

2023

# SIGNIFICANT CASES

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# SIGNIFICANT CASES

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# COMMERCIAL LITIGATION

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**COUNSEL:** Ralph Burnham & J Kelly Ratliff

**FIRM:** Reminger Co., L.P.A.

**HEADQUARTERS:** Cleveland, OH

## BUSINESS

### Appellate Win for Blasting Company

Plaintiff, a land development company, alleged that the blasting company breached an agreement to provide certain guaranteed results because it was unhappy with the results of the defense's blasting operations. Plaintiff sought over \$200,000 in damages. The defense argued the blasting company never guaranteed specific results. Instead, they maintained the blasting work performed was consistent with the description in the proposal bid terms. Unfortunately, Plaintiff never provided written acceptance of the bid proposal terms. And no other written contract existed. The defense, therefore, argued a signed contract was unnecessary and that assent to the bid terms was reflected by the fact Plaintiff invited the blaster to perform the blasting work after receiving the bid. On summary judgment, the U.S. District Court for the Western District of Kentucky agreed the bid terms were controlled, even though no written contract existed, and dismissed the Plaintiff's claims against the blaster. The District Court also granted the defense's counterclaim and awarded the blaster its reasonable attorneys' fees.

In a unanimous decision, the Sixth Circuit agreed that even in the absence of a signed agreement, the terms of the bid proposal governed the parties' relationship. As a result, the Sixth Circuit upheld the dismissal of Plaintiff's Complaint as well as the award of attorneys' fees in the defense's favor. ■

**RESULT:** Motion for Summary Judgment Granted.

**COUNSEL:** Anthony Ellrod & Linna Loangkote

**FIRM:** Manning Kass

**HEADQUARTERS:** Los Angeles, CA

## BUSINESS LITIGATION

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### Jury Denies Management Consultants' Multi-Million Dollar Claims

Owners of multiple nightclubs were represented in action against management consultants for theft and defended action by management consultants against clients, claiming unpaid consulting fees and an ownership interest in the businesses. Pretrial offer by the owners was to pay consultants \$100,000. After a six-week trial, consultants asked for an award in excess of \$2.3 million and a finding that they had a 50% ownership in businesses. The jury returned a verdict in five hours, awarding one of the consultants \$20,000 and denying all other claims, including claims of ownership. ■

**RESULT:** Favorable Jury Verdict for Business Owners.

**COUNSEL:** Anthony Ellrod & Linna Loangkote

**FIRM:** Manning Kass

**HEADQUARTERS:** Los Angeles, CA

## BUSINESS LITIGATION

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### Online Affiliate Royalties Program Enforced

Owners and operators of an online magazine entered into an affiliate agreement with defendant, pursuant to which, they would receive a percentage of product sales to consumers directed to defendant's website by the magazine's website. Defendants denied that any contract existed and challenged damages. At trial, the online magazine was awarded \$821,040.59, representing 100% of the lost royalties asserted. ■

**RESULT:** Favorable Verdict for Online Affiliate.



# CIVIL RIGHTS / MUNICIPAL LIABILITY

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**COUNSEL:** Meghan Wynkoop & Anastasia Shubert-Baranowski

**FIRM:** Margolis Edelstein

**HEADQUARTERS:** Philadelphia, PA

## CIVIL RIGHTS

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### School Bus Operator Allegedly Wrongfully Detained Minor

Minor-Plaintiff through her parents/guardians filed a federal civil rights action against the Defendant-bus driver, school district, the local intermediate unit, and three additional school staff members alleging the bus driver intentionally and unlawfully detained the disabled Minor-Plaintiff on a school bus in violation of her Constitutional Rights under the Fourth, Fifth and Fourteenth Amendments. Defense's Motion to Dismiss pursuant to Rule 12(b) (6) for failure to state a claim heavily relied on the Defendant-bus driver's right to Qualified Immunity and Plaintiff's failure to establish that a Constitutional violation occurred where the Defendant-bus driver did not act with the requisite intent. The Judge considered not only the parties' briefs, but also video footage submitted by Plaintiff and granted the Defendant's Motion, dismissing all of Plaintiff's federal civil rights claims without leave to amend. ■

**RESULT:** Motion to Dismiss Granted.

**COUNSEL:** Meghan Wynkoop & Jocelyn Mendez

**FIRM:** Margolis Edelstein

**HEADQUARTERS:** Philadelphia, PA

## CIVIL RIGHTS

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### Plaintiff's Improper Detention Argument Fails on Jurisdictional Grounds

Plaintiff initiated this action in the USDC, New Jersey, claiming the Defendants subjected him to improper detention in a Pennsylvania Immigration Detention Facility, because he was under the impression that he was a lawful U.S. Citizen. Plaintiff had been living in New Jersey for several years and, after committing a crime of conspiracy to commit bank fraud, he was transferred from a state prison in Pennsylvania to an immigration detention facility in Pennsylvania and ultimately removed to his home country of Liberia. He alleged several tortious and Constitutional violations against the detention facility and several other federal defendants, including the United States.

The detention facility is located in Pennsylvania, yet plaintiff filed in New Jersey. The Defendant facility successfully argued the matter should be dismissed for lack of personal jurisdiction and improper venue. The Court agreed and shortly after this decision, the Court also dismissed the matter as to the remaining federal defendants. ■

**RESULT:** Motion to Dismiss Granted.

**COUNSEL:** Eugene Ramirez & Lynn Carpenter

**FIRM:** Manning Kass

**HEADQUARTERS:** Los Angeles, CA

## WRONGFUL DEATH/CIVIL RIGHTS

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### Unanimous Defense Verdict in Federal Court

A unanimous 7-0 defense verdict was obtained on behalf of defendants in a federal civil rights action in the Central District of California. The lengthy case culminated with plaintiffs asking for \$115 million in damages, but the jury disagreed, finding in favor of the defendant. The jury deliberated for 2 ½ hours before arriving at a unanimous verdict in favor of the deputy, finding that the use of lethal force here was objectively reasonable, necessary, and justified under these extreme circumstances. ■

**RESULT:** Defense Verdict.



**POLICE LINE DO NOT CROSS**

**COUNSEL:** Mike Ryan & Jonathan Zellner

**FIRM:** Ryan Ryan Deluca LLP

**HEADQUARTERS:** Bridgeport, CT

## MUNICIPAL LIABILITY

### School District Dodges Liability for Dodgeball Injury

Plaintiff, a high school student, claimed a traumatic brain injury as a result of being hit in the head by a soft foam ball during a game of “Doctor Dodgeball” in PE class. He claimed he told his teacher of the incident and that he was not feeling well but was not sent (and did not go) to the school nurse and, instead, simply sat out the remainder of the class. While walking in the gymnasium hallway later that day after an athletic team practice, plaintiff collided with another student and was hit in the head again, allegedly exacerbating his symptoms from the earlier incident. The plaintiff sued the local school district, claiming that it was negligent in allowing the class to play Doctor Dodgeball and in not sending him for medical attention after he allegedly informed his teacher of the incident in class. In an effort to avoid the defense of governmental immunity, the plaintiff claimed that the teacher was under a mandatory duty to only teach activities listed on the high school physical education curriculum and to send him for medical attention after he allegedly informed the teacher of the incident. The trial court agreed with the defense that neither of these were mandatory duties, but instead involved the exercise of discretion. As a result, the judge instructed the jury that in order to prevail the plaintiff had to prove that it was apparent to the teacher that his failure to act subjected the student to imminent harm. After a twelve-day trial, the plaintiff asked the jury for an award in excess of \$10 million. The jury returned a defense verdict in under five hours. ■

**RESULT:** Defense Verdict.

**COUNSEL:** Mike Ryan & Jonathan Zellner

**FIRM:** Ryan Ryan Deluca LLP

**HEADQUARTERS:** Bridgeport, CT

## MUNICIPAL LIABILITY

### Justice Delayed Isn't Always Justice Denied

In this federal court lawsuit, the plaintiffs claimed that a town and several town officials and planning and zoning commission members violated their due process, equal protection, and First Amendment rights in connection with the planning and zoning commission's handling of an application for renewal of a special exception permit. The commission initially denied the permit renewal application, but after plaintiffs appealed that denial and obtained a reversal from the state court the commission granted a renewal subject to certain conditions. The plaintiffs contended that the conditions imposed were onerous, that the commission did not take similar action with respect to an allegedly comparable property in town, and that the commission had retaliated against the plaintiffs for exercising their First Amendment rights. The defendants moved for summary judgment on several grounds, including that the plaintiffs' claims failed as a matter of law and the defendants were entitled to qualified immunity. The plaintiffs' initial demand was \$10.4 million. The demand dropped to \$5 million dollars while summary judgment was pending, with an indication the demand would increase substantially if the court denied summary judgment.

The district court agreed with the defendants, granting summary judgment in their favor both on the merits and on the basis of qualified immunity. One of the more remarkable aspects of the case is that the summary judgment motion was filed in 2015 and argued in 2016, but not decided until 2023. ■

**RESULT:** Summary Judgment.

**COUNSEL:** Mark Hastings

**FIRM:** BTO Solicitors LLP

**HEADQUARTERS:** Glasgow, Scotland

## PUBLIC LIABILITY

### High Profile Occupiers' Liability Tetraplegia Case

A £16.25 million public liability claim was filed for damages after a fall from two stacked portacabins within the confines of a work site which sat adjacent to an electrical substation in Aberdeen. The pursuer, a member of the public, accessed a fenced area off-site with two stacked portacabins during the hours of darkness. He fell from the top portacabin and was found by the clients the following morning. The pursuer has been rendered tetraplegic and requires 24-hour care and adapted living accommodation.

The case raised an important issue on the statutory interpretation of "danger" in terms of s.2(1) of the Occupiers' (Scotland) Act 1960. It also raised novel issues on remoteness of loss, the extent of the duty of care owed, the interpretation of reasonable foreseeability of harm together with the application of the doctrine of volenti.

A diet of debate was fixed to argue that the pursuer's case was irrelevant in law and should be dismissed. The Debate was heard in October 2023 and judgment issued on 19 December 2023. The Court upheld the argument that the pursuer's case was fundamentally irrelevant in law and dismissed the case. A costs award was also secured in the clients' favour for the costs in defending the case successfully to Debate. ■

**RESULT:** Successfully Defended.

# CONSTRUCTION

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**COUNSEL:** Gary Snodgrass, Nick Meriage, and Andrew Corkery

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

**HEADQUARTERS:** St. Louis, MO

## CONSTRUCTION & PROPERTY DAMAGE

### Complete Defense Verdict in Favor of Contractor on a Case Alleging Water Damage to an Apartment Complex Seeking in Excess \$1.5 Million in Damages

A defense verdict was obtained in a property damage case in which Plaintiff sought in excess of \$1.5 million dollars in damages. Plaintiff's final demand prior to trial was \$900,000. This case resulted from a frozen sprinkler pipe that caused a flooding event on February 14, 2020. Plaintiff claimed that Defendant, a sprinkler contractor, left water in the building's dry sprinkler system, after a July 31, 2019, testing of the system. Plaintiff alleged this water left in the pipe several months before froze and led to the pipe burst, causing damage to 15 apartments and common areas in the building. Plaintiff claimed that costs to repair the building were over \$1.5 million. Defendant claimed the cause of the water in the dry sprinkler system was the build-up of condensation and the building owner's failure to drain the condensation from the system. After a four-day trial, the St. Louis County jury returned a unanimous verdict in favor of the Defendant. The jury found that Plaintiff was 100% at fault for the incident.

This case was listed as one of the 18 best defense verdicts in Missouri in 2023, according to *Missouri Lawyer's Weekly*. ■

**RESULT:** Complete Defense Verdict.



**COUNSEL:** Joseph L. Amos, Jr.

**FIRM:** Fisher Rushmer, P.A.

**HEADQUARTERS:** Orlando, FL

# COMMERCIAL CONSTRUCTION DEFECT

## Successful Summary Judgment Dismissal in a Construction Defect Case, Based on Controversial Statute of Repose

A Daytona Beach, Florida condominium association sued various defendants (architect, engineer, general contractor and numerous subcontractors). The defendants prevailed on a final summary judgment motion based on Florida's Statute of Repose. (Per the Florida Statute, the final tolling event is defined as one of four possible events.)

The Plaintiff/condominium association has appealed the decision, and the appeal is pending. ■

**RESULT:** Summary Judgment Granted – Appeal Pending.



**EMPLOYMENT /  
DISCRIMINATION /  
DISABILITY /  
WORKERS  
COMPENSATION**



**COUNSEL:** Bethanie Murray

**FIRM:** Reminger Co., L.P.A.

**HEADQUARTERS:** Cleveland, OH

## EMPLOYMENT

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### Did Job Duties as Delivery Driver Cause Illness?

In a unanimous defense verdict, the jury found with the defense that Plaintiff's heat exhaustion, dehydration, and acute kidney injury did not arise out of his employment. Although Plaintiff indisputably became severely ill while working as a delivery driver, the jury was not convinced that his job duties caused his illness and subsequent hospitalization. ■

**RESULT:** Defense Verdict.



**COUNSEL:** Shelby McMillan

**FIRM:** Reminger Co., L.P.A.

**HEADQUARTERS:** Cleveland, OH

## WORKERS COMPENSATION

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### Total Refund in Ohio Workers Compensation Case

Defense successfully obtained a total refund from the Ohio Bureau of Workers' Compensation (BWC) Surplus Fund for the entire cost of a claim against her client. The employee's injury occurred while he was on a lunch break, running some personal errands, and also making a bank deposit for his employer. The claimant was driving back to his place of employment when he was hit head on by another car. Although the State-Fund employer contested the original allowance of the claim, their defense was rejected. The claim was allowed for the conditions of Fractured Sternum; Contusion of Left Knee; Abrasion of Right Hand and a Complex Tear of the Left Medial Meniscus.

Defense utilized a narrow exception offered to state fund employers when their employees are injured as the result of a "Not-At-Fault Motor Vehicle Accident." The BWC agreed to remove the cost of the entire claim from the employer's experience, which was significant since there was nearly \$40,000.00 in indemnity and medical bills paid in the claim. The claim ultimately settled for \$34,500.00. However, defense was charged nothing for the settlement since The BWC agreed to reimburse the State-Fund employer for all charges to their experience from this claim, including the final settlement. ■

**RESULT:** Total Refund from Ohio Bureau of Workers' Compensation.

**COUNSEL:** Heather Veik

**FIRM:** Erickson | Sederstrom

**HEADQUARTERS:** Omaha, NE

## EMPLOYMENT

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### Victory in Nebraska Supreme Court

An employee who suffered physical and mental injuries during an active shooter training drill conducted by her employer asserted claims for assault and intentional infliction of emotional distress against her employer. The district court dismissed the employee's claims on the basis that the Nebraska Workers' Compensation Act provided the employee her exclusive remedy and therefore barred the employee from pursuing tort claims in district court.

The employee challenged the district court's decision on appeal, arguing that the exclusive remedy did not apply under the circumstances of her claims. The Nebraska Supreme Court rejected the employee's arguments and affirmed dismissal of the claims. In doing so, the Nebraska Supreme Court agreed that the Nebraska Workers' Compensation Act provided the exclusive remedy for the employee's injuries, barring her from pursuing tort damages in district court. The Nebraska Supreme Court found that the exclusive remedy rule applied even though the employee claimed that her employer acted with specific intent to cause injury, rejecting the employee's request to narrow the exclusivity rule and also rejecting the employee's argument that the dismissal of her claims violated public policy. ■

**RESULT:** Dismissal of Tort Claims Against Employer Affirmed.

**COUNSEL:** Michael D. Williams & Nicholas J. Cenac

**FIRM:** Brown Sims, P.C.

**HEADQUARTERS:** Houston, TX

# LONGSHORE AND HARBOR WORKERS' COMPENSATION ACT

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## 72-Year-Old Longshoreman Backs out of Settlement Then Loses at Trial

In January 2020, the 72-year-old claimant was injured while working for a defense contractor aboard a US Navy vessel under construction. He claimed injury to his knee and other parts of his body resulting in his total disability. The claimant had been treated for his knee injury and provided with compensation and medical benefits pursuant to the LHWCA. The insurance carrier terminated benefits once a dispute arose over whether continued pain complaints and other injuries were attributable to the workplace injury or the pre-existing condition. Prior to an initial trial setting, the parties agreed to a \$100,000 settlement. Shortly before the agreement was finalized, however, the claimant reneged on the agreement and demanded more than \$350,000 to settle his claim. Prior to trial, the parties mediated twice, and the insurance carrier offered the same amount to settle that was previously offered. The case was then tried to an administrative law judge. Employer and Carrier argued that the workplace injury had resolved, that any lingering complaints were related exclusively to the worker's pre-existing conditions, and that claimant was not totally disabled. The administrative law judge issued a Decision and Order Denying Benefits. In her decision, the ALJ held that Employer and Carrier had met their burden of proof in establishing that the worker's workplace injury was resolved, that Employer and Carrier had honored their obligations to the worker under the Act, and that no further compensation or medical benefits were owed. ■

**RESULT:** Defense Decision and Order.

**COUNSEL:** Natalie McCartney & Laura Donald

**FIRM:** BTO Solicitors LLP

**HEADQUARTERS:** Glasgow, Scotland

## OCCUPATIONAL STRESS

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### High Profile Stress at Work Claim

A claim for occupational stress is being pursued on behalf of a nurse against her employer, which is the largest health board in Scotland. The nurse was employed from 2016 in the role of Chief Nurse and Head of Child Protection. From January 2017, she provided advice in respect of child protection concerning an in-patient child. This resulted in media reports surrounding an investigation into the child's parents, and particularly her mother. The nurse was accused of having helped compile a falsified report in relation to the child, which resulted in the mother being charged with attempted murder. Further articles were published by other media companies, which named the nurse and published photographs of her, causing her significant distress. The claim arises from the client failing to receive any support from her employer during the period she was off work sick with stress and with no occupational health referral being made. A claim is brought against the health board for occupational stress, as the nurse has sustained a serious psychiatric injury as a result of alleged breach of duty by her employer. It is unlikely she will ever return to work as a nurse and, after investigation, she is likely to raise a high value claim against the Board, with junior and senior counsel instructed. A number of expert reports are being instructed from a psychiatrist and an expert in occupational health. The claim is very complex, involving events over many years, and shows experience in pursuing as well as defending claims. This case is likely to attract media attention. It is of the utmost importance to the client due to the significant impact on her health. ■

**RESULT:** Defense in the Face of Media Attention.

# INSURANCE COVERAGE

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**COUNSEL:** Stephen D. Ellis

**FIRM:** Paul Frank + Collins P.C.

**HEADQUARTERS:** Burlington, VT

## FIRE INSURANCE COVERAGE

### Big Win for Insured Condo Association

Defendant obtained a \$2.2million arbitration award for a ski resort condominium association against its insurer. The claim arose out of a 2014 fire that destroyed a building and its 30+ units. The policy insured the building and units at replacement cost value. The association's initial estimates projected total construction costs in excess of \$12million, but the insurer's initial estimates were closer to \$6million. The condo board was effectively paralyzed by the projected shortfall, and several unit owners sued and put the association into receivership. The Receiver negotiated an agreement with the insurer whereby the insurer agreed to reimburse actual construction costs up to its "undisputed loss measure," which had by then increased to over \$8million, the Receiver waived claims for bad faith and agreed that just over \$1million was excluded under a "code and ordinance" exclusion, and the parties agreed to submit any remaining disputes to arbitration. Construction was completed at a total cost of about \$11.5million, but the insurer took the position that all costs over its "undisputed loss measure" were excessive or excluded. After the receivership was terminated, the claim was taken over and arbitration demanded. Following a three-day hearing, the arbitration panel awarded the insured association \$2.2million, an amount exactly equal to the difference between total construction cost and the amount the insurer had paid voluntarily, less the amount the Receiver had agreed were excludable under "code and ordinance" exclusion. The award was confirmed and paid and was recently remanded back to the arbitration panel to determine whether to add pre-award interest at the statutory rate of 12%. If awarded, interest will likely exceed \$500,000. ■

**RESULT:** \$2.2 million Arbitration Award in Favor of Defense.

**COUNSEL:** Robert Friedman

**FIRM:** Harman, Claytor, Corrigan & Wellman, P.C.

**HEADQUARTERS:** Alexandria and Richmond, VA

## INSURANCE COVERAGE DISPUTE

### Tort Claimant Challenges Reduction of UIM Limits

This federal declaratory judgment action involved a tort claimant's challenge to a reduction of UIM limits under a business auto policy. In the underlying wrongful death action, claimant sued for \$10.35 million and pursued UIM coverage under the decedent's employer's business auto policy. The claimant argued that the employer's reduction of the UIM limit to a \$70,000 combined single limit was defective, such that the applicable UIM limit reverted to the policy's liability limit of \$1,000,000. The trial court granted the defendant insurer's motion for summary judgment, holding that the UIM limit reduction was valid and effective, such that the applicable limit was \$70,000—all of which was offset by the tortfeasor's available liability coverage. On appeal, the appellate court affirmed the trial court's decision. ■

**RESULT:** Summary Judgment in Favor of Insurer.



**COUNSEL:** Paul Convery

**FIRM:** William Fry LLP

**HEADQUARTERS:** Dublin, Ireland

## INSURANCE

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### **Aircraft Lessors Make Claim Against Insurance for Loss/ Detention of Aircraft**

Multiple aircraft leasing companies have taken claims against insurance providers following the imposition of European sanctions against Russia which led to the insureds terminating various leases. Subsequently many of the lessees re-registered the aircraft in Russia and the aircraft have not been returned. The insureds seek to make claims under “All Risks” or “War Risks” aspects of the policies.

The proceedings are currently before the High Court for case management where a number of issues, such as the use of evidence as between the different proceedings, security concerns surrounding the identities of witnesses, the need for expert evidence in English law and the translation of documents are under review. The trial is due to begin in September 2024, with similar proceedings currently before the English courts. ■

**RESULT: Defense across International Lines.**

**COUNSEL:** Stacey L. King

**FIRM:** Garan Lucow Miller, P.C.

**HEADQUARTERS:** Detroit, MI

# AUTO INSURANCE COVERAGE DISPUTE

## Out-of-State Vehicle Driven in MI for 1 Year Without Notifying Auto Insurance Carrier of Garaging Location Change Then Sues Insurer Arguing Policy Reformation

A 2023 verdict was awarded in favor of a national insurance company in a Jury Trial in Michigan, in a complicated auto insurance coverage dispute. The plaintiff moved from out-of-state to Michigan but failed to notify the insurer of her vehicle's change in garaging locations for over 1 year. She continued to drive around in MI with expired, out-of-state license plates, and knowing she needed Michigan auto insurance, but was doing nothing to advise her auto insurance company of the change. The plaintiff was then involved in a serious accident in Michigan in 2021. The plaintiff sued the auto insurer, arguing that her auto insurer "should have known" that she had moved, despite the auto insurer's repeated communications to her regarding her out-of-state auto insurance policy. The plaintiff argued that reformation applied to the out-of-state auto insurance policy, so as to provide her with all of the trappings of the Michigan No-Fault system. Had she been successful on that argument, her claim to date would have easily exceeded \$200,000 in medical bills, household chores and attendant care reimbursement, and policy reformation would have entitled her to lifetime, unlimited medical reimbursement. The Jury disagreed with the woman and found that reformation did not apply, and that she was not entitled to Michigan PIP coverage/benefits at all. ■

**RESULT:** Defense Jury Verdict.

**COUNSEL:** Steven E. Peiper

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

**HEADQUARTERS:** Buffalo, NY

## INSURANCE COVERAGE

### Second Circuit Returns to Traditional New York Approach in Applying “Horizontal Exhaustion” vs “Vertical Exhaustion” Where Other Insurance Applies

The battle between primary and excess insurers, when “other insurance” is involved, is often tricky and in most states, courts follow the “horizontal exhaustion” rule that all primary policies are exhausted before excess policies come into play. The Second Circuit, applying New York law, had backtracked from that rule in a couple of cases, looking to the intent of the contracting parties to prioritize coverage, rather than looking at the policies and then the indemnity/risk transfer agreements in trade contracts. In other words, the Court had been implementing “vertical exhaustion,” even without paying heed to the indemnity agreements.

In this case, the Second Circuit was steered back to a traditional horizontal approach. A primary level insurer sought to relieve exposure to its primary CGL policy by arguing that the existence of a trade contract indemnity agreement rendered an “other insurance” approach moot, trying to avoid a focus on the risk transfer elements of the trade contract. The court recognized that where the indemnity clause is at issue in the underlying litigation, or has been dismissed, the court should recognize the impact of that issue or that decision and apply the doctrine of horizontal exhaustion. ■

**RESULT:** Horizontal Exhaustion Rule Applied.

**COUNSEL:** Caleb Riser & Hunter Adams

**FIRM:** Richardson, Plowden & Robinson, P.A.

**HEADQUARTERS:** Columbia, SC

## INSURANCE

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### **\$6,000,000 in Damages Claimed, \$15,000 Awarded**

After 8 days of trial and nearly \$6,000,000 in damages claimed by Plaintiff for fire loss against insurance carriers and agent, jury found for the insurance carriers on all claims, for the agent on comparative negligence and awarded only \$15,000 in damages against agent on breach of fiduciary duty claim. ■

**RESULT:** Defense Judgment.



**COUNSEL:** Lauren Paxton Roberts, Ashley Alderson,  
and Chadwick A. McTighe

**FIRM:** Stites & Harbison PLLC

**HEADQUARTERS:** Louisville, KY

## INSURANCE AND ARBITRATION

### Arbitration Saga Finally Ends

The plaintiffs brought a host of claims against a number of defendants resulting from a terminated captive insurance relationship. The defendants moved the claims to arbitration, and a two-week hearing resulted in a complete defense award. The plaintiffs attempted to challenge that award in court, which failed. The defendants, meanwhile, commenced arbitration to recover fees and expenses incurred in the first arbitration pursuant to the parties' contracts. The proceeding resulted in an award to the defendants turned claimants, plus an award of fees incurred in pursuing the claims. The original plaintiffs returned to court to challenge this second award, where the trial court affirmed the award. That ruling was then affirmed on appeal. ■

**RESULT:** Arbitration Award in Favor of Defense Affirmed.



**COUNSEL:** Jose Riguera

**FIRM:** Keller Landsberg PA

**HEADQUARTERS:** Fort Lauderdale, FL

## MALICIOUS PROSECUTION

### Public Adjuster Sued Property Insurance Company and its Agents for Malicious Prosecution in Reporting Suspected Insurance Fraud

A claim for malicious prosecution was filed by a public adjuster against a property insurance company (represented by co-counsel) and several of its employees who reported the plaintiff to the Florida Department of Financial Services, Division of Insurance Fraud in connection with his handling of a fire damage claim. The trial court granted summary judgment in favor of the defendants, finding that the public adjuster failed to prove the defendants acted with malice in causing the underlying criminal charges to be filed against him (although the prosecutor later dismissed the charges) and further holding that the defendants were immune from civil liability under § 626.989, Fla. Stat. because they were under a statutory duty to report suspected insurance fraud. The Fourth District Court of Appeal affirmed the dismissal. ■

**RESULT:** Summary Judgment for the Defendants on All Claims.



**COUNSEL:** Raymond Robin & Dena Sacharow

**FIRM:** Keller Landsberg PA

**HEADQUARTERS:** Fort Lauderdale, FL

## EQUITABLE SUBROGATION

### Workers Compensation Carrier has to Repay Health Insurer for Work-Related Injuries

After eight years of contentious litigation over insurance benefits, including a five-day trial, the case prevailed on appeal. First, a judgement was recovered in the trial court for \$1,755,436.85 in favor of the client and against another insurance company on claims for Equitable Subrogation and Unjust Enrichment. The client sought reimbursement for amounts it paid for medical treatment of an injured employee which should have been paid by the other insurance company, the employer's workers compensation insurer. The other insurance company appealed. On October 12, 2023, the Fourth District Court of Appeal summarily affirmed the trial court judgment a day after oral argument. The client also prevailed on its claims for attorneys' fees in both the trial court and in the Fourth DCA. ■

**RESULT:** Final Judgment Affirmed on Appeal.

# LEGAL MALPRACTICE

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**COUNSEL:** Mike Stoberski & Stephanie Zinna

**FIRM:** Olson Cannon & Gormley

**HEADQUARTERS:** Las Vegas, NV

## LEGAL MALPRACTICE

### Jury Awards Defense Verdict and Finds No Breach of the Rules of Professional Conduct

The defendant law firm represented a doctor who was allegedly scammed by a real estate investment partner in purchasing property. While the doctor was aware of the purchase of a particular piece of property, his signature was allegedly forged on deeds of trust pledging his office building as collateral, as well as his personal guaranty. He hired the defendants to stop the foreclosure on his office building and give him time to work something out to save his building. The doctor's partner, a convicted fraudster, allegedly caused the doctor's signatures to be placed on the documents without his knowledge or consent. The doctor failed to disclose when he hired the defendants that he had attempted to obtain a take out loan from a bank with the fraudster upon learning of the fraud. At the underlying trial, the defendants learned for the first time of the doctor's attempts to borrow money to cure the default. The judge found the doctor did not act like someone who was the victim of fraud. The judge had to choose between finding in favor of an innocent lender who had loaned \$2.95 million dollars, and the doctor, who willingly was involved in the transaction, and whose partner was a convicted fraudster. As a matter of equity, the judge found in favor of the lender and allowed the foreclosure to proceed. The defendants' efforts successfully stayed the foreclosure of the medical office building for almost five years. After trial, the doctor fired the defendants, hired new counsel who settled the foreclosure matter, dismissed the appeal and filed suit against his attorneys for among other things, failing to produce alibi evidence that he was in surgery all day and could not have executed the deeds of trust and guaranty.

**COUNSEL:** Mike Stoberski & Stephanie Zinna

**FIRM:** Olson Cannon & Gormley

**HEADQUARTERS:** Las Vegas, NV

## [CONTINUED]

The doctor sued his attorneys for the \$800,000 he had to pay for settlement of the foreclosure matter; the value of the property that he lost in the scam which their expert appraised at \$2,965,000; and \$100,000 in fees and costs awarded to parties to whom the court granted summary judgment in the action that were found to have no involvement. The doctor also sought disgorgement of \$770,000 in attorneys' fees. The doctor claimed that the fees charged were all for the subject matter, when in actuality, the fees covered 15 matters over a period of ten years. The judge ruled she, not the jury, would decide if any disgorgement of fees was proper, but allowed the jury to answer an interrogatory whether any breach of any rule of professional conduct was a serious breach which would trigger the potential disgorgement of fees.

The jury took less than an hour to award a defense verdict and find no breach of the rules of professional conduct. ■

**RESULT: Defense Verdict.**



**COUNSEL:** Jose Riguera

**FIRM:** Keller Landsberg PA

**HEADQUARTERS:** Fort Lauderdale, FL

## LEGAL MALPRACTICE

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### Husband Demanded over \$1M for Alleged Negligent Drafting of Special Needs Trust

A prominent South Florida law firm and one of its partners were successfully defended in a case filed by a disappointed would-be beneficiary husband who challenged the provisions of a Special Needs Trust the law firm drafted for the benefit of his disabled wife. The plaintiff asserted claims for malpractice/professional negligence, breach of fiduciary duty, and breach of contract, alleging the attorney (who represented the wife's guardian) failed to adequately protect the ward and her husband from self-dealing and misappropriation of assets by the trustees appointed to administer the Special Needs Trust. Defendants prevailed on summary judgment, arguing the plaintiff lacked standing to maintain a legal malpractice action against the law firm and that the plaintiff failed to establish that the law firm fell below the standard of care in drafting the Special Needs Trust. ■

**RESULT:** Summary Judgment for the Defendants on All Claims.

**COUNSEL:** Jose Riguera

**FIRM:** Keller Landsberg PA

**HEADQUARTERS:** Fort Lauderdale, FL

## LEGAL MALPRACTICE

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### **Wife Filed Suit Alleging Firm was Negligent in Failing to Amend her Late Husband's Estate Plan for Her Benefit**

Dismissal was obtained with prejudice of a lawsuit against an AmLaw200 firm by the deceased client's wife asserting claims for legal malpractice, professional negligence, breach of fiduciary duty, vicarious liability, and breach of contract. The plaintiff alleged that the law firm and one of its partners failed to prepare an estate plan in a timely manner before the decedent passed away. The trial court dismissed the wife's claims with prejudice, finding she lacked standing to bring those claims against the law firm because she was not the client and could not demonstrate that the decedent's testamentary intent, as expressed in a will or other testamentary instrument, was frustrated. The order of dismissal is currently on appeal. ■

**RESULT:** All Claims Dismissed with Prejudice.

**COUNSEL:** Maria P. Gonzalez & Raymond Robin

**FIRM:** Keller Landsberg PA

**HEADQUARTERS:** Palm Beach, FL

## LEGAL MALPRACTICE AND BREACH OF FIDUCIARY DUTY

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### Seller of Real Estate Sued 13 Defendants in Connection with the Sale of his Multi-Million Dollar Waterfront Home

A local law firm and one of its attorneys (the “Firm”) were represented in a case filed by a disappointed seller of real estate who claimed he would have demanded a higher sales price for his multi-million-dollar waterfront home if he knew the identity of the ultimate buyer who purchased the home after the contract was assigned to that buyer. The plaintiff-seller was represented by the Firm in connection with the transaction and asserted claims for malpractice/professional negligence and breach of fiduciary duty against the Firm. Defense prevailed on a motion to dismiss with prejudice, convincing the court that the plaintiff failed to state any cause of action against the Firm, including on the grounds that the Firm had no duty to investigate who the ultimate buyer was, considering that plaintiff signed the contract before retaining the law firm to represent him and the contract allowed the buyer to freely assign the contract without restrictions. This client was the only defendant in the action to be dismissed at the motion to dismiss stage. Defense attorneys successfully handled the appeal, which resulted in an affirmance of the order of dismissal by the Third District Court of Appeal. ■

**RESULT:** Final Dismissal with Prejudice, Affirmed on Appeal.

**COUNSEL:** Maria P. Gonzalez & D. David Keller

**FIRM:** Keller Landsberg PA

**HEADQUARTERS:** Palm Beach, FL

# VARIOUS TORT CLAIMS AGAINST LAW FIRM AND ATTORNEY

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## Plaintiff Sued Out-of-State Law Firm and Partner for Various Tort Claims in Connection with Representation of Plaintiff Out-of-State

Dismissal was obtained for a lawsuit asserting various tort claims against an out-of-state law firm and attorney (the “Firm”). The claims were dismissed on personal jurisdiction grounds, based on the finding that the plaintiff failed to demonstrate that the Firm had sufficient minimum contacts in Florida to establish jurisdiction over it. ■

**RESULT:** Case Dismissed on Personal Jurisdiction Grounds.





**COUNSEL:** David Keller & Maria Vernace

**FIRM:** Keller Landsberg PA

**HEADQUARTERS:** Palm Beach, FL

## LEGAL MALPRACTICE

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### Chinese Educational Company Demanded over \$14.5M Against Prominent National Law Firm for Alleged Failure to Provide Advice During Purchase of an Independent College

A prominent national law firm and one of its prior partners were successfully defended in a case filed by a Chinese educational company who lost its entire investment in a California College after the College shut its doors. The plaintiff asserted a claim for malpractice/professional negligence, alleging the attorney and law firm, during their representation of the plaintiff in the purchase of the College, failed to adequately advise the plaintiff of accreditation and financial issues with the College and the potential consequences that could result from the accreditation problems. Defense prevailed on summary judgment, convincing the court the plaintiff's claim against the attorney and law firm was time-barred because the plaintiff had actual knowledge of the financial and accreditation problems with the College prior to plaintiff's purchasing the College, and suffered the alleged damages at the time the plaintiff purchased the College. ■

**RESULT:** Summary Judgment for the Defendants.

**COUNSEL:** Rob Laney

**FIRM:** Ryan Ryan Deluca LLP

**HEADQUARTERS:** Bridgeport, CT

## LEGAL MALPRACTICE

### Jury Vindicates Lawyer Sued After Obtaining a \$17.5 Million Divorce Settlement

Despite the plaintiff's admission during her divorce proceedings that she was 100% at fault for the deterioration of the marriage, her attorney secured for her a judgment of divorce awarding her cash and assets of approximately \$17.5 million, representing a little more than half of the marital estate. Two years later, having somehow run out of money, the plaintiff sued her divorce lawyer for malpractice, contending that he failed to fully advise her about all of the details of the comprehensive 36-page separation agreement incorporated into the divorce decree, that she should have also received lifetime alimony, and that she was unaware that the \$12 million house that she received in the divorce was encumbered by a mortgage. After a two-week trial, the plaintiff asked the jury to award her a minimum of \$5.5 million. The jury returned a verdict in favor of the defendant attorney after deliberating for less than half a day. Notably, plaintiff's legal malpractice expert was so unpersuasive that two days after the verdict one of the jurors sent defense counsel an email that referred to the expert as "the man who knew nothing" and stating that after cross-examination the jury believed the expert was a better witness for the defendant than he was for the plaintiff. ■

**RESULT:** Defense Verdict.

**COUNSEL:** Jose Riguera

**FIRM:** Keller Landsberg PA

**HEADQUARTERS:** Fort Lauderdale, FL

## DEFAMATION AND TORTIOUS INTERFERENCE

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### Plaintiff Sued Law Firm and Former Partner for Alleged Defamation and Tortious Interference

Dismissal with prejudice was obtained for a lawsuit asserting claims for defamation and tortious interference against an AmLaw 100 firm and one of its former partners. The claims against the former partner were dismissed on personal jurisdiction grounds, and the court granted the law firm's motion to dismiss and transfer, based on forum non conveniens. The appeal was successfully handled, which resulted in a per curiam affirmance in the Third District Court of Appeal. ■

**RESULT:** Case Dismissed on Personal Jurisdiction.



**COUNSEL:** Raymond Robin

**FIRM:** Keller Landsberg PA

**HEADQUARTERS:** Palm Beach, FL

## ATTORNEYS' FEE DISGORGEMENT

### Attorneys' Fees Paid to Attorneys Not Subject to Disgorgement

Motion to Dismiss was a success in a probate adversary proceeding. A Law Firm that had represented a Trustee in a case filed by a Trust Beneficiary acted as Defendant. At the conclusion of that case, the Beneficiary filed a Supplemental Complaint against the Law Firm claiming the right to disgorgement of all attorneys' fees paid to the Law Firm in connection with the Trustee's case. Defense prevailed on a Motion to Dismiss arguing: (1) absent specific claims of fraud against an attorney, the beneficiary had no standing to sue the Trustee's counsel; (2) in order to be liable for surcharge or disgorgement, one must have breached a fiduciary duty owed to the party asserting the claim; and (3) a law firm representing a Trustee in a case brought by a Beneficiary owes no separate independent duty to the Beneficiary. The Court agreed, granted dismissal with prejudice, and denied rehearing. ■

**RESULT:** Final Dismissal with Prejudice.

# MEDICAL MALPRACTICE

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**COUNSEL:** Alexandria Balduff & Michael Murphy

**FIRM:** Reminger Co., L.P.A.

**HEADQUARTERS:** Cleveland, OH

## MEDICAL MALPRACTICE

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### Directed Verdict in Favor of Ophthalmologist

This medical malpractice case against an ophthalmologist involved the negligent insertion of an intraocular lens during cataract surgery which led to pain, blurred vision, and other visual symptoms. The Plaintiff also claimed negligence on behalf of the defense for failing to identify that the lens was dislocated on post-op visits over a several-year period. Ultimately, the Plaintiff had lens explanation surgery, and a new lens was placed. Based on testimony from the Plaintiff (and other witnesses), the Judge granted the defense's motion after 4 days of trial and at the close of the case on a statute of limitations defense. The pre-trial demand was \$500,000 and Plaintiff was offered \$10,000. ■

**RESULT:** Directed Defense Verdict.



**COUNSEL:** Alexandria Balduff, Michael Murphy & Daniel Egger

**FIRM:** Reminger Co., L.P.A.

**HEADQUARTERS:** Cleveland, OH

## MEDICAL MALPRACTICE

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### Hospitalist and Pharmacist Sued for \$2.1M After Alleged Negligent Off-Label Prescription

This case involved the alleged negligent off-label prescription of an antipsychotic medication which led to side effects including seizure, blood clotting, and, ultimately, the death of an elderly woman. The hospital's employed pharmacist and hospitalist were both accused of medical negligence. The Plaintiff claimed that the pharmacist was negligent in approving the prescription, as there is literature suggesting the medication is not safe for that use. The Plaintiff claimed that the hospitalist approved the use of the anti-psychotic medication and did not order adequate DVT prophylaxis, leading to deep vein thrombosis and pulmonary embolism.

After several days of trial, the plaintiff asked the jury to return a verdict in the amount of \$2.1M. There was never an offer made by any defendant. The jury returned unanimous defense verdicts in favor of the hospitalist and pharmacist. ■

**RESULT: Defense Verdict.**

**COUNSEL:** Thomas Kilbane & Nick Siciliano

**FIRM:** Reminger Co., L.P.A.

**HEADQUARTERS:** Cleveland, OH

## MEDICAL MALPRACTICE

### Radiologist, General Surgeon, and Hospital System Cleared of Med Mal Charges

Plaintiff experienced groin pain and was referred to a Radiologist and General Surgeon for evaluation and treatment. The Radiologist performed a dynamic ultrasound and diagnosed the plaintiff with bilateral femoral hernias and a sports hernia/core muscle injury. The General Surgeon then performed a laparoscopic hernia repair with mesh and tacks after obtaining plaintiff's consent. Post operatively, plaintiff reported severe chronic pain due to the tacks and mesh. Over the next four years, plaintiff had three surgeries to remove the tacks and mesh.

Plaintiff alleged a lack of informed consent, and that the defense had misdiagnosed the hernias, performed the wrong surgery, and improperly performed the surgery. Additionally, plaintiff's husband made a claim for loss of consortium.

After six days of trial, the plaintiff asked the jury to return a verdict in excess of \$500,000. After 45 minutes of deliberation, the jury returned defense verdicts in favor of the Radiologist, General Surgeon, and Hospital System. ■

**RESULT:** Defense Verdict.



**COUNSEL:** Susan Blasik-Miller, Taylor Knight, David Krause,  
and Meredith Turner-Woolley

**FIRM:** Reminger Co., L.P.A.

**HEADQUARTERS:** Cleveland, OH

## MEDICAL MALPRACTICE / WRONGFUL DEATH

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### Radiologist and Family Physician Prevail in Wrongful Death Suit

Radiologist and Family Physician prevailed after a week-long medical malpractice wrongful death trial. The Plaintiff claimed the Defendant physicians were negligent, which delayed the diagnosis of lung cancer and resulted in the death of a 58-year-old man. After deliberating for 90 minutes, the jury returned a unanimous 8-0 verdict, finding that all of the Defendants provided appropriate care to the unfortunate patient. ■

**RESULT:** Defense Verdict.

**COUNSEL:** Erin Hess & Daniel Egger

**FIRM:** Reminger Co., L.P.A.

**HEADQUARTERS:** Cleveland, OH

## MEDICAL MALPRACTICE

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### Home Health Nurse Cleared in Negligence Case

Plaintiffs claimed that home health nurse was negligent during a suprapubic catheter change which allegedly led to a bowel perforation and the need for surgery including colostomy and hospital stay. After a week and a half of trial, the jury returned a defense verdict on negligence in favor of the home health nurse and hospital system. ■

**RESULT:** Defense Verdict.



**COUNSEL:** Trenton Gill & Brooke Behrens

**FIRM:** Reminger Co., L.P.A.

**HEADQUARTERS:** Cleveland, OH

## MEDICAL MALPRACTICE

### First of Its Kind Cryotherapy Lawsuit

The plaintiff visited a chiropractor seeking treatment for a constant, severe headache, as well as lower back and ankle pain. After standard chiropractic adjustments and acupuncture, the chiropractor suggested trying a whole-body cryotherapy session. The plaintiff agreed, but ended the session after two minutes, citing 10/10 pain and signs of hypertensive crisis. The plaintiff contended that her blood pressure was never checked prior to the cryotherapy, and therefore she should never been allowed to use the therapy. Further, Plaintiff also contended that the chiropractor was negligent in their post-cryotherapy management. As per the plaintiff's assertions, the chiropractor's alleged negligence led the plaintiff to require emergency medical attention and resulted in subsequent diagnoses of hypertension and post-traumatic stress syndrome (PTSD).

The defendants denied they failed to take the blood pressure. They presented evidence of standard processes and procedures which they follow every time for every patient using cryotherapy. Furthermore, once the plaintiff had a bad experience, they provided reasonable care in helping her recover, including offering her every opportunity to obtain transportation home or to a hospital. She recovered quickly and did not have PTSD.

After a three-day trial, the jury returned a defense verdict in favor of the chiropractor. ■

**RESULT: Defense Verdict.**

**COUNSEL:** Juliane Miller & Lynne Blain

**FIRM:** Harman, Claytor, Corrigan & Wellman, P.C.

**HEADQUARTERS:** Alexandria and Richmond, VA

## MEDICAL MALPRACTICE

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### Verdict in Favor of Long-Term Care Facility

Plaintiff sued a long-term care facility after her husband contracted COVID and died in May 2020. Plaintiff alleged that the defendant failed to ensure that the decedent received proper hydration and nutrition and failed to communicate essential information to the family and physician. Plaintiff alleged that defendant failed to transfer the decedent to the hospital when asked to do so by the family. After six days of trial, the jury found negligence but also concluded that the long-term care facility acted in good faith and was therefore immune from liability under a Maryland statute providing immunity to health care providers acting in good faith under a catastrophic health emergency declaration. ■

**RESULT:** Defense Verdict.



**COUNSEL:** Jill Harris

**FIRM:** BTO Solicitors LLP

**HEADQUARTERS:** Glasgow, Scotland

## MEDICAL MALPRACTICE

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### Defending General Practitioners in Complex and High-Value Fatal Claim Involving Allegations of Delay in Diagnosis of Cervical Cancer

General Practitioners (GPs) were defended in a complex fatal claim involving allegations that the GPs failed to examine and refer the deceased to gynecology for investigations resulting in the late diagnosis of her cervical cancer and her subsequent death. Breach of duty was complex as the clinical records were incomplete and did not reflect the discussions the GPs had with the deceased offering examination. There were also complexities in relation to causation in respect of the scope of the claim as expert evidence was that referral to gynecology would not have avoided the deceased's demise but may have improved her symptoms. The deceased was aged 34 at the time of her death so this claim was potentially very high value. The matter was complicated as there was a concurrent investigation before the GPs' professional regulator (the General Medical Council) into the GPs' involvement in the deceased's care. GPs were defended before the General Medical Council as well as in the civil claim. The regulator was persuaded to close the investigation at the earliest stage and achieved a very favorable outcome in out of court settlement. ■

**RESULT:** Favorable Out-of-Court Settlement Achieved.

**COUNSEL:** Claire White

**FIRM:** BTO Solicitors LLP

**HEADQUARTERS:** Glasgow, Scotland

## MEDICAL MALPRACTICE

### Defending General Practitioners in Complex and High-Value Ophthalmology Claim

A GP acts as defendant in a highly complex claim raised against multiple defenders. It is a complex case because it is raised against various professional bodies, including an optician service, the hospital dermatology and eye clinic services and various GPs. The claimant suffered from dermatitis and was prescribed topical steroid creams from 2010 to 2018. The pursuer alleges that the application of steroid cream to his face has caused him to develop glaucoma, and, as a result, he has lost sight in one eye and has reduced vision in the other. Factual issues remain in dispute on whether the claimant was advised of the risks associated with steroid creams and whether he applied the creams contrary to advice given. The claim spans 8 years and requires understanding of complex arguments on causation given multiple defenders were involved in his care. Investigations have been undertaken to establish whether the pursuer's glaucoma deficits were present before the prescribing of steroids. As the pursuer was under ophthalmic treatment from the first and second defenders at the relevant time, it is alleged that both defenders delayed in diagnosing glaucoma which could have impacted subsequent deterioration of the pursuer's eyesight. Particular skill was required to determine apportionment of liability. A supportive breach of duty report and substantive investigations into condition and prognosis continue. A 6-week trial is assigned to commence in spring 2024. ■

**RESULT:** Defense with Apportionment Claims.

# MOTOR VEHICLE / TRANSPORTATION / AVIATION

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**COUNSEL:** Nicholas Brunette, Katherine Haire & James Scheidler

**FIRM:** Reminger Co., L.P.A.

**HEADQUARTERS:** Cleveland, OH

## TRANSPORTATION

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### Victory in Indiana Supreme Court

This case involved catastrophic injuries from a semi-truck accident, where the Plaintiff's attorney tried to sue new defendants (who were involved in the road construction in the vicinity of the accident) in a different county after Plaintiff had obtained a judgment through a bench trial against the truck driver and trucking company. Defense obtained a dismissal of the case with prejudice from the Monroe County Court. Plaintiff then appealed the Monroe County Court's dismissal to the Indiana Court of Appeals.

After the Court of Appeals reversed the trial court, the defense attorneys moved the Indiana Supreme Court to accept transfer. Notably, the Indiana Supreme Court agrees to hear only about 10% of all civil cases in which transfer is sought; here, the Supreme Court granted transfer, vacated the Court of Appeals' decision, and affirmed the trial court's dismissal with prejudice. ■

**RESULT:** Dismissal with Prejudice.



**COUNSEL:** Jeffrey W. Kirsheman

**FIRM:** Fisher Rushmer, P.A.

**HEADQUARTERS:** Orlando, FL

## TRUCK ACCIDENT V. PEDESTRIAN

### Paralegic Plaintiff Sues for \$36 M in Negligent Selection of Motor Carrier Lawsuit

Plaintiff is a registered nurse who stopped to render aid to an overturned vehicle. As she was walking back to her vehicle on the side of the road, she was struck by a truck that was hauling luxury vehicles shipped by a Nevada car dealership to its Florida customers. Plaintiff was rendered a paraplegic as a result of the accident, with neurogenic bowel and bladder, and also sustained a TBI among other injuries. The driver of the truck did not have the required CDL, and the truck was not properly marked per DOT regulations.

Plaintiff sued the dealership alleging negligent selection of the motor carrier. Although the motor carrier had valid operating authority and proper insurance, Plaintiff alleged the dealership had a duty to conduct a safety analysis of the motor carrier including review of DOT websites, which would have revealed multiple prior citations and violations, including operation of CMVs without a CDL, and deficient safety statistics. Plaintiff supported her theory with expert testimony as to the standard of care and cited multiple red flags which contraindicated hiring the carrier.

The Defendant dealership argued it had no legal duty to conduct such a safety analysis prior to hiring the motor carrier. Industry standard required at most verification of valid operating authority, proper insurance, and no unsatisfactory rating with the DOT, all of which were met. Defendant further argued the motor carrier was an independent contractor, and that the dealership properly relied on the motor carrier to comply with all laws and regulations and to safely transport the goods.

**COUNSEL:** Jeffrey W. Kirsheman

**FIRM:** Fisher Rushmer, P.A.

**HEADQUARTERS:** Orlando, FL

## [CONTINUED]

The Court granted summary judgment for the Defendant dealership on the grounds argued by Defendant. The Court found legal duty, including the scope of inquiry of the shipper, was a question of law for the Court, and that Defendant owed Plaintiff no legal duty to conduct the in-depth safety analysis asserted by Plaintiff. ■

**RESULT:** Summary Judgment Granted.



**COUNSEL:** Todd King & Taylor Sweet

**FIRM:** Cranfill Sumner LLP

**HEADQUARTERS:** Raleigh, NC

## TRUCKING

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### Plaintiff Sues Truck Driver and Trucking Company After Suffering Significant Orthopedic and Internal Injuries

Defendant truck driver turned left onto a 2-lane rural highway at night. Plaintiff approached from the Defendant's left and was hidden from Defendant's view at the time the turn was initiated due to a dip in the road. Defendant's tractor completed the left turn, but his trailer was still in Plaintiff's lane of travel when Plaintiff's car struck the rear end of the trailer. Plaintiff suffered a broken femur, internal bleeding, traumatic brain injury, and alleged that the accident injured his kidney, resulting in the need for dialysis and a kidney transplant. Important defense witnesses were an engineer/accident reconstructionist and a human factors expert. Demands prior to, and during, trial, were in the several million-dollar range. ■

**RESULT:** Defense Verdict.

**COUNSEL:** Mica Nguyen Worthy & Devin Honbarger

**FIRM:** Cranfill Sumner LLP

**HEADQUARTERS:** Raleigh, NC

## AVIATION

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### Aviation Law Group Secures Order on Aircraft Repossession Matter

Plaintiff air charter company sued defendant aircraft owner over its exercise of repossession rights under the parties' lease agreement. After the defendant's repossession of the aircraft, the air charter company withheld certain aircraft logbooks from the aircraft owner. Defense attorneys filed a counterclaim and moved the Court for claim and delivery of the logbooks. After a successful hearing, the court granted the defendant's motion and ordered seizure of the logbooks and the return of the defendant aircraft owner. ■

**RESULT:** Granted Order for Seizure.

**COUNSEL:** James Jebo

**FIRM:** Harman, Claytor, Corrigan & Wellman, P.C.

**HEADQUARTERS:** Alexandria and Richmond, VA

## TRACTOR TRAILER ACCIDENT

### Jury Rejects Plaintiff's Exacerbation and Future Medical Claims

This tractor trailer accident occurred at a truck stop in southwest Virginia. The defendant tractor trailer was pulling an oversize load. The driver did not realize the rear of his cargo struck the claimant's tractor as he maneuvered from a parking spot. The plaintiff was forced to chase down the defendant. A claim for punitive damages based on the hit and run was ultimately rejected by the court after extensive motions practice.

Plaintiff alleged that the impact knocked him out of his sleeper berth, causing injuries to his neck, back, and shoulder, as well as a concussion. He later claimed PTSD from the incident. Plaintiff suffered from chronic neck and back pain from an earlier work injury and sought regular treatment with pain management in the 10 years leading up to the subject accident. However, despite his pain, Plaintiff was able to continue working as a pipe fitter. A year before the accident, he obtained his CDL and began working as a truck driver. After the accident, Plaintiff claimed that his pain was exacerbated. Several months later he claimed he was unable to continue working and was eventually recommended for cervical and lumbar discectomies and fusions. The past and future medical bills totaled \$512,309.28. Plaintiff alleged past and future lost earnings of \$480,000. At trial, Plaintiff called his treating neurosurgeon, neurologist, and psychologist, as well as a forensic neurosurgeon.

The defense argued that the claimed injuries and future medical treatment were the result of the natural progression of Plaintiff's underlying spinal condition. They utilized a neurosurgeon to testify about his interpretation of the radiological imaging as well as his examination of the plaintiff. Ultimately, the defense asked the jury

**COUNSEL:** James Jebo

**FIRM:** Harman, Claytor, Corrigan & Wellman, P.C.

**HEADQUARTERS:** Alexandria and Richmond, VA

## [CONTINUED]

to focus on the medical records from the first 3 months following the accident, where Plaintiff's complaints were identical to his pre-accident complaints. The defense also found several inconsistencies in the medical histories that Plaintiff provided to his doctors.

At the close of the three-day trial, Plaintiff asked the jury to award \$1,800,000. The defense argued that this was simply a muscle strain case and recommended a verdict of \$45,000 to \$55,000. The jury deliberated for 2 hours and awarded \$55,000. ■

**RESULT:** Jury Verdict for the Amount Recommended by the Defense.



**COUNSEL:** Chris Marcucci

**FIRM:** Margolis Edelstein

**HEADQUARTERS:** Mount Laurel, NJ

## TRUCK ACCIDENT

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### 3 Plaintiffs, 2 Collisions & 1 Tractor-Trailer...0 Liability

Three personal injury actions arose from a motor vehicle collision in which a disabled vehicle on a multi-lane highway, occupied by the Plaintiff-mother/driver and her two Plaintiff-minor children, was struck by a tractor-trailer operated by the Defendant. Two Plaintiffs sustained multiple fractures in the collision requiring emergent surgery. Immediately prior to this collision, at approximately 5:00 AM, Plaintiff-mother rear-ended a bus. As a result of the first collision, Plaintiff's vehicle came to rest sideways, across the middle lane of traffic. Plaintiff-mother failed to turn on the hazard lights. Within 1 to 2 minutes later, the Defendant-truck driver struck the disabled vehicle. At the conclusion of a 2-week trial, the jury returned a defense verdict of no cause of action, finding that the defendant had not been negligent. ■

**RESULT:** Defense Jury Verdict.

**COUNSEL:** Brian M. Webb

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

**HEADQUARTERS:** Buffalo, NY

## TRUCKING ACCIDENT

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### Plaintiff Seeks \$5M in Damages from High-Speed Trucking Accident

A driver for a Canadian trucking company was involved in a high-speed rear-end accident with a passenger vehicle while traveling through Western New York. The passenger vehicle was crushed and resulted in a total loss, arguably as a result of the truck driver's negligence. Plaintiff's counsel maintained a settlement demand of the full \$5M (Canadian) policy throughout. The truck driver and trucking company were awarded summary judgment dismissing plaintiff's complaint in its entirety on the basis that plaintiff suffered neither a "serious injury" nor economic loss in excess of "basic economic loss" as defined by Article 51 of NYS Insurance Law ("No-Fault"). ■

**RESULT:** Claim Dismissed on Summary Judgment.



**COUNSEL:** Jon Nichols & Alison Feehan

**FIRM:** Harman, Claytor, Corrigan & Wellman, P.C.

**HEADQUARTERS:** Alexandria and Richmond, VA

## NEGLIGENCE

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### Inebriated Bicyclist Riding on Highway Demands \$2 Million When Hit by Driver

This negligence case arose from a motor vehicle accident involving an inebriated bicyclist riding at night in the rain on a public highway. The Plaintiff's \$2 Million lawsuit was removed to federal court. The defense prevailed on a critical argument regarding the exclusion of police dash and body cam video footage. Plaintiff's counsel sought in part to exclude video footage that showed Plaintiff assaulting a first responder and using threats of violence. The federal court held that Plaintiff's violent outbursts and threats of violence had probative value as to Plaintiff's level of intoxication. Within three months of the Court order, as Defendants prepared to file for summary judgment, Plaintiff voluntarily dismissed all claims. There was no settlement. ■

**RESULT:** Voluntary Dismissal.



**COUNSEL:** Ben Woody & Brennan McGovern

**FIRM:** Harman, Claytor, Corrigan & Wellman, P.C.

**HEADQUARTERS:** Alexandria and Richmond, VA

## NEGLIGENCE, NEGLIGENT ENTRUSTMENT

### Dissatisfied Plaintiff Attempts to Pin Liability Elsewhere for Motor Vehicle Accident Injuries

Circuit Court for the City of Winchester, Virginia. After an unfavorable jury verdict in a garden-variety motor vehicle tort case in November 2022, the plaintiff sued the original defendant's father under theories of negligent entrustment and negligence supervision for having allowed his daughter to drive the vehicle in the first place. The father filed a demurrer and a plea-in-bar. The father argued that the demurrer should be sustained because Virginia law does not recognize separate tort liability for the owner of a vehicle simply allowing another driver with a series of traffic tickets or a single, specific criminal offense unrelated to negligent driving on her record. The father also sought an order holding that the claim against him for damages was barred, as the jury had already decided the amount of damages the plaintiff sustained in this accident, and that the judgment had already been marked satisfied. The trial court granted the demurrer and dismissed the case with prejudice, holding that there was no basis to hold the father liable and therefore denying the plea in bar without prejudice as moot. Acknowledging the relative lack of caselaw from Virginia's appellate courts on negligent entrustment, the trial court facilitated the entry of a final judgment to allow the case to be immediately appealed to the Court of Appeals of Virginia. Plaintiff did not appeal. ■

**RESULT:** Demurrer Sustained.

# PERSONAL INJURY

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**COUNSEL:** Michael Thorne & Nabeel Peermohamed

**FIRM:** Brownlee LLP

**HEADQUARTERS:** Calgary, AB

## PERSONAL INJURY

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### Turning Tides: Alberta's Landmark Decision on Failure to Mitigate and Future Loss of Income Claims

Following a serious rear-end car accident, the plaintiff alleged a traumatic brain injury and PTSD and hired 12 experts to claim damages for his injuries, loss of income and cost of future care. The defense hired 4 experts and pointed out discrepancies between the plaintiff's own evidence and how he depicted himself in his YouTube videos. A judge (without jury) deemed the plaintiff "not credible or reliable" and awarded \$95,000 in damages, including a 40% reduction for his failure to mitigate by refusing to follow medical advice (the highest known reduction in Alberta's history). Notably, the defense surpassed both their best formal offer to settle and the plaintiff's settlement demand by a considerable margin. ■

**RESULT:** Judge Deems Plaintiff "Not Credible or Reliable" and Awards 40% Reduction in Damages.

**COUNSEL:** David Owens & Mary B. Dolan Roche

**FIRM:** Molod Spitz & DeSantis, P.C.

**HEADQUARTERS:** New York, NY

## PERSONAL INJURY

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### Red Light Accident

The plaintiffs were passengers in a motor vehicle operated by the defendant. The vehicle was struck in the rear by the co-defendant while stopped at a red light. Defense moved for summary judgment prior to the commencement of discovery. An affidavit was submitted of the defendant providing his account of the incident. In opposition, the co-defendant failed to submit any evidence to contradict the defendant's account of the accident. The Court granted the motion holding that the defendant's affidavit was sufficient to establish a prima facie case of negligence. The Court also noted that the co-defendant failed to demonstrate that discovery might lead to the discovery of facts exclusively within the control of the plaintiff. ■

**RESULT:** Summary Judgment Granted.



**COUNSEL:** David Pick & Leilani Karr

**FIRM:** Brownlee LLP

**HEADQUARTERS:** Calgary, AB

## PERSONAL INJURY

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### **Trial Verdict Upheld on Appeal: Injury to 9-Year-Old Passenger in an ATV Incident was a Freak Accident, Not Caused by Negligence of Driver**

This is an appeal from the dismissal of an action in negligence arising from a terrible accident in which the appellant was severely injured at the age of nine while a passenger on an all-terrain vehicle. The accident occurred during an off-road trip with the appellant's uncle, his 15-year-old cousin, and a family friend. The appellant submits the trial judge erred (1) in failing to find that the uncle, as the supervising adult, breached the standard of care by permitting him to participate in the trip as the cousin's passenger in the vehicle, and (2) in failing to find that the direct and circumstantial evidence established a prima facie case that the cousin was negligent in his operation of the vehicle. In the alternative, the appellant says that, as a matter of law, a statute in force at the time of the accident but repealed prior to trial, which cast the legal onus of proof on owners and operators of all-terrain vehicles to prove they were not negligent, applied to this action. Held: Appeal dismissed. Given the evidentiary record and the trial judge's findings of fact, it cannot be concluded that the uncle breached the standard of care in his role as a supervising adult by permitting the appellant to participate in the trip as the cousin's passenger. The trial judge made no reviewable error in his analysis of the cousin's liability or in his application of the onus of proof. The reverse onus provision in the repealed statute was purely procedural and did not apply to the appellant's action. ■

**RESULT:** Appeal Dismissed.

**COUNSEL:** Julie S. Palmer

**FIRM:** Harman, Claytor, Corrigan & Wellman, P.C.

**HEADQUARTERS:** Alexandria and Richmond, VA

## **AUTOMOBILE LIABILITY / TRAUMATIC BRAIN INJURY APPEAL**

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### **\$7,000,000 Judgment Overturned in Appellate Victory**

Plaintiff sought \$25,000,000 in damages after suffering a traumatic brain injury in a catastrophic automobile accident. Jury found in favor of Plaintiff and awarded \$7,000,000 in damages. Defense Counsel was retained to appeal the adverse verdict, which was well in excess of the defendant's available insurance coverage. On appeal, Defense argued that Plaintiff had not adduced sufficient evidence to establish that Defendant's negligent was a proximate cause of the accident. The intermediate Court of Appeals agreed, reversed the \$7,000,000 excess judgment, and entered judgment in favor of the defendant. ■

**RESULT:** Reversal of Adverse Jury Verdict and Judgment for Defendant.

**COUNSEL:** Kara L. Ellsbury & Erin E. Berry

**FIRM:** Hirst Applegate, LLP

**HEADQUARTERS:** Cheyenne, WY

## NEGLIGENCE

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### Defense Wins Summary Judgment in a Food Truck Gas Explosion

Plaintiff, an employee at a food truck, was severely injured in a gas explosion. The food truck had a main gas line that split into four lines, each servicing a different appliance. Many years before the explosion, a non-party removed an appliance and either did not cap the gas line that serviced the removed appliance or the cap subsequently fell off. From that point forward, the food truck owner did not use that gas line and kept the service valve closed. The day before the explosion, the food truck owner hired Defendant to repair a pilot light on the stovetop range. Defendant completed the pilot light repair without incident and checked the new pilot light for gas leaks. The next day, while Plaintiff was opening the food truck, Plaintiff turned on all four gas lines, including the uncapped gas line. Plaintiff went to light a pilot light on a fryer and an explosion occurred. Plaintiff filed suit against Defendant, alleging Defendant had a duty to inspect the entire gas system and discover the uncapped line. Defendant moved for summary judgment, arguing Defendant was not hired to inspect or work on the entire gas system and did not have a duty to inspect appliances or gas lines beyond those Defendant was hired to work on. The Court agreed and held Defendant did not have a duty to inspect the entire gas system, including lines he did not contract to work on. ■

**RESULT:** Summary Judgment Granted.



**COUNSEL:** Robert Kaplan

**FIRM:** Margolis Edelstein

**HEADQUARTERS:** Mount Laurel, NJ

## DIRT BIKE VS. CAR, INTERSECTION ACCIDENT

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### Unlicensed Plaintiff-Felony Convict/Dirt Bike Operator Wipes Out at Trial

Plaintiff was riding a dirt bike, intended for off-road use, heading east on a two-lane roadway consisting of a single lane in each direction. The traffic signal for Plaintiff's lane of travel was yellow as he approached the intersection. Plaintiff operated his dirt bike on the shoulder of the roadway to pass a car in front of him with its left turn signal on. He collided with the front passenger side of a car operated by the Defendant, who was traveling in the opposite direction and navigating a left turn to the south. Plaintiff sustained multiple fractures necessitating surgery with resulting range of motion limitations and scarring.

Plaintiff's counsel sought summary judgment on the issue of the Defendant's negligence despite Plaintiff's deposition testimony that he lost control of the dirt bike when he attempted to brake and entered the intersection when the traffic signal had turned red. Plaintiff's counsel also sought to exclude evidence of Plaintiff's being unlicensed, as well as his prior conviction for conspiracy to commit murder, which the court denied. The jury returned a defense verdict, finding that the Defendant was not negligent. ■

**RESULT:** Defense Jury Verdict.

# PRODUCT LIABILITY

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**COUNSEL:** Phillip Bryant & Andrew Corkery

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

**HEADQUARTERS:** St. Louis, MO

## PRODUCTS LIABILITY

### Building Owner Alleged Sprinkler Pipe Manufacturer had a Duty to Warn of Proper Pipe Installation

Fire suppression sprinkler dry system ruptured in a hotel. Hotel owner sued the installer, the inspection company, and the defendant, the pipe manufacturer, alleging that the manufacturer failed to warn that the pipe should be installed with the weld seam oriented in a 12 o'clock position to avoid possible corrosion to the weld, the weakest part of the pipe. Given the state of the art, defense asserted that the manufacturer had no duty to warn. Additionally, the plaintiff's claimed \$5,100,000 damages were challenged. Following nearly 5 years of litigation, defense successfully convinced the plaintiff's attorney to settle with the manufacturer for an amount less than the anticipated cost of continued litigation. ■

**RESULT:** Favorable Out-of-Court Settlement.



**COUNSEL:** Scott D. Kagan

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

**HEADQUARTERS:** Buffalo, NY

## PRODUCT LIABILITY

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### **Pour It Out: Plaintiff's Lost Wine Profits Claim Barred by the Economic Loss Doctrine**

Six-thousand gallons of wine rose above 68 degrees and was irreparably damaged due to an alleged defective wine chiller. The winery sold the damaged wine for a significantly decreased price. In asserting a claim under New York strict products liability, the winery sought compensation for the lost profit value of the wine.

The economic loss doctrine provides that where only economic loss with respect to a product itself is alleged and the underlying transaction is a sale of goods, the purchaser is limited to its contractual remedies and may not maintain the traditional tort causes of action of negligence or strict products liability. In this case, the New York Appellate Division, Third Department, held that the loss of value to the wine is a consequential damage caused by the chiller's failure to perform as anticipated under normal business conditions – a traditional breach of contract situation and as such, recovery is precluded in a tort claim by the “economic loss doctrine.”

**RESULT:** New York Appellate Division Dismisses Claim.

# PROPERTY / PREMISES LIABILITY

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**COUNSEL:** Jeremy L. Swift

**FIRM:** Treece Alfrey Musat P.C.

**HEADQUARTERS:** Denver, CO

# PREMISES LIABILITY - AUTOMOBILE ACCIDENT IN CONSTRUCTION ZONE

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## Vehicular Rollover in Construction Zone with Severe Injuries

Plaintiff collided with a stationary median in an ongoing construction zone. Plaintiff's vehicle rolled several times, resulting in severe back injuries and surgical fusion surgery. Plaintiff had not worked since the date of the accident, and the trial commenced more than five years post-accident. Plaintiff claimed that the construction zone was poorly lit, and that the temporary traffic control devices violated various provisions of the Manual for Uniform Traffic Control Devices. Plaintiff sued multiple Defendants, and despite numerous attempts by the Defendants to obtain summary judgment, the Court permitted the case to proceed to a jury trial. Counsel represented the traffic control subcontractor, but all Defendants presented a unified defense to the claims. Following six days of testimony, Plaintiff's counsel asked the jury to award \$9.8 million in damages. The jury deliberated for one and one-half hours and returned a complete defense verdict. No appeal followed. Plaintiff had also attempted to submit claims for exemplary damages to the jury, but the Court dismissed those claims halfway through the trial.

**RESULT:** Complete Defense Verdict Following Six-Day Jury Trial.

**COUNSEL:** Leonard G. Kamlet

**FIRM:** Abrams, Gorelick, Friedman & Jacobson, LLP

**HEADQUARTERS:** New York, NY

## GENERAL LIABILITY

### Elderly Man/Retired NYC Police Detective and Attorney Fell on Exterior Restaurant Stairs

Plaintiff, whose primary injury was a surgically repaired ruptured quadriceps tendon, consistently demanded the million-dollar policy to settle and no less than \$875,000 to avoid motion practice. He refused to mediate. Plaintiff claimed that the stairway was defective and did not have adequate lighting. He also claimed that since the two separately represented corporate defendants had an identity of principals, each were culpable, an argument rejected by the court. Based on a detailed presentation of plaintiff's confusing testimony, the landlord sought summary judgment on the argument that plaintiff's testimony, distilled to its essence, allowed the court to conclude that the only possible reading of plaintiff's testimony was that he mis-stepped and lost his balance because he could not see; that his foot never touched the single step below the exit platform; that the design, configuration, or construction of the stairway was causally unrelated to the fall; and that the defendant landlord was a non-liaible out-of-possession lessor because it did not retain sufficient control over the leased premises, was not contractually obligated to maintain and repair, no causally related significant structural defect existed contrary to a specific statutory provision, and, finally, its course of conduct was not inconsistent with its status as an out-of-possession lessor.

The case is coming up for trial against the codefendant tenant.

**RESULT:** New York Supreme Court Grants Summary Judgment to Defendant Commercial Landlord.

**COUNSEL:** Ben Woody & Alison Feehan

**FIRM:** Harman, Claytor, Corrigan & Wellman, P.C.

**HEADQUARTERS:** Alexandria and Richmond, VA

## PREMISES LIABILITY / NEGLIGENCE

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### After Trip-and-Fall Results in Amputation, Landscaping Company Hit with \$12mm Lawsuit

Superior Court for the District of Columbia. Trial court granted summary judgment to a landscaping company, which was sued after a pedestrian walking along a public park allegedly fell into an unmarked bollard hole, breaking her ankle, ultimately requiring a below-the-knee amputation. Plaintiff alleged that the landscaping contractor had a duty to warn the city of potential hazards discovered in the course of performing its landscaping duties. Notwithstanding the fact that the contract did not impose this obligation on the contractor, the record revealed no instance of the landscaping company being on-site or summoned to perform duties within months of the injury. So, since the plaintiff could not present a triable issue of fact on the issue of duty or breach, the trial court awarded summary judgment.

**RESULT:** Summary Judgment Granted.



**COUNSEL:** Alice Spitz & Mary B. Dolan Roche

**FIRM:** Molod Spitz & DeSantis, P.C.

**HEADQUARTERS:** New York, NY

## PERSONAL INJURY

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### Trip and Fall in Retail Store

Plaintiff tripped and fell over the base of a stanchion in the electronics department of a retail store. Video Footage captured multiple store guests including the plaintiff pass the stanchion without incident prior to the accident. Defense moved for summary judgment on the basis that the stanchion was an open and obvious condition. Plaintiff opposed the motion claiming that because the stanchion was not in use and there were no ropes connecting it to other stanchions it was an inherently dangerous condition. The Eastern District awarded summary judgment to the retail store. The Court's decision highlights that the condition was open and obvious because the plaintiff observed the stanchion prior to the incident and had ample space to maneuver around it.

**RESULT:** Summary Judgment Granted.

**COUNSEL:** Alice Spitz & Mary B. Dolan Roche

**FIRM:** Molod Spitz & DeSantis, P.C.

**HEADQUARTERS:** New York, NY

## PERSONAL INJURY

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### Trip and Fall Outside Retail Store

Plaintiff slipped and fell on an accumulation of water at the entrance of retail store. The accident was unreported, and the plaintiff did not know how long the water was present on the floor prior to the accident. Defense sought permission from the Court to move for summary judgment at the conclusion of fact discovery. The pre-motion conference request letter set forth the grounds for the motion and highlighted that plaintiff presented no evidence of how the condition was created or any evidence of notice. At the pre-motion conference, the Court dismissed the case because plaintiff failed to come forth with evidence regarding creation of the condition and notice of the condition to oppose the request to move for Summary Judgment.

**RESULT:** Case Dismissed at Pre-Motion Conference.



**COUNSEL:** Alexander Hartwig

**FIRM:** McCague Borlack LLP

**HEADQUARTERS:** Ottawa, Ontario

## PERSONAL INJURY - OCCUPIERS' LIABILITY

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### Woman Sues Brother-In-Law After Tripping Over Her Sister's Crocs

The plaintiff was visiting her sister and brother-in-law at their home in Ottawa when she tripped over her sister's "Croc" brand sandals that were left on an outdoor landing, breaking her ankle as a result. Rather than sue her sister, the plaintiff chose to only sue her brother-in-law, alleging that he failed to meet the reasonable duties required of an "occupier." She argued that he did not warn her about his wife's "habit" of leaving her sandals on the landing, that he did not instruct his wife to refrain from doing so, or that he failed to install a shoe rack or to widen the landing to give his wife somewhere else to leave her sandals.

Judge found the plaintiff's sister/defendant's wife to be an independent and capable adult, not someone who needed their spouse to tell her where to put her shoes. He found that "only the most anxious person" would tell visitors to be on guard for the possibility of sandals being left out, and that the standard of care of a reasonable homeowner required neither installing a shoe rack nor widening a back step just to mitigate this risk. Overall, there was no breach of the standard of care. Even if there had been a breach, the judge found this would not have caused the plaintiff's injury: the evidence showed the defendant's wife still left her sandals on the landing even after knowing her sister had fallen and after a shoe rack was installed, so nothing the defendant could have done would have made any difference. Had there been a finding of liability, the judge found the plaintiff would have been 25% contributorily negligent for not looking down while stepping onto a lower landing.

**RESULT:** Action Dismissed, No Liability Found.

# WRONGFUL DEATH

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**COUNSEL:** Dannel Duddy, Ben Woody

**FIRM:** Harman, Claytor, Corrigan & Wellman, P.C.

**HEADQUARTERS:** Alexandria and Richmond, VA

## PRODUCT LIABILITY, ADMIRALTY AND MARITIME PERSONAL INJURY

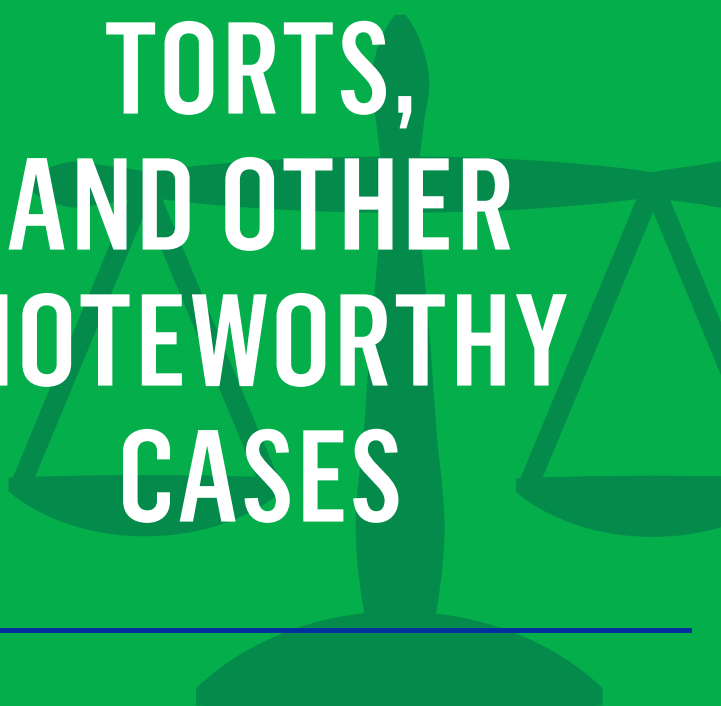
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### **\$18mm State-Law Wrongful Death Claim Against Manufacturer of Component to Military Equipment Preempted by the General Maritime Law**

Trial court granted a manufacturer's motion to dismiss a claim for state-law wrongful death arising out of a workplace injury suffered by a harbor worker assisting in the refurbishment of a destroyer. The manufacturer was alleged to have designed or manufactured an unreasonably dangerous blow-in door protecting the air intake on a gas turbine. Despite orders to lock out and tag out the electrical source controlling the blow-in door, it still activated unexpectedly, crushing and killing the plaintiff's decedent. The manufacturer argued that because the sole basis for the trial court's jurisdiction was its admiralty jurisdiction pursuant to 28 U.S.C. S 1333, the general maritime law applied, preempting Plaintiff's claims for state-law wrongful death remedies. The District Judge adopted the report and recommendation of the Magistrate Judge, which agreed that the considerably less generous general maritime law supplied the sole remedies for recovery. ■

**RESULT:** Dismissal of State-Law Wrongful Death Claim.

**BUSINESS,  
TRADEMARK  
INFRINGEMENT,  
REPUTATIONAL  
TORTS,  
AND OTHER  
NOTEWORTHY  
CASES**



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**COUNSEL:** Samuel Meadows and Nicholas Siciliano

**FIRM:** Reminger Co., L.P.A.

**HEADQUARTERS:** Cleveland, OH

## PRIVATE NUISANCE

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### Smoke Clears on Pizza Oven Nuisance Case

Defense attorneys were retained by an insurer to defend a family who built a wood-fired pizza oven in their backyard. The plaintiffs, residents of a neighboring apartment building alleged that the smoke from the pizza oven invaded their property and home resulting in pain and discomfort, loss of use, and diminished property value. After years of feuding, the plaintiffs filed a lawsuit against the defendants, seeking compensatory and punitive damages. After a four-day trial and 30 minutes of deliberations, the jury returned a defense verdict, agreeing that their use of the pizza oven did not constitute a private nuisance.

The trial was highly publicized by local media sources, including [Cleveland.com](#), [Cleveland Scene](#), [Channel 19 News](#), and [Fox 8 News](#). WKYC News live-streamed Samuel's [opening statements](#) and Nicholas' [cross-examination](#) of the plaintiff. Fox 8 News also aired a portion of Samuel's [closing statements](#). Legal podcaster, Steve Lehto, also documented the case on YouTube. ■

**RESULT:** Defense Verdict.

**COUNSEL:** Andrew C. Simpson

**FIRM:** Andrew C. Simpson, P.C.

**HEADQUARTERS:** St. Croix, U.S. Virgin Islands

# REVIEW OF FEDERAL AGENCY ACTION

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## Oil Refinery Overturns 40-year Agency Policy

A mothballed oil refinery seeking to restart in the wake of the severe shortage of refining capacity was ordered by the Environmental Protection Agency that it could not restart unless it retrofitted the refinery to comply with “Prevention of Significant Deterioration” regulations that Congress had applied solely to newly constructed refineries. The EPA had applied this standard to mothballed refineries and power plants for 40 years, based upon a theory that a facility that restarts after being mothballed is “new.” The refinery owner petitioned the U.S. Court of Appeals for the Third Circuit to overturn the policy. In an opinion with nationwide implications, the court vacated the order, concluding that the EPA had exceeded its statutory authority. The policy was considered so settled that it had never before been challenged. ■

**RESULT:** U.S. Third Circuit Overrules Agency Action.



**COUNSEL:** Zoltan Forgo & Viktor Vasi

**FIRM:** Forgó, Damjanovic & Partners Law Firm

**HEADQUARTERS:** Budapest, Hungary, EU

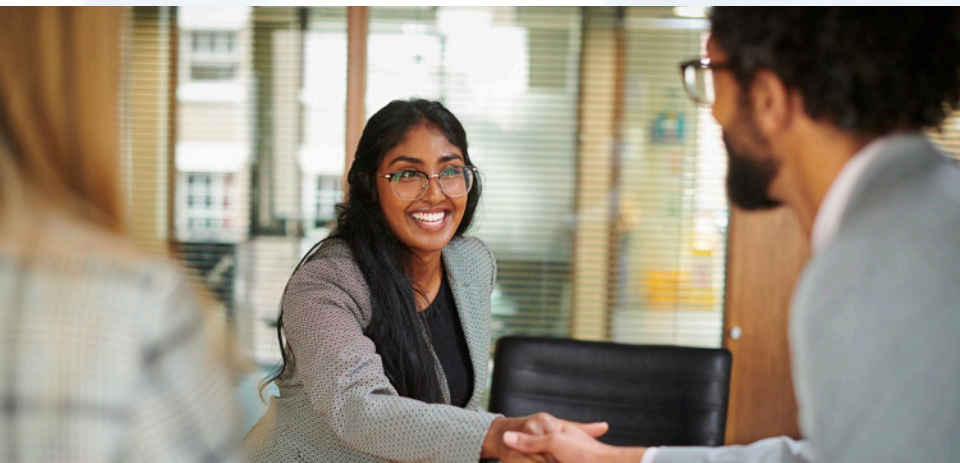
## AGRICULTURE BUSINESS

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### Enforcement of a USD 8 Million claim deriving from sale of fodder and forage

The local subsidiary of a leading US-based agricultural corporation had a large claim against a defaulting customer of agricultural products, with overall case value exceeding USD 8 Million. After several enforcement actions and a long and complex negotiation, the case ended up with an out-of-court settlement. ■

**RESULT:** Favorable Out-of-Court Settlement.



**COUNSEL:** Viktor Vasi & Adam Nemeth

**FIRM:** Forgó, Damjanovic & Partners Law Firm

**HEADQUARTERS:** Budapest, Hungary, EU

## CROSS-BORDER BUSINESS

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### Cross-Border Product Sale and Purchase Within the EU / Non-Payment of Purchase Price

The local subsidiary of a leading US-based agricultural corporation had a lawsuit against a defaulting customer of agricultural products in another EU member country, with overall case value exceeding USD 400,000. Following an extensive evidencing process, the subsidiary reached a complete victory on the level of the first instance court. ■

**RESULT:** Favorable First-Instance Judgment in Cross-Border Product Sale Dispute.

**COUNSEL:** Viktor Vasi & Réka Bali

**FIRM:** Forgó, Damjanovic & Partners Law Firm

**HEADQUARTERS:** Budapest, Hungary, EU

## CROSS-BORDER BUSINESS

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### Claiming Unpaid Fees

In 2023, this Italian client continued its defense in a high-value dispute over unpaid fees in connection with a large agricultural construction project in the eastern part of Hungary. This was the main contractor on the project, during which it carried out additional work for which it was not paid by the customer. The subject matter of the case is to determine who should bear the cost of the additional work in the amount of approximately EUR 300,000. ■

**RESULT:** Defense Involving Interpretation of International Construction Contract.

**COUNSEL:** Sean Needham

**FIRM:** Reminger Co., L.P.A.

**HEADQUARTERS:** Cleveland, OH

## INVESTMENTS

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### Rare Dismissal of All Claims in FINRA Arbitration

Rare dismissal of all claims was asserted in a FINRA arbitration in favor of an independent broker-dealer, and its registered representative, in a customer dispute seeking more than seven-figures in damage related to the purchase of several alternative investments.

In this regard, the customers claimed, amongst other things, that their accounts were overconcentrated, subject to unsuitable investment recommendations, and lacked supervision as to the five Real Estate Investment Trusts at issue.

On January 6, 2022, the three-member FINRA Panel issued a decision agreeing with the defense that the case was ineligible for arbitration as it was filed more than six years after the transactions at issue. After a full telephonic hearing, the Panel issued its Award dismissing all claims against the defense, holding that “any and all claims for relief... including any request for punitive damage, treble damages and attorneys’ fees, are denied.” ■

**RESULT:** Dismissal of All Claims.

**COUNSEL:** Adriann McGee & Mary Kraft

**FIRM:** Reminger Co., L.P.A.

**HEADQUARTERS:** Cleveland, OH

## BREACH OF FIDUCIARY DUTY

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### Verdict in County's First Probate Trial in 25 Years

The Plaintiff, the Executor of an Estate, was accused of breach of fiduciary duty. Plaintiff's claim included that the power of attorney for the decedent breached her duties by adding herself as the co-owner on the decedent's bank account, then gifting herself funds that belonged solely to the decedent.

After a 4-day trial, the jury ruled in favor of the Plaintiff and awarded attorney fees and costs to the Plaintiff's estate. This was the first jury trial to be held in the Delaware County Probate Court in 25 years. ■

**RESULT:** Favorable Verdict in Favor of Client.

**COUNSEL:** Russell Racine

**FIRM:** Cranfill Sumner LLP

**HEADQUARTERS:** Raleigh, NC

## TRADE DRESS/TRADEMARK INFRINGEMENT; BUSINESS TORTS; LANHAM ACT

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### Commercial Developer Sought to Prevent a Competing Facility Through Allegations of Trade Dress Infringement

Commercial developer Plaintiff asserted trade dress and trademark infringement against Defendants based on Defendants' publicly filed building plans and approved building permits related to Defendants' planned project. Plaintiff claimed unfair competition and other violations of the Lanham Act against the Defendants, including allegations of tortious interference with business opportunity and cybersquatting. After four days of trial, the jury returned a defense verdict on all causes of action, thereby invalidating Plaintiff's claimed trade dress. The jury concluded that Defendants had done nothing wrong, and the Court awarded Defendants costs and fees related to one of the causes of action. ■

**RESULT:** Defense Verdict.



**COUNSEL:** Ben Woody, Scott Fisher, Tom Garrett & Brennan McGovern

**FIRM:** Harman, Claytor, Corrigan & Wellman, P.C.

**HEADQUARTERS:** Alexandria and Richmond, VA

## DEFAMATION, TORTIOUS INTERFERENCE, BREACH OF FIDUCIARY DUTY, FRAUD, BUSINESS CONSPIRACY

### Plaintiffs Challenge Validity of Arbitral Award and Arbitrability of Suit After Losing \$3mm Business Tort Arbitration

Trial court confirmed an arbitral award after a two-week arbitration concerning accusations of defamation, tortious interference with contract, breach of fiduciary duty, fraud, and conspiracy to interfere with business operations under Virginia law. The lead pastor of a nondenominational church, his wife, his son, and the church itself sought a multimillion-dollar judgment against its former associate pastor and two volunteer directors, pastors of churches located elsewhere across the United States, alleging that recommendations for the pastor and his family seek a sabbatical for the son's mental health concerns were pretext to oust them from church leadership and take over a successful and rapidly growing ministry. The plaintiffs alleged that this pretext culminated in an ultimatum the directors made: either take the sabbatical or carry on after a mass resignation of key personnel and resultant fracturing of the congregation. The plaintiffs refused, and numerous key personnel resigned. Counsel successfully asserted a defense that the allegedly defamatory statements were non-actionable and that the conduct attributable to the directors were consistent with their obligations under the church's bylaws, which afforded them broad discretion in counseling the pastor. Further, the defense proved that even if any conduct were indeed sanctionable, the resignations and unenrollment of the congregants were not "business expectancies"

**COUNSEL:** Ben Woody, Scott Fisher, Tom Garrett & Brennan McGovern

**FIRM:** Harman, Claytor, Corrigan & Wellman, P.C.

**HEADQUARTERS:** Alexandria and Richmond, VA

## [CONTINUED]

that a church could have. The arbitrator found in favor of the defendants and awarded them fees and costs incurred in connection with the plaintiffs' efforts to avoid arbitration. The trial court affirmed the arbitration award. ■

**RESULT:** Arbitration Award in Favor of Defendants Affirmed.





**COUNSEL:** Jeffrey E. Havran

**FIRM:** Margolis Edelstein

**HEADQUARTERS:** Scranton, PA

## DEFAMATION

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### Victory in Defamation Case Alleging Damage to Reputation

Plaintiff alleged Defendant's Facebook posting alleging Plaintiff was a vindictive alcoholic who engaged in animal cruelty and abuse, unlawfully ingested medical marijuana and was known to harass was defamatory resulting in damage to Plaintiff's reputation and his ability to engage in future business dealings, causing financial harm, pain, suffering and severe emotional distress. Deposition testimony and discovery responses revealed Plaintiff's failure to show that anyone had formed a low opinion of or was deterred from associating with him. Moreover, Plaintiff failed to identify anyone who saw the Facebook post and discussed the contents with him nor was he aware of any clients or employers seeing the post. At the close of discovery, Cross-Motions for Summary Judgment were filed by both parties. The Court denied Plaintiff's Motion, granted Defendant's finding Plaintiff had failed to establish that a third party witnessed the defamatory communication or shown any special damages and, therefore, Plaintiff had failed to meet his burden of proof. ■

**RESULT:** Summary Judgment Granted in Favor of the Defendant.