



2024

SIGNIFICANT
CASES

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CIVIL RIGHTS / MUNICIPAL LIABILITY



COUNSEL: David Corrigan & Blaire O'Brien

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

HEADQUARTERS: Richmond, VA

CIVIL RIGHTS

Defense Verdict Obtained in First Amendment Case

The plaintiff in this civil rights case was a former General Registrar and Director of Elections who claimed she was not reappointed to serve another term in office for political reasons, in violation of the First Amendment. The Defendants, two members of the local Electoral Board, argued that the decision to appoint a candidate other than the Plaintiff to serve the new term was consistent with the Code of Virginia and motivated by concerns about competence, rather than politics. The case went up on an interlocutory appeal on an immunity issue before being returned to the lower court for trial. After a four-day trial, the jury returned a verdict in favor of the Defendants, finding that the appointment decision was not motivated by politics. The pre-trial demand was \$1.5 million; Defendants did not counter. The jury's verdict is now on appeal. ■

RESULT: Jury Verdict in Favor of Defendant Electoral Board Members.

COUNSEL: Jake Stewart & Pat Flanagan

FIRM: Cranfill Sumner

HEADQUARTERS: Raleigh, NC

CIVIL RIGHTS

Summary Judgment Upheld in Officer-Involved Shooting Case

Law enforcement responded to a domestic disturbance call involving a husband and wife at their home. Officers were notified that the husband was armed with a firearm. Upon arrival, officers made contact with the husband in front of his home. Officers advised the husband to show his hands and get down on the ground. Officers fired their weapons when they saw the husband reach for a firearm in his waistband. Based upon the officer testimony and evidence, the Court found the officers were entitled to Summary Judgment since their use of deadly force was reasonable in light of the suspect's actions following lawful instructions from law enforcement. The decision was appealed to the 4th Circuit and upheld. ■

RESULT: Summary Judgment Granted in Favor of Officers.



POLICE LINE DO NOT CROSS

COUNSEL: Holly Marie Wilson & Brianna M. Prislipsky

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

HEADQUARTERS: Cleveland, OH

GOVERNMENTAL LIABILITY

Appellate Win in Favor of Police Officers

This governmental liability case against several police officers involved an initial call by a duplex resident, who complained over a steady water leak into his home from the adjoining unit. The resident called the firefighters, who performed a search of the property, noting both the water leak and the scent of natural gas. The firefighters requested the assistance of several police officers, who they asked to enter the property and perform a safety sweep for the firefighters, after the firefighters forced entry into the property. The Plaintiff later brought § 1983 claims related to the police officers' entry.

Ultimately, the trial court found that the police officers were immune, given that they performed a safety sweep at the behest of the firefighters. The Plaintiff appealed to the Circuit Court of Appeals, who affirmed the trial court's verdict in favor of the Defendants. ■

RESULT: Summary Judgment Affirmed.



COUNSEL: Geoffrey R. Plowden, Robert E. Murphy & Yury A. Kolesnikov

FIRM: Manning Kass

HEADQUARTERS: Los Angeles, CA

GOVERNMENTAL ENTITY LIABILITY

City Cleared in Police Negligence Case

Counsel achieved a total defense verdict in a case involving false arrest and excessive force allegations, where the Plaintiff claimed he sustained significant injuries. A motion for summary judgment was initially granted, but the Plaintiff appealed and a single cause of action for negligence was remanded for trial. The district court dismissed that cause of action, prompting the Plaintiff to refile the case, and two police officers were forced to face trial. The Plaintiff initially demanded \$25 million, and the defense team countered with \$100,000. Following thorough consideration of the evidence and arguments presented by counsel from both sides, the jury came to the conclusion that the Plaintiff failed to prove the Defendants' negligence, and the Plaintiff left the courthouse emptyhanded. ■

RESULT: Defense Verdict Granted.

CONSTRUCTION



COUNSEL: Salvatore DeSantis

FIRM: Molod Spitz & DeSantis P.C.

HEADQUARTERS: New York, NY

CONSTRUCTION / PERSONAL INJURY

Construction Company Wins Summary Judgment

The Plaintiff alleged that the Defendant failed to properly safeguard and protect him while he was conducting framing work on a construction site, causing him to fall off of a garage structure. While the Defendant was hired to perform work on the property, the Defendant was not the general contractor or construction manager of the construction site, or on the construction site the day of the incident. Further, the Defendant had not begun their contractual duties regarding the garage structure as they could not begin until the Plaintiff had completed his work on the garage. Defense moved for summary judgment dismissing the Plaintiff's Complaint as the Defendant did not own the property, did not supervise, control, or manage the Plaintiff's work or the construction site, did not perform any work on the garage prior to the accident, and was not responsible for the Plaintiff's safety on the date of the incident. The Court granted summary judgment dismissing the Plaintiff's claims and all cross claims against the Defendant. ■

RESULT: Complaint Dismissed in Favor of Construction Company.

COUNSEL: Salvatore DeSantis & Robert Von Hagen

FIRM: Molod Spitz & DeSantis P.C.

HEADQUARTERS: New York, NY

CONSTRUCTION / PERSONAL INJURY

Summary Judgment Granted in Favor of Construction Company

This was a negligence action in which Plaintiff sought damages for personal injuries allegedly sustained when she was struck by a portion of a dislodged construction fence owned by a Co-Defendant. The Defendant did not own the premises where the Plaintiff was allegedly injured; did not perform any work on the premises; and did not repair, alter, or have any responsibility for the premises or maintenance or construction of the fence around it. The Defendant did obtain a permit for the construction fence at the request of the premises owner, but the permit was issued after the Plaintiff's alleged incident. As such, the Defendant did not owe a duty of care to the Plaintiff. Defense moved for summary judgment on behalf of the client, which was granted by the Court, dismissing the complaint. ■

RESULT: Complaint Dismissed.

DEFAMATION



COUNSEL: Chad Willits & Michael Caligaris

FIRM: Reminger Co., LPA

HEADQUARTERS: Cleveland, OH

DEFAMATION

Defense Win in Defamation, Disparagement, & Tortious Interference Case

This defamation matter involved a Plaintiff-salesman terminated by the Defendant after several instances of misconduct. After his termination, the salesman went to work for a direct local competitor and began soliciting the Defendant's customers. In communicating with its then-current customers, the Defendant shared some of the Plaintiff-salesman's misbehavior and other criticisms. The Plaintiff learned of these conversations and sued, alleging defamation per se and breach of a written non-disparagement provision. The competitor/new employer also sued on a tortious interference claim. Plaintiffs claimed that the Defendant's allegedly defamatory statements to five specific customers—three of which left the Defendant's business to do business with the Plaintiffs—had damaged the salesman's professional reputation and cost him and his new employer sales revenues and corresponding commissions.

The claims were defended in a six-day jury trial on the grounds of truth, qualified privilege to communicate with one's own customers, causation, lack of actual malice, and Plaintiffs' failure to establish damages. The truth defense required evidence of the salesman's prior misconduct that had triggered his termination and several of the allegedly defamatory statements. Plaintiffs initially sought nearly \$3.6 million in allegedly lost sales revenues and commissions, but the Court was successfully convinced to exclude the bulk of those figures as speculative. Plaintiffs still blackboarded just under \$1 million in alleged economic damages and lost commissions. Plaintiffs also sought "millions" in punitive damages, contending in closing that a six-figure award of punitives would equate to a

COUNSEL: Chad Willits & Michael Caligaris

FIRM: Reminger Co., LPA

HEADQUARTERS: Cleveland, OH

[CONTINUED]

“win” for the defense. The jury deliberated for several hours and entered a verdict in the Defense’s favor, finding that only two of the five alleged statements were actually made; and of those two, one proximately caused no harm whatsoever, and the other was made without actual malice. ■

RESULT: Defense Verdict in Favor of Insured Business.



COUNSEL: David Owens & Mary Dolan

FIRM: Molod Spitz & DeSantis P.C.

HEADQUARTERS: New York, NY

DEFAMATION

It's Not Defamation if it's True, an Opinion, or a Non-actionable Finding of a Rabbinical Council Arbitration

Plaintiff brought a suit against a non-profit organization, alleging defamation, false light, intentional infliction of emotional distress and civil conspiracy. Plaintiff alleged that a post was made on the non-profit organization's webpage, depicting the Plaintiff's image and text accusing Plaintiff of domestic violence. However, the post that Plaintiff claimed was defamatory was an non-actionable finding of a rabbinical council arbitration, setting forth the basis by which the Plaintiff had violated not only the terms of the voluntary arbitration agreement he entered into, but also Jewish law in failing to participate in the proceeding and denying his partner an opportunity to obtain a proper divorce pursuant to the dictates of their religion. The Court granted the Defendant's Pre-Answer motion to dismiss finding that not only did Plaintiff fail to state a cause of action in which relief can be granted, but also acknowledging that the post on the non-profit organization's webpage was protected free speech, dismissing the Plaintiff's complaint. ■

RESULT: Case Dismissed Pre-Answer Summary Judgment Granted Against Plaintiff.

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



COUNSEL: Joni M. Mangino & Aaron H. Weiss

FIRM: Zimmer Kunz, PLLC

HEADQUARTERS: Pittsburgh, PA

WORKER'S COMPENSATION

Employer Not Liable for Workplace Exposure as Claimant had Subsequent Workplace Exposure Under Different Employer

The West Virginia Supreme Court affirmed the lower courts' decision in holding that the client/employer (who employed Claimant from 2003-2005) was not legally liable for alleged workplace exposure and injuries. The case arose after the Claimant filed a claim for benefits after being diagnosed with injuries from workplace exposure to chemicals at a fabrication plant from 1976-2015. The workplace had changed owners over the years, and all employers were sued. The client/employer argued (1) it was not liable / chargeable, as it was not the employer during the Claimant's last work exposure, since he worked until 2014; (2) there was no evidence specific to any workplace exposure during his work for them; and (3) even if there was exposure, it was prior to 2006 and the responsibility of the state's Old Fund insurance liabilities. The Workers' Compensation Board of Review issued its Decision confirming the client/employer was not a chargeable employer. This was then affirmed by both the Intermediate Court of Appeals and Supreme Court of West Virginia. ■

RESULT: Decision of No Liability Affirmed by West Virginia Supreme Court.

COUNSEL: Raphaella Poteau & Stephen Bruderle

FIRM: Margolis Edelstein

HEADQUARTERS: Philadelphia, PA

EMPLOYMENT DISCRIMINATION

Stellar Defense Performance at Trial Brings Decade-Long Employment Dispute to a Close

Plaintiff brought a variety of claims against her former employer alleging wrongful termination, race and gender discrimination, harassment, retaliation, and more, in a decade-long saga. Plaintiff even filed a second lawsuit, later consolidated, alleging her former employer retaliated against her again years later. Plaintiff's original demand was \$14M. Given the length of the matter and the persistence of Plaintiff's counsel, the insurer, anticipating an appeal, retained appellate counsel, who remained present throughout the trial. After a jury trial lasting over two weeks, including Plaintiff's testimony that lasted one week, the case was submitted to the jury for deliberations. Plaintiff requested settlement, and the parties reached an agreement one hour into jury deliberations. The six-figure settlement provided the best outcome for the Defendant, sparing both the Defendant and insurer from prolonged appeals litigation. At the conclusion of the case, the judge commented on the record that defense counsel's trial performance was one of the best the judge had ever seen in her career as a federal judge. ■

RESULT: Settlement During Jury Deliberations Yields Best Result for Defendant.

INSURANCE COVERAGE



COUNSEL: Michael McKenna

FIRM: Margolis Edelstein

HEADQUARTERS: Philadelphia, PA

DECLARATORY ACTION — INSURANCE COVERAGE

Court Rules No Coverage for Fatal Stabbing at Fast-Food Franchise Due to Weapons Exclusion

The underlying personal injury lawsuit involved the fatal stabbing of Plaintiff's Decedent in the parking lot of a fast-food restaurant. Plaintiff alleged negligence in failing to prevent the stabbing and failing to properly assist the Decedent. The suit was filed in a venue known for excessive jury awards. The trial court granted the defense Motion for Judgment on the Pleadings, confirming that a firearms and weapons exclusion applied to exclude all coverage under the general liability policy issued to the franchisee. ■

RESULT: Judgment on the Pleadings Granted.



COUNSEL: Stephen Ellis, Ott Lindstrom

FIRM: Paul Frank & Collins

HEADQUARTERS: Burlington, VT

DECLARATORY JUDGMENT/ BAD FAITH – TITLE INSURANCE COVERAGE

Court Rules No Coverage for Insured's Boundary Dispute with Neighbor

Plaintiffs purchased a title insurance policy when they purchased a residential property and very quickly became involved in a dispute with a neighbor over the ownership of a strip of land between their properties. Plaintiffs claimed to have acquired ownership of the land by prescription/adverse possession. The neighbor sued plaintiffs for trespass and for a declaratory judgment as to the boundary line. Plaintiffs then sued the title insurer, seeking a declaratory judgment that the insurer was required to defend and indemnify them against the neighbor's claim, and asserting that insurer's denial of coverage was in bad faith. In granting the insurer's motion for summary judgment, the court found that the neighbor's claim that the plaintiffs were trespassing on the neighbor's property was not a "covered loss" under the policy, but the "survey exception" precluded coverage in any event. The court further agreed that the plaintiffs would not suffer any loss regardless of the outcome of the neighbor's case against them, which would either affirm the property lines in the public records, confirming no loss to the property covered by the policy, or find that plaintiffs had adversely possessed the disputed area, granting them a net gain compared to the public records. ■

RESULT: Summary Judgment granted to Title Insurance Company.

LEGAL MALPRACTICE



COUNSEL: Holly Marie Wilson & Brianna M. Prislipsky

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

HEADQUARTERS: Cleveland, OH

LEGAL MALPRACTICE

Summary Judgment in Favor of Attorney

Plaintiff filed an action for legal malpractice, alleging that his attorney did not properly advise him as to the legality of certain casino operations. A dispute arose over the timeliness of the Plaintiff's claim, given that claims were filed more than one year from the dates the Plaintiff was arrested and later arraigned and indicted. The Plaintiff argued that the statute of limitations did not begin to run until he was actually convicted several months later, which made his claim timely. The Defendant obtained summary judgment in the trial court, and its decision was affirmed on appeal by the district court of appeals. ■

RESULT: Summary Judgment Affirmed.



COUNSEL: George T. Lewis

FIRM: Baker, Donelson, Bearman, Caldwell & Berkowitz, PC

HEADQUARTERS: Memphis, TN

BUSINESS DIVORCE

Nine-Figure Jury Verdict Successfully Reversed on Appeal

This case involved allegations of fraud, accord and satisfaction, lawyer misconduct regarding the conflict of the lawyer drafting the shareholder agreement and trial counsel misconduct regarding jury instructions/verdict form, and contract interpretation. The jury awarded compensatory damages and \$11,516,067 in punitive damages. Based primarily upon the trial court's handling of the accord and satisfaction issue, the trial court reversed the judgement in all respects and remanded for a new trial. ■

RESULT: Tennessee Court of Appeals Reversed Jury Verdict and Remanded for New Trial.



COUNSEL: Michael T. Ryan

FIRM: Ryan Ryan Deluca LLP

HEADQUARTERS: Bridgeport, CT

LEGAL MALPRACTICE

Two Lawsuits Against Attorney Dismissed

Plaintiff filed two actions for legal malpractice, alleging that her attorney did not properly represent her in the defense of a foreclosure action. The defendants moved to dismiss for lack of standing, as the plaintiff had filed a bankruptcy petition in which she failed to list the claims against the law firm in her bankruptcy petition. The court dismissed the actions on the grounds of judicial estoppel and lack of standing. ■

RESULT: Motions to dismiss granted/judgments of dismissal entered.

MEDICAL MALPRACTICE



COUNSEL: Erin Siebenhar Hess & Samuel A. Meadows

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

HEADQUARTERS: Cleveland, OH

MEDICAL MALPRACTICE

Trial Verdict in Favor of Attending ER Physician

Plaintiff – a 17-year-old – presented to the ED with respiratory difficulties. Despite not appearing overwhelmingly ill at the time of her initial presentation, Plaintiff quickly decompensated. She experienced respiratory failure, arrest, and ultimately died the following day from pneumonia, ARDS, and sepsis. Plaintiff claimed that the care team’s lack of supportive care and inadequate ventilation/oxygenation of this minor Plaintiff – and not preexisting pneumonia – caused her to suffer an anoxic brain injury and death. Plaintiff demanded \$17.4m. After a 10-day trial, the jury rendered a verdict in favor of the Defendant-physician. ■

RESULT: Defense Verdict.



COUNSEL: Ronald P. Herbert

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

HEADQUARTERS: Norfolk, VA

MEDICAL MALPRACTICE

Jury Defense Verdict in Wrongful Death Claim against Nursing Home Physician's Assistant

This medical malpractice case against a physician's assistant involved a claim for the alleged wrongful death of a post-surgical skilled nursing facility patient who developed a C difficile infection that resulted in sepsis and his death. Plaintiff alleged that over a seven-day period, the physician's assistant failed to timely order an inexpensive test of the patient's stool that would have identified the infection and led to proper antibiotic treatment that would have prevented the death. After four days of trial, the jury returned a unanimous defense verdict. ■

RESULT: Defense Verdict.



COUNSEL: Erin Siebenhar Hess & Brianna M. Prislipsky

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

HEADQUARTERS: Cleveland, OH

MEDICAL MALPRACTICE

Trial Verdict in Favor of OB/GYN

This OB/GYN negligence case arose out of the removal of the Plaintiff's left remaining ovary during a preplanned hysterectomy. While the Plaintiff had indicated a prior desire to keep the ovary, during the hysterectomy, the physician encountered a large cyst which had become attached to the ovary. The physician removed both the cyst and ovary for the Plaintiff's safety, causing her to enter premature menopause. The Plaintiff brought claims for negligence and lack of informed consent and sought \$1.3 million in damages. The case proceeded to trial, and the jury rendered a verdict in favor of the Defendant physician. ■

RESULT: Defense Verdict.



COUNSEL: Ronald P. Herbert

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

HEADQUARTERS: Norfolk, VA

MEDICAL MALPRACTICE

Jury Defense Verdict in Favor of Orthopedic Surgeon and Physician's Assistant

This medical malpractice case against an orthopedic surgeon and orthopedic physician's assistant involved the post-operative care of a patient following a two-level anterior cervical disc fusion surgery. Approximately 12 hours post-surgery, the patient pulled his own surgically placed drain which resulted in the development of a hematoma in his neck that cut off his airway and caused the patient to have a full arrest. The patient was down for approximately 20 minutes and sustained irreversible brain damage. He was removed from life support a number of days post incident. The surgeon, the physician's assistant and the hospitalist and the nursing staff were all named and proceeded to trial in a multi-defendant trial. Plaintiff alleged that all parties failed to timely recognize the signs and symptoms of the impending hematoma and failed to timely act to prevent the closure of the airway. There was no consent to settle and no offer made. The jury returned a unanimous defense verdict after a 10-day trial. ■

RESULT: Defense Verdict.

COUNSEL: Brian D. Sullivan, Brianna M. Prislipsky,

Shannon K. Bockelman & Robert V. Kish

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

HEADQUARTERS: Cleveland, OH

MEDICAL MALPRACTICE

Trial Verdict Affirmed on Appeal in Favor of Physicians

This medical malpractice case against several physicians involved the alleged delayed diagnosis of the Decedent's cancer based upon an MRI scan. During voir dire, Plaintiff made several challenges for cause against jurors who had purportedly indicated that they could not follow the law as given or act impartially. The trial court found that these challenges had no merit and/or that various jurors had been successfully rehabilitated by subsequent inquiry. The jury ultimately returned a defense verdict, and the Plaintiff appealed to the state court of appeals, who affirmed in the physicians' favor. The case has since been appealed to the Ohio Supreme Court, who has accepted it for review. ■

RESULT: Trial Verdict Affirmed.

MOTOR VEHICLE / TRANSPORTATION / AVIATION



COUNSEL: Mica Nguyen Worthy

FIRM: Cranfill Sumner

HEADQUARTERS: Raleigh, NC

AVIATION BUSINESS DISPUTE

Prevailed on F. Civ. P. Rule 12(c) Motion Eliminating Plaintiff's Lost Profits Allegations

Plaintiff charter company sued Defendant aircraft owner after it repossessed the aircraft, and aircraft owner countersued. After pleadings closed, counsel for Defendant filed a Rule 12(c) Motion for judgment on the pleadings. The federal court granted Defendant's Motion in part, dismissing Plaintiff's claims for unjust enrichment and special damages but allowing it to proceed on other limited claims. Regarding special damages, the Court dismissed Plaintiff's claim for lost profits based on the language of the parties' lease agreement that excluded consequential damages. The Court upheld North Carolina's longstanding case law and public policy of allowing freedom of contract without the "paternalism" of courts for protection of the effects of an unfavorable result, thereby significantly limiting Plaintiff's case. ■

RESULT: F. Civ. P. Rule 12(c) Ruling.

COUNSEL: Matthew D. Quandt

FIRM: Erickson & Sederstrom, P.C., L.L.O.

HEADQUARTERS: Omaha, NE

TRUCKING

\$100,000 Verdict in a \$12 million Admitted Liability Case

The rear-end accident occurred on Interstate 80 in January 2020. Plaintiff alleged that Defendant truck driver was drunk, rear-ended Plaintiff, and left the scene. In discovery, Plaintiff alleged \$12,509,424 in total damages. They claimed a traumatic brain injury, chronic post-traumatic headaches, and a permanent neck injury. Defense counsel excluded some expert opinions on causation, permanency, and futures. One week before trial, Plaintiff proposed a \$3,500,000-1,500,000 high-low agreement. At trial, Plaintiff's counsel put on over two days of evidence, including four fact witnesses and three medical experts, and asked for over \$2,100,000 million in closing. One week before trial, Defendants offered \$70,000. At trial, Defense counsel admitted liability, put on less than two hours of evidence, and suggested \$45,000. After only two hours of deliberation, the unanimous jury returned a verdict for only \$100,000. ■

RESULT: \$100,000 jury verdict.

COUNSEL: Lawrence D. Esten & Sophie O. LaFranchi

FIRM: Manning Kass

HEADQUARTERS: Los Angeles, CA

TRANSPORTATION LIABILITY

Defense Pays Out \$4 Million Less Than Demanded

Counsel obtained a huge defense verdict in a claim arising out of an admitted liability rear-end collision on the I-210 Freeway. The Plaintiff subsequently underwent an anterior cervical discectomy and disc arthroplasty at the C5-6 level, presented a life care plan of more than \$850,000, and claimed a future fusion surgery would be necessary. In closing, the Plaintiff's attorney asked the jury to award \$4.7 million dollars. Counsel successfully argued that the Plaintiff had previous treatment for neck pain and had not credibly sustained significant injury from the subject accident, and certainly not to the extent claimed. Because the Plaintiff's chiropractor testified that the Plaintiff came in for his first treatment with a business card from an attorney, the Defense counsel held up a "Better Call Saul" business card during closing argument to demonstrate that the Plaintiff treated this accident like a golden lottery ticket. After the Defense's closing, the jury came back with a unanimous verdict awarding the Plaintiff a nominal \$6,000, barely covering the chiropractic treatment the Defense did not dispute. ■

RESULT: Unanimous Jury Verdict Awards Plaintiff \$6,000.

COUNSEL: Nick Meriage & Andrew Corkery

FIRM: Pitzer Snodgrass, P.C.

HEADQUARTERS: St. Louis, MO

TRUCKING ACCIDENT

Cost of Defense Settlement in Six Figure Case

Cause of action arose out of truck-vehicle accident that occurred in Southeast Missouri. Plaintiff was a passenger in vehicle that collided with Defendant's truck. There was a dispute as to whether the vehicle was merging onto the highway or was already established on the highway when the collision occurred. The truck did not have any dash cam or other video of the incident. Plaintiff allegedly suffered injuries to his head, neck and back in collision. Plaintiff claimed over \$100,000 in medical bills. Plaintiff sued the driver of the vehicle and the trucking company.

Defense counsel first removed the case to the federal court. Written discovery and depositions ensued. Defendant had Independent Medical Examination done on Plaintiff to counter the alleged injuries. Defendant also disclosed a biomechanical expert who opined that the force experienced by Plaintiff was similar to the forces experienced in everyday life. Plaintiff did not properly disclose the medical providers in compliance with the federal rules. At the close of discovery, Defense moved to bar introduction of any medical evidence offered by Plaintiff. Defendant's motion was supported by controlling Eight Circuit Court of Appeals case law.

While the Motion to Bar Medical Testimony was pending, the case resolved at mediation. The Defendant vehicle driver paid policy limits for settlement. Defendant Truck Company settled the claim against it for cost of defense. ■

RESULT: Defense Counsel Obtain Favorable Settlement on Behalf of Trucking Defendant.

COUNSEL: David Owens & Claire Liber

FIRM: Molod Spitz & DeSantis P.C.

HEADQUARTERS: New York, NY

MOTOR VEHICLE ACCIDENT

Six Vehicle Collision Results in Summary Judgment Granted Against Plaintiff

This action arose out of a multi-vehicle accident in which six vehicles were involved. Testimony and a certified police report show that the Defendant was the lead vehicle in the accident and had not struck any other car, but had been struck in the rear multiple times. The Plaintiff was a driver of another vehicle involved in the accident and brought suit claiming that that the incident was caused by the Defendant, and she sustained injuries as a result of the Defendant carelessly and negligently operating their vehicle. During the Plaintiff's testimony, she admitted that she had never seen the Defendant's vehicle and that the vehicle that struck her own was not the same color as the Defendant's. Defense's motion for summary judgment was granted by the Court. ■

RESULT: Summary Judgment and Costs Granted to Lead Vehicle Client.

COUNSEL: Mica Nguyen Worthy & Kayla McDaniel

FIRM: Cranfill Sumner

HEADQUARTERS: Raleigh, NC

AVIATION BUSINESS DISPUTE

Favorable Settlements in Multiparty Aviation Business Dispute

Counsel was retained to evaluate and potentially prosecute litigation against an aircraft mechanic and his maintenance repair and overhaul (“MRO”) facility after the Aircraft sustained damage from faulty engine work and for specific misrepresentations by the MRO. Counsel prepared the Complaint and provided pre-suit demands to the MRO, the aircraft manufacturer, and engine manufacturer for their parts in the resultant damages, and was able to assist in obtaining favorable settlements without admission of liability. ■

RESULT: Favorable Settlement.



COUNSEL: Brian M. Webb

FIRM: Hurwitz Fine P.C.

HEADQUARTERS: Buffalo, NY

SNOWMOBILE LIABILITY

Summary Judgement Granted in Snowmobile Traumatic Brain Injury Case

The Plaintiff sought damages for injuries, including TBI, which she sustained while riding as a passenger on a snowmobile operated by Defendant. As Defendant was preparing to turn to the left to ascend a hill, the snowmobile was struck by an oncoming snowmobile. Defendant stated that he saw the headlight of the approaching snowmobile and that, although he attempted to turn, he was unable to avoid the accident. Furthermore, testimony established that the Defendant was traveling approximately 45 or 50 miles per hour in an area with a speed limit of 55 miles per hour.

The settlement demand at all times exceeded the available insurance coverage, and Plaintiff's counsel expressed that they were seeking an excess judgment to enforce.

The trial court granted the Defendant's motion for summary judgment, finding that the Defendant met his burden in establishing that he fulfilled his common-law duty as a driver to see that which he should have seen, and exercised reasonable care under the circumstances to avoid the accident. The court also determined that the Plaintiff failed to raise an issue of fact as to whether the Defendant was negligent—specifically, whether the Defendant failed to see what was there to be seen and had enough time to take evasive action to avoid the collision. The Appellate Division, Fourth Department, affirmed the dismissal. ■

RESULT: Dismissal of Defendant Affirmed on Appeal.

COUNSEL: Matthew D. Quandt

FIRM: Erickson & Sederstrom, P.C., L.L.O.

HEADQUARTERS: Omaha, NE

TRUCKING

Successful Compelled Settlement Reduction in a Matter of First Impression

The rearend accident occurred on Interstate 80 in September 2019. Defendant driver accidentally rear-ended multiple vehicles in a construction zone, causing three deaths and additional injuries. He was sentenced to 18 months in prison. Two fatalities were reasonably resolved early. The final fatality went into extensive litigation. First, defense counsel obtained partial summary judgment on the parents' and unadopted stepdaughter's \$3,000,000 negligent infliction of emotional distress claims. Next, after unsuccessful mediations, a settlement was compelled using a novel legal theory and mechanism. Nebraska's workers compensation third-party claim statute allows the court to "determine that the settlement offer is fair and reasonable considering liability, damages, and the ability of the third person and his or her liability insurance carrier to satisfy any judgment." Plaintiff's workers compensation provider and Defense counsel submitted evidence, including a neutral mediator's affidavit and economist's report, to support and request a \$5,000,000 settlement. Plaintiff objected and argued for a "verdict in excess of \$10,000,000." The District of Nebraska agreed with the \$5,000,000 valuation and compelled settlement. Plaintiff appealed to the 8th Circuit, where it is currently pending as a matter of first impression. ■

RESULT: Settlement Compelled on Final Fatality for \$5,000,000 over \$10M+ Objection.

COUNSEL: Mica Nguyen Worthy

FIRM: Cranfill Sumner

HEADQUARTERS: Raleigh, NC

AVIATION TRANSACTION

Successfully Handled Complex Aircraft Registration Procedures with FAA

Aviation clients retained counsel to navigate the complex legal and administration regulatory process to have an aircraft registered to the proper legal entity, after it had been transferred through the Trust and Estate processes following the passing of the prior owner. Counsel was able to assist with formation of legal entities, navigation of the documentation with the representatives of the Estate, including preparation of necessary registration application materials, communication with the Federal Aviation Administration, and successfully obtaining aircraft registration for the clients. ■

RESULT: Successful registration of aircraft for estate.



PERSONAL INJURY



COUNSEL: Salvatore DeSantis & Robert Von Hagen

FIRM: Molod Spitz & DeSantis P.C.

HEADQUARTERS: New York, NY

ANIMAL ATTACK

Owner of Nearby Vacant Lot Held Not Liable for Dog Attack

This matter arose from an incident in which the Plaintiff alleges she was knocked to the ground by two dogs as she was walking on the sidewalk adjacent to our client's premises, sustaining injuries. The client Defendant owned a vacant lot which was leased to a Co-Defendant during the time of the incident. On the date of the incident, a Co-Defendant, friend of the lessee, opened the doors of his vehicle, releasing two dogs onto the sidewalk without using any restraints. The dogs allegedly attacked the Plaintiff and knocked her to the ground. Defense submitted a Motion for Summary Judgment on the grounds that the client Defendant did not own, maintain, supervise, or control the dogs at any time, and the incident in question did not occur within the premises. The Court dismissed the complaint and cross claims against the client Defendant, finding that they were merely the out of possession owner of a property near where the incident occurred. ■

RESULT: Summary Judgment Granted, Motion Dismissed in Favor of Landowner.

COUNSEL: Aaron H. Weiss

FIRM: Zimmer Kunz, PLLC

HEADQUARTERS: Pittsburgh, PA

TORT / PERSONAL INJURY

Case Dismissed by Pennsylvania Supreme Court for Untimely / Improper Service

The case arose from a personal injury claim for an alleged slip and fall at a fast food restaurant on August 26, 2018. Plaintiff failed to serve her Complaint timely or via the sheriff, as are required by the Pennsylvania Rules of Civil Procedure. Instead, she chose to provide a copy of the Complaint to the Defendant via private process server (a practice her counsel had been wrongly implementing throughout the state). On interlocutory appeal, the Pennsylvania Supreme Court reversed the trial and Superior Court, instead confirming Plaintiff failed to meet her burden to demonstrate a good faith effort to comply with the rules of service. Specifically, it advised “[o]ne effort of service of process prior to the date on which the statute of limitations would have expired and no further effort until over two months after the expiration date is the opposite of diligence in timely serving process on the defendant.” Furthermore, the actions in this case were “not technical non-compliance . . . because there was never an intent to comply with the Rules. We have never held that any notice to a defendant of a pending legal lawsuit is a substitute for service of process and we refuse to do so here.” The court cautioned, “If attempts at service of process are optional for giving such notice, then no plaintiff would be required to rely on the service of process Rules to impart notice.” This new ruling has already helped subsequent defendants challenge and correct defective service. ■

RESULT: Dismissal by Pennsylvania Supreme Court.

COUNSEL: Rolf Kroll & Michael Pipa

FIRM: Margolis Edelstein

HEADQUARTERS: Harrisburg, PA

PEDESTRIAN ACCIDENT

Driver Cleared in High-Stakes Child Pedestrian Accident Deemed Unavoidable

The matter involved Plaintiff, an eleven-year-old pedestrian, who sustained critical injuries after she was struck by Defendant's vehicle while crossing the street. The accident, captured on video, showed the minor airborne after impact, raising the risk of an excess verdict due to the severity of the injuries. In the Motion for Summary Judgment, the defense argued that Defendant's view of Plaintiff was partially obstructed by a yellow school bus, preventing Defendant from taking evasive action and therefore making the accident unavoidable as a matter of law. Plaintiff opposed, claiming Defendant was driving too fast for the conditions and should have been more cautious due to the presence of school children and a stopped school bus. The court ultimately agreed with the defense arguments, granting summary judgment. ■

RESULT: Summary Judgment Granted.



COUNSEL: Dennis Monaco

FIRM: Molod Spitz & DeSantis P.C.

HEADQUARTERS: New York, NY

PERSONAL INJURY

Defendant had Right of Way-Plaintiff's Case Dismissed

The Plaintiff sought to recover for personal injuries allegedly sustained when a vehicle in which he was a passenger collided with the Defendant's vehicle. The Plaintiff claimed to have sustained significant injuries, including a right shoulder arthroscopy, a right knee arthroscopy, and a cervical discectomy. On the day of the accident, the Plaintiff's vehicle was travelling on Empire Avenue, while the Defendant's vehicle was traveling on Sage Street. It was undisputed that a stop sign governed traffic proceeding on Sage Street at the intersection, but no traffic device governed traffic proceeding on Empire Avenue. The accident occurred when the Plaintiff's vehicle attempted to make a left-hand turn from Sage Street onto Empire Avenue and struck the passenger side of the Defendant's vehicle. Defense submitted a motion for summary judgment on the issue of liability as the Defendant had the right-of-way at the intersection. The Court granted the motion for summary judgment in favor of the Defendant. ■

RESULT: Summary Judgment Granted Against Passenger Plaintiff.

COUNSEL: Nabeel Peermohamed & Michael Thorne

FIRM: Brownlee LLP

HEADQUARTERS: Calgary, AB

MOTOR VEHICLE PERSONAL INJURY

Plaintiffs' Judgment Wiped Out by Cost Consequences of Not Accepting Formal Offer

This motor vehicle accident case involved the plaintiff being called a liar in 20 paragraphs by the justice in his decision. As a result, the plaintiff's multi-million-dollar lawsuit was virtually eroded by the cost consequences of not accepting a generous pre-trial offer of \$400,000. This case signifies the importance of weighing risk, the significant cost consequences of not accepting a good formal offer and then not beating it at trial, and the strategic value of making formal offers at key times during litigation in advance of trial. ■

RESULT: Plaintiffs only received \$1,500 after seven years of litigation due to deceit.



COUNSEL: David Owens

FIRM: Molod Spitz & DeSantis P.C.

HEADQUARTERS: New York, NY

TRIP AND FALL

Housing Fund Development Corporation Not Responsible for Oil Delivery Hose

The Plaintiff alleged that she sustained serious and permanent injuries as a result of a trip and fall over an oil delivery hose that was placed across the sidewalk of our client's building. She claimed that as a result of this incident, she sustained injuries to her lumbar spine resulting in her requiring surgical fusion to her lumbar spine as well as arthroscopic surgeries to the shoulder and knee. At trial, counsel successfully established that the Defendant was not responsible for the placement of the hose and had no notice of the time when the oil delivery was to be performed. The jury returned a verdict in favor of the Defense within 30 minutes. ■

RESULT: Defense Verdict for Housing Fund Development Corporation.



PROPERTY / PREMISES LIABILITY



COUNSEL: Salvatore DeSantis

FIRM: Molod Spitz & DeSantis P.C.

HEADQUARTERS: New York, NY

TRIP AND FALL

Raised Subway Grate Trip and Fall Complaint Dismissed with Prejudice

Summary judgment was granted by the Court against the Plaintiff in this trip and fall case. The Plaintiff claimed that he tripped and fell while walking on a subway grate, due to the lifted grating, in front of the Defendant's property. The Plaintiff testified that the accident did not occur on the sidewalk itself, but solely on the subway grating. The Defendant did not own the grating where the Plaintiff fell, had never performed any work or repairs to the grating, and had never had any responsibility to perform maintenance or repair work to the grating. A motion for summary judgment on the issue of liability was filed with the Court, requesting a dismissal of all cross claims in favor of the Defendant. The Court granted the motion dismissing Plaintiff's Complaint and any cross claims against the Defendant with prejudice. ■

RESULT: Motion Granted, Dismissing Plaintiff's Complaint and any Cross Claims with Prejudice.

COUNSEL: Codie J. Ross

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

HEADQUARTERS: Cleveland, OH

RETAIL & HOSPITALITY PREMISES LIABILITY

Plaintiff Declined \$4M, Received Nothing

This premises liability case against a Fort Wayne hotel involved a trip and fall accident in the hotel's parking lot wherein the Plaintiff tripped over a somewhat deteriorated concrete joint in the lot's dumpster pad area. At its greatest, the deterioration in the concrete joint was no more than one inch deep. The Plaintiff (a nurse practitioner) suffered not only a fracture to her left arm, but also several fractures to the orbital region of her left face, thus requiring a rather complex surgical procedure. In addition, she suffered double vision which she claimed permanently prevented her from driving again, as well as permanent nerve damage to the left side of her face that left her with the feeling of a self-described stabbing sensation any time water or breeze or light fabrics touched the area. After a four-day trial, Plaintiff asked the jury to award \$30,000,000. The Defense had offered over \$4,000,000 to settle the matter, but it was not accepted. Following six hours of deliberation, the jury returned a defense verdict, finding the Plaintiff 62% at fault and the Defendant only 38% at fault. Under Indiana's modified comparative fault scheme, Plaintiff received nothing because the hotel was not found at least 50% at fault. ■

RESULT: Defense Jury Verdict.

COUNSEL: Salvatore DeSantis & Robert Von Hagen

FIRM: Molod Spitz & DeSantis P.C.

HEADQUARTERS: New York, NY

TRIP AND FALL

Plaintiff's Attorneys' Relentless Behavior Warrants Sanctions

Plaintiff tripped and fell on a sidewalk outside of the premises that the Defendant was renovating, sustaining injuries. Over the course of the year, the Plaintiff's counsel continuously filed discovery motions. The Plaintiff's counsel filed discovery motions prior to the preliminary conference and repeatedly filed before making the required showing of good faith. Defense cross-moved against every motion, arguing that they were frivolous and for increasing sanctions. Even after a sanction hearing against Plaintiff's counsel for this relentless behavior, the Plaintiff's counsel continued to file discovery motions. The Plaintiff's counsel filed nine discovery motions over the course of a single year. The Court ultimately found that Plaintiff's attorneys' actions warranted the imposition of sanctions and granted the Defense's motion, ordering Plaintiff's attorneys to pay costs, sanctions and fees, and granting the motion to strike the Plaintiff's complaint against the Defendant. ■

RESULT: Sanctions and Motion to Strike Granted.

COUNSEL: Brian T. Moss, Sean Dowsing & Bayan Salehi

FIRM: Manning Kass

HEADQUARTERS: Los Angeles, CA

PREMISES LIABILITY

Movie Theater Prevails Against \$7.7 Million Demand for Trip-and-Fall

Counsel prevailed in a recent jury trial involving a premises liability claim, which stemmed from an alleged trip and fall over a mat at the Defendant's movie theater, from which the Plaintiff sustained a broken shoulder. The Plaintiff's injury required surgery to install metal plates, which the Defendant agreed was both reasonable and necessary. While trial was ongoing, however, the Plaintiff sought a consultation from another physician who recommended further surgeries, prompting the Plaintiff to demand a \$7.7 million verdict. Counsel leveraged new evidence while cross-examining the Plaintiff and her experts to successfully dismantle the Plaintiff's claims. Paired with its carefully prepared expert testimony, Counsel successfully persuaded the jury that the Defendant's negligence was not the legal cause of the Plaintiff's damages – an argument which earned a defense verdict. ■

RESULT: Defense Verdict Granted in Favor of Movie Theater.

COUNSEL: Salvatore DeSantis & Julie Molod

FIRM: Molod Spitz & DeSantis P.C.

HEADQUARTERS: New York, NY

TRIP AND FALL

Summary Judgment Granted in Favor of Garden Maintenance Nonprofit

Defendant was a not-for-profit corporation, which participates in the maintenance of a garden. The Plaintiff claimed that she tripped and fell when the top of her foot got caught on a protruding sidewalk flag outside of the garden. Plaintiff alleged that the Defendant was responsible for the sidewalk where the accident occurred and failed to maintain the sidewalk, created the condition, or made special use of the sidewalk, and was therefore liable under New York Law. However, the Defendant was only responsible for the maintenance of the cobblestone section adjacent to the sidewalk flags, not the sidewalk flags themselves, and had never performed any maintenance or repair to the section of the sidewalk where the Plaintiff claimed to have fallen, nor did they hire anyone to perform any maintenance or repair to that sidewalk on its behalf. Defense submitted a motion for summary judgment on the issue of liability. The Court granted the motion, finding that the Defendant was not responsible for maintaining sidewalk flags, and that the responsibility lies with the City of New York. ■

RESULT: Case Dismissed.

COUNSEL: Lem E. Montgomery, Kyle V. Miller, James H. Bolin,
H. Barber Boone & Anna L. Morris

FIRM: Butler Snow LLP

HEADQUARTERS: Ridgeland, MS

MULTIPLE SUITS - PERSONAL INJURY AND PROPERTY DAMAGE IN PIPELINE EXPLOSION

All Claims Successfully Resolved in Colonial Pipeline Matter, Final Suit Dismissed on Summary Judgement

Multiple Mississippi lawyers served as lead defense counsel on all claims and suits arising from a colonial pipeline explosion that occurred on October 31, 2016 in Pelham, Alabama. A third-party contractor performing maintenance on a refined petroleum interstate pipeline contacted the line, causing a breach and pressurized release of product. The product ignited, resulting in two fatalities and multiple injuries. In addition to defending claims by claimants, the firm assisted with the related government investigations. The firm also defended against claims by the landowner whose property was affected by the release. The last remaining suit was dismissed on summary judgment in July 2024. The summary judgment was based primarily on insufficient evidence to establish proximate cause between the incident and the alleged damages. ■

RESULT: Last Remaining Suit Dismissed on Summary Judgment in July 2024.

COUNSEL: Leslie Davis & Megan Simmons

FIRM: Hermes Law, P.C.

HEADQUARTERS: Dallas, TX

PREMISES LIABILITY

Property Owner Obtains Dismissal through Non-Suit before Summary Judgment Hearing in Alleged Sexual Assault Case filed by Bar Patron

This premises liability/third-party criminal assault case involved an alleged rape in the parking lot of a shopping center which contained two bars after Plaintiff attended a Facebook group's event at one of the bars. Plaintiff claimed the criminal conduct was foreseeable and the premises owner/operator acted unreasonably. The bar's motion for summary judgment established that evidence of criminal conduct on the property did not reach a level that made crime likely, and the alleged violent crime was not considered foreseeable when analyzed under the five relevant factors: proximity, recency, frequency, similarity, and publicity. After deposing the bar owner and recognizing Plaintiff did not have sufficient evidence, Plaintiff non-suited the bar to avoid the hearing on the motion for summary judgment. ■

RESULT: Non-Suit of the Bar Before Summary Judgment Hearing.

COUNSEL: Salvatore DeSantis & Robert Von Hagen

FIRM: Molod Spitz & DeSantis P.C.

HEADQUARTERS: New York, NY

TRIP AND FALL

Lessee Owes no Duty of Care to Plaintiff who Fell on the Sidewalk

Plaintiff claimed that she sustained injuries when she fell on a public sidewalk in the vicinity of a condominium building, in which the Defendant leased a unit. The Defendant did not own any portion of the condominium building, and the condominium declaration and bylaws did not place any responsibility for maintaining sidewalks on individual condominium unit owners, their tenants, lessors, or sub-lessors. Further, there was nothing in the lease or its rider that imposed any obligation onto the Defendant for maintaining sidewalk slabs, flags, or structural elements, which is what the Plaintiff testified caused her fall. Defense submitted a Summary Judgment motion asking for a dismissal on all claims and cross claims as a matter of law. The Court granted the motion finding that, through production of the lease and an affidavit in support, the Defendant did not have a duty to maintain the sidewalk which allegedly caused the Plaintiff to trip, fall, and sustain injuries. ■

RESULT: Summary Judgment Granted Against Plaintiff in Sidewalk Trip and Fall.

COUNSEL: Steven W. DeLateur

FIRM: Manning Kass

HEADQUARTERS: Los Angeles, CA

LAND USE

Homeowner Awarded Arbitration Against Solar Companies

Counsel represented a homeowner whose solar power equipment, installed by one of the largest solar companies in the United States and its affiliated companies, did not perform as promised. This resulted in the homeowner being responsible for monthly lease payments to the company, in addition to paying the local electric power utility company for the electricity the homeowner consumed as a direct result of the failure of the solar equipment to generate electricity. To make matters worse, the solar power companies failed to repair or replace the defective equipment, notwithstanding the homeowner having lodged dozens of reports that the equipment was not operating properly and requesting that the equipment be repaired or replaced. Counsel obtained a sweeping award in binding arbitration. The award included, among other forms of relief, the cancellation of the solar power contract, consisting of a lease of certain solar power equipment between the homeowner and the solar company, all unpaid lease payments and other claims by the solar companies against the homeowner, compensatory money damages, the discharge of any liens against the homeowner's property, and a large award of attorney's fees and costs. ■

RESULT: Arbitration Award Obtained in Favor of Homeowner.

COUNSEL: Alice Spitz & Mary Dolan

FIRM: Molod Spitz & DeSantis P.C.

HEADQUARTERS: New York, NY

TRIP AND FALL

Plaintiff Tripped and Fell Over an Open and Obvious Condition

Plaintiff alleged that while at a store, they tripped and fell over a basket/cart holder, sustaining injuries. Defense submitted a summary judgment motion arguing that the basket/cart holder was an open and obvious condition and that there was no hazardous condition nor notice of a hazard condition made to the store. The Court found that the Plaintiff failed to present any evidence of an affirmative act by the store in creating a hazardous condition and failed to prove that the store had notice. The Court awarded summary judgment in favor of the Defense. ■

RESULT: Summary Judgment Granted in Favor of Department Store.



COUNSEL: Kyle V. Miller, Gary C. Rikard, Margaret Z. Smith & Carly H. Chinn

FIRM: Butler Snow LLP

HEADQUARTERS: Ridgeland, MS

MULTIPLE SUITS - PERSONAL INJURY AND PROPERTY DAMAGE IN CO2 RELEASE

Complete Dismissal Achieved in Yazoo County CO2 Release Litigation

Counsel represented a company that maintains a multi-state CO2 pipeline, which runs through Mississippi, to supply CO2 in relation to drilling operations. More than 130 residents filed suit in Texas State Court alleging personal injuries and property damage. After mounting strong defenses as to all claims and cases, approximately 30 Plaintiffs voluntarily dismissed their claims, and the remaining Plaintiffs' claims were resolved. ■

RESULT: Suit Dismissed in May 2024.



COUNSEL: Alice Spitz & Mary Dolan

FIRM: Molod Spitz & DeSantis P.C.

HEADQUARTERS: New York, NY

TRIP AND FALL

A Shiny Floor Does Not Constitute Negligence, Summary Judgment Win Against Plaintiff

Plaintiff tripped and fell within the vicinity of a store and brought this action claiming that the store's negligence caused Plaintiff to fall. Defense moved for summary judgment on the basis that Plaintiff was inconsistent in her testimony and unable to identify the location or any cause of her fall. Plaintiff was also unable to provide any evidence of a defective or hazardous condition that would cause the fall, or evidence that notice of said condition was given to the store. The Court noted that Plaintiff failed to present admissible evidence establishing the creation of the defective or hazardous condition, as it is well established that a shiny floor does not constitute evidence of negligence. ■

RESULT: Summary Judgment Granted in Favor of Department Store.



TOXIC TORTS



COUNSEL: Andrew C. Simpson

FIRM: Andrew C. Simpson P.C.

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

TOXIC TORT / PERSONAL INJURY

Asbestos Claims Time-Barred

Counsel was retained as appellate counsel to defend the trial court's order granting summary judgment on the statute of limitations and dismissing pneumoconiosis asbestos claim after applying the "discovery rule" to determine that the Plaintiff knew, or should have known, to file his asbestos and mixed-dust exposure claim at least a year earlier. The decision has application to at least 50 other asbestos claims pending against the same client. After full briefing and oral argument, the Virgin Islands Supreme Court affirmed the dismissal of the asbestos claim. ■

RESULT: Summary Judgment affirmed by Virgin Islands Supreme Court.



COUNSEL: Robert Varney & Mary Tallon

FIRM: Robert T. Varney & Associates

HEADQUARTERS: Bloomington, IL

TOXIC TORT

Defense Verdict Obtained in a \$15M Herbicide Drift Case

Plaintiffs claimed their 37-acre property containing a bustling environment full of timberland and wildlife was destroyed from the drifting of Defendants' agricultural application of herbicides on three (3) separate occasions. Plaintiffs pursued negligence, gross negligence and private nuisance actions including requests for punitive damages. Plaintiffs' expert claimed it would take \$15,143,427.88 to repair and replace all vegetation to the property's native condition. Defendants countered Plaintiffs' ecosystem was previously disturbed by a prior owner who operated a gravel pit on the premises. Defendants further argued that any damage from the alleged herbicide drift was temporary in nature. A pre-litigation offer of \$191,678.94 was rejected. Plaintiffs never reduced their demand from \$15,143,427.88. After a two-week trial, the jury returned a verdict in favor of Defendants. ■

RESULT: Jury Verdict in Favor of Defendants.

COUNSEL: Phillip Bryant & Andrew Corkery

FIRM: Pitzer Snodgrass, P.C.

HEADQUARTERS: St. Louis, MO

TOXIC TORT

Summary Judgement Granted in “Take Home” Asbestos Exposure Mesothelioma Case

Plaintiff’s Decedent died of Mesothelioma. Plaintiff claimed that Decedent was exposed to “take home” asbestos that her husband and son came into contact with while working on the family farm in Idaho. Plaintiffs identified the Defendant’s farm machinery as being present on their farm. Plaintiffs also testified that they performed maintenance and made repairs to Defendant’s farm equipment while it was on their family farm. Plaintiff claimed their Decedent was exposed to the asbestos from the machinery when she did laundry, and when she was around her sons and her husband after working on the farm.

After discovery, Defense counsel moved for summary judgment on the basis that Plaintiff had not proven exposure to asbestos from Defendant’s products, let alone exposure to the product in the duration and frequency required to cause mesothelioma. Defendant also argued that the law of the location of the exposure, Idaho, controlled the case. Idaho did not recognize the “take home” theory of exposure. The court in a plaintiff-friendly county granted Defendant’s Motion for Summary Judgment. ■

RESULT: Defendant Obtained Summary Judgment on Behalf of Farm Machinery Company in Mesothelioma Claim.

WRONGFUL DEATH



COUNSEL: David Owens & Robert Von Hagen

FIRM: Molod Spitz & DeSantis P.C.

HEADQUARTERS: New York, NY

WRONGFUL DEATH

Vehicle Owner Wins Summary Judgment in Fatal Motor Vehicle Accident

This action arises from a tragic incident in which a two-year old infant Plaintiff was fatally struck by an automobile, driven by a Co-Defendant and owned by the client Defendant, when she wandered onto the roadway. It was alleged that a Co-Defendant's parking the client Defendant's vehicle next to a curb in the wrong direction, facing in the opposite direction of the closest moving traffic lane on a two-way street, contributed to the infant Plaintiff being struck by another Co-Defendant's vehicle. It was undisputed that the client Defendant's vehicle never came into contact with the infant Plaintiff, therefore there was no negligence attributable to the client, nor was the client's vehicle a proximate cause of the incident as a matter of law. On these grounds, Defense moved for summary judgment, which the Court granted in its entirety, dismissing the complaint against the client Defendant. ■

RESULT: Summary Judgment Granted in Favor of Vehicle Owner.

COUNSEL: Leslie Davis & Megan Simmons

FIRM: Hermes Law, P.C.

HEADQUARTERS: Dallas, TX

WRONGFUL DEATH


Safety Consultant Wins Summary Judgment in Wrongful Death Case

This is a wrongful death action arising from an accident at a construction site wherein Plaintiffs' Decedent (an independent contractor) died from injuries related to the installation of an underground concrete pipe. The general contractor hired a safety consultant for the subject job site. The safety consultant was not on site at the time of the accident, and the safety consultant had no involvement in the pipe installation. Further, the safety consultant was not responsible for the site or any of the employees or independent contractors of the general contractor. After depositions of the parties, the Court granted the safety consultant's motion for summary judgment. ■

RESULT: Summary Judgment Granted in Favor of Safety Consultant.



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



COUNSEL: V. Christopher Potenza

FIRM: Hurwitz Fine P.C.

HEADQUARTERS: Buffalo, NY

PUBLIC NUISANCE/ OPIOID LIABILITY

Nominal Settlement in Opioid Public Nuisance Claim Seeking \$8 million in Damages

In coordinated litigation, 38 upstate New York municipalities brought suit against dozens of independent “mom and pop” pharmacies, seeking reimbursement for public health costs as a result of the opioid “epidemic.” Attempting to shift the blame for the opioid epidemic to small independent pharmacies, Plaintiffs asserted causes of action sounding in public nuisance, negligence, and unjust enrichment. Defendants challenged the legal sufficiency of the lawsuit, arguing that Plaintiffs’ public nuisance and negligence claims failed because the pharmacies, which were not manufacturers or distributors, had no duty to the public, only to their individual patients. Pharmacies simply fill patients’ prescriptions in accordance with prescriptions written by licensed prescribers. To find a pharmacist liable, it must be shown that the pharmacist knew the prescription was in fact medically inappropriate. Furthermore, the public nuisance claim failed because the pharmacies’ conduct was not negligent, intentional, or abnormally dangerous, and the municipal cost recovery rule (or free public service doctrine) barred municipalities from recovering public expenditures made in the performance of governmental functions, and no exceptions applied.

This individual Defendant was given an \$8 million settlement demand. However, with an appeal of a dispositive motion pending at the Appellate Division, the claim against this pharmacy resolved for a nominal four-figure nuisance value. ■

RESULT: Resolved for Four Figures vs. \$8 Million Demanded.

COUNSEL: Felix Hörlsberger & Magdalena Nitsche

FIRM: DORDA Rechtsanwälte GmbH

HEADQUARTERS: Vienna, Austria

WARRANTY & INDEMNITY INSURANCE

Largest W&I Insurance Case in EMEA

Austrian law firm has assisted in dealing with a request for a three digit million Euros claim under a Warranty & Indemnity (W&I) insurance policy. Underlying the payout are disputes following the acquisition of an Austrian packaging manufacturer, in which the Plaintiff acquired a stake in 2021 but then sold the shares in a restructuring in 2022 after serious irregularities were discovered in the balance sheets for previous years as well as gross misconduct by former managers. Criminal proceedings were then initiated against the former members of the manufacturer's management for various criminal offences.

The payment of €120 million, contributed to by the W&I insurers (as syndicate leader for seven other insurers) and the Defendant as excess insurer, is the largest ever recorded under a W&I policy in the EMEA region. Specialist insurance broker was responsible for the so-called "insurance tower," an arrangement whereby insurance policies are stacked one above the other, with the next layer only coming into effect once the insurance cover of the previous layer has been exhausted. ■

RESULT: Out-of-Court Settlement.

COUNSEL: Stephen W. Rosenblatt & Christopher R. Maddux

FIRM: Butler Snow LLP

HEADQUARTERS: Ridgeland, MS

BANKRUPTCY

Chapter 11 Plan Confirmed for Mississippi Phosphates, Maximizing Value and Resolving Environmental Liabilities

Counsel represented a major United States producer and marketer of diammonium phosphate (“DAP”), one of the most common types of phosphate fertilizer, in its Chapter 11 case. The bankruptcy filing was necessitated by virtue of a cash crunch resulting from operating losses, significant trade payables, capital expenditure requirements, and environmental liabilities, coupled with having utilized its available line of credit. Upon the filing of the chapter 11, working with the Chief Restructuring Officer, Defense secured DIP financing and embarked to obtain comprehensive settlements with the unsecured creditors and with the State and Federal environmental regulatory agencies to address environmental issues. Defense also worked with the investment banker on a marketing and sales process that culminated in court-approved transfers of the assets and its two subsidiaries to a Liquidation Trust and Environmental Trust. Through this orderly liquidation process, the value of the enterprise was maximized while, at the same time, reducing environmental liabilities. Counsel obtained a confirmed Chapter 11 Plan for this client.

RESULT: Court Entered Order Confirming Chapter 11 Plan for Mississippi Phosphates Corporation.

COUNSEL: Mica Nguyen Worthy & Rebecca Knudson

FIRM: Cranfill Sumner

HEADQUARTERS: Raleigh, NC

INTERNATIONAL BUSINESS DISPUTE

Resolution of Complex International Business Dispute

Counsel represented a private equity company involved in complex business transactions in the hotel industry. Plaintiff was a company with foreign owners in China, who claimed the private equity company made misrepresentations and/or mishandled Plaintiff's investments, despite substantial disclosures and the impact of the global pandemic on the hospitality industry. After handling initial discovery and discussion with opposing counsel, the parties came to an amenable favorable settlement without admission of liability for the client.

RESULT: Favorable Settlement.



COUNSEL: Roland Tong

FIRM: Manning Kass

HEADQUARTERS: Los Angeles, CA

TRADEMARK, PATENT LAW

New York Wine Store Tackles Trademark Infringement Claim

Counsel obtained a defense verdict in a case involving a New York-based limited liability company that operates a wine store (“Defendant”), and a similarly named California-based corporation that specializes in the sale of Japanese alcoholic beverages (“Plaintiff”). Defendant has operated its store in-person and online in specified states since 2013, while Plaintiff has offered its goods in stores and online since 2018. After Defendant submitted cease-and-desist letters for trademark infringement, Plaintiff filed a complaint, seeking a declaratory judgment that it did not infringe on Defendant’s trademark and instead alleging that Defendant infringed on their trademark by directing its sales toward the State of California. While Defendant had previously delivered its goods to California, its sales to the state averaged less than .01% of its annual transactions, and as of 2023, Defendant stopped shipping its goods to California upon discovering shipping restrictions on wine. Defense Counsel successfully persuaded the Court that Defendant could not have known that Plaintiff would be harmed, and the case was dismissed due to the Court’s lack of personal jurisdiction.

RESULT: Defense Verdict Granted in Favor of New York Wine Store.

COUNSEL: Raúl Marshall & Rodolfo Vega

FIRM: Baraona Marshall

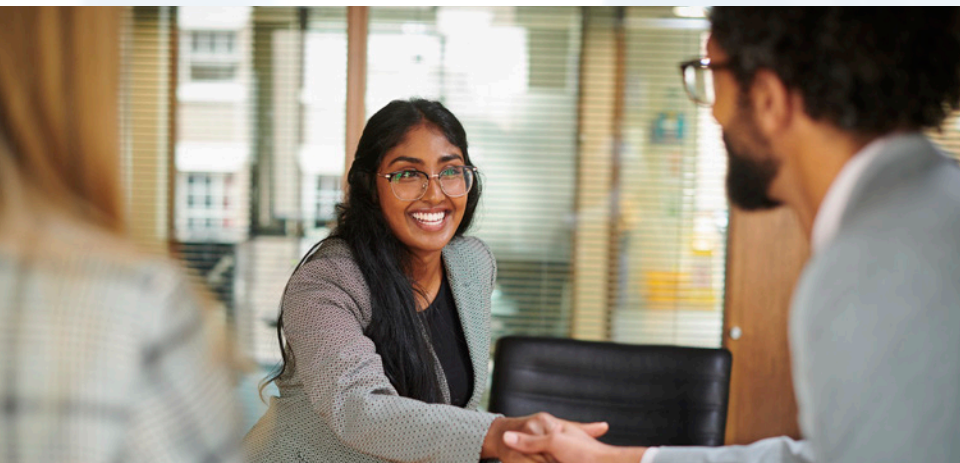
HEADQUARTERS: Santiago de Chile

SYNDICATED FINANCING AGREEMENT

Financing Agreement Granted by Multiple Lenders

This case dealt with the refinancing and restructuring of all the corporate debts of the largest steel manufacturer in the Republic of Chile. The transaction, amounting to approximately USD \$143,000,000, includes bringing in additional lenders to optimize the use of pre-paid stamp taxes and establishing both general and limited guarantees from the parent company.

RESULT: Successful Corporate Debt Restructuring.



COUNSEL: Marta Arias

FIRM: Baraona Marshall

HEADQUARTERS: Santiago de Chile

FAVORABLE JUDGEMENT IN VICARIOUS LIABILITY CASE

Liability in Fire

These civil liability proceedings were initiated by an insurance company, which sought to establish the Defendant's liability for a fire allegedly caused by an individual purported to be in the company's employ. The claim was for the sum of CLP 886,319,214.

Throughout the litigation, significant legal issues were contested, particularly concerning the scope of vicarious liability of employers for acts committed by individuals claimed to be their employees. The proceedings also involved a detailed examination of the general requirements for the recovery of damages, leading to extensive submissions on the limitations of corporate liability in such cases.

RESULT: Judgment Upheld by Court of Appeals.

COUNSEL: Winston West & Benton Toups

FIRM: Cranfill Sumner

HEADQUARTERS: Raleigh, NC

HOMEOWNERS ASSOCIATION

HOA Successfully Enforces Restrictive Covenant

This Homeowners Association case involved homeowners modifying the exterior of their unit. The homeowners filed a declaratory judgment seeking a judicial decree that their exterior modification was in conformity with harmony of appearance within the wider community. HOA counterclaimed seeking removal of the modification and attorney's fees. Following a bench trial, the Court found that homeowners violated the restrictive covenants without justification and entered a permanent injunction enjoining the homeowners to bring their unit within architectural harmony of the community. The last settlement offer before trial was that homeowners would pay half of the cost for all units within the community to receive the same exterior modification. The petition for attorney's fees is currently pending.

RESULT: Defense Verdict (Complaint); Defense Verdict (Counterclaim).



COUNSEL: Michael J. Williams

FIRM: Hurwitz Fine P.C.

HEADQUARTERS: Buffalo, NY

SEXUAL TORTS

National Charitable Corporation Obtained Dismissal of Child Sexual Abuse Claims for Lack of Personal Jurisdiction

Plaintiffs, represented by various national child sexual abuse firms, commenced suit against national corporations in addition to their independently incorporated local affiliates. Plaintiffs argued two theories: (1) the national corporation was negligent in how it controlled the local affiliate and (2) the national corporation could have improved youth protection by setting higher standards for the affiliates. In a coordinated national campaign, the national corporation used new developments in personal jurisdiction law, its own governance documents, chartering statute, and state records, to repeatedly achieve dismissals on jurisdictional grounds.

Initially, the national corporation argued that its registration and ongoing operations in every state did not constitute consent to jurisdiction as discussed in recent U.S. Supreme Court jurisprudence. Secondly, general jurisdiction is determined at the time the complaint is filed, permitting jurisdictional challenges even in states where the national corporation previously maintained its principal place of business. Thirdly, specific jurisdiction requires a connection between a specific act by the national corporation and the injury alleged, approaching a strict causation standard. Critically, for Plaintiffs asserting a failure to act, specific jurisdiction requires an act and the decision to act takes place at the national corporate headquarters, not where the injury occurred. As a result, the national corporation has repeatedly been dismissed at the trial court and appellate levels.

RESULT: Multiple Dismissals Across All States.