The Law Offices of
METHFESSEL & WERBEL
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The Leading Insurance and Claims Attorneys

Fall 2014

CASE UPDATE

Methfessel & Werbel is pleased to present the Fall 2014 edition of our Case Update. Click on the case names to view the complete decisions; click on attorney names to view their profiles and contact information. As always, we welcome your questions and feedback

METHFESSEL & WERBEL NEWS

Adam S. Weiss was recently reappointed to the New Jersey State Bar Association School Law Committee. The School Law Committee monitors developments in education law and recommends modifications to education law-related regulations.

New Jersey Defense Association recently published an article written by Ed Thornton regarding "The Evolution of the Mode of Operation" theory of liability in commercial premises liability cases. Click here to view the article and feel free to contact Ed with any questions you may have about the application of this liability theory to your claims.

The New Jersey Law Journal recently published an article by Vivian Lekkas and Jared Schure regarding "Finding Individual Liability under the NJLAD." Click here to view the article and feel free to contact Vivian, Jared or Eric Harrison with any questions you have about this fast-developing area of law.

Vivian Lekkas was selected as a member of the New Jersey Law Journal's first Young Lawyer Advisory Board. This new advisory board is tentatively scheduled to meet for the first time in October of 2014.

NEW ASSOCIATES JOIN M&W

Six new associates joined Methfessel & Werbel in September:

Kegan Andeskie joined the Employment Practices Group following a clerkship with the Honorable Thomas C. Miller, presiding judge of the Civil Division in Somerset County Superior Court. Kegan attended Seton Hall Law School, where he graduated magna cum laude, Order of the Coif. He previously attended Vassar College, where he studied English and German.

Marco F. Ferreira is a Rutgers graduate and magna cum laude graduate of Seton Hall Law School who clerked for Judge Rea in Middlesex County. Marco will practice on Bill Bloom's Liability Team.

Christen Rafuse is a summa cum laude Rutgers graduate who obtained her law degree from Penn State in 2013. She clerked for Judge Manahan in the Law Division and the Appellate Division. Christen joins the Insurance Coverage Team under the direction of Marc Dembling.

Michael Raskys, who obtained a B.A. and M.A. from James Madison University, obtained his law degree from Rutgers Law School in 2013 before spending a year clerking for Joseph L. Yannotti, Presiding Judge of the Appellate Division. Previously Mike served as a judicial extern for U.S. Magistrate Judge Lois H. Goodman. Mike joins our Property Coverage Team under the direction of Stephen Katzman

Mark Speed, a graduate of Stockton College and Brooklyn Law School, clerked for Judge Nemeth in Ocean County. Mark will focus on first party coverage issues under the direction of Stephen Katzman on our Property Coverage Team.

Carrie Grace Zalewski obtained her B.A. from Rutgers and her J.D. from Seton Hall, which she attended as a Presidential Scholar. She clerked for the Honorable Travis L. Francis, Assignment Judge of Middlesex County. Carrie joins our Insurance Coverage team under the direction of Marc Dembling.

UPDATES IN FEDERAL LAW- MEDICARE LIENS

On July 29, 2014, in Taransky v. Secretary of U.S. Dept. of Health and Human Services, the Third Circuit held that under the Medicare as Secondary Payer Act, appellant was required to reimburse the Government for conditional medical expenses it advanced on her behalf after she settled a lawsuit with a tortfeasor. Taransky tripped and fell in a shopping center and suffered injuries. Medicare made conditional payments on her behalf and Taransky later filed suit against the owners and operators of the shopping center. Taransky settled with the shopping center for $90,000 and released all claims against it, including Medicare liens. In anticipation of administrative proceedings with Medicare, Taransky filed a motion in state court requesting an apportionment of her settlement proceeds between various elements of damages. Arguing that New Jersey's Collateral Source Statue ("NJCSS") prevented her from receiving payments for medical expenses already paid by Medicare, the Court granted her motion and ruled that the settlement did not include any Medicare expenses.

A Medicare contractor thereafter demanded reimbursement for the conditional payments made and an Administrative Law Judge found in its favor ruling that Taransky was required to pay. Taransky brought a federal claim again, arguing that Medicare was not entitled to reimbursement. The Third Circuit found her arguments to be unpersuasive and predicted that the New Jersey Supreme Court would rule that conditional Medicare payments would not constitute a collateral source of benefits under the NJCSS. As such, she was required to reimburse Medicare. This case is another reminder of the importance of understanding Medicare liens and obtaining appropriate releases when settling cases.

UPDATES IN NEW JERSEY CASE LAW

AUTO LIABILITY

In Cammarota v. Cammarota the Appellate Division affirmed the grant of a directed verdict as to plaintiff's mother but reversed and remanded for a new trial as to plaintiff's father. Plaintiff was injured when he fell from the roof of a house purchased by his father while working to renovate the home without compensation. The Appellate Division reasoned that plaintiff presented sufficient evidence that his father owed him a duty of care where the father owned the house being renovated, had obtained building permits, certified that he assumed responsibility for the work being done on the property and the condition of the property, paid the other workers, and was at the work site every day.

TORTS - NEGLIGENCE

In Walters v. YMCA, an unpublished decision, Plaintiff sued the YMCA after he slipped and fell. The trial court granted defendant's motion for summary judgment relying upon an exculpatory clause in the membership agreement. The Appellate Division reversed finding that the expansive exculpatory clause was unenforceable because it would eviscerate the common law duty of care owed by the YMCA to its invitees.

In Prioleau v. Kentucky Fried Chicken, Inc. a divided appellate panel held that the trial court acted erroneously when it charged the jury with the mode-of-operation doctrine and that prior case law supports that the doctrine is limited to self-service businesses. Plaintiff slipped on "water" or "grease" in defendants' fast food restaurant. The Appellate Division found that not all dangerous conditions arising in the operation of a business satisfy the mode-of-operation theory of liability and that in this case plaintiff could not identify the business practice that created the danger. We will be watching closely for the Supreme Court's decision on this important issue.

In an unpublished decision, Moran-Alvarado v. Nevada Court Realty, LLC, the Appellate Division reversed the trial court's grant of summary judgment to EZ Donuts and Travelers Insurance. Nevada Court owned a strip mall and leased premises to EZ Donuts, which was insured by Travelers Insurance. Plaintiff slipped and fell on snow and/or ice at the strip mall. Nevada Court filed a third-party claim against EZ Donuts for contractual indemnification

and a third-party claim for insurance coverage against Travelers. The Appellate Division held that genuine issues of material fact precluded summary judgment in favor of EZ Donuts including its contractual indemnification obligations and the amount of any indemnification payment under the lease, which are dependent on whether the accident occurred on the premises and the negligence and percentage of the parties. As such, summary judgment to Travelers was also premature since the indemnification exposure was coextensive with EZ Donut's liability.

In Jones v. Sheraton Atlantic City, another unpublished decision, the Appellate Division disagreed with the trial court's grant of summary judgment in favor of defendants, the hotel and elevator company. Plaintiff was seriously injured when an elevator door closed on her. The Appellate Division found that under the doctrine of res ipsa loquitur, it was defendants' burden to prove that they were not negligent. This case serves to reiterate that in elevator, escalator, and automatic door cases, a plaintiff will be entitled to a presumption of negligence and the burden to rebut the presumption generally will shift to the defendant.

TORTS – NEGLIGENT REPRESENTATION

In Ridge at Back Brook, LLC v. Klenert, the Appellate Division held that a pro se litigant should be permitted relief from a judgment pursuant to R. 4:50 if the judgment resulted from the pro se litigant's negligent misrepresentation of himself. Defendant, a member of a golf course, was sued for overdue fees, taxes, and other charges. Despite Klenert's short opposition, the Court granted summary judgment to the golf course finding that Klenert failed to respond to the golf course's discovery requests, thereby essentially admitting the allegations made. Klenert unsuccessfully moved before the trial court for relief under R. 4:50. On appeal, the panel reversed the trial court relying upon R. 4:50(f), the catch-all provision which allows litigants to seek relief from a judgment for "any other reason justifying it."

WORKERS' COMPENSATION

In Renner v. AT&T the New Jersey Supreme Court considered whether a telecommuter could establish a worker's compensation claim for her family to pursue following her heart attack which resulted in her death. Reneer, who worked primarily from her home office, worked throughout the night and the day the evening before her project deadline. The Court noted that the petitioner would have to prove that the injury or death was produced by the work effort or strain in excess of the wear and tear of daily living in order to be compensated. Here, the Court found that there was no substantial condition or event to support a compensable claim. Reneer was not confined to a specific space and not instructed to remain in her workstation. The Court also considered that her hours were generally long and the nature of her work was driven by deadlines.

INSURANCE COVERAGE

In Peterson v. New Jersey Manufacturers, an unpublished decision, the Appellate Division examined the adequacy of an insurer's reservation of rights letter. The son of the insured pled guilty to stabbing a person and admitted he did so intentionally at a plea hearing. The carrier pointed to policy language excluding coverage for claims of bodily injured expected or intended by one or more insureds. The Appellate Division held that despite the insured never signing the ROR, the insured acquiesced to it. Therefore, the carrier was not estopped from denying coverage.

In an unpublished decision, Johnson v. Plasser American Corp., the Appellate Division held that the carrier had no duty to defend the employer, as the umbrella policy exclusions relieved the excess carrier of a duty to indemnify, and the carrier's delay in processing the claim for additional coverage did not constitute bad faith. Plaintiff suffered significant injuries while conducting railroad maintenance and repair work for his employer. The Appellate Division reasoned that since there was no coverage and therefore no duty to defend or indemnify, the trial court correctly dismissed the declaratory judgment action and its claim for attorneys' fees.

In Masaitis v. Allstate New Jersey Ins. Co. the Appellate Division affirmed the jury verdict finding that plaintiffs were not entitled to compensation from their homeowner's insurance carrier. Plaintiffs' home was damaged by a fire. After investigation, Allstate denied the claim based upon "misrepresentation, fraud or concealment." Plaintiffs filed a Complaint and Allstate filed a counterclaim alleging insurance fraud. After a jury verdict in favor of Allstate, plaintiffs appealed. The Appellate Division found plaintiffs' arguments meritless noting that there was a jury question as to whether material misrepresentations had been made since the evidence suggested that plaintiffs had

removed pets, valuable belongings, and cars on the day of the fire; plaintiff had misrepresented his whereabouts as proven through cellular phone records; and misrepresentations were made about the value of the property loss, including plaintiffs inability to prove ownership of two Rolex watches allegedly valued at $70,000.

CIVIL RIGHTS

As you may recall from our last Case Update, the New Jersey Supreme Court was poised to make an important decision regarding the reach of the New Jersey Civil Rights Act ("CRA"). In Perez v. Zagami, the New Jersey Supreme Court held that there is no private cause of action under the CRA against individuals, except those who are acting under color of law. Therefore, two Glassboro residents could not bring claims against Zagami, the corporate name of a local tavern.

EMPLOYMENT LAW

In Dunkley v. S. Coraluzzo Petroleum Transporters, the Appellate Division issued an important decision for employers seeking to avoid liability for harassment claims through enactment of an appropriate and effective policy. Plaintiff alleged a hostile work environment, constructive discharge, and retaliation in violation of the New Jersey Law Against discrimination. He was subjected to racist comments made by Harrington, another employee who arguably was plaintiff's supervisor at least during his initial training period. After plaintiff reported the incidents to the safety director, a meeting was held where plaintiff recounted the incidents that occurred. The next day plaintiff was assigned to a different trainer where he endured no further harassment. The trial court found, and the Appellate Division agreed, that although plaintiff was subjected to a hostile work environment, the employer had effective policies in place and swiftly addressed plaintiff's concerns by removing him from the harassing environment. Plaintiff acknowledged that he received an employee handbook which outlined the policies and complaint procedures and that he had received training on those policies but that he did not utilize the policies set forth. The Appellate Division found that the employer's policies, training, and the fact that the harassment was quickly addressed all warranted dismissal of plaintiff's Complaint. The panel agreed that plaintiff had not been constructively discharged and that his co-workers' avoidance of him after he complained was not sufficient to establish a violation under the LAD.

In an unpublished decision, Smith v. Millville Rescue Squad, the Appellate Division addressed the scope of the "marital status" protection under the New Jersey Law Against Discrimination ("LAD"). The Appellate Division reversed the trial court's dismissal of plaintiff's LAD claim based upon his marital status. The Court found that the LAD protects persons from discrimination because they are in the process of being divorced.

EVIDENCE

In Chapin v. Samaras, the Appellate Division held that spoliation of evidence may have occurred when the homeowner removed a tree that allegedly caused injury to a passing motorist. The panel reversed and remanded for further consideration finding that the court incorrectly applied case law concerning whether a third party has a duty to preserve evidence rather than case law regarding the duty that arises once litigation is imminent against a potentially liable defendant

In Manata v. Pereira, the Appellate Division reversed and remanded for a new trial following misuse of a police report during cross-examination. The Court held that the plaintiff's use of a police report for impeachment purposes during cross-examination of defendant was improper. Plaintiff had not offered the police report into evidence; nor was the police officer who authored the report or some other police official called as a witness to authenticate the document.

STATUTE OF LIMITATIONS

In Artwell v. Sea Scape Landscaping, the Appellate Division addressed the statute of limitations in cross-claims between carriers for PIP reimbursement. The issue was when the two-year statute of limitations began to run and what constitutes a formal claim. The panel held that merely because the defendant's carrier knew that one day there may be a reimbursement claim filed is not ground for tolling the limitations or relating back the claim to an earlier

and timely claim brought by its insured who sought damages for personal injury. The Complaint was dismissed.

DAMAGES

In Biazzo v. Parker, the Appellate Division addressed the issue of whether the plaintiff or defendants had the burden of apportioning damages suffered by the plaintiff in two rear-end accidents which happened to plaintiff within several hours of each other. The Court held that since it would be impossible for the plaintiff to prove apportionment, the burden would shift to defendants. At trial if the defendants failed to present proofs sufficient to enable a jury to allocate damages, then the trial court would allocate them equally among the defendants.

INDEMNIFICATION

In Matthews v. Board of Educ. of the Union County Vocational Technical School, the Appellate Division agreed with the Commissioner of Education that Matthews, a teacher at the school, was entitled to reimbursement under N.J.S.A. 18A:16-6. A student brought assault charges against Matthews and the insurer declined coverage. Matthews was provided counsel pursuant to a liability insurance policy issued to his union. The suit was settled with no admission of liability. The Court held that the statute required the Board to provide a defense and indemnification when the allegations arise out of the performance of the individual's duties such as was the case here.

RECENT TRIAL RESULTS

Bill Bloom obtained a no cause on damages in Middlesex County in a car accident case. Bill's client, a taxi, disregarded a stop sign and collided with the vehicle operated by the 22-year-old female plaintiff. Plaintiff went to the emergency room later that day with complaints of neck and back pain, and a hematoma on her forehead, all documented in the records. Plaintiff treated extensively for the next four years, including chiropractic care, pain management, and ultimately a two level lumbar fusion. Bill relied on surveillance video taken while the plaintiff's back surgery recommendation was pending which showed the plaintiff moving freely and not exhibiting any evidence of pain, limitation, or stiffness. In addition, Bill relied on the testimony of the treating radiologist who testified that the findings on the MRI were degenerative in nature and that it is "impossible" that the findings were caused by trauma. In addition, Bill pointed to inconsistencies in the medical records. Liability was stipulated, and prior to closing statements, the Court found as a matter of law that the plaintiff sustained "some injury." Nonetheless, the jury awarded the plaintiff no damages, which was subsequently challenged by plaintiff on a motion for a new trial. Bill successfully relied upon case law standing for the proposition that under certain circumstances a jury is permitted to conclude that a de minimis injury does not warrant compensation. Plaintiff's motion was denied.

Marc Dembling and **Jacqueline Cuozzo** obtained summary judgment on a claim for additional insured coverage for a window manufacturer. The manufacturer had been sued due to serious eye injuries sustained by the plaintiff when he was struck by one of the windows being discarded as debris by one of our insured's employees. The manufacturer had never been requested by the insured contractor/vendor of the manufacturer to be named as an additional insured, and there was no coverage available under the policy issued to our carrier's insured. The Court entered summary judgment dismissing all claims against our client.

Marc and Jackie also obtained summary judgment on an insurance coverage claim brought against a carrier on a homeowner's policy where there had been a fire which destroyed the home. The carrier had paid replacement cost coverage to the mortgagor of the property because the mortgagor was a loss payee. Plaintiff had argued that the carrier owed him additional replacement cost coverage as well as loss of use coverage on the policy because the carrier had not advised the insured that such coverage was included in his policy. Plaintiff had failed to file a claim within the two-year limitations period set forth in the suit clause of the policy. We successfully argued that all appropriate payments were made and the Court dismissed all claims.

Ric Gallin successfully obtained a no cause verdict in an employment discrimination case in the Eastern District of Pennsylvania. Plaintiff, a 60-year-old Emergency Medical Technician, claimed she was terminated because of her age. The jury agreed with Ric that she was actually let go due to competency issues. During an in-house skills review course, an independent evaluator had found that her skills were unsatisfactory and recommended that she not be permitted to ride ambulances.

Ric also obtained summary judgment in the Supreme Court, Queens County, against a plaintiff who had been rendered a quadriplegic following a fall from a tree. The insured owned a two-family house and hired plaintiff to trim some trees. Plaintiff indicated he was an experienced tree cutter. The insured only told plaintiff what to cut but did not control the means or methods of work. Plaintiff did not use safety devices and fell out of the tree, suffering devastating injuries. The Court agreed with Ric that since the insured was the owner of a two-family home, he fell within the exception to Labor Law 240. In addition, since he did not control the means or methods of operation, plaintiff could not claim that he was provided an unsafe work site since his own actions created the unsafe condition.

Eric Harrison obtained summary judgment in U.S. District Court dismissing all claims of an alleged "whistleblower" firefighter against the department and township. Plaintiff appealed the decision to the Third Circuit, arguing that the District Court erred with respect to his First Amendment retaliation claim and his state law claim under the New Jersey Conscientious Employee Protection Act. Plaintiff argued that he was entitled to protection because he complained about the department's staffing levels and training procedures. The Third Circuit agreed with the District Court and affirmed the decision, finding that plaintiff's complaints were not entitled to First Amendment protection and that he was not a whistleblower because his reliance on "best practices" guidelines did not constitute reliance on a law, rule or clear mandate of public policy.

Stephen Katzman successfully defended a non-trucking liability insurance carrier in a declaratory judgment action filed in federal court by an insurance company that issued a commercial policy to a federally authorized motor carrier. The issue was whether a truck driver was in the course of trucking operations when two accidents occurred resulting in the death of one victim and serious bodily injuries to another individual. A secondary issue was whether the insurer for the motor carrier was entitled to rescission due to underwriting fraud. Both issues were resolved with the non-trucking liability carrier having no liability under its policy.

Stephen Katzman and **Christian Baillie** successfully obtained summary judgment in a Superstorm Sandy related first party case. The client insured several motor vehicles owned by the plaintiffs. However, prior to Superstorm Sandy, the client forwarded a renewal package to plaintiffs which they ignored. Thus, the policy expired as a non-accepted renewal prior to the storm, and coverage was denied accordingly. Plaintiffs filed suit asserting that the carrier failed to provide them with notice the policy was set to expire. In opposition to the motion, plaintiffs attempted to conflate the concepts of cancellation, renewal, and non-renewal, which is contrary to the express holding of the Appellate Division in Lopez v. New Jersey Automobile Full Insurance Underwriting Association, 239 N.J. Super. 13 (App. Div.), certif. denied, 122 N.J. 131 (1990). The Court agreed with our arguments and found that there was no coverage.

Ed Thornton tried a matter in Morris County wherein the plaintiff, an employee of a tenant in the insured's multi-tenanted commercial building, alleged that as a result of a one inch raise in a sidewalk slab, she was caused to trip. She landed on her left knee, which underwent arthroscopic surgery for torn meniscus, chondromalacia, and suspicion of patellar fracture. Plaintiff maintained that she never recovered from the knee trauma, being forced to use a cane or crutches for the next two and a half years causing her spinal stenosis. She alleged the stenosis caused her to have various herniations and bulges and pain in the lumbar spine, necessitating fusion surgery at L3 through L5. The plaintiff was employed as a medical administrative assistant and never returned to work after the back surgery. She alleged she was going to work until 70 years of age, losing $670,000.00 in wages, plus benefits. The matter was defended on the issue of constructive notice, as well as plaintiff's lack of proofs of the actual size of the defect or its obviousness. The jury agreed with our position, finding the insured not negligent, and in the face of a $600,000.00 settlement demand, gave a defense verdict.

Lori Brown Sternback and **Lindsay Spero** obtained summary judgment in a slip and fall case which occurred in the parking lot of a shopping center. The third-party plaintiff and property manager of the shopping center alleged that the insured owners of Jane's Cutaway hair salon were required to indemnify the property manager for the plaintiff's accident. Lori and Lindsay were successful in convincing the Court that the property manager was not a named party to the indemnification agreement between the insured and the property owner of the shopping center and thus was not entitled to be indemnified.

James Foxen obtained a defense verdict following trial in a property damage case. Plaintiff filed suit after a retaining wall separating the plaintiff's and insured's properties began to collapse. Plaintiff alleged that negligent property

maintenance on the part of the insured caused the damage. The collapsed portion of the wall measured 60 feet in length by 5 feet in height. The insured's property, which was residential in nature, had been unkempt for many years and several vegetative growths, including large trees, were present just inside the retaining wall. The Court issued a written decision entering a no cause verdict in favor of the insured. Citing Deberjeois v. Schneider, 254 N.J. Super. 694 (1991), another case handled by this office, Judge Steele found that the trees and vegetation were a naturally occurring condition for which the insureds could not be held liable. Plaintiff's Complaint was dismissed with prejudice.

Jennifer Herrmann obtained summary judgment in a race discrimination case. Plaintiff, a Caucasian school security guard, was laid off and not rehired when two security guard positions later became available. Although plaintiff did not have tenure or seniority rights, he expected to be automatically rehired, and he alleged discrimination in violation of state and federal law because the selected candidates were African American and Hispanic. The District Court accepted defendant's legitimate non-discriminatory reason for hiring the two other candidates: their interview performances were better than plaintiff's. An appeal is pending.

Richard Isolde obtained summary judgment in a case where a broken gutter caused an ice condition that lead plaintiff to fall in the fire lane in front of our client's health club as she was leaving the club. The plaintiff complained of back injuries and a fracture to her foot. The foot became badly infected and required two surgeries and changed the plaintiff's gait. Judge Baldwin ruled that our client, a commercial tenant in a multi-tenant shopping center, owed no duty to its patrons to maintain the area where the plaintiff fell and possessed no duty to warn the plaintiff through the placement of cones or tape. Additionally, the Court dismissed the landlord's contractual defense and indemnification claims against our client.

Maurice Jefferson obtained summary judgment on a counterclaim for defamation. The insured sued a cheerleading school for breach of contract and violation of the Consumer Fraud Act. The defendant counterclaimed on the basis of very insulting comments that the insured published on social media forums. The mildest of the insults criticized the defendant's business practices. We argued that the statements, no matter how insulting they may have been, did not meet the legal definition of defamation as they contained no specific factual allegations. Rather, they were only opinions and therefore, protected speech. The Court agreed and granted partial summary judgment, dismissing the counterclaim.

Jerry Kaplan and **James Foxen** obtained summary judgment in a personal injury motor vehicle accident case. Plaintiff was a passenger in a vehicle being operated by her husband on February 15, 2011. The co-defendant was traveling north on Route 21 in Newark toward the Belleville exit. The insured was also traveling north on Route 21 in the left lane. The co-defendant attempted to make a left turn in front of the insured to exit from Route 21 at the Belleville exit resulting in the collision. The Court determined that under the case of Ambrose v. Cyphers, the co-defendant had to exercise a high degree of care in view of the hazardous maneuver of making that left turn and failed to do so.

Frank Keenan obtained summary judgment in Supreme Court, New York County, on a Labor Law 240(1) case. Plaintiff was an employee of a tenant who fell off a ladder while replacing ceiling tiles allegedly discolored by a leaking roof. We moved for summary judgment on behalf of the building owner arguing that Labor Law did not apply since plaintiff was performing routine maintenance rather than construction or repair work that falls within the protection of the Labor Law. Judge Braun agreed with our position and dismissed plaintiff's claims.

Leslie Koch successfully obtained summary judgment of a student's claims in U.S. District Court under the New Jersey Anti-Bullying Bill of Rights, the New Jersey Law Against Discrimination ("LAD"), a claim for negligent infliction of emotional distress, and claims under the First, Fourth, Fifth, and Fourteenth Amendment of the U.S. Constitution. Plaintiff had transferred into the East Orange school district from Georgia in September 2010. She asserted that throughout her fourth and fifth grade school years that she was spit on, punched, kicked and called "country" because of her southern accent by multiple students and that the District did nothing to stop it. Additionally, she asserted that another female student threatened to "make her a lesbian." The Court dismissed all claims finding that plaintiff's southern heritage was not a protected class under the LAD and that the New Jersey Anti-Bullying Bill of Rights did not establish a private cause of action apart from the claims plaintiff had already asserted.

Caitlin Lundquist obtained summary judgment in a special education matter appealed to federal court from an administrative decision in favor of the defendant board of education. Plaintiff argued that the Administrative Law Judge erred by dismissing his claim for reimbursement under the Individuals with Disabilities Education Act ("IDEA")

for the unilateral placement of his child at a private residential boarding school, despite that he failed to notify the school district of his intentions prior to making such a placement as required by the statute. In addition, he claimed the District violated the IDEA by denying his request that it identify the methodology that would be used in its proposed reading program. The District Court held that plaintiff disregarded his obligation to cooperate and assist in the development of an educational program for his son, was not deprived of an opportunity to meaningfully participate in the decision making process, and was properly denied reimbursement for his unilateral private placement. As a result, each of plaintiff's claims was dismissed on summary judgment.

Richard Nelke conducted an Examination Under Oath ("EUO") of an insured who allegedly had her Porsche stolen. During the EUO, the insured failed to provide material information and documentation pertinent to the investigation of her claim. Following the EUO, Rich continued to press the insured's attorney for the documentation to no avail. Subsequently, the attorney withdrew as counsel and the insurer, at Rich's recommendation, denied the claim for her failing to cooperate as she was required to do under the policy. The insured and another individual were eventually brought up on charges for conspiracy, insurance fraud, attempted theft by deception, and falsifying or tampering records for allegedly defrauding insurance companies by reporting luxury vehicles were stolen while knowing that the vehicles had been shipped to China for resale at a much higher price.

Richard Nelke and **Christian R. Baillie** successfully obtained partial summary judgment in a Superstorm Sandy related first-party insurance case. Specifically, the motion sought to dismiss plaintiff's claims for bad faith, breach of the implied covenant of good faith and fair dealing, breach of the New Jersey Consumer Fraud Act, and all claims for extra-contractual damages, including consequential damages, punitive damages, treble damages, and attorney's fees. Significantly, there were approximately seven weeks remaining in the discovery period as of the return date of the motion. Nevertheless, the Court found that the motion was ripe for determination and granted the motion in its entirety.

Steven Parness successfully defended against plaintiff's appeal to the Third Circuit in his case asserting claims under the United States Constitution and New Jersey Constitution. Previously, in December 2012, Eric Harrison and Jennifer Herrmann obtained summary judgment in this case, in which plaintiff's elementary school students accused their teacher of touching them inappropriately. After the local municipal court dismissed criminal charges against him, plaintiff sued school officials, police officers, and two prosecutor's office investigators alleging false arrest and malicious prosecution. We represented the investigators, who the District Court found to be immune from suit because they had probable cause for investigating plaintiff.

Jared Schure successfully obtained a letter of dismissal from the Equal Employment Opportunity Commission ("EEOC") in a disability discrimination claim against a board of education. The former employee alleged that she was denied a reasonable accommodation and was terminated because she suffered from a disability in violation of the Americans with Disabilities Act. Using emails and text messages exchanged between the complainant and her supervisors, Jared argued that the complainant was offered a reasonable accommodation and that she was terminated because she amassed four months of unexcused absences from work, not because of her disability. The EEOC agreed and issued a finding of no probable cause.

Lindsay Spero and **Bill Rada** were successful in persuading the court to bar damages as a result of spoliation. In this construction defect case, plaintiff alleged that the defendant insured defectively constructed a barn and surrounding structures resulting primarily in water damage. Relying upon Robertet Flavors, Inc. v. Tri-Form Constr., Inc., 203 N.J. 252, 272-74 (2010), the Court found that plaintiff spoliated evidence related to repairs made to the exterior stairs of the barn since these repairs were made without notice to the defendants and after the plaintiff filed suit but prior to defendant's expert inspection. As a result, all evidence and damages related to the stairs are barred at trial.