The Law Offices of
METHFESSEL & WERBEL
A Professional Corporation

The Leading Insurance and Claims Attorneys

Winter 2015

CASE UPDATE

Methfessel & Werbel is pleased to present the Winter 2015 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

In November 2014 the Appellate Division issued a published a decision of first impression in J.T. v. Dumont Public Schools, a case litigated by M&W's Employment and Civil Rights Team led by **Eric Harrison**. The appellate panel articulated the standards applicable to educated-related claims under the New Jersey Law Against Discrimination ("LAD"). Henceforth, school districts which comply with the Individuals with Disabilities in Education Act ("IDEA") in the education of classified students will be deemed in compliance with the LAD. In the Dumont case, the Child Study Team responsible for the student in question was determined not to have violated either the IDEA or the LAD by educating the plaintiff, a disabled kindergartener, in an elementary school which was not the neighborhood school he would have attended had he not had special needs.

In January 2015 **Stephen Katzman** and **Christian Baillie** obtained an appellate decision affirming dismissal of a first party coverage case based on application of a concurrent causation exclusion. The insureds owned a gas station and convenience store that sustained damage during Hurricane Irene. A subterranean pipe collapsed, causing water leakage and soil erosion which in turn caused a partial collapse of the building. The insurer denied coverage based on earth movement and water damage exclusions. The policy contained an anti-concurrent/anti-sequential exclusionary clause. The Law Division granted our motion for summary judgment and the Appellate Division affirmed, agreeing that the anti-concurrent/anti-sequential clause and the exclusionary language for earth movement and water damage excluded plaintiffs' loss. The Court found that regardless of any other potentially covered cause of loss within the chain of events, the insureds could not overcome summary judgment because it was undisputed that water seeped through the culvert to cause soil erosion, which was an expressly excluded cause of loss that occurred sequentially or concurrently with all other potential causes of loss.

In January 2015 the New Jersey Law Journal published **Caitlin Lundquist's** article assessing the current state of the exhaustion doctrine as applied to education-based civil rights claims. "Administrative Exhaustion Is a Pre-Requisite to Claims Under IDEA" discusses the potential impact of failure to exhaust administrative remedies .

Vivian Lekkas and **Jared Schure** made an appearance on the 96th episode of AM Best's Insurance Law Podcast. During the interview with John Czuba, editor of Best's Directory of Recommended Insurance Attorneys, Jared and Vivian discussed individual liability under the New Jersey Law Against Discrimination. Click ***here*** to listen to the podcast.

Four episodes later, **Ed Thornton** was the guest on the milestone 100th episode of AM Best's Insurance Law Podcast. During the interview with John Czuba, Ed defined the often-misunderstood "mode of operation" doctrine and explained who can be held liable under this theory. He pointed out the practical effect the doctrine has on the parties involved and provided some examples of its application. Click ***here*** to listen to the podcast .

On January 16, 2015, **Marc Dembling** moderated and spoke at a seminar entitled "Hot Button Issues in Insurance Law: 2015." The seminar was presented for the New Jersey Institute for Continuing Legal Education in cooperation with the New Jersey State Bar Association. Marc led the panel in a discussion of recent case law affecting the insurance industry.

Seven lawyers from our office were asked to participate as judges in Union County for the New Jersey State Bar Association high school mock trial program. **Ed Thornton**, **Bill Bloom**, **Paul Endler**, **Jared Kingsley**, **Adam Weiss**, **Lindsay Spero**, and **Marco Ferreira** presided over trials litigated by teams of high school students from schools throughout the county.

NEW ASSOCIATE JOINS M&W

Diaa Musleh joined our subrogation team in January 2015. Diaa attended law school at Rutgers University where he spent a semester as a judicial intern for Chief Justice Stuart Rabner in the New Jersey Supreme Court, a semester at the New York County District Attorney's Office in New York, and two semesters at New Jersey Legal Services. He also served as managing research editor of the Rutgers Journal of Law & Public Policy. Following law school he completed a judicial clerkship with the Honorable Amy C. O'Connor in the Appellate Division. Most recently, Diaa transitioned from a firm where he specialized in the representation of management in school law, employment law, and labor relations.

UPDATES IN FEDERAL LAW

*Note – Case names are hyperlinks. Clicking on the case name will take you to a complete copy of the decision.

The Third Circuit, in Heffernan v. City of Paterson, recently addressed whether constitutional damages are available for perceived political retaliation. The plaintiff police officer filed a 42 U.S.C. § 1983 claim alleging that he was demoted in retaliation for exercising his First Amendment freedom of speech and freedom of association rights. Plaintiff was demoted after he was observed obtaining a campaign sign supporting a candidate running against the Mayor. In fact, the officer was picking up the sign for his mother and professed to being apolitical with respect to the local election. He sued over his demotion, contending that it occurred in retaliation for protected political activity. The district court granted summary judgment in favor of the defendants, finding that Heffernan failed to prove that he actually exercised his First Amendment rights and further holding that he could not seek compensation under § 1983 for retaliation based only on the perceived exercise of those rights. The Third Circuit agreed that there was insufficient proof that plaintiff had intended to convey a political message when he picked up the sign or that he had been associated with the campaign. While constitutional damages are not available for perceived political retaliation, this case does not foreclose a plaintiff from filing a PERC unfair labor practice charge or an internal grievance when seeking to challenge an employment action based on perceived political activity.

UPDATES IN NEW JERSEY LAW

*Note – Case names are hyperlinks. Clicking on the case name will take you to a complete copy of the decision.

INSURANCE – BAD FAITH

Twenty-three years ago the New Jersey Supreme Court decided Pickett v. Lloyd's of London, accepting the argument advanced by Methfessel and Werbel on behalf of the insurance industry that extra-contractual damages should not be available in a dispute over first party coverage when the insurer's decision in question is "fairly debatable." Last week the Supreme Court unanimously reiterated the continued validity of Pickett, turning back the plaintiffs' bar in its campaign to ease limitations on bad faith damages in uninsured/underinsured motorist cases.

In Badiali v. New Jersey Manufacturers Insurance, the Court ruled that NJM's rejection of the arbitration award was "fairly debatable" and therefore insulated from a claim of bad faith, as are all "fairly debatable" first party coverage decisions pursuant to Pickett.

Just as the Pickett Court afforded property carriers the ability to negotiate claims in good faith without fear of extra-contractual exposure, Badiali puts to rest the efforts of the plaintiffs' bar to blur the distinction between third party-based Rova Farms bad faith claims and direct UM/UIM claims, freeing auto carriers to take their chances with a jury without risking liability beyond policy limits so long as the factual and legal bases for their prior positions are "fairly debatable."

PENDING LEGISLATION

The New Jersey State Assembly has passed a bill limiting access to information from vehicle black boxes. The bill makes clear that the information in the black box is the property of the owner of the vehicle and is not easily accessible by others. For instance, law enforcement would only be able to access information after obtaining a search warrant, and an adverse party in a civil matter would have to produce an order signed by a judge. On the other hand, the automobile owner may not destroy information for two years following an accident or could face a $5,000 fine. Since the federal government has made installation of black boxes mandatory, it is expected that such crash data will become a focal point of accident defense in the future. The legislation defines recorded information to include electronically stored information of vehicle speed, direction, location, steering, braking, and seat belt use but does not include personal recording devices not attached to the vehicle such as video cameras, dashboard cameras, or mobile telephones with recording capabilities.

NEW JERSEY TORT CLAIMS ACT

In Florian v. Johnson the Appellate Division reversed the trial court's summary judgment dismissal of a claim brought under the New Jersey Tort Claims Act ("TCA"). The Appellate Division found that the trial court did not properly analyze whether the public entity defendant's actions were discretionary, and thus immune under the TCA, or ministerial and not subject to immunity. The trial court's decision not to put the issue to the jury in the first place was surprising because the trend in New Jersey is to leave to a jury the question of whether a public entity's actions were discretionary or ministerial. Indeed, in one of the leading cases on the issue, Henebema v. South Jersey Transp. Authority, the court stressed the need to submit to a jury disputed facts regarding the discretionary or ministerial nature of a public entity's actions.

In Greene v. Middlesex County, an unpublished Appellate Division decision, plaintiff filed a personal injury action after she tripped on a stop sign that was partially covered by snow. The stop sign had been installed by the county on a county road at its intersection with a municipal road. The county and town of Woodbridge were granted summary judgment but the Appellate Division reversed, finding that a genuine issue of material fact existed as to whether the defendants acted in a "palpably unreasonable" manner in failing to address the fallen stop sign.

TORTS – MINORS

C.J.R. v. G.A. addressed an issue of first impression: the standards of tort liability to apply when a minor is injured by another minor during the course of a youth sports activity. The Appellate Division adopted a two-prong analysis, holding that the court must consider: (1) whether the opposing player's injurious conduct would be actionable if it were committed by an adult; and (2) whether it would be reasonable in the particular youth sports setting to expect a minor of the same age and characteristics as defendant to refrain from the injurious physical contact. The Appellate Division upheld the trial court's dismissal of plaintiff's claims, finding that the 11-year-old lacrosse player's conduct did not rise to the level of intentional or reckless behavior that would support the imposition of tort liability.

NURSING HOME ACT

In Bermudez v. Kessler the Appellate Division held that facilities for physical/occupational rehabilitation, such as Kessler Institute, are not "nursing homes" within the meaning of the Nursing Home Act. This is an important holding because successful claimants alleging violations of the Nursing Home Act are entitled to treble damages and attorneys' fees, as opposed to the damages contemplated by traditional tort principles.

AFFIDAVIT OF MERIT

The Appellate Division held in Hill v. Atlantic City Bd. of Ed.that under the Affidavit of Merit statute, to support claims of malpractice or negligence liability, the affidavit must be issued by an affiant who is licensed within the same profession as the defendant. In this case the engineer had issued an affidavit against an architect and plaintiff asserted that because the professions overlap in many ways, his affidavit should be accepted. The Appellate Division rejected this contention under the plain language of the statute, noting nevertheless that in circumstances where the plaintiff's claims are confined to theories of vicarious or agency liability and not a professional standard of care, no affidavit is required.

REMITTITUR

In Mickens v. City of Elizabeth, the Appellate Division revisted the law regarding remittitur of jury verdicts. Plaintiff Mickens was awarded $2.4 million for being the victim of a relatively low-speed impact, eventually undergoing a discectomy at L4-5. The case gives great deference to the judge's "feel of the case" and can be read to exclude any subjective issue review by the Appellate Division, leaving such impressions solely in the hands of the trial judge. As each trial judge has a different view from a different background, the Appellate Division made clear that it will also rely heavily on the individual trial judge's experience, in a particular venue, of verdicts in similar cases. The Appellate Division's deference to trial judges reminds the bar that the sustainability of an atypically high or low verdict will continue to turn in large part on the proclivities of the trial judge.

INSURANCE – DUTY OF INDEPENDENT ADJUSTERS

New Jersey has never addressed the issue of whether an independent adjuster owes a duty to an insured. However, the majority of courts in other jurisdictions, including California, Arizona, Texas, Florida, New York, and South Carolina, have held that an independent adjuster owes no duty to the insured. Until recently, Oklahoma courts held that insurance adjusters do in fact owe a duty to the insured. However, in December of 2014, the Supreme Court of Oklahoma rendered a decision in Trinity Baptist Church v. Bhd. Mut. Ins. Serv., LLC and joined the majority holding that independent adjusters owe no duty to the insured. This developing area of law will likely be litigated in New Jersey courts making Trinity an important and useful decision when defending claims brought directly against adjusters.

INSURANCE – COVERAGE

In Lighthouse Point Marina & Yacht Club, LLC v. Int'l Marine Underwriters, the United States District Court granted the defendant insurer's motion to dismiss. Plaintiff refused to permit a re-inspection of its property despite the Court-ordered Joint Discovery Plan and despite the policy provision requiring the policyholder to permit the insurer to inspect the property as often as is reasonably required or to forfeit litigation. The Court held that the policy provision barred the action.

EMPLOYMENT LAW

The New Jersey Supreme Court has explicitly accepted an employer's affirmative defense to a hostile work environment sexual harassment claim under the New Jersey Law Against Discrimination. In Aguas v. State of New Jersey, the Supreme Court adopted the Ellerth/Faragher standard and ruled that the employer in a sexual harassment hostile work environment context, when faced with vicarious liability based upon a supervisor's harassment, may assert an affirmative defense that it "exercised reasonable care to prevent and correct promptly any sexually harassing behavior," and the "plaintiff employee unreasonably failed to take advantage of any preventative or corrective opportunities provided by the employer or to avoid harm otherwise." The Court further adopted a broad definition of supervisor: (1) one who is authorized to undertake tangible employment decisions affecting the plaintiff; or (2) one who is authorized by the employer to direct the day-to-day work activities. While previous case law touched upon this notion when asserting negligence claims against an employer, including the seminal case of Lehmann v. Toys 'R' Us, this decision directly addresses the issue and will be useful in defending against such claims.

In a recent decision approved for publication, Wolff v. Salem Cty. Correctional Facility, the Appellate Division affirmed the trial court's dismissal of plaintiff's retaliation claim under the New Jersey Law Against Discrimination based on the doctrine of res judicata. The Appellate Division held that plaintiff's claim was barred because

he raised retaliation as an unsuccessful defense in a disciplinary proceeding before an Administrative Law Judge. The panel relied upon the New Jersey Supreme Court's 2012 decision in Winters v. North Hudson Regional Fire & Rescue, which held that a plaintiff who unsuccessfully raised retaliation as a defense in a disciplinary proceeding was barred by the principles of collateral estoppel from thereafter raising a retaliation claim under the Conscientious Employee Protection Act.

POST-VERDICT DISCUSSIONS

In Davis v. Husain, the New Jersey Supreme Court explicitly prohibited any post-verdict discussions between trial courts and discharged jurors. After a jury verdict was rendered and the jury was discharged, but before post-trial motions were argued and the judgment was entered, the trial judge had a conversation with jurors outside the presence of counsel. One of the jurors commented about a witnesses' conduct when the witness took the oath prior to testifying, noting that he did not put his hand on the Bible. While post-verdict ex parte discussions between a trial judge and jurors have been discouraged, the Supreme Court now has unequivocally stated that such discussions are prohibited unless part of a hearing ordered on good cause pursuant to Rule 1:16-1.

RECENT CASE RESULTS

Ric Gallin obtained a successful subrogation settlement in a case pending in the Supreme Court, Steuben County. Defendant had leased a dryer to the insured and had also installed same. The dryer was improperly set up. Defendant denied that they set the dryer up improperly and also claimed that the claim was barred by the Statute of Limitations because the installation had been over three years before suit was filed. The Court denied defendants motion. While the three years Statute barred negligence claims a six year statute applied to their contractual obligations to perform their work in a good and accepted fashion. The Court also agreed with Ric that based on the cirucumstantial evidence they were not entitled to summary judgment on their claims that they did not do the installation as there was evidence that no one else had performed work on the dryer. Upon denial of their motion the defendant agreed to settle the case at 75%.

Stephen Katzman and **Christian Baillie** obtained summary judgment dismissing the insured's Complaint with prejudice in a first party case. The insured was injured while riding his motorcycle when it was struck by another vehicle. At the time of the accident, the insured and his resident relative were insured by the client for vehicles unrelated to the accident. The insured's motorcycle was insured under a separate policy issued in his name. The tortfeasor's auto carrier tendered the insured its liability limit, which was less than the insured's underinsured motorist ("UIM") coverage. The insured thereafter submitted a UIM claim to the client under both his and his resident relative's auto policies. The claims were denied as both policies exclude UIM coverage when the vehicle involved in the accident is covered under another policy where the claimant is either a named insured or relative of a named insured. The Court agreed that these exclusions were clear and unambiguous, and thus the insured's claimed expectations of coverage were irrelevant. The Court found that the declaration pages, in conjunction with the policy's table of contents and clear headings and subheadings, properly signaled the exclusion to the insured.

Ed Thornton tried a matter in Middlesex County, representing a home care agency and its employee against a claim that the aide negligently handled the 83-year-old plaintiff, who broke her leg when she fell while exiting a shower. The claim focused on two aspects: whether or not the client should have recommended a shower grab bar and prohibited showers before the grab bar was installed and the actual handling of the client. The jury found, after only 15 minutes of deliberation, that there was no negligence and accordingly entered a defense verdict. The plaintiff presented $51,000 in a Medicare lien for hospital and rehabilitative care bills in addition to the claim of pain and suffering for the triple fracture of the right leg.

Ed Thornton tried a death case in Middlesex County wherein plaintiff's decedent, an independent contractor/construction inspector on a highway reconstruction/paving project, was hit and crushed up to his waist by a 13-ton asphalt steam roller. The decedent was crushed into 260 degree asphalt and remained there for approximately 30 minutes until removed by EMS. He was taken to a local hospital and placed into an induced coma but suffered an hour of pain and suffering before he tragically died. His widow brought claims for his pain and suffering, loss of income, and loss of guidance and advice and $960,000 in medical bills which were subject to lien. The trial judge

ruled that although the decedent was on a work visa in this country, it would be the burden of the defense to show that there would have been no application by any employer to extend the visa after its expiration in three years. The plaintiff ultimately demanded $5,000,000 while the jury was deliberating and Ed responded with an offer of $3,500,000. The jury returned a net verdict of $1,931,000, finding the roller operator 70% at fault.

Ed Thornton recently tried a third case in Middlesex County involving an elderly plaintiff who fell down a staircase leading from a rear deck. The plaintiff was the father-in-law of the owner of the one family home. The insured had bought the home for investment purposes, but then rented the home to her son and daughter-in-law. When preparing for a religious blessing on the house, the insured was told about a popped nail on the rear deck, which she assured the daughter-in-law she would fix before the ceremony the next day. She forgot to do so, the plaintiff tripped on the nail, went down 13 stairs, and sustained a three part fracture of his skull, fractured two cervical vertebrae, and had other associated injuries. Because the insured acknowledged the nail to be a dangerous condition and promised to fix it, summary judgment was denied. Plaintiff demanded the $500,000 policy limit to settle the case against an offer of $75,000. The Medicaid lien was $50,000 out of a gross medical billing of $123,000. The jury found the insured not negligent, undoubtedly having accepted Ed's argument that credibility issues undermined the plaintiff's claims. The Court molded the verdict to a no cause for action.

Gerald Kaplan and **Marco Ferreira** obtained summary judgment in a fall-down case. Plaintiff was entering the insured's liquor store and fell down after stepping on the floor mat inside of the door. Plaintiff's expert opined that the positioning of a loose mat over time would produce an uplift condition creating a tripping hazard. We argued that the expert's opinion was a net opinion that should be stricken as the expert was speculating and failed to establish any standards that were violated. The court agreed and further granted summary judgment ruling that without expert testimony there was no proof of negligence. This dismissal was significant as Plaintiff suffered severe injuries rendering him disabled.

Gerald Kaplan and **Marco Ferreira** obtained summary judgment and a no cause at trial on account of two related cases. In the underlying case, plaintiff sued the insured condominium association after falling on a broken sidewalk. The court granted summary judgment in light of the 2010 change in the law, which now states that condo associations are residential property and therefore, are not responsible for sidewalk defects they did not create. As a result, the commercial unit owner settled with the plaintiff. After the settlement, the unit owner filed suit against the insured condo association asserting claims for common law indemnity. The unit owner also asserted that the master deed and bylaws of the association required the association to maintain common areas making it primarily liable for the injuries. After cross-motions for summary judgment determined that the association had to indemnify the unit owner, Jerry appeared for a bench trial strictly limited to the issue of damages, which included plaintiff's claim for counsel fees. The trial was before a different judge and at the conclusion of the trial, the judge ruled that plaintiff was not entitled to common law indemnity since the association was not a tortfeasor and plaintiff's liability in the underlying case was not vicarious. The court dismissed plaintiff's Complaint and entered judgment in favor of the association. The judge ruled that he had the power to review, revise, reconsider, and modify the prior judge's ruling on the summary judgment motions where there was a clear showing of fundamental error.

Jared Kingsley, **Ed Thornton**, and **Jacqueline Cuozzo** turned away an effort to limit the reach of a workers' compensation lien. An employee who was injured in a motor vehicle accident sought to extinguish the workers' compensation lien to the extent of PIP benefits available. The plaintiff had received almost $30,000 in medical and temporary disability benefits. Plaintiff, relying on an unpublished Appellate Division decision, Dever v. NJM, argued essentially that if he could not recover for his PIP benefits from the tortfeasor, pursuant to the evidence exclusion in N.J.S.A. 39:6A-12, the lien would be unjust since his recovery could not and did not include such damages. However, plaintiff's reasoning was flawed under the published opinion of Lefkin v. Venturini. Indeed, since the accident was in the course and scope of plaintiff's employment, they were workers' compensation benefits. Notwithstanding the fact that the PIP carrier may have had to pay the benefits and seek statutory reimbursement from the workers' compensation carrier, they were not PIP benefits but workers' compensation benefits. Accordingly, the court found they were not excludable from evidence, were available as damages, and the lien was enforceable. This is likely not the last we will see of this issue, as it was set for discussion at the New Jersey Association for Justice seminar, and we are aware of Law Division decision both in our favor and against our position in various trialh courts.

Jared Kingsley and **Gina Stanziale** obtained summary judgment in a declaratory judgment action where plaintiff was seeking first party coverage under his wife's automobile policy of insurance. Relying upon the principles established in Palisades Safety v. Bastien, the Court found that the plaintiff and his wife had misrepresented their marital status at the inception of the policy and also failed to disclose a change in address, both of which were material to the determination of the premium.

John Knodel obtained summary judgment in a one-vehicle motorcycle accident. The insured was the owner and operator of a motorcycle with his plaintiff girlfriend riding as a passenger. The insured suddenly and unexpectedly hit a large pothole, causing the motorcycle to go airborne, but the insured was able to keep the bike upright. Plaintiff suffered a compression fracture as well as aggravation of pre-existing disc herniations, incurred approximately $25,000 in medical bills, and missed six months from work. At plaintiff's deposition, John elicited an admission that the insured never operated his motorcycle in a dangerous or hazardous manner before and that at the time of the accident he was driving safely and within the speed limit. John moved for summary judgment, arguing the insured was not operating his motorcycle negligently but came upon a sudden, unexpected, and unavoidable situation. The Court agreed and granted summary judgment.

Richard Nelke and **Christian Baillie** obtained summary judgment in a Superstorm Sandy-related first party case. The insured sustained wind-driven rain damage to its business. The insurer denied coverage pursuant to a windstorm exclusion, which excluded coverage for property damage caused by windstorm, including water infiltration. The policy also contained a one-year shortened suit clause. The insured filed suit 13 months after the formal denial of coverage. The insured file a motion for summary judgment alleging that the windstorm exclusion was not applicable. The insured also argued that there were no genuine issues of material fact as to whether the insurer engaged in bad faith. Our office filed a cross-motion for summary judgment arguing that the claims were barred pursuant to the shortened suit clause. The court agreed with our position and granted the cross-motion for summary judgment, dismissing the Complaint with prejudice in its entirety.

Lori Brown Sternback tried a case in Middlesex County involving a plaintiff driver who contended that the defendant driver of an ambulance in a non-emergency situation negligently failed to yield before turning left out of a driveway, causing the collision. The defendant maintained that the plaintiff jumped out of a line of cars into a turn-only lane and that he failed to pay adequate attention and was comparatively negligent. The plaintiff contended that he suffered a SLAP tear to the right dominant shoulder that was treated by way of arthroscopic surgery. He also alleged cervical disc pathology that required injections and radio frequency ablation. The plaintiff maintained that although he experienced improvement in the pain, he would permanently suffer significant restriction. The defendant denied that the shoulder tear was causally related, pointing to a five-week delay before the plaintiff complained of any shoulder symptoms. Defendant also maintained that any disc pathology was related to degenerative disc disease. The plaintiff's pre-trial demand was $250,000. The jury found the defendant 80% negligent, the plaintiff 20% comparatively negligent, and rendered a gross award of $50,000.

Lori Brown Sternback and **Lindsay Spero** obtained summary judgment in a case involving a slip and fall 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 a 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 summary judgment on behalf of an insured homeowner who was sued when a tree fell on plaintiff's Maserati, which was parked on the insured's property, during Hurricane Sandy. Plaintiff had struck a deal with the insured's son in which plaintiff would pay $100.00 per month for storage of the vehicle. Plaintiff alleged that a bailment was created thus creating a duty on the insured. Approximately $54,000 in damage was caused to plaintiff's Maserati during the hurricane and subsequent cleanup. Summary judgment was granted in favor of the insured.

Jennifer Herrmann and **Eric Harrison** successfully obtained a dismissal of all claims in a widely publicized civil rights case involving the former Sheriff of Hunterdon County and two of her employees. The plaintiffs sued the

County and several public officials for alleged discrimination, violations of their state and federal constitutional rights, and malicious prosecution. Our firm first represented two former prosecutors, against whom the Complaint was dismissed in March of 2013. We later represented two Prosecutor's Office detectives, against whom the Complaint was dismissed in November of 2014.

Jennifer Herrmann obtained summary judgment in a sexual harassment case. Seven male plaintiffs who worked in a bus garage alleged that another male garage employee sexually harassed them in violation of the New Jersey Law Against Discrimination. In granting summary judgment, the Superior Court accepted all of our arguments, including that the alleged harassment, even if it occurred as plaintiffs described, was not because of plaintiffs' sex but because of an overall vulgar work environment, to which plaintiffs themselves contributed.

Rich Isolde obtained summary judgment in a fall-down accident where the insured owned a deli next to a parking lot where the plaintiff sustained a trimalleolar fracture of his left ankle. Due to the landlord's delays in filing a third-party complaint, we successfully barred the landlord from making the breach of contract and common law indemnity claims against the insured in the underlying case. We also successfully prevented the plaintiff from amending the Complaint to name our insured in the underlying case due to the statute of limitations. Thereafter, the landlord filed a separate action against the insured. Summary judgment was granted against the landlord in the second action as the insured had no duty to maintain the area where the plaintiff fell and the indemnity provision of the lease did not cover the landlord for the landlord's own negligence.

Richard Isolde obtained summary judgment in a case involving a dispute between a farmer and an environmental action group that opposed the insured's projects to build a farm stand and a barn. The Highlands Coalition awarded the group a grant to hire a lawyer and engineer to set precedent to create municipal responsibility for storm water management. The environmental group filed a multi-party complaint against the insured that included a prerogative writ action and common law claims related to the erection of a barn. The plaintiff alleged that the barn had changed the course of the Delaware River in such a way as to cause property damage to neighboring land owners. The claims related to the prerogative writ action resolved and we solely defended the negligence claim. Summary judgment was granted against the environmental action committee. While the committee had standing to make Environmental Rights Act claims related to the prerogative writ action, the committee had no standing to assert the negligence claims under the Environmental Rights Act. Rich also successfully defeated a motion to amend for the committee to assert time-barred prerogative writ claims and to name the property owners as the plaintiffs for the negligence claims.

Caitlin Lundquist obtained a dismissal of an EEOC complaint filed by a former teacher against a local board of education alleging disability discrimination and failure to accommodate in violation of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act. While the complainant asserted that the Board should have granted her request for various accommodations, particularly a transfer to a vacant teaching position at another elementary school located closer to her home, the EEOC determined that she had failed to establish any violation of the ADA or Section 504, and dismissed the complaint and closed its file.

Matthew Rachmiel recently obtained summary judgment in a multi-vehicle car accident case. The insured was traveling on an interstate when a vehicle in front of his, in the lane to his right, changed lanes suddenly and without signaling. In order to avoid being struck by that vehicle, which was now directly in front of his, the insured slowed his vehicle down. The vehicle travelling directly behind the insured was unable to slow down in time and rear-ended the insured's vehicle. That collision forced the trailing vehicle to the lane to its left where it struck the plaintiff's vehicle and pushed it into the guardrail. Matt successfully moved for summary judgment asserting that the insured did not drive negligently and was not the proximate cause of the impact to plaintiff's vehicle. The causes of the accident were the vehicle that changed lanes and cut off the insured's vehicle and the vehicle that was directly behind the insured's vehicle and was unable to avoid rear-ending it when the insured was forced to slow down.

Matthew Rachmiel and **James Foxen** obtained summary judgment in a sidewalk fall-down case on behalf of their public entity client. Plaintiff claimed that he fell due to a poorly maintained, broken portion of sidewalk. Plaintiff never served our client, the entity that handled the water and sewer systems, with a notice of tort claim as required by the New Jersey Tort Claims Act. Plaintiff opposed the insured's summary judgment motion and argued that his

service of a notice of tort claim on the city, which was a co-defendant, was also sufficient as to our client because the city and our client were essentially the same legal entity and that plaintiff had thus substantially complied with the notice requirement. The court agreed with our arguments that the two entities were not the same, our client was not a department of the city, and rather was an autonomous legal entity not based at City Hall.

Bill Rada and **Lindsay Spero** obtained summary judgment in a construction defect case where the plaintiffs alleged that the insured contractor was liable for damages to her residential septic system. Bill and Lindsay were successful in convincing the Court that plaintiff's five-count Complaint should be dismissed as there was no evidence that the insured's repair work contributed to the failure of the plaintiffs' septic system. In addition, the court was convinced that the plaintiffs were partially at fault due to their failure to authorize and pay for the additional work which was required to fix the septic system.

Boris Shapiro and **Eric Harrison** obtained summary judgment in federal court on behalf of a board of education. Plaintiff, a substitute teacher, had been involved in a physical altercation with a female 10th grade student. The teacher was arrested several days later but ultimately acquitted. He brought a civil action against his employer board of education, the police department, and the female student alleging race discrimination and violations of constitutional rights. The crux of plaintiff's argument was that the Board failed to investigate the student's allegations, which ultimately led to his arrest. The evidence demonstrated, however, that the Board performed a through investigation. The court agreed with our position and granted summary judgment, finding absolutely no evidence of discrimination or any violation of plaintiff's constitutional rights.

Boris Shapiro and **Eric Harrison** obtained dismissal of all claims against our insured, the former Superintendent of a North Jersey school district. Plaintiff filed a lawsuit against our insured as well as the employer board of education and plaintiff's union, both represented by separate counsel, contending that he was forced to resign under false pretenses. Specifically, plaintiff alleged that defendants conspired to create a fraudulent grievance, which left him no choice but to sign a separation agreement from the Board. As to our insured, plaintiff alleged various causes of action, including fraudulent inducement, tortious interference, and a violation of free speech. We filed two motions to dismiss for failure to state a claim on behalf of the insured. Following the second motion, all claims were dismissed with prejudice.