The Law Offices of

METHFESSEL & WERBEL

A Professional Corporation

The Leading Insurance and Claims Attorneys

Fall 2016

CASE UPDATE

Methfessel & Werbel is pleased to present the Fall 2016 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

We are honored to announce that for the third straight year the *New Jersey Law Journal* has selected Methfessel & Werbel as insurance litigation department of the year. It is the hard work of our attorneys and staff, as well as the relationships we have built with our clients, that have enabled us to achieve this honor for the third year in a row. We look forward to another successful year in partnership with our clients.

As previously reported earlier this year, **Gina Stanziale** was promoted to co-attorney manager of the firm's property team. Gina and **Marc Dembling**, both co-attorney managers, are responsible for leading the team and coordinating with clients in the investigation and adjustment of first party property claims.

Ed Thornton has been invited to join the American Board of Trial Advocates ("ABOTA"). The ABOTA is an invitation-only organization dedicated to courtroom advocacy on both a state and national level and includes both civil and criminal trial attorneys and judges.

We are pleased to welcome **Brent Pohlman** as Counsel. Brent comes to the firm with over ten years of experience in the litigation of employment and civil rights claims. In addition to representing employers in judicial and administrative actions, Brent assists clients in developing and implementing workplace policies and procedures which reduce exposure to liability. Brent joins our employment and civil rights team under the direction of Eric Harrison.

Achille Alipour has joined our liability and coverage team under the direction of Ric Gallin. Achille most recently served as a judicial law clerk to the Honorable Justine A. Niccollai in Passaic County Superior Court, Chancery Division. Achille received his B.A. from the University of Maryland, College Park in 2012 and his J.D. from Rutgers School of Law in 2015.

Sheigh Fanous has joined our liability defense team under the direction of William Bloom following her clerkship with the Honorable Morris G. Smith of the Camden County Superior Court, Chancery Division. Sheigh earned her B.S. from Seton Hall University in 2010 and her J.D. from the University of Maryland, Francis King Carey School of Law in 2015.

Tim Sheehan has joined our property team under the direction of Stephen Katzman following a clerkship with the Honorable Mitchel E. Ostrer of the Superior Court Appellate Division. Tim earned his B.F.A. from New School University in 2009 and his J.D. from Georgetown University Law Center in 2015.

Steven Unterburger has joined our general liability team under the direction of Ed Thornton following a clerkship with the Honorable Jamie S. Perri of the Monmouth County Superior Court. Steven obtained his B.S. from the College of New Jersey in 2012 and his J.D. from Rutgers School of Law, where he graduated *magna cum laude*.

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.

UPDATES TO NEW JERSEY COURT RULES EFFECTIVE SEPTEMBER 1, 2016

The New Jersey Rules of Court have undergone substantial changes effective September 1, 2016. Below is a recap of some of the significant substantive changes. The most notable changes are summarized below.

Rule 1:9-3: The rule was modified to permit subpoenas seeking production of documents to be served by registered, certified or ordinary mail; however, the subpoena will be enforced only with a signed acknowledgement and waiver of personal service. As previously reported we have updated our internal practices to provide these cost savings benefits to our carriers.

Rule 4:10-2(f): The new rule explicitly refers to metadata in electronically stored information and provides that a party may request metadata in electronic documents. The newly added comment to the rule defines "metadata" as embedded information in electronic documents that is generally hidden from view in a printed copy of a document. The comment states that the rule does not affect the general rule that information protected by privilege is not subject to discovery.

Rule 4:18-1 (Comment) – The rule now adds a comment regarding metadata. The comment encourages parties to meet and confer about the format in which electronic documents will be produced and to reach agreement on whether the receiving party may review unrequested metadata in electronic documents. The comment explicitly states that the parties have an obligation to preserve metadata in electronic documents, subject to a standard of reasonableness.

Rule 4:30A: This rule, which codifies the entire controversy doctrine, was amended to permit the assertion of bad faith claims against an insurer after an underlying UM/UIM claim has been resolved in Superior Court.

Rules 4:58-2 and 4:58-3: These rules govern offers of judgment and have been modified for UM/UIM claims. The amendments note that the monetary award in UM/UIM cases should be adjusted to reflect comparative negligence, if any, to determine whether the relief afforded by the rule is triggered. Awards reduced by a court to conform to policy limits have no effect in analyzing whether the threshold has been met to trigger the potential relief afforded by the offer of judgment rules. While these rule amendments are advantageous to claimants, they also create an opportunity for insurers to avail themselves of the benefits of formal offers of judgment.

PENDING LEGISLATION

Assemblywoman Marlene Caride, D-Bergen, recently introduced Bill A4173, which would amend the New Jersey Law Against Discrimination ("LAD") to prohibit an employer from requiring an employee or prospective employee to waive his or her rights under the LAD as a condition of employment, continued employment, or continued compensation. This bill follows the unanimous ruling in Rodriguez v. Raymours Furniture, in which the Supreme Court held that the statute of limitations for LAD claims cannot be contractually shortened. While we expect this bill to pass, it remains to be seen whether the final version will prohibit the waiver of a jury trial in LAD disputes.

INSURANCE – COVERAGE

In Bardis v. Stinson, a case handled by Marc Dembling and Jacqueline Falcone of M&W, the New Jersey Supreme Court reversed the Appellate Division to hold that the supplemental collapse coverage provision contained in the insurer's dwelling policy was unambiguous and therefore did not afford coverage for collapses caused by "hidden" construction defects. This decision reinforces the principle that courts must enforce the contract as written when the terms of the policy are clear.

The New Jersey Supreme Court held in Cypress Point Condominium v. Towers that consequential damages caused by a subcontractor's faulty workmanship constitute "property damage" and an "occurrence" under the 1986 ("ISO") form CGL insurance policy. The condominium association sued the developer and their subcontractors for allegedly defective installation of roofs, gutters, brick facades, exterior insulation and finishing system siding, windows, doors, and sealants which caused damage to the interior structures, common areas, and unit owners' property. When the developer's insurers declined coverage, plaintiff amended its Complaint to add the insurer, seeking a declaration that its CGL policies, which were written on the 1986 ISO standard form, covered plaintiff's claims against the developer. That insurer impleaded a second insurer, and both insurers moved for summary judgment. While the trial court held that there was no "property damage" or "occurrence" as required by the policies to trigger coverage, the Appellate Division reversed, coming to the opposite conclusion. The Supreme Court affirmed, determining that the subcontractors' faulty workmanship was an "occurrence" under the policies. The Court scrutinized the policy exclusions eliminating coverage for "your work," holding that the exclusion does not apply if the damaged work or the work out of which the damage arises was performed by a subcontractor and not the insured itself.

AUTO INSURANCE - STEP-DOWN PROVISIONS

In Rivera v. McCray, the Appellate Division prohibited a vehicle's insurer from "stepping down" its UIM coverage for a passenger who held a stripped-down "special policy" which afforded no UIM coverage. Based upon the plain language of the policy and well-established principles of insurance contract interpretation, a "special policy" which provided no UIM coverage at all did not provide "similar coverage" so as to trigger the step-down provision and reduce UIM coverage to zero.

INSURANCE – PIP REIMBURSEMENT

In Abdulai v. Casabona, the Appellate Division held that the insurer's action for reimbursement of PIP benefits was timely. N.J.S.A. 39:6A-9.1 establishes a two-year statute of limitations within which an insurer that has provided personal injury protection ("PIP") benefits must bring suit seeking reimbursement from a tortfeasor. The court held that the statute of limitations begins to run on the date the insurer receives a completed application, which constitutes the filing of the claim under the statute.

TORTS

In Scannavino v. Walsh, a case handled by James Foxen of our firm, the Appellate Division affirmed the artificial versus natural distinction under the Restatement (Second) of Torts relating to property damage caused by an insured's tree, including the roots. The plaintiff property owner brought a private nuisance action against adjacent property owners, alleging that tree roots from the adjacent owners' property caused damage to the retaining wall between the properties. The Appellate Division held that the plaintiff bears the burden of proving that the insured or someone in the insured's chain of title planted the tree, or that the insured took affirmative actions to preserve the trees or the health or growth of the tree or its roots. Evidence that the insured merely cut branches is not sufficient to make the tree an "artificial" condition. The condition was "natural" and therefore, the insureds were not liable. The case is the first of its kind to extend residential property sidewalk immunity to claims of property damage caused by natural conditions.

TORTS – MODE OF OPERATION DOCTRINE

In Walker v. Costco, the Appellate Division reversed the trial court's refusal to permit a mode of operation jury charge. The Appellate Division, following the reasoning set forth in Prioleau v. Kentucky Fried Chicken, Inc., instructed that on retrial a very specific jury charge had to be tailored so that before defendant could be found negligent under mode of operation principles, the jury had to be persuaded that the substance slipped on was in fact a portion of the demonstration samples of the retailer. Otherwise, the jury would then be charged on standard negligence principles, including the need to prove actual or constructive notice of the substance on the part of the retailer.

TORT CLAIMS ACT

In Gomes v. County of Monmouth the Appellate Division held that as a matter of first impression a notice of tort claim was not required for a plaintiff suing private contractors working for public entities.

In Lee v. Brown, an unpublished decision, the Appellate Division reviewed the requirements for immunity under the Tort Claims Act with respect to a municipal building inspection. Following a horrific fire in Paterson, New Jersey, lawsuits were filed. The Appellate Division noted that this was not a case of negligent inspection or negligent failure to enforce the law where absolute immunity would apply. Rather, because the electric inspector knew of the dilapidated condition of the electrical panel and did not approach his superior for an immediate closedown order, there was a question of fact whether qualified immunity applied based upon whether the inspector acted in good faith in his deliberate failure to execute or enforce a law.

AFFIDAVIT OF MERIT

In McCormick v. State of New Jersey, the Appellate Division addressed whether a plaintiff can overcome the affidavit of merit requirement by suing only the public entity and not the licensed professionals alleged to have been negligent. The court found that such circumvention of the statute is impermissible and that an affidavit of merit is required.

WORKERS' COMPENSATION

In Talmadge v. Burn, the Appellate Division reviewed the interplay between workers' compensation and no-fault benefits. The case demonstrated that the workers' compensation carrier is the first source of indemnity for medical bills and that the carrier has a right to assert a lien, either through its insured or independently. Since the carrier has the right to assert the lien, the medical bills become evidentiary at trial and if a plaintiff's suit is successful, he or she must reimburse the compensation carrier.

Similarly, in Lambert v. Travelers, the Appellate Division, in consolidated appeals, held that when a worker is injured in a motor vehicle accident in the course of employment and workers' compensation coverage is available, the right of the injured worker to pursue claims against a third-party tortfeasor and the right of the workers' compensation insurer to be reimbursed are governed by the Workers' Compensation Act. The injured worker may recover medical expenses from a third-party tortfeasor, and N.J.S.A. 39:6A-12, part of the Automobile Insurance Cost Reduction Act, does not apply. The workers' compensation insurer, in turn, has the right to be reimbursed for the appropriate portion of medical expenses it has paid.

CIVIL / TRIAL PROCEDURE

In Torres v. Pabon, the New Jersey Supreme Court articulated important points regarding trial and civil procedure and concluded that the trial court made five improper rulings warranting a new trial. First, the trial court erred when it gave the jury an adverse inference charge with respect to defendants' decision not to call defendant to testify, noting that the court did not consider the factors articulated in State v. Hill. Second, the trial court erred in permitting plaintiff to read to the jury defendants' responses to plaintiff's requests for admissions because they were untimely served and because they were substantively improper as they sought admissions regarding defendants' expert report. Third, the trial court's error was compounded when it gave the jury an adverse inference charge regarding defendants' decision not to call their expert as a witness at trial without considering the Hill factors. Fourth, the jury instructions were improper as the Model Civil Jury Charges were not tailored to the specific facts of the case and could have given the jury the mistaken impression that defendants' vehicle followed plaintiff's vehicle too closely. Lastly, the trial court erred in failing to instruct the jury that plaintiff, who collected PIP benefits, was not entitled to an award for medical expenses as an element of damages in her civil claim.

EMPLOYMENT - NEW JERSEY LAW AGAINST DISCRIMINATION

As noted above with respect to pending legislation, in Rodriguez v. Raymours Furniture Co. the Supreme Court unanimously held that a contract provision shortening the New Jersey Law Against Discrimination's ("LAD") statute of limitations from two years to six months was unenforceable.

In Smith v. Millville Rescue Squad, the New Jersey Supreme Court arguably expanded the reach of the LAD to hold that employers may not retaliate against their workers because they are separated or contemplating divorce. In a unanimous decision, the Court ruled that the LAD precludes retaliation based on a worker's marital status.

EMPLOYMENT – CONTRACTS

In Vitale v. Schering-Plough Corp., the Appellate Division held that eliminating an employee's remedies from a non-employer through a contractual provision and allowing only those remedies provided by his or her employer pursuant to the Workers' Compensation Act is against public policy and unenforceable. In this case the plaintiff was a security guard who sued the company with which his employer had contracted to provide security services. He was permitted to proceed with a claim against the company notwithstanding a previous waiver to the contrary.

RECENT CASE RESULTS

Marc Dembling and Jacqueline Falcone were successful before the Supreme Court in the case of Bardis v. Stinson. The New Jersey Supreme Court ruled that the supplemental collapse coverage provision contained in a dwelling policy issued by Cumberland Mutual Fire Insurance Company was unambiguous and did not afford coverage for collapses caused by "hidden" construction defects. The Supreme Court's decision reaffirms the principle that courts must enforce the contract as written when the terms of the policy are clear.

Marc Dembling and Christen Rafuse obtained summary judgment on behalf of an insurance carrier on the basis of a mold/fungi exclusion contained in the policy. The insured, who had been sued, filed a crossclaim against the carrier for indemnification and defense on the plaintiff's mold claim. The judge agreed with our argument that the fungi/mold exclusion precluded coverage and defense as the sole damages claimed were for mold. The insured's motion for reconsideration was denied.

Marc Dembling and Danielle Singer obtained summary judgment in a first-party case in which the named insured was admittedly no longer residing in the insured premises which sustained damages due to a fire. The named insured claimed that she was unable to read her policy and thus was unaware that she had to alert her homeowner's insurance company if she moved out of the insured premises. The court upheld the denial of coverage by the homeowner's insurance company because the insured had a duty to read her policy, which clearly required that she reside in the insured premises to maintain coverage. The court also denied all claims for consequential damages related to alleged delays in payment to the named insured for contents damage and to the mortgagee because the homeowner's insurance company had valid reasons for delaying payment of the claims.

Ric Gallin recently obtained a 108% recovery on a subrogation case pending in the Supreme Court, Westchester County. Defendant chimney sweeper, while trying to induce a draft, started a fire which caused extensive damage to the house. Ric helped with the resolution of a contentious adjustment by forcing the insured to comply with appraisal requirements. He then persuaded the defendant to agree to pay not only 100% of the ACV appraisal award, but also a significant amount of pre-judgment interest as a condition of settlement.

Ric Gallin successfully argued an appeal in the Appellate Division, First Department, on behalf of an insurance carrier. The insured party was hired in 2007 to perform repairs to a brick wall. In 2010 the policy was cancelled. In 2012 the wall collapsed and the town ordered that the building be demolished. The insured claimed that this was a continuous trigger situation and thus there was damage occurring when the policy was still in place. The court agreed with our position that the occurrence was the date of the collapse, which was after the policy was cancelled, and therefore there was no coverage.

Stephen Katzman successfully obtained a dismissal of the claims of a mortgagee who failed to give notice to the insurer of the filing of a Complaint for foreclosure 17 months before a fire occurred at the insured home. The Mortgagee Agreement stated that a mortgagee will be paid for a covered cause of loss as long as the mortgagee complies with the following, "Without delay, notify us of any change in ownership or occupancy, foreclosure proceeding, or increased risk of hazard known to the mortgagee." The court found no ambiguity in this language and agreed that the insurer should have been notified of the foreclosure proceedings, that the insurer should have been given the opportunity to cancel or non-renew and that the Mortgagee Agreement was violated thereby negating coverage. Our argument and defense was strengthened by the inclusion of the words "foreclosure proceeding" in the MSO policy as compared to an ISO policy, which generally does not include such specific language regarding foreclosure proceedings.

Ed Thornton successfully tried a matter in Middlesex County representing an insured hair salon. The 82-year-old plaintiff, after having her hair dyed, got up from her chair and alleged that she tripped over a hair dryer cord. She suffered a fractured left hip, open reduction with internal fixation, and a fractured left wrist, also open reduction and internal fixation. She presented a net medical lien of $67,000.00 and had $20,000.00 in out-of-pocket expenses. Our offer of $75,000.00 was refused, with plaintiff's demand being $250,000.00. The jury unanimously agreed that the plaintiff did not establish that she tripped over an electric cord. We showed that the cord would not have been long enough for the plaintiff to trip where she said she did, that it would have had to be out in an exposed area for approximately 45 minutes, that the plaintiff's history of tripping forward was inconsistent with her history of falling backward, that the salon was immaculately kept and the hair dryer, which was not being used on the plaintiff, would have been significantly out of place and noticeable. The eight-person jury agreed that the plaintiff had not met her burden of proof, and a verdict of no-cause of action was entered in favor of the insured.

Kegan Andeskie and Eric Harrison obtained summary judgment on behalf of a local department of public works ("DPW"). This matter was a CEPA whistle blower case arising from plaintiff's allegations that the defendants retaliated against plaintiff for his cooperation with an Attorney General investigation of a named defendant. The named defendant was investigated and pled guilty to official misconduct and plaintiff received a subpoena to cooperate with the investigation. Plaintiff claimed that as a result of this cooperation, he was called a "rat," "snitch," and denied overtime and other bonuses. On September 2, 2016, the court granted our motion for summary judgment, finding that plaintiff failed to establish a pattern of retaliatory conduct such that the statute of limitations could be tolled, and finding no adverse employment action, as plaintiff is still employed in the same position at the DPW.

Jacqueline Falcone obtained summary judgment on behalf of an insurance carrier in a first party action involving significant structural damages to a residential property. The plaintiff's engineering expert opined that the damages in question were the result of a failed sewer pipe, which caused water to leak into the soil and cause erosion and consolidation which undermined the structural integrity of the home. The trial court held that

the damages were subject to the Earth Movement exclusion contained in the plaintiff's dwelling policy. In so holding, the trial court recognized that an "anti-sequential" clause applied to the exclusion, and found that the exclusion was not unclear or ambiguous. The court granted summary judgment against all claims, including breach of contract and bad faith claims against the carrier.

James Foxen obtained a defense verdict following a three-day trial wherein plaintiff claimed significant damage including a retaining wall collapse caused by overgrown tree roots. Citing Deberjeois v. Schneider, a case handled by Ed Thornton of this office, Judge Steele of the Bergen County Superior Court found that the trees and vegetation were a naturally occurring condition for which the insureds could not be held liable. Plaintiff's counsel appealed the decision, arguing that the residential property immunity should not apply to the insured's property because the insured undertook affirmative acts of maintaining the vegetative growth thus transforming the natural condition into an artificial one. Plaintiff's counsel also argued that the residential property immunity should be abrogated.

A three-judge appellate panel issued a written opinion affirming the trial court's ruling. In Scannavino v. Walsh, the Appellate Division declined plaintiff's invitation to adopt the Third Restatement of Torts governing such private nuisance claims. The Appellate Division also found that plaintiff failed to establish by any competent evidence that any actions on the property by the insured transformed this condition from natural to artificial. The case is the first of its kind to extend the residential property sidewalk immunity to claims of property damage caused by natural conditions.

James Foxen recently obtained an order from the Bergen County Superior Court requiring co-defendant to provide a defense and indemnity for the insured, a commercial building owner. The insured owned a commercial building which housed a restaurant in Edgewater, New Jersey. Plaintiff, a patron of the co-defendant restaurant, tripped and fell on the public sidewalk following dinner, sustaining a serious fracture to her dominant wrist which required open reduction and internal fixation. Plaintiff eventually developed carpal tunnel syndrome in both wrists requiring two carpal tunnel release surgeries. Under the lease the commercial tenant was required to provide defense and indemnity for any and all injuries "arising out of" the tenant's use of the building including any and all injuries occurring on the sidewalk abutting the property. Judge DeLuca of the Bergen County Superior Court found that there were no ambiguities in the language of the lease agreement and ordered that the defendant restaurant was required to assume the defense of the insured, indemnify the insured, and pay all attorneys' fees.

Richard Isolde obtained summary judgment in a matter where the plaintiff sued the insured auto body shop under theories of breach of contract, the Consumer Fraud Act, common law fraud, and bailment. Plaintiff alleged that the shop failed to fix her Corvette's engine and for vandalism that was done to her vehicle while it was parked in the insured's parking lot. The auto body shop performed the work at cost and not for profit because the plaintiff was a longtime customer. In a 15-page decision, Judge Gibson dismissed all claims with prejudice. Plaintiff's expert report was insufficient to prove breach, causation, or damages. Since the work was done at cost, there was no consideration and no enforceable contract and no sale to trigger the Consumer Fraud Act. There was no intentional misrepresentation sufficient to satisfy the elements of the common law fraud claim. The bailment was held to be gratuitous and the plaintiff failed to meet the high standard of gross negligence because she failed to notify the shop that her vehicle had been vandalized in the past and she had an insufficient alarm system.

Richard Isolde and Emily Kornfeld obtained summary judgment in a case where we represented the only non-defaulting defendant. Plaintiff was the mother of the insured and routinely looked after the insured's single family residence while the insured was away. The plaintiff was checking on the premises when she fell on ice on the insured's front stairway. The allegedly defective hand rail plaintiff was holding broke, and plaintiff landed on her outstretched left arm and hand. Plaintiff fractured her hand and wrist and an open reduction and internal fixation (ORIF) of the left distal radius was performed. Judge Marbrey granted summary judgment under Longo v. Aprile as the court ruled that the plaintiff was a social guest for premises liability purposes, because she was voluntarily checking on defendant's premises, without monetary compensation at the time of the accident.

Blake Johnstone and Diaa J. Musleh successfully obtained summary judgment and a noteworthy settlement on a subrogation claim. Defendant was hired by the insureds to repair a frozen pipe that had burst. Defendant negligently caused a fire within the insured's home and three other homes owned by other plaintiffs, including additional insureds. The plaintiffs' investigation revealed that Defendant was uninsured and had no assets; therefore, all of the plaintiffs filed their Complaints against defendant for negligence and against the insureds for negligently hiring an unlicensed plumber. Our firm was retained by the carrier to defend the insureds and to also pursue the subrogation claims against the defendant and to investigate any other responsible parties. Our investigation revealed another potentially responsible party, an insured plumbing corporation, resulting in plaintiffs and the insurer amending the Complaints to add the plumbing company as a direct defendant. Following depositions, our firm filed a successful motion for summary judgment dismissing the insureds as defendants. Thereafter, we drafted a Rova Farms letter to the plumbing contractor, the only defendant with insurance and demanded the policy limit. The defendant plumbing corporation agreed to settle the matter for $975,000, which was accepted. The matter was also settled with the unlicensed plumber defendant for $5,000.

Gerald Kaplan and Ashlee Murph obtained summary judgment on behalf of the insured in a personal injury case. Plaintiff had suffered serious injuries requiring three surgeries and a shoulder replacement after tripping on a raised sidewalk in front of the insured's three-family home, which was utilized by family members. The sidewalk raised up because of a tree root planted at the curb by the co-defendant Town of Kearny. At some time in the past there had been an attempted repair of the crack. Plaintiff and the town argued that there should be an inference that the repair had been made by a family member. We argued that without actual proof of who made the repair, their arguments were speculative and there was insufficient evidence to establish liability against our insured. The court agreed with our argument and granted summary judgment.

Vivian Lekkas obtained a dismissal and a finding of no probable cause from the Equal Employment Opportunity Commission. The case involved a former employee who claimed she was discriminated against by a local board of education on account of her disability and race. The claimant has 90 days to bring her federal and/or state claims in federal or state court. We are cautiously optimistic that no such claim will be filed and will be contacting the Division on Civil Rights to request that it adopt the EEOC's determination.

Steve Parness, Boris Shapiro and Eric Harrison successfully obtained a dismissal on behalf of a local school district. Plaintiff was an employee of a school district that alleged after reporting student-on-student violence, he was retaliated against. The two alleged discrete acts of retaliation allegedly occurred in October 2012 and May 2013. Plaintiff's Complaint was not filed until December 24, 2015. As such, we filed a motion to dismiss

the Complaint on the basis that plaintiff failed to meet the applicable one-year CEPA statute of limitations. In opposition, plaintiff argued that beginning in the Summer of 2014, and again in the Summer of 2015, plaintiff was subjected to a new discrete act of retaliation when he was not returned to his prior location and not provided with the number of summer hours previously worked. The court issued a "tentative disposition" which adopted Plaintiff's continuing violation theory, but subsequently reversed itself following oral argument and ruled for the employer.

Matthew Rachmiel obtained summary judgment in a sidewalk fall-down case. Plaintiff tripped and fell due to a height differential between adjoining sidewalk slabs in front of the insured's hair salon business located in a strip mall. The insured's lease with the co-defendant landlord did not require the insured to maintain the sidewalk and the landlord made repairs to the sidewalk after plaintiff's fall. The court agreed that there was no nexus between plaintiff's fall and the insured's business since plaintiff was not going to or coming from the insured's business when he fell.

Boris Shapiro and Eric Harrison obtained a dismissal from the Office for Civil Rights ("OCR"). Petitioner had filed a Complaint with the U.S. Department of Education Office for Civil Rights where she alleged that the District discriminated against her classified son by not permitting him to use the side entrance door to enter the school during the 2015-2016 school year. The District successfully argued that the requirement was in response to a recently updated security policy which was implemented in conjunction with the police department. The Petitioner filed a Second Complaint where she alleged that the District retaliated against her in response to her disability related advocacy on behalf of her son when the District had Board counsel conduct an IEP meeting. The District pointed out that the IEP meeting was conducted by the case manager and that Board counsel was invited to attend the meeting to keep it on track in response to previous incidents with the Petitioner. Following an investigation, the OCR dismissed the claim.

Gina Stanziale and Danielle Singer obtained summary judgment in a case involving the issues of residency and permissive use. The driver of an insured vehicle was involved in an accident in which the plaintiff was injured. In the bodily injury action, no defense was entered on behalf of the driver as coverage was denied. Following a proof hearing, the plaintiff filed a declaratory judgment action against the insurance carrier. The court agreed that the driver was not a resident relative of the insured's household and not a permissive user of the vehicle. The judgment in excess of $96,000 was therefore avoided.

Gina Stanziale and Danielle Singer obtained summary judgment on behalf of a residential property owner who gave permission to her next door neighbor to place garage sale items on her property. Plaintiff was a patron of the garage sale and fell off of a concrete barrier dividing the two properties sustaining an injury to her knee, which resulted in a total knee revision and an award of $240,960 at arbitration. The court found there was no breach of any duty owed to the plaintiff.