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C A S E A L E R T

Appellate Division, In Case Handled By M&W’s Bill Bloom, Reiterates Affidavit of Merit Deadline But Upholds Claims Against Professional Defendant Based on Discovery Conduct

In [Yagnik v. Premium Outlet](#) – a case handled by [Bill Bloom](#) of M&W – the Appellate Division ruled that the filing of an Amended Complaint does not reset the clock to serve an affidavit of merit against a professional defendant.

In [Yagnik](#), the plaintiff sustained a trip and fall on a recently constructed concrete exterior ramp/staircase – with some unrelated components of the area still under construction – in a commercial strip mall. The plaintiff tripped on an allegedly inconspicuous step. The original Complaint asserted claims against the mall owner, the general contractor, and the architect, Pennoni. The Complaint alleged that Pennoni breached a duty to design and engineer the project in a manner “to ensure that the construction . . . could be completed safely.” Pennoni filed an Answer which included the Affidavit of Merit affirmative defense. Thereafter, the plaintiff failed to file an affidavit of merit within the statutorily-designated time period.

Subsequently, plaintiff filed an Amended Complaint to add various subcontractors

involved in the construction; the Amended Complaint contained the same claim against Pennoni. Pennoni filed an Answer which included the same defenses.

The Appellate Division ruled that the Amended Complaint did not reset the affidavit of merit filing period, reiterating that the operative event is the professional defendant’s filing of its Answer to the original complaint (or at least the original complaint that includes a professional malpractice count). However, the court held that extraordinary circumstances existed – pointing to delays in Pennoni providing information to the plaintiff regarding its involvement – which warranted relaxing the rule and allowing the malpractice claim to go forward.

As such, M&W’s client benefits from the plaintiff’s apparent intention to focus upon developing a claim against the professional defendant.

Friends and clients are welcome to address questions about the impact of this holding to [Bill Bloom](#).

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