

Carolyn Kelly Bogart

Co-Chair, Hospitality & Liquor Liability

Co-Chair, Premises & Retail Liability

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Carolyn, a shareholder in our Casualty Department, has been a practicing attorney since 1996. She focuses her practice on premises liability, defense of liquor liability, construction injury, significant exposure excess insurance claims, contract and general casualty matters, and sports and entertainment litigation. Carolyn's practice also focuses on the area of retail liability, representing national and local retail clients defending general casualty matters, risk transfer claims, and negligent security matters. As a seasoned litigator Carolyn represents many clients in construction-based litigation involving contractual disputes and subrogation matters.

Carolyn has extensive experience defending fraternal organizations, schools and universities in matters involving contractual disputes, indemnity, vicarious liability, dram shop and general negligence. She is well versed in NJ immunity laws for schools and fraternal entities. Additionally, Carolyn has experience defending organizations and hotel chains in high-exposure cases involving human trafficking and sexual assault allegations, including matters brought under the federal Trafficking Victims Protection Reauthorization Act (TVPPRA).

Much of Carolyn's caseload requires interpretation of contractual disputes involving insurance status and coverage disputes. She has extensive experience litigating complex contract and insurance coverage issues arising in construction, landlord and tenant, and other casualty matters. Carolyn has litigated numerous matters to verdict in the state of New Jersey and practices in all counties and federal court venues in the state.

In addition to her law practice, Carolyn provides annual legal updates to various clients ranging from issues dealing with auto liability, premises liability and risk management. She often provides consult to clients regarding liability matters, preparing for future issues to avoid litigation and developing policies and procedures for risk assessment.

Carolyn is a graduate of The Catholic University of America, Washington, D. C. While

Practices

- General Liability
- Construction Injury Litigation
- Premises & Retail Liability
- Product Liability
- Commercial Litigation
- Hospitality & Liquor Liability
- Trucking & Transportation Liability
- Automobile Liability
- Social Services & Human Services Liability

residing in Washington, D.C., she worked on Capitol Hill as a legislative intern for Congressman James Saxton (Rep. 13th District of New Jersey). After receiving a Bachelor of Arts degree in Political Science, Carolyn continued her education at Catholic University's Columbus School of Law where she was actively involved in the Families and Law Clinic, Moot Court, and was also employed as a judicial intern for the Honorable Brook Hedge, D.C. Superior Court, Criminal Division.

Upon completion of her *juris doctor* in 1995, she accepted a position with the New Jersey State Judiciary and became law clerk to the Honorable George L. Seltzer, New Jersey Superior Court, Law Division.

Education

- The Catholic University of America Columbus School of Law (J.D., 1995)
- Catholic University of America (B.A., 1992)

Admissions

- New Jersey, 1996
- U.S. District Court District of New Jersey, 1996
- U.S. Supreme Court, 2002

Honors & Awards

- AV® Preeminent™ by Martindale-Hubbell®
The Martindale-Hubbell rated attorney list is issued by Internet Brands, Inc. A description of the selection methodology can be found [here](#). No aspect of this advertisement has been approved by the Supreme Court of New Jersey.

Associations & Memberships

- Camden County Bar Association

Classes/Seminars Taught

- *Commercial Defense Practice in New Jersey and Pennsylvania*, Nationwide Insurance Company, Co-Presenter, December 2013

Published Works

- "Let It Snow," *Defense Digest*, Vol. 27, No. 5, December 2021
- "Sidewalk Liability - What You and Your Condo Association Have In Common," *Defense Digest*, Vol. 18 No. 4, December 2012

Significant Representative Matters

- **Summary Judgment Secured in New Jersey Wrongful Death Case** Obtained a summary judgment in a wrongful death case, based on a lack of duty owed by a groom to his wedding guest, and dismissal of cross claims for lack of a viable contract owing indemnity under Azurak. The decedent was a plus-one guest at our client's wedding, which was held at a multi-building facility in Moorestown, NJ. Specifically, the venue consisted, in part, of a 131-year-old home with a castle-like outward appearance. The home's design includes an elevated terrace (raised approximately

five feet and accessible by stairs) with an unguarded, flat ledge. The plaintiff alleges the decedent was sitting and/or leaning against the ledge when he fell over, sustaining injuries that allegedly resulted in his death a few months after the event. Our client was an employee at the facility. The corporate owners of the property permitted him to use the home for his wedding, at no cost, provided he obtain an event insurance policy. The co-defendants sought indemnification, arguing that the policy evidenced an agreement that our client would provide indemnification to them. It was our position, and the court agreed, that our client owed no duty to warn the decedent as this was an open and obvious condition that the decedent was aware of or by a reasonable use of his faculties would observe. Further, our client and the decedent were both invitees to the property, and it is the co-defendant landowners who had a non-delegable duty to use reasonable care to protect against dangerous conditions. Therefore, the claims raised in the complaint and cross-claims for contribution were dismissed. Further, the court found no breach of contract or enforceable agreement to indemnify; the negligence in this case was on the co-defendant commercial property owners.

- **Summary Judgment Obtained in an Indemnity and Common Law Contribution Case** Successfully argued and secured summary judgment in favor of a masonic organization, dismissing third-party claims for indemnity and common law contribution. At issue was a third-party complaint for contractual indemnity and common law contribution over an alleged trip and fall due to a structural condition with a rented property. The masonic organization rented the property for a single use event in support of the organization. The plaintiff claimed to be a guest and initiated suit against the commercial property owner, the third-party plaintiff. In support of the third-party complaint, a rental agreement was produced, which was not for the alleged date of loss. The third-party plaintiff argued the rental agreement disclaimed liability on the part of the property owner and turned the property over to the renter's charge; therefore, the renter was required to inspect the property and warn its guests of dangerous conditions. The court granted summary judgment for the following reasons. First, the rental agreement could not support contractual indemnity because it was not Azurak compliant as there was no explicit language requiring indemnity. Second, the masonic organization's duty as a short-term lessee did not require inspection prior to the event, nor was there sufficient factual evidence to overcome the masonic organization's charitable immunity.
- **Summary Judgment Secured in a Dram Shop Liability Case** Obtained a summary judgment in a challenging dram shop liability case against a large restaurant chain where the demand was \$1 million. The plaintiff alleged our client was responsible for overserving the co-defendant driver prior to the subject motor vehicle accident. The court agreed with our arguments that the plaintiff failed to establish a violation of the The New Jersey Dram Shop Act. The plaintiff failed to present an expert report until opposing our motion for summary judgment. The expert report, which was submitted as an exhibit to the plaintiff's opposition brief, did not extrapolate the defendant's BAC at the time he left the defendant's establishment. There was also no eyewitness testimony on the issue. The court rejected the plaintiff's arguments that there was sufficient circumstantial evidence to support a jury's conclusion that the co-defendant driver was visibly intoxicated at the time of service based on police observations at the scene of the accident and a (.17) BAC reading, which was administered approximately one hour and 30 minutes after leaving the restaurant. Distinguishing between prior case law and the subject circumstances, summary judgment was awarded based on the lack of either direct testimony or expert opinion as to the co-defendant's state of intoxication at the time of service.
- **Appellate Court Pivots; Motion To Dismiss Granted** Obtained a published decision in the New Jersey Appellate Division reversing the denial of a motion to dismiss because of a lack of duty. The plaintiff's ex-husband drove through the gate at a large,

high-rise apartment complex, waited for plaintiff to arrive, and then shot her in the face. Our client was the former management company which ceased its management obligations 17 days before the shooting, when a successor management company took over. The plaintiff argued that our client was negligent based on procedures for securing the lot it put in place when it managed the property. We sought summary judgment, arguing a lack of duty due to the expiration of a management contract. The Law Division judge denied that motion, asserting there were genuine issues of fact and that the jury had to decide whether a duty existed. We persuaded the Appellate Division to grant interlocutory appeal, and then we successfully argued for a reversal. First, the Appellate Division agreed with us that the trial judge erred by holding that the existence of a duty was a jury question and not a question for the court to decide as a matter of law. Second, the Appellate Division held that, since our client no longer had any rights or responsibilities over the security of the premises when the shooting happened, and because there was no indication that the successor management company or the owner of the property could not have changed the procedures which our client had put in place, the former management company owed no duty to the plaintiff and that summary judgment was therefore appropriate.

- **Social Host Act Does Not Apply to Gross Negligence Claims** Carolyn was successful in opposing a plaintiff's appeal against our client, a former fraternity member and social guest. In 2014, the plaintiff was a 20-year-old college student and fraternity member attending a university in New Jersey. After consuming his own alcohol, he fell asleep in a dorm room that was the location of an on-campus party. In the early morning hours, he left the dorm room and proceeded to drive his vehicle, which was unknown to anyone in attendance, as all of the party attendees had either left the party or were asleep when he left. He injured himself in a one-car accident, resulting in a traumatic brain injury and disfigurement claim. In 2016, he filed a lawsuit naming all party attendees and fellow brothers in his fraternity, as well as the university and its employees. Following over 30 depositions, summary judgment was granted to all defendants. The appeal was filed in 2019, and a reported decision issued on March 25, 2021, affirming the underlying Superior Court decision as to our client. The appeal raised questions concerning the scope of the duty owed to an adult not old enough to drink legally, but who nonetheless drank to excess. The appellate panel ruled that the Social Host Liability Act did not apply because it governs liability for third party injuries resulting from the service of alcohol to an of-age adult.
- **Dismissal of Complaint Under New Jersey's Charitable Immunity Act** Marshall Dennehey was successful in the New Jersey Appellate Division, which affirmed the dismissal of the plaintiff's complaint under New Jersey's Charitable Immunity Act. The defendant operated a shelter for battered women, their dependent children and the homeless. The plaintiff and her child were residents at the shelter and beneficiaries of its charitable goals when the plaintiff slipped and fell on ice on the shelter's property. She argued that she was not a beneficiary of the charity because she did administrative tasks and volunteered in the charity's thrift store. However, the trial court and Appellate Division rejected those arguments, holding that the plaintiff's presence on the defendant's property was due to her being a resident beneficiary of the charity, not as a result of any volunteer work she may have performed for the defendant. Thus, because her volunteer activities were incidental to her residency at the shelter, the Charitable Immunity Act applied and the dismissal of the complaint was affirmed.

Results

Summary Judgment Secured in New Jersey Wrongful Death Case

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Claims Barred Under New Jersey's Charitable Immunity Doctrine.

We obtained summary judgment in the Passaic County Superior Court of New Jersey on behalf of a non-profit shelter for battered women. The plaintiff, who was staying at the shelter at the time of her alleged incident, accused the shelter of negligence with regard to removing snow and ice from their parking lot. The plaintiff attempted to argue that she was not a "beneficiary" of the shelter but was a volunteer, who was not required to help but who chose to work at the shelter in exchange for room and board. Defense counsel successfully argued that the defendant was a qualified non-profit organization and that the plaintiff was clearly benefiting from the non-profit at the time of her incident.

Therefore, the plaintiff's claims were barred under the New Jersey Charitable Immunity doctrine.

Thought Leadership

September 1, 2025

On the Pulse...Navigating the New Era of Dram Shop Liability: Marshall Dennehey's Hospitality & Liquor Liability Practice Group Steps Forward

December 1, 2021

Let It Snow

