

# Kimberly A. Boyer-Cohen

Special Counsel

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Kimberly's legal practice is devoted solely to post-trial and appellate advocacy, dealing with a wide variety of substantive matters including professional malpractice, civil rights litigation, products liability, employment law and premises liability. In her capacity as an appellate attorney, Kimberly has handled over 150 appeals, including oral arguments when necessary before the Pennsylvania Superior Court, Pennsylvania Commonwealth Court, Pennsylvania Supreme Court and the Third Circuit Court of Appeals.

In 1992, Kimberly graduated from Penn State University with a B.S. in Labor and Industrial Relations. After working for several years in the area of human resources, she attended Temple University School of Law where she received her *juris doctor* in 1999. While at Temple, Kimberly was involved in the Moot Court Honor Society and the Women's Law Caucus and served on the executive board of both organizations.

Kimberly is admitted to practice in Pennsylvania and before the Third Circuit Court of Appeals and the Sixth Circuit Court of Appeals. She is a member of the Philadelphia Bar Association, where she is active in the Women in the Profession Committee and the Appellate Courts Committee. Also at the Pennsylvania Bar Association, Kimberly is involved in the Commission on Women in the Profession and the Post-Trial and Appellate Practice Committee.

Prior to joining Marshall Dennehey in 2001, Kimberly worked for a Philadelphia law firm where her practice focused on construction litigation, labor and employment law and defense litigation.

## Practices

- Appellate Advocacy & Post-Trial Practice

## Education

- Temple University Beasley School of Law (J.D., 1999)
- The Pennsylvania State University (B.S., 1992)

## Admissions

- Pennsylvania, 1999
- U.S. District Court Eastern District of Pennsylvania, 2000
- U.S. Court of Appeals 3rd Circuit, 2002
- U.S. Court of Appeals 6th Circuit, 2006
- U.S. Supreme Court, 2008

## Honors & Awards

- AV® Preeminent™ by Martindale-Hubbell®
- Litigation Counsel of America Fellows
- Pennsylvania Super Lawyer (2013-2022)
- Top Women in Law, The Legal Intelligencer (2016)

## Associations & Memberships

- Pennsylvania Bar Association, Commission on Women in the Profession
- Pennsylvania Bar Association, Post-Trial and Appellate Practice Committee.
- Philadelphia Bar Association, Appellate Courts Committee, Co-Chair (2009 to present)
- Philadelphia Bar Association, Women in the Profession Committee

## Classes/Seminars Taught

- *Preserving Issues In The Trial Court*, NACLE, April 1, 2014
- *Professionalism in the Law*, Villanova Law School, September 2012
- *Creating a Win-Win Mentoring Program for Female Attorneys and the Firm*, American Conference Institute's Premier Conference on Retaining and Promoting Female Attorneys, May 22, 2007

## Published Works

- "Pennsylvania Supreme Court Refuses to Expand Lawyer Liability," *Defense Digest*, January 2021, Vol. 27, No. 1
- "Occupant In a Fleeing Vehicle Is Not an Innocent Bystander...Or Is He?," *Defense Digest*, Vol. 20, No. 1, March 2014
- "Navigating The 1925(b) Minefield Of Waiver - The Pennsylvania Supreme Court's Attempt To 'Clarify The Confusion And Quell The Consternation'," *Defense Digest*, June, Vol. 14 No. 2, 2008
- "Stipulating to Cap on Compensatory Damages Limits Potential Delay Damages," *Defense Digest*, March, Vol. 12 No. 1, 2006
- "The Trend In Construing the Ohio Employer Intentional Tort Exception -A Consistent, Workable Standard or Confusing, Expansive Quandary?," *Defense Digest*, December, Vol. 9 No. 4, 2003
- "Failure to Anticipate Potential Mail Delays May Result in a Party's Loss of Rights,"

*Defense Digest*, March, Vol. 8 No. 1, 2002

- "A Taint of Evidence Claim of Error - It 'Taint' So Effective in Civil Cases'," *Defense Digest*, December, Vol. 8 No. 4, 2002

## Significant Representative Matters

- By a vote of 7-0, the Pennsylvania Supreme Court reversed the Superior Court and the trial court and ruled that Kim's client, a general contractor, was immune from suit under Pennsylvania's statutory employer doctrine. The ruling nullified a large verdict against the general contractor. Twenty-one construction and insurance industry groups joined together as amici to support John's appeal to the Supreme Court. *Patton v. Worthington Associates*, 2014 Pa. LEXIS 788 (March 26, 2014)
- The Pennsylvania Superior Court dismissed a highly-publicized death case filed against Kim's client in Pennsylvania based upon the doctrine of forum non conveniens under Pennsylvania's long-arm statute, 42 Pa.C.S. § 5322(e). *Jones v. Morey's Pier Inc.*, No. 2990 EDA 2012 (March 10, 2014)
- The Superior Court vacated a large judgment against Kim's client and remanded for the entry of judgment notwithstanding the verdict, finding that the plaintiff had failed to establish the store had actual or constructive notice of the allegedly defective condition. *Davis v. Target Corporation*, 2098 EDA 2011 (Pa. Super., March 27, 2013).
- In a case of first impression, the Pennsylvania Supreme Court reversed the en banc Superior Court's finding that "a patient does have a cause of action against either a psychiatrist or a general practitioner rendering psychological care, when during the course of treatment the physician has a sexual relationship with the patient that causes the patient's emotional or psychological symptoms to worsen." The Pennsylvania Supreme Court granted allocatur limited to deciding "Whether, for purposes of determining professional negligence, a general practitioner who provides mental health treatment to a patient is held to the same higher duty as a specialist in psychiatry or psychology?" After engaging in a very exhaustive review and analysis of the law in Pennsylvania, as well as other jurisdictions, the Pennsylvania Supreme Court held that as a general practitioner, Kim's client was under no specific or "heightened" duty in tort to refrain from sexual relations with his patient under the circumstances where he provided "incidental mental health treatment." In doing so, the Supreme Court rejected the Superior Court's decision which held the doctor to a novel duty and standard. *Thierfelder v. Wolfert*, 52 A.3d 1251 (Pa. 2012).
- The Pennsylvania Commonwealth Court vacated a large judgment against Kim's client, a township, and remanded for the entry of judgment notwithstanding the verdict, on the basis that the trial evidence failed to demonstrate that the township was responsible for the decedent's death. *Rahman v. Falls Township*, 2012 Pa. Commw. Unpub. LEXIS 126 (Pa.Cmwlt., January 6, 2012).
- The Pennsylvania Superior Court reversed the ruling of the trial court and awarded a judgment notwithstanding the verdict, vacating a large verdict against Kim's client, a mutual insurance company, on the basis that the insurer's conduct in handling a fire damage claim did not constitute bad faith as a matter of law. *Edkin v. Brethren Mutual Insurance Co.*, 1331 MDA 2009 (Pa. Super., February 4, 2011)
- The Pennsylvania Superior Court vacated an adverse jury verdict and remanded for a new trial in favor of Kim's client, one of the world's leading construction firms, in its claim for contractual indemnity. *Skanska USA Buildings, Inc. v. Gory Mechanical Contractors*, 345 EDA 2010 (Pa. Super., January 19, 2011)
- The Pennsylvania Superior Court affirmed the judgment of the trial court and upheld the dismissal of all claims against Kim's client, an investigating company, on the basis that the plaintiff, who was seeking workers' compensation benefits from his employer,

failed to show that he had an expectation of privacy while participating in a worship service in a sanctuary. *Tagouma v. Investigative Consultant Servs.*, 4 A.3d 170 (Pa. Super. 2010).

- The Pennsylvania Superior Court vacated an adverse jury verdict and remanded for the entry of judgment notwithstanding the verdict in favor of Kim's client on the basis that the trial court failed to make the threshold determination of whether an absolute privilege applied to the hospital's use of the plaintiff's confidential personnel file at a labor relations hearing involving unionization of nurses. Moreover, the Superior Court determined that the record showed no evidence of abuse of that privilege and made clear the purpose of the disclosure was genuine and related to the NLRB proceedings. *Doe v. Wyo. Valley Health Care Sys.*, 987 A.2d 758 (Pa. Super. 2009).
- Successfully argued in the Superior Court that a methadone clinic, which took steps to regulate the dissemination of methadone in accordance with federal guidelines, did not owe a duty of care to a third party who lethally overdosed after buying methadone that was stolen from a patient of the clinic." to say "The Superior Court affirmed the grant of judgment in favor of Kim's client on the basis that a methadone clinic, which took steps to regulate the dissemination of methadone in accordance with federal guidelines, did not owe a duty of care to a third party who lethally overdosed after buying methadone that was stolen from a patient of the clinic. *McCandless v. Edwards*, 908 A.2d 900 (Pa. Super. 2006)
- Successfully argued in the Superior Court that dismissal of a medical malpractice complaint was required when the cause of action arose outside of Pennsylvania, even if the trial court has jurisdiction" to say "In a case of first impression, Kim successfully argued in the Superior Court that dismissal of a medical malpractice complaint was required when the cause of action arose outside of Pennsylvania, even if the trial court has jurisdiction. *Searles v. Estrada*, 856 A.2d 85 (Pa. Super. 2004)

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## Results

### **Dismissal of Legal Malpractice Action per Lease Agreement Dispute**

We obtained the dismissal of a legal malpractice action against our client arising from its representation of the plaintiff in a lease agreement dispute. After the deadlines passed for completion of discovery and production of the plaintiff's expert report, the trial court granted summary judgment in favor of our client on the basis that the plaintiff's claim for professional negligence failed as a matter of law because the plaintiff failed to produce an expert report to support its allegations of professional negligence. On appeal, the Pennsylvania Superior Court affirmed the dismissal and rejected the plaintiff's argument that it had been improperly sanctioned for a discovery violation. In support of its affirmance, the Superior Court found that summary judgment was properly granted because the plaintiff had been given ample time in which to satisfy its evidentiary burden of producing an expert report, but failed to act with due diligence and could not substantiate each element of its claim without an expert report.

### **Dismissal of Legal Malpractice Action Obtained**

The plaintiff brought a professional negligence claim against our client arising from the firm's representation of the plaintiff in a lease agreement dispute. After the deadlines passed for the completion of discovery and the production of the plaintiff's expert report,

the trial court granted summary judgment in favor of our client on the basis that the plaintiff's claim for professional negligence failed as a matter of law because the plaintiff failed to produce an expert report to support its allegations of professional negligence. On appeal, the Pennsylvania Superior Court affirmed the dismissal and rejected the plaintiff's argument, that it had been improperly sanctioned for a discovery violation. In support of its affirmance, the Superior Court found that summary judgment was properly granted because the plaintiff had been given ample time in which to satisfy its evidentiary burden of producing an expert report but failed to act with due diligence and could not substantiate each element of its claim without an expert report. *True Railroad Realty v. McNees Wallace and Nurick, LLC*, \_\_ A.3d \_\_, 2022 PA Super 70 (April 19, 2022).

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## Thought Leadership

January 29, 2021

**Pennsylvania Supreme Court Refuses to Expand Lawyer Liability**

January 6, 2021

**Pennsylvania Supreme Court Refuses to Expand Lawyer Liability**