

M. Scott Gemberling

Senior Counsel

MSGemberling@mdwgc.com

Philadelphia – 215.575.2714



For over 40 years, Scott has focused a significant portion of his practice on the defense of liquor liability, professional liability (legal, accounting, employment, D&O, non-profit, HOA) and significant exposure excess insurance claims. Scott has tried over 100 jury cases to verdict, many involving dram shop, medical and dental malpractice and product liability matters.

In addition to his law practice, Scott has lectured extensively to various claims and trial lawyer associations concerning liquor liability, early mediation and/or settlement negotiations and trial tactics. He serves as the National Litigation Coordinator for high-exposure liquor liability, professional liability and excess claims cases for a number of national insurance companies. Scott has actively defended liquor liability, casualty and professional liability claims in a variety of jurisdictions including Florida, New York, Massachusetts, Rhode Island, Oklahoma, Michigan, Minnesota, Georgia, South Carolina, North Carolina, New Jersey, Connecticut, California, Washington, Arizona, Kentucky, Tennessee, Texas and Colorado.

Scott previously served on the faculty of the Pennsylvania Bar Institute for its annual Tort Law Update Program lecturing attorneys on subjects including dram shop liability and the admission of evidence of alcohol in civil cases. He has served as a judge pro tem in Delaware County (1997-2002), co-chairman of the Delaware County Civil Trial Practice Committee (1998-2002) and a member of the Delaware County Judicial Advisory Committee.

Scott graduated from Clarion University of Pennsylvania in 1974 and completed master's credits toward a Master of Psychosocial Science at the Pennsylvania State University from 1976 through 1978. He concluded his legal education at Widener University School of Law in 1981. Scott began his career with Marshall Dennehey as a law clerk in 1979 and continued employment with the firm following his admission to the Pennsylvania Bar in 1981.

Practices

- Hospitality & Liquor Liability
- Miscellaneous Professional Liability
- Employment Law

Education

- Widener University Delaware Law School (J.D., 1981)
- Pennsylvania Western University, Clarion (B.A., 1974)
- The Pennsylvania State University
 - M.Pssc. [course credits completed for Master in Psycho Social Science], 1976-1978

Admissions

- Pennsylvania, 1981

Honors & Awards

- AV® Preeminent™ by Martindale-Hubbell®
- Litigation Counsel of America Fellows
- Pennsylvania Super Lawyers (2005-2021)

Associations & Memberships

- American Board of Trial Advocates, Eastern Pennsylvania Chapter
- Delaware County Bar Association
- Delaware County Judge Pro Tem (1997 – 2002)
- Delaware County, Judicial Advisory Committee (1998-2002); Co-Chairman, Civil Trial Practices Committee (1998 – 2002)
- Pennsylvania Bar Association
- Pennsylvania Defense Institute
- Philadelphia Association of Defense Counsel
- Philadelphia Bar Association

Classes/Seminars Taught

- *Dram Shop, The Toxicology and the Law*, National Academy of Continuing Legal Education, August 1, 2024
- *Dram Shop, The Toxicology and The Law*, National Academy of Continuing Legal Education, December, 2020
- *The New Fair Share Act and Dram Shop Liquor Liability*, Markel Insurance Co. and Markel International Insurance, August 2011
- *Recent Developments in Dram Shop Litigation*, Pennsylvania Association for Justice, April 2010
- *Mealey's Retail Hospitality Liability Conference*, Las Vegas, Nevada, October 2005
- *Annual Symposium on Alcoholic Beverage Law*, National Alcohol Beverage Control Association, Inc., Arlington, Virginia, March 2004
- *Dram Shop Liability*, Insurance Society of Philadelphia, December 2003
- *Tort Law Update*, Pennsylvania Bar Institute, August 2008
- *Liquor Liability*, Philadelphia Trial Lawyers Association, November 1999
- *Liquor Liability Seminar*, Pennsylvania Bar Institute (Pittsburgh, Mechanicsburg and Philadelphia), 1999-Present
- *Tort Law Update (Evidence and Expert Witnesses)*, Pennsylvania Bar Institute, 1995-

Present

- *Evidence of Intoxication*, Philadelphia Bar Education Foundation, December 1995
- *Defending Liquor Liability Cases*, Philadelphia Trial Lawyers Association, June 1992
- *Dram Shop Liability*, Pennsylvania Trial Lawyers Association, Winter 1991
- American College of Forensic Psychiatrists, 1992, 1994, 1996, 1999

Published Works

- "Dram Shop Cases Are Perfectly Suited For Early Mediation." *The Legal Intelligencer*, Liquor Law Supplement (page 6), February 22, 2019
- "Appellate Bailout in Pennsylvania Dram Shop Case," *Defense Digest*, Vol. 18, No. 1, March 2012
- "Recent Dram Shop Developments," *The Pennsylvania Bar Association Quarterly*, Vol. 70, No. 3, July, 1999
- "Direct vs. Circumstantial Evidence of Visible Intoxication in Dram Shop Case - Kelly Hotel Continues The Trend," *Defense Digest*, Vol. 5, No. 3, 1999
- "Direct vs. Circumstantial Evidence of Visible Intoxication in Dram Shop Case - Kelly Hotel Continues The Trend," *Pennsylvania Law Weekly*, July 19, 1999
- "Defense of Contributory Negligence In A Dram Shop Case Involving An Adult Consumer of Alcohol," *Defense Digest*, Vol. 5, No. 2, 1999
- "Defense of Contributory Negligence In A Dram Shop Case Involving An Adult Consumer of Alcohol," *The Legal Intelligencer*, June 14, 1999
- "Dram Shop Liability," *Pennsylvania Bar Institute* No. 1999-2074
- "'After Hours' Service of Alcohol Not A Basis For Liability Under PA Dram Shop Act," *Defense Digest*, October 1995
- "Estate of Boudwin v. Dino's Lounge, et al.: A Dram Shop Act Case," (Co-Author), *American Journal of Forensic Psychiatry*, Vol. 15, No. 3, 1994
- "No Social Host Liability for 'Minors'," *Defense Digest*, Summer 1992
- "The Dram Shop Act in Pennsylvania: Strategies for the Defense," (Co-Author), *American Journal of Forensic Psychiatry*, Vol. 13, No. 3, 1992

Pro Bono Activities

- Advisory Board of the Nerney Leadership Institute at Cabrini College, Advisory Board, 2014-2016
- National Advisory Board, United States Liability Insurance Group

Significant Representative Matters

- In *Hiles v. The Brandywine Club*, 443 Pa. Super. 462; 662 A.2d 16 (1995), Scott represented the co-defendant liquor licensee, The Brandywine Club, in the wrongful death/survival claim of a husband whose wife was killed by the codefendant drunk driver, William Diviney, as she was driving to work at 6:30 a.m. on November 30, 1985. Following trial in Chester County, Pennsylvania, the jury rendered a verdict finding Diviney 100% liable and awarded Hiles \$925,000.00 with The Brandywine Club avoiding payment of the entire verdict under joint and several liability for any percent of negligence. The Hiles case has since provided the defining standard in Pennsylvania for licensee liability involving off-premises accidents caused by intoxicated adult patrons.
- In *Pulliam v. Bakerstown Hotel*, 2004 Pa. Super. 116 (2004), the plaintiff was rendered quadriplegic as a result of a one-vehicle accident following his consumption of alcoholic beverages at the defendant bar. During jury trial in Butler County,

Pennsylvania in 2002, the Court admitted evidence of plaintiff's juvenile drug rehabilitation records, prior DUI convictions and evidence that plaintiff's urine tested positive for marijuana and cocaine following the accident as "highly probative" of the plaintiff's life expectancy and tolerance to intoxicants. Plaintiff's Petition for Allowance of Appeal was denied by the Pennsylvania Supreme Court in July 2005 and the case has since provided the standard by which evidence of plaintiff's prior drug and alcohol history may be admitted at trial.

Results

Successfully Defended Appeal Sustaining Objections of Improper Venue

We successfully defended the plaintiff's appeal of a trial court decision sustaining preliminary objections on the grounds of improper venue. This case involved the death of a 19-year-old woman at a university who fell down an 11-story trash chute in an off-campus condominium building. In this mixed negligence and product liability case, we represented two of the multiple defendants, the condominium association and the building management company. The Philadelphia Court of Common Pleas found that venue was improper in Philadelphia County and ordered that the case be transferred to Centre County. The plaintiff appealed that decision, and the matter was briefed and argued in the Superior Court of Pennsylvania. The Superior Court, in a precedential decision, affirmed the trial court's decision and found that there was no abuse of discretion in sustaining the preliminary objections. In support of its decision, the Superior Court found that the plaintiff's arguments were unsupported by Pennsylvania law. The Superior Court, in finding waiver of an issue, quoted directly from the brief prepared by Kim.