

# Rachel A. Ramsay- Lowe

Shareholder

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Rachel practices exclusively in the Workers' Compensation Department. She is admitted to practice law in both New Jersey and New York. Rachel defends insured entities such as national department stores, retail chains and various other small employers in matters relating to workers' compensation in New Jersey. Her legal career began at a plaintiff's firm, where she handled hundreds of cases representing petitioners in workers' compensation claims.

Rachel also served as an Assistant District Attorney in Brooklyn, one of the largest and busiest prosecutor's offices in the country. During her three-year tenure, Rachel successfully prosecuted hundreds of cases in the Crimes Against Children Bureau. She tried several cases to verdict, conducted pre-trial and post-conviction hearings, and presented numerous cases to the grand jury.

Prior to joining Marshall Dennehey, Rachel defended insured and self-insured entities, such as national chain restaurants, national hotel chains, national supermarket chains, national manufacturers, health care facilities and other small businesses, against claims related to product liability, premises liability, toxic tort, construction defect, and motor vehicle accidents in New Jersey and New York.

Rachel currently serves as a member of the executive committee of the New Jersey State Bar Association's Workers' Compensation section.

## Education

- Cooley Law School (J.D., 2008)
- Stetson University (B.A., 2002)

## Admissions

- New Jersey, 2009

## Practices

- Workers' Compensation Defense

- New York, 2010

## Honors & Awards

- The Network Journal, "40 Under Forty" (2018)

## Associations & Memberships

- Justice James H. Coleman Jr. New Jersey Workers' Compensation American Inn of Court, Essex/Union
- New Jersey State Bar Association, Executive Committee Workers' Compensation Section
- New York Bar Association

## Classes/Seminars Taught

- *Northeastern Casualty and Worker's Compensation Litigation Trends*, Marshall Dennehey Client Seminar, June 2024.
- *Strategies to Limit Exposure and Minimize Risk*, Marshall Dennehey Workers' Compensation Seminar, October 27, 2022
- *Workers' Compensation Winter Roundup*, Graham Company webinar, December 15, 2020
- *Legal and Legislative Updates*, National Business Institute New Jersey Workers' Compensation Fundamentals, December 3, 2019
- *Mini Med School for Attorneys*, National Business Institute, October 29, 2019
- *How Medical Marijuana Is Impacting Workers' Compensation*, Marshall Dennehey Workers' Compensation Seminar, October 24, 2019

## Published Works

- "Idiopathic Conditions: Are These Types of Claims Compensable?," *Defense Digest*, Vol. 23, No. 3, September 2017
- "Proposed Changes to Guidelines for Medical Provider Claims in New Jersey," *Defense Digest*, Vol. 21, No. 2, June 2015

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## Results

### **Dismissals on the Rise! Our New Jersey Workers' Compensation attorneys are successful in precluding litigation**

Lela Eke received a Dismiss Without Prejudice for Lack of Prosecution, after filing a Motion to Dismiss in response to numerous discovery requests that remained unanswered. At the hearing, Petitioner's counsel was unable to provide an explanation for the delay. We argued that keeping the case open to give them more time to respond to our discovery and Motion would be prejudicial against us, and the Court granted our Motion.

Jessica Gordon received a dismissal for lack of prosecution in a case where the claim was denied with ongoing request for medical treatment, but there had been no report

from the Petitioner to support the request and no demand was made in lieu of litigation.

William Murphy successfully obtained an order for dismissal for a claim involving a workplace assault. In the case, the Petitioner alleged injuries to their neck, back, chest, and right hand following an assault at work. After the Petitioner missed multiple independent medical exams scheduled by the employer, we filed a motion to dismiss this claim for lack of prosecution. The judge of compensation granted the motion.

Rachel Ramsay-Lowe was successful in defending a case where the Petitioner was not complying with discovery requests and did not appear for Respondent's permanency evaluation. We filed a Motion to Dismiss for Lack of Prosecution and the Court entered the dismissal Order.

Kristy Salvitti was successful in obtaining an Order for Dismissal where the Petitioner had filed a Reopener of a Clam Petition relative to a prior permanency award arguing that disability to his right shoulder, thoracic and lumbar spine had increased to permanent and total disability. If successful, Petitioner would receive lifetime related medical treatment and 450 weeks to life of his temporary total disability rate. However, following oral argument that Petitioner failed to timely prosecute the claim, the Reopener Petitioner was dismissed.

**Successfully proved that a claimant was not an employee/special employee of our client, the employer.**

We successfully defended a claim where a large cable provider (owner) hired a contractor to complete work at an out-of-state location, and various parts of the job were subcontracted to several different companies, one of which did not have New York workers' compensation insurance coverage. The contested issues were whether the Board has subject matter jurisdiction over this claim, what company employed the claimant, and whether the claimant was a covered employee.

We argued that the claimant was not an employee/special employee of the cable provider and emphasized that an owner who contracts with an independent contractor for construction on his own property is not a contractor within the meaning of Section 56 of the Workmen's Compensation Law in New York. A special employer assumes and exercises "exclusive control" over a general employee; a determination on the issue of special employment may be made as a matter of law. However, if there are issues of fact concerning a surrender of control by a general employer and an assumption of control by a special employer, a determination on the issue of special employment will hinge upon a consideration of not only control but also factors such as the special employer's right to hire or discharge such an employee, the payment of wages and ownership of tools utilized on the job, all the while recognizing that ordinarily no one factor is determinative. There was no evidence on the record to support that an employee-employer relationship existed between our client and the claimant.

With regard to subject matter jurisdiction, we argued that New York did not have sufficient contacts with the circumstances surrounding this claim. The only contact between this claim and the state of New York was the claimant's home address.

The court agreed with our arguments and dismissed our client from the claim.

**Trial Success Secured for Cable Company Client**

We won a trial for a cable company where the claimant was injured while working at one of the company's sites. The claimant was hired by one of the subcontractors of our client to complete work at their facilities. We successfully argued that the claimant is not an employee or special employee of our client. The court agreed and dismissed our client from this claim.

**Cervical spine excluded from an established workers' comp claim.**

We successfully excluded the cervical spine from an established workers' compensation claim. The claimant injured his lumbar spine and alleged he passed out while at home from the lumbar spine pain, causing a neck injury. We presented hospital records revealing no injury to the cervical spine and that the claimant did not seek any medical treatment to the cervical spine until seven months after this alleged incident.