Shane Haselbarth

Assistant General Counsel

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Shane is a member of the firm's Post-Trial and Appellate Advocacy Practice Group. In this role, he handles all aspects of briefing and argument in federal and state appellate courts, and is also routinely tasked with assisting trial teams with the preparation and presentation of briefing and argument in support of pre-trial motions and post-trial motions. The appellate team at Marshall Dennehey also provides critical support to attorneys at trial to ensure that pitfalls are avoided and viable appellate issues are preserved. Serving as appellate lead counsel and trial-level support counsel allows Shane to handle cases of all varieties, including civil rights and municipal liability, negligence, construction accidents, professional malpractice, product liability, toxic torts, and class actions.

In 2021, Shane was named the Assistant General Counsel for the firm. In this role, and drawing on his litigation experience, he brings a results-oriented perspective to issues as they arise for the firm itself. Working with firm General Counsel Jay Rothman, Shane is tasked with process development and assisting colleagues navigate routine (and non-routine) issues that legal professionals face today.

Prior to joining the firm, Shane clerked for Judge D. Brooks Smith, former Chief Judge of the United States Court of Appeals for the Third Circuit, and earlier clerked for Judge William J. Zloch of the United States District Court for the Southern District of Florida. Shane has been admitted to practice in all state courts of Pennsylvania, New Jersey, and Florida, as well as the U.S. Supreme Court, the U.S. Courts of Appeals for the First, Third, Fourth, and Eleventh Circuits, and the United States District Courts for the Eastern and Middle Districts of Pennsylvania.

Practices

- Appellate Advocacy & Post-Trial Practice
- Product Liability
- Premises & Retail Liability
- Public Entity & Civil Rights Litigation

Education

- Ave Maria School of Law (J.D., *summa cum laude*, 2007)
- Franciscan University of Steubenville (B.A., *magna cum laude*, 2004)

Admissions

- Pennsylvania, 2007
- New Jersey, 2007
- Florida, 2014
- U.S. Supreme Court
- U.S. Court of Appeals 1st Circuit
- U.S. Court of Appeals 3rd Circuit
- U.S. Court of Appeals 4th Circuit
- U.S. Court of Appeals 11th Circuit
- U.S. District Court Eastern District of Pennsylvania
- U.S. District Court Middle District of Pennsylvania

Honors & Awards

- Pennsylvania Super Lawyer Rising Star (2015-2017)

Associations & Memberships

- Pennsylvania Bar Association
- Philadelphia Bar Association

Classes/Seminars Taught

- *Highlights in Pennsylvania Medical Malpractice Law*, Health Care and Health Law Seminar, Marshall Dennehey, November 7, 2019
- *Highlights in Pennsylvania Medical Malpractice Law*, Health Care and Health Law Seminar, Marshall Dennehey, November 5, 2015

Published Works

- “The Phantom Vehicle: Prejudice in Delayed UM Claim Not Presumed, But Certainly Demonstrable,” *Defense Digest*, Vol. 20, No. 1, March 2014
- *Case Law Alerts*, regular contributor, January 2014-present

Media Commentary

- "Pa. Atty Off Hook For Extended Interest on Malpractice Award," *Law360*, March 31, 2021

Significant Representative Matters

- In a police shooting case involving a fatality, a unanimous Third Circuit panel affirmed the District Court's entry of summary judgment (on Shane's motion as well), holding that the officers violated no Fourth Amendment right of the decedent. Dispatch relayed news of a 911 call for a stabbing, and two police officers approached the scene, where they were informed by multiple bystanders that the suspect had a gun. Converging toward him, and with the benefit of a body-mounted camera recording, the officers ordered the suspect to drop his gun. While the suspect did so, he inexplicably reached down and picked up the gun again. Heroically and utterly selflessly, the officers held their fire and ordered him again to drop his gun—until the suspect raised his gun and aimed it in the direction of one officer and the suspect’s

mother, whom the suspect had brutally stabbed (leading to the 911 call from the suspect's terrorized sister). Because the suspect aimed his gun at his mother and/or the police officer, the officers used deadly force against him, and only did so when the suspect raised his gun as though to shoot it. Though the suspect died from gunshot wounds, the District Court and Third Circuit ruled that the officers were entitled to judgment on all claims and dismissed the case. The use of deadly force, while tragic, was wholly reasonable given the facts and circumstances which the officers encountered on the night in question. *Estate of Paone v. Twp. of Plymouth,* 2026 WL 661978 (3d Cir. Mar. 9, 2026).

- Post-trial victory in the Court of Common Pleas of Philadelphia. The family of a former in-patient resident who died as a result of complications from the Covid-19 virus filed suit raising outrageous claims that the patient was sexually assaulted while in the care of the hospital and a subsidiary ambulance company. Asked to join the defense team just after nonsuit was awarded to one co-defendant, Shane immediately jumped in to assist the defense through the end of trial. Following the jury's $3.5M verdict against the remaining defendants, Shane succeeded in greatly winnowing the liability exposure. First, Shane convinced the trial judge to deny Plaintiff's request to reinstate the punitive damages claim dismissed at nonsuit. Next, he succeeded in obtaining the grant of a partial judgment notwithstanding the verdict on one claim, lopping a full $700,000 off the jury's verdict. Finally, the trial judge outright denied the Plaintiff's motion for delay damages, which had sought to add $742,000 to the jury's verdict. *Estate of Quigley v. Pottstown Hospital, LLC*, Nos. 210701389 & 221001449 (Phila C.P. June 12, 2025.)

- Unanimous, precedential opinion from the Pennsylvania Superior Court, throwing out the jury's $5M+ verdict against a general contractor on the basis of statutory employer immunity. The plaintiff, an employee of a roofing subcontractor on a construction project, fell through an uncovered hole in the library roof which the general contractor had contracted with the library to remove and replace. The Superior Court determined that all five elements of the statutory employer test set forth in *McDonald v. Levinson Steel Co.*, 153 A. 424 (Pa. 1930) were satisfied, vacated the $5.6 judgment entered on the jury's verdict for plaintiff, and remanded for judgment to be entered in favor of the general contractor. On the Plaintiff's appeal to the Pennsylvania Supreme Court, another unanimous decision reaffirming the existence and viability of the century-old statutory employer defense under the Workers' Compensation Act. *Yoder v. McCarthy Constr., Inc.*, 345 A.3d 668 (Pa. 2025), affirming in relevant respect 291 A.3d 1 (Pa. Super. 2023)

- In a case involving death and serious injuries to the plaintiffs resulting from a car accident, the Superior Court ruled that the original defendants' claims were viable against the additional defendants as joint tortfeasors, as they each negligently repaired the plaintiffs' hood latch on their car and warranted it was safe to drive, prior to the car's becoming disabled in the roadway when the hood flew open, where it was struck by the original defendants. While the trial court had dismissed the additional defendants at the summary judgment stage, concluding that the additional defendants could not be liable for the plaintiffs' injuries and losses, given the substantial evidence of the original defendants' negligence. On appeal, the Superior Court unanimously agreed that the defendants' contribution claims against the additional defendants are meritorious under Pennsylvania law and the facts of the case, reversing the trial court's entry of summary judgment (indeed, for the second time in the life of the case) and remanding for litigation of the contribution claims on the merits. *Straw v. Fair*, 284 A.3d 899, 2022 WL 3149329 (Pa. Super. Aug. 8, 2022)

- In a product liability / class action case, a unanimous Third Circuit panel affirmed the District Court's denial of class certification. The individual plaintiffs—property owners claiming defects in yellow-jacketed, corrugated stainless steel tubing used to transport natural gas and allegedly present in their structures—sued on behalf of a putative class. However, both the District Court and Third Circuit agreed with the arguments advanced by the defendants: that the class was not ascertainable without mini-trials and individual inquiries, that questions common to the class did not predominate in the case, that the proofs necessary to establish both liability and damages would differ across the putative class members' claims, and that the various state laws governing their disparate claims included separate, non-overlapping elements—all of which are at cross-purposes with class treatment. Though the Third Circuit granted the plaintiffs' request for interlocutory review of the class certification decision over defendants' objection, nevertheless it affirmed the District Court's denial of class certification. *Adams Pointe I, L.P. v. Tru-Flex Metal Hose Corp.*, 2021 WL 3612155 (3d Cir. Aug. 16, 2021)

- The U.S. Court of Appeals for the Third Circuit ruled no unfair trade practices claim was stated against licensed unclaimed proper finder who assisted plaintiff in retrieving his own lost money. The plaintiff, after entering into a contract with the property finder service (the terms and language of which are regulated by the Pennsylvania Department of the Treasury), and actually receiving his funds before they escheated to the state, sued under the Unfair Trade Practices Act on the theory that the service failed to disclose that the plaintiff could retrieve his lost funds for free on his own. The Third Circuit rejected the plaintiff's "unreasonable presumption" that the pre-printed forms gave the impression that the finder's services were the only way he could retrieve his money. Instead, "those forms disclose all the information [the plaintiff] would need to recover the property himself and further inform him of the services it provides in exchange for the fee, none of which indicate or even suggest that [the plaintiff] could not otherwise recover his property or that [the finder service's] assistance was necessary." Thus, it affirmed dismissal of the case at the pleading stage, seeing no merit worthy of discovery and trial. *DeSimone v. U.S. Claims Servs. Inc.,* ___ Fed. App'x ___, 2021 WL 1662779 (3d Cir. Apr. 28, 2021).

- The U.S. Court of Appeals for the Third Circuit affirmed the dismissal, at the motion to dismiss stage, of this civil rights action against a county Children & Youth Agency and its staff attorneys and caseworkers. The Plaintiffs brought their 5-month-old child to the hospital, where he was diagnosed with a spiral fracture mid-shaft on his right humerus. The hospital team collectively concluded that the injury was probably accidental in nature, but a nurse reported the injury to C&A, concerned that it might have been caused by abuse. C&A initiated its state-mandated investigation, wherein a judge approved the request for a safety plan that required chaperone to be with the parents and child while the merits of the abuse investigation continued. At the end of the investigation, the judge concluded the injury was accidental, and the safety plan was terminated. The Plaintiffs then filed this action, alleging that the safety plan violated their Fourteenth Amendment substantive due process rights. The federal district court dismissed the case, concluding that the Plaintiffs' allegations of interference with the family unit, even if true, do not rise to the level of "shocking to the conscience," necessary for a due process violation. On appeal, the Third Circuit affirmed, agreeing with Shane's argument that the nurse's report of possible child abuse, in conjunction with other evidence to support even the suspicion of the same, make the municipal Defendants' actions not "shocking to the conscience," and so no substantive due process claim was stated. *A.J. v. Lancaster County*, 826 Fed. App'x 248 (3d Cir. Sept. 16, 2020).

- The U.S. Court of Appeals for the First Circuit affirmed the judgment of the U.S. District Court for the District of Massachusetts in favor of Shane's client. In this FINRA arbitration case, the Claimant retired from his job and invested his entire savings through an individual advisor. The advisor moved from broker-dealer to broker-dealer over the next fourteen years, as is typical in the industry. However, atypically, the individual advisor lied to Claimant, telling him his withdrawals from the account were from the interest only. In reality, they came from the principal, and steadily depleted the account to zero. Suit was filed, and a FINRA arbitration panel ruled in favor of Shane's broker-dealer client, because the individual advisor's improper conduct was not only undiscoverable by the broker-dealer but outside the scope of employment. After the defense arbitration award, the Claimant appealed first to the District Court, and then again to the Court of Appeals. In both courts, Shane briefed and orally argued the case, advocating for a judgment confirming the defense award. Both courts ruled in Shane's client's favor, with the First Circuit in particular being swayed by Shane's argument, and ruling in a way that strengthened and buttressed the rationale of the award, and completely exonerating the broker-dealer from any accusation of wrongdoing. *Ebbe v. Concorde Inv. Servs., LLC,* 953 F.3d 172 (1st Cir. 2020), affirming 392 F. Supp. 3d 228 (D. Mass. 2019).

- Shane convinced the Superior Court that Pennsylvania lacks general personal jurisdiction over his national client because it is not "at home" here, even though it is a limited liability company whose sole member is a Pennsylvania corporation. While that corporation is "at home" in the Commonwealth, the Superior Court agreed that the LLC is not, because it lacks sufficient business operations here. It concluded that suit arising from a tractor trailer crash outside Pennsylvania—even involving a plaintiff who lives in Pennsylvania—must be filed elsewhere, because Pennsylvania's jurisdiction does not reach this not-at-home defendant. *Ismail v. Volvo Group North America, LLC*, No. 1231 EDA 2017 (Pa. Super. Mar. 2, 2018)

- In this civil rights case the District Court denied qualified immunity to several individual Pittsburgh police officers, holding that a jury could find their conduct was unconstitutional. The plaintiff was a passenger in a vehicle that sped from Homestead into neighboring Pittsburgh's bar and restaurant district on Carson Street, at a time when it was flooded with pedestrians and other law abiding citizens. Reacting quickly to the rapidly increasing threat, the officers fired on the vehicle as it swerved in and out of its appropriate travel lane and crashed into cars parked along the street. In the process, the plaintiff-passenger was struck by a bullet. On appeal from the denial of qualified immunity, Shane obtained a unanimous, precedential decision from the Third Circuit, holding that the officers did not violate any constitutional right of the plaintiff. The Court held that the officers shot at the vehicle with knowledge that it engaged in such reckless and unlawful conduct, and their actions were objectively reasonable as a matter of law. The case was remanded with instructions to enter summary judgment for the officers. *Davenport v. Borough of Homestead*, 870 F.3d 273 (3d Cir. 2017).

- The Second District Court of Appeal of Florida unanimously affirmed the entry of summary judgment in favor of Shane's client in this declaratory judgment action, involving homeowners' association obligations. In the 1980s, a property developer erected a club to administer common amenities such as clubhouses, a private beach, and exercise facilities, with membership in the club designated as the owners of properties in four separate, later-developed communities. The four communities thereafter erected their own homeowners' associations. This suit began with a slim majority of one homeowners' association purporting to exempt its members from membership in the club via an amendment passed in 2014. The trial court rejected this improper attempt to alter membership in the club, which is tied to the land,

because it was attempted by one-half-of-one-quarter of the club's membership and contrary to the club's governing documents. Under well-established Florida law, the attempted change in membership came from the wrong voting members, via an improper procedure, inequitably, and too late. After plenary briefing and oral argument, the DCA saw no issue and issued a *per curiam* order affirming judgment for Shane's client. *Placida Pointe Home Owners Ass'n v. Placida Harbour Club, Inc.*, No. 2D16-413, 2017 Fla. App. LEXIS 3065 (Fla. 2d DCA Mar. 8, 2017).

- The Pennsylvania Superior Court unanimously affirmed a dismissal of a complaint with prejudice, filed by an insured against his home and auto insurer. The suit alleged that the issuance of a homeowner's policy with a $1 million liability limit required the insurer to advise its insured to purchase more than the $100,000 auto policy he had. The dispute arose after the insured's spouse caused a fatal car accident, and the wrongful death suit settled for $300,000, with the insurer tendering the full value of the auto policy. The Superior Court rejected the insured's arguments that the insurer was bound to advise the insured to purchase greater levels of auto liability insurance, or to equalize the disparate liability policies. The Court also affirmed that the insurer's commercial advertising campaign did not render it liable under the Unfair Trade Practices Act in light of its clearly stated policy limits. *Cohan v. United Services Automobile Association*, 683 EDA 2016 (Pa. Super. Jan. 5, 2017).

- In this data breach suit, the Court of Appeals for the Third Circuit affirmed the District Court's dismissal of the Plaintiffs' complaint with prejudice. Plaintiffs, on behalf of a class of employees and customers of Shane's clients, medical and dental benefit providers, sued following a breach of the providers' computer network by non-party, criminal hackers. The class members' personal identifying information was stolen and used to file fraudulent tax returns, causing them monetary harm. The Third Circuit agreed that Pennsylvania law barred the tort claim, as the economic loss doctrine requires allegations of personal injury or property damage to assert a cause of action for negligence. In addition, the Third Circuit held that the dismissal of the contract claim was proper, because the complaint failed plausibly to state a claim that the Defendants agreed contractually to protect the class members' data from breach by hackers. *Longenecker-Wells v. Benecard Services*, No. 15-3538, 2016 U.S. App. LEXIS 15696 (3d Cir. Aug, 25, 2016).

- The Court of Appeals for the Third Circuit unanimously vacated the District Court's denial of qualified immunity to Shane's client, a police officer. The complaint asserted that the officer initiated a chase of the now-convicted co-defendant, and reached speeds exceeding 110 miles per hour before the co-defendant crashed into the innocent plaintiff. The District Court denied a qualified immunity motion to dismiss, filed in response to the 14th Amendment due process claim asserted against the officer, concluding that fact issues remained that required a trial. Shane persuaded the Third Circuit that the District Court failed to analyze the pure question of law whether the right alleged by the Plaintiff was clearly established on the date of the incident. The Third Circuit vacated the denial of qualified immunity, and remanded. *Conte v. Rios*, No. 15-3361, 2016 U.S. App. LEXIS 13915 (3d Cir. Aug. 1, 2016).

- The Superior Court of Pennsylvania affirmed by unanimous opinion a verdict in favor of Shane's insurer client in this first-party breach of contract action. The plaintiff suffered damages to his retail inventory caused by smoke and soot infiltration from a nearby fire, and made a claim for remediation under the policy. The insurer adjusted the loss and issued a check per the terms of the policy for the whole loss amount. After depositing the check, the plaintiff filed suit seeking additional damage, represented as additional cleaning and restoration costs. At trial, the plaintiff

presented the testimony of its owner, who justified the claim for additional damages by the ongoing cleaning costs for the inventory. The defense relied on the expert testimony of a certified restoration company, who could perform the job at a fraction of the cost. The trial court found that the defense figure was the true cost of damages, and the Superior Court rejected the plaintiff's argument on appeal. *The Classic Lighting Emporium, Inc. v. Erie Insurance Exchange*, No. 3158 EDA 2014 (Pa. Super. Nov. 17, 2015).

- A unanimous panel of the Court of Appeals for the Eleventh Circuit affirmed the entry of judgment in favor of Shane's client, an employer with a healthcare plan governed by ERISA. The plaintiff sought statutory damages of up to $110 per day going back years, plus attorney's fees, against the employer and the co-defendant third-party administrator, asserting that she was unable to obtain requested documents from both parties, which were necessary to appeal the termination of her long-term disability benefits. Against the employer specifically, the plaintiff asserted that it had a duty to amend historical plan documents to update its address, as she relied on an old address in seeking documents without success. The Eleventh Circuit rejected the claim, holding that the District Court did not abuse its discretion in declining to award statutory penalties, especially where the Plaintiff not only had the document she later requested, but also had the means of knowing the proper address to which to send requests. *Smiley v. Hartford Life and Accident Insurance Company*, 610 Fed. Appx. 8, 2015 U.S. App. LEXIS 12334 (11th Cir. Jul. 17, 2015).

- In this tortious interference/civil conspiracy matter, the trial court dismissed the case for failure of the plaintiff to timely serve original process. Shane defended against the appeal by plaintiff, which argued that plaintiff's good faith efforts and mere mistake easily satisfied Pennsylvania's service rules. The Superior Court unanimously decided against plaintiff, and affirmed the dismissal of the case for failure to make timely service. *Smash PA, Inc. v. Lehigh Valley Restaurant Group, Inc.*, 1811 EDA 2014 (Pa. Super. April 14, 2015).

- In an underinsured motorist case, the federal Court of Appeals for the Third Circuit upheld summary judgment granted in favor of Shane's client. The plaintiff, carrying UM coverage on top of applicable policy limits of $100,000, sued and settled with the other driver for $41,715, the number recommended by an arbitrator. The plaintiff then proceeded against her UM carrier, asserting that her actual damages exceeded the coverage threshold, despite the settlement. The Third Circuit rejected that contention, and affirmed the District Court's holding that the evidence did not support her entitlement to UM benefits—that her damages went beyond the level of applicable third-party coverage. The case drew amicus support from the Pennsylvania Association for Justice in support of Plaintiff. *Gallagher v. Ohio Casualty Insurance Company*, 2015 U.S. App. LEXIS 1426 (3d Cir. Jan. 29, 2015).

- A unanimous panel of the Superior Court affirmed the entry of summary judgment in favor of Shane's client, a heavy construction equipment manufacturer and dealer. Despite being the lone deep pocket in a case with large exposure due to the catastrophic and permanent injuries, the Superior Court agreed that the deposition testimony could not allow the claim to survive summary judgment, because there was no evidence that the design of the product caused the accident and injuries to the plaintiff. *Williams v. Anderson Equip. Co., Komatsu American Corporation*, 1454 WDA 2013 (Pa. Super. Oct 7, 2014).

- In a premises liability case involving severe head and cognitive injuries, Shane successfully defended against suit in Pennsylvania against a California golf resort.

The Third Circuit agreed with the District Court that no basis for personal jurisdiction over the resort was demonstrated from the record, but remanded for jurisdictional discovery. After a round of written discovery and depositions, Shane assisted the trial attorney in a new briefing on the jurisdictional issue. The Eastern District of Pennsylvania renewed its conclusion that no basis for jurisdiction could be demonstrated and dismissed the case a second time. There was no appeal. *Rocke v. Pebble Beach Company*, 541 Fed. Appx. 208 (3d Cir. Oct 10, 2013) & 2014 U.S. Dist. LEXIS 60218 (E.D. Pa. April 28, 2014).

Results

Superior Court of Pennsylvania Vacates $1.09 Billion Verdict, Orders New Trial Over Crashworthiness Jury Instructions

We convinced the Superior Court of Pennsylvania to vacate a $1.09 billion jury verdict and remand for a new trial. The court held that the jury had not been properly instructed on the elements of a crashworthiness claim under Pennsylvania law. The court's ruling received press coverage in both *The Legal Intelligencer* and *The Philadelphia Inquirer.*

Successfully Dismantled a Complex Claim Against a Major Health Care Corporation

We succeeded in partially dismantling a complex claim against a major health care client. The family of a former in-patient resident who died as a result of complications from the COVID-19 virus filed suit, raising claims that the patient was sexually assaulted while in the care of the hospital and a subsidiary ambulance company. Asked to join the defense team shortly before trial, we effectively discredited the plaintiff's witnesses throughout the plaintiff's case-in-chief. At the nonsuit stage, we wholly extricated our client—sealing off any exposure to liability for the large, corporate parent company. Following the jury's $3.5 million verdict against the remaining defendants, we were engaged as appellate counsel and succeeded in further winnowing the liability exposure. We convinced the trial judge to: (1) deny the plaintiff's request to reinstate the punitive damages claim based on the trial record; (2) grant a partial judgment notwithstanding the verdict on one claim, lopping a full $700,000 off the jury's verdict; and (3) outright deny the plaintiff's motion for delay damages, which had sought to add $742,000 to the jury's verdict.

Volatile Sexual Assault Case Successfully Moved Out of Philadelphia

We successfully obtained an order to move a sexual assault case to Chester County, Pennsylvania. At first, the venue appeared *prima fascia* good for Philadelphia until our attorneys more closely investigated and found the one defendant holding the case in the city was never served and could not be found.

Received Precedential Decision from PA Superior Court in Venue Transfer Case

We secured a unanimous, precedential decision upholding a venue transfer from Philadelphia to Butler County under forum non conveniens, setting a new standard for defendants after a series of appellate reversals.

Favorable Precedential Decision Obtained in High-Stakes Construction Defect

Case

We prevailed in a unanimous, precedential decision in the Superior Court of Pennsylvania, which reconciled conflicting case law in the state. The plaintiffs were joined by 55 amici, and our client was joined by numerous construction organizations as amici. The court eventually applied Pennsylvania's statute of repose to bar construction defect claims brought by homeowners.

$1.8 Million Jury Verdict Against a Philadelphia Hospital Nullified

Our appellate attorneys successfully convinced a Philadelphia trial judge to grant judgment notwithstanding the verdict and nullify a $1.8 million jury verdict against a Philadelphia hospital. The case involved a fall in the hospital's bathroom, and the trial judge determined that the plaintiff's trial evidence failed to demonstrate that the hospital was responsible for the fall.

Pennsylvania Appellate Courts Uphold Nonsuit Obtained By Jack Delany In $11.5 Million Construction Death Case

By Order dated April 5, 2023, the Supreme Court of Pennsylvania refused to review the Superior Court's affirmance of a 2021 nonsuit obtained by Jack Delany in hotly contested litigation stemming from the death of a construction worker. John Hare and Shane Haselbarth handled the appeal along with Jack.

The Supreme Court's ruling ends more than five years of litigation that arose from the construction worker's death while he was involved in the Pier 78 renovation project on the Delaware River in Philadelphia. The plaintiff sued the general contractor and others involved in the project and ultimately settled with the general contractor for $10.5 million. The general contractor then pursued a contractual indemnification claim against Jack Delany's concrete subcontractor client on the Pier 78 project. The indemnification claim included the $10.5 million settlement plus approximately $1 million in attorneys' fees.

The case proceeded to trial in 2021 and, at the close of the general contractor's case-in-chief, Jack moved for and was granted a nonsuit on the basis that the general contractor was the deceased construction workers' statutory employer pursuant to the five-element test set forth by the PA Supreme Court in *McDonald v. Levinson Steel*, 153 A. 424 (Pa. 1930). The case was especially notable because, rather than retaining an attorney to address the reasonableness of the amount of the underlying settlement, which is typical, Jack retained an economist to explain that, based upon his analysis of comparable cases, the settlement amount was excessive.

The general contractor appealed the nonsuit. In an unanimous decision dated September 30, 2022, the Superior Court affirmed. The Supreme Court denial of allowance of appeal brings the lengthy litigation to an end.

Appellate Court Affirms District Court Order Dismissing a Federal Civil Rights Lawsuit

A unanimous panel of the the Third Circuit affirmed an order of the U.S.E.D. Pa., which had granted a Rule 12 motion to dismiss in favor of a former Assistant District Attorney.

The plaintiff had plead guilty to murder and other offenses in 1990 after shooting a man in the back four times. In 1993, the plaintiff filed a petition under Pennsylvania's Post Conviction Relief Act (PCRA), claiming ineffective assistance of counsel. The crux of his argument being his counsel failed to object when the court incorrectly stated the meaning of life imprisonment. According to the original transcript, the court said, "Life *implies* 17 ½ to 35 years." Our client, a former Assistant District Attorney, worked on the opposition to the plaintiff's PCRA petition and contacted the court stenographer about that line in the transcript. The stenographer admitted the transcripts contained an error and filed a certified copy of the corrected page to reflect that the court said, "Life *plus* 17 ½ to 35 years." The PCRA petition was denied.

Then, in 2019, the plaintiff obtained a handwritten note by our client which referenced needing a "new and improved version" of the transcript. The plaintiff filed another PCRA petition. The current administration of the Philadelphia District Attorney's Office and the plaintiff reached a stipulated agreement to resolve the case. The plaintiff's 1990 guilty plea was vacated, he re-pleaded to third-degree murder and robbery, and was sentenced to 17 ½ to 35 years' imprisonment, and was then released for time served.

The plaintiff filed a lawsuit against our client under 42 U.S.C. § 1983, arguing that our client's ex parte communication with the stenographer violated his right to due process and to a jury trial. We moved for dismissal pursuant to Rule 12(b)(6), arguing our client's actions were protected by absolute prosecutorial immunity and qualified immunity. The District Court agreed and dismissed the lawsuit with prejudice. The plaintiff appealed. Writing for a unanimous panel, the Judge concluded the claims asserted by the plaintiff "lack merit[.]" Affirmance was decided solely on the issue of qualified immunity. The court concluded the claims were "fatally deficient" because: (1) the plaintiff defined his right to due process and jury trial at too high a level of generality; and (2) the plaintiff failed to cite authority establishing that his rights to due process and a jury trial entitled him to protection from our client's ex parte communication with a court stenographer. Thus, our client was entitled to qualified immunity, as argued by us in the District Court.

$5.6 Million Judgment Nullified in Construction Case

Our appellate attorneys were victorious in the Pennsylvania Superior Court, which granted a judgment notwithstanding the verdict and nullified a $5.6 million judgment in a construction accident case. In a unanimous, precedential opinion, the court ruled that the general contractor represented by our attorneys was the plaintiff's statutory employer and, thus, immune from suit. *Yoder v. McCarthy Constr., Inc.*, 2023 PA Super 13 (Pa. Super. 2023).

$5.6 million judgment nullified in construction accident case.

Our appellate attorneys were victorious in the Pennsylvania Superior Court, which granted a judgment notwithstanding the verdict and nullified a $5.6 million judgment in a construction accident case. In a unanimous, precedential opinion, the court ruled that our client, a general contractor, was the plaintiff's statutory employer and thus immune from suit.

Township granted Rule 12 motion to dismiss.

We successfully obtained from the U.S. Court of Appeals for the Third Circuit affirmance of a district court order granting a township's Rule 12 motion to dismiss. The panel agreed with the appellees and concluded the District Court exercised proper discretion in dismissing the complaint since the plaintiffs failed to assert under 42 U.S.C. § 1983 plausible claims of federal constitutional violations.

MD's Appellate Attorneys Convince PA Superior Court to Unanimously Reverse Trial Court Ruling

We convinced the Superior Court of Pennsylvania to unanimously reverse a Philadelphia trial court's refusal to compel arbitration of a claim against a nationally recognized online coupon marketing platform. The plaintiff claimed the company was responsible for an alleged sexual assault during a massage that the plaintiff's son purchased on the coupon platform and gifted to the plaintiff. The Superior Court ruled that the plaintiff was a third-party beneficiary of the agreement between her son and the company and she was, therefore, bound by the arbitration clause in the agreement.

Appellate attorneys prevail in the Pennsylvania Supreme Court.

The decision, which reversed the trial court and Superior Court, reinstated a jury verdict in favor of our clients. Following a defense verdict, the trial court awarded a new trial based on a question posed by defense counsel, who was not a Marshall Dennehey attorney. The Superior Court affirmed the award of a new trial, but the Supreme Court reversed and reinstated the defense verdict on the basis that defense counsel's question was neither improper nor prejudicial.

Dismissal of Consumer Fraud Class Action

Our clients specialize in identifying and reclaiming lost property for consumers who are unaware that such lost property exists. The plaintiff brought claims under the Pennsylvania Unfair Trade Practices Consumer Protection Law (UTPCPL) and for fraudulent inducement, arguing that the business model was deceptive because consumers could recover their own property without paying for the ease and convenience of having the defendant business work on their behalf. Not surprisingly, the district court found that the plaintiff's serial complaints failed to allege anything "more than Defendants' expertise," and that there was no factual basis to support the notion that consumers are unduly influenced or misled. On appeal, the Third Circuit affirmed the dismissal, expressly noting that the defendants made no misrepresentation at any time, and the UTPCPL and fraud claims were dismissed without merit.

Third Circuit Affirms Dismissal of Consumer Fraud Class Action Against Unclaimed Property Recovery Services Firm

We obtained a dismissal of a consumer fraud class action against our clients, a national firm and its principal, who specialize in identifying and reclaiming lost property for consumers who are unaware that such lost property exists. The plaintiff brought claims under the Pennsylvania Unfair Trade Practices Consumer Protection Law (UTPCPL) and for fraudulent inducement, arguing that the business model was deceptive because consumers could recover their own property without paying for the ease and convenience

of having the defendant business work on their behalf. Not surprisingly, the district court found that the plaintiff's serial complaints failed to allege anything "more than Defendants' expertise," and that there was no factual basis to support the notion that consumers are unduly influenced or misled. On appeal, the Third Circuit affirmed the dismissal, expressly noting that the defendants made no misrepresentation at any time, and the UTPCPL and fraud claims were dismissed as without merit. *DeSimone v. U.S. Claims Servs., Inc.*, 2020 WL 2556949 (E.D. Pa. May 20, 2020), aff'd 2021 WL 1662779 (3d Cir. Apr. 28, 2021).

Thought Leadership

July 1, 2025
New York Court Reaffirms Internal Affairs Doctrine, Denies Standing in Derivative Suit Against English Corporation

November 1, 2024
LEGAL ROUNDUP – Pennsylvania

October 1, 2024
Supreme Court to Decide Pair of Mental Health Procedures Act Cases, Outlining the Contours of Claims Against Treatment Providers.

April 1, 2024
Pennsylvania Supreme Court to Review Constitutionality of Sovereign Immunity–Based Damages Cap

July 1, 2023
Superior Court: Yes, We Actually Mean Actual Authority for an Actual Settlement of a Civil Case

April 1, 2023
Anger, Guns and Squirrels Create Problems Begetting Problems - En Banc Pennsylvania Superior Clarifies Collateral Estoppel Effect of Criminal Conviction

January 3, 2022
Pennsylvania Superior Court decides issue of first impression regarding assignment of claims.