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# Timothy J. Hartigan

Shareholder

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Timothy provides legal counsel to insured individuals and corporations who are defendants in claims arising in the areas of premises liability, product liability, construction defects, and auto liability. Tim also represents homeowners sued for alleged failure to disclose pre-sale conditions of their homes to buyers, a practice area referred to as real estate sellers disclosure liability. He has defended claims on behalf of companies in slip and fall cases, manufacturing design and defect cases, and failure to warn cases.

Tim has litigated multiple construction defect matters in Philadelphia and surrounding county courts involving stucco/ EIFS coated structures and water intrusion, both as the stucco contractor and on behalf of other trades. Stucco/ EIFS issues have also been involved in many of the seller's disclosure cases he has litigated. He has handled mold litigation that were contained within larger construction-defect related claims.

Tim's significant experience in this area has allowed him to develop a working familiarity with residential construction techniques and related liability issues. He has litigated more general construction defect issues, including building code compliance on behalf of general contractors performing casualty remediation on existing structures.

To date, Tim has tried roughly a dozen cases to verdict in state and federal courts in Pennsylvania. Hundreds more have been handled to a successful conclusion through public and private arbitration forums. Tim regularly serves as an arbitrator on cases in both Montgomery and Delaware Counties.

Prior to joining Marshall Dennehey, Tim was an associate at the law firm of Kelly, McLaughlin and Foster, after working at the law firm of Margolis Edelstein. At both firms, Tim primarily handled premises liability and automobile liability matters for the insurance company clients' policyholders. Tim also maintained a solo practice focusing exclusively on automobile and casualty subrogation for nearly eight years for over a dozen different insurance company clients.

## Practices

- General Liability
- Automobile Liability
- Architectural, Engineering & Construction Defect Litigation
- Real Estate E&O Liability
- Product Liability

Tim is a graduate of the University of Pennsylvania's Wharton School and Rutgers School of Law. He was the recipient of the American Jurisprudence Award for Achievement in the study of Torts while matriculating at Rutgers School of Law.

## Education

- Rutgers Law School (J.D., 1992)
- The Wharton School of the University of Pennsylvania (B.S., 1982)

## Admissions

- Pennsylvania, 1992
- U.S. District Court Eastern District of Pennsylvania, 1993

## Associations & Memberships

- Montgomery County Bar Association, 2005 - Present
- Pennsylvania Bar Association, 1992 - Present

## Published Works

- "The (Rarely Heard) Other Voice In The Courtroom," *Defense Digest*, 2004
- "Limit Those Claims: Applying the 'Gist of the Action Doctrine' to Remove Negligence, Fraud, Common Law Contribution and Indemnification Claims," *Defense Digest*, 2008

## Classes/Seminars Taught

- Panelist, Pennsylvania Bar Institute Continuing Legal Education program, *Philadelphia's Compulsory Arbitration Program*, 2001

## Significant Representative Matters

- Represented owner of deer fencing company sued by independent contractor whose assistant was injured when a tension cable being used in the installation of a deer fence system snapped and lacerated the plaintiff's face and eyes. Established that plaintiff himself was the cause of the cable snapping and subsequent injuries. Defense verdict.
- Defense verdict in novel negligence/premises liability case. Defended a night club which had hired an off-duty state constable as a security guard who shot and killed a pedestrian who had just pulled a handgun and fired into a crowd of people on a busy city sidewalk. Two bystander plaintiffs alleged they were struck by bullets fired by the constable's weapon. Jury apparently agreed with our position that the decedent created a public hazard and that the constable's response was necessary and appropriate. We also argued that there was no proof that the bystanders were struck by bullets from the constable's weapon. We established that at least two other weapons were discharged during the situation and there were more bullets and bullet fragments present than could be accounted for by the known weapons. One bystander did not have the bullet removed from his body, and the bullet which struck the other bystander passed through her body and was not identified from those recovered at the scene.
- Represented seller of home accused by plaintiff of failure to disclose numerous of prior incidents of water intrusion. Conceded a single incident of water intrusion, which occurred post execution of agreement of sale and which was thought to have been

repaired. Asked the jury to find for the plaintiff in the amount of approximately \$2,000 for repairs related to that incident. Jury returned verdict of \$2,500 for plaintiff.

- Represented plumbing contractor joined by home builder as an additional defendant in numerous construction defect cases commenced against builder by homeowners. Successfully raised "The Gist Of The Action Doctrine" as a complete bar to claims for contribution and indemnification by builders. Five claims dismissed on motions in Chester County Court of Common Pleas. Two more claims pending in Delaware County Court of Common Pleas.

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## Results

### **Successful Resolution of Premises Liability Action**

We successfully tried a premises liability action to a defense verdict in favor of a resident's association in the Chester County Court of Common Pleas, and also successfully defended against the plaintiff's appeal. The plaintiff, who was a community resident (formerly married to a unit owner but not an owner herself), claimed that she tripped and fell on a tree branch on common area steps at night as a result of a burned out PECO-owned lamp, and that the Association failed to ensure that the light was fixed. The plaintiff had asked for either invitee status or a hybrid charge on duty, but the court agreed with the defense that she was able to use the common areas by permission, not by invitation, making her a licensee only. This resulted in the duty owed being only to make the property as safe as it appeared. The defense presented multiple instances of notice to PECO of the burned-out light, and the plaintiff conceded the defense contention that it could not change the bulb itself because PECO owned the lamp. The plaintiff also conceded that she had been aware of the light being out for some time. The jury unanimously found in favor of the Association and, on appeal, the Superior Court affirmed the judgment on the jury verdict, finding that the trial court did not err by charging the jury that the plaintiff was entitled only to the care due to a licensee on the property, and not an invitee.