A PUBLICATION BY THE NEW JERSEY DEFENSE ASSOCIATION / SUMMER 2021

NEW JERSEY DEFENSE

PRESIDENT'S LETTER

I am grateful and honored for the opportunity to have served as the President of the NJDA for 2020-2021. As my term winds down, it is only natural to reflect upon the last year and wonder if it was all that it should have been. Quite frankly, things did not look good in the opening months. For a time, it seemed that each new week brought another cancellation. However, looking back at the calendar of events for the year, other than the absence of social gatherings, it was full of the usual programming and meetings. While it is disappointing to have gone the last twelve months attending every single event in front of a laptop with the next closest "member miles away, it is satisfying to know that we did do the best we could under the circumstances. The use of listserve has become very robust. I see daily examples of members helping members. We became a valued voice in the Courts through our involvement in various post-pandemic planning committees. We learned how to try a case over the internet. How fitting that my term ended with my own first virtual trial, aided greatly by the knowledge I gained from our COVID calls and the virtual trial webinars.

As I step down, I have great optimism about the future of this association. There will be aspects of our pandemic year that will make us more efficient and stronger for years to come. I am confident that our incoming President, Ryan Richman will be an excellent leader. I encourage each of you to become more involved and support Ryan and the NJDA. Join one of our committees, contact our incoming President-Elect, Michelle O'Brien to write an article for this publication or share some of your knowledge by presenting at a seminar.

As the world begins to return to some sense of normal it is time to reintroduce many of the social events we have missed over the past fifteen months. This is set to begin with our annual convention at The Otesaga in Cooperstown, NY. I look forward to this next year being one of gatherings.

I wish you all a happy and safe summer.

Very Truly Yours,

JOHN V. MALLON, ESQ.

TECHNOLOGY CONTINUES TO INCREASE AVAILABLE INFORMATION IN TRUCKING ACCIDENTS

BY NICOLE CROWLEY, GOLDBERG SEGALLA

A new case lands on your desk. The facts are relatively common: your clients, a small to medium size fleet and its driver, are being sued by a plaintiff who alleges that the truck driver drifted into his lane as they were heading towards the Holland Tunnel, causing the plaintiff to crash into a barrier. Your clients deny the allegations and do not want to discuss the possibility of settlement. However, you know these types of cases can be tough to defend because any evidence of lane drifting, or lack thereof, is difficult to prove. It is unlikely that the truck's electronic control module (ECM), the "black box" that records data such as speed, braking, and hard stops, will have information related to the allegations. There are no witnesses to corroborate what happened.

Other than the ECM and potential witnesses, there used to be few other sources of information or data in commercial truck accident. Today, tractor-trailers can be equipped with a plethora of information recorders and technology that could be the key to understanding if and how a crash occurred. The two main types of technology are telematics devices and advanced driver assistance systems.

TELEMATICS DEVICES

What exactly is telematics? It is the joining of telecommunications and information processing, i.e. the ability for a truck to gather information and send it to an electronic storage device via the cloud. Software is then able to analyze the data and produce it in a useable format for trucking companies to use in order to increase safety, efficiency, and show compliance with federal regulations.

The most common telematics device is the Electronic Logging Device. The ELD is synchronized with the tractor's engine and automatically records the date, time, location information, engine hours, vehicle miles, driver and motor carrier identification information and vehicle information while the tractor is in use. As of December 20, 2019, every commercial truck driver that is required to track his hours of service must be driving a truck equipped with an ELD.

Additionally, many trucks are equipped with telematic devices that track much more than a driver's hours of service, including:

- Smart cameras that are able to analyze and tag stopping distances, harsh braking (including why the truck suddenly slowed), distracted driving, lane drifting and red-light infractions; and
- Telematic Equipped GPS devices that, in addition to location, can show engine light information, vehicle fault codes, and engine data, which would be helpful in any case involving negligent vehicle maintenance or part failure allegations.

Fleets are beginning to use these telematics devices to identify good and bad driving behavior, increase fleet efficiency, and monitor vehicle maintenance.

Other than an ELD, there is no requirement for commercial trucks to utilize telematic devices. Moreover, federal regulations only regulate ELD data, which is to be retained for 6 months. There are no uniform standards or rules regarding any other data. Therefore, it is imperative to always request the driver's ELD logs and any other telematics data be preserved as soon as possible.

ADVANCED DRIVER ASSIST SYSTEMS

While autonomous trucking companies are in the headlines, OEMs currently sell commercial trucks with an advanced driver assistance system (ADAS). AN ADAS is more advanced than standard cruise control or an alert system because an ADAS is able to control the truck. For example, adaptive cruise control regulates the trucks braking and acceleration without the driver needing to intervene. Lane Keep Assist can alert a driver if he is drifting and can gently steer the truck to maintain its position within the lane. Trucks may also be equipped with automatic electronic stability control, automatic emergency braking, and blind spot assist.

Although relatively new, more fleets are starting to utilize this technology. It is important to know if a truck is equipped with an ADAS so that you can understand how the driver used the ADAS and confirm if there were any warnings activated before the crash. While studies have shown that an ADAS can help prevent accidents and lower accident severity, some drivers may become overly reliant on the technology. An ADAS is not fully autonomous; therefore, the driver is to remain alert and in control of the truck at all times.

Data related to an ADAS may be stored if it is used in connection with a telematic device, but there is no requirement that any data or warning system information be retained. Additionally, there are no requirements that trucks be equipped with an ADAS.

THE FUTURE OF TRUCKING TECHNOLOGY

Returning to the opening scenario, there may be data available to determine whether the driver drifted from his lane if it was equipped with a telematics device or an ADAS. For example, a camera equipped with GPS data may have captured the truck's position in the lane, or there may be evidence that Lane Keep Assist was utilized near the time of the accident. While none of this evidence would be dispositive on its own, it would be very helpful in presenting a defense of the case.

The use of telematics devices and ADAS in commercial trucks is here and will continue to grow, especially as insurance premiums rise and fleets look for ways to make commercial truck driving safer. It will be important to work with clients to understand how they use telematics devices and ADAS, their data retention policies and ensure that important data is saved after an accident.

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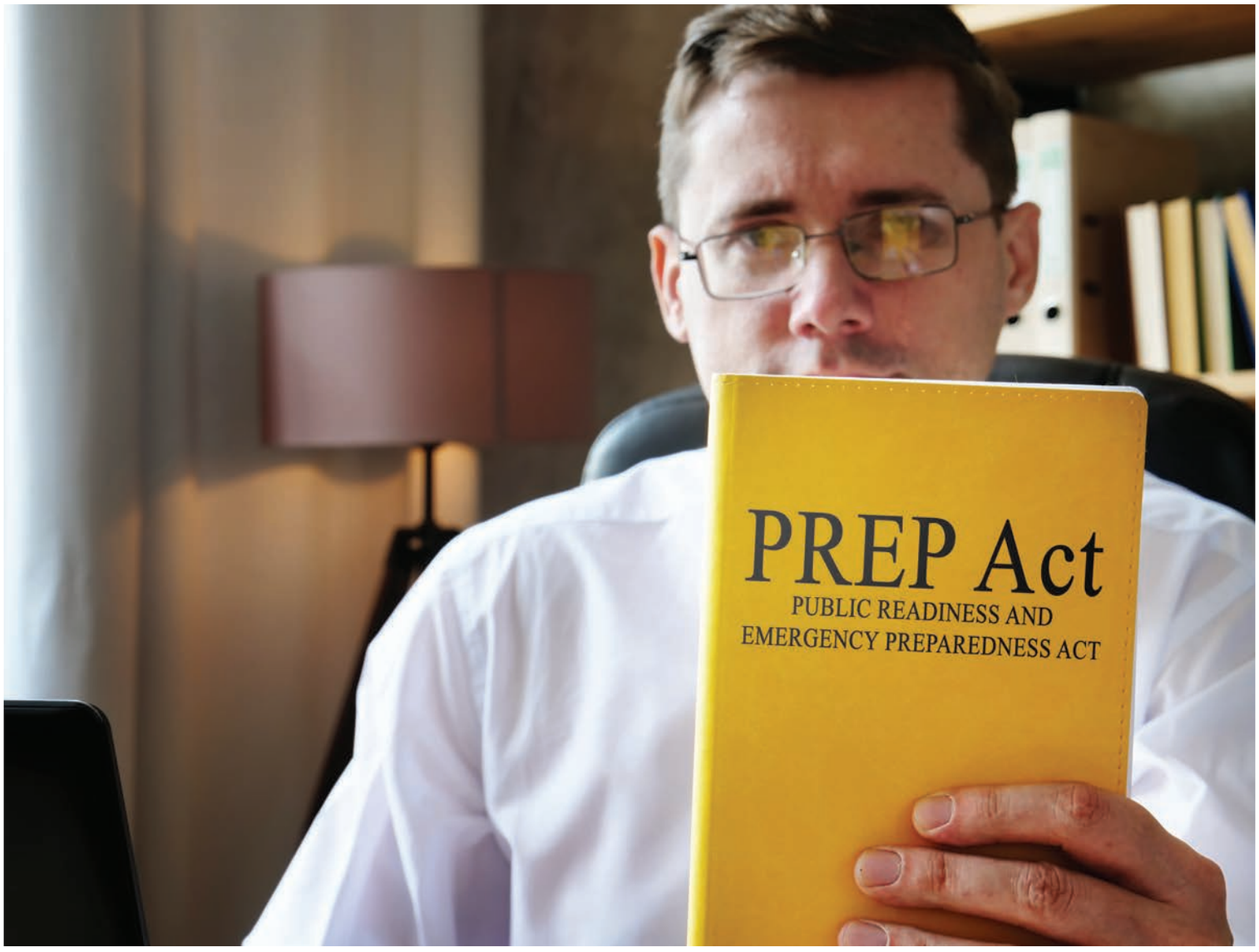

THE PREP ACT OF 2005 AND THE GROWING WAVE OF COVID-19 LITIGATION

BY HERBERT KRUTTCHNITT III & RYAN A. NOTARANGELO

The COVID cases have begun to be filed and, not surprisingly, the procedural machinations are the first order of business. The fight for the choice of jurisdiction is underway, and a 16-year-old federal statute is at the forefront. The Public Readiness and Preparedness Act (PREP Act) was enacted on December 30, 2005. It includes provisions which address liability immunity and create a compensation program. Congress enacted the PREP Act so that local healthcare providers could assist the federal government in carrying out its task of managing a coordinated response effort to a national pandemic without interference from litigation and with immunity from liability for its agents.

The PREP Act authorized the Secretary of Health and Human Services to issue a declaration providing immunity to certain entities, i.e. "covered persons" against any claim of loss caused by, or relating to, the manufacture, distribution, administration, or use of "covered countermeasures" in response to the declared emergency. The PREP Act, in part, states:

> a covered person shall be immune from suit and liability under Federal and State law with respect to all claims for loss caused by, arising out of, relating to, or resulting from the administration to or the use by an

individual of a covered countermeasure if a declaration under subsection (b) has been issued with respect to such countermeasure.

Immunity applies to any claim of loss that has a causal relationship with the administration to or use by an individual of a "covered countermeasure", including a causal relationship with the distribution and dispensing of such countermeasure. In order to qualify for the immunity, the claims against the "covered person" must arise out of, relate to, or result from the use or administration of a "covered countermeasure."

A "covered person" is defined as a "program planner," such as a residential care facility, and a "qualified person," such as a healthcare provider, who administers, distributes, or uses "covered countermeasures." The definition of a "covered person" has been expanded in response to the COVID-19 pandemic.

A "covered countermeasure" was recently redefined to include "a qualified pandemic or epidemic product"; "a security countermeasure"; a drug; and a biologic product, devices authorized for emergency use in accordance with the Federal Food, Drug, and Cosmetic Act, such as PPE, or respiratory protective device approved by National Institute for Occupational Safety and Health. The definition of a "covered countermeasure" has been significantly expanded in response to the COVID-19 pandemic.

Qualifying under these definitions is critical in determining the application of the immunity. Parsing these definitions is how plaintiffs will argue for the immunities not to apply. So, let's go forum shopping.

On March 10, 2020, Secretary Alex M. Azar issued the required Declaration invoking the PREP Act for the COVID-19 pandemic, determining that the spread of SARS-CoV-2 or a virus mutating therefrom, and the resulting disease COVID-19, constitutes a public health emergency for purposes of this Declaration under the PREP Act.

On March 27, 2020, Congress enacted the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act"). The CARES Act added respiratory protective devises approved by the National Institute for Occupational Safety and Health as "covered countermeasures" eligible for immunity under the PREP Act.

On April 15, 2020, the Secretary amended the Declaration to expand the definition of "covered countermeasures" to include respiratory protective device approved by National Institute for Occupational Safety and Health pursuant to the CARES Act's amendments to the PREP Act. The Amendment noted that such respiratory protective devices are a priority for use during the public health emergency for the entire United States to aid in response of the nation's health care community to the COVID-19 outbreak. The Secretary extended liability immunity for the use and distribution of such respiratory protective devices.

On June 4, 2020, the Secretary again amended the Declaration to, among other things, expand the definition of "covered countermeasures" to include PPE and other such qualified products that limit the harm COVID-19 might otherwise cause pursuant to the PREP Act. This second Amendment noted that personal protective equipment to healthcare providers is essential for a national response to the pandemic. The Secretary again extended liability immunity for the use and distribution of such PPE.

On August 19, 2020, the Secretary amended the Declaration for a third time to, among other things, expand the definition of "covered diseases" to include other diseases, health conditions, or threats that may have been caused by COVID-19, SARS-CoV-2, or a virus mutating therefrom.

On December 3, 2020, the Secretary again amended the Declaration for a fourth time to, among other things, clarify that non-administration of "covered countermeasures" is covered by the PREP Act and that a *federal court* must adjudicate cases involving the invocation of the PREP Act. Of note, the Secretary clarified that in circumstances where there are limited "covered countermeasures", *not* administering a "covered countermeasure" to one individual in order to administer it to another individual qualifies as relating to the administration of that "covered countermeasure." Moreover, the Secretary explained that purposeful allocation of a "covered countermeasure", particularly if done in accordance with a public health authority's directive, will fall within the PREP Act liability protections.

Finally, the Secretary noted that there are substantial federal legal and policy issues, and substantial federal legal and policy interests within the meaning of *Grable & Sons Metal Products, Inc. v. Darue Eng'g. & Mf'g.*, 545 U.S. 308 (2005), favoring a *uniform interpretation* of the PREP Act preemption of claims.

The argument by the defense in the COVID cases will be that the PREP Act and its Amendments provide broad immunity to local healthcare providers who assist the government in the coordinated national response to the COVID-19 pandemic.

The manner and decision to allocate and distribute PPE and respiratory protective devices are going to be key issues in COVID cases and should be subject to federal immunity.

The PREP Act has gotten a lot of attention lately, as the coming wave of COVID litigation has already begun to spread, and a pandemic of lawsuits are being filed. The PREP Act, being a federal immunity statute, has already become the focus as plaintiffs begin to jockey for the forum most likely to find reasons to not apply it; to wit, the state courts. One of the first of the COVID lawsuits, *Estate of Maglioli v. Andover Subacute Rehab. Ctr.*, after having been filed in the Superior Court of New Jersey, Law Division, was removed by the defendants to the federal court and is currently before the U.S. Circuit Court of Appeals on appeal from a remand Order.[1]

In remanding, the District Court reasoned that state courts could apply and interpret the PREP Act, and that the interposing of a PREP Act defense did not confer exclusive federal jurisdiction. Which is true, but not the point. The PREP Act needs to have one interpretation state-wide so that there will be certainty that healthcare providers across the state will be afforded the immunities uniformly.

So, if the COVID cases are best litigated in federal courts, and more likely to have uniform and broad sweeping immunity when litigated in federal courts, is there any wonder that they are being filed in state courts? Let the gamesmanship begin.

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[1]Maglioli has recently been re-removed, and is currently pending in both the Federal District Court for the District of New Jersey as well as the 3rd Circuit Court of Appeals.

DIVERSITY JURISDICTION AND ITS DISCONTENTS: HOW NOT TO USE THE FORUM DEFENDANT RULE

BY MARK R. SCIROCCO

Imagine a case in which a New Jersey plaintiff sues two defendants, one a citizen of Pennsylvania and one a citizen of New Jersey. The matter is brought in state court and there is no federal question presented. After the Pennsylvania defendant is served, but before service is effectuated on the New Jersey defendant, the Pennsylvania entity notices removal of the case to federal court.

In the above scenario, "complete diversity of citizenship" between the parties is clearly lacking – there is a New Jersey plaintiff and a New Jersey defendant, leaving 28 U.S.C. §1332(a) unsatisfied and the district court without subject matter jurisdiction. Yet, in a handful of cases in the Third Circuit involving similar circumstances (by my count, six in 2020 alone), the matter was removed. How can this be?

The theory goes that under the "forum defendant" rule, 28 U.S.C. §1441(b)(2), removal is appropriate if the diversity-defeating defendant (the New Jersey defendant in the imaginary case above) has *not been served* at the time of removal. This type of removal, when noticed before service of a defendant who is a citizen of the forum where the case is brought, is often referred to as a "snap removal."

Is this a valid basis for removal? And should a defendant desperate to get a case into federal court try it?

The answer to both questions is no. The existence of diversity jurisdiction depends on the parties' citizenship, regardless of the status of service on any one defendant. In courts within the Third Circuit, every time "snap removal" without complete diversity of citizenship has been tried, the case has been remanded. There is only one judge in the District of New Jersey who issued an opinion denying remand, even though complete diversity was lacking. Recently, that judge reconsidered his prior ruling, agreed that the court did not possess subject matter jurisdiction, and remanded the matter to state court.

By way of brief review, the forum defendant rule provides "[a] civil action otherwise removable solely on the basis of [diversity jurisdiction] may not be removed if any of the parties in interest properly joined and served as defendants is a citizen of the State in which such action is brought." 28 U.S.C. §1441(b)(2). In a 2018 case involving an Illinois plaintiff and a Pennsylvania defendant, the Third Circuit interpreted the words "*properly joined and served*" such that removal was permissible from Pennsylvania state court because the defendant had not been formally served. Encompass Ins. Co. v. Stone Mansion Rest. Inc., 902 F.3d 147, 153-54 (3d Cir. 2018).

A number of defendants in the District of New Jersey have used the Third Circuit's decision in Encompass, along with the forum defendant rule's "*properly joined and served*" language, to support "snap removal" in cases where the parties lack complete diversity of citizenship. In a decision issued last summer, Dillard v. TD Bank, NA, No. 1:20-cv-07886-NLH-JS, 2020 U.S. Dist. LEXIS 132881 (D.N.J. July 27, 2020), Judge Noel L. Hillman addressed the propriety of removal where the plaintiff, a New Jersey citizen, sued another New Jersey citizen along with TD Bank, a citizen of Delaware. TD Bank noticed removal before service was effectuated on the New Jersey defendant. In his July 2020 opinion, Judge Hillman denied remand because "a snap removal allows a non-forum defendant to remove an action before the diversity-defeating forum defendant is served." Id. at *2.

This reading of the forum defendant rule is problematic in several ways. The question of whether a defendant is "*properly joined and served*" under the forum defendant rule only arises if – as the text of the rule itself makes clear – the matter is "*otherwise removable*" based solely on diversity jurisdiction. In other words, if complete diversity of citizenship does not exist, the forum defendant rule does not apply. Although the Third Circuit's decision in Encompass did not state this explicitly, removal was permissible in that case only because there was complete diversity between the parties.

Furthermore, the forum defendant rule does not create a right to remove where there is none. Rather, it *prevents* removal in situations where complete diversity otherwise exists. Take Encompass as an example, with an Illinois plaintiff and a Pennsylvania defendant. Such a case undoubtedly possessed complete diversity of citizenship, yet the Third Circuit wrestled with whether to remand the matter to Pennsylvania state court. This was because the forum defendant rule blocks removal when there is diversity jurisdiction but the defendant "is a citizen of the State in which such action is brought." 28 U.S.C. §1441(b)(2). In Encompass, removal was allowed because the Pennsylvania forum defendant had not yet been "*properly joined and served.*"

Put simply, the forum defendant rule has a well-established purpose which does not override the jurisdictional requirements of 28 U.S.C. §1332(a). Otherwise, jurisdiction would hinge merely on a race to notice removal before all defendants are served. Such an absurd result would revolutionize subject matter jurisdiction in the federal courts.

After the issuance of the July 2020 decision in Dillard, three other judges in the District of New Jersey rendered opinions which disagreed with Judge Hillman's reasoning. Then, on March 22, 2021, Judge Hillman reconsidered his July 2020 opinion and remanded the Dillard case to state court due to lack of subject matter jurisdiction. Dillard v. TD Bank, N.A., No. 1:20-cv-07886-NLH-JS, 2021 U.S. Dist. LEXIS 53192 (D.N.J. Mar. 22, 2021).

In practice, this means that if a defendant were to "snap remove" a case under the forum defendant rule when complete diversity of citizenship is lacking, the matter will be remanded. In light of the numerous judges that have now spoken on this issue, any similarly noticed "snap removals" may also result in the imposition of attorney fees, which can be recovered under 28 U.S.C. §1447(c). When all signs point against removing a case, a defendant should carefully consider whether being in federal court is really that important.

Mark Scirocco is a partner at Scirocco Law PC in Morristown, NJ.

VIRTUAL TRIAL / MAY 10-12

On May 10-May 12, 2021 I participated in a zoom trial in the mater of Amar v. Aguirre, v enued in Passaic County before the Hon Vicky Citrino. The trial was "all Virtual" with parties, witnesses and jury panel appearing remotely. A Consent order had been entered agreeing to an expedited trial in which liability was stipulated against the defendant, a damages cap of $35,000.00 and all expert reports to be submitted to the jury. Pursuant to pre-trial motions all references to the issue of liability were redacted from medical records and the accident report was not entered into evidence. Jury selection took place on 5/10, motions and charge conference was held 5/11 and trial commenced on 5/12. The opening statement by the plaintiff was brief, @10 minutes. My opening statement referenced photos of damage to the vehicles and to the course of treatment. Testimony was provided by the plaintiff, with both direct and cross being completed in @90 minutes. Significantly plaintiff had been involved in a subsequent accident in which the vehicle she had been a passenger suffered severe damage. Closing statements were provided by each party. My closing statement emphasized the defenses reports which were presented to the jury via screen sharing. The plaintiff did not utilize screen sharing at any time during the trial. The jury charge was given prior to a 30 minute lunch break after which time the jury deliberated for @30 minutes before finding that plaintiff's injuries were causally related to the accident but were not permanent in nature. I would strongly recommend entering into agreements to proceed on an expedited basis and that documents provided to the jury be as streamlined as possible. I was able to utilize records that plaintiff's counsel had included in their submission by sharing those relevant portions with the jury.

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VIRTUAL TRIAL / APRIL 26-27

I tried a virtual case in Union County from April 26 through April 27, 2020. Captioned Mayorga v. GEICO, UNN-L-2854-17, before the Honorable Thomas Walsh. Trying the case for the plaintiff was Jonathan Holtz from Bramnick Rodriguez and trying the case for the defense was myself, William J. Raulerson, and Amanda Dadiego. It was a UIM verbal threshold matter where liability was stipulated. Proceeded on damages only. Plaintiff, 64 at the time of the accident, claimed four cervical bulges and two lumbar bulges. Treatment included a series of three lumbar epidural injections and two lumbar facet injections. Moderate property damage, no immediate treatment, last date of treatment in November 2016. Both experts, Ningning He for the plaintiff and Michael Bercik for the defense, were on videotape and played for the jury. All attorneys, witnesses, and jurors were remote. Two Spanish interpreters were utilized. Jury selection occurred the morning of April 26 and the case was tried in its entirety on April 27, 2020. 7 jurors returned a unanimous verdict of no cause. There were no technical glitches.

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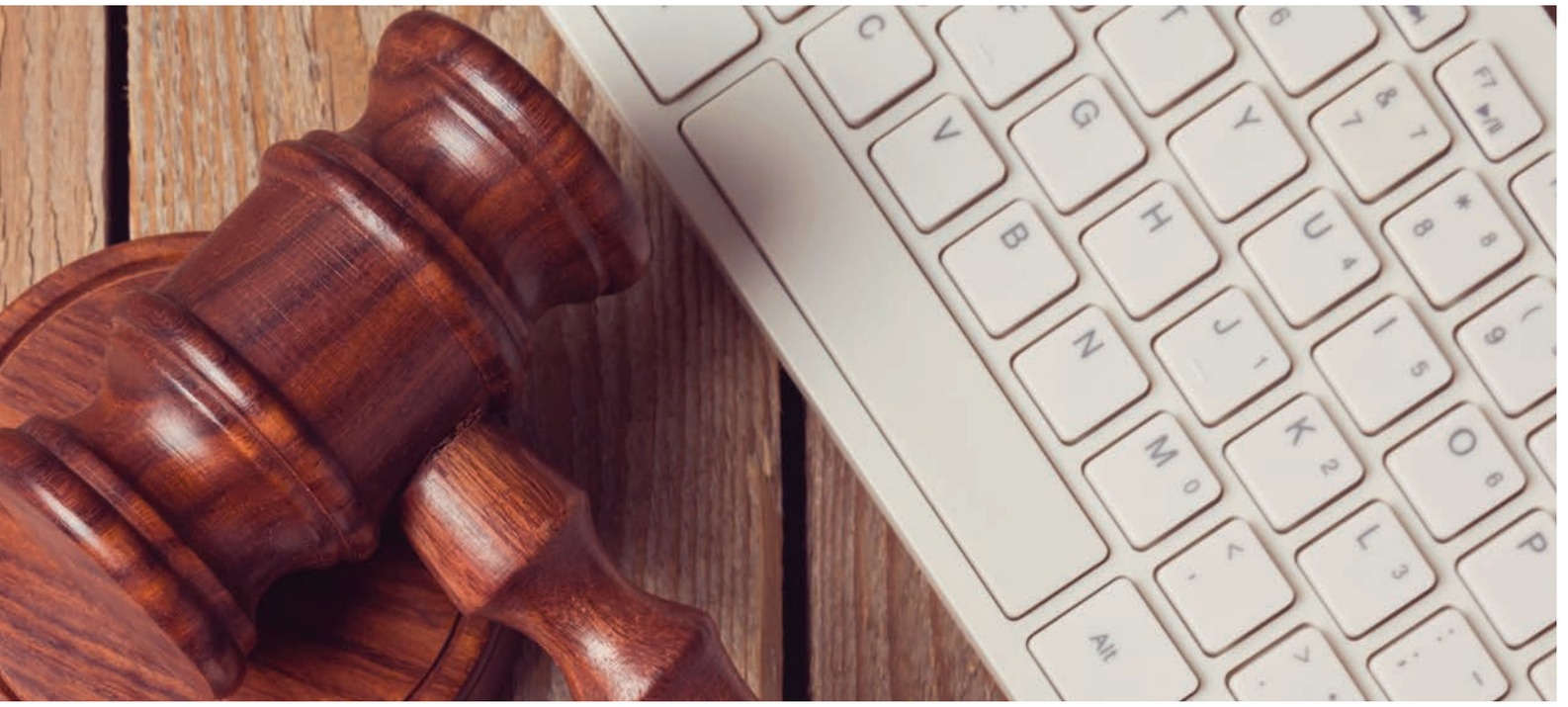
VIRTUAL TRIAL

In Bergen County's first virtual civil jury trial, Thomas Zuppa, Jr., of Chasan Lamparello Mallon & Cappuzzo, PC, obtained a no cause verdict in New Jersey Superior Court, Bergen County, successfully defending a driver insured by New Jersey Manufacturers Insurance Company. The matter of Sturm v. NJM was tried before the Honorable Walter F. Skrod, J.S.C., and involved a hit-and-run motor vehicle accident in which the tortfeasor was alleged to be uninsured. Liability was not disputed. As a result of the accident, plaintiff claimed permanent injuries to her neck and back. On cross-examination of the plaintiff and the plaintiff's medical expert, Tom highlighted the degenerative nature of the plaintiff's condition to show that the injuries were not causally related to the accident or permanent. The jury agreed that the plaintiff did not sustain her burden of proving a permanent



injury causally related to the accident, as required by law. The claim against the Firm's client was dismissed.

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VIRTUAL TRIAL

I won a defense verdict in in Eileen Ervin v. Archana Parikh, BUR-L-2152-19. Burlington County's first fully virtual jury trial presided over by Judge Aimee Belgard. The jury, participating in the trial from their homes via Zoom, returned with a "no cause" defense verdict in a verbal-threshold auto accident case.

The plaintiff alleged that as a result of the rear-end car accident she suffered permanent injuries to her back; in particular, multiple herniated lumbar discs and lumbar radiculopathy. She underwent a course of physical therapy for a year, was supervised by a pain management facility, and received nerve blocks and lumbar epidural injections. She testified at trial that she is still suffering from daily pain and discomfort in her back that she had never experienced prior to the accident.

The defense relied on an expert radiologist who reviewed the plaintiff's cervical MRI scans and offered the opinion that there was no imaging evidence of a traumatically induced lumbar disc herniation, but rather the pathology in her lumbar spine was degenerative in nature. The defense also offered evidence that the plaintiff had been injured in a car accident one year prior to the accident in question, which supported the argument that she had preexisting degeneration in her spine. Ultimately, the jury found that the defendant's admitted negligence was not the proximate cause of a permanent injury to the plaintiff, and she was not awarded damages.

The arbitration award was $46,000 and the offer of judgment was for $20,000.

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DEFENSE VERDICT IN VIRTUAL CIVIL JURY TRIAL — CAMDEN COUNTY

On April 14, 2021, a Camden County jury returned a defense verdict following an eight-day virtual trial in Paladino v. Auletto Enterprises, Inc. t/a Auletto Caterers. The trial judge was Michael J. Kassel. Plaintiff contended that a single step on defendant's premises was a dangerous condition and caused her to fall. Plaintiff alleged injuries to her left knee and low back. Plaintiff underwent arthroscopic left knee surgery, left knee replacement surgery and epidural and branch block injections in her back. Plaintiff sought damages for past and future medical expenses/surgeries, pain and suffering, disability, impairment and loss of enjoyment of life.

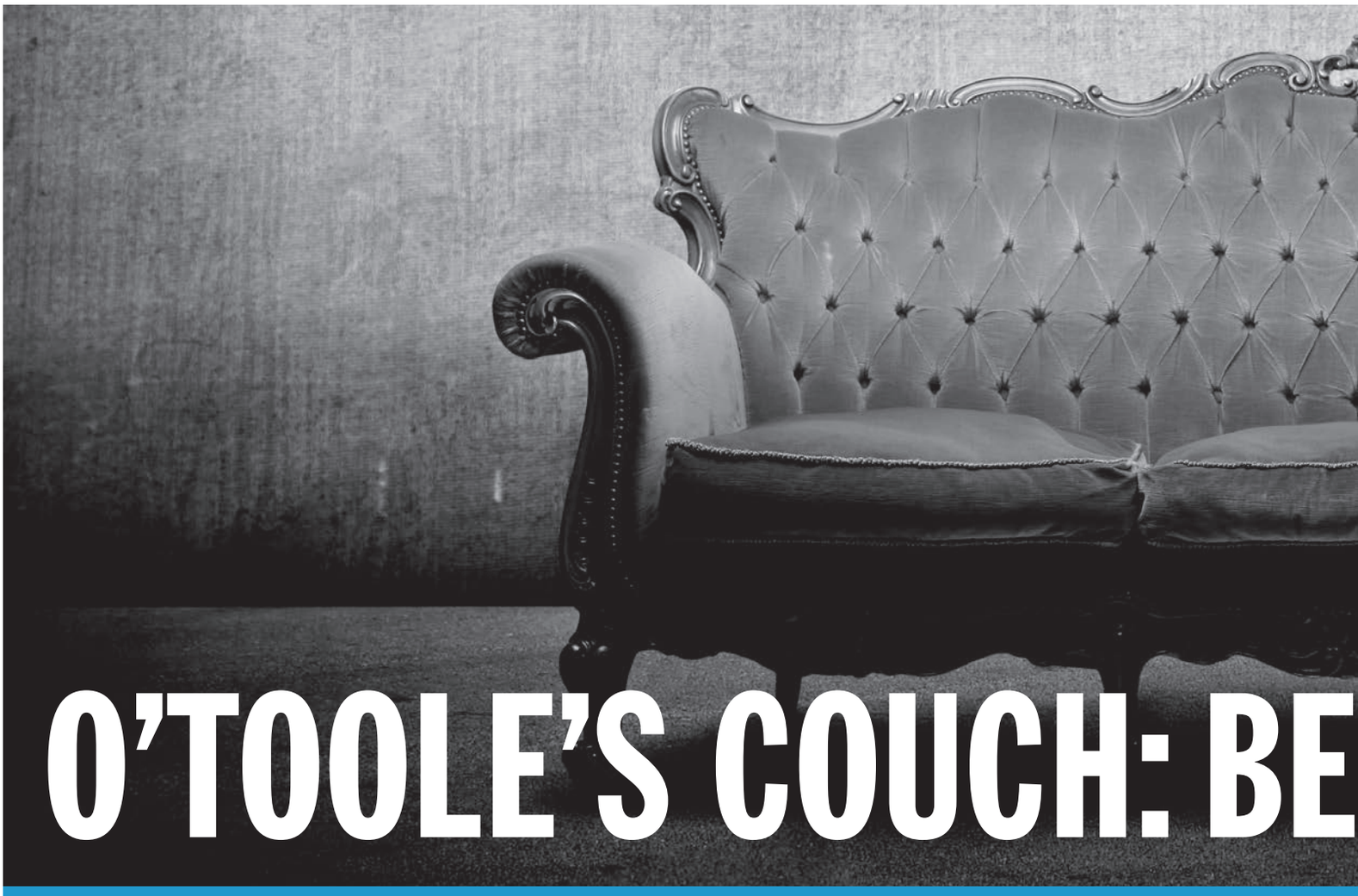
Plaintiff called a liability expert (engineer) and two medical experts (knee and back) to testify, as well as witnesses regarding plaintiff's pain and suffering. Plaintiff's liability expert opined that the single step was a dangerous condition and pointed out that security camera footage showed two other guests who appeared to stumble on the same step. Plaintiff's medical experts opined that the fall caused her knee and back injuries and that she will require a future knee replacement surgery and one or two future back surgeries.

The defense was able to rebut plaintiff's theories of liability through the testimony of plaintiff and certain fact witnesses, which included no evidence of prior falls on the step, credibility issues with plaintiff's liability expert and plaintiff not paying attention to her surroundings moments before her fall. With respect to damages, through cross-examination of plaintiff's fact and expert witnesses, the defense was able to raise credibility issues and demonstrate that plaintiff had some unrelated pre and post-accident conditions, which undermined some of her damages claims.

The jury returned a defense verdict finding that defendant was not negligent. The trial attorneys were Joseph Tomaino and Brittany Barbet from Landman Corsi Ballaine & Ford P.C.

DEFENSE WINS

In **Yagnik v. Premium Outlet Partners**, in which the Association was represented by member Anthony Cocca, the Appellate Division held that the Affidavit of Merit ("AOM") statute's filing deadline runs from the date when the licensed professional files its answer, regardless of whether the pleadings are subsequently amended to name other defendants or assert additional claims. The Court also recognized that the statutory deadline is subject to long-established exceptions for substantial compliance and extraordinary circumstances. Although the Appellate Division affirmed the trial court's determination to permit an otherwise untimely Affidavit, it did so based upon the extraordinary circumstances exception rather on the trial court's determination to run the time for filing from the date when all pleadings as to all parties were filed. In doing so, the appellate court settled an unanswered question presented by a hodge-podge of non-binding trial and federal court opinions holding that the time-period began when all pleadings were filed. The decision is groundbreaking and highly favorable to defendants facing professional negligence claims.



O'TOOLE'S COUCH: BE

Our family has had a love affair with the Jersey Shore our entire lives, renting bungalows in Brielle, Sea Girt, Spring Lake, Point Pleasant and, most especially Manasquan. Here my parents ultimately bought a bungalow in 1974; a wonderful vacation spot for their children and grandchildren. Fast forward to 2001, when Sunny and I also bought a beachfront bungalow in Manasquan, a dream come true.

As time passed, and beach erosion became a subject of concern, frequent conversations with neighbors across the street suggested that at some point our house could be gone and their houses would become beachfront. Sounds good for them until the erosion continues, and the damage to their land is next.

Following the actual destruction of beachfront property caused by Hurricane Sandy in 2012, we were relieved to discover that our property has a submerged bulkhead deep in the ocean that diverted the water away from our house and to the homes on either side of us. Additionally, some other beachfront homes were spared due to the rock wall jetties that also exist along the Manasquan beaches.

After the hurricane, Sunny and I attended a Beachfront Homeowners' Association meeting led by a representative of the Department of Environmental Protection, where the subjects of beach erosion and beach replenishment were discussed at great length. The DEP suggested building large dunes with stairs leading up and over them. The attending professionals had differing opinions, but all seemed to be in agreement that Global Warming was a dominant contributor to the erosion. The Army Corp of Engineers was represented and outlined a plan to resolve this problem in several beach municipalities. As you might imagine, all of these projects were extremely expensive and would take years to accomplish. The point was made that the longer the work was delayed, the more expensive the bottom line would be. Global Warming is a scientific fact and we can no longer bury our heads in the sand (no pun intended.)

After much discussion, a vote was taken by the beachfront homeowners in attendance.

ACHFRONT PROPERTY

Of the nearly 75 people present, only 5 (including us) were initially in favor of the dunes and accompanying stairways. In our opinion, blocking peoples' oceanfront views should not be of the utmost concern. However, no one could ensure us that another hurricane wouldn't result in these large stairways being destroyed and ending up contributing to the destruction of our homes. The questions are many; the answers are yet to be found!

Fast forwarding to 2021, it is amazing how much new construction has taken place. Manasquan requires that such construction must include pilings to elevate the houses. The need for such pilings is determined by the dollar amount and percentage of construction being undertaken. Nearly all neighboring properties have become tear-downs with total new construction, and obviously built on pilings. (When the digging for the pilings takes place, it feels and sounds like an earthquake.) The bungalows have been replaced with three-story beach homes, most with elaborate patios and balconies; some with inground pools.)
I, however, still remember the olden days when all the homes were one story bungalows with shuttered windows and one small bathroom. (Thank goodness for outdoor showers!) The local bar and restaurant, Leggett's, used to be called The Sand Bar, and The Osprey was only half its present size. Time marches on, but we still enjoy those memories.

Certainly, Manasquan has become a high-end, much desired area, like so much of the Jersey Shore. This situation was reinforced by the pandemic. People were not travelling and were looking for local vacation spots. All Jersey shore properties, including Manasquan, are put on the market and have bidding wars, selling over asking price.

I have no choice but to strongly recommend you and your families enjoy the beautiful Jersey Shore whenever possible, and devote some time to fishing for striped bass and drinking a cold Guinness, while taking in the beautiful views. Best wishes from Manasquan!

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SEPTEMBER 17, 2021

PRODUCTS LIABILITY COMMITTEE SEMINAR
Location to be announced
8:30 a.m. – 1:00 p.m.

NOVEMBER 11, 2021

12TH ANNUAL WOMEN AND THE LAW
APA Hotel Woodbridge
8:30 a.m. – 1:00 p.m.

NOVEMBER 24, 2021

NJDA/ICNJ AUTO LIABILITY SEMINAR
APA Hotel Woodbridge
8:30 a.m. – 1:00 p.m.

DECEMBER 10, 2021

2021 CIVIL TRIAL SEMINAR
9:00 a.m. – 12:30 p.m.
Webinar by Zoom

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