

The Legal Intelligencer

PHILADELPHIA, WEDNESDAY, NOVEMBER 2, 2016

LEGAL & LITIGATION DEPARTMENTS OF THE YEAR



Photo by Nanette Kardaszkeski

Appellate group, standing: Audrey L. Copeland, Thomas A. Specht, Thomas A. Brophy, president and CEO, Carol A. VanderWoude, Shane Haselbarth and Kimberly Boyer-Cohen.

Seated: John J. Hare, chair, appellate advocacy and post-trial practice group, Christopher E. Dougherty, chairman, board of directors and director, professional liability department, and Teresa Ficken Sachs, vice-chair, appellate advocacy and post-trial practice group.

Marshall Dennehey

WINNER, APPELLATE AND
PROFESSIONAL LIABILITY

READY TO ROLL

MARSHALL DENNEHEY PUTS CLIENTS' NEEDS FIRST

BY BEN SEAL

Of the Legal Staff

On an early October afternoon, Teresa Ficken Sachs was running to an emergency hearing at City Hall on just a few



Photo by Nanette Kardaszkeski

Professional Liability group, Standing: Arthur W. Lefco, Daniel J. Sherry, Joan Orsini Ford and Dennis J. Roman.

Seated: Christopher E. Dougherty, chairman, board of directors and director, professional liability department, Eric A. Fitzgerald, assistant director, professional liability department, Robin B. Snyder, William L. Banton Jr., assistant director, health care department, and T. Kevin Fitzpatrick, director, health care department.

minutes' notice. She'd been working with the trial team from the start, monitoring the case as appellate counsel, and her presence was needed—and soon.

It was just the type of quick response clients have come to expect from Sachs and her colleagues in Marshall Dennehey Warner Coleman & Goggin's appellate department. John

Hare, the practice's chair, said the group prides itself on “availability and responsiveness.”

The appellate team, which includes seven full-time lawyers in Pennsylvania, functions as a sort of in-house legal department for the rest of the firm, working with lawyers from across

its practice areas to protect and develop issues for the next stage of litigation.

Daniel J. Sherry, vice chair of Marshall Dennehey's health care liability practice, said the appellate team benefits everyone in the firm.

“I can't tell you how many times I've



called John in the middle of the night to get his advice on something,” Sherry said.

Hare, Sachs and their group specialize in more than just internal work. The practice is distinguished, Hare said, by the assistance it offers to trial lawyers beyond the firm’s walls. Roughly one-third of its work comes from outside lawyers who ask Marshall Dennehey to ride along through trial, sometimes arguing motions, sometimes taking a behind-the-scenes role, away from counsel table, carefully preparing the appellate record.

In the past two years, the approach has led the firm to victories spanning all of Pennsylvania’s appellate courts.

Before the U.S. Court of Appeals for the Third Circuit, special counsel Kimberly Boyer-Cohen successfully argued in *Munroe v. Central Bucks School District* that a school district did not violate the First Amendment rights of a teacher when it fired her for criticizing her students on social media.

At the Pennsylvania Supreme Court, in *Patton v. Worthington*

Associates, Hare and Boyer-Cohen won the reversal of a lower court’s ruling in a decision that upheld the century-old statutory employer defense for general contractors sued over injuries to subcontractors’ employees. Hare, along with Carol VanderWoude, also secured a ruling from the justices in *Sellers v. Township of Abington* that held police owe no duty to unknown passengers in a fleeing vehicle, and Sachs received clarification from the court in *Green v. Pennsylvania Hospital* that a nurse cannot provide expert testimony on patient care when both doctors and nurses were involved in the treatment.

A Superior Court case, *Nelson v. American Standard*, which tossed a \$14.5 million asbestos verdict based on the erroneous admission of expert testimony and prejudicial statements by opposing counsel, showed why outside firms turn to Marshall Dennehey. Hare was actively involved in the trial, during which his client correctly suspected a big result was coming. He was able to get it thrown out

on appeal by preserving the right issues, erasing the heavy damage.

Those are the times when the appellate team is at its best, protecting corporate clients in the “high-exposure environment” of Philadelphia, Hare said.

For Sherry and the rest of Marshall Dennehey’s professional liability practice, the risks are almost always high. He’s been with the firm more than 42 years, and said it takes proper communication from the start to get physicians, hospital administrators and insurers all on board with the approach to a case. The firm also focuses on getting the right experts involved from the “earliest possible point” and seeking their guidance, he said.

Arthur Lefco, senior counsel at the firm, has the fate of lawyers, accountants and corporate officers in his hands as they face litigation that puts them in precarious positions.

“It’s bad emotionally, it’s bad psychologically, and it might be bad financially, so we take quite seriously the weight of what we’re doing here,” Lefco said.

The group's focused approach is evident in its results. In 2014 and 2015, the professional liability practice resolved 3,337 matters in Pennsylvania, according to the firm, including 785 cases involving claims against licensed professionals.

The firm resolves many of its cases through mediation, but it doesn't shy away from going to trial. Three-quarters of the 105 trials it handled in the past two years involving licensed professionals resulted in dismissal or a defense verdict, the firm said.

Those trials included Lefco's defense of Reed Smith against claims from automobile dealerships alleging the firm failed to preserve their claims against a third party following a \$7 million fraud allegedly perpetrated by their chief financial officer. The plaintiffs alleged Reed Smith's mistake came during the negotiation of loan workout documents with their bank, and that they stood to recover nearly \$20 million in damages from the missed opportunity. Lefco said trying *Brandow Chrysler Jeep v. Reed Smith*,

despite the "extortionate demand," was "very gratifying." It was the type of long-lasting litigation that is Marshall Dennehey's specialty.

"These cases don't get resolved in a year or two," Lefco said, and not many firms have the heft to handle such matters. But Marshall Dennehey doesn't have the labor or corporate departments that divert other firms' attention, he said. More than half its Pennsylvania attorneys—156 of them—litigate professional liability matters, the firm said.

Over the past two years that's included Stephen Ryan's successful defense of York Hospital, which had faced claims of ostensible agency regarding a pediatric ophthalmologist's alleged failure to properly treat the eyes of a child who went blind. Ryan navigated around the ophthalmologist's interest in admitting liability to secure a finding of no causation, keeping the hospital in the clear.

Joan Orsini Ford achieved a defense verdict after a four-week trial in *Scott v. Lower Bucks Hospital*, a birth injury case that

had involved a \$50 million demand and projected life care costs of \$148 million.

Lefco said the firm's comfort with the risks of trial is an important part of its success.

"We're confident when we go to trial, if necessary, that the lawyers from this firm will be fully prepared, will have the requisite level of experience, and will have the necessary support to maximize the chances of success," he said.

Whether it's the professional liability group or the appellate department, the firm's attorneys are ready to be there for whatever clients need.

"They don't have to hesitate if they have something that is emergent," Sachs said.

And then she hurried off to court to prove it. •