

## ROBERT J. FITZGERALD

SHAREHOLDER



### AREAS OF PRACTICE

Workers' Compensation

### CONTACT INFO

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Mount Laurel, NJ 08054

### ADMISSIONS

New Jersey  
2000

Pennsylvania  
2000

U.S. District Court Eastern District  
of Pennsylvania  
2000

U.S. District Court District of New  
Jersey  
2000

### EDUCATION

Widener University School of Law  
(J.D., 2000)

Temple University (B.A., 1994)

### OVERVIEW

Bob is the managing attorney of the Workers' Compensation Department in the firm's Mount Laurel office. He devotes his entire practice to workers' compensation defense litigation, providing experienced counsel to employers and insurance carriers. Bob has represented employers in many industries, including retail services, hospitals and health care, banking, construction, manufacturing and distribution. Through his extensive litigation experience and educational offerings, Bob has helped clients achieve significant monetary savings and reduce their workers' compensation expenditures.

Bob works in tandem with his clients to develop risk management and litigation strategies that best suit their business needs and goals. He stays abreast of current trends, and frequently authors articles and conducts seminars on issues impacting workers' compensation in New Jersey. Bob is a regular contributor to the firm's quarterly newsletter, *Defense Digest*, and the New Jersey Defense Association publications, and is a frequent presenter for our monthly What's Hot in Workers' Comp Live webinar.

Bob is admitted to practice in New Jersey and Pennsylvania, as well as the U.S. District Courts for New Jersey and the Eastern District of Pennsylvania. He earned his *juris doctor* from Widener University School of Law, where he was a member of Phi Delta Phi, Honor Chapter. Bob is an active member of the New Jersey Self Insurers' Association, New Jersey Defense Association and New Jersey State Bar Association.

### HONORS & AWARDS

New Jersey Super Lawyer Rising  
Star  
2006-2007, 2010

*The Super Lawyers list is issued by Thomson Reuters. A description of the selection methodology can be found [here](#). No aspect of this advertisement has been approved by the Supreme Court of New Jersey.*

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## ASSOCIATIONS & MEMBERSHIPS

New Jersey Defense Association

New Jersey Self Insurers' Association

New Jersey State Bar Association

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## YEAR JOINED

2001

## THOUGHT LEADERSHIP

### **Lack of Insurance Coverage Does Not Defeat Workers' Compensation Bar for New Jersey Workers' Compensation Intentional Injury Claim**

**Mount Laurel  
Workers' Compensation  
March 1, 2024**

Key Points: Defense Digest, Vol. 30, No.

### **New Jersey Supreme Court Holds That in a Civil Action, the Jury, Not the Judge, Decides the Issue of Whether There Is a Special Employee Relationship**

**Mount Laurel  
Workers' Compensation  
September 1, 2023**

Key Points:

### **Penalties, Sanctions and Other Bad Employer Words**

**Mount Laurel  
Workers' Compensation  
October 1, 2022**

Defense Digest, Vol. 28, No.

### **I've Got Your Papers Right Here! New Jersey Appellate Division Reverses Extending Workers' Compensation Coverage to Owner Based on Alleged Producer and Carrier Errors**

**Mount Laurel  
Workers' Compensation  
April 1, 2022**

Key Points: Defense Digest, Vol. 28, No. 1, April 2022 is prepared by Marshall Dennehey Warner Coleman & Goggin to provide information on recent legal developments of interest to our readers.

### **New Jersey Workers' Compensation and Property Leases. Two Greats Tastes That Don't Taste Great Together**

**Mount Laurel  
Workers' Compensation  
December 1, 2021**

Key Points: Defense Digest, Vol. 27, No. 5, December 2021 is prepared by Marshall Dennehey Warner Coleman & Goggin to provide information on recent legal developments of interest to our readers.

## CLASSES/SEMINARS TAUGHT

*Open Mic: Ask the Experts*, New Jersey Self Insurers' Association Annual Conference, April 24, 2024

*A State-By-State Guide to Avoiding Attorneys' Fees and Sanctions*, Marshall Dennehey Workers' Compensation Seminar, October 27, 2022

*Workers' Compensation Winter Roundup*, Graham Company webinar, December 15, 2020

*Setting the Strategy Stage: When to Deny and Fight a Workers' Compensation Claim*, Marshall Dennehey webinar, October 30, 2020

*The Intersection of Workers' Compensation and Health Care*, Marshall Dennehey Workers' Compensation Seminar, October 24, 2019

*What Do You Want From Your Defense Attorney*, Marshall Dennehey Workers' Compensation Seminar, October 25, 2018

*Ingredients for Successfully Defending Claims for Work Injuries at Home*, Marshall Dennehey Workers' Compensation Seminar, October 19, 2017

*Do's and Don'ts of Fact Witnesses*, Marshall Dennehey Workers' Compensation Seminar, October 27, 2016

*Put Me In Coach: Top 10 Opportunities in Claims and Litigation Management*, Marshall Dennehey Workers' Compensation Seminar, October 22, 2015

*Social Media Update*, Marshall Dennehey Workers' Compensation Seminar, October 30, 2014

*IMEs: How They Really Work*, Roadmap to Success - Understanding Workers' Compensation, Marshall Dennehey seminar, October 24, 2013

*Workers' Compensation Law Update*, Insurance Society of Philadelphia, February 15, 2013; January 27, 2012; April 20, 2011; March 2010

*Psych Injuries and How They Relate to Banks, How and When to Settle a Case, and Dissecting Medical Records*, Client Seminar, May 2010

*Recent Changes in the New Jersey Workers' Compensation Act*, Client Seminar, October 2008

## PUBLISHED WORKS

"New Jersey Supreme Court Holds That in a Civil Action, the Jury, Not the Judge, Decides the Issue of Whether There Is a Special Employee Relationship," *Defense Digest*, Vol. 29, No. 3, September 2023

"Penalties, Sanctions and Other Bad Employee Words," *Defense Digest*, Vol. 28, No. 3, October 2022

"I've Got Your Papers Right Here! New Jersey Appellate Division Reverses Extending Workers' Compensation to Owner Based on Alleged Producer and Carrier Errors," *Defense Digest*, Vol. 28, No. 1, April 2022

"New Jersey Workers' Compensation and Property Leases. Two Greats Tastes That Don't Taste Great Together," *Defense Digest*, Vol. 27, No. 5, December 2021

"Better Not Be Late! Workers' Compensation Occupational Exposure Claims and the Statute of Limitations," *Defense Digest*, Vol. 27, No. 2, March 2021

"New Jersey Supreme Court Once Again Affirms Employers' Subrogation Rights," *Defense Digest*, Vol. 26, No. 3, September 2020

"Workers' Comp Update: The NJ Supreme Court One Again Affirms an Employers' Subrogation Rights," *New Jersey Defense Magazine*, July 2020

"The Appellate Division Beats Back Another Challenge to the Intentional Injury Exception of the New Jersey Workers' Compensation Statute," *Defense Digest*, Vol. 25, No. 3, September 2019

"New Jersey Workers' Compensation Section 40 Subrogation Provisions Beat Back a Challenge by the Motor Vehicle Insurance Verbal Threshold," *Defense Digest*, Vol. 25, No. 1, March 2019

"Dot Your I's and Cross Your T's. Insurance Coverage Cancellation Must Be Done Right in New

Jersey Workers' Compensation," *Defense Digest*, December 2018, Vol. 24, No. 4

"Bifurcation, Compensability and Other Confusing Things in New Jersey Workers' Compensation," *Defense Digest*, Vol. 24, No. 3, September 2018

"Burdens of Proof and the New Jersey Workers' Compensation Second Injury Fund," *Defense Digest*, Vol. 23, No. 2, June 2017; *New Jersey Defense Association Newsletter*, Spring 2018

"Workers' Compensation Liens Rule!!! The Appellate Division Fends Off Another Challenge to Section 40 of New Jersey's Worker's Compensation Statute," *Defense Digest*, Vol. 22, No. 4, December 2016

"What Did You Know and When? The Latest Analysis of the "Discovery Rule" Exception to the Statute of Limitations Defense," *Defense Digest*, Vol. 22, No. 3, September 2016

"More Than 100% Disabled? The New Jersey Appellate Division's Latest Analysis of Permanent/Total Disability Benefit Awards," *Defense Digest*, Vol. 22, No. 1, March 2016 and *New Jersey Defense Association Newsletter*, Spring 2016

"Appellate Division Approves, but Limits, Sanctions in New Jersey Workers' Compensation Proceedings," *Defense Digest*, Vol. 21, No. 3, September 2015

"The Appellate Division Weakens Workers' Compensation Dismissal Orders," *Defense Digest*, Vol. 21, No. 1, March 2015

"Let It Snow! Let it Snow! Let It Snow! There Is No Bad Weather Exception to the Coming and Going Rule for NJ Workers' Compensation," *Defense Digest*, Vol. 20, No. 3, September 2014 and *New Jersey Defense Association Newsletter*, Fall 2015

"Not So Fast!!! The Court Reverses Dismissal of Unjust Enrichment Claim for Overpayment of Workers' Compensation Benefits," *Defense Digest*, Vol. 19, No. 4, December 2013

"Further Expansion of Governmental Immunity Exception to Workers' Compensation Section 40 Liens," *Defense Digest*, Vol. 19, No. 2, June 2013

"Exclusive Remedy Doctrine Of Workers' Compensation Act Is Reaffirmed," *New Jersey Law Journal*, October 26, 2012

"Look Out Below! Petitioner's Intentional Injury Claims Falls Short of Piercing the New Jersey Workers' Compensation Bar," *Defense Digest*, Vol. 18, No. 1, March 2012

"Once Again, There Is No Pain Or Suffering – Damages That Is – In New Jersey Workers' Compensation," *Defense Digest*, Vol. 17, No. 2, June 2011; *New Jersey Defense Association Newsletter*, Fall 2011

"Once Is Enough! When It Comes To Considering Evidence Of The Plaintiff's Intentional Injury By The Employer And Loss Of The Workers' Compensation Bar," *Defense Digest*, Vol. 16, No. 4, December 2010

"Life Is About Choices – So Too Is New Jersey Workers' Compensation Law When Addressing An Employer's Section 40 Lien Against A Pennsylvania Motor Vehicle Insurance Policy," *Defense Digest*, Vol. 16, No. 1, March 2010; *New Jersey Self-Insurers Association Newsletter*, August 2010

"My Boss Made Me Do It! The Appellate Division Examines the Compensability of Injuries that Occur During Employer-Sponsored Social Events," *Defense Digest*, Vol. 15, No. 4, December 2009

"Strict Statutory Interpretation - New Jersey Supreme Court Affirms Determination Of Improper Cancellation of Workers' Compensation Insurance Coverage," *Defense Digest*, Vol. 15, No. 2, June 2009

"Liar! Liar! -- The Appellate Division Upholds The Imposition Of Penalties Under The Fraud Provisions Of The New Jersey Workers' Compensation Law," *Defense Digest*, Vol. 14, No. 4, December 2008

"Appellate Division Affirms Determination Of Improper Workers' Compensation Insurance Cancellation, Despite Carrier's Utilization Of State Insurance Bureau's Electronic Filing Procedures," *Defense Digest*, Vol. 14, No. 2, June 2008

"Exclusive Remedy Applies Despite Violation of Contract," *New Jersey Law Journal*, September 17, 2007

"Construction Company's Violation of Minority Business Contract Does Not Remove Protection of Exclusive Remedy Doctrine for Special Employer," *Defense Digest*, Vol. 13, No. 1, March 2007

"Actual Lost Income Must Be Shown," *New Jersey Law Journal*, December 11, 2006

"Last Call! The New Jersey Supreme Court Waters Down the Intoxication Defense in Workers' Compensation," *Defense Digest*, Vol. 12, No. 4, December 2006

"A Watered Down Intoxication Defense," *New Jersey Law Journal*, November 6, 2006

"Prove It! -- The Appellate Division Restates The Petitioner's Burden Of Proof For New Jersey Workers' Compensation Temporary Disability Benefits," *Defense Digest*, Vol. 12, No. 3, September 2006

"The Appellate Division Further Clarifies The Computation Of Weekly Wages Under The New Jersey Workers' Compensation Act," *Defense Digest*, Vol. 12, No. 1, March 2006

## RESULTS

### Medical provider claim petition dismissed, with prejudice.

#### **Workers' Compensation November 10, 2022**

The parties were litigating a motion for medical treatment in which a physician was recommending an additional spinal surgery. The physician moved forward without authorization and performed spinal surgery on the petitioner. In order to complete the surgery, the physician brought in several ancillary services, including a vendor to perform diagnostic monitoring during the surgery. Following the surgery, the medical provider submitted its bills to the carrier, which were rejected based upon the lack of authorization.

### Favorable decision in New Jersey workers' compensation matter.

#### **Workers' Compensation November 23, 2020**

The case involved a compensable claim for right hip and shoulder fractures sustained in a fall. At issue was the level of permanent disability for the compensable injuries and the relatedness of a subsequent hip replacement surgery. The petitioner's demand before trial was more than \$450,000, plus almost \$78,000 for medical expenses. The employer's final offer was \$180,000. After a three-day trial in Ocean County, the judge awarded permanency benefits totaling less than \$153,000.

### Workers' compensation defense verdict for a prominent health care system.

#### **Workers' Compensation May 18, 2020**

The petitioner filed a motion for additional medical and temporary disability benefits, essentially alleging she was permanently and totally disabled from prior compensable shoulder and leg injuries. After a three-day trial and extensive briefing, the judge dismissed the motion. He determined that, despite the compensable injuries, the petitioner had plateaued medically and was not entitled to any further benefits.

## SIGNIFICANT REPRESENTATIVE MATTERS

Successfully proved that client was not liable for any workers' compensation benefits for a quadriplegic who had a catastrophic fall at the respondent's quarry where the petitioner alleged the respondent was acting as a general contractor. *Daryl Hopkins v. Lehigh Hanson, et al.*, Claim Petition no. 2012-12762, et al., (JWC E. Cox, Jun 16, 2015)

Successfully proved that petitioner, a graduate student and teaching assistant, was not considered an employee of a university when he was performing research for his graduate degree.