

WALTER F. KAWALEC III

SHAREHOLDER



AREAS OF PRACTICE

Appellate Advocacy & Post-Trial Practice
Public Entity & Civil Rights Litigation
Insurance Services – Coverage & Bad Faith
Litigation

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ADMISSIONS

Pennsylvania
1998

U.S. Court of Appeals 3rd Circuit
1999

New Jersey
2002

U.S. Supreme Court
2002

U.S. District Court Eastern District
of Pennsylvania
2002

District Court District of New
Jersey
2002

U.S. Court of Appeals 4th Circuit
2017

EDUCATION

University of Pittsburgh School of
Law (J.D., cum laude, 1998)

Glassboro State College (B.A.,
1991)

OVERVIEW

Walt focuses the majority of his practice on post-trial appellate advocacy with particular emphasis in the areas of public entity liability and civil rights, insurance coverage/bad faith litigation and professional liability. He has handled several hundred appeals to date, many of which have been in representation of physicians and attorneys, in appeals connected with malpractice litigation.

In his capacity as an appellate attorney, Walt has developed extensive experience briefing and arguing cases before the Third Circuit Court of Appeals, the Supreme Courts of Pennsylvania and New Jersey, Pennsylvania's intermediate appellate courts, the Superior Court and Commonwealth Court, and New Jersey's intermediate court, the Appellate Division. As well, Walt has experience, thus far, up to the petition stage before the United States Supreme Court.

In addition to Walt's involvement in the appellate courts, he has also briefed and argued cases and motions before the Pennsylvania Board of Finance and Revenue, the Pennsylvania Courts of Common Pleas, and the New Jersey Superior Court Law Division.

Walt is a graduate of Glassboro State College and the University of Pittsburgh School of Law, where he earned his *juris doctor, cum laude*, in 1998. He was the recipient of the Dean's Scholarship for three years, first year moot court competition award for "Best Brief," and served as an officer in Phi Alpha Delta legal fraternity.

In 1999 Walt joined Marshall Dennehey as a member of the Appellate Group. Since that time, he has developed an proficiency in all aspects of appellate law, from legal research, brief writing and other written advocacy to oral argument, and appellate-level motion practice.

Walt's published opinions in New Jersey, Pennsylvania and the Third Circuit Court of Appeals have established and clarified important legal principles on subjects ranging from insurance coverage and remittitur, to informed consent claims in medical malpractice actions, and contributory negligence in accountant malpractice cases.

From 2002 to 2011, Walt also worked as the editor of *Defense Digest*—Marshall Dennehey's quarterly newsletter that updates our clients on important legal cases and issues of the day.

YEAR JOINED

1999

THOUGHT LEADERSHIP

Reconsidering Reconsideration

Mount Laurel

Appellate Advocacy & Post-Trial Practice

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.

Walters v. YMCA, Putting Some Limitations on *Stelluti v. Casapenn*

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Amusements, Sports & Recreation Liability

Appellate Advocacy & Post-Trial Practice

December 1, 2014

By Walter F. Kawalec, III, Esq.* Key Points: Defense Digest, Vol. 20, No. 4, December 2014

Qualified immunity is proper in civil suit if arresting officer had reasonable suspicion of crime, even if evidence of underlying event might suggest self-defense.

Public Entity & Civil Rights Litigation

Appellate Advocacy & Post-Trial Practice

July 1, 2012

This civil rights suit against an investigator for the Bethlehem Township Police Department stemmed from an incident in which the plaintiff was involved in a fight at a party, which resulted in the plaintiff stabbing three people and slashing a fo Case Law Alert - 3rd Qtr 2012

Safety First: The Third Circuit Finds Safety Concerns Trump Claim for Religious Accommodation in Employment

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Public Entity & Civil Rights Litigation

Appellate Advocacy & Post-Trial Practice

December 1, 2010

Federal - Civil Rights Key Points: Defense Digest, Vol. 16, No. 4, December 2010

PUBLISHED WORKS

"Reconsidering Reconsideration," *Defense Digest*, Vol. 27, No. 5, December 2021

"*Walters v. YMCA*, Putting Some Limitations on *Stelluti v. Casapenn*," *Defense Digest*, Vol. 20, No. 4, December 2014

"De Facto Appeals Eliminate Federal Jurisdiction," *Defense Digest*, Vol. 10, No. 4, 2004

"Pennsylvania Superior Court Rejects Request To Void Stacked Coverage," *Defense Digest*, Vol. 10, No. 3, 2004

"'Advertising Injury' in the Third Circuit: A Frog Switch and a Green Machine," *Defense Digest*, Vol. 9, No. 1, 2003

"An Injury Is Not An 'Injury' If The Pain Is Non-Compensable," *Defense Digest*, Vol. 8, No. 2, 2002

"Superior Court, S.I.R.'s and the Direct Action Statute: Contracts Rule, Penna. Bar Ass'n, Civil Litigation Newsletter," orig. published in the *Defense Digest*, 2002

"Pennsylvania Appellate News," *Defense Digest*, Vol. 7, No. 1, 2001

"Appellate Courts Refine Pennsylvania Settlement Law," *Defense Digest*, Vol. 6, No.1, 2000

"Pennsylvania Appellate News," *Defense Digest*, Vol. 5, No. 4, 1999

RESULTS

Summary Judgment Secured in a Racial and Sex-Based Discrimination Employment Case

Public Entity & Civil Rights Litigation
Appellate Advocacy & Post-Trial Practice
September 7, 2023

We obtained summary judgment in an employment litigation case involving claims of racial and sex-based discrimination. The plaintiff alleged that she experienced a hostile work environment based solely on her race. We were able to prove that there was no evidence to substantiate these claims.

Defense obtains a published New Jersey Appellate Division decision affirming that perception of having COVID-19 does not constitute perceived disability under NJLAD.

Appellate Advocacy & Post-Trial Practice
Employment Law
June 7, 2023

The New Jersey Appellate Division affirmed the dismissal our defense team obtained in a New Jersey Law Against Discrimination (NJLAD) perceived disability claim, alleging COVID-19 to be a disability under this statute. This employment discrimination claim involved a matter of first impression in New Jersey and established that COVID-19 infection, without more, does not constitute a disability under the NJLAD.

Appellate court pivots; motion to dismiss granted.

Appellate Advocacy & Post-Trial Practice
General Liability
December 12, 2022

We obtained a published decision in the New Jersey Appellate Division reversing the denial of a motion to dismiss because of a lack of duty. The plaintiff's ex-husband drove through the gate at a large, high-rise apartment complex, waited for plaintiff to arrive, and then shot her in the face. Our client was the former management company which ceased its management obligations 17 days before the shooting, when a successor management company took over. The plaintiff argued that our client was negligent based on procedures for securing the lot it put in place when it managed the property.

Confirmation for obtaining the grant of summary judgement in a premises liability case.

Premises & Retail Liability
Appellate Advocacy & Post-Trial Practice
August 13, 2021

Our defense team successfully obtained an affirmance of the grant of summary judgment in a premises liability case. The plaintiff asserted he tripped and fell in our client's supermarket and that the fall exacerbated his epilepsy. The discovery period ended without the plaintiff producing an expert opinion that causally connected the medical complaints to the fall. The plaintiff claimed that his treatment for cancer caused his inability to be timely examined and to obtain an expert opinion.

New Jersey Appellate Division affirms dismissal of plaintiff's gender discrimination and workers' comp retaliation claims.

Public Entity & Civil Rights Litigation
Appellate Advocacy & Post-Trial Practice
August 13, 2021

Our defense team was successful before the New Jersey Appellate Division. The plaintiff is a former employee of a non-profit agency that provides services to disabled individuals. She filed suit against her former employer and its manager, alleging gender discrimination and retaliation for filing a workers' compensation claim. As discovery progressed, thousands of pages of discovery were exchanged, which demonstrated that legitimate, long-standing performance deficiencies were the actual basis for her termination.

SIGNIFICANT REPRESENTATIVE MATTERS

Obtained summary judgment on behalf of an obstetrician in a medical malpractice action. The plaintiff alleged that our client did not obtain the requisite informed consent from our client to undergo a trial of labor after having two prior cesarean section deliveries ("TOLAC x2"). The court found that the plaintiff's lack of informed consent claim was without foundation as she had an awareness of the risks of TOLAC x2. Rather, the court found that her claim was premised on the assertion that the physician performing the TOLAC x2 failed to convert the TOLAC to a C-section quickly enough when complications arose. The court held that as matter of law our client had no obligation to discuss the risk that the doctor in the delivery room may wait too long to pivot to a C-section, which was the actual cause of the plaintiff's alleged harm.

Successfully defended a grant of summary judgment in the New Jersey Appellate Division that resulted in a published opinion. Our clients were the owner and manager of an apartment complex for seniors. The plaintiff resident had returned from walking her dog and alleged she received injuries entering the elevator. She had allowed the dog to enter first, when the doors began to close. She alleged injuries occurring when the right door struck her arm, and when she used her left arm and left side of her body to slow the doors from closing while she leapt into the elevator. She sued our clients and the company hired to maintain the elevator, but was unable to establish any proof of negligence. The trial judge dismissed the case, declining to apply the doctrine of *res ipsa loquitur*, in part, because the plaintiff could not establish the third element of the doctrine: that the injury did not result from the plaintiff's own voluntary act or neglect. On appeal, the plaintiff argued that the Appellate Division should eliminate this third element. The Appellate Division, in a published opinion, concluded that the third element is a well-established law in New Jersey and only the New Jersey Supreme Court could eliminate it, and that court has shown no inclination to do so. Because the plaintiff could not demonstrate the third prong, *res ipsa* was not applicable and the failure of the plaintiff to establish negligence resulted in summary judgment in the defendants' favor.

Successfully argued to the New Jersey Supreme Court that the grant of a new trial by the Appellate Division in medical malpractice action was erroneous, as the plaintiff failed to object to the matter at trial and could not establish plain error.

Successfully argued to the US District Court and Third Circuit Court of Appeals that a municipalities decision close a property to the public during the removal of a significant amount of buried military ordinance did not constitute a constitutional violation or takings.

Successfully argued that the represented municipality enacted a valid regulatory ordinance and not an improper licensing ordinance notwithstanding the use of the term "license" in the ordinance.

Successfully briefed arbitration argument and achieved a defense result in multi-million dollar binding arbitration in construction defect case.

Successfully persuaded the Appellate Division to reinstate multi-million dollar complaint dismissed in the Law Division.

Successfully argued for the reversal of a dismissal of the insurance carrier's fraud complaint, which clarified the operation of the entire controversy doctrine in New Jersey.

Successfully argued that a minor deviation on the form for rejecting the stacked limits for UIM coverage was not enough to vitiate the policy-holder's rejection of stacked coverage.

Successfully argued that a trial court committed reversible error when, after the Appellate Division found the verdict to be excessive and remanded the case for remittitur, remitted the verdict by one cent.

Successfully argued that parties who were found guilty of criminal tax evasion were estopped from denying their contributory negligence in a civil suit against their accountant, stemming from the preparation of those income tax returns.

Successfully argued that the term "advertising injury" in policy was limited to claims arising out of the misappropriation of advertising ideas or style of doing business.

Successfully argued that a plaintiff who was successful against a carrier's policyholder has no claim against the carrier for the amount of the self-insured retention of the policyholder.

REPRESENTATIVE CASES

T.L. v. Goldberg, N.J., A-11-18 (N.J. 2019)

Cona v. Tp. of Wash., 456 N.J. Super. 197, 201 (N.J. App. Div. 2018)

Estate of Brust v. ACF Industries, LLC, 443 N.J. Super. 103 (N.J. App. Div. 2015)

Bermudez v. Kessler Institute for Rehabilitation, 439 N.J. Super. 45 (N.J. App. Div. 2015)

Nat'l Amusements, Inc. v. Borough of Palmyra, 716 F.3d 57 (3d Cir. 2013)

Manahawkin Convalescent v. O'Neill, 217 N.J. 99 (N.J. 2014)

EEOC v. Geo Group, Inc., 616 F.3d 265 (3rd Cir. 2010)

Biber Partnership, P.C. v. Diamond Hill Joint Venture, LLC, 404 N.J. Super. 96 (App. Div. 2008)

Allstate New Jersey Ins. Co. v. Cherry Hill Pain & Rehab. Institute, 389 N.J. Super. 130 (App. Div. 2006)

Marran v. Marran, 376 F.3d 143 (3d Cir. 2004)

Vosk v. Encompass Ins. Co., 851 A.2d 162 (Pa. Super. 2004)

Columbia Med. Group, Inc. v. Herring & Roll, P.C., 829 A.2d 1184 (Pa. Super. 2003)

Tomaino v. Burman, 364 N.J. Super. 224 (App. Div. 2003)

Green Machine v. Zurich-American Ins. Co., 313 F.3d 837 (3d Cir. 2002)

Hohns v. Gain, 806 A.2d 16 (Pa. Super. 2002)

Kleban v. National Union Fire Insurance Co., 771 A.2d 39 (Pa. Super. 2001)

Miller v. Sacred Heart Hospital, 753 A.2d 829 (Pa. Super. 2000)