

## ESTELLE KOKALES MCGRATH

SUPERVISOR, PROFESSIONAL LIABILITY - WESTERN PENNSYLVANIA  
SHAREHOLDER



### AREAS OF PRACTICE

Miscellaneous Professional Liability  
Public Entity & Civil Rights Litigation  
Employment Law  
Real Estate E&O Liability  
Insurance Agents & Brokers Liability  
Non-Profit D&O  
Workers' Compensation

### CONTACT INFO

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### ADMISSIONS

Pennsylvania  
2001

West Virginia  
2011

U.S. District Court Southern  
District of West Virginia  
2011

U.S. District Court Western District  
of Pennsylvania  
2011

U.S. District Court Northern District  
of West Virginia  
2017

### EDUCATION

Widener University School of Law  
(J.D., 2001)

Juniata College (B.A., 1998)

### HONORS & AWARDS

Pennsylvania Super Lawyer Rising  
Star  
2008, 2012-2016

### OVERVIEW

Estelle is a member of the Professional Liability Department with a diverse practice, which is concentrated in the areas of public entity/civil rights, employment law, real estate and insurance agent errors & omissions litigation in both the state and federal courts of Pennsylvania and West Virginia. Estelle also serves as the Supervisor of the Professional Liability Practice Group in Western Pennsylvania. In this capacity, she oversees the operations of the Professional Liability Attorneys in our Pittsburgh, Cincinnati and Cleveland offices.

The public entity/civil rights part of Estelle's practice focuses on the defense of public entities and police officers. Estelle routinely represents schools, universities and municipalities for various claims and suits brought against them. She also represents and defends teachers, college professors and coaches covering a wide array of professional liability matters. In addition, she defends police chiefs, police officers, constables, humane officers, volunteers and security guards when claims and suits are brought against them.

Estelle's employment practice includes her representation and defense of public entities and private employers. The claims brought against her clients involve discrimination and retaliation based on race, sex, religion, age, disability and FMLA entitlement, as well as claims of Whistleblower violations and sexual assault. Discrimination cases frequently have Estelle representing her clients at the administrative level (EEOC/PHRC) and, thereafter in state and federal court. Estelle also represents employers at unemployment and workers' compensation hearings.

In her real estate/directors' & officers' practice, Estelle represents real estate agents, real estate appraisers, home inspectors, property management companies, homeowner associations, homeowner boards and board members. The defense of these individuals and entities requires Estelle to regularly analyze contracts, governing documents of the association and the Uniform Planned Community Act.

She also concentrates her practice on the defense of errors and omissions claims brought against insurance agents and brokers.

In addition, Estelle is also a member of the firm's Executive Committee Advisory Council, a distinguished group of firm leaders whose purpose is to enhance the communication between the Executive Committee and younger members of the firm's professional ranks, including associates, special counsel and junior shareholders.

Estelle acts as a pro bono mediator with the Equal Employment Opportunity Commission (EEOC). She mediates employment discrimination charges pending before the EEOC. She was also selected to be a member of the Council on Litigation Management (CLM) and the FETA organization (individuals in the professional lines business of Greek ethnicity).

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## ASSOCIATIONS & MEMBERSHIPS

Allegheny County Bar Association

Council on Litigation Management

FETA 2013-present

Pennsylvania Bar Association

Professional Liability Underwriting Society (PLUS) 2013-present

West Virginia Bar Association

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## YEAR JOINED

2002

## THOUGHT LEADERSHIP

### Lessons from Accountant's Age Discrimination Suit

**Pittsburgh  
Employment Law  
March 1, 2024**

### The Customer Is Not Always Right: Considering the Customer's Conduct When Defending Insurance Brokers

**Pittsburgh  
Insurance Agents & Brokers Liability  
November 1, 2023**

Insurance brokers are usually sued when their customers find themselves without the necessary insurance to protect themselves from suit or damages. Legal Update for Insurance Agents & Brokers, November 2023 has been prepared for our readers by Marshall Dennehey.

### EEOC Mediation: Five Things to Consider Before Participating

**Pittsburgh  
Employment Law  
October 23, 2023**

### Top Ten Ways an Insurance Broker Can Avoid Liability

**Pittsburgh  
Insurance Agents & Brokers Liability  
December 20, 2022**

How does an Insurance Broker avoid liability? The material in this law alert has been prepared for our readers by Marshall Dennehey.

### HOA Living. It Is Not For Everyone

**Pittsburgh  
Non-Profit D&O  
June 1, 2021**

Key Points: Defense Digest, Vol. 27, No. 3, June 2021 is prepared by Marshall Dennehey Warner Coleman & Goggin to provide information on recent legal developments of interest to our readers.

## CLASSES / SEMINARS TAUGHT

*Risk Management for Insurance Agents & Brokers*, Pittsburgh I-Day, October 8, 2024

*How to Avoid Mistakes with Mismanagement of Life & Health Claims*, Joint Webinar with National Association of Professional Agents, May 2023

*Pandemic Coverage Litigation Update / Insurance Broker Best Practices*, Client Webinar, September 2022

*The Aftermath of the Pandemic For Carriers and Agents*, Client Webinar, July 2021

*Civil Litigation Updates in COVID-19 Litigation – Where Do We Stand One Year Later?* Marshall Dennehey Webinar, May 2021

*Supervisor Training on Discrimination*, Client Seminar, June 2021

*Impact of COVID-19 on Insurance Agents*, Client Webinar, May 2021

*Pandemic Coverage Litigation Update: Agent E & O Wars to Come*, Client Webinar, March 2021

*Pregnancy Discrimination*, Client Seminar, March 2020

*Promoting Diversity & Inclusion*, Client Seminar, November 2019

*Police: Handling Critical Incidents*, Client Seminar, May 2018

## PUBLISHED WORKS

"Lessons From Accountant's Age Discrimination Suit," *Pennsylvania CPA Journal*, Spring 2024

"EEOC Mediation: Five Things to Consider Before Participating," *The Legal Intelligencer*, Employment Law Supplement, October 2023

"Top 10 Ways an Insurance Broker Can Avoid Liability," National Association of Professional Agents, March 1, 2023

"Top Ten Ways an Insurance Broker Can Avoid Liability," *Legal Update for Insurance Agents & Brokers*, December 21, 2022

"HOA Living. It Is Not For Everyone," *Defense Digest*, June 2021, Vol. 27, No. 3

"Ten Ways An Employer Can Reduce Their Chances of Being Sued for Discrimination," *PLUS Blog*, May 10, 2021

"HOA Living. It Is Not For Everyone.," *Defense Digest*, March 2021, Vol. 27, No. 2

"House Bill No. 88 to be Signed by Governor Rendell," *What's Hot in Workers' Comp*, Volume 7, No. 12, December 2003

"Supreme Court Reverses *Caso* Decision," *What's Hot in Workers' Comp*, Volume 7, No. 12, December 2003

"Course of Employment Argument Saves Employer," *Defense Digest*, Volume 9, No. 2, June 2003

"Board's Decision Reversed Where Claimant Failed to Present Evidence," *Lawyers Journal*, The Journal of the Allegheny County Bar Association, June 27, 2003

"Borough of *Lewistown v. Pennsylvania Labor Relations Board*: The Supreme Court of Pennsylvania Holds Arbitration Award Final and Binding When Participating Joint Employer Failed to Appeal the Award," 9 WIDENER J. PUB. L 615 (2001).

## RESULTS

### Putative Class Action Lawsuit Dismissed

#### **Employment Law September 16, 2024**

In a case where we represented a child care center, a federal district judge from the Western District of Pennsylvania granted our motion to dismiss with prejudice. The plaintiffs were nine minority employees who were involuntarily furloughed in the fall of 2020. They filed suit, alleging their employment was terminated in violation of Title VII of the Civil Rights Act, the Age Discrimination in Employment Act, the Family Medical Leave Act, the Pennsylvania Human Relations Act, the Wage Payment and Collection Law, and Section 1981 of the Civil Rights Act.

### Lawsuit against insurance broker dismissed.

#### **Insurance Agents & Brokers Liability Insurance Services – Coverage & Bad Faith Litigation August 13, 2021**

In a case where we represented an insurance broker, a Federal District Judge from the Southern District of West Virginia granted our motion to dismiss and dismissed the suit in its entirety. The plaintiff was a women's fashion and accessory boutique. The suit arose from a dispute over the plaintiff's insurance coverage for damages it sustained while being ordered to close by West Virginia's COVID-19-related orders. The insurance carrier filed a motion to dismiss, and, thereafter, the plaintiff voluntarily dismissed the carrier.

### Newspaper Beats Suit Alleging Employee Status

#### **Workers' Compensation Appellate Advocacy & Post-Trial Practice April 16, 2021**

The Pennsylvania Supreme Court denied a newspaper delivery person's petition for allowance of appeal on March 30, 2021. The claimant filed a claim petition in 2018, alleging that he suffered serious injuries to his right leg after slipping and falling on ice when he was delivering newspapers. The newspaper asserted that the claimant was an independent contractor. The case was bifurcated to determine whether the claimant was an employee.

### Lawsuit Against West Virginia Insurance Broker Dismissed.

#### **Insurance Agents & Brokers Liability March 22, 2021**

In a case where we represented an insurance broker, a Federal District Judge from the Southern District of West Virginia granted our motion to dismiss and dismissed the suit in its entirety. The plaintiff was a women's fashion and accessory boutique. The suit arose from a dispute over the plaintiff's insurance coverage for damages it sustained while being ordered to close by West Virginia's COVID-19-related orders. The insurance carrier filed a motion to dismiss, and, thereafter, the plaintiff voluntarily dismissed the carrier.

## SIGNIFICANT REPRESENTATIVE MATTERS

#### **Preliminary Objections Sustained in Employment Suit for Public Entity, October 5, 2023**

Obtained dismissal of employment case for public entity. Plaintiff alleged a whistleblower claim and multiple wrongful discharge claims after being terminated. The Judge sustained the employer's preliminary objections, as the Court agreed that plaintiff failed to set forth any legally viable claims against her supervisor or prior employer.

#### **Dismissal of Employment Discrimination Charge Before the Pennsylvania Human Relations Commission, August 24, 2023**

A terminated employee filed a Charge of Discrimination with the Pennsylvania Human Relations Commission against her non-profit employer alleging age, sex and disability discrimination. We were able to prove through the investigation process that there was no discrimination. The Charge was accordingly dismissed.

#### **Dismissal of Employment Discrimination Charge Before Pittsburgh Commission on Human Relations, August 14, 2023**

A terminated employee filed a charge of discrimination with the Pittsburgh Commission on Human Relations against his non-profit employer alleging age and disability discrimination. We were able to prove through the investigation process that there was no age or disability discrimination. The Charge was accordingly dismissed.

#### **Secured Voluntary Dismissal of Employment Suit for Public Entity, May 24, 2023**

A terminated employee filed suit in the United States District Court for The Western District alleging violation of his First Amendment Rights as a result of retaliation based on political opposition and protected speech. The employee also alleged a violation of the Equal Protection clause of the Fourteenth Amendment. After filing a Motion for Sanctions, the employee voluntarily dismissed the entire federal lawsuit.

**Secured Voluntary Dismissal of Homeowners Association in Unjust Enrichment Suit, January 13, 2023**

A contractor sued a homeowner's association for unjust enrichment because the builder failed to pay it for its services. After discussions with counsel, the contractor agreed to voluntarily withdraw said suit against the homeowner's association.

**Motion to Dismiss Granted in Employment Suit for Public Entity, December 19, 2022**

Secured dismissal of First Amendment count in the United States District Court for The Western District on behalf of public entity alleged to have retaliated against plaintiff for exercising her First Amendment rights to freedom of speech and to petition the government for redress of grievances. The public entity employer was entitled to dismissal of the First Amendment Count because plaintiff's complaints were only intended to protect her interests, not that of the public. The court declined to exercise supplemental jurisdiction over the remaining state law claims.

**Summary Judgment Granted for Vocational School, May 10, 2021**

Obtained summary judgment in state court on behalf of a vocational school alleged to have violated the plaintiff's procedural due process rights to continued enrollment. The plaintiff alleged sexual assault by an instructor and asserted that she was dismissed from the school after reporting the alleged assault. The school was entitled to judgment as a matter of law as the plaintiff was unable to prove that she had a recognized property right in continued enrollment in a commercial driver's license program.

**Complaint Dismissed Against Homeowners' Association and Property Management Company, January 28, 2020**

A homeowner, Plaintiff, filed suit in Butler County Court of Common Pleas. Plaintiff sued the Homeowners' Association, the Property Management Company, the Property Managers and individual board members alleging breach of contract, breach of fiduciary duty, gross negligence, intentional misrepresentation and negligent misrepresentation. After arguing preliminary objections to the 490-paragraph complaint, the Judge sustained the objections and dismissed the entire lawsuit with prejudice. The Judge also granted the Defendants' Motion for Sanctions against Plaintiff for failing to voluntarily dismiss the individual defendants from the suit.

**Motion to Dismiss Granted for Housing Authority Alleged to Have Violated Civil Rights of Tenant and Guest, January 13, 2020**

Plaintiffs filed a lawsuit in the United States District Court for the Southern District of West Virginia alleging that the housing authority and their employee violated state and federal laws. After filing a motion to dismiss all claims against the housing authority and their employee, the Judge granted the motion in its entirety dismissing three counts alleging violations of federal laws and four counts alleging violations of state laws.

**Defeated Class Action Certification Against Property Management Company, November 20, 2019**

Eight homeowners filed a class-action complaint in Washington County Court of Common Pleas averring claims of conversion and conspiracy against a property manager of their homeowners' association. The homeowners sought to certify a class-action lawsuit for all of the unit owners in the planned community. They accused the property manager of wrongfully converting unit owner association fees and conspiring to delay the "turn over" of their homeowners' association. After a lengthy and contentious discovery process, the Judge denied the class certification against the property management company.

**Dismissal of Employee's Claims of Employee Status, August 2018**

Claimant filed a claim petition alleging he was an employee of a newspaper. The case was bifurcated to determine whether the claimant was an employee versus an independent contractor. The Judge dismissed the claim petition finding that claimant was an independent contractor. The Judge's decision was upheld by the Workers' Compensation Appeal Board and the Commonwealth Court.

**Voluntary Dismissal of Real Estate Agent from Lawsuit, November 16, 2017**

A buyer sued multiple defendants, in Westmoreland County Court of Common Pleas, including the seller's real estate agent alleging claims of misrepresentation and unfair trade practices in Pennsylvania state court. During the discovery process, counsel was able to prove that the real estate agent was not liable. Thus, Plaintiff voluntarily agreed to discontinue the lawsuit as to the real estate agent.

**Voluntary Dismissal of Borough and Chief of Police, March 17, 2017**

A prior employee (plaintiff) filed a complaint in the United States District Court For The Western District of Pennsylvania alleging that the borough, the mayor and chief of police unlawfully discriminated against him, which forced him to resign. The employee set forth various federal and state claims including a violation of his substantive due process rights and intentional infliction of emotional distress. After deposing the plaintiff, he voluntarily agreed to dismiss the complaint with prejudice.

**Employee Injuries Denied and Determined Fully Recovered, May 2016**

A union president filed multiple petitions against the employer for accepted and unaccepted injuries. During a six-year battle, the employer was successful in its defenses before the workers' compensation judge, the workers' compensation appeal board, the Commonwealth Court and the Pennsylvania Supreme Court.

**Employee's Claims for Wage Loss Denied, March 17, 2015**

An employee, truck driver, filed a claim in West Virginia for injuries he suffered in the course of his employment. The Employer was successful in proving that claimant's disc injury was preexisting in nature, which was affirmed by the Supreme Court of Appeals.

**Preliminary Injunction Denied, November 24, 2014**

Plaintiff, a manufacturer and seller of refractory products, filed a Motion for Injunctive Relief to prohibit their prior employees from working with a new company, which also manufactured and sold refractory products. The Judge denied Plaintiff's Motion for Preliminary Injunctive Relief after a contentious, speedy discovery stage of depositions and other motions. The trial team was successful in protecting the defendants' new business from being shut down.