

## ADAM FOGARTY

SHAREHOLDER



### AREAS OF PRACTICE

General Liability  
Premises & Retail Liability  
Trucking & Transportation Liability  
Hospitality & Liquor Liability

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### ADMISSIONS

New Jersey  
2007

Pennsylvania  
2007

U.S. District Court District of New  
Jersey  
2007

U.S. District Court Eastern District  
of Pennsylvania  
2009

### OVERVIEW

Adam is a member of the Casualty Department where he handles all sorts of civil litigation matters involving claims of personal injury and property damage. He frequently advises insurance carriers and defends clients in matters of premises liability (residential, commercial, restaurant, and retail) and motor vehicle torts, including for claims of wrongful death and punitive damages. Adam also has experience defending against claims of construction defect, employment discrimination, negligent security, asbestos exposure, and products liability.

Adam has drafted countless motions for summary judgment that have resulted in the parties reaching a mutually amenable settlement agreement before the outcome of the motion was decided. He has also had numerous such motions decided in favor of his clients, resulting in the immediate dismissal of all claims against them.

Adam has assisted clients in navigating through the civil court system, some for their first time. He takes additional time to counsel and advise his clients and their carriers, partnering with them to develop effective and efficient strategies for resolving their claims.

Prior to practicing civil litigation, Adam spent years practicing personal bankruptcy law in the Federal Districts of New Jersey and Eastern Pennsylvania. This has given him a unique approach to engaging in settlement negotiations, particularly when on behalf of potentially "judgment-proof" clients.

Adam graduated *magna cum laude* from The College of New Jersey in 2003. Thereafter, he attended Rutgers School of Law – Camden, where he was Managing Editor of the Rutgers Law Journal. He graduated in 2007. Before practicing law, Adam clerked for the Honorable Thomas A. Brown, Jr., Presiding Judge of the Criminal Division of the New Jersey Superior Court in Camden, New Jersey.

Adam calls Camden, New Jersey home with his wife and three children.

### EDUCATION

Rutgers, the State University of  
New Jersey School of Law (J.D.,  
2007)

The College of New Jersey (B.S.,  
*magna cum laude*, 2003)

### HONORS & AWARDS

AV® Preeminent™ by Martindale-  
Hubbell®

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## ASSOCIATIONS & MEMBERSHIPS

Camden County Bar Association

New Jersey Bar Association

New Jersey Defense Association

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## YEAR JOINED

2017

## THOUGHT LEADERSHIP

### Marshall Dennehey Announces 2023 Shareholder Class - Largest in Firm's 60-Year History

December 8, 2022

Marshall Dennehey is pleased to announce that 20 attorneys, 12 men and eight women, have been elevated to shareholder effective January 1, 2023.

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### To Foresee or Not to Foresee?

**Mount Laurel  
General Liability  
October 19, 2018**

### PUBLISHED WORKS

"To Foresee or Not to Foresee? That is the Question for Determining Liability for Criminal Acts by Third Parties," *New Jersey Law Journal*, October 22, 2018

"Case Comment, *Schoenvogel v. Venator Group Retail, Inc.*, 895 So.2d 225 (Ala. 2004)," *Rutgers Law Journal*, vol. 36, pgs. 1609-25, 2005

"The Impact of *Daubert* on Forensic Science," *Pepperdine Law Review*, vol. 31, pgs. 323-361, Co-Author, 2004

"The Impact of *Daubert* on the Admissibility of Behavioral Science Testimony," *Pepperdine Law Review*, vol. 30, pgs. 403-444, Co-Author, 2003

## RESULTS

### Defense clips product liability lawsuit on behalf of nail salon owner.

**Product Liability  
Premises & Retail Liability  
February 9, 2021**

The defense prevailed on summary judgment for a nail salon owner against negligence and product liability claims by a plaintiff who slipped and fell off-site while still wearing pedicure slippers. The plaintiff had received a pedicure at our client's nail salon. When she left the premises, she continued to wear the disposable pedicure slippers. The plaintiff then walked in the rain and eventually slipped and fell upon entering a retail store.

### SIGNIFICANT REPRESENTATIVE MATTERS

Obtained summary judgment relief for the owner of a property where a construction site accident occurred. Our client was a local board of education, which hired a general contractor to perform an HVAC renovation project at a high school. Plaintiff was a subcontractor working on that project and became injured when a light fixture fell on him as he was replacing ceiling tiles in a suspension grid. Summary judgment was granted as there was no evidence to suggest the injury was caused by negligence of the property owner. Instead, an exception to the general duties of a commercial property owner applied because the client had not retained control over the manner/means of the contractor's work; there was no evidence that the contractor was incompetent; and the contracted work did not constitute a nuisance *per se*.

Obtained summary judgment relief for a property manager in a lawsuit based on a drive-by shooting. The shooting occurred on a public roadway adjacent to our client's managed property in Elizabeth, New Jersey. Our client was contracted to manage an adjacent apartment complex, owned by a co-defendant. The court agreed that neither the property owner nor the property manager owed a duty to protect the plaintiffs from this drive-by shooting given the location of the shooting and the lack of foreseeability. Our client's duty was further limited by the terms of the property management agreement.

Obtained a summary judgment for a nail salon owner against negligence and product liability claims by a plaintiff who slipped and fell off-site while still wearing pedicure slippers. Plaintiff had received a pedicure at our client's nail salon. When she left the premises, she continued to wear the disposable pedicure slippers. Plaintiff then walked in the rain and eventually slipped and fell upon entering a retail store. Plaintiff brought general negligence and product liability claims against the nail salon's owner. At the conclusion of discovery, the Court granted our motion for summary

judgment based on plaintiff's admission that there was nothing wrong with the slippers and the failure of plaintiff to provide expert opinion as to the existence of any defect in the slippers.

Obtained summary judgment relief for owner and driver of tow truck involved in multi-vehicle fatality crash. Our clients' truck was struck from behind while towing another vehicle. The striking vehicle was a correctional facility transport van, which was transporting two inmates and two correctional officers. The impact caused injuries to both occupants of the tow truck and to all four occupants of the van, including fatal injuries to one of the inmates. Our clients were target defendants of the plaintiff correctional officer who was a passenger in the van, given the immunity provided to the Department of Corrections and its driver by the worker's compensation bar. At the conclusion of discovery, the Court accepted our motion based on the argument that a jury could not reasonably find our driver negligent despite the allegation that he had been driving too slow and despite the fact that he had received numerous citations for motor vehicle and towing violations. Our argument relied upon the uncontroverted expert opinions reached by the State Police's accident investigator and our own accident reconstruction expert.

Obtained summary judgment in a motor vehicle accident case in Atlantic County, New Jersey. The accident occurred at the intersection of a county road and a side street, which was controlled by stop signs. Plaintiffs were back seat passengers in the client's commercial Ford F-150. The client was driving the speed limit down the 45 mile-per-hour county road. When the client was approximately 200 feet from the 25 mile-per-hour intersecting side street, co-defendant, an inexperienced young-adult driver, proceeded from the side-street-stop-sign into the intersection, crossing into the client's direct path of travel and causing the vehicles to collide. We moved for summary judgment on two grounds. We argued there was no evidence the client negligently operated his motor vehicle at the time of the accident. We also argued that co-defendant's negligence was the sole proximate cause of the accident since co-defendant misjudged the speed and distance of the client's oncoming vehicle which had the right of way at the intersection. The trial court agreed and granted our motion.

Obtained summary judgment relief for residential owner-occupants in two fall-down premises liability cases. The first lawsuit was filed in by a neighbor claiming personal injuries from a slip and fall on ice on the sidewalk abutting the defendants' residential property. It had snowed five days prior, at which time the defendants had shoveled the snow from the sidewalk onto the adjacent lawn. The plaintiff alleged the resulting snow pile subsequently melted back onto the sidewalk and eventually re-froze, creating the ice on which the plaintiff would eventually fall. At the conclusion of discovery, the defendants moved for summary judgment based on the argument that New Jersey residential property owners have no duty to maintain sidewalks from naturally occurring conditions. The court granted the motion, agreeing that even though the defendants had created the snow pile adjacent to the sidewalk, snow melting and refreezing is a naturally-occurring phenomenon and is therefore not within the scope of a residential property owner's duty of care owed to pedestrians. As such, the court found there was no legal basis on which one could reasonably conclude that the defendants were responsible for the plaintiff's injuries. The second lawsuit was filed by an individual claiming injuries from an incident in the backyard of the defendants' residential property. The plaintiff had entered the property in an attempt to contact the owner of an undeveloped lot where a tree had supposedly fallen across the access road, leading to an adjacent lot that the plaintiff owned. The plaintiff believed the owner of the lot lived at the subject premises, but had never spoken with anyone from, nor ever been to, the premises before. After entering the premises and observing yellow caution tape hanging across the steps leading to the front porch, the plaintiff walked around the house and began ascending steps leading to the rear deck. The plaintiff claims that as he reached the top of the steps, he touched a handrail that was allegedly unhinged. He claims the unhinged rail fell on him, causing him to fall from the stairs, lose consciousness, and sustain other injuries. At the conclusion of discovery, the court granted summary judgment for the defendants, upon finding that the plaintiff was a trespasser at the time of the alleged incident. As a trespasser, the plaintiff was owed only a limited duty of care by the defendants, and the court found the motion record lacked sufficient evidence from which a trier of fact could reasonably conclude such a duty had been breached.

Obtained summary judgment in favor of defendant in a fall down premises liability case. The lawsuit was filed by an individual claiming personal injuries from a fall down incident in a parking lot after leaving the defendant's bank. The defendant was successful in obtaining summary judgment relief, without having to incur the costs of participating in the formal exchange of discovery. The motion was granted based upon concessions obtained from the plaintiff and co-defendant that the subject parking lot was municipally owned, and therefore not within the control of the defendant. Moreover, the court agreed the location of the parking lot in relation to the defendant's bank was such that it was not necessary to the defendant's patrons to use the parking lot in order to access the bank. The court agreed there was no basis upon which one could reasonably conclude the defendant was responsible for maintaining the parking lot.

