

# RAWLE'S REPORTS

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## PENNSYLVANIA APPELLATE

### PA Supreme Court Grants Petition to Review Issue of Proper Venue in Internet Defamation Suit

On December 24, 2019, the Pennsylvania Supreme Court entered an Order in the case of *Fox v. Smith, et al.*, granting the Petition for Allowance of Appeal filed by Rawle & Henderson LLP on behalf of its client, Stacey Smith, to review the issue of proper venue in an Internet defamation case. As set forth in the Supreme Court's Order granting the Petition, the issue is as follows:

Whether the Superior Court panel, in a matter of first impression, improperly developed a rule for determining proper venue in an internet-based defamation action that deems venue proper anywhere the purported defamation is accessed through the internet despite the lack of any other connection to the venue, a rule which abandons all of the protections accorded by the limiting characteristics of the venue rules and opens the door to unchecked forum shopping, calling for this Court to provide "decision and statutory guidance" as requested by the Opinion of the concurring panel member of the Pennsylvania Superior Court?

The *Fox* lawsuit arose out of a mayoral election in Chester Heights, a small borough located in Western Delaware County, Pennsylvania. In November 2017, plaintiff Joy Fox, the Democrat mayoral candidate, lost the election to Stacey Smith, the Republican mayoral candidate; Smith is currently serving as the Mayor of Chester Heights.

In her ensuing defamation lawsuit, which she filed in state court in Philadelphia County, candidate Fox alleged that in connection with the November 2017 election, Smith and several other Republican candidates and members of Republican committees in Delaware County posted on the Internet information that Fox had had a "bad check" conviction, among other things, in order to damage her reputation and impact the election. **Daniel J. Rucket** of Rawle & Henderson was retained to represent Mayor Smith. The defendants filed preliminary objections based on improper venue, arguing that venue was only proper in Delaware County where Fox and all the defendants resided and the Internet postings were made. In response to the venue challenge, Fox argued that a close friend of hers, who resided in Philadelphia, "read the defamatory information on the Facebook post published by the candidates and their committee on their social media pages" on her computer at her residence in Philadelphia, thus making venue proper in Philadelphia County.

The trial judge, Judge Arnold New, denied the defendants' preliminary objections. Although Judge New noted in his opinion that the postings in question were not directed or sent to anyone



**Carl D. Buchholz, III**



**Daniel J. Rucket**

in Philadelphia, and had to be sought out by any viewer, he concluded that he was compelled to follow the Supreme Court's prior holding in *Gaetano v. Sharon Herald Co.*, a 1967 decision that held venue was proper in a print media defamatory cause of action where the defamatory statement is "published," which the Supreme Court defined as where the defamatory statement was read and understood to be defamatory to the plaintiff. However, Judge New also specifically recognized that Fox's Internet defamation case raised venue issues that were not before the Supreme Court when it decided *Gaetano*:

In the 51 years since *Gaetano* was decided, technology drastically changed the way in which we communicate, yet the venue rules related to defamation have remained stagnant. This Court humbly requests a reevaluation of these principles to the internet, social media, and technology of the modern era.

Judge New also certified the issue of venue as being appropriate for immediate appeal to the Pennsylvania Superior Court. On appeal, a three-member panel of the Superior Court affirmed the trial court's decision, again following the Supreme Court's 1967 decision in *Gaetano*. However, one member of the Superior Court panel, Judge Mary Murray, in her concurring Opinion, specifically requested the Supreme Court to examine the venue issue and update the law requiring proper venue in an Internet defamation case:

Accordingly, I write to underscore that the courts of this Commonwealth – at both the intermediate

appellate and trial level – would benefit from decision and statutory guidance in analyzing established legal principles such as venue, [and] I respectfully request that our Supreme Court, its rules committees, and our legislature provide further guidance in the evolving area of electronic communications.

As noted, it is Rawle & Henderson LLP's position on behalf of Mayor Smith that proper venue in an Internet defamation case should be limited to the venues in which the allegedly defamatory remarks were posted and directed, and where the plaintiff resides. In other words, venue should be limited in such cases to where the allegedly defamatory posting would have its most significant impact since the primary purpose in a defamation action is to assure that a plaintiff who has been defamed will be allowed to vindicate his/her reputation where their reputation is most important, in their home community. Rawle & Henderson will also argue that following the venue rule in *Gaetano* in an Internet defamation case would completely undermine all the protections afforded by the limiting characteristics of the venue rules, and open the door to uncheckable forum shopping. In fact, applying the Supreme Court's holding in *Gaetano* to an Internet defamation case would theoretically permit the filing of such a lawsuit in any of the 67 counties in Pennsylvania, despite the lack of any meaningful connection to the remote venue.

Smith's and the co-defendants' Supreme Court briefs are currently due on February 3, 2020, but this date will likely be extended by the Court.

**Carl D. Buchholz, III**, is Chair of the Appellate, Maritime and Insurance Coverage sections. He is a partner in our **Philadelphia** office. His federal appellate practice includes an argument before the United States Supreme Court, as well as numerous arguments before the U.S. Court of Appeals for the Third Circuit. His state appellate practice includes 10 arguments before the Pennsylvania Supreme Court and over 45 oral arguments before the Pennsylvania Commonwealth Court, the Pennsylvania Superior Court, and the Superior Court of New Jersey, Appellate Division. From 2006–2012, Carl served as a member of the Disciplinary Board of the Supreme Court of Pennsylvania, including a term as Board Chair. Prior to his appointment to the Disciplinary Board, Carl served a six-year term as Chair and Board Member of the Pennsylvania Lawyers Fund for Client Security. Carl graduated with a B.A. from Muhlenberg College and earned his J.D. from Villanova Law School, where he was a member of the *Villanova Law Review* and graduated with honors. He is rated **AV Preeminent** and has been selected as a **Pennsylvania Super Lawyer** for the last 16 years.

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**Daniel J. Rucket** is a partner in our **Philadelphia** office. He concentrates his practice in general casualty defense litigation, including construction site accidents, premises liability, catastrophic injury, construction defects, products liability, stucco home water infiltration claims, motor vehicle accidents, subrogation defense, and general negligence. He graduated with Honors from Franklin & Marshall College and earned his J.D. from the William & Mary Law School. He subsequently clerked for the Honorable Albert R. Subers in the Montgomery County Court of Common Pleas. Dan is admitted to practice in Pennsylvania, the U.S. District Courts for the Eastern and Middle Districts of Pennsylvania, and the Third Circuit Court of Appeals. Prior to being named **Super Lawyer** from 2010 through 2019, he was selected as a **Pennsylvania Rising Star** in 2005, 2006 and 2007.

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# WORKERS' COMPENSATION

**Claudio J. DiPaolo** presented a workers' compensation seminar to Eclipse Senior Living claims professionals in December 2019. The seminar was held at the **headquarters office of PMA Companies** in Blue Bell, Pennsylvania. Claudio discussed workers' compensation procedures from first report of an injury to Compromise & Release Agreements. Specifically, he discussed initial claims handling, accident investigation, work safety programs, the use of panel physicians, litigation of disputed claims, subrogation, and the claims settlement process.



**Claudio J. DiPaolo**

Claudio J. DiPaolo, Chair of Rawle & Henderson's Workers' Compensation Section since 2009, has practiced insurance defense litigation for over 20 years. He is a partner in our **Philadelphia** office. Claudio has defended workers' compensation matters on behalf of self-insured corporations, insurance carriers, third party administrators and various governmental agencies. He has also handled a wide variety of civil matters, including employment, commercial motor vehicle, product liability, premises liability, insurance coverage, errors & omissions, and medical malpractice. He began his career with an appointment to the Pennsylvania Department of Labor and Industry as an opinion writer, where he drafted hundreds of administrative law decisions involving adjudicated workers' compensation matters. He also assisted in the editing of *Pennsylvania Workers' Compensation: Law and Practice*. Prior to joining Rawle & Henderson, Claudio practiced at the nation's largest employment law firm. He has counseled clients regarding compliance with federal, state, and local laws, and preventing liability for workplace injuries. Claudio has made presentations to clients throughout the country on various workers' compensation topics including the interplay between workers' compensation and ADA, FMLA, Title VII, and SSDI/SSI as well as recovering workers' compensation costs through subrogation, errors & omissions, special fund reimbursements, and various other statutory credits. His clients include large multinational companies, Fortune 500 corporations, global insurers, and the nation's largest restaurant chain, pet store retailer, airline and internet retailer. Claudio was selected as a **Pennsylvania Super Lawyer** in 2015, 2016, 2017, 2018 and 2019 by *Supers Lawyers*, a service of Thomson Reuters.

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**Zachary M. Rubinich** was nominated and unanimously approved by the Board of Governors to be inducted as a **Fellow of the College of Workers' Compensation Lawyers Class of 2020**. He will be inducted in March 2020 in New Orleans, Louisiana.



**Zachary M. Rubinich**

The College of Workers' Compensation Lawyers (CWCL) was established to honor attorneys who have distinguished themselves in their practice in the field of workers' compensation. Individuals are nominated by their peers, the bar or bench who have been in practice for 20 years or more and possess the highest professional qualifications and ethical standards, character, integrity, professional expertise and leadership. Currently, there are just over 300 Fellows nationally and only 32 in Pennsylvania.

Zach is a partner in our **Philadelphia** office. He focuses his practice on the defense of insurance carriers, self-insured entities and third-party administrators against workers' compensation claims in Pennsylvania. Based on his extensive experience, the Pennsylvania Bar Association Workers' Compensation Law Section has certified him as Specialist in the practice of workers' compensation law. Zach has handled all aspects of litigation before workers' compensation judges, the Workers' Compensation Appeal Board, the Commonwealth Court and the Pennsylvania Supreme Court. He routinely counsels employers, insurance carriers and third party administrators on claims management, workplace safety, return-to-work programs, employment practices and risk management. Zach has been appointed to the following American Bar Association Tort Trial and Insurance Practice (TIPS) leadership positions: Vice-Chair of the Litigation and Trial Practice Committee; Vice-Chair of the Appellate Advocacy Committee; member of the Ethics and Professionalism Standing Committee; and member of the CLE Board Committee. These appointments became effective in September 2019. He is the Past Chair of the American Bar Association's Tort Trial and Insurance Practice (TIPS) Workers' Compensation and Employers' Liability Law Committee from 2018-2019. He served as Vice-Chair of this committee for 2015-2016, 2016-2017 and 2017-2018. In addition, Zach served as Vice-Chair of the 2017-2018 American Bar Association Standing Committee for Diversity and Inclusion. Zach has been rated **AV Preeminent** by Martindale-Hubbell for the eighth consecutive year in 2020. He has been selected as a 2019 **Pennsylvania Super Lawyer** by *Super Lawyers*. He was selected as a **Pennsylvania Rising Star** by *Super Lawyers* from 2010 to 2014.

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# ABA LITIGATION SECTION REGIONAL CLE PROGRAM

John C. McMeekin II will speak at the **Environmental & Energy, Mass Torts, and Products Liability Litigation Committees' Joint Regional CLE Program** in Snowmass Village, Colorado, on January 30, 2020. John will speak in the session "*Yours, Mine, & Auer's: Agency Deference in 2020.*" The session will examine the survival of Auer deference to an agency's interpretation of its own regulations, albeit in a narrower form, in the aftermath of the 2019 *Kisor v. Wilkie* Supreme Court decision. The session will provide guidance for practitioners, courts, and the agencies themselves.



**John C. McMeekin II**

John C. McMeekin II is a partner in Rawle & Henderson LLP's **Philadelphia** office and a member of the Firm's Executive Committee. He represents clients as local, national and trial counsel in environmental, toxic and mass torts, class actions, insurance coverage, and sexual abuse and harassment litigation. He graduated *magna cum laude* from the University of Baltimore School of Law. John is admitted to practice in Pennsylvania, New Jersey and Maryland and related U.S. District Courts. John is a former firefighter and emergency medical technician, and is Hazmat certified. He has been published in professional and law review journals on a variety of topics related to toxic tort and environmental litigation.

He was recently elected Chair Elect of the American Bar Association Tort Trial & Insurance Practice Section. Mr. McMeekin has also served the American Bar Association as a Council Member, Section Secretary, the Section Revenue Officer, Chair of the Toxic Tort & Environmental Law Committee, Chair of the International Law Committee, and Chair of the CLE Board. In addition to his service with the ABA, Mr. McMeekin chaired the Philadelphia Bar Association Environmental and Toxic Tort Law Committee and has been a member of the Delaware Valley Environmental Inn of Court. His significant cases can be found in the *BNA Law Reports* and *Law360*. He is rated AV Preeminent by Martindale-Hubbell and has been selected multiple times as a Pennsylvania Super Lawyer.

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## R&H RANKS AMONG TOP PA FIRMS IN SIZE & DIVERSITY

Rawle & Henderson LLP has been ranked **34th in size among the top 100 firms in the Commonwealth of Pennsylvania** for 2019, according to the *PaLaw Annual Report on the Legal Profession*, a supplement to *The Legal Intelligencer*. This ranking is based on total number of attorneys in Pennsylvania. Rawle & Henderson LLP is ranked 21st largest in the City of Philadelphia in the *PaLaw Annual Report*. The *Report* was published in December 2019.

In addition, the firm ranked **26th in Pennsylvania by percentage of female attorneys (32.89%)** and **31st in Pennsylvania by percentage of minority attorneys (5.26%)**.

Rawle & Henderson LLP is committed to diversity in the workplace at all levels, including partners, associates, paralegals and staff. The firm has participated and sponsored diversity-promoting events with the American Bar Association, Philadelphia Bar Association and local universities and colleges. As the nation's oldest law firm, established in 1783, Rawle & Henderson LLP remains committed to increasing its diversity.

