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RAWLE'S REPORTS

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PENNSYLVANIA PERSONAL INJURY

Defense Verdict in Philadelphia County

Suzanne Curran Murphy

Suzanne Curran Murphy, a member of the General Casualty Practice Group in the Philadelphia office of Rawle & Henderson LLP, obtained a defense verdict from a Philadelphia jury on December 8, 2015, in a personal injury case. Plaintiffs Bernice Byrd and Barbara Jackson alleged that they were injured while occupying a parked car that was struck by a vehicle operated by an employee of Chestnut Wash and Lube, Inc. Plaintiffs filed suit against Chestnut Wash and Lube, Inc. and its employee, Martin Felix Cabrera. Defendants' primary defense in the case was that the plaintiffs were not inside the parked vehicle at the time of the collision.

Plaintiffs arrived at the car wash on Sunday morning after church services to report an alleged theft of an iPad on those premises the previous day. After argument on defendants' Motion in Limine, it was agreed that reference to the theft would be precluded as prejudicial, but that reference to a "prior unrelated issue" would be permitted.

Plaintiffs asserted that they parked their vehicle on Chestnut Street in front of the car wash. They claimed that defendant Cabrera struck the parked vehicle while moving a customer's car the wrong way down Chestnut Street toward the car wash bay. Contending that they were inside the vehicle at the time of the collision, plaintiffs testified that they were violently thrown from side to side by the impact.

Although defendant Cabrera was outside the country at the time of trial, another attendant at the car wash testified that he heard the accident while he was nearby drying off a washed vehicle. He testified that after hearing the collision, he observed that plaintiffs were walking on the sidewalk. The cashier at the car wash testified that plaintiffs were inside speaking with her shortly before the collision and that in a conversation she had with them shortly after the collision, plaintiffs did not say that they were inside the parked vehicle when the impact occurred.

A police officer, who had been called to the scene regarding a "prior unrelated issue," arrived just after the collision and proceeded to investigate the accident. He testified that plaintiffs

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never told him that they were in the vehicle at the time of the collision. Because he was not present at the time of the collision, however, he could not state with certainty whether plaintiffs were in the vehicle when it was struck.

Negligence in striking the parked vehicle was stipulated to by defendants before trial. However, liability for the plaintiffs' claimed injuries was denied. Plaintiff Byrd claimed soft tissue issues to her neck, back and arms. Plaintiff Jackson, who treated at the emergency room on the date of the accident, claimed significant injury to her right hand and wrist requiring surgery, as well as soft tissue injuries to her neck and back.

Notably, plaintiffs attempted to advance their case at trial by impeaching defendants' expert physician, using a prior deposition from another case to imply that the expert rendered opinions solely for compensation. Although this tactic was allowed by the court, the defense expert's passionate defense of his own reputation appears to have prevailed.

At trial, Murphy argued foremost that plaintiffs were not in the vehicle at the time of the collision. Lacking eyewitnesses to the collision itself, she called the attendant who heard the accident, the cashier who had spoken to the plaintiffs both prior to and after the collision, and the investigating police officer.

Based upon the direct examinations of the defense witnesses, the jury determined that the negligence of the defendants was not a factual cause of the injuries alleged, thus extinguishing all claims.

Bernice Byrd, et al. v. Martin Felix Cabrera, et al., Court of Common Pleas of Philadelphia County, PA, August Term, 2014, No. 01366

Suzanne Curran Murphy, of our Philadelphia office, concentrates her practice in the areas of premises liability, construction litigation and school bus/commercial motor vehicle litigation. Suzanne received her Bachelor of Arts degree from Loyola College and Juris Doctorate from Widener University School of Law. She served as a judicial law clerk for the Honorable Frank X. O'Brien, Court of Common Pleas in Philadelphia, PA. She is admitted to practice in the state courts of Pennsylvania and New Jersey as well as the United States District Court for the District of New Jersey and the United States District Court for the Eastern District of Pennsylvania. She has argued successfully before the Pennsylvania Superior Court. Suzanne is an active participant in the University of Pennsylvania Law School's Quaker Classic Mock Trial Tournament.

Suzanne can be reached directly at: (215) 575-4242 • smurphy@rawle.com

PHILADELPHIA BAR ASSOCIATION

Patrice O'Brien, Of Counsel to the firm in the Philadelphia office, has been selected to serve as a co-chair of the **Medical-Legal Committee of the State Civil Litigation Section of the Philadelphia Bar Association**. The Medical-Legal Committee monitors problems resulting from the interaction of the medical and legal professions. It works to administer the provisions of the Professional Code between the Philadelphia County Medical Society, the Philadelphia County Osteopathic Society and the Association. In addition, the Committee supplies speakers to hospitals and medical societies on forensic topics. It also monitors pending legislation in malpractice, health care, mental health and other areas.

Patrice O'Brien

Patrice O'Brien has practiced as a civil trial lawyer for over 20 years in the areas of medical malpractice, products liability and environmental, toxic and mass torts in the mid-Atlantic region. She received her undergraduate degree from Delaware Valley College, *magna cum laude*, and her J.D. from Columbus School of Law at Catholic University. Patrice is admitted to practice in Pennsylvania and New Jersey, as well as the U.S. District Court for the Eastern District of Pennsylvania. For the past eight years, she has been the captain of Rawle & Henderson LLP's race team for the annual Komen Philadelphia Race for the Cure, helping to raise funds to find a cure for breast cancer.

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AMERICAN COLLEGE OF TRIAL LAWYERS

Fred B. Buck

Fred B. Buck, a partner in our Philadelphia office, will speak at the **American College of Trial Lawyers Spring Meeting** on March 3, 2016. Fred will be a panelist for the session *"It's All a Matter of Proportion: The 2015 Amendments to the Federal Rules of Civil Procedure."* The panel will discuss the amendments, which are designed to make the civil litigation process more streamlined and less expensive. In addition, the panelists will explain how the amendments are expected to operate and what they are intended to achieve, focusing on four key areas: increased cooperation among counsel, more active judicial management, proportionality of discovery, and remedies for loss or destruction of electronically stored information.

Fred Buck has been an active litigator and trial lawyer for over 30 years. He is Chair of the firm's Professional Liability Section. He is a Fellow of the American College of Trial Lawyers and a member of the American Board of Trial Advocates. Fred has represented clients in high exposure cases in many diverse areas of the law including general negligence, civil rights, product liability, professional liability, commercial motor vehicle, and construction site accidents. He has tried many jury and nonjury cases in the Courts of Common Pleas of Philadelphia, Berks, Bucks, Delaware, Lackawanna, Lehigh, Monroe, Montgomery, Pike and York Counties as well as in the U.S. District Courts for the Eastern and Middle Districts of Pennsylvania. He has argued appeals in the Pennsylvania appellate courts and in the United States Court of Appeals for the Third Circuit. He has taught as an adjunct professor of law at the Villanova University School of Law. He has been selected as a Pennsylvania Super Lawyer from 2004 through 2015.

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OF COUNSEL

Jeffrey L. Oster

Rawle & Henderson LLP is pleased to announce that **Jeffrey L. Oster** has been named Of Counsel to the firm in the Philadelphia office. Jeff concentrates his practice on general negligence, premises liability, motor vehicle liability, trucking, professional liability, medical malpractice, employment law, and toxic torts. He has experience at all levels of case management, from pre-litigation advisement and opinion through settlement, arbitration and mediation, and, if necessary, trial. He is also skilled in general contract matters, negotiations and government affairs. He has served as a member of emergency response teams for various national clients. He has obtained numerous defense verdicts at arbitration and trial.

Jeff earned his J.D. from Widener University School of Law in 2006 and his B.A. from the University of Delaware in 2003. He is licensed to practice in the state and federal courts of Pennsylvania and New Jersey. He has been specially admitted as trial counsel in several other states and also serves as an arbitrator for the Philadelphia County Court of Common Pleas.

Jeff performs Pro Bono services for the Legal Aid of Southeastern Pennsylvania, representing indigent clients in matters involving Protection from Abuse and custody, as well as for the Superior Court of Burlington County, New Jersey, where he represents low-income individuals in defense of minor criminal infractions and family law matters.

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PA. HOUSE JUDICIARY COMMITTEE

Peter J. Neeson

Peter J. Neeson, a partner in Rawle & Henderson LLP's Philadelphia office, testified on January 11, 2016, before the Pennsylvania House Judiciary Committee in favor of House Bill 1428. Known as the Fairness in Claims and Transparency Act, the legislation seeks to provide for transparency of claims made against asbestos related bankruptcy trusts and for connecting the bankruptcy trust system with the tort system through pre-trial disclosure of trust documents and jury allocation of responsibility, including trusts, during their deliberations. This was the second time that Peter has testified on this issue before the House Judiciary Committee. Peter, along with other panelists, explained the Act and the problems that it solves. They also addressed why the legislation would help to close a loophole and bring the Fair Share Act rules of apportioning liability to asbestos litigation. The House Judiciary Committee will vote on the Act at a later date.

A practicing trial attorney for 37 years, Peter Neeson is Chair of the Environmental Law and Toxic Torts Sections of Rawle & Henderson LLP. He has been involved in numerous toxic tort matters in multi-district litigation and class action cases in both state and federal courts, including benzene, underground storage tank, silica, orthopedic bone screw and asbestos litigation among others. Peter has been selected as National Coordinating Counsel in the FRT, asbestos, latex glove and PPA drug litigation. In 2007, he served as Chair of TIPS (Tort Trial and Insurance Practice Section of the ABA). In 2012, Peter received the prestigious TIPS James K. Carroll Leadership Award in part for his efforts in founding the TIPS Trial and Leadership Academies. Since 2009, Peter has been a member of the Board of Directors of the National Judicial College, the organization which trains the country's state court judges. He is a past Chair of the Board. He has been rated AV Preeminent by Martindale-Hubbell and has been selected as a Pennsylvania Super Lawyer from 2004 through 2015.

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DRI TOXIC TORT SEMINAR / LEGAL JOURNAL

Eric K. Falk

Eric K. Falk, a partner in the firm's Pittsburgh office, will moderate a panel at the **2016 DRI Toxic Tort Seminar** in New Orleans on March 17, 2016. The panel is titled *"When the Public Does Not Believe the Science"* and will include: Dr. Dennis Paustenbach, a scientist with Cardno ChemRisk LLC; Jayne O'Donnell, health reporter for ***USA Today***; and Jeff Steir, a social media specialist who works on scientific issues for the National Center for Public Policy Research. The session will explore mass media, social media, scientific education, and other social pressures that result in the individuals—including jurors—being skeptical of science simply because it is science.

Eric, who is an avid amateur photographer, was featured in the January 22, 2016, issue of the ***Legal Journal of the Allegheny County Bar Association*** in an article about his photography and his work as an attorney. In the past year, he has had his photography exhibited at the U.S. District Court House for the Western District of Pennsylvania, the Image Box Gallery and The Rivers Club. He has his own webpage: **https://marketplace.500px.com/ericfalk1959**.

Eric focuses his practice on defending companies in toxic tort litigation. He is currently a member of the DRI Toxic Tort Committee and is a former chair of the DRI Industrywide Litigation Committee. He received his J.D. from the University of Pittsburgh School of Law and his B.S. with Honors from the American University in Washington, D.C. He is admitted to practice in Pennsylvania and West Virginia as well as the U.S. District Court for the Western District of Pennsylvania, the U.S. District Courts for the Southern and Northern Districts of West Virginia, and the U.S. Court of Appeals for the Fourth Circuit. He was selected as a 2013 Top Rated Lawyer in Mass Torts by Martindale-Hubbell, and he has been rated AV Preeminent by Martindale-Hubbell from 2005 to 2016.

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