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PENNSYLVANIA CLASS ACTION

Federal Court Denies Class Certification

Rawle & Henderson LLP recently obtained a favorable opinion and order from the United States District Court of the Eastern District of Pennsylvania denying plaintiffs' motion for a class certification against our clients, in which plaintiffs alleged they, along with thousands of other property owners in Philadelphia County, sustained property damage as the result of the spraying of a herbicide by our clients.



Valerie Kellner

In this matter, plaintiffs filed a putative class action alleging nuisance, trespass and negligence claims against our clients. Plaintiffs alleged they sustained damage to the backyard of their home in Philadelphia, which borders a rail line, as a result of our clients' application of a well-known herbicide along the rail lines in Philadelphia County. Plaintiffs alleged plaintiffs' property, and alleged similarly situated properties along the rail lines, were exposed to a well-known herbicide, thereby causing property damage, including death of vegetation. Our clients provided vegetation management services along the rail lines. Central to our defense was the herbicide was applied on a very limited number of occasions and in a targeted manner.

Under Rule 23 of the Federal Rules of Civil Procedure ("Rule 23"), a plaintiff seeking class certification must satisfy all requirements of Rule 23(a) and at least one of the requirements of Rule 23(b). Rule 23(a) requires the plaintiffs to establish (1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and (4) the representative parties will fairly and adequately protect the interests of the class.

In their motion for class certification, plaintiffs relied on two experts to establish both the numerosity and commonality requirements under Rule 23(a). Plaintiffs relied on their two experts to establish the potential number of members of the class action, as well as the common questions of fact/law regarding the alleged exposure amongst the potential members of the class.

We argued that both of plaintiffs' experts' reports were speculative and unreliable and, thus, could not be considered because they did not meet the requirements for expert testimony set forth in *Daubert v. Merrell Dow Pharmaceuticals*, 509 U.S. 579 (1993). With respect to the numerosity requirement, we argued plaintiffs' experts failed to provide any basis for their methodology and relied on research literature which was inapposite to the methods of application used in this case. With respect to commonality, we argued plaintiffs' claims of nuisance, trespass and negligence required individual determinations to establish liability and, thus, could not meet the commonality requirement of Rule 23. Specifically, there had to be an individual analysis into the particular circumstances of

each herbicide application, each potential class member's property location, and each property owner's individual use and enjoyment of their property, which plaintiffs' experts failed to conduct.

We argued that since both experts' reports were speculative and unreliable, the motion for class certification should be denied. The Court in the Eastern District of Pennsylvania agreed with our position. The Court found plaintiffs' experts unreliable since the experts did not provide any methodology, testable theory or explanation of exactly what from the reviewed literature gave rise to their conclusions. Since plaintiffs could not meet the Rule 23 elements, the Court denied motion for class certification.

Valerie Kellner is a partner in Rawle & Henderson LLP's **Philadelphia** office. Valerie has over 20 years of experience in handling product liability, premises liability and construction litigation, including catastrophic injuries and death cases in New Jersey and Pennsylvania. She is admitted to practice in the federal and state courts of New Jersey, the state courts of Pennsylvania, and the U.S. District Courts for the Eastern and Middle Districts of Pennsylvania. Valerie is a member of the Federation of Defense & Corporate Counsel (FDCC). She is the Program Co-Chair for the upcoming FDCC Corporate Counsel Symposium on October 4-6, 2020, in Philadelphia, Pennsylvania. She also acts as a *Judge Pro Tem* as well as an Arbitrator for the Philadelphia Court of Common Pleas. In addition, Valerie is a member of the Temple Inn of Court. She previously served as the Chairperson for the Products Liability Committee as well as the Public Relations Committee for TIPS (Tort Trial & Insurance Practice Section) of the American Bar Association. Valerie graduated Rutgers Law School and served as law clerk in the Superior Court of New Jersey in Middlesex County in the civil division.

Valerie can be reached directly at (215) 575-4292 • vkellner@rawle.com

PHILADELPHIA BUSINESS JOURNAL

The *Philadelphia Business Journal* has ranked Rawle & Henderson LLP in the top 25 Philadelphia law firms in its *2020 Book of Lists*. The firm placed 25th among the top 100 firms named by the *Business Journal*. The results were based on number of area attorneys. Rawle & Henderson has a total of 69 attorneys in its three Delaware Valley offices (Philadelphia, PA, Marlton, NJ, and Wilmington, DE). In addition, the firm was ranked 8th among the oldest area businesses. Rawle & Henderson LLP was founded in 1783. The seven older businesses are Saint-Gobain Corp. (1665), Christ Church and Burial Ground (1695), The Carpenters Company of City and County of Philadelphia (1724), The Library Company of Philadelphia (1731), The Rowland Company (1732), Penn Medicine (1751), and The Philadelphia Contributionship (1752).



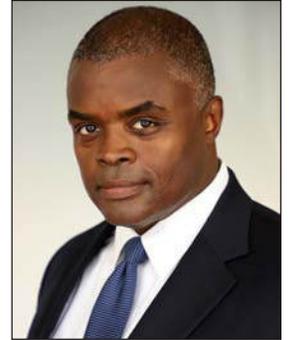
BARRISTERS' ASSOCIATION OF PHILADELPHIA CLE EVENT

Nigel A. Greene will speak at a CLE event sponsored by the **Barristers' Association of Philadelphia** on February 20, 2020. The seminar, *"Nuts-and-Bolts: Taking/Defending Depositions and Investigatory Witness Interviews,"* will be held at Greenberg Traurig LLP in Philadelphia. The Barristers' Association of Philadelphia has served the black legal profession and black community of Philadelphia for nearly 70 years by promoting and fostering professional and practice development and excellence, economic and political empowerment, charitable community service, and justice and equal opportunity.

Nigel and other panelists will illustrate the importance of depositions and how they can often win or lose a case. The panelists will outline techniques to draw out relevant information when questioning an individual in a deposition. In addition, panelists will discuss tools for securing credible and reliable insights and recollections in investigatory witness interviews. They will show how well-organized corporate internal investigation interviews can help a corporation protect itself in civil cases and also in potential criminal investigations arising out of the same alleged conduct that can generate a civil case.

Nigel A. Greene is a partner in Rawle & Henderson LLP's **Philadelphia** office. He focuses his practice on the defense of commercial motor vehicle companies, municipalities, commercial general liability, and premises liability matters. In addition, he serves as an arbitrator in Philadelphia County. He is admitted to practice in the state courts of Pennsylvania, the U.S. District Courts for the Eastern and Middle Districts of Pennsylvania and the U.S. Courts of Appeals for the Third Circuit. He received his J.D. from Georgetown University Law Center in 1994 and his B.A. from the Virginia Polytechnic and State University in 1989. Nigel is a member of the American Bar Association and the Trucking Industry Defense Association. He currently serves as Vice-Chair of the ABA Tort Trial and Insurance Practice Section (TIPS) Commercial Transportation Litigation General Committee.

Nigel can be reached directly at (215) 575-4278 • ngreene@rawle.com



Nigel A. Greene

PITTSBURGH

Grant H. Hackley has joined the firm as an associate in the **Pittsburgh** office. He concentrates his law practice in the areas of insurance coverage, construction, casualty & premises liability, product liability, and environmental, toxic and mass torts.

Grant earned his J.D. from the University of Pittsburgh in 2007. He served as the *Law Review* Editor-in-Chief and was a Student Bar Association Representative. In addition, he won a Student Leadership Award. He was also awarded the Dean's Scholarship and the Arthur J. Murphy, Jr., Endowed Scholarship. He served as a Judicial Intern for the Honorable Ralph J. Cappy, Chief Justice of the Pennsylvania Supreme Court. In addition, he served a clerkship for the Honorable Bernard L. McGinley in the Commonwealth Court of Pennsylvania.

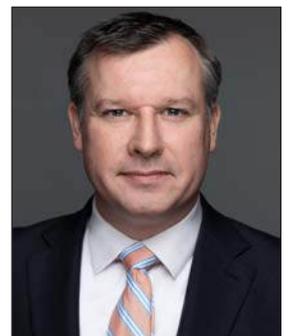
Grant earned a B.S. degree in Physiology & Neurobiology from the University of Maryland, College Park, in 2000.

Grant is admitted to practice in Pennsylvania and West Virginia, and also 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 Third Circuit Court of Appeals.

Grant was selected as a **Pennsylvania Rising Star** by *Super Lawyers* in 2016 and 2017. He has participated in the Allegheny County Bar Association Young Lawyers Division Bar Leadership Initiative. Grant is a Contributing Editor for the American Bar Association Litigation Section's *Litigation News* quarterly periodical.

Prior to joining Rawle & Henderson LLP, Grant was an attorney in the Pittsburgh office of a litigation and business transactions law firm.

Grant can be reached at (412) 261-5715 • ghackley@rawle.com



Grant H. Hackley

MIDTOWN MANHATTAN

Rawle & Henderson LLP is pleased to announce the addition of **Rachel Ji-Young Yoo** to our **Midtown Manhattan** office. Rachel is Of Counsel to the Firm and focuses her law practice in the area of immigration law, policy and strategy. With Rachel's addition, Rawle & Henderson adds an **IMMIGRATION, POLICY & STRATEGY** practice to the Firm's practice areas.

Rachel has extensive experience representing clients from the healthcare, K-beauty and technology sectors in all aspects of U.S. Immigration Laws, including, but not limited to, obtaining temporary and permanent visas for foreign professionals, multi-national executives, investors, entertainers and religious workers. Rachel also represents individuals in various family-based immigration filings and in deportation (defense in removal) proceedings. She helps clients navigate through complicated status maintenance issues, consular processing of visas, waivers of the foreign residence requirement and other citizenship matters. In addition, Rachel advises employers with respect to employer I-9, LCA and Audit compliance requirement.



Rachel Yoo

Rachel has also represented EB-5 regional centers, developers, and investors; worked with various HR departments on I-9 employment verification matters as well as H-1B and LCA compliance; represented individual E2 investors and Korea-U.S. branch office enterprise E2 employee visa; represented foreign EB-5 investors with I-526 filings and I-829 filings; and assisted several U.S. companies in diverse industries with H-1B RFE responses.

Rachel has obtained two law degrees from the U.S. and Korea. She also received an M.B.A. degree through a U.S.-Korea International Program. In addition, she serves as a member of the advisory board of the Korea Trade-Investment Promotion Agency (KOTRA), a non-profit governmental agency promoting the international trade and investment.

A distinguished speaker, Rachel has presented on complex immigration issues throughout the country and around the world. She has been recognized in the 2018-2019 editions of *New York Metro Super Lawyers – Rising Stars*; *Marquis Who's Who in American Law*. Rachel proudly works as a voluntary lawyer for the Safe Passage Project, a New York-based nonprofit that provides pro bono legal services to unaccompanied children in immigration proceedings. Prior to joining Rawle & Henderson LLP, Rachel was Of Counsel for a New York City-based firm.

Rachel can be reached at (212) 643-0200 • ryoo@rawle.com

HARRISBURG

Eric Suter has joined the **Harrisburg** office of Rawle & Henderson LLP as an associate. He has nearly 20 years of experience handling civil litigation matters. He focuses his law practice in the area of commercial motor vehicle defense.

Eric earned his J.D. from the University of Colorado School of Law in Boulder, Colorado, in 1998. He graduated in the top 10 percent of his class/Order of the Coif. He earned High Grade (former "AmJur" Award) in five classes, including Commercial Transactions, Torts, Antitrust and Tax. Eric was a Regional Mock Trial Champion and a National Mock Trial Finals Participant (San Antonio, TX, 1997). He was awarded a scholarship for excellence in trial advocacy. After graduating from law school, Eric served as a law clerk for the Office of Counsel to the President at the White House in Washington, D.C. He collaborated with numerous Associate and Senior White House Counsel in various matters implicating the powers, duties, privileges, and prerogatives of the office of the President of the United States and then-occupant, William Jefferson Clinton.



Eric Suter

Eric earned his B.S. in Political Science with Honors, *summa cum laude*, from the University of Colorado-Denver in 1994. He was a National Mock Trial Championship participant (Des Moines, IA, 1994).

Eric is admitted to practice in Pennsylvania. Prior to joining Rawle & Henderson LLP, he was an attorney with a civil litigation law firm in York, Pennsylvania.

Eric can be reached directly at (717) 234-1003 • esuter@rawle.com