



Pennsylvania Case Summaries

- Workers' Compensation -



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MEET
OUR TEAM

PENNSYLVANIA WORKERS' COMPENSATION

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JOSEPH E. VAUGHAN

MANAGING PARTNER

Joseph Vaughan has spent the past thirty-nine years defending employers and insurance carriers large and small against an array of ever-changing claims and exposures. He has acted as both litigator and advisor to his clients, counseling them on ways to mitigate operational risks and strategies that add value to their bottom line.

Joseph remains vigilant of constantly evolving statutes and case law and their potential impact on employment practices, as well as the exposures that these changes often create. He regularly provides his clients with education and training on a customized in-house basis and has dedicated his practice to preserving and promoting his clients' best interests financially and as leaders in their respective industries.

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Education

Villanova University School of Law | J.D., 1984
 University of Scranton | B.S., 1981

Bar & Court Admissions

U.S. Supreme Court
 U.S. Court of Appeals for the Third Circuit
 U.S. Court of Appeals for the Eleventh Circuit
 U.S. Court of Appeal for the Federal Circuit
 U.S. District Court for the Eastern District of Arkansas
 U.S. District Court for the Western District of Arkansas
 U.S. District Court for the Central District of California
 U.S. District Court for the Southern District of Florida
 U.S. District Court for the Eastern District of Pennsylvania
 U.S. District Court for the Western District of Pennsylvania

Bar & Court Licenses

Pennsylvania
 New York

Practice Areas

- Appellate Practice
- Bankruptcy/Creditors' Rights
- Commercial Litigation
- Construction Practices & Litigation
- Employment Practice & Liability
- ERISA & Employment Benefits
- Federal Employer's Liability Act
- Gig Economy
- Workers' Compensation
- Insurance Coverage
- Intellectual Property Litigation
- Premises Liability
- Product Liability
- Professional Liability
- Public Sector
- Retail, Hospitality & Restaurants
- Sexual Assault
- Transportation
- Trucking

Professional Affiliations

- Professional Liability Underwriting Society
- Professional Lines Attorney Network
- Defense Research Institute
- Pennsylvania Self-Insurers' Association
- Greater Philadelphia Executive Claims Counsel
- Aviation Insurance Association
- Pennsylvania Defense Institute
- Professional Liability Defense Federation
- Risk and Insurance Management Society
- Society for Human Resource Management
- Pennsylvania Chamber of Business & Industry's Workers' Compensation Executive



MADELINE S. BAIO

MANAGING PARTNER


Madeline Baio represents product manufacturers, retailers, trucking companies, a transportation network company, national pharmacy chains, supermarkets, food production companies and restaurants in product liability, premises liability, motor vehicle and employment-related matters. She has tried cases to verdict in federal and state courts, and has represented clients in appeals as well as arbitration, mediation and other alternative dispute resolution proceedings.


Madeline has significant experience representing manufacturers in product liability litigation involving catastrophic injuries and death with claims based on design defect, manufacturing defect, improper warnings, crashworthiness, misrepresentation in advertising and negligence. She has also defended product manufacturers and suppliers in connection with significant fire loss claims and has represented food production companies in connection with product liability claims involving alleged adulterated, contaminated and mislabeled food products.

Madeline has extensive experience defending pharmacy malpractice claims. Over the past 16 years, she has represented pharmacy and supermarket chains in pharmacy malpractice matters. In addition, she has defended a pharmacy chain in multidistrict litigation alleging failure to warn and other drug-related claims, as well as in premises liability and false arrest claims. She represents generic pharmaceutical companies as both litigation counsel and local counsel in connection with Abbreviated New Drug Application, or ANDA, litigation and has successfully defended trademark infringement claims on behalf of national and international distributors.

Her employment experience includes defending and counseling clients from a broad range of industries, including Fortune 100 companies, with regard to matters such as discrimination in hiring, firing and promotion; wages; benefits; civil rights claims; workplace investigations of discrimination and harassment claims; EEOC and state agency investigations; and drafting of employee manuals, employment agreements, severance agreements, non-compete agreements and employment policies and procedures.

A trusted authority within her practice areas, Madeline regularly presents on emerging employment-related issues at conferences around the country and frequently writes about developments in fields such as LGBTQ rights in the workplace and public accommodation.

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Education

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Bar & Court Admissions

U.S. District Court for the Eastern District of Pennsylvania
 U.S. District Court for the District of New Jersey
 U.S. Court of Appeals for the Third Circuit

Bar & Court Licenses

Pennsylvania
 New Jersey
 Massachusetts

Practice Areas

- Employment Practice & Liability
- Gig Economy
- Premises Liability
- Product Liability
- Professional Liability
- Retail, Hospitality & Restaurants
- Sexual Assault
- Transportation
- Trucking

Professional Affiliations

- National Retail & Restaurant Defense Association, Board of Directors
- Employment Practices Committee, Board Advisor and Former Chair
- Annual Conference Planning Committee
- Chamber of Commerce of Greater Philadelphia, Firm Member

Honors

- AV Preeminent® rating by Martindale-Hubbell®
- Super Lawyers, 2021-2023




GREGORY J. FISCHER


ASSOCIATE

Greg Fischer brings more than 20 years of experience to his practice of workers' compensation law. He represents employers, insurers and third-party administrators in all aspects of workers' compensation litigation. He has successfully represented clients including large retailers, school districts, hospitals, trucking companies, and manufacturers, among others. Greg is also licensed in West Virginia, where he has also represented employers and insurers.

For a leading national retailer, Greg was able to assume a specific workers' compensation case and successfully negotiate a resolution of a complex matter. The case had been in and out of litigation for almost 20 years. For an insurer client, Greg successfully argued before the Commonwealth Court, an intermediate appellate court in Pennsylvania, and saved the client close to \$100,000. He argued that a contractor who was essentially acting as a medical provider under Pennsylvania law by modifying the home of an injured worker, was obligated to file a fee review which he did not do.

Greg has served on the planning committee for the Pennsylvania Worker's Compensation Bureau Conference since 2015. He is also on the planning committee for the Western Pennsylvania Workers' Compensation Bar Association Kids' Chance Golf Outing, the Bar Association's annual statewide charity event.

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Education

University of Pittsburgh School of Law | J.D., 2000
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Bar & Court Admissions

Pennsylvania State Bar
West Virginia State Bar

Bar & Court Licenses

Pennsylvania
West Virginia

Practice Areas

- Workers' Compensation

Professional Affiliations

- Pennsylvania County Bar Association
- Allegheny County Bar Association
- West Virginia Bar Association



JOHN P. GOETZ III

PARTNER

John P. Goetz III concentrates his practice solely in Workers' Compensation defense litigation. Earlier in his career, John practiced at a regional defense firm where he handled all aspects of workers' compensation matters across the Commonwealth of Pennsylvania for insurance carriers, third-party administrators and large self-insureds.

Drawing from his 20 years of experience, John currently represents multiple insurance carriers and a multitude of large self-insureds across a wide range of industries including healthcare, retail, nursing homes, construction, manufacturing, and transportation. He is dedicated to establishing and nurturing long term relationships with his clients and claims personnel. This has allowed him to provide sophisticated problem solving and representation, while also being able to anticipate clients' future needs.

Outside of his practice, John's favorite pastime is cooking, where he tries his hand at dishes from a wide range of cuisines including Italian, Japanese, Thai, Mexican, Hungarian and French. He hopes to pass his love of food and feeding friends and family on to his son.



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Bar & Court Admissions

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Bar & Court Licenses

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Practice Areas


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Education

Widener University School of Law | J.D., 2000
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Bar & Court Licenses

Pennsylvania

Kelly Davis practices in the firm's Workers' Compensation, Insurance and Employment practice groups. Kelly defends employers against workplace claims and injuries, and advises businesses in the retail, staffing, manufacturing, and restaurant and hospitality industries. She also has over a decade of experience working with small family-owned businesses.

Kelly began her legal career as an attorney for the Workers' Compensation Appeal Board, which has Commissioners throughout the State and at its main office in Harrisburg. She then joined Gallagher Bassett Services, a third-party administrator, where she was part of the management team and handled complex litigated compensation claims. Kelly was based in the company's Mechanicsburg, P.A. office.

Drawing from her experience in the insurance industry, Kelly blends legal experience with actual day-to-day business strategy. Working in claims directly with employers, she understands their business needs as it relates to claims handling and exposure, employee retention, and various other concerns. Kelly knows that many employers have business needs that influence how safety and claims are handled and she's able to carry that understanding forward and let it influence her legal advice. Kelly's understanding of the claims process enables her to connect easily with claims professionals as well as employers facing challenges resolving claims matters.

Kelly's strength as an advocate comes from her emphasis on being available, responsive and easy to contact. She also takes great pride in being approachable and easy to understand—a skill, which she developed after more than a decade teaching and mentoring students as an Adjunct Professor at Central Penn College.

Kelly's favorite part of being a lawyer is talking and collaborating with employers and claims professionals to solve various legal needs. If Kelly weren't practicing law, she would be a professional chef or caterer. Kelly enjoys cooking for friends and family and sitting down to dinner.


Practice Areas


- Workers' Compensation
- Employment Practice & Liability
- Retail, Hospitality & Restaurants



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Education

Villanova University School of Law | J.D., 1982
University of Delaware | B.A., 1979

Bar & Court Admissions

U.S. Supreme Court
U.S. Court of Appeals for the Third Circuit
U.S. District Court for the District of Delaware
U.S. District Court for the Eastern District of Pennsylvania
U.S. District Court for the District of New Jersey

Bar & Court Licenses

Delaware
Pennsylvania

Raymond Cobb has almost 40 years of trial and litigation experience, having appeared as counsel in all courts in Delaware and before various Delaware administrative boards. Additionally, he has appeared as trial counsel in Pennsylvania, New Jersey and other states.

For most of his career, he has represented corporations and employers in a variety of matters including workers' compensation, general liability, and director and officer liability, shareholder litigation matters.

Raymond has also represented individuals and corporations in the Delaware Court of Chancery. His experience includes:

- Defense of wrongful death claims,
- Construction defect claims
- Workers' compensation claims
- Trucking and automobile claims
- Toxic tort claims

Raymond has served as national trial counsel for a manufacturer in product liability matters, playing a key role in numerous expert depositions and trials in jurisdictions throughout the country. He has also defended insurance coverage and declaratory judgment actions on behalf of insurance companies. He has defended multi-million-dollar construction defect claims on behalf of general contractors and developers, as well as liability claims on behalf of trucking companies.

As a part of his representation of manufacturers, he has defended claims for exposure to asbestos, benzene, lead, talc and other alleged toxic substances.

Practice Areas

- Workers' Compensation
- Construction Practices & Litigation
- Premises Liability
- Product Liability
- Commercial Litigation
- Corporate Governance

Professional Affiliations

- Delaware State Bar Association

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Case Summaries

June 2023

We hope you find our Vaughan Baio & Partners June issue of summaries of cases pertaining to Pennsylvania Workers' Compensation proceedings useful. These summaries are a roundup of cases our Workers Compensation Group has deemed to have effected the standard of review of Workers Comp cases. The decisions touch on employers in different industries. All cases have their own individual fact patterns, procedural histories, and as seen, outcomes. The summaries enclosed are by no means exhaustive. If you wish to discuss any of these cases further or if you have a matter pending in the Workers Compensation landscape, please feel free to contact the Workers Compensation attorneys at Vaughan Baio.



LINDSAY FRANCYK V. THE HOME DEPOT, NO. 11 WAP 2022

Date of Filing: April 19, 2023

Opinion by Justice Wecht

In a Nutshell: Workers' Compensation Remains Exclusive Remedy in Pennsylvania with few exceptions.

Plaintiff-Respondent Lindsay Franczyk, was working at The Home Depot when a customer's dog bit her during the course of her employment. Franczyk reported the bite promptly to her supervisors, but they barred Franczyk from having any further contact or interaction with the dog owner or any witnesses.

The supervisors did, however, speak with individuals who (separately) had brought dogs into the store, and also spoke to an eyewitness, but ultimately allowed all of them to leave the store without taking any identifying or contact information.

Franczyk claimed and received workers' compensation benefits. Nevertheless, Franczyk brought a direct tort action against her employer and his two supervisors, alleging they failed to investigate the incident sufficiently in that they negligently allowed the dog owner and witnesses to leave without obtaining identifying information. She contended that these acts and omissions denied her the opportunity to file a third-party suit against the dog owner.

Defendants filed a motion for summary judgment, claiming immunity under the exclusivity provision of the Workers' Compensation Act.

In denying this motion, the Superior Court embraced Franczyk's view that she did not seek to recover from Defendants for the dog bite itself, but rather for the economic harm she suffered when she lost the opportunity to file a third-party claim against the tortfeasor dog owner.

Citing Section 411 of the Act, the Court opined that, to the extent that Franczyk's allegedly impeded third-party claim seeks to recover for her compensable, work-related injuries as such, the Act clearly precludes Defendants' liability beyond that provided by the Act.

In its analysis, the Court stated that it is essential to determine whether employee pursuits of damages outside the context of the liability confines for employer liability statutorily defined in the Pennsylvania Workers' Compensation Act have as their ultimate basis an injury compensable under Act. The Court provided examples of situations where a direct action against the employer were precluded by Section 411, including an allegation that an insurance company wrongfully delayed his receipt of compensation benefits; that the employer should be denied its right to subrogation because it had failed to satisfy its affirmative duty to assist him in his efforts against the third-party. The Court notes that even non-, mis-, and malfeasance generally have not thwarted application of the exclusivity provision Act.



The Court also held that the Plaintiff's reliance on the holding reached in *Martin v. Lancaster Battery Co., Inc.* was misplaced. In that case, employees were exposed to lead in connection with the manufacture of batteries. Federal regulations required that the employer regularly test employees' blood for lead. For several years, the employer withheld or altered test results indicating blood toxicity. The severity of the plaintiff-employee's conditions could have been substantially reduced but for the employer's deception. While acknowledging that a direct action sounding in tort against the employer was permitted to proceed, it is significant to note that the Court drew a distinction between the original workplace injury and the aggravation that the employee attributed to the employer's deception. The Court determined that Martin's truly separable injury is not present here, and that the asserted injury—by whatever name—is “intertwined” inextricably with the workplace injury thereby limiting her remedies to those set forth in the Act.

**TERESA L. FEGLEY, AS EXECUTRIX OF THE ESTATE OF PAUL SHEETZ V.
FIRESTONE TIRE & RUBBER (WORKERS' COMPENSATION APPEAL BOARD),
NO. 680 C.D. 2021**

Date of Filing: March 17, 2023
Opinion by Judge Covey

In a Nutshell: Failure to “reimburse” a claimant for medical marijuana may expose a carrier/employer to penalties.

Claimant sustained a work-related injury in 1977. He subsequently underwent two back surgeries and was eventually prescribed opiates and narcotics. Decades later, at the recommendation of his physician, Claimant began taking medical marijuana. It was hoped that the effects of the marijuana would obviate the need for continuing opiates and narcotics. Claimant reported that medical marijuana did afford him pain relief and he was able to reduce his needs for opiates and narcotics.

Failure of the Employer to pay for Claimant's medical marijuana resulted in Claimant filing a Petition for Penalties.

The WCJ denied Claimant's penalty petition, concluding that Claimant had failed to prove that the employer's refusal to pay for the medical marijuana treatment violated the WC Act.

The WCAB affirmed the WCJ's decision.

The Court highlighted certain language under the Medical Marijuana Act (MMA) providing that insurers are not required to provide coverage for medical marijuana. While the Court concluded that the workers' compensation insurance carrier in this case was an insurer, the obligation that the carrier assumed upon providing workers' compensation coverage to Employer consisted of making



payments under the WC Act for reasonable surgical and medical services, as well as medicines and supplies as in when needed.

The Court felt compelled to presume that the General Assembly was aware of the WC Act's mandate that employers pay for employees' reasonable and necessary medical treatment of work injuries when it authorized medical marijuana as a medical treatment. The Court also quoted language in the MMA that "Scientific evidence suggests that medical marijuana is one potential therapy that may mitigate suffering in some patients and also enhance quality of life."

The Court rejected the argument advanced by Claimant that a workers' compensation insurance carrier is not an insurer. However, the Court opined that application the MMA is limited to not requiring insurers to provide coverage for medical marijuana, as distinguished from the obligation of WC carriers to reimburse claimants for out-of-pocket costs of medical treatment which has been found to be reasonable and necessary for their work injury.

The Court further opined that, in view of the fact that the employer was not prescribing marijuana to the Claimant, but rather reimbursing him for the lawful use the marijuana rub, Employer is not in violation of the Federal Drug Act prohibiting, any person to manufacture, distribute, or dispense, or possess with intent, to manufacture, distribute, or dispense, a controlled substance.

Significantly, the Court reasoned that the fact that dispensing marijuana is illegal under the federal law does not transform a medically reasonable and necessary treatment under the WC act for a work injury to a medically unreasonable and unnecessary treatment. Such a determination would be to eviscerate the entire MMA.

The Court reversed a portion of the WCAB's order, denying Claimant's penalty petition, and remanded it to the WCAB for remand to the WCJ to determine whether a penalty should be imposed.

In the Dissenting Opinion, authored by Judge Fizzano Cannon, it was argued that no reimbursement of medical expenses is necessary where coverage does not exist and, under MMA, insurers are not required to provide coverage for the use of medical marijuana. The Court concluded that this makes sense in that medical marijuana has not yet been approved by the FDA as a safe and effective for use in medical treatment, and that use is not legal under federal law.

