

ATTORNEY PROFESSIONAL LIABILITY UPDATE  
November 2017-November 2018

Jeff Albert  
Dresher, PA  
jalbertlaw@gmail.com

A. LEGAL MALPRACTICE STATUTE OF LIMITATIONS—WHEN  
IS IT BREACH OF CONTRACT OR ONLY A TORT?

Seidner v. Finkelman, Oct. Term, 2012, No. 2283, 2016 Phila. Ct. Com. Pl. LEXIS 378 (C.P. Phila., Oct. 2016) (Coleman, J.), *motion for reconsideration denied* (C.P. Phila., May 1, 2017), opinion submitted, PICS Case No. 17-1091 (C.P. Phila., June 12, 2017) (Coleman, J.) (available on C.P. Phila. docket), *aff'd*, Nos. 716 & 808 EDA 2017, 2018 Pa. Super. Unpub. LEXIS 3249 (Pa. Super., Aug. 31, 2018) (Platt, J.), *petition for allowance of appeal pending*, No. 461 EAL 2018 (Pa., filed Sept. 28, 2018), discussed in Lizzy McLellan, *Legal Malpractice Cases Raises Statute-Of-Limitations Question*, **LEGAL INTELLIGENCER**, Oct. 18, 2016; Zack Needles, *Legal Mal Suit Over Attorneys' Divorce Was Time-Barred Tort Claim*, **LEGAL INTELLIGENCER**, Sept. 6, 2018

FEDERAL COURT CONTINUES TO VIEW TWO-YEAR STATUTE  
OF LIMITATIONS AS GOVERNING LEGAL MALPRACTICE  
CLAIMS UNDER PENNSYLVANIA LAW

Brenco Oil Co., Inc. v. Blaney, No. 17-3938, 2017 U.S. Dist. LEXIS 204775 (E.D. Pa., Dec. 13, 2017) (Pratter, J.), discussed in Alesia S. Sulock, 24 **DEFENSE DIGEST** No. 2, June 1, 2018

DISCOVERY RULE EXTENDING STATUTE OF LIMITATIONS  
DUE TO FINANCIAL INABILITY TO DISCOVER, AT LEAST IN  
MEDICAL MALPRACTICE CASES. WILL THIS APPLY TO  
PROFESSIONAL LIABILITY CASES AGAINST ATTORNEYS?

Nicolaou v. Martin, No. 44 MAP 2017, 2018 Pa. LEXIS 5468, ---  
A.3d --- (Pa., Oct. 17, 2018), *from* No. 1286 EDA 2014, 153 A.3d  
383, 2016 PA Super 300, 2016 Pa. Super. LEXIS 784 (Pa. Super.,  
Dec. 22, 2016) (en banc) (Shogan, J.), *from* No. 2012-C-05128  
(C.P. Lehigh, Feb. 24, 2014) (McGinley, J.), discussed in Y. Peter  
Kang, *Pa. High Court to Hear Med Mal 'Discovery Rule' Case*,  
**LAW360**, Aug. 21, 2017.

EFFORT TO FIND A CAUSE OF ACTION OTHER THAN  
NEGLIGENCE IN CRIMINAL REPRESENTATION WERE DENIED,  
INCLUDING CLAIM FOR BREACH OF CONTRACT

Saterstad v. Lock, No. 337 MDA 2016, 2017 Pa. Super. Unpub.  
LEXIS 1644 (Pa. Super., April 28, 2017) (memorandum)  
(Stabile, J.), *aff'g*, No. 2006-CV-4989-CV (C.P. Dauphin Cty., Dec.  
20, 2012 and Jan. 29, 2016) (Dowling, J.), *petition for  
reconsideration and reargument denied*, 2017 Pa. Super. LEXIS  
326 (Pa. Super., April 28, 2017), *petition for allowance of  
appeal denied*, No. 375 MAL 2017, 2017 Pa. LEXIS 3437, 175  
A.3d 981 (Pa., Dec. 4, 2017).

AFTER FAILURE TO TAKE TIMELY APPEAL, CLIENT WAITED  
MORE THAN TWO YEARS TO FILE A LEGAL MALPRACTICE  
ACTION

Communications Network Int'l, Ltd. v. Mullineux (also referred  
to as Mullineaux), No. 2213 EDA 2017, 2018 PA Super 126,  
2018 Pa. Super. LEXIS 463, 187 A.3d 957 (Pa. Super., May 11,  
2018) (Platt, J.), *reh. denied*, 2018 Pa. Super. LEXIS 819 (Pa.

Super., Pa. Super., July 17, 2018), *petition for allowance of appeal pending*, No. 371 EAL 2018 (Pa., filed Aug. 16, 2018), *from* Dec. Term, 2014, No. 1519, PICS Case No. 17-1063 (C.P. Phila., July 10, 2017) (McInerney, J.) (available in C.P. Phila. website opinions), discussed in Max Mitchell, *Ex-Client Too Late to Sue Astor Weiss, Judge Says*, **LEGAL INTELLIGENCER**, July 11, 2017; see also Josh J. T. Byrne, *Deadlines the Harsh Reality of Legal Malpractice*, Swartz Campbell blog, Jan. 28, 2013.

#### CLAIM OF ATTORNEY MISCONDUCT IN “FORCING” CLIENT TO CLOSE REAL ESTATE TRANSACTION BARRED BY STATUTE OF LIMITATIONS

Burns v. Silverang, Donohue, Rosensweig & Haltzman LLC, Oct. Term, 2017, No. 2349, 2018 Phila. Com. Pl. LEXIS 81 (C.P. Phila., Sept. 11, 2018) (Glazer, J.), *appeal pending sub nom. Burns v. Silverang and Associates*, No. 2873 EDA 2018 (Pa. Super., filed Sept. 27, 2018).

#### DISCOVERY RULE AND SPECULATIVE DAMAGES DEFEAT LEGAL MALPRACTICE CLAIM; FEES AND COSTS AWARDED ON APPEAL

Mahonski v. Engel, No. 939 MDA 2017, 2018 Pa. Super. Unpub. LEXIS 1690 (Pa. Super., May 22, 2018) (judgment order) (Platt, J.), *following alloc. denial*, No. 800 MAL 2016, 2017 Pa. LEXIS 919 (Pa., April 25, 2017), *from* No. 2113 MDA 2015, 2016 Pa. Super. LEXIS 441, 2016 PA Super 172, 145 A.3d 175 (Pa. Super., Aug. 8, 2016) (Stevens, J.), *reargument denied*, 2016 Pa. Super. Unpub. LEXIS 2586 (Pa. Super., Oct. 12, 2016), *from sub nom. Mahonski v. Rider*, No. 11-01458, PICS Case No. 15-2011 (C.P. Lycoming, Nov. 12, 2015) (Saylor, J.), summarized in **LEGAL INTELLIGENCER**, Jan. 5, 2016.

## SETTLEMENT MALPRACTICE LITIGATION BAR REDUX?

McGuire v. Russo, No. 901 EAL 2016, 2017 Pa. LEXIS 1301 (Pa., June 6, 2017), *from* No. 2603 EDA 2015, 2016 Pa. Super. Unpub. LEXIS 4281 (Pa. Super., Nov. 22, 2016) (memorandum) (Ford Elliott, J.; Fitzgerald, J., dissenting), *aff'g*, No. 2011-C-3564 (C.P. Lehigh, July 15, 2015) (Reibman, J.), discussed in Zack Needles, *Justices to Revisit Post-Settlement Legal Malpractice Claims*, **LEGAL INTELLIGENCER**, June 8, 2017.

Although the Pennsylvania Supreme Court agreed to consider the following question, the case was settled before argument.

“Should this Court overturn its decision in *Muhammad v. Strassburger, McKenna, Messer, Shilobod & Gutnick*, 587 A.2d 1346 (Pa. 1991), which bars legal malpractice suits following the settlement of a lawsuit absent an allegation of fraud, even in instances where an attorney’s negligence led to a lesser settlement.”

**MUHAMMAD DID NOT APPLY TO AGREEMENT TO COMPENSATE CLIENT FOR FAILURE TO PROVIDE FOR LOSS OF CONSORTIUM CLAIM**

Rupert v. King, No. 1309 WDA 2017, 2018 Pa. Super. Unpub. LEXIS 1951 (Pa. Super., June 4, 2018) (Murray, J.), *rev'g and remanding* No. 12-007664, 2017 Pa. Dist. & Cnty. Dec. LEXIS 3287 (C.P. Allegheny, Aug. 15, 2017) (Colville, J.).

See related case of Dillon McCandless King Coulter & Graham, LLP v. Rupert, No. 1648 WDA 2015, 2017 Pa. Super. Unpub. LEXIS 1505 (Pa. Super., April 20, 2017) (memorandum) (Lazarus, J.), *from* No. 12-10019, 24 Butler Co. L.J. No. 14 (C.P.

Butler, Sept. 18, 2015) (Horan, J.), *alloc. denied*, No. 191 WAL 2017, 2017 Pa. LEXIS 3233, 174 A.3d 105 (Pa., Nov. 22, 2017).

#### **MUHAMMAD DID NOT BAR CLAIM BECAUSE RELEASE DID NOT EXTINGUISH CLAIMS**

Gallagher v. O'Donnell, No. 557 EDA 2017, 2018 Pa. Super. Unpub. LEXIS 2501 (Pa. Super., July 16, 2018) (Stevens, J.), *reh. denied*, 2018 Pa. Super. LEXIS 961 (Pa. Super., Aug. 30, 2018), *petition for allowance of appeal pending*, No. 479 EAL 2018 (Pa., filed Oct. 1, 2018), discussed in Josh J. T. Byrne, *A Look at Recent Legal Malpractice Cases*, **LEGAL INTELLIGENCER**, July 20, 2018.

#### **MUHAMMAD DID NOT BAR CLAIM THAT LEGAL MALPRACTICE CAUSED DEBT ABANDONMENT**

Index Realty, Inc. v. Gargano (Appeal of Mirarchi), Aug. Term, 2015, No. 02844 (C.P. Phila., Aug. 4, 2017) (Powell, J.) (opinion attached to Pa. Super. opinion), *aff'd*, No. 2688 EDA 2017, 2018 Pa. Super. Unpub. LEXIS ---- (Pa. Super., Oct. 22, 2018) (Shogan, J.)

#### **C. APPLICATION OF *BILT-RITE* BEYOND ARCHITECTURAL SERVICES**

Fulton Bank, N.A. v. Sandquist, No. 2306 EDA 2016. 2017 Pa. Super. Unpub. LEXIS 3622, 2017 WL 4284923 (Pa. Super., Sept. 27, 2017) (memorandum) (Ott, J.), *alloc. denied*, Nos. 732 & 763 MAL 2017, 183 A.3d 973 (Pa., April 3, 2018), *from* No. 2016-01908-77 (C.P. Chester, June 1, 2016) (Sommer J.), discussed in Christopher J. Tellner, *Lawyers Beware of What You Represent About Those You Represent*, **Updates to Pennsylvania Legal**

**Malpractice**, Kaufman Dolowich Voluck LLP blog (Oct. 23, 2017)

## D. DRAGONETTI ACT HELD TO BE CONSTITUTIONAL, BUT QUESTIONS REMAIN

Villani v. Seibert, No. 66 MAP 2016, 159 A.3d 478, 2017 Pa. LEXIS 939 (Pa., April 26, 2017), *petition for reconsideration denied* (Pa., June 6, 2017), from No. 2012-09795, 2015 Pa. Dist. & Cnty. Dec. LEXIS 13784 (C. P. Chester Cty., Aug. 25, 2015) and 2015 Pa. Dist. & Cnty. Dec. LEXIS 13780 (C.P. Chester, Oct. 5, 2015), discussed in Josh J. T. Byrne, *The Dragonetti Act—Where Do We Stand Now*, **LEGAL INTELLIGENCER**, May 22, 2017

## DRAGONETTI ACT—CAN LARGEST PUNITIVE DAMAGES AWARD IN DRAGONETTI ACT SUIT STAND?

Brown v. Halpern, June Term, 2013, No. 1428 (C.P. Phila., Sept. 30, 2016), discussed in, *Dragonetti Case Nets \$2.3M Against Drexel Hill Attorney*, **LEGAL INTELLIGENCER** (Oct. 4, 2016), *post-trial motions denied* (C.P. Phila., May 4, 2017) (Robins New, J.), *aff'd*, No.1496 EDA 2017 and No. 1714 EDA 2017 (Pa. Super., 2018 PA Super 320, 2018 Pa. Super. LEXIS --- (Nov. 28, 2018) (Olson, J.), discussed in Matt Fair, *Constitutional Challenge Coming in \$2 Million Frivolous Suit Appeal*, **LAW360** (June 5, 2017), and Max Mitchell, *Judge Refuses to Throw Out \$2.3 Million Verdict in Dragonetti Case*, **LEGAL INTELLIGENCER**, May 9, 2017

## DRAGONETTI ACT CLAIM BY REAL ESTATE DEVELOPER AGAINST OPPOSING LAW FIRM AND OTHERS AS THWARTING PROPOSED DEVELOPMENT BECAME A SEE-SAW OF LITIGATION OVER ASSERTION OF ATTORNEY-CLIENT PRIVILEGE, WITH PRE-TRIAL PROCEDURES NOW

CONSUMING MORE THAN SEVEN YEARS. CASE SETTLED  
AFTER FINDINGS OF FACT AND CONCLUSIONS OF LAW  
ISSUED IN DENIAL OF SUMMARY JUDGMENT

De Botton v. Kaplin (Appeal of Kaplin, Stewart, Meloff, Reiter & Stein, P.C.), Nos. 1270 & 1301 EDA 2015, 161 A.3d 367, 2017 Pa. Super. Unpub. LEXIS 427 (Pa. Super., Feb. 3, 2017) (memorandum) (Bender, J.; Stevens, J., concurring), *from* Oct. Term, 2010, No. 1997 (C.P. Phila., April 2, 2015) (Tereshko, J.), discussed in Zack Needles, *Long-Running Dragonetti Suit Against Firm Sent Back Down Again*, **LEGAL INTELLIGENCER** (Feb. 10, 2017), order (C.P. Phila., Aug. 10, 2017) (Tereshko, J.), findings of fact and conclusions of law (C.P. Phila. Feb. 9, 2018) (Robinson, J.).(available on C.P. Phila. docket).

DRAGONETTI CLAIM BASED UPON STATEMENTS MADE IN  
COURSE OF LITIGATION IS BARRED BY JUDICIAL PRIVILEGE

PCIC v. Kiely, June Term, 2017, No. 0645, 2018 Phila. Com. Pl. LEXIS 83 (C.P. Phila., Oct. 3, 2018) (Massiah-Jackson, J.), *appeal pending*, No. 3111 EDA 2018 (Pa. Super., filed Oct. 9, 2018).

*See also* Creazzo v. Lopiano-Reilly, No. 1003 EDA 2017, 2018 Pa. Super. Unpub. LEXIS 77, 183 A.3d 1047 (Pa. Super., Jan. 11, 2018) (Platt, J.), *from* No. C-48-CV-2016-04524 (C.P. Northampton Cty., Feb. 28, 2017) (Baratta, J.).

DRAGONETTI ACTION NOT BARRED BY CLAIM THAT  
UNDERLYING ACTION WAS PROTECTED BY JUDICIAL  
IMMUNITY

Freundlich & Littman, P.C. v. Feierstein, No. 3381 EDA 2015, 157 A.3d 526, 2017 PA Super 40, 2017 Pa. Super. LEXIS 116 (Pa. Super., Feb. 23, 2017) (Bender, J.), *petition for*

*reconsideration denied*, 2017 Pa. Super. LEXIS 2316 (Pa. Super., May 2, 2017), *vacating & remanding*, April Term, 2015, No. 1569, 2016 Phila. Ct. Com. Pl. LEXIS 8 (C.P. Phila., Oct. 8, 2015) (Cohen, J.), discussed in P.J. D'Annunzio, *Dragonetti Act Trumps Judicial Immunity, Court Rules*, LEGAL INTELLIGENCER, Feb. 27, 2017.

DRAGONETTI ACT'S REQUIREMENT THAT PLAINTIFF HAD A FAVORABLE TERMINATION OF UNDERLYING ACTION IS NOT SATISFIED WHEN DEFENDANT WAS BENEFIT OF DECISION NOT TO PROSECUTE ACTION TO CONCLUSION; IMPACT OF CONTENT OF RULE 1023.2 NOTICE ON SANCTIONS

Pinardo v. Dorsey, No. 774 EDA 2016, 2017 Pa. Super. Unpub. LEXIS 3703 (Pa. Super., Oct. 4, 2017) (memorandum) (Bender, J.), *petition for reargument denied*, 2017 Pa. Super. LEXIS 1029 (Pa. Super., Dec. 7, 2017), *from* March Term, 2014, No. 2347 (C.P. Phila., Feb. 17, 2016) (Butchart, J.).

ATTORNEY DID NOT VIOLATE THE FEDERAL RACKETEERING ACT IN REPRESENTING A CLIENT IN DIVORCE PROCEEDINGS

Hvizdak v. Linn, No. 1012 WDA 2017, 2018 PA Super 170, 2018 Pa. Super. LEXIS 675, 190 A.3d 1213 (Pa. Super., June 18, 2018) (Stabile, J.), *reh. denied*, 2018 Pa. Super. LEXIS 915 (Pa. Super., Aug. 21, 2018), *from* No. AD 15-11055 (C.P. Butler, June 9, 2017) (Horan, J.).

C. ATTORNEY SUBJECT TO CLAIMS FOR INVOLVEMENT IN OPERATION OF NONPROFIT

Commonwealth of Pennsylvania v. New Foundations, Inc., No. 36 MD 2014, --- A.3d --- (Pa. Cmwlt., March 1, 2018)



(Pellegrini, J.)(under stay of proceedings while pursuing mediation prior to trial)

#### D. WILL PREPARATION MALPRACTICE CLAIMS LIMITED TO NAMED BENEFICIARIES

Estate of Agnew v. Ross, No. 76 MAP 2015, 152 A.3d 247, 2017 Pa. LEXIS 129 (Pa., Jan. 31, 2017) (Dougherty,, J.; Saylor, C.J., concurring), *rev'g*, No. 2195 EDA 2014, 2015 PA Super 22, 110 A.3d 1020, 2015 Pa. Super. LEXIS 33 (Pa. Super. 2015) (Strassburger, J.), *rev'g*, No. 12-09300, 2014 Pa. Dist. & Cnty. Dec. LEXIS 1222 (C.P. Chester Cty., June 4, 2014) (Sommer, J.), discussed in Matt Fair, *Pa. Justices Bar Unnamed Beneficiary Malpractice Claim*, **LAW360**, Jan. 19, 2017.

#### E. MARITRANS REDUX: LIABILITY FOR ALLEGEDLY UNDERTAKING CONFLICTING REPRESENTATION

Towers Watson Delaware v. Morgan Lewis & Bockius LLP, April Term, 2017, No. 2096 (C.P. Phila., June 28, 2018) (McInerney, J.) (available in C.P. Phila. docket).

#### F. EXISTENCE OF CALCULABLE DAMAGES IN LEGAL MALPRACTICE ACTIONS

Servin v. Duane Morris, Dec. Term, 2016, No. 2828, 2017 Phila. Ct. Com. Pl. LEXIS 247 (C.P. Phila., Aug. 23, 2017) (McInerney, J.), *aff'd*, No. 1543 EDA 2017, 2018 Pa. Super. Unpub. LEXIS 742, 188 A.3d 521 (Pa. Super., March 13, 2018) (McLaughlin, J.), *reh. denied*, 2018 Pa. Super. LEXIS 495 (Pa. Super., May 8, 2018), *petition for allowance of appeal denied*, No. 250 EAL 2018 (Pa., Dec. 5, 2018), discussed in *Duane Morris Faces \$625M Suit Over Appellate Brief*, **LEGAL INTELLIGENCER**, Jan.

6, 2017, and Matt Fair, *Duane Morris Ducks Malpractice Suit Over Telecom Deal Row*, **LAW360** (April 19, 2017).

Brown v. Boyer, No. 206 WDA 2017, 2018 Pa. Super. LEXIS 852 (Pa. Super., May 18, 2018) (Stabile, J.; Olson, J., concurring; Bender, J., dissenting), *petition for reargument denied* (Pa. Super., July 26, 2018), *petition for allowance of appeal pending*, No. 333 WAL 2018 (filed Aug. 24, 2018), *from* Civ. 2014-10798 (C.P. Butler, Jan. 12, 2017) (Yeager, J.).

Cook v. Gelman, Sept. Term, 2013, No. 3528, PICS Case No. 17-0197, 2017 Phila. Ct. Com. Pl. LEXIS 31 (C.P. Phila., Jan. 24, 2017), (Coleman, J), reported in **LEGAL INTELLIGENCER**, Feb. 17, 2017, *aff'd*, No. 2184 EDA 2016, 2018 Pa. Super. Unpub. LEXIS 537 (Pa. Super., Feb. 21, 2018) (Stabile, J.), *alloc. denied*, No. 132 EAL 2018, 2018 Pa. LEXIS – (Pa., Aug. 20, 2018).

G. EXPERT WAS NECESSARY TO PROVE LEGAL MALPRACTICE CLAIMS ASSERTING THAT SEQUENTIAL MALPRACTICE CLAIMS LINKED BY ALLEGED CONSPIRACY WITH ATTORNEYS' PROFESSIONAL LIABILITY INSURERS ARISING FROM UNSUCCESSFUL UNDERLYING ABUSE OF PROCESS CLAIM.

Cruickshank-Wallace v. Egan, No. 2621 EDA 2016, 2017 Pa. Super. Unpub. LEXIS 3562 (Pa. Super., Sept. 25, 2017) (memorandum) (Bowes, J.), *alloc. denied sub nom.*

Cruickshank-Wallace v. CNA, Nos. 852 & 853 MAL 2017, 187 A.3d 907, 2018 Pa. LEXIS 308 (Pa., June 19, 2018), *from* No. 2013-11158 (C.P. Chester, July 11 and 12, 2016) (Mahon, J.).

H. CASE-WITHIN-CASE PROOF PROPERLY REJECTED BY ENTRY OF DIRECTED VERDICT FAILED AS THE ERISA ADMINISTRATOR HAD DISCRETION TO DENY CLAIM AND

PLAINTIFF'S EXPERT ADVOCATED INTERPRETATION OF  
ERISA LAW THAT HAD BEEN REJECTED IN A PRIOR DISTRICT  
COURT OPINION

Skonieczny v. Cooper, No. 1166 WDA 2016, 2017 Pa. Super. Unpub. LEXIS 1644 (Pa. Super., April 28, 2017) (memorandum) (Strassburger, J.), *alloc. denied*, 2017 Pa. LEXIS 3312, 174 A.3d 1029 (Pa., Nov. 28, 2017), *from* No. GD 01-018372 (C.P. Allegheny, July 22, 2016) (James, S.J.), *discussed in* Dee Thompson, *Former USAir flight attendant loses appeal in legal malpractice*, **PENN RECORD**, May 12, 2017

I. CASE-WITHIN-A-CASE: DEFENSE ATTORNEY'S FAILURE TO  
SUBMIT F. R.C.P. RULE 50 MOTION DID NOT CAUSE  
DEFENDANTS TO LOSE UNDERLYING TRIAL

Erie Insurance Exchange v. Hall, No. 370 WDA 2016, 159 A.3d 1016, 2016 Pa. Super. Unpub. LEXIS 4720 (Pa. Super., Dec. 28, 2016) (Musmanno, J.) (memorandum), *from* No. 11342-07 (C.P. Lawrence Cty., Feb. 11, 2016) (Motto, P.J.) (attached to Superior Court opinion), *discussed in* Max Mitchell, *Panel Tosses Legal Mal Suit Involving Man Falsely Accused of Terrorism*, **LEGAL INTELLIGENCER**, Dec. 30, 2016

J. ATTORNEY MAY BE LIABLE FOR NOT COUNSELING CLIENT  
TO SUE "DEEP POCKET" DEFENDANT

Heldring v. Lundy, Beldecos & Milby, P.C., No. 1731 EDA 2017, 2018 Pa. Super. Unpub. LEXIS 1315, 190 A.3d 749 (Pa. Super., April 27, 2018) (Lazarus, J.) (en banc), *vacating panel opinion* 151 A.3d 634, 2016 PA Super 263, 2016 Pa. Super. LEXIS 706 (Pa. Super., Nov. 28, 2016) (Solano, J.), *rev'g*, May Term, 2015, No. 2532, 2016 Phila. Ct. Com. Pl. LEXIS 108 (C.P. Phila., Feb. 16, 2016) (Glazer, Adm. J.), *on remand, defendants' motion for*

*judgment on pleadings granted* (C.P. Phila., April 24, 2017) (Glazer, J.), *reconsideration denied* (C.P. Phila., May 4, 2017), *opinion issued* (C.P. Phila., June 13, 2017) (Glazer, J.), , discussed in Jeffrey P. Lewis, *Malpractice for Failure to Sue the Deep Pocket*, **PA. BAR NEWS**, Jan. 23, 2017.

**K. WHEN EXPERT IS DISQUALIFIED IN UNDERLYING MEDICAL MALPRACTICE CASE, CAN AN ATTORNEY SELECTING THAT EXPERT BE HELD LIABLE FOR LEGAL MALPRACTICE**

Rutyna v. Schweers, No. 895 WDA 2016, 2018 PA Super 2, 177 A.3d 927 (Pa. Super., Jan. 4, 2018) (en banc) (Lazarus, J.), *following* 2017 Pa. Super. Unpub. LEXIS 2179 and 2186 (Pa. Super., June 6, 2017), *superseding* 2017 Pa. Super. Unpub. LEXIS 1120 (Pa. Super., March 27, 2017) (Strassburger, J.; Solano, J., dissenting), *from* No. GD 07-025584 (C.P. Allegheny, June 1, 2016) (Colville, J.), discussed in Dan Packel, *Suit Alleging Atty Botched Med Mal Row Wins En Banc Rehear*, June 9, 2017, and Onika K. Williams, *Summary Judgment Granted after Expert Is Conflicted Out of Case*, **LITIGATION NEWS** (ABA Sec. of Litigation), Aug. 10, 2017.

**L. PRIOR LITIGATION ESTABLISHED THAT VARIOUS PLAINTIFFS HAD NO DIRECT FINANCIAL INTEREST IN CHALLENGED TRANSACTION; LONGER NEW YORK STATUTE OF LIMITATIONS CONTROLLED CLAIMS ORIGINALLY FILED IN NEW YORK STATE**

Berger v. Cushman & Wakefield of Pennsylvania, Inc., Civ. A. No. 13-5195, 2017 U.S. Dist. LEXIS 132587 (E.D. Pa., Aug. 18, 2017) (DuBois, J.), *later* 294 F. Supp.3d 369, 2018 U.S. Dist. LEXIS 26967 (E.D. Pa., Feb. 16, 2018), and 2018 U.S. Dist. LEXIS 7221 (E.D. Pa., April 26, 2018),\_discussed in Emma Cueto,

*Investor Booted From Cozen, Blank Rome Fraud Suit*, **LAW360**, Aug. 21, 2017, and *sub nom. Busystore Limited in Liquidation v. Cushman & Wakefield of Pennsylvania, Inc.*, 2018 U.S. Dist. LEXIS 87547, 106 Fed. R. Evid. Serv. (Callaghan) 604 (E.D. Pa., May 24, 2018) (DuBois, J.).

M. IN ACTION CLAIMING ATTORNEY FAILED TO PAY A SHARE OF RECOVERY FROM FEDERAL FALSE CLAIMS ACTION PHILADELPHIA WAS INCONVENIENT VENUE WHERE NO PARTY RESIDED OR HAD ANY SIGNIFICANT CONTACT WITH THAT COUNTY

Ferguson v. Stengle,, March Term, 2015, No. 2491, 2017 Phila. Ct. Com. Pl. LEXIS 139, PICS Case No. 17-0490 (C.P. Phila., March 21, 2017) (Younge, J.), discussed in **LEGAL INTELLIGENCER**, April 14, 2017, *aff'd*, No. 3623 EDA 2016, 2018 Pa. Super. Unpub. LEXIS 173, 183 A.3d 1072 (Pa. Super., Jan. 19, 2018) (Dubow, J.), *reh. denied*, 2018 Pa. Super. LEXIS 269 (Pa. Super., March 19, 2018).

N. A DEBT COLLECTOR'S USE OF AN ATTORNEY'S LETTERHEAD TO MAKE AN EFFORT TO COLLECT THE DEBT DOES NOT IMPLICATE AN ACTION TAKEN BY AN ATTORNEY OR A THREAT TO PURSUE A DEBT COLLECTION ACTION

Daniels v. Solomon & Solomon, P.C., Civ. A. No. 17-0757, 2017 U.S. Dist. LEXIS 136662 (E.D. Pa., Aug. 25, 2017) (Surrick, J.), *aff'd*, No. 17-3017, -- Fed. Appx. --, 2018 U.S. App. LEXIS 25799 (3d Cir., Sept. 12, 2018) (McKee, J.) (non-precedential).

O. FOLLOWING BAD FAITH JURY VERDICT AGAINST INSURANCE COMPANY, PLAINTIFF'S COUNSEL'S DOCUMENTATION OF ATTORNEYS FEES WAS REJECTED IN

## LARGE PART DUE TO EXCESSIVE BILLING AND INADEQUATE SUPPORT

Clemens v. New York Central Mut. Fire Ins. Co., No. 17-3150, 903 F.3d 396, 2018 U.S. App. LEXIS 25803 (3d Cir., Sept. 12, 2018), from No. 3-13-2447-MEM, 2017 U.S. Dist. LEXIS 138557 (M.D. Pa., Aug. 29, 2017) (Mannion, J.), discussed in Max Mitchell, *Judge Tosses \$1M fee request, refers matter to ethics board*, **PITTSBURGH POST-GAZETTE**, Sept. 12, 2017.

## P. ATTEMPT TO SANCTION COUNSEL FOR MISCONDUCT DENIED

Patra v. Pennsylvania State System of Higher Educ., No. 4:14-cv-02265, 2017 U.S. Dist. LEXIS 3772 (M.D. Pa., March 17, 2017) (Brann, J.), *later* 2018 U.S. Dist. LEXIS 77233 (M.D. Pa., May 8, 2018), discussed in John Beauge, *Judge Rules Attorneys did Nothing Improper in Discrimination Lawsuit*, **PENNLIVE**, March 17, 2017.

## Q. AWARD OF FEES AND COSTS FOR VEXATIOUS CONDUCT IN PURSUIT OF LITIGATION

Moscatiello v. Zokaites, No. 1027 WDA 2017, 2018 Pa. Super. Unpub. LEXIS 1670, 192 A.3d 267 (Pa. Super., May 21, 2018) (Strassburger, J.), *from* No. AR-000260 (C.P. Allegheny, June 28, 2017) (Colville, J.).

Wallace v. State Farm Ins. Co., 2018 PA Super 325, 2018 Pa. Super. LEXIS ---- (Pa. Super., Nov. 30, 2018) (Strassburger, J.)

## **PROFESSIONAL LIABILITY INSURANCE COVERAGE ISSUES**

Allied World Ins. Co. v. Lamb McErlane, P.C., Civ. A. No. 17-2878, 2018 U.S. Dist. LEXIS 29223 (E.D. Pa., Feb. 23, 2018) (Rice, M.J.) (failure to report claim timely negated coverage).

Westport Ins. Corp. v. Hippo Fleming & Pertile Law Offices, No. 3:2015cv00251, 319 F.R.D. 214, 97 Fed. Rules Serv.3d (Callaghan) 487, 2017 U.S. Dist. LEXIS 31659 (W.D. Pa., March 7, 2017) (Gibson, J.), *later* 2018 U.S. Dist. LEXIS 168756 (W.D. Pa., Oct. 1, 2018), discussed in Zack Needles, *Legal Mal Policy Void Because Firm Hid Ties to Clients*, **LEGAL INTELLIGENCER**, Jan. 17, 2017.

## **MISCELLANEOUS**

### JURISDICTION OVER FALSE ADVERTISING CLAIMS AGAINST OUT-OF-STATE ATTORNEYS

Rosenbaum & Associates, P.C. v. Morgan & Morgan, Civ. A. No. 17-4250, 2018 U.S. Dist. LEXIS 7022, 2018 WL 327167 (E.D. Pa., Jan. 8, 2018) (Kearney, J.).