MARSHALL DENNEHEY

SHANE HASELBARTH

ASSISTANT GENERAL COUNSEL
SHAREHOLDER

AREAS OF PRACTICE

Appellate Advocacy & Post-Trial Practice
Product Liability
Premises & Retail Liability
Public Entity & Civil Rights Litigation

CONTACT INFO

(215) 575-2639
SSHaselbarth@mdwcg.com

2000 Market Street, Suite 2300
Philadelphia, PA 19103

ADMISSIONS

Pennsylvania
2007

New Jersey
2007

Florida
2014

Supreme Court of the United States

U.S. Court of Appeals 1st Circuit

U.S. Court of Appeals 3rd Circuit

U.S. Court of Appeals 4th Circuit

U.S. Court of Appeals 11th Circuit

U.S. District Court Eastern District of Pennsylvania

U.S. District Court Middle District of Pennsylvania

EDUCATION

Ave Maria School of Law (J.D., summa cum laude, 2007)

Franciscan University of Steubenville (B.A., magna cum laude, 2004)

OVERVIEW

Shane is a member of the firm's Post-Trial and Appellate Advocacy Practice Group. In this role, he handles all aspects of briefing and argument in federal and state appellate courts, and is also routinely tasked with assisting trial teams with the preparation and presentation of briefing and argument in support of pre-trial motions and post-trial motions. The appellate team at Marshall Dennehey also provides critical support to attorneys at trial to ensure that pitfalls are avoided and viable appellate issues are preserved. Serving as appellate lead counsel and trial-level support counsel allows Shane to handle cases of all varieties, including civil rights and municipal liability, negligence, construction accidents, professional malpractice, product liability, toxic torts, and class actions.

In 2021, Shane was named the Assistant General Counsel for the firm. In this role, and drawing on his litigation experience, he brings a results-oriented perspective to issues as they arise for the firm itself. Working with firm General Counsel Jay Rothman, Shane is tasked with process development and assisting colleagues navigate routine (and non-routine) issues that legal professionals face today.

Prior to joining the firm, Shane clerked for Judge D. Brooks Smith, former Chief Judge of the United States Court of Appeals for the Third Circuit, and earlier clerked for Judge William J. Zloch of the United States District Court for the Southern District of Florida. Shane is admitted to practice in all state courts of Pennsylvania, New Jersey, and Florida, as well as the U.S. Supreme Court, the U.S. Courts of Appeals for the First, Third, Fourth, and Eleventh Circuits, and the United States District Courts for the Eastern and Middle Districts of Pennsylvania.

HONORS & AWARDS

Pennsylvania Super Lawyer Rising Star
2015-2017

ASSOCIATIONS & MEMBERSHIPS

Pennsylvania Bar Association

Philadelphia Bar Association

YEAR JOINED

2010

THOUGHT LEADERSHIP

Supreme Court to Decide Pair of Mental Health Procedures Act Cases, Outlining the Contours of Claims Against Treatment Providers.

Philadelphia - Headquarters
Appellate Advocacy & Post-Trial Practice
Health Care Liability
October 1, 2024
"One of the purposes of the Mental Health Procedures Act is to provide limited protection from civil and criminal liability to mental health personnel and their employers in rendering treatment in this unscientific and inexact field." Farago v Case Law Alerts, 4th Quarter, Octo

Pennsylvania Supreme Court to Review Constitutionality of Sovereign Immunity–Based Damages Cap

Philadelphia - Headquarters
Appellate Advocacy & Post-Trial Practice
April 1, 2024
States, including the Commonwealth, enjoy immunity from suit and have since "before the ratification of the Constitution." Goldman v. Septa, 57 A.3d 1154, 1172 (Pa. 2012) (quoting Alden v. Maine, 527 U.S. 706, 713 (1999)).

Marshall Dennehey Named 2024 Litigation Department of the Year for Appellate Law By ALM's Pennsylvania Legal Awards

Appellate Advocacy & Post-Trial Practice
March 15, 2024
Marshall Dennehey was awarded with the 2024 Litigation Department of the Year for Appellate Law by ALM's prestigious Pennsylvania Legal Awards.
Read More

Superior Court: Yes, we actually mean actual authority for an actual settlement of a civil case.

Philadelphia - Headquarters
Appellate Advocacy & Post-Trial Practice
July 1, 2023
Driscoll and King were partners in a venture operating a restaurant. Their relationship soured, and so as not to sour matters for their customers, they sought to separate amicably. Case Law Alerts, 3rd Quarter, July 2023 is prepared by Marshall Dennehey to provide information on recent developments of interest to our readers.

Anger, guns and squirrels create problems begetting problems: En banc Pennsylvania Superior clarifies collateral estoppel effect of criminal conviction.

Philadelphia - Headquarters
Appellate Advocacy & Post-Trial Practice
April 1, 2023
Lloyd Thomas, who had some history of mental instability, was to watch his father's property, which included a small gun shop. Case Law Alerts, 2nd Quarter, April 2023 is prepared by Marshall Dennehey to provide information on recent developments of interest to our readers.

CLASSES/SEMINARS TAUGHT

Highlights in Pennsylvania Medical Malpractice Law, Health Care and Health Law Seminar, Marshall Dennehey, November 7, 2019

Highlights in Pennsylvania Medical Malpractice Law, Health Care and Health Law Seminar, Marshall Dennehey, November 5, 2015

PUBLISHED WORKS

"The Phantom Vehicle: Prejudice in Delayed UM Claim Not Presumed, But Certainly Demonstrable," *Defense Digest*, Vol. 20, No. 1, March 2014

Case Law Alerts, regular contributor, January 2014-present

MEDIA COMMENTARY

"Pa. Atty Off Hook For Extended Interest on Malpractice Award," *Law360*, March 31, 2021

RESULTS

Volatile Sexual Assault Case Successfully Moved Out of Philadelphia

Social Services & Human Services Liability
March 1, 2024
We successfully obtained an order to move a sexual assault case to Chester County, Pennsylvania. At first, the venue appeared *prima fascia* good for Philadelphia until our attorneys more closely investigated and found the one defendant holding the case in the city was never served and could not be found.

Unanimous Precedential Decision Received by the Pennsylvania Superior Court

General Liability
Appellate Advocacy & Post-Trial Practice
October 30, 2023
We won a unanimous precedential decision that upheld the venue transfer of a significant case from Philadelphia to Butler County under the doctrine of forum *non conveniens*. The decision breaks a recent string of appellate reversals of venue transfers out of Philadelphia. The decision has been reported as creating the new standard that defendants must meet in order to secure a venue transfer based on forum *non conveniens*.

Favorable Precedential Decision Obtained in High-Stakes Construction Defect Case

Appellate Advocacy & Post-Trial Practice
Architectural, Engineering & Construction Defect Litigation
September 29, 2023
We prevailed in a unanimous, precedential decision in the Superior Court of Pennsylvania, which reconciled conflicting case law in the state. The plaintiffs were joined by 55 amici, and our client was joined by numerous construction organizations as amici. The court eventually applied Pennsylvania's statute of repose to bar construction defect claims brought by homeowners.

$1.8 million jury verdict against a Philadelphia hospital nullified.

Appellate Advocacy & Post-Trial Practice
Health Care Liability
May 10, 2023
Our appellate attorneys successfully convinced a Philadelphia trial judge to grant judgment notwithstanding the verdict and nullify a $1.8 million jury verdict against a Philadelphia hospital. The case involved a fall in the hospital's bathroom, and the trial judge determined that the plaintiff's trial evidence failed to demonstrate that the hospital was responsible for the fall.

Pennsylvania Appellate Courts Uphold Nonsuit Obtained By Jack Delany In $11.5 Million Construction Death Case

Appellate Advocacy & Post-Trial Practice
Catastrophic Claims Litigation
Construction Injury Litigation
April 5, 2023
By Order dated April 5, 2023, the Supreme Court of Pennsylvania refused to review the Superior Court's affirmance of a 2021 nonsuit obtained by Jack Delany in hotly contested litigation stemming from the death of a construction worker. John Hare and Shane Haselbarth handled the appeal along with Jack.

SIGNIFICANT REPRESENTATIVE MATTERS

In a product liability / class action case, a unanimous Third Circuit panel affirmed the District Court's denial of class certification. The individual plaintiffs—property owners claiming defects in yellow-jacketed, corrugated stainless steel tubing used to transport natural gas and allegedly present in their structures—sued on behalf of a putative class. However, both the District Court and Third Circuit agreed with the arguments advanced by the defendants: that the class was not ascertainable without mini-trials and individual inquiries, that questions common to the class did not

predominate in the case, that the proofs necessary to establish both liability and damages would differ across the putative class members' claims, and that the various state laws governing their disparate claims included separate, non-overlapping elements—all of which are at cross-purposes with class treatment. Though the Third Circuit granted the plaintiffs' request for interlocutory review of the class certification decision over defendants' objection, nevertheless it affirmed the District Court's denial of class certification. Adams Pointe I, L.P. v. Tru-Flex Metal Hose Corp., ___ Fed. App'x ___, 2021 WL 3612155 (3d Cir. Aug. 16, 2021)

The U.S. Court of Appeals for the Third Circuit ruled no unfair trade practices claim was stated against licensed unclaimed proper finder who assisted plaintiff in retrieving his own lost money. The plaintiff, after entering into a contract with the property finder service (the terms and language of which are regulated by the Pennsylvania Department of the Treasury), and actually receiving his funds before they escheated to the state, sued under the Unfair Trade Practices Act on the theory that the service failed to disclose that the plaintiff could retrieve his lost funds for free on his own. The Third Circuit rejected the plaintiff's "unreasonable presumption" that the pre-printed forms gave the impression that the finder's services were the only way he could retrieve his money. Instead, "those forms disclose all the information [the plaintiff] would need to recover the property himself and further inform him of the services it provides in exchange for the fee, none of which indicate or even suggest that [the plaintiff] could not otherwise recover his property or that [the finder service's] assistance was necessary." Thus, it affirmed dismissal of the case at the pleading stage, seeing no merit worthy of discovery and trial. DeSimone v. U.S. Claims Servs. Inc., ___ Fed. App'x ___, 2021 WL 1662779 (3d Cir. Apr. 28, 2021).

The U.S. Court of Appeals for the Third Circuit affirmed the dismissal, at the motion to dismiss stage, of this civil rights action against a county Children & Youth Agency and its staff attorneys and caseworkers. The Plaintiffs brought their 5-month-old child to the hospital, where he was diagnosed with a spiral fracture mid-shaft on his right humerus. The hospital team collectively concluded that the injury was probably accidental in nature, but a nurse reported the injury to C&A, concerned that it might have been caused by abuse. C&A initiated its state-mandated investigation, wherein a judge approved the request for a safety plan that required chaperone to be with the parents and child while the merits of the abuse investigation continued. At the end of the investigation, the judge concluded the injury was accidental, and the safety plan was terminated. The Plaintiffs then filed this action, alleging that the safety plan violated their Fourteenth Amendment substantive due process rights. The federal district court dismissed the case, concluding that the Plaintiffs' allegations of interference with the family unit, even if true, do not rise to the level of "shocking to the conscience," necessary for a due process violation. On appeal, the Third Circuit affirmed, agreeing with Shane's argument that the nurse's report of possible child abuse, in conjunction with other evidence to support even the suspicion of the same, make the municipal Defendants' actions not "shocking to the conscience," and so no substantive due process claim was stated. A.J. v. Lancaster County, 826 Fed. App'x 248 (3d Cir. Sept. 16, 2020).

The U.S. Court of Appeals for the First Circuit affirmed the judgment of the U.S. District Court for the District of Massachusetts in favor of Shane's client. In this FINRA arbitration case, the Claimant retired from his job and invested his entire savings through an individual advisor. The advisor moved from broker-dealer to broker-dealer over the next fourteen years, as is typical in the industry. However, atypically, the individual advisor lied to Claimant, telling him his withdrawals from the account were from the interest only. In reality, they came from the principal, and steadily depleted the account to zero. Suit was filed, and a FINRA arbitration panel ruled in favor of Shane's broker-dealer client, because the individual advisor's improper conduct was not only undiscoverable by the broker-dealer but outside the scope of employment. After the defense arbitration award, the Claimant appealed first to the District Court, and then again to the Court of Appeals. In both courts, Shane briefed and orally argued the case, advocating for a judgment confirming the defense award. Both courts ruled in Shane's client's favor, with the First Circuit in particular being swayed by Shane's argument, and ruling in a way that strengthened and buttressed the rationale of the award, and completely exonerating the broker-dealer from any accusation of wrongdoing. Ebbe v. Concorde Inv. Servs., LLC, 953 F.3d 172 (1st Cir. 2020), affirming 392 F. Supp. 3d 228 (D. Mass. 2019).

Shane convinced the Superior Court that Pennsylvania lacks general personal jurisdiction over his national client because it is not "at home" here, even though it is a limited liability company whose sole member is a Pennsylvania corporation. While that corporation is "at home" in the Commonwealth, the Superior Court agreed that the LLC is not, because it lacks sufficient business operations here. It concluded that suit arising from a tractor trailer crash outside Pennsylvania—even involving a plaintiff who lives in Pennsylvania—must be filed elsewhere, because Pennsylvania's jurisdiction does not reach this not-at-home defendant. *Ismail v. Volvo Group North America, LLC*, No. 1231 EDA 2017 (Pa. Super. Mar. 2, 2018)

In this civil rights case the District Court denied qualified immunity to several individual Pittsburgh police officers, holding that a jury could find their conduct was unconstitutional. The plaintiff was a

passenger in a vehicle that sped from Homestead into neighboring Pittsburgh's bar and restaurant district on Carson Street, at a time when it was flooded with pedestrians and other law abiding citizens. Reacting quickly to the rapidly increasing threat, the officers fired on the vehicle as it swerved in and out of its appropriate travel lane and crashed into cars parked along the street. In the process, the plaintiff-passenger was struck by a bullet. On appeal from the denial of qualified immunity, Shane obtained a unanimous, precedential decision from the Third Circuit, holding that the officers did not violate any constitutional right of the plaintiff. The Court held that the officers shot at the vehicle with knowledge that it engaged in such reckless and unlawful conduct, and their actions were objectively reasonable as a matter of law. The case was remanded with instructions to enter summary judgment for the officers. *Davenport v. Borough of Homestead*, 870 F.3d 273 (3d Cir. 2017).

The Second District Court of Appeal of Florida unanimously affirmed the entry of summary judgment in favor of Shane's client in this declaratory judgment action, involving homeowners' association obligations. In the 1980s, a property developer erected a club to administer common amenities such as clubhouses, a private beach, and exercise facilities, with membership in the club designated as the owners of properties in four separate, later-developed communities. The four communities thereafter erected their own homeowners' associations. This suit began with a slim majority of one homeowners' association purporting to exempt its members from membership in the club via an amendment passed in 2014. The trial court rejected this improper attempt to alter membership in the club, which is tied to the land, because it was attempted by one-half-of-one-quarter of the club's membership and contrary to the club's governing documents. Under well-established Florida law, the attempted change in membership came from the wrong voting members, via an improper procedure, inequitably, and too late. After plenary briefing and oral argument, the DCA saw no issue and issued a *per curiam* order affirming judgment for Shane's client. *Placida Pointe Home Owners Ass'n v. Placida Harbour Club, Inc.* , No. 2D16-413, 2017 Fla. App. LEXIS 3065 (Fla. 2d DCA Mar. 8, 2017).

The Pennsylvania Superior Court unanimously affirmed a dismissal of a complaint with prejudice, filed by an insured against his home and auto insurer. The suit alleged that the issuance of a homeowner's policy with a $1 million liability limit required the insurer to advise its insured to purchase more than the $100,000 auto policy he had. The dispute arose after the insured's spouse caused a fatal car accident, and the wrongful death suit settled for $300,000, with the insurer tendering the full value of the auto policy. The Superior Court rejected the insured's arguments that the insurer was bound to advise the insured to purchase greater levels of auto liability insurance, or to equalize the disparate liability policies. The Court also affirmed that the insurer's commercial advertising campaign did not render it liable under the Unfair Trade Practices Act in light of its clearly stated policy limits. *Cohan v. United Services Automobile Association*, 683 EDA 2016 (Pa. Super. Jan. 5, 2017).

In this databreach suit, the Court of Appeals for the Third Circuit affirmed the District Court's dismissal of the Plaintiffs' complaint with prejudice. Plaintiffs, on behalf of a class of employees and customers of Shane's clients, medical and dental benefit providers, sued following a breach of the providers' computer network by non-party, criminal hackers. The class members' personal identifying information was stolen and used to file fraudulent tax returns, causing them monetary harm. The Third Circuit agreed that Pennsylvania law barred the tort claim, as the economic loss doctrine requires allegations of personal injury or property damage to assert a cause of action for negligence. In addition, the Third Circuit held that the dismissal of the contract claim was proper, because the complaint failed plausibly to state a claim that the Defendants agreed contractually to protect the class members' data from breach by hackers. *Longenecker-Wells v. Benecard Services*, No. 15-3538, 2016 U.S. App. LEXIS 15696 (3d Cir. Aug, 25, 2016).

The Court of Appeals for the Third Circuit unanimously vacated the District Court's denial of qualified immunity to Shane's client, a police officer. The complaint asserted that the officer initiated a chase of the now-convicted co-defendant, and reached speeds exceeding 110 miles per hour before the co-defendant crashed into the innocent plaintiff. The District Court denied a qualified immunity motion to dismiss, filed in response to the 14th Amendment due process claim asserted against the officer, concluding that fact issues remained that required a trial. Shane persuaded the Third Circuit that the District Court failed to analyze the pure question of law whether the right alleged by the Plaintiff was clearly established on the date of the incident. The Third Circuit vacated the denial of qualified immunity, and remanded. *Conte v. Rios*, No. 15-3361, 2016 U.S. App. LEXIS 13915 (3d Cir. Aug. 1, 2016).

The Superior Court of Pennsylvania affirmed by unanimous opinion a verdict in favor of Shane's insurer client in this first-party breach of contract action. The plaintiff suffered damages to his retail inventory caused by smoke and soot infiltration from a nearby fire, and made a claim for remediation under the policy. The insurer adjusted the loss and issued a check per the terms of the policy for the whole loss amount. After depositing the check, the plaintiff filed suit seeking additional damage,

represented as additional cleaning and restoration costs. At trial, the plaintiff presented the testimony of its owner, who justified the claim for additional damages by the ongoing cleaning costs for the inventory. The defense relied on the expert testimony of a certified restoration company, who could perform the job at a fraction of the cost. The trial court found that the defense figure was the true cost of damages, and the Superior Court rejected the plaintiff's argument on appeal. *The Classic Lighting Emporium, Inc. v. Erie Insurance Exchange*, No. 3158 EDA 2014 (Pa. Super. Nov. 17, 2015).

A unanimous panel of the Court of Appeals for the Eleventh Circuit affirmed the entry of judgment in favor of Shane's client, an employer with a healthcare plan governed by ERISA. The plaintiff sought statutory damages of up to $110 per day going back years, plus attorney's fees, against the employer and the co-defendant third-party administrator, asserting that she was unable to obtain requested documents from both parties, which were necessary to appeal the termination of her long-term disability benefits. Against the employer specifically, the plaintiff asserted that it had a duty to amend historical plan documents to update its address, as she relied on an old address in seeking documents without success. The Eleventh Circuit rejected the claim, holding that the District Court did not abuse its discretion in declining to award statutory penalties, especially where the Plaintiff not only had the document she later requested, but also had the means of knowing the proper address to which to send requests. *Smiley v. Hartford Life and Accident Insurance Company*, 610 Fed. Appx. 8, 2015 U.S. App. LEXIS 12334 (11th Cir. Jul. 17, 2015).

In this tortious interference/civil conspiracy matter, the trial court dismissed the case for failure of the plaintiff to timely serve original process. Shane defended against the appeal by plaintiff, which argued that plaintiff's good faith efforts and mere mistake easily satisfied Pennsylvania's service rules. The Superior Court unanimously decided against plaintiff, and affirmed the dismissal of the case for failure to make timely service. *Smash PA, Inc. v. Lehigh Valley Restaurant Group, Inc.*, 1811 EDA 2014 (Pa. Super. April 14, 2015).

In an underinsured motorist case, the federal Court of Appeals for the Third Circuit upheld summary judgment granted in favor of Shane's client. The plaintiff, carrying UM coverage on top of applicable policy limits of $100,000, sued and settled with the other driver for $41,715, the number recommended by an arbitrator. The plaintiff then proceeded against her UM carrier, asserting that her actual damages exceeded the coverage threshold, despite the settlement. The Third Circuit rejected that contention, and affirmed the District Court's holding that the evidence did not support her entitlement to UM benefits—that her damages went beyond the level of applicable third party coverage. The case drew amicus support from the Pennsylvania Association for Justice in support of Plaintiff. *Gallagher v. Ohio Casualty Insurance Company*, 2015 U.S. App. LEXIS 1426 (3d Cir. Jan. 29, 2015).

A unanimous panel of the Superior Court affirmed the entry of summary judgment in favor of Shane's client, a heavy construction equipment manufacturer and dealer. Despite being the lone deep pocket in a case with large exposure due to the catastrophic and permanent injuries, the Superior Court agreed that the deposition testimony could not allow the claim to survive summary judgment, because there was no evidence that the design of the product caused the accident and injuries to the plaintiff. *Williams v. Anderson Equip. Co., Komatsu American Corporation*, 1454 WDA 2013 (Pa. Super. Oct 7, 2014).

In a premises liability case involving severe head and cognitive injuries, Shane successfully defended against suit in Pennsylvania against a California golf resort. The Third Circuit agreed with the District Court that no basis for personal jurisdiction over the resort was demonstrated from the record, but remanded for jurisdictional discovery. After a round of written discovery and depositions, Shane assisted the trial attorney in a new briefing on the jurisdictional issue. The Eastern District of Pennsylvania renewed its conclusion that no basis for jurisdiction could be demonstrated and dismissed the case a second time. There was no appeal. *Rocke v. Pebble Beach Company*, 541 Fed. Appx. 208 (3d Cir. Oct 10, 2013) & 2014 U.S. Dist. LEXIS 60218 (E.D. Pa. April 28, 2014).