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Ricci Tyrrell employees, Bernadette Golden and Sheila Ciemniecki with Amelia Coleman-Brown, the Principal of the William D. Kelley Elementary School in Philadelphia, PA on February 3, 2016. Ricci Tyrrell Johnson & Grey partnered with Eagles Charitable Foundation by donating winter clothing for the students of the Philadelphia School District.

Quarterly Newsletter

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Ricci Tyrrell is proud to celebrate our ***Super Lawyers***™. ***Super Lawyers*** is a rating service of outstanding lawyers published in all 50 states and Washington, D.C. **William J. Ricci** and **Francis J. Grey. Jr**. have again been named Super Lawyers™ and Mr. Bill Ricci has again been named to the Pennsylvania Top 100. **Sean L. Corgan** has been named a ***Rising Star***. This recognition is quite an honor. No more than 5 percent of the lawyers in the state are named to Super Lawyers and no more than 2.5 percent are named to the Rising Star list.

We are closing our first quarter in our new suburban Pennsylvania office located at 794 Penllyn Pike, Blue Bell, PA 19422.

John E. Tyrrell is featured on the ***Law Firm Excellence*** podcast. Mr. Tyrrell was interviewed concerning the formation and management of Ricci Tyrrell. The podcast can be viewed at www.LawFirmExcellence.com.

Mr. Tyrrell has also become a Sustaining Member of the Product Liability Advisory Council (PLAC). PLAC is a non-profit association formed in 1983 to analyze, understand and shape the common law of product liability and complex litigation.

Growth continues at Ricci Tyrrell where we have made three recent hires of associate lawyers: **Jonathan Delgado**, **Joshua Grajewski** and **Eric Pasternack**.

We are also pleased to announce that **Sean L. Corgan** has become a Member in Ricci Tyrrell Johnson & Grey.

Ricci Tyrrell Johnson & Grey
ATTORNEYS AT LAW

SUMMARY JUDGMENT GRANTED IN TRIP AND FALL CASE

On February 22, 2016, Ricci Tyrrell client, Target Corporation, obtained summary judgment in a trip and fall case in the United States District Court for the Eastern District of Pennsylvania, arising from an incident that took place at the King of Prussia Target within a few weeks of its grand opening in August of 2014. The Honorable Gerald J. Pappert ruled in favor of Target, dismissing plaintiff's claims for injuries she sustained after falling over an allegedly unsecured clothing rack. The plaintiff claimed she had been shopping in the girls' section of the Store when her foot became caught on a clothing rack she claimed had come apart as a result of being struck by her cart.

The incident was captured on surveillance video. The Opinion authored by Judge Pappert noted that the surveillance video contradicted the plaintiff's account of the events in question. "For example, the video shows that her cart never strikes the rack, and thus could not have caused it to 'come apart.' In fact, at the time of her fall, she is not using the cart or moving it in any way," Pappert wrote. "[Plaintiff] also testified that she was down on the ground for ten minutes. In fact, she was down on the ground for less than thirty seconds."

More importantly, plaintiff's testimony, combined with the surveillance video, established the absence of a dangerous condition at the store. Plaintiff had conceded that the area was well-lit and that nothing about the in-store displays caused her concern – an account backed up by Target store personnel who reviewed the surveillance video.

Relying on the Restatement (Second) of Torts 343A, Target argued that the clothing rack was simply a stationary object of which the plaintiff was both actually and constructively aware. "A possessor of land is not liable to his invitees for physical harm caused to them by any activity or condition on the land whose danger is known or obvious to them, unless the possessor should anticipate the harm despite such knowledge or obviousness." RESTATEMENT (SECOND) OF TORTS §343A (1965). Plaintiff knew of the display's presence as she was standing next to it for several minutes taking off and putting back merchandise housed on the rack.

In this way, Target argued, and the Court agreed, the case was squarely controlled by In *Rogers v. Max Azen, Inc.*, 16 A.2d 529 (Pa.1940), a case where a shopper tripped over the base of a plainly visible staircase.

> Disclosing, as it does, thoughtless inattention to her surroundings and a complete failure to be duly observant of where she was stepping, this testimony leaves no room for speculation as to the sole cause of [the customer's] injuries. It brings the case within the rule that where one is injured as the result of a failure on his part to observe and avoid an obvious condition which ordinary care for his own safety would have disclosed, he will not be heard to complain.

Rogers, 16 A.2d at 531. While over 75 years old, the logic of *Rogers* has never been disturbed. And Judge Pappert kept that record intact, citing the cases Target highlighted as recent decisions in the Eastern District of Pennsylvania following that rule. "Holding Target liable under these circumstances would charge them with a duty not recognized under Pennsylvania law – to protect customers from tripping over perfectly operational clothing racks that are in plain sight," Pappert wrote. "Because the

mere occurrence of an accident does not establish negligent conduct, Plaintiff's claim is dismissed."

Francis J. Grey, Jr. was lead counsel for Target Corporation. Sean L. Corgan wrote the papers and presented the oral argument.

SUMMARY JUDGMENT GRANTED IN SLIP AND FALL CASE BASED ON VALID EXCULPATORY RELEASE

Ricci Tyrrell successfully obtained summary judgment for all Defendants in the Philadelphia Court of Common Pleas in *Reynolds et ux. v. Pennsylvania Center for Adaptive Sports et al.*, February Term 2015 No. 3161, before the Honorable Frederica Massiah-Jackson.

Ms. Reynolds claimed she was injured while volunteering for the Pennsylvania Center for Adaptive Sports' (PCAS) rowing program on June 3, 2013. PCAS is a non-profit program which promotes athletic activities for individuals with disabilities, including a rowing program at the PCAS Boathouse facility on the Schuylkill river.

Ms. Reynolds alleged she was acting as a volunteer, pushing a rower who was utilizing a wheel chair, at the time of the accident. Ms. Reynolds claims she fell as she was pushing the rower up a ramp at the boathouse, allegedly injuring her shoulders in the fall. Ms. Reynolds alleged negligence in the maintenance and care of the ramp.

As part of her Application to participate in any way in the PCAS rowing program, Ms. Reynolds executed a "Waiver and Release of Liability Form".

The Philadelphia Court of Common Pleas, the Honorable Frederica Massiah-Jackson presiding, granted summary judgment in favor of all Defendants. In a comprehensive Memorandum Opinion issued March 14, 2016, Judge Massiah-Jackson analyzed the Release under the standards identified in the seminal Pennsylvania Supreme Court case of *Chepkevich v. Hidden Valley Resort, L.P.*, 607 Pa. 1, 2 A.3d 1174 (Pa. 2010). Judge Massiah-Jackson found the Release both valid and enforceable under the applicable standards. The Court rejected the primary argument of the Plaintiffs, that the Release violated public policy, noting that there was no law or legal citation provided to support that contention. Further, the Court specifically rejected Plaintiffs' argument that the language was ambiguous, finding that the language clearly released negligence claims including the negligence of the Defendants, and noting that at her deposition, Ms. Reynolds admitted she could read and understand the language in question.

John E. Tyrrell was lead counsel in the Reynolds case, assisted by Sean L. Corgan. Patrick J. McStravick led the briefing and oral argument of the Motion.

SUMMARY JUDGMENT AFFIRMED BY THE SUPERIOR COURT IN CATASTROPHIC INJURY LIQUOR LIABILITY (DRAM SHOP) SUIT

Ricci Tyrrell successfully defended a grant of summary judgment on appeal to the Superior Court in *Bade v. Picone*, et al., 511 M.D.A. 2015, Memorandum and Order dated January 5, 2016. The matter was on appeal from Schuylkill County, Civil Action No. S-129-2012, Order dated February 2, 2015 (J. Domalakes).

Plaintiff in the *Bade* matter suffered catastrophic injuries when he was struck as a pedestrian by an allegedly intoxicated driver. In addition to claims against the driver, Plaintiff sought recovery on a variety of theories against additional parties, including ten (10) Defendants represented by Ricci Tyrrell. These ten Defendants were alleged partners, employees, and relatives of employees, of a restaurant where the driver was employed. One minor Defendant was also allegedly present at a gathering at a private residence prior to the incident. Plaintiff alleged that the minor driver had either consumed alcohol at the restaurant, or that alcohol from the restaurant had made its way to the private residence and been consumed there by the driver. The claims were liquor liability under a "Dram Shop" theory, which was alleged to attach to the Defendants due to their relationships to the restaurant. Plaintiff also alleged "Social Host" liability against the minor Defendant, related to the gathering at the private residence.

The Trial Court of the Schuylkill County Court of Common Pleas (J. Domalakes) granted summary judgment due to the lack of any evidence, at all, connecting the alcohol allegedly consumed by the driver to the restaurant, which connection was a necessary element of the Dram Shop case. The Trial Court held that under the rules of civil procedure governing Summary Judgment motions in Pennsylvania, and specifically Pa.R.Civ.P. 1035.2(2), the Plaintiff had failed to evidence facts essential to the cause of action which would be required to be submitted to a jury (*i.e.* a *prima facie* case). The Trial Court further correctly held that *Nanty-Glo v. American Surety Co.*, 309 Pa. 236 (1932) was inapplicable, because the *Nanty-Glo* Rule only applies to a Summary Judgment Motion under Pa.R.Civ.P. 1035.2(1) and that a Motion under Section (2) of the Rule should still be granted in the absence of evidence of a *prima facie* case. The Trial Court also granted summary judgment on the claims against the minor Defendant, citing the Pennsylvania Supreme Court precedent *Kapres v. Heller*, 640 A.2d 888, 891 (Pa. 1994) which forbids Social Host claims against minors. The Trial Court rejected the opinions of a purported expert on the source of the alcohol as unsupported, not stated to an appropriate level of certainty, and not being "expert" opinions, as the opinions were really fact resolutions not appropriate for "expert" opinion at all.

The Superior Court affirmed. After briefing, and oral argument by **John E. Tyrrell**, in a unanimous opinion authored by Judge Jenkins (joined by Judges Ott and Pannella), the Superior Court held that the Plaintiff had indeed failed to identify any evidence connecting the alcohol alleged ingested by the driver to the restaurant, and affirmed summary judgment under Pa.R.Civ.P. 1035.2. After setting for the Dram Shop, The Superior Court specifically found that the Plaintiff had failed to provide any evidence connecting the alcohol to the restaurant, and that such a connection was a necessary predicate to the Dram Shop theories that the Plaintiff was advancing. The Superior Court also affirmed the inapplicability of *Nanty-Glo*, and the Trial Court's proper grant of summary judgment to the minor Defendant, citing *Kapres*. Finally, the Superior court affirmed the rejection of the expert "opinions" on the source of the alcohol, holding that

such determinations were determinations of fact for the jury, and for which expert opinions were unnecessary.

An Application for Reargument before the Superior Court was also denied.

The Bade case was argued at the Appellate level by John E. Tyrrell. Patrick J. McStravick was the principal author of the briefs.

PENNYSYLVANIA SUPREME COURT SET TO APPLY *TINCHER* IN FAILURE-TO-WARN CONTEXT

By William J. Ricci and Thomas W. Grammer

It is probably an understatement to say that Pennsylvania strict product liability law is in flux. As those familiar with Pennsylvania strict product liability law well know, in *Tincher v. Omega Flex, Inc.*, 104 A.3d 328 (Pa. 2014), the Pennsylvania Supreme Court overruled its long-standing decision that had served as the foundation for much of Pennsylvania product liability law, *Azzarello v. Black Brothers Co.*, 391 A.2d 1020 (Pa. 1978), and announced a new standard of proof for strict product liability cases. The Court explained that the notion of 'defective condition unreasonably dangerous' is the normative principle of the strict liability cause of action. *Tincher*, 104 A.3d at 400. Under *Tincher*, a plaintiff seeking to recover on a theory of strict product liability bears the burden of proving by a preponderance of the evidence that the product at issue was in a "defective condition." *Id.* at 335. The plaintiff may now carry that burden by showing that either: (a) the danger is unknowable and unacceptable to the average or ordinary consumer, or (b) a reasonable person would conclude that the probability and seriousness of harm caused by the product outweigh the burden or costs of taking precautions. *Id*. In addition, whether a product is in a defective condition is now a question of fact for the finder of fact, and a court may take that question away from the factfinder only where reasonable minds cannot differ on the answer to that question. *Id.*

For all the change *Tincher* brought, however, it left a great deal of uncertainty. The Court itself pointed out the limits of its holdings, noting explicitly that its decision was confined to the facts and issues presented to it, *i.e.*, a design defect claim. *Id.* at 409-10. As a result, courts applying *Tincher* have struggled to determine the decision's impact on a plethora of issues. *See*, *e.g.*, *Rupert v. Ford Motor Co.*, No. 15-1731, 2016 U.S. App. LEXIS 1359, at *6 n.20 (3d Cir. Jan. 28, 2016) (holding under *Tincher* plaintiff asserting crashworthiness must prove alternative feasible design) (non-precedential); *Cancelleri v. Ford Motor Co.*, No. 267 MDA 2015, 2016 Pa. Super. Unpub. LEXIS 53 (Pa. Super. Ct. Jan. 7, 2016) (holding that *Tincher* did not require trial court to instruct jury to consider whether product was "unreasonably dangerous"; did not alter inadmissibility of standards evidence; and had no effect on malfunction theory) (unpub.)[1]; *Punch v. Dollar Tree Stores, Inc.*, No. 12-154, 2015 U.S. Dist. LEXIS 162174, *13-*14 (W.D. Pa. Nov. 5, 2015) (holding *Tincher* did not alter intended user/intended use doctrines); *Schwartz v. Abex Corp.*, 106 F. Supp. 3d 626, 663 (E.D. Pa. 2015) (applying *Tincher* and granting summary judgment on "bare metal" defense); *Nathan v. Techtronic Indus. N. Am.*, 92 F. Supp. 3d 264, 272 (M.D. Pa. 2015) (concluding *Tincher* applies retroactively and

[1] No petition for allowance of appeal was filed in *Cancelleri*, and as of this writing, the time for filing one has expired. An application was filed in the Superior Court for reargument or reconsideration but it was later withdrawn.

granting in part and denying in part summary judgment). Other recent decisions have applied the standards set forth in *Tincher* in a straightforward way. *See, e.g.*, *High v. Pennsy Supply, Inc.*, No. 2013 CV 6181, slip op. at 3-5 (Pa. C.P. Dauphin Co. Feb. 18, 2016) (granting summary judgment under *Tincher* to claim wet concrete was defective); *English v. Crown Equip. Corp.*, No. 3:13-0978, 2016 U.S. Dist. LEXIS 18029, at *41 (M.D. Pa. Feb. 16, 2016) (granting in part and denying in part summary judgment under *Tincher* to design defect claim regarding stock picker). At least two courts have disagreed about *Tincher*'s applicability to warning claims. *Compare Amato v. Bell & Gossett*, 116 A.3d 607, 620 (Pa. Super. Ct. 2015) (holding *Tincher* applicable), *with Martinez v. Am. Honda Motor Co.*, No. 111203763, 2015 Phila. Ct. Com. P. LEXIS 276, at *16-17 (Pa. C.P. Phila. Co. Sept. 17, 2015) (distinguishing *Tincher*).

In an apparent effort to give additional guidance, the Supreme Court recently granted allowance of appeal in the *Amato* case. *Amato v. Bell & Gossett*, 447 & 448 EAL 2015, 2016 Pa. LEXIS 109 & 119 (Pa. Feb. 1, 2016). That case involves two asbestos cases that were tried together in January and February 2013 in Philadelphia. In both cases, the plaintiff asserted a strict product liability claim for failure to warn. At trial, the manufacturer presented evidence that during the time the plaintiffs encountered the manufacturer's product, no manufacturer provided asbestos warnings for such products, and that plaintiffs' exposure was below the current limit for workplace exposure to asbestos. However, the trial court refused to allow the manufacturer to put on evidence that plaintiffs' exposures were reasonable or to argue to the jury that its product was "reasonably safe." In addition, the trial court disallowed the manufacturer's expert witness testimony that eyewitness identification is unreliable, which the manufacturer sought to present as part of a product misidentification defense. At the close of plaintiffs' evidence, the manufacturer moved for a compulsory nonsuit on the "sophisticated user" defense, arguing that one plaintiff's employer was a sophisticated user. The trial court denied the motion. It later explained in its Pa.R.A.P. 1925(a) opinion that the defense had not been adopted into Pennsylvania law, and in any event, the case did not implicate the defense because the manufacturer had not provided any warning at all, including to a "sophisticated user."

During jury instructions, the court refused to give the manufacturer's proposed jury instruction on the strict product liability failure to warn claim. The proposed instruction incorporated reasonableness concepts:

> A product is defective because of inadequate instructions or warnings when, at the time of sale or distribution, the foreseeable risks of the harm posed by the product could have been reduced or avoided by the provision of reasonable instructions or warnings by the seller and the omission of the instructions or warnings renders the product not reasonably safe.

Amato, 116 A.3d at 622. The trial court instead instructed the jury, "If you find that necessary warnings or instructions were not given, then the defendant is responsible for all harm caused by the failure to warn." *Id.* at 621. The jury found for both plaintiffs, returning verdicts of $2.3 million and $2.5 million.

The manufacturer appealed both verdicts to the Superior Court, and after it had filed its appellate brief, the Supreme Court handed down its decision in *Tincher*. The manufacturer obtained permission to file a supplemental brief in whish it argued that it was entitled to a new trial because the jury instructions did not comply with the standards set forth in *Tincher*.

The Superior Court first concluded that the manufacturer had properly preserved its argument that *Tincher* should govern. The court explained that the manufacturer had argued throughout the litigation that the jury instructions for the failure-to-warn claim should include a consideration of the

reasonableness of its conduct. The Court then determined that the standards set forth in *Tincher* applied, but that the trial court's jury instruction had not prejudiced the manufacturer.

Turning next to whether *Tincher* applies to failure-to-warn claims, the court concluded that it does. It observed that although *Tincher* was a design defect case, and the *Tincher* Court had emphasized the limits of its holding, the Superior Court considered *Tincher* to have provided "something of a road map for navigating" the new standard. *Amato*, 116 A.3d at 619-20. The Superior Court pointed out that the *Tincher* Court had stated that its decision might "ultimately have broad implications by analogy," and had rejected the notion that "negligence concepts" have no place in strict liability. *Id.* at 620 (quoting *Tincher*, 104 A.3d at 381, 381 n.21). Because the manufacturer in the case before the court had challenged the jury instructions, and *Tincher* had ruled that it was for the jury to decide whether a product is "unreasonably dangerous," the court held that *Tincher* applied. *Id.*

Nonetheless, the court concluded that the jury instruction had not prejudiced the manufacturer. The manufacturer argued that the instruction did not allow the jury to consider whether the absence of a warning rendered the product "unreasonably dangerous," and was therefore at odds with *Tincher*. The manufacturer reasoned that it was entitled to a "state-of-the-art" instruction to enable the jury to assess whether the manufacturer's actions were reasonable at the time it had sold the product, in light of the scientific knowledge then available. *Id.* at 621.

The Superior Court concluded that the trial court had not erred in refusing to give the instruction because the manufacturer had not argued that its product was not "unreasonably dangerous." *Id.* at 622. Rather, according to the Superior Court, the manufacturer had defended the case on the ground that because the product "was not dangerous *at all*," no warnings were required. *Id.* As a result, the court concluded that the manufacturer's theory of the case had not warranted the instruction, and the trial court's failure-to-warn instruction had caused no prejudice to the manufacturer. *Id.* at 622-23.

The Superior Court also rejected the manufacturer's arguments that it should have been allowed to present expert testimony that eyewitness testimony is unreliable, pursuant to *Commonwealth v. Walker*, 92 A.3d 766 (Pa. 2014). The Superior Court rejected the argument, noting that *Walker* was explicitly limited to identifications in criminal cases. *Amato*, 116 A.3d at 613 n.2. The court also turned aside the manufacturer's argument that the trial court erroneously refused to instruct the jury on the sophisticated user defense. The court stated that no precedential opinion had ever adopted the defense as a matter of Pennsylvania law, and in any event, the defense was unavailable here as it was undisputed that the manufacturer had not provided any warnings at all, including to a putatively sophisticated user.

The manufacturer petitioned the Supreme Court for allowance of appeal, seeking review of three questions:

1. Whether the change in Pennsylvania law recently announced in *Commonwealth v. Walker*, 92 A.3d 766 (Pa. 2014 – the holding that it is no longer *per se* impermissible to introduce expert witness testimony regarding the scientific factors related to eyewitness identification – applies in civil cases, or is limited only to criminal cases, as the Superior Court suggests.

2. Whether, under the Court's recent decision in *Tincher v. Omega Flex, Inc.*, 104 A.3d 328 (ap. 2014), a defendant in a strict-liability claim based on a failure-to-warn theory has the right to have a jury determine whether its

product was "unreasonably dangerous."

3. Whether the Court, as an issue of first impression, will adopt the sophisticated-user defense.

Petition for Allowance of Appeal, *Amato v. Bell & Gossett*, 448 EAL 2015 (Pa. July 17, 2015); *see also* Petition for Allowance of Appeal, *Vinciguerra v. Bayer CropScience, Inc.*, 447 EAL 2015 (Pa. July 17, 2015) (seeking review of first two questions only).

The manufacturer argued that the Superior Court decision conflicts with *Tincher*. The manufacturer explained that despite recognizing that *Tincher* had returned to the factfinder the question of whether a product is unreasonably dangerous, the court had nonetheless denied the manufacturer the right to have the jury in this case make that determination. The manufacturer urged the Supreme Court to grant review to confirm that *Tincher* does indeed apply in failure-to-warn cases and that juries must be permitted to receive evidence on, and ultimately determine, whether the plaintiff established that the product at issue was unreasonably dangerous. The manufacturer further argued that the Superior Court's decision conflicted with *Walker* (holding criminal defendant entitled to present evidence challenging reliability of eyewitness identification), and that the Court should grant review of the sophisticated-user defense as an issue of first impression for the Court.

The Supreme Court granted the appeal limited to "whether, under [*Tincher*], a defendant in a strict-liability claim based on a failure-to-warn theory has the right to have a jury determine whether its product was "unreasonably dangerous [.]" *Amato*, 448 EAL 2015, 2016 Pa. LEXIS 119 (Pa. Feb. 1, 2016); *Vinciguerra v. Bayer CropScience, Inc.*, 447 EAL 2015, 2016 Pa. LEXIS 109 (Pa. Feb. 1, 2016). It denied review of the remaining questions. The Supreme Court is thus poised to state clearly whether *Tincher*'s new regime applies to failure-to-warn claims and whether a court in a strict liability matter abuses its discretion by refusing a jury instruction that incorporates reasonableness concepts. Because a failure-to-warn claim, by its nature, is an assertion that a product's warnings render it defective, and *Tincher* redefined the meaning of "defective," the Court will very likely hold that *Tincher* applies to failure-to-warn claims. It is unlikely, however, that it will state that *Tincher* applies to manufacturing claims, or otherwise go beyond the scope of the issues and facts before it, given the Court's stated preference for narrow holdings. *See Tincher*, 104 A.3d at 409-10 (explaining Court's preference for leaving issues undecided that are "outside the scope of the facts" of case before Court, and stating law regarding "related considerations should develop within the proper factual contexts against the background of targeted advocacy."). One can still hope, though, that the Court's explanation of its holding will offer clear guidance on at least some of the many issues that *Tincher* left in a state of uncertainty.

William J. Ricci is a founding Member of Ricci Tyrrell Johnson & Grey and Thomas W. Grammer is an Associate.

WILLIAM J. RICCI IS CO-AUTHOR OF AMICUS CURIAE BRIEF

Ricci Tyrrell Member, William J. Ricci is the co-author of the Pennsylvania Defense Institute Amicus Curiae brief submitted to The Pennsylvania Supreme Court in *Amato v. Crane Co.*, No 4-5 EAP 2016. The question presented for review is:

Whether, under the Court's recent decision in *Tincher v. Omega Flex, Inc*., 104 A.3d 328 (Pa. 2014), a defendant in a strict-liability claim based on a failure-to-warn theory has the right to have a jury determine whether its product was "unreasonably dangerous."

William J. Ricci is a founding Member of Ricci Tyrrell Johnson & Grey.

PATENTS IN THE ENTERTAINMENT MEDIA

By Stuart M. Goldstein

Patent attorneys know that a United States patent grants an inventor the exclusive right to make, use, sell, and distribute his or her invention in this country for a given period of years. This is a valuable property right which allows the inventor to develop his or her invention for financial gain, free from competing companies or individuals. Unfortunately, the true worth of a patent is largely unknown to the general public. However, on occasion the entertainment media, specifically television and movies, has addressed the value of patents by focusing on individuals who have been granted patents and who have received substantial rewards for their efforts.

For instance, many inventors who come to me as potential clients truly believe that their invention is the next product which will revolutionize the market. Often they are so motivated as a result of watching the television program "**Shark Tank**," in which wealthy business venture capitalists ("sharks") are enticed to invest in the products of up-and-coming entrepreneurs/inventors. Anyone who regularly watches "Shark Tank" knows that after the eager presenter demonstrates his or her new product or invention, one of the sharks will inevitably ask whether a patent has been granted on that product or invention. If so, it is more likely than not that some type of investment will be offered, thereby providing a significant boost to the fledgling company requesting additional capital in order to expand the business. The sharks certainly recognize that the benefits of a patent provide an added layer of comfort that the product in which they are investing will be shielded from competitors.

The value of a patent is truly brought home in the movie "**Flash of Genius**." In this film, actor Greg Kinnear portrays Robert Kearns, the inventor of the automobile intermittent windshield wiper system, which is currently utilized in virtually every vehicle on the road today. Mr. Kearns developed the wiper system in the 1950's and early 1960's and secured the first of his many patents on it in 1967. While the film certainly contains its share of Hollywood embellishments, many of the facts depicted are true, including Mr. Kearns' prolonged, individual crusade against major automobile manufacturers who, he alleged, "stole" the wiper system and infringed his patents. Despite enduring many personal and financial hardships over the ensuing years, Mr. Kearn's prevailed, as the validity of his patents was ultimately upheld. He was successful in obtaining millions of dollars in recovery against targeted car manufacturers, including Chrysler and Ford.

Most recently in the movie "**Joy**," actress Jennifer Lawrence plays Joy Mangano, the inventor of numerous household products, including the well-

known Miracle Mop,® initially sold on television's QVC. The issues of patent validity and intellectual property rights owned by Ms. Mangano play a significant role in the movie's story. Once again, the film takes a number of liberties in its factual recount of Ms. Mangano's struggle as a young woman, seeking to invent, develop and ultimately sell the Miracle Mop,® her initial invention. It is, however, accurate in its portrayal of the difficulties faced by an inventor in bringing his or her product to market and the need to secure patent protection in order to ensure exclusive ownership of that product.

Interestingly, the initial success Ms. Mangano enjoyed with the Miracle Mop® spurred her to continue inventing and to even greater successes. Ms. Mangano has obtained approximately fifty U.S. patents on various household products, including her Huggable Hangers® system, multi-compartment luggage, beauty cases, clothes steamers, and garment drying cases, among others. Ms. Mangano continues to invent new products and is currently very active in selling many of the items she has developed, still regularly appearing on HSN as the spokeswomen for her products.

While there is no guarantee that securing a patent will result in the successes (or failures) depicted in the entertainment media, one thing is clear. A patent does confer valuable, protective property rights to the inventor, a critical step in the successful marketing and selling of a new and useful product.

Stuart M. Goldstein offers continuing insight into intellectual property concerns in the Ricci Tyrrell Quarterly Newsletter.

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TIMING OF AN AMENDMENT TO AN *AD DAMNUM* CLAUSE

By Jonathan A. Delgado

This article looks at the timing of the amendment of the *ad damnum* clause from *Wilson, et al v. U.S. Security Associates Inc., et al.*, Philadelphia CCP Civil Action October Term, 2011, No. 0971.

The plaintiffs in *Wilson* filed a motion on the eve of trial to amend the *ad damnum* clause of the complaint to include a request for punitive damages. The court granted this request, allowing for a bifurcated trial, which led to a finding of liability and subsequently a jury award of more than $38.5 million in punitive damages. Following the verdict, defendant U.S. Security Associates, Inc. filed post-trial motions seeking judgment notwithstanding the verdict on the compensatory damages award and judgment notwithstanding the verdict and/or new trial and/or remittitur on the punitive damages verdict.

The above listed motions were recently denied on November 16, 2015 in *Masciantonio v. United States Sec. Assocs.*, No. 0653, 2015 Phila. Ct. Com. Pl. LEXIS 332 (Phila. C.C.P. 2015). When addressing the timing of the amendment of the *ad damnum* clause, the court quoted Rule 1033 of the Pennsylvania Rules of Civil Procedure which states:

> A party, either by filed consent of the adverse party or by leave of court, may at any time change the form of action, add a person as a party, correct the name of a party, or otherwise amend the pleading. The amended pleading may aver transactions or occurrences which have happened before or after the filing of the original pleading, even though they give rise to a new cause of action or defense. An amendment may be made to conform the

> pleading to the evidence offered or admitted.

Pa.R.C.P. Rule 1033.

The court began its reasoning by stating that amendments to pleadings are liberally granted. *Masciantonio*, 2015 Phila. Ct. Com. Pl. LEXIS, *69. However, "[a]n amendment which introduces a new and different cause of action after the statute of limitations has run is not allowed." *Id*. But, it is "well-settled that the right to punitive damages is incident to a cause of action and is not the subject of the action itself." *Id*.

Even though defense counsel acknowledged that, "[t]he proposed amendment to the complaint does not add any new factual content", it was still argued that punitive damages should not be allowed based on the statue of limitations and other similar situations where operative facts had been added to complaints. *Id*. at *70. The court did not find this persuasive because none of the factors argued by defense counsel were implicated because an amendment clause to the *ad damnum* clause is permissible at any point in the litigation. *Id*.
Defense counsel then argued that the amendment should not be allowed because there was a stipulation signed by the parties to withdraw punitive damages. *Id*. It was defense counsel's position that this stipulation should be treated like a Pa. R. Civ. P. 231 Voluntary Discontinuance, which permits a second action to be commenced only within the original statue of limitations. *Id*.

Unfortunately for defense counsel, the court distinguished the current action from *Williams Studio Division of Photography v. Nationwide Fire Ins. Co.*, 550 A.2d 1333 (PA Super. 1988) by stating that "the plaintiff's amendment was not a second action, but rather a request for an element of damages incident to an existing cause of action." *Id*. at *71.

The court closed its opinion on this topic by finding that the trial court had not abused its discretion or committed an error of law by allowing the amendment to the *ad damnum* clause to add the prayer of punitive damages. *Id*. at *72. When the prayer for punitives is not a separate, new, or different cause of action the defendant's position must fail. *Id*. at *71

Given the court's recent decision in *Maciantonio*, a higher burden of preparation has now been placed on defense counsel. Defense counsel must always be prepared for a claim of punitive damages at any stage of litigation.

*Jonathan A. Delgado is an Associate at Ricci Tyrrell Johnson & Grey***.**

Philadelphia Jury Awards $1.7 Million in First Asbestos Trial Against a Former Employer

By Nancy D. Green

After a 15 day trial, a Philadelphia County jury recently awarded $1.7 million to the estate of a former employee and his wife in the first verdict against an employer in connection with a former employee's asbestos-related personal injury lawsuit. In *Estate of John Busbey v. Air & Liquid Systems Corp., et al.*, Philadelphia County Court of Common Pleas, May Term 2012, No. 3046, the decedent and his wife brought suit against his former employer, Chemtron Corp., where he worked in a factory from 1962 to 2001. Chemtron

was later known as Alloy Rods, Inc. and was known as ESAB Group at the time of suit.

In January 2012, Mr. Busbey was diagnosed with mesothelioma (a type of cancer which can be associated with prior asbestos exposure) and died six months later. He was 72 years old at the time of his death. He alleged that he was exposed to asbestos during his employment while working close to welding rods and welding wire ovens which caused his asbestos-related disease. He worked in various capacities at the factory, including as a sweeper cleaning up.

While the decedent and his wife sued numerous manufacturers, most were dismissed prior to trial except for ESAB and an oven manufacturer. The jury found that the employer negligently allowed Mr. Busbey to be exposed to asbestos while working at the facility and that this exposure caused his mesothelioma. The employer argued that it did not act negligently because asbestos was the best material available at the time and that it took corrective action where appropriate. The jury found that the oven was not defective and found ESAB 100% liable for its former employee's mesothelioma and subsequent death. The jury's verdict included $200,000 for pain and suffering, $500,000 for wrongful death, and $1 million for the loss of consortium claim.

Bringing a lawsuit against a former employer related to past asbestos exposure became possible in Pennsylvania in 2013 when in *Tooey v. A.K. Steel Corp.,* 81 A.2d 851 (Pa. 2013), the Pennsylvania Supreme Court ruled that the Pennsylvania Workers' Compensation Act does not cover occupational diseases, like mesothelioma, that can manifest more than 300 weeks after employment ends. Prior to *Tooey,* employers could only be held liable through the Workers' Compensation Act. After *Tooey*, however, Pennsylvania companies that had asbestos used at their facilities, now face the uncertainty of liability for injuries that manifest themselves years or decades following a former employee's employment. Given Pennsylvania's industrial history, *Tooey* and the verdict in *Busbey*, a new wave of employer asbestos cases seems likely.

Nancy Green is a Member of Ricci Tyrrell who concentrates her practice in the area of asbestos litigation.

Coverage Corner

By Francis P. Burns III

The Third Circuit recently addressed coverage for an Additional Insured premises owner under ISO endorsement CG20330704 (Additional Insured – Owners, Lessees or Contractors) in the familiar context of a workplace accident during ongoing operations at a construction site that spawns an action for bodily injury by a subcontractor's employee. ***Ramara, Inc v. Westfield Insurance Co.*, 2016 U.S. App. LEXIS 2656 (3d Cir. 02/17/2016).** The opinion delivers four significant rulings: (1) a duty to defend declaration is immediately reviewable under 28 U.S.C. §1292(a)(1); (2) the Court found that the putative Additional Insured's interpretation of "caused, in whole or in part" as meaning "but-for", not proximate, causation was correct; (3) for purposes of the "duty to defend" analysis liberal construction of the plaintiff's Complaint must take account of the plaintiff's reluctance to plead his employer's (the Named Insured's) negligence due to the Workers' Compensation Act; and (4) the qualifying definition for an additional insured under form CG20330704

at odds with ISO endorsement CG70551298 – "Other Insurance Condition Amended."[2]

Statement of the Case. Ramara, Inc. hired a general contractor, Sentry Builders, to perform work on a parking garage owned by Ramara. *Sentry* entered into a subcontract with Fortress Steel to install concrete and steel components. The subcontract obliged *Fortress* to maintain liability insurance naming *Ramara* as an additional insured.

In April 2012 a *Fortress* employee, Anthony Axe, fell through an opening in the garage deck while doing his job. He was seriously injured and collected workers' compensation benefits. Mr. Axe sued *Ramara, Sentry* and two other defendants in the Philadelphia Court of Common Pleas.[3]

Ramara tendered its defense to Westfield Insurance Company, *Fortress's* general liability insurer. When *Westfield* declined coverage *Ramara* undertook its own defense and commenced an action for declaratory judgment in state court naming *Ramara, Fortress, Sentry* and Mr. Axe as defendants. *Westfield* removed the coverage action to the Eastern District of Pennsylvania and successfully opposed a motion to remand by Ramara that asserted untimely removal, lack of complete diversity and less than unanimous assent to removal by the defendants named in the declaratory judgment action.

Westfield disclaimed coverage because *Fortress* was not a defendant in Mr. Axe's lawsuit, and *Westfield* read the Complaint as free of any allegation that *Fortress's* acts or omissions, in whole or in part, caused the accident. The Additional Insured endorsement, extended insured status to an organization the Named Insured (*Fortress*) had agreed in writing to add as an additional insured but limited the scope of coverage to bodily injury "caused, in whole or in part, by: 1. Your [Fortress's] acts or omissions; or 2. The acts or omissions of those acting on your behalf; in the performance of your ongoing operations for the additional insured."

Interlocutory Appeal. The district court granted *Ramara's* motion for partial summary judgment, held that *Westfield* had a duty to defend, awarded accrued defense costs and declared *Westfield* must prospectively defend the tort action still pending in state court. *Westfield's* duty to indemnify was not ripe for adjudication. Over *Ramara's* opposition, the Third Circuit found that the District Court's Order was injunctive and appealable under 28 U.S.C. §1292(a)(1).

Underlying Complaint. Under Pennsylvania law, the duty to defend is determined solely by comparing the factual allegations of the plaintiff's Complaint to the terms of the policy under which a defense is sought. Both pleading allegations and terms of an insuring agreement are to be liberally construed in favor of coverage.[4]
The Court framed the core "duty to defend" question as follows: "At bottom, this case concerns whether the Axe complaint sufficiently alleges….that Axe's injuries potentially were 'caused, in whole or in part' by Fortress's acts or omissions or the acts or omissions of someone acting on *Fortress's* behalf." The Court found the allegations of the Axe Complaint sufficient to trigger a duty to defend. The path to that result was not straight and level.

The Court acknowledged Pennsylvania's adherence to the "four corners" rule, and explicitly rejected the notion that insurers have a duty to undertake investigation to learn facts beyond those set forth in a Civil Action Complaint. *Id.*, *44 n.12. However, the Court was apparently concerned that *Ramara*, as the premises owner, had bargained for additional insured coverage, but the coverage provided was limited to bodily injury "caused, in whole or in

[2] The *Ramara* opinion does not recite the ISO form numbers. Neither does the opinion of the district court. *Ramara, Inc. v. Westfield Insurance Company*, 69 F.Supp.3d 490 (E.D.Pa. 2014). The forms were identified by accessing the summary judgment record in the District Court.
[3] *Anthony Axe v. Ramara, Inc*., et al., Case ID: 121202919.
[4] *American & Foreign Insurance Co. v. Jerry's Sports Center, Inc*., 2 A.3d 526 (Pa. 2010).

part" by *Fortress* or those acting on its behalf.[5] But as a practical matter, an employer in Pennsylvania enjoys immunity from suit under the exclusive remedy provision of the Workers' Compensation Act ("WCA") and Mr. Axe had no incentive to allege causal negligence by his employer.[6] Those concerns coalesced to produce an unfamiliar application of the "four corners" rule.

In one paragraph of his Complaint Mr. Axe identified himself as an employee of *Fortress*.[7] No other paragraph mentioned *Fortress* by name or other unique identifier. As for the accident, the Complaint alleged Mr. Axe fell though an opening in the garage deck and was seriously injured.[8] The Complaint generally alleged *Ramara* acted by and through its agents, servants, and/or employees.[9] The Court found these allegations raised the potential that acts or omissions of *Ramara's* agents, contractors or subcontractors – of which *Fortress* was one - was a proximate cause of plaintiff's injuries. The Court noted that Mr. Axe could not be expected to explicitly accuse his employer which was shielded from suit by the WCA. *Westfield* was, therefore, faulted for reading the Complaint narrowly by ignoring "the realities of the worksite" and "the effect of the Pennsylvania Workers' Compensation Act."

The *Ramara* decision arguably introduces a variant of the "four corners" rule, if not a departure from it. No "factual allegations" that might support a negligence claim against *Fortress* are quoted to support an inference of causal conduct attributable to *Fortress*. How allegations to the effect that *Ramara* "act[ed] by and through its agents, servants and/or employees" are to be understood as "factual" and produce an inference of *Fortress's* negligence is not patent.[10] At face value, the allegations are legal inferences to be proven, not alleged facts that if assumed true inform an inference of employer neglect.

If pragmatism has a place in the analysis, then it is fair to observe that Mr. Axe, as master of his pleading, did not plead facts stating or suggesting his employer's negligence played a role in causing the accident and he would not be expected to present evidence of employer neglect at trial.[11] A duty to defend can only arise if a Complaint alleges *facts* which, if proven as alleged, give rise to a duty to indemnify.[12] How *Fortress's* negligence would be proven at trial to take coverage from potential liability, triggering a duty to defend, to actual liability triggering a duty to indemnify is not explained in the opinion.

Also puzzling is why the WCA augments the plaintiff's Complaint when the Act supplies no historical facts about the accident or events leading to it. In practice, the Act is blind to causal responsibility for purposes of awarding benefits. The Act itself cannot warrant an inference that an employer's negligence caused an injury, which in a factual vacuum can be hypothetically explained just as plausibly by the worker's own carelessness or that of a third-party or no fault on anyone's part. In *Ramara*, the WCA is used to supply or at least fortify the conclusion that *Fortress's* acts or

[5] The subcontract was an agreement between *Sentry* and *Fortress*. As is often true, the agreement did not specify the scope of additional insured coverage to be provided.
[6] An allegation that the accident was caused single-handedly by the employer (i.e., "caused in whole") would foreclose the liability of any other person or entity. Explicit allegations of partial causal fault by a non-party employer would be nearly as counter-productive.
[7] Complaint, ¶14.
[8] *Id*., ¶¶19-20. It did not allege the opening was latent or concealed. Nor did it allege facts providing insight about how the opening came to be, or what should have been done and by whom to prevent the accident.
[9] *Id*., ¶40(f.).
[10] The Court did not consider whether "acts or omissions" should necessarily be taken as synonymous with "negligent acts or omissions." *Cf., Liberty Mutual Ins. Co. v. Zurich American Ins. Co*., 2014 U.S. Dist. LEXIS 42471 (S.D.N.Y. 2014).
[11] Neither would one anticipate that the plaintiff would accept, or that the trial court would include over objection, a jury interrogatory asking if the accident was caused *in part* by the acts or omission of plaintiff's employer. Thus, a residual contest about indemnity under the policy would force a trial de novo in the federal declaratory judgment action.
[12] *Pacific Indemnity Co. v. Linn*, 766 F.2d 754, 766 (3d Cir. 1985).

omissions, or acts or omissions of those acting on its behalf at the jobsite, potentially caused harm to Mr. Axe.[13] But if the facts of the Complaint, taken as true and as is, cannot be read to say his employer was at least partially at fault then resort to the WCA adds nothing but a vehicle for speculation extrinsic to the pleading.

Additional Insured Endorsement. The Third Circuit found the Complaint satisfied the AI endorsement whether "caused, in whole or in part" is construed to mean "but-for" or proximate causation. *Id*. at *28-34. The Court does not flatly state that the phrase is ambiguous in the context of the facts of the Axe Complaint but effectively treats it as ambiguous.[14] Neither did the Court distinguish decisions interpreting the phrase as meaning proximate cause. See, *Dale Corp. v. Cumberland Mutual Fire Insurance Co*., 2010 U.S. Dist. LEXIS 127126 *11-22 (E.D. Pa. 2010)(collecting cases). The Court could have stopped there, but instead proceeded to compare the Additional Insured endorsement and the policy's "Other Insurance" endorsement; it found there support for a "but-for causation interpretation."[15] *Id.* at *35-37.

Other Insurance Endorsement. The "other insurance" endorsement provides that the policy will be "excess" to "other valid and collectible insurance" available to an additional insured "if the loss is caused by the sole negligence of any additional insured, owner, lessee or contractor."[16]

The Court read the "other insurance" endorsement to mean that *Ramara*, as an additional insured, could not access excess coverage if Westfield's "proximate cause" interpretation were applied. This is so because a loss caused solely by *Ramara's* negligence could not, by definition, be simultaneously "caused, in whole or in part," by acts or omissions of *Fortress* – the requisite condition for *Ramara* to qualify as an additional defendant in the first place. The Court does not elaborate on why that tension informs interpretation of "caused, in whole or in part" as meaning "but-for causation" but a rationale is close to the surface.[17]

If the Named Insured's "acts or omissions" require only a "but-for" causal link, then it follows the Named Insured's acts or omissions need not be a legal cause of injury and if not a legal cause then the Additional Insured's sole liability in negligence is potentially within coverage; provided that, access to coverage under the AI endorsement would only be as excess if the additional insured has other valid and collectible primary insurance. Thus, a "but-for interpretation" makes it possible to reconcile the two endorsements.

Parting Observations. *Ramara* establishes, by express language, precedent construing "caused, in whole or in part" to mean "but-for" causation.[18] For all practical purposes, a "but-for" interpretation treats the language of the AI endorsement as synonymous with "arising out of the Named Insured's acts or omissions" and renders

[13] The Court did not consider whether Mr. Axe's own acts or omissions in the course and scope of his work could have been negligent, attributed to his employer, and thereby satisfy the qualifying definition for an additional insured. Cf., *Gilbane Building Company v. Empire Steel Erectors, L.P*., 664 F.3d 589 (5th Cir. 2011). .

[14] Contract terms are not to be construed in a vacuum. Ambiguity must be found to arise when the contract term is applied to a particular set of facts. *Madison Construction Co. v. Harleysville Mutual Ins. Co.*, 735 A.2d 100, 106 (Pa. 1999).

[15] The District Court did not find it necessary to resolve the meaning of "caused, in whole or in part" because the court found a duty to defend even if a "proximate cause" test applied. *Ramara, Inc. v. Westfield Ins. Co*., 69 F.Supp.3d 490, 498 (E.D.Pa. 2014).

[16] "Other Insurance Condition Amended," ISO endorsement CG70551298.

[17] The District Court discussed the perceived tension between the two endorsements but did not rely on it as a basis for finding a "duty to defend." *Ramara, Inc. v. Westfield Ins. Co*., 69 F.Supp.3d 490, 497 (E.D.Pa. 2014).

[18] "Although Ramara qualifies as an additional insured under either the 'but-for' or 'proximate cause" interpretation of the Additional Insured Endorsement, we point out that Ramara's but-for causation interpretation is correct." 2016 U.S. App. LEXIS 2656, *35.

inconsequential changes made to the endorsement by ISO in 2004. See, *Dale Corp. v. Cumberland Mutual Fire Insurance Co., supra*. (discussing ISO drafting history).

The opinion also introduces a novel application of the rule that the plaintiff's factual allegations are to the construed liberally by requiring consideration of the Workers' Compensation Act and "realities of the workplace." Whether a "but-for" or "proximate cause" interpretation of "caused, in whole or in part" is chosen, the Court's interpretation of the allegations in the Axe Complaint set a very low threshold to satisfy the AI endorsement. The absence of explicit allegations of a Named Insured employer's causal fault are unnecessary to trigger the duty to defend when the claimant is an employee of the Named Insured, the Named Insured enjoys statutory immunity, the work being done when the accident happened was or may have been under the control of the Named Insured, and the Complaint alleges generally that the Additional Insured's legal culpability is based on the acts or omissions of its contactors and subcontractors - one of whom was the Named Insured.

Finally, a trial de novo within the declaratory judgment action looms as a real possibility in order to resolve the duty to indemnify. This risk arises because the causative role of the Named Insured employer will not be adjudicated in the underlying tort action. If the Additional Insured - premises owner is found liable in the tort action, the right to indemnity still hinges on whether the Named Insured's acts or omissions can be connected casually to the accident as more than just a circumstance or remote cause.

Francis P. Burns III is a member of Ricci Tyrrell Johnson & Grey and head of its insurance coverage practice.

OVERLY BROAD STANDARD DISCOVERY

By Samuel Mukiibi

One way to control the direction of a case is to not yield control to the opposing party during the discovery process. Limiting discovery to relevant case issues avoids excess expenditure, focuses attention, and ensures that the discovery process is a means to an end, and not an end unto itself.

Standard or uniform discovery, however, may increase the risk of an ill-defined discovery process. What is problematic is that in many jurisdictions, trial courts will not entertain objections to standard discovery requests. For instance, the Philadelphia Local Rules of Civil Procedure provide for standard discovery in product liability cases. There are fifteen (15) standard interrogatories that can be served.[19] Philadelphia Courts do not entertain objections to these standard interrogatories and parties who file such objections will be subject to sanctions including the imposition of counsel fees.[20] This structure is not novel to Philadelphia County and Pennsylvania. New Jersey also has uniform interrogatories in many areas including product liability matters.[21] The New Jersey Rules state an obligation to answer every uniform interrogatory unless a claim of privilege is made pursuant to statute and or unless the court has otherwise ordered.[22]

Consider Philadelphia Standard Product Interrogatory Nine (9) regarding complaints and malfunctions before the alleged accident. The interrogatory asks for: (a) the substance of any complaints or malfunctions; (b) the dates when any complaints or malfunctions occurred; (c) the name and address of the persons who made such complaints or experienced the malfunctions; (d) whether the complaints or malfunctions are

[19] *See* Phila. Civ. R. 4005 (A).
[20] Phila. Civ. R. 4005(D).
[21] N.J. Ct. R. R. 4:17-1(b)(2); NJ R PRAC App. 2 Form C(4) Uniform Interrogatories.
[22] N.J. Ct. R. R. 4:17-1(b)(3) – (b)(4).

documented and the identification of the persons who prepared the documents; and (e) whether there were any oral reports made as to any complaints or malfunctions.[23] Many of the Philadelphia product interrogatories including interrogatory nine state that they may be accompanied with a request for production.

Interrogatory nine is not tailored to the subject matter of the accident and instead asks for any and all complaints, which may contain unrelated customer grievances, or worse, unrelated malfunctions or issues. A cautious attorney would want to limit the discovery to complaints and/or malfunctions related to the plaintiff's claim or of the alleged defect.

While a Philadelphia trial court would appear certain to order a defendant to answer a standard interrogatory, an Appellate Court may find some standard interrogatories objectionable. An example is that Pa. R. C. P. 4003.5 provides only for discovery of experts who will testify at trial, and only of their reports or answers to expert interrogatories. In contrast, Philadelphia Standard Product Interrogatory Twelve (12) asks for "all reports and other documents (except reports of experts consulted by you whom you do not intend to call at trial)."[24] Interrogatory Twelve's request for "other documents" is at odds with Pa. R. C. P. 4003.5.

Overall, discovery disputes can be contentious, time-consuming, and yield unexpected results. Standard discovery forms which are actually objectionable only complicate this process.

Samuel Mukiibi is an Associate at Ricci Tyrrell Johnson & Grey.

[23] Phila. Civ. R. 4005 Standard Product Interrogatories.
[24] Phila. Civ. R. 4005 Standard Product Interrogatories.

IN THE COMMUNITY

In January 2016, Ricci Tyrrell participated in an **Eagles Charitable Foundation (ECF)** children's winter clothing drive to benefit students in Philadelphia public elementary schools. The firm's employees donated new coats, hats, gloves and scarves for the Philadelphia School District children and surpassed their goal of collecting 100 items by January 15, 2016. On February 3, 2016, Ricci Tyrrell employees **Bernadette Golden** and **Sheila Ciemniecki** accompanied members of Eagles Charitable Foundation and the ECF Eye Mobile to the William D. Kelley Elementary School to assist in the distribution of the winter clothing items collected, as well as the distribution of books and eyeglasses provided by Eagles Charitable Foundation.

On February 19, 2016, Ricci Tyrrell employees **Angela Forte** and **Eileen Hardie** accompanied members of Eagles Charitable Foundation to the J. B. Kelly Elementary School to assist in the distribution of winter clothing items collected.

As with past involvement in Eagles Charitable Foundation events, Ricci Tyrrell volunteers got as much enjoyment out of the events as the children!

Eagles Charitable Foundation has reached more than one million children in the Philadelphia region through health and education programs. ECF's Mission Statement:

> "Using our unique platform to provide children in the Philadelphia region greater access to vision care and autism research services".

Each holiday season, Ricci Tyrrell makes a donation to **Philabundance®**, a regional non-profit hunger relief organization.

Ricci Tyrrell Associate **Tracie Bock Medeiros** served on the Silent Auction Committee for the "For Our Children" event at the **Noreen Cook Center for Early Childhood Education of Har Zion Temple**, where her son attends preschool. The annual fundraiser and silent auction was held on March 10, 2016 and hopes to raise money to expand the school's playgrounds.

One of the founding Members of Ricci Tyrrell, **William J. Ricci,** is on the Board of Directors of, and heavily involved with **Renovating Hope**, a charitable organization gaining national prominence which renovates homes for wounded troops returning from active duty. Bill is involved in significant fundraising efforts for the organization and provides ongoing pro bono legal representation on a variety of issues.

"In the Community" is edited by Ricci Tyrrell Associate Tracie Bock Medeiros.

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