



Ricci Tyrrell Johnson & Grey

ATTORNEYS AT LAW

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News and Events:



Ricci Tyrrell Johnson & Grey is pleased to announce that **Michael T. Droogan, Jr.** has joined our firm as a Member.

Mr. Droogan is a graduate of Gettysburg College and Delaware Law School and has almost 30 years' experience successfully defending construction defect claims, catastrophic vehicle accidents, fire damage, medical malpractice, premises liability, utility company liability and products liability. He also has a wealth of trial and arbitration experience, having tried more than 30 jury trials to verdict and over 200 arbitrations in Pennsylvania, New Jersey and New York. Mr. Droogan has also argued cases to the Third Circuit Court of Appeals, the Pennsylvania Supreme Court and the Pennsylvania Superior Court.

Mr. Droogan is admitted to practice in Pennsylvania and New Jersey, including the Western, Middle and Eastern Districts of Pennsylvania and the District of New Jersey.

Matthew Mortimer and **Alex Shaen** have joined **Ricci Tyrrell Johnson & Grey** as new Associates. Both Mr. Mortimer and Mr. Shaen were long-term interns at the firm. **Matthew Mortimer** is a 2018 graduate of The Temple University Beasley School of Law. **Alex Shaen** is a 2018 graduate of The Drexel University Thomas R. Kline School of Law.



MAJOR MARITIME VICTORY IN SHIP EXPLOSION CASE

Ricci Tyrrell client BDP International Inc. was exonerated from fault in the matter of the explosion of the MSC FLAMINIA which occurred on July 14, 2012.

On July 14, 2012, the M/V MSC FLAMINIA (the "Flaminia") was crossing the Atlantic Ocean bound for Antwerp, Belgium. The vessel had departed from New Orleans, Louisiana fourteen days earlier and was loaded with cargo. Early that morning 4 alarms sounded, smoke arose from one of the holds, and an explosion followed. As a result, three members of crew were killed, numerous cargo containers were destroyed, and the vessel was seriously damaged.

Several lawsuits followed seeking compensation for death, bodily injury, loss of cargo, damage to the vessel, and for contribution and indemnification. Many of the original claims were settled, including those alleging wrongful death and bodily injury. The remaining claims were based on theories of negligence, statutory violations, and breaches of contractual obligations.

Due to the complexity of issues and the anticipated length of a single trial, the Court divided the trial into 2 liability phases: "Phase I" to determine the cause of the explosion; and "Phase II" to establish and allocate responsibility for this incident. A "Phase III" trial will follow if an upcoming mediation process does not resolve the remaining damage issues.

After the Phase I trial, the Court found that the explosion was the result of runaway auto-polymerization (chemical process that increases heat and pressure in a closed container) of the DVB80 which was stowed in one of the holds. The Court issued factual findings relating to the cause of the explosion and concluded that the DVB80's auto-polymerization was caused by excessive heat exposure to the DVB after being delivered to the pier before loading on the Flaminia, as well as from heat emanating from an adjacent cargo emanating heat that affected the DVB 80, and finally by insufficient ventilation in the hold.

The Phase II trial began on August 13, 2018 and concluded on August 29, 2018. Several parties asserted tort claims based on theories including general negligence, negligent failure to warn, and strict liability. Stolt (NVOCC) asserted a breach of contract claim against BDP. With respect to the Stolt claim against BDP, the Court limited Stolt's breach of contract claim against BDP to one of proving that BDP's omission

deprived Stolt of a defense it might have then been able to assert in its own defense to claims brought by MSC.

BDP acted as Stolt's Documentation Department and was under a contractual obligation with Stolt to ensure certain instructions were contained on the final version of Master Bill of Lading, but it failed to do so. The Master Bill of Lading Instructions provided the following heat warning: "DO NOT STOW NEAR HEAT SOURCES. STOW ABOVE DECK FOR TEMPERATURE MONITORING". The Court had previously determined in response to motions that BDP's omission was a breach of its contractual duty to Stolt.

The Court exonerated BDP. The evidence at trial established that BDP's breach did not contribute to any loss nor lead to any damages. The Court rendered a 122-page decision wherein among other conclusions, held that Stolt did not produce sufficient evidence of damages by BDP's breach. Stolt did not establish that had the heat warnings been included on the bill of lading, MSC would have acted differently in stowing the cargo of DVB and that Stolt did not prove the inclusion of the stowage instructions on the final version of the Bill of Lading would have provided Stolt with a complete, or even partial, defense to the claims brought against it by other parties. The Court also found that it was not foreseeable that BDP's failure to include those instructions could have led to the explosion.



Trial counsel and lead counsel for the Flaminia matter was Ricci Tyrrell Founding Member
James W. Johnson.

SUMMARY JUDGMENT AWARDED IN SLIP AND FALL ACCIDENT

Ricci Tyrrell client Speedway, LLC was awarded summary judgment in an opinion, DuBois, J., dated June 22, 2018. *See Sutton v. Speedway, LLC*, E.D. Pa. No. 16-4765. Plaintiff alleged he tripped and fell on an unmarked curb in front of the entrance of a Speedway convenience store. Plaintiff ruptured his left and right quadriceps in the fall. Judge DuBois determined, upon

review of photographs submitted in support of the motion, that the curb was not dangerous as a matter of law, and "that the curb is one that an invitee should normally expect to encounter". The Court further ruled that the curb presented an open and obvious condition as a matter of law.



The Sutton case was handled and the motion prosecuted by Ricci Tyrrell Member **Michael T. Droogan**.

LACK OF EVIDENCE OF SLIPPERY CONDITION RESULTS IN SUMMARY JUDGMENT FOR DEFENDANT

In an opinion dated August 13, 2018, the Honorable F.P. Kimberly McFadden granted summary judgment to Ricci Tyrrell client Target Corporation. See *McGeehan v. Target Corporation*, Court of Common Pleas of Northampton County, PA. No. C-48-CV-2016-1702.

Plaintiff alleged there was an area of wetness on the floor at a Target store and/or that the floor was excessively polished. However, store surveillance video depicted no substance on the floor nor other evidence of slipperiness. Plaintiff's submission of an expert opinion did not change this determination by the Court.

The Summary Judgment Motion was prosecuted by Ricci Tyrrell associate **Samuel Mukiibi**. Lead counsel for the McGeehan case was Founding Member **Francis J. Grey**.



DISTINCTIVE NATURE OF THE WORK-PRODUCT DOCTRINE

On June 7, 2018, the Pennsylvania Superior Court issued an opinion addressing whether "notes and memoranda of witness interviews by a private investigator, acting at the express direction of defense counsel" are protected by the work-product doctrine. *Deborah McIlmail, Administratrix of the Estate of Sean Patrick McIlmail v. Archdiocese of Philadelphia, Monsignor William Lynn, Fr. Robert Brennan*, 2018 Pa. Super 157, *1 (Pa. Super. 2018).

In investigating the alleged claims, counsel for the defense retained a private investigator to conduct interviews of potential witnesses. *Id.* at 2. Thereafter, during the course of discovery, plaintiffs requested those statements obtained by the private investigator. *Id.* In response, the defense objected and refused to provide any information obtained by the private investigator. *Id.* It was counsel's contention that this information was protected by the broader protections of the work-product doctrine because the private investigator was their agent. *Id.*

In determining whether the sought information was discoverable, the Superior Court reviewed Pennsylvania Rule of Civil Procedure 4003.3. That rule provides:

Subject to the provisions of Rules 4003.4 and 4003.5, a party may obtain discovery of any matter discoverable under Rule 4003.1 even though prepared in anticipation of litigation or trial by or for another party or by or for that other party's representative, including his or her attorney, consultant, surety, indemnitor, insurer or agent. The discovery shall not include disclosure of the mental impressions of a party's attorney or his or her conclusions, opinions, memoranda, notes or summaries, legal research or legal theories. With respect to the representative of a party other than the party's attorney, discovery shall not include disclosure of his or her mental impressions, conclusions or opinions respecting the value or merit of a claim or defense or respecting strategy or tactics.

Pa.R.C.P. 4003.3

The court noted that this scope of discovery is subject to the work-product privilege which is divided into two categories, attorney work product and non-attorney work product. *McIlmail*, 2018 Pa. Super 157 at *5. The court continued that when materials are produced

by a representative of a party, other than an attorney, the rule only prohibits the representative's mental impressions, conclusions or opinions regarding the value/merit of a claim or the defense or respecting strategy or tactics. *Id.* "Memoranda or notes made by the representative are not protected". Pa.R.C.P. 4003.3, Explanatory Comment.

For the attorney work-product doctrine to apply, the defense had to "establish that the doctrine was properly invoked with respect to the notes and summaries written by the investigator, not the attorney." *McIlamil*, 2018 Pa. Super 157 at *5. The defense argued that the private investigator's notes and summaries were protected by the work-product doctrine to the same extent as if they were conducted by counsel because it was done at their express direction. *Id.* at 6. It was their position that the private investigator was their agent and thus that work should be protected under the broader protection of the work product applicable to attorney and not protection afforded to representatives. *Id.*

The court rejected this argument and stated, "that conferring attorney work-product protection to the investigator's notes of the interviews would impermissibly expand Rule 4003.3" *Id.* It was reasoned that if the interpretation proposed by the defense was adopted, it could "corrode the clear distinction that the Rule makes between the work-product of an attorney with that of a non-attorney representative." *Id.* Applying the attorney work-product privilege in this situation would ignore the specific differences that were defined in Rule 4003.3. *Id.* "The intent behind Rule 4003.3 is to shield the mental processes of an attorney, designed to protect from disclosure an attorney's thoughts and views about a case including theories, mental impressions or litigation plans." *Id.* The court found that the disclosure of the documents that related solely to factual information obtained by an investigator from potential witnesses did not reflect the thought process of the attorneys involved. *Id.* at 7. Thus, the factual statements that were obtained by the investigator from the witnesses were to be turned over.

This is an important outcome and addresses the importance of determining when to use a private investigator. The private investigator will not be considered an agent of the attorney but will be an "other representative" of the party. This will only provide the private investigator with limited protection from discovery. If an attorney seeks to have memoranda, notes or summaries of interviews of potential witnesses protected, then the interviews should be performed by the attorney.



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

DISCOVERABILITY OF SOCIAL MEDIA CONTENT IN PENNSYLVANIA

In this age of technology, the impact of social media cannot be overstated. Social media has replaced the way people interact with each other, make professional connections, and communicate their personal, political and religious beliefs. People share photographs and post up-to-the-minute details about nearly every aspect of their lives. A person's online presence can be a major source of information for employers in determining the employability of a candidate. Likewise, social media has quickly become a unique source of evidence in the context of personal injury litigation.

In its infancy, the importance of social media may have been overlooked by the legal profession. However, as social media grew, lawyers and the courts began to recognize the influence and impact social media postings could have on personal injury claims. While social media postings may not alter the facts and circumstances of a particular accident, the information obtained from an injured plaintiff's social media accounts can significantly impact the amount of damages in a case. Experienced attorneys know that a significant issue in most personal injury cases is how a judge or jury will perceive a plaintiff's alleged claims for non-economic damages such as pain and suffering, mental anguish, loss of enjoyment of life, etc. While the amount of damages for economic claims such as lost wages or medical bills is easily calculable, the amount of damages for non-economic claims is very subjective. Many times, it comes down to the credibility of the plaintiff. A photograph of a plaintiff enjoying a vacation with friends and family or participating in sporting activities is evidence that can seriously impact the credibility of a plaintiff who malingers or exaggerates the extent of his/her injury.

Though there is limited authority on the issue, use of a party's social media accounts in litigation is becoming

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more common. Whether social media content is discoverable typically depends on general standards of reasonableness. In Pennsylvania, many courts have held that social media accounts may be discoverable if it appears likely that they contain information that could be relevant. A common issue of dispute that arises in determining the discoverability of social media content is the plaintiff's expectation of privacy. Many people presume that when social media accounts are set to "private," the material cannot be made available for public scrutiny. However, that argument has been rejected again and again by courts. When a person shares content with others, even if it is only a small group of selected friends, most courts have held that there is no reasonable expectation of privacy for such content. Various Pennsylvania trial courts have indicated that there is arguably no expectation of privacy on social media because the account holder is sharing information with others in a public or quasi-public domain. See *Gallagher v. Urbanovich*, No. 2010-33418 (Montgomery C.C.P., Feb. 27, 2012); *Mazarella v. Mount Airy #1, LLC*, No. 1798 CV 2009 (Monroe C.C.P., Nov. 7, 2012).

In a recent decision, *Kelter v. Flanagan*, No. 286-Civil-2017 (C.P. Monroe Co. Feb. 19, 2018, Williamson, J.), the Court granted a Defendant's Motion to Compel a Plaintiff to provide defense counsel with her Instagram account log-in information. Defendants argued that the Instagram account may contain relevant information concerning the alleged injuries suffered by Plaintiff in the accident. At deposition, the Plaintiff initially testified that she did not maintain any social media accounts. However, when confronted with information to the contrary, Plaintiff admitted that she had maintained an Instagram account. Defendant's counsel then presented Plaintiff with various Instagram posts from a time period shortly after the accident that were available for public access. The posts appeared to indicate that Plaintiff was engaged in vigorous physical activity, both before and after the accident, such as shoveling snow and going to the gym. Following the deposition, Plaintiff changed her Instagram settings to "private." Plaintiff's actions made the once-public posts no longer accessible and defense counsel expressed concern that the posts could be deleted. Because Plaintiff claimed injuries that may preclude her from participating in such activities, the Court found that the information sought was relevant. The Court ordered the Plaintiff to provide defense counsel with her Instagram log-in information within fifteen (15) days and to refrain from removing or deleting any content from the account.

While the courts have been willing to permit discovery of social media content, they do not typically allow

"fishing expeditions." Across the country, some judges have been reluctant to allow discovery of social media content in cases where a requesting party hasn't shown at least some specific information indicating that the account contains relevant evidence. Because of this, experienced plaintiff's attorneys are advising their clients as early as possible to set their social media accounts to private and/or to refrain from or limit social media posts. The idea is that if there is limited information that is publicly available, the defense will have limited grounds to argue for greater access to the social media accounts based on relevancy. Notably, in a recent decision, the Court of Appeals of New York rejected a heightened threshold that would require a party to establish a factual predicate for discovery of private social media content by identifying information in public posts that contradicts the other party's allegations. See *Forman v. Henkin*, 2018 NY Slip Op 01015, 30 N.Y.3d 656, 70 N.Y.S.3d 157, 93 N.E.3d (Feb. 13, 2018). Pennsylvania courts have not yet addressed this issue.



Jason Avellino is an Associate at Ricci Tyrrell Johnson & Grey.

PATENTS CONTINUE TO DRIVE INNOVATION

On July 31, 1790, the first U.S. patent was issued to Samuel Hopkins for his process of making potash, an ingredient used in fertilizer. The patent, signed by President George Washington in accordance with the U.S. Patent Act of 1790, resulted from the mandate stated in Article 1, Section 8 of the United States Constitution, vesting Congress with the power "to promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries."

The framers of the Constitution were wise enough to recognize that the fledgling union known as the United States of America could only succeed by being an economically and commercially viable country. If Americans were to advance technology by inventing

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new and useful products, machines, and methods of manufacture, they must have an incentive to do so. The Constitution provided this incentive by granting inventors the exclusive right to their inventions for a period of years. Inventors could then be confident that their innovations would be protected against competitors. They would be the only individuals who would reap the monetary benefits of bringing their inventions to the marketplace.

Little did President Washington or the framers know or could even have comprehended that their vision would be wildly successful and that the rights granted to inventors through the patent system would jump start and fuel the flourishing economy we have to this day. The framers certainly could not envision that over two centuries after Mr. Hopkins obtained his patent, the patent system would continue to protect inventor's rights and the ten millionth patent would be granted.

In fact, on June 19, 2018, U.S. Pat. No. 10,000,000 was indeed issued to Joseph Marron for "Coherent LADAR Using Intra-pixel Quadrature Detection," a laser detection and ranging system. Commenting on this momentous achievement, current U.S. Secretary of Commerce Wilbur Ross stated:

Innovation has been the life blood of this country since its founding . . . Our patent system's importance to the daily lives of every American has never been greater. Given the rapid pace of change, we know that it will not take another 228 years to achieve the next 10,000,000 patent milestone.

Mr. Ross' comments represent an understanding of America's technological development. The acceleration of innovation over the history of this country has been astounding. Patent number 1,000,000 was issued in 1911, 121 years after the first patent was awarded in 1790. U.S. Pat. No. 2,000,000 was granted only 23 years later, in 1932. Newly issued U.S. Pat. No. 10,000,000, issued in June, 2018, was granted a mere three years after U.S. Pat. No. 9,000,000. Given this track record, it certainly will not take another 228 years to reach the next ten million patent milestone.

There have been and always will be doubters when it comes to continuing American innovation; but one would guess that Charles Duell, the Commissioner of the U.S. Patent Office in 1899, was truly off base when he stated that "Everything that can be invented has been invented." About 9,000,000 inventions later, the United States patent system and the economy it drives continues to thrive.



Stuart M. Goldstein heads Ricci Tyrrell's Intellectual Property Practice.

IN THE COMMUNITY

On May 19, 2018, many Ricci Tyrrell employees attended and participated in the inaugural **Eagles Autism Challenge**. Ricci Tyrrell was one of the inaugural sponsors for the challenge. The **Eagles Autism Challenge** is dedicated to raising funds for innovative research and programs to help unlock the mystery of autism. Philadelphia Eagles players, alumni, coaches, executives, cheerleaders and Swoop were present for the bike ride and family friendly 5K run/walk. Team Ricci Tyrrell was made up of Ricci Tyrrell Founding Members **John E. Tyrrell** and **James W. Johnson**, Chief Operating Officer, **Julianne F. Johnson**, Member **Patrick J. McStravick**, Associates **Jason M. Avellino**, **Tracie Bock Medeiros**, **Kelly J. Woy**, and employees **Sheila J. Ciemniecki**, **Bernadette Golden**, **Yolanda Jenkins**, **Megan P. McDonnell**, **Susan E. Schonewolf**, **Eric P. Shaw**, and **Lisa A. Tiffany**.



On April 15, 2018, **Tracie Bock Medeiros** served on the Host Committee and attended the **Philly Friendship Gala**, an annual event that raises money for **The Philly Friendship Circle**. The Friendship Circle provides organized physical and social structures to support inclusive friendships, connections, respite, and fulfillment for youth with special needs, young adult

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volunteers, their respective families, and the Jewish community at large. Through fun and interactive experiences, these relationships bring a sense of joy and meaning to the Friendship Circle community and beyond. The money raised at the **Philly Friendship Gala** assists with the cost of programming throughout the year.

On May 25, 2018, Ricci Tyrrell Founding Member **William J. Ricci** participated in the **Ocean City Unlocking of the Ocean and Business Persons Plunge**. At this annual event, participants dress in business suits, carry brief cases and march into the ocean to the strains of **Pomp and Circumstance** to welcome the new season. This event always takes place the Friday afternoon leading into Memorial Day weekend, the unofficial start of summer down the shore!



On May 29, 2018, Ricci Tyrrell Founding Member **John E. Tyrrell**, Associate **Samuel Mukiibi**, and Legal Assistant **Yolanda Jenkins** visited **Penn Treaty School** in Philadelphia, Pennsylvania, with **The Eagles Eye Mobile**, which travels to different schools to make free comprehensive vision care

accessible to under-insured and uninsured children. The Eye Mobile is part of the **Eagles Charitable Foundation (ECF)**. Ricci Tyrrell has been a sponsor and supporter of ECF for over two decades.

On June 4, 2018, Ricci Tyrrell employees contributed towards and purchased golf balls for **The Philadelphia Ronald McDonald House's (PRMH) 2018 Hit 'em for the House Ball Drop**. The Ball Drop is RMH's annual raffle which gives folks the opportunity to purchase a golf ball for \$100 and possibly win \$10,000. On June 4th, 200 golf balls were dropped from a helicopter and the purchaser of the ball that landed closest to the 18th hole won \$10,000, with \$10,000 going back to help support the families staying at **PRMH**. While none of the balls purchased by Ricci Tyrrell employees were the winning ball, we all felt like winners as we contributed towards the \$10,000 raised for the **PRMH**. The **PRMH** provides a comfortable room to sleep, home cooked meals, and other supportive services to families who travel to Philadelphia to obtain medical treatment for their children. These services allow parents to comfort their children around the clock, in the hospital or after an outpatient treatment. By staying at the House, the families also get support from a community of other parents in similar situations, finding comfort and hope.

On July 19, 2018, Ricci Tyrrell Associate **Jonathan A. Delgado** and his girlfriend Alicia Palombo attended a silent auction fundraiser benefiting **Doctors of the Americas**. **Doctors of the Americas** is a nonprofit organization that provides health and vision care as well as dental hygiene education and other humanitarian relief in El Salvador each year. One additional goal of the organization is to provide educational opportunities in international medicine in order to inspire a new generation of medical professionals to participate in humanitarian work.

On May 15, 2018, Ricci Tyrrell Associate **Tracie Bock Medeiros** was elected to and sworn into the **Board of Directors** of her synagogue, **Har Zion Temple**. Throughout the prior nine months, Tracie served on the Senior Rabbi Search Committee for Har Zion Temple and volunteered an extensive amount of time to the process required for selecting the congregation's spiritual leader for years to come. This led to her position on the Board of Directors.

Ricci Tyrrell employee **Lisa A. Tiffany** is an active member of, and currently serves on the **Board of Directors** of, the **Springfield Lions Club**. Lisa had a busy few months with the **Springfield Lions Club**. In March she assisted in delivering 65 baskets of food to people who needed a little help this Easter season. On June 2, 2018, Lisa **co-chaired** the **Springfield Lions Club's** annual Chicken BBQ which was a huge success and SOLD OUT! On July 4, 2018, Lisa volunteered at the **Springfield Township's 4th of July Parade**, sponsored by the **Springfield Lions Club**. Finally, in honor of all her hard work and dedication to the organization, Lisa received the **Lion of the Year Award** on July 17, 2018! The **Springfield Lions Club's** main goal is to help the hearing and visually impaired.



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

