Ricci Tyrrell Johnson & Grey
ATTORNEYS AT LAW

# QUARTERLY NEWSLETTER

October 2019
Volume 16

*Firm Members Fran Grey and John Tyrrell cheering for their Eagles in Minnesota.*

## In This Issue:



## News and Events:

On November 1, 2019, founding Member **Bill Ricci** will be one of the presenters in the "Masters of Litigation," presented in collaboration between the **American College of Trial Lawyers** and **Temple University Beasley School of Law**. Mr. Ricci will present jointly with Thomas J. Duffy, Esquire and Kathleen Kramer, Esquire on "The Opening Statement - Style Content, Delivery, Connecting with the Jury."

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Managing Member **John E. Tyrrell** and firm Member **Patrick J. McStravick** were both presenters at the **Pennsylvania Bar Institute** Personal Injury Law Conference 2019, which took place on September 18, 2019. Mr. McStravick's topic was "If It's Not Broken, Don't Fix It – How to Defend a Products Liability Case." Mr. Tyrrell addressed, "How to Avoid a Catastrophic Verdict in a Catastrophic Case."

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**Bill Ricci** will present at the **Dispute Resolution Institute's** Annual Personal Injury Practicum CLE on November 7, 2019. Mr. Ricci will present on the subject of who is a "seller" under Restatement (Second) of Torts 402A: *Oberdorf v. Amazon.com, Inc.*

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Member **Brian L. Wolensky** will be a presenter at a CLE, offered through the **Pennsylvania Bar Institute**. The presentation will be live on December 3, 2019 and will also be available via simulcast and webcast. Brian's presentation will be part of a program devoted to advancing technologies in automobiles and titled "Collision Ahead! Vehicle Technology Enters Litigation." Brian will be focusing on the liability of manufacturers as vehicle technology continues to advance.

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**Samuel Mukiibi** is serving as an Adjunct Professor at **Drexel University, Thomas R. Kline School of Law** for the Fall 2019 semester. Mr. Mukiibi is teaching a Justice Lawyering Seminar, which is required for all students

enrolled in one of the law school's clinical programs (Civil Litigation, Federal Appellate Litigation, Criminal and Community Lawyering). The course explores a number of topics law students encounter in legal clinics through a lens of justice lawyering and examines the lawyer's role in promoting justice specifically. Though certain topics in the course material are guided by the students' actual work experience in the respective clinics, the course also uses the eviction crisis in the United States and more specifically, in Philadelphia, to frame issues surrounding the access to justice. Mr. Mukiibi was guided toward this crisis after reading *Evicted: Poverty and Profit in The American City*, by Princeton Professor, Matthew Desmond. To aid and prepare for the course, Mr. Mukiibi volunteered as a *pro bono* attorney in Philadelphia Landlord/Tenant Court representing indigent people well below the poverty line. Thus far, Mr. Mukiibi has been able to save a family with four minor children from eviction and enabled a disabled elderly woman to vacate and dismiss a wrongfully obtained default judgment.

## SUMMARY JUDGMENT AWARDED TO U.S. FIGURE SKATING

The *Boldurian* case was defended by Members **John E. Tyrrell**, **Patrick J. McStravick**, and Associate **Alisha Rodriguez**.



In *Boldurian v. Virtua Center Flyers Skate Zone, et al*, the Plaintiff claimed injury due to a skating accident at an ice rink and brought suit in New Jersey Superior Court, Camden County. Ricci Tyrrell represented **U.S. Figure Skating**, the national governing body for the sport of figure skating on ice in the United States. Among the Plaintiff's allegations was that the U.S. Figure Skating program, **Learn to Skate**, was negligently designed. Due to improper service, Ricci Tyrrell entered the case for U.S. Figure Skating only months before trial, but was quickly able to secure summary judgment in its client's favor on all claims.

## PUNITIVE DAMAGES – FIGHT EARLY, OFTEN AND AT EVERY OPPORTUNITY




**Francis J. Grey, Jr.**, **Monica V. Pennisi Marsico** and **Brian Wolensky** are Members at **Ricci Tyrrell**. **Jonathan A. Delgado** is a firm Associate.

A Miami-Dade County Judge allowed a punitive proceeding to go forward after the jury found **$0** in compensatory damages. The jury ultimately awarded a $1,000,000 punitive verdict.

In *Moore v. R.J. Reynolds*, 2008-CA-000858, damages were sought because the plaintiff's mother had been diagnosed with laryngeal cancer after smoking two to three packs of cigarettes a day for over 40 years. The treatment for the cancer required the removal of her larynx. She eventually died 10 years after the diagnosis due to circumstances unrelated to smoking. It was argued that the cigarette company knew that cigarettes were dangerous and addictive, and by continuing to sell them was the cause of the cancer.

Following closing arguments, the jury determined that the plaintiff was entitled to $0 for compensatory damages. Despite that finding, the Circuit Court Judge allowed the hearing on punitive damages to move forward. She reasoned that an award of compensatory damages was not a perquisite for a punitive verdict and added that this issue was one to be resolved at the appellate level. The Judge expressed concerns of denying the opportunity for punitive damages and then having the appellate court reverse her decision.

This outcome is a seriously concerning premise, especially if it were to be affirmed and become a growing trend. This result is a departure from the guidance given by the Supreme Court. Punitive damages must be connected to the harm suffered by the plaintiff and cannot serve only as punishment. That is why now, more than ever, claims for punitive damages must be fought at every single stage of litigation; even if the case presents minimal risk of liability.

## THE "OTHER PROPERTY" EXCEPTION TO THE ECONOMIC LOSS DOCTRINE

**Francis J. Grey, Jr.**, **Monica V. Pennisi Marsico** and **Brian Wolensky** are Members at **Ricci Tyrrell**. **Alexander M. Shaen** is a firm Associate.

In its most basic form, the Economic Loss Doctrine (ELD) prohibits a plaintiff from recovering pure economic damages in tort. Recent developments in this area of law have diminished the once favorable defense in property damage cases for automotive manufacturers by creating an exception to the ELD, which allows plaintiffs to claim economic damages in tort based on damage to "other property."

A number of states have adopted the "other property" exception to the ELD. *See, e.g.*, *Marsulex Envtl. Techs. v. Selip S.P.A.*, 247 F. Supp. 3d 504, 513 (M.D. Pa. 2017) (recovery in tort is not barred for economic loss that results in damage to other property"); *Naporano Iron & Metal Co. v. Am. Crane Corp.*, 79 F. Supp. 2d 494, 504-05 (D.N.J. 1999) (the "other property" exception is limited to other property of the plaintiff, not a third-party); *Sharp v. Hylas Yachts, Inc.*, 962 F. Supp. 2d 361, 366 (D. Mass. 2013); *Praxair, Inc. v. Gen. Insulation Co.*, 611 F. Supp. 2d 318, 325-28 (W.D.N.Y. 2009).

In a practical sense, this means that insurers can bring tort claims for economic losses if the plaintiff's insured also lost personal property during the incident. Think of a vehicle fire that also destroys the vehicle owner's personal belongings, such as a cell phone, bags, or maybe even something as simple as an air freshener. Due to the generalized nature of "other property," pleading something as little as "the contents of the vehicle" may satisfy the exception and prevent the use of the ELD.

While the ELD still remains a viable defense, the "other property" exception has diminished this once resolute defense. This is important because it no longer limits plaintiffs' claims to breach of contract / warranty, and now permits plaintiffs to bring negligence and product liability claims. Please contact us to discuss different strategies to assert the ELD defense.

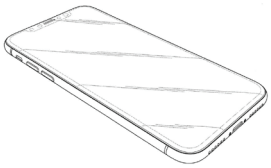
## DESIGN PATENTS REDUX

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

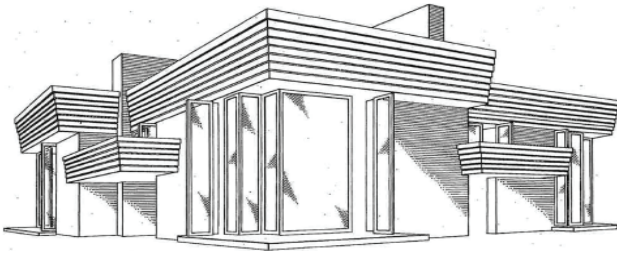
In past articles, I have discussed the advantages of protecting the design of a product by having it patented in accordance with the federal design patent statute, 35 U.S.C. §171. The statute states that a design patent will be granted to anyone who has invented a new, original, and ornamental design for an article of manufacture. Articles of manufacture include items such as hand and household tools, computer accessories, furniture, clothing, automobile parts, etc. However, I am still often asked what "things" the subject of design patents can be. The answer: just about anything that has a novel look, appearance or design.

Below are examples of drawings from actual United States design patents. See if you can guess what the products are. Answers are at the end of this article:

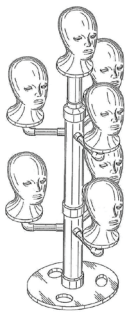
(1) You probably have one of these:



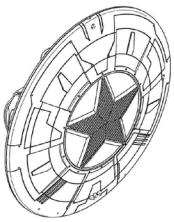
(2) One of Mr. Wright's:



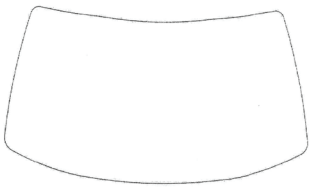
(3) For a woman of many looks:



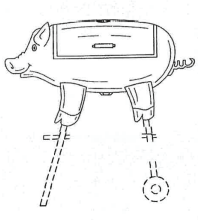
(4) This is Marvel-ous:



(5) Look right through this:

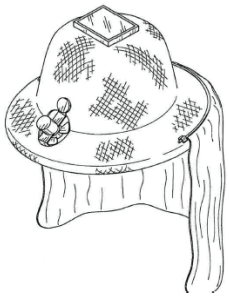


(6) This little piggy . . .

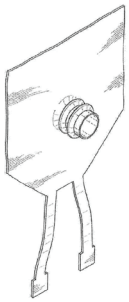


(7) Chew on this:

(8) Keep cool:



(9) Bonus:



Answers: (1) Electronic device; U.S. Pat. No. D806,705; Apple Inc.; (2) Dwelling; U.S. Pat. No. D114,204; Inventor: F.L. Wright; (3) Wig Hanger; U.S. Pat. No. D624,332; Inventor: Nwatu et al.; (4) Shield; U.S. Pat. No. D819,750; Applicant: Disney Enterprises; (5) Vehicle Windshield; U.S. Pat. No. D786,157; Assignee: Ford Global Technologies; (6) BBQ Grill; U.S. Pat. No. D427,484; Inventor: Ethridge; (7) Dental Implant; U.S. Pat. No. D689,610; Inventor: Dukhan; (8) Ventilated Hat; U.S. Pat. No. D670,891; Inventor: Bayley; (9) Sexually Transmitted Disease Prevention Shield; U.S. Pat. No. D737,423; Inventor: Mulson

# INSTRUCTING THE JURY ON THE RISK-UTILITY TEST WHEN A PLAINTIFF PURSUES A CLAIM UNDER THE CONSUMER EXPECTATION TEST

**Alexander M. Shaen** is an Associate of **Ricci Tyrrell**.

On July 19, 2019, a three-judge panel of the Pennsylvania Superior Court in *Davis v. Volkswagen Grp. of Am.*, Civ. A. No. 1405 EDA 2018, 2019 Pa. Super. Unpub. LEXIS 2763 (July 19, 2019),[1] unanimously affirmed a trial court opinion wherein the jury was instructed on both the consumer expectation test and the risk-utility test. The Superior Court determined that while a plaintiff is the master of their claim, where evidence suggests a party-requested instruction on a theory or defense, a charge on said theory or defense is warranted. Such was the case in *Davis* where the evidence placed the risk-utility test into issue.

The plaintiff initiated this lawsuit following a motor vehicle accident where a vehicle driven by one of the defendants[2] crossed the center line of the highway and struck the Volkswagen vehicle being driven by the plaintiff's decedent. *Id.* at *1-2. The Volkswagen vehicle caught fire and the decedent died as a result of his injuries. *Id.* at *2. Plaintiff's estate asserted strict liability claims based on the alleged design defect in the Volkswagen's fuel tank. *Id.* Volkswagen presented evidence contrary to the plaintiff's theories that the fire originated in the fuel tank; instead, Volkswagen's experts opined that the fire originated in the engine. *Id.* at *4.

Prior to trial, the plaintiff filed a motion *in limine* asking the court to apply the consumer expectation test, while Volkswagen argued that the court should apply the risk-utility test "as the only test appropriate to strict product liability cases involving complex products such as automobiles." *Id.* at *2-3. The court denied the motion *in limine* as the question of whether the vehicle was in a "defective condition" was a question of fact that the plaintiff could establish under "either the consumer expectation test or risk-utility test." *Id.* at *3.

The trial commenced in May 2017 and the parties presented the court with proposals for jury instructions. *Id.* at *3-4. Plaintiff offered a jury instruction based on the consumer expectation test "and offered, in case the court denied that instruction," a proposed instruction on the risk-utility test; whereas, Volkswagen proposed an instruction on the risk-utility test only. *Id.* at *4. Reviewing both parties proposed jury instructions, the court decided to instruct the jury on the consumer expectations test and the risk-utility, stating:

> As I understood it from the outset, the Plaintiff wanted the consumer expectation only, and the Defendants wanted the risk-utility test, only. And, as I read the instruction, it could be either, and/or. I am going to give both, and you can fight it out.

*Id.* at *4-5.

The jury returned a verdict in favor of Volkswagen noting that the fuel tank was defective, was not crashworthy, but the defective fuel tank did not bring about harm to the decedent. *Id.* at *14. Plaintiff appealed and raised a number of questions, specifically "[d]id the Trial Court abuse its discretion or commit legal error by refusing to allow Appellants to pursue their chosen theory of liability, as commanded by the Pennsylvania Supreme Court in *Tincher v. Omega-Flex, Inc.*[?]" *Id.* at *16.

On appeal, the plaintiff argued that the trial court erred in instructing the jury on both the consumer expectation test and the risk-utility test, when the plaintiff only litigated her case under the consumer expectation test. *Id.* at *31. While the plaintiff aptly noted that the *Tincher* Court stated "plaintiff is the master of the claim in the first instance[;]" the *Tincher* Court also stated "[w]here evidence supports a party-requested instruction on a theory or defense, a charge on the theory or defense is warranted." *Tincher v. Omega-Flex, Inc.*, 104 A.3d 328, 406, 408 (Pa. 2014).

The Superior Court determined that this situation contemplated in *Tincher* was present in the current matter. *Davis*, 2019 Pa. Super. Unpub. LEXIS 2763, at *33. Specifically, Volkswagen admitted into evidence expert testimony that the fuel tank was not punctured,

and that the fire started in the engine, not near the fuel tank as the plaintiff alleged. *Id.* Given this evidence, the risk-utility test was at issue and the court properly instructed the jury using this instruction. *Id.* The Superior Court also disagreed with the plaintiff's contention that instructing the jury on the risk-utility test prevented her from litigating her case under her chosen theory, since the trial court instructed the jury on both the consumer expectation test and the risk-utility test. *Id.* at *33-34.

A concurring opinion was authored by Judge Stabile and joined by Judge Bowes. *Id.* at *34 (Stabile, J. concurring). Judge Stabile noted that if any error was committed in instructing the jury on the consumer expectation test and the risk-utility test, the error was harmless. *Id.* Neither party challenged the applicability of either test[3] and the issue on appeal was narrowly drawn as to whether the jury should have been instructed under both tests where the plaintiffs only sought the consumer expectation test. *Id.* at *36. The jury ultimately determined the fuel tank was defective, was not crashworthy, but also determined that it was not the factual cause of the harm claimed by the plaintiff. *Id.* at *37. Given that the jury found the fuel tank defective, any error was harmless because the jury still found the product defective, regardless of which test applied. *Id.*

Both the trial court and the Superior Court in *Davis* provide an avenue for the defendant to introduce a risk-utility test jury instruction. *Davis* does not take away a plaintiff's right to be the master of their claim, as the plaintiff's desired jury instruction, i.e. the consumer expectation test, will still be included; however, a defendant now has the opportunity, where the evidence suggested a party-requested instruction on a theory or defense, to instruct the jury on its desired instruction, i.e., the risk-utility test.

[1] Although a "Non-Precedential Decision," pursuant to the operating procedures of the Superior Court, a "[n]on-precedential decision filed after May 1, 2019 may be cited for [its] persuasive value, pursuant to Pa.R.A.P. 126(b)." Pa. IOP Super. Ct. 65.37.

[2] Defendant operator of the vehicle that crossed the center line was also killed in the accident.

[3] Judge Stabile noted that if there was a challenge as to the applicability of the consumer expectation test, "it does not appear certain that a consumer would be knowledgeable enough to form expectations regarding the design of a fuel tank[.]" Id. at *35-36.

## CONSIDERATIONS RELATED TO STATUTE OF LIMITATIONS UNDER *LAMP V. HEYMAN*

**Kelly J. Woy** is an Associate of **Ricci Tyrrell**.

When a defense attorney conducts an initial review and analysis of a complaint to identify whether the applicable statute of limitations has been violated, it is prudent—and necessary— to not only look at the date on which the action was initiated, but also the details of the plaintiff's service (or attempted service) of original process on the defendant.

By way of background, the laws of each state set forth deadlines for commencing legal actions. For example, 42 Pa.C.S. § 5524 provides that an action to recover damages for injuries caused by alleged negligence must be commenced in Pennsylvania within two years of the accident. In Pennsylvania, a legal action may be commenced by filing a praecipe for writ of summons in lieu of a complaint. Pa. R.C.P. 1007. Original process must be served on the defendant within 30 days of the issuance of the writ. Pa. R.C.P. 401(a). However, a writ can be reissued "at any time and any number of times," thereby allowing more time for service. Id. at (b)(1), (2). The Pennsylvania Supreme Court has held that the filing of a writ of summons is sufficient to toll the running of the statute of limitations. *Lamp v. Heyman*, 366 A.2d 882, 885 (Pa. 1976) (citing *Ehrhardt v. Costello*, 437 Pa. 556, 264 A.2d 620 (1970)). However, Pennsylvania courts have made clear that the aforementioned provisions are not a free pass for a plaintiff to file a writ of summons to toll the statute of limitations and then take no further action.

*Lamp v. Heyman* involved a plaintiff who was injured in a motor vehicle accident on September 1, 1967 and filed a praecipe for writ of summons in Beaver County on August 28, 1969, within the two-year statute of limitations. 366 A.2d at 884. However, per the attorney's

instructions to the prothonotary, the writ was not delivered to the sheriff's office and therefore was not served on the defendants. Id. at 885. Subsequently, on April 9, 1970 and June 4, 1970, the plaintiff filed a praecipe for the reissuance of the writ, but service was not effectuated until June 19, 1970, for no apparent reason. Id. The defendants filed preliminary objections, which the trial court overruled. Id.

The Pennsylvania Supreme Court reversed the decision of the trial court, holding that "a writ of summons shall remain effective to commence an action **only if the plaintiff then refrains from a course of conduct which serves to stall in its tracks the legal machinery he has just set in motion**." Id. at 889 (emphasis added). Specifically, the Court stated that "a plaintiff should comply with local practice as to the delivery of the writ to the sheriff for service," and unless the rules of local practice state otherwise, "the plaintiff shall be responsible for prompt delivery of the writ to the sheriff for service." Id.[1]

The Pennsylvania Supreme Court has expressly stated that it "subtly altered our holding in *Lamp* in *Farinucci*, requiring plaintiffs to demonstrate 'a good-faith effort to effectuate notice of commencement of the action.'" *McCreesh v. City of Philadelphia*, supra 888 A.2d 664, 672, quoting *Farinucci,* 511 A.2d 757, 759 (Pa. 1986). Good faith is demonstrated by a plaintiff's affirmative showing that there has been no attempt to stall the judicial machinery or that the failure to comply with the requirements of Rule 401 have caused no prejudice to the defendant. Id. at 674. "[I]t is not necessary the plaintiff's conduct be such that it constitutes some bad faith act or overt attempt to delay before the rule of *Lamp* will apply. Simple neglect and mistake to fulfill the responsibility to see that requirements for service are carried out may be sufficient to bring the rule in *Lamp* to bear." *Rosenberg v. Nicholson*, 597 A.2d 145, 148 (Pa. Super. 1991), *alloc. den.*, 606 A.2d 903 (1992); *Farinucci*, 511 A.2d 757 (mere inadvertence of counsel is enough to implicate *Lamp*). It is the plaintiffs' burden to demonstrate they have met the requirement of a "good faith effort." *McCreesh*, 888 A.2d at 672; *Bigansky v. Thomas Jefferson Univ. Hosp.*, 658 A.2d 423, 434 (Pa. Super. 1995), appeal denied 668 A.2d 1119 (Pa. 1995).

Following *Lamp* and *Farinucci*, Pennsylvania courts have consistently found that mere reissuance of a writ of summons, without attempted service within the 30-day period during which the writ is active prior to reissuance, is insufficient to toll the statute of limitations, both in the context of summary judgment motions and preliminary objections. See, e.g. *Delphus v. Kastanek*, 405 A.2d 1285 (Pa. Super. 1979) (affirming the trial court's decision that the plaintiff's claim was time-barred where the plaintiff filed a praecipe for writ of summons two weeks before the two-year statute of limitations expired but did not attempt to serve the Defendant prior to re-issuing the writ); *Chruszczyk v. City of Philadelphia*, 103 A.3d 888 (Pa. Commw. Ct. 2014) (finding the plaintiff's action time-barred where he filed a praecipe for writ of summons four days before the expiration of the two-year statute of limitations period, but did not attempt to serve defendants prior to re-issuing the writ); *Santiago v. Abuiso*, 47 Pa. D. & C. 5th 245 (C.P. Monroe Cnty April 16, 2015) (sustaining defendant driver's preliminary objections under *Lamp v. Heyman*, where the plaintiff failed to properly effectuate service of original process on defendant or prove she made a good-faith effort to service); *Robinson v. El Primo Grocery*, 2011 Phila. Ct. Com. Pl. LEXIS (affirming the trial court's decision to sustain preliminary objections under *Lamp v. Heyman* where the plaintiff initiated the action two days before the statute of limitations expired but only attempted service of the writ once within the 30 days after filing the praecipe, finding a lack of good faith).

[1] However, note that service in Philadelphia County can be made without a sheriff under the current rule. See Pa.R.C.P. 400.1.

## PENNSYLVANIA VENUE LAW - ENDING THE FLAWED APPLICATION OF PA.R.CIV.P 1006(C)

**Matthew R. Mortimer** is an Associate of **Ricci Tyrrell**.

A Pennsylvania court's determination regarding proper venue is governed by, *inter alia*, Pa.R.Civ.P 1006. Unfortunately for the defense bar, Rule 1006 and its rather amorphous language, discussed *infra*, has

seemingly resulted in wide-spread misinterpretation among both attorneys and judicial decision-makers alike, particularly in the Philadelphia Court of Common Pleas, resulting in a flawed application of the rules related to venue.

Specifically, litigants appear to have creatively isolated the language of 1006(c)(1)[1] and 1006(e).[2] Interpreting these provisions conjunctively and in a vacuum without due consideration of equally applicable and opposing provisions/principles, has effectuated a seemingly uncontroverted and plaintiff-friendly "venue for one = venue for all" rule in complex civil litigation involving multiple defendants. This can be attributed to, at least in part, the overly broad definition as to what constitutes "any county in which venue may be laid against any one defendant…" under Rule 1006(e).

Two practical examples of this misguided approach are discussed below.

(1) A products liability claim against a defendant, an industrial machine manufacturer, and various co-defendants was recently filed in the Philadelphia Court of Common Pleas. Two corporate co-defendants filed preliminary objections arguing improper venue because neither did business in Philadelphia and the Court permitted venue-related discovery. Presumably seeking to avoid the time and expense associated with such discovery, another co-defendant entered a stipulation conceding that it "regularly conducted' business in Philadelphia and sought to implicate Rule 1006 in order to moot the venue objections; and

(2) In another product liability case, one defendant filed timely preliminary objections to venue, but multiple defendants simply filed an answer, thus waiving their right to raise improper venue. At the rule to show cause hearing on the venue objection, the court overruled the objections without permitting argument on the grounds that multiple defendants had answered the complaint and any objection to venue was thus waived.

Arguably, this interpretation/application of Pennsylvania law is wholly inconsistent with binding precedent. *See Stenger v. Volz*, 69 A.3d 1280 (Pa.Super. 2013); *See also Schulz v. MMI Prods.*, 30 A.3d 1224 (Pa.Super. 2011).

In *Stenger,* the Court interpreted the language of Rule 1006(c)(1) that a claim "may be brought against all defendants in any county in which the venue may be laid against one of the defendants" as establishing that *"if venue in Philadelphia County is* ***proper*** *as to any defendant, then venue…is proper as to all defendants."* In doing so, it specifically held the Court will assess the propriety of venue as to each defendant.

Implicit in the Court's decision is support for the proposition that proper application of Rule 1006(c)(1) necessitates a judicial determination that venue is, in fact, proper. As such, so long as the objection is not personally waived, defendants should be permitted to pursue improper venue objections despite a co-defendant's waiver/concession.

*Schultz* involved a plaintiff alleged to have sustained serious injuries during a workplace construction accident. Plaintiff filed suit against numerous parties in Philadelphia County. Only two of the defendants filed Preliminary Objections arguing improper venue. The Preliminary Objections related to venue were granted by the trial court, based on a finding that they did not regularly conduct business in Philadelphia County. On appeal, the plaintiff maintained that because improper venue was waived as to the three defendants, which did not raise the issue of venue in their preliminary objections, Philadelphia County was the proper venue for the corporate defendants, which did not object; therefore, because venue in Philadelphia was proper as to the defendants, which did not object, venue is proper for all corporate defendants under Rule 1006(c)(1). The Superior Court stated "Our Court has previously rejected this exact argument in *Panzano v. Lower Bucks Hosp.*, 395 Pa. Super. 480, 577 A.2d 644, 645 (Pa. Super. 1990).

In *Panzano*, the Court stated:

> **[W]aiver of objection to improper venue does not amount to a finding that venue is proper and "may be laid" there.** Therefore, an action which may be brought in a particular county, **because a defendant has waived objection to it, is not necessarily an action in which venue is properly laid for the purposes of 1006(c)(1).**

The primary takeaway from the above cases is that, for purposes of Rule 1006(e), finding a county to be one

"in which venue may be laid against any one defendant" necessarily requires a judicial determination that venue is proper within that county pursuant to applicable law. Thus, a waiver of objection to venue by one party and/or one defendant's concession that venue is proper is insufficient to preclude improper venue objection on behalf of a defendant that has not personally waived the objection or conceded proper venue.

[1] Rule 1006(c)(1) provides "Except as otherwise provided by subdivision (c)(2), an action to enforce a joint or joint and several liability against two or more defendants, except actions in which the Commonwealth is a party defendant, may be brought against all defendants in any county in which the venue may be laid against any one of the defendants under the general rules of subdivisions (a) or (b)."

[2] Rule 1006 (e) provides, in relevant part, "Improper venue shall be raised by preliminary objection and if not so raised shall be waived."

## IN THE COMMUNITY


Ricci Tyrrell was a Beyond Sponsor at the Blitz, Bowties, Bourbon and Beyond event sponsored by the **Malcom Jenkins Foundation** and held at **Lincoln Financial Field** on October 7, 2019. The firm was represented at the event by Managing Member **John E. Tyrrell** and his wife **Kathleen Tyrrell**. The mission of the Malcolm Jenkins Foundation is to effectuate positive change in the lives of youth, particularly those in underserved communities. The Foundation provides resources, innovative opportunities, and experiences that will help youth succeed in life and become contributing members of their communities.

Ricci Tyrrell Johnson & Grey was a par sponsor for the 2019 Perlman Cup golf tournament on May 6, 2019, which benefits the **Special Olympics New Jersey Organization**. Proceeds from the golf tournament provide funding to increase unified programs in schools and throughout the community in New Jersey. The unified programs offer an opportunity for athletes with and without disabilities to compete alongside each other. Ricci Tyrrell Associate, **Kelly Woy** and Billing Manger, **Patricia Grey** participated in the Golf tournament.

The **Bank of America Festival of Arts, Books and Culture** will be held from November 10 to 17 at **Katz JCC** in Cherry Hill, New Jersey. Ricci Tyrrell is one of the Scribes Sponsors for this event. Producers for the event include firm financial advisor and friend, **Alec Price**, and his wife **Jocelyn Price**.

On June 6, 2019, the **Foundation of the National Bar Association Women Lawyers Division, Philadelphia Chapter ("WLD")** hosted its annual *Jazz in June* Scholarship Reception. Ricci Tyrrell Associate, **Alisha**

**Rodriguez** served as *Jazz in June* Chair for the third consecutive year. Ricci Tyrrell Johnson & Grey was a sponsor for the event. Thanks to the generous donations of all the supporters, over $11,000 was raised for scholarships for African-American women law students attending law schools in the Philadelphia area. At the reception, local leaders were also recognized for their commitment to diversity and equity. The *2019 Renaissance Man Award* was awarded to **Kenneth A. Murphy**. The *Honorable Doris May Harris Award* was presented to **Rhonda Hill Wilson** and the inaugural *WLD Legacy Award* was presented to the **Honorable Jacqueline F. Allen**, the Administrative Judge of the Philadelphia County Court of Common Pleas.

**Alisha Rodriguez** volunteered at the 2019 Life Planning Clinic hosted by the **Barristers' Association of Philadelphia** and **SeniorLAW Center**. At the annual Life Planning Clinic, volunteers served low-income senior citizens at **Center in the Park**, a nonprofit community center in Northwest Philadelphia, by preparing wills and other life planning documents.

Ricci Tyrrell was a par sponsor for the **St. Joseph's Preparatory** School golf outing on July 27, 2019 at Paxon Hollow Golf Club in Media, PA. The golf outing supports the football program at St. Joseph's Prep. Franny Grey and Mack Grey, the sons of Ricci Tyrrell Johnson & Grey Founding Member **Francis J. Grey**, participated in the golf tournament. Franny and Mack Grey are St. Joseph Prep school alumni, and both played football all four years while attending St. Joseph's Prep.