



Ricci Tyrrell Johnson & Grey

ATTORNEYS AT LAW

QUARTERLY NEWSLETTER

December 2024
Volume 32



In This Issue:

- P. 2** Developments in Premises Liability – The Hills and Ridges Doctrine
- P. 3** New Jersey Reforms OPRA
- P. 5** Proximate causation analysis in New Jersey aggravation cases
- P. 6** In The Community

News and Events

RTJG has again been named a 2025 Tier 1 **Best Law Firm** for Products.Liability in a ranking by **Best Lawyers**.

Ricci Tyrrell welcomes **Joyce Adelugba** and **Buyong Bonnie Lee** as associates. Ms. Adelugba attended the University of Virginia earning a double major in English and History. She received her J.D. degree from John Marshall Law School. Ms. Lee earned her J.D. from Rutgers Law School and earned a B.A., with honors, from Johns Hopkins University in Music, minoring in Economics and Arts Administration. Ms. Lee also attended the Julliard School for Music in Violin.



Bill Ricci
Member

Member Bill Ricci as usual was engaged in a number of professional activities in the past quarter including: (1) teaching a session as an adjunct professor for the **Temple LLM in Advocacy**, topic "Persuasion in Opening Statements"; (2) co-authoring a September 2024 **Pennsylvania Defense Institute (PDI)** Counterpoint article titled "Pennsylvania Supreme Court overruled Azzarello in 2014, but Ten Years Later the Ghost of Azzarello continues to Haunt"; (3) serving as a panelist regarding Mediation techniques at the Annual **PLAC** Meeting in Tucson Arizona; (4) chairing the October 29 **PDI** webinar dealing with issues and strategy in the handling and trial of products liability cases after the Pennsylvania Superior Court and Supreme Court decisions in *Sullivan v. Werner*.



Joyce Adelugba
Associate

Joyce Adelugba was a panelist for the **Pennsylvania Bar Association Commission on Women in Profession** 2024 Fall Retreat held at the Hotel Hershey on November 1-2, 2024.



John E. Tyrrell
Managing Member

Managing Member **John E. Tyrrell** and Associate **Joyce Adelugba** authored an article in the September-October issue of *Sports Facilities and the Law*. You can access the article [here](#).



Mike Droogan
Member



Matthew Cioeta
Associate

DEFENSE VERDICT IN PREMISES LIABILITY TRIAL

Member **Michael Droogan** and associate **Matthew Cioeta** obtained a defense verdict for firm client The Fresh Grocer in a bench trial in front of the Honorable Idee Fox in the Philadelphia County Court of Common Pleas. The Court found that the plaintiff failed to meet the applicable burden of proof to show that the defendant had actual or constructive notice of an alleged condition on the client's restroom floor which caused her to slip and fall, and that plaintiff was not credible in her testimony regarding the incident.

Ricci Tyrrell Johnson & Grey

DEVELOPMENTS IN PREMISES LIABILITY – THE HILLS AND RIDGES DOCTRINE



William Rossi is an
Associate of **Ricci Tyrrell
Johnson & Grey**

On September 17, 2024, the Lackawanna County (PA) Court of Common Pleas granted a Motion for Summary Judgment filed by defendant homeowners pursuant to the “hills and ridges” doctrine. In the context of slippery and icy conditions, the Court held that a property owner’s affirmative act of applying rock salt to his premises did not preempt a defense under the hills and ridges doctrine.

Factual Background

In *White v. Nesbeth*, No. 2022-CV-2147 (C.P. Lacka. Co. Sept. 17, 2024 Nealon, J.), the plaintiff, Timothy White, was injured while making a delivery as a DoorDash driver. Specifically, Mr. White alleged that on January 1, 2021, a “wintry mix” of precipitation consisting of “freezing rain and sleet” commenced approximately 30 minutes prior to his DoorDash delivery at a home owned by the defendants, Anthony and Trudy Nesbeth. *Id.* at 2–3. Mr. White testified that he was aware of the weather conditions when he arrived at the Nesbeths’ property and was caused to slip and fall after taking two steps onto their walkway. *Id.* at 3. He did not notice or feel “any kind of accumulation” on the sidewalk prior to slipping. *Id.* Defendant, Anthony Nesbeth, testified that approximately 45 minutes before Mr. White fell, Mr. Nesbeth applied rock salt to the front steps and sidewalk of the home. *Id.* at 4.

Parties’ Arguments

In their Motion for Summary Judgment, the Nesbeths argued that under the hills and ridges doctrine, a landowner may be liable for injuries caused by “generally slippery conditions” only if the plaintiff proves that: (1) snow and ice “had accumulated on the sidewalk in ridges or elevations of such size and character as to unreasonably obstruct travel and constitute a danger to pedestrians;”

(2) the landowner “had notice, either actual or constructive, of the existence of such condition;” and (3) the “dangerous accumulation of snow and ice” caused the plaintiff’s fall. *Id.* at 3–4. According to the Nesbeths, plaintiff’s testimony regarding the “wintry mix” and “freezing rain and sleet” established that “generally slippery conditions” were sufficiently present to afford a defense under the hills and ridges doctrine. *Id.* at 4.

In his opposition to the defendants’ Motion for Summary Judgment, Mr. White argued that Mr. Nesbeth’s application of rock salt on the home’s steps and sidewalks negated the hills and ridges defense “as the condition of the sidewalk was not the result of an entirely natural accumulation.” *Id.* On this basis, Mr. White argued that the Nesbeths were negligent in failing to treat the “icy condition of the sidewalk” in the 45 minutes that passed following the rock salt application and the plaintiff’s incident. *Id.*

Analysis of the Hills and Ridges Doctrine

The Court began its analysis of the hills and ridges doctrine by identifying a property owner’s general duty to maintain their sidewalks so that they do not pose an unreasonable risk of harm to pedestrians. *Id.* at 7. The Court continued by clarifying the scope of the hills and ridges doctrine, stating that it applies only to ice and snow. *Id.* In this context, a property owner is not required to always keep their sidewalk free from ice and snow, as Pennsylvania courts have recognized that such a duty would be impossible in this climate. *Id.* at 8 (citing *Alexander v. City of Meadville*, 61 A.3d 218, 224 (Pa. Super 2012)). Thus, the courts impose liability on a property owner for a general slippery condition only when the condition is “due to ridges or elevations which were allowed to remain an unreasonable length of time, or were created by defendant’s antecedent negligence.” *Id.* (citing *Rinaldi v. Levine*, 406 Pa. 74, 176 A.2d 623 (1962)).

When the hills and ridges doctrine applies, it is the plaintiff’s duty to prove that the snow and ice accumulated in a ridge and/or elevation and was “of such size and character to constitute a substantial obstruction to travel.” *Id.* at 9. (citing *Rinaldi*, 406 Pa. at 79). The Court highlighted circumstances where the hills and ridges doctrine would not apply: where there was no recent precipitation, where ice forms and accumulates artificially due to a unique condition of the property or some form of human intervention, and where the icy condition is caused by the property owner’s neglect, such as defective hydrants, water pipes, drains, or spigots. *Id.* at 11 (citing *Collins v. Philadelphia Suburban Development Corporation*, 179 A.3d 69, 76 n.3 (Pa. Super. 2018)).

Ricci Tyrrell Johnson & Grey

In this case, the Court rejected Mr. White's contention that Mr. Nesbeth's application of rock salt constituted "human intervention" making the ice accumulation a condition of artificial origin. There was no evidence to support Mr. White's claim that the rock salt was the cause of his incident. *Id.* at 13. On the contrary, the Court determined that Mr. Nesbeth acted more responsibly by spreading the rock salt, despite not having any duty to do so until after the active precipitation subsided. *Id.* at 14. According to the Court, categorizing Mr. Nesbeth's conduct as "human intervention" would deter property owners from taking proactive and cautionary measures in their property maintenance. *Id.* Because the record was devoid of any evidence that the subject condition accumulated in a ridge or elevation in the Nesbeths' sidewalk, the Court granted the Motion for Summary Judgment under the hills and ridges doctrine. *Id.* at 14-15.

NEW JERSEY REFORMS OPRA



Nicholas Sulpizio is an
Associate at **RTJG**

On June 5, 2024, Governor Phil Murphy signed into law New Jersey Bill S2930 (named the "Reform Bill") which impacts a requestor's access to certain government records. The law recently went into effect on September 3, 2024 and impacts all public entities which are subject to New Jersey's Open Public Records Act (NJSA 47:1A-1 et seq.) ("OPRA"). The Reform Bill directly revises and amends OPRA in that it substantially alters the public's access to government records as well as sets forth specific procedural requirements in order to gain access to the requested public records.

Substantive Changes

Privacy. The Reform Bill strengthens the ability of a public entity to avoid disclosure of a person's private information, termed "personal identifying information", especially in the circumstances in which the public agency has reason to believe that the disclosure would lead to harassment, unwanted solicitation, identity theft, or other opportunities for criminal acts.

This confidential information includes, but is not limited to, social security number, credit card number, debit card number, bank account information, month and day of birth, personal email address, telephone number, drivers' license number, and residential address. The Reform Bill also restricts the disclosure of information of a minor, logs of telephone calls/emails/texts, and electronic calendars.

Commercial Purpose. The Reform Bill limits the dissemination of information and documents for commercial purposes. The definition of "commercial purposes" was expanded to include news or media outlets, any person acting on behalf of a political candidate or political committee, any labor organization, any contractor signatory to a collective bargaining agreement regarding wage and hour and other labor protections, and any non-profit entity. However, all that is required in this section is for the requestor to indicate that the request will be utilized for commercial purposes and a custodian cannot withhold public records for the sole reason that they will be utilized for commercial purposes.

Possession of Public Records. The definition of public records and the custodian's possession of same has changed under the Reform Bill. A public agency is deemed to not be in possession of a public record that is created, maintained, or received by another public agency. The custodian is not obligated to provide the record to the requestor in this case but must provide the identity of the public agency which possesses the record. The request is then deemed complete at that time.

Video Footage. Under the Reform Bill, security footage of public buildings is excluded from the definition of a public record under OPRA "unless the request identifies a specific incident that occurred, or a specific date and limited time period at a particular public building."

Litigation. New to the Reform Bill is the inclusion that a party to a legal proceeding may not request a government record from a custodian without proper certification and the custodian is not required to complete the OPRA request. Should a party seek records through OPRA, the requestor must certify that purpose and identify the proceeding for the request to be fulfilled.

There is a carve out exception for labor organizations seeking information and materials regarding wage and hour protections and the compliance of other labor and employment laws.

Ricci Tyrrell Johnson & Grey

Cause of Action for Public Agencies. The Reform Bill also enables public agencies to file lawsuits against individuals who make records requests that would limit the individual's ability to submit future requests. Under this provision, a court may issue a protective order if it finds by clear and convincing evidence that the requestor has sought records "with the intent to substantially interrupt the performance of government function." If issued, the protective order would limit the scope or number of the records requested. Significantly, the court may also eliminate or limit the public agency's duty to respond to the requestor in the future. Under the previous version of OPRA, if there was a dispute as to the providing of documents pursuant to OPRA, the requestor was able to automatically recover attorney's fees if they prevail in the case. Under the new Reform Bill, a requestor's attorney's fees are recoverable only if the public agency "unreasonably denied access, acted in bad faith, or knowingly and willfully violated" OPRA. Additionally, under the new amendments, if the public agency furnishes the records within seven days of being served with the requestor's lawsuit, the requestor may be entitled to attorney's fees only if the agency "knew or should have known that the denial of access violated" OPRA. In all other situations, attorney fees may be awarded at the discretion of the Court.

Procedural Changes

Form and Format. A requestor does not have to use a specified form to submit a request pursuant to OPRA and instead may submit a letter or email including all requisite information. The request is not deemed to be "submitted" until it is received by the custodian of records. The custodian may deny the request if the letter or email contains substantially more information than required and requires more than a reasonable effort on behalf of the custodian to clarify the information. The custodian may also deny the request outright if the request does not include all of the requisite information from the form.

Identification of Requestor. While anonymous requests cannot be denied outright, anonymous requestors will not have the ability to challenge a denial. OPRA Requests that do not include the requestor's name, address, email, and phone number may be denied outright. Requestors are also limited in the number of requests being made at one time. Each submission of a government request form cannot be made to more than one public agency. Submission of repeated requests to multiple custodians of the same public agency for the same record while another request is pending can be categorically denied.

Medium of Documents. The custodian of records must permit access to a government record and provide a copy in the medium or format requested if the entity maintains that specific record in that particular medium or format. If the record is not maintained in the specific format, the custodian may charge a reasonable special charge for the change in medium or format. The charge can account for extensive use of information technology or labor cost of personnel actually incurred. The custodian is under no obligation to provide records not in the requested format which require substantial amount of manipulation or programming of information technology.

Time to Respond to a Request. The Reform Bill lengthens the timeline for government entities to respond to some OPRA requests. More specifically, the Reform Bill provides for the custodian of records to respond to an OPRA request within 7 business days. However, if the request is being used for commercial purposes, then the custodian has 14 business days to respond to the request. If a commercial requestor demands a response within a shorter timeframe, then the custodian can charge a special service fee not to exceed two times the cost of production. If the sought government record is in storage or achieved, then the custodian must advise the requestor within the applicable timeframe and advise as to when the records may become available not to exceed 21 business days. The custodian is also entitled to a reasonable extension if the custodian cannot complete the request due to unforeseen circumstances or other circumstances which otherwise reasonably necessitate additional time. In the event a custodian fails to respond within the applicable time, failure to respond is deemed a denial of the request unless the requestor has not identified themselves. If the requestor does not identify themselves, the custodian is not obligated to respond until the requestor contacts the custodian seeking a response to the original request.

Fees. There were several revisions regarding the fees charged for OPRA disclosures. The Reform Bill includes that the public entity may charge a fee for the production of records pursuant to an OPRA request. The fee must be based on actual direct cost of providing the copies of records. A special service charge is able to be assessed by a municipality when the actual cost for duplication exceeds the rates established by ordinance.

Ricci Tyrrell Johnson & Grey

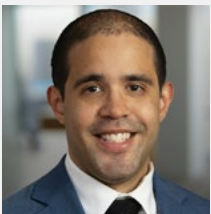
The special service charge is presumed to be reasonable. The custodian must provide an explanation and itemized list for the fees and charges. The requestor has an opportunity to review and object to the fees and charges prior to it being incurred. There is a presumption that the fees charged are reasonable. If the requestor objects to the fees, they must demonstrate that the charges are unreasonable.

Analysis and Conclusion

Specific to litigation and the practice of law in New Jersey, any party in need of public records in the pendency of any action must follow and abide by these revised policies and procedures. Based on the changes and revisions of the Reform Bill, OPRA requests to public agencies now require more specific requests which are narrowly tailored in order to obtain requested public documents. For example, requests for "any and all" documents pertaining to a specific topic are severely limited and are subject to categorical denial. The new Reform Bill also permits longer timelines and the imposition of special fees for commercial requests, which includes litigation.

Any litigation which involves any New Jersey public entity or agency and/or any investigation performed by any New Jersey public entity or agency will be subject to these amended provisions of the Reform Bill as it applies to obtaining public documents pursuant to OPRA. Since the process in requesting these public documents has significantly changed, we recommend paying close attention to the form and format of the request, the specific wording and language utilized in any public records request, and the imposition of deadlines and special fees assessed in obtaining public records pursuant to a request.

PROXIMATE CAUSATION ANALYSIS IN NEW JERSEY AGGRAVATION CASES



Julio Navarro is an Associate at **RTJG**

In *Davidson v. Slater*, 189 N.J. 166, 185-86, 914 A.2d 282, (2007), the New Jersey Supreme Court set forth the seminal analysis of the proofs required of a Plaintiff who is alleging aggravation of a pre-existing injury or illness. The Court also outlined the proofs and risks for a Plaintiff who does not allege an aggravation but has prior injuries.

Davidson was a personal injury action involving the limitation-on-lawsuit or "verbal" threshold of the Automobile Insurance Cost Reduction Act (AICRA), which requires plaintiff to vault the verbal threshold by showing a permanent injury proximately caused by the accident. *Id* at 169. The trial court dismissed the case because plaintiff had been injured in a prior accident and "did not provide a comparative-medical analysis distinguishing the alleged accident injuries from all other injuries to the same body parts." See *Id*. The Appellate Court reversed because plaintiff had not pled an aggravation of the prior injury. See *Id*.

The New Jersey Supreme Court resolved the issue by relying on "basic tort principles of causation and burden allocation as between plaintiffs and defendants." *Id*. The New Jersey Supreme Court found that when a plaintiff alleges an aggravation of a pre-existing injury, then the plaintiff must provide comparative evidence to satisfy their burden on causation. *Id*. However, if a plaintiff does not allege aggravation, then they do not have to provide comparative evidence. *Id*.

The rub comes when a plaintiff does not allege aggravation but does have prior injuries. The New Jersey Supreme Court declined to impose an affirmative duty to provide comparative evidence on a Plaintiff in such a situation. However, the Court cautioned that Defendants will likely seek to determine a Plaintiff's prior injuries and a "plaintiff will risk dismissal on summary judgment if the defendant can show that no reasonable factfinder could conclude that the defendant's negligence caused plaintiff's alleged permanent injury." See *Id* at 188. A plaintiff "who does not prepare for comparative medical evidence is at risk of failing to raise a jury-worthy factual issue about whether the subject accident caused the injuries." *Id*.

Ricci Tyrrell Johnson & Grey

As a practical matter, the Court's analysis may impact various circumstances, such as where the plaintiff did not plead aggravation in the complaint but had the case dismissed for failure to provide a comparative analysis when the defendant proved prior injuries. See *Raval v. Jhocson*, No. A-2563-06T2, 2008 N.J. Super. Unpub. LEXIS 2240 (Super. Ct. App. Div. Jan. 3, 2008); see also *Nichols v. Linden*, No. A-0472-21, 2023 N.J. Super. Unpub. LEXIS 1196 (Super. Ct. App. Div. July 17, 2023). Similarly, there have been cases that were "saved" when the Appellate Division reversed a Summary Judgement after combing through the expert reports and finding enough evidence to support a comparative analysis. See *Frenklakh v. Lojek*, No. A-2619-05T5, 2007 N.J. Super. Unpub. LEXIS 2637 (Super. Ct. App. Div. Feb. 15, 2007). There are also cases where the plaintiff did not plead aggravation in the complaint but had the case dismissed for failure to provide comparative evidence because the answers to interrogatories and deposition testimony clearly suggested it was an aggravation case. *Caldwell v. Hernandez*, No. A-1288-11T3, 2012 N.J. Super. Unpub. LEXIS 1575 (Super. Ct. App. Div. July 2, 2012).

IN THE COMMUNITY



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

On October 18, 2024, **Eagles Autism Foundation** hosted various RTJG Members and staff at the **NovaCare Complex** for a luncheon to thank RTJG for its continued support of Eagles Autism Foundation.



RTJG was a sponsor of **Brown's Super Stores 26th Annual Charity Golf Outing**, which raised money for **Uplift Solutions**, a program that provides training and work-life skills to former incarcerated individuals. RTJG Member **Mike Droogan** and associates **Nick Sulpizio** and **Matt Cioeta** joined Matt McCaffery for a sun-splashed day at **Old York Road Country Club** on October 21, 2024. RTJG had a second foursome at the event, comprised of RTJG associates **Michael Rosenthal** and **William Rossi**, and RTJG paralegals **Kristian Monsanto** and **John Osborne**.



On August 15, 2024, RTJG Administrative Assistant **Yolanda Jenkins** volunteered with **The Malcolm Jenkins Foundation** and **Philabundance** to prepare for the **Get Ready Fest** held on August 17, 2024, at the **KROC Center** in Camden, NJ. The Foundation provided 1,000 families with fresh food and produce. Get Ready Fest is The Malcolm Jenkins Foundation's signature community outreach event that provides hundreds of families with fresh and shelf-stable food and produce, health and wellness products, essential social services and other resources for youth, seniors and veterans.



From left to right: Gwendolyn Jenkins, Yolanda Jenkins, W. Lee Jenkins, Jr.

Ricci Tyrrell Johnson & Grey

RTJG employees purchased golf balls for **The Philadelphia Ronald McDonald House's 2024 Hit 'em for the House Ball Drop**. On July 8, 2024, 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 The Philadelphia Ronald McDonald House.

On September 19, 2024, RTJG employees participated in a **Served with Love** dinner at The Philadelphia Ronald McDonald House. The Served with Love program brings groups of volunteers into the kitchen at Philly's Ronald McDonald House to prep and serve tasty meals for over 250 individuals staying there while their children receive life-saving medical care. The Philadelphia Ronald McDonald House 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 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.



Lisa Sumpter, Lisa Halbruner, Patti Grey, Sheila Ciemniecki, Yolanda Jenkins and Nicole Caldwell

October 31 – November 3, 2024 was the **Disney Wine & Dine Half Marathon Weekend**. RTJG Associate **Ilana Robinson** ran the 10k on **Team RMHC** which raised money for **Ronald McDonald House Charities of Central Georgia**. Ilana was one of the Top Participants on her team and raised more than her \$1,200 fundraising goal.

As October was **Breast Cancer Awareness Month**, RTJG's Fall Community Project was raising funds for **Susan G. Komen**, an organization that is funding more breast cancer research than any other nonprofit while providing real-time help to those facing the disease. Its mission is to save lives by meeting the most critical needs in our communities and investing in breakthrough research to prevent and cure breast cancer. Throughout the month of October, RTJG sold raffle tickets for a prize basket which culminated on October 31, 2024 with RTJG wearing pink and Nick Sulpizio, in honor of his mother's successful fight against breast cancer, picking the winning ticket.



Ricci Tyrrell Johnson & Grey

On June 24 and 25, 2024, RTJG Member **Mike Droogan** and RTJG associates **Nick Sulpizio** and **Matt Cioeta** participated in the 33rd Annual **Speedway Miracle Tournament** at **NCR Country Club** in Kettering, Ohio, benefiting **Children's Miracle Network Hospitals** (CMN Hospitals). This year, the Tournament raised \$3.2 Million. Since 1991, the Speedway Miracle Tournament has served as the centerpiece of Speedway's fundraising efforts for CMN Hospitals and continues to be one of the largest charity golf tournaments in the nation. Funds raised to help CMN Hospitals advance pediatric healthcare by providing critical lifesaving equipment and much needed resources to help treat sick and injured children.



With the assistance of Member **Mike Droogan** and Legal Assistant **Yolanda Jenkins**, Ricci Tyrrell client **ShopRite** donated Gatorade, water and fruit bars to Philly Potential Threats AAU basketball team for their "Nurture the Community Basketball Tournament". The tournament is a fundraiser that benefits the Cheltenham team's "Feed the Homeless" Thanksgiving drive.

