



THE PHILADELPHIA ASSOCIATION OF DEFENSE COUNSEL

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MEMORANDUM

TO: DRI
FROM: ROBERT COSGROVE, HARRIET ANDERSON & DAVID COLE
SUBJECT: 2018/2019 YEAR IN REVIEW
DATE: AUGUST 6, 2019

The following is an overview of activities undertaken by the PADC in the last year.

A. CLE Programs

1. PADC members Harriet Anderson of Robert J. Casey, Jr. & Associates, Lydia Abdo of the Law Office of Hubshman Flood Dorn & Kolb, Andre Webb of German Gallagher & Murtagh, Eleanor Good of the Law Office of Donna M. DiPietro, June Eسس of Weber Gallagher and Jennifer Coatsworth of Margolis Edelstein arranged the following luncheon CLE Programs:

- September 2018: “The United States Supreme Court Post-Kennedy” by Drexel University Thomas R. Kline School of Law Associate Professor and Supreme Court scholar Lisa Tucker;
- October 2018: “Your Next Best Cross-Examination” by Honorable Mark Bernstein (ret.)
- November 2018: “The Interrogators’ Guide to Depositions, Investigations and Discovery: What Civil Trial Attorneys Can Learn from the World’s Best Interrogators” by John Morgenstern, Esquire of Deasey Mahoney & Valentini;
- December 2018: “Ethics in Mediation” by Honorable Jane Cutler Greenspan (ret.), Timothy Lawn, Esquire of Raynes Lawn & Hehmeyer and Kate McGrath, Esquire of ADR Options;
- January 2019: “Ethical Requirements in Maintaining Cyber Security” by Jack Fleming of Minnesota Lawyers Mutual Insurance;
- February 2019: “Hearsay in the Courtroom” by Honorable Gene E.K. Pratter;
- March 2019: “Issues in Jury Selection in Philadelphia CCP” by Glenn Ricketti, Esquire of Margolis Edelstein and A.J. Howlett, tipstaff for Honorable Sean Kennedy;
- April 2019: “The New Restatement of Liability Insurance” by Tom Baker, University of Pennsylvania Law School William Maul Measey Professor of Law and Health Sciences; and



- May 2019: “Amicus Briefs Briefing” by James Beck of Reed Smith and Teresa Sachs of Marshall Dennehey Warner Coleman & Goggin.

2. The agenda for PADC’s 2019 Annual Meeting arranged by PADC member Dan Ferhat of White and Williams includes the following topics:

- “The Utilization of Wearable Technology to Improve Patient Care and Managing the Litigation Challenges That Can Arise As a Consequence” by Vivek Sailam, M.D. and Edward Beitz of White and Williams;
- “Case Law Update: Auto, Coverage and General Liability” by Glen Shikunov of McCormick & Priore, P.C. (Auto), Colleen Hayes of Wade Clark Mulcahy (Coverage) and In-Sook Kim of Robert J. Casey, Jr. & Associates (Liability);
- “Data Breach and Cybersecurity Issues Impacting Law Firms and Other Businesses: Risk Avoidance and Critical Response Plans” by Anthony Mongeluzo and Albert Wilson; and
- “Judicial Potpourri” by Honorable Nitza I. Quinones Alejandro, Honorable Lori A. Dumas and Stanley Thompson, Director, Complex Litigation Center.

3. The agenda for PADC’s 2019 Young Lawyers Program was established by PADC members Colleen Hayes of Wade Clark Mulcahy and Hillary Ladov of Goldberg Segalla and included the following topics:

- “Changes in the Philadelphia Court of Common Pleas” by Peter Divon, Director, Dispute Resolution Center;
- “Dealing With Difficult Attorneys During Discovery” by Dennis Suplee of Schnader Harrison; and
- “How to Overcome Adversity in Our Diverse Legal Community” by Honorable Sheila Tsai, Marcel Pratt, Philadelphia City Solicitor and Jennifer Coatsworth of Margolis Edelstein.

4. The PADC’s first ever women in law event entitled “Leaders in the Courtroom: From the Trial Court to the US Supreme Court” program consisted of a panel discussion by Honorable Cynthia Rufe, Regina Foley of Raynes Lawn & Hehmeyer, Roberta Liebenberg of Fine Kaplan & Black and Teresa Sachs of Marshall Dennehey Warner Coleman & Goggin. The program was created by Erin Siciliano of Wilson Elser, Harriet Anderson of Robert J. Casey, Jr. & Associates, Kathleen Wilkinson of Wilson Elser and Jennifer Coatsworth of Margolis Edelstein.

B. Amicus Activity

In conjunction with the Pennsylvania Defense Institute and other organizations, PADC drafted or joined the following amicus briefs.



1. Pennsylvania Supreme Court

- ***Hammons v. Ethicon, et al.*** Question is whether 14th Amendment Due Process Clause and 42 Pa.C.S. §5322(c) precludes PA from asserting personal jurisdiction over two NJ companies in a case brought by an Indiana resident asserting claims under the Indiana Product Liability Act. Appeal granted April 19, 2019. PADC is working on the brief.
- ***Scott v. Travelers/Sayles v. Allstate*** (on certification from Third Circuit). Whether court order based on showing of good cause is required to obtain medical examination in first-party cases. Argued May 15, 2019; awaiting decision. Brief for PDI & PADC: John McGrath (Palmer & Barr).
- ***Barnard v. Travelers*** (on certification from Third Circuit). Question is whether a new rejection of UM/UIM stacking is required when an insured purchases increased UIM limits. Argued May 14, 2019; awaiting decision. Brief for PDI & PADC: Lisa Luborsky of Bennett Bricklin.
- ***Erie v. Moore/McCutcheon***. Question involves interpretation of “occurrence” and “intentional act” exclusion in case involving claim of coverage for murder-suicide. Argued April 11, 2019; awaiting decision. Brief for PDI and PADC: Lou Long of Thomas, Thomas & Hafer.
- ***Roverano v. John Crane, Inc.*** Question involves application of Fair Share Act to asbestos cases. Argued March 6, 2019. Brief for PADC, PDI and other entities: John Hare of Marshall Dennehey.
- ***Mitchell v. Shikora***. Question involves admissibility of evidence regarding risks and complications in case alleging breach of standard of care. Argued October 23, 2018; and the decision has just come in. The Supreme Court reversed the Superior Court’s decision and reinstated the trial court’s order allowing the evidence. The Court reasoned that the Superior Court blurred the distinction between evidence of informed consent, *i.e.*, a patient’s affirmative consent to surgery, and evidence regarding the risks and complications of a medical procedure. The Supreme Court explained that evidence that the plaintiff’s injury is a known risk or complication of the medical procedure does not definitively prove or disprove negligence. Rather, the evidence of known risks, even if the surgery is performed with due care, is essential to inform the jury that injury can occur absent negligence. Because risks and complications evidence may assist the jury in determining whether the injury was the result of negligence, it helps the jury determine whether the physician violated the standard of care. Preclusion of the evidence may encourage the jury to conclude that a physician is a guarantor of a particular outcome. In other words, without risk/complication evidence, the jury would not know that the particular injury suffered by the plaintiff is known to be a risk/complication that may happen even with the best of care. The Supreme Court’s ruling, thus, permits a jury to determine whether the plaintiff’s injury occurred due to non-negligent causes. In reaching its decision, the Court acknowledged that the admission of risks and complications evidence could lead a jury to mistakenly conclude that the injury was merely an assumed risk or complication, but instructed trial courts to ensure, through instruction and comment, that the jury is aware of the proper role of the evidence. In a Concurring Opinion, Mr. Justice Wecht also suggested review of the current Proposed Standard Jury Instructions to ensure that the jury does not misuse the evidence as consent to negligence. In a Concurring/Dissenting Opinion, Madame Justice Donohue agreed that the evidence may



be admissible, but was not in the case of Mitchell. Brief for PADC & PDI: Dan Ferhat of White & Williams.

- ***Oriental-Guillermo v. Safe Auto***. Question involved unlisted resident driver exclusion. Argued December 6, 2018. Brief for PADC & PDI: Terry Sachs of Marshall Dennehey.
- ***Gallagher v. GEICO***. Question involved application of household vehicle exclusion where claimant injured on motorcycle. Supreme Court decision issued January 23, 2019. Brief for PADC & PDI: Terry Sachs of Marshall Dennehey.

Third Circuit

- ***Sapa Extrusions, Inc. v. Liberty Mut. Ins. Co., Great American Assurance Co., Arch Specialty Ins. Co., National Union Ins. Co., Ins. Co. of State of Pa., ACE American Ins. Co., Pacific Employers Ins. Co.*** Question is whether manufacturer is entitled to liability coverage for damages arising from component manufactured by insured. *Kvaerner/Indalex* issues. Argued May 1, 2019; awaiting decision. Brief for PADC & PDI: Lou Long of Thomas, Thomas & Hafer.

Superior Court

- ***Mallory v. Norfolk Southern Ry.*** Question involves exercise of general personal jurisdiction over foreign corporations based on registration to do business in Pennsylvania. Case stayed after briefing pending *en banc* decision in *Murray v. LaFrance*. Brief for PADC and PDI: Jim Beck of Reed Smith.
- ***Murray v. LaFrance***. The above issue is also involved in this case; the Superior Court granted reargument *en banc*, which has not yet been scheduled. Brief for PADC and PDI: Jim Beck of Reed Smith.
- ***Newsuan v. Republic Services***. The issue was the applicability of attorney-client privilege and attorney work product privilege to meetings with employees of corporate defendant. The trial court ordered the disclosure of many documents. The case was argued on March 13, 2019. The decision has just come in. The Superior Court reversed, holding that the defendant corporate client “possesses a privilege over the communications supplied at the behest of corporate counsel to assist him in advising [defendant corporation] in the present litigation.” The privilege applied equally to employees and former employees. The Superior Court agreed that dual representation of employees and the corporation presents a concurrent conflict of interest for which a conflict waiver is necessary, but that the absence of such a waiver did not destroy the privilege under the circumstances here. The Superior Court also held that the trial court erred in ordering disclosure of the attorney’s work product, for two reasons. First, the order had been based on the trial court’s erroneous conclusion of no attorney-client privilege, and second, even if there had been no attorney-client privilege, the materials were protected by the broader attorney work-product privilege. Brief for PADC: Matt McColgan of German Gallagher.

C. By-Laws Amendments

Much of the EC’s year was spent on improving PADC’s by-laws. Thanks to the hard work of former PADC President Joseph Cincotta and Daniel Fitch of Stradley Ronon, the EC endorsed the



below changes were ratified by PADC's membership at a Special Meeting called for that purpose on April 16, 2019. A summary of the important amendments are as follows:

- PADC's old By-Laws provided for Officers of a President, President-Elect, Vice President, Secretary and Treasurer. The amendment to the By-Laws changed this to a PADC President, Vice President-Operations, Vice President-Programs, Secretary and Treasurer. Additional amendments clarified the duties of the various Officers. These revised Officer positions were designed to more accurately reflect the duties these positions have assumed over the years.
- PADC's old By-Laws were silent on the qualifications to be eligible to become PADC President. PADC practice had been that one must serve in all the existing Officer positions to be eligible to become President and before that served on the EC. This essentially served as a six year commitment to become PADC President. The new By-Laws provide that to be eligible to be nominated as PADC President, one must have at least one year as a member of PADC's Executive Committee, held the position of Secretary or Treasurer for one year and served as Vice President-Operations or Vice-President- Programs for one year. The amendment reduces the minimum commitment to become President to three years. It also allowed PADC's Nominating Committee to better match the qualifications of Officer candidates to the various Officer positions.
- Another new By-Laws amendment listed in much greater detail than the current By-Laws the powers and duties of the Executive Committee and the obligations of the members.
- Another new amendment clarified the composition of the Executive Committee.

D. Med-Mal Venue Rules Comments

PADC, led by Dan Ferhat of White and Williams, filed comments with Pennsylvania's Civil Procedural Rules Committee opposing the proposed revocation of Rule of Civil Procedure 1006(a.1) and related medical malpractice venue rules. These current Rules limit venue in medical malpractice cases to the county where the care at issue was rendered. Our opposition was based on the fact that there was no data to support the conclusion that the Rule is no longer needed. The Rules committee has held off on instituting the rules and a bill has now been proposed in the legislature.

E. Products Liability Standard Jury Instructions

The PDI has historically taken the lead in jury charge revisions. This year PADC created its own working group to work with PDI members Bill Ricci of Ricci, Tyrrell Johnson & Grey, Scott Toomey of Littleton Park Joyce Ughetta & Kelly, and Jim Beck of Reed Smith. PADC's members consisted of Wesley Payne of White and Williams, Bill Conroy of Campbell, Conroy & O'Neill, Dennis Ziemba of Eckert Seamons and former PADC President Joe Cincotta,. Proposed changes to the SJI were endorsed by PADC, published and sent to all Pennsylvania judges for their information



F. Community Service Events

PADC's Community Service Committee chaired by Rebecca Grausam of Robert J. Casey, Jr. & Associates and members Sarah Adams of Robert J. Casey, Jr. & Associates, Lauren Brown of Campbell Conroy & O'Neil, Elyse Cohen of Marshall Dennehey Warner Coleman & Goggin, Lauren Steins of Deasey Mahoney & Valentini, In-Sook Kim of Robert J. Casey, Jr. & Associates and Colleen Hayes of Wade Clark Mulcahy oversaw the following events:

- June 2018 – 2nd Annual Book Drive benefitting students at Thomas G. Morton Elementary School. We collected 105 books and \$335.00, which allowed every 3rd grader to take home a book over the summer.
- Aug 7, 2018 – 2nd Annual “PADC Picnic” at Ronald McDonald House – we prepared dinner for the families staying there.
- Dec 2018 – Comfort Cases – collected 15 completed comfort cases and \$1,275, which provided enough comfort cases for Philadelphia area foster children to divide the donations between CASA, Youth Service, Inc and People Emergency Care.
- January 2019 – MLK Day of Service – volunteered at Jane Addams Place, which provides temporary housing for homeless families (organized donations, assisted children with arts and crafts).
- March 4 and 11, 2019 – Philadelphia Futures Mock Interviews – conducted mock interviews to prepare first generation college students for internship interviews.
- June 2019 – 3rd annual Book Drive benefitting students at Thomas G Morton Elementary school in southwest Philadelphia.
- PADC continues to support the Rendell Center for Civics Education by having PADC members participate in mock trials as coaches and judges.

G. Social Activities

- 2018 Annual Executive Committee Dinner;
- 2018 Annual Joint Holiday Party with PDI and PTLA; and
- Past Presidents Luncheon.

H. Judicial Initiatives

PADC, in conjunction with the Philadelphia Trial Lawyers Association and the Philadelphia Bar Association participated in meetings with Judge Woods-Skipper, Judge Fox, Judge Allen and Judge New. The year started off with a bang and the first ever joint PTLA/PADC resolution was circulated in July 2019 and addressed such issues as electronic ID access to City Hall and motions in limine. While several additional initiatives were discussed, Judge Fox's elevation to Presiding Judge and Judge New's replacement of her as Presiding-Civil delayed specific progress on additional projects. However, as the year progressed, PADC was able to reengage the judiciary on several projects (e.g. video conferencing technology in the settlement conference part and judicial education seminars). When the Philadelphia court system was the victim of a cyberattack, PADC also took the lead in working with the courts to help the court disseminate information to the Bar (in, for example, the attached memo that was published in The Legal Intelligencer). Robert



Cosgrove of Wade Clark Mulcahy and Jennifer Coatsworth of Margolis Edelstein represented PADC in these discussions.

I. Law School Initiatives

In February, PADC invited PDI to participate in our first ever law school event which was hosted at Drexel University Law School. The event included a panel discussion with PADC panelists Harriet Anderson of Robert J. Casey, Jr. & Associates, Jim Scott of Bodell Bove, Andre Webb German Gallagher & Murtagh, Rachel Kelly of Sweeney & Sheehan, Holly Kendorski of Naulty Scaricamazza & McDevitt and Lauren Steins of Deasey Mahoney & Valentini of what it means to be a civil defense lawyer. Robert Cosgrove of Wade Clark Mulcahy served as panel moderator. A cocktail reception and resume collection event followed the panel discussion. Additional events are scheduled for the fall.

J. Affinity Group Initiatives

PADC has created designated liaisons with various affinity groups in Philadelphia. The liaisons are Wesley Payne of White and Williams to the Hispanic Bar Association, Matthew Care of Wade Clark Mulcahy to GALLOP, In-Sook Kim of Robert J. Casey, Jr. & Associates to the Asian Pacific Bar Association and Damian Jackson of Reilly McDevitt & Henrich to the Barristers Bar.

K. Firm Relationship Initiatives

PADC invited every known defense firm in Philadelphia to meet with us and discuss their concerns. Several firms took us up on the opportunity.

L. CLE Sponsorship

PADC sponsored and administered in-house CLE programs for PADC member firms Stylidaes, Mezzanotte & Hasson, Goldberg Miller & Rubin, Sweeney & Sheehan, Swartz Campbell & Detweiler, Fowler Hirtzell McNulty & Spaulding, and Robert J. Casey, Jr. & Associates.

M. Membership

PADC's current membership is 321. This compares with 2018 year-end membership of 286.

N. Technology

PADC updated its website (<http://www.philadefense.org>) to facilitate the posting of more consistent news and events. PADC further created a LinkedIn page (<https://www.linkedin.com/company/philadefense>) and created a new listserv (<https://gaggle.email>) for members that offers a searchable archive



O. Resolutions

PADC's Executive Committee passed the following resolutions, which are attached:

- PBA Candidate Endorsement Policy
- Membership Dues for 2019
- PADC Sponsorship Program
- Endorsement of Updated *Tincher* Jury Charges
- PADC By-Laws Changes
- Deputy, VP Programs and Operations

P. DRI and SLDO

- Harriet Anderson of Robert J. Casey, Jr. & Associates attended the DRI SLDO leaders conference in Chicago in January 2019.
- Robert Cosgrove of Wade Clark Mulcahy attended the SLDO Atlantic Region meeting in April 2019 in Virginia.
- Colleen Hayes of Wade Clark Mulcahy attended the SLDO Young Lawyer events in June 2018 and otherwise worked to post PADC events on the DRI website.