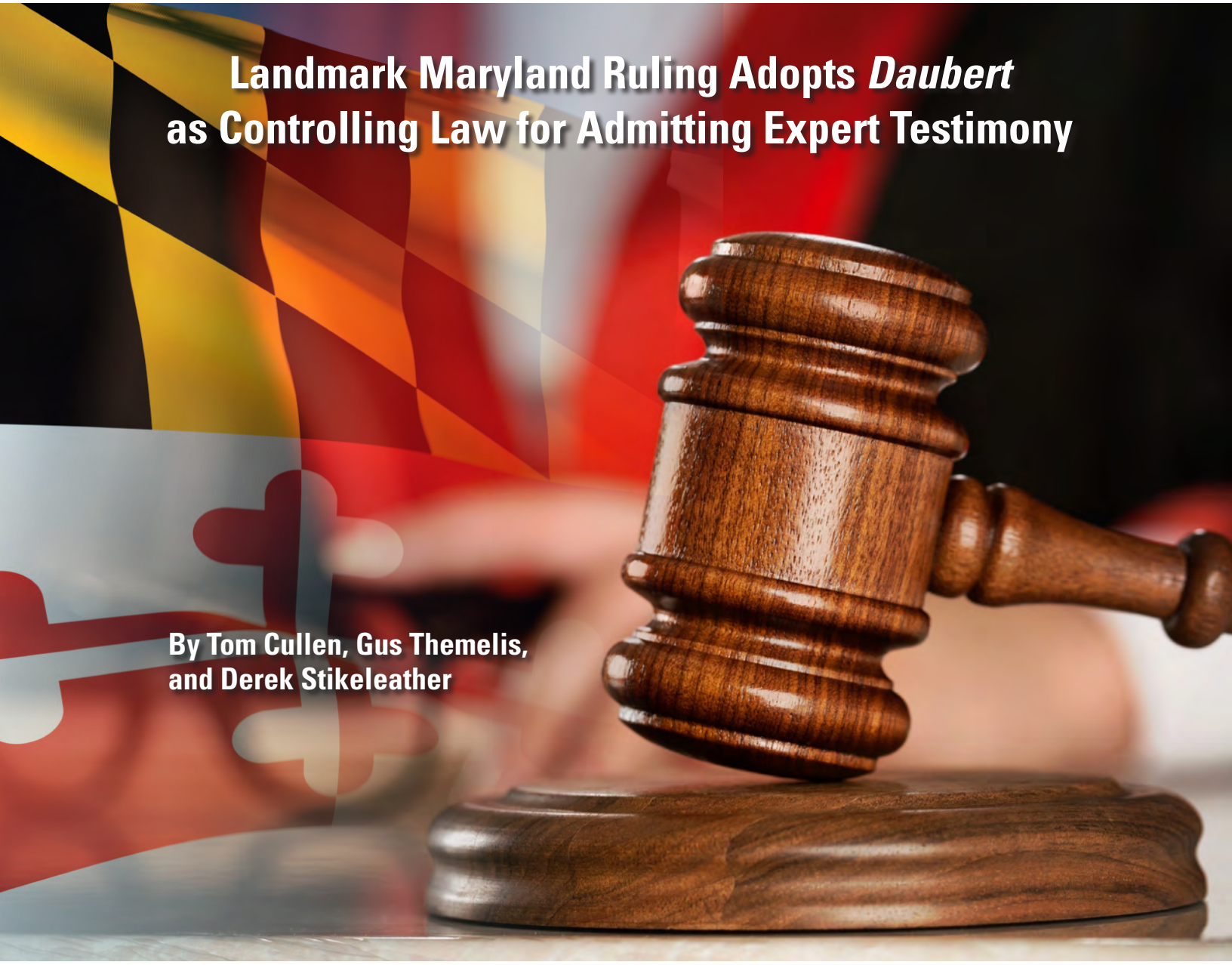
THE DEFENSE LINE

November 2020

A Publication From Maryland Defense Counsel, Inc.



Landmark Maryland Ruling Adopts *Daubert* as Controlling Law for Admitting Expert Testimony

By Tom Cullen, Gus Themelis, and Derek Stikeleather

Also Featured

President's Message

Welcome to the Fall 2020 edition of the *Defense Line*. I would like to extend a hearty thank you to our new Publications Co-Chairs, Rachel Gebhart (GodwinTirocchi, LLC) and Nick Phillips (Gavett, Datt & Barish, P.C.), for editing this edition and pulling together another stellar publication for the organization.

Colleen K. O'Brien, Esquire
Travelers

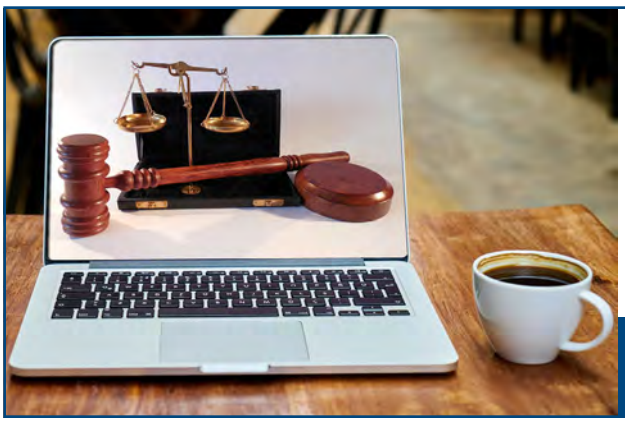
In addition, I would also like to recognize the Judicial Selections Committee, which has been hard at work at the end of the summer and into this fall with a series of judicial candidate interviews for the Circuit Courts of Baltimore City and Baltimore County, as well as Allegany and Wicomico Counties. Thank you to Amy Askew (Kramon & Graham PA) and Chris Dunn (DeCaro Doran Siciliano Gallagher & DeBlasis LLP) for Co-Chairing the Committee last year, and to Jennifer Alexander (McNamee Hosea) for taking the reins this year.

In addition to utilizing Zoom for these latest judicial interviews, we also took the annual Past President's Reception to Zoom this year on September 29, 2020, with a cocktail class led by Anna Kent of the Baltimore Bartenders' Guild. We also held a webinar on the Use of Graphics to Effectively Litigate Medical Malpractice and Personal Injury Cases on August 21, 2020, which was sponsored by ION Medical Designs, and co-presented by Lindsay Coulter (ION Medical Designs) and Christina Billiet (Waranch & Brown LLC). Thank you to everyone who joined us for these events.

In terms of coming attractions, we will be holding our annual educational seminar by Zoom on the morning of Monday, December 7, 2020, titled "Practice Pointers from the Pandemic." Instead of a Deposition Bootcamp or Trial Academy as MDC has usually organized, this year we are going to cover the lessons learned in this age of social distancing on conducting virtual depositions, virtual motions hearings, and virtual mediations. Thank you to Chris Jeffries (Kramon & Graham PA), Katherine Lawler (Nelson Mullins), Zak Miller (Wilson Elser Moskowitz Edelman & Dicker LLP), and Jeff Wettengel (Miles & Stockbridge), for their input and their service on the planning committee for this completely new program.

MDC is also partnering with CLM on a winter coat drive from November 23, 2020 through the end of the year, which will benefit Paul's Place. Thank you to Marisa Trasatti (Wilson Elser Moskowitz Edelman & Dicker LLP), for bringing our organizations together for this charitable effort.

As I said in the last edition, as we continue to adapt to the "new normal," MDC will continue to provide a platform for our membership to connect and to bring informative and exceptional programs. If you want to be more involved, or if you have ideas for improvement, I welcome your reaching out to me.



Maryland Defense Counsel, Inc. Presents

Practice Pointers from the Pandemic

Monday, December 7, 2020 ✯ 9:00 am – 11:45 am

By Zoom

Registration: mddefensecounsel.org/events.html

THE DEFENSE LINE

November 2020

The Defense Line is a publication from Maryland Defense Counsel, Inc.

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TABLE OF CONTENTS

Landmark Maryland Ruling Adopts *Daubert* as Controlling Law for Admitting Expert Testimony

Tom Cullen, Gus Themelis, and Derek Stikeleather



In a landmark ruling, the Court of Appeals of Maryland officially adopted the *Daubert* standard for admitting expert testimony. *Rochkind v. Stevenson*, Case No. 47, September 2019 Term (Aug. 28, 2020). In doing so, the court overturned a trial-court verdict that rested on flawed expert testimony and ordered a new trial.

After more than a decade of incrementally adopting the standard set forth in *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993) — and the steady erosion of *Frye-Reed* as an independent, additional requirement for trial courts applying Maryland Rule 5-702 — the Court of Appeals clarified Maryland law on expert testimony. In *Rochkind v. Stevenson*, the Court formally adopted the *Daubert* standard as controlling Maryland law.[1] In doing so, Maryland retired the superfluous *Frye-Reed* test, which had not only become riddled with exceptions but also evolved into the same "analytical gap" test that courts use when applying Rule 5-702 to expert testimony.

The change is effective immediately, and applies to all "cases that are pending on direct appeal [on Aug. 28] . . . where the relevant question has been preserved for appellate review."[2]

But much of what the *Rochkind* Court says isn't new at all; it's just much clearer. Maryland courts had already been told to consider the *Daubert* factors. And they had already been told that the *Frye-Reed* and Rule 5-702(3) tests had merged into *Daubert's* "analytical gap" test. The only trial courts that now have to change the way they screen expert opinions are those that have not been following the — admittedly unclear — precedent on Rule 5-702 over the last decade. For those judges who have been keeping pace, the *Rochkind* opinion has not changed much about the interpretation of Rule 5-702 except the label.

The "New" Standard

Although the Supreme Court's 1993 *Daubert* decision introduced a five-part test for weighing the admissibility of scientific expert testimony, subsequent opinions clarified that *Daubert* applied to all expert testimony under FRE 702. And because the *Daubert* standard is more flexible than the *Frye* test that it replaced, federal courts have added additional factors, to be used depending on the type of expert testimony proffered. The *Rochkind* opinion reflects this expansive *Daubert* test and states ten factors for trial courts to consider when applying Rule 5-702. First, courts must consider the five original *Daubert* factors:

(1) whether a theory or technique can be (and has been) tested;

(2) whether a theory or technique has been subjected to peer review and publication;

(3) whether a particular scientific technique has a known or potential rate of error;

Continued on page 6

Upcoming events will be announced at MDdefensecounsel.org.

[1] Case No. 47, September 2019 Term (Aug. 28, 2020).
[2] *Id.* at 39.

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(DAUBERT) *Continued from page 5*

(4) the existence and maintenance of standards and controls; and

(5) whether a theory or technique is generally accepted.

Because "courts have developed additional factors for determining whether expert testimony is sufficiently reliable," Maryland courts should also consider:

(6) whether experts are proposing to testify about matters growing naturally and directly out of research they have conducted independent of the litigation, or whether they have developed their opinions expressly for purposes of testifying;

(7) whether the expert has unjustifiably extrapolated from an accepted premise to an unfounded conclusion;

(8) whether the expert has adequately accounted for obvious alternative explanations;

(9) whether the expert is being as careful as he [or she] would be in his [or her] regular professional work outside his [or her] paid litigation consulting; and

(10) whether the field of expertise claimed by the expert is known to reach reliable results for the type of opinion the expert would give.[3]

The *Rochkind* court re-emphasized that the Supreme Court's guidance in *Daubert*, *General Elec. Co. v. Joiner*, 522 U.S. 136 (1997), and *Kumho Tire Co. v. Carmichael*, 526 U.S. 137 (1999), "is critical to a trial court's reliability analysis" and that the *Daubert* inquiry is "a flexible one."[4] Maryland courts must continue to "consider the relationship between the methodology applied and conclusion reached" to guard against any opinion that has an "analytical gap."[5] Rather than revolutionizing Maryland evidence law with the formal adoption of *Daubert*, the *Rochkind* decision merely clarifies that Maryland's existing precedent on Rule 5-702 must be honored and provides a less confusing test for doing so.

Goodell, DeVries, Leech & Dann, LLP participated in the *Rochkind* appellate briefing with California attorneys from Sheppard Mullin in support of adopting Daubert. Tom Cullen argued the case before the Court of Appeals.

A partner with Goodell DeVries, Tom Cullen has represented clients in complex pharmaceutical, product liability, and toxic tort litigation for over 30 years. He has taken cases to trial in over 20 states while representing clients across the country as both national and trial counsel.

Gus Themelis is a partner with Goodell DeVries. He has represented clients in complex toxic tort litigation, products liability cases, commercial and business litigation, franchise disputes, and the defense of health care professionals and institutions against claims of medical malpractice for over 15 years. Throughout his career, he has successfully tried dozens of jury trials and hundreds of bench trials. He has been involved with cases on behalf of clients nationwide.

Derek Stikeleather is a partner with Goodell DeVries. He practices primarily in the areas of appellate advocacy and complex litigation with an emphasis on product liability, personal injury, and class action defense. Derek has represented several medical device and pharmaceutical manufacturers, including Pfizer, DENTSPLY International, Inc., DePuy Orthopaedics, and Hanger Prosthetics & Orthotics in federal and state court proceedings.

[3] *Id.* at 36.
[4] *Id.* at 36–37.
[5] *See id.* at 37–38.

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Editors' Corner

The Editors are pleased to publish this edition of *The Defense Line*. We are grateful to you, MDC members, for your continued support and participation in submitting articles, advice, resources, and spotlights for publication. A special thank you goes to the following individuals who contributed articles to this edition: **Amy Askew**, **John Bourgeois**, and **Bradley Strickland** (Kramon & Gramon); **Tom Cullen**, **Gus Themelis**, and **Derek Strikeleather** (Goodell DeVries); and **Marisa Trasatti**, **Bob Scott**, and **Zachary Miller** (Wilson Elser). As our community continues to adapt to the effects of the pandemic, we look forward to opportunities to support the MDC and be a resource to its members.

If you have any comments or suggestions, or would like to submit an article or spotlight for a future edition of *The Defense Line*, please feel free to contact the Publications Committee.

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Member Spotlight

MDC Congratulates John Sly for Winning the 2020 Fred H. Sievert Award by DRI

Maryland Defense Counsel would like to congratulate John T. Sly, a partner at Waranch & Brown, LLC, for receiving this year's DRI Fred H. Sievert Award which recognizes an outstanding defense bar leader.

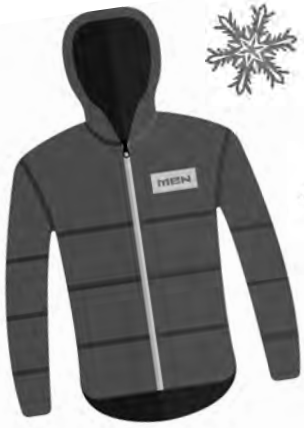
John has been on MDC's Executive Board for many years and served as MDC President during 2018–2019.

John's practice focuses on medical malpractice defense of physicians and health care facilities throughout Maryland. He has an AV rating from Martindale Hubbell and was elected to the American Board of Trial Advocates (ABOTA).

DRI's criteria for receiving the award states "The nominee should be an individual who has made a significant contribution towards achieving the goals and objectives of the organized defense bar." and "must be the current or past president of a SLDO, who has initiated innovative projects for the betterment of the organization and exercised strong leadership."

He received the award at the virtual DRI Annual Meeting In October 2020 and it will be presented to him at the 2021 Summit in the spring.

Congratulations, John!



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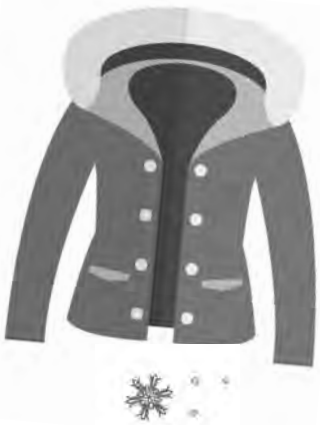

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Maryland Court of Special Appeals Affirms Trial Court's Decision that the Improper and Untimely Designation of Experts Results in Summary Judgment

Amy E. Askew, John A. Bourgeois, and Bradley M. Strickland



On September 10, 2020, the Maryland Court of Special Appeals affirmed, in a published decision, a grant of summary judgment in favor of Kramon & Graham's client, CSX Transportation, Inc. *See Asmussen v. CSX Transp., Inc.*, No. 814, SEPT. TERM, 2019, 2020 WL 5417549 (Md. Ct. Spec. App. Sept. 10, 2020). The Court held that the Circuit Court for Baltimore City did not abuse its discretion in denying Plaintiff Paul Asmussen's request to modify the scheduling order to permit the untimely designation and depositions of his desired experts, or in granting CSX's motion to exclude Mr. Asmussen's expert witnesses. The exclusion of the experts resulted in Mr. Asmussen being unable to meet his burden of proof, and therefore, the grant of summary judgment was proper.

In a claim brought under the Federal Employers' Liability Act, 45 U.S.C. § 51 et seq., Mr. Asmussen alleged he developed kidney cancer in 2015 from exposures to silica while working for CSX from 1977 to 1988. To support his claims, Mr. Asmussen initially identified four expert witnesses, including two toxicologists, Drs. Joseph Regna and James Dahlgren to testify on causation, and a treating physician, Dr. Christopher Runz, to testify regarding damages without disclosing the substance of their opinions. After numerous good faith attempts to obtain the information required under Maryland Rule 2-402(g) and the Scheduling Order, CSX filed a motion to compel, which was denied without explanation. Thereafter, in response to an inquiry by CSX, counsel for Mr. Asmussen sent an email proposing dates for the depositions of Drs. Regna and Dr. Runz, and withdrawing Dr. Dahlgren as an expert. The Court of Special Appeals stated this email "prove[d] to be problematic" for Mr. Asmussen for two reasons.

The first problem, as conceded by Mr. Asmussen after Dr. Regna's deposition, was that Dr. Regna was not qualified to opine as to the causation of Mr. Asmussen's kidney cancer. Thus, a week after the deposition, and nearly five months after his deadline to designate experts, Mr. Asmussen redesignated the previously withdrawn Dr. Dahlgren who would replace Dr. Regna as his causation expert. Mr. Asmussen then only provided Dr. Dahlgren's report nearly two months after the discovery deadline.

The second problem with the email sent by Mr. Asmussen's counsel was that he had not actually contacted Dr. Runz when he proposed deposition dates. In fact, Dr. Runz's first contact regarding the deposition was through an untimely subpoena served by Mr. Asmussen less than a week before the scheduled deposition. Dr. Runz was not available for the deposition, no alternative dates were provided, and he was not deposed.

Given these problems with his experts, Mr. Asmussen moved to modify the scheduling order, claiming good cause existed to extend the discovery deadline because he "substantially complied" with the order and the failure to allow the designation of Dr. Dahlgren and the depositions of Drs. Dahlgren and Runz would "operate as a case-ending sanction." CSX opposed this motion, filed motions to strike Drs. Dahlgren and Runz, and moved for summary judgment based on Mr. Asmussen's failure to provide a standard of care expert or causation expert. In opposition to CSX's motion for summary judgment, Mr. Asmussen provided a 20-page report from Dr. Dahlgren, in the form of an affidavit. The trial court agreed with CSX, denied Mr. Asmussen's motion to enlarge pretrial deadlines, and granted CSX's motion for summary judgment based on Mr. Asmussen's failure to properly designate experts on either standard of care or causation.

The Court of Special Appeals held the trial court did not abuse its discretion by denying Mr. Asmussen's motion to modify or in granting the motion to strike his experts, noting that "there is no substantive difference" between those types of motions. It reached this decision by applying the factors outlined in *Taliaferro v. State*, 295 Md. 376, 390 (1983) for determining when Md. Rule 2-504(c)'s "dual requirements for modification — substantial compliance and good

Continued on page 10

See photos from past events at mddefensecounsel.org/gallery



(SUMMARY JUDGEMENT) *Continued from page 9*

cause" are met as to permit modification of a scheduling order. Those factors — (1) whether the disclosure violation was technical or substantial; (2) the timing of the ultimate disclosure; (3) the reason for the violation; (4) the degree of prejudice to the parties; (5) whether any prejudice might be cured by postponement; and (5) if such a cure is possible, the overall desirability of a continuance — often "overlap," and assist the trial court to elucidate the "facts of the particular case" on which it may apply its "large measure of discretion." Slip op. at 21.

The Court of Special Appeals noted that Mr. Asmussen first provided the substance of Dr. Dahlgren's findings and opinions six months after the expert disclosure deadline and six weeks after the close of discovery, and observed that even the initial disclosures of Dr. Dahlgren (and Dr. Regna) were insufficient, as they conveyed only "boilerplate" language identifying "the *general subject matter* of the witnesses' testimony," without providing the substance of their opinion(s) required by Md. Rule 2-402(g). Slip op. at 25. The Court observed that "in reality" at the time the initial disclosures were provided, "Drs. Regna and Dahlgren had not made any findings or formulated any opinions at all." *Id.* Because CSX "had no information regarding the substance of Dr. Dahlgren's expert opinions and the bases for them until six weeks after the close of discovery," the violation was substantial, not technical. Slip op. at 26. Moreover, the reason for the delay was a failure to vet Dr. Regna's qualifications and opinions properly. According to the Court, a "cursory review" and a "few **simple** questions" would have revealed Dr. Regna was not qualified to provide the desired causation opinion. Slip op. at 29. The Court also stated that to allow the late designation of Dr. Dahlgren would "severely prejudice" CSX because, among other reasons, it already invested substantial resources into challenging the opinions of Dr. Regna. Slip op. at 27. Accordingly, the Court held that the refusal to modify the scheduling order was reasonable.

Despite recognizing the "harsh" nature of the rulings, the Court ultimately held that summary judgment was warranted because Mr. Asmussen had no causation expert.[1] Slip op. at 28. Its ruling is a good reminder that expert disclosures must provide "the substance" of the experts' opinions and findings, not just "the general subject matter" of their opinions. Further, it is of paramount importance that parties carefully evaluate their experts' opinions and their factual basis before the experts' depositions, as the trial court may not be inclined to provide additional time to designate or depose a new expert.

Amy Askew, Principal at Kramon & Graham, P.A., is a Maryland trial lawyer with particular experience representing the rail and health care industries. She also represents lawyers in professional responsibility matters. Amy has tried many jury and bench trials to verdict and successfully argued in the appellate courts of Maryland. She has significant experience defending companies in class-action litigation, particularly consumer class actions.

John Bourgeois, Principal at Kramon & Graham, P.A., is a versatile trial lawyer with extensive jury-trial experience in a variety of civil and criminal cases. In addition to handling high-stakes commercial litigation, John represents clients in business disputes, administrative and licensing proceedings, intellectual property disputes, civil rights litigation, and admiralty and maritime matters. John has particular experience representing individual defendants charged with serious federal and state crimes. He also represents lawyers in malpractice and professional-responsibility proceedings.

Practicing in the firm's litigation group, Bradley Strickland is a trial attorney at Kramon & Graham, P.A., who concentrates his practice in matters involving commercial and professional liability, catastrophic personal injury, toxic torts, and products liability. Brad's engineering background gives him a unique perspective in complex litigation cases, particularly in toxic-tort, mass-tort, and products liability matters.

[1] The Court declined to decide whether summary judgment based on Mr. Asmussen's failure to designate a standard of care expert was correct, or whether the misrepresentations regarding Dr. Runz's availability violated the Maryland Discovery Rules or Guidelines.

MDC's 2020 Virtual Past President's Reception

Maryland Defense Counsel ("MDC") hosted its annual **Past President's Reception** virtually on **Tuesday, September 29, 2020**. Attendees enjoyed a zoom cocktail class with bartender Anna Kent, featuring "Baltimore Southside" and "Cosmopolitan" cocktails.

MDC wishes to thank all attendees, including our sponsors and members for their participation and contributions to a fun and creative event.


Anna Kent


Robert Klein

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Debbie Wynne


Robert Klein


Debbie Wynne


Nicole DeFord

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Important Reminders For Your Remote Deposition

Planet Depos

You've likely been taking remote depositions for going on six months now, so you're well-versed in the procedure. Even so, a refresher is always a good thing. Or perhaps you've been resisting the remote trend and are now taking the plunge. Great! Consider this list your remote proceedings checklist/refresher course. Here are the vital points to keep in mind when scheduling virtual depositions.

1. **Check the rules!** Remote depositions have been around for a long time now, but you still want to double-check the state and federal rules. Odds are good that if both sides stipulate, you're set to conduct your remote deposition. Some states require stipulation regarding the administration of the oath when the reporter is not in the presence of the witness, though many states have issued temporary orders allowing remote administration of the oath.

2. **Check your connection and speed!** Internet speed is a crucial detail for your remote proceedings. Zoom recommends speeds of 1.5Mbps. The higher your speeds the better! You can test your internet speeds at sites like SpeedTest.net.

3. **Consider the hardwired connection.** If you have any Wi-Fi issues, connect your computer to the router with an ethernet cable for additional protection against those issues. Check your signal strength and join the call with confidence.

4. **Test call!** Speaking of connection, connect with your technician to test your connection prior to the virtual proceeding. This is the time to test your setup (we'll get to that in a bit), your microphones, headphones, etc. This is also the opportunity get expert advice from your technician on any questions you have about the remote deposition platform or anything techy related to the upcoming proceeding. Planet Depos is staffed around the clock, so you can get those questions answered any time, but seize this opportunity!

5. **Get the best audio possible.** This is where a headset makes a huge difference. Don't forget to test the headset on the test call! Check our tips for the best audio during a remote deposition for more ideas.

6. **Send any exhibits in advance.** This helps the technician, as the exhibits are organized and ready for him to pull up, mark, etc., at your request during the deposition. You can also mark them yourself during the deposition, or even send them pre-marked.

7. **Setup matters. Setup affects audio quality and visibility.** You want to set up in a quiet, well-lit space. Do not sit in front of a window, as your facial expressions will be indistinct. You want space clear of clutter so you can easily access any paper documents for the deposition. Dress in solid, dark colors.

8. **Consider the stage.** You're separate from all the other parties. Speak a little slower, a little louder, and take extra care to enunciate. Be prepared for the possibility of being asked to repeat yourself, especially if you don't speak a littler slower. Technology is amazing but be realistic. Make a few adjustments to allow for the fact that you're not all in the same room, and there will be fewer interruptions and a smoother proceeding overall.

9. **Communicate all applicable tips to your witness!** Make sure they conduct a test call, test their own internet speed, etc., and have space with the optimal setup. We have a list of tips to share with your witness before their virtual deposition.

10. **Communicate with your court reporting agency!** All regular services are available with remote depositions. Realtime can add a real punch to your remote proceeding, for example. Video is available, even synced, and all the other options you may be accustomed to. Get the most out of your remote deposition by letting the agency know exactly what you need. Also make sure they have email addresses for all participants, so everyone who needs to can connect!

With these reminders, you can continue scheduling remote depositions confident the proceedings will be smooth, and confident you will receive your regular orders after the proceedings. There should be nothing daunting about conducting a remote deposition. Work through the list to confirm you are prepared and can successfully do your job, so you get the most from your remote deposition.

Planet Depos has been covering remote depositions for over a decade, throughout the United States, and all around the world. For more information on anything remote-related, contact Planet Depos at **888.433.3767**, or **scheduling@planetdepos.com**. You can even schedule online.

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Spotlights

Trasatti, Scott, and Miller Obtain Summary Judgment Based on Delaware's Continuing Storm Doctrine

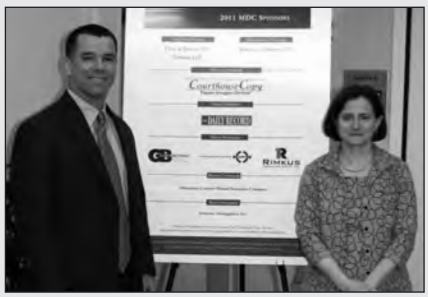
Marisa Trasatti, **Robert E. Scott Jr.**, and **Zachary Miller**, of Wilson Elser Moskowitz Edelman & Dicker LLP, in Baltimore, obtained summary judgment in Delaware Superior Court in favor of a pharmaceutical company in a premises slip-and-fall case. The claimed damages in the case were significant, and attempts at settling the claim prior to the ruling failed. Marisa Trasatti argued the motion via videoconference during the pandemic, stating that Plaintiff's claims should be dismissed under the continuing storm doctrine, which allows premises owners to wait until the end of a storm to remove snow and treat ice. During follow-up briefing, the Defendants argued that during the motions hearing, and in her opposition, Plaintiff attempted to manufacture a dispute of fact by claiming that the storm had ended at the time of her fall.

Specifically, the Defendants argued that the undisputed evidence in the case demonstrated that at the time of Plaintiff's fall, around 7:40 a.m. on January 12, 2015, the storm was ongoing based on the following testimonial and documentary evidence: (1) both parties' experts agreed with the National Weather Service, which stated that the storm occurred from 12:00 a.m. until 11:59 p.m. on January 12, 2015; (2) an invoice for snow and ice removal services showed the premises was treated after Plaintiff fell at 8:30 a.m. on January 12, 2015, as well as on January 13, 2015; (3) Plaintiff's admission in her deposition that she did not remember what the weather was like after the incident occurred, and just stated "I don't remember" or "I'm not sure"; (4) according to Doppler radar, there was light freezing rain falling on January 12, 2015 through 9:35 a.m.; (5) the National Weather Service stated that there were periods of freezing, thawing, and refreezing from January 11, 2015 through January 13, 2015; (6) the National Weather Service issued a "Winter Weather Advisory" on January 12, 2015 at 12:30 a.m. through 10:00 a.m., predicting a wintry mix of sleet and freezing rain, before changing over to rain; (7) Doppler radar images showed that on January 12, 2015, precipitation changed to plain liquid rain and periods of light to moderate rain falling from 9:35 a.m. through 5:14 p.m.; and (8) on January 10, 2015, January 11, 2015 from Midnight through 11:20 a.m., 7:30 p.m. through 7:32 p.m., and 7:40 p.m. through Midnight, and January 12, 2015 from Midnight through 12:15 a.m., 1:30 a.m. through 3:35 a.m., 3:50 a.m. through 8:30 a.m., 8:40 a.m. through 8:42 a.m., and 9:30 a.m. through 9:35 a.m., the low temperature in the area where the alleged incident occurred was below freezing.

In addition, Defendants also argued that there was no dispute that Plaintiff simply does not know when the storm ended according to her repeated deposition testimony, as stating "I don't know" does not generate a material dispute of fact. *See Saienni v. 3 Mill Park Court*, LLC, 2016 WL 7105945. Lastly, Defendants noted that even if a storm did not occur at the time that Plaintiff fell, the continuing storm doctrine still applied, since the evidence showed that a storm continued after Plaintiff fell, indicating that there was simply a lull in the storm at the time that Plaintiff fell. *See Elder v. Dover Downs, Inc.*, 2012 WL 2553091 (Del. Super. Ct. July 2, 2012) (granting summary judgment based upon the continuing storm doctrine where the Plaintiff failed to present evidence that the storm had completely abated at the time of her fall). As the undisputed evidence showed that a storm occurred prior to and did not conclude until sometime after the time that Plaintiff fell, the Court granted summary judgment to all defendants holding that Delaware's continuing storm doctrine applied.

See photos from MDC past events:

mddefensecounsel.org/gallery



Spotlights

Wilson, Elser, Moskowitz, Edelman & Dicker LLP attorneys **Shadonna Hale** (Of Counsel-Baltimore) and **Ashley Wetzel** (Associate-Baltimore) represented an attorney and his law firm in a defamation case — a consolidation of three separate lawsuits relating to three minors' allegations that they were molested by a prominent rabbi: (1) the rabbi sued alleged victims, their families and members of the press for publicizing the allegations; (2) our clients represented the alleged victims and their families in two counter-lawsuits against the rabbi and the camp where the alleged abuse took place; (3) the alleged victims' cases were consolidated with the rabbi's case as counter-claims. The plaintiff rabbi sought to amend his complaint to add our clients as additional defendants. In their motion to amend, the plaintiffs alleged that throughout the course of representing their clients, the law firm and attorney posted defamatory statements on their Facebook pages and made defamatory comments to reporters that were published in newspaper articles. In opposition to the motion for leave to amend, Shadonna and Ashley argued that the plaintiffs' baseless claims were a thinly veiled attempt to disqualify the law firm and attorney as counsel for their clients. Allowing the plaintiffs to file the proposed amended complaint would be futile because the claims had no merit and would severely prejudice the alleged victims and their parents. The court agreed that it was inappropriate to allow the plaintiffs to bring other parties' counsel into the case and denied the motion for leave to amend.

Josh Gayfield and **Megan McGinnis** recently secured a noteworthy published opinion from the United States Court of Appeals for the Fourth Circuit. The opinion establishes new law regarding Federal Rule of Evidence 408 and the admissibility of pre-litigation settlement negotiations. The case, in which Miles & Stockbridge represented the redeveloper of a 3,100-acre land parcel east of Baltimore Inner Harbor, arose from a dispute over a former employee's claim to an alleged commission for the resale of the property. At a civil jury trial in the Maryland District Court, Miles & Stockbridge objected to the introduction of certain testimonial evidence key to the plaintiff's case on the basis that it involved an attempt to compromise a disputed claim. While trial court initially allowed the evidence, a unanimous panel of the Fourth Circuit held that the lower court had erred and accordingly vacated the judgment and remanded for a new trial.

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