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Weber Gallagher

General Liability Alert

New Jersey Limits Scope of Releases (of all Liability) for Health Clubs

In *Walters v. YMCA*, the plaintiff sustained an injury when he slipped on steps leading from a pool at a YMCA health club. Although exculpatory clauses have previously been held enforceable when the resulting injury was an inherent risk in the nature of the physical activity, here the Appellate Court held that this type of accident could have occurred in any business setting. Therefore, if applied literally, it would totally dilute the common law duty of care owned by any business to its invitees, regardless of the nature of the business activity involved, and so it was rejected by the Court.

Pennsylvania Broadens Scope of Issues Considered for Venue Change on Forum Non Conveniens Grounds

In *Bractic v. Rubendall*, the Supreme Court reaffirmed the *Cheesman* holding, which allowed a transfer of venue only if detailed information on the record can demonstrate that the chosen forum is oppressive or vexatious to the defendant. However, the Court cautioned courts being too restrictive in their applications, while "mere inconvenience" remains insufficient, there is now greater latitude when ruling on a forum non conveniens Motion (opened the door to "something a little more" than the minimal showing).

New Jersey Upholds Dismissal of Special Employee Plaintiff under Exclusivity of Workers Compensation Act

In *Hernandez v. Port Logistics*, the plaintiff, a general warehouse worker supplied by a staffing company pursuant to a Service Agreement, suffered an injury while working at a warehouse and distribution center operated by the defendant. Although the Service Agreement explicitly stated that the plaintiff was an employee of the staffing company, the Appellate Court held that the plaintiff was a special employee of the defendant (defendant controlled details of the plaintiff's work, paid his wages and sent him home whenever there was no work for him). Therefore, the plaintiff's claim was barred under the exclusivity provision of the Workers Compensation Act.

UPDATE: New Jersey Limits on Use of Adverse Inference for Failure to Call Own (Medical) Expert Witness

The *Washington v. Perez* Supreme Court decision is now codified into the New Jersey Model Civil Jury Charges. That means, the Model Charges instruct the Judge at trial to charge the jury according to the principle that an adverse inference can only be drawn, for failure to call one's own fact witness, not one's own expert witness, unless there is a (very specific, limited) rationale for applying to expert witnesses, rather than solely limiting its use to not producing a fact witness.