

GENERAL LIABILITY UPDATE

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Our attorneys handle a wide range of general liability matters, including claims involving construction defects, premises liability, property damage, fire loss, liquor liability/dram shop actions, civil actions arising out of the criminal conduct of third persons, defamation/libel and mass tort actions. We represent a variety of self-insured entities as well as insurance carriers in defending such

actions. It is our belief that in order to provide the most cost-efficient service to our clients, cases are evaluated at an early stage so that efforts can be made to identify those cases that, in all likelihood, will eventually settle. Resources can then be directed to those cases which have been deemed to be appropriate for trial. We pride ourselves on the extensive trial skills of the

attorneys in this practice group, all of whom have had experience in handling a variety of high-exposure cases in front of juries in a number of jurisdictions. Regardless of the complexity of the matter, our continuing goal is to ensure that our clients are fully informed of the status of all litigation so that the most effective strategic decisions can be made at each stage.

COMMERCIAL LANDLORD/ TENANT LIABILITY AND COVERAGE LAW CHANGES (NEW JERSEY)

Plaintiff slipped and fell on ice in the parking lot of a strip mall. Issue was whether the Real Estate Manager was acting on behalf of the Tenant or the Landlord. Since the Plaintiff's injury is solely the responsibility of the Landlord (and property manager) pursuant to the lease, the Court found that the Tenant had no responsibility *or liability* in this matter.

Further, in that same case the Landlord and Real Estate Manager claimed that they were covered by a liability insurance policy of the strip mall *tenant*. The strip mall tenant failed to name either the Landlord or the Real Estate Manager in the insurance policy. However, the tenant's insurance policy provided coverage for "any person... acting as your real estate manager." Given, that the Real Estate Manager was acting on the behalf of the Landlord and not the Tenant, the insurance policy would not cover the Real Estate Manager and the Landlord, regardless.

SSA DISABILITY BENEFITS CANNOT BE USED AS PROOF OF DISABILITY IN COURT (NEW JERSEY)

The Federal Court in New Jersey has just published an opinion which rejects as proofs, and totally bars the introduction in any way, of a finding of "disability" or "total disability" made by the Social Security Administration in awarding Social Security Disability Benefits to a plaintiff following an accident or illness.

This case is important, as it is the first reported decision in New Jersey to expressly deal with this issue at trial. The Court held that plaintiff *cannot* use the Social Security Disability determination, *nor* the fact that he is receiving disability benefits, from the Social Security Administration, as "proof" that plaintiff is in fact: disabled, or totally disabled, or that the disability is related to the incident in question, etc. At least as importantly, the Federal Court went on to hold that the potential prejudicial effect to a jury (of the Social Security Disability determination) could potentially so out weigh any probative effect such evidence would have, that the Court granted a Motion barring *any* introduction into evidence or mention at trial, of the Social Security Administration disability determination and any benefits received, in their entirety.

CLEAN AIR ACT CLAIM TESTS LIMITS OF FEDERAL JURISDICTION

(In a case that also has implications in *Environmental* Litigation as well as *Toxic Tort* Litigation, this case also can be used for General Liability and Litigation purposes, as well.) The Plaintiff, an inmate at a Federal prison, alleged that multiple Defendants broke State and Federal Law. Plaintiff claimed exposure to asbestos during re-roofing and asbestos abatement projects on several buildings. His Complaint alleged four legal theories: Gross Negligence; Common Law Fraud; Violations of the Clean Air Act; and, Negligence.

The Federal Court acknowledged that the plaintiff's allegations relating to the Clean Air Act would confer the Federal Court with federal question jurisdiction. However, that Court barred the allegation, stating that that Act does not allow for a *private cause of action* for compensatory damages. The Plaintiff also alleged that Defendants violated the Clean Air Act, as a "breach of fiduciary duty," and sought damages based upon Defendants' violations. The Court struck down that allegation as well, because it was just another incorrect attempt to recover compensatory damages under that Act.

Therefore, there was no longer a federal question, so no federal question jurisdiction. Lastly, the Plaintiff alleged that because he was a prisoner in Pennsylvania, there was complete diversity of citizenship jurisdiction still applying to the remaining (not barred) claims. The Court rejected that too, because a prisoner's citizenship is not his state of incarceration but "the prisoner's domicile before imprisonment." Therefore, the entire case was tossed from the Federal Court, due to lack of federal jurisdiction.

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