

Marc Penchansky

Partner

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Marc has a varied practice with a focus on insurance coverage and related litigation, class actions, insurance broker and agent liability, medical malpractice and appeals. As an appellate attorney, he assists trial teams with complex motion practice, evidentiary issues and litigation strategy.

OVERVIEW

Marc Penchansky has a varied practice with a focus on insurance coverage and related litigation, class actions, insurance broker and agent liability, medical malpractice, and appeals. Marc is regularly involved in first-party insurance claims involving catastrophic losses from events like hurricanes, floods, windstorms, and collapses. He also has extensive experience in conventional and artificial (EIFS) stucco coverage litigation and other moisture intrusion cases. During the COVID-19 pandemic, Marc has handled dozens of COVID-19 business interruption claims and represented carriers in subsequent litigation.

Marc frequently assists carrier clients with claims investigations, coverage analyses, examinations under oath, and resulting litigation including litigation over alleged bad faith. He also aids carriers in pursuing pre-litigation settlement through appraisal.

Marc's experience with third-party claims includes national sports concussion litigation, consumer class actions, construction accidents, construction defects, sexual abuse, and sex trafficking. Carriers often ask Marc to determine whether it has a duty to defend or indemnify the policyholder, and when necessary, he participates in litigation to resolve any outstanding issues.

Marc also has significant experience representing insurance agents and brokers in litigation alleging breach of professional liability. In this capacity, he is engaged in all aspects of the litigation and has been involved in cases defining the scope of a producer's duty to insureds and third parties.

PRACTICES

Appellate
Class Actions
First-Party Property
Healthcare
Insurance Coverage and Bad Faith
Life, Health, Disability and ERISA
Litigation
Professional Liability

BAR AND COURT ADMISSIONS

Pennsylvania
New Jersey
U.S. Court of Appeals for the Third Circuit
U.S. District Court for the District of New Jersey
U.S. District Court for the Eastern District of Pennsylvania
U.S. District Court for the Middle District of Pennsylvania
U.S. District Court for the Western District of Pennsylvania

EDUCATION

University of Richmond School of Law, JD,
magna cum laude, 1998
Rutgers University, BA, 1994



As a former appellate law clerk, Marc is also involved in many of the appeals that arise at the firm. He represents clients in intermediate New Jersey and Pennsylvania appellate courts, the New Jersey and Pennsylvania Supreme Courts, and the United States Court of Appeals for the Third Circuit. His extensive appellate experience includes jurisdictional challenges, interlocutory appeals, and expedited appeals that often involve complex and novel issues.

As an appellate attorney, Marc also assists trial teams in all practice areas with complex motion practice, evidentiary issues, and litigation strategy. Marc is asked to identify appellate issues and ensure proper preservation of error. He also works to ensure that positive results are unassailable on appeal. His peers routinely ask him to step into ongoing litigation to draft and argue motions on key issues that will profoundly influence the disposition of the case.

Marc has extensive experience in medical malpractice defense, particularly with EMTALA cases. He has also supervised a team of attorneys in discovery matters including productions for large-scale antitrust matters and government investigations.

Marc earned his law degree, *magna cum laude*, from the University of Richmond School of Law, where he was an active member of the law review, member of the honor society, and served as research assistant to two professors. Prior to entering private practice, Marc was a judicial clerk to the Honorable Thomas L. Ambro of the U.S. Court of Appeals for the Third Circuit. He also served as a staff attorney for the Third Circuit, at which time, he spent several months as an elbow clerk to the Honorable Jane Roth. After his clerkships, Marc served in the appellate department of a midsize law firm that mainly represented nursing homes and hospitals. He also has experience working in the antitrust and toxic torts departments of a large international firm.

REPRESENTATIVE MATTERS

White and Williams Defeats Emergency Injunction Requests To Force Use of Ivermectin To Treat COVID-19 Patient
12.20.21

Court Rules That Assignment of Claims Against Insurance Broker Was Void
11.15.21

District Court in The Middle District of Pennsylvania Dismisses Hotel's Claim for Lost Business Income Due To COVID-19
6.1.21

White and Williams Successfully Defends on Appeal the Dismissal of Class Action Lawsuit
4.5.21

Third Circuit Court of Appeals Affirmed Summary Judgment in a National Origin and Age Discrimination Case
3.12.19

Professional Liability Group Defeats Claim of "Special Relationship" Between Insurance Broker and Insured

Retained following the entry of an adverse summary judgment ruling finding that a contractor had a duty to indemnify a condominium association and its management company for injuries sustained by the contractor's employee and for the contractor's alleged failure to procure insurance that met the requirements in a service agreement between the association and contractor, and promptly reversed that decision through an interlocutory appeal in the New Jersey Appellate Division.

Obtained summary judgment, and defeated class certification, on behalf of an event security company in Maryland class action consisting of hundreds of young female dancers who were spied upon by a convention center public safety officer who inappropriately used the facility's surveillance cameras to view and record the dancers' dressing area

Litigation counsel to various insurers for COVID-19 insurance claims

Successfully obtained declaratory relief extricating insurer from liability for defense and indemnification for a California class action against manufacturer of non-stick copper pans that failed to perform as advertised, as such faulty workmanship claims failed to constitute an "occurrence" under the manufacturer's commercial general liability insurance policy

Reversed on appeal a jury's defense verdict for a bank in a suit brought by a federal receiver for the bank's participation in a Ponzi scheme on grounds that trial court erroneously concluded that Pennsylvania did not recognize a cause of action for aiding and abetting fraud and for other errors concerning the erroneous admission of evidence, resulting in exposure to the bank on retrial well in excess of \$20 million

Drafted successful summary judgment motion on behalf of insurance broker in a multi-million-dollar litigation where the broker was alleged to have violated its duty to provide insurance quotes to its client; successfully defended the entry of summary judgment on appeal

Successfully defended on appeal before the Pennsylvania Superior Court a negligence action filed by a subcontractor's employee against the general contractor

Drafted successful motion to dismiss class action on behalf of a large automotive insurer who was accused of improperly renewing its policies

Obtained reversal from Pennsylvania Superior Court of trial court's refusal to dismiss first-party claim for uninsured motorist benefits at the pleading stage; convinced Superior Court that Insured had failed to adequately plead a viable cause of action against her insurer and had failed to point to any conduct that amounted to bad faith

Drafted successful petition for review to the Supreme Court of Pennsylvania on behalf of an insurance broker against claims of township employees who alleged that the broker fraudulently prevented the payment of a large insurance claim; the Supreme Court's grant of the petition led to a favorable resolution of the matter before an opinion was issued

Successfully defended on appeal to the United States Court of Appeals for the Third Circuit, a dismissal of plaintiff's breach of contract claim and bad faith claim based on Pennsylvania four-year statute of limitations for contract actions and two-year statute of limitations for bad faith claims

Secured the early dismissal of a large medical malpractice litigation based on the Emergency Medical Treatment and Labor Act (EMTALA)

IN THE NEWS

13th Annual Coverage College Hosts Over 400 Insurance Professionals
11.1.19

White and Williams Announces Lawyer Promotions
Two Lawyers Elected to Partnership and Six Associates Promoted to Counsel
1.4.18



EVENTS

Civil Human Trafficking Lawsuits: A Growing Risk for Insurance
AIRROC Summer Membership Meeting 2022, 7.21.22

Class Action Lawsuits Series - Part Three
Webinar, 7.12.22

Coverage College 2021
10.21.21

Coverage College 2020
10.22.20

COVID-19 Insurance Program
Webinar, 8.11.20

Coverage College 2019
10.24.19

Differing Approaches to Products Liability: A Cross-Jurisdictional Analysis
White and Williams Lunch-and-Learn, 3.28.17

PUBLICATIONS

Consent to General Jurisdiction by Registration Affirmed ... But Only In Pennsylvania, and Perhaps Not For Long
Client Alert, 6.28.23

White and Williams Team Persuades the PA Supreme Court to Recognize Claim for Aiding and Abetting Fraud
Litigation Alert, 2.10.23

The Complex Insurance Coverage Reporter - November 2022 - Special Edition
The Complex Insurance Coverage Reporter, 11.21.22

Where Can Your Company Be Sued? A 2022 Update on All Things Personal Jurisdiction
General, Specific, Digital and Consent by Registration
Litigation Alert, 1.4.22

Are Insurance Brokers the Next Target for Claims Arising From the Pandemic?
The Legal Intelligencer, 7.26.21

Court Holds That Insurance Producer Cannot Be Liable for Denial of COVID-19 Business Interruption Claim
Professional Liability Alert, 10.12.20

Broker Liability in the Wake of COVID-19 Coverage Litigation
Professional Liability Alert, 5.8.20



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ANNIVERSARY

White and
Williams LLP

Marc Penchansky

First Coronavirus Coverage Suit Filed For Business Interruption
Insurance Coverage and Bad Faith Alert, 3.17.20

Responsive Pleadings: Preliminary Objections, Answers and Counterclaims
Pennsylvania Civil Trial Practice, Chapter 4, January 2017, 2018 and 2019 Editions