

## JOHN L. SLIMM

SENIOR COUNSEL



### AREAS OF PRACTICE

Lawyers' Professional Liability  
Accountants' Professional Liability  
Architectural, Engineering & Construction  
Defect Litigation  
Insurance Agents & Brokers Liability  
Real Estate E&O Liability  
Miscellaneous Professional Liability  
Disciplinary Board Representation

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Mount Laurel, NJ 08054

### ADMISSIONS

New Jersey  
1970

### EDUCATION

Notre Dame Law School (J.D.,  
1970)

La Salle College (B.A., 1967)

### OVERVIEW

Jack is a member of the Professional Liability Department where he concentrates his practice in complex litigation, with emphasis on the defense of professionals, including lawyers, accountants, architects and engineers, insurance brokers, real estate professionals, and directors and officers in matters pertaining to malpractice, negligence, fraud, and defamation. He is also a fellow in the American College of Trial Lawyers, and has tried over 100 cases and argued scores of appeals.

Jack is admitted to practice in New Jersey, the District of New Jersey, the Court of Appeals for the Third Circuit, and the United States Supreme Court. He has also been admitted to try cases in the Commonwealth of Pennsylvania, the Eastern District of Pennsylvania, the Eastern District of New York, and the Southern District of New York, as well as the Supreme Court of the State of New York.

A graduate of the University of Notre Dame Law School, Jack subsequently served as Law Secretary for the Honorable Thomas F. Dalton, J.S.C., Superior Court of New Jersey.

Jack is a frequent speaker for the New Jersey Institute for Continuing Legal Education and the American College of Trial Lawyers on legal malpractice matters.

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## HONORS & AWARDS

AV® Preeminent™ by Martindale-Hubbell®

*The Martindale-Hubbell rated attorney list is issued by Internet Brands, Inc. A description of the selection methodology can be found [here](#). No aspect of this advertisement has been approved by the Supreme Court of New Jersey.*

The Best Lawyers in America®, Legal Malpractice Law - Defendants; Professional Malpractice Law – Defendants; Philadelphia "Lawyer of the Year" Legal Malpractice Law - Defendants, 2015 2010-2024

*The Best Lawyers list is issued by Woodward & White. A description of the selection methodology can be found [here](#). No aspect of this advertisement has been approved by the Supreme Court of New Jersey.*

New Jersey Super Lawyer List 2005-2009, 2011-2021

*The Super Lawyers list is issued by Thomson Reuters. A description of the selection methodology can be found [here](#). No aspect of this advertisement has been approved by the Supreme Court of New Jersey.*

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## ASSOCIATIONS & MEMBERSHIPS

American Bar Association

American College of Trial Lawyers

Burlington County Bar Association, Co-Chairman of Civil Practice Committee

Camden County Bar Association, Civil Practice Committee

New Jersey State Bar Association

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## YEAR JOINED

1995

## THOUGHT LEADERSHIP

### Strategic Defenses to Appellate Malpractice Claims

**Mount Laurel**  
**Lawyers' Professional Liability**  
**Appellate Advocacy & Post-Trial Practice**  
**April 19, 2024**

### Legal Updates for Lawyers' Professional Liability - CASE LAW UPDATE

**Mount Laurel**  
**Lawyers' Professional Liability**  
**November 1, 2023**

Marshall Dennehey Attorneys Successful in Legal Malpractice Action Arising Out of a Complex Wrongful Medical Diagnosis Case Legal Update for Lawyers' Professional Liability – November 2023

### New Jersey Supreme Court Ruling Clarifies the Standard for Lost Profit Claims on Behalf of New Business

**Mount Laurel**  
**Lawyers' Professional Liability**  
**September 20, 2022**

On August 17, 2022, the New Jersey Supreme Court issued its opinion in Larry Schwartz and NJ 322, LLC v. Cooper Levenson and Pulte Homes. This newsletter is prepared by Marshall Dennehey to provide information on recent legal developments of interest to our readers.

### Three Marshall Dennehey Attorneys Selected 2022 "Lawyers of the Year" and 67 Attorneys Recognized Overall in the 2022 Editions of The Best Lawyers in America® and Best Lawyers: Ones to Watch®

August 19, 2021  
Marshall Dennehey is proud to announce that three of the firm's attorneys have been selected 2022 "Lawyers of the Year" and 67 attorneys have been recognized overall in the 2022 Editions of The Best Lawyers in America® and Best Lawyers: Ones to Watch®  
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### Marshall Dennehey Counsel Prevails on Appeal of a Legal Malpractice Judgment for the Unauthorized Practice of Law Under New Jersey's Criminal Statute

**Mount Laurel**  
**Lawyers' Professional Liability**  
**July 29, 2021**

John "Jack" Slimm, highly accomplished attorney, has been selected 2022 "Lawyer of the Year" and 67 attorneys have been recognized overall in the 2022 Editions of The Best Lawyers in America® and Best Lawyers: Ones to Watch®  
The material in this law alert has been prepared for our readers by Marshall Dennehey Warner Col

## CLASSES/SEMINARS TAUGHT

*Mediation Process & Techniques in Civil & Chancery Disputes: Producing the Best Results for Your Client*, Camden County Bar Association's Civil Practice Update, June 5, 2023

*Criminal Defense Bar and Their Exposure to Legal Malpractice & Cross-Examining an Expert in a Legal Malpractice Case*, NJICLE 2023 Legal Malpractice Update, March 25, 2023

NJICLE Annual Legal Malpractice Conference, March 27, 2021

*De Bene Esse Depositions*, NJICLE Deposition College Seminar, March 26, 2021

*What Can Go Wrong At Trial?*, New Jersey Institute for Continuing Legal Education, April 2014

*Where Has All the Privy Gone?*, New Jersey Institute for Continuing Legal Education, March 2013

*Legal Malpractice*, New Jersey Law Journal Continuing Legal Education Series, December 2012

*Examining Non-Traditional Claims Against Lawyers*, The Hartford, May 2012

*Non-Traditional, Complex Professional Liability Claims*, PLUS, April 2012

*New Jersey's Litigation Privilege, How It Applies and Can Be Used In Defense of Attorneys in Actions Filed in Both State and Federal Courts in New Jersey*, New Jersey Institute of Continuing Legal Education, April 2012

*Civil Practice*, Camden County Bar Association, November 2011

*Legal Malpractice*, Mercer County Bar Association, November 2011

*False Arrest and Malicious Prosecution*, CNA Insurance Company, October 2011

*2010 Review of the New Jersey Environmental Law Seminar: Issues of Legal Malpractice and Ethics Arising Out of the Handling of Transactions in Which Environmental Issues are Involved*, New Jersey Institute for Continuing Legal Education, March 2010

*Defense Perspective of Civil Practice Under the Rules of Court*, Camden County Bar Association Civil Practice Committee, November 2009

*Legal Malpractice Seminar*, Burlington County Bar Association, November 2009

*Civil Practice*, Camden County Bar Association, February 2009

## PUBLISHED WORKS

"Strategic Defenses to Appellate Malpractice Claims," *PLUS Blog*, April 19, 2024

"Strategy is Key for Opening Statements and Closing Arguments," *New Jersey Lawyer*, June 2021

"The Liability of Trial Counsel for Strategic and Tactical Judgments Made During Trial," *New Jersey Law Journal* Professional Malpractice Supplement (page 6), January 13, 2020

"How to Avoid Liability For Your Clients' Representations," *New Jersey Law Journal*, Professional Malpractice Supplement, January 9, 2019

"The Immunity of Attorneys for the Occasional Bad Result," *New Jersey Law Journal*, Professional Malpractice Supplement, January 15, 2018

"When Attorney Fees Can Be Awarded in Legal Mal Actions Brought by Non-Clients," *New Jersey Law Journal*, January 24, 2017

"Disgruntled Beneficiaries and Claims Against Estate Planning Attorneys," *New Jersey Law Journal*, January 18, 2016

"New Jersey's Litigation Privilege Does Not Bar a Claim By a Client for Legal Malpractice Against Defense Attorneys," *Defense Digest*, Vol. 19, No. 1, March 2013

"The Litigation Privilege In Claims Against Attorneys," *New Jersey Law Journal*, Vol. 203, No. 11, March 14, 2011

"New Jersey Holds Comparative Negligence Defense Unavailable in Broker Malpractice Actions," *Defense Digest*, Volume 7, No. 6, December, 2001

"Hashing Out the Broker -Dealers Duty of Disclosure," *Pennsylvania Law Weekly*, September 27, 2001

"Discharge of At-Will Employees in New Jersey," *Defense Digest*, Volume 7, No. 4, August 2001

"The Architect's Conditional Privilege to Interfere with the Construction Contract of its Principal," *Defense Digest*, Volume 7, No. 4, August 2001

"New Jersey Appellate Division Concludes that the Manifest Trigger Applies for Only First-Party Property Damage Coverage Involved," *Defense Digest*, Volume 6, No. 5, October 2000

"New Jersey Limits Accountants Liability in Securities Fraud Actions," *Defense Digest*, Vol. 6, No. 4, June 2000

"New Jersey Rejects Claims for Bad Faith Settlement of Asbestos-Related Personal Injury Claims," *Defense Digest*, Vol. 6, No. 4, June 2000

"Federal Court, Under Judicial Estoppel Theory, Rejects Plaintiff's Claims For Disability Under the ADA and NJLAD," *Defense Digest*, Vol. 6, No. 2, April 2000

"New Jersey Limits Accountant's Liability in Review Engagements," *Defense Digest*, Volume 6, No. 1, February 2000

"Proving the Empty Chair Defense In New Jersey Product Liability Actions," *Defense Digest*, Vol. 5, No. 2, 1999

"New Jersey Accounting Malpractice Update," *Defense Digest*, Vol. 5, No. 3, 1999

"New Jersey Supreme Court Rejects Learned Intermediary Doctrine," *Defense Digest*, Oct. Vol. 5, No. 5, 1999

## RESULTS

### Claims Dismissed in Complex Legal Malpractice Trial

#### **Lawyers' Professional Liability**

**December 18, 2023**

We won a complex legal malpractice trial in Burlington County, New Jersey. The case arose out of underlying breach of employment cases where the plaintiff claimed his employer shorted him on amounts due for his salary and an electrical property. Based on the net opinions of the plaintiff's expert, the court dismissed the legal malpractice claims during trial, and the jury awarded our client fees and costs, with interest.

### Defense Jury Verdict Secured in Complex Legal Malpractice Matter

#### **Lawyers' Professional Liability**

**November 17, 2023**

We obtained a defense jury verdict in a legal malpractice action arising from two wrongful termination trials. This matter included the two trials, an appeal, in addition to involving aspects of intellectual property law. There were numerous evidence issues as a result of the two underlying trials. However, we were successful on pretrial hearing in limiting plaintiff's proofs and in barring significant damages claims asserted by the plaintiff's expert. The jury rejected these claims and awarded all of our client's fees, with interest and costs.

### Dismissal of ethics grievance against attorney.

#### **Disciplinary Board Representation**

**December 12, 2022**

We obtained a dismissal of an ethics grievance against a matrimonial attorney in northern New Jersey. The ethics grievance alleged that money in the grievant's trust account was improperly handled since the ledger cards were completed incorrectly. Upon interviewing our client, the ethics investigator determined that no ethical violation was present since the money at issue was fully accounted for in the Trust account, despite the allegations by the grievant.

### Defense verdict for New York law firm in legal malpractice jury trial.

#### **Lawyers' Professional Liability**

**December 5, 2022**

In this case the plaintiff, after receiving legal invoices from our client, filed a legal malpractice complaint alleging fraudulent billing. At trial, the legal malpractice claims against our client were dismissed, leaving the fee claim we asserted in the counterclaim to be decided by the jury. The jury rendered a verdict in our favor within 15 minutes for the full amount of the invoices owed to the firm, \$244,759.59.

### Dismissal of multiparty action against church involving pastor's child abuse.

#### **Social Services & Human Services Liability**

**November 1, 2022**

The lawsuit involved claims of child abuse committed by a pastor that occurred during church-based camp activities. We obtained a dismissal of all counts for abuse filed by all plaintiffs against our client, one of the church defendants. Our client did not employ the pastor when the abuse occurred and had no knowledge of the claims asserted.

## SIGNIFICANT TRIALS

Successfully defended an action in the Superior Court of New Jersey, Law Division, Monmouth County, and obtained dismissal of a legal malpractice action involving \$12 million in liquidated damages arising out of two underlying Law Division actions, two bankruptcy matters, a Federal District Court action, an Appeal to the Third Circuit, underlying foreclosure and Note actions, and an appeal to the Appellate Division. Jack represented a well-known bankruptcy practitioner in connection with claims made by the plaintiff borrower against the lender bank, its officers, and counsel.

Obtained a defense verdict in an action recently tried in the Superior Court of New Jersey, Law Division, Monmouth County, in which Jack represented a boutique New York firm in connection with their representation of a money manager in a construction defect case involving millions of dollars in damages. Jack, during trial, was successful in getting the malpractice claims dismissed. Jack then

proceeded to argue the insured's Counterclaim for fees due and owing. The jury found in our favor, and entered a Judgement against the plaintiff on our Counterclaim in the approximate amount of \$250,000.00. Then, the Court awarded contractual interest (which is discretionary), taking the total award in favor of our client against the plaintiff to almost \$500,000.00.

Obtained a defense verdict in a matter tried in the Superior Court of New Jersey, Law Division, Burlington County, involving a New York firm who was sued in connection with the failure to properly prosecute a Title 7 retaliation case. Jack tried the case-within-a-case Title 7 case, and the jury found that there was no causation for the legal malpractice action because the plaintiff's employer rightfully terminated the plaintiff, and that there was no retaliation by the employer.

Obtained a defense verdict in the Superior Court of New Jersey, Law Division, Gloucester County in favor of a land use planning attorney arising out of claims of negligent land use planning and land development, which arose out of the faulty design of a drainage system for a new development.

Successfully defended in the Superior Court of New Jersey, Law Division, Hunterdon County, an architect in connection with claims asserted by homeowners for water infiltration, mold growth, personal injuries, and permanency in a multi-defendant action against builders, developers, architects, and engineers relative to the design of a solar panel system.

Successful at trial in the Superior Court of New Jersey, Law Division, Middlesex County in the defense of manufacturers of keyboards, and in defense of claims for orthopedic injuries against the manufacturers of keyboards. This was the first test case tried in New Jersey. Jack tried this case for weeks, resulting in a defense verdict for the computer keyboard industry.

Successful at trial in the Superior Court of New Jersey, Law Division, Cape May County, in a complex legal malpractice action where the Court entered a direct verdict after a trial lasting months involving claims by a developer against the lending bank and bank counsel for lender liability and fraud.

Successfully obtained a dismissal in a Superior Court of New Jersey, Law Division, Monmouth County, case on behalf of a County Utilities Authority in an action by a developer against Municipalities, the Utilities Authorities, the Freeholders, and the Counties arising out of the developer's claim, in an affordable housing development, that the Municipalities refused to provide consent to permit water service for the property, and failed to facilitate the development of affordable housing.

Successful at trial in the Superior Court of New Jersey, Law Division, Ocean County, in a complex legal malpractice action arising out of a claim that the real estate/business law firm failed to properly document a multi-million dollar transaction, failed to properly ascertain the true owner of the property, and failed to properly investigate the Title to the property and undertake a Title search. Jack successfully argued at trial that the real estate attorney had a limited scope of engagement, and was only required to draft transaction documents based upon information provided by the clients.

*Cureton Clark, P.C. v. William H. Lewis*, Individually and as Administrator of the Estate of Irma B. Lewis, Superior Court of New Jersey, Burlington County, Chancery Division – Probate Part, Docket No: 2008-0644. In this case, Jack defended the Counterclaim filed by the Administrator of an Estate against the attorneys who handled the probate litigation. The attorneys were retained to defend the probate case which involved the challenge of gifts. Following the resolution of that litigation, the attorneys filed an action against the Estate for non-payment of fees. The Estate filed a Counterclaim and a Third Party Complaint against the attorneys, alleging legal malpractice, fraud, and misrepresentation in connection with the attorney's handling of the underlying probate case and their billings. The Complaint and Counterclaim were tried in the Superior Court of New Jersey, Burlington County, Chancery Division – Probate Part. Jack defended the Counterclaim and Third Party Complaint. After a trial spanning several weeks, the Court issued its opinion on October 18, 2013 dismissing all claims in the Counterclaim and Third Party Complaint, and also awarding fees to our clients. The Court found that the services performed by our clients were not performed in bad faith or for the purpose to gain fees in the underlying case. The Court found that there was no dishonesty, fraud or deceit on the part of the attorneys in their billings. The Court did not find any deceit, fraud, or dishonesty by the attorneys. Also, the Court agreed with our position, pursuant to *Camden Iron v. Klehr*, 384 N.J. Super. 172 (App. Div. 2006), that there is no independent cause of action in New Jersey based upon the Rules of Professional Conduct. The Court also found that there was no showing by clear and convincing evidence of any material misrepresentations by the attorneys.

## **APPEALS**

*Johnson v. McClellan*, 468 N.J. Super. 562 (App. Div.), cert. denied, 249 N.J. 76 (2021). Jack was retained by a prominent law school to represent on appeal one of its professors who had been

charged with the unauthorized practice of law, which resulted in the Trial Court entering a Judgment against the professor for hundreds of thousands of dollars, including treble damages and attorneys' fees because of his acceptance of a referral fee in a malpractice case. The plaintiff argued, and the trial Judge found, that the professor violated New Jersey's Criminal Statute for the unauthorized practice of law. Jack was retained to brief and argue the appeal. The Appellate Court reversed the Trial Court, reversed the finding that the professor engaged in the unauthorized practice of law, and reversed the Trial Court's Judgment which had been entered against the professor for treble damages and fees. The Supreme Court denied plaintiff's Petition for Certification. This decision could spare others from criminal prosecution under New Jersey's Criminal Statute related to the unauthorized practice of law.

*Schwartz v. Cooper Levenson*, 251 N.J. 556 (2022). Jack argued before the New Jersey Supreme Court in this precedent-setting case in connection with whether the New Business Rule constitutes a per se bar on all lost profits claimed by new businesses. This opinion applies in any type of case in which a new business is making a claim for lost profits. The Supreme Court agreed with Jack's argument that if the Court intended to amend the rule, then they should follow the New York and Illinois rule, which provides that such claims must be proven by reasonable certainty. Jack convinced the Supreme Court to apply New York and Illinois law to find that, with regard to a new business, the reasonable certainty standard applies to claims for lost profits. This decision will apply to all cases in which a new business is making a claim for lost profits. The Supreme Court ruled, pursuant to Jack's argument, that Trial Courts must now "carefully scrutinize" a new business' lost profits claim, and should bar that claim unless it can be proven with reasonable certainty.

*Mystic Isle Development Corp. v. Perskie & Nehmad*, 142 N.J. 310 (1995). This case is a precedent-setting case in New Jersey jurisprudence. Jack successfully argued before the New Jersey Supreme Court that the Entire Controversy Doctrine applied to attorneys and law firms. This case is regularly cited in opinions by the Appellate Division and the New Jersey Supreme Court regarding the application of the Entire Controversy Doctrine.

*Lynch v. NJ Education Association*, 161 N.J. 152 (1999). Jack successfully argued in the New Jersey Supreme Court on behalf of an editor, in a public figure defamation case, that the plaintiff, a State Senator, was a public official and public figure. The plaintiff argued that the campaign literature was defamatory, including an article entitled "Boss of Bosses," which was published in a local newspaper. The Senator alleged that the advertisement described him not merely as associated with organized crime, but as its top official. The Supreme Court held that the statement in the newspaper was not defamatory. The Supreme Court also held that the facts in the newspaper advertisement that the Senator had been a partner and an officer in three mob-owned companies, and had mobsters as business partners and clients, did not support the assertion that the Senator was the boss of bosses of the mafia. The Court found that readers of the newspaper articles would understand the statements to be hyperbole and name-calling, emanating from a rough-and-tumble political campaign. The Court found that the Senator's proofs did not demonstrate that a jury could find by clear and convincing evidence that the editor published the statements with actual malice.

*2820 Mt. Ephraim Ave. v. Brown*, A-2694-19/A-2699-19 (App. Div. July 13, 2021). Jack successfully argued pre-trial Motions for Summary Judgment in the Superior Court of New Jersey, Law Division, Camden County, in a \$10,000,000 tortious interference and defamation case filed on behalf of investors against an attorney and bank counsel arising out of a multi-million dollar loan for a commercial land transaction. The allegations against the attorney included claims of slander for allegedly calling the plaintiff a "wannabe gangster" in front of a potential investor, as well as a claim for tortious interference with prospective economic advantage for a contract that plaintiff entered into with the investor. The Trial Court granted the Motions, and found that calling plaintiff a "wannabe gangster" was name-calling, and not actual defamation. On appeal, the Appellate Division affirmed the Trial Court's holding, and held that the statement "wannabe gangster" does not constitute slander per se because it did not impute a criminal offense, and did not necessarily assign the plaintiff a characteristic that was incompatible with his business or trade as an attorney and accountant. The Appellate Division agreed with the Trial Court that the statement fell within the litigation privilege. The Appellate Division affirmed the Trial Court's Order which granted the attorneys' Motion for Summary Judgment because the defamation claim was barred by the litigation privilege.

*Camden Iron & Metal, Inc. v. Klehr Harrison*, 384 N.J. Super. 172 (App. Div., certif. denied), 187 N.J. 83 (2006). This is a seminal case in New Jersey in which Jack successfully appealed the decision of the trial court. The Appellate Division ruled that New Jersey courts do not have the authority to regulate attorney conduct in Pennsylvania simply because the attorneys are admitted in New Jersey and have offices in New Jersey. Also, the court ruled that forum non conveniens Motions for Disqualification must be filed in the jurisdiction where the underlying litigation is pending. The court also ruled that the Rules for Professional Conduct do not provide a basis for a legal malpractice action. The New Jersey Supreme Court denied plaintiff's petition for certification.

*Morris Properties, Inc. v. Jonathan Wheeler, et al.*, A-2653-20 (App. Div. February 28, 2023). Jack successfully argued on appeal, in a legal malpractice action arising out of an underlying complex insurance coverage litigation in the United States District Court, that in legal malpractice actions, proximate cause requires an initial determination of cause in fact, which requires proof that the result complained of probably would not have occurred but for the negligent conduct of the defendant.

Also, Jack made the point that a plaintiff must then present evidence to support a finding that the defendant's negligent conduct was a substantial factor in bringing about plaintiff's injury, even though there may be other concurrent causes of the harm. In addition, Jack successfully argued that a plaintiff must show what injuries were suffered as a proximate consequence of the attorney's breach of duty, ordinarily measured by the amount that a client would have received but for the attorney's negligence. Also, the client must have sustained actual damage that is real, not merely speculative. It is the plaintiff's burden to show what injuries were suffered as a proximate consequence of the attorney's breach of duty. In *Morris Properties*, at the trial level, Jack argued that plaintiffs did not present expert testimony to demonstrate that the plaintiff would have prevailed in its coverage case against the carrier, or would have received a greater settlement had the attorneys met the standard of care. The Appellate Division agreed that plaintiffs failed to establish proximate cause as a matter of law, and that expert testimony was necessary to prove proximate causation and damages. Plaintiffs did submit an expert report.

*Borough Construction, Inc. v. Lenape Reg. High School Dist. Bd. of Ed. v. DiGeronimo/Mikula Assoc.*, 445 Fed. Appx. 498 (3d Cir. 2011). Jack Slimm and Dante Rohr had the privilege of representing the nationally recognized expert in the design of running tracks in an action in the United States District Court for the District of New Jersey. Our client developed the standards used in the industry for running tracks, including those at the Olympic level where he has designed running tracks. In the litigation, the school district brought suit against numerous contractors, designers, etc. for defects in the high school. The co-defendants settled at mediation leaving in the case the general contractor for his retainage, and our client, who designed the running track. The school district alleged, through their expert, that the running track was not properly certified, was not properly built, and was not certifiable. Therefore, the school district had a new track installed at considerable expense. This track was a "double bend" or "broken-back" configuration. (You might recall seeing that design when you watched the Olympics on television). In any event, the case involved some courtroom drama because the school district took the risk of re-calling their expert engineer on rebuttal. When he was re-called, he changed his opinion. When asked by the Federal judge why he changed his testimony, the plaintiff's expert testified, "I was confused by Mr. Slimm's cross-examination." That cross-examination came through the geometric calculations which were done at counsel table by New Jersey's resident electrical engineer, Dante Rohr, who gave Jack the numbers on the fly so that Jack could cross-examine plaintiff's expert. It worked, and the expert was discredited. The court, after findings of fact and conclusions of law, rejected the opinions of plaintiff's expert, and entered Judgment in favor of our client dismissing all claims.

*Shapiro v. Rinaldi*, A-1753-14T4 (App. Div. March 18, 2016). Jack successfully argued at the Trial Court and on appeal that the law firm had no liability for the actions of the non-lawyer assistant to advise clients with respect to their legal rights, including advising clients of deadlines to file a claim. Jack was successful in arguing that the plaintiff's expert's reliance on the Rules of Professional Conduct was not sufficient to make out a cause of action for legal malpractice. Also, this opinion is significant because, in the same, the Appellate Division held that, with solo practitioners, the attorney took responsibility to ensure that his secretary/paralegal complied with his professional obligations. In addition, the Appellate Division rejected the plaintiff's claim that the attorney should be held vicariously liable for his secretary's oversight. Significantly, the Court held that the attorney's secretary was not an attorney, and owed no duty to the plaintiff.

*Broadway Family Practice v. Willitts* (Successful defense of appeal in App. Div. under Docket No: A-3700-04T1) (App. Div. 2005). In this Appellate Decision argued by Jack, the court held that the Entire Controversy Doctrine does apply to bar legal malpractice if the attorney commits malpractice in the course of handling a case and the client becomes aware of the facts supporting the potential claim while the case is still pending. The malpractice action against the attorney must be joined with the underlying lawsuit, or it will be barred by the Entire Controversy Doctrine. The Entire Controversy Doctrine applied in that case because in April of 1997, when the underlying Chancery Division action was pending, the law was such in New Jersey that the attorney could have and should have been joined as a defendant pursuant to *Mystic Isle Development Corp. v. Perskie & Nehmad*, 142 N.J. 310 (1995), a case which Jack successfully argued in the New Jersey Supreme Court.

*Shamrock Lacrosse, Inc. v. Klehr, Harrison, Harvey, Branzburg & Ellers, LLP*, 416 N.J. Super. 1 (App. Div. 2010). Jack successfully argued in the Appellate Division in a complex legal malpractice action arising out of the allegedly negligent omissions made by a patent attorney who had worked, in succession, at two law firms. The Complaint alleged that the attorney failed to assure that certain renewal fees necessary to maintain plaintiff's patent were paid to the United States Patent & Trademark Office (the "USPTO"). Consequently, the patent expired, and plaintiff was unable to get



it reinstated. As a result, plaintiff claimed that it suffered economic harm. In this precedent-setting case, the Appellate Division held that under New Jersey's Affidavit of Merit Statute, N.J.S.A. 2A:53A-26 to -29, law firms are "licensed persons" for which an Affidavit of Merit is required under the Statute, N.J.S.A. 2A:53A-27. The Court held that it would be anomalous to allow a plaintiff to evade the Affidavit of Merit requirement by suing only the professional entities (here the law firms), and not the principals, partners, shareholders, and employees of those firms who actually provided the professional services in question. In addition, the Court rejected the plaintiff's argument that the Complaint fell, at least in part, outside the scope of N.J.S.A. 2A:53A-27 because it substantively asserted various other causes of action in additional legal malpractice. The Court found that the other claims were "simply labels for a cause of action, the essence of which is one sounding in legal malpractice. Accordingly, the Affidavit of Merit obligation applied to the entire Complaint.

*Soult v. Mattioni, Ltd.*, A-A-2619-07T2 (App. Div. February 20, 2009), Jack successfully argued at the trial level, and then on appeal, that attorneys handling toxic tort cases do not have an obligation to shop for a new expert when they receive an unfavorable opinion. In this key case, the Appellate Division held that there is nothing to support a plaintiff's claim and a plaintiff's expert opinion that it is the standard to continue to shop for a favorable expert once unfavorable reports are rendered. The Court made the point that without liability, damages are pointless. This is the only Appellate Division case on this issue. Attorneys are not required to shop around for a better or different expert in order to prove liability. Once the attorney receives an opinion from a competent expert (whether on the defense side of the plaintiff side), there is no continued duty to shop for a favorable expert in an attempt to get a better or different opinion.

*Merrick Wilson; Presidential Hill, LLC; and Pennington Hills, LLC v. Robert A. Gladstone, Esq. and Charles J. Casale, Jr., Esq.*, A-1774-11T1 (App. Div. May 17, 2013). In this case, Jack successfully argued at trial, and on appeal, in this multi-million dollar land use planning matter, where plaintiffs brought a legal malpractice claim against the defendant zoning counsel, who was retained to challenge Hopewell Township's Zoning Ordinance. In the case, the plaintiff/developer argued that the attorney failed to Subpoena NJDEP personnel to testify at trial that the Town used improper methodology to support its conclusions as to the availability of water for residential development on the property. The Appellate Division held that it was speculative for plaintiffs to argue that the DEP would have provided a letter opinion or testified at the trial. It was purely speculative as to what the DEP engineer would have testified to at trial, and whether it would have been favorable to the plaintiffs' position.

*Twp. of Gloucester v. Maryland Casualty*, 702 F. Supp. 1126 (D. N.J. 1987). Jack was lead counsel in this environmental coverage case. This was the first case in New Jersey to establish the doctrine of known risk in Law Division cases. The case involved \$100 million in damages to the township property.

*Monsanto v. Lacy's Express*, 5 F.3d 1490 (3d Cir. 1993). Jack argued as lead counsel and was successful in obtaining a dismissal based upon New Jersey's entire controversy doctrine.

*Trivedi v. Martin-Simmonds*, A-3166-05T5 (App. Div., May 14, 2007). The Appellate Division affirmed an order for Summary Judgment obtained by Jack in a legal malpractice action against Allstate's defense counsel, where there was an underlying excess verdict. Jack successfully argued that the opinions of plaintiffs' experts were net opinions. The Appellate Division found that expert testimony is necessary in professional malpractice cases in order to establish both the applicable standard of care and whether damages were proximately caused by the alleged negligence of the attorney. This case is significant because in it the Appellate Division affirmed the order for Summary Judgment granted by the trial court in favor of the defense attorneys appointed by All State to defend their insured in the underlying litigation. Unfortunately, there was an excess verdict, which resulted in a legal malpractice action. Nevertheless, Jack was successful and the Appellate Division ruled that plaintiffs' experts referenced no judicial or statutory authority establishing the existence of a standard of care for defense attorneys when the client's monetary exposure over the policy limits places the client in jeopardy of substantial excess verdict.

*Torban v. Obermayer Rebmann Maxwell & Hippel, LLP*, A-3660-05T3 (App. Div., June 27, 2007). Jack obtained a dismissal at trial, which was affirmed on appeal, on behalf of the law firm in connection with duty of attorneys regarding post-mortem tax planning. The case was decided pursuant to the Estate of Fitzgerald v. Linnus, A-6626-98T3 (App. Div. Jan. 22, 2001). This matter was affirmed on appeal. Jack was successful in arguing that the attorneys had no duty to the testator's son for post-mortem tax planning. The Court found that the estate plan drafted by the attorneys would have been affected had the testators followed the attorney's instructions regarding retitling certain assets. This case holds that attorneys retained to counsel an executor during administration of an estate are under no duty to advise regarding post-mortem estate planning options.

*Liberty Travel v. Friedman & Siegelbaum*, A-4136-07T1 (App. Div. July 14, 2010). In Liberty Travel,

the legal malpractice action arose from a class action suit filed in Pennsylvania, arising out of claims for retaliatory termination, and violation of the Pennsylvania Minimum Wage Act. In the malpractice action, Liberty claimed that the attorneys failed to obtain an extension of time to Answer the employee's Complaint, and that a default was entered and not vacated, resulting in a Judgment of \$1,406,117.58 against Liberty. The Court held that under the case-within-a-case Doctrine, Liberty was legally liable in the class action suit. Although there were deviations from the standard of care, nevertheless there was no causal connection under *Froom v. Perel*, 377 N.J. Super. 298 (App. Div.), certif. denied, 185 N.J. 267 (2005).

*Chulsky v. Hudson Law Offices*, 2011 U.S. Dist. LEXIS 29781 (D.N.J. March 22, 2011). In this case of first impression, the Court granted the Motion to Dismiss with respect to the New Jersey Consumer Fraud Act and the Truth In Consumer Contract Warranty & Notice Act claims brought by a debtor against a collection attorney arising out of the attorney's purchase of and attempts to collect a consumer debt. The Court held that the New Jersey Consumer Fraud Act does not reach the debt collection activities of a debt buyer of defaulted credit card debt. It found that a debt buyer, while subject to regulation under the FDCPA and, perhaps, New Jersey's Collection Act or Criminal Statutes, is not a "seller" whose subsequent performance falls within the ambit of the NJCFA.

*Morse v. Kaplan*, 2011 U.S. Dist. LEXIS 61201 (D.N.J. June 8, 2011). In this Fair Debt Collection Practices Act claim against a collection attorney, the Court granted Summary Judgment when suit was brought stemming from two debt collection letters written by the attorney to the debtor.

*ACBB-BITS v. Clancey v. Lombardo*, A-2734-09T1 (App. Div. November 21, 2011). Jack successfully defended an appeal in a complex economic dispute between a property owner, a commercial landlord, a real estate broker, and the attorney who represented the plaintiff-owner in Lease negotiations for an office building in New Jersey. In the Law Division, Jack was successful in obtaining an Order for Summary Judgment. After the other defendants obtained dismissals, the matter was appealed. The Appellate Division agreed with Jack's argument that the Third Party Complaint filed by the real estate broker against the attorney did not state a claim because the broker and the attorney could never be deemed joint tortfeasors under New Jersey's Joint Tortfeasors Contribution Law. Their alleged torts were separate in nature and time. The broker could not claim that he relied upon any representations of the attorney for the owner, nor that his firm represented them. New Jersey law does not provide a cause of action under these circumstances which the broker could pursue. Therefore, although the case was remanded in connection with the owner's claims against the broker for tort, breach of contract, and consumer fraud, the Appellate Division affirmed the Judgment.