

## White and Williams Obtains Emergency Stay of Major Jury Trial from Supreme Court of Pennsylvania

5.17.16

On May 5, 2016, Robert Devine and Andrew Ralston successfully obtained, from the Supreme Court of Pennsylvania, emergency relief staying a major jury trial set to begin the next day in the Philadelphia County Court of Common Pleas.

The trial was to involve the claims of a driver of a lawn care truck who crashed his work vehicle, and as a result suffered quadriplegia. The plaintiff sued several defendants, including those represented by White and Williams. White and Williams' clients asserted that they had no responsibility whatsoever for the plaintiff's injuries.

Another defendant who the plaintiff sued claimed to be plaintiff's employer and defended by contending that it was statutorily immune from suit under the Worker's Compensation Act. White and Williams' clients asserted cross-claims against this entity, alleging that it, if anyone, was solely responsible for plaintiff's injuries. The Court of Common Pleas of Philadelphia County denied this defendant's attempts to be dismissed at the preliminary objection and summary judgment stages of the litigation, concluding that whether or not the entity was the employer of plaintiff, and thus immune, involved "substantial" material questions of fact for the jury to decide. Following the denial of its motion for summary judgment, which White and Williams' clients opposed, the alleged employer co-defendant filed an appeal to the Superior Court of Pennsylvania under Pa.R.A.P. 313. Plaintiff sought to quash that appeal, but that motion was denied.

The trial court scheduled trial to begin on May 6, 2016, during the pendency of the co-defendant's appeal. White and Williams argued to the trial court that, because of the cross-claims of its clients against the co-defendant who had perfected an appeal, the trial must be stayed, in light of 42 Pa.C.S. §7102(a.1) and (a.2), the Fair Share Act, which requires apportionment of fault between all liable or settled parties, during the pendency of that appeal, pursuant to Pennsylvania Rule of Civil Procedure 1701(a). The trial court denied that request and instead ordered that all claims – both those brought by plaintiff against the appealing co-defendant, and White and Williams' client's cross-claims – would be severed from the remainder of the claims, and the trial would proceed as scheduled against all but the appealing co-defendants.

White and Williams filed in the Superior Court of Pennsylvania an appeal of that decision, and an emergency application for relief in the nature of peremptory mandamus seeking a stay of the trial, again arguing that Pa.R.C.P. 1701(a) dictated that the trial must be stayed. By means of a *per curiam* order, the Superior Court quashed the appeal because it asserted that orders severing parties and denying a stay were not final, appealable orders.

With only days remaining until the trial was to begin, White and Williams filed in the Supreme Court of Pennsylvania an emergency application for relief in the nature of peremptory mandamus seeking a stay of the trial. White and Williams argued that the Fair Share Act affirmatively requires that all co-defendants be tried at one time, to the same jury, because the Act requires apportionment of several, and not joint, liability in most cases. For purposes of determining how the Act would apply in this case prior to the trial occurring, it had to be assumed that the jury would apportion several liability because the Act does not permit later contribution suits from defendants who are apportioned several, and not joint, liability. In light of this application of the Fair Share Act, White and Williams argued that the Supreme Court must stay the trial.

On May 5, 2016, one day before trial was to begin, the Supreme Court of Pennsylvania granted White and Williams' client's emergency application, and stayed all proceedings in the Court of Common Pleas of Philadelphia County. The matter is now under appellate review.