

RECENT AND UPCOMING EVENTS FOR THE YOUNG LAWYERS DIVISION

By Gaurav Gupte

The Allegheny County Bar Association (ACBA) Young Lawyers Division (YLD) is thrilled to reflect on some recent successes and spotlight exciting upcoming events designed to foster community, professional growth, and service. Here's a look back at our recent gatherings and what's on the horizon:

PAST EVENTS

Esquire Open

The YLD kicked off the season with the Esquire Open, a lively evening filled with pickleball, red wine, and spirited camaraderie at the Rivers Club. This gathering was not only a chance to unwind but also an opportunity for young lawyers to display their competitive spirit and forge lasting connections in a relaxed and enjoyable setting.

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TOP: The winners of the YLD Esquire Open Pickleball Tournament pause for a photo at the Rivers Club. From left to right: Third Place winners Neil Friedrich and Joseph Peluso, First Place winners ShiouWeei Ong and Caroline Bailey, and Second Place winners Evita Barjolo and Annette Dobanics.



LEFT: YLD Chair Danielle Parks, YLD Immediate Past-Chair Tara Sease and YLD Chair-Elect Rebeca Himena Miller.

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PENNSYLVANIA SUPREME COURT SIDESTEPS PITTSBURGH RENTAL ORDINANCE

By Payton Gutierrez

In 2015, the City of Pittsburgh passed a “Rental of Residential Housing Ordinance.”¹ By doing so, the City attempted to impose various obligations on landlords.

The 2015 Ordinance:

- mandated registration of residential rental units in Pittsburgh;
- provided that no rental unit could be leased, rented, or occupied without a permit from the City;
- established an annual fee for rental permits;
- directed the City’s Department of Permits, Licenses, and Inspections (“DLPI”) to periodically inspect each registered rental unit;
- directed DLPI to create a public database with information related to registered properties and their inspections; and
- directed DLPI to create a “manual of good landlord practices,” a “landlord academy,” and to make non-mandatory resources available for landlords.

Shortly thereafter, industry groups such as the Landlord Service Bureau, the Apartment Association of Metropolitan Pittsburgh, and the Realtors Association of Metropolitan Pittsburgh challenged the ordinance in the Allegheny Court of Common Pleas. The challengers specifically argued, inter alia, that the 2015 Ordinance violated the “business exclusion” to municipal authority granted by the Home Rule Charter and Optional Plans Law (“Home Rule Law”).² The business exclusion prohibits a home rule municipality from “determin[ing] duties, responsibilities or requirements placed upon businesses . . . except as expressly provided by statute[.]”³

Naturally, the City argued that while the Ordinance placed obligations on landlords, it was empowered to do so pursuant to its inherent ability to protect the health, safety, and general welfare of its residents (commonly referred to as a municipalities “police

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THE GOLDEN GLOBE STATUETTE 2018: A REMINDER THAT ORIGINALITY IS STILL A REQUIREMENT IN COPYRIGHT

By Jaden Rankin-Wahlers

With the 82nd Annual Golden Globes airing January 5, 2025, the iconic statuette serves as a reminder that while the threshold for originality in copyright is low, it remains a requirement.

The Copyright Act grants artists the exclusive rights to their works, which in turn creates a financial incentive to create works and enrich our society. But the Act only protects original works, thereby preventing an artist from monopolizing what rightfully belongs to the public.

In January 2019, the Hollywood Foreign Press Association (“HFPA”) filed an application to register a copyright for the Golden Globe Statuette 2018 (the “Statuette”). After an initial rejection which found that the Statute lacked the authorship to support a copyright claim, the HFPA requested that the U.S. Copyright Office (the “Office”) reconsider the refusal. Upon the reconsideration, the Office found that the Statuette was an upgraded version of the prior Golden Globe Statuette “and that the differences between the two sculptures consist of only basic geometric shapes, common or familiar symbols or designs, and color variations, none of which are copyrightable.”¹ Further, “the elements . . . are combined in a manner that one would expect to see in a slightly updated version of the original statue, and thus the arrangement is more mechanical and inevitable than creative and original.”

Once again, the HFPA asked for a reconsideration and “highlighted the



Previous Golden Globe Statuette

public awareness of the sculpture, its use in the Golden Globe Awards program, and that copies are being manufactured and sold without HFPA’s authorization.”

Again, the Office refused to register the Statuette for copyright protection.

A work may be registered if it is both an (1) original work of authorship and (2) in a fixed medium. Original means that the work is an independent creation and is creative. Only a “de minimis quantum of creativity” is necessary. There can be no copyright in a work in which “the creative spark is utterly lacking or so trivial as to be virtually nonexistent.” See *Feist Publ’ns, Inc., v. Rural Tel. Serv. Co.*, 499 U.S. 340, 345 (1991) (holding that a telephone directory which is alphabetically organized is not creative enough to warrant originality, but if the telephone book



2018 Golden Globe Statuette

was organized in another method it could potentially be creative enough to be considered original).

Since the Statuette is a derivative version of the previous statuette, the issue is whether the changes were sufficiently creative to warrant copyright protection.² There were only four changes made to the statute between the previous version and the Statuette:

- (1) the new Statuette is matte whereas the previous is shiny;
- (2) the new Statuette’s cone-shaped base is hollow, with “HFPA” more apparent;
- (3) the new base is gold and round with the previous being stone and rectangular; and
- (4) and the words “Hollywood Foreign Press Association” are now etched on the base.

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GREEN LIGHT, GRAY AREAS: NAVIGATING MEDICAL MARIJUANA IN PENNSYLVANIA'S WORKERS' COMPENSATION

By Katherine Ryalls

Almost ten years have passed since the Commonwealth Court of Pennsylvania approved the Medical Marijuana Act, igniting ongoing discussions about the role of medical marijuana across the United States. With an increasing number of states legalizing its use, Pennsylvania courts recently have provided greater clarity on its implications for workers' compensation, particularly concerning work-related injuries and insurers' obligations to pay for reasonable, necessary, and causally related medical treatment. However, that clarity has provided more questions than answers.

The Medical Marijuana Act, enacted in May 2016, opened the door for patients to access medical marijuana for pain and anxiety linked to qualifying conditions like ALS, Parkinson's disease, and cancer. Since then, the MMA has evolved significantly; notably, in 2021, the list of qualifying conditions expanded from 17 to 24. As a result, the number of eligible patients has surged, with over 441,000 residents certified by March 2023 and supported by more than 1,900 medical professionals authorized to prescribe treatment.

Despite its growing accessibility as medical treatment, medical marijuana is not covered by health insurance. Patients must pay out-of-pocket, as insurance companies are not authorized to pay for medical marijuana. This limitation stems from the federal Controlled Substances Act, which classifies marijuana as a Schedule I substance. As a Schedule I substance, marijuana is legally prohibited for use



in medical treatment at the federal level. The Medical Marijuana Act agrees with the Controlled Substance Act and states in Section 2102 that “[n]othing in this act shall be construed to require an insurer or a health plan, whether paid for by Commonwealth funds or private funds, to provide coverage for medical marijuana.”

Yet, recent Pennsylvania Commonwealth Court rulings have shifted the landscape in regards to medical marijuana and an insurers' obligation to pay. Despite the Medical Marijuana Act and the Controlled Substance Act explicitly forbidding the payment of medical marijuana through insurers, the Commonwealth Court has imposed obligations on insurers to pay for medical marijuana expenses related to injured workers.

To understand the context of medical marijuana in Pennsylvania Workers' compensation, it is important to turn to the Workers' Compensation Act. The Workers' Compensation Act provides that in the event of a work-related illness or injury, if covered under the Act, an injured worker is entitled to the payment of related reasonable, necessary, and casually related medical services rendered by a physician or other health care provider. The Workers' Compensation Act also provides that medicine and supplies are also covered, as long as they are reasonable, necessary, and casually related to the work injury. If an injured worker is denied their benefits, they may seek

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The Office held that these new features are minor and minor variations do not satisfy creativity. Changing the color from shiny to matte is not creative. The new cylindrical base is a common shape for standard statute bases. The addition of the words and lettering at the base of the Work is also only a minor variation of a common trophy design. Taken as a whole, the new authorship simply does not distinguish itself from the Prior Statuette. The new contributions are too few and minor to make it distinguishable in a creative way. The changes that were made are the type to be expected in that of a trophy.

The Office referenced a Ninth Circuit case in which a glass sculpture who specialized in jellyfish statutes was denied protection.³ The glass sculptor asserted that creativity was found in using clear glass, an oblong shroud, bright colors, and a vertical orientation. However, the Ninth Circuit held that “[t]hese elements are so commonplace in glass-in-glass sculpture and so typical of jellyfish physiology that to recognize copyright protection in their combination effectively would give Plaintiff a monopoly on lifelike glass-in-glass sculptures of single jellyfish with vertical tentacles.”

Similarly, in the instant matter, the changes were common updates made to trophies and were not creative.

In an attempt to defend its filing, the HFPA focused heavily on the aesthetic value and merit of the Statuette, claiming it created a modern version of the award with a “classic and iconic look.” However, the Office does not consider attractiveness of a design, the intentions of the author, the

design’s visual effect or its symbolism, the time and effort it took to create, or the design’s commercial success in the marketplace in determining whether a design is copyrightable.⁴

The Supreme Court has made it clear that “[i]t would be dangerous undertaking for persons trained only in the law to constitute themselves final judges of the worth of pictorial illustrations, outside the narrowest and most obvious limits. At the one extreme some works of genius would be sure to miss appreciation.”⁵ Therefore, no matter how aesthetically pleasing a work may be, that aspect does not weigh in favor of copyrightability.

This is also not the first time an award show has been denied copyright protection. The Academy logo was a derivative work of the Oscar statuette and also did not possess the requisite creativity.

Have no fear, despite the Golden Globe Statuette 2018 being denied copyright protection, the original Golden Globe Statuette does enjoy copyright protection. Protection of the underlying work should suffice to protect the HFPA from any copycats and bad faith actors. Instead let this

serve as a reminder as you watch the Golden Globes, while the bar is low, originality is required to obtain copyright protection. ■

¹*Second Request for Reconsideration for Refusal to Register Golden Globe Statuette 2018* (Correspondence ID: 1-3ZD3A0A; SR # 1-7297718861), Copyright Review Board (July 23, 2021).

²*The amount of creativity required for extending copyright to a derivative work is the same for any other work.*

³*Satava v. Lowry*, 323 F.3d 805, 811 (9th Cir. 2003).

⁴*Bleistein v. Donaldson Lithographing Co.*, 188 U.S. 239 (1903).

⁵*Bleistein v. Donaldson Lithographing Co.*, 188 U.S. 239 (1903).



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Submit an article for *Point of Law* The YLD's ABA award-winning newsletter

YLD members are encouraged to write about the practice of law or any substantive legal issue of interest. Additionally, writers are encouraged to write responses to any article appearing in this issue. Featured authors will have their article – up to 1,000 words long – published along with a brief bio. Articles and inquiries may be submitted to YLDCommunications@gmail.com.

RECENT AND UPCOMING EVENTS FOR THE YOUNG LAWYERS DIVISION

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Boo'ery Tour

Continuing the Halloween festivities, the YLD hosted the Boo'ery Tour, an adventurous outing that took members through the vibrant breweries of the North Side. Starting at Voodoo Brewing and concluding at Bar Louie, participants enjoyed a delightful blend of craft brews and Halloween cheer, along with a competitive costume contest.

"Scary Legal Topics" CLE

In the spirit of Halloween, this thought-provoking program tackled some truly "scary" legal scenarios. Esteemed panelists explored critical updates, including Kayden's Law affecting child custody in Pennsylvania, and the concerning rise in eviction rates statewide. Attendees engaged with pressing issues in healthcare and criminal appeals, gaining valuable insights into navigating these complex legal challenges.

Speakers included:

- **Adam DiBuo**, Neighborhood Legal Services
- **Matthew J. DeMaio**, Gordon Rees Scully Mansukhani LLP
- **Samantha Dorn**, Allegheny County Court of Common Pleas
- **Harrison Graydon**, Woods Law Offices PLLC

Moderator:

- **Adam J. Garret**, Pietragallo Gordon Alfano Bosick & Raspanti LLP



LEFT: *Katie Ryalls and Mike Conway took first place in the costume contest as Barbie and Ken during the YLD Boo-ery Tour.*



RIGHT: *Corey Kirkwood took second place in the costume contest as the Devil's Advocate.*

FUTURE EVENTS

Passing the Bar Bash

DATE:
November 21, 5 PM - 7 PM

LOCATION:
The Foundry | Table and Tap, 381 N. Shore Dr., Pittsburgh, PA 15212

DETAILS:
Join us for a jubilant celebration at the Passing the Bar Bash, honoring the remarkable achievements of our newest attorneys who passed the bar exam in 2024. This festive gathering is the perfect opportunity to welcome fresh talent into our profession and to celebrate their hard-earned success!

ACBA Holiday Party

DATE:
December 5, 5 PM - 7 PM

LOCATION:
Talia, 611 William Penn Place, Pittsburgh, PA 15219

DETAILS:
Experience the magic of the season at the ACBA Holiday Party, one of the most anticipated nights of the year for the YLD. Delight in exquisite food, festive beverages, and an atmosphere of celebration and networking with fellow members as we ring in the holiday spirit together!

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power.”) Indeed, the Commonwealth Court has on several occasions upheld local regulation of the rental market as a valid exercise of police power.⁴ Based on that precedent, the trial court granted partial judgement on the pleadings in favor of the City.⁵

The industry groups appealed and the Commonwealth Court reversed the trial court’s ruling. The Commonwealth Court found that the Ordinance at issue was “more extensive in scope” than the challenged ordinances in Berwick, Simpson, and McSwain and, according to the Commonwealth Court, “even if the police power authorizes the Rental Ordinance, that power, in turn, is limited by [the business exclusion].”⁶ The Commonwealth Court also shot down the City’s argument that Section 101 of the City’s own Home Rule Charter

provided authority because City Charter only grants it the power to “perform and function and exercise any power not denied by . . . the laws of Pennsylvania[.]”⁷

The Commonwealth Court clarified that the Ordinance’s registration requirement was not “the problem.” It instead took issue with inspection without permission, the landlord’s obligation to hire a responsible local agent, to follow best practices, attend training, and to have the unit’s registration and inspection information posted to a public database.

The City then appealed to the Pennsylvania Supreme Court. However, on September 26, 2023 and during the pendency of the appeal, the City passed a new ordinance,⁸ which repealed the 2015 Ordinance. The 2023 ordinance is effectively a diminished version of

the prior ordinance insofar as it dispensed with most of the affirmative obligations that the Commonwealth Court took issue with. For this reason, the majority found the issue moot and dismissed the appeal.⁹ Justice Wecht, joined by Justice Donohue however, authored a strong and well-reasoned dissent.

Justice Wecht argued that the Court should have issued a ruling pursuant to the public importance exception to the mootness doctrine. He criticized the majority for essentially holding the City’s decision to hedge against the prospect of the City’s rental market going completely unregulated by passing a new and more limited Ordinance against it. Further, he noted that the “Commonwealth Court’s

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YLD Holiday Gift Drive



DATE:

December 7, 8 AM - 2 PM

LOCATION:

Koppers Building, 436 Seventh Ave., Pittsburgh, PA 15219

DETAILS:

The YLD is dedicated to spreading joy this holiday season through our annual Children’s Gift Drive, a heartwarming initiative that aims to provide personalized holiday gifts to nearly 1,000 underprivileged children in local shelters and programs.

HOW TO PARTICIPATE:

Sponsor a Child: Bring holiday wishes to life by sponsoring a child through DreamList, with gifts ranging from \$60 to \$100. To sponsor a child or children, email the ACBA YLD Gift Drive Committee at acbaldtoydrive@gmail.com.

Stocking Stuffers: Join us on December 7 from 8 AM to 2 PM at the Koppers Building Conference Center to help stuff stockings full of joy for deserving children. Register via MemberCentral at this link.

Be Santa: Embrace the spirit of giving by volunteering as Santa! Don’t worry about the suit—we’ve got you covered!

Monetary Donations: Your contributions are invaluable, helping cover costs for items like Santa suits and treats for our hardworking volunteers.

For more details on how to get involved or to register for events, please email: **ACBA YLD Gift Drive Committee at acbaldtoydrive@gmail.com.** ■



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sweeping precedential decision on this novel question severely hamstrings the ability of governments selected by hundreds of thousands if not millions of Pennsylvanians to [exercise its police power].” In Justice Wecht’s view, the Commonwealth Court’s decision and the Court’s subsequent dismissal will have a chilling effect on local governments who wish to protect their constituents by attempting to hold landlords accountable through regulation.

The Court’s unwillingness to issue a ruling is also puzzling considering that the Commonwealth Court, failed to analyze whether the Municipal Housing Ordinance Authorization Law (“MHOA”) provides the required authorization to overcome the business exclusion.¹⁰ Though, that may be because the City, for whatever reason, failed to argue its applicability. In any event, the MHOA broadly grants local governments the ability to “to enact and enforce suitable ordinances to govern and regulate the...occupation, maintenance ... use and inspection of all buildings and housing[.]”¹¹ This glaring omission from the

Commonwealth Court’s analysis was raised in an amicus brief by the Housing Law Group of the Pennsylvania Legal Aid Network. Because of the Court’s unwillingness to confront the substantive issues raised in this case, it is unclear whether the MHOA provides home rule municipalities the authority to ask anything of landlords.

Unsurprisingly, at least one of the industry groups who opposed the 2015 Ordinance has also challenged the substantially weaker 2023 Ordinance.¹² The group, however, has not challenged the 2023 Ordinance on business exception grounds, therefore it is unlikely that the Court will have another opportunity to clarify the extent to which home rule municipalities, like Pittsburgh, can act to protect the health, safety, and welfare of its renters, at the expense of landlords, for a long time. ■

²See 53 Pa. C.S. § 2961 (Scope of Home Rule Powers) and *Id.* § 2962(f) (Limitation on Powers – Business Exclusion).

³*Id.* § 2962(f).

⁴See *Berwick Area Landlord Association v. Borough of Berwick*, 48 A.3d 524 (Pa. Cmmwlth. 2012.); *Simpson v. City of New Castle*, 740 A.2d 287 (Pa. Cmmwlth. 1999); *McSwain v. Commonwealth*, 520 A.2d 527 (1987).

⁵Docket number GD-15-023074.

⁶*Landlord Serv. Bureau, Inc. v. City of Pittsburgh*, 291 A.3d 961 (Pa. Cmmwlth. 2023).

⁷*Home Rule Charter of the City of Pittsburgh*, § 101.

⁸*Pittsburgh City Code*, art. X, ch. 781, §§ 781.00-781.11 (2023).

⁹*Landlord Serv. Bureau v. City of Pittsburgh & Council of City of Pittsburgh*, 15 WAP 2023 (Pa. Jun. 18, 2024).

¹⁰53 P.S. §§ 4101, *et seq.*

¹¹53 P.S. § 4101

¹²*The Apartment Ass'n of Metro. Pittsburgh v. City of Pittsburgh*, GD-23-14270 (CCP Allegheny).



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GREEN LIGHT, GRAY AREAS: NAVIGATING MEDICAL MARIJUANA IN PA'S WORKERS' COMPENSATION

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recourse by filing a penalty petition. Through a penalty petition, an injured worker may seek penalties against an employer or insurer for failing to pay benefits, comply with the law, or respond to a claim promptly. This legal framework paves the way for understanding recent court cases that directly address the use of medical marijuana in workers' compensation claims.

In 2023, two Commonwealth Court decisions ruled that medical marijuana is considered medical treatment under the Workers' Compensation Act. In *Fegley v. Firestone Tire & Rubber* and *Appel v. GWC Warranty Corp.*, the Commonwealth Court explored the context of medical marijuana under the Workers' Compensation Act. See *Fegley v. Firestone Tire & Rubber* (Workers' Comp. Appeal Bd.), 291 A.3d 940 (Pa. Cmmw. Ct. 2023) and *Appel v. GWC Warranty Corp.*, 291 A.3d 927 (Pa. Cmmw. Ct. 2023).

In *Fegley*, the Commonwealth Court ruled that an employer must reimburse a claimant for medical marijuana expenses after he provided his prescription and receipts. The claimant filed a penalty petition for the employer's failure to reimburse these out-of-pocket costs. The court found this failure violated the Act, affirming

that employers are responsible for covering prescribed medical marijuana costs. Although the employer cited the Medical Marijuana Act as a defense, the court noted it does not prevent workers' compensation carriers from reimbursing reasonable and necessary medical expenses for work-related injuries.

In *Appel*, the employer argued against being required to pay for a substance that is considered illegal under federal law. However, the court concluded that since the employer was reimbursing the claimant for lawful medical use, it was not violating the Controlled Substances Act. The court emphasized that if a statute does not prohibit insurers from covering medical marijuana and if its use is causally related to a work injury, then reimbursement for reasonable and necessary treatment is mandated by the Act.

More recently, the Commonwealth Court issued its ruling in *Schmidt v. Schmidt, Kirifides and Rassias, PC* (WCAB). See *Schmidt v. Schmidt, Kirifides & Rassias, PC* (Workers' Comp. Appeal Board), 305 A.3d 1137 (Pa. Cmmw. Ct. 2023). Similar to *Fegley*, the claimant in *Schmidt* filed a Penalty Petition due to the employer's failure to reimburse him for out-of-pocket expenses related to medical

marijuana and CBD oil prescribed by his doctor. The court ruled that requiring the employer or carrier to cover the costs of CBD oil would violate federal law, as CBD is classified differently from marijuana and does not fall under the same federal restrictions.

While Pennsylvania's Workers' Compensation system appears to encourage insurance companies to cover medical marijuana expenses, it also exposes legal ambiguities under state and federal law. Potential legislative changes may offer additional clarity, but for now, the interplay of the Commonwealth Court's decisions has created a complicated environment for injured workers and insurers seeking to incorporate medical marijuana into their treatment plans. While the Commonwealth's recent decisions signal a green light for coverage it also creates gray areas for the broader landscape of medical marijuana and insurers in Pennsylvania and the United States when it comes to abiding with state and federal laws. ■



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