



A YEAR OF ENGAGEMENT: HIGHLIGHTS AND HORIZONS FOR THE YOUNG LAWYERS DIVISION

By Diana Bruce Bonino

With 2025 at a close, the Young Lawyers Division ("YLD") is grateful to reflect on its robust roster of recent events and activities while looking ahead at exciting events to come. The YLD has been extremely busy connecting the local legal community of young lawyers through happy hours and parties, annual flagship events, and a new emphasis on wellness-focused gatherings. In cultivating engagement, the YLD's mission remains at the fore: to empower its members, promote a just, accessible, and inclusive judicial system, and serve the community at large. Below are a few highlights showcasing where the YLD achieved that mission so far this year:

WELLNESS INITIATIVE

This year, YLD Chair Rebeca Himena Miller focused her efforts on expanding the YLD's commitment to wellness in the profession, culminating in several new and engaging events



Above: The YLD partnered with Bestie Walk Club for a three-mile wellness walk on the Three Rivers Heritage Trail.

Right: The YLD de-stressed with Puppy Yoga at 57th Street Studios.

targeted towards physical and mental health, community, and togetherness.

These efforts kicked off with a wellness walk in concert with the

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SANTA'S HELPERS IN ACTION AT THE 2025 CHILDREN'S GIFT DRIVE

By Audrey G. Fox



Twas the night before the Gift Drive, when all through Koppers Building, not a creature was stirring—well, except for the Young Lawyers Division, of course.

The Annual Young Lawyers Division (YLD) Children's Gift Drive kicked off earlier this fall and concluded with the Stocking Stuffer event on the morning of Saturday, December 6. Co-Chairs Zoe Crawford and Erin Volz led this year's charge to a resounding success, assisted by their team of elves, the YLD Public Service Committee and the Bar Leadership Initiative (BLI) Class. The Gift Drive served 18 organizations throughout Allegheny County, providing gifts to 1,081 children. That is over 3,000 gifts purchased by our incredible community of attorneys, judges, friends and families! Every year, the Gift Drive gets bigger and, every year, the hearts and generosity of the ACBA grow with it.

In the weeks leading up to the stocking stuffer event, the BLI Class worked behind the scenes to compile holiday lists on Dreamlist for each individual child, ensuring that Santa delivered exactly what they wished for this year. The children wished for Barbie dolls, monster trucks, art supplies, sports gear, hair gems, stuffed animals, building blocks, magic kits, sweaters, hoodies, Legos, music boxes, footballs, basketballs, LED lights, makeup kits, baby dolls and so much more. Surprisingly, slime was a fan favorite. Dreamlist helped facilitate smooth communication between the sponsors and the YLD, making donating fun and enjoyable, and also efficient. Each gift was hand-selected by our incredible sponsors and shipped directly to the organizations, where the children were eagerly awaiting their presents.

This year, the Gift Drive was sponsored by small firms, solo

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practitioners, big law firms, judges and their chambers, and the family and friends of our superb ACBA community. In total, we had over 200 sponsors who purchased gifts for children. In addition to the sponsors who purchased gifts directly, several members of the community gave monetary donations, which went towards the items for the stockings and any last minute gifts. Every form of donation and support was much needed and very much appreciated.

The purchasing of the gifts is just the beginning. The morning of December 6 started with the stockings all stacked on the tables with care, with hopes that BLI would soon be there. There were cookies and juice boxes, hats and gloves, toothbrushes and toothpaste, toys and puzzles, all stuffed into 810 stockings by the YLD, BLI Class, and Santa's helpers in less than an hour.

The stocking stuffer event is a well-oiled machine, with seasoned volunteers assisting first-time event attendees so that stockings are stuffed, packaged, and delivered on time. Speaking of, this year's success would not be complete without the special delivery of the stockings to the organizations during their holiday parties. Those who helped stuff the stockings were honored to attend several parties, and they didn't show up alone—nine Santas, and even Buddy the Elf, made an appearance to hand out stockings and spread holiday cheer. Children whispered their wishes to Santa and played with Buddy the Elf, and by the end of the day had enough sweets, candy and joy to settle them in for a long winter's nap. The events of December 6 were a wonderful and magical conclusion to all the hard work put in by the YLD over the last few months.



Above: YLD Members visited shelters around Allegheny County to deliver the stocking stuffers and attend holiday celebrations.

Top Right: Public Service Committee (PSC) Chairs and BLI Members who spearheaded this year's Gift Drive.

Top Row (Left to Right): Audrey Fox (BLI), Bailee Yaeger (BLI), Alyssa Zottola (PSC), Nate Ecker (PSC), Julia Nista (BLI)
Bottom Row (Left to Right): Zoe Crawford (PSC), Erin Volz (PSC)



Bottom Right: BLI Members bringing joy to one of our local shelters.

Each year, the Gift Drive succeeds in its mission to ensure that all members of our community are loved and cared for around the holidays. That would not be possible without the overwhelming generosity and support of our sponsors, donors, and volunteers. A special thank you to Zoe and Erin for all their efforts to ensure that each child received gifts, and to the entire ACBA community for rallying together when called upon. This Gift Drive means so much to the organizations it serves. I would like to extend the sincerest and warmest thank you on behalf of our Co-Chairs and the YLD Public Service Committee for helping us bring joy and light to these organizations and their children during the holidays. Happy Gift Drive to all, and to all a good night! ■



Audrey Fox is a family law attorney with McCarthy McEnroe Rosinski & Joy. She is currently a member of the YLD Bar Leadership Initiative 2025-26 Class.

EXPERT TESTIMONY VS. EXPERT OPINION TESTIMONY, AND PRACTICAL IMPLICATIONS

By JJ Gismondi

An expert witness is frequently one of the most powerful and persuasive witnesses a party can call to the stand at trial. For any trial attorney, knowing the requirements for such testimony and when it may be used is critical. Many practitioners are familiar with the typical admissibility requirements for expert opinion testimony vis-à-vis the *Frye* test (and in federal court, the *Daubert* test), when such testimony is necessary, when it is permitted, etc. But we often skip over a more basic question: is expert testimony the same as opinion testimony under Pennsylvania law?

A quick read of Pennsylvania Rule of Evidence 702 makes clear that the answer is, technically, “No.” That Rule states experts “may testify in the form of an opinion or otherwise,” and while that non-descript “or otherwise” may initially strike one as being rather insignificant, the comments to Rule 702 make clear it is not, stating: “Much of the literature assumes that experts testify only in the form of an opinion. The language ‘or otherwise’ reflects the fact that experts frequently are called upon to educate the trier of fact about the scientific or technical principles relevant to the case.” The Rule then goes on to state three requirements for admitting an expert’s testimony.

First, the testimony must concern specialized knowledge beyond that possessed by laypeople; second, it must help the jury understand the evidence or decide an issue in the case; and finally, the methodology must pass the *Frye* general acceptance test. Put simply, expert testimony is any testimony based on an expert’s specialized knowledge



that will help the jury decide the facts, regardless of whether it is an opinion or simply factual information the expert is familiar with due to their expertise.

While this observation may at first strike one as devoid of any practical significance (or, at the very least, a pedantic and overly technical “law school” way of defining expert testimony), the case law makes clear that it has at least two practical implications for trial lawyers.

Implication 1: Experts are permitted to testify to purely factual information so as to educate the jury, even without offering opinions

The first implication is that experts are not required to give opinions in order to testify, and, in fact, imposing such a requirement is likely reversible error. The case most on point in that

respect is the Commonwealth Court’s decision in *Carpenter v. Pleasant*, 759 A.2d 411 (Pa. Cmmw. Ct. 2000), a car crash case where the plaintiff and another driver both proceeded through an intersection at the same time due to a double green light. The plaintiff sued the city on the theory the crash occurred because it did not have “conflict monitor” devices installed on the intersection’s traffic lights. And at trial, she called a traffic signal devices expert to testify that these conflict monitors are designed to prevent these double green situations from happening. Crucially, however, he did not give an opinion that the lack of conflict monitors caused the double green in this particular case. The trial court thus precluded the expert on that basis, holding that it would be improper to permit the plaintiff’s expert to testify

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DECONSTRUCTING THE CONTRACTUAL CHAIN: THE LEGAL MECHANICS OF SUBCONTRACTOR CLAIMS ON MEGAPROJECTS

By Elizabeth Fitch

Large transportation and bridge programs have grown increasingly complex over the past several decades. With hundreds of specialized subcontractors performing tightly sequenced work, even minor disruptions can cause massive effects. Delayed Notice to Proceed, utility conflicts, evolving design packages, and unforeseen site conditions have become features of modern infrastructure delivery. Yet subcontractors rarely have a direct contractual relationship with the project owner, leaving them dependent on the prime contractor to manage their claims and secure recovery for them.

This disconnect between where impacts occur and where contractual rights reside creates the conditions in which mechanisms such as pass-through claims, liquidating agreements, and flow-down clauses become essential. These are the tools that govern how risk and responsibility move throughout the contractual chain.

What Is a “Megaproject”?

In the construction world, the term “megaproject” generally refers to a large-scale, high-cost undertaking, often exceeding \$1 billion, that demands complex risk allocation and coordination among public agencies, designers, and multiple tiers of contractors. Beyond their engineering scale, sociologists note that megaprojects function as “space-shrinking” forces in modern society, forming part of a broader trend toward frictionless mobility and rapid connectivity,

reshaping how people and goods move through the world.¹ In transportation, this vision takes material form in multi-bridge replacement programs, urban tunnel projects, and full-corridor highway reconstructions.

Why Subcontractor Claims Proliferate on Megaprojects

Once that scale comes into focus, the prevalence of subcontractor claims becomes far easier to understand. Megaprojects depend on intricate work sequences, each discipline beginning where another ends. A small shift in a traffic control plan, a delayed utility relocation, or an unexpected design error can ripple across trades that never interacted directly. Subcontractors encounter these impacts immediately, but the decisions that triggered them often originate far upstream. This leads to a steady rise in claims from parties far removed from the source of the disruption. This is where the legal framework becomes vital.

Pass-Through Claims: What They Are and Why They Matter

Because subcontractors lack contractual privity with the owner, they often cannot bring claims directly against the entity that caused the delay or disruption. Pass-through claims serve as the mechanism that bridges that gap. A pass-through claim is one brought by a prime contractor against the owner on behalf of the subcontractor. By allowing the prime contractor to advance the subcontractor’s claim, they preserve the subcontractor’s right to seek recovery while also preserving the owner’s interest in maintaining a single point of contractual responsibility.

Still, this mechanism brings its own set of legal confines. A prime contractor must retain at least some degree of liability, actual or contingent, toward the subcontractor. Without it, a pass-through claim may fail under the Severin doctrine. Thus, the viability of

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Bestie Walk Club, including three miles of great views and company. Rebeca led a mindfulness moment at a YLD council meeting, and members de-stressed during a puppy yoga



"This year, we're prioritizing wellness because sustainable service requires sustainable people. If we want young lawyers to show up for clients and the community, we have to normalize showing up for ourselves first."

Rebeca Himena Miller
ACBA YLD Chair

session. Rebeca says of this effort: "I hope the fall wellness walk, the mindfulness break during our [YLD] Council meeting, and puppy yoga sparked more young lawyers to think intentionally about wellness and longevity in the profession—and I'm excited to bring even more of these opportunities to them this spring."

The YLD looks forward to a continued push for wellness and togetherness in the coming months.

HAPPY HOURS AND PARTIES

The YLD ushered in the new bar year by offering colleagues a chance to reconnect at the JLL Center during the Welcome Back Happy Hour. A beautiful view of Market Square formed the backdrop for mixing, mingling, and preparing for the busy months to come. Later, the following month, the YLD convened once more for its Members-Only Happy Hour, a popular event geared towards furthering connections amongst the member base. Not long after, the YLD concluded the Halloween season with its themed happy hour, where members dressed for the occasion and took a stroll amongst familiar haunts in the Strip District. Finally, the YLD's annual Holiday Party drew the first half of the bar year to its jolly conclusion. Members

came dressed to impress ringing in the holiday season merriment together.

FLAGSHIP EVENTS

In early October, the Esquire Open Pickleball Tournament commenced in full swing. This popular event was attended by enthusiasts of all experience levels and encouraged friendly competition amongst colleagues. Not long after, the YLD celebrated its Diverse Law Student Reception, where the Pittsburgh legal community mixed and mingled with local law students of diverse backgrounds to form connections and encourage pathways to engagement with the YLD and Allegheny County Bar Association ("ACBA"). Passing the Bar Bash, then celebrated recent graduates the following month, marking the end of a strenuous but exciting time for Pittsburgh's newest attorneys.

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Top Left: YLD Diversity Co-Chair Timur Dikec connects with local law students during the Diverse Law Student Reception.

Bottom Left: YLD members met at the Art Room on the Strip District to get in the holiday spirit with food, beverages and plenty of networking.

Throughout the year, the YLD also focused on service. Two Wills for Heroes events were held to give back to local first responders and veterans by preparing basic estate planning documents. The YLD brought holiday cheer to 1,081 children by coordinating its tremendously successful Children's Gift Drive. For more information about this particular event and its impact on our community, please review this edition's article, "Santa's Helpers in Action at the 2025 Children's Gift Drive", by Audrey G. Fox.

Clearly, 2025 was a busy and successful period for the YLD, but



YLD Public Service Committee holding its "Wills for Heroes" program at the A. W. Beattie Career Center in Allison Park.

there is much to look forward to in 2026. From the annual Bar Leadership Initiative class event to the ACBA's partnership with the Thomas R. Kline School of Law of Duquesne University

and the University of Pittsburgh School of Law at the Law Student Career Reception, the YLD's efforts to connect its community will continue. Below are a few events on the horizon!

FUTURE EVENTS

Law Student Career Reception

DATE: February 4, 2026 from 5:00 PM to 7:00 PM

LOCATION: Power Center Ballroom Duquesne University, 1015 Forbes Avenue, Pittsburgh, PA 15219

DETAILS:

YLD and ACBA members can meet with local law students from the Thomas R. Kline School of Law of Duquesne University and the University of Pittsburgh School of Law to mix, mingle and provide education in their area of practice. This event provides law students with an opportunity to meet lawyers working in their areas of interest and ask questions about their career journeys. This is a rewarding event with plenty of opportunities to participate!

Strike Out Hunger

DATE: March 4, 2026 from 5:30 PM to 7:30 PM

LOCATION: Shorty's Pints and Pins

DETAILS: All YLD members should prepare for another fun night of networking and games while supporting a great cause for this year's Strike Out Hunger event! As in years past, this event will benefit the Allegheny County Bar Foundation's Attorneys Against Hunger campaign, which has been raising funds to fight food insecurity in Allegheny County for over 30 years.

Bar Leadership Initiative Event

DATE: March 30, 2026

LOCATION: To be announced

DETAILS: The Bar Leadership Initiative ("BLI") is a group of motivated young lawyers looking to engage with the YLD and the ACBA through connectivity and volunteerism. Every year, the BLI class's efforts culminate in a night of fun to give back to an organization or cause of their choice. While this year's event has yet to be announced, all YLD members

can look forward to celebrating a worthy cause with the soon-to-be graduates of this year's BLI class!

For more information on our exciting events in the second half of this bar year, please refer to our calendar at <https://www.acbayld.org/calendar>.

If you have any questions on event specifics or how to sign up, please feel free to email our Communications Committee at yldcommunications@gmail.com. The YLD looks forward to seeing all of our colleagues and friends at these exciting events throughout the remainder of the bar year! ■



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EXPERT TESTIMONY VS. EXPERT OPINION TESTIMONY

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if he was not prepared to opine that a conflict monitor would have prevented this particular double green situation. In other words, the expert was excluded because he was not prepared to offer any opinions on the case.

On appeal, the Commonwealth Court recognized the plaintiff's expert should have been permitted to testify about conflict monitors generally. The trial court had erroneously assumed the plaintiff's witness was not actually an expert merely because he would not be offering opinions. However, as the Commonwealth Court explained, what makes a witness an expert is whether they have a reasonable pretension to specialized knowledge, not their willingness to offer opinion testimony. The court went on to reference Rule 702 and its comments to hold that, so long as an expert's specialized knowledge will help the jury, they may testify; whether that testimony is opinion or not does not factor into that determination. Thus, because the plaintiff's expert was clearly qualified and his precluded factual testimony could have led the jury to find the city liable, the court remanded the case for a new trial.

The takeaway from *Carpenter* is experts are not required to come to the courtroom ready to offer opinions before being permitted to take the stand—helping the jury determine the facts is all they need to come prepared to do.

Of course, this takeaway prompts another question: given its significant persuasive value, why would any party not have their expert offer opinion testimony? The reason is sometimes opinion testimony is not permitted on an issue. That brings us to implication 2.

Implication 2: Expert testimony may be permitted even if opinion testimony is inadmissible, but it must educate the jury on an issue beyond common sense and everyday experience

Pennsylvania case law has long recognized that experts cannot invade the province of the jury, particularly with the prohibition on opinion testimony that usurps the jury's exclusive authority to determine witness credibility. However, as the Pennsylvania Supreme Court's decision in *Commonwealth v. Walker*, 92 A.3d 766 (Pa. 2014), demonstrates, parties may be able to get very close to that line without crossing it by deploying an expert who testifies solely to factual information to educate the jury on an issue that they would not understand based on their common sense and experience alone. *Walker* was a criminal case involving a defendant convicted of a string of robberies based primarily on the victims' eyewitness identifications. Prior to trial, the defendant procured an expert to testify about the fallibility of eyewitness identification generally and the factors that can impact its accuracy, but the trial court precluded the expert under a long line of precedent prohibiting such testimony based on concerns that the jury would just defer to the expert rather than assess witness credibility for themselves.

The Pennsylvania Supreme Court ultimately reversed in large part because of its conclusion that the jurors' common sense and experience did not provide them with the knowledge necessary to appreciate the factors that impact eyewitness fallibility. While the Court recognized

that permitting an expert to opine on the reliability of a particular eyewitness would impermissibly invade the province of the jury, allowing them to comment generally on the factors that influence eyewitness identification does not raise the same concerns because it "does not directly speak to whether a particular witness was untrustworthy, or even unreliable." Instead, it simply provides the jury with more information beyond what the average juror would know so as to allow them to better assess the witness's testimony and make a more informed decision. The Court went on to note that, as recognized in *Carpenter*, Rule 702's "or otherwise" language implicitly recognizes that experts may simply teach the jury about relevant specialized knowledge without giving opinions. The Court accordingly remanded the case for further proceedings and for the trial court to fully consider whether the defendant's expert testimony should have been admitted.

The *Walker* decision thus highlights that when jurors are asked to decide a witness credibility issue but their common sense and experience alone does not ensure they will appreciate all the facts and circumstances relevant to that inquiry, it may be appropriate to have an expert take the stand not to opine directly on the credibility issue but to simply educate the jury and provide them the tools necessary to make an informed decision. ■



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DECONSTRUCTING THE CONTRACTUAL CHAIN

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a pass-through claim not only rests on the merits of the underlying delay, but also on the contractual structure of the prime-subcontractor relationship.

The Severin Doctrine: The Gatekeeper of Pass-Through Claims

The Severin doctrine, originating in *Severin v. United States*, 99 Ct. Cl. 435 (1943), remains a defining limitation on pass-through claims. The case established that a prime contractor can only bring a pass-through claim on behalf of a subcontractor if the prime contractor is also liable to the subcontractor for those damages.² While the strict application of this rule has been modified over the years, courts continue to follow this principle, insisting that a prime maintain at least conditional liability for a subcontractor's claim to proceed. In practice, this principle shows up in a few different ways, including "pay-if-paid" clauses, "equivalent project relief" provisions, and "exclusive remedy" clauses.

Another common and effective solution comes in the form of a liquidating agreement. A "liquidating agreement" preserves the prime's liability to the subcontractor but explicitly limits it to whatever the owner ultimately pays, thereby satisfying the Severin doctrine and preventing duplicative recovery.³

Flow-Down Clauses: Making Sure Everyone Plays by the Same Rules

Even with pass-through claims and liquidating agreements in place, another challenge emerges: ensuring subcontractors comply with the procedures in the prime contract. This is where flow-down clauses come into play. These provisions extend key owner-level requirements such as notice deadlines, documentation standards, schedule obligations, and dispute procedures, directly to subcontractors further down on the contractual chain.

On megaprojects, where timing and documentation are crucial, courts consistently enforce clear flow-down language. Subcontractors who miss an upstream notice deadline or fail to provide required documentation may lose their right to pursue recovery entirely. Flow-down clauses, therefore, do more than assign risk. In addition, they establish the conditions that determine whether a subcontractor's claim can succeed.

Final Takeaways

In the end, subcontractor claims are not simply disputes to be managed; they are a structural feature of megaproject delivery. Pass-through claims and flow-down clauses keep complex systems moving. They are the legal framework of infrastructure.

For contractors, it is essential to track notice requirements and maintain proper documentation. For subcontractors, understanding their obligations and the consequences of missing an owner-level requirement may determine whether recovery is possible at all. For owners, consistent change management and transparent communication are critical to maintaining trust throughout the contractual chain. Ultimately, well-managed subcontractor claims and a clear understanding of these legal frameworks allow megaprojects to operate with greater precision, fewer disputes, and deliver large-scale infrastructure more efficiently. ■

¹Flyvbjerg, Bent & Bruzelius, Nils & Rothengatter, Werner. *Megaprojects and Risk: An Anatomy of Ambition*. (Cambridge Univ. Press 2003).

²Severin v. United States, 99 Ct. Cl. 435 (1943)

³J.L. Simmons Co. v. United States, 304 F.2d 886 (Ct. Cl. 1962)



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