

## **JAMES M. BECK AMICUS BRIEFS WITH SUBJECT MATTER**

Abrahams v. Sig Sauer, Inc., Nos. 3018 EDA 2025, 1714 EDA 2025 (Pa. Super. filed July 20, 2026) (whether Restatement 402A-based strict liability requires instructing the jury that the alleged defect must make the product “unreasonably dangerous”) (PLAC) (pending).

Gill v. ExxonMobil Corp., No. 2811 EDA 2024 (Pa. Super. filed June 23, 2025) (whether no threshold dose opinions, governmental standards, and differential diagnosis ignoring idiopathic causes are generally accepted) (PLAC, NAM, (DRI, FDCC, PDI) (pending)

Woodruff v. Ford Motor Co., No. E2023-00889-SC-R11-CV (Tenn. Filed Feb 5, 2025) (whether the duty to warn in product liability extends to risks created after sale by a third-party’s misuse of the product with products manufactured by others) (PLAC) (loss, published, \_\_\_ S.W.3d \_\_\_, 2026 WL 2096884).

Amagasu v. Mitsubishi Motors North America, Inc., No. 1594 EDA 2024 (Pa. Super. filed Feb. 5, 2025) (punitive damages issues: sufficiency of evidence, compliance instruction, constitutionality, 1:1 ratio) (PLAC, U.S. Chamber of Commerce, PDI, PADC, PCCJR, Pa Chamber of Commerce) (win, 2025 WL 3708201) (unpublished).

Halpern v. Ricoh U.S.A., Inc., No. 7 EAP 2024 (Pa. filed Aug. 8, 2024) (whether the Pennsylvania consumer protection statute allows a deception claim for an out-of-warranty failure of a product component in the absence of any affirmative statement by the manufacturer defendant or duty to disclose) (PLAC) (win, published, 353 A.3d 1264).

Beavan v. Allergan, Inc., No. A-001501-23 (N.J. Super. filed May 2, 2024) (whether New Jersey recognizes a product liability claim for failure to recall; whether such a claim is impliedly preempted) (PLAC and U.S. Chamber of Commerce) (other, mixed, unpublished, 2024 WL 4847575)

In re Paraquat Products Liability Litigation, 160 EDM 2023 (Pa. Super. filed Nov. 2, 2023) (whether the Dormant Commerce Clause precludes Pennsylvania from imposing general personal jurisdiction on all foreign corporations registering to do business in the state) (PADC and PDI) (other, interlocutory appeal denied).

Gustafson v. Springfield, Inc., No. 7 WAP 2023 (Pa. filed June 29, 2023) (whether the 10th Amendment precludes federal preemption of state common-law tort claims) (PADC and PDI) (win, published 333 A.3d 651).

Rennick v. Teleflex Medical, Inc., No. 2020AP001454 (Wis. filed Dec. 16, 2022) (whether Wisconsin should adopt the learned intermediary rule) (PLAC) (other, unpublished, 974 N.W.2d 892 (Table) (other, court equally divided and no opinion issued).

Mallory v. Norfolk Southern Railway, No. 21-1168 (U.S. filed Sept. 1, 2022) (whether general personal jurisdiction is constitutional when based solely on a defendant’s “consent” by reason of registration to do business in a state) (PaCCJR and PMA) (loss, published, 600 U.S. 122).

Brown v. Saint-Gobain Performance Plastics Corp., No. 2022-0132 (N.H. filed July 6, 2022) (whether New Hampshire should recognize claims for medical monitoring in the absence of any present injury to the plaintiff) (PLAC) (win, published, 300 A.3d 949).

Ruffing v. Wipro, Ltd., No. 21-2424 (3d Cir. filed Dec. 17, 2021) (whether it is unconstitutional for Pennsylvania to impose statutorily “general” personal jurisdiction for foreign companies registering to do business in Pennsylvania) (PaCCJR) (other, settled).

Johnson & Johnson, Inc. v. Fitch, No. 21-348 (U.S. filed Oct. 4, 2021) (whether a presumption against preemption applies in express preemption cases; whether preemptive agency “requirements” are limited to notice-and-comment rulemaking) (PLAC) (loss, unpublished, 142 S.Ct. 732).

Albert v. Sheeley’s Drug Store, Inc., No. 5 MAP 2021 (Pa. filed April 28, 2021) (whether plaintiff’s cause of action was barred by his criminal drug abuse under the *in pari delicto* doctrine) (Pa. Defense Institute, Philadelphia Ass’n of Defense Counsel) (win, published, 265 A.3d 442).

Lowery, et al. v. Hunt Refining Co., Nos. 2010 to 2013, 2016, 2018, 2020, and 2028 EDA 2020 (Pa. Super. filed April 16, 2021) (and three other related cases) (whether the Pennsylvania Long Arm Statute, specifying imposition of “general” personal jurisdiction for foreign companies registering to do business in Pennsylvania, is unconstitutional) (Pennsylvania Coalition For Civil Justice Reform, Pennsylvania Chamber of Business & Industry, Pennsylvania Manufacturers Association, and Pennsylvania Bankers Association) (other, remanded).

Janssen Pharmaceuticals, Inc. v. A.Y., No. 20-1069 (U.S. filed March 4, 2021) (whether off-label use warning claims are barred by impossibility preemption) (PLAC) (loss, unpublished, 141 S.Ct. 2658).

Ford Motor Co v. Montana Eighth Judicial District Court/Bandemer, Nos. 19-368 & 369 (U.S. filed March 6, 2020) (whether stream of commerce is a viable theory of specific personal jurisdiction) (DRI) (loss, published, 592 U.S. 351).

Emmet v. Ethicon, Inc., 1078 EDA 2019 (Pa. Super. filed Dec. 4, 2019) (whether Pennsylvania law prohibits a strict liability design defect claim in a product liability action involving a prescription medical product) (PLAC) (other, settled).

Oberdorf v. Amazon.com, No. 18-1041 (3d Cir. en banc filed Oct. 24, 2019) (whether a federal court sitting in diversity can predict novel expansion of state-law liability) (Chamber of Commerce of the United States) (other – issue certified to Pennsylvania Supreme Court and settled, unpublished, 818 Fed. Appx. 138).

Hammons v. Ethicon, Inc., No. 7 EAP 2019 (Pa. filed June 21, 2019) (whether specific personal jurisdiction may constitutionally be based, in an action by a non-resident plaintiff against a non-resident defendant, solely on in-state contacts that are the same for all possible plaintiffs; who has the burden of proof of proving personal jurisdiction) (PLAC, Pa. Defense Institute, Philadelphia Ass’n of Defense Counsel) (loss, published, 240 A.3d 537).

Walsh v. BASF, Nos. 14-18 WAP 2019 (Pa. filed May 14, 2019) (whether expert opinions that “herbicides” generally cause “cancer” generally are admissible under Pennsylvania’s Frye standard for expert testimony; whether such opinions fit Pennsylvania law, which requires defendant-specific causation) (PLAC, Croplife America, Chamber of Commerce PA, Chamber of Commerce US, NAM, ATRA, WLF, Coalition for Litigation Justice, PA Coalition for Civil Justice Reform, NFIB) (mixed, opinions admissible but not sufficient, defendant-specific causation standard reaffirmed, published, 234 A.3d 446).

Murray v. American LaFrance, LLC, Nos. 2105 EDA 2016, *et al.* (Pa. Super. filed March 4, 2019) (en banc) (whether the Pennsylvania Long Arm Statute, specifying imposition of “general” personal jurisdiction for foreign companies registering to do business in Pennsylvania, is unconstitutional) (Pa. Defense Institute, Philadelphia Ass’n of Defense Counsel, Washington Legal Foundation) (other – affirmed on waiver grounds, published, 234 A.3d 782).

Mallory v. Norfolk Southern Railway, 802 EDA 2018 (Pa. Super. filed Oct. 24, 2018) (whether the Pennsylvania Long Arm Statute, specifying imposition of “general” personal jurisdiction for foreign companies registering to do business in Pennsylvania, is unconstitutional) (Pa. Defense Institute, Philadelphia Ass’n of Defense Counsel, Washington Legal Foundation) (transferred to Pennsylvania Supreme Court, win, published, 266 A.3d 542); further appeal granted resulting in loss, see above.

Walsh v. BASF, 359 WAL 2018 (Pa. filed Sept. 20, 2018) (should the court allow an appeal to decide whether expert opinions that “herbicides” generally cause “cancer” generally are admissible) (PLAC, Croplife America, Chamber of Commerce PA) (win, unpublished, appeal granted, 191 A.3d 838).

Air & Liquid Systems Corp. v. DeVries, No. No. 17-1104 (U.S. filed July 16, 2018) (whether maritime law should allow asbestos liability against defendants that did not manufacture any asbestos product to which plaintiff was exposed) (PLAC) (loss, published, 586 U.S. 446).

Baker v. St. Gobain Performance Plastics Corp./Benoit v. St. Gobain Performance Plastics Corp., Nos. 17-3942, 17-3941(L) (2d Cir. filed March 1, 2018) (whether New York should create exceptions to its prohibitions against recovery of medical monitoring and purely economic loss) (PLAC, National Ass’n of Manufacturers) (loss, published 959 F.3d 70/959 F.3d 491).

Dittman v. UPMC, No. 43 WAP 2017 (Pa. filed Nov. 27, 2017) (whether Pennsylvania should continue to adhere to broad economic loss rule) (Pa. Defense Institute, Chamber of Commerce USA, Chamber of Commerce PA) (loss, published, 196 A.3d 1036).

In re Accutane Litigation, No. 079933 (N.J. filed Sept. 19, 2017) (whether to accept appeal concerning New Jersey presumption of adequacy of FDA warnings being enforced according to its terms) (Health Institute of NJ) (win, unpublished, appeal granted).

Ethicon, Inc. v. Huskey, No. 16-1399 (U.S. filed June 23, 2017) (whether FDA “substantial equivalence” device clearance is admissible evidence in product liability suits) (AdvaMed) (loss, unpublished, certiorari denied, 583 U.S. 905).

T.H. v. Novartis Pharmaceuticals Corp., No. S233898 (Cal. filed Dec. 7, 2016) (whether California should adopt innovator liability where the defendant had left the market altogether prior to plaintiff's injury) (PLAC) (loss, 407 P.3d 18).

Taylor v. Intuitive Surgical, Inc., No. 92210-1 (Wash. filed April 21, 2016) (whether Restatement §402A, comment k applies across the board and requires a negligence standard in warning cases) (PLAC) (loss – 389 P.3d 517)

Amato/Vinciguerra v. Crane Co., Nos. 4-5 EAD 2016 (Pa. filed March 14, 2016) (whether the unreasonably dangerous ruling in Tincher should apply in a warning defect case, in the context of state of the art) (PLAC) (other – appeal dismissed as improvidently granted, 150 A.3d 956).

Wal-Mart Stores, Inc. v. Phipps, No. 15-597 (U.S. filed Dec. 9, 2015) (whether the Court should review stacking of class actions under the federal class action tolling doctrine) (PLAC) (loss – cert. denied, unpublished, 577 U.S. 1138).

Medicis Pharmaceutical Corp. v. Watts, No. CV-15-0065-PR (Ariz. filed October 20, 2015) (whether Arizona should adopt the learned intermediary rule and not an exception for DTC advertising) (PLAC) (win – published, 365 P.3d 944)

Dummit v. Crane Co., APL-2014-00209 (N.Y. filed Oct. 1, 2015) (whether New York law should limit product liability warning claims to manufacturers of the product that actually injured the plaintiff; whether New York law should adopt a heeding presumption in warning cases) (PLAC) (loss on first issue, waiver finding with helpful dictum on second – published, 59 N.E.3d 458)

Medicis Pharmaceutical Corp. v. Watts, No. CV-15-0065-PR (Ariz. filed June 24, 2015) (whether the Arizona Supreme Court should grant review of decision concerning learned intermediary rule and adopt the rule) (PLAC) (win – unpublished, writ granted)

Sadler v. Pacificare of Nevada, Inc., No. 62111 (Nev. filed May 15, 2015) (whether Nevada should recognize an independent cause of action for medical monitoring in the absence of present injury) (PLAC) (other – motion for leave to file denied)

Rost v. Ford Motor Co., No. 56 EAP 2014 (Pa. filed Jan. 20, 2015) (admissibility of “any exposure is cumulative” expert opinions in asbestos mesothelioma cases; viability of Philadelphia automatic consolidation of mesothelioma cases) (PLAC) (loss on first issue, partial win on second – published 151 A.3d 1032)

Nelson v. Airco Welders Supply, Nos. 865 EDA 2011, *et al.* (Pa. Super. Filed Feb. 14, 2014) (en banc) (whether non-case-specific “any exposure” expert opinions can establish substantial factor causation in asbestos mesothelioma cases) (PLAC) (win – published 107 A.3d 146)

Caronia v. Philip Morris, USA, Inc., CTQ-2013-00004 (N.Y. filed Oct. 5, 2013) (whether New York should recognize an independent cause of action for medical monitoring in the absence of present injury) (PLAC) (win – published, 5 N.E.3d 11)

Bostic v. Georgia Pacific Corp., No. 10-0775 (Tex. filed Aug. 19, 2013) (whether “each and every breath” causation expert opinions can establish substantial factor causation in asbestos mesothelioma cases) (PLAC) (win – published, 439 S.W.3d 332)

Tincher v. Omega Flex, Inc., No. 17, MAP, 3013 (Pa. filed June 9, 2013) (whether Pennsylvania should overrule Azzarello strict liability and adopt the Third Restatement) (PLAC) (win – published, 104 A.3d 328)

Dixon v. Ford Motor Co., Sept. Term, 2012, No. 82 (Md. filed Feb. 25, 2013) (whether non-case-specific “any exposure” expert opinions can establish substantial factor causation in asbestos mesothelioma cases) (PLAC) (loss – published, 70 A.3d 328)

Howard v. A.W. Chesterton Corp., Nos. 48, 49, 50 EAP 2012 (Pa. filed Dec. 17, 2012) (whether non-case-specific “any exposure” expert opinions can establish substantial factor causation in asbestos mesothelioma cases) (PLAC) (win – published, 78 A.3d 605)

Braun v. Wal-Mart Stores, Inc., Nos. 32, 33, EAP, 2012 (Pa. filed Oct. 22, 2012) (whether Pennsylvania would allow trial by formula in a class action) (PLAC) (loss – published, 106 A.3d 656)

Dixon v. Ford Motor Co., No. 536, Sept. 2011 Term (Md. App. filed Feb. 29, 2012) whether an expert opinion that every exposure to asbestos is a substantial contributing factor to the development of disease is generally accepted and therefore admissible under the Frye/Reed test) (PLAC) (win – published, 47 A.3d 1038); further appeal granted resulting in loss, see above

Betz (Simikian) v. Pneumo Abex LLC, No. 38, WAP, 2010 (Pa. filed April 25, 2011) (whether an expert opinion that every exposure to asbestos is a substantial contributing factor to the development of disease is generally accepted under the Grady/FryeFrye test) (PLAC) (win – published, 44 A.3d 27)

Centocor, Inc. v. Hamilton, No. 10-0223 (Tex. Filed Jan. 18, 2011) (whether Texas adopts the learned intermediary rule and/or the DTC exception to the rule) (PLAC) (win – published 372 S.W.3d 140)

United States v. Mitchell, No. 09-4718 (3d Cir. Dec. 3, 2010) (whether it is an unreasonable search and seizure to force an arrested, but unconvicted person to give a DNA sample) (ACLU) (loss, 8½ -5½ en banc decision – published 652 F.3d 387)

Matrixx Initiatives, Inc. v. Siracuso, No. 09-1156 (U.S. filed Aug. 27, 2010) (whether a securities claim can be made out solely on the basis of statistically insignificant adverse event reports (AdvaMed) (loss – published, 131 S. Ct. 1309)

Guinan/Hess v. A.I. duPont Hospital For Children, Nos. 09-1426, 09-3598, 09-4120/Nos. 09-1979, 09-4121 (3d Cir. filed March 10, 2010) (whether Delaware law would allow recovery for medical monitoring in the absence of present injury) (PLAC) (win – unpublished, 393 Fed. Appx. 884)

Perdue v. Nissan Motor Co., No. 09-40881 (5th Cir. filed Dec. 16, 2009) (whether Texas law permits 100% liability to the manufacturer and 0% liability to negligent drivers in a crashworthiness case) (AIAM) (settled)

Commonwealth v. Janssen Pharmaceutica, Inc., No. 24 EAP 2009 (Pa. filed Aug. 11, 2009) (whether Pennsylvania law permits state governmental agencies to hire outside contingent fee counsel to sue on their behalf) (WLF) (loss – published, 8 A.3d 267)

Schmidt v. Boardman Co., No. 13, WAP, 2009 (Pa. filed July 27, 2009) (whether Pennsylvania would adopt product line exception to successor corporation non-liability; whether Pennsylvania would permit recovery of purely emotional distress in strict liability) (PLAC) (other – first issue held waived and court split 3-3 on second, published, 11 A.3d 924)

Shamell Samuel-Bassett v. Kia Motors America, Inc., Nos. 22, 23 & 24, EAP, 2008 (Pa. filed Jan. 20, 2009) (whether Pennsylvania would allow economic-loss-only class actions against product manufacturers on an express warranty theory) (PLAC) (loss – published, 34 A.3d 1)

Conte v. Wyeth, Inc., No. S169116 (Cal. filed Jan. 6, 2009) (whether pioneer drug manufacturers can be liable on a misrepresent theory for injuries suffered by plaintiffs who took competing generic drugs) (PLAC) (loss – unpublished denial of review)

Bugosh v. I.U. North America, Inc., No. 7 WAP 2008 (Pa. filed June 16, 2008) (whether Pennsylvania should adopt Restatement Third §2) (PLAC) (other – appeal dismissed as improvidently granted, 971 A.2d 1228 two-justice dissent from dismissal)

Dukes v. Wal-Mart Stores, Inc., No. 04-16688 (9th Cir. filed January 18, 2008) (whether the court should rehear class certification en banc because punitive damages class actions are unconstitutional) (PLAC) (win – unpublished, en banc reconsideration granted) (win on the merits, published; punitive class reversed, 603 F.3d 571)

Gaudio v. Ford Motor Co., No. 1021, EDA, 2007 (Pa. Super. filed Dec. 12, 2007) (whether crashworthiness can be a strict liability doctrine under Pennsylvania law) (PLAC) (loss – published, 976 A.2d 524)

Busch v. Marple Newtown School District, No. 07-2967 (3d Cir. filed Nov. 1, 2007) (whether bible-reading in class is barred by the First Amendment in the context of show and tell) (Anti-Defamation League) (win – published, 567 F.3d 89)

Ackermann v. Wyeth, No.06-41774 (5th Circuit filed Apr. 27, 2007) (whether an SSRI suicidality claim is preempted by contrary FDA decisions; whether a fraud on the FDA statutory exception is preempted by Buckman) (PLAC) (other – court affirmed summary judgment on non-preemption, causation-related grounds, published, 526 F.3d 203)

City of St. Louis v. Benjamin Moore & Co., No. SC88230 (Mo. filed Mar. 7, 2007) (whether Missouri should adopt either public nuisance or market share liability as forms of non-identification liability against product manufacturers) (PLAC) (win – published, 226 S.W.3d 110)

Dukes v. Wal-Mart Stores, Inc., No. 04-16688 (9th Cir. filed Mar. 1, 2007) (whether the court should rehear class certification because punitive damages class actions are unconstitutional) (PLAC) (not decided – court avoided issue, published, 509 F.3d 1168; en banc reargument subsequently granted)

United States v. Caputo, Nos. 06-3612 & 06-3619 (7th Cir. filed Jan. 16, 2007) (whether the First Amendment precludes FDA suppression of truthful commercial speech about off-label use) (WLF) (other – case decided on other grounds, but helpful dictum, 517 F.3d 935)

Betz v. Pneumo Abex LLC, No. 1058, WDA, 2006 (Pa. Super. filed Jan. 16, 2007) (whether an expert opinion that every exposure to asbestos is a substantial contributing factor to the development of disease is generally accepted under the Grady/FryeFrye test) (PLAC) (loss – published, 998 A.2d 962); further appeal granted resulting in win, see above.

Pennsylvania Prison Society v. Kane, Nos. 06 3354 & 06 3370 (3d Cir. filed Dec. 5, 2006) (whether the 1997 amendments to the Pennsylvania constitution changing commutation procedures were constitutional) (ACLU) (not decided – dismissed for lack of standing, published, 508 F.3d 156)

Summers v. Certaineed Corp./Nybeck v. Union Carbide Corp., Nos. 19-22 EAP 2006 (Pa. filed Sep. 11, 2006) (whether an asbestos “each and every breath” expert opinion must be taken at face value) (PLAC) (loss – published, 997 A.2d 1152)

Straub v. Cherne Industries, Nos. 31-32 EAP 2006 (Pa. filed Aug. 7, 2006) (whether Pennsylvania law recognizes the “sophisticated user/purchaser” defense in product liability) (PLAC) (not decided – appeal dismissed as improvidently granted, 909 A.2d 797)

County of Santa Clara v. Atlantic Richfield Co., No. S142578 (Cal. filed May 2, 2006) (whether the Court should accept an appeal to decide whether public nuisance is a viable cause of action against manufacturers of legal and non-defective products when brought by a municipal plaintiff) (PLAC) (loss – unpublished denial of review)

Berrier v. Simplicity Corp., No. 05-3621 (3d Cir. filed Mar. 23 2006) (whether bystander strict liability is compatible with Pennsylvania’s intended use/user limitation on strict liability, and whether Pennsylvania law should instead adopt the Third Restatement of Torts) (PLAC) (win – published, 563 F.3d 38)

Walsh v. Vivino, No. 2867 EDA 2005 (Pa. Super. filed Mar. 13, 2006) (reasonable degree of medical certainty requires more confidence than “more likely than not”) (Pa. Defense Institute) (win – unpublished, 913 A.2d 955).

Alsip v. Johnson City Medical Center, No. E2004-00831-SC-S09-CV (Tenn. filed Feb. 7, 2006) (whether HIPAA preempts state law concerning whether defense counsel may interview plaintiff’s treating physicians informally) (Tennessee Ass’n of Defense Counsel) (other – preemption issue not reached, published, 197 S.W.3d 722).

Gregg v. V-J Auto Parts, Inc., No. 38 EAP 2005 (Pa. filed Nov. 28, 2005) (whether Pennsylvania should retain the “regularity, frequency and proximity” test for causation in asbestos cases and whether this test applies to circumstantial evidence) (PLAC) (win – published, 943 A.2d 216)

Toy v. Metropolitan Life Insurance Co., Nos. 33 & 34 WAP 2005 (Pa. filed Nov. 4, 2005) (whether a consumer protection action requires proof of the reliance and causation elements of fraud) (PLAC) (win – published, 928 A.2d 186)

Hollock v. Erie Insurance Exchange, No. 67 MAP 2005 (Pa. filed Sep. 19, 2005) (whether litigation misconduct is admissible to establish punitive damages; standard of appellate review for excessiveness claims relating to punitive damages) (PLAC) (not decided – appeal dismissed as improvidently granted, 903 A.2d 1185)

Straub v. Cherne Industries, Nos. 57-58 EAP 2004 (Pa. filed Mar. 8, 2005) (whether a defendant can be negligent for manufacturing a non-defective product; whether Pennsylvania should adopt Restatement Third §2) (PLAC) (not decided due to waiver – published, 880 A.2d 561)

Harsh v. Petroll, Nos 200-01 MAP 2004 (Pa. filed Jan. 31, 2005) (whether negligent drivers and crashworthiness defendants are joint tortfeasors; whether Pennsylvania should adopt Restatement Third §2) (PLAC) (win on first issue – published, 887 A.2d 209)

Thomas v. American Cyanamid Co., No. 03-1528 (Wis. filed Dec. 14, 2004) (whether risk-contribution non-identification liability is a viable cause of action against lead paint pigment manufacturers) (PLAC) (loss – published, 701 N.W.2d 523).

Jackson v. Metro Nissan, Inc., No. 16 EAP 2004 (Pa. filed Dec. 8, 2004) (elements of a private cause of action under the Pa. Consumer Protection statute) (PLAC) (not decided – appeal dismissed as improvidently granted, 868 A.2d 379).

District of Columbia v. Beretta, U.S.A., Nos. 01-CV-24, 01-CV-38 (D.C. en banc filed Nov. 8, 2004) (whether public nuisance and negligent marketing are viable causes of action against manufacturers of legal and non-defective products; both municipal and non-municipal plaintiffs) (PLAC) (win – published 872 A.2d 633).

Cassell v. Lancaster Mennonite Conference, No. 86 MAP 2004 (Pa. filed Jul. 26, 2004) (procedures for assessing expert methodology under Frye) (PLAC) (not decided – appeal dismissed as improvidently granted, 869 A.2d 974).

City of Chicago v. American Cyanamid Co., No. 03-3276 (Ill. App. 1st Dist. filed May 12, 2004) (whether public nuisance allegations identifying no product and alleging no conduct in last 30 are viable against manufacturers of lead paint pigment when brought by a municipal plaintiff) (PLAC) (win – published, 823 N.E.2d 126).

People v. B&B Group, Inc., Nos. A103211, A105309 (Cal. App. 1st Dist. filed Apr. 19, 2004) (whether unfair competition and public nuisance are viable causes of action against manufacturers of legal and non-defective products when brought by a municipal plaintiff) (PLAC) (win – published, 24 Cal.Rptr.3d 659).

Excel Corp. v. Kriefall, No. 03-862 (U.S. filed Feb. 13, 2004) (requesting court to accept review of decision rejecting, for product liability purposes USDA definition of adulterated meat) (PLAC) (loss – cert. denied, unpublished, 541 U.S. 956).

United States ex rel. Gilligan v. Medtronic, Inc., No. 03-305 (6th Cir. filed Nov. 24, 2003) (whether a private *qui tam* relator can fraud on the FDA under the false claims act) (Advanced Medical Technology Ass’n) (reversed on other grounds – published, 403 F.3d 386).

District of Columbia v. Beretta, U.S.A., Nos. 01-CV-24, 01-CV-38 (D.C. filed Aug. 25, 2003) (whether public nuisance and negligent marketing are viable causes of action against manufacturers of legal and non-defective products; both municipal and non-municipal plaintiffs) (PLAC) (win – published, 847 A.2d 1127).

Smith v. American Home Products Corp., No. 254 (N.J. Super. Law Div. Middlesex Co. filed Aug. 1, 2003) (whether HIPAA preempts state law permitting defense counsel to interview plaintiff’s treating physicians informally) (DRI) (win – published, 855 A.2d 608).

City of Chicago v. Beretta USA Corp., No. 00-3541 (Ill. filed May 13, 2003) (whether public nuisance and negligent marketing are viable causes of action against manufacturers of legal and non-defective products) (PLAC) (win – published 821 N.E.2d 1099).

Young v. Bryco Arms, Nos. 93678, 93685 & 93728 (Ill. filed Mar. 26, 2003) (whether public nuisance is a viable cause of action against manufacturers of legal and non-defective products; not a municipal plaintiff case) (PLAC) (win – published 821 N.E.2d 1078).

In re Bridgestone/Firestone, Inc. Tires Products Liability Litigation, Nos. 03-1379 & 03-1564 (7th Cir. filed Mar. 5, 2003) (whether the All Writs Act permits injunction against prosecution of identical nationwide class actions in state court following a federal ruling against class certification) (PLAC) (win – published, 333 F.3d 763).

Larkin v. Pfizer, Inc., No. 2002-SC-746-CL (Ky. filed Feb. 20, 2003) (whether Kentucky should adopt the learned intermediary rule) (PLAC) (win – published, 153 S.W.3d 758).

Grady v. Frito-Lay, Inc., No. 43 WAP 2002 (Pa. filed Aug. 19, 2002) (whether Pennsylvania should continue to apply the Frye standard for admissibility of expert testimony, or should adopt a Daubert standard) (PLAC) (win – published, 839 A.2d 1038).

Mt. Olivet Tabernacle Church v. Edwin L. Wiegand Division, Emerson Electric Co., No. 20 EAP 2002 (Pa. filed Jul. 1, 2002) (spoliation of fire scene in product liability cause and origin litigation) (PLAC) (loss – unpublished, 811 A.2d 565).

James v. Arms Technology, Inc., No. ESX-L-6059-99 (N.J. Super. App. Div. filed Jun. 20, 2002) (whether public nuisance and negligent marketing are viable causes of action against manufacturers of legal and non-defective products) (PLAC) (loss – published, 820 A.2d 27).

Phillips v. Cricket Lighters, No. 90 WAP 2001 (Pa. filed Mar. 7, 2002) (whether a plaintiff must be an “intended user” of a product in strict product liability; whether Azzarello defect standard should be abandoned) (PLAC) (win on first issue, tie on second – published, 841 A.2d 1000).

Williams v. United States, No. 01-175 (U.S. filed Jul. 18, 2001) (whether *ad hoc* congressional denial of cost of living adjustments to the judiciary is unconstitutional) (ABA) (loss – 3-justice dissent from denial of certiorari published, 535 U.S. 911).

City of Philadelphia v. Beretta, USA Corp., No. 01-1118 (3d Cir. filed Jun. 19, 2001) (Pennsylvania law) (whether public nuisance and negligent marketing are viable causes of action against manufacturers of legal and non-defective products) (PLAC) (win – published, 277 F.3d 415).

Camden County Board of Chosen Freeholders v. Beretta U.S.A. Corp., No. 01-1051 (3d Cir. filed Jun. 6, 2001) (New Jersey law) (whether public nuisance is a viable cause of action against manufacturers of legal and non-defective products) (PLAC) (win – published, 273 F.3d 536).

City of Chicago v. Beretta USA Corp., No. 00-3541 (Ill. App. 1st Dist. filed Apr. 25, 2001) (whether public nuisance and negligent marketing are viable causes of action against manufacturers of legal and non-defective products) (PLAC) (loss – published, 785 N.E.2d 16); further appeal granted resulting in win, see above.

City of Cincinnati v. Beretta, USA Corp., No. 00-1705 (Ohio filed Apr. 11, 2001) (whether public nuisance and negligent marketing are viable causes of action against manufacturers of legal and non-defective products) (PLAC) (loss – published, 768 N.E.2d 1136).

Colville v. Crown Equipment Corp., No. 1363 EDA 2000 (Pa. Super. filed Apr. 2, 2001) (whether compliance with government regulations and industry standards is admissible state of the art evidence in strict product liability) (PLAC) (loss – unpublished); decision reversed and remanded by Pa. Supreme Court, Mar. 20, 2002, virtually identical brief refiled (Pa. Super. filed May 20, 2002) (other – court decided case on other issues, 791 A.2d 1168).

Hamilton v. Beretta USA Corp., No. 42 (N.Y. filed Nov. 13, 2000) (whether negligent marketing and market share liability are viable causes of action against manufacturers of non-defective firearms) (PLAC) (win – published, 750 N.E.2d 1055).

Southard v. Temple University Hospital, No. 22, EAP, 2000 (Pa. filed Oct. 2, 2000) (whether the doctrine of informed consent requires physicians to explain the FDA-regulatory status of prescription medical products to patients) (Medtronic Sofamor Danek, Inc.) (win – published, 781 A.2d 101).

Alder v. Eli Lilly & Co., No. 99-2151 (Ohio filed June 9, 2000) (whether market share liability is a viable cause of action; stare decisis) (PLAC) (win – unpublished, 731 N.E.2d 1135).

Phillips v. Cricket Lighters, No. 1924 WDA 1999 (Pa. Super. filed May 11, 2000) (whether a plaintiff must be an “intended user” of a product in strict product liability) (PLAC) (loss – published, 773 A.2d 802) (appeal granted by Pennsylvania Supreme Court, and reversed for a win, see above).

Osburn v. Danek Medical, Inc., No. 549A99 (N.C. filed Apr. 12, 2000) (whether the doctrine of informed consent requires physicians to explain the FDA-regulatory status of prescription

medical products to patients) (American Medical Ass'n, North Carolina Medical Society, and American Academy of Orthopaedic Surgeons) (win – unpublished, 530 S.E.2d 54).

Coward v. Owens-Corning Fiberglas Corp., Nos. 0048-51, E.D. App. Dkt., 1999 (Pa. filed Dec. 16, 1999) (whether a “heeding presumption” that a plaintiff would have followed an adequate warning exists) (PLAC) other – never decided, stayed due to defendant’s bankruptcy and ultimately dismissed).

Washington Legal Foundation v. Henney, No. 99-5304 (D.C. Cir. filed Nov. 8, 1999) (right of drug company under the First Amendment to provide truthful information to physicians about off-label uses of FDA-regulated medical products) (ACLU) (court decided case on other issues – published, 202 F.3d 331).

Hamilton v. Beretta USA Corp., No. 99-178 (2d Cir. filed Oct. 29, 1999) (whether market share liability is a viable cause of action against manufacturers of non-defective firearms) (PLAC) (certified to state court – published, 222 F.3d 36).

Bryant v. HCA Health Services, No. 01A01-9801-CV-00046 (Tenn. filed Aug. 12, 1999) (whether hospitals could be liable under an informed consent theory) (American Medical Ass’n, Tennessee Medical Ass’n, and Tennessee Hospital Ass’n) (win – published, 15 S.W.3d 804).

Seymour v. Sun Co., Nos. 55-56, M.D. App. Dkt, 1999 (Pa. filed Jun. 23, 1999) (public policy issues and punitive damages) (PLAC) (loss – unpublished, 740 A.2d 1139).

Duchess v. Langston Corp., No. 37, W.D. App. Dkt., 1999 (Pa. filed Jun. 16, 1999) (whether evidence of subsequent remedial measures is inadmissible in strict product liability) (PLAC) (win – published, 769 A.2d 1131).

Buckman Co. v. Plaintiffs Legal Committee, No. 98-1768 (U.S. filed Jun. 2, 1999) (whether fraud-on-the-FDA claims are impliedly preempted by federal law) (Medtronic Sofamor Danek, Inc.) (win – published, 531 U.S. 341).

Brenner v. American Cyanamid Co., No. 12596/83 (N.Y. App. 4th Div. filed Apr. 23, 1999) (whether market share liability is a viable cause of action against lead paint pigment manufacturers) (PLAC) (win – published, 699 N.Y.S.2d 848).

Steamfitters Local Union No. 420 Welfare Fund v. Philip Morris, Inc., No. 98-1426 (3d Cir. filed Oct. 2, 1998) (Pennsylvania law) (whether third party payor payments for medical treatment of smokers was too remote to be recoverable as economic loss from cigarette manufacturers) (PLAC, Nat’l Ass’n of Manufacturers) (win – published, 171 F.3d 912).

Wilson v. Vermont Castings, Inc., No. 97-7530 (3d Cir. filed Aug. 21, 1998) (Pennsylvania law) (whether the plaintiff’s conduct was admissible in strict product liability where relevant to causation of the accident) (PLAC) (win – published, 170 F.3d 391).

Portwood v. Ford Motor Co., No. 84488 (Ill. filed May 13, 1998) (whether an unsuccessful class action brought in one jurisdiction tolls the statute of limitations against identical claims asserted individually in another jurisdiction) (PLAC) (win – published, 701 N.E.2d 1102).

Sutowski v. Eli Lilly & Co., No. 97-1142 (Ohio filed Oct. 23, 1997) (whether market share liability is a viable cause of action) (PLAC) (win – published, 696 N.E.2d 187).

Vargo v. Koppers Co., No. 55, W.D. App. Dkt., 1997 (Pa. filed Sep. 19, 1997) (whether modifications to the statute of repose had reduced it to a statute of limitation) (PLAC) (win – published, 715 A.2d 423).

Schroeder v. Commonwealth, DOT, No. 61, W.D. App. Dkt., 1996 (Pa. filed Feb. 19, 1997) (whether a plaintiff's spoliation of the product warranted a per se rule of dismissal of a product liability suit) (PLAC) (loss – published, 710 A.2d 23).

Spino v. John S. Tilley Ladder Co., No. 68, E.D. App. Dkt., 1996 (Pa. filed Nov. 27, 1996) (whether evidence of lack of similar occurrences is admissible evidence in strict product liability) (PLAC) (win – published, 696 A.2d 1169).

Skipworth v. Lead Industries Ass'n, No. 894, E.D. App. Dkt., 1995 (Pa. filed Aug. 28, 1996) (whether market share liability is a viable cause of action against lead paint pigment manufacturers) (PLAC) (win – published, 690 A.2d 169).

Medtronic Inc. v. Lohr, Nos. 95-754, 95-886 (U.S. filed Mar. 13, 1996) (express preemption of product liability claims concerning medical devices) (Medical Device Manufacturers Ass'n) (loss – published, 518 U.S. 470).

Shadrick v. Centennial Medical Center, No. 01A01-9604-CV-00145 (Tenn. filed Jan. 10, 1996) (whether the doctrine of informed consent requires physicians to explain the FDA-regulatory status of prescription medical products to patients; statute of limitations) (American Medical Ass'n and Tennessee Medical Ass'n) (loss on statute of limitations, other issue not reached – published, 963 S.W.2d 726).

Klein v. Biscup, Nos. 68615, 68659 (Ohio App. 8th Dist. filed Jul. 21, 1995) (whether the doctrine of informed consent requires physicians to explain the FDA-regulatory status of prescription medical products to patients) (Ohio State Medical Ass'n) (win – published, 673 N.E.2d 225).

Vaughn v. AcroMed, Nos. A065356/A066163 (Cal. App. 1st Div. filed Jun. 19, 1995) (whether the doctrine of informed consent requires physicians to explain the FDA-regulatory status of prescription medical products to patients) (American Medical Ass'n and California Medical Society) (win – unpublished).

Davis v. Berwind Co., No. 0001, E.D. App. Dkt., 1995 (Pa. filed May 1, 1995) (whether an employer's intentional removal of a safety device from a product barred a strict product liability claim) (PLAC) (win – published, 690 A.2d 186).

Phillips v. A-Best Products Co., No. 32, W.D. App. Dkt., 1994 (Pa. filed Aug. 1, 1994) (existence of sophisticated user and bulk supplier defenses in strict product liability) (PLAC) (court did not reach issues – published, 665 A.2d 1167).

Hahn v. Richter, No. 32, E.D. App. Dkt., 1994 (Pa. filed Jul. 25, 1994) (whether Restatement §402A, comment k applies to all prescription drugs across the board, barring all strict liability warning claims) (PLAC) (win – published, 673 A.2d 888).

Green v. Dolsky, No. 104, E.D. App. Dkt., 1994 (Pa. filed Mar. 27, 1994) (express preemption of product liability claims involving medical devices) (Medical Device Manufacturers Ass’n) (partial win – published, 685 A.2d 110).

Burgstahler v. AcroMed Corp., No. 4330, Phila., 1994 (Pa. Super. filed Feb. 21, 1994) (express preemption of product liability claims involving medical devices) (Medical Device Manufacturers Ass’n) (partial win – published, 670 A.2d 658).

Brantner v. Black & Decker Manufacturing Co., Nos. 93-3473 and 93-3474 (3d Cir. filed Feb. 7, 1994) (Pennsylvania law) (whether substantial change can defeat a strict product liability action as a matter of law; role of foreseeability) (PLAC) (win – unpublished, 30 F.3d 1485).

City of Philadelphia v. Lead Industries Ass’n, Nos. 92-1419, 1420 (3d Cir. filed Aug. 12, 1992) (Pennsylvania law) (whether market share liability and other forms of non-identification liability are valid theories of liability) (PLAC, Business Roundtable, and Chamber of Commerce of the USA) (win – published, 994 F.2d 112).

**Wins** – 65      **Losses** – 38      **Other** – 29      **Pending** 2

**Wins Reversed On Further Appeal** – 2      **Losses Reversed On Further Appeal** – 4

**Unpublished Wins** – 11      **Unpublished Losses** – 10

**Final, Published Wins** – 52\*      **Final, Published Losses** – 24

\*DC v. Beretta opinion was technically a reversal in part but a win on all points briefed