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James Sukkar

AREAS OF PRACTICE: Civil Litigation
Toxic Torts
Construction Accidents
Premises Liability
Third Party Auto
Transportation Liability
Underground Facilities

EDUCATION: Detroit College of Law (J.D., *cum laude*, 1978)
Wayne State University (B.A., 1974)

BAR ADMISSIONS: State Bar of Michigan 1978
U.S. District Court for the Eastern District of Michigan 1978
U.S. District Court for the Western District of Michigan 1978
U.S. Court of Appeals for the Sixth Circuit 1985
U.S. District Court for the Northern District of Georgia 1995
U.S. District Court for the Northern District of Ohio 2003

EMPLOYMENT: Board of Directors at Harvey Kruse from 1995 to the present
Shareholder at Harvey Kruse from 1985 to the present
Associate Attorney at Harvey Kruse from 1979 to 1985
Law Clerk to the Honorable Vincent J. Brennan, Michigan
Court of Appeals 1978-1979
Pre-hearing Attorney Michigan Court of Appeals 1978

ACKNOWLEDGMENTS: Martindale Hubbell Rating A/V
Award Winner Wayne County Mediation, Most Mediation
Evaluations Accepted

EXPERIENCE: Trial Attorney representing numerous clients in courts throughout the State of Michigan, United States District Court for both the Eastern District and Western District of Michigan, Michigan Court of Appeals, Michigan Supreme Court and the U.S. Court of Appeals for the Sixth Circuit. Also admitted in the U.S. District Court for the Northern District of Ohio and the Georgia Northern District Court.

Obtained successful verdicts and appellate decisions in numerous cases as outlined below.

Mediator/evaluator for the Wayne County Mediation Tribunal and Macomb County Circuit Courts.

REPRESENTATIVE CLIENTS:

ACE/ESIS
Amerisure Insurance Companies
Ashland Inc.
BASF
Bituminous Insurance Companies
Hyundai Motor America
J.E. Jacobs
Kia Motors America, Inc.
Nationwide Insurance
Victoria Insurance Company

MEMBER:

Association of Defense Trial Counsel
Fellow, Michigan State Bar Foundation

**REPRESENTATIVE
TRIAL & APPELLATE
DECISIONS:**

Detroit Edison v. Troelsen Excavating Company, Wayne County Circuit Court; Successful in obtaining a jury verdict in favor of Troelsen on Edison's claim that Troelsen violated the Production of Underground Facilities Act (MISS DIGG). Also recovered sanctions of \$40,000.00 against Detroit Edison.

Ray v. Walbridge Aldinger, et al, Wayne County Circuit Court; Represented Walbridge Aldinger and filed a cross claim against a subcontractor arguing that the subcontractor was a co-indemnitor. Motion for Summary Disposition for Co-Indemnity was granted.

Ferritt v. Etkin, Oakland County Circuit Court; Involved a slip and fall at a mall under renovation. Obtained full and complete indemnity for the general contractor pursuant to a motion for summary disposition against the Third Party Defendant, subcontractor.

Etkin Management v. Federal Insurance, Wayne County Circuit Court; Involved a declaratory action brought on behalf of a property management company against a co-insurer arising out of a slip and fall case that was settled. The motion for summary disposition against the co-insurer was granted resulting in the co-insurer paying 50% of the defense and indemnity costs.

Abke v. Ross Structural Steel, et al, Wayne County Circuit Court; Plaintiff was involved in a construction accident as an employee of a subcontractor on the construction site. Plaintiff fell from a ladder suffering debilitating injuries. In representing the general contractor Plaintiff's employer was added as a third party defendant pursuant to an indemnity clause in the subcontract. The employer's carrier took over the defense of all Defendants retaining Harvey Kruse as defense counsel. Trial was completed and a jury verdict of no cause for action was obtained in favor of all Defendants.

Sconochia v. Durocher's T.V. & Appliance, Inc., Monroe County Circuit Court; Involved a premises liability claim in which a summary disposition was obtained on the basis that the Plaintiff was a licensee and the Defendant had no notice or knowledge of the alleged icy condition.

Mohr v. S.R. Jacobson, Wayne County Circuit Court; Involved a claim alleging a sexual assault on Defendant's premises by a third party. Summary disposition was obtained on the basis that Defendant had no notice or knowledge of an impending danger that would give rise to a duty to protect the Plaintiff.

Hatrack v. Hyundai, 16th District Court; Involved a consumer protection claim against Hyundai arising out of the purchase of a motor vehicle. The matter was tried with the jury finding on behalf of the Defendant in that Defendant did not breach any warranty to the Plaintiff.

Gladych v. New Family Holmes, Inc., Michigan Supreme Court; The court held that the Plaintiff failed to toll the Period of Limitations pursuant to MCL 600.5856 by failing to serve the complaint within the period of limitations. The court reversed the Court of Appeals and reinstated summary disposition as ruled by the trial judge in favor of Defendant.

Formella v. Ciba-Geigy Corp., Michigan Court of Appeals; The Court of Appeals held that since the Plaintiff's cause of action was based upon the adequacy of Ciba-Geigy's warnings to physicians, Ciba-Geigy's liability turned upon the question of whether it exercised reasonable care with regard to the adequacy of the warning in question. The prescribing physician failed to read the published warnings and thus any negligence by Ciba-Geigy to further emphasize the hazards was

not a proximate cause of Plaintiff's injuries. A directed verdict in the favor of the Defendant was affirmed.

Sink vs. Sverdrup/Wade Trim Joint Venture, Wayne County Circuit Court; Plaintiff was an employee of Facilities Management, a wholly owned subsidiary of Wade Trim, a partner in the Detroit Wastewater Joint Venture. The joint venture hired Facilities Management to perform maintenance tasks at the Detroit Wastewater Facility. The Plaintiff was injured when he fell from a ladder attempting to remove a ceiling mounted panel cover. Plaintiff sued the joint venture. The joint venture filed a motion for summary disposition arguing that Plaintiff's claims were barred by the exclusive remedy provision of the Worker's Compensation Act. Plaintiff had received worker's compensation benefits from Wade Trim's carrier. Judge Neilson granted the joint venture's motion holding that since Plaintiff's employer was a wholly owned subsidiary of Wade Trim and since Wade Trim supervised the maintenance activities carried out by Plaintiff's employer, Wade Trim was the dual employer of the Plaintiff and as a joint venture partner, the exclusive remedy extended to the joint venture.

Commonwealth Insurance vs. Gleason Construction Company, et al, Federal District Court, Eastern District of Michigan. This involved a business loss claim advanced by Commonwealth Insurance as subrogee of Creative Solutions. The claim arose out of damage to underground fiber optic cable which was struck by Gleason Construction during the course of its boring operation in Washtenaw County in December of 2001. In the defense of Gleason Construction, Harvey Kruse, P.C. named the facility locating company, SM&P as a non-party at fault. SM&P was added as a party Defendant. The case was tried before Judge Denise Page Hood. The jury found in favor of Commonwealth Insurance and awarded damages in the amount of \$109,000.00 as against SM&P for negligence and violation of The Protection of Underground Facilities Act. The jury rendered a verdict of no cause for action in favor of Harvey Kruse's client Gleason Construction.

Pamela McClain vs. Nationwide Insurance, Wayne County Circuit Court. Ms. McClain was injured when the Co-Defendant was involved in a single vehicle accident while driving a Hertz rental vehicle. The renter, an acquaintance of the driver, testified that she did not give the driver permission to use the car. Hertz was dismissed from the lawsuit on the

basis that the driver was not a permissive user. Judge Torres granted Nationwide's motion based upon the language in Nationwide's policy that a self-insured vehicle is not considered uninsured by definition. Hertz is a self-insurer as per certificates filed with the Secretary of State. The summary disposition motion was granted pursuant to the clear and unequivocal language of the Nationwide policy.

GEM Industrial vs. Sunoco, U.S. District Court for the Northern District of Ohio; Harvey Kruse represented GEM Industrial in a cross claim filed by Sunoco arising out of repairs to a hydrogen furnace located at Sunoco's Toledo Refinery. In addition to replacement damages, Sunoco sought consequential damages of approximately \$3,000,000.00. GEM raised as an affirmative defense a provision incorporated in the contract that excluded consequential damages. Sunoco filed a Motion for Partial Summary Judgment. GEM answered with its own Motion for Partial Summary Judgment on the issue of consequential damages. The court addressed Sunoco's arguments in the alternative. Initially, the court pointed out that the terms of the contract were clear and unambiguous and were therefore binding. Alternatively, the court held that even if the terms required explanation, the affidavits by GEM's controller and the former Sunoco contract manager in support of GEM's position were uncontraverted. The court denied Sunoco's motion and granted GEM's Motion for Summary Disposition striking Sunoco's claim for consequential damages.

Munoz vs. BASF, Wayne County Circuit Court; Plaintiff was severely injured on the premises of BASF in Wyandotte while exiting the van of her employer, Third Party Defendant, Distinctive Maintenance. Plaintiff encountered icy conditions in BASF's parking lot. Upon bringing suit against BASF, BASF added Plaintiff's employer, Distinctive Maintenance pursuant to the applicable maintenance contract which required Distinctive Maintenance to indemnify BASF from any claims arising out of or directly or indirectly in connection with performance of its work. Judge Sapala ruled that since Distinctive Maintenance's procedure called for both picking up and returning its employees to their respective work areas within BASF's complex, the subject incident was directly or indirectly connected with the work and Distinctive Maintenance owed BASF full and complete indemnity.

Munoz vs. BASF, Michigan Court of Appeals; The lower court denied BASF's Motion for Summary Disposition based upon

the open and obvious defense. The Court of Appeals accepted leave under its expedited track. Ultimately, the Court of Appeals ruled in favor of BASF holding that the Plaintiff should have known that based upon her observations of a light drizzle in the morning and one inch of snow at lunchtime, ice would have formed under the snow in BASF's parking lot. The Court of Appeals reversed the lower court and granted summary disposition to BASF. The Plaintiff suffered significant injuries arising out of the subject slip and fall requiring four surgeries and future disability. Her case mediated for \$350,000.00.

Szewczyk vs. Nextlink, Oakland County Circuit Court; Suit was brought by the Plaintiff, Szewczyk, against Nextlink arising out of a fall suffered by the Plaintiff when he encountered a concrete cover that had been installed by Corby Energy Services as a subcontractor to Nextlink. Plaintiff did not sue Corby. Nextlink sought common law indemnity against Corby for Plaintiff's claims. Harvey Kruse on behalf of Corby filed a Motion for Summary Disposition on the indemnity claim. Judge Andrews ruled that since the primary Plaintiff advanced claims of active negligence against Nextlink, who had the oversight and inspection responsibilities on the project, no claim for common law indemnity existed. Corby's motion was granted.

Ostasiewicz vs. Kia Motors, 46th District Court; Plaintiff brought a lemon law/breach of warranty claim arising out of the purchase of a new Kia Spectra. Plaintiff argued that the cruise control was defective in that it would disengage, on its own, and not allow re-engagement until the vehicle was stopped and turned off. The vehicle was brought in for service, as alleged by the Plaintiff, on seven occasions. The court granted Kia's Motion for Summary Disposition holding that the Plaintiff was unable to prove that the use or value of the vehicle was substantially impaired since she testified at deposition that the problem resulted in an inconvenience. She was able to use the vehicle as intended throughout her ownership. On each occasion that the vehicle was brought in for service the alleged defect was either not verified or corrected.

Salmo vs. Hiller's Market, Oakland County Circuit Court; Summary Disposition was granted in favor of Hiller's Market arising out of a wrongful death claim advanced by the estate of the decedent Ayad Salmo who was killed, by a Hiller's employee who ran the decedent over after an altercation in the

parking lot while the employee was waiting to be admitted to the store for his midnight stocking shift. In its motion Hillers argued that the employee was not in the course of his employment when he struck the decedent with his automobile. Further, the employee's actions were criminal and not foreseeable from the standpoint of the employer. In addition to vicarious liability, the Plaintiff advanced a claim of negligent hiring. This also was dismissed as there was nothing in the employee's background that would have put Hiller's on notice of any type of violent tendencies.

Rivard vs. Kia Motors America, 42-1st District Court; Plaintiff brought suit under Michigan's Lemon Law and for breach of warranty arising out of the purchase of a new Kia Sorrento. This matter was tried before a jury in the district court. The jury found in favor of Kia Motors of America holding that Kia did not breach its warranty and that Plaintiff's vehicle did not have a defect or condition which substantially impaired its use or value. Kia was awarded case evaluation sanctions covering its trial costs and attorney fees.

Maxon vs. Sears Roebuck & Company, U.S. District Court for the Eastern District of Michigan, Southern Division; Plaintiff, an employee of a masonry contractor, was injured when he fell from a scaffold erected by Plaintiff's employer. Plaintiff brought suit against Sears Roebuck claiming that Sears acted as its own general contractor for the construction of its Great Indoors outlet. Judge Gadola ruled that Sears had not retained control over the means and methods of performance of Plaintiff's employer and granted summary judgment to Sears Roebuck & Company.

Jaffray vs. F. Lax Construction Company, Wayne County Circuit Court; Dennis Jaffray filed suit against F. Lax Construction Company arising out of bathroom renovations that occurred some 10 years before suit was filed. Jaffray raised various claims including misrepresentation, breach of contract, latent defect and continuous injury (arising out of the presence of mold). Judge Robert Ziolkowski granted F. Lax Construction's Motion for Summary Disposition based upon the running of the Statute of Limitations and the running of the Statute of Repose. Judge Ziolkowski ruled that all claims were barred despite Plaintiff's attempts to describe the claims as ongoing and continuous.