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John R. Prew

AREAS OF PRACTICE: Product Liability
Construction Accidents/Defects
Premise Liability
Trucking/Auto Litigation
Commercial/Contract Litigation
Insurance Coverage

EDUCATION: U.S. Marine Corps Basic School 1989 (Honor Graduate)
Naval Justice School 1989
Detroit College of Law (J. D., *cum laude*, 1988)
Detroit College of Law, Law Review 1986-1988
Michigan State University, James Madison College (B.A., 1985)

BAR ADMISSIONS: State Bar of Michigan 1988
U.S. District Court for the Eastern District of Michigan 1988
U.S. Military Court of Appeals 1989
U.S. District Court of Colorado 2004
U.S. District Court for the Western District of Michigan 2006
U.S. Court of Appeals for the Sixth Circuit 2007
U.S. District Court for the Central District of Illinois 2011
United States Supreme Court 2011

EMPLOYMENT: Managing Partner at Harvey Kruse, P.C. 2011-Present
Shareholder at Harvey Kruse, P.C. 2004-2011
Associate Attorney at Harvey Kruse, P.C. 2000-2003
Associate Attorney at Dawson & Clark 1995-2000
Associate Attorney at Bigler, Berry, Johnston, Szykiel & Hunt,
P.C. 1992-1995
U.S.M.C., Judge Advocate 1989-1992

ACKNOWLEDGMENTS: Martindale Hubbell Rating: A/V

EXPERIENCE: Trial and appellate attorney, successfully represented numerous clients in courts throughout the State of Michigan, United States District Court for the Eastern District and Western District of

Michigan, Michigan Court of Appeals, Michigan Supreme Court. As a specialist in complex national product liability cases, Mr. Prew has also been admitted pro hac vice to handle cases in other states including Alabama, California, Colorado, Florida, Kentucky, Mississippi, Missouri, New Jersey, New York, North Carolina, Ohio, Pennsylvania, West Virginia, and Wisconsin.

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

Served as a judge advocate in the United States Marine Corps, honorably discharged having attained the rank of Major. Served as Review Officer for the Commanding General, Third Marine Aircraft Wing, and Commanding General, Marine Corps Air Station, El Toro, California. Acted as prosecutor handling special and general courts-martial, trying numerous jury and bench trials involving offenses including, but not limited to, conspiracy, aggravated assault, larceny, drug importation, drug use and distribution, and check and credit card fraud. One successful complex prosecution involving criminal conspiracy to commit check fraud was a basis for the award of the Navy Achievement Medal. Acted as the presiding officer in numerous Article 32 hearings which equate with grand jury proceedings. Attended the U.S. Attorney General's Trial Advocacy Course. Also served as the Staff Judge Advocate and Officer in Charge of the Joint Law Center at Marine Corps Air Station, Tustin, California, providing counsel to the station commander and tenant squadrons on all legal matters. Also acted as a Special Assistant, United States Attorney, prosecuting cases in the Federal District Court for the Central District of California, involving offenses committed by civilians while on board Marine Corps Air Stations El Toro and Tustin. While in the Marine Corps Reserve, served for a period of time as the Staff Judge Advocate for Marines located at Selfridge Air National Guard Base, Michigan.

Mr. Prew has served as national product liability counsel for several clients in litigation throughout the United States. His involvement in the defense of large, automotive component part suppliers on a national basis allowed him to help shape the trends in product liability throughout the United States. Mr. Prew is one of the pioneers in defending component part suppliers in product liability suits. Mr. Prew has further utilized his product liability expertise and experience in the defense of hunting equipment manufacturers, crane manufacturers, glass

manufacturers, electrical equipment manufacturers, outdoor equipment manufacturers, and numerous other manufacturers.

Mr. Prew also specializes in commercial litigation, and currently serves several clients in commercial disputes. Mr. Prew has successfully defended companies in commercial business and construction disputes alleging breach of contract, product recall, intentional interference with business relations, breach of warranty, and misrepresentation.

**REPRESENTATIVE
CLIENTS:**

AlliedSignal
Amerisure Insurance Companies
Argo Group US
Badger Mutual Insurance Company
Colony Insurance
HDI Global Insurance Company
Liberty Mutual Group
Maxum Indemnity Company
National General Ins. Co.
Nationwide Insurance Company
Northland Insurance Company
Scottsdale Insurance Company
Underwriters at Lloyd's, London
XL Insurance America, Inc.
Zurich American Insurance Company

Airgas, Inc.
Bass Pro, Inc.
Bendix Commercial Vehicle Systems, L.L.C.
Ford Motor Company
Game Tracker, Inc.
Gorilla, Inc.
Honeywell International, Inc.
Hunter Safety Systems, Inc.
Key Safety Systems, Inc.
Manitowoc Cranes, LLC
Mazda Motor Corporation
Quality Safety Systems Co.
Steinman, Boynton, Gronquist and Birdsall
Summit Treestands, LLC
TA Operating LLC
Treestand Manufacturers Association
United Parcel Service, Inc.
Volkswagen Group of America, Inc.

MEMBER: Defense Research Institute
Michigan Defense Trial Counsel
Oakland County Bar Association
State Bar of Michigan

MILITARY SERVICE: United States Marine Corps January 1989 - 1992

SIGNIFICANT CASES: *Van Syckle v Ford Motor Company*, Wayne County Circuit Court, defense verdict in a rear impact automobile negligence case against the operator of a vehicle owned by Ford Motor Company wherein plaintiff sought hundreds of thousands of dollars for permanent shoulder disabilities and resulted in surgery.

Smith v Ford Motor Company, Wayne County Circuit Court, intimately involved in obtaining a defense verdict for The Ford Motor Company in a wrongful death case wherein plaintiff's personal representative claimed product defects with respect to the seating system in a Ford Motor Company automobile.

Williams v Ford Motor Company, 1997 WL 33350573 (Mich. App. Apr. 15, 1997 (No. 171658)), rev. 457 Mich. 888, 586 NW2d 232 (1998), plaintiff suffered serious personal injuries following a single vehicle accident and filed suit claiming product defects in the steering components of a Ford Motor Company vehicle. The Oakland Circuit Court granted Ford's motion for summary disposition on the basis the claim was barred by a release. The Michigan Court of Appeals originally affirmed the grant of summary disposition on the basis the plaintiff failed to tender back the consideration received in exchange for the release. On rehearing, the Michigan Court of Appeals reversed itself finding plaintiff presented a material factual dispute regarding whether there was fraud in the execution of release foregoing the need to tender back the consideration to repudiate the release. The Michigan Supreme Court reversed the Michigan Court of Appeals decision (on rehearing) and reinstated the judgment of the trial court granting summary disposition for Ford.

Blackshear v United Way, Oakland County Circuit Court, premises liability claim in which the minor plaintiff was injured after a fall from playground equipment at an elementary school. We were successful in our motion for summary disposition that United Way had no liability for the alleged injury which did not occur during a United Way program.

Dubowsky v General Motors Corporation and Commercial Contracting Corporation, Wayne County Circuit Court, a construction accident claim in which plaintiff claimed he suffered a serious knee injury after being struck by a hi-lo while performing electrical work on behalf of a subcontractor at the General Motors Poletown Plant. We were successful in obtaining a dismissal of the claim against our client, commercial Contracting Corporation, on the basis that discovery revealed that the hi-lo did not belong to Commercial Contracting and that Commercial Contracting did not control or otherwise supervise the area where the accident occurred.

Cleola Black v Nationwide Insurance Company, 45-B District Court, a claim by plaintiff for property damage benefits as a result of a house fire. We moved for dismissal due to the plaintiff's failure to provide discovery responses in response to a court order, and the case was dismissed with an award of costs to the defendant.

State Farm Fire & Casualty Company v S. R. Jacobson Development Corp., et al., Oakland County Circuit Court, a defective construction case in which State Farm claimed its insured incurred property damages from soot as a result of a defective furnace system installed in her condominium. We were successful in obtaining summary disposition on our cross-claim for complete indemnification against the co-defendant furnace installer resulting in an eventual settlement where our clients paid zero.

Proffitt v Pulte Land Development Corporation, et al.,

Washtenaw Circuit Court, a nuisance/defective construction claim in which plaintiff suffered serious personal injuries, having tripped and fallen over a sidewalk discontinuity while attempting to avoid the base of a basketball stanchion. Plaintiff alleged that Pulte and its subcontractor, Rotondo Brothers Concrete Company, defectively constructed the subject sidewalk and created a nuisance. After the filing of our motion for summary disposition, we were able to obtain the dismissal of the concrete subcontractor, Rotondo, on the basis of the statute of repose. We also obtained summary disposition on behalf of Pulte on the basis that the height discontinuity was open and obvious and that Pulte was entitled to this defense since the sidewalk was a “simple product”.

Lofton v Schelde Enterprises, Inc./Bonfire Bistro Brewery,

Oakland County Circuit Court, a premises liability claim in which the plaintiff alleged she mis-stepped and fell off of a single step in a restaurant due to poor lighting and poor interior design. We were successful in obtaining summary disposition for our client on the basis that the subject step was open and obvious.

Bert v Ferguson Enterprises, Inc., et al., Wayne County Circuit

Court, a three-vehicle intersection accident involving a bus, our client’s tractor trailer, and a third vehicle which ran a stop sign at a high rate of speed. After cross-examination of the plaintiff at deposition during which we exonerated our client’s driver of fault, an order of dismissal was entered with respect to our clients.

Lakowsky v Comcast Cablevision, 42nd Judicial District Court, a

claim by plaintiff for damages to a new home resulting from the alleged improper installation of cable products. After the filing of a motion to strike plaintiff’s complaint or for a more definitive statement, the Court entered an order striking plaintiff’s complaint.

LeClair v Life Insurance Company of North America, Delta County Circuit Court, an action seeking recovery of accidental death and dismemberment benefits. Plaintiff was working on a scaffold when it rolled into a hole, causing it to topple whereupon the plaintiff fell to the ground, suffering paraplegia as a result of a spinal cord injury. Plaintiff brought suit seeking benefits because of the injury to his spinal cord which resulted in loss of the functional use of his legs, thus sustaining a loss of two limbs by “severance at or above the wrist or ankle.” We were successful in obtaining summary disposition for our client arguing that the insured’s functional loss of his legs and feet due to his spinal injury was not equivalent to the loss of both feet “by severance at or above the ankle” as contemplated by the accidental insurance policy.

Johnson v 7 D’s Towing and Storage, Inc., et al., Wayne County Circuit Court, plaintiff claimed assault by an agent of 7 D’s Towing and intentional infliction of emotional distress following the plaintiff’s arrest for stealing car parts from 7 D’s Towing facility. After obtaining a discovery order against the plaintiff and the filing of a motion to dismiss for violations of said order, the case settled for a very nominal amount.

Northfield Insurance Company and Underwriters at Lloyd’s London v Arthur Hills & Associates, et al., Wayne County Circuit Court, an action on behalf of plaintiff insurance carriers for equitable subrogation and indemnification for expenses, costs and proceeds paid to defend and settle underlying lawsuits filed by property owners adjacent to a City of Taylor golf course which, after construction, caused water runoff onto the adjoining property, flooding the same and rendering it unsuitable for building. In the underlying litigation, Arthur Hills & Associates refused to defend and/or contribute to the settlement. After protracted litigation in both state and federal court, the case settled for an amount in the multiple six figures.

Norlock v Essco, L.L.C., et al., Oakland County Circuit Court, a premise liability action wherein the plaintiff purportedly slipped and fell on “black ice” located on a sidewalk owned and controlled by the City of Birmingham and located in front

of the defendant's building. We moved for summary disposition, arguing our client had no duty to maintain the publicly-owned sidewalk abutting its property, our client had no notice of the purported "black ice" condition or, in the alternative, the "black ice" was open and obvious. Prior to the hearing, plaintiff settled for a very nominal amount.

Estate of Mary Jackson v Williams Lake Development, et al., Oakland County Circuit Court, a wrongful death and property damage action wherein plaintiff sought damages following the flooding of plaintiff's decedent's condominium as the result of heavy rainstorms. Plaintiff's decedent was the owner and residing in a condominium located within defendant's development which was still undergoing development. Plaintiff alleged that as a result of improper site design, improper grading and drainage and poor site maintenance, a catch basin overflowed and backed up, flooding the decedent's condominium. As a result of the flooding, plaintiff alleged lost value to the value of the property, damages to personal property and that decedent's forced evacuation of the premises hastened the decedent's death. We obtained summary disposition for our client establishing plaintiff failed to produce the necessary evidence to support the claims for economic and non-economic loss and Michigan case law did not support sentimental/ emotional distress damages for loss of use or damage to property.

Sylvan Township v Kvetko, et al., Washtenaw County Circuit Court, a construction defect case wherein plaintiff claimed our client, third-party defendant, Rothenberger Company, Inc., should be liable for any damages arising from defendant's counter-claim for constitutional takings and trespass based on the alleged defective installation of a sewer service line adjacent to defendants' property. We successfully moved for summary disposition arguing our client owed no duty to plaintiff and that, even assuming such a duty existed, any claims of defective installation of the sewer line failed on a matter of law.

Gary Fannon and Karen Fannon, Individually and as Next Friends of W.F. and O.F., minors v Bass Pro, Inc., et al., United States District Court, Eastern District of Texas, Marshall Division, involved a claim by the plaintiff, Gary Fannon, that a tree stand from which he was hunting was defective because a strap holding it to a tree broke while he was sitting in it, resulting in his fall to the ground and subsequent paraplegia. It was alleged that our clients, Bass Pro, Inc., and Bass Pro Outdoor World, L.L.C., purportedly sold the subject tree stand and its securing strap. After engaging in discovery and obtaining an affidavit from the actual designer of the subject tree stand, a motion for summary judgment was filed on behalf of Bass Pro, Inc., and Bass Pro Outdoor World, L.L.C., on the basis that neither entity sold, supplied, distributed or otherwise placed into the stream of commerce the aforementioned products. Subsequent to the filing of the motion for summary judgment, the subject case was dismissed without prejudice.

Hedley v Frank Rewold & Sons, Inc., Royal Roofing, Inc., et al., Oakland County Circuit Court, a case involving a claim by the plaintiff, Larry Hedley, a volunteer for the Apostolic Church of Christ construction project. Mr. Hedley had climbed a 14-foot steel ladder and, while attempting to close a scuttle door, fell to the concrete floor, suffering alleged severe personal injuries. While attempting to close the scuttle door, a gripper sleeve on the closing handle slipped off, contributing to the plaintiff losing his balance and falling to the floor. Plaintiff filed suit against a number of different entities, including our clients, Frank Rewold & Son, Inc., the construction manager, and Royal Roofing Company, Inc., the entity which installed the scuttle door. Plaintiffs alleged there were defects with regard to the design of the steel ladder in conjunction with the orientation of the scuttle door, as well as negligence in the installation thereof. The trial court granted summary disposition on behalf of Frank Rewold & Son, Inc., on the basis that the alleged danger was not readily observable and that the accident in this case did not happen from a violation of the construction manager's duty as set forth in various controlling Michigan construction accident cases. Royal Roofing Company, Inc., was also granted summary disposition on the basis the plaintiff failed to show that it did not use due care in installing the hatch.

Tearra Lofton, as Personal Representative of the Estate of Mychal Matthews, Deceased, v Detroit Board of Education, Detroit Public Schools, et al., Wayne County Circuit Court, was a case involving allegations that a 16-year-old boy, a severely mentally and physically handicapped “special needs student”, was choked to death while wearing his doctor-approved safety vest and while riding on a school bus owned by the Detroit Public Schools. Plaintiff alleged that the defendants, along with two of its employees, were negligent and violated his constitutional rights under 42 USC §1983. After extensive discovery, defendants filed a motion for summary disposition on the basis the state law claims against the defendant employees were barred by governmental immunity, the defendants did not deprive the decedent of his due process rights guaranteed by the 14th Amendment and that the plaintiff lacked standing since there was no person who could actually recover damages under the Wrongful Death Act. The trial court agreed with the defendants and entered an order granting the defendants’ motions for summary disposition. The decision of the trial court was affirmed by the Michigan Court of Appeals.

Kevin McGuckin v Severstal North America, Inc., Wayne County Circuit Court, involved allegations that plaintiff, a journeyman iron worker, slipped and fell on oil at Severstal’s premises while working for his employer which had subcontracted to perform steel replacement work at Severstal’s steel production cold mill facility. Plaintiff alleged that Severstal failed to warn and protect him from the oily conditions and failed to use reasonable care to protect him from an unreasonable risk of harm caused by the dangerous conditions on the premises. After extensive discovery, defendant filed a motion for summary disposition on a number of different bases, including that the oil conditions were open and obvious and that plaintiff had executed a release as part of his worker’s compensation settlement which, in turn, released any claims arising out of his employment. The trial court agreed with the defendant and entered an order granting the defendant’s motion for summary disposition.

Middle Cities Risk Management Trust v Port Huron Roofing & Sheet Metal Company, Oakland County Circuit Court, a subrogation action involving allegations that defendant, while performing repairs on plaintiff's insured's school building, caused extensive damages by dust intrusion. Plaintiff filed this action after having expended tens of thousands of dollars to remediate and repair the conditions in the facility. After initial discovery, defendant filed a number of requests for admissions predicated upon the underlying contract between the plaintiff's insured and defendant which included the waiver of all rights between the contracting parties for damages caused by any loss to the extent covered by property insurance including all rights of subrogation. After the filing of the requests for admissions and follow-up discovery, plaintiff agreed to voluntarily dismiss its case.

Lela Tompkins v Northwest Airlines, Wayne County Airport, et al., Wayne County Circuit Court, involved allegations that plaintiff slipped and fell as a result of water accumulation in the Midfield Terminal, Main Tram Station, located at Detroit Metropolitan Airport, resulting in serious and debilitating injuries to her back and lower extremity. Northwest Airlines and Wayne County Airport Authority, d/b/a Detroit Metropolitan Airport, filed a third-party complaint against Crown Corr, Inc., and Hunt Construction Group, Inc., alleging that Hunt was the general contractor for the construction and erection of the McNamara Terminal and that Crown Corr, its subcontractor, was responsible for the design, construction and fabrication of the roof for the terminal, including the area above which the water leak occurred. Third-party plaintiffs alleged that Crown Corr and Hunt were negligent in failing to properly design and construct the roof which caused the water to leak onto the Tram Station platform. Also alleged were counts for breach of warranty and breach of contract with respect to the same alleged defects which resulted in plaintiff's injuries. After depositions of various corporate representatives, a motion for summary disposition was filed on behalf of Crown Corr, Inc., arguing that the statute of repose barred the third-parties' claims as these claims were filed more than six (6) years after the time of occupancy, use or acceptance of the completed improvement. It was further argued that the statute of repose applied irrespective of the fact that warranty work occurred in subsequent years following the date of occupancy, use or acceptance of the improvement. The trial court agreed

with the defendant and entered an order granting defendant's motion for summary disposition.

Amanto v Summit Treestands, LLC, and Dick's Sporting Goods, Inc., West Chester Court of Common Pleas, Pennsylvania, a product liability case wherein plaintiffs alleged the defendants were strictly liable as a result of a purported defect in a Summit X4 Climbing Treestand which supposedly allowed a cable stop to pull through a cable bracket during climbing operations, causing the fall of the plaintiff and resulting in serious personal injuries. After a 5-day trial, the 8-person jury returned a unanimous verdict finding no defect with respect to the product and rendering a verdict for the defendants.

Tompkins v Crown Corr, Inc.; Northwest Airlines, Inc., et al., United States District Court, Eastern District, Michigan. Represented Crown Corr, Inc. initially in Wayne County Circuit Court where Northwest Airlines, Inc. joined my client, Crown Corr, Inc. by way of a third party complaint. Crown Corr, Inc. was added on the theory it had liability since it purportedly designed and constructed the roof. Summary disposition was obtained based on the statute of repose. After dismissal, Crown Corr, Inc. was named as a non-party at fault. As a result, plaintiff was allowed to join Crown Corr, Inc. as a direct defendant; whereupon, Northwest Airlines, Inc. cross-claimed against Crown Corr, Inc. Crown Corr, Inc. removed the case to the United States District Court, Eastern District of Michigan. After the filing of a motion for summary disposition, the cross-claim was dismissed based on the full faith and credit clause per 28 USC §1738. Plaintiff's claims that it was Crown Corr, Inc.'s negligent repairs that allowed the water to leak onto the platform were also dismissed based on the statute of repose.

McKinney v Pavilion Title Agency, Inc., et al., United States District Court, Eastern District, Michigan. Plaintiff filed a 59 count, 26 page complaint against 14 entities, including Pavilion Title Agency, Inc., asserting claims for breach of contract, fraud, and violations of the Truth and Lending Act, the Federal

Trade Commission Act, the Equal Credit Protection Act, the Real Estate Settlement Procedures Act as well as violations of the civil and constitutional rights. The premise for the plaintiff's complaint was that he was defrauded out of real property as part of a financing scheme. After the filing of a motion for dismissal pursuant to Fed. R. Civ. Pro. 12(b)(6) and Fed. R. Civ. Pro. 12(c), the court entered an order dismissing the complaint in its entirety.

Cohen v. Roof Rite, Inc., Oakland County Circuit Court.

Plaintiff contracted with defendant to remove and replace the roof at his home. Plaintiff thereafter filed suit seeking money damages related to purported problems he discovered after the completion of the roofing project. Plaintiff asserted claims for breach of contract, fraud, statutory conversion and negligence. Plaintiff filed a motion for partial summary disposition and, in turn, defendant filed a cross-motion for partial summary disposition. Plaintiff's motion for summary disposition was denied, and defendant's request for partial summary disposition as to the breach of contract, fraud and statutory conversion was granted based upon the economic loss doctrine.

Hyperbaric Options, LLC v. Oxy-Health, LLC, et al., United States District Court, Eastern District, Michigan. Plaintiffs filed their complaint in Oakland County Circuit Court alleging claims of tortious interference with business expectancy, defamation, and a violation of the Michigan Anti-Trust Reform Act based upon allegations that the defendants used a large number of aliases to post factually inaccurate and misleading information about the plaintiffs' products on internet websites which purportedly resulted in a dramatic reduction in sales and revenue. After removal to federal court, defendants filed a motion to dismiss the plaintiff's first amended complaint pursuant to Fed. R. Civ. P. 12(b)(2) and 12(b)(6), as well as plaintiffs' application to file a second amended complaint. The Court granted defendants' motion to dismiss for lack of personal jurisdiction and denied plaintiffs' leave to file a second amended complaint as being futile as it would not cure the jurisdictional issues.

Capek v. Sachse Construction and Development Corporation, et al, and Sachse Construction and Development Corporation v. Devange Construction, et al., Oakland County Circuit Court. During the build out of a tenant suite, the plaintiff alleged that he fell from a ladder while attempting to install diffusers in the ceiling as part of the HVAC system. While attempting to attach a flexible connection from the diffuser to a duct in the acoustical ceiling, plaintiff alleged that the ceiling grid moved which caused the diffuser to fall, which knocked him off of the ladder resulting in personal injury. Sachse Construction and Development Corporation was the general contractor who subcontracted the acoustical ceiling work to Devange Construction, Inc. Sachse Construction filed a motion for summary disposition against Devange Construction arguing it was contractually obligated to indemnify and hold Sachse harmless from the plaintiff's claims of injury, and that Devange breached its contract by failing to obtain necessary insurance. The Court granted Sachse Construction's motion in its entirety ruling Devange was required to indemnify Sachse from the date of the claim.

Pounders v. Fawaz, Dahber and H&A Mart, Inc., et al and Fawaz v. Dahber and H&A Mart, Wayne County Circuit Court. The plaintiff alleged that her minor child was sold K2 (spice) by the defendants, which was ingested resulting in alleged mental injuries. A motion for summary disposition by Fawaz against Dahber and H&A Mart was filed predicated upon a lease agreement requiring Dahber and H&A Mart to defend and indemnify Fawaz. Dahber and H&A Mart contended there was an ambiguity regarding the application of insurance, the indemnification language was ambiguous and the lease was not in effect at the time of the incident, there was a separate claim against Fawaz rendering the indemnity language inapplicable, and that Michigan law did not allow Fawaz to recover attorney fees as part of his claim for indemnification. The Court granted Fawaz's motion for summary disposition ruling that Dahber and H&A Mart owed Fawaz contractual indemnification, including attorney fees.