

# Marlin E. Buckley, P.C.®

## Building Experts

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### Testimony and Expert Work Marlin E. Buckley July 16, 2013

*The following cases are cited in accordance with Federal Rules of Civil Procedure 26 (a) (2) (B):*

In May, 2007, I was engaged to provide expert services in a private mediation case being held before the Honorable L. Anthony Gibson, JSC (ret'd), Linwood, NJ. The caption of the case is CCC Atlantic, LLC v. Intech Construction, Inc. I had been engaged to support counsel for the plaintiff, Walter T. Wolf, Esquire, Walter T. Wolf, LLC, Audubon, NJ.

The plaintiff hired the defendant to renovate a large office building in Linwood, NJ. The claim involved multiple construction defect issues, and was approximately \$5 million.

Some of the highlights of my work in this case are as follows:

- Expert report (initial), dated November 16, 2007
- Supplements to the expert report, dated June 4, 2008 and July 9, 2008
- Expert report to critique defendant's expert report, dated June 25, 2008
- Deposition on July 3, 2008
- Testimony at trial on July 9 & 10, 2008

Judge Gibson ruled in favor of my client.

In July, 2008, I was engaged by Defense Counsel, Attorney James N. Gross, Philadelphia, to assist with his client's counter claim. Two real estate investors jointly owned 2 properties in North Philadelphia, and wished to dissolve the partnership. Plaintiff sued to obtain clear title to both properties. Defendant counter sued to receive compensation for renovation work he

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Architects, and other Construction Professionals*

performed at the properties. The case was filed in the Court of Common Pleas of Philadelphia County, August Term, 2007, No. 003040. The parties were Elinor Lee v. Wai Keung Ng.

I submitted an expert report on August 4, 2008, in which I stated the fair market value of defendant's construction work.

Counsel mutually agreed to reduce the claims to under \$50,000, thus qualifying the case for Philadelphia Common Pleas arbitration. I testified at trial on January 22, 2009.

The arbitration tribunal ruled in favor of my client, and awarded a good monetary judgment.

On June 15, 2004, I prepared an expert report to support defense counsel in an American Arbitration Association action, case No. 14 M 110 01337 02. David Garcia, Esquire, Garcia and Associates, Philadelphia, was retaining counsel. The caption in the case was World Asian Investment Group, LP v. Hoon Ho Oh Builders and Contractors, Inc., and involved breach of contract and wrongful termination. The defendant was in the early stages of constructing a new office building when the plaintiff fenced in the job site and locked him out.

My expert report involved estimating the value of work already performed by the defendant in support of his counter suit. The case settled pre-trial in favor of the defendant.

On June 2, 2009, I was deposed as a fact witness in a case originating in 2001, affiliated with alleged collateral damages to a large apartment building caused by the collapse of the World Trade Center towers. Suit was filed by plaintiff's counsel in the United States District Court for the Southern District of New York, ECF CASE, Case No. CV-04-5201, before the Honorable Loretta A. Preska. The parties to the action are Parks Real Estate Purchasing Group, et. al., v. St Paul Fire and Marine Insurance Company. I supported defense counsel, attorney Brian J. Gerling, of the firm Hunton & Williams, McLean, VA.

On October 31, 2008, I submitted an expert report in support of plaintiff's counsel in a construction accident and personal injury case. The plaintiff, an ironworker, fell some 12 feet from a roof and suffered permanent injury to his legs and feet. The case was filed in the United States District Court for the District of New Jersey, and the caption is Brian P. Jones v. Dandrea Construction Co., and Greyhawk North America, LLC, et. al., Civil Action No. 07CV1884. Retaining counselors are Jeffrey A. Krawitz, Esquire, of Silverman Burns Kasmien & Krawitz, Two Penn Center Plaza, Suite 910, Philadelphia, and Arthur M. Krawitz, Esquire, of Doroshow Pasquale Krawitz & Bhaya, 1202 Kirkwood Highway, Wilmington, DE.

Retaining counsel reported the case settled before the trial, which had been listed for the week of February 1, 2010.

On October 16, 2008, I submitted an expert report in support of plaintiff's counsel in a personal property damage case. A prominent artist was in process of transferring his personal artwork collection into a newly constructed studio when the roof leaked, causing permanent damage to a significant portion of his work. The case was filed in the Court of Common Pleas of Delaware County. The caption in the case was Charles Stegeman and Marie-Therese Zenner, h/w vs. The Trustees of Haverford College, et. al., No. 06-6867. Retaining counsel was Michael Lastowski, Esquire, of Duane Morris, LLP, 1100 Market Street, Suite 1200, Wilmington, DE.

The case settled pre-trial in favor of the plaintiff, and a monetary payment was made by the defendants.

On a cold Winter afternoon a retired Philadelphia first grade teacher returned home to discover that a water pipe had frozen and burst, flooding her basement family room. She hired a clean-up contractor to repair the damage. When the contractor failed to follow established industry guidelines for water damage clean-up a toxic mold infestation erupted in her house, forcing the elderly lady to vacate the premises.

Upon contacting me, I provided technical assistance to identify the locations of the mold infestations and hired a qualified remediation contractor to clean the building. Efforts to obtain cooperation from the original clean-up contractor failed. Legal counsel was retained, and suit was filed to recover the damages. I wrote an expert report for counsel.

The caption in this case is Dorothy Pesa v. ServiceMaster Clean, et. al., Court of Common Pleas of Philadelphia County, May Term 2008, No. 2537. Counsel is David Garcia-Villarreal, Esquire, of Garcia & Associates, LLC, Philadelphia. This case settled in Spring, 2010.

On July 6, 2009, I submitted an expert report in defense of a mechanical contractor who had installed a mop receptor in an office building. An employee on the floor below was hit on the head by a ceiling tile when water saturated it. This employee (the plaintiff) was suing for personal injuries. The case was listed for the November, 2009, trial pool in the Court of Common Pleas of Philadelphia County, and was continued into the December trial pool. The case number is October Term, 2007, No. 002393. Retaining counsel was Jay Branderbit, Esquire, of the firm Kent & McBride, P.C., Philadelphia.

Retaining counsel reported that jury selection had concluded on December 18, 2010, shortly after which the parties came to a settlement agreement.

On October 5, 2009, I submitted an expert report in the defense of a mechanical contractor who had installed an air conditioning cooling tower on the rooftop of a university library building as part of a major renovation project. The plaintiff, a maintenance employee of the university, fell while descending the ladder of the cooling tower. Plaintiff was seeking a multi-million dollar claim against the mechanical contractor for alleged construction deficiencies.

The case was listed for trial in January, 2010, and jury selection concluded on January 29, 2010. Retaining counsel reported that opening arguments had commenced when the case settled on February 2, 2010.

The caption in the case is Robert Harvey, et. al., v. West Chester Mechanical Contractors, Inc., et. al., Court of Common Pleas of Philadelphia County, June Term, 2008, No. 000549. Retaining counsel was Marc B. Zingarini, Esquire, of the law firm of Weber Gallagher Stapleton Fires & Newby, LLC, Philadelphia.

On April 20, 2010, I submitted an expert report in defense of a large Philadelphia area office management firm. The plaintiff, an occupant of one of the offices, claimed that when she flushed the water closet (toilet) in the ladies room it exploded, hurling her into the toilet compartment door, causing personal injury.

The caption in the case is Nikita Fulton v. Becker Ventures, LLC, et. al., Court of Common Pleas of Philadelphia County, September Term, 2009, No. 2325. Retaining counsel was Greg A. Ray, Esquire, of the firm Comeau & Bunker, Philadelphia.

Retaining counsel reported this case settled shortly after my expert report was issued.

I was engaged by defense counsel for a large Philadelphia construction management firm in a large insurance subrogation case. The construction management firm was hired by a developer to build a project consisting of luxury condominiums and renovations to a historic Philadelphia restaurant. Due to funding difficulties and cost overruns not all condominium units were completed. A number of the condominium units were finished to only a *white box* level.

Subsequent to completion by the construction manager, the developer hired a general contractor to complete interiors of a number of the units.

On a particularly cold February day a fire sprinkler pipe, located inside an exterior wall, froze and burst, causing substantial damage to the condominium and the restaurant below. It is believed that the general contractor tampered with the fire sprinkler pipe which had been originally installed by the defendant. In addition to property damages there was a business interruption claim. Plaintiff in this case was the insurance carrier for the restaurant, and was seeking to recover losses paid on the claims.

The caption in the case is Depositor's Insurance Company v. The Henderson Corporation, et., al., United States District Court for the Eastern District of Pennsylvania, Docket No. 08-787 (S.S.D.C.E.D.Pa). Retaining counsel was Richard E. Stabinski, Esquire, of the firm Weber Gallagher Simpson Stapleton Fires & Newby, LLP, Philadelphia.

The case settled in the Spring of 2010, a couple of weeks before my expert report was completed.

A homeowner in the Frankfort section of Philadelphia hired a satellite antenna television service to install subscription service at her residence in September, 2007. Sometime thereafter, she complained of a malodor inside the premises and alleged personal injuries to herself and other occupants of the dwelling as a result of the installation of the satellite antenna.

Plaintiff's counsel demanded damages exceeding \$2 million, and suit was filed in court. The caption in the case was SYBIL O'NEIL, et. al., v. DIRECTV, INC, Court of Common Pleas of Philadelphia County, docket NO. 0904-2939. The case was listed for jury trial in the November, 2010, trial pool.

I was engaged as an expert witness by defense counsel, attorney Norman L. Haase, partner in the firm of Swartz Campbell, LLC, Media, PA. After investigating the premises on July 27, 2010, I prepared an expert report dated August 21, 2010.

Trial preparation conferences were conducted, and a video recorded demonstration was prepared for presentation to the jury.

Retaining counsel reported that the case settled for a nominal monetary amount on November 2, 2010.

Two homeowners in the Cobbs Creek section of Philadelphia hired a home improvement contractor to replace the roof on their house. The contractor subsequently hired a roofing contractor to actually perform the work. While the work was underway, a heavy storm passed through the area, and water entered through the open portion of the roof, causing damages to the building interior and its contents. The costs of repairs and contents replacement were paid by the homeowner's insurance carrier.

Subsequently, the insurance carrier filed a subrogation law suit against the insurance carrier of the home improvement contractor to recover the monies paid out.

I was retained by defense counsel for the home improvement contractor's insurance carrier, and prepared an expert report, dated October 4, 2010.

The caption in the case is ALLSTATE INSURANCE COMPANY A/S/O WILLIAM AND NIKKOL BLAGMON v. HAYDEN CONSTRUCTION CO. D/B/A ROCCO & SONS CONSTRUCTION CO., INC.; AND ANTON BERZIN, Court of Common Pleas of Philadelphia County, docket NO. 0906-1363. Retaining counsel was Joseph W. Denneker of Zarwin Baum DeVito Kaplan Schaer Toddy, P.C., Philadelphia.

The case settled shortly before the trial.

A lady had been renting a row house in South Philadelphia for over 10 years. During that time there were chronic leaks emanating from the 2<sup>nd</sup> floor bathroom, and water was making its way down to the kitchen. Repeated notifications to the landlord failed to correct the problem. On August 10, 2010, after using the bathroom, the plaintiff entered the kitchen and slipped on a puddle of water. Her injuries were extensive, and she is permanently disabled.

I was retained by plaintiff's counsel, attorney Frank D. Branella, Philadelphia, to prepare an expert report, dated November 7, 2011, and to testify at trial before a jury of 12, on April 24, 2012.

The caption in the case is BARBARA CUSUMANO-MURDOCK v. JOHN FALCONE, Court of Common Pleas of Philadelphia County, docket NO. 110101237.

The case is currently on appeal.

UPDATE: As of July, 2013, retaining counsel reports the case is still pending appeal in PA Superior Court.

A new homeowner couple hired a home improvement contractor friend of one of the family members. As work progressed the homeowners became dissatisfied with the quality of the workmanship, and withheld a sizable bank draw. The contractor ceased work and filed a mechanic's lien on the property. The homeowners retained counsel and filed a counter claim against the contractor.

I was retained by the homeowners to evaluate the construction deficiencies and to prepare a cost estimate for remediation. The cost estimate was incorporated into my expert report dated February 23, 2012. A supplementary expert report was prepared on March 8, 2012, in rebuttal to the contractor's expert's report.

An American Arbitration Association hearing was held on June 27, 2012, at which I testified. The caption in the case was JOSEPH DELVISCIO, DANIAL DELVISCIO & ROMAN

BUILDERS v. CHRIS SAULLO & GEANINE SAULLO, AAA NO. 14 527 01160 11. Counsel for the Saullo's was Daniel M. Keane, of Clemens Richter & Reiss, P.C., Doylestown, PA.

The arbitrator rendered judgment in favor of both parties.

A small township just Northwest of Reading, PA, built a new municipal building and police office. It was a multi-prime contract, as is common in public works construction projects. The HVAC prime contractor had numerous deficiencies in his work which significantly impacted the system's performance, and therefore, the comfort of the building's occupants. Additionally, energy consumption was well beyond expectations. The township withheld final payment to the HVAC contractor and filed suit to recover its costs incurred while correcting the work.

I was retained as an HVAC expert by the township solicitor, attorney Cheryl J. Allerton, of Hartman & Shurr, Wyomissing, PA. Following a site investigation of the work and case file documents I prepared a Settlement Proposal Workbook, dated March 7, 2012. On March 27, 2012, I attended a settlement conference with the parties at the township building.

In or around August, 2012, the parties settled.

The caption in the case was ONTELAUNEE TOWNSHIP v. TMI COMMERCIAL, INC., and AEGIS SECURITY INSURANCE COMPANY, Court of Common Pleas, Berks County, PA, NO. 10-12599.

A Center Valley, PA, couple contracted with a local builder to construct a custom home. Shortly after occupying the home the couple decided to have installed a private bathroom in their young son's second floor bedroom. They hired a local plumbing contractor to perform the work.

Several years later they began to experience severe clogging of the son's water closet. One of these occasions caused significant damage, especially to the finished basement area. A new plumbing contractor was brought in to clear the blockage and to investigate. It was discovered the plumbing contractor who installed the son's bathroom connected the soil pipe to a passive radon evacuation stack, and not to the soil stack. Repairs were made.

Suit was filed by the homeowners and their insurance carrier to recover the costs. I was retained as a plumbing and construction management expert witness by counsel for the insurance carrier of the plumbing contractor.

Upon investigating the site I concluded in my expert report (and agreed with the homeowners' expert) that my client, the plumbing contractor, had connected the bathroom soil pipe in error to the radon evacuation stack.

The case settled.

The caption in the case was LEONARD and CHRISTINE PAPARO v. SPECTRUM HOMES, INC., and RITTER PLUMBING & HEATING, LLC, Common Pleas Court of Lehigh County, PA, NO. 2011-C-1568. Retaining counsel was attorney Richard C. Howard, Jr., of Weber, Kracht & Chellew, Perkasio, PA.

An elderly tenant of an apartment building slipped and fell down a flight of stairs suffering serious and permanent injuries to her legs. She had slipped on loose carpeting on the stairway.

Counsel for the tenant retained my services as an expert witness in the area of carpet installation and property maintenance code evaluation. My expert report was dated August 29, 2012, and was followed by a supplemental report dated November 12, 2012. I was deposed on March 12, 2013, by counsel for the landlords' insurance carrier.

The case settled in early July, 2013.

The caption in the case was MARIA POKORA v. ROMAULD KWIECINSKI, JANUSZ KOWALCZYK, and RYSZARD DZIEDZIC, United States District Court for the Eastern District of Pennsylvania, NO. 11-7617. Retaining counsel was Christopher S. Froba, Gordon and Weinberg, P.C., Conshohocken, PA.

In a complex multi-issue construction defect suit involving the construction of a large condominium project in Northern New Jersey I was engaged as a plumbing and construction management expert witness. The project had been completed some 8 to 10 years earlier, and suffered from deficiencies from the outset, including various structural weaknesses and rain water infiltration.

The condominium association filed suit, and eventually my client, the plumbing contractor to the builder, ended up as one of the many defendants. The claim by experts for the association was that my client compromised the structural integrity of a number of floor trusses (TJIs) while installing his 3 inch soil lines.

Evidence was spoliated, which precluded any meaningful site investigation. Relying on limited photographic evidence provided by others, and deposition testimonies of various parties, I speculated my client possibly could have cut the trusses. Conclusive proof was absent.

I prepared an initial expert report, dated August 15, 2012, and a supplementary report, dated September 28, 2012, which included cost estimates for the repair work which retaining counsel used to settle the case.



The caption in the case was THE NICOLE CONDOMINIUM ASSOCIATION INC., aka 729 MADISON STREET CONDOMINIUM ASSOCIATION, INC., v. LUONGO PLUMBING & HEATING, et. al., Superior Court of New Jersey, Law Division: Hudson County. Retaining counsel was Leslie Parikh of Gebhardt & Keifer, P.C., Clinton, NJ.

A Philadelphia area HVAC contractor submitted a prime bid to a New Jersey school district for scattered site repairs to vandalized school building HVAC equipment. This contractor was the apparent low bidder by a rather slim margin. Bidder #4, who was higher by a significant amount, filed a protest and notified the school board it intended to file suit if the work was awarded to any of bidders 1-3. The claim was that the 3 lowest bidders failed to name a licensed New Jersey Master Plumber, even though the required bid form provided no line on which to name a plumber.

Plumber #1 retained counsel and filed a temporary restraining order against the school board, preventing contract award, pending further hearings.

Counsel for plumber #1 retained me as a Licensed New Jersey Plumbing expert witness to research the matter. I concluded the bid documents, in fact, contained no plumbing, as defined by the New Jersey Administrative Code. I further concluded my client was properly qualified to perform the work as designed. These findings were memorialized in expert reports dated April 17, 2013, and April 24, 2013.

Retaining counsel filed a petition and a hearing was held on April 17, 2013, to determine the merits of extending the temporary restraining order through trial. At the request of retaining counsel I was on standby in the court room in the event my testimony would be needed. The temporary restraining order was extended through trial.

Last report from counsel was that a settlement with the school board was on the table.

The caption in the case was DEVINE BROTHERS, INC. v. CAMDEN CITY PUBLIC SCHOOLS, Superior Court of New Jersey, Law Division, Civil Part, Mercer County, NO. CAM-L-1503-13. Retaining counselors were Shawn R. Farrell and Kathleen M. Morley of Cohen Seglias Pallas Greenhall & Furman, P.C. George Pallas was the name partner for the case.

Two real estate developers were in process of dissolving their relationship. Multiple properties had been acquired and developed over many years. One problematic parcel involved in the litigation was an unfinished project. Essentially, the building construction ceased in its very early stages some years ago, and remained a shell. A commercial building appraiser needed to know the cost to complete renovations of the building into 3 retail spaces in order to place a fair market value on the property.

At the recommendation of the appraiser I was retained by counsel for one of the developers as a professional construction cost estimator and construction manager expert witness. Following my site inspection of the property with the appraiser I prepared my expert report which included a cost estimate for completion of the work.

At the request of counsel, I attended the hearing on May 10, 2013, and was on standby to testify if needed.

Litigation is ongoing.

The caption in the case was BRUCE EARLE, et. al. v. GEORGE J. SPAEDER, et., al., Court of Common Pleas, Delaware County, PA, NO. 12-6409. Retaining counsel was Daniel J. Dugan of Specter Gadon & Rosen, P.C., Philadelphia.

Marlin E. Buckley