

ROBERT G. KAMENEC



Partner

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Robert G. Kamenech serves as the Department Leader of Plunkett Cooney's Professional Liability/Insurance Department, which includes approximately 45 attorneys practicing in such specialized areas as appellate law, construction liability, insurance coverage, medical liability and professional liability.

Mr. Kamenech specializes in appellate law, special and complex litigation, and telecommunications. His practice is concentrated in the substantive areas of insurance coverage, medical malpractice, professional liability, drug liability, and title insurance. He has briefed and argued hundreds of cases at all levels of the Michigan court system, as well as in the Sixth Circuit Court of Appeals.

Mr. Kamenech has handled successfully appeals of multi-million dollar verdicts, as well as precedent-setting cases. Mr. Kamenech has a long track record of representing a variety of clients, including municipalities, insurance companies, hospitals, physicians and pharmaceutical manufacturers. He has been responsible for many of Plunkett Cooney's complex litigation matters, both at the trial and appellate court levels. These matters include litigation involving high exposure medical malpractice, diethylstilbestrol (DES), L-Tryptophan, silicone breast implants, DBCP, other chemicals and pesticides, and Fen-Phen. Mr. Kamenech has also represented various corporate clients and insurance companies in the environmental context.

Representative Client Work

- Largest appeal to proceed in Michigan's appellate system (*Dow Corning v Continental Casualty*)

Areas of Practice

- Appellate Law
- Directors & Officers Liability
- Drug Liability
- Environment, Energy and Resources Law
- Financial Services Liability
- Foodservice & Hospitality Industry Group
- Insurance Law
- Medical Liability
- Municipal Law
- Nursing Home & Long-term Care Liability
- Telecommunications Law
- Title Insurance Law
- Video & Cable Franchising

Honors & Awards

- The Best Lawyers in America® for Appellate Law (Copyright 2010 by Woodward/White, Inc., of Aiken, S.C.), 2007 - 2011
- American Academy of Appellate Attorneys, 2007 - present
- Martindale-Hubbell's highest rating-AV Preeminent™ Peer Review Rated. AV Preeminent is a certification mark of Reed Elsevier Properties Inc., used in accordance with the Martindale-Hubbell® certification procedures, standards and policies.
- Michigan Super Lawyer in Personal Injury Defense; Medical Malpractice; Michigan Super Lawyers, a Thomson Reuters publication, 2006 - 2011

- Tort reform appeals addressing the application and constitutionality of various measures (damages, common law right to setoff, allocation of fault)
- Constitutionality of Michigan's "FDA – Immunity" statute
- Determination of whether Michigan law recognizes "loss of a chance" as a compensable item of damage
- Several certified questions, including when a mortgage is considered recorded under Michigan law
- Portfolio of cases dealing with common legal issues (for example, retroactivity of *Waltz v Wyse*, 469 Mich 642; 677 NW2d 813 (2004))
- Multiple filings in the United States Supreme Court

Notable Cases

- *Dow Corning v Continental Casualty*, 1999 WL 33435067 (Mich App) (October 12, 1999) (various insurance coverage issues in the breast implant context, including trigger of coverage, "all sums" versus pro-rata allocation, horizontal versus vertical exhaustion, "expected or intended" exclusion, collateral estoppel and judicial notice, defense versus indemnity damages, impairment of subrogation rights, misrepresentation, and recovery of attorney fees in a declaratory action)
- *Andrea Smith v Botsford General Hospital*, 419 F.3d 516 (6th Cir. 2005) (as a matter of first impression, Emergency Medical Treatment in Active Labor Act's (EMTALA) incorporation of state law extends to caps on damages; jury's award of \$5,000,000 in non-economic damages subject and reduced to Michigan's cap on malpractice damages of \$359,000.00)
- *American Bumper and Mfg Co v National Union Fire Insurance Company*, 261 Mich App 367; 683 NW2d 161 (2004) (deaths of employees in manufacturing mechanical press allegedly as a result of employer's specific intent or willful disregard of knowledge of certain injury were expected or intended by the employer; intentional injury exclusion of umbrella policy barred liability coverage; the subjective expectation of injury was inferred as a matter of law; court reverses judgment of \$2,400,000 against National Union and remands for entry of summary disposition)

- Michigan Super Lawyer, Appellate Law Practitioner, Top 100 Lawyers Statewide, 2009
- Lawyer of the Year, Michigan Lawyers Weekly, 2006

Education

- University of Detroit School of Law, J.D., 1982
- University of Michigan, B.A. (English), 1978

Bar & Court Admissions

- Michigan Court of Appeals, 1983
- Michigan Supreme Court, 1983
- U.S. Court of Appeals for the Sixth Circuit, 1983
- U.S. Supreme Court, 1988

- *Taylor v SmithKline Beecham Corp*, 468 Mich 1; 658 NW2d 127 (2003) (court holds constitutional statute granting immunity from product liability actions to manufacturers of prescription drugs)
- *Koski v Allstate Insurance Company*, 456 Mich 439; 532 NW2d 636 (1998) (insured's breach of notice-of-suit provision (by failing to notify insurer of tort suit until three months after entry of default judgment) prejudiced insurer);
- *Allstate Insurance Company v Keillor (After Remand)*, 450 Mich 412; 437 NW2d 589 (1995) (motor vehicle exclusion bars coverage under a homeowner's policy for death of a motorist)
- *Locke v Pachtman, MD*, 446 Mich 216; 521 NW2d 786 (1994) (alleged admissions by surgeon insufficient to establish standard of care and breach of that standard; plaintiff failed to state prima facie case of medical malpractice on theory of res ipsa loquitur)
- *Moll v Abbott Laboratories*, 444 Mich 1; 506 NW2d 816 (1993) (under discovery rule in a pharmaceutical products liability action, plaintiff's claim accrues when plaintiff discovers, or should have discovered, injury and a possible connection between injury and the defendant's alleged breach)
- *Auto-Owners Insurance Company v Churchman*, 440 Mich 560; 489 NW2d 431 (1992) ("expected or intended" exclusion applies to preclude coverage when insured is mentally ill or insane)
- *Falcon v Memorial Hospital*, 436 Mich 443; 562 NW2d 44 (1990) (loss of substantial opportunity to survive compensable in medical malpractice action)
- *Campbell v St John Hospital*, 434 Mich 608; 455 NW2d 695 (1990) (physicians seeking to arbitrate medical malpractice claim must plead arbitration as an affirmative defense in first responsive pleading)
- *Wlosinski v William Beaumont Hospital*, 269 Mich App 303; 2005 WL 3484608 (Dec. 20, 2005) (in matter of first impression, court holds that neither hospital nor doctor has a duty to disclose a doctor's statistical history of transplant failures to obtain informed consent of patient; court vacates \$1,500,000 verdict for plaintiff and remands for new trial; lack of informed consent count dismissed as a matter of law)
- *Markley v Oak Health Care Investors of Coldwater, Inc.*, 255 Mich App 245; 660 NW2d 344 (2002) (common-law rule of setoffs survives tort reform legislation in medical malpractice actions)
- *Dykes v William Beaumont Hosp*, 246 Mich App 471; 633 NW2d 440 (2001) (in medical malpractice action based on loss of an opportunity to survive, plaintiff's expert witness must establish with a reasonable degree of medical certainty that defendant's activities would have made any difference in the outcome or prolonged the decedent's life)
- *Rheume v Vandenberg, PT*, 232 Mich App 417; 591 NW2d 331 (1999) (plaintiff must name all health professionals in a notice of intent (substantial compliance insufficient); case barred by the statute of limitations as to unnamed physical therapist)
- *Persichini v William Beaumont Hosp*, 238 Mich App 628; 607 NW2d 100 (1999) (plaintiff cannot question a defendant physician during cross-examination on whether that physician had been sued in unrelated lawsuits)
- *McKinney v Clayman*, 237 Mich App 198; 602 NW2d 612 (1999) (statute of limitations commences on date of alleged malpractice; related diagnosis separate from any subsequent new act or omission does not delay accrual)

- *Engle v Zurich-American Insurance Group* (On Remand), 230 Mich App 105; 483 NW2d 484 (1998) (under bobtail policy, lessor is insured under a lessee's policy when driving to lessee's yard after completion of assigned deliveries)
- *People v Whitney*, 228 Mich App 230; 578 NW2d 324 (1998) (criminal conviction under Michigan's Open Meeting Act requires a showing of specific rather than general intent)
- *Meyerhoff v Turner Construction Collision Company* (On Remand), 456 Mich 933; 575 NW2d 550 (1998), vacating 210 Mich App 491; 534 NW2d 204 (1995) (Supreme Court vacates finding that medical monitoring expenses are a compensable item of damages)
- *Salinger v Hertz Corporation*, 211 Mich App 163; 535 NW2d 204 (1995) (presumption in favor of military personnel retaining domicile in their home state for purposes of no-fault priority)
- *Harwood v Auto Owners Insurance Company*, 211 Mich App 249; 535 NW2d 207 (1995) (independent insurance agency is agent of policyholder, rather than agent of insurer)
- *Rouse v Wesley, MD*, 196 Mich App 624; 494 NW2d 7 (1993) (in a wrongful pregnancy case, parents not entitled to recover costs of raising child to maturity)
- *Maryland Casualty Company v Transamerica Insurance Corporation of America*, 199 Mich App 561; 502 NW2d 749 (1993) (homeowners policy excludes ATVs from coverage)
- *American States Insurance Company v Auto Club Insurance Association*, 193 Mich App 248; 484 NW2d 1 (1992) (notice of cancellation of no-fault automobile policy is governed by statute addressing casualty insurance policies generally)
- *Auto-Owners Insurance Company v Winter*, 188 Mich App 230; 469 NW2d 314 (1991) (insurer not afforded coverage for accident involving newly acquired automobile during the 30-day period set forth in the "automatic coverage" clause of the policy)
- *Star Steel Supply Collision Company v USF&G*, 186 Mich App 475; 465 NW2d 17 (1991) (insurer failed to establish product liability coverage under claim of "lost policy")
- *Gelman Sciences, Inc v Fireman's Fund Insurance Companies*, 183 Mich App 445; 445 NW2d 328 (1990) (court distinguishes between defense and indemnity costs in an environmental context, and further determines that insurer has a right to jury trial for claims of breach of contract and bad faith)
- *Jayakar v North Detroit General Hospital*, 182 Mich App 108; 451 NW2d 518 (1990) (insured not required to seek additional insured's consent before settling malpractice suit)
- *Grant-Southern Iron & Metal Collision Company v CNA Insurance Company*, 905 F.2d 954 (6th Cir. 1990) (under Michigan law, phrase "sudden and accidental" in exception to standard pollution exclusion clause has temporal component and does not include continuous or ongoing polluting events)
- *Walling v Allstate Insurance Company*, 183 Mich App 731; 455 NW2d 736 (1990) (private hospital owes no duty to treat person presented to emergency room, absent unmistakable medical emergency)
- *Stapleton v City of Wyandotte*, 177 Mich App 339; 441 NW2d 90 (1989) (statute of limitations not extended by mere reminder to make a check-up appointment; action time barred because plaintiff filed one date late)
- *Moy v Detroit Receiving Hospital*, 169 Mich App 600; 426 NW2d 722 (1988) (expert testimony required to establish prima facie case of medical malpractice; patient had no right to call defendant physicians as expert witnesses)

- *Rogan v Morton*, 167 Mich App 483; 423 NW2d 237 (1988) (homeowners insurer has no cause of action for indemnification against builder's risk insurer)
- *Thomas v Vigilant Insurance Collision Company*, 156 Mich App 280; 401 NW2d 351 (1987) (who constitutes "resident" under no-fault automobile policy);
- *Klym v Nida*, 147 Mich App 709; 383 NW2d 93 (1986) (water skiing maximum liability limitation valid and enforceable absent statute which prohibits such limitation)
- *Havens v Nationwide Insurance Company*, 139 Mich App 64; 360 NW2d 185 (1985) (insurer not collaterally stopped to challenge basis of the underlying judgment when asserting the policy's intentional act exclusion)

Professional Affiliations

- Detroit Metropolitan Bar Association
- Oakland County Bar Association
- State Bar of Michigan
- Council on Litigation Management, 2010
- Michigan Defense Trial Counsel (1983 – present; Chairperson of the Appellate and Amicus Section, 1996 – 1998; MDTC Board of Directors, 1997-1999)
- Michigan Court of Appeals Mediator, 1997 – 1998
- American Bar Association; Torts and Insurance Practice Section, 1983 – present
- DRI-The Voice of the Defense Bar

Fraternities

- Phi Sigma Kappa

Publications and Lectures

- "Perfect Game;" Presenter; Plunkett Cooney's Medical Liability Seminar; Detroit Athletic Club; April 7, 2011
- "The Right Side of Checkmate," Presenter, Plunkett Cooney's Medical Liability Seminar, Detroit Athletic Club, April 30, 2010
- "Tort Reform," Lecturer, Michigan Municipal League
- "Michigan Tries Tort Reform," Lecturer, National Association of Independent Insurance Adjusters
- "Right of Confrontation - *Ohio v Roberts*, 448 U.S. 56," Case note, University of Detroit Journal of Urban Law, 1980

Publications

- Supreme Court Defers on Lost Opportunity Doctrine
- Rocket Docket Indefinitely Suspended Due to Budget Constraints
- Plaintiff May Not Rely Upon Equitable Tolling to Escape Retroactive Effect of *Waltz v Wyse*

- 'Rocket Docket' Speeds Processing of Appeals in Michigan Court of Appeals
- Michigan Court of Appeals Declares Conflict with Ousley
- Informed Consent Does Not Include Surgeon's Success Rate
- Michigan's Medical Damages Cap Reduces Federal Jury's Verdict
- Successor Personal Representative Cannot Revive An Untimely Complaint
- Trial Court Must Conduct Searching Inquiry Before Determining Expert Testimony Is Unreliable
- Res Ipsa Does Not Always Speak for Itself: Expert Testimony Needed to Establish Medical Malpractice
- Additional Two-Year Tolling Period is not Automatic for Successor Personal Representatives
- Apsy Update: Out-of-State Notary Certification Requirement to be Applied
- Are Your Incident Reports Protected?

Speaking Engagements

- Medical Liability Seminar - Perfect Game
- 2010 Medical Liability Seminar
- Extended Care Seminar & Mock Trial - Nov. 6

News

- Plunkett Cooney attorneys among Michigan 'Super Lawyers' 2011
- Plunkett Cooney attorneys among Michigan 'Super Lawyers' 2010
- Plunkett Cooney attorneys named Among 'Best' in America' 2011
- Plunkett Cooney attorneys among 'Best' in America 2009
- Plunkett Cooney attorneys among Michigan 'Super Lawyers' 2009
- Plunkett Cooney attorneys named among 'Best' in America 2010
- Plunkett Cooney attorneys among Michigan 'Super Lawyers' 2008
- Plunkett Cooney attorneys among 'Best' in America 2008
- Plunkett Cooney Attorneys Named 2007 Michigan 'Super Lawyers'