

RESOLUTION NO. 11A2015

Whereas, the City of Reading retained the legal services of Duane Morris for matters involving the legality of the City of Reading's recycling fee (*Iezzi and Ziegler* cases); and

Whereas, the *Ziegler* case is presently on appeal before the Commonwealth Court of Pennsylvania; now, therefore,

The Council of the City of Reading hereby resolves as follows:

That Duane Morris' engagement as counsel for the City of Reading be authorized to assist the Law Department in the *Ziegler* case as set forth in Duane Morris' "Qualifications for Legal Services" and proposed budget as set forth in Exhibit A.

Adopted by Council July 17, 2015



President of Council

Attest:



City Clerk

I, LINDA A. KELLEHER, City Clerk of the City of Reading, Pa., do hereby certify, that the foregoing is a true and correct copy of the original Resolution passed by the Council of the City of Reading, on the 17 day of July, A. D. 20 15. Witness my hand and seal of the said City this 18 day of July, A. D. 20 15.



CITY CLERK

The logo for Duane Morris, featuring the name in a serif font with a registered trademark symbol. The logo is centered within a dark, textured rectangular area that is part of a larger decorative header consisting of three vertical panels with a grainy, stippled texture.

Qualifications for Legal Services

Presented to
City of Reading, Pennsylvania

September 2014

Duane Morris - Firm and Affiliate Offices | New York | London | Singapore | Los Angeles | Chicago | Houston | Hanoi | Philadelphia | San Diego
San Francisco | Silicon Valley | Oman | Baltimore | Boston | Washington, D.C. | Las Vegas | Atlanta | Miami | Pittsburgh | Newark | Boca Raton
Wilmington | Cherry Hill | Lake Tahoe | Myanmar | Ho Chi Minh City | Duane Morris LLP - A Delaware Limited liability Partnership

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Executive Summary

Duane Manis LLP appreciates this opportunity to present its qualifications to serve the City of Reading. As presented in our proposal, in addition to our unique experience with the *Iezzi* case, we have extensive public sector experience combined with significant class action capabilities that support our readiness for this representation.

Leading our proposed team is Alan Kessler. Alan brings decades of public sector experience, both serving government entities and providing government-related services to a number of prominent clients in addition to having served in government at both the local and federal levels. The latter work tends to involve highly sophisticated issues for private sector clients where we advocate positions before government at all levels. But we are most proud of the considerable work for city, state and local government agencies, including, of course, the City of Reading, as well as its elected officials, for which and whom we have secured several important recent victories. Additional public sector representations are detailed below.

We were proud to represent the City following the Commonwealth Court's October 2013 decision in *City of Reading v. Iezzi*, and as such are intimately familiar with the historical background and other factual issues, the statutory and other legal issues, and the political and other strategic decisions. We are similarly proud of our additional public sector work in the Lehigh Valley, including:

- Lehigh County
Sacknoff v. Lehigh County (Collective/Class Action), No. 5:13-cv-04203-EGS (E.D. Pa.)
- City of Allentown
Lehigh Valley Properties v. City of Allentown, 5:14-cv-04091-JLS (E.D. Pa.)
- City of Easton
Pension Fund Legal Remediation Issues

City of Reading v. Iezzi

We were retained to represent the City following the Commonwealth Court's October 2013 decision in *City of Reading v. Iezzi*. That case raised issues identical to those the City currently faces in the *Ziegler* case (although *Iezzi* was not filed as a class action like *Ziegler* – an area in which Duane Morris is particularly experienced): the preemptive effect of Act 101 and the legal authority of the City to charge a recycling fee under the Third Class City Code and the Home Rule Charter and Optional Plans Law. After our retention by the City, we mobilized on several fronts to overturn the Commonwealth Court's decision, including obtaining letters of support for the City's position from the Pennsylvania Municipal League and the Professional Recyclers of Pennsylvania, a trade organization. After learning that *Iezzi* had declared bankruptcy prior to the Commonwealth Court's decision, we obtained an order from the United States Bankruptcy Court for the Eastern District of Pennsylvania holding that the Commonwealth Court's decision was void because it violated the bankruptcy code's automatic stay provision. This order permitted the City to once again begin charging a recycling component of the annual waste hauling fee.

Our familiarity with and success with the almost identical *Iezzi* case, as well as other successful Reading representations makes us uniquely qualified to represent the City in the pending class action case. We are all already extremely familiar with the facts, the law, the legal issues, the strategies and the arguments and therefore there is no learning curve, resulting in substantial savings to the City.

Other Notable Public Sector Litigation Experience:

- Represented Mayor Spencer personally in connection with litigation initiated by the City of Reading Charter Board. In those two cases, we represented the Mayor before the Charter Board. Following the Charter Board's decisions against the Mayor, we appealed to the Berks County Court of Common Pleas, successfully arguing to Judge Rowley that the Board's adjudications were in error. We then successfully defended Judge Rowley's rulings on appeal before the Commonwealth Court.
- Represented Lehigh County in a Fair Labor Standards Act collective (class) action suit brought by approximately 40 guards at the County's Juvenile Detention Facility. The guards alleged that the County systematically failed to pay them wages and overtime for mandatory pre-shift safety briefings. After limited discovery, we secured a favorable settlement that was 1/4th of the guards' initial demand and well within the County's acceptable range. The entire matter was resolved in less than one year.
- Represented the Pennsylvania Department of Treasury in defeating a putative class action brought by property owners, who were seeking as much as \$54 million from the Philadelphia Sheriff's Office in excess proceeds from property auctions, which lower court decision was recently affirmed by the Pennsylvania Commonwealth Court.
- Representing the housing authority of a major city in the defense of a class action brought on behalf of approximately 100,000 public-housing residents against various governmental agencies and lead-paint manufacturers that seeks more than \$30 million in damages as well as injunctive relief arising from the alleged presence of lead-based paint in over 5,000 public-housing residences.
- Representing the public housing authority of a suburban county in a class action brought by Section 8 tenants seeking injunctive and declaratory relief from the alleged presence of lead-based paint in Section 8 housing.
- Lead counsel on behalf of the Office of Federal Housing Enterprise Oversight in its special examination of Fannie Mae, which resulted in a settlement by Fannie Mae of \$400 million, and in its administrative prosecution of charges against the former CEO, CFO, and controller of Fannie Mae seeking millions of dollars in penalties. Continued representation to the successor agency, the Federal Housing Finance Agency, in multidistrict litigation in the U.S. District Court for the District of Columbia and in a separate multidistrict litigation dealing with subprime issues in the U.S. District Court for the Southern District of New York.
- We reached a class settlement on behalf of a public housing authority of a major city, resolving claims that the housing authority failed to factor rising natural gas prices into the allowance residents receive to pay utility bills.
- Represented the Commonwealth of Pennsylvania and its Department of General Services in connection with the Commonwealth's attempt to build several new prisons throughout Pennsylvania. These projects were opposed by a group of non-union contractors who were opposed to the manner in which the bidding was to be structured. In connection with this representation, we defended three preliminary injunction requests and litigated an appeal to the Pennsylvania Supreme Court. The representation was successfully concluded after we secured a favorable ruling on the Plaintiffs' third request for a preliminary injunction, clearing the way for the project to proceed.

We look forward to further dialogue with the City on how we can best meet your needs. As always, you can expect us to hit the ground running on your behalf.

About Duane Morris

Duane Morris LLP is a full-service law firm headquartered in Philadelphia -with the resources and capabilities to meet every service required by the City. Our 100+ year history in the city is anchored by a very deep and very broad bench of local attorneys. Of our 732 total attorneys, 220 of them work out of Philadelphia, where the majority of the work will be performed for the City of Reading. With respect to the pending class action, one of the most compelling reasons to hire us is that we have already litigated this case (in *Iezzi*). You can rest assured that we will have answers to your questions, from the routine to the most complex, and will also offer you the strategic, legal, political and communications advice and counsel so critical to your success. Additional information on Duane Morris overall can be found at www.duane-morris.com.

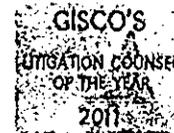
Public Sector Representation

Specifically in Pennsylvania, Duane Morris has a long and proud history of providing comprehensive and coordinated legal services to public sector clients, including the following:

- City of Reading
- City of Easton
- City of Allentown
- City of Pittsburgh
- City of Philadelphia
- Lehigh County
- Allegheny County
- Pennsylvania Convention Center Authority
- Pennsylvania Turnpike Commission
- Commonwealth of Pennsylvania
- Pennsylvania Department of General Services
- Pennsylvania Department of Treasury
- Pennsylvania Employees Retirement Service
- Philadelphia Authority for Industrial Development
- Philadelphia Housing Authority
- Pennsylvania Economic Development Financing Authority
- Hospitals and Higher Education Facilities Authority of Philadelphia
- Philadelphia Parking Authority
- Delaware River Port Authority

GENERAL LITIGATION

Over half of our 700+ lawyers are litigators. We have the level of industry-specific litigation experience necessary to successfully manage matters, large and small, for clients ranging from individuals to Fortune 100 companies to numerous governmental entities. We are proud to count major companies like Cisco, SAP, TD Bank and Ford Motor Company, as key clients. We are of course proud of the work we have done for the City of Reading, as well as for our many other public sector clients.



Experience and Teams - Duane Morris lawyers represent clients in countless contexts

Industry

in state and federal trial and appellate courts in the United States. Our collective capabilities are both deep and wide.

Dispute Navigation Analytics (DNASM) is Duane Morris' proprietary, systematic approach to litigation early case assessment combines a thorough, step-by-step analysis of the various factual and legal issues facing clients in litigation with a detailed process for better predicting costs, risk exposure and outcome probabilities.

Extensive Courtroom and ADR Experience – We call ourselves the "trial department" because we actually try cases to verdict. Whenever possible, however, we make use of alternative dispute resolution techniques to pursue the client's goals.

Effective Resource Management – We know how to process and analyze thousands of documents; our computer capabilities are regularly employed by Fortune 100 companies; and we have been a leader in alternative fee structures, including contingent fee and success premiums.

LABOR AND EMPLOYMENT

Our employment lawyers regularly counsel and advise employers on compliance with federal, state and local employment laws with the goal of increasing workplace efficiency and preventing potentially disruptive litigation. Employment services are individually developed to reflect each client's business goals and objectives.

TRANSACTIONAL - REAL ESTATE AND BUSINESS

Our representations include work relating to lease agreements, financing and loan documents, restructurings and workouts, condemnation, eminent domain, valuation and tax issues, purchase and sale agreement negotiations, real estate development and real estate portfolio management. Real estate transactions and projects often include other areas of the law, so we bring together resources as needed from other practice groups such as corporate, construction, tax, securities and bankruptcy.

EMPLOYEE BENEFITS

The attorneys in our Employee Benefits and Executive Compensation (EBEC) Practice are focused on providing practical solutions for our clients through the full range of workplace and regulatory employee benefits issues. From qualified retirement plans to sophisticated equity compensation arrangements and from executive employment agreements to broad-based health and welfare plans, the members of the EBEC Practice combine practical experience with high-quality and efficient service that leads to practical solutions.

INTELLECTUAL PROPERTY

National publications such as *U.S. News & World Report*, *Intellectual Property Today*, *IP Law & Business*, and *IP Law360* have all ranked Duane Morris among the leading law firms handling patents, trademarks, copyrights and related IP litigation. Duane Morris' IP attorneys focus on leveraging their clients' intellectual property to help them achieve success in the marketplace. They provide counsel on the most effective methods of establishing and developing IP holdings and protecting IP rights so clients can realize the most value from those assets. Our attorneys offer clients portfolio management and strategic advice on obtaining and protecting their full range of intellectual property.

MUNICIPAL FINANCE

Duane Morris delivers targeted, cost-effective municipal finance counsel to clients nationwide. Our municipal finance attorneys have been included in the "Red Book" for more than 25 years. We bring to clients strong professional relationships with local governmental and regulatory authorities across the firm's U.S. locations. On a daily basis, our municipal finance lawyers work closely with borrowers, bond issuers, underwriters, credit providers, trustees and other parties to help ensure that our clients' matters are handled expeditiously.

Class Action Litigation Experience

In class action cases the early stages of the litigation can be especially important for defendants. In addition to learning the facts concerning a new class action, we look promptly at potential dispositive motions; we analyze whether it is in a defendant's best interest to bifurcate discovery; and we aggressively contest class certification. Our team has a particularly good track record of success in formulating very creative strategies to defeat or limit class certification.

Significantly, our proposed team lead Alan Kessler has been recognized by federal judges in class action litigation to be "highly qualified and an expert in this type of litigation."

In addition to the class action matters for public sector clients listed on page 2 of this proposal, we present below additional highlights of our extensive public sector class action experience.

- Represented manufacturer in nationwide class action suit brought on behalf of all building owners who lease or sublease their properties to federal agencies, *Prince George Center v. U.S. Gypsum Co., et al.*, No. 5388 (Ct. Com. Pl. Phila. May Term, 1986). Plaintiffs sought damages and injunctive relief arising from the purported need to remove asbestos-containing construction products from more than 100,000 properties.
- Defended claims brought in federal and state courts by individual property owners in cases frequently involving 200-300 buildings, e.g., *Catasagua Area School Dist. v. Raymark Industries, Inc.*, No. 85-3743 (E.D. Pa.), and *Trustees of the University of Pennsylvania v. W.R. Grace & Co.*, No. 2497 (Ct. Com. Pl. Phila. Oct. Term, 1985).
- Representing the housing authority of a major city in the defense of a class action brought on behalf of approximately 100,000 public-housing residents against various governmental agencies and lead-paint manufacturers that seeks more than \$30 million in damages as well as injunctive relief arising from the alleged presence of lead-based paint in over 5,000 public-housing residences. *Hurt v. Philadelphia Housing Auth.* C.A. No. 91-4746 (E.D. Pa).
- Representing the public housing authority of a suburban county in a class action brought by Section 8 tenants seeking injunctive and declaratory relief from the alleged presence of lead-based paint in Section 8 housing.
- Represented the department of human services of a major city, and represented a state, in class actions regarding the provision of child welfare services.

Our attorneys have experience in many other class action matters, as described on our website at <http://www.duanemorris.com/dmcom2/repmatters/practice/classactionlitigation.html>.

Proposed Team

In addition to lead attorney Alan Kessler, our proposed team shown below includes attorneys with vast municipal and public sector experience, as well as considerable familiarity and success with the recent *Iezzi* case, which fundamentally underlies the pending class action. Although we have listed a team of four attorneys who will be available to work closely with the Reading Solicitors Office, not all four attorneys will be working on any given issue at any given time.



ALAN C. KESSLER, PARTNER

Proposed Lead Attorney Representing Duane Morris

Alan practices in the area of commercial litigation with a focus on class actions and other complex litigation, government relations and general counseling. He has worked with the Commonwealth of Pennsylvania, the Cities of Reading, Allentown and Philadelphia, and numerous other governmental agencies. He has counseled and advised governors, mayors, council members and many other elected officials.



ROBERT L. BYER, PARTNER

Rob is head of the Appellate division of Duane Morris' Trial Practice Group. Mr. Byer concentrates his practice in appellate and legal issues litigation. Mr. Byer is a former judge of the Pennsylvania Commonwealth Court and Pennsylvania Court of Judicial Discipline. He has worked with the City of Reading on *Iezzi* and other matters.



BRIAN J. SLIPAKOFF, SPECIAL COUNSEL

Brian practices in the area of commercial litigation, handling a wide variety of complex commercial disputes and statutory and constitutional issues. He counsels clients involving claims related to contract disputes, business torts, securities and commercial fraud, various class actions, procurement bid protests, toxic tort and premises liability in state and federal courts throughout the country. He has worked with the City of Reading.



ANDREW R. SPERL, ASSOCIATE

Andrew practices in the area of litigation. Mr. Sperl is a 2011 graduate of New York University School of Law, where he was staff editor for the *Annual Survey of American Law*, and a graduate of Columbia University. He has worked with the City of Reading.

Biographies appear on the following pages.

Alan C. Kessler, Partner
Duane Morris LLP
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Philadelphia, PA 19103-4196

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Alan C. Kessler practices in the area of commercial litigation with a focus on class actions and other complex litigation, government relations and general counseling. Mr. Kessler represents real estate developers, banks, airlines, healthcare institutions and hospitals and alternative energy companies.

Mr. Kessler has worked with a wide range of clients, including small closely-held entrepreneurial companies, closely-held public companies, Fortune 100 companies, real estate developers, real estate management companies, healthcare providers, an entertainment industry company, franchisors, franchisees, electronics companies, consumer product companies, municipal authorities, the Commonwealth of Pennsylvania, the City of Philadelphia, Philadelphia Authorities and other governmental agencies.

Mr. Kessler's public service activities include serving as a member of the Clinton/Gore Presidential Transition Team in 1991-1992; as a presidential appointee by President Clinton as the vice chair of the Presidential/Congressional Commission on Risk Assessment and Risk Management (1994-1998); and as a presidential appointee by President Clinton, confirmed by the U.S. Senate, to the Board of Governors of the United States Postal Service. He was elected chair of the USPS Board of Governors in 2008, having served as vice chair since 2005, and President Obama appointed him to a second term, with the Senate confirming, in 2009. He also has served as finance vice chair of the Democratic National Committee (DNC), as a national finance vice chair of Gore 2000, Vice President Gore's presidential campaign, and as a national finance chair of Hillary for President in 2008.

On a regional level, Mr. Kessler was a Township Commissioner for Lower Merion Township and a member of the Philadelphia City Planning Commission. Kessler previously acted as co-chair of the Mayor's Transition Committee for Mayor Edward Rendell (1992) and as a member of the Executive Committee of Philadelphia 2000. He served as a member and co-chair of Governor Rendell's transition team. He was a member of the Electoral College for the Commonwealth of Pennsylvania in 2000. Additionally, he is currently a member of the board of directors of the Philadelphia Industrial Development Corporation, Drexel University, Penn Medicine Campaign Board and the Central Philadelphia Development Corporation, where he serves as a member of the executive committee. He was also appointed by the Pennsylvania Supreme Court as chair of the Supreme Court's Continuing Legal Education Board. Mr. Kessler also was appointed by Governor Rendell as finance chair of the Pennsylvania Democratic Party.

Mr. Kessler is a 1975 graduate, with honors, of the University of Maryland School of Law and a graduate, with honors, of the University of Delaware.

Representative Matters

- Obtained an Order on behalf of the City of Reading, PA from the U.S. Bankruptcy Court for the Eastern District of PA voiding a Commonwealth Court ruling, thus allowing to stand the City's recycling user fee, which supported costs associated with the City's recycling program.
- Involved in a substantial number of procurements in diverse industries, including transportation, telecommunications, media, and advertising, as well as representing educational and governmental entities. Said representations have included all aspects of said procurements, including litigation arising therefrom.
- Substantial experience in the defense and litigation of class action claims in both federal and state court.
- Represented a Fortune 500 manufacturer of chemicals and construction products in the defense of claims brought in one of the largest class actions ever filed, *In re Asbestos School Litig.*, Master File No. 83-0268 (E.D. Pa.). The toxic-tort class action, brought on behalf of more than 35,000 plaintiffs, sought damages estimated in the billions of dollars, as well as equitable relief.
- Represented manufacturer in nationwide class action suit brought on behalf of all building owners who lease or sublease their properties to federal agencies, *Prince George Center v. U.S. Gypsum Co., et al.*, No. 5388 (Ct. Com. Pl. Phila. May Term, 1986). Plaintiffs sought damages and injunctive relief arising from the purported need to remove asbestos-containing construction products from more than 100,000 properties.
- Defense of class claims brought against construction product and chemical manufacturer on behalf of all colleges and universities across the United States, *Central Wesleyan College v. W.R. Grace & Co., et al.*, C.A. No. 2:87-1860-2 (D.S.C), and in a statewide class action brought on behalf of all Michigan school districts, *Board of Education of the School District of the City of Detroit v. Celotex Corp.*, C.A. No. 84-42634 NP (Cir.Ct. Mich.).
- Defended claims brought in federal and state courts by individual property owners in cases frequently involving 200-300 buildings, e.g., *Catasagua Area School Dist. v. Raymark Industries, Inc.*, No. 85-3743 (E.D. Pa.), and *Trustees of the University of Pennsylvania v. W.R. Grace & Co.*, No. 2497 (Ct. Com. Pl. Phila. Oct. Tenn, 1985).
- Member of a national committee and class-action subcommittee responsible for coordination and direction of litigation in more than 150 cases, both class actions and individual lawsuits, brought in forums across the country arising from claims brought for abatement of asbestos-containing building products.
- Representing the housing authority of a major city in the defense of a class action brought on behalf of approximately 100,000 public-housing residents against various governmental agencies and lead-paint manufacturers that seeks more than \$30 million in damages as well as injunctive relief arising from the alleged presence of lead-based paint in over 5,000 public-housing residences. *Hurt v. Philadelphia Housing Auth.* C.A. No. 91-4746 (E.D. Pa).
- Representing the public housing authority of a suburban county in a class action brought by Section 8 tenants seeking injunctive and declaratory relief from the alleged presence of lead-based paint in Section 8 housing.

- Represented the department of human services of a major city, and am representing a state, in class actions regarding the provision of child welfare services.
- Extensive experience in both the successful defense and prosecution of major antitrust and securities class action suits in the U.S. district courts for the Eastern District of Pennsylvania, the Middle District of Pennsylvania, the Southern District of New York, the District of Maryland, the Northern District of Georgia, the Southern District of Florida, the Western District of Tennessee and the Southern District of Texas. Cases include: *In re Craftmatic Securities Litig.*, Master File No. 88-4530 (E.D. Pa.); *In re O'Brien Energy Systems Securities Litig.*, Master File No. 89-8089 (E.D. Pa.); *In re Corrugated Container Antitrust Litig.*, ISADL No. 310 (S.D. Tex.); and *In re Fine Paper Antitrust Litig.* MDL No. 323 (E.D. Pa.).
- Representing a major securities brokerage firm in state securities litigation in which the lower court's dismissal of the complaint was affirmed first by the state superior court and recently by the state supreme court.
- Provide antitrust counseling and representation to various clients, including a major women's designer sportswear manufacturer, independent "networkers" of sporting events, a manufacturer of well-known watches, soda and beer distributors, and franchisees in numerous industries including the hotel and food industries.
- Represent public companies in class action securities litigation involving the Securities Act of 1933, the Securities Exchange Act of 1934, and SEC Rules 3b-6, 10b-5, 14a-9 and 174.
- Negotiate and draft contracts in various entertainment law matters.
- Represent candidates for federal, state and local office in election law proceedings.
- Clients include small, closely held entrepreneurial companies; closely held public companies; Fortune 100 companies; real estate developers; real estate management companies; healthcare providers; entertainment industry company; franchisors; franchisees; electronics companies; consumer product companies; municipal authorities; the Commonwealth of Pennsylvania; the State of New Jersey; the City of Philadelphia; Philadelphia authorities; and other governmental agencies.

Professional Activities

- American Bar Association
 - Section of Antitrust
 - Section of Corporations, Banking and Business Law
- Pennsylvania Bar Association
- Philadelphia Bar Association

Admissions

- Pennsylvania
- Supreme Court of Pennsylvania
- U.S. District Court for the Northern District of Georgia
- U.S. District Court for the Eastern District of Pennsylvania
- U.S. District Court for the Western District of Tennessee
- Supreme Court of the United States

Education

- University of Maryland School of Law, J.D., with honors, 1975
- University of Delaware, B.A., with honors, 1972

Board Memberships

- United States Postal Service Board of Governors, 2000-2011
 - Chair, 2008-2009
 - Vice Chair, 2005-2008
- Philadelphia Industrial Development Corporation, 2001-2013
- The Central Philadelphia Development Corporation
 - Member, Executive Committee
- Drexel University
- Penn Medicine Campaign Cabinet

Civic and Charitable Activities

- Hillary for President
 - National Finance Chair, 2008
- Democratic National Committee
 - Finance Vice Chair
- Pennsylvania Democratic Committee
 - Finance Chair
- Gore 2000
 - National Finance Vice Chair, 2000
- Commonwealth of Pennsylvania Electoral College, 2000
- Philadelphia 2000
 - Executive Committee
- Lower Merion Township
 - Township Commissioner
- Pennsylvania Supreme Court Continuing Legal Education Board
- Governor Edward Rendell's Transition Team
- Presidential/Congressional Commission on Risk Assessment and Risk Management, 1994-1998
- Mayor's Transition Committee, 1992
- Clinton/Gore Presidential Transition Team, 1991-1992

Honors and Awards

- Listed in Pennsylvania Super Lawyers, 2004-2005 and 2007-2014
- Listed in Super Lawyers, Corporate Counsel Edition, 2010 and 2011
- AV® Preeminent™ Peer Review Rated by Martindale-Hubbell

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Robert L. Byer is head of the Appellate division of Duane Morris' Trial Practice Group. Mr. Byer concentrates his practice in appellate and legal issues litigation. Mr. Byer is a former judge of the Pennsylvania Commonwealth Court and Pennsylvania Court of Judicial Discipline.

As an appellate lawyer, Mr. Byer has argued or briefed over 200 appeals in the United States Courts of Appeals for the Third, Fifth, Eighth, Ninth, Eleventh, District of Columbia and Federal Circuits, the Pennsylvania appellate courts and the appellate courts of California, Maryland and Washington. He also has briefed and worked on appeals in the United States Supreme Court. In addition to his work as an appellate lawyer, Mr. Byer also advises major corporations on issues related to commercial contracts, corporate governance, corporate compliance (including export control and political contribution and lobbying issues), dispute resolution, ethics and internal investigations.

Mr. Byer is a fellow of the American Academy of Appellate Lawyers and a member of the American Law Institute. He is a former member of the Lawyers Advisory Committee of the United States Court of Appeals for the Third Circuit and a founding member of the Third Circuit Bar Association. He is currently in his fourth term as a member of the Pennsylvania Supreme Court's Appellate Court Procedural Rules Committee, and he chaired that committee for five years. Mr. Byer has served two terms as Chair of the Pennsylvania Bar Association Civil Litigation Section and served for 15 years in the Pennsylvania Bar Association House of Delegates. He is a former adjunct faculty member at Duquesne University School of Law, where he taught advanced courses on civil procedure, and The National Judicial College, where he taught courses on judicial review of administrative agency adjudications. He also is listed in *Best Lawyers in America* (Appellate and Commercial Litigation), *Pennsylvania Super Lawyers* (Appellate), and *Super Lawyers, Corporate Counsel Edition* (Appellate). *Best Lawyers* also named Mr. Byer 2011 Pittsburgh Appellate Lawyer of the Year.

Mr. Byer is the author of a treatise on Pennsylvania civil practice and has authored chapters in the *Third Circuit Appellate Practice Manual* (PBI, 2d ed. 2010) and *A Practitioner's Guide to Appellate Advocacy* (ABA 2010). He also is the author of numerous published articles, monographs, and course materials on various legal topics. He has been a speaker at seminars and continuing legal education programs throughout the United States.

Mr. Byer is a graduate of the University of Pittsburgh (J.D., 1977; editor, *University of Pittsburgh Law Review*; B.A., *magna cum laude*, 1973). He engaged in post-graduate studies at Harris Manchester College, Oxford University.

Representative Matters

- Obtained 2014 order from the Supreme Court of Pennsylvania summarily affirming an order in favor of the statutory liquidator of an insurance company barring coverage for a multi-million dollar racial discrimination jury verdict.
- Obtained on behalf of an automobile manufacturer, in a significant asbestos-related appeal before the Superior Court of Pennsylvania, a reversal of an order granting a mistrial and the reinstatement of a judgment following a defense verdict after a jury trial in the Philadelphia Court of Common Pleas.
- Obtained a precedential decision from the U.S. Court of Appeals for the Third Circuit confirming the proper test for taxpayer residency in the U.S. Virgin Islands and reversing the district court's finding after a nonjury trial that several taxpayers had failed to establish Virgin Islands residency. *Vento v. Dir. V.I. Bureau of Internal Revenue*, ___ F.3d ___, 2013 U.S. App. LEXIS 7701 (3d Cir. 2013).
- Obtained a reversal from the Pennsylvania Supreme Court of an intermediate Appellate decision dismissing on procedural grounds an appeal from an \$18.5 million judgment. *Newman Development Group of Pottstown v. Genuardi's Family Markets, Inc.*, ___ Pa. ___, ___ A.3d ___, 2012 Pa. LEXIS 2262 (Sept. 28, 2012) – briefed and argued.
- Federal Circuit upheld a lower court ruling that client's carrying cases for tools did not infringe appellant's patents. *Outside the Box Innovations, LLC v. Travel Caddy, Inc.*, ___ F.3d __ (Fed. Cir. Sept. 21, 2012) -briefed.
- Represented real estate developers in a successful appeal, reversing a trial court decision denying a municipality's request to sell public land to developers under Pennsylvania's Donated and Dedicated Property Act. *Borough of Downingtown v. Friends of Kardon Park*, ___ A.3d ___, 2012 Pa. Commw. LEXIS 236 (Pa. Cmwlth. Aug. 3, 2012) (en banc) - briefed and argued.
- Represented a corporation, as respondent, in an appeal to the U.S. Supreme Court in a case arising from the corporation efforts to recover under a business-interruption policy. The case established the significant precedent that a party who moves for dismissal on the basis of lack of personal jurisdiction is required to submit to discovery on the jurisdictional questions, and that personal jurisdiction can be imposed as a discovery sanction as a result of that party's failure to comply with discovery orders. *Insurance Corp. of Ireland v. Companies des Bauxite de Guinee*, 456 U.S. 694 (1982).
- Represented the Pennsylvania Department of Banking in an action to preclude a Delaware-incorporated payday lender from charging Pennsylvania borrowers monthly participation fees. Obtained decision from Pennsylvania Commonwealth Court that the fees violated Pennsylvania's Consumer Discount Company Act and Loan Interest and Protection Law and a permanent injunction barring the lender from imposing the fees in Pennsylvania. Represented the department in the lender's appeal to Pennsylvania Supreme Court, which affirmed the commonwealth court's decision. *Pennsylvania Department of Banking v. NCAS of Delaware, LLC*, 931 A.2d 771 (Pa. Commw. 2007), *aff'd*, 995 A.2d 422 (Pa. 2010).
- Represented the University of Pittsburgh in an appeal from a decision by the Department of Labor and Industry allowing a professor to inspect letters written by outside evaluators that were contained in his personnel file. A majority of an en banc Commonwealth Court panel reversed, determining that the letters constituted letters of

reference that are not subject to inspection under Pennsylvania's Personnel Files Act. *University of Pittsburgh of the Commonwealth System of Higher Education v. Department of Labor & Industry*, 896 A.2d 683 (Pa. Commw. 2006) (en bane).

- Represented a bank in appeal to the U.S. Court of Appeals for the Third Circuit from a district court's decision dismissing the plaintiff's action under the Truth in Lending Act (TILA) as untimely. The appeals court agreed that the action was time-barred because the plaintiff did not file suit within one year of mortgage closing. It further determined that the plaintiff could not avail himself of the TILA's rescission provision because the mortgage was for an investment property, rather than the plaintiff's primary dwelling, and the action was filed more than three years after the closing. *Taggart v. Chase Bank USA, N.A.*, 375 Fed. Appx. 266 (3d Cir. 2010).

Rob's full matters list is found at <http://www.duanemorris.com/attorneys/robertlbyer.html>.

Professional Activities

- American Academy of Appellate Lawyers
- American Law Institute
- American Bar Association
 - Council of Appellate Lawyers, Judicial Administration Division
 - Appellate Litigation Subcommittee, Business Litigation Committee, Section of Business Law
 - Appellate Practice Committee, Section of Litigation
 - Appellate Advocacy Committee, Tort & Insurance Practice Section (Vice Chair, Subcommittee on Rules of Procedure, 1995-1997)
 - Vice Chairman, Special Committee on Class Actions, Tort and Insurance Practice Section (1981-1985)
- American Judicature Society
 - Board of Directors, 1998-2000
- Bar Association of the Third Federal Circuit (Founding Member; served on original Steering Committee)
- Pennsylvania Bar Association
 - Chair, Civil Litigation Section (1989-1991; Vice Chair, 1987-1989; Secretary, 1985-1987; Section Council, 1984-1985; Discovery Rules Committee, 1995-1996)
 - Chair, Amicus Curiae Brief Committee (2006- ; Vice Chair, 2004- ; member, 2001-)
 - Appellate Practice Committee (Vice Chair, Subcommittee on Procedural Rules, 2004-)
 - Judicial Administration Committee (2006-)
 - House of Delegates (1981 - 1996)
 - Section Council, Municipal Law Section (1992-1993)
 - Judicial Selection & Administration Committee (1995-1996; Legislative Subcommittee, 1995-1996)
 - Member, Task Force for Revisions to the Pennsylvania Code of Judicial Conduct
- Pennsylvania Bar Institute (Treasurer, 1996-1997; Director, 1986-1992, 1995-1996; Chair, Publications Committee, 1988-1990; Chair, Judicial Education and Courts Liaison Committee, 1990-1992)

- Philadelphia Bar Association
 - Appellate Courts Committee (2006-)
- Allegheny County Bar Association
 - Pittsburgh Legal Journal (Editor-In-Chief and Chairman, 1985-1987; Opinion Editor, 1980-1984; Associate Editor, 1988-1994; Executive Committee, 1988-1994)
 - Appellate Practice Committee (1987-)
- Academy of Trial Lawyers of Allegheny County (1986-1997)
 - Chairman, Alternative Dispute Resolution Committee, 1994-1996
- Pennsylvanians for Modern Courts, Southwest Pennsylvania Advisory Board (1993-)
- American Bar Foundation (Life Fellow)
- Pennsylvania Bar Foundation (Life Fellow)
- Allegheny County Bar Foundation (Charter Fellow)

Admissions

- Pennsylvania
- Supreme Court of the United States
- U.S. Court of Appeals for the Third Circuit
- U.S. Court of Appeals for the Fifth Circuit
- U.S. Court of Appeals for the Eighth Circuit
- U.S. Court of Appeals for the Ninth Circuit
- U.S. Court of Appeals for the Eleventh Circuit
- U.S. Court of Appeals for the District of Columbia Circuit
- U.S. Court of Appeals for the Federal Circuit
- U.S. District Court for the Eastern District of Pennsylvania
- U.S. District Court for the Middle District of Pennsylvania
- U.S. District Court for the Western District of Pennsylvania
- U.S. Tax Court

Education

- University of Pittsburgh School of Law, J.D., 1977
Note Editor, *University of Pittsburgh Law Review*
- Oxford University, Harris Manchester College, Post-Graduate Studies, 1974
- University of Pittsburgh, B.A., *magna cum laude*, 1973

Board Memberships

- American Jewish Committee
 - Board of Directors, Pittsburgh Chapter, 1996-1999

Civic and Charitable Activities

- Duquesne University Law School
 - Adjunct Professor, 1995-2000

- National Judicial College
- Faculty, 1992-1995
- Pennsylvania Election Reform Task Force, 2004
- Commonwealth of Pennsylvania, Office of Attorney General
- Transition Team, 1996-1997

Honors and Awards

- Named 2011 Pittsburgh Appellate Lawyer of the Year by *Best Lawyers*
- Fellow, American Academy of Appellate Lawyers
- American Law Institute, Elected Member
- Listed in *The Best Lawyers in America* for Appellate Law and Commercial Litigation, 2006-2015
- Listed in *Super Lawyers Corporate Counsel Edition*, Appellate
- Listed in *Pennsylvania SuperLawyers*, Appellate
- United States Court of Appeals for the Third Circuit, Lawyers' Advisory Committee (appointed as nominee of Third Circuit Judges stationed in the Western District of Pennsylvania), 2005-2009
- Chair of Pennsylvania Supreme Court Appellate Court Procedural Rules Committee, 1994-1998; member, 1987-1991, 1992-1994, 2009-
- Advisory Committee for the Study of Rules of Practice, United States District Court for the Western District of Pennsylvania
- AV® Preeminent™ Peer Review Rated by Martindale-Hubbell

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Brian J. Slipakoff practices in the area of commercial litigation, handling a wide variety of complex commercial disputes and statutory and constitutional issues. He counsels clients involving claims related to contract disputes, business torts, securities and commercial fraud, various class actions, procurement bid protests, toxic tort and premises liability in state and federal courts throughout the country. In addition, Brian has represented Pennsylvania state insurance department in numerous matters arising of the liquidation of insolvent insurance compames.

In 2010 through 2014, he was named a Rising Star for Pennsylvania.

Admitted to practice in Pennsylvania, New Jersey and numerous federal courts, Mr. Slipakoff is a 2003 cum laude graduate of Georgetown University Law Center and a 2000 graduate of the University of Maryland.

Representative Matters

- Obtained a preliminary injunction in the Loudoun County, Virginia Circuit Court on behalf of a Virginia-based spinal medical device and biologics company against its former product manager who went to work for a competitor.
- Representing former officer and director of Fortune 300 exploration and production company in a number of related matters, including private claims of securities fraud and breach of fiduciary duty, a Securities and Exchange Commission inquiry, a Department of Justice inquiry, several state Attorney General inquiries and an internal audit committee inquiry.
- Represented perfume manufacturer in action against world-famous musician arising from the musician's failure to promote a perfume endorsed by him, successfully obtaining judgment in excess of \$4.4 million. *Revelations Peljume and Cosmetics, Inc. v. Nelson*, 35 Misc.3d 1216(A), 2012 WL 1434856 (N.Y. Sup. Ct. Apr. 12, 2012).
- Represented a plaintiff investment adviser in a federal court action concerning breach of contract and tortious interference with subadvisory contracts.
- Defended a Fortune 100 cable and entertainment company in federal court action alleging violations of RICO, New York Consumer Protection Act, breach of fiduciary duty and fraud claims arising out of a stock-swap transaction. *Gavin v. AT&T Corp.*, 543 F. Supp. 2d 885 (N.D. Ill. 2008).
- Successfully defended state governmental agencies in Pennsylvania Commonwealth Court and Supreme Court regarding the legality and constitutionality of the agency's procurement procedures and the legality of project labor agreements under

Qualifications for Legal Services

Pennsylvania law. *Glenn O. Hawbaker, Inc. v. Dep't of Gen. Servs.*, 17 A.3d 319 (Pa. 2011).

- Defended public housing authority in action for personal injury due to alleged exposure to lead-based paint, obtaining pre-trial dismissal of federal civil rights claims. *Hurt v. Phi/a. Haus. Auth.*, 70 Pa. D. & C.4th 142 (C.C.P. Phila. 2005).
- Obtained a decision from the Superior Court of Pennsylvania upholding a decision that outdoor advertising company had not breached a lease of a billboard and reversing a \$313,167.94 judgment that had been entered for the billboard owner for delays its actions allegedly caused in the processing of the owner's zoning variance application. *CBS Outdoor, Inc. v. Warfield Phi/a., L.P.*, 32 A.3d 280 (Pa. Super. 2011).

Professional Activities

- American Bar Association
- Pennsylvania Bar Association

Admissions

- Pennsylvania
- New Jersey
- U.S. District Court for the Eastern District of Pennsylvania
- U.S. District Court for the Southern District of New York
- U.S. District Court for the Eastern District of New York
- U.S. District Court for the District of New Jersey
- U.S. Court of Appeals for the Second Circuit
- U.S. Court of Appeals for the Third Circuit
- U.S. Court of Appeals for the District of Columbia Circuit

Education

- Georgetown University Law Center, J.D., *cum laude*, 2003
- Editorial Board, *Georgetown Journal of Legal Ethics*, 2002-2003
- University of Maryland, B.A. in Criminology, B.A. in Government and Politics, 2000

Honors and Awards

- Listed in Pennsylvania Rising Stars, 2010-2014

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Andrew R. Sperl practices in the areas of appellate litigation, corporate governance and shareholder disputes, and commercial litigation. A member of the firm's appellate practice group, Mr. Sperl has briefed cases before each of Pennsylvania's appellate courts and the United States Court of Appeals for the Third Circuit. Mr. Sperl is a 2011 graduate of New York University School of Law, where he was staff editor for the *Annual Survey of American Law*, and a graduate of Columbia University.

Representative Matters

- Obtained on behalf of former NFL star Jason Taylor and two business partners a decision from the United States Court of Appeals for the Third Circuit ordering the return of deposits totaling \$1.5 million paid in connection with a failed real estate transaction in the Virgin Islands. *Addie v. Kjaer*, __F.3d__, 2013 WL 6577144 (3d Cir. 2013).
- Obtained on behalf of a motor vehicle company, in a significant asbestos-related appeal before the Superior Court of Pennsylvania, a reversal of an order granting a mistrial and a reinstatement of a defense verdict from the Philadelphia Court of Common Pleas.
- Member of appellate team that obtained on behalf of a development firm a ruling from the Supreme Court of Pennsylvania, reversing a prior ruling by the Commonwealth Court of Pennsylvania, holding that neighboring landowners who become parties to a zoning hearing, but are not party appellants to the land use appeal, lack standing to appeal. *Stuckley, et al. v. ZHB of Newtown Twp., et al.*

Professional Activities

- Pennsylvania Bar Association
- Philadelphia Bar Association

Admissions

- Pennsylvania
- New Jersey
- U.S. Court of Appeals for the Third Circuit
- U.S. District Court for the Eastern District of Pennsylvania
- U.S. District Court for the District of New Jersey

Education

- New York University School of Law, J.D., 2011
- Columbia University, B.A., 2006

References

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Cost Proposal

Our proposed team includes attorneys with a deep understanding of and success with the recent *Iezzi* case. As such, we are deeply familiar with the City's needs and are ideally-positioned to help the City with the related pending class action. Duane Morris is dedicated to public sector work, which is why we are proposing vastly reduced rates to the City. It is important to note that although we have named four attorneys in our proposed team, only those attorneys necessary for particular issues will be working closely with the Reading Solicitor's Office at any given time.

These rates were negotiated and approved by the City for the *Iezzi* case, and we propose to keep these rates even though the pending case, while involving the same substantive issues, as a putative class action is far more procedurally complex and specialized. Our proposed fees for this matter:

	City of Reading Hourly Rate	Standard Hourly Rate
Rob Byer	\$420	\$930
Alan Kessler	\$400	\$975
All Other Partners	\$380	
Associates	\$325	

However, we are prepared to discuss these rates further if there is a need to do so. In addition, we will make the services of our Senior Public Relations Manager, Joshua Peck, and his staff available at **no charge** as a "value added" feature to assist with any communications issues.

Conflicts

Duane Morris represents several servicers and lenders in connection with residential and commercial mortgages, including but not limited to foreclosures and code violations. Many of these matters involve municipalities, such as the City of Reading, as there are unpaid taxes in connection with the properties. Therefore, our previous engagement letter with the City regarding the related *Iezzi* case provided that the City waived any potential or actual conflicts of interest in connection with Duane Morris' representation of servicers and lenders in connection with residential and commercial mortgages, including but not limited to foreclosures and code violations, involving the City of Reading.

We are not aware of any other potential conflicts at this time that would preclude Duane Morris from working with the City on the class action matter.

Summary

Once again, we are thankful for the privilege of being considered to represent the City of Reading, and are willing to answer any questions in connection with this proposal or to further supplement it if necessary.

Charles Younger

From: Fred Lachat
Sent: Wednesday, January 28, 2015 12:42 PM
To: Charles Younger
Subject: FW: Ziegler Budget

Frederick T. Lachat, III
Staff Attorney
City of Reading Law Department
610-655-4382

From: Slipakoff, Brian J. [mailto:BSlipakoff@duanemorris.com]
Sent: Wednesday, January 28, 2015 11:53 AM
To: Eron Lloyd; Frank Denbowski
Cc: Fred Lachat; Byer, Robert L.; Kessler, Alan
Subject: Ziegler Budget

Eron and Frank,

At your request, we have prepared the below budget to handle the appeal of Judge Fudeman's decision in the Ziegler case to the Commonwealth Court and, possibly, the Pennsylvania Supreme Court. This budget is a supplement to our detailed submission in response to the City's August 2014 RFQ on this matter. As you will recall, this case arises from and, in many ways, is a continuation of the *City of Reading v. Iezzi* case, which we entered our appearance in after the Commonwealth Court initially invalidated the City's recycling fee in October 2013.

Bear in mind that this is only a reasonable estimate of the time we may spend litigating this appeal, and that actual costs could be below or exceed these estimates. This budget assumes, in order to control costs, the continued significant participation of Fred Lachat in the researching and drafting of the City's briefing, as well in preparing for oral argument. While we believe the City's position to be the correct one, we note the distinct possibility that the Commonwealth Court will rule against the City based upon the logic of its prior decision in the *Iezzi* case; though we were successful in getting the *Iezzi* decision vacated after our retention in October 2013, that vacation was on technical grounds, and the Commonwealth Court remains free to adopt its reasoning again, which it recently did in an en banc decision issued earlier this month. Should this occur, the City will need to seek relief from the Pennsylvania Supreme Court, which is why we have included budgeting for such an appeal.

Commonwealth Court (\$57,000-\$78,000)

Review designation of contents of reproduced record: 2-3 hours (\$800-\$1,200)
Review brief of appellants: 7-15 hours (\$2,800-\$6,000)
Draft brief of appellees: 65-75 hours (\$26,000-\$30,000)
Review reply brief of appellants: 2-3 hours (\$800-\$1,200)
Consultation with amici like Pennsylvania Municipal League and PROP: 3-10 hours (\$1,200-\$4,000)
Legal research: 6-8 hours (\$2,400-\$3,200)
Prepare for argument (including but not limited to a moot court): 40-50 hours (\$16,000-\$20,000)
Argument: 5-10 hours (\$2,000-\$4,000)
Application for reargument: 15-20 hours (\$6,000-\$8,000)

Supreme Court (\$60,000-\$73,000, if appellant)/(\$54,000-\$69,000, if appellee)

Petition for allocatur: 15-20 hours (\$6,000-\$8,000)
Designation of record: 5-10 hours (\$2,000-\$4,000)

Briefing (if appellant): 80-85 hours (\$32,000-\$34,000)

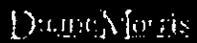
Briefing (if appellee): 65-75 hours (\$26,000-\$30,000)

Legal research: 6-8 hours (\$2,400-\$3,200)

Prepare for argument (including but not limited to a moot court): 40-50 hours (\$16,000-\$20,000)

Argument: 5-10 hours (\$2,000-\$4,000)

Thanks-please let us know if you have any questions.



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Brian J. Silpakoff
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