



# Thomas McKay, III

## Senior Counsel

## Cherry Hill

tmckay@cozen.com | (856) 910-5012

Thomas McKay III has tried in excess of 100 jury and non-jury trials and has participated in numerous arbitrations. He has secured numerous defense verdicts in actions involving six-figure and multimillion-dollar claims against his clients. He holds the designation of Certified Civil Trial Attorney by the Supreme Court of New Jersey.

Tom represents clients across the United States. In 2005, he obtained a complete defense verdict on behalf of his client against a claim in excess of \$150 million. Tom also acted as lead counsel on behalf of one of the insurance company defendants in the World Trade Center insurance coverage litigation, obtaining a verdict in favor of his client and thereby saving the client more than \$200 million.

Tom lectures on trial related matters, first-party insurance and has served on insurance industry education panels. He co-authored *Resolving Property Insurance Claims and Insurance Litigation* published by the New Jersey Institute for CLE. Tom is a member of the Camden County, New Jersey State and American Bar Associations. He has been named a New Jersey "Super Lawyer" by *Law & Politics*. Tom is AV rated by Martindale-Hubbell.

From 1973-1981, Tom served as an assistant U.S. attorney for the District of New Jersey. He was admitted to practice in New Jersey in 1972. He is also admitted to practice before the U.S. Supreme Court; the U.S. Courts of Appeal for the Second, Third and Fourth Circuits; and the U.S. District Courts for the Southern and Eastern Districts of New York and the District of New Jersey. He was admitted to practice in New York in 1994. Thomas also serves as a member of the New Jersey Supreme Court's District IV Ethics Committee, which oversees attorney ethics investigations in Camden and Gloucester counties.

Tom has served for more than 25 years as an appointed Class IV member of the Hainesport Township, NJ, Joint Land Use Board. He completed a three-year term (2012-2015) as a member of the Rutgers University Board of Overseers, which directs the management of the Rutgers University Foundation. Tom served as the office managing partner of the firm's Cherry Hill office from 2000 to 2015.

Tom earned his Bachelor of Arts from Rutgers University in 1969 and his law degree from Temple University School of Law in 1972. From 1972-1973, he served as a law clerk to the Hon. W. Thomas McGann and the Hon. Herman Belopolsky, Superior Court of New Jersey, Law Division.

## Experience

Won summary judgment in related cases involving damage to two oceanfront homes during Storm Sandy. The combined claims totaled more than \$5 million, and the coverage dispute centered on the wording of the surface water exclusion in the operative insurance policies, which did not indicate whether the exclusion applied when the water was wind-driven or a storm surge. We convinced the court that the terms of the exclusion unambiguously reached damage caused by a storm surge, that the plaintiffs had no reasonable expectation of coverage, and that they were judicially estopped from arguing that anything other than flood caused the loss.

### Practice Areas

- Appellate
- Insurance Coverage
- Professional Liability
- Professional Liability Insurance Coverage

### Industry Sectors

- Insurance

### Education

- Temple University School of Law, J.D., 1972
- Rutgers College, B.A., 1969

### Bar Admissions

- New Jersey
- New York

### Court Admissions

- Superior Court of New Jersey
- Supreme Court of New Jersey
- New York Court of Appeals
- New York Supreme Court
- U.S. Court of Appeals for the Fourth Circuit
- U.S. Court of Appeals for the Second Circuit
- U.S. Court of Appeals for the Third Circuit
- U.S. District Court -- Eastern District of New York
- U.S. District Court -- New Jersey
- U.S. District Court -- Southern District of New York
- U.S. Supreme Court

### Affiliations

- American Bar Association
- Camden County (NJ) Bar Association
- New Jersey State Bar Association

### Awards & Honors

- Best Lawyers in America 2018-2019

Thomas McKay, III

tmckay@cozen.com

P: (856) 910-5012 | F: (877) 259-7983

©2019 Cozen O'Connor. All rights reserved.



Negotiated a nuisance-value settlement of a claim, originally in excess of \$3 million, stemming from the loss of an oceanfront mansion during Storm Sandy. The plaintiffs alleged that wind damage rendered the property a total loss before the storm surge, which was subject to a policy exclusion, struck the home. When we exposed the plaintiffs' key witness as unreliable during a video deposition, and filed a counterclaim under the New Jersey Insurance Fraud Prevention Act, the plaintiffs immediately entered into the successful settlement negotiations.

Won a jury verdict in favor of the insurer in a case centering on property damage that we proved was caused by a landslide and thus excluded from coverage. Contending that the exclusion did not apply, the plaintiffs sought \$6 million under claims for breach of contract, failure to adjust the claim, violations of the Tennessee Consumer Protection Act, and bad-faith refusal to pay. The court granted our motion to bifurcate the trial, and after 10 days the jury found for our client on the breach of contract claim. This result was affirmed by the U.S. Court of Appeals for the Sixth Circuit.

Following a 2-week trial centering on a \$4.3 million homeowner's fire loss claim, the Superior Court granted our insurer equitable rescission. Before trial, we successfully moved to dismiss the plaintiffs' bad faith claim. We then convinced the court that the policy which might have covered the loss was void ab initio due to the plaintiffs' material misrepresentations during the application process. In addition, the court found that the plaintiffs had been unjustly enriched by payment to an innocent mortgagee, and entered judgment in our client's favor in the amount of the \$1.4 million payment to the mortgagee.

Won a dispute in a high-profile 14-week trial insurance coverage trial under which more than 20 insurers wrote their property policies for the World Trade Center complex. We saved the company hundreds of millions in potential double exposure and also successfully represented our client on appeal in which the 2nd Circuit recently affirmed the jury verdict in favor of our client.

Served as national mold coverage counsel for a worldwide insurance company. In a series of Texas cases, our lawyers have saved our client from unfairly paying in excess of \$100 million.