

# Walsh, Barnes, Collis & Zumpella, P.C.

We are a full-service Civil Litigation Defense firm serving Western/Central Pennsylvania and West Virginia

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## Statutes of Limitation and Repose in Construction Defect Cases

The affirmative defenses of the statute of limitations and the statute of repose are two (2) powerful defenses a defendant in a construction defect case may assert. Although the successful assertion of both of these defenses may result in an early dismissal of a lawsuit, these defenses are quite different in both theory and practical application.

Generally, a **statute of limitation** sets a maximum time period during which a certain action can be brought or a certain right enforced. A statute of limitation is an affirmative defense that must be pleaded in a responsive pleading under the heading "New Matter." Pa.R.C.P. 1030. Pennsylvania statutory law provides for numerous statutes of limitations, which are generally codified in Title

42 of the Pennsylvania Consolidated Statutes.

A **statute of repose** is a statute barring any suit that is brought after a specified time since the defendant acted, even if this period ends before the plaintiff has suffered a resulting injury. A statute of repose begins to run upon the completion of certain conduct by a party. *Graver v. Foster Wheeler Corp.*, 96 A.3d 383 (Pa.Super. 2014). Because a statute of repose focuses solely on a defendant's actions, it may potentially bar a plaintiff's suit before the cause of action arises. Like a statute of limitation, a statute of repose is as an affirmative defense.

Although statutes of limitation and statutes of repose are similar in that they are affirmative defenses

*(Continued on page 2)*



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## *Statutes of Limitation and Repose in Construction Defect Cases (Continued)*

that establish the time in which a plaintiff must bring a cause of action, the similarities end there. Statutes of limitation are a form of procedural law that bar recovery on an otherwise viable cause of action. On the other hand, statutes of repose operate as substantive law by extinguishing a cause of action outright. *Graver, supra*. Although a statute of limitation may be tolled by a plaintiff's failure to discover the legal injury, a statute of repose generally will not be tolled under any circumstances, including a plaintiff's failure to discover an injury.

Moreover, unlike a statute of limitation, a statute of repose is not waived if a litigant fails to plead it as an affirmative defense as it is a non-waivable legislative enactment. *Mitchell v. United Elevator Co., Inc.*, 434 A.2d 1243, 1249 (Pa.Super. 1981). Therefore, it may be properly raised at any point in the litigation, including through a motion for non-suit, directed verdict, or judgment notwithstanding the verdict. *Id.* (citations omitted).

### **Common Statutes of Repose and Limitations in Construction Defect Cases**

One such **statute of repose** relates to improvements to real property, which provides:

#### **§5536. Construction Projects**

(a) General Rule--except as provided in subsection (b), a civil action or proceeding brought against any person lawfully performing or furnishing the design, planning, supervision, or observation of construction, or construction of any improvement to real property must be commenced within 12 years **after completion of construction of such improvement** to recover damages for:

- (1) Any deficiency in the design, planning, supervision or observation of construction or construction of the improvement.
- (2) Injury to property, real or personal, arising out of any such deficiency.
- (3) Injury to the person or for wrongful death arising out of any such deficiency.
- (4) Contribution or indemnity for damages sustained on account of any injury mentioned in paragraph (2) or (3)

42 Pa.C.S.A. §5536(a) (emphasis added). It is important to note, the period to commence a claim is calculated not from the time of the defendant's conduct necessarily, but rather from the completion of the construction of the improvement.

### **This statute of repose provides an exception:**

- (1) If an injury or wrongful death shall occur more than 10 and within 12 years after completion of the improvement, a civil action or proceeding within the scope of subsection (a) may be commenced within the time otherwise limited by this subchapter, but not later than 14 years after completion of construction of such improvement.

42 Pa.C.S.A. §5536(b)(1). Thus, although it is commonly regarded that construction claims are barred if commenced later than 12 years, the foregoing exception permits a claim to be brought within 14 years after the completion of the construction of the improvement.

There are four (4) common **statutes of limitation applicable to construction defect cases**. First and most commonly, is the four (4) year limitation period for contract-related actions, including warranty claims, as most construction cases arise out of a contractual undertaking between two or more parties. 42 Pa.C.S. §5525. This statute of limitation also applies to claims for implied warranty of reasonable workmanship, quasi-contract, and quantum meruit.

Second, a two (2) year limitation applies to any action based upon "negligent, intentional or otherwise tortious conduct," including deceit or fraud. 42 Pa.C.S. §5524. In addition to the garden variety action for negligent construction, this limitation period governs an action by a contractor for negligent misrepresentation against a design professional for errors or omissions in a project design. Section 552 of the Restatement (Second) of *Torts; Bilt-Rite Contractors, Inc. v. The Architectural Studio*, 866 A.2d 270 (Pa. 2005).

Third, there is a six (6) year statute of limitation that applies to actions not specifically addressed by any other limitation period. 42 Pa.C.S. §5527. The most common claim is for violations of Pennsylvania's Unfair Trade Practice and Consumer Protection Law are commonly asserted in construction defect cases based upon deceptive conduct or misrepresentations relative to the work to be performed or the quality of the work.

Finally, a one (1) year limitation period governs actions based upon a payment or performance construction bond. 42 Pa.C.S. §5523.

Statutes of repose and statutes of limitations can be effective affirmative defenses in construction defect lawsuits. Each should be identified early in a lawsuit to ensure the defense is asserted the answer and evidence to support a motion for summary judgment is properly developed through written discovery and witness depositions.

## Workers' Compensation Immunity is Broad, But...

The workers' compensation immunity of the employer is broad, and that immunity extends to the workers' compensation insurance carrier and third party administrator ("TPA"). But the immunity is not absolute, and in some circumstances the carrier or TPA can be sued civilly for claims adjusting missteps. In a recent decision (*Charlton v. PMA Insurance Group*, 2015 WL 6870724 (Pa. Super. Ct. 2015), *appeal denied*, \_\_\_ A.3d \_\_\_ (Pa. 2016)), the Superior Court allowed such a lawsuit against a carrier and claims representative.

The decision is unpublished, and therefore lacks precedential value. However, the *Charlton* decision tracks an earlier opinion to the same effect.

*Taras v. Wausau Ins. Cos.*, 602 A.2d 882 (Pa. Super. Ct. 1992). The *Charlton* case is a worthy reminder of the limits of immunity.

In *Taras*, the employee was injured in a work-related auto accident. He had physical injuries, as well as resulting depression and anxiety. Wausau insured the employer and commenced payment of benefits. Wausau used a registered nurse to analyze and monitor the employee's medical care. According to the employee, the nurse case manager told him he would have to undergo treatment as determined necessary by Wausau to continue receiving benefits. The nurse

arranged for evaluation at a psychiatric center, which led to the employee being treated with electro convulsive therapy (ECT). The ECT exacerbated the employee's underlying post-traumatic stress disorder (caused initially by service during the Vietnam war), and he eventually learned the treatment was inappropriate for his conditions. He filed a civil suit against the nurse, the physicians and psychiatric clinic which oversaw the treatment, and Wausau. As to Wausau and the nurse, the employee claimed they were negligent in directing and coordinating his medical care. The Superior Court held the civil suit could proceed, determining the injury claimed did not arise from the work-related injury.

In *Charlton*, the employee was injured at work in 1986 and experienced both physical and psychological injuries. The carrier paid for the employee's medical and psychiatric treatment. The employee revealed to the psychiatrist treating him for his work-related injuries that he had been a victim of sexual abuse as a child. The psychiatrist referred the employee to another therapist for treatment of this non-work-related issue. Several years later, the carrier's claims representative reviewed the notes of the psychiatrist treating the work-related conditions, and noted the reference to the employee's past history of being sexually abused. The claims representative then contacted the employee by phone and advised him the carrier was "tired of paying for something that happened to you as a child." In the same conversation, the claims representative demanded the employee settle his workers' compensation claim.

The employee became agitated and anxious on hearing this commentary from the claims representative. He believed it was a threat to shame him if he did not settle his workers' compensation claim. His concerns were not alleviated by a follow-up voicemail message in which the claims representative stated there would be no dissemination or further discussion of the childhood sexual abuse. The employee filed suit, contending the carrier was liable for negligent infliction of emotional distress. The trial court granted judgment on the pleadings in favor of the carrier and claims representative, determining they were immune from suit. The Superior Court reversed. Relying on *Taras*, the Superior Court held the cause of action arose from a condition unrelated to the work injury. Where a claim is not "ultimately" based on compensable injury, immunity is not available.

*Where a claim is not "ultimately" based on compensation injury, immunity is not available.*

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## U.S. Supreme Court Expands Statute of Limitation Periods in Federal Employment Case Law

The U.S. Supreme Court recently expanded the limitation period for a federal employee's constructive discharge claim under Title VII in the case of Green v. Brennan, 136 S. Ct. 1769 (2016). In a 7 to 1 decision, the Green Court held the 45 day clock for a federal employee's constructive discharge claim under Title VII began running only **after** the employee gave the employer notice of his resignation.

Plaintiff, Marvin Green, was an African American man who worked at the Postal Service for 35 years. In 2008, he was serving as the Postmaster for Englewood, Colorado when he applied for a promotion to the vacant Postmaster position in near-by Boulder. He was not hired for the position, and shortly thereafter he complained he was denied the promotion because of his race. Following his complaint, his relations with his supervisors "crumbled". Id. at 1774. He was accused of intentionally delaying the mail, which is a criminal offense. Id. Ultimately, an agreement was signed between the Postal Service and Green whereby the Postal Service promised not to pursue criminal charges in exchange for Green's promise to leave his post in Englewood. Green was also given a choice of either retiring effective March 31, 2010 or reporting for duty in Wamsutter, Wyoming – population 451 – at a salary considerably lower than what he earned in his Denver suburb. Green chose to retire and submitted his resignation to the Postal Service on February 9, 2010 effective, March 31, 2010. Id.

Green contacted an Equal Employment Opportunity (EEO) counselor to report an unlawful constructive discharge on March 22, 2010. This was 41 days after submitting his resignation paperwork to the Postal Service, but 96 days after signing the settlement agreement in December 2009. His contention was his supervisors had threatened criminal charges, and thus, negotiated the resulting agreement in retaliation for his original Complaint. Id.

Green eventually filed suit in the District of Colorado, alleging constructive discharge. The Postal Service successfully moved for summary judgment, arguing Green failed to make timely contact with an EEO counselor within 45 days of the "matter alleged to be discriminatory" as required by 29 CFR Section 1614.150(a)(1).

The Supreme Court noted that, under the standard rule, a "limitations period commences when the plaintiff has a complete and present cause of action". However, a cause of action does not become, for limitations

purposes, complete and present until the plaintiff can file suit and obtain relief. The Court concluded the "matter alleged to be discriminatory" for a constructive discharge claim to include the date Green resigned. The Court held such a claim accrues only after the employee resigns. Id. at 1776.

Notably, the Court also addressed the issue of **when** precisely a resignation occurs. Since, in an ordinary wrongful discharge claim, the limitations period begins to run when the employer notifies the employee he is fired, not on the last date of employment, it follows that for a constructive discharge claim the limitations period begins to run when the employee gives notice of his resignation, not on the effective date of that resignation. Id. at 1782. The Court remanded the case to the Tenth Circuit to determine when in fact Green actually gave notice since the Postal Service argued the signing of the agreement in December 2009 was the resignation, and Green argued he did not resign until February 9, 2010, when he submitted the retirement paperwork.

The examination of employment law by the land's highest court continues to provide concerns about expanding plaintiffs' rights to reach a jury. Strictly speaking, the decision in Green applies to federal employees suing under federal law, but it is speculated that its reasoning and decision will likely reach into other employment discrimination cases as well. As such, there may be some potential to influence limitations periods in the private sector.



# Threshold Issues in Public Employee First Amendment Retaliation Claims

Insurers of public sector entities frequently encounter First Amendment retaliation claims filed by employees, pursuant to 42 U.S.C. § 1983, alleging the employee's right of free speech was inhibited by some form of retaliatory action on the part of the governmental employer.

The statute of limitations for a § 1983 action is governed by the personal injury tort law of the state where the cause of action arose. Stascavage v. Borough of Exeter, WL 65938037 (M.D. Pa. 2012). Consequently, the statute of limitations for § 1983 claim's in Pennsylvania is 2 years. Courts have repeatedly held the statute of limitations may be raised in a motion to dismiss when the defense is clearly apparent on the face of the complaint.

To make out a First Amendment retaliation claim the employee must establish: 1) he/she engaged in protected speech, 2) the employer took adverse action sufficient to deter a person of ordinary firmness from exercising their First Amendment rights, and 3) the adverse action was prompted by the employee's protected speech. See Wilson v. Zielka, 3 Fed. Appx. 151 (3d Cir. 2010) citing Mitchell v. Horn, 318 F.3d 523 (3d Cir. 2003).

The defense of such claims can exact a substantial cost in time, energy and treasure making it essential that defense counsel attack the complaint at the earliest possible time via a motion to dismiss or a motion for a more definitive statement and by asserting the defense of qualified immunity. Such an aggressive approach is favored by the Courts.

## Actual Speech

It is well established there must be actual speech for an employee to pursue a claim. See Ambrose v. Twp. of Robinson, PA, 303 F.3d 488 (3d Cir. 2002). In Ambrose a police officer sued the township alleging his suspension was in retaliation for his aid and/or support of a fellow officer's lawsuit against the township. On appeal, following an initial jury verdict in favor of the police officer, the Court of Appeals held 1) there was insufficient evidence the officer's speech was a motivating factor in his suspension, and 2) the District Court's "perceived support" theory did not provide a legal basis for liability. The court explained a retaliation case can only be sustained if the conduct was constitutionally protected, and, therefore, only if there was actually conduct. In Ambrose the court found there was no conduct, i.e. speech, so there was no retaliation claim.

## Citizen Speech

A public employee's speech is protected activity, when in making it, the employee 1) spoke as a "citizen"; 2) the statement involved a matter of public concern; and 3) the government employer did not have "an adequate justification for treating the employee differently from any other member of the general public" as a result of the statement made. A public employee, does not speak "as a citizen" when the statement is made pursuant to their official duties. Garcetti v. Ceballos, 547 U.S. 410 (S.Ct. 2006). Accordingly, Garcetti requires courts to determine, at the threshold, whether the employee spoke in their capacity as a citizen or as an employee, as the First Amendment does not protect speech made in the course and scope of the public employee's duties.

Moreover, even if the employer engaged in "citizen speech", and the subsequent employment actions constitute adverse treatment, the employer must establish the key speech was "a substantial factor" in any subsequent adverse action. The causation element for establishing a retaliation claim considers timing and evidence of ongoing antagonism. Brennan v. Norton, 350 F.3d 399 (3<sup>rd</sup> Cir. 2003). Courts in this jurisdiction have held the time span of several months is too great. See Wells v. Miller, 2009 WL 2981945 (W.D.Pa. 2009).

## Qualified Immunity

If the employee's complaint sufficiently sets forth a cause of action for First Amendment retaliation, defense counsel should attempt to assert the qualified immunity defense, which shields government officials performing discretionary functions "from liability in civil damages insofar as their conduct does not violate clearly established statutory constitutional rights which a reasonable person would have known." Miller v. Clinton County, 544 F.3d 542 (3<sup>rd</sup> Cir. 2008). Qualified immunity is "an entitlement not to stand trial or face the other burdens of litigation." Saucier v. Katz, 533 U.S. 194 (S. Ct. 2001). Therefore, any claim of qualified immunity must be resolved at the earliest possible stage of litigation.

Claims for qualified immunity are evaluated using a 2 step process. First, the courts must decide whether the facts, taken in the light most favorable to the employee, show a constitutional violation. If the employee fails to make out a constitutional violation, the qualified immunity inquiry is at an end. If evidence of a constitutional violation has been introduced, courts then determine whether the constitutional right was clearly established.

## ***Threshold Issues in Public Employee First Amendment Retaliation Claims (Continued)***

In Miller, a former county probation office employee alleged she was discharged by the defendant Judge as a result of her writing a letter criticizing her supervisors. Following denial of the Judges' Motion to Dismiss and Motion for More Definite Statement, an appeal followed. The Third Circuit held the employee had not engaged in protected speech and, therefore, could not establish a retaliation claim because her speech, while touching on matters of public concern, focused on her private grievances as an employee and her other remarks were collateral. As the employee failed to make out a constitutional violation, the qualified immunity inquiry ended, and the Judge was entitled to immunity.

### **F.R.C.P. 12 (e)**

While the Federal Rules of Civil Procedure require only notice pleading, resolution of the qualified immunity defense entails specific inquiry should be made at the earliest possible stage in litigation.

The United States Supreme Court stated in Saucier that unless the employee's allegations state a claim

of violation of clearly established law, a defendant pleading qualified immunity is entitled to dismissal before the commencement of discovery. A complaint fashioned under a simplified notice pleading standard often fails to provide sufficient factual information for the defendant to frame a proper qualified immunity defense. For the same reason, the district court is often hard pressed to conduct the fact specific qualified immunity analysis at an early stage in the litigation. Consequently, it is possible the Complaint, while complying with the notice pleading standard lacks factual information necessary to frame the qualified immunity defense. This may compel the defendant to engage in discovery and suffer the burdens of litigation, thereby obviating the protections of qualified immunity.

In such situations a motion for a more definitive statement is the best procedural tool available to obtain the factual basis underlying the employee's claim for relief. The district court will likely avail itself of this option before addressing the immunity defense.

## **Trends in Attendance at IME Examinations by Third Parties**

There has been a recent trend of attorneys, third parties and even experts attending Independent Medical Examinations (IMEs) with plaintiffs in Pennsylvania. Under Pa.R.C.P. 4010(a)(4)(i), an individual who will be examined has the right to have counsel or another representative present during examination. While there has been no definitive ruling from the Pennsylvania appellate courts, several cases have held the term "another representative" includes third parties and experts. In *Harding v. Sears, Roebuck & Co.*, 47 Pa. D. & C. 3d 591 (C.C.P. Wash. Co. 1987), the trial court held the plaintiff would be permitted to have her own chiropractor present at her IME. The trial court noted there was no specification as to who could attend an IME and as such, a medical expert could attend an examination.

There is no requirement under the Rules that a plaintiff's counsel give notice that someone will accompany the plaintiff to an IME. Thus, it is important to determine up front if a plaintiff will have someone accompanying them to an examination to assess whether defense counsel needs to be present or the examination needs to be documented by video and/or transcription. In some cases it may also be necessary to depose the individual attending the examination to determine what observations were made during

the examination, which could be used to impeach an expert on cross-examination at trial. In *Black-Dienes v. Markey*, 40 Pa. D. & C. 4<sup>th</sup> 571 (C.C.P. York Co.) defense counsel sought to depose a paralegal and nurse from a plaintiff's counsel's office who had attended plaintiff's IME as a representative. Plaintiff's counsel argued the paralegal was protected under Pa.R.C.P. 4003.5(a)(3) as she would not be called as a witness at trial.

The Court in observed Pa.R.C.P. 4003.5(a)(3) does not apply to a party's employee. It noted Pa.R.C.P. 4003.5 was designed to prevent an attorney from engaging an individual to investigate a client's claim and then designating that person as an expert to avoid otherwise permissible discovery.

The Court also noted Pa.R.C.P. 4010(a)(4)(i) made a party's attorney or representative's presence a matter of right. The Court held what plaintiff's paralegal and nurse saw and heard at the IME were not work product, but any opinion or evaluation based on those observations was work product pursuant to Pa.R.C.P. 4003.3.

The Court further held plaintiff's representative could be deposed as she might be offered to impeach the IME doctor as to what occurred at the examination, but the deposition would be strictly limited to factual observations of the IME.

# Announcements/Results

## Announcements

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■ **Pam Collis** was elected to the Allegheny County Academy of Trial Attorneys. This is a peer organization, invitation only, limited to 250 trial attorneys in Allegheny County, PA. It is an honor to be nominated as the Academy is comprised of experienced litigators, both plaintiff and defense, with a proven trial record. Our firm is well represented as Pam joins Paul Walsh and Ed Yurcon who are members as well.

■ **Gina Zumpella** was appointed to the Claims and Litigation Management Alliance Western Pennsylvania Leadership Team. The Claims and Litigation Management Alliance (CLM) is collaborative organization that promotes and furthers the highest standards of claims and litigation management. CLM's Members and Fellows include risk and litigation managers, insurance and claims professionals, corporate counsel, outside counsel and third party vendors. The CLM sponsors educational programs, provides resources and fosters communication among all in the industry.

## Results

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■ **In August 2016**, the Superior Court of Pennsylvania affirmed a directed verdict in favor of our client. In the case at issue, plaintiff had alleged that our client and a co-defendant were responsible for damage to his property from an improperly functioning storm water drainage system. Directed verdict was granted in our client's favor at trial. The co-defendant argued on appeal that evidence existed that the property damage sustained to plaintiff's property was the result of actions by our client. Susan Kostkas and Matthew Hronas successfully argued that no evidence existed that our client was responsible for the improper functioning of a storm water drainage system. The Superior Court agreed.

■ **In June 2016**, Gina Zumpella obtained a dismissal of a personal injury case in Westmoreland County, Pennsylvania. Our client was joined as an Additional Defendant to the lawsuit. The plaintiff alleged that the original defendant was responsible for his injuries sustained when he tripped over an electrical cord in an active work site. Our client, a subcontractor of the original defendant, was joined to the action. We first successfully argued via Preliminary Objections that the Plaintiff had no direct right of

recovery against us as our client was joined after the Statute of Limitation lapsed. Upon Motion for Summary Judgment, the Court found that no evidence existed to hold the original defendant liable for the plaintiff's trip and fall and that none of the Defendants had a duty to warn the plaintiff of the electrical cord which was open and obvious. After the Motion for Summary Judgment was granted, all crossclaims against our client were dismissed as well.

■ **Adam Barnes** recently obtained summary judgment in a declaratory judgment action in Cabell County, West Virginia on behalf of the insurance carrier client. The policyholder, the general contractor for the construction of a shopping center, sought coverage for a lawsuit filed against it by the property owner alleging defects in the ground preparation of several store locations, which resulted in movement at various locations within the plaza and resulting damage to building structures and other improvements. The property owner seeks millions of dollars for cost of repairs, lost rent for vacated tenancies, and reputational damages. The trial court declared the client owed no duty to defend or indemnify the policyholder based the Contractual Liability exclusion of the CGL and Umbrella policies.

# Top Ten Legal Movies

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**10. The Verdict (1982)** – A down on his luck alcoholic lawyer takes a medical malpractice case to redeem himself, encountering trials and tribulations in his search for justice. Starring Paul Newman, James Mason and Charlotte Rampling and directed by Sidney Lumet, this film was nominated for five Academy awards.

**9. Jagged Edge (1985)** – An intruder kills a San Francisco socialite. Her husband is arrested by DA Thomas Krasny (Peter Coyote). Jack hires Teddy Barnes who agrees to take the case as long as Jack is truthful. As the court case unfolds, twists and turns and surprise evidence lead to a surprise ending. Starring Glen Close, Jeff Bridges, Peter Coyote and Robert Loggia and directed by Richard Marquand.

**8. Malice (1993)** – Andy Safian and Tracy Safian are a newlywed couple living and working at a university in Massachusetts. When Tracy has a medical issue regarding her ovaries, a local surgeon Jed Hill, insists that the ovary must be removed. After its removal, the ovary is in fact found to be healthy and the couple sue Dr. Hill. A twisting story of murder and deceit follow, with one of the best speeches in film delivered by Alec Baldwin. Starring Bill Pullman, Nicole Kidman and Alec Baldwin and directed by Harold Becker.

**7. 12 Angry Men (1957)** – In a New York City courthouse, a jury argues over the guilt of a boy who is to receive the death penalty if found guilty. Juror 8 refuses to find the boy guilty, and a descent into the passions, prejudices, triumphs and failures that face the modern jury system are displayed in what is considered one of the most culturally, historically and aesthetically significant films of the past century. Starring Henry Fonda, Lee Cobb, Ed Begley, E.G. Marshal and Jack Warden and directed by Sidney Lurnet, this film was nominated for three Academy awards.

**6. To Kill a Mockingbird (1962)** – Atticus Finch is appointed by a local judge to defend Tom Robinson, an African American, against an accusation of the rape of a Mayella Ewell, a white woman. Facing prejudice, lynch mobs and the spectre of racism in the early 20<sup>th</sup> Century, Atticus Finch defends Tom Robinson against the heinous accusations. Starring Gregory Peck, Mary Badham, Philip Alford, Jogn Megna, Ruth White, Paul Fix, Brock Peters and Frank Overton and directed by Robery Mulligan, this film was nominated for eight Academy awards and won three.

**5. Liar, Liar (1997)** – Fletcher Reede is placed under a spell by the birthday wish of his son, Max and is unable to tell a lie for a day. As an attorney, Fletcher finds this nearly impossible, as he has constructed his entire existence out of lying. In a raucous comedy, Fletcher must try to weather the spell and win a court case while trying to save his relationship with his estranged wife, Audrey and Max. Starring Jim Carrey, Maura Tierney, Jennifer Tilly and Cary Elwes and directed by Tom Shadyac.

**4. ...And Justice for All (1979)** – Arthur Kirkland, a fiery criminal defense attorney in Baltimore, is jailed after punching Judge Henry Fleming while arguing the case of Jeff McCullaugh. Arthur is forced to take on Judge Fleming's case after he is accused of a brutal sexual assault. Arthur, dealing with the broken and untoward parts of the criminal justice system, must weather the trial and the seedier aspects of attorney-client privilege. Starring Al Pacino, Jack Warden, John Forsythe and Lee Strasberg and directed by Norman Jewison, the film received two Academy award nominations.

**3. Inherit the Wind (1960)** – Based on the famous Scopes “Monkey” Trial, Henry Drummon must defend Bertram Cates when he violated a state law for teaching evolution. Matthew Harrison Brady, the prosecutor, is a lauded attorney set against Henry Drummon. Reverend Jeremiah Brown and E.K. Hornbeck whip the town's people into a frenzy over the trial. Henry Drummon, centered in a charged atmosphere, must save Bertram Cates from jail. Starring Spencer Tracy, Fredric March, Gene Kelly, Dick York, Donna Anderson and Harry Morgan, directed by Stanley Kramer.

**2. A Few Good Men (1992)** – U.S. Marines Harold Dawson and Loudon Downey are facing court-martial for killing a fellow marine during a “code red”. They maintain they were acting under orders from Lieutenant Jonathan James Kendrick. Daniel Kaffee takes on the marines' case, and must face stiff resistance in Colonel Nathan Jessup in order to defend the marines. Starring Tom Cruise, Jack Nicholson, Demi Moore, Kevin Bacon, Kevin Pollack, James Marshal, J.T. Walsh and Kiefer Sutherland and directed by Rob Reiner, the film was nominated for four Academy awards.

**1. My Cousin Vinny (1992)** – Vincent Gambini, an inexperienced personal injury lawyer, takes on the trial of the decade when his cousin, Billy Gambini and his friend are arrested for a homicide in rural Alabama. A riotous comedy focusing on the finer points of legal procedure, the film puts on arguably the most realistic depiction of courtroom procedure and trial strategy ever put to film. The film received critical praise and Marissa Tomei deservedly won the Academy Award for Best Supporting Actress for her superb performance.

