



# Thomas McKay, III

## Senior Counsel

### Cherry Hill

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Thomas McKay, III joined Cozen O'Connor as a member in January 1982. He was the office managing partner (OMP) of the Cherry Hill, New Jersey office from 2000 through 2015. He served two terms on the firm's national board of directors and also acted as the interim OMP for the New York office for 1993 – 1994.

In June 2019, Thomas retired from his national defense litigation practice and became senior counsel to the firm. His practice is now limited exclusively to select and limited pro bono representation in New Jersey. He served from 2014 to 2024 as an appointed member of the New Jersey Supreme Court's District IV Ethics Committee, which oversees attorney ethics investigations in Camden and Gloucester counties. He served as the vice chairman of the committee for 2020 – 2021, and as chairman for 2023 – 2024.

Tom's litigation practice focused primarily on first party insurance coverage and insurance fraud defense. He has tried dozens of civil jury trials and numerous arbitrations in multiple jurisdictions securing numerous defense verdicts in actions involving six-figure and multi-million dollar claims against his clients. He served as lead counsel on behalf of one of the insurance company defendants in the World Trade Center 9/11 insurance coverage litigation in the Southern District of New York, obtaining a defense verdict thereby saving the client over \$260 million.

Tom has lectured on first-party insurance and trial related matters 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 Continuing Legal Education. He is a member of the Camden County, New Jersey State and American Bar Associations. Tom held the designation of Certified Civil Trial Attorney by the Supreme Court of New Jersey from 1989 to 2024, when he retired.

Tom earned his bachelor of arts degree from Rutgers University in 1969, where he was a member of the Alpha Chi Rho Fraternity and earned varsity letters as a member of the crew. Tom received his law degree from Temple University School of Law in 1972. From 1972-1973 he served as a law clerk to the Honorable W. Thomas McGann and the Honorable Herman Belopolsky, Superior Court of New Jersey, Law Division.

From 1973-1981, Tom served as an assistant U.S. attorney for the District of New Jersey where he handled both federal civil cases and criminal prosecutions and tried dozens of major criminal jury trials. He was admitted to practice in New Jersey in 1972. He was also admitted to practice in New York in 1994 (retired admission in 2020). He is also admitted to practice before the U.S. Supreme Court, the U.S. Court of Appeals for the Second, Third, Fourth, and Sixth Circuits, the U.S. District Court for the District of New Jersey and the Southern and Eastern Districts of New York.

Tom has served for more than 30 years as an appointed Class IV member of the Hainesport Township, New Jersey Joint Land Use Board, which oversees zoning appeals and land use development in Hainesport. He currently serves as chairman of that board. From 2012 to 2015 he served as an appointed member of the Rutgers University Foundation board of directors, which oversees the management of the university's foundation. Tom is a past commodore of the Surf City Yacht Club on Long Beach Island, New Jersey. Tom is married for over 50 years to Dianne Adele McKay. She was an

### Practice Areas

- Appellate & Supreme Court
- Insurance Coverage
- Professional Liability
- Professional Liability Insurance Coverage

### Industry Sectors

- Insurance

### Education

- Temple University—James E. Beasley School of Law, J.D., 1972
- Rutgers University, B.A., 1969

### Bar Admissions

- New Jersey
- New York (Retired)

### 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. Court of Appeals for the Sixth 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

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

### Awards & Honors

- Selected to N.J. Super Lawyers. This award is conferred by Super Lawyers. A description of the selection methodology can be found here. No aspect of this advertisement has been approved by the Supreme Court of New Jersey.

### Clerkships

Honorable W. Thomas McGann and the Honorable Herman Belopolsky, Superior Court of New Jersey

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adjunct professor at the School of Management and Labor Relations at Rutgers until her retirement in 2024.

## Experience

Won summary judgment in the Supreme Court in related cases involving damage to two New Jersey 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. The trial court's decision was affirmed on appeal.

Negotiated a nuisance-value settlement of a claim filed in the Superior Court, originally in excess of \$3 million, stemming from the loss of an oceanfront mansion on the New Jersey shore 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 an early video deposition exposed the plaintiffs' key witness as unreliable, the company filed a counterclaim under the New Jersey Insurance Fraud Prevention Act, and the plaintiffs immediately entered into the successful settlement negotiations.

Won a federal 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 over \$6 million under claims for breach of contract and additional damages for, 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 a 10 day trial, 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 high-profile 14-week insurance coverage federal jury trial arising from the 9/11 attack on the World Trade Center involving more than 20 insurers who wrote property policies for the complex. We saved the company over \$260 million in potential exposure and also successfully represented our client on appeal in which the 2nd Circuit 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 saved our client from unfairly paying in excess of \$100 million in disputed claims.