

## STUART T. O'NEAL III

### BIOGRAPHY

Stuart "Tye" O'Neal is an Equity Member of Burns White, and is on the firm's Executive Committee. He is the co-chair of the Professional Liability and Cyber-security practice groups. He is an active trial attorney in charge of several valued trial teams, and enjoys the challenge of representing clients' difficult cases against respected opposing counsel and before judges and juries. This most recently occurred in July of 2021 during a seven-day trial, where Attorney O'Neal represented a hospital against allegations that it did not have the proper blood products for a patient. Attorney O'Neal was able to gain valuable concessions by the Plaintiff's renown experts which helped to secure the defense verdict, which was 11-1 in his client's favor. Thereafter, in October of 2020 during an eight-day trial, Attorney O'Neal secured another defense verdict when a jury of 12 Luzerne County citizens rendered a verdict in favor of his client, a community hospital, in a high exposure, highly contested case. The demand in the case from the Plaintiff was \$16,000,000.00 and the jury came back in favor of Attorney O'Neal's client in fourteen (14) minutes, declining to award the Plaintiff any money. Between those two recent pandemic cases, with a combined demand of \$17,560,000, Attorney O'Neal's clients paid zero. This has occurred on other notable occasions as well.

Individuals, groups, large corporations and even fellow lawyers retain Stuart and his team when they are in immediate crisis or are involved in high stakes litigation. Stuart and his team are "go-to" counsel for a wide variety of industries, including but not limited to healthcare, entertainment, human services, non-profits, and Fortune 500 companies. Stuart's practice ranges from Crisis Management to professional liability across all spectrums, as well as employment and commercial matters. Stuart and his team have handled internal audits, allegations of fraud, and embezzlement allegations, and served as the "boots on the ground" when needed by clients in distress. Stuart was involved in witness representation immediately after the Jerry Sandusky incident at Penn State. Stuart and his team have been parachuted into cases to try them, in conjunction with existing counsel, or to end them with a successful resolution. His team will try cases many others do not want to in a courtroom.

Stuart graduated from Dickinson College in Carlisle, Pennsylvania as an undergraduate and from the Villanova University School of Law. Stuart also continues his education on mediation training through seminars at the Harvard University School of Law.

Stuart proudly volunteers his time on two Boards on issues that are very important to him: children and Veterans. With respect to children, Stuart is currently the Board President for The Hamels Foundation, founded by former Phillies pitcher Cole Hamels and his wife Heidi. The organization raises money to assist in educational endeavors for students from Philadelphia all the way to Africa. Stuart is also a Board member of Harrisburg-based, The Sherman Foundation, which provides resources to those who suffer from addiction, as well as PTSD.



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**CREDENTIALS**Areas of Law

- Cybersecurity Liability/Data Breach Defense
- Employment and Commercial Matters
- All Matters Related to Professional Liability Defense

Education

- Harvard Law School (Negotiation Certificate Intensive Program, Professor Robert C. Bordone)
- Villanova University School of Law
- Dickinson College

Bar and Court Admissions

- Commonwealth of Pennsylvania
- New Jersey
- United States District Court for the Eastern District of Pennsylvania
- United States District Court for the Middle District of Pennsylvania

Memberships

- Pennsylvania Bar Association
- Professional Liability Defense Federation
  - Past President
  - Chair of Data Breach/Privacy Committee

**ACCOLADES & INVOLVEMENT**Community/Civic Involvement

- The Sherman Foundation, Board of Directors
- The Hamels Foundation Board of Directors
  - President, 2016-Present
  - Vice President, 2014-2015
- Maxwell Football Club, Voting Member

**PRESENTATIONS**

- "Crisis Mode: Experts Hone in on Preventative Company Measures" Central Penn Business Journal Roundtable, November 2019
- "Opioids in the Workplace" *Philadelphia Business Journal*, Thought Leader Forum, August 2018

**PUBLICATIONS**

- Co-Author, "Crisis Management: Is Your Organization Prepared to Execute a Rapid Response?" *Burns White Insights*, June 2019
- Cited in "What to Know About Risk, Coverage Before You Buy Cyber Insurance" *Healthcare IT News*, August 2017

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**REPRESENTATIVE MATTERS**

- Obtained defense verdict in an eight-day trial on behalf of a hospital and physician practice group in a heavily contested case involving alleged catastrophic injuries and damages in Lackawanna County.
- Obtained a dismissal of a large regional medical center pursuant to a Motion for Summary Judgment. Plaintiff claimed vicarious liability and corporate negligence against the medical center related to the prescription, oversight, and monitoring of blood thinning medication that allegedly resulted in the Plaintiff requiring an emergency craniotomy due to a brain hemorrhage. A Motion for Summary Judgment was filed on behalf of the medical center arguing that Plaintiff's proffered expert reports lacked the required expert opinions to establish professional negligence in a malpractice action in Pennsylvania on either Plaintiff's vicarious or corporate theories. This motion was opposed by Plaintiff. After oral argument, the Court ruled to grant summary judgment, dismissing Plaintiff's case against the medical center entirely.
- Obtained a dismissal of the firm's client, an outpatient radiology center, from a lawsuit involving a delayed diagnosis of cancer. The Complaint alleged that numerous Defendants were negligent in failing to identify and diagnose cancer in the Plaintiff. Claims against the radiology center included claims for ostensible agency and vicarious liability with regard to two (2) interpreting radiologists, as well as corporate liability and loss of consortium claims. The client was dismissed prior to the undertaking of extensive discovery—saving them from potential liability, as well as a significant investment of time, effort, and cost of litigation.
- Obtained the maximum arbitration monetary award available for the firm's hospital client involving a commercial dispute over the sale of hospital equipment to a third party vendor. The hospital contended that the Tulsa, Okla.-based defendant, which it was suing, was unjustly enriched and breached a commercial sales contract with the hospital over the sale of the equipment. The defendant contended through several witnesses at the hearing, including its CEO, that a mutual mistake between the parties voided the transaction and the contract. The three-person arbitration panel found in favor of the hospital in less than twenty minutes.
- Received a dismissal for a healthcare system client in a claim brought under the Racketeer Influenced and Corrupt Organizations Act (RICO). The plaintiff, a former patient, filed amended complaints of conspiracy and later RICO against our client and four other defendants after not entering a settlement from an initial claim made several years prior. In June 2014, Judge Petrese B. Tucker, C.J. of the U.S. District Court for the Eastern District of Pennsylvania dismissed all claims with prejudice, stating the plaintiff lacked standing, and her allegations of conspiracy were little more than an attempt to improperly re-litigate her medical malpractice claim.
- Secured a complete dismissal for a physician client on the eve of trial in a medical malpractice matter in Philadelphia County, where the plaintiff's demand was \$12 million.
- Obtained a dismissal for a hospital client in a medical malpractice case in Philadelphia County. The hospital raised preliminary objections challenging several procedural deficiencies in the plaintiff's complaint, which were sustained in their entirety, resulting in the client's dismissal.

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- Obtained a dismissal with prejudice in the United States District Court for the Eastern District of Pennsylvania for a parent company of a co-defendant hospital facing alleged violations of the federal Anti-Kickback Statute and False Claims Act. The plaintiff, who was a physician, entered into two successive on-call agreements with the hospital, where he was paid for the days he worked as the on-call physician. The first contract was terminated after it was learned that the plaintiff had a financial stake in a competing healthcare provider. The plaintiff later entered into a second on-call agreement when the hospital was under new management which permitted him to retain his financial stake in the competing provider. However, he subsequently violated a non-compete clause in that agreement which led to the termination of the contract. After meeting with his attorney, the plaintiff alleged that he realized that both on-call agreements were executed solely to coerce Medicare patient referrals violating the federal Anti-Kickback Statute and the False Claims Act. Both defendants argued that the plaintiff's complaint failed to provide a claim in either agreements' termination provisions that violated the federal statutes.
- Secured the dismissal of corporate liability claims in three medical malpractice matters against two hospital clients. In all three cases, the main argument was made through dispositive motion practice, centering on elements of the Pennsylvania's Supreme Court opinion in *Thompson v. Nason Hospital* that were not met.
- Obtained a dismissal for a health system client in a professional liability/medical malpractice action. The plaintiffs, the parents of a little boy, alleged that their son suffered serious injuries over the course of delivery due to a hospital's negligence. The firm's health system client was included in the matter by virtue of a successor liability theory that was dismissed early in the litigation.
- Secured a dismissal with prejudice for a hospital client in a medical malpractice action where a party representing the deceased patient alleged the administration of various drugs and drug combinations causing prolongation of the QTc interval, QT prolongation in the EKG and sudden cardiac death. Burns White successfully entered a judgment of non pros for failure to file timely certificates of merit and later filed a motion to strike the plaintiff's certificate of merit and dismiss his complaint with prejudice on the basis that it was not certified by the appropriately licensed professional qualified to offer opinions critical of the hospital's agents and employees.
- Secured a complete dismissal of a claim for a New Jersey-based physician client in a medical malpractice matter involving eight other facilities and physicians. The defense strategy centered on the care and treatment provided exceeding the standard of care, discounting any alleged malpractice. In order to preserve our client's reputation, Burns White requested a dismissal which was later granted.
- Obtained dismissal with prejudice for a hospital client in a medical malpractice matter in Luzerne County, Pennsylvania, involving thirteen other facilities and physicians. The court granted the dismissal based on an affidavit of non-involvement and subsequent motion illustrating that the hospital had no part in the negligent care and treatment that was alleged.
- Granted a hospital client a petition for equitable relief in the form of a permanent injunction in Lackawanna County, banning a problem patient for life. The client initiated the action after encountering continuous problems from a frequent patient, who was both verbally abusive and threatening to hospital staff.

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- Received a summary judgment for a nonprofit client that provides residential, therapeutic, educational, vocational and social programs for individuals with intellectual and developmental disabilities on the basis that the plaintiff failed to sustain their burden of proof of gross negligence, a required threshold in cases against facilities like our client covered by the Mental Health and Mental Retardation Act and the Mental Health Protections Act. Burns White further asserted that the plaintiff failed to produce expert reports to support their theories of negligence and causation. The matter is currently being appealed by the plaintiff.
- Obtained a dismissal for a drug and alcohol rehabilitation facility client. Through aggressive investigation and discovery motions, it was determined and confirmed that the plaintiff had died before the filing of the lawsuit. Burns White secured an order on the motion for sanctions precluding the plaintiff from offering certain evidence in support of the case. Burns White also established that there was no proper party to the suit, as the plaintiff was deceased and her counsel did not seek to timely find a substitute for her estate.
- Successfully defeated a plaintiff's motion for injunctive relief in federal court for a foster placement agency facing allegations of professional negligence in a child placement matter where several children were improperly removed from the home.
- Successfully defended a private foster child placement service and several of its named employees in a claim brought by foster parents contesting the county agency's decision to place the foster children with different foster parents. The complaint, filed in federal court, raised constitutional and pendent state claims against the county agency and the Burns White client. After filing comprehensive motions for summary judgment raising the plaintiffs' lack of standing, the federal abstention doctrine and qualified immunity, among other defenses, the plaintiffs voluntarily dismissed their complaint against all parties before oral argument on the motions.
- Secured a summary judgment in the U.S District Court for the Eastern District of Pa. for a foster care service that was sued along with a government agency, regarding the removal and termination of parental rights of the plaintiff-father. While several of the plaintiff's claims were dismissed prior to summary judgment, a federal claim regarding the abuse or violation of due process and a state claim regarding the intentional infliction of emotional distress remained. Burns White argued that not only was our client not involved in any alleged violation of due process, but that the plaintiff had received due process throughout the underlying litigation. The court granted summary judgment, ruling in favor of the defendants on all of the plaintiff's remaining claims.
- Obtained a dismissal for a licensed social worker against civil allegations that she engaged in fraudulent business activities and unethical conduct. The client denied all allegations brought by the business partnership and her former employer, and was not charged criminally. The court found in favor of the defense, ordering that all defense fees and costs be submitted to binding arbitration for potential reimbursement.
- Successfully resolved a defamation case for a high-level corporate executive, estopping several national and international companies from defaming his reputation. The alleged defamation was internet-based and implicated the Communications Decency Act of 1996 and the Stored Communications Act. In addition, the actions of the offending companies were also threatening to interfere with present and prospective contractual relations of the executive client and his company. The matter was resolved outside of court, saving the client a significant amount of time and money from what would have been a very long, complex and costly Federal trial, while still achieving all of his goals.

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- Received a defense verdict in Montgomery County on behalf of a professional liability corporation in a matter where the plaintiff alleged defamation, as well as outrageous and reckless conduct that allegedly warranted punitive damages. The court found in favor of the defense and dismissed the plaintiff's claims outright.
- Secured a dismissal of a defamation claim lodged against a large healthcare provider, as well as an individual executive from the same institution, facing alleged punitive damages. The claims for defamation, denied by the healthcare provider and the executive, were related to a former physician and department head.
- Received a dismissal for a health system client, where the estate of a 54-year-old man alleged that the staff of one of its hospital emergency rooms did not diagnose a cerebral vascular incident that caused his death three months after admission. The plaintiff declared counts of wrongful death—vicarious liability, wrongful death—corporate liability and a Survival Act claim. On the eve of trial, our hospital client was released from the case due in part to several summary judgments that mitigated many of the claims against the hospital itself, including corporate liability.
- Obtained a complete defense verdict after a two-week trial before the Honorable Marlene Lachman for an acute care hospital client involving allegations of a delay in intubation for a patient with angioedema, swelling of the neck, mouth and airway, secondary to prescription ACE inhibitors. The plaintiff's claims included claims of corporate negligence regarding emergency room coverage and specialty consultation availability for an airway emergency. The jury verdict was unanimous.
- Secured a dismissal for an acute care hospital in a breach of standard of care case. The plaintiff, a patient who received treatment at the facility, alleged that our client failed to identify her as a fall risk and prevent her alleged injuries. Through the aggressive pursuit of discovery, Burns White showed that the plaintiff failed to respond to any discovery requests and file a verification with the complaint. Prior to granting the dismissal, the court precluded the plaintiff from testifying about the information requested in our discovery requests.
- Received a favorable ruling in Philadelphia County where a hospital client, along with an affiliated physician and a nonprofit organization, were facing allegations of pneumonia diagnosis and treatment failure that led to a patient's death. The hospital and its corporate entity were being sued by the deceased's descendent under theories of vicarious liability and corporate liability. In two separate counts, plaintiff alleged a host of failures, including failure to obtain appropriate consultations, appropriately supervise nurses and residents, hire competent physicians and staff, and ensure quality medical care. In the first order, the court sustained Burns White's preliminary objections, striking plaintiff's claims of corporate negligence, vague allegations of agency and over 50 vague allegations of negligence from plaintiff's amended complaint. In the second order, the court granted a motion to enter a judgment of non pros on plaintiff's claims of corporate negligence, where plaintiff failed to file timely certificates of merit for claims of corporate negligence resulting in a dismissal with prejudice.
- Obtained a summary judgment in Trumbull County, Ohio for an insurance client in a coverage matter. The third-party plaintiffs, three nurses who were being sued for medical malpractice in relation to the obstetrical management, labor and delivery of a baby born on Feb. 24, 2010, were seeking liability insurance coverage, and damages for breach of contract and bad faith. Burns White argued that the policy did not apply to any loss prior to the retroactive date of Oct. 1, 2010, thus excluding the Feb. 24 incident from coverage. The court agreed, dismissing all counts in the third-party complaint with prejudice.

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- Received a dismissal in the United States District Court in Philadelphia for a private placement and treatment services agency client in a matter raising serious claims of indifference, nonfeasance and malfeasance. Plaintiff, a woman alleging that she suffered physical abuse as a child while living in a foster home, brought the case after she reached the age of majority. Her claim, which was multifaceted, centered on Constitutional dimension claims under 42 U.S.C. §1983 involving our client, the local government's Department of Human Services and other private agencies. Burns White filed a motion to dismiss, relying upon the statute of limitations and plaintiff's failure to plead sufficient facts concerning the actions of the client to state a claim, including that the client was acting under the color of state law when working on plaintiff's behalf.
- Obtained a complete defense verdict for a healthcare institution client, where a husband and wife alleged damage to their personal property while on the client's premises. The court adjudicated on claims made by both the husband and wife, and considered testimony of all parties, including several eye witnesses.
- Received a defense verdict for a hospital client in a premises liability action in Philadelphia County. Following a detailed background investigation, Burns White introduced key witness testimony of the alleged accident which undermined all allegations of negligence against the hospital. At the time of arbitration, the panel attributed no liability to the facility and entered a defense verdict.
- Secured a dismissal in Chester County, Pa. for an executive of a solar power company in a breach of contract claim.

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