New Jersey Law Journal

STATEWIDE LEGAL AUTHORITY SINCE 1878

An ALM Publication

OUR LAST ISSUE!

VOL. 229 NO. 52 MONDAY, DECEMBER 25, 2023 LAW.COM/NJLAWJOURNAL

Transparency Bill Moving Through Legislature Could Have Major Impact

By Colleen Murphy

A bill before the Senate Labor Committee could have New Jersey joining a wave of states passing pay transparency laws, though employment lawyers caution that it could result in future litigation over pay inequity and other biases by existing employees.

Recently, Assembly bill No. 3937 was before the Assembly Consumer Affairs Committee with amendments, which would require employers to disclose the hourly range, salary, or a range of compensation for each job they post. Amendments to the bill would also require employers to make reasonable efforts to notify all current employees of the opportunities for promotion. The

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New Jersey's Federal Bench Is Almost at Full Strength, But Will Cases Move More Efficiently?

PHOTO BY DIEGO M. RADZINSCI/ALM

EDWARD KIEL

By Charles Toutant

With one judicial nominee just confirmed and another appearing to be in line for confirmation, the District of New Jersey stands to attain a special status in 2024: the court with a fully staffed bench.

Jamel Semper was confirmed as a federal trial court judge on Nov. 29 and the Senate Judiciary Committee reported out the nomination of Edward Kiel for bench on Nov. 30.

No date has been set for Kiel's confirmation vote, but if he gets the green light, the District of New Jersey will have its full complement of 17 judges.

It's impossible to say how long it will last, although no retirements or

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Retired State Trooper Not Entitled to Free Health Insurance Despite Alleged Clerical Error, Says NJ Supreme Court

PHOTO BY DANIEL VIA ADOBE STOCK

By Colleen Murphy

The New Jersey Supreme Court agreed with an Appellate Division opinion that the state Division of Pensions and Benefits was within its rights to deduct health insurance premiums from a retired state trooper after previously promising him, allegedly due to a clerical error, that he was entitled to free health benefits.

James Meyers was an employee of the New Jersey State Police from 1994 until he retired as a captain in September 2015. During the term of his employment, in June 2011, the

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NJ Attorney General Files First Complaint Under Enhanced Workers' Comp Laws

By Colleen Murphy

The New Jersey Attorney General's Office announced that the first lawsuit has been filed under the new laws permitting the state to file suit in Superior Court against employers for misclassification of workers as independent contractors.

The complaint was filed in Essex County Superior Court against shipping and logistics companies STG Logistics and STG Drayage. It sought to stop the practice of misclassifying more than 300 drivers as independent contractors

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DECISION OF INTEREST

37 PERSONAL INJURY
D.T. v. Archdiocese of Philadelphia: Court lacked personal jurisdiction over out-of-state archdiocese with respect to sexual abuse claims.

MICHAEL STEIN OF PASHMAN STEIN1

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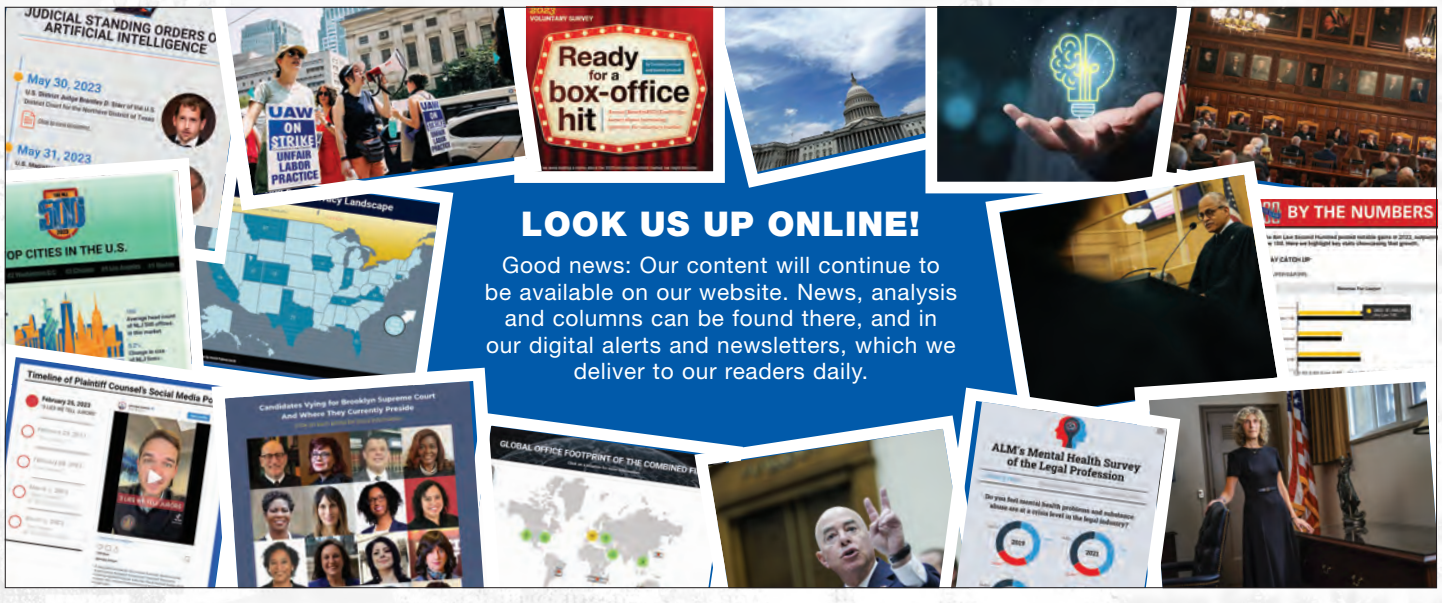

LOOK US UP ONLINE!

Good news: Our content will continue to be available on our website. News, analysis and columns can be found there, and in our digital alerts and newsletters, which we deliver to our readers daily.

BACKGROUND IMAGE: OLGA/ADOBE STOCK

EDITOR'S NOTE

DAVID GIALANELLA

'Rewarded With Success': The Law Journal's New Chapter

There's a saying about old habits, and for good reason.

The New Jersey Law Journal print issue has been a habit, you could say, since January 1878, when the first edition was printed by Honeyman & Rowe Publishers of Somerville—with attorney Abraham Van Doren Honeyman as its editor.

"We begin the publication of a distinctive law journal for a small State not without hesitation. The times, generally speaking, are not propitious, nor can we reasonably expect that the necessarily limited circulation of such a periodical in New Jersey will, now or hereafter, yield to its publishers more than a scanty remuneration for their pains. But ... [o]ur laws are good and their execution proverbial, thanks to our Bench and Bar," the first edition's Editors' Notes reads (thanks to the New Jersey State Library for its archiving).

Changes would come, over the decades. (Indeed there have several changes in my relatively short 13 years with the Law Journal).

Now comes another change—though, as with many others that came before, we believe it will be for the better.

As a company, we have decided to move away from the print production of nearly all of our news publications, including the New Jersey Law Journal. This Dec. 25, 2023, edition is our final printed edition.

For those of you who, like me, have stacks of print copies on your desks or stored away, I understand what "holding a copy" of your favorite publications means. Countless numbers of you have told me how enjoyable it is to have a publication in hand.

But for many reasons, including where readers are actually consuming our content (online) as well as our drive to be environmentally responsible, it was time for ALM to make the proactive decision to step away from the print format.

Strange though it might seem, nothing is essentially changing from a content standpoint. We've long published our content—from daily breaking news to signature projects like Top 40 and Largest Law Firms; from Editorial Board pieces to our special sections; from the New Jersey Legal Awards to On the Move—on the website. You will get online what you are accustomed to getting in print.

In fact, for those of you who've read us predominantly or exclusively in print, you'll be getting more online. It was always the case that we could only fit so much content into our print editions, and so a proportion of our content would run online only. What's more, now that we are freed up from the time constraints of producing various print products, we will be able to produce more content, and faster.

To quote Gina Passarella, ALM's SVP of Content, and longtime editor-in-chief of The American Lawyer (which is going all digital, too), our focus is on great content and being connected with our audience. Whether the content was for print or online has long been a secondary consideration. The most important thing we need to do as a newsroom is provide the most relevant, insightful information in a way that highlights where the industry is headed and what it means for our readers.

The editors' notes of that first edition of the New Jersey Law Journal would go on to say, "Now, legal brethren, it is yours to say if this honest attempt to do you a service shall be rewarded with success."

It's safe to say that the Law Journal turned out to be a great success. That success is ongoing—thanks most of all to you, our readers, and the New Jersey legal community at large. In saying so, I can't resist one more quote from that first issue: "Remember this is *your* organ and not ours."

Thank you, as always, for reading and engaging with us. Happy New Year, and cheers to a bright future.

The Law Journal Is Going Digital. Here's What to Know.

The New Jersey Law Journal will stop producing a print product starting next year. Here is a list of frequently asked questions intended to provide all the information you need to know about the change.

What is happening?

The New Jersey Law Journal, along with most other ALM publications—including The American Lawyer magazine, The Legal Intelligencer in Pennsylvania, the Daily Report in Georgia and the Daily Business Review in Florida—will be moving to digital-only.

Will there be any changes in coverage?

No. The Law Journal will continue producing the same amount and the same quality of in-depth coverage of the New Jersey legal community. That includes breaking news, timely analysis and deep insights on the latest major issues affecting the legal world. We will also continue to provide the same steady stream of insightful articles from contributing authors on the full range of issues affecting the legal world.

When is the change taking place?

The last print edition of the Law Journal will be coming out on Dec. 25.

Will this affect the website and email newsletters?

No. All of our content will continue to be available on our website. New stories will be accessible on the homepage as soon as they are published, and our top stories will be updated daily. News, analysis and columns—including Editorial Board pieces, case results, law firm moves, special sections and more—will continue to be available on the site and in our digital alerts and newsletters. Those alerts and newsletters will continue to be sent throughout the day.

How will the change affect contributed content?

Contributed content from our scheduled authors will continue to be a priority and will appear on our website daily just as they did in print. Pitches for contributed articles on timely topics are still greatly encouraged. Continue to reach out to Donovan Swift at dswift@alm.com.

Will full PDFs of the newspaper and supplements still be available online?

No. The PDFs were part of the print process and they will be discontinued along with print.

Will court notices and case digests continue to be available online.

Yes. Court notices and case digests remain available on the site.

How will the change affect the supplements?

Our special sections/supplements will no longer be printed on hard copies, but we will continue to produce the same supplement products throughout the year. You will continue to be able to access the content online and through our alerts.

If you have articles you would like to submit for publication, please contact Donovan Swift at the above email.

What will be the effect on The New Jersey Legal Awards?

Essentially none. We will continue recognizing the excellent work that is being done by attorneys throughout New Jersey's legal community, and hosting our annual awards event. The awards supplements will no longer be printed; however, the profile, Q&As and other material will still be available online.

Will there still be advertising?

Yes. We will still have ads online and on our newsletters. For any advertising-related questions, please reach out to Joe Pavone (jpavone@alm.com).

Who can I speak to about access problems I've been having with my account?

Customercare@alm.com

Who can I speak to about questions I have regarding my subscription?

Subscriptions@alm.com

Still have other questions? Reach out to David Gialanella (dgialanella@alm.com) and Max Mitchell (mmitchell@alm.com).

NOTICES TO THE BAR

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Notice - New Fee Arbitration Secretary for District VIII (Middlesex County) Fee Arbitration Committee

NOTICE TO THE BAR

NEW FEE ARBITRATION SECRETARY FOR DISTRICT VIII (MIDDLESEX COUNTY) FEE ARBITRATION COMMITTEE

Effective January 1, 2024, the Fee Arbitration Secretary for the District VIII (Middlesex County) Fee Arbitration Committee is:

Steven Nudelman, Esq., Secretary
District VIII Fee Arbitration Committee
P.O. Box 5600
Woodbridge, NJ 07095
732-476-3206
Fax: 732-476-2429
DFACVIII_Secretary@greenbaumlaw.com

All pre-action notices served in accordance with *R.1:20A-6* should include the new secretary's name, address and phone number.

Dated: December 15, 2023
Johanna Barba Jones, Director
Office of Attorney Ethics

Notice/Order/Directive — Victim's Assistance and Survivor Protection Act (VASPA) — Relaxation of Court Rule 5:7B; New Administrative Directive #23-23

Notice to the Bar

Effective January 1, 2024, the Victim's Assistance and Survivor Protection Act (VASPA) will provide an avenue for victims not covered by domestic violence statutes to seek a protective order for certain offenses, including the additional predicate acts of stalking and cyber-harassment. This new law supersedes the Sexual Assault Survivor Protection Act of 2015 (SASPA) while retaining the substance of that Act.

The Supreme Court in the attached December 5, 2023 Order has relaxed Rule 5:7B ("Sexual Assault and Survivor Protection Act: Protection Order") to align with and implement VASPA. The attached rule relaxation order will remain in effect pending the adoption of conforming rule amendments.

In addition, attached Administrative Directive #23-23 ("Family -- Procedures for Implementation of Victim's Assistance and Survivor Protection Act (VASPA); Rescission of Directive #07-03"), sets out protocols for VASPA applications. Directive #23-23 promulgates new and updated forms, which are also available at njcourts.gov.

Questions on VASPA, the Court's December 5, 2023 Order, and Directive #23-23 should be addressed to the AOC Family Practice Division at 609-815-2900, ext. 55350.

/s/ Glenn A. Grant
Administrative Director of the Courts
Dated: December 13, 2023

SUPREME COURT OF NEW JERSEY

It is ORDERED, pursuant to N.J. Const. Art. VI, sec. 2, par. 3, that, effective January 1, 2024, the provisions of Court Rule 5:7B ("Sexual Assault and Survivor Protection Act: Protective Orders"), and such other rules as necessary, are hereby relaxed and supplemented to conform to the provisions of L. 2023, c. 127, the Victim's Assistance and Survivor Protection Act (VASPA).

It is FURTHER ORDERED that, consistent with the provisions of VASPA and this Order, the Superior Court may issue protective orders for acts of stalking and cyber-harassment for certain victimized persons in situations for which the Prevention of Domestic Violence Act of 1991 (N.J.S.A. 2C:25-

17 et seq.) does not apply due to the lack of a familial or dating relationship between the victim and offending actor.

The provisions of this Order shall remain in effect pending further order or adoption of conforming rule amendments.

For the Court,
/s/ Stuart Rabner
Chief Justice
Dated: December 5, 2023

To: Assignment Judges
Trial Court Administrators
From: Glenn A. Grant, Administrative Director
Subject: Family –Procedures for Implementation of Victim's Assistance and Survivor Protection Act (VASPA); Rescission of Directive #07-03
Date: December 13, 2023

This Directive promulgates procedural guidance regarding the Victim's Assistance and Survivor Protection Act (VASPA). Under this Act, the Superior Court can issue protective orders for persons victimized by acts of non-consensual sexual contact, sexual penetration, lewdness or any attempt of such conduct, or stalking and cyber-harassment in situations in which the victim does not meet the requirements under current statutes for a domestic violence restraining order. The protocols set out in this directive are effective January 1, 2024 and supersede those promulgated by prior notices to the bar and Judiciary forms.

Background

Legislation adopted July 24, 2023 to be effective January 1, 2024 (L. 2023, c. 127), amended the Sexual Assault Survivor Protection Act of 2015 (SASPA) so as to expand the predicate acts for which a protective order can be issued for victims not eligible for relief under domestic violence statutes due to the lack of a familial or dating relationship between the offender and the victim. The predicate acts added are stalking and cyber-harassment. Because the amendments expand the scope of the act to potentially cover actor-victim interactions not of a sexual nature, the legislation also changed the name of the act to the Victim's Assistance and Survivor Protection Act (VASPA). The new law will go into effect on January 1, 2024. A copy of the law is attached to this Directive.

Court Procedures

The application for the VASPA temporary protective order will be completed by the plaintiff or if applicable by the plaintiff's parent or guardian. The application is to be submitted electronically through the Judiciary Electronic Document Submission (JEDS) system or hand delivered by the litigant to the Family Division. Although an application for the temporary protective order may be submitted through JEDS at any time, the application will be processed by Family Division staff during normal court business hours. If the application is received through JEDS after 4pm, the application may be processed on the next court business day.

Unless the plaintiff or staff have questions, the application may be processed by Family Division staff without interviewing the plaintiff, and the matter will be scheduled promptly for an emergent hearing. If the plaintiff is not at the courthouse, staff will notify the plaintiff electronically by email or by telephone of the hearing time. These applications will be treated as a priority similar to the procedure for domestic violence temporary restraining orders. Court staff will make every effort to process the case as soon as possible and expedite the hearing.

If a temporary protective order is issued, that order will be served on the defendant by law enforcement, and a hearing will be scheduled for a final protective order.

Any temporary or final protective order issued shall be in effect throughout the state and shall be enforced by all law enforcement officers. In the event of a violation of a protective order, the degree of the contempt charge for that violation will determine whether the Family Division or the Criminal Division will hear the case. The Family Division has exclusive jurisdiction if the violation involves a disorderly or petty disorderly persons offense. The Criminal Division hears contempt charges if the defendant committed a violation that constitutes an indictable offense.

All records maintained in relation to VASPA applications shall be confidential and shall not be made available to any individual or institution except as provided by law. Additionally, VASPA protective orders will automatically be entered into the Domestic Violence Central Registry (DVCR).

In addition, because VASPA enables a parent or guardian to seek a temporary protective order for a minor victim of stalking, this Directive rescinds prior Directive #07-03 ("Family – Amendments to Stalking Law – Procedures for Complaints Filed by Parents/Guardians Seeking Temporary Restraining Orders"), which is no longer necessary.

VASPA forms for use in this process are available at njcourts.gov. Questions on VASPA and this Directive should be addressed to the AOC Family Practice Division at 609-815-2900, ext. 55350.

Attachments:
(1) VASPA Legislation
(2) VASPA Combined Packet
(3) VASPA Complaint
(4) VASPA Additional Form
(5) VASPA Application to Amend Temporary Protective Order
(6) VASPA Confidential Information Sheet
(7) VASPA How to Enforce or Request a Change of VASPA Final Protective Order
(8) VASPA Certification to Dismiss Protective Order

cc: Chief Justice Stuart Rabner
Family Presiding Judges
Criminal Presiding Judges
Steven D. Bonville, Chief of Staff
Jennifer M. Perez, Director, Trial Court Services
Joanne M. Dietrich, Assistant Director, Family Practice
Special Assistants to the Administrative Director
Amelia Wachter-Smith, Chief, Family Practice
Family Division Managers and Assistants
Criminal Division Managers and Assistants
Domestic Violence Hearing Officers
Domestic Violence Team Leaders

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'Persistent Failure to Provide Responsive Answers' in Discovery Results in Dismissal of Counterclaims

By Colleen Murphy

A case concerning discovery disputes has landed before the New Jersey Appellate Division for the second time for what the court cited as "persistent non-compliance with discovery requests" by the defendants/third-party plaintiffs to provide responsive answers and documents to support its counterclaims.

In November 2018, a Middlesex County judge entered an order striking with prejudice the answer, counterclaims, and third-party claims of the defendants/third-party plaintiffs, ARF Realty Management and ARF Realty Investors, for failure to comply with discovery obligations. On a first appeal, the Appellate Division reversed the lower court's order and directed the trial court to make specific findings of fact concerning whether there were grounds to dismiss ARF's claims.

The underlying case involved a piece of property, owned by plaintiff/third-party defendant Seaside Properties, in Woodbridge. Seaside's members include Walter Jakovcic and Richard Matera. In a case filed in June 2017, Seaside filed this action against the defendants/third-party plaintiffs, ARF Realty Management and ARF Realty Investors, and PB 24 & 35 Cutters Dock, which sought to quiet title to the property. The action further sought a declaration that a mortgage that

PHOTO BY GOODIDEAS VIA ADOBE STOCK

was recorded against the property and a subsequent assignment of the mortgage were void and unenforceable, according to the opinion.

ARF's counterclaims against Seaside asserted five causes of action, including fraud and misrepresentation, tortious interference, breach of contract, violations of New Jersey's Racketeer Influenced and Corrupt Organizations Act, and punitive damages for filing a frivolous lawsuit. And in its third-party complaint, ARF alleged that it made loans or payments on behalf of the third-party defendants of approximately $6 million and it sought repayment plus the agreed-on rate of 12% interest and a declaration that the mortgage was legal and valid.

During discovery, in response to interrogatories by Seaside and the other third-party defendants, ARF provided nearly 2,000 pages of documents. Seaside and the other defendants believed those responses were deficient and noted that ARF answered the wrong set of interrogatories. ARF later provided answers to the correct ones.

Seaside and the other third-party defendants ultimately filed motions to strike ARF's pleadings with prejudice under Rule 4:23-5(a)(2). After hearing oral arguments, the court granted the motion, citing ARF's "persistent non-compliance with discovery requests and failure to file a motion to reinstate," according to the opinion.

The lower court issued its written statement of reasons and an order striking ARF's answer and affirmative claims with prejudice on Jan. 31, 2022. As for the counterclaims alleged by ARF, the appeals court held that the company persistently failed to provide responsive answers and documents to support its counterclaims against Seaside. Therefore, the opinion stated, the court found no abuse of discretion in the part of the Superior Court's order dismissing the counterclaims with prejudice.

The second issue before the appeals court concerned answers and documents on the allegation made in ARF's third-party complaint that it gave loans and made payments on behalf of Seaside and other third-party defendants. On that point, the appeals court found that those answers and documents may be questioned as to their adequacy, but found that they were sufficiently responsive and therefore dismissal is not warranted. The Appellate Division reversed and remanded to the trial court with the

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Single AOM for Multiple Entities Results in Dismissal of Vicarious Liability Claim Before Appellate Division

By Colleen Murphy

In a published opinion, the Appellate Division upheld a Hudson County Superior Court ruling that the plaintiff's failure to identify individually negligent nurses in a medical malpractice claim rendered the affidavit of merit insufficient to support a vicarious liability claim.

In the underlying case, *Hargett v. Hamilton Park OPCO*, Rosetta Hargett, as administratrix ad prosequendum for the estate of Martha Ingram, appealed the trial court order dismissing her medical malpractice claim with prejudice for failing to provide an appropriate affidavit of merit, according to the opinion. The Appellate Division agreed with the trial court, holding that the AOM offered by Hargett was inadequate because it alleged collective negligence by multiple unidentifiable nurses.

Ingram was a patient at defendant Alaris Health at Hamilton Park for about a month. While there, she developed pressure-related skin breakdown and pressure wounds, according to the opinion. Ingram was then transferred to defendant Jersey City Medical Center, where she continued to experience pressure-related skin breakdown and pressure wounds. She passed away about a year after being transferred.

PHOTO BY NVB STOCKER VIA ADOBE STOCK

Hargett filed a complaint against Alaris Health, JCMC, and RWJ Barnabas Health, alleging that Ingram's injuries, which were sustained at Alaris Health and JCMC, caused or contributed to her death.

Hargett alleged that Alaris had an obligation to establish policies and procedures for the recognition and treatment of medical conditions to ensure timely and appropriate care, according to the opinion. She also alleged Alaris Health had an obligation to employ competent, qualified staff and to provide adequate staffing levels. And she alleged that Ingram's injuries were caused by the negligence and carelessness of Alaris Health and its nursing and administrative staff.

Hargett served an AOM supporting the claims against Alaris Health, JCMC, their nursing staffs, and their nursing administrative staffs. The AOM was prepared by Paula Kotz, RN, B-C, CWOCN, CLNC, CFNC, CFCS, according to the opinion. The appellate opinion was authored by Judge Robert M. Vinci, on temporary assignment to the Appellate Division. Judges Jack M. Sabatino and Hany A. Mawla joined in the opinion.

"Appellant contends the trial court erred by dismissing her vicarious liability claim against Alaris Health because she pleaded a valid vicarious liability claim based on the collective failure of Alaris Health's nursing staff to provide proper wound preventative care," Vinci said. "She argues there is no requirement that an AOM identify individual employees for whom an employer may be held vicariously liable if the employees are not named as defendants."

At issue, Vinci stated, was the question of whether Kotz's AOM was sufficient to support appellant's vicarious liability claim against Alaris Health. The judge said the appeals

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Bill Allowing Former Felons to Serve on Juries Held in Senate Judiciary Committee

By Colleen Murphy

At the New Jersey Legislature's Senate Judiciary Committee on Monday, multiple members of the committee expressed concerns about a bill that would allow individuals with prior criminal convictions to serve on juries.

The bill, S3043, would permit those with past convictions of indictable offenses to serve on juries. Currently, past convictions in either New Jersey, another state, or under federal law is an automatic disqualification for jury service. Sen. Jon Bramnick, a Republican, opened the discussion by sharing his concerns about the bill, stating that he believes there are certain crimes that should eliminate an individual's right to serve on a jury.

"I can understand that people who are involved in low-level offenses, I don't believe that is a serious impact on jury decision-making," said Bramnick. "But people involved in violent crimes, who have spent serious time in jail, and are still on probation or parole, I believe they lose the right to judge another defendant and whether that defendant is innocent or guilty."

Sen. Brian P. Stack, a Democrat and chair of the committee, said he understands Bramnick's concerns and asked whether there would be a version of the bill he could support if certain crimes were carved out, such as murder.

PHOTO BY WIKIMEDIA COMMONS

"I would be concerned if someone plead guilty or was found guilty of a crime higher than a third degree," stated Bramnick.

Bramnick said that the committee should look at the level of the offense to determine the ability of a person to serve on a jury. He declined to identify specific crimes, but that crimes of violence should be eliminated in his judgment.

Stack said, despite the fact he is a sponsor of the bill, he has his own concerns. He recommended that he hold the bill and that the committee discuss the issue.

"I am not 100% comfortable with the legislation myself, so I am looking to work together, that is for sure," said Stack.

Sen. Michael L. Testa, a Republican, said that the committee could take some guidance from recovery court, which has a list of enumerated offenses that could disqualify a person from participation. Testa mentioned a few such offenses that could be included such as aggravated arson or Megan's Law offenses.

"We are not trying to have New Jerseyans to have life sentences or scarlet letters, so to speak, if they have in fact paid their due to society," said Testa. He also drew a line at first- and second-degree crimes and agreed that there could possibly be a carve-out.

Sen. Troy Singleton said that if someone has paid their debt to society, and he is not sure about putting barriers in place to their reintegration into society. He also posed a question as to whether there is any limitation on the ability of former felons to vote based on the crime they committed. Some on the committee responded there was no such restriction.

"I leave it to the lawyers in the room, who understand the process of jury selection far better than I ever will," stated Singleton. "I am just trying to wrestle with the intellectual honesty of the debate in my head." ■

Third Circuit Nominee Questioned Over Rutgers Board Role

By Avalon Zoppo

Republican members of the Senate Judiciary Committee grilled a pair of circuit court nominees, including Third Circuit pick Adeel Mangi over his role on an advisory board to the Rutgers' Center for Security, Race and Rights.

The lawmakers on Dec. 13 pointed to a letter signed by the center's director in 2021 that supported Palestinians against "violent occupant removal, erasure and expansion of Israeli settler colonialism." Sen. Josh Hawley, R-Missouri, and other Republicans repeatedly pressed Mangi on whether he agrees with the director's views.

Mangi said his role on the board was to meet with other members once a year to offer advice on research areas that the center should focus on, and he had not seen the director's letter.

"That is not a statement that I had any involvement in," Mangi said. "I am not in a position to make any policy pronouncements about actions in the Middle East."

"Any acts of antisemitism, or any bigotry, including anti-Muslim bigotry on college campuses, is abhorrent. My children will be going to universities. I want them to feel safe. And I want the children of my Jewish friends and colleagues to feel safe," Mangi continued.

Mangi is a partner at Patterson Belknap Webb & Tyler and would be the first Muslim American to sit on the Third Circuit if confirmed. Mangi was born in Pakistan and moved to England to study law at Oxford University in 1995, before attending Harvard University in 1999.

He has handled a series of prominent religious land use cases in New Jersey. He has successfully litigated on behalf of Muslim religious organizations denied local approval for mosques, including in the Bernards Township case, which settled in 2017 with the municipality agreeing to pay a $3.25 million settlement.

ADEEL MANGI

PHOTO BY DIEGO M. RADZINSCHI/ALM

During his hearing, Mangi spoke about how his family's history has influenced his view of the rule of law.

"A big part of my experience growing up [in Pakistan] was seeing that in that country, if your rights are violated, there is often no recourse," Mangi said. "Indeed, the legal system will often be the one that's oppressing you in the first place, particularly if you're a woman or a minority. That experience impressed upon me so deeply the value of being in a country and in a place where if your rights have been trampled upon … you can go to the courts, and you can get recourse. For me, that is what the conception of justice is all about."

Also during the committee hearing, lawmakers questioned U.S. Court of Appeals for the Fourth Circuit nominee and longtime labor lawyer Nicole Berner over a past comment she made calling the "right-to-work" movement racist.

Several GOP senators raised a speech Berner gave in which they said she called the movement "deeply racist." Right to work laws, which exist in at least 27 states, give employees the right to refrain from being a member of a labor union.

Berner, who serves as general counsel of the Service Employees International Union, said her speech was about the history of the movement and denied that she believes that individuals who support those laws today are racist.

"I was speaking about the historic underpinnings of the original right to work laws in the 1940s which were begun in southern states. The initial proponents of those laws proposed them to argue that white workers should not be compelled to be in the same organization as Black workers," said Berner, who was repeatedly interrupted by Republicans while answering their questions.

Republicans also pressed Berner on her response as SEIU's general counsel to allegations of sexual harassment directed at Dave Regan, president of the United Healthcare Workers West, by SEIU-UHW staffer Mindy Sturge. According to a PayDay Report article that delved into the allegations, Berner told the woman staffer who sued Regan that the national union declined to meet with her and that the matter was best investigated by the local union.

"You said that the matter was best left to be investigated by the local SEIU, the same union whose president Ms. Sturge was suing for sexual misconduct. This is inconceivable. What was your expectation about this woman getting a fair outcome from having the abuser actually handle the investigation?" Sen. Marsha Blackburn, R-Tennessee, asked.

Berner said that as the SEIU general counsel, she does not handle matters related to local SEIU unions except in specific situations, and that Sturge's case wasn't one she was counsel for.

"The Service Employees International Union represents 2 million workers across every state in this country and Puerto Rico and Canada as well. And each member of the union is a member of a locally chartered affiliate union," Berner said. "I am general counsel of the International Union and in that capacity … I am not responsible for nor do I advocate on behalf of local unions, except when I'm called upon to do so in specific instances. The specific instances that were referenced were not instances that I was personally counsel to." ■

'Persistent Failure to Provide Responsive Answers' in Discovery Results in Dismissal of Counterclaims

Continued from page 5

direction that ARF be allowed to reinstate its third-party complaint, but that it be limited to the information set forth in its discovery responses.

In the present appeal, ARF challenges the Jan. 31, 2022, order, arguing that its discovery responses were adequate and that the trial court made errors dismissing its affirmative claims. ARF also claims that dismissal with prejudice "was an inappropriately harsh sanction" and that the trial court should have considered lesser sanctions, the opinion said.

Failure to comply with a demand for discovery pursuant to Rule 4:17 subjects the noncompliant party to dismissal in accordance with Rule 4:23-5. See R. 4:23-5(a)(1). Rule 4:23-5 creates a two-step dismissal procedure. First, the compliant party moves for dismissal without prejudice. See R. 4:23-5(a)(1). If that motion is granted, the noncompliant party has 60 days to cure and move to vacate the dismissal order. See R. 4:23-5(a)(2), the per curiam opinion said, which was issued by Judges Robert J. Gilson and Patrick DeAlmeida.

"The motion to dismiss with prejudice 'shall be granted' unless a motion to vacate was filed by the noncompliant party and 'either the demanded and fully responsive discovery has been provided or exceptional circumstances are demonstrated,'" the opinion said. "The goal of the two-step procedure in Rule 4:23-5 is to compel discovery compliance rather than to dismiss claims."

The trial court found that ARF's discovery responses did not respond to Seaside's requests for information concerning specific damages and the facts supporting those damages which were asserted in the counterclaim, according to the opinion. The court further noted that it had ordered more specific responses, which ARF failed to provide.

"Having reviewed the record, we discern no abuse of discretion in the trial court's determination as it relates to the counterclaims," the opinion said. "In short, ARF simply did not provide Seaside with any information that would support the counterclaims. Moreover, Seaside was prejudiced by those non-responses because without that information it could not prepare a defense or even move for summary judgment."

The appeals court affirmed the part of the order that dismissed all counterclaims against Seaside with prejudice, but reversed the portion dismissing the third-party complaint. The court added that, on remand, ARF's third-party complaint is to be reinstated but will be limited to its claims on monies owed on the 10 loans identified in its certification.

Counsel for ARF, Jonathan B. Behrins of The Behrins Law Firm, did not immediately respond to a request for comment. Counsel to Seaside and the other respondents, Willard C. Shih of Wilentz, Goldman & Spitzer, declined to comment. ■

Woman Injured in Crash With Board of Ed Truck Reaches $3 Million Settlement

A $3 million settlement was reached in *Ramirez v. Howard* on Sept. 18 for a North Brunswick woman who was seriously injured when she was involved in a motor vehicle accident with a large box truck owned by the North Brunswick Board of Education.

On Dec. 23, 2016, 71-year-old Mary Ramirez was stopped at a traffic light at the corner of Remsen Avenue and Sunday Street in New Brunswick. Her light turned green, and she was proceeding through the intersection when a large box truck owned by the New Brunswick Board of Education and operated by Arthur Howard crashed into her. The crash pushed Ramirez's SUV off the road and into an adjacent building, according to her lawyer, **Nicholas J. Leonardis** of **Stathis & Leonardis** in Edison.

Ramirez, too, happened to be an employee of the board of education, though the accident didn't occur in the course of her employment.

The defense claimed that Ramirez ran a red light, but a witness who was driving near the accident site on her way to Rutgers University saw the crash and confirmed that it was Howard who actually ran the red light, Leonardis said.

Ramirez sustained a concussion with open head injury requiring sutures, a right wrist fracture, and aggravation of a preexisting law back condition and hip arthritis. She required a lumbar laminectomy, and had post-surgery weight-bearing issues that required a 30-day readmission to rehabilitation, and a total right hip replacement, Leonardis said.

The defense denied that the hip replacement was due to the crash, and alleged that her low back pain was also unrelated to the collision, Leonardis said. Further, the defense argued that Title 59, which preserves the common-law rule of sovereign immunity, may preclude or limit the plaintiff's recovery, he said.

The case was settled after two settlement conferences with Judge **Michael V. Cresitello** in Middlesex County Superior Court, and one meditation session with retired Judge **Eugene J. Codey Jr.** of **Connell Foley** in Roseland. The matter settled on Sept. 18.

The plaintiff argued that post-crash photos showed a large area of ecchymosis on her hip area, which confirmed an injury which continued to worsen over

COURTESY PHOTO

NICHOLAS LEONARDIS

time, according to Leonardis. Her treating doctors and surgeons all causally related the surgeries to an aggravation of her preexisting age-related issued, and said the surgeries were directly related to the worsening of her conditions due to the crash, he said.

Experts for the plaintiff included Theodore Batlas Ph.D. for head injury, Joseph Lombardi M.D. for orthopedic spine, Stephen Kayarios M.D. for orthopedic hip, and Gino Chiapetta for orthopedic spine. Defense experts included Steven Fried M.D. for orthopedic, William Head M.D. for Neuropsychology, and Behnam Salari M.D. for orthopedic spine.

Leonardis said Ramirez did not recover as well as she had hoped and was not able to return to her job at the board of education.

"This was a case where the plaintiff happened to also be a Board of Education employee," said Leonardis. "She was so happy at her job, and so not being able to continue with that was really difficult for her. We are happy we are able to get the recovery we hope she was entitled to."

John A. Camassa of the **Camassa Law Firm** in Wall, representing the defendants, didn't respond to a request for comment.

— Colleen Murphy

$300,000 Middlesex Auto Verdict

Morales-Gaviria v Makanast: A Middlesex County jury awarded $300,000 to a man injured as a result of a tractor-trailer's rear-end collision. The verdict was issued on July 27.

According to plaintiffs counsel and court documents, on April 23, 2018, plaintiff Santiago Morales-Gaviria, a 30-year-old factory worker, was driving on Route 46 in Middle Falls when defendant Shadi Makanast, driving a tractor-trailer, rear-ended a van, which in turn struck Morales-Gaviria's vehicle, who in turn struck another vehicle in front of him, causing a multiple car pile-up. The driver of the van died in the accident.

Makanast did not hit the brakes before rear-ending the van, which hit Morales-Gaviria.

Morales-Gaviria sued Makanast, alleging that he was negligent in the operation of his tractor-trailer. Makanast stipulated to liability.

Morales-Gaviria was taken to the emergency room at St. Joseph's University Medical Center in Paterson. He then followed up with chiropractic care and physical therapy on his own. He was diagnosed with lumbar herniations at the L3-4 and L4-5 levels, and a bulging disc at the L5-S1 level. He had one lumbar epidural and two branch block injections, as well as nine months of physical therapy and chiropractic care. He is unable to sit in one position for a long period of time due to pain. A competitive soccer player before the accident, he now has to limit how many days he plays soccer each week and must undergo rehab for a couple of days following each game. Makanast contended that his injuries were not that serious.

Following a three-day trial before Superior Court Judge **Bina K. Desai**, the eight-member jury unanimously found Makanast to be 100% liable and awarded Morales-Gaviria $300,000. There had been an offer of settlement for $15,000. The insurer was Amtrust.

The plaintiff was represented by **Thomas MacInnis** of **Ginarte Gonzalez & Winograd** in Newark. The defense was represented by **Rafael Soto** of **Barry McTiernan & Moore** in New York.

**Editor's Comment: This report is based on information obtained from plaintiff's counsel and court documents. Defense counsel did not respond to a request for comment.*

— Yawana Fields (adapted from VerdictSearch)

on the move & after hours

Chiesa Shahinian Expands Practice Groups

Chiesa Shahinian & Giantomasi announced the elevation of long-time team members to leadership roles as part of real estate group strategy. The redevelopment, land use and zoning group will be led by co-chairs **Lisa A. John-Basta** and **Thomas J. Trautner Jr.**, and practice group leader **Jennifer M. Porter**, who are all veterans of redevelopment practice, the announcement said. Also, **John Lloyd**, a leader of the property taxation bar, will become chair of the rebranded real property taxation and incentives group.

LISA A. JOHN-BASTA

"The significant growth of the firm's real estate group has created the opportunity to establish the redevelopment, land use & zoning group and rebrand our real estate property taxation and incentives group, all in order to align with client needs," said **Francis J. Giantomasi**, member of the executive committee of CSG Law, in a statement.

Mitchell S. Berkey, chair of the real estate group, added: "Lisa, Tom and Jen spearheading our redevelopment, land use and zoning team, and John continuing to helm our enhanced property taxation and incentives practice, recognizes their proven leadership and will be a win-win for CSG Law and our clients for years to come."

JENNIFER PORTER

John-Basta co-authors "New Jersey Zoning & Land Use Administration," a treatise on land use and zoning, published by Gann Law Books. She received her J.D. from Seton Hall University School of Law and her bachelor's from Ramapo University.

Trautner is the co-chair of the Northern New Jersey District of the Urban Land Institute. He received his J.D. from Rutgers Law School and his bachelor's from Rider University.

Porter's practice expands the team's reach to four states (New Jersey, New York, Pennsylvania and Connecticut). She received her J.D. from Pace University Elisabeth Haub School of Law and her bachelor's from Indiana University of Pennsylvania.

THOMAS TRAUTNER

Lloyd has over three decades of experience representing owners, taxpayers, and municipalities on real property taxation issues spanning all asset classes, as well as complex PILOT, redevelopment, condemnation, and incentives matters, the announcement noted. He received his J.D. from Rutgers Law School and his bachelor's from Saint Joseph's University.

JOHN LLOYD

Jeralyn Lawrence Wins Trial Bar Award

Jeralyn Lawrence, managing member and founder of **Lawrence Law**, was a Trial Bar Award honoree, along with **Robert Kaplan** and **Paul G. Nittoly**, at the Trial Attorneys of New Jersey's 55th annual award reception on Oct. 5, according to an announcement by her firm.

Upon receiving the award, Lawrence said in a statement, "As a trial attorney, it was a tremendous honor to receive the Trial Bar Award from the Trial Attorneys of New Jersey. I am so proud to share this recognition with other distinguished honorees who have made an incredible impact in the practice of law. This award will always resonate and be meaningful to me."

Lawrence devotes her litigation practice to matrimonial, divorce, and family law, and is a trained collaborative lawyer, divorce mediator, and arbitrator. She is the immediate past president of the New Jersey State Bar Association and a past president of the American Academy of Matrimonial Lawyers, New Jersey Chapter.

She received her J.D. from Seton Hall University School of Law and her bachelor's from Kean University.

JERALYN LAWRENCE

on the move & after hours

The Trial Attorneys of New Jersey, according to the organization's website, "is an organization of approximately 600 members consisting of both plaintiff & defense attorneys from the civil and criminal bars and is dedicated to promoting the interests of the public at large, the interest of the litigants involved in civil and criminal cases, and the interests of the bench and bar."

Emanuel Rouvelas Receives Lifetime Achievement Award

EMANUEL ROUVELAS

On Dec. 11, **Emanuel "Manny" Rouvelas**, a partner with **K&L Gates**, received the 2023 Lifetime Achievement Award from the Containerization & Intermodal Institute at a ceremony in Newark, according to an announcement by the firm. Given to organizations or individuals who have played a long-standing, significant and supporting role, Rouvelas was recognized for his many impactful contributions to the industry and as a leader in maritime law, the firm said.

"Manny has been a trailblazer focused on government relations and maritime law enhancing transparency and collaboration within the transportation sector," said Steve Blust, president of CII, in a press release announcing the award. "As a founder of one of the longest-running lobbying firms in D.C., he has had a hand in strengthening our industry as a whole. In today's fast-moving legal and business climate, we are all better supported as a result of his unflinching dedication to building trust, visibility, and partnership throughout the sector."

Prior to joining K&L Gates, Rouvelas served as counsel to the U.S. Senate Committee on Commerce and as chief counsel to its Merchant Marine and Foreign Commerce Subcommittees, where he helped to enact 32 maritime and transportation laws, the announcement noted. He opened the Washington, D.C., office of **Preston Thorgrimson Ellis Holman & Fletcher**, founding the public policy and law and maritime practices that eventually became part of K&L Gates. In June 2023, the public policy and law practice celebrated its 50th anniversary as one of the longest-serving such practices in a law firm.

Rouvelas has frequently been recognized for his work in both maritime law and government affairs, including receiving the Admiral of the Ocean Seas award from the United Seamen's Service.

Rouvelas received his J.D. from Harvard Law School and his bachelor's from the University of Washington.

Gansah and Hathaway Deliver Webinar on AI

On Dec. 13, **Faegre Drinker** labor and employment associate **Marc-Joseph Gansah** presented "AI and Bias in Hiring Promotion Practices" as a part of the firm's "Labor & Employment Series: Staying on Top of YourGame" webinar series, according to an announcement by the firm.


MARC-JOSEPH GANSAH

Gansah was be joined by Faegre Drinker labor and employment partner Jerry Hathaway as they broke down the latest developments in AI to help employers best mitigate risks, the announcement said.

Participants heard about AI algorithmic hiring biases in the context of employment decisions, as well as historic regulation of employment selection procedures, and how that historic regulation would apply to using AI for employment decisions. The speakers provided an overview of legislators' and employers' past and expected efforts to create a transparent and trustworthy framework for using AI in the employment context, including President Joe Biden's recently signed executive order on safe, secure and trustworthy AI.

In his practice, Gansah represents employers in complex labor and employment matters, and is also a part of Faegre Drinker's artificial intelligence and algorithmic decision-making (AI-X) team.

Gansah received his J.D. from Fordham University School of Law and his bachelor's from the University of Baltimore.

A Q&A with NJ-CRC Chief Counsel On What's New for 2024

By Michael F. Schaff and Jennie M. Miller

COURTESY PHOTO

In the nearly three years since New Jersey legalized cannabis, many of you readers have dealt with the New Jersey Cannabis Regulatory Commission (NJ-CRC) in some capacity. For this December issue of our cannabis law column, we asked Christopher Riggs, chief counsel of the NJ-CRC, to respond to some questions that would (i) provide insight into the operations of the NJ-CRC, (ii) highlight the key developments in 2023, (iii) provide some helpful pointers to attorneys practicing in the cannabis field, and (vi) provide a preview of what is to come in 2024. In preparing this article, it confirmed our prior dealings with the NJ-CRC—that the NJ-CRC is a resource that is easily accessible and helpful to the legal community (but, of course, be sure to check the NJ-CRC FAQs first).

We would like to extend our sincerest gratitude to Christopher Riggs and the NJ-CRC staff whose time and effort made this article possible.

Could you please describe the purpose of the NJ-CRC and its day-to-day functions?

The New Jersey Cannabis Regulatory Commission is responsible for the regulation of the state's medicinal and adult-use cannabis markets, which means writing and implementing the regulations that govern how cannabis businesses are licensed and operate. The day-to-day work of the Commission includes providing support for participants in the Medicinal Cannabis Program, accepting and reviewing applications for recommendation to the board of commissioners, and monitoring and inspecting awarded businesses as they set up operations and after they are open.

From an operational perspective, how has the NJ-CRC grown since it was first seated in April of 2021 (new/increased staff, divisions, offices etc.)?

The agency began with the five governor-appointed commissioners, a governor-appointed executive director, and a skeletal staff that came over from the Department of Health to support the Medicinal Cannabis Program. Today the agency has 78 employees, with the largest contingency supporting licensing and compliance functions.

Could you identify and describe what you believe are the three most critical regulatory developments that we have seen from the CRC in 2023 (medicinal and/or adult-use, recreational)?

1. *Removing the restrictions on vertical integration. See* https://www.nj.gov/cannabis/news-events/20230209.shtml
2. Expanding allowed edible cannabis products. See https://www.nj.gov/cannabis/news-events/20231017.shtml
3. Removing the wait for new Alternate Treatment Centers (ATCs) to expand into adult-use. See https://www.nj.gov/cannabis/news-events/20220411a.shtml

What developments have been most exciting to roll out? Why?

That is hard to say. New Jersey is still an emerging market, yet we are already a positive example for other states for a number of reasons—including making social equity an inextricable part of our application process. Developments at the NJ-CRC have been thoughtful and supported by what is best for our state, our operators, and the New Jersey public.

What developments have been the most challenging to roll out? Why?

NJ-CRC is an agency that operates in an industry that does not yet exist at the federal level. This presents unique challenges. However, all of our actions are mandated by law and we are required to follow standard procedures. The real challenge lies in accomplishing everything that needs to be done in a timely manner.

What are the most common questions you receive from attorneys who represent applicants who seek to enter the adult-use, recreational cannabis space? How do you respond?

"What is the easiest/fastest/best way to apply for a cannabis business license?" The application process is straightforward, and our website has all the information about applying anyone could need. Getting to as level a playing field as possible starts with making sure everyone has the same access to the same information. This ensures that everyone has the same path to licensure. See, e.g., https://www.nj.gov/cannabis/businesses/.

What are the most common mistakes you see from applicants who seek to enter the adult-use, recreational cannabis space?

It is important for applicants (and their attorneys) to remember that applications are being accepted on a rolling basis. There is no deadline and applications are reviewed based on priority application status. It is better to take a bit of extra time to complete the application and submit paperwork correctly, than to have to cure your application later. That will be a delay.

What advice do you have for attorneys representing applicants who seek to enter the adult-use, recreational cannabis space?

Please remain patient and review our website for frequently asked questions (FAQs) and answers. Most of the questions we hear from attorneys are answered on the website. If the question is not answered, feel free to ask. We are committed to ensuring that everyone has access to all the information needed to provide all required application materials.

If you could convey one message to members of the public who might consider entering the cannabis space, what would be that message?

Do your homework. Like any new business, the road to success may contain speed bumps. Read the website and educate yourself on all the regulatory requirements that apply to operating a cannabis business.

What might we expect to see from the NJ-CRC in 2024? Have there been any developments from a regulatory perspective in the medical-use cannabis space?

We should have clinical registrant regulations completed sometime in 2024 and this will help to advance cannabis research for the benefit of medicinal application.

Are there any similar developments expected in the adult-use, recreational cannabis space?

Regulations regarding edible manufacturing and sales, and those for consumption areas will be enacted in 2024.

Recently, we've seen allegations from both attorneys and applicants claiming there has been corruption and politicking at the municipal level with respect to the local cannabis licensing process (see, e.g., https://www.nj.com/marijuana/2023/11/corruption-unfair-play-is-stalling-njs-legal-cannabis-market-here-are-some-fixes-insiders-say.html). What might we expect to see from the NJ-CRC to address these issues in the upcoming year?

We try to maintain an open dialogue with municipalities through town halls and one-on-one meetings, and have issued guidance on how they can align their local approval process with the state's licensing process (Municipal Preference Guidance .pdf (nj.gov)). However, as per the CREAMM Act, we do not have any oversight as to how the municipalities craft their ordinances or their approval processes. We advise anyone with concerns about any illegal activities at the municipal level to report them to the Office of the Attorney General's Office, specifically the Office of Public Integrity & Accountability.

Disclaimer: Cannabis remains a scheduled narcotic under federal law, and anyone considering entering this field should first consult with competent counsel. The information contained in this article does not constitute legal advice and is for informational purposes only. ■

Michael F. Schaff *is a shareholder with Wilentz, Goldman & Spitzer, where he co-chairs the corporate, healthcare and cannabis departments. Michael just completed six years as a trustee of the New Jersey State Bar Association (NJSBA), is a past co-chair of the NJSBA Cannabis Law Committee and is currently on its Executive Committee.*

Jennie M. Miller *is an associate with Wilentz, Goldman & Spitzer, where she focuses her legal practice on corporate, healthcare and cannabis Law. Jennie is currently a member of the NJSBA Cannabis Law Committee.*

How I Made Partner: 'Do Your Best to Make Yourself Indispensable,' Says Erika Handler of Weinstein Family Law

By Zack Needles

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Erika Handler, 47, Weinstein Family Law, Short Hills, New Jersey
Job title: Partner
Practice area: Family Law
Law school and year of graduation: Rutgers Law School, 2006
How long have you been at the firm? 2.5 years

What was your criteria in selecting your current firm? It was a priority for me to find a firm where I could grow, that would give me exposure to complex cases and where I would have access to accomplished attorneys. As a parent of younger children, having a reasonable work life- balance was also a priority to me.

Were you an associate at another firm before joining your present firm? If so, which one and how long were you there? Yes, I worked at a few boutique family law firms for a number of years prior to joining Weinstein Family Law.

What do you think was the deciding point for the firm in making you partner? Was it your performance on a specific case? A personality trait? Making connections with the right people? I was very fortunate in that my personality and work style gelled with the other attorneys at the firm. The firm has high standards. Nothing leaves the office unless it is perfect. When I began at the firm I was eager to learn and I spent the time to ensure I was consistently producing quality work product. Almost as important was that I noticed that the firm was interested in my own development and success. There was a mutuality there that I did not know could exist at a law firm.

Who had or has the greatest influence in your career and why? Please provide name, job title and a brief explanation. My mentor, Jeff Weinstein, who sadly passed away in September of 2022, had the biggest influence on my career in modeling the type of lawyer I aspire to be. If you were Jeff's client or colleague, you were family. Jeff was a fierce advocate yet always professional, honest, and an outside-the-box thinker. Jeff demanded excellence from himself and everyone on his team. I put Dictionary.com to good use working with Jeff.

What advice would you give an associate who wants to make partner? Do your best to make yourself indispensable. Be willing to do the tasks that others avoid and deliver quality work product. If you don't understand a concept, ask and spend time learning outside of the office. Nothing novel here but be a team player and don't engage in the water cooler gossip.

When it comes to career planning and navigating inside a law firm, in your opinion, what's the most common mistake you see other attorneys making? You spend the majority of your time at the office, so it's important to find a firm that not only does legal work that interests you but also has a culture and an environment you are comfortable being in.

What challenges, if any, did you face or had to overcome in your career path and what was the lesson learned? How did it affect or influence your career? I took a few years off when my children were born. When I came back to practicing law, I had to learn to juggle "proving myself' at a new firm while meeting the demands of my home life. It was an incredibly stressful time which I made infinitely worse with negative self-talk and unrealistic expectations. But as soon as I accepted that I was on a different path than many of my law school peers, I began to enjoy practicing law much more. I was able to see how the decisions in my personal life (getting married, having children, taking time to be a stay-at-home mom) benefitted my practice as I could relate to the challenges many of my clients faced. It came through in my legal writing and client relationships. I also sought out and found here at Weinstein Family Law a good work-life balance and colleagues and attorneys willing to help me grow.

Knowing what you know now about your career path, what advice would you give to your younger self? If I could go back in time, I would tell myself to breathe and to go at my own pace, to keep showing up, keep dedicating myself to the practice and trust that everything would again fall into place.

I would also advise my younger self to step outside of my comfort zone and try to be as active as possible in my local legal community and bar associations.

Do you utilize technology to benefit the firm/practice and/or business development? My Family Wizard is an app that has proven incredibly helpful to my clients who have difficulty either eliciting a response from their co-parent or who need a management tool for scheduling and tracking shared expenses. Not only does it help simplify the communication process, but it also maintains the communication history in one place, making it easier to hold a co-parent accountable if one party is not complying with their responsibilities and judicial intervention is ultimately required.

How would you describe your work mindset? I want all of my clients to feel that their voices are being heard and to know that I am a fierce advocate for their stories. I am focused on listening, bringing trust into their relationship with me and strategizing to meet their goals. Divorce is not simply a "let's divide everything in half and you take the kids every other weekend" scenario. People have increasingly complex home lives and finances that require a more nuanced approach.

If you participate in firm or industry initiatives, please mention the initiatives you are working on as well as the impact you hope to achieve. I am involved in recruiting and growing the firm with Evan Weinstein, the managing partner of our firm. Evan was similarly guided by Jeff and works with clients to achieve a blend of sophisticated and compassionate legal counsel. We have built a strong team of attorneys and staff who genuinely respect each other and share the common goal of ensuring that our clients receive the best possible representation.

For career advancement advice and success stories, check out the "How I Made It" Q&A series on Law.com.

ALM's Professionals Network on LinkedIn, Advancing Future Leaders. We are excited about this pivotal group. ■

Transparency Bill Moving Through Legislature Could Have Major Impact

Continued from page 1

committee heard testimony Thursday on the bill but did not take a vote on its passage.

The bill, in its current form, would allow the commissioner of the Department of Labor and Workforce Development to enforce civil penalties of up to $1,000 for the first violation, $5,000 for the second violation, and $10,000 for each subsequent violation. Each failure to include the required information would constitute a separate violation.

Tim Ford, a partner with Einhorn, Barbarito, Frost & Botwinick in Denville who focuses his practice on employment law and commercial litigation, said that if the bill passes, employers could be opened to claims for pay inequity and other biases for existing employees.

"I think employers can best prepare themselves, if the law bill is passed, by undertaking a substantial review of individual compensation and by engaging outside consultants to evaluate their current workforce and their payroll," Ford told the Law Journal.

Ford noted that states such as Colorado, Connecticut and New York already have either passed or have pending similar legislation. Even some cities such as New York City and Jersey City have such laws. As employers in those states and cities have begun to deal

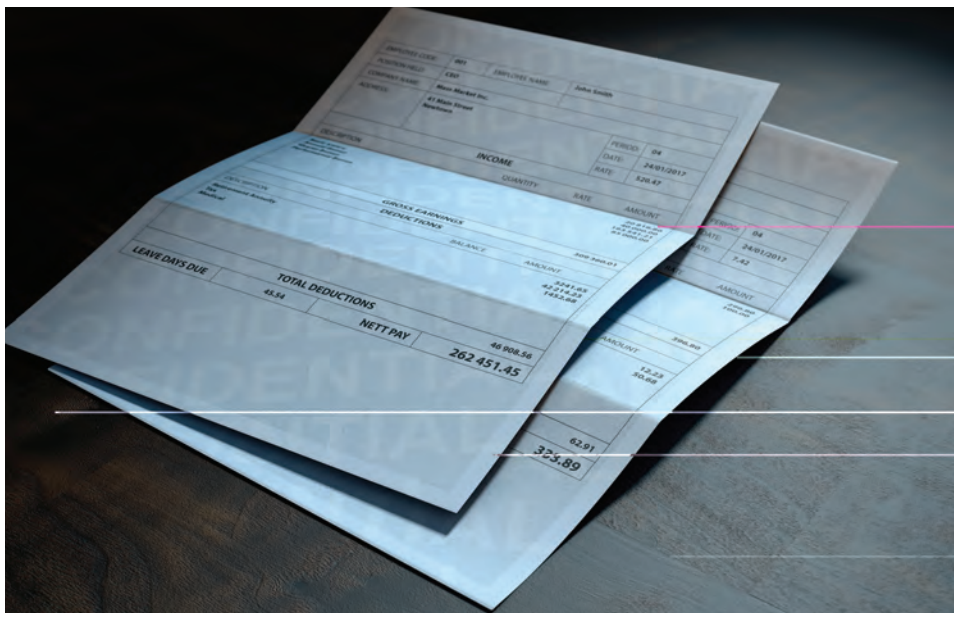

PHOTO BY ALSWARD VIA ADOBE STOCK

with the new regulations, Ford has seen at least one practice he would caution employers to avoid.

"Some companies have put in salary ranges of $0-$2 million," Ford said. "I do not anticipate that the attorney general is going to look kindly upon that, to the extent that the state is looking to enforce this in the future."

If enacted into law, Ford said there could be more Equal Pay Act claims, which he said are difficult and challenging to prove. But at this point, Ford said, it is difficult to evaluate because it is unknown if this will be the actual legislation signed into law.

"I do not know if I anticipate a lot of private causes of action as it relates to new employees," Ford said. "I think it will probably result in more litigation from a company's existing employees when they start to see what they pay scales are. Invariably, a lot of companies are going to try to comply with the law, but they are not going to do their due diligence in reviewing their current pay practices. I think that is where a lot of employers are going to find themselves in trouble."

David A. Rapuano, a partner with Archer & Greiner who concentrates his practice in representing management in all areas of labor and employment law, said that the recent additions to the bill were welcome.

"They took a law that was extremely broad and undefined, and added certain exceptions and added clarity to the fact that many promotions are not advertised at all," Rapuano told the Law Journal. "They are simply something that happens over time."

Rapuano said that it is not clear yet how a law such as this would apply to employers outside of New Jersey who have remote workers in the state.

"I think what employers would really like from the Legislature is more certainty. Not making laws that, to figure out what it means, you have to go to litigation," Rapuano said. "To me, and to my clients, it is bad policy to create laws that cannot be figured out unless a court [is involved]."

Rapuano said that the second version of the bill took away a good amount of uncertainty for employers. In his experience, most employers may not be as formal as the Legislature believes they are about what is and is not a promotion, he said.

"I think that employers, given the legal landscape … ought to be more systematic about understanding and putting positions within their organization within some sort of framework," Rapuano said. ■

Retired State Trooper Not Entitled to Free Health Insurance Despite Alleged Clerical Error, Says NJ Supreme Court

Continued from page 1

Legislature adopted N.J.S.A. 52:14-17.28d(b)(1), which requires retired public employees to contribute toward the cost of their health care benefits coverage through the withholding of a premium contribution from their monthly retirement allowance, according to the per curiam opinion issued by the New Jersey Supreme Court.

A provision in that law exempted public employees with 20 or more years of creditable service, on the date of enactment, from the obligation to pay health insurance premiums. As of the enactment date, June 28, 2011, Meyers had 17 years and nine months of creditable service time, and did not qualify for the exemption. Then, in 2013, the Legislature passed another law, Chapter 87, this time making it possible for public employees eligible to purchase military service credit and apply that credit to New Jersey public service time, according to the opinion.

In 2015, Meyers applied for early retirement, and with his purchased military service credit, he had accumulated more than 25 years of creditable time toward his State Police Retirement System benefits. In response to his retirement application, the New Jersey Division of Pensions and Benefits sent Meyers a letter stating that his retirement health care benefits would be provided at no cost to him, according to the opinion.

Two years later, the division discontinued Meyers' fully paid health care, citing what it said was an error. The division subsequently began making a monthly deduction of $792.51 from Meyers' pension payments. Meyers appealed to the State Health Benefits Commission, which referred the matter to the Office of Administrative Law (OAL) for fact-finding. According to an SHBC letter, the sole issue at the hearing would be "equitable estoppel … specifically, to determine if the member, [petitioner], detrimentally relied on incorrect information provided by the Division," according to the opinion.

An administrative law judge issued a decision barring the SHBC from deducting the payments from Meyers. The ALJ invoked the doctrine of equitable estoppel in support of the decision, according to the opinion. The SHBC rejected that decision, which led Meyers to appeal. The Appellate Division sided with the SHBC, and Meyers appealed again, this time to the state's Supreme Court.

However, the court disagreed with Meyers' interpretation of the statutes. The purchase of four years credit of military service did not qualify him as a public worker with "20 or more years of creditable service," according to the opinion.

"Thus, although petitioner had twenty-five years and one month of State Police Retirement Service credit when he retired at age forty-six on October 1, 2015, he was subject to Chapter 78's health benefits premium-sharing obligations," stated the opinion.

At oral argument in September, Richard M. Pescatore, counsel to Meyers, argued that the legal issue before the court was whether the Appellate Division improperly refused to consider or review the fully tried issue of estoppel on appeal in contravention of the Supreme Court's precedents.

At oral arguments, Chief Justice Stuart Rabner stated to Pescatore, "I know that you have said twice now that the sole and exclusive issue in the case that was sent to the ALJ was estoppel, but the SHBC said that they transmitted this question on estoppel to the OAL to make a determination because there was a factual dispute and the need for a factual record to be developed. Transmittal to determine an issue does not mean that is the only issue in the case and that any legal question no longer has a role."

In its opinion, the New jersey Supreme Court held that the Appellate Division correctly determined that it did not need to reach the issue of equitable estoppel.

"Before considering whether the equities require that a governmental entity be estopped from changing its position in a particular instance, the court must examine the precise nature of the governmental actions in question," stated the opinion. "That is because a governmental entity cannot be estopped from refusing to take an action that it was never authorized to take under the law—even if it had mistakenly agreed to that action."

Counsel to Meyers, Pescatore of The Law Offices of Richard M. Pescatore, did not immediately respond to a request for comment. Counsel to the State Health Benefits Commission, Assistant Attorney General Donna Arons, likewise did not respond to a request for comment. ■

NJ Attorney General Files First Complaint Under Enhanced Workers' Comp Laws

Continued from page 1

and to recover millions of dollars in back wages, penalties and fines, according to a press release.

The power to bring actions such as this one is a result of legislation signed by Gov. Phil Murphy in 2020 and 2021 which enhanced the state's power to curtail misclassification of workers. It includes the power to bring actions in Superior Court and increase penalties for misclassification and enhance authority to issue stop-work orders, according to the news release.

The plaintiff in the case is Robert Asaro-Angelo, the commissioner of the New Jersey Department of Labor and Workforce Development.

"Companies illegally profiting through corrosive business models at the expense of hardworking employees have been put on notice. We are proud to have the strongest worker protection laws in the country, which also safeguard employers who play by the rules. Misclassifying employees will not be profitable, nor overlooked," Asaro-Angelo said.

"Through their conduct, and that of the predecessor entities for which they assumed liability, defendants have misclassified hundreds of drivers, depriving them of their rightful wages and essential labor rights and protections," the complaint said.

The practice of misclassification, according to the complaint, resulted in paying the truck drivers less than New Jersey's effective minimum wage. And it further alleged that the deductions from their pay sometimes totaled more than their gross pay, resulting in negative net pay for some pay periods.

ATTORNEY GENERAL MATTHEW PLATKIN

COURTESY PHOTO

The press release said that workers are presumed to be employees under most New Jersey labor laws unless a company can satisfy the "ABC test." To do so, companies must prove all three of the criteria. First, that individuals are largely free from control or direction over the performance of their work; second, that the type of work performed is outside the company's usual course of business or is outside the usual place of business; and third, that individuals have their own independent trade, job, profession or business.

The defendants engaged in a misclassification scheme, according to the complaint, by disguising the significant control they had over the drivers and then hindered the DLWD's investigation into the matter. The nine-count complaint included claims for misclassification, unlawful deduction, diversion and withholding of wages, and minimum wage violation. Among the other claims were failure to maintain and produce certain records and failure to carry sufficient workers' compensation insurance.

"When employers unlawfully and callously toss their workers into the 'independent contractor' category they are not only depriving them of a steady paycheck, they are also stripping them of earned sick leave, workers' compensation, minimum wage, and more," Attorney General Matthew J. Platkin said. "These are national, profitable corporations with deep pockets who are padding their profits with illegal labor schemes, and they seem to have no plans to stop this kind of behavior."

Counsel has not yet entered an appearance for the defendants. According to the Attorney General's Office's statement, XPO Logistics Drayage was purchased by defendant STG Logistics during the course of the investigation. A request for comment sent to STG Logistics was not immediately returned.

In August 2020, XPO paid the state $893,671.28 to resolve a prior Department of Labor audit finding that it failed to make required contributions to the Unemployment Compensation and Disability Benefits Funds from 2015 through 2018, according to the press release.

The Attorney General's Office is represented by a team that includes Deputy Attorneys General Jeffrey Olshansky, Nadya Comas, Olivia Mendes and Marc D. Peralta, under the supervision of Labor Enforcement Section Chief Eve E. Weissman, Assistant Attorney General Mayur P. Saxena, and Deputy Director Jason W. Rockwell. ■

Single AOM for Multiple Entities Results in Dismissal of Vicarious Liability Claim Before Appellate Division

Continued from page 6

court concluded it was not.

"Here, it is not possible to identify any Alaris Health nurses who Kotz asserts were negligent because the AOM refers generally to the entire Alaris Health nursing staff over an extended period and indiscriminately combines the nursing staffs of two separate facilities," Vinci said.

The judge said that Hargett did not satisfy her obligation to Alaris Health by serving one AOM that gives an opinion collectively as to the care provided by both Alaris Health and JCMC. Instead, she was required to provide each defendant with an appropriate AOM, the opinion said.

"In fact, by referring ambiguously to all of the nurses at both facilities, the AOM leaves open the possibility that Kotz was not able to offer an opinion as to Alaris Health's nurses standing alone," Vinci said.

According to the judge, the AOM statute entitles a defendant facing a vicarious liability claim to an AOM that is limited to the alleged deviation by its own licensed employees. In this case, the judge stated, Alaris Health was entitled to an AOM that offered a clear opinion that its own nurses deviated from the applicable standard of care. By serving one AOM for all nurses at the two facilities, Vinci said, the appellant deprived Alaris Health of its right to an appropriate AOM and "effectively thwarted the purpose of the AOM statute to weed out frivolous lawsuits."

Vinci further held that Hargett is unable to identify any nurses individually who were negligent because the complaint is based on the administrative negligence of Alaris Health, not vicarious liability.

"The trial court determined correctly that appellant failed to serve an appropriate AOM and properly dis missed her complaint against Alaris Health with prejudice," Vinci said. "The court did not abuse its discretion by denying appellant's motion for reconsideration."

Counsel to Hargett, Matthew E. Gallagher of Swartz Culleton, and counsel to Alaris, Beth A. Hardy of Farkas & Donohue, did not respond to requests for comment. ■

New Jersey's Federal Bench Is Almost at Full Strength, But Will Cases Move More Efficiently?

Continued from page 1

transitions to senior status have been announced recently in the District of New Jersey. Chief Judge Renee Marie Bumb becomes eligible for senior status in 2025, when she turns 65 and will have 19 years of service. Under the so-called "Rule of 80," federal judges can collect a pension when they are at least 65 years old and have served at least 15 years on the bench.

There's no doubt that having the state's federal courts reach a state of normalcy will be a boon for attorneys and litigants. And it comes less than three years after the District of New Jersey reached its low point of six vacancies. Back then, New Jersey's federal courts had the unwelcome designation of being in a state of judicial emergency, with some of the highest per-judge caseloads in the nation. But the judicial emergency status has been lifted.

During his term as president, from 2017 to 2021, Donald Trump saw 174 of his picks confirmed as federal judges, but none of those went to New Jersey. Joe Biden has seen the U.S. Senate confirm 122 district court judges that he nominated. If Kiel is confirmed, he will be the 10th Biden nominee to join the District of New Jersey.

"It will be great for the District of New Jersey to have all of the court's active judgeships filled," said Carl Tobias, a professor at the University of Richmond School of Law who studies federal judicial selection.

"When the court is at full strength, this enables it to clear any backlogs that accumulated and takes pressure off of the active and senior judges and court staff, and allows the civil docket to move faster and civil litigants to realize more trials with earlier dates. This situation also allows the court to deliver justice more quickly for litigants in the District of New Jersey," Tobias said.

It's difficult to estimate how long this situation can be sustained because it's uncertain how many active judges are eligible for senior status, Tobias said. What's more, some judges could retire or leave the bench before attaining senior status, he said. One New Jersey federal judge, John Michael Vazquez, did that when he left the bench in September following seven years of service. Vazquez was 53 when he stepped down to join Chiesa, Shahinian & Giantomasi in Roseland.

Kiel is set to replace Kevin McNulty, who assumed senior status on Oct. 31. If he is confirmed, the District of New Jersey will have nine women judges and eight men. And the court will have nine persons of color among the 17 judges.

Gerald Krovatin of Krovatin Nau in Newark, a former president of the Association of the Federal Bar of the State of New Jersey, said the state's district courts are still recovering from the dual forces of COVID-19 and the lack of any new judges for four years.

"They are continuing to work their way through the docket impact that both of those things had on our federal district court. And there's no question that the recent appointments and confirmations are going to help that backlog. The new judges, to a person, are committed to stepping up and pulling their weight," Krovatin said.

But cases in the District of New Jersey move slowly because the judges carry a heavy caseload, and that will still be the case with a full complement of judges, said Daniel Fleming of Wong Fleming in Princeton.

Fleming said that when he works with co-counsel from other states on cases in the District of New Jersey they comment on the relatively slow progress their cases make.

"They don't understand why things are not moving as quickly as they should," Fleming said. "Sometimes they think there's some kind of other reason for it—there's no other reason other than [the New Jersey federal judges] are overworked."

Fleming welcomes the new judges and he thinks their arrival will make the district more efficient, but not dramatically.

"The problem is that they're still going to be super busy, they're still going to have one of the heaviest caseloads in the country. And it's still going to be hard to move cases efficiently through the district court in New Jersey," Fleming said.

The U.S. Judicial Conference asked Congress in March to fund three additional district court judgeships in New Jersey, bringing the total to 20, based on caseload. Three judges are being sought for New Jersey as part of a nationwide request for 66 more district judgeships and two courts of appeals judgeships.

The last time new judges were added to the federal bench was 1990, when 11 circuit seats and 61 district court seats were added.

"If you're going to file a motion to dismiss, it's still going to take you, best-case scenario, six months to get a ruling on that. My personal view is you need another three, four, five [judges], maybe even more than that," Fleming said. ■

Please note that calendar events must be received in writing by this office no later than TUESDAY morning, six days prior to the Monday issue in which the calendar item is to appear.

Please send items to contributed content editor Donovan Swift at dswift@alm.com and managing editor David Gialanella at dgialanella @alm.com.

For more information on New Jersey State Bar Association events, please contact Kate Coscarelli, Senior Managing Director of Communications and Media Relations, at kcoscarelli@njsba.com or call 732-249-5000.

January 2

LAWYERS CONCERNED FOR LAWYERS OF NEW JERSEY – Tuesday, 7:30 p.m. LCLNJ's Montclair-based confidential recovery group for lawyers, law students, judges, law graduates, disbarred attorneys and suspended attorneys who meet every Tuesday at 7:30 pm. Currently, meetings are remote-only. For more information contact Eric S at LCLMontclair@gmail.com or e-mail the New Jersey Lawyers Assistance Program (NJLAP) at info@njlap.org.

January 3

LAWYERS CONCERNED FOR LAWYERS OF NEW JERSEY – Wednesday, 6:00 p.m. LCLNJ's Fort Lee based confidential recovery group for lawyers, law students, judges, and law graduates, law graduates, disbarred attorneys and suspended attorneys meets every Wednesday at 6:00 pm. Currently, meetings are remote-only. For more information contact Craig W. at craigweinstein@verizon.net or e-mail the New Jersey Lawyers Assistance Program (NJLAP) at info@njlap.org.

January 8

NEW JERSEY LAWYERS ASSISTANCE PROGRAM The New Jersey Lawyers Assistance Program (NJLAP) facilitates a twice monthly free and confidential Women Attorneys Peer Counseling (WAPC) Zoom meeting at noon on the 2nd and 4th Monday of every month at 12 PM, where participants may share and seek peer support on any and all personal or professional challenges that they might face as women in the legal profession. To learn more about how to participate, or other support programs available through the NJLAP, email or call us at 800-246-5527 (800-24-NJLAP). Communications with NJLAP will be held in the strictest confidence.

LAWYERS CONCERNED FOR LAWYERS OF NEW JERSEY – Monday, 7:00 p.m. LCLNJ's Women's Zoom confidential recovery group for lawyers, law students, judges, law graduates, disbarred attorneys and suspended . Currently, meetings are remote-only. For more information contact the New Jersey Lawyers Assistance Program (NJLAP) at info@njlap.org or by calling 800-246-5527.

January 11

THE HUDSON COUNTY BAR ASSOCIATION & FOUNDATION - 2024 Annual Cocktail Reception and Installation Dinner, 6:00 PM Hudson House, 2 Chapel Avenue, Jersey City. Installation of Diane L. Cardoso, Esq. as President and Installation of all 2024 Officers Trustees and YLD. Formal attire/Black tie optional. $175.00- Public Employees & Full/Part time Judges; $195.00- All Other Attendees. To register for any or our in person or online seminars or events please go to www.hcbalaw.com

January 17

MIDDLESEX COUNTY BAR ASSOCIATION – Annual Family Law Awards Dinner & CLE, The Pines Manor, 2085 Route 27, Edison. Joint meeting with the Union and Somerset County Bar Associations. Pre-Dinner CLE Seminar (4:30 p.m.): A Review of the Most Important Family Law Opinions in 2023. Moderators: John P. Paone, Jr., Esq. & Cassie Murphy, Esq. Speakers: Hon. Deborah J. Venezia, PJFP; Hon. Robert Wilson, PJFP; Hon. Thomas Walsh, PJFP; Timothy McGoughran, Esq.; and Megan Murray, Esq. Dinner meeting (6:15 p.m.): 2023 Edward Schoifet and Martin Goldin Family Law Awards. To RSVP go to www.mcbalaw.com or send email to jcowles@mcbalaw.com.

January 23

MIDDLESEX COUNTY BAR ASSOCIATION – Tax Committee Virtual Meeting @ 9:00 a.m. A Review of 2024 Heckerling Estate Planning Institute – Part 1. Speaker: Richard Greenberg, Esq. Attendance via webcast. Cost: $10 per person. To RSVP go to www.mcbalaw.com or send email to jcowles@mcbalaw.com.

January 25

NEW JERSEY LAWYERS ASSISTANCE PROGRAM – Thursday, 3 p.m. The New Jersey Lawyers Assistance Program (NJLAP) hosts a monthly free and confidential facilitated solo/ small firm support meeting at 3 p.m. on the final Thursday of every month. Meetings are remote-only format at present. To register and learn more about the group, please complete our initial questionnaire at https://www.njlap.org/solosmall/. Further questions may also be sent via email to info@njlap.org. org, or call us at 800-246-5527 (800-24NJLAP). Communications with NJLAP will be held in the strictest confidence.

January 31

MIDDLESEX COUNTY BAR ASSOCIATION – Civil Trial Practice Program @ 4:00 p.m., MCBA Office, 87 Bayard St, New Brunswick. Live & Remote. Evaluation & Treatment Options for Patients with Spine & Extremity Injuries. Speakers: Dr. Didier Desmesmin; Craig Aronow, Esq. & Patrick Heller, Esq. Moderator: Eugene Wishnic, Esq. Live Cost: $30-Members & $40-Non-Members. Remote: $45-Members; $65-Non-Members. To RSVP go to www.mcbalaw.com or send email to jcowles@mcbalaw.com.

February 2

MIDDLESEX COUNTY BAR ASSOCIATION – Municipal Court Program @ 12:00 p.m., MCBA Office, 87 Bayard St, New Brunswick. Live & Remote. Annual Municipal Court Case Law Review. Speakers: Hon. Christine Heitmann, PJMC; Philip Nettl, Esq.; & John Hogan, Esq. Live Cost (includes lunch): $10-Law Clerks; $30-MCBA Members; and $45-All Others. Virtual Cost: Free-Law Clerks; $40-MCBA Members; and $60-Non-Members. To RSVP go to www.mcbalaw.com or send email to jcowles@mcbalaw.com.

February 9

MIDDLESEX COUNTY BAR ASSOCIATION – "Bar Goes Local" Lunch Meeting @ 12:15 p.m., Gabriele's Restaurant, 1351 Centennial Ave, Piscataway. Speakers: NJ Senators Hon. Bob Smith & Hon. Patrick Diegnan, Jr. Host: Megha Thakkar, Esq., MCBA President. Cost: $30 per person. To RSVP go to www.mcbalaw.com or send email to jcowles@mcbalaw.com.

February 21

MIDDLESEX COUNTY BAR ASSOCIATION – Civil Trial Practice Program @ 3:00 p.m., MCBA Office, 87 Bayard St, New Brunswick. Live & Remote. Effective Civil Motion Practice. Speakers: Hon. Michael Cresitello, Jr., PJCv; Hon. Bina Desai, JSC; Maureen Goodman, Esq.; and Michelle O'Brien, Esq. Live Cost: $30-Members & $45-Non-Members. Remote: $45-Members; $60-Non-Members. To RSVP go to www.mcbalaw.com or send email to jcowles@mcbalaw.com.

February 22

MIDDLESEX COUNTY BAR FOUNDATION – 2nd Annual Comedy Night at The Stress Factory Comedy Club, 6:00 p.m., 90 Church St, New Brunswick. To RSVP go to www.mcbalaw.com or send email to jcowles@mcbalaw.com.

February 27

MIDDLESEX COUNTY BAR ASSOCIATION – Tax Committee Virtual Meeting @ 9:00 a.m. A Review of 2024 Heckerling Estate Planning Institute – Part 2. Speaker: Richard Greenberg, Esq. Remote attendance only. Cost: $10 per person. To RSVP go to www.mcbalaw.com or send email to jcowles@mcbalaw.com.

Editorials

Time For the Smoke to Clear

We are now told that the perennial bill (S-264, A-2150) to eliminate the single exemption to our state's 2006 ban on indoor smoking has been pulled from the agenda of the Legislature's "lame duck" session. This concession to New Jersey's casino industry has been criticized for years based on the scientifically-demonstrated negative effect of secondhand smoke on people who don't smoke themselves. It was, however, a necessary compromise that cleared the way for the 2006 law.

It is one thing to allow exposure of those who, voluntarily, periodically patronize casinos to secondhand smoke (even if they also smoke). It is quite another thing to expose those who are employed in casinos, many full time, to this dangerous and deadly carcinogen. We don't permit such voluntary exposure to patrons of any other public space. But, of course, if casino patrons step outside for a smoke they won't be gambling!

Legislative leaders say the proposal to end the 17-year-old loophole, permitting smoking in designated areas (25% of floor space) was pulled because the votes were not there to pass it. A number of cosponsors had changed their minds and now opposed the bill.

The sponsor stated that the issue would be reconsidered next legislative session, including casino industry recommendations such as better ventilation, banning smoking at table games and building indoor smoking rooms where patrons could continue gambling with volunteer staff. Union members in favor of eliminating the exemption lit cigarettes in the legislative hearing room and blew smoke at the legislators in protest. Other unions representing casino workers oppose the bill out of fear of lost jobs.

There are competing claims about the effect of a total smoking ban on casino operations. Casinos argue that business and jobs will be lost, including losing patrons to Philadelphia casinos. Advocates argue that business would increase, relying on data from other states, including Philadelphia. It is unclear how New Jersey's legal online gambling figures into this controversy.

We call on our Legislature to do its job and protect New Jerseyans. Our state Constitution includes a right to "safety" (Art. I, para. 1) and bans "special laws" (laws that are arbitrary and exclude matters that reasonably should be included) (Art. IV, sec. VII, paras. 7-9). This longstanding statutory loophole in an important public safety law at the heart of our state's police power, arguably contravenes these provisions. Regardless of whether it was an old compromise, the Legislature should end it now. It should have done so long ago. If it fails to do so now, we suggest litigation.

Private Police Training Report Demands Dramatic Action

"The High Price of Unregulated Private Police Training to New Jersey," a 43-page report this month of the New Jersey Comptroller's Police Accountability Project, provides an excruciatingly painful, if partial, explanation of why too many police in New Jersey (and America generally) fall short of the model community-focused law enforcement organizations we need and deserve.

Based on information obtained from Street Cop, a private police training company, only after a hard-fought court battle, see *N.J. Criminal Interdiction LLC v. Walsh*, No. A-4009-21, 2022 N.J. Super. Unpub. LEXIS 2311 (Super. Ct. App. Div. Nov. 23, 2022), the report details racist, unconstitutional, and illegal words and materials provided to police "trainees," including around 240 from New Jersey.

The findings of the Report speak for themselves:

- Instructors at the conference (in Atlantic City, organized by private police trainers funded by tax dollars) promoted the use of unconstitutional policing tactics for motor vehicle stops;
- Some instructors glorified violence and an excessively militaristic or "warrior" approach to policing. Other presenters spoke disparagingly of the internal affairs process; promoted an "us vs. them" approach; and espoused views and tactics that would undermine almost a decade of police reform efforts in New Jersey, including those aimed at deescalating civilian-police encounters, building trust with vulnerable populations, and increasing officers' ability to understand, appreciate, and interact with New Jersey's diverse population; and
- The conference included over 100 discriminatory and harassing remarks by speakers and instructors, with repeated references to speakers' genitalia, lewd gestures, and demeaning quips about women and minorities.

The report continues to detail the cost to the state and its citizens of the behaviors the instructors encouraged: millions of dollars in payments to the victims of police abuse as well as a deteriorating respect for law enforcement. Indeed, the "training" in many instances and in its general impression is counter to the standards promulgated and official training by the state. While only a few New Jersey police departments sent officers to the conference, State Police did attend. And while there may have been some useful information conveyed, some attendees rightfully decried the examples criticized above.

The report calls for recoupment of the funds expended on this program and a number of reforms, including retraining any attendees and regulating, licensing, and tightly supervising police training. We recognize that the comptroller has limited enforcement authority, but the report should be taken as a clarion call. We understand that the attorney general may have referred the recommendations to an internal departmental commission, but we question whether that action deals with the matter with sufficient urgency. If the attorney general and Law Department do not have authority to move forward expeditiously to implement the recommended regulation and other reforms, they should seek that authority from the Legislature. New Jersey must root out from our police the mindset evidenced by this "training."

Protecting Free Speech in Law School

The ABA Section of Legal Education and Admissions to the Bar has proposed a requirement that all law schools desiring ABA accreditation establish a written policy protecting academic freedom and free expression for all who work or study in those institutions. Faculty had long enjoyed such protection, but this proposal would extend it to students and staff.

The proposal was a reaction to a series of protests in recent years in which students had shouted down or otherwise disrupted appearances by controversial speakers. Last March, Judge Kyle Duncan of the U.S. Court of Appeals for the Fifth Circuit had to cut short his presentation at Stanford Law School when students in the audience began chanting, clapping, and banging on desks in protest. At Yale the year before, similar behavior by students disturbed, but did not prevent, a speech by Kristen Waggoner of the Alliance Defending Freedom, a conservative law group. Also in 2022, Ilya Shapiro, a professor on leave from Georgetown Law School, was prevented from taking part in a discussion at the University of California Hastings College of the Law by students who shouted, banged desks, and otherwise stifled his attempts to speak. To date, we are unaware of similar deplorable behavior at New Jersey law schools; however, rules at Rutgers (Newark and Camden) do provide sanctions for inappropriate conduct.

In a statement released on Nov. 17, the ABA described the proposal as the first of its kind for accredited law schools. Accreditation is significant in that almost half of U.S. states and territories will allow only graduates of ABA-accredited law schools to take their respective bar exams, thus limiting the options for practice of graduates who do not attend accredited law schools.

The section's proposal will be put before the ABA House of Delegates for approval in February. It will not impose specific policy language but will require a clearly written commitment by the schools "to communicate ideas that may be controversial or unpopular, including through robust debate, demonstrations or protests," and to forbid activities that disrupt or impinge on free speech. More preciseness would be helpful to the schools in developing their programs.

It is an unsurprising yet disappointing sign of our times that a written policy protecting free speech must be required of law schools. We would hope that aspiring lawyers had internalized the principles on which our government rests: free and open debate, rational argument, and respect "to the opinions of mankind," as expressed in the Declaration of Independence. Without those principles, a healthy democracy cannot survive.

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Commentary

Un(conditional) Love: Who Gets the Engagement Ring After the Break-Up?

By Veronica McCarty and David J. Steerman

In 2020, the average cost of an engagement ring in the United States was $6,000, with Americans spending an average of $16.4 billion dollars on engagement jewelry each year. So it is no surprise that such valuable gifts generate litigation, especially when the wedding does not go through as planned. And often ex-couples have the same question: When the engagement ends, who gets the ring?

Under Pennsylvania and New Jersey law, engagement rings are conditional gifts. The condition of these gifts is the marriage, not the engagement. When the marriage does not occur, the condition is said to be unfulfilled. As such, the gift is considered to be not final, and the ring should be returned to the donor if he or she requests it back. Who broke off the engagement or who was at fault for the engagement ending (even through infidelity) is immaterial and irrelevant to the court, as Pennsylvania and New Jersey courts apply a "no fault" approach to the end of an engagement.

Of course, there are exceptions to the rule. For instance, an engagement ring obtained by fraud is not considered a conditional gift and need not be returned. Fraud occurs when a false promise is made that is calculated to deceive the donee to marry in exchange for money, a vehicle, jewelry, etc. The donee must show that reliance on the false promise or representation to establish that fraud occurred. In instances involving fraud, the donee would not be required to return the ring, as the conditional gift was given in the context of fraud and for illegitimate purposes. Another exception is when the donor lacks the ability to contract at the time of the proposal. This occurs when the donor proposes when he or she is already married, as the engagement ring is not seen as a "conditional gift" as the donor is unable to meet the condition, or enter into the contract of marriage.

PHOTO BY 5SECOND VIA ADOBE STOCK

But what about gifts given during the engagement process that aren't engagement rings, such as a watch or even real estate? While some may view these gifts as similar to an engagement ring, here the burden falls upon the gift-giver to prove that the gift was conditional, and the condition was marriage. If the gift can be shown to be contingent upon the marriage occurring, it should be returned to the donor upon request. However, if the donor cannot convince the court that the condition of marriage was attached to the gift, it will be considered a token of love and affection that is not required to be returned.

A good example of this is Christmas gifts. Those considering getting engaged or giving an engagement ring over the holiday season (the most popular time of year to become engaged) should be careful to make it clear that the ring is in fact an "engagement ring." By ensuring that the recipient understands that the ring is an "engagement ring," this creates the presumption that the gift of the engagement ring is conditional, with the condition being marriage. If this distinction is not clearly made, the recipient could then argue that the "engagement ring" was actually a Christmas gift, which are completed gifts at the time of the giving and need not be returned. ■

Veronica McCarty is an associate at Devlin Law Firm. Her practice is focused on patent litigation across the country, but she is also involved in pro bono family law work.

David J. Steerman is chair of the family law group at Klehr Harrison Harvey Branzburg. For over 34 years, David has dedicated his legal career to helping individuals and families resolve all forms of legal issues including, but not limited to divorce, custody, all forms of support, prenuptial and post nuptial agreements.

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New Jersey Mergers & Acquisitions

Integra LifeSciences to Pay $275M for ENT Leader Acclarent

Princeton, New Jersey-based **Integra** largely sells neurosurgery devices, but it also has a line of surgical instruments for ENT procedures called **MicroFrance**. With the purchase of the **Acclarent** business, Integra will gain access to balloon technologies to dilate the sinus and the eustachian tube, as well as surgical navigation systems, RBC Capital Markets analyst Shagun Singh wrote in a research note.

Integra said the purchase will make it one of the leading providers of ENT products and technologies. It plans to pay $275 million in cash at closing and an additional $5 million if certain regulatory milestones are met.

Continued on next page

Consumer Price Index: Urban Wage Earners and Clerical Workers

CPI

Source: Bureau of Labor Statistics

N.Y.-Northeastern N.J.
November 2023 — 319.611
Philadelphia-Southern N.J.
October 2023 — 307.523
Northeast Urban
November 2023 — 314.024
U.S. City Average
November 2023 — 301.224

NOTE: Base year 1984 = 100. Phila-NJ numbers are adjusted on a two-month cycle.

'Proof of Concept': A Conversation With the Law Journal's Firm of the Year

COURTESTY PHOTO

MICHAEL STEIN

By David Gialanella

At the 2023 New Jersey Legal Awards earlier this year, the Law Firm of the Year winner was announced from a slate of three finalists. Pashman Stein Walder Hayden of Hackensack won based on its attorneys achieving recognitions in numerous other categories: Litigation Departments of the Year (as a finalist), New Leaders of the Bar, Mentors and Unsung Heroes.

Pashman Stein was recognized for, among other accomplishments, its victories

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Merck Hit With Antitrust Suit Over Settlement for 2 Best-Selling Cholesterol Treatments

By Colleen Murphy

Merck has been hit with an antitrust action in New Jersey federal court, which claimed that the company entered into an anti-competitive settlement agreement and an unlawful business arrangement in violation of antitrust and consumer protection laws in relation to two cholesterol-reducing drugs.

The suit was surfaced by Law.com Radar, ALM's source for immediate alerting on just-filed cases in state and federal courts. Law.com Radar now offers state court coverage nationwide. Sign up today and be the first to know about new suits in your region, practice area or client sector.

The complaint, filed by Centene,

Continued on next page

IN-HOUSE COUNSEL

As AI Hype Train Rolls On, Regulators on High Alert for 'AI Washing'

By Hugo Guzman
CORPORATE COUNSEL

Federal regulators say they're ready to pounce on companies that seek to add sizzle to a product's marketing by making unsubstantiated artificial intelligence claims.

The practice even has a catchy name, "AI washing," the high-tech equivalent of "greenwashing," the making of unsupported environmental claims, a practice companies have long known could put them in regulators' crosshairs.

Speaking at an AI-focused event on Dec. 5, U.S. Securities and Exchange Commission Chair Gary Gensler warned companies against making bold AI claims unless they're backed by hard evidence.

"Don't do it," he said. "One shouldn't greenwash and one shouldn't AI wash."

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m&a New Jersey Mergers & Acquisitions

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Integra did not say how the deal would affect its finances but plans to share more detailed forecasts upon closing. Acclarent had 2022 revenues of $110 million, the company said, and gross margins about in line with Integra's company average. The transaction is expected to close in the first half of 2024, subject to customary closing conditions and regulatory approvals. Transition manufacturing services would be provided for up to four years after that.

JLL Secures Permanent Financing for Luxury Mercer Community

JLL Capital Markets announced that it has arranged permanent financing for Woodmont Way at West Windsor, a 443-unit, garden-style, luxury multihousing community located in West Windsor, Mercer County, New Jersey. JLL represented the borrower, **Woodmont Properties**, to secure the five-year, fixed-rate loan through **Northwestern Mutual**.

Constructed in 2022, the 13-building Woodmont Way at West Windsor features a mix of one-, two- and three-bedroom apartment units. Situated at 100 Woodstone Circle, Woodmont Way at West Windsor is located within proximity to State Route 1 and State Route 206. It is within a 20-minute drive to the Princeton Airport and a three-mile commute to the Princeton Junction train.

JLL Capital Markets is a full-service global provider of capital solutions for real estate investors and occupiers.

Software services provider Cognizant has agreed to acquire two-year-old Thirdera, a global pure-play advisory firm, as part of its focus on emerging enterprise workflow products.

US-headquartered Cognizant plans to absorb 940 people from Thirdera into its ServiceNow business group, its channel partner which has a team of 1,500 people. The ServiceNow business group will be run by Jason Wojahn, CEO and cofounder of Thirdera, Cognizant said in a statement.

Cognizant to Acquire Colorado Workflow-Solutions Firm

Software services provider **Cognizant** has agreed to acquire 2-year-old Thirdera, a global pure-play advisory firm, as part of its focus on emerging enterprise workflow products.

U,S.-headquartered Cognizant plans to absorb 940 people from **Thirdera** into its ServiceNow business group, its channel partner which has a team of 1,500 people. The **ServiceNow** business group will be run by Jason Wojahn, CEO and cofounder of Thirdera, Cognizant said in a statement.

Cognizant and ServiceNow are currently building a $1 billion combined business focused on AI-driven automation. The addition of Thirdera, which brings an on-and-near-shore global presence for the Cognizant ServiceNow Business Group, will build on that business.

The acquisition is expected to close in January 2024. Financial details of the deal were not disclosed.

—From NJBiz.com and other sources

Appellate Division Relied on Precedent to Dismiss Tory Burch's COVID-19 Business Interruption Claims

By Colleen Murphy

In an unpublished decision, the Appellate Division rejected arguments made by fashion brand Tory Burch in a suit filed against its insurer, Zurich American, for property damage and business interruption due to the COVID-19 virus and pandemic and for breach of contract.

Tory Burch purchased an all-risk insurance policy from Zurich American that insured against "direct physical loss or damage to" the company's property but contemplated only certain kinds of losses, according to the opinion. New Jersey's Gov. Phil Murphy declared a state of emergency in March 2020 which caused Tory Burch to close its retail stores to the public through May 2020.

Tory Burch alleged that it suffered substantial losses of business and income and sought coverage through its policies with Zurich. That coverage was declined because Zurich alleged the policies did not cover COVID-19-related losses and that coverage was barred by the "Contamination Exclusion," according to the opinion.

Tory Burch filed suit in Union County Superior Court for a declaratory judgment and to compel defendant to provide insurance coverage to plaintiff for property damage and business interruption due to the COVID-19 virus and pandemic, and breach of contract. Zurich moved to dismiss under Rule 4:6-2(e), contending that the plain language of the policies did not cover the losses, according to the opinion. After oral argument, the trial court granted

PHOTO BY WILLIAM BARTON VIA ADOBE STOCK

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Merck Hit With Antitrust Suit Over Settlement for 2 Best-Selling Cholesterol Treatments

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a provider of health care-related services, including insuring risk for prescription drug costs, alleged that the two Merck drugs have been among the best-selling cholesterol treatments over the last 15 years. The drugs are Zetia, a lipid-lowering medication, and Vytorin, a fixed-dosed combination pill comprised of Zetia and simvastatin. Annual sales for each drug is consistently more than $1 billion, and sometimes more than $2 billion, according to the complaint.

The plaintiffs are represented by Preetha Chakrabarti, Daniel A. Sasse, Tiffanie L. McDowell, Kent A. Gardiner, Mark M. Supko and Diane A. Shrewsbury of Crowell & Moring.

Counsel has yet to enter an appearance for the named defendants, which include Merck and Schering-Plough. Other named plaintiffs include health care service providers WellCare Health Plans, New York Quality Healthcare and Health Net.

Centene alleged that when the new chemical exclusivity period on Zetia was nearing its end, Merck took aggressive action to protect its profits from generic manufacturers. Glenmark was the first company to file an Abbreviated New Drug Application (ANDA), which sought the launch of a generic version to compete with Zetia. Merck sued Glenmark for patent infringement.

"Merck later admitted its lawsuit had no merit because it had failed to disclose prior art to the United States Patent and Trademark Office that would have resulted in the denial of patent protection for Zetia," the complaint said. "But simply by initiating the litigation, Merck triggered a 30-month stay, which precluded the Food & Drug Administration from granting final approval of Glenmark's ANDA."

Glenmark was granted partial summary judgment in the case and subsequently entered into a marketing and distribution agreement with Par Pharmaceuticals, according to the complaint. About a week later, Glenmark and Merck settled their action. That agreement was for Glenmark to drop its claims and defenses against Merck and to delay its launch of a generic Zetia for nearly five years. Merck agreed to refrain from competing with Glenmark by not introducing its own generic version of the drug during Glenmark's 180-day period of first-filer exclusivity, according to the complaint.

"Merck's overarching monopolistic scheme, Merck and Glenmark's anticompetitive settlement agreement, and Merck, Par, and Glenmark's unlawful business arrangement violated numerous State antitrust and consumer protection laws," the complaint said. "Defendants were also unjustly enriched from their actions. Accordingly, the Centene Companies seek damages for overcharges they paid as a direct result of defendants' anticompetitive conduct."

The six-count complaint included claims for monopolization, conspiracy to monopolize, conspiracy to restrain, unfair and deceptive trade practices, monopolistic scheme, and unjust enrichment under various state laws.

Merck did not immediately respond to a request for comment. ■

PHOTO BY JASON DOIY/THE RECORDER

Lloyd's of London Prevails in Insurance Claim Over KN95 Masks Detained by Customs Authorities

By Colleen Murphy

The Appellate Division affirmed a trial court ruling in favor of Lloyd's of London in a complaint filed by a global distributor who sought insurance coverage for the detention of millions of inferior KN95 masks.

The plaintiff, Dialectic Distribution, is a global distributor and reseller of consumer electronics that purchased millions of KN95 masks from Chinese suppliers early in 2020, according to the opinion. Dialectic imported the masks for sale in the United States and Europe. Although the masks were supposed to meet a 95% filtration specification, they turned out to be inferior and less effective.

The U.S. Customs and Border Protection and the Governance of Economics in Brussels detained the masks at airports in New York, Los Angeles, Chicago and Brussels. Most of the masks imported to the United States were subject to Food and Drug Administration hold notices, according to the opinion, which prohibited Dialectic from selling the masks as labeled until they were released by the FDA, according to the opinion.

When the masks were detained, Dialectic filed a claim, which Lloyd's denied because the temporary detention of the masks for inspection was not a physical loss under the policies because

PHOTO BY XXXXXXX

the masks were returned to plaintiffs undamaged, according to the opinion.

Dialectic filed a complaint in Bergen County Superior Court in November 2020, which alleged breach of contract, bad faith, and breach of the implied covenant of good faith and fair dealing. The complaint filed in *Dialectic Distribution v. Certain Underwriters at Lloyd's London* sought compensatory, punitive, direct, incidental, and of consequential damages, along with attorney fees. Damages, calculated by an expert based on lost profits, were estimated to be in the millions of dollars due to the detainments, according to the opinion.

On appeal, Dialectic argued that the judge erred in finding no physical loss due to the government's seizure of the masks. They alleged that the policies with Lloyd's covered "all risks of physical loss or damage … from any external cause" and did not exclude government seizure, according to the opinion.

Appellate Division Judges Jack M. Sabatino, Hany A. Mawla and Mark K. Chase heard the appeal.

"The central issue is whether the detention of the masks by customs authorities constituted a 'physical loss or damage' to the masks," the opinion said. "Our review of the plain language of the policy does not convince us it was ambiguous."

The court said that it was not persuaded that the terms "physical loss or damage" included the detention of the masks for inspection by customs authorities, or by the fact that the masks did not meet KN95 standards. The opinion stated that the detention itself did not constitute direct physical loss or damage. Instead, the court concluded that the masks were temporarily unavailable during the inspections, which constituted neither a loss, nor damage.

"Construing the policies in the manner argued by plaintiffs would lead to an absurd result, such as obligating coverage for a delay of any time-period plaintiffs were without the masks," the per curiam opinion said. "A plain reading of the policies convinces us the masks had to be damaged, lost, or altered in some way to constitute a physical loss or damage covered by the policy."

Dialectic relied on two Appellate Division opinion for its arguments, *Customized Distribution Services v. Zurich Insurance and Wakefern Food*

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'Proof of Concept': A Conversation With the Law Journal's Firm of the Year

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at the New Jersey Supreme Court in the multimillion-dollar shareholder dispute Sipko v. Koger*, as well as in* Rivera v. Union County Prosecutor's Office*, a case concerning police internal affairs investigations.*

The latter case was handled through the firm's Justice Gary S. Stein Public Interest Center, named for the retired justice (who remains special counsel at Pashman Stein) and father of firm founder and managing partner Michael Stein. (The center, launched in 2019 and headed by CJ Griffin, recently brought on its first fellow.)

Michael Stein recently spoke about the recognition and the firm's development in an interview.

'Proof-of-Concept Moment'

"What for me, and I think the firm as an institution, was most gratifying about this recognition is that a lot of the work that I presume garnered the attention was work that we did through our policy center," Stein said.

"It's sort of a proof-of-concept moment in that, we undertook that effort out of nothing more than a belief that lawyers have a responsibility to give back, to be part of the conversation of the issues of the day, and that law firms are uniquely positioned to make a difference. Call it what you want but it's [the notion that] a law firm should be more than a business," Stein said.

"In retrospect, [launching the center] was an extraordinary investment, and it felt a little idiosyncratic at the time. We were much smaller when we first made the investment—we're still fairly small—but in retrospect, there have been a lot of unintended benefits that could serve as a template to other firms who may be on the fence about whether it makes sense to invest in this way," Stein said.

One benefit, he said, is "the incredible sense of pride that is felt" by everyone from staff to senior partners at the firm because of "this sense that we're doing something meaningful" that has "injected a sense of meaning and purpose and passion."

Stein also pointed to "the experience that it's given our lawyers, both young and old," with the firm averaging upward of 30 state Supreme Court arguments per year, experience that's hard to come by for developing attorneys practicing at law firms rather than public-interest organizations. He added that such work "renews a promise of sorts" to those who went to law school hoping to make a broad policy impact in their practices.

"The institution is stronger. There's this extraordinary sense that we're doing something different, and it has nothing to do with our bottom line," Stein said.

'More Attention From Paying Clients'

Except that it does. The center's work has had a measurable business impact, according to Stein.

"These benefits I'm describing are so impactful that at the end of the day, it's worth the investment, and frankly these benefits have led to an elevation of our profile, our brand … and it's strengthened our culture," Stein said.

"All that, frankly, leads to more attention from paying clients; it leads to better recruitment prospects," he added.

The message to firms who are "intrigued but [have] not yet made the commitment" to launch a dedicated public-interest unit, Stein said, is "that it can align quite well with your business interest."

"To me personally here, that's the headline," he said.

Indeed, the firm has grown, particularly during the pandemic. It had roughly 60 attorneys when the center launched, and has some 90 today. It was founded in 1995 by Stein, who in 1987 left life as a bond trader for a career in law, along with fellow name partner Louis Pashman. In 2016, the firm, which had 33 lawyers, combined with Walder Hayden, adding 12 lawyers and forming Pashman Stein Walder Hayden.

In changing careers, Stein said his goal was "to keep punching until I found a job where I had the same spring in my step on Monday morning that I do on Friday when I'm pouring my first cocktail."

'The Dust Is Going to Begin to Settle'

Asked about what the prevailing challenges of 2024 might be, Stein's answer was somewhat surprising in that it's a response a managing partner might have been expected to give at this time in 2022 or even 2021, but that nevertheless makes sense given that so many firms are still working through the issue.

"The first thing that comes to mind is what all industries are grappling with: what does the new normal look like, are we there yet, what does that mean for hiring, what does it mean for geographic scope, what does it mean for office life, what does it mean for the day-to-day practice of law?" Stein said. "In 2024, the dust is going to begin to settle. … A lot of law firms have set policy in stone. … There's all kinds of variations of these policies.

"We have not mandated any of it, and I think that decision is being vindicated because, I think what a lot of firms are finding is it's really hard to enforce and it's hard to put teeth into these policies, and they were instituted before the dust was fully settled," Stein continued. "So here we are, it's year four … and those who thought the dust had settled and had advanced policies are finding an extra layer of unnecessary challenges."

"I've always been of the view that most people want to be in the office about half the time and enjoy the level of flexibility that we can enjoy. … So with some carrots and without sticks, you can get the right kind of energy in the office and give people the flexibility they expect," he said. ■

LEGAL TECH

Evolution of Large Language Models in Law: A Road to Integration and Precision

By Olga V. Mack

In the intricate world of legal systems, picture a future in which we transcend reliance on a solitary dominant language model for legal research and analysis. Instead, visualize a cohesive assembly of hyper-focused models, each meticulously calibrated for distinct legal domains, operating in synergy. This signifies the envisioned trajectory for large language models in the legal sphere—a forthcoming era marked by diversity, collaboration, and effortless incorporation with specialized legal AI tools.

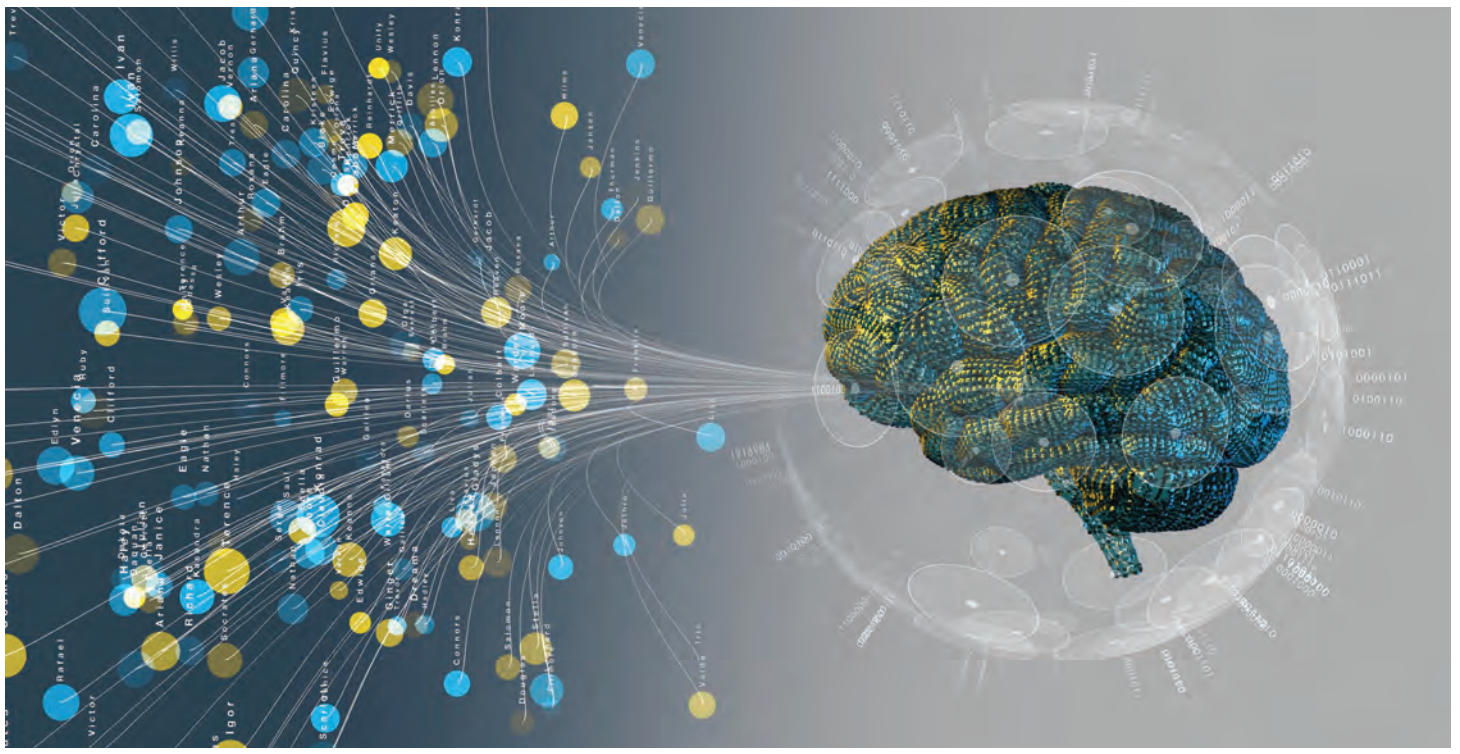

PHOTO BY EYAL SHTARK VIA ADOBE STOCK

Specialized Training: Tailoring Legal Expertise

In the complex world of legal systems, generic AI models are giving way to specialized counterparts that are carefully trained on domain-specific datasets. These advanced models, deeply immersed in the intricacies of legal texts, pledge to interpret statutes and provisions with the precision of seasoned legal experts. By focusing on the right and private datasets, they ensure the confidentiality of client-sensitive information while becoming adept at navigating the intricate details of various legal jurisdictions.

The transition from broad to specialized training arises from the legal sector's need for in-depth domain-specific knowledge. Whether in corporate law, criminal jurisprudence, or intellectual property rights, these AI models can delve deeply, providing accurate and highly relevant insights. This customized approach ensures that legal professionals receive precise information, thereby enhancing both efficiency and accuracy in their work. By 2024, we expect these AI models to be capable of integrating real-time updates from global legal databases and news sources, ensuring legal professionals have access to the most current legal information and developments.

In the ever-changing legal landscape, AI tools need to progress in step with these changes. Continuous learning becomes crucial, ensuring that these models stay current with the latest legal developments. The future of AI in law doesn't lie in broad applications but in detailed, precise expertise. It envisions a collaborative relationship where AI complements legal professionals, offering both depth and breadth of knowledge.

Collaborative Precision: A New Era in Legal AI

The legal sector is on the verge of a transformative shift, centered around collaboration among professionals and models. Rather than depending solely on a single AI model for legal insights, the future embraces an ensemble approach. Multiple models will collaborate, cross-checking and improving each other's outputs to substantially reduce errors, ensuring accurate and consistent legal interpretations of statutes and case laws. Looking ahead to 2024, we anticipate the integration of these AI models into interactive platforms. This will provide legal professionals with opportunities to engage in simulated legal scenarios and mock trials, enhancing real-world application and practical training.

This shift represents more than just technological progress; it signifies a change in mindset. Rather than AI models operating in isolation, they will function as a unified entity, each model augmenting the capabilities of the others. The result? Unprecedented precision in legal research and analysis.

In this emerging era, competition gives way to collaboration as models work together to set new standards and benchmarks in legal analysis. It envisions a future where AI not only supports but elevates the legal sector, providing legal professionals with the most precise and reliable tools. By 2024, there is an anticipated emphasis on developing and implementing comprehensive ethical frameworks for AI in law. This ensures the mitigation of biases and promotes fairness and transparency in AI-driven legal applications.

Seamless Integration: The Future of Legal AI Assistance

Language models have made strides, but their true potential in the legal domain lies in seamless collaboration with other legal and AI technologies. Essential tools like extractive AI will mine extensive legal databases, supplying models with relevant case laws and statutes.

The evolution in AI for the legal domain transcends mere linguistic proficiency. It's a convergence of advanced tools such as legal analytics and contract analysis that elevates these models to provide profound legal insights. This development signifies the creation of a comprehensive AI legal assistant. This assistant not only excels in language but also possesses a keen legal intellect, harnessing a broader spectrum of capabilities to navigate the complexities of legal analysis and provide more nuanced and contextually rich information.

In the envisioned future, the integration of diverse AI tools will pave the way for a harmonious synergy, elevating the accuracy, reliability, and overall quality of legal tasks. As we look forward to 2024, we anticipate a more nuanced collaboration between AI models and human legal experts. This envisages a scenario where AI-driven insights are complemented by experienced human oversight, ensuring a well-rounded and judicious, hyper-focused legal analysis. It offers a glimpse into a world where AI doesn't simply assist, but actively collaborates with legal professionals, delivering unparalleled expertise and precision.

Ethical and Practical Considerations in Legal AI

While technological advancements hold promise, it's crucial to address the ethical implications. Preventing unintentional breaches of attorney-client privilege and addressing biases from historical legal data are paramount. Moreover, the legal industry, traditionally resistant to change, may face challenges in adopting these innovations, especially among older practitioners or in jurisdictions where tradition prevails. Striking a balance between progress and ethical considerations becomes pivotal in navigating the evolving landscape of AI in the legal sector.

Conclusion: A New Dawn in Legal AI

We are trending to a more hyper-specialized, focused, and integrated approach. The projection is clear: the evolution of large language models in law involves establishing a harmonious synergy among diverse technologies, each amplifying the capabilities of the others in legal tasks. This vision not only promises technological progress, but also envisions a future where AI becomes an indispensable ally in legal practice, research, and analysis, provided it's implemented with due care and consideration for ethical and practical challenges.

The legal landscape is undergoing a transformation, and the role of language models within it is poised to be revolutionary. As the legal sector becomes increasingly globalized, these AI models will advance to offer enhanced capabilities for cross-jurisdictional legal analysis, effectively navigating and integrating diverse legal systems and cultural contexts. ■

Olga V. Mack is a Fellow at CodeX, The Stanford Center for Legal Informatics, and a Generative AI Editor at law.MIT, and an award-winning general counsel, operations specialist, and tech startup advisor who encourages lawyers to embrace disruptive technologies that make law more functional and accessible. A three-time TEDx presenter with an exceptional blend of legal, technological, and business expertise, Olga is one of today's top speakers and thought leaders. Find her latest insights at Above the Law, Forbes, Bloomberg Law, ACC Docket, law.MIT Computational Law Report, Newsweek, Venture Beat, and her podcast, Notes to My (Legal) Self. As a Berkeley Law lecturer and a fellow of the College of Law Practice Management, Olga is confident the law's future is secure in the hands of innovators. Olga's numerous awards include the Silicon Valley Women of Influence, ABA Women in Legal Tech, Make Your Mark, Corporate Counsel of the Year, and Women Leaders in Technology Law. In examining how disruptive technologies impact laws, society, business, and commerce, Olga authored Blockchain Value: Transforming Business Models, Society, and Communities and co-authored Fundamentals of Smart Contract Security. She is working on her three books: Visual IQ for Lawyers (ABA 2024), The Rise of Product Lawyers: An Analytical Framework to Systematically Advise Your Clients Throughout the Product Lifecycle (Globe Law and Business 2024), and Legal Operations in the Age of AI and Data (Globe Law and Business 2024).

MANAGEMENT

Engagement Fatality: How the Command-and-Control Leadership Style Takes Its Toll

By Tracy LaLonde

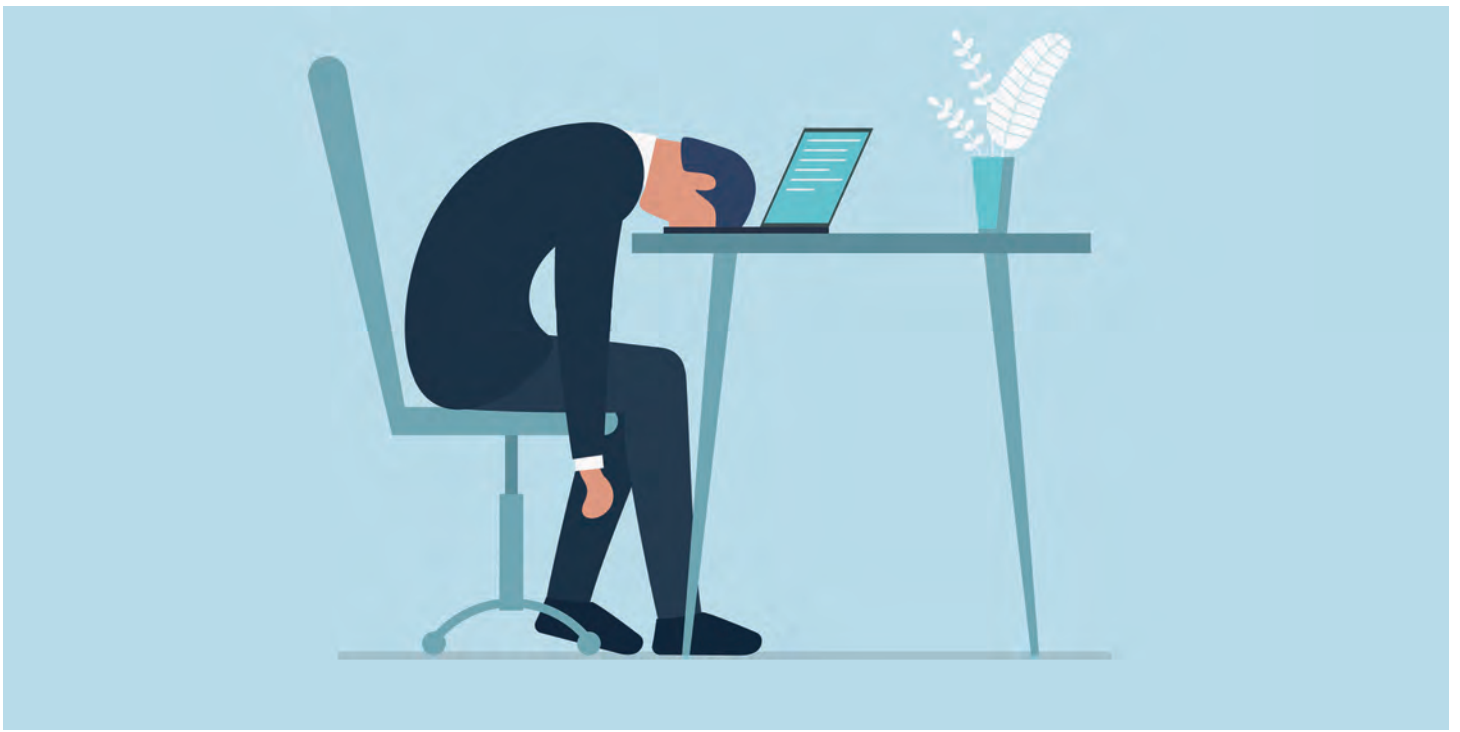

PHOTO BY VALEEV VIA ADOBE STOCK

Lawyer Wellness

You've heard it from me, and you've heard it from others—the leadership style known as "command-and-control" is rampant in law firms. Unfortunately, it can also be fatal to a law firm's culture. If you're not familiar with the actual name of this leadership style, you're surely familiar with the style itself. It's where a leader makes decisions without input from others, gives orders and maintains absolute authority over his or her "team"—which is certainly a loose description of such a group in these situations.

On Dec. 6, I wrote an article titled, "Law Firms' Command-and-Control Management Style Isn't Working—What Now?" In that piece, we explored the behaviors of leaders who use this style, explained how those behaviors erode trust and presented new opportunities for law firms to gain this trust. In this article, let's assess if you or your firm are enabling this leadership style, explore why it is no longer effective and provide alternative management solutions.

How to Unveil the Dominance of Command-and-Control at Your Firm

As research indicates, command-and-control began in the 1950s and 1960s when people returning to work following military service during World War II rose to leadership positions in businesses and corporations. Those leaders learned this approach during time in the armed forces—giving orders, enforcing strict policies, soliciting input only from senior officials—and supported the growth of this management style in the United States in the latter half of the 20th century.

The command-and-control style is easily implemented in law firms, as many associates are inexperienced in the practice of law and need direction. They want to do good work and impress the partners at the firm, so they do as they are told, work the tremendous hours they are required to and often refrain from questioning their leaders. However, as our world, culture and workplaces have evolved, command-and-control is no longer a viable leadership technique, nor does it result in long-term success.

While this might seem like an effective way to get things done, we've seen this lead to associate burnout and disengagement over and over again, especially given the emergence of younger generations in the workforce. They are increasingly less motivated working "for" people who manage this way. For example, associates want more autonomy or input in determining which assignments to accept, setting deadlines, and when and where to work, among other things.

So, how do you assess whether your leadership style or that of your firm leaders is the one fatal to attorney engagement? Consider these questions:

* Do you make decisions without seeking the perspectives of others?
- Do you expect your team members to do things your way?
- Do you need to be informed of most, if not all, communications with clients?
- Do you think of associates or business professionals as working "for" you rather than "with" you?
- Do you have a low tolerance for mistakes?
- Do you emphasize results above all else?

If you answered yes to all or most of these, you lead with a command-and-control style. But have no fear. By the end of this article, you will gain techniques to update your management style.

Unpacking the Fatal Flaws of Command-and-Control

In a command-and-control environment, associates and business professionals comply with directives from leading partners, operating under the belief that such actions are essential for achieving business objectives. Yet, it often leaves team members uninspired and unengaged.

Here are some common scenarios that happen in this type of environment:

- Associates have no opportunity to offer input or autonomy to make decisions, even though they are the ones actually doing the work on a transaction or a case; they operate to only follow the directions of the lead partner on the matter.
- The partner doesn't provide the larger context or bigger picture when delegating, so business professionals, junior partners and associates don't know why they are taking an action; they just know they must take it because a leader told them to do so.
- Partners demand constant updates on even the most minor case or transaction developments, excessively scrutinizing small details with an attitude of, "That's not how I would have approached it."
- It's become customary for a firm leader to publicly criticize associates or business professionals under the guise of providing "productive" feedback.

These situations have proven detrimental to businesses for several reasons. First and foremost, this leadership approach creates an increased workload, as leaders consistently micromanage individuals rather than empowering them to take charge themselves. Second, heightened management involvement leads to escalated expenses, requiring more resources for constant supervision. Third, attorneys and business professionals feel marginalized in this type of work environment. And finally, it poses a high-risk setting for business operations. When unforeseen challenges arise, the team lacks the empowerment to tackle them, resulting in lost productivity, dissatisfied clients, managerial stress, opportunity costs, and disengaged attorneys and business professionals.

Shifting Focus: Managing Toward Engagement

How do firms change this leadership style that might be lurking in every corner? It requires just a few adjustments:

- Instead of focusing solely on what someone is doing wrong, catch them doing something right and make a point of acknowledging it. Positive feedback perpetuates mastery.
- When delegating, provide the big picture so associates can feel part of something bigger. When people understand the goals, they work harder toward accomplishing them and might come up with a few ideas about how to be more efficient in getting there.
- Regularly reinforce how assigned tasks impact the larger matter or project so team members feel they are making a difference for their clients.
- Ask team members their perspectives when making a decision. Then, once you have made the decision, circle back to the team, explaining your rationale and how their input impacted your thinking.
- Give the team the opportunity to determine the best path to achieving the end result. You can discuss this when delegating to ensure they don't go too far off the course of what you believe might be in the best interests of your client.
- Be patient and allow for mistakes to happen—no one is perfect, including firm leadership. When mistakes do happen, empower your team members to fix them independently, offering guidance along the way.

In reflecting on the prevalence and repercussions of the command-and-control leadership style in law firms, it's evident that this approach poses significant threats to firm culture and success. Within firms, this leadership style often seeps in due to various dynamics but recognizing that this is the environment you are currently operating in is the first step toward change.

By embracing a more inclusive and empowering approach, law firms can shed the limitations of command-and-control, paving the way for a more engaged, innovative and successful future. Empowered and committed teams foster stronger client relationships, improved productivity and a more vibrant firm culture. The path forward lies in a leadership style that nurtures collaboration, autonomy and continual growth. ■

Tracy LaLonde trains law firm leaders on how to generate better engagement, and she's burnout's worst enemy. With over 30 years of experience in training, consulting and professional development, LaLonde is on a mission to change the way law firms engage with their teams. She may be reached at info@joychiever.com.

Hackers Increasingly Infiltrate Software While It's Still in Development—Before Guard Is Up

By Maria Dinzeo

CORPORATE COUNSEL

PHOTO BY IMAGEDESIGN VIA ADOBE STOCK

Imagine a lauded restaurant that attracts government officials and corporate elite. One day, someone sneaks into the kitchen and puts cyanide into a pot of stock used in its signature dish. The sitting U.S. president happens to be a guest that evening and consumes it. Now, the president is dead.

"That's kind of what's happened here, where SolarWinds are the cooks in the kitchen, and somebody has snuck in and put some malicious code into their software as they're building it. And nobody noticed," said Dan Draper, technologist and founder of Australia-based cybersecurity and governance platform CipherStash.

Draper is referring to the 2020 hack of Austin, Texas-based SolarWinds, which sells network-management software to Fortune 500 companies, all U.S. military branches, the State Department and the Pentagon—the most infamous example so far of a sophisticated supply chain hack that pushed malicious code to thousands of customers through routine software updates.

But what was so insidious about this hack, Draper said, is that it was so covert. "Not only is this terrifying because it can happen to any organization that's building software, but it's actually also incredibly difficult to detect," he said.

Cybersecurity experts say such attacks are the latest frontier for hackers, a humbling reality for computer security leaders to confront just as they're getting better at shielding their enterprises from older methods of infiltration.

Cybersecurity company Crowdstrike, one of several that assisted SolarWinds in its investigation of the attack, posted a breakdown on its blog of how hackers inserted malicious code into SolarWinds' network management software as it was being built, without arousing suspicion.

Joe Sullivan, a former security chief at Uber, said it was almost fortuitous that Crowdstrike made the discovery.

"When they discovered the compromise, it wasn't because they did an audit of the code and discovered it. It was because CrowdStrike had a good security team that had gotten an alert on lateral movement in their identity and access management infrastructure," he said. "So hundreds of companies and governments had run the software and it had gone through their third-party vendor software audit review process and blessed it. And nobody caught it."

In a landmark enforcement action, the Securities and Exchange Commission in October sued SolarWinds and its chief information security officer, Tim Brown, alleging the company ignored red flags raised by employees and Brown himself about their ability to fend off cyberattacks.

Draper said that while much of the public discussion has focused on the attack itself, and the vulnerability of the SolarWinds' system, the malware—dubbed "Sunspot" by security researchers—could end up playing a critical part in the case.

"The SEC is out for blood," Draper said. "Was SolarWinds negligent in allowing an adversary to implant malicious code in their source code as they're developing the software? That's the question of the day, and for some reason it's the question that people are not talking about."

In the aftermath of the SolarWinds hack becoming public in December 2020, the Biden administration issued an executive order stating that "the private sector must adapt to the continuously changing threat environment, ensure its products are built and operate securely, and partner with the federal government to foster a more secure cyberspace.

But Draper said the success of the hack doesn't necessarily mean there were lapses in cybersecurity. "At the time, I'm not sure that there were any standard practices, certainly not that I'm aware of, that would have necessarily provided a high confidence that they would have detected this issue," he said.

Cybersecurity professionals commonly refer to attacks that occur while software is being created and deployed—often in a series of automated processes known as continuous integration/continuous delivery pipeline—as "poisoned pipeline" executions.

The CI/CD pipeline is meant to streamline development and cut down on errors, but it's also an area of vulnerability because attackers can inject malware into the CI/CD pipeline and manipulate the software to execute malicious commands.

"This is a new, up-and-coming attack vector," said Saumil Patel, cofounder and chief technology officer of EchoLayer, a startup that helps companies resolve security vulnerabilities. "Now there's a billion things that happen in the CI/CD pipeline. And that makes this attack vector significantly more broad," Patel said.

He said bad actors are increasingly zeroing in on where the sausage gets made as security professionals become more adept at fending off common hacking techniques, such as manipulating Structured Query Language code so that databases give up their secrets.

"As cybersecurity professionals block certain places, people shift to other places to try and attack them," he said. "CI/CD is just the new frontier."

Cybercriminals also can carry out poisoned pipeline executions by injecting malicious code into third-party code libraries that software developers draw from. The code often is open source and not always maintained.

"Let's say I have a library that I'm using in the CI/CD, or I'm using somebody's service, and they're using a third-party library that is using another library. An attacker could technically change the code in that third library that is going to eventually be executed, because I'm executing something that that library then executes," Patel said.

"Because there's so much more complexity that's being introduced to the CI/CD pipeline these days, and there's a lot more tools and a lot more pieces to it, it makes it a very good place to disguise these kinds of attacks because people are not completely intuitively aware of exactly what is happening."

This summer, application security provider Checkmarx found that hackers had compromised hundreds of repositories on GitHub, a site frequented by software developers looking to store and share code.

Security teams have to be even more vigilant now that engineers are leaning heavily on AI to help them write code. In a survey conducted by the application testing platform SauceLabs, 60% of software developers confessed to using untested code generated by ChatGPT without reviewing it properly.

"So you can see how there is code being merged even in large organizations without proper reviews, or without properly understanding what it does, because AI wrote it and AI does a very good job of writing code," Patel said. "But you can see how this kind of 'letting your guard fall to find me more productive and ship more code' could cause these issues," Patel said.

While cybersecurity professionals are taking precautions, Patel said, they soon won't be able to keep up. "Every single day, there's more code being run in this world than before. So I think that the pace at which this will increase, it's just going to be exponential," he said.

Draper, the CipherStash founder, said that even within a single company code bases can be so large that it's impractical and too expensive for companies to invest their cybersecurity resources into protecting everything. Instead, he said, they need to "have a reasonable understanding of what parts of their system might be interesting to an attacker" and target those.

While public disclosure of additional poisoned pipeline attacks might serve as a potent reminder to the cybersecurity industry to be vigilant at every turn, the unsettling reality is that there may already be similar attacks or even worse ones that just haven't come to light, industry professionals say.

"Such a dramatic outcome is not necessarily the goal of an attacker. They may just be interested in very discreetly sending bits of information they collect from target systems back to their own bases," Draper said.

"So it's not necessarily something that is going to be noticed by many folks. I would argue that it's extremely likely that there are attacks like this going on on a regular basis. And the perpetrators are extremely careful." ■

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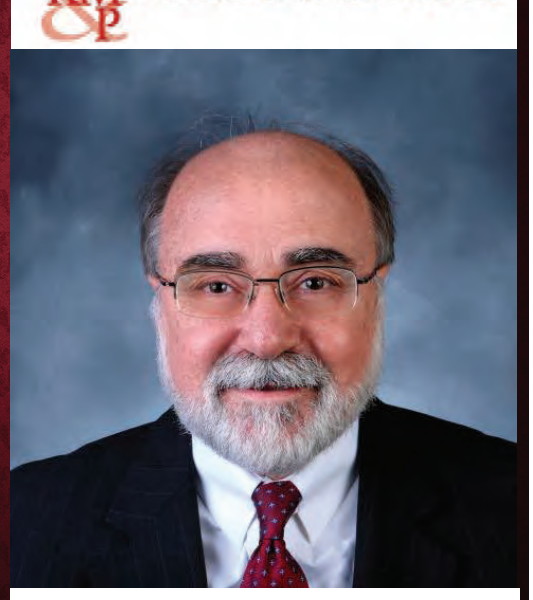

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IN-HOUSE COUNSEL

As AI Hype Train Rolls On, Regulators on High Alert for 'AI Washing'

Continued from page 21

The Federal Trade Commission delivered a similar message back in February, warning companies not to exaggerate what their AI products can do, not to falsely claim their AI-powered products perform better than non-AI alternatives, and not to claim their products use AI when they actually don't.

In a Feb. 27 blog post, Michael Atleson, an attorney with the FTC's Division of Advertising Practices, said AI has become a hot marketing term, "and at the FTC one thing we know about hot marketing terms is that some advertisers won't be able to stop themselves from overusing and abusing them."

Atleson added: "AI is important, and so are the claims you make about it. You don't need a machine to predict what the FTC might do when those claims are unsupported."

Ballard Spahr attorneys Charley Brown and Jonathan Hummel said in a note to clients last week that the FTC has gone so far as to warn companies that it will send in technologists to inspect AI-powered products to check if advertising claims match reality.

In what's believed to be its first AI-related enforcement action, the FTC in August sued West Hollywood, California-based Automators AI alleging it falsely claimed to use AI, and made a litany of other false claims, to lure investors into providing $22 million to fund online stores on Amazon.com and Walmart.com.

The FTC lawsuit says Automators AI told customers they could make more than $10,000 per month in passive income from their stores. In fact, according to the agency, most investors failed to recoup their investments, and many lost their life savings.

PHOTO BY XXXXXXX

Law.com was unable to locate company officials for comment.

According to Samuel Levine, the director of the FTC's Bureau of Consumer Protection, "the defendants preyed on consumers looking to provide for their families with promises of high returns and the use of AI to power such returns."

Among the company's specific claims: "We've recently discovered how to use AI tools for our 1 on 1 Amazon coaching program, helping students achieve over $10,000/month in sales!"

That the SEC is joining the FTC in zeroing in on greenwashing is not surprising given that companies have been falling all over themselves to use the term during quarterly conference calls with analysts, Jones Day attorneys said in a recent client note.

Reuters noted, for instance, that Intel, which is struggling with investor perceptions that it is missing out on the AI boom, used the term 58 times during its second-quarter conference call. That compared with 15 times on its first-quarter call.

"The SEC is likely to pursue investigations looking for material overstatements of AI capabilities or understatements of the risks AI pose to a company's business, with the goal of bringing high-profile 'message' cases to deter others from engaging in such conduct," Jones Day said in its client note.

One reason companies might be tempted to push the envelope on AI claims is that the term is ambiguous, often referring to a variety of tech tools and techniques that use computation to perform tasks such as predictions, decisions or recommendations.

That lack of clarity could embolden companies, leaving them with the perception that they have wiggle room on how far they can go with their claims.

But in its note to clients, Jones Day cautions against gamesmanship.

"Chair Gensler's remarks provide a stark reminder that these disclosures must be fair, accurate, and complete and balanced with adequate risk disclosure, where appropriate," Jones Day said.

"In anticipation of increased SEC scrutiny of such claims, companies may wish to review their disclosure controls and procedures to ensure that they include processes for validating AI claims with subject-matter experts and ensuring that critical information about how AI truly affects a company's business reaches those responsible for public reporting," Jones Day added. ■

Lloyd's of London Prevails in Insurance Claim Over KN95 Masks Detained by Customs Authorities

Continued from page 23

v. Liberty Mutual Fire Insurance, in support of their conception of physical loss, according to the opinion.

However, the appeals court found that Customized Distribution was clearly distinguishable because that case arose from the improper rotation of a beverage on behalf of Campbell Soup Co. Here, the masks had no expiration date that could be tied to their value, according to the opinion. In Wakefern, the plaintiffs operated a group of supermarkets that lost food in a four-day blackout. There, the appeals court held that the term "physical damage," in the context of that insurance policy, was ambiguous.

The appeals court cited *Phibro Animal Health v. Nat'l Union Fire Ins. Co. of Pittsburgh*, where the court said it addressed a similar argument to the one the plaintiff made in this case. Phibro sold an additive for chicken feed that prevented a parasitic disease, according to the opinion. Although the additive successfully prevented disease, it also stunted the growth of the chickens, according to the opinion.

The *Phibro* trial court ruled that the property damage provision of the insurance policy did not apply because the chickens were not physically damaged and were sold for human consumption. But the appeals court reversed holding that the stunted growth of the chickens qualified as physical injury, according to the opinion.

"Again, *Phibro* is distinguishable because the chickens were physically altered and here, the masks were not," the opinion said. "The fact the masks lost value as face coverings during their detention in customs is not analogous to the chickens' loss of value because the loss in value was not based in the physical damage, alteration, or modification of the masks, whereas the physically stunted growth of the chickens caused their loss in value."

The Appellate Division affirmed the trial court's order granting summary judgment to Lloyd's of London.

Counsel to Lloyd's, John Woods of Clyde & Co, admitted pro hac vice from the New York bar, did not immediately respond to a request for comment. Likewise, counsel to Dialectic, Stephen A. Weisbrod of Weisbrod Matteis & Copley, admitted pro hac vice of the District of Columbia, California, Florida, Illinois, New York, and Washington bars, did not respond to a request for comment. ■

Appellate Division Relied on Precedent to Dismiss Tory Burch's COVID-19 Business Interruption Claims

Continued from page 22

the motion and dismissed the plaintiff's complaint with prejudice.

Before the Appellate Division panel, which included Judges Heidi Willis Currier and Lisa A. Firko, Tory Burch argued that the usage limitations imposed by the governor's executive orders constituted a physical loss or damage to its properties. The company further alleged that the policies did provide for coverage under the "Covered Cause of Loss" provision and that the trial court improperly discounted its allegations that COVID-19 caused physical alterations to the insured premises, according to the opinion.

"Plaintiff contends the Contamination Exclusion does not bar coverage because the EOs, not the virus itself, caused the closures," the per curiam opinion said. "Plaintiff also argues that even if the Contamination Exclusion did apply, the doctrine of regulatory estoppel bars defendant from asserting it."

The appellate opinion stated that Tory Burch's arguments are virtually identical to those of the claimants in *Mac Prop. Grp. and The Cake Boutique v. Selective Fire & Cas. Ins.,* a 2022 Appellate Division opinion.

"In *Mac Property*, several businesses sought insurance coverage for lost business based on policies which contained the language 'direct physical loss of or damage to covered property' after the COVID-19 EOs required non-essential businesses to close," the opinion said.

In that case, the appeals court rejected the business owner's claims and held that "direct physical loss of or damage to" covered property was "not so confusing that average policyholders could not understand that coverage extended only to instances where the insured property has suffered a detrimental physical alteration or there was a physical loss of the insured property."

Tory Burch also attempted to rely on a 2002 U.S. Court of Appeals for the Third Circuit opinion in *Port Auth. of N.Y. and N.J. v. Affiliated FM Ins.* However, the opinion stated that *Port Authority* substantially predates *Mac Property* and is not controlling. Tory Burch further contended that the "Contamination Exclusion" in the policies did not apply because the proximate cause of the loss was not COVID-19, but the executive orders. On this point, the appeals court stated that they addressed the same argument in *Mac Property*, where the court held that the executive orders "were only issued to curb the COVID-19 pandemic, making the virus the efficient proximate cause of plaintiffs' losses."

The appeals court also dismissed Tory Burch's claim that it was entitled to discovery and to serve expert reports that would show coronavirus physically altered its property. The court noted that in Mac Property, it found that "the mere presence of the virus on surfaces does not physically alter the property, nor does the existence of airborne particles carrying the virus."

"Thus, based on our holding in *Mac Property*, we reject plaintiff's contention that respiratory particles—droplets and airborne aerosols—are physical substances that could have physically and tangibly altered its insured property," the opinion said. "Since the policies here require physical tangible alteration to property, and it has already been determined that coronavirus on surfaces could not physically alter property, factual and expert discovery would be futile."

The appeals court also disagreed with Tory Burch's contention that the "Virus Deletion Endorsement" removed the words "virus" and "pathogen" from the policy definition of "contamination," and that the "Amendatory Endorsement–Louisiana" supersedes the "Contamination Exclusion."

"Had defendant intended for state-titled endorsements using general prefatory language to ignore geographical boundaries, then it would not use geographic identifiers with conflicting terms between endorsements unless the endorsements were meant to be state-specific," the opinion said.

If the court were to adopt Tory Burch's interpretation, according to the opinion, then it would render the geographic identifier of all the state-title endorsement meaningless. The court also cited a New Jersey district court opinion, *Manhattan Partners v. Am. Guar. and Liab. Ins.*, as having addressed identical language in a COVID-19 insurance action which held that the Louisiana Endorsement is specific to that state.

The court affirmed the trial court ruling in the case.

Counsel to Tory Burch, Stephen M. Orlofsky, Michael Ray Darbee, Lisa M. Campisi and Helen K. Michael of Blank Rome, did not immediately respond to requests for comment. Likewise, counsel to Zurich American, Edward M. Pinter and Jon R. Grabowski of Ford Marrin Esposito Witmeyer & Gleser, and Jeffrey R. Babbin and David R. Roth of Wiggin and Dana, did not respond to requests for comment. ■

New Jersey Law Journal

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APPELLATE DIVISION

PERSONAL INJURY

Court Lacked Personal Jurisdiction Over Out-of-State Archdiocese with Respect to Sexual Abuse Claims

D.T. V. ARCHDIOCESE OF PHILADELPHIA
NO. A-0372-22
DEC. 7, 2023 (DATE DECIDED)
JUDGE GILSON
FOR APPELLANT: Ruxandra M. Laidacker (Kline & Specter, PC, attorneys; Charles L. Becker, David K. Inscho, Lorraine H. Donnelly, and Ruxandra M. Laidacker, on the briefs)
FOR RESPONDENT: Nicholas M. Centrella (Clark Hill PLC, attorneys; Nicholas M. Centrella, on the brief)

Plaintiff appealed the order of the trial court that dismissed his claims against defendant Archdiocese of Philadelphia for lack of personal jurisdiction. Plaintiff alleged that Michael McCarthy, a former Catholic priest, sexually abused him in New Jersey in 1971. At the time of the alleged abuse, McCarthy was serving as a priest with the archdiocese. Prior to 2013, the archdiocese owned two properties in New Jersey that served as vacation homes for the archdiocese's clergy.

Plaintiff's family was introduced to McCarthy in 1971 while McCarthy was serving at a parish in Drexel Hill, Pennsylvania. In July 1971, McCarthy invited plaintiff to travel with him to a home in Margate, New Jersey, that McCarthy occasionally stayed at, where McCarthy allegedly sexually assaulted plaintiff.

In his complaint, plaintiff alleged that the archdiocese became aware of McCarthy's propensity for sexually abusing minors as early as 1986. A later Philadelphia grand jury report identified McCarthy as a perpetrator of sexual abuse in the archdiocese. The grand jury found that the archdiocese had received reports about McCarthy's alleged abuse in 1986, 1991, and 1992. Plaintiff alleged that the archdiocese was vicariously liable for McCarthy's abuse and was directly negligent in hiring and supervising McCarthy.

The archdiocese moved to dismiss plaintiff's complaint for lack of personal jurisdiction, contending that it had no contacts with New Jersey and that McCarthy's alleged abuse fell outside the scope of his service to the archdiocese. The trial court granted the archdiocese's motion, finding that its prior ownership of properties in New Jersey was insufficient to constitute purposeful availment of the benefits of New Jersey, particularly where plaintiff did not allege that he was abused at one of the archdiocese's New Jersey properties. The trial court also held that there was no allegation of deliberate conduct by the archdiocese, as it agreed with the archdiocese that McCarthy had acted unilaterally in allegedly abusing plaintiff.

On appeal, the court affirmed the grant of the archdiocese's motion to dismiss for lack of personal jurisdiction. The court agreed with the trial court that the archdiocese's past ownership of property in New Jersey could not confer general or specific personal jurisdiction. The court further held that the archdiocese's supervision over McCarthy could not establish specific personal jurisdiction with respect to plaintiff's abuse claims as the archdiocese never purposefully availed itself of New Jersey with respect to the alleged abuse.

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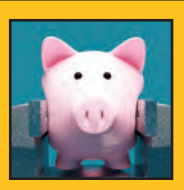

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'Thomson Reuters v. Ross Intelligence': AI Copyright Law and Fair Use on Trial
By Sushila Chanana and Vanessa K. Ing

Illustrations: ©2023 Jupiterimages Corporation and istockphoto.com

CRIMINAL LAW

Luring/Enticing Conviction Did Not Require Child Victim to Travel Away from Home or to Another Place

STATE V. MARTINEZ-MEJIA
NO. A-3472-21
DEC. 7, 2023 (DATE DECIDED)
JUDGE CHASE
FOR APPELLANT: Samuel Clark Carrigan, Assistant Deputy Public Defender (Joseph E. Krakora, Public Defender, attorney; Samuel Clark Carrigan, of counsel and on the briefs)
FOR RESPONDENT: Emily M. M. Pirro, Assistant Prosecutor (John P. McDonald, Somerset County Prosecutor, attorney; Emily M. M. Pirro, of counsel and on the brief)

Defendant appealed his conviction on charges of luring/enticing a child. A multi-jurisdictional

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BANKRUPTCY

Courts Issue Increasing Number of Distressed Real Estate Decisions as Filings Increase

By Andrew C. Kassner
and Joseph N. Argentina Jr.

PHOTO BY HYDRONS VIA ADOBE STOCK

In October we reported on a case involving a distressed real estate bankruptcy. Although interest rates may have peaked, we continue to expect a large volume of distressed real estate debtors to utilize the bankruptcy system over the next couple of years. Today we are reporting on two additional recent decisions regarding distressed real estate bankruptcies, both of which involve rights of real estate lenders against proceeds of collateral other than the real estate itself. One involves the right of a lender to assert a deficiency claim against proceeds of the bankrupt debtor's insurance policy, and the other concerns whether a debtor can use the rents derived from the property that were pledged as additional collateral for the loan.

Lender Permitted to Assert Deficiency Claim Against Insurance Policy

In our first case, the U.S. Bankruptcy Court for the Eastern District of New York issued an opinion on Sept. 21 in I*n re Savva's Restaurant,* Case No.: 22-70382-reg. According to the opinion, a mortgage lender sought to recover under the debtor's insurance policy following destruction of the property in a fire. The borrower filed a bankruptcy case and sold the property in a sale pursuant to a Chapter 11 plan. The lender entered into a stipulation consenting to the sale and agreeing its secured claim would be reduced by the amount of the net proceeds of the sale. The lender then asserted the deficiency amount against the insurance policy.

The insurer had rescinded the policy as a result of the debtor making misrepresentations in the insurance application. As is typically the case, the lender was listed as an additional insured and loss payee under the policy. The insurer argued that the lender could not assert a claim under the policy because rescission of the policy as to the insured also rescinds the policy for additional insureds. The bankruptcy court disagreed. The court reasoned that while controlling state law provided an additional insured's right to collect is derivative of the primary insured's continuing right to coverage, the lender was also a loss payee under the policy and a loss payee under an insurance policy has an independent contract with the insurer that is not dependent on an enforceable agreement between the insurer and the primary named insured.

The insurer also argued that under controlling state law, when a lender successfully conducts a foreclosure sale and the sale proceeds are insufficient to pay the debt in full, the lender must bring an action to set the amount of the deficiency claim under state law, and failure to do so waives the deficiency claim. The lender in this case did not bring a deficiency action, and the insurer argued as a result the lender had waived any deficiency claim, so there was no insurable interest subject to coverage. The court rejected that argument as well, holding federal bankruptcy law and process preempts state court foreclosure requirements. Here, the court had approved a stipulation between the lender and the debtor that provided for the deficiency claim, and as such, the lender retained an insurable interest subject to the policy.

Borrower Denied Use of Cash Collateral Because Lender's Interest in Assigned Rents Was Not Adequately Protected

The second case involves *In re Rosario,* Case No. 23-02291 MAG11, where the U.S. Bankruptcy Court for the District of Puerto Rico issued an opinion on Nov. 9 denying a debtor's request over the lender's objection to use rents from leases in a commercial building that were pledged as collateral for a real estate loan to maintain the premises. This was a single asset real estate case, and the debtor's only source of income was approximately $9,000 in monthly rent generated by the property. The debtor's pre-petition secured lender held valid liens against the property, as well as the rents generated at the property to the lender as additional security for the loan.

In its cash collateral motion, the debtor proposed to use $6,000 of the monthly rental income to maintain the premises, and remit the remaining $3,000 to the lender. The debtor argued that using rents to maintain the premises would provide adequate protection of the lender's security interest. The debtor also offered to adequately protect the lender's interests by granting replacement liens in future rents generated by the property. The debtor asserted that the rents were its only source of income, and without use of the rents, it would have to cease operations.

The lender objected to the debtor's use of cash collateral by arguing the debtor had grossly mismanaged its business and had been embroiled with litigation with the lender for over a decade, during which time the lender had not received any loan payments. Moreover, the debtor was confusing the lender's right to adequate protection in the rents with its right to adequate protection in the underlying premises. Finally, the lender asserted that replacement liens in future rents could not provide adequate protection because the lender already had a lien in those rents as well.

The bankruptcy court began its analysis by noting the definition of cash collateral in Section 363 of the Bankruptcy Code includes rents and other proceeds and profits of property, as provided in Section 552 of the Bankruptcy Code. The court noted that Section 552 governs the post-petition extent of security interests granted prior to the bankruptcy filing. The general rule in Section 552(a) is that property acquired post-petition becomes property of the estate free of any pre-petition security interest. However, Section 552(b) provides an exception to the general rule. Under Section 552(b), if a debtor and creditor entered into a pre-petition security agreement that created a security interest in property and its rents, then the security interest extends to rents received after the commencement of the case. The court found that the lender had established the existence of a pre-petition security agreement that included the property and rents, and the debtor did not challenge the validity of the lender's perfected security interests.

The opinion went on to hold since the lender held a perfected security interest in post-petition rents, in order to use the rents, the debtor was required to provide adequate protection to the lender pursuant to Section 363(e). Section 361 of the bankruptcy code provides examples of adequate protection, including cash payments or replacement liens and other forms of adequate protection that provide the secured party with the "indubitable equivalent" of its interest in the property.

The debtor proposed to use the rents to maintain the property, thereby protecting the lender's interest. However, the court reasoned that the lender's interest in the rents was separate and distinct from the lender's interest in the property, and the debtor's proposal to use the rents to maintain the premises failed to adequately protect the lender's interest in the rents. The opinion states when there has been an assignment of rents, a debtor's diversion of any portion of the rents diminishes the lender's interest in the rent portion of the security interest, and here the replacement liens did not provide adequate protection because the lender already had liens in future rents. Finally, while the court noted that the debtor had a compelling need to use the rents, that need could not circumvent the clear provisions of the bankruptcy code. The court denied the debtor's request to use cash collateral.

Conclusion

These two decisions are reminders that while the primary asset in distressed real estate bankruptcies is the debtor's real estate, debtors and lenders must also focus on the use and disposition of other supporting collateral, and the effect, if any, it will have on the outcome of the bankruptcy case and disposition of creditor claims. There have been hundreds of decisions over the years adjudicating the ability of a debtor to use cash collateral to operate the properties in bankruptcy, and the court's decision in Rosario is a reminder that approval of such use should not be taken for granted by the debtor just because the debtor has no other source of income. We will report more on distressed real estate issues in the coming months. ■

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'Thomson Reuters v. Ross Intelligence': AI Copyright Law and Fair Use on Trial

By Sushila Chanana and Vanessa K. Ing

PHOTO BY IURIIMOTOV VIA ADOBE STOCK

In Sept. 25, Judge Stephanos Bibas (sitting by designation in the District of Delaware), determined that fact questions surrounding issues of fair use and tortious interference required a jury to decide media conglomerate Thomson Reuters's lawsuit against Ross Intelligence, a legal-research artificial intelligence startup. Thomson Reuters, which owns legal research platform WestLaw, alleges that Ross infringed its copyright by illegally copying WestLaw's short summaries of points of law that appear in judicial opinions (i.e., headnotes).

In recent months, technology companies have weathered lawsuits from authors, artists, programmers, and more traditional media companies. These plaintiffs argue that the use of their work to train generative AI software is copyright infringement. For example, at least two groups of authors allege that large technology companies used their work to train large language model (LLM) chatbots. In another instance, artists allege that Stability AI used the artists' works to train Stability AI's text-to-image generator to create AI-generated images "in the style of" those artists, referring to works that others would accept as works created by those artists. Similarly, Getty Images has initiated a copyright infringement suit against Stability AI for using Getty's photos to train and create AI-generated images.

In yet another lawsuit, a programmer and lawyer allege that their copyrighted source code was scraped to train an AI code-generator. A common defense for these technology companies is that the use of existing writing, art, photography and code to train generative AI systems is fair use of copyrighted work.

The court's unwillingness to choose between these dueling positions has implications for lawsuits challenging the use of copyrighted material to train generative AI systems. Indeed, as noted above, there are currently other technology companies defending AI copyright suits by relying on the fair use defense.

Case Background (Using Legal Memos as Machine-Learning Training Data)

WestLaw has a registered copyright on "original and revised text and compilation of legal material," which includes its headnotes and key number system. Ross Intelligence, a legal research startup, sought to create a search engine that would produce direct quotations from judicial opinions upon entry of a natural language question. After unsuccessfully attempting to acquire a license to use WestLaw's legal material to train its search engine, Ross Intelligence retained a third party to create memos with legal questions and answers; that third party then did so using a text-scraping bot. Ross then converted the memos into usable machine-learning training data. Thomson Reuters contends that the 25,000 questions were essentially WestLaw headnotes. Ross admits that the headnotes "influenced" the questions but that lawyers ultimately drafted them.

Relying on 2,830 questions that it contended Ross's own expert admitted were copied, Thomson Reuters moved for summary judgment on its copyright infringement claim and its tortious interference with contract claims. Both sides moved for summary judgment on Ross's fair-use defense, and Ross moved for summary judgment on its preemption defense to Thomson Reuters's tortious interference claims.

Bibas denied Thomson Reuters' motion for summary judgment on its copyright infringement claim, finding that a dispute of fact existed over how closely WestLaw's headnotes resemble uncopyrightable judicial opinions, as well as over whether Ross's questions were substantially similar to WestLaw's headnotes. Bibas also denied both sides' motions for summary judgment on Ross's fair use defense. On Thomson Reuters' tortious interference claims, Bibas determined that while one claim was preempted, the other two must go to a jury. Finally, Bibas entered summary judgment for Thomson Reuters on a number of Ross' affirmative defenses.

Key Takeaway Concerning Fair Use

Critically, in denying the parties' cross-motions for summary judgment on Ross' fair use defense, the court concluded that the purpose and character of Ross's use of WestLaw's headnotes must be determined by contested facts. Ross had argued that intermediate copying caselaw is applicable and supports a finding of fair use. Such caselaw holds that users who copy material to discover unprotectable information or as a "minor step" in creating a new product are engaging in fair use. However, the court reasoned that whether such case law was applicable depended on a disputed fact: Did Ross' AI only use WestLaw headnotes to learn language patterns such that its search engine can produce judicial opinion quotes, or does its AI use the headnotes to replicate the creative expression of WestLaw's attorney editors in drafting those headnotes?

The court opined that if Ross's AI only studied language patterns in WestLaw headnotes to learn how to produce judicial opinion quotes, which are unprotected, then such use was "transformative." (As the court later noted, in assessing the substantiality of Ross's copying, "if Ross's AI works the way that it says, it is likely fair use because it produces only the opinion, not the original expression.") However, the court acknowledged that if Thomson Reuters is correct that Ross trained its AI on WestLaw headnotes in order to replicate the creative drafting of those headnotes, then Ross's copying was not merely an "intermediate" "minor step" toward a transformative use. Importantly, the court observed that "how Ross's AI works and what output it produces remain disputed."

The court's unwillingness to choose between these dueling positions has implications for lawsuits challenging the use of copyrighted material to train generative AI systems. Indeed, as noted above, there are currently other technology companies defending AI copyright suits by relying on the fair use defense. Many of these technology companies have submitted public comments in response to the U.S. Copyright Office's August 2023 notice of inquiry on copyright and AI, staking out a position that the use of copyrighted materials is for analysis of statistical relationships (e.g., between words and how they are used in writing), much like the act of reading a book and learning the facts and ideas within it.

In short, many more jury trials will be required if judges must refrain from deciding whether the purpose of a generative AI system's use of copyrighted material to learn language patterns is to produce a new product or to replicate the creative expression of the copyrighted material. Here, the output of Ross' AI remains disputed in part because its output so closely resembles the copied WestLaw headnotes (which themselves closely resemble the judicial opinions analyzed).

However, perhaps judges may be more inclined to decide the purpose of a generative AI system's use of copyrighted material to conduct statistical analysis when the output of the AI is markedly different, like the amalgamations of a text-to-image generator. In any case, companies developing generative AI systems, particularly those that train on material scraped from the internet, should be careful to emphasize (and consistently document) that the purpose of their systems' machine learning is not to copy the creative expression of the scraped material, but that the training is an intermediate minor step toward creating something wholly new. ■

Sushila Chanana is a partner at Farella Braun + Martel and co-leads Farella's platforms initiative and privacy and cybersecurity practice. Vanessa K. Ing is a business litigation associate at the firm.

STATE DIGESTS

Continued from page 37

law enforcement task force was established to conduct undercover operations investigating adults who used the internet to lure children into sexual activity. Special Agent Cedro Cruz of the Department of Homeland Security served as a "chatter" posing as a 14-year-old girl named "Angela." Cruz created a profile for Angela on a social networking and dating application, using a birthdate reflecting that Angela was 18 years old to circumvent the application's age restrictions. Angela's profile photos were of a female border patrol officer that were altered to make Angela appear younger.

Defendant contact Angela's profile and began a discussion with Cruz. After Cruz revealed Angela's true age, defendant began sending nude photos of himself and attempting to engage in explicit sexual discussions with Angela, including stating that he wanted to perform oral sex on her. When Angela stated that she would be home alone, defendant offered to meet her at her home. Defendant was given an address and a phone number associated with Cruz's undercover phone. Defendant called the phone number, with a female detective from the New Jersey State Police providing Angela's voice. Defendant took an Uber to the address, where he was arrested and found in possession of a cell phone, a receipt with the address, cash, and condoms.

On appeal from his conviction, defendant argued that the state failed to prove every element of the offense because he did not attempt to lure a child to travel anywhere. The court rejected defendant's arguments and affirmed his conviction.

The court ruled that the language of the luring/enticing statute also criminalized traveling to a child's home to engage in sexual activity with that trial. The court held that a conviction did not require having a child travel to another place. The court noted that the legislature had gradually been expanding the scope of the luring statute to prohibit additional types of conduct aimed at engaging in sexual contact with a child. The court ruled that defendant's conduct in ensuring that a child would be home alone so he could engage in sexual activity with her was the type of conduct prohibited by the statue.

SUPREME COURT

EMPLOYMENT BENEFITS

SHBC Correctly Discontinued Fully Paid Health Benefits to Retiree Who Was Never Exempt from Contribution Requirement

MEYERS V. STATE HEALTH BENEFITS COMM'N
NO. A-27-22 (087633)
DEC. 14, 2023 (DATE DECIDED)
PER CURIAM
FOR APPELLANT: Richard M. Pescatore (The Law Offices of Richard M. Pescatore, attorneys; Richard M. Pescatore, on the briefs)
FOR RESPONDENT: Donna Arons, Assistant Attorney General (Matthew J. Platkin, Attorney General, attorney; Donna Arons and Melissa H. Raksa, Assistant Attorney General, of counsel, and Alison Keating, Deputy Attorney General, on the briefs)

Petitioner appealed the judgment of the appellate division that affirmed respondent State Health Benefits Commission's decision to discontinue petitioner's fully paid health insurance coverage. In 2011, the legislature amended the state pension laws to create a requirement for retired public employees to contribute to their health care coverage costs through withholdings from their pension payments. However, the legislature exempted employees with 20-plus years of creditable service time in state or local retirement systems on the effective date of the amendment from this contribution requirement. On the effective date of the amendment, petitioner, a State Police officer, had 17 years and nine months of creditable service time.

Upon his retirement from the state police, petitioner was offered retirement health benefits with no contribution obligation. In 2017, the division of pensions recognized the error and discontinued petitioner's fully paid health care coverage. The division began deducting contributions from petitioner's pension payments.

Petitioner appealed the discontinuation of his fully paid health care coverage. An ALJ initially reversed the discontinuation. Concluding that an injustice had occurred, the ALJ invoked the doctrine of equitable estoppel to bar the SHBC from deducting health care contributions from petitioner's pension payments. However, the SHBC rejected the ALJ's decision. Petitioner appealed to the appellate division, which affirmed the SHBC.

On appeal, the court also affirmed. The court agreed with the appellate division that petitioner's fully paid health care coverage was properly discontinued because he was never eligible for the exemption from contribution requirements. The court held that it was unnecessary for the ALJ to have reached the issue of equitable estoppel because the government cannot be estopped from refusing to take an action it was never authorized to take, even if it had previously undertaken that action in error. Thus, the court held that the initial grant of fully paid health benefits to petitioner was ultra vires.

SUPREME COURT

CRIMINAL LAW

Amendment to Sexual Assault Statute of Limitations Creating Exceptions for DNA/Fingerprint Cases Did Not Apply Retroactively

STATE V. ROSADO
NO. A-53-22 (088067)
DEC. 13, 2023 (DATE DECIDED)
PER CURIAM
FOR APPELLANT: Gretchen A. Pickering, Deputy First Assistant Prosecutor (Jeffrey H. Sutherland, Cape May County Prosecutor, attorney; Gretchen A. Pickering, of counsel and on the briefs)
FOR RESPONDENT: Morgan A. Birck, Assistant Deputy Public Defender (Joseph E. Krakora, Public Defender, attorney; Morgan A. Birck and Eric R. Shenkus, Deputy Public Defender, of counsel and on the briefs)

The state appealed the judgment of the appellate division, which remanded the case with instructions for the trial court to dismiss the criminal complaint with prejudice. The victim, S.N., was found dead in Wildwood City in 1990. Vaginal swabs and fingernail scrapings contained an unknown DNA profile. No one was charged with S.N.'s assault and murder for over 30 years. In 2018, the unknown DNA profile was sent to a different forensic lab, which identified defendant as a person of interest. A subsequent DNA test in 2021 indicated a high probability that defendant matched the unknown DNA profile. Defendant was accordingly charged with sexual assault in April 2022.

Defendant moved to dismiss the criminal complaint as untimely under the five-year statute of limitations in effect at the time of the alleged assault. The trial court denied defendant's motion, ruling that the statute of limitations did not begin to run until police obtained a DNA sample from defendant in 2021 to match against the unknown DNA profile. The trial court further ruled that the 2002 amendment to the statute of limitations, which carved out an exception for cases involving DNA or fingerprint evidence, did not have the effect of reviving an expired prosecution in defendant's case and thus did not violate his Ex Post Facto Clause rights.

However, the appellate division reversed and remanded for dismissal of the case, holding that the statute of limitations began to run when the offense occurred. The appellate division noted that the legislature had amended the statute of limitations for sexual assault twice – once in 1996 to eliminate the limitations period and again in 2002 to carve out exceptions for cases involving DNA or fingerprint evidence. The court noted that the state had conceded that the 1996 amendment did not apply; the court further ruled that the 2002 amendment also did not apply because there was no language in the amendment indicating the legislature's intent that it retroactively apply to offenses that occurred before the effective date. Instead, the court found that the amendment merely stated that it was to go into effect "immediately." The appellate division further noted that the Ex Post Facto clause generally barred extending the time for prosecution in cases where the limitations period had already expired.

On appeal, the court affirmed for the reasons expressed by the appellate division.

OPINIONS APPROVED FOR PUBLICATION

DECEMBER 14 - DECEMBER 19, 2023

STATE COURT CASES

EMPLOYMENT BENEFITS

Meyers v. State Health Benefits Comm'n, N.J. (per curiam) (11 pp.) Petitioner appealed the discontinuation of his fully paid health insurance coverage. In 2011, the legislature added a requirement for each public employee to contribute, through withholding from monthly pension benefits, toward the cost of health insurance. However, the legislature also created an exemption from contribution obligations for employees with 20 or more years of creditable service in state or local retirement systems on the effective date of the amendment. On the date of the amendment, petitioner had 17 years and nine months of creditable service time. However, upon his retirement, petitioner was offered retiree health benefits with no contribution obligation. In 2017, the division of pensions and benefits discontinued petitioner's fully paid health insurance coverage and began deducting contributions from petitioner's pension payment. Petitioner appealed, and an ALJ invoked the doctrine of equitable estoppel to bar deductions from petitioner's pension benefits. However, the State Health Benefits Commission rejected the ALJ's decision. The appellate division affirmed. On appeal, the court also affirmed, agreeing that petitioner was never eligible for exemption from health insurance contributions and thus it was proper to correct the erroneous fully paid health insurance coverage.

UNPUBLISHED OPINIONS

The summaries below have been prepared by* Law Journal *editors and not by the courts. The decisions have not been and might never be approved for publication. Under N.J. Court Rule 1:36-3, an unpublished state court opinion may be cited in briefs and all other court papers only if "the court and all other parties are served with a copy of the opinion and of all contrary unpublished opinions known to counsel." There is no federal court rule restricting citation of unpublished cases.

For redeliveries of your Daily Decision Email Alert or to subscribe to this service, please contact customercare@alm.com.

BUSINESS TORTS

Schwab v. Blay, N.J. Super. App. Div. (per curiam) (25 pp.) Plaintiffs appealed trial court's order granting summary judgment in favor of individual defendants in plaintiffs' defamation suit. Plaintiff believed certain persons were associated with websites that published derogatory statements and inferences that plaintiff participated in corrupt business dealings with a township committeeman. Plaintiff and his business sued defendants, along with another individual defendant who retweeted the content on his Twitter account, alleging defamation and other torts. After discovery, defendants each sought summary judgment, which trial court granted. Plaintiffs appealed. Court affirmed. As to one defendant, trial court applied the actual malice defamation standard because the allegedly defamatory statements implicated matters of legitimate public concern regarding corrupt business dealings between the township and plaintiff. Plaintiffs argued they had to meet the heightened standard of clear and convincing evidence only as to actual malice. Court disagreed, noting that a plaintiff's burden of proof for each element of defamation is by clear and convincing evidence. Plaintiffs also failed to demonstrate a material issue of fact as to whether the individual defendant was the person responsible for publishing articles on the websites of contention. None of the evidence proffered by plaintiffs established that defendant authored or published the defamatory materials. In addition, defendant provided a sworn statement that he did not author or publish the articles. Plaintiffs offered no evidence to the contrary. Plaintiffs also failed to subpoena the websites' domain registrars or hosts to gain information about the identity of associated persons. Trial court did not err in granting summary judgment in favor of defendant. Plaintiff similarly offered merely meager evidence that another individual defendant published articles on the disputed websites, and also failed to offer evidence of damages associated with that defendant, with the result that trial court did not err in granting that defendant's motion for summary judgment. As to the defendant who published commentary on his Twitter account, trial court correctly found that plaintiffs failed to demonstrate any of the remarks were made with actual malice. The individual defendant testified he believed his statements were true based on rumors in the township that plaintiff was involved in corrupt real estate deals. Absent evidence that would have led him to question the information's accuracy, plaintiffs could not show actual malice.

CIVIL PROCEDURE | PERSONAL INJURY

Dye v. Wildstein, N.J. Super. App. Div. (per curiam) (6 pp.) Plaintiff appealed trial court's order denying his motion for reconsideration of its order dismissing his defamation complaint. Pro se plaintiff sued defendants, an online news source and its editor, for defamation. Defendants moved to dismiss. Plaintiff opposed the motion but did not address the merits of defendants' arguments. Instead, plaintiff complained of an inability to focus on the matter due to personal issues, and he sought an extension of time to obtain counsel. Trial court granted an extension, but plaintiff twice failed to appear for scheduled oral argument. After waiting for an additional period, trial court concluded the complaint had to be dismissed on statute of limitations grounds and due to problems associated with service of the complaint. Plaintiff filed an untimely motion for reconsideration that did not include substantive argument. Upon hearing, plaintiff denied receiving trial court's emails regarding scheduling, but he also admitted he did not always check or read his emails. Plaintiff did not offer argument regarding the substance of trial court's decision, complaining instead that he had not been able to retain an attorney. Trial court denied plaintiff's motion for reconsideration, observing that plaintiff had full opportunity to respond to defendants' motion to dismiss and did not identify any error that would warrant reconsideration of trial court's order granting the motion. Trial court noted, too, that plaintiff's motion for reconsideration was not timely filed. Plaintiff appealed. Court affirmed. Court found no basis to disturb trial court's well-reasoned decision to deny plaintiff's motion for reconsideration. Plaintiff was afforded ample opportunity to argue in opposition to the merits of defendants' motion to dismiss his complaint, but he failed to do so. On appeal, plaintiff still offered no basis for overturning trial court's decision.

COMMERCIAL LAW

Triffin v. 3 Gigioni, Inc., N.J. Super. App. Div. (per curiam) (12 pp.) Plaintiff appealed the dismissal of his complaint. Business defendant employed defendant Rivera as a cook and issued a check to Rivera. Rivers deposited the check in an account in a bank and also cashed the check with a check cashing company. Check cashing company deposited the check which was dishonored and returned as a "Duplicate." Defendants' copy of the check had a May 23, 2019 "Posting Date," printed information confirmed the bank and account numbers and the back of the check had a signature and the printed phrase "For Deposit Only -JPMC." Plaintiff's copy of the back of the check had a printed date of May 24, 2019 and stamps stating "For deposit only to Friendly CC Corp" and the front of the check was stamped "DUPLICATE." Plaintiff purchased check cashing company's rights in connection with the check and argued check cashing company had no knowledge of any defenses by any party when it cashed the check and thus, became a holder in due course and was entitled to the amount of the check plus interest and costs. Trial court found defendants established a defense pursuant to N.J.S.A. 12A:3-305(a)(2). Plaintiff argued defendant's copy of the check was "non-compliant" under 12 U.S.C. § 5003. Court disagreed and found record contained sufficient evidence to support trial judge's findings.

CONTRACTS

Skelly v. Hackensack Univ. Med. Ctr. N. at Pascack Valley, LLC, N.J. Super. App. Div. (per curiam) (15 pp.) Plaintiff doctor appealed grant of summary judgment to hospital in his action asserting tortious interference with contract and with prospective economic advantage. Plaintiff was employed by an entity, PAGNY, that assigned doctors to hospital positions at New York City facilities from 2002 to 2015. Doctor initiated visits to patients' homes to test their drinking water while treating patients affected by a Legionnaires' disease outbreak. He did so without authorization or supervision and was placed on administrative leave for violating HIPAA. PAGNY terminated doctor for "gross misconduct." Doctor submitted his application for privileges at defendant in 2018. On the application, he stated he had not been subject to disciplinary action and did not list PAGNY as a prior employer. Doctor's omission of PAGNY impeded the credential committee's verification process and, after committee obtained the information, it tabled his application as "not a good fit." Committee received new information in 2019 and voted to deny the application. However, legal department approved a one-year staff appointment but the available position was already filled. Trial court found hospital had a legitimate reason to delay the credentialing process and there was no evidence of an intent to interfere with his employment contract. Doctor argued trial court failed to properly weigh the evidence. Court found trial court did not err.

CONTRACTS

The Law Office of Rajeh A. Saadeh, LLC v. Grau, N.J. Super. App. Div. (per curiam) (13 pp.) Plaintiff appealed trial court's judgment to the extent it denied plaintiff's application for the costs of collection and attorney fees incurred to collect fees for legal services. Defendant retained plaintiff for representation in a divorce action. Plaintiff's fee agreement stated that if plaintiff were required to use legal process to collect outstanding fees, it could recover the costs of collection, including attorney fees, plus reasonable expenses. Defendant later accrued outstanding legal fees, leading plaintiff to withdraw as defendant's counsel. After unsuccessful negotiations regarding full payment of plaintiff's fees, plaintiff sent defendant a fee arbitration demand that included the final amount that she owed. Some two months later, plaintiff filed suit to recover the remaining debt owed by defendant, along with interest, costs of suit, costs of collection and attorney's fees. Upon trial, trial court found in favor of plaintiff. Trial court denied plaintiff recovery of costs and attorney fees, however, concluding that the collection action was necessary only because of poor business practices by plaintiff that created complications regarding defendant's payment of her bill. Plaintiff appealed. Court reversed and remanded for further proceedings. Reviewing analogous case authority, court concluded that defendant executed a retainer agreement providing that she would be responsible for the costs of collection and a reasonable attorney fee in the event plaintiff was forced to take legal action to collect unpaid fees. Court found no support in the record for trial court's conclusion that an award of collection costs and attorney fees would be unreasonable because plaintiff's business practices resulted in unnecessary litigation against defendant. Court noted in particular that plaintiff sent a fee arbitration notice to defendant that stated her final balance, and plaintiff then waited over two months before filing suit. Court found nothing unreasonable in a law firm filing suit to collect fees under a retainer agreement in those circumstances.

CORPORATE ENTITIES

Furey v. Ragan, N.J. Super. App. Div. (per curiam) (24 pp.) Plaintiff appealed the enforcement of a settlement agreement that resolved shareholder litigation over a company dissolution. Plaintiff and defendant were founding shareholders in an engineering firm and each held a 50 percent interest. Plaintiff filed a complaint alleging corporate deadlock in 2019. Parties reached a tentative settlement agreement that provided defendant would sell his stock to plaintiff, be paid $300,000 plus any accounts receivable attributable to his client base and resign and leave plaintiff as sole owner. The settlement never occurred, parties continued to argue over the accounts receivable payment and they both moved to enforce settlement. Before argument on the motion, plaintiff informed defendant he intended to cease company operations. Trial court rejected plaintiff's interpretation of the calculation of defendant's accounts receivables, ordered parties to execute the stock purchase agreement and ordered plaintiff to pay defendant. Plaintiff failed to comply and defendant moved to enforce the order. Plaintiff again failed to comply, defendant again moved for enforcement and trial court again issued an order. Court found trial court correctly found plaintiff's actions caused a de facto dissolution of company, that plaintiff was estopped from arguing a SPA was necessary, correctly calculated the accounts receivable and properly granted attorney fees for plaintiff's bad faith and willful and improper conduct.

EMPLOYMENT BENEFITS

Behar v. Bd. of Tr., Pub. Emps.' Ret. Sys., N.J. Super. App. Div. (per curiam) (15 pp.) Petitioner appealed respondent board's administrative determination that petitioner's post-retirement full-time employment with the Division of Law violated Public Employees' Retirement System regulations and requiring him to reimburse retirement benefits he received. In March 2017, petitioner applied for a special retirement service. On his application, petitioner certified that he had made no pre-arrangement to return to public employment and understood the terms and conditions of his retirement. When his retirement was approved, petitioner was advised of his obligation to notify any future employers of his retirement benefits and the fact that his benefits could be suspended or cancelled if he obtained future employment. In August 2021, petitioner applied for a position with the DOL, which was also covered by PERS. During his interview, petitioner stated that he had retired from the Division of Criminal Justice and was receiving a state pension. Petitioner began working 35 hours per week for the DOL starting in January 2022. PERS investigated petitioner's employment and concluded that he was obligated to re-enroll in PERS and had to repay any retirement benefits he received after his enrollment. Petitioner received over $9,000 in PERS benefits before leaving employment with the DOL and having his pension benefits reinstated. PERS sought reimbursement of those benefits. Petitioner appealed, blaming the division for not contacting him before he started employment with the DOL. However, the board upheld the reimbursement determination. On appeal, the court affirmed, ruling that the board had a statutory obligation to suspend petitioner's pension benefits because he obtained employment that made him eligible to be a member of PERS.

EMPLOYMENT BENEFITS

Duran v. Bd. of Tr., Police & Firemen's Ret. Sys., N.J. Super. App. Div. (per curiam) (9 pp.) Petitioner appealed respondent's denial of his application for accidental disability retirement benefits. Petitioner worked as a police officer for a university police department and was a liaison officer for the local city police department. While working with the city police, he attempted to apprehend a fleeing suspect who collided with him and knocked him to the pavement. Petitioner suffered leg injuries that required surgery. Petitioner filed for accidental and ordinary disability benefits. Respondent found petitioner totally and permanently disabled and granted ordinary disability. Respondent

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denied accidental disability benefits because petitioner's injury was due to the performance of his regular and assigned job duties. Petitioner appealed the denial of accidental disability benefits. An administrative law judge conducted a hearing and affirmed. Respondent adopted ALJ's determination and denied petitioner's application for accidental disability retirement benefits. Petitioner appealed. Court affirmed. Court concluded petitioner did not suffer his injury because of an "undesigned and unexpected" event, and there was sufficient evidence to support a finding that there was no unexpected happening. Respondent's determination that petitioner's injury was not the direct result of a traumatic event that was undesigned and unexpected was supported by credible evidence and was not arbitrary, capricious, or unreasonable. Petitioner acknowledged that chasing suspects was part of his job and was typically part of his regular or assigned duties. Thus petitioner's injury, while traumatic, was not undesigned and unexpected.

EMPLOYMENT LITIGATION

Noriega v. Bd. of Tr., Pub. Employees' Ret. Sys., N.J. Super. App. Div. (per curiam) (15 pp.) Petitioner appealed denial of her application for accidental disability retirement LITIGATION. Petitioner worked for county as a motor vehicle operator and applied for LITIGATION in 2015 identifying a 2012 motor vehicle accident as the traumatic cause of her disability. Board granted ordinary disability retirement but denied accidental disability retirement finding her disability was the result of a pre-existing condition. Petitioner appealed but before the OAL hearing occurred, she requested to amend her application to include an additional event, a passenger assault in 2004. Board denied the request to amend as inconsistent with her position in her pending appeal. Petitioner appealed the denial of her request to amend and Board did not respond. ALJ denied her request to amend her application at the hearing. Petitioner's neurosurgeon testified she was permanently and totally disabled, the 2012 motor vehicle accident was a substantial cause and the 2004 incident also played a role. Board's orthopedic surgeon opined petitioner's disability was based on previous degenerative changes in her neck and back. ALJ affirmed board's denial. Petitioner argued Board erred in denying her request to amend and in failing to merge her appeal of the denial of her application and of her request to amend. Court affirmed finding no abuse of discretion in Board's decision to deny amendment, accidental disability retirement LITIGATION or to merge the appeals.

EMPLOYMENT LITIGATION

Smith v. Bd. of Tr., Police & Firemen's Ret. Sys., N.J. Super. App. Div. (per curiam) (18 pp.) Petitioner appealed respondent's final agency decision denying her application for accidental disability retirement benefits. Petitioner worked as a police officer for a county police department when she injured her right arm while assisting others in restraining an irate individual. The injury required arthroscopic treatment of petitioner's shoulder, after which petitioner experienced continued shoulder pain. A functional capacity examination indicated petitioner could perform light to medium work not involving heavy lifting. Petitioner's physician advised that petitioner could not return to work as a police officer because her job duties included restraining suspects weighing two hundred pounds or more. Petitioner applied for accidental disability retirement benefits. Respondent requested an independent medical examination of petitioner. The IME concluded petitioner was not totally and permanently disabled from the normal duties of her job as a police officer and that she had suffered no total and permanent disability for any reason, including the incident that she claimed was the basis of her injury. Respondent denied petitioner's application in keeping with the IME's conclusions and an administrative law judge affirmed. Respondent affirmed the denial. Petitioner appealed. Court affirmed. ALJ's role was to determine which medical expert's opinion was more credible based on the evidence of record. Here, ALJ thoroughly summarized the medical testimony of plaintiff's physician and the IME, painstakingly explaining why she credited the IME's testimony as more persuasive and credible. The record contained more than sufficient evidence for respondent to adopt ALJ's decision concluding petitioner failed to satisfy her burden of proving she suffered a total and permanent disability.

EMPLOYMENT LITIGATION

State v. Lavin, N.J. Super. App. Div. (per curiam) (25 pp.) Plaintiff appealed the denial of his petition for post-conviction relief and the decision finding him ineligible to apply for accidental disability retirement benefits. Plaintiff, former sergeant in the county sheriff's office, was assisting with security at an event. Several women were arrested for disorderly conduct and plaintiff allegedly sprayed one woman in the face with pepper spray while she was handcuffed. He also allegedly told two subordinates to match their reports to his which falsely stated the woman was not handcuffed and was struggling when she was pepper sprayed. He was charged with official misconduct and admitted into the PTI program without a guilty plea, subject to his resigning his position. Plaintiff resigned, completed his PTI program and the indictment was dismissed. Plaintiff applied for accidental disability retirement benefits. Board denied his request because he resigned as part of his PTI terms and agreed not to seek future employment with the county. Plaintiff appealed. While the pension proceedings were ongoing, plaintiff filed a PCR petition seeking to vacate his entry into PTI based on "newly discovered evidence" – allegedly withheld internal affairs and disciplinary records of potential witnesses. PCR court found the probative value of the allegedly withheld documents was based on supposition and documents would not have been admissible at trial. Court found plaintiff's PCR claims were not cognizable because the charges were dismissed and found Cardinale v. Bd. of Trustees, 458 N.J. Super. 260, controlled his accidental disability retirement application.

ENVIRONMENTAL LAW

Twp. of W. Caldwell v. Carant Ltd. P'ship, N.J. Super. App. Div. (per curiam) (29 pp.) In consolidated appeals, township appealed the grant of summary judgment to defendants in township's action under the Environmental Rights Act and township challenged the denial of their counterclaim in defendants' prerogative writs action. Defendant owned two lots that were in a "flood fringe" section of a flood hazard area. Planning board approved construction of a new building on the property, subject to certain conditions. Department of Environmental Protection approved an FHA individual permit for grading and construction. Site work began in 2016. In 2017, township health officer accused defendant of illegally placing recycled asphalt millings on the property and filed a complaint with the DEP. DEP found no land use violations. Township construction official denied defendant's application for a foundation permit alleging defendant deposited undocumented asphalt millings as "fill." Defendant hired a licensed site remediation professional who concluded there was no soil contamination. Township rejected expert's report. Township filed a complaint under the ERA. Defendant filed a prerogative writs action asserting arbitrary denial of the construction permit. Trial court granted summary judgment to defendants in the ERA action but denied counsel fees. Another trial judge dismissed defendants' prerogative writs complaint. On reconsideration, trial judge vacated that order. Court found no basis to disturb any of the challenged orders.

FAMILY LAW

J.R.L. v. P.T.R., N.J. Super. App. Div. (per curiam) (14 pp.) Defendant appealed trial court's entry of a final restraining order against him pursuant to the Prevention of Domestic Violence Act. Plaintiff and defendant dated off and on for some two years until plaintiff broke off the relationship. According to plaintiff, defendant's reaction was extreme, including threats to take away plaintiff's apartment, phone and computer. Plaintiff testified that defendant attacked her in the apartment in a fit of jealous rage and took her phone from her after a physical struggle. Defendant denied the physical altercation but admitted taking the phone because he had bought it for plaintiff. Plaintiff offered evidence that defendant also wrote plaintiff letters accusing her of infidelity, observing that he had paid for her apartment and other necessities, and that without him she would be homeless. Defendant testified that he was heartbroken when he wrote the letters, but that he was "past that" now and there was no threat of future harassment. Trial court found plaintiff to be the more credible witness and deemed the struggle over the phone to be a reckless assault prompted by defendant's behavior. Trial court entered an FRO against defendant. Defendant appealed. Court affirmed. Plaintiff's testimony regarding the events involving defendant supported trial court's finding of the predicate acts of assault and harassment. Trial court's credibility findings, essentially adopting plaintiff's narrative of events over the narrative proffered by defendant, warranted court's deference on appeal. Trial court concluded an FRO was required because the evidence demonstrated defendant's refusal to accept that his relationship with plaintiff was over, his threats to take away plaintiff's home, phone and computer, his attacks on plaintiff's personal character and life choices, and his continuing controlling behavior.

FAMILY LAW

M.J.S. v. C.R.A.S., N.J. Super. App. Div. (per curiam) (12 pp.) Defendant appealed trial court's entry of a final restraining order against her under the Prevention of Domestic Violence Act. Plaintiff and defendant divorced after eighteen years of marriage. Six months later, plaintiff filed a domestic violence complaint against defendant and obtained a temporary restraining order. Upon trial, the record indicated the parties had a long history of acrimony and contentiousness and had filed multiple prior domestic violence complaints against each other. Plaintiff testified defendant had sent multiple disturbing text messages that included threats. Plaintiff also believed defendant had posted negative online reviews about his business, including accusations that he was a sexual predator. Plaintiff also testified, without objection, about defendant's numerous prior acts of domestic violence. Trial court concluded plaintiff had proven, by a preponderance of evidence, the predicate act of harassment. Trial court further found that an FRO was necessary to protect plaintiff from immediate or future acts of domestic violence. Defendant appealed. Court affirmed. Trial court noted that defendant's texts to plaintiff were "pretty horrific," or at least harassing, and that defendant was "smiling and smirking" at trial while plaintiff testified about the messages. Trial court deemed the online review issue to be of serious concern. Trial court's finding that defendant committed the predicate act of harassment by making unwanted communications through "text applications" which were annoying and alarming was supported by substantial credible evidence, court said. Court noted in particular that trial court made ample credibility findings based on the parties' demeanors and the unbelievable nature of defendant's explanations regarding aspects of her conduct. Likewise, sufficient credible evidence supported trial court's conclusion that an FRO was necessary to protect plaintiff from immediate danger, further abuse, and future harm.

FAMILY LAW

New Jersey Div. of Child Prot. & Permanency v. A.R., N.J. Super. App. Div. (per curiam) (22 pp.) Defendant appealed trial court's judgment of guardianship that terminated his parental rights to his two sons. Plaintiff filed a complaint to terminate defendant's parental rights, noting defendant's long history of incarcerations, substance abuse, mental health issues and lack of stable housing. At the start of trial, trial court granted defendant's request to appear virtually from a correctional facility due to medical issues. Defendant was cautioned that trial would proceed in his absence if he failed to attend. Defendant attended some trial days thereafter, while on other days he failed or even refused to appear. Trial court ultimately concluded the children's best interest would be served by termination of parental rights followed by adoption. Defendant appealed, contending in pertinent part that trial court abused its discretion when it failed to ensure he received his medication on each trial date, thereby depriving him of his opportunity to meaningfully participate at trial. Court affirmed. Court was satisfied that under the circumstances defendant was afforded the opportunity for meaningful participation at trial, and there was no error in the procedure that trial court employed. Defendant had notice of the trial proceedings, was represented by counsel, and was not deprived of an opportunity to testify or produce evidence. Defendant at no time provided medical records indicating that he was deprived of prescribed medications, nor did he explain how the timing of the administration of medications would affect his ability to participate at trial. Court noted, too, that defendant exhibited no signs of impairment or physical illness on the days he attended trial in a presumably unmedicated state. Separately, defendant also alleged ineffective assistance of counsel because his attorney allegedly ignored his pleas to be medicated and to ensure that he received medication before trial. That argument failed. Even accepting defendant's allegations as true, the outcome at trial would not have been different in light of the overwhelming evidence supporting trial court's decision to terminate defendant's parental rights.

FAMILY LAW

Quaziz v. El Ghazoini, N.J. Super. App. Div. (per curiam) (14 pp.) Pro se plaintiff challenged the entry of a Rosenblum order finding him a vexatious litigant. Plaintiff refused to accept DNA test results confirming he was the biological father of the child born during his marriage to defendant. Plaintiff and defendant married in March 2019 and child was born in April 2020. Plaintiff filed a pro se divorce complaint before the child was born, alleging he was not the father. He filed three amended complaints over several months seeking a divorce or annulment and alleging adultery, extreme cruelty, infliction of emotional distress and fraud. Two court-ordered paternity tests showed plaintiff was the father. He failed to pay child support and court entered an

order finding him in violation of litigant's rights. Plaintiff moved to recuse judge and void all prior orders and later moved for vacatur of the orders establishing paternity and for child support. Court issued a warrant for plaintiff's arrest for failure to pay child support in 2022. Plaintiff sued state superior court judges, county prosecutor and the DNA lab in federal court. That complaint was dismissed and plaintiff again filed a state court motion to vacate all prior court orders and contested the DNA results. Defendant cross-moved for a Rosenblum order. Court found no abuse of discretion in trial court's finding that a Rosenblum order was necessary.

INSURANCE LAW

Capri Holdings Ltd. v. Zurich Am. Ins. Co., N.J. Super. App. Div. (Firko, J.A.D.) (20 pp.) Plaintiff appealed the dismissal of its complaint for declaratory relief in an action over COVID-19 insurance coverage. Plaintiff luxury fashion retailer purchased a high-end All Risk Commercial Insurance Policy from defendant insurer. Executive Orders limited the scope and hours of retail establishments in March 2020 due to the COVID-19 pandemic. Plaintiff alleged the required closing of its stores caused direct physical loss of damage to its properties and triggered coverage under the Property Damage, Time Element, and Special Coverages & Described Causes of Loss sections of its policies. Plaintiff asserted over 900 of its employees tested positive for COVID-19 and a combination of foot traffic in its stores and positivity rates in the area proved it was "statistically certain" that customers who visited its stores carried the virus. Plaintiff contended the presence of the virus in and on its properties caused physical loss of or damage to property by making it incapable of being used for its intended purpose. Plaintiff also asserted the Contamination Exclusions provisions violated New Jersey public policy. Trial court rejected plaintiff's arguments. Appellate court rejected the same arguments as applied to similar insurance policies in Mac. Prop. Grp., LLC v. Selective Fire & Cas. Ins. Co., 473 N.J. Super 1, relied on Mac Property and affirmed the dismissal of plaintiff's complaint.

PERSONAL INJURY

McDade v. P&P Assocs., Inc., N.J. Super. App. Div. (per curiam) (33 pp.) Defendants appealed the verdict entered for plaintiff that found defendants liable for defamation and awarded her $105,000 in unspecified damages and $500,000 in punitive damages. Defendants challenged the denial of their summary judgment motion seeking to dismiss the case under the entire controversy doctrine. Defendants also challenged the damages award as unsupported by the evidence or excessive. Plaintiff, a licensed beautician, leased commercial space from defendant P&P Associates, Inc.; two other businesses also occupied the space, one of which was owned by defendant Steven Paglione, who was also P&P's sole owner. The parties' dispute began when plaintiff requested repairs to her space. Paglione allegedly responded by verbally abusing plaintiff. In response to problems with the air conditioning, plaintiff withheld rent. P&P filed suit for nonpayment, which culminated in a settlement under which plaintiff paid her back rent and P&P agreed to install a new HVAC system. However, plaintiff claimed that Paglione instructed her not to turn on the system for heat in the winter. When plaintiff attempted to turn on the heater in November 2017, she heard a loud crack or pop and called the gas company, who responded with the fire department. Firefighters evacuated the building and asked plaintiff if she had access to Paglione's space. Plaintiff had a key and granted the firefighters access; when they returned, they told plaintiff that they had red-tagged the hot water heater for being illegally installed. Local authorities sent P&P a violation notice. Plaintiff retained counsel to negotiate with Paglione to terminate the lease; during conversations, Paglione allegedly used derogatory language to refer to plaintiff. Paglione also allegedly used derogatory language in his conversations with the code enforcement officer. Defendants ultimately obtained judgment of possession and plaintiff moved to alternative commercial space; Paglione allegedly contacted plaintiff's new landlord to complain about her. On appeal, defendants argued that plaintiff's defamation claims should have been asserted during the parties' tenancy and municipal water cases. The court affirmed in part and vacated and remanded in part. The court found that the entire controversy doctrine was inapplicable because Paglione's allegedly defamatory statements were not sufficiently connected to the parties' landlord-tenant dispute. But the court vacated the punitive damages award because it was unclear whether the jury awarded plaintiff compensatory or nominal damages.

PERSONAL INJURY | GOVERNMENT

Moore v. The Ctr. for Lifelong Learning, N.J. Super. App. Div. (per curiam) (12 pp.) Plaintiff appealed the dismissal of her complaint filed by on behalf of her son, Joshua. Joshua, a 10-year-old suffering from cerebral palsy, fell while exiting a school bus under defendants' care and supervision. Joshua suffered numerous injuries in the fall. Defendants' employee prepared an accident report that claimed Joshua stumbled on the wheel space dip. Plaintiff's counsel alleged that he prepared, and plaintiff signed, a notice of tort claim and sent it to defendants' via certified mail. Defendants denied receiving a notice of tort claim. Counsel was unable to find the certified receipt for the mailing. When plaintiff failed to produce any evidence of the notice, defendants' moved to dismiss. Plaintiff cross-moved for leave to file a late notice. The trial court granted defendants' motion and denied plaintiff's cross-motion. On appeal, the court affirmed. The court held that the Tort Claims Act was amended to trigger the notification period upon the appointment of a guardian for an incapacitated person. Thus, the court ruled that plaintiff had sought leave to file a late notice of tort claim outside the one-year window following her appointment as Joshua's guardian. The court found no circumstances that would have prevented plaintiff from filing a timely notice or seeking leave to file a late notice.

REAL ESTATE

MacFarlane v. Soc'y Hill at Univ. Heights Condo. Ass'n II, Inc., N.J. Super. App. Div. (per curiam) (6 pp.) Plaintiff appealed the dismissal of his complaint with prejudice. Plaintiff was a unit owner at defendant's condominium complex and a member of defendant. Plaintiff filed suit to void defendant's 2020 annual board election, alleging that defendant's redaction of his biography submitted in support of his candidacy constituted an unlawful act. The trial court initially granted defendant's motion to compel alternative dispute resolution. Thereafter, plaintiff filed the present lawsuit alleging that defendant violated its governing documents by not holding open meetings since the 2020 annual board election, entering contracts without authorization, and refusing to release minutes and financial records. Defendant moved to dismiss, arguing that the complaint was seeking the same relief as plaintiff's first lawsuit, which was pending on appeal. The trial court mistakenly entered an order dismissing the case with prejudice. Upon discovering the error, the trial court vacated its order and restored the case to the active calendar. Thus, the court concluded that plaintiff's appeal was moot.

REAL ESTATE

Sam's Route 73, LLC v. US Bank Cust, N.J. Super. App. Div. (per curiam) (5 pp.) Plaintiff appealed the summary dismissal of its complaint for negligence and unjust enrichment in connection with a related tax sale foreclosure. Plaintiff's claims arose out of defendant's sale of a property defendant acquired in a tax sale foreclosure after plaintiff failed to redeem the tax certificate. Defendant sold the property to a third party while plaintiff's appeal of the tax judgment was pending in court. Plaintiff alleged defendant had "an obligation and duty to notify this court and Sam's of the impending sale of the property" to the third party and defendant's failure to comply the notice requirements of Rule 4:5-1(b)(2) and the joinder requirements under Rule 4:28-1 was the "direct and proximate cause of the destruction of Sam's right of redemption." Plaintiff also asserted defendant was unjustly enriched when it sold the property. Trial court rejected plaintiff's claims, finding that when General Equity judge entered final judgment in the tax foreclosure, defendant was vested with title to the property and plaintiff never sought a stay of the judgment. Additionally, the lis pendens statute bound third party to the outcome of the litigation, just as joinder would have done. Court found plaintiff's arguments lacked sufficient merit to warrant discussion and affirmed for the reasons stated by the trial court.

TAX | REAL ESTATE

US Bank Cust v. Block 5.04, N.J. Super. App. Div. (per curiam) (32 pp.) Defendant Sam's Route 73 LLC appealed order determining the rights of the parties and dismissing the tax foreclosure. Plaintiff purchased tax sale certificates on two properties assessed to defendant Sam's in 2017. Plaintiff filed to foreclose the certificates five months later, contending the properties had been abandoned. Sams opposed but trial court declared the property abandoned without at hearing. Appellate court reversed. Plaintiff sold one property to a third party. Sam's counsel opined the sale of that property rendered the hearing moot and a determination of abandonment as to the other property would be of "no moment" since two years from the tax sale date had passed. Chancery judge cancelled the scheduled hearing and declared the property abandoned. Plaintiff moved for entry of final judgment. Sam's argued plaintiff lacked standing. Plaintiff filed a motion to determine the rights of the parties in 2019 and Sam's cross-moved to vacate the abandonment order and dismiss the tax foreclosure as moot. Plaintiff argued third party's deed had been voided by operation of law and it wanted to clear title to the property. Sam confirmed it did not want to redeem the property. Trial court granted plaintiff's motion to determine the rights of the parties, held the deed to the third party was not void and remained in effect and the tax foreclosure was dismissed. Sam's argued failure to join the third party, plaintiff lacked standing to continue its tax foreclosure after its sale of the property and trial court's abandonment order should be vacated because it was entered in error. Court found no merit in any of the claims and noted Sam's clearly refused to participate in the ordered evidentiary hearing.

WRONGFUL DEATH

Washington v. Newark Bd. of Educ., N.J. Super. App. Div. (per curiam) (13 pp.) Plaintiff appealed the dismissal of her wrongful death action over the death of her young daughter. Daughter had asthma and died of cardiac arrest after plaintiff picked her up from school. Plaintiff went to school the next day and unsuccessfully sought records from teacher and school nurse. At child's funeral, plaintiff heard school nurse may have improperly medicated daughter. She made additional unsuccessful record requests. She filed a pro se complaint against school board alleging negligence by teacher and school nurse. Board demanded an affidavit of merit. Plaintiff did not submit a timely AOM. Court found an AOM was not necessary to sustain charges against teacher and ordered discovery as to nurse. Records showed daughter was given "no medication at school" the day she died. Plaintiff argued the records provided were not complete and were unusable for obtaining an AOM. Trial court found an AOM was needed for nurse and dismissed the entire complaint with prejudice. Plaintiff argued she followed the affidavit of merit statute by submitting "a sworn statement in lieu of affidavit" after Board repeatedly denied her in-person record requests for over three years. Court disagreed. However, trial court erred in dismissing the claims against the teacher.

CRIMINAL LAW

Graciano v. New Jersey Dep't of Corr., N.J. Super. App. Div. (per curiam) (10 pp.) Petitioner, an inmate, appealed the DOC's final agency decision upholding a finding of guilt and the imposition of sanctions against petitioner for the prohibited act of possessing or introducing a weapon. During a search of petitioner's cell, corrections officers discovered a three-inch piece of metal they deemed to be a weapon. Petitioner denied that the metal piece belonged to him. An inmate in the adjacent cell admitted that the metal piece belonged to him and he had mistakenly given the jar containing the piece to petitioner. Petitioner asserted that the inmate's statement was false. A hearing officer found petitioner guilty. Petitioner appealed to the DOC, arguing that it was not proven that he possessed the weapons because others had access to his cell and belongings. The DOC upheld the guilty finding. On appeal, the court affirmed, holding that there was sufficient evidence to support the hearing officer's determination. The court ruled that the hearing officer was not required to provide an extensive discussion as to why she found the corrections officer's testimony credible.

CRIMINAL LAW

State v. Alves, N.J. Super. App. Div. (per curiam) (11 pp.) Defendant appealed the denial of his motion for a new trial based on new DNA evidence. Defendant's girlfriend was found dead from strangulation in the apartment they shared on Aug. 14, 1999. Defendant and girlfriend had been together on Aug. 11, 1999, the last time girlfriend was seen alive by third parties. Defendant left the country on Aug. 12, 1999. Defendant denied attacking girlfriend and said he was in Portugal visiting at the time of her death. Medical examiner placed victim's death on August 11 while defendant's expert placed the death on August 12 or 13. Defendant was found guilty and his first petition for post-conviction relief was denied. Defendant filed for post-conviction discovery of DNA evidence and tests showed defendant's DNA was one of two DNA profiles found on a towel and victim's nail clippings. Lab had no satisfactory reference sample for victim's DNA. Court affirmed find trial court did not abuse its discretion in denying defendant's motion. Trial court properly found defendant failed to satisfy the first and third prongs of the Carter test because the DNA results did not exculpate him. Trial court noted defendant had argued at trial that his DNA would not be found under victim's fingernail but the DNA testing found it was.

CRIMINAL LAW

State v. Bakula, N.J. Super. App. Div. (per curiam) (31 pp.) Defendant appealed his conviction for aggravated sexual assault, sexual assault and endangering the welfare of a child. Plaintiff and victim met at a karate dojo. Defendant argued State elicited improper highly prejudicial hearsay testimony from three witnesses about his character traits, conduct and guilt. Two dojo members described defendant as "an awkward weird kid" and having an "odd personalty." One testified defendant, an 18-year-old man, told her he was "in love" with victim who was ten years old. Court found the testimony was permissible

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UNPUBLISHED OPINIONS

Continued from preceding page

lay opinion. However, one witness's testimony, that she believed victim was truthful, was inadmissible but admission of that testimony did not constitute plain error. Victim's reference to defendant as a pedophile did not amount to plain error sufficient to raise reasonable doubt. Court rejected defendant's allegation of prosecutorial misconduct in summation. Court also rejected defendant's contentions that trial court erred by admitting evidence of uncharged prior conduct. Trial court conducted a thorough Cofield analysis, found the prior acts with victim were admissible at trial and gave a proper limiting instruction. The uncharged acts provided necessary background to show defendant's intent to groom a young child and the progression of sexual acts to desensitize victim. Trial court properly admitted witness's testimony about victim's conversation with her in 2013 as "fresh complaint" evidence. The court affirmed defendant's conviction and sentence.

CRIMINAL LAW

State v. C.P., N.J. Super. App. Div. (per curiam) (16 pp.) Defendant appealed trial court's denial of her petition for release pursuant to the Compassionate Release Act. In 1997, defendant was sentenced to concurrent life terms for two murders, with thirty years of parole ineligibility, and to a consecutive prison term of twenty years for attempted murder. Twenty-four years later, defendant petitioned for compassionate release. Upon hearing, evidence revealed that defendant suffered from a combination of debilitating medical conditions. She also had had her left leg amputated below the knee and suffered a recent heart attack. Due to her full-time nursing needs, defendant was living in the infirmary at a women's correctional facility. Defendant's proposed plan, approved by the State Parole Board, was to live with her daughter, who was a licensed nurse living in another state and who had experience working in the state's prison system. Witnesses related to one of the murder victims testified in opposition to defendant's release. Trial court denied the petition. Defendant appealed, contending trial court abused its discretion. Court reversed and ordered defendant's compassionate release. Court characterized the single issue on appeal as whether trial court engaged in a proper exercise of discretion in applying the analytical framework set out in State v. A.M., 252 N.J. 432 (2023). Under A.M., an inmate who satisfies the CRA's medical and public safety criteria should be granted compassionate release unless one or more extraordinary aggravating factors exist. Here, the record showed that defendant demonstrated the medical and public safety requirements by clear and convincing evidence. The issue, then, was the propriety of trial court's findings regarding the presence of extraordinary aggravating factors. Court emphasized that under the CRA the issue is whether the aggravating factors in a given case are extraordinary in nature. In defendant's case, it was true that upon her conviction trial court had characterized her crimes as heinous, cruel, or depraved, but that was often true in first-degree murder cases, and the facts of defendant's crimes did not rise to the level of being an extraordinary aggravating factor. Similarly, the effect of defendant's release upon surviving victims could not be deemed "particularly detrimental" where almost thirty years had passed after defendant's conviction and sentencing.

CRIMINAL LAW

State v. Haughey-Morales, N.J. Super. App. Div. (per curiam) (14 pp.) Defendant appealed his jury trial conviction for first-degree murder and related crimes. Defendant was tried in absentia after he engaged in multiple interruptive outbursts. Defendant variously threatened the court, refused to get dressed to appear before the court, and disrupted the proceedings. The jury found defendant guilty on all counts. Defendant appealed, contending that trial court should have sua sponte held a competency hearing to ensure his ability to stand trial. Court affirmed. Court noted that a defendant's ability to assist in his own defense means the ability to assist regarding the facts, witnesses, and other trial-related information, not the ability to understand legal questions. Here, defendant understood he was in court and the nature of the proceedings, and he responded accordingly when asked questions about the trial and when informed that his disruptive behavior would lead to his removal from the courtroom. Defendant therefore could be considered competent. The record also reflected that defense counsel stated during sentencing that defendant understood what was going on around him, and defense counsel never believed defendant's competency was at issue. Thus, court said, there was insufficient evidence to raise a bona fide doubt that defendant failed to meet the competency standards to undergo trial. Court also rejected defendant's contention that the jury should have been instructed on a provocation defense. Evidence showed that defendant approached a house with a rifle in the early morning hours while the family inside was celebrating, and that partygoers subsequently tried to push defendant away from the door to prevent him from entering. The encounters, which defendant instigated while holding a rifle, did not demonstrate that he was provoked in such a way that a reasonable person would lose control of his behavior. Defendant also left and then returned to shoot at the house, indicating a cooling-off period that negated the notion of provocation.

CRIMINAL LAW

State v. Ingram, N.J. Super. App. Div. (per curiam) (9 pp.) Defendant appealed the denial of his petition for post-conviction relief. Defendant was convicted for first-degree murder and related weapons offenses. After his direct appeal was unsuccessful, defendant filed a PCR petition alleging ineffective assistance of counsel due to counsel's presentation of an alibi defense after defendant instructed her not to do so, failure to adequately investigate that alibi defense, and failure to move for reconsideration of his motion to suppress identification evidence or for a mistrial due to the police's allegedly faulty identification procedure. At a hearing, trial counsel claimed that defendant never instructed her not to present an alibi defense but instead agreed with the defense strategy and provided the contact information for his mother and sister who testified in support of the defense. The trial court credited counsel's testimony and rejected defendant's assertion that counsel should have conducted a more in-depth investigation, as there was state evidence showing that the alibi defense as presented by counsel was plausible. Finally, the trial court held that there was no basis to move for reconsideration of the suppression motion or for a mistrial. On appeal, the court affirmed for the reasons expressed by the trial court.

CRIMINAL LAW

State v. Matos, N.J. Super. App. Div. (per curiam) (21 pp.) Defendant appealed the denial of his petition for post-conviction relief. Pursuant to a negotiated plea agreement, defendant pled guilty to first-degree felony murder, robbery, and unlawful possession of a weapon. Defendant was sentenced to an aggregate 40-year term with an 85 percent parole ineligibility period. Following an unsuccessful appeal, defendant filed a PCR petition alleging ineffective assistance from his plea counsel. Defendant claimed that counsel failed to pursue exclusion of his inculpatory statements during a police interrogation on the grounds that he did not knowingly, voluntarily, or intelligently waive his Miranda rights and made "clear" invocations of counsel at multiple points during the interrogation. Defendant also presented expert testimony opining, based on defendant's speech and demeanor, that he was "clearly delusional" during the interrogation. Defendant further claimed that counsel effectively coerced him to plead guilty by convincing him that he would lose at trial and receive a harsher sentence. Defendant alleged that counsel only provided the details of the plea offer moments before the plea hearing. The trial court denied defendant's petition, noting that plea counsel initially filed a motion to suppress defendant's statement and ruling that the decision not to pursue the motion was sound trial strategy based on the limited time to accept the state's plea offer. The trial court noted that there was other direct and circumstantial evidence of defendant's guilt aside from his confession. The trial court found no evidence in the plea record to support defendant's allegation that he was confused or disoriented. On appeal, the court affirmed. The court found that a motion to suppress would have been meritless as police ceased questioning defendant when he stated "I need a lawyer" and it was defendant who re-initiated the conversation.

CRIMINAL LAW

State v. McCall, N.J. Super. App. Div. (per curiam) (10 pp.) Defendant appealed trial court's order denying his motion for admission into a pretrial intervention program after being rejected by a county prosecutor's office. Defendant was indicted on narcotics and weapons charges after detectives observed him participating in a streetside drug deal. Defendant submitted a PTI application, contending that two extraordinary and compelling reasons supported his admission into PTI. The first was that defendant was a primary caregiver for his young disabled son. The second was that he possessed a firearm for self-protection after having been a victim of a gun-related crime in the past. The prosecutor's office rejected defendant application for PTI. Defendant appealed. Trial court denied the appeal, concluding defendant failed to show that the prosecutor's office abused its discretion. Defendant pleaded guilty to reduced charges and was sentenced accordingly. Defendant appealed. Court affirmed. Defendant advanced arguments in support of his application for PTI based on his age and lack of a prior criminal record, but there was no indication that the prosecutor's office denied his PTI application based on anything other than a consideration of the relevant statutory factors. Court declined to second-guess the prosecutor's office in its determination of what weight to give to the various factors. The record fully supported the denial of defendant's application based on the findings of the prosecutor's office that defendant, with a gang affiliation, engaged in a hand-to-hand drug sale, had over $1,000 in his pocket, and used his nearby car to stash his gun, cocaine, packaging materials and a scale. That the prosecutor's office weighed the pertinent PTI application factors in a fashion different than defendant wished did not equate to a patent abuse of discretion, especially given the prosecutor's wide latitude in deciding whom to divert into the PTI program and court's deferential standard of review for such decisions.

CRIMINAL LAW

State v. Mitchell, N.J. Super. App. Div. (per curiam) (15 pp.) Defendant appealed the denial of his second petition for post-conviction relief. Defendant pled guilty to multiple robbery counts in 2015 and his sentence was affirmed on appeal. His 2018 PCR petition alleging ineffective assistance of plea counsel was denied. His appeal from the denial argued ineffective assistance of PCR counsel and was denied. Defendant filed a second PCR petition in 2021 which alleged plea counsel and PCR counsel were ineffective for failing "to object to [the first] degree charge." PCR court rejected the petition as untimely and found that the merits of his claim had been rejected in his appeal of the first PCR petition. Court found no error in PCR court's analysis and affirmed for the reasons set forth in that court's decision. Court noted the claims defendant asserted in his briefs in his first appeal were never presented to the PCR court and were improperly raised for the first time on appeal. Additionally, none of defendant's claims asserted a prima facie ineffective assistance of counsel claim under the Strickland standard. Defendant admitted he brandished a gun and there was an adequate factual basis for his first-degree robbery convictions. Plea counsel was not ineffective for failing to make a meritless argument challenging a legal sentence and merely pleading guilty did not entitle him to mitigating factor twelve.

CRIMINAL LAW

State v. Perdomo, N.J. Super. App. Div. (per curiam) (7 pp.) Defendant appealed her conviction for shoplifting. Defendant was charged with shoplifting after she was alleged to have pretended to make a product exchange when she actually had brought no merchandise into a store. Defendant's activities were recorded by surveillance cameras in the store, but because such videos were automatically deleted in about 30 days, the assistant store manager recorded the videos onto her cell phone to preserve them. Upon trial, municipal court found defendant guilty of shoplifting. On de novo review, trial court affirmed. Defendant appealed, arguing that the surveillance videos were inadequately authenticated, the store manager prejudicially described defendant as "a person of interest," and State failed to prove her guilt of shoplifting beyond a reasonable doubt. Court affirmed. The surveillance videos were properly authenticated where the store manager provided an ample foundation for the recordings. The manager had personal knowledge of many of the events depicted, was familiar with the store's routine for creating and storing surveillance videos, and offered justification for re-recording the videos to avoid their potential erasure. Nor was there reversible error in the manager's testimony explaining that store personnel were monitoring defendant's actions as a "person of interest." The term could suggest that defendant had committed shoplifting or other bad acts in the past, but it was not "clearly capable" of producing an unjust result in defendant's non-jury trial. Finally, State's proofs were ample to establish defendant's guilt beyond a reasonable doubt.

CRIMINAL LAW

State v. Smith, N.J. Super. App. Div. (per curiam) (26 pp.) Defendant appealed his convictions on two counts of reckless manslaughter. Defendant was indicted for aggravated man-

slaughter and arson after the home where he resided with his mother and her companion caught fire. Both defendant's mother and her companion, who were asleep in the home, were killed in the blaze. Defendant's theory was that the fire started in the garage from an electrical spark that ignited gasoline leaking from a motorcycle's fuel valve. Defendant notified township personnel that the home should not be tampered with to avoid destroying evidence. After the passage of several months, township ultimately demolished the structure. Defendant sought dismissal of the indictment on grounds of evidence spoliation. Trial court denied the motion. At trial, in addition to forensic and other evidence, State presented testimony from defendant's friend, who had smelled gasoline in the home's garage before witnessing defendant start a fire there. Forensic evidence suggested the blaze was associated with a liquid accelerant, and testing revealed gasoline on the sole of one of defendant's boots. Jury convicted defendant of the lesser-included offenses of reckless manslaughter. Defendant appealed, contending he was deprived of due process and the right of confrontation when State destroyed exculpatory evidence, namely his mother's home and the motorcycle, despite his preservation requests. Court affirmed in part and remanded in part. The record failed to show that State either acted in bad faith or that its conduct was egregious or flagrant. There existed legitimate public safety concerns about the destroyed home, and State was in constant contact with defense counsel to inquire about plans to inspect the property. State kept defense counsel apprised of the home's deterioration and that demolition was being delayed so that a defense expert could inspect the site. Defendant's complaint that the motorcycle was critical evidence with exculpatory value was misplaced. After concluding defendant received a fair trial and rejecting his remaining assertions of error, court affirmed defendant's convictions. Court remanded for trial court to offer an explanation, missing from the record, of the real-time parole consequences of defendant's sentence.

CRIMINAL LAW | EVIDENCE

State v. Williams, N.J. Super. App. Div. (per curiam) (15 pp.) Defendant appealed from his guilty plea conviction for second-degree unlawful possession of a handgun. Defendant was indicted for unlawful possession of a handgun and other crimes. Defendant moved to suppress the handgun. Following a tip from confidential informant, street crimes officers located defendant, who matched the provided description, and instigated a stop. No weapons or contraband were found when defendant was subjected to a pat-down search. Officers held defendant for a few minutes, however, in order to locate a woman who had been walking with him, but who had walked away suspiciously when police arrived. The woman was located moments later walking with another male, who was carrying a bag that was found to contain a handgun. The woman spontaneously reported that defendant had given her the gun. Trial court denied defendant's motion to suppress. Defendant pleaded guilty to second-degree unlawful possession and appealed. Court reversed and remanded for further proceedings. Defendant correctly argued that trial court erred in denying his suppression motion because he was unlawfully detained after the pat-down did not produce weapons or contraband. Trial court was mistaken in finding that the police officers had a reasonable suspicion that defendant had a handgun to justify defendant's stop and, in turn, the subsequent frisk. While trial court deemed reasonable suspicion existed in light of the CI's tip, the record was devoid of information regarding the length of the CI's relationship with the reporting officer or the quality of the CI's prior tips. The record also was silent as to how the CI came to know that defendant possessed a handgun. None of the facts alleged were sufficient to establish an objectively reasonable suspicion that defendant possessed a handgun, the court said. In addition, trial court also erred in finding that officers had reasonable and articulable suspicion to detain defendant based on his presence in a high crime area and the behavior of the woman who had been accompanying him. Evidence of the handgun had to be suppressed because defendant's arrest was based on possession of the weapon, which in turn stemmed from defendant's unlawful detention. Court further vacated defendant's plea and remanded for further proceedings.

FEDERAL COURT CASES

CREDITORS' AND DEBTORS' RIGHTS

Formica v. Parke Bancorp, Inc., D.N.J. (Williams, U.S.D.J.) (10 pp.) Defendant moved for summary judgment and plaintiffs cross-moved for partial summary judgment. Plaintiffs filed suit alleging that defendant violated the Truth in Lending Act when it issued a payoff statement that was $10,000 more than the payoff required for plaintiffs' note and mortgage. Plaintiff Frank Formica filed for Chapter 7 bankruptcy, which motivated plaintiffs to sell their house on which defendant held a first priority mortgage. The bankruptcy court authorized the sale, with the parties communicating through their attorneys to consummate the sale. Defendant's counsel sent a payoff statement to the title company, which included the amounts due on the note and mortgage and other debts owed by Frank. The parties' counsel engaged in extensive negotiations over the allocation of the sale proceeds. Defendant later provided another payoff statement that included an additional $10,000 to be paid to defendant. The closing went forward with the additional $10,000 sent to defendant. Plaintiffs alleged that defendant impermissibly included the additional $10,000 on the eve of closing. The court granted defendant's summary judgment motion and denied plaintiffs' cross-motion for partial summary judgment. The court held that TILA did not impose any obligation on defendant's counsel to respond to plaintiffs' request for a payoff balance. The court found no evidence that defendant's counsel agreed to act as defendant's agent for such requests. [Filed November 30, 2023]

EMPLOYMENT LITIGATION

Needham v. Chubb Corp., 3d Cir. (Phipps, J.) (17 pp.) Plaintiffs appealed the adverse summary judgment entered by the district court. Defendant Chubb Corporation was an insurance company that offered three employee benefit plans. Chubb owned a real-estate management company and permitted it to allow its employees to participate in Chubb's employee benefit plans; the company elected to do so. The management company wholly owned a company that operated a golf club; although the golf club was permitted to participate in Chubb's employee benefit plans, it chose not to do so. Plaintiffs were employees of the golf club beginning in the 1990s. In 1997, the golf club began decreasing its operational reliance on Chubb and the management company and made plans to leave Chubb's payroll system. The club also restructured its employee benefit plans, terminating its workers' coverage under a Chubb disability benefits plan and establishing a separate benefit plan. After becoming the club's president and general manager, plaintiff Jonathan Needham discovered that his predecessor had participated in Chubb's employee benefits plan, although the predecessor also served as a VP for the real estate management company. Plaintiffs ultimately filed a claim for participation in Chubb's plans. However, the plan committee denied the claim on the grounds that plaintiffs did not meet the definition of an eligible employee because neither provided services to the real estate management company, which had elected participation in the benefits plans. Plaintiffs filed suit, but the district court granted summary judgment for defendants, finding that they lacked authority to administer the plans. On appeal, the court affirmed, finding that the plan committee had not unreasonably interpreted the plan definition of an employee to require that plaintiffs provide services to the real estate management company to become eligible to participate in the Chubb employee benefits plan. In a concurring opinion, Judge Roth argued that the claims against the companies should have been dismissed on res judicata grounds because plaintiffs had previously sued those companies and lost. [Filed December 18, 2023]

EMPLOYMENT LITIGATION | CIVIL PROCEDURE

Nahas v. Foxhill Capital Partners, D.N.J. (Quraishi, U.S.D.J.) (11 pp.) Defendants moved to dismiss plaintiffs' unlawful termination action under the Conscientious Employee Protection Act for lack of personal jurisdiction. Plaintiff New York citizen worked for defendant as a consulting analyst. Their agreement specified the agreement was governed by New Jersey law. Defendant changed its New Jersey registration to Delaware in 2019, moved its principal place of business to Florida but maintained an office in New Jersey until September 2019. Plaintiff alleged defendant continued to do business in New Jersey. Individual defendant, CIO and part owner of the company, was a Florida resident. Company's chief compliance officer was a Rhode Island resident. Plaintiff submitted a written notice of CIO's unethical and illegal behavior, including insider trading and attempted market manipulation misconduct, to company compliance officer. Plaintiff alleged adverse actions began including threatened termination and diminished responsibilities. He was fired in April 2021. Defendants argued the complaint failed to allege their contacts with New Jersey after 2018, none of the activities that gave rise to plaintiff's CEPA claim occurred in New Jersey and there were no grounds to find specific jurisdiction. Court agreed none of the elements of the CEPA claim occurred in New Jersey, plaintiff did not claim to have sustained an injury in New Jersey and there was no basis in the alleged breach of contract claim for asserting personal jurisdiction over defendants. [Filed November 29, 2023]

GOVERNMENT

Earle Asphalt Co. v. County of Camden, 3d Cir. (Bibas, J.) (4 pp.) Plaintiffs appealed the district court's dismissal of their complaints against Atlantic and Camden Counties. Both counties required winning contractors on public works projects to associate or cooperate with unions. Plaintiffs were non-union contractors who filed suit alleging that the counties' union requirements unconstitutionally prevented them from bidding on public works projects. Plaintiffs alleged that similar requirements had harmed them on past unspecified jobs and might harm them again in the future. However, the district court granted the counties' motions to dismiss, finding that plaintiffs lacked standing because they had failed to plead a plausible injury in fact. On appeal, the court affirmed, finding that plaintiffs had not alleged that, but for the union requirement, they would bid on the counties' projects. Instead, the court found that plaintiffs had merely alleged that they were likely to bid on public works projects in the foreseeable future and were ready and able to perform such work. However, the court noted that plaintiffs never pleaded a settled intent to bid on the counties' projects. [Filed December 18, 2023]

HEALTH CARE LAW

Kogan v. Becerra, D.N.J. (Castner, U.S.D.J.) (15 pp.) The government moved for summary judgment to deny plaintiff's appeal of an administrative order barring plaintiff, a licensed acupuncturist, from participating in federal health care programs for 15 years following his conviction for healthcare fraud and related crimes. Plaintiff sought to challenge his exclusion on the grounds of double jeopardy, equal protection, arbitrariness/capriciousness, and violations of the Americans with Disabilities Act and the Rehabilitation Act. Plaintiff had pled guilty to healthcare fraud and mail fraud for submitting false or fraudulent Medicare/Medicaid claims. An ALJ initially rejected plaintiff's appeal, noting that he caused a financial loss to the federal government of more than $50,000, his conduct lasted longer than a year, and he was sentenced to more than one year of incarceration. The ALJ rejected plaintiff's alcoholism as a mitigating factor. The court granted the government's motion and denied plaintiff's appeal. The court noted that plaintiff offered no argument in support of his constitutional claims. The court also rejected plaintiff's Rehabilitation Act claim because he was not excluded from federal health care programs due to his alcoholism but rather due to his defrauding of said programs. The court found no error in declining to consider plaintiff's alcoholism as a mitigating factor to reduce the length of his exclusion. [Filed November 29, 2023]

INSURANCE LAW

Minisohn Chiropractic & Acupuncture Ctr., LLC v. Horizon Blue Cross Blue Shield of New Jersey, D.N.J. (Castner, U.S.D.J.) (11 pp.) Defendant moved to dismiss plaintiff's complaint. Plaintiff performed licensed acupuncture and chiropractic services. Despite plaintiff's efforts, defendant failed to recognize plaintiff as a multidisciplinary practice in its system and accordingly denied plaintiff's reimbursement claims for years. Plaintiff alleged that, rather than correcting its system, defendant attempted to claw back the few claims it did pay. Plaintiff alleged that its patients were subscribers to health insurance plans issued or administered by defendant. Plaintiff claimed that it entered written assignments of benefits with its patients, empowering it to file a civil action against defendant as a participant or beneficiary. Defendant moved to dismiss, arguing that plaintiff lacked standing because the complaint contained no allegations supporting plaintiff's assertion that it had been assigned patients' claims for benefits. In response, plaintiff argued that it had sufficiently pled that it was assigned benefits and any assignment agreements could be produced in discovery. The court agreed with defendant and granted the motion to dismiss, holding that a conclusory statement alleging that a healthcare provider was assigned health insurance benefits was insufficient to demonstrate standing. The court noted that plaintiff's complaint failed to identify any patient who allegedly assigned their claims to plaintiff or plead the terms of any purported assignment. The court also noted that plaintiff failed to identify which plan terms were allegedly violated by defendant or what fiduciary duties it breached. [Filed Nov. 29, 2023]

LABOR LAW

Bd. of Tr. of the Int'l Union of Operating Eng'rs v. Delaware Valley Crane Rental, Inc., D.N.J. (King, U.S.M.J.) (8 pp.) Plaintiffs sought to reopen discovery in its action to recover unpaid employee benefit plan contributions. Plaintiffs alleged defendant failed to make all required contributions due under the CBA and an audit showed over $1 million in unpaid contributions, liquidated damages and interest were outstanding. Plaintiff additionally alleged Delaware Valley Crane Rental Inc. operated as a single employer with, and as an alter-ego of, J. L. Dobbs Inc., and both were jointly liable. At the final pre-trial conference, plaintiffs advised court of a purported issue with the transfer of JLDI's cranes and sought to reopen discovery to explore the issue. Plaintiff contended a LLC was formed in Delaware in May

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NOTICES TO THE BAR

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ATTACHMENT 1
VASPA Legislation

CHAPTER 127

AN ACT concerning protective orders for certain victimized persons, amending various parts of the statutory law, and repealing section 2 of P.L.1999, c.47.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. Section 1 of P.L.2015, c.147 (C.2C:14-13) is amended to read as follows:

C.2C:14-13 Short title.

1. P.L.2015, c.147 (C.2C:14-13 et al.) shall be known and may be cited as the "Victim's Assistance and Survivor Protection Act."

2. Section 2 of P.L.2015, c.147 (C.2C:14-14) is amended to read as follows:

C.2C:14-14 Application for temporary protective order.

2. Application for Temporary Protective Order.

a. (1) Any person alleging to be a victim of nonconsensual sexual contact, sexual penetration, or lewdness, or any attempt at such conduct, or stalking or cyber-harassment, and who is not eligible for a restraining order as a "victim of domestic violence" as defined by the provisions of subsection d. of section 3 of P.L.1991, c.261 (C.2C:25-19), may, except as provided in subsection b. of this section, file an application with the Superior Court pursuant to the Rules of Court alleging the commission of such conduct or attempted conduct and seeking a temporary protective order.

As used in this section and in sections 3, 4, and 8 of P.L.2015, c.147 (C.2C:14-15, C.2C:14-16, and C.2C:14-20):

"Sexual contact" means an intentional touching by the victim or actor, either directly or through clothing, of the victim's or actor's intimate parts for the purpose of degrading or humiliating the victim or sexually arousing or sexually gratifying the actor.

"Sexual penetration" means vaginal intercourse, cunnilingus, fellatio or anal intercourse between persons or insertion of the hand, finger or object into the anus or vagina either by the actor or upon the actor's instruction.

"Lewdness" means the exposing of the genitals for the purpose of arousing or gratifying the sexual desire of the actor or of any other person.

"Intimate parts" means the following body parts: sexual organs, genital area, anal area, inner thigh, groin, buttock or breast of a person.

"Stalking" means purposefully or knowingly engaging in a course of conduct directed at or toward a person that would cause a reasonable person to fear for the reasonable person's own safety or the safety of a third person, or suffer other emotional distress, because the conduct involves: repeatedly maintaining a visual or physical proximity to a person; directly, indirectly, or through third parties, by any action, method, device, or means, following, monitoring, observing, surveilling, threatening, or communicating to or about a person, or interfering with a person's property; repeatedly committing harassment against a person; or repeatedly conveying, or causing to be conveyed, verbal or written threats or threats conveyed by any other means of communication or threats implied by conduct or a combination thereof directed at or towards a person.

"Repeatedly" means on two or more occasions.

"Emotional distress" means significant mental suffering or distress.

"Cause a reasonable person to fear" means to cause fear which a reasonable victim, similarly situated, would have under the circumstances.

"Cyber-harassment" means conduct that occurs, while making one or more communications in an online capacity via any electronic device or through a social networking site and with the purpose to harass another, that involves: threatening to inflict injury or physical harm to any person or the property of any person; knowingly sending, posting, commenting, requesting, suggesting, or proposing any lewd, indecent, or obscene material to or about a person with the intent to emotionally harm a reasonable person or place a reasonable person in fear of physical or emotional harm to the reasonable person; or threatening to commit any crime against a person or the person's property.

(2) Except as provided in subsection b. of this section, an application for relief under P.L.2015, c.147 (C.2C:14-13 et al.) may be filed by the alleged victim's parent or guardian on behalf of the alleged victim in any case in which the alleged victim:

(a) is less than 18 years of age; or

(b) has a developmental disability as defined in section 3 of P.L.1977, c.200 (C.5:5-44.4) or a mental disease or defect that renders the alleged victim temporarily or permanently incapable of understanding the nature of the alleged victim's conduct, including, but not limited to, being incapable of providing consent, or of understanding the nature of the alleged conduct that is the subject of the application.

b. (1) When it is alleged that nonconsensual sexual contact, sexual penetration, or lewdness, or any attempt at such conduct, or stalking or cyber-harassment has been committed by an unemancipated minor, an applicant seeking a protective order shall not proceed under the provisions of P.L.2015, c.147 (C.2C:14-13 et al.), but may seek a protective order and other relief under the "New Jersey Code of Juvenile Justice," P.L.1982, c.77 (C.2A:4A-20 et seq.) by filing a complaint pursuant to the provisions of section 11 of P.L.1982, c.77 (C.2A:4A-30).

(2) When it is alleged that nonconsensual sexual contact, sexual penetration, or lewdness, or any attempt at such conduct, or stalking or cyber-harassment has been committed against an unemancipated minor by a parent, guardian, or other person having care, custody and control of that child as defined in R.S.9:6-2, an applicant seeking a protective order shall not proceed under the provisions of P.L.2015, c.147 (C.2C:14-13 et al.), but shall report the incident to the Department of Children and Families for appropriate action.

c. (1) An applicant may seek a protective order pursuant to P.L.2015, c.147 (C.2C:14-13 et al.) and the court may issue such an order regardless of whether criminal charges based on the incident were filed and regardless of the disposition of any such charges.

(2) The filing of an application pursuant to this section shall not prevent the filing of a criminal complaint, or the institution or maintenance of a criminal prosecution based on the same act.

d. The court shall waive any requirement that the applicant's or alleged victim's place of residence appear on the application.

e. An applicant may seek a protective order pursuant to P.L.2015, c.147 (C.2C:14-13 et al.) in a court having jurisdiction over the place where the alleged conduct or attempted conduct occurred, where the respondent resides, or where the alleged victim resides or is sheltered.

f. No fees or other costs shall be assessed against an applicant for seeking a protective order pursuant to P.L.2015, c.147 (C.2C:14-13 et al.).

3. Section 3 of P.L.2015, c.147 (C.2C:14-15) is amended to read as follows:

C.2C:14-15 Temporary protective order.

3. Temporary Protective Order.

a. An applicant may seek emergency, ex parte relief in the nature of a temporary protective order. A judge of the Superior Court may enter an emergency ex parte order when necessary to protect the safety and well-being of an alleged victim on whose behalf the relief is sought. The court may grant any relief necessary to protect the safety and well-being of an alleged victim.

b. The court shall, upon consideration of the application, order emergency ex parte relief in the nature of a temporary protective order if the court determines that the applicant is a victim of nonconsensual sexual contact, sexual penetration, or lewdness, or any attempt at such conduct, or stalking or cyber-harassment, and qualifies for such relief pursuant to section 2 of P.L.2015, c.147 (C.2C:14-14). The court shall render a decision on the application and issue a temporary protective order, where appropriate, in an expedited manner.

c. The court may issue a temporary protective order, pursuant to court rules, upon sworn testimony or an application of an alleged victim who is not physically present, pursuant to court rules, or by a person who represents an alleged victim who is physically or mentally incapable of filing personally. A temporary protective order may be issued if the judge is satisfied that exigent circumstances exist sufficient to excuse the failure of the applicant to appear personally and that sufficient grounds for granting the application have been shown.

d. An order for emergency, ex parte relief shall be granted upon good cause shown and shall remain in effect until a judge of the Superior Court issues a further order. Any temporary protective order issued pursuant to this section is immediately appealable for a plenary hearing de novo not on the record before any judge of the Superior Court of the county in which the alleged victim resides or is sheltered if that judge issued the temporary protective order or has access to the reasons for the issuance of the temporary protective order and sets forth in the record the reasons for the modification or dismissal.

e. A temporary protective order issued pursuant to this section may include, but is not limited to, the following emergency relief:

(1) an order prohibiting the respondent from committing or attempting to commit any future act of nonconsensual sexual contact, sexual penetration, lewdness, stalking, or cyber-harassment against the alleged victim;

(2) an order prohibiting the respondent from entering the residence, property, school, or place of employment of the victim or the victim's family or household members, and requiring the respondent to stay away from any specified place that is named in the order and is frequented regularly by the alleged victim or the alleged victim's family or household members;

(3) an order prohibiting the respondent from having any contact with the alleged victim or others, including an order forbidding the respondent from personally or through an agent initiating any communication likely to cause annoyance or alarm including, but not limited to, personal, written, or telephone contact, or contact via electronic device, with the alleged victim or the alleged victim's family members, or their employers, employees, or fellow workers, an employee or volunteer of a sexual assault response entity that is providing services to an alleged victim, or others with whom communication would be likely to cause annoyance or alarm to the alleged victim;

(4) an order prohibiting the respondent from following, or threatening to harm, stalk, or follow, the alleged victim;

(5) an order prohibiting the respondent from committing or attempting to commit an act of harassment against the alleged victim; and

(6) any other relief that the court deems appropriate.

f. A copy of the temporary protective order issued pursuant to this section shall be immediately forwarded to the police of the municipality in which the alleged victim resides or is sheltered. A copy of the temporary protective order shall also be forwarded to the sheriff of the county in which the respondent resides for immediate service upon the respondent in accordance with the Rules of Court. The court or the sheriff may coordinate service of the temporary protective order upon the respondent through the police in appropriate circumstances. If personal service cannot be effected upon the respondent, the court may order

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other appropriate substituted service. At no time shall the alleged victim be asked or required to serve any order on the respondent.

g. Notice of temporary protective orders issued pursuant to this section shall be sent by the clerk of the court or other person designated by the court to the appropriate chiefs of police, members of the State Police and any other appropriate law enforcement agency or court.

4. Section 4 of P.L.2015, c.147 (C.2C:14-16) is amended to read as follows:

C.2C:14-16 Final protective order.

4. Final Protective Order.

a. A hearing shall be held in the Superior Court within 10 days of the filing of an application pursuant to section 3 of P.L.2015, c.147 (C.2C:14-15) in the county where the temporary protective order was issued, unless good cause is shown for the hearing to be held elsewhere. A copy of the application shall be served on the respondent in conformity with the Rules of Court. If a criminal complaint arising out of the same incident which is the subject matter of an application for a protective order has been filed, testimony given by the applicant, the alleged victim, or the respondent in accordance with an application filed pursuant to this section shall not be used in the criminal proceeding against the respondent, other than contempt matters, and where it would otherwise be admissible hearsay under the rules of evidence that govern when a party is unavailable. At the hearing, the standard for proving the allegations made in the application for a protective order shall be a preponderance of the evidence. The court shall consider but not be limited to the following factors:

(1) the occurrence of one or more acts of nonconsensual sexual contact, sexual penetration, or lewdness, or any attempt at such conduct, or acts of stalking or cyber-harassment against the alleged victim; and

(2) the possibility of future risk to the safety or well-being of the alleged victim.

b. The court shall not deny relief under this section due to: the applicant's or alleged victim's failure to report the incident to law enforcement; the alleged victim's or the respondent's alleged intoxication; whether the alleged victim did or did not leave the premises to avoid nonconsensual sexual contact, sexual penetration, or lewdness, or an attempt at such conduct, or to avoid being stalked; or the absence of signs of physical injury to the alleged victim.

c. In any proceeding involving an application for a protective order pursuant to P.L.2015, c.147 (C.2C:14-13 et al.), evidence of the alleged victim's previous sexual conduct or manner of dress at the time of the incident shall not be admitted nor shall any reference made to such conduct or manner or dress, except as provided in N.J.S.2C:14-7.

d. The issue of whether an act alleged in the application for a protective order occurred, or whether an act of contempt under subsection d. of N.J.S.2C:29-9 occurred, shall not be subject to mediation or negotiation in any form.

e. A final protective order issued pursuant to this section shall be issued only after a finding or an admission is made that the respondent committed an act of nonconsensual sexual contact, sexual penetration, or lewdness, or any attempt at such conduct, or committed stalking or cyber-harassment against the alleged victim. A final protective order shall:

(1) prohibit the respondent from having contact with the victim; and

(2) prohibit the respondent from committing any future act of nonconsensual sexual contact, sexual penetration, lewdness, stalking, or cyber-harassment, or any attempt at such conduct, against the victim.

f. In addition to any relief provided to the victim under subsection e. of this section, a final protective order issued pursuant to this section may include, but is not limited to, the following relief:

(1) an order prohibiting the respondent from entering the residence, property, school, or place of employment of the victim or the victim's family or household members, and requiring the respondent to stay away from any specified place that is named in the order and is frequented regularly by the victim or the victim's family or household members;

(2) an order prohibiting the respondent from having any contact with the victim or others, including an order forbidding the respondent from personally or through an agent initiating any communication likely to cause annoyance or alarm including, but not limited to, personal, written, or telephone contact, or contact via electronic device, with the victim or the victim's family members or their employers, employees, or fellow workers; an employee or volunteer of a sexual assault response entity that is providing services to a victim; or others with whom communication would be likely to cause annoyance or alarm to the victim;

(3) an order prohibiting the respondent from following, or threatening to harm, stalk, or follow, the victim;

(4) an order prohibiting the respondent from committing or attempting to commit an act of harassment against the victim; and

(5) any other relief that the court deems appropriate.

g. A copy of the final protective order issued pursuant to this section shall be immediately forwarded to the police of the municipality in which the victim resides or is sheltered. A copy of the final protective order shall be forwarded to the sheriff of the county in which the respondent resides for immediate service upon the respondent in accordance with the Rules of Court. The court or the sheriff may coordinate service of the final protective order upon the respondent through the police in appropriate circumstances. If personal service cannot be effected upon the respondent, the court may order other appropriate substituted service. At no time shall the victim be asked or required to serve any order on the respondent.

h. Notice of a final protective order issued pursuant to this section shall be sent by the clerk of the Superior Court or other person designated by the court to the appropriate county prosecutor, the appropriate chiefs of police, members of the State Police and any other appropriate law enforcement agency. Notice of the issuance of a final protective order shall also be provided to the Division of Child Protection and Permanency in the Department of Children and Families where the victim is less than 18 years of age.

i. A final protective order issued pursuant to this section shall remain in effect until further order of a judge of the Superior Court. Either party may file a petition with the court to dissolve or modify a final protective order. When considering a petition for dissolution or modification of a final protective order, the court shall conduct a hearing to consider whether a material change in circumstances has occurred since the issuance of the protective order which would make its continued enforcement inequitable, oppressive or unjust taking into account the current status of the parties, including the desire of the victim for the continuation of the protective order, the potential for contact between the parties, the history of the respondent's violations of the protective order or criminal convictions, and any other factors that the court may find relevant to protecting the safety and well-being of the victim.

5. Section 8 of P.L.2015, c.147 (C.2C:14-20) is amended to read as follows:

C.2C:14-20 Central registry of protective orders.

8. The Administrative Office of the Courts shall establish and maintain a central registry of all protective orders issued pursuant to P.L.2015, c.147 (C.2C:14-13 et al.) and all persons who have been charged with a violation of such a protective order. All records made pursuant to this section shall be kept confidential and shall be released only to:

a. A public agency authorized to investigate a report of nonconsensual sexual contact, sexual penetration, or lewdness, or any attempt at such conduct, stalking, cyber-harassment, or domestic violence;

b. A police or other law enforcement agency for official purposes;

c. A court, upon its finding that access to such records may be necessary for determination of an issue before the court;

d. A surrogate, in that person's official capacity as deputy clerk of the Superior Court, in order to prepare documents that may be necessary for a court to determine an issue in an adoption proceeding; or

e. The Division of Child Protection and Permanency in the Department of Children and Families when the division is conducting a background investigation involving:

(1) an allegation of child abuse or neglect, to include any adult member of the same household as the individual who is the subject of the abuse or neglect allegation; or

(2) an out-of-home placement for a child being placed by the Division of Child Protection and Permanency, to include any adult member of the prospective placement household.

Any individual, agency, or court which receives from the Administrative Office of the Courts the records referred to in this section shall keep the records and reports, or parts thereof, confidential and shall not disseminate or disclose such records and reports, or parts thereof; provided that nothing in this section shall prohibit a receiving individual, agency, surrogate or court from disclosing records and reports, or parts thereof, in a manner consistent with and in furtherance of the purpose for which the records and reports or parts thereof were received.

Any individual who disseminates or discloses a record or report, or parts thereof, of the central registry, other than for an official purpose authorized by this section, for the investigation of an alleged violation of a protective order issued pursuant to P.L.2015, c.147 (C.2C:14-13 et al.), conducting a background investigation involving a person's application for employment at a police or law enforcement agency, making a determination of an issue before the court, conducting a background investigation as specified in subsection e. of this section, or for any other purpose other than that which is authorized by law, the Rules of Court or court order, shall be guilty of a crime of the fourth degree.

6. N.J.S.2C:58-3 is amended to read as follows:

Purchase of firearms.

2C:58-3. a. Permit to purchase a handgun.

(1) A person shall not sell, give, transfer, assign or otherwise dispose of, nor receive, purchase, or otherwise acquire a handgun unless the purchaser, assignee, donee, receiver or holder is licensed as a dealer under this chapter or has first secured a permit to purchase a handgun as provided by this section.

(2) A person who is not a licensed retail dealer and sells, gives, transfers, assigns, or otherwise disposes of, or receives, purchases or otherwise acquires a handgun pursuant to this section shall conduct the transaction through a licensed retail dealer.

The provisions of this paragraph shall not apply if the transaction is:

(a) between members of an immediate family as defined in subsection n. of this section;

(b) between law enforcement officers;

(c) between collectors of firearms or ammunition as curios or relics as defined in Title 18, U.S.C. section 921(a)(13) who have in their possession a valid Collector of Curios and Relics License issued by the Bureau of Alcohol, Tobacco, Firearms, and Explosives; or

(d) a temporary transfer pursuant to section 1 of P.L.1992, c.74 (C.2C:58-3.1) or section 1 of P.L.1997, c.375 (C.2C:58-3.2).

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(3) Prior to a transaction conducted pursuant to this subsection, the retail dealer shall complete a National Instant Criminal Background Check of the person acquiring the handgun. In addition:

(a) the retail dealer shall submit to the Superintendent of State Police, on a form approved by the superintendent, information identifying and confirming the background check;

(b) every retail dealer shall maintain a record of transactions conducted pursuant to this subsection, which shall be maintained at the address displayed on the retail dealer's license for inspection by a law enforcement officer during reasonable hours;

(c) a retail dealer may charge a fee for a transaction conducted pursuant to this subsection; and

(d) any record produced pursuant to this subsection shall not be considered a public record pursuant to P.L.1963, c.73 (C.47:1A-1 et seq.) or P.L.2001, c.404 (C.47:1A-5 et al.).

b. Firearms purchaser identification card.

(1) A person shall not sell, give, transfer, assign or otherwise dispose of nor receive, purchase or otherwise acquire an antique cannon or a rifle or shotgun, other than an antique rifle or shotgun, unless the purchaser, assignee, donee, receiver or holder is licensed as a dealer under this chapter or possesses a valid firearms purchaser identification card, and first exhibits the card to the seller, donor, transferor or assignor, and unless the purchaser, assignee, donee, receiver or holder signs a written certification, on a form prescribed by the superintendent, which shall indicate that the person presently complies with the requirements of subsection c. of this section and shall contain the person's name, address and firearms purchaser identification card number or dealer's registration number. The certification shall be retained by the seller, as provided in paragraph (4) of subsection a. of N.J.S.2C:58-2, or, in the case of a person who is not a dealer, it may be filed with the chief police officer of the municipality in which the person resides or with the superintendent.

(2) A person who is not a licensed retail dealer and sells, gives, transfers, assigns, or otherwise disposes of, or receives, purchases or otherwise acquires an antique cannon or a rifle or shotgun pursuant to this section shall conduct the transaction through a licensed retail dealer.

The provisions of this paragraph shall not apply if the transaction is:

(a) between members of an immediate family as defined in subsection n. of this section;

(b) between law enforcement officers;

(c) between collectors of firearms or ammunition as curios or relics as defined in Title 18, U.S.C. section 921(a)(13) who have in their possession a valid Collector of Curios and Relics License issued by the Bureau of Alcohol, Tobacco, Firearms, and Explosives; or

(d) a temporary transfer pursuant to section 1 of P.L.1992, c.74 (C.2C:58-3.1) and section 1 of P.L.1997, c.375 (C.2C:58-3.2).

(3) Prior to a transaction conducted pursuant to this subsection, the retail dealer shall complete a National Instant Criminal Background Check of the person acquiring an antique cannon or a rifle or shotgun. In addition:

(a) the retail dealer shall submit to the Superintendent of State Police, on a form approved by the superintendent, information identifying and confirming the background check;

(b) every retail dealer shall maintain a record of transactions conducted pursuant to this section which shall be maintained at the address set forth on the retail dealer's license for inspection by a law enforcement officer during reasonable hours;

(c) a retail dealer may charge a fee, not to exceed $70, for a transaction conducted pursuant to this subsection; and

(d) any record produced pursuant to this subsection shall not be considered a public record pursuant to P.L.1963, c.73 (C.47:1A-1 et seq.) or P.L.2001, c.404 (C.47:1A-5 et al.).

c. Who may obtain. Except as hereinafter provided, a person shall not be denied a permit to purchase a handgun or a firearms purchaser identification card, unless the person is known in the community in which the person lives as someone who has engaged in acts or made statements suggesting the person is likely to engage in conduct, other than justified self-defense, that would pose a danger to self or others, or is subject to any of the disabilities set forth in this section or other sections of this chapter. A handgun purchase permit or firearms purchaser identification card shall not be issued:

(1) To any person who has been convicted of: (a) any crime in this State or its felony counterpart in any other state or federal jurisdiction; or (b) a disorderly persons offense in this State involving an act of domestic violence as defined in section 3 of P.L.1991, c.261 (C.2C:25-19) or its felony or misdemeanor counterpart involving an act of domestic violence as defined under a comparable statute in any other state or federal jurisdiction, whether or not armed with or possessing a weapon at the time of the offense;

(2) To any person who is presently confined for a mental disorder as a voluntary admission as defined in section 2 of P.L.1987, c.116 (C.30:4-27.2) or who is presently involuntarily committed to inpatient or outpatient treatment pursuant to P.L.1987, c.116 (C.30:4-27.1 et seq.);

(3) To any person who suffers from a physical defect or disease which would make it unsafe for that person to handle firearms, to any person with a substance use disorder involving drugs as defined in section 2 of P.L.1970, c.226 (C.24:21-2), or to any alcoholic as defined in section 2 of P.L.1975, c.305 (C.26:2B-8) unless any of the foregoing persons produces a certificate of a medical doctor, treatment provider, or psychiatrist licensed in New Jersey, or other satisfactory proof, that the person is no longer suffering from that particular disability in a manner that would interfere with or handicap that person in the handling of firearms; to any person who knowingly falsifies any information on the application form for a handgun purchase permit or firearms purchaser identification card;

(4) To any person under the age of 18 years for a firearms purchaser identification card and to any person under the age of 21 years for a permit to purchase a handgun;

(5) To any person where the issuance would not be in the interest of the public health, safety or welfare because the person is found to be lacking the essential character of temperament necessary to be entrusted with a firearm;

(6) To any person who is subject to or has violated a temporary or final restraining order issued pursuant to the "Prevention of Domestic Violence Act of 1991", P.L.1991, c.261 (C.2C:25-17 et seq.) prohibiting the person from possessing any firearm or a temporary or final domestic violence restraining order issued in another jurisdiction prohibiting the person from possessing any firearm;

(7) To any person who as a juvenile was adjudicated delinquent for an offense which, if committed by an adult, would constitute a crime and the offense involved the unlawful use or possession of a weapon, explosive or destructive device or is enumerated in subsection d. of section 2 of P.L.1997, c.117 (C.2C:43-7.2);

(8) To any person whose firearm is seized pursuant to the "Prevention of Domestic Violence Act of 1991", P.L.1991, c.261 (C.2C:25-17 et seq.) and whose firearm has not been returned; or

(9) To any person named on the consolidated Terrorist Watchlist maintained by the Terrorist Screening Center administered by the Federal Bureau of Investigation;

(10) To any person who is subject to or has violated a court order prohibiting the custody, control, ownership, purchase, possession, or receipt of a firearm or ammunition issued pursuant to the "Extreme Risk Protective Order Act of 2018", P.L.2018, c.35 (C.2C:58-20 et al.);

(11) To any person who is subject to or has violated a court order prohibiting the custody, control, ownership, purchase, possession, or receipt of a firearm or ammunition issued pursuant to P.L.2021, c.327 (C.2C:12-14 et al.);

(12) To any person who is subject to or has violated a temporary or final protective order issued pursuant to the "Victim's Assistance and Survivor Protection Act," P.L.2015, c.147 (C.2C:14-13 et al.);

(13) To any person who has previously been voluntarily admitted to inpatient treatment pursuant to P.L.1987, c.116 (C.30:4-27.1 et seq.) or involuntarily committed to inpatient or outpatient treatment pursuant to P.L.1987, c.116 (C.30:4-27.1 et seq.), unless the court has expunged the person's record pursuant to P.L.1953, c.268 (C.30:4-80.8 et seq.);

(14) To any person who is subject to an outstanding arrest warrant for an indictable crime in this State or for a felony, other than a felony to which section 1 of P.L.2022, c.50 (C.2A:160-14.1) would apply, in any other state or federal jurisdiction; or

(15) To any person who is a fugitive from justice due to having fled from any state or federal jurisdiction to avoid prosecution for a crime, other than a crime to which section 1 of P.L.2022, c.50 (C.2A:160-14.1) would apply, or to avoid giving testimony in any criminal proceeding.

In order to obtain a permit to purchase a handgun or a firearms purchaser identification card, the applicant shall demonstrate that, within four years prior to the date of the application, the applicant satisfactorily completed a course of instruction approved by the superintendent in the lawful and safe handling and storage of firearms. The applicant shall be required to demonstrate completion of a course of instruction only once prior to obtaining either a firearms purchaser identification card or the applicant's first permit to purchase a handgun.

The applicant shall not be required to demonstrate completion of a course of instruction in order to obtain any subsequent permit to purchase a handgun, to replace an existing firearms purchaser identification card, or to renew a firearms purchaser identification card.

An applicant who is a law enforcement officer who has satisfied the requirements of subsection j. of N.J.S.2C:39-6, a retired law enforcement officer who has satisfied the requirements of subsection l. of N.J.S.2C:39-6, or a veteran who was honorably discharged as a member of the United States Armed Forces or National Guard who received substantially equivalent training shall not be required to complete the course of instruction required pursuant to the provisions of this subsection.

A person who obtained a permit to purchase a handgun or a firearms purchaser identification card prior to the effective date of P.L.2022, c.58 shall not be required to complete a course of instruction pursuant to this subsection.

d. Issuance. The chief police officer of an organized full-time police department of the municipality where the applicant resides or the superintendent, in all other cases, shall upon application, issue to any person qualified under the provisions of subsection c. of this section a permit to purchase a handgun or a firearms purchaser identification card.

A firearms purchaser identification card issued following the effective date of P.L.2022, c.58 shall display a color photograph and be electronically linked to the fingerprints of the card holder. A person who obtained a firearms purchaser identification card prior to the effective date of P.L.2022, c.58 shall not be required to obtain a firearms purchaser identification card that displays a color photograph and is electronically linked to fingerprints. The superintendent shall establish guidelines as necessary to effectuate the issuance of firearms purchaser identification cards that display a color photograph and which are electronically linked to the fingerprints of the card holder.

The requirements of this subsection concerning firearms purchaser identification cards issued following the effective date of P.L.2022, c.58 shall remain inoperative until such time as the superintendent establishes a system to produce cards that comply with this requirement and, until such time, applicants issued a firearms purchaser identification card shall be provided with cards that do not conform to the requirements of this section, which shall be afforded full force and effect until such time as the system is established and a compliant card is issued in accordance with this subsection. An applicant issued a non-compliant firearms purchaser identification card shall obtain a card, at no cost to the applicant, which conforms to the requirements of this section no later than one year after receiving notice that the system to produce cards that comply with this requirement is operational.

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If an application for a permit or identification card is denied, the applicant shall be provided with a written statement of the reasons for the denial. Any person aggrieved by the denial of a permit or identification card may request a hearing in the Superior Court of the county in which the person resides if the person is a resident of New Jersey or in the Superior Court of the county in which the person's application was filed if the person is a nonresident. The request for a hearing shall be made in writing within 30 days of the denial of the application for a permit or identification card. The applicant shall serve a copy of the request for a hearing upon the chief police officer of the municipality in which the person resides, if the person is a resident of New Jersey, and upon the superintendent in all cases. The hearing shall be held and a record made thereof within 60 days of the receipt of the application for a hearing by the judge of the Superior Court. No formal pleading and no filing fee shall be required as a preliminary to a hearing. Appeals from the results of a hearing shall be in accordance with law.

The Administrative Director of the Courts shall coordinate with the superintendent in the development of an electronic filing system to receive requests for hearings and serve the chief police officer and superintendent as required in this section.

e. Applications. Applications for permits to purchase a handgun and for firearms purchaser identification cards shall be in the form prescribed by the superintendent and shall set forth the name, residence, place of business, age, date of birth, occupation, sex, any aliases or other names previously used by the applicant, gender, and physical description, including distinguishing physical characteristics, if any, of the applicant, and shall state whether the applicant is a citizen, whether the applicant is an alcoholic as defined in section 2 of P.L.1975, c.305 (C. 26:2B-8) or is a drug-dependent person as defined in section 2 of P.L.1970, c.226 (C.24:21-2), whether the applicant has ever been confined or committed to a mental institution or hospital for treatment or observation of a mental or psychiatric condition on a temporary, interim or permanent basis, giving the name and location of the institution or hospital and the dates of confinement or commitment, whether the applicant has been attended, treated or observed by any doctor or psychiatrist or at any hospital or mental institution on an inpatient or outpatient basis for any mental or psychiatric condition, giving the name and location of the doctor, psychiatrist, hospital or institution and the dates of the occurrence, whether the applicant presently or ever has been a member of any organization which advocates or approves the commission of acts of force and violence to overthrow the Government of the United States or of this State, or which seeks to deny others their rights under the Constitution of either the United States or the State of New Jersey, whether the applicant has ever been convicted of a crime or disorderly persons offense in this State or felony or misdemeanor in any other state or federal jurisdiction, whether the applicant is subject to a restraining order issued pursuant to the "Prevention of Domestic Violence Act of 1991", P.L.1991, c.261 (C.2C:25-17 et seq.) or an order entered under the provisions of a substantially similar statute under the laws of another jurisdiction prohibiting the applicant from possessing any firearm, whether the applicant is subject to a protective order issued pursuant to the "Victim's Assistance and Survivor Protection Act," P.L.2015, c.147 (C.2C:14-13 et al.) or an order entered under the provisions of a substantially similar statute under the laws of another jurisdiction, whether the applicant is subject to a protective order issued pursuant to the "Extreme Risk Protective Order Act of 2018", P.L.2018, c.35 (C.2C:58-20 et al.), whether the applicant is subject to a protective order issued pursuant to P.L.2021, c.327 (C.2C:12-14 et al.) prohibiting the applicant from possessing any firearm, and other information as the superintendent shall deem necessary for the proper enforcement of this chapter. For the purpose of complying with this subsection, the applicant shall waive any statutory or other right of confidentiality relating to institutional confinement. The application shall be signed by the applicant and shall contain as references the names and addresses of two reputable citizens personally acquainted with the applicant.

An applicant for a permit to purchase a handgun shall also certify, with respect to each handgun listed on the form, whether the applicant is purchasing the handgun on the applicant's own behalf or, if not, that the purchase is being made on behalf of a third party to whom the applicant may lawfully transfer the handgun.

Application blanks shall be obtainable from the superintendent, from any other officer authorized to grant a permit or identification card, and from licensed retail dealers, or shall be made available through an online process established or made available by the superintendent.

The chief police officer or the superintendent shall obtain the fingerprints of the applicant and shall have them compared with any and all records of fingerprints in the municipality and county in which the applicant resides and also the records of the State Bureau of Identification and the Federal Bureau of Investigation, provided that an applicant for a handgun purchase permit who possesses a valid firearms purchaser identification card, or who has previously obtained a handgun purchase permit from the same licensing authority for which the applicant was previously fingerprinted, and who provides other reasonably satisfactory proof of the applicant's identity, need not be fingerprinted again; however, the chief police officer or the superintendent shall proceed to investigate the application to determine whether or not the applicant has become subject to any of the disabilities set forth in this chapter.

f. Granting of permit or identification card; fee; term; renewal; revocation. The application for the permit to purchase a handgun together with a fee of $25, or the application for the firearms purchaser identification card together with a fee of $50, shall be delivered or forwarded to the licensing authority who, upon determining that the application is complete, shall investigate the same and, provided the requirements of this section are met, shall grant the permit or the identification card, or both, if application has been made therefor, within 30 days from the date of receipt of the completed application for residents of this State and within 45 days for nonresident applicants. A permit to purchase a handgun shall be valid for a period of 90 days from the date of issuance and may be renewed by the issuing authority for good cause for an additional 90 days. A firearms purchaser identification card issued or renewed after the effective date of P.L.2022, c.58 shall expire during the tenth calendar year following its date of issuance and on the same calendar day as the person's date of birth.

If the date of birth of the firearms purchaser identification card holder does not correspond to a calendar day of the tenth calendar year, the card shall expire on the last day of the birth month of the card holder.

A firearms purchaser identification card issued pursuant to this section may be renewed upon filing of a renewal application and payment of the required fee, provided that the holder is not subject to any of the disabilities set forth in subsection c. of this section and complies with all other applicable requirements as set forth in statute and regulation. If an application for renewal of a firearms purchaser identification card is denied, the applicant shall be provided with a written statement of the reasons for the denial. Any person aggrieved by the denial of an application for renewal of a firearms purchaser identification card may request a hearing in the Superior Court of the county in which the person resides if the person is a resident of New Jersey or in the Superior Court of the county in which the person's application was filed if the person is a nonresident. The request for a hearing shall be made in writing within 30 days of the denial of the application for renewal of the firearms purchaser identification card. The applicant shall serve a copy of the request for a hearing upon the chief police officer of the municipality in which the applicant resides, if the person is a resident of New Jersey, and upon the superintendent in all cases. The hearing shall be held and a record made thereof within 60 days of the receipt of the application for a hearing by the judge of the Superior Court. A formal

(1) a federal, State, or local law enforcement officer or agency purchasing handguns for use by officers in the actual performance of their law enforcement duties;

(2) a collector of handguns as curios or relics as defined in Title 18, United States Code, section 921(a)(13) who has in the collector's possession a valid Collector of Curios and Relics License issued by the federal Bureau of Alcohol, Tobacco, Firearms and Explosives;

(3) transfers of handguns among licensed retail dealers, registered wholesale dealers and registered manufacturers;

(4) transfers of handguns from any person to a licensed retail dealer or a registered wholesale dealer or registered manufacturer;

(5) any transaction where the person has purchased a handgun from a licensed retail dealer and has returned that handgun to the dealer in exchange for another handgun within 30 days of the original transaction, provided the retail dealer reports the exchange transaction to the superintendent; or

(6) any transaction where the superintendent issues an exemption from the prohibition in this subsection pursuant to the provisions of section 4 of P.L.2009, c.186 (C.2C:58-3.4).

The provisions of this subsection shall not be construed to afford or authorize any other exemption from the regulatory provisions governing firearms set forth in chapter 39 and chapter 58 of Title 2C of the New Jersey Statutes;

A person shall not be restricted as to the number of rifles or shotguns the person may purchase, provided the person possesses a valid firearms purchaser identification card and provided further that the person signs the certification required in subsection b. of this section for each transaction.

j. Firearms passing to heirs or legatees. Notwithstanding any other provision of this section concerning the transfer, receipt or acquisition of a firearm, a permit to purchase or a firearms purchaser identification card shall not be required for the passing of a firearm upon the death of an owner thereof to the owner's heir or legatee, whether the same be by testamentary bequest or by the laws of intestacy. The person who shall so receive, or acquire the firearm shall, however, be subject to all other provisions of this chapter. If the heir or legatee of the firearm does not qualify to possess or carry it, the heir or legatee may retain ownership of the firearm for the purpose of sale for a period not exceeding 180 days, or for a further limited period as may be approved by the chief law enforcement officer of the municipality in which the heir or legatee resides or the superintendent, provided that the firearm is in the custody of the chief law enforcement officer of the municipality or the superintendent during that period.

k. Sawed-off shotguns. Nothing in this section shall be construed to authorize the purchase or possession of any sawed-off shotgun.

l. Nothing in this section and in N.J.S.2C:58-2 shall apply to the sale or purchase of a visual distress signaling device approved by the United States Coast Guard, solely for possession on a private or commercial aircraft or any boat; provided, however, that no person under the age of 18 years shall purchase nor shall any person sell to a person under the age of 18 years a visual distress signaling device.

m. The provisions of subsections a. and b. of this section and paragraphs (4) and (5) of subsection a. of N.J.S.2C:58-2 shall not apply to the purchase of firearms by a law enforcement agency for use by law enforcement officers in the actual performance of the officers' official duties, which purchase may be made directly from a manufacturer or from a licensed dealer located in this State or any other state.

n. For the purposes of this section, "immediate family" means a spouse, domestic partner as defined in section 3 of P.L.2003, c.246 (C.26:8A-3), partner in a civil union couple as defined in section 2 of P.L.2006, c.103 (C.37:1-29), parent, stepparent, grandparent, sibling, stepsibling, child, stepchild, and grandchild, as related by blood or by law.

Continued on next page

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(1) a federal, State, or local law enforcement officer or agency purchasing handguns for use by officers in the actual performance of their law enforcement duties;

(2) a collector of handguns as curios or relics as defined in Title 18, United States Code, section 921(a)(13) who has in the collector's possession a valid Collector of Curios and Relics License issued by the federal Bureau of Alcohol, Tobacco, Firearms and Explosives;

(3) transfers of handguns among licensed retail dealers, registered wholesale dealers and registered manufacturers;

(4) transfers of handguns from any person to a licensed retail dealer or a registered wholesale dealer or registered manufacturer;

(5) any transaction where the person has purchased a handgun from a licensed retail dealer and has returned that handgun to the dealer in exchange for another handgun within 30 days of the original transaction, provided the retail dealer reports the exchange transaction to the superintendent; or

(6) any transaction where the superintendent issues an exemption from the prohibition in this subsection pursuant to the provisions of section 4 of P.L.2009, c.186 (C.2C:58-3.4).

The provisions of this subsection shall not be construed to afford or authorize any other exemption from the regulatory provisions governing firearms set forth in chapter 39 and chapter 58 of Title 2C of the New Jersey Statutes;

A person shall not be restricted as to the number of rifles or shotguns the person may purchase, provided the person possesses a valid firearms purchaser identification card and provided further that the person signs the certification required in subsection b. of this section for each transaction.

j. Firearms passing to heirs or legatees. Notwithstanding any other provision of this section concerning the transfer, receipt or acquisition of a firearm, a permit to purchase or a firearms purchaser identification card shall not be required for the passing of a firearm upon the death of an owner thereof to the owner's heir or legatee, whether the same be by testamentary bequest or by the laws of intestacy. The person who shall so receive, or acquire the firearm shall, however, be subject to all other provisions of this chapter. If the heir or legatee of the firearm does not qualify to possess or carry it, the heir or legatee may retain ownership of the firearm for the purpose of sale for a period not exceeding 180 days, or for a further limited period as may be approved by the chief law enforcement officer of the municipality in which the heir or legatee resides or the superintendent, provided that the firearm is in the custody of the chief law enforcement officer of the municipality or the superintendent during that period.

k. Sawed-off shotguns. Nothing in this section shall be construed to authorize the purchase or possession of any sawed-off shotgun.

l. Nothing in this section and in N.J.S.2C:58-2 shall apply to the sale or purchase of a visual distress signaling device approved by the United States Coast Guard, solely for possession on a private or commercial aircraft or any boat; provided, however, that no person under the age of 18 years shall purchase nor shall any person sell to a person under the age of 18 years a visual distress signaling device.

m. The provisions of subsections a. and b. of this section and paragraphs (4) and (5) of subsection a. of N.J.S.2C:58-2 shall not apply to the purchase of firearms by a law enforcement agency for use by law enforcement officers in the actual performance of the officers' official duties, which purchase may be made directly from a manufacturer or from a licensed dealer located in this State or any other state.

n. For the purposes of this section, "immediate family" means a spouse, domestic partner as defined in section 3 of P.L.2003, c.246 (C.26:8A-3), partner in a civil union couple as defined in section 2 of P.L.2006, c.103 (C.37:1-29), parent, stepparent, grandparent, sibling, stepsibling, child, stepchild, and grandchild, as related by blood or by law.

o. Registration of handguns owned by new residents. Any person who becomes a resident of this State following the effective date of P.L.2022, c.52 and who transports into this State a firearm that the person owned or acquired while residing in another state shall apply for a firearms purchaser identification card within 60 days of becoming a New Jersey resident, and shall register any handgun so transported into this State within 60 days as provided in this subsection.

A person who registers a handgun pursuant to this subsection shall complete a registration statement, which shall be in a form prescribed by the superintendent. The information provided in the registration statement shall include, but shall not be limited to, the name and address of the person and the make, model, and serial number of the handgun being registered. Each registration statement shall be signed by the person, and the signature shall constitute a representation of the accuracy of the information contained in the registration statement.

The registration statement shall be submitted to the law enforcement agency of the municipality in which the person resides or, if the municipality does not have a municipal law enforcement agency, any State Police station.

Within 60 days prior to the effective date of P.L.2022, c.52, the superintendent shall prepare the form of registration statement as described in this subsection and shall provide a suitable supply of statements to each organized full-time municipal police department and each State Police station.

A person who fails to apply for a firearms purchaser identification card or register a handgun as required pursuant to this subsection shall be granted 30 days to comply with the provisions of this subsection. If the person does not comply within 30 days, the person shall be liable to a civil penalty of $250 for a first offense and shall be guilty of a disorderly persons offense for a second or subsequent offense.

If a person is in possession of multiple firearms or handguns in violation of this subsection, the person shall be guilty of one offense under this subsection provided the violation is a single event.

The civil penalty shall be collected pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.) in a summary proceeding before the municipal court having jurisdiction. A law enforcement officer having enforcement authority in that municipality may issue a summons for a violation, and may serve and execute all process with respect to the enforcement of this subsection consistent with the Rules of Court.

p. A chief police officer or the superintendent may delegate to subordinate officers or employees of the law enforcement agency the responsibilities established pursuant to this section.

7. Section 4 of P.L.2018, c.35 (C.2C:58-23) is amended to read as follows:

C.2C:58-23 Filing of temporary extreme risk protection order.

4. a. Except as provided in subsection l. of this section, a petitioner may file a petition, as prescribed by the Administrative Director of the Courts, for a temporary extreme risk protective order in the court in accordance with the Rules of Court alleging that the respondent poses a significant danger of bodily injury to self or others by having custody or control of, owning, possessing, purchasing, or receiving a firearm. The petition shall be heard by the court in an expedited manner.

Petition forms shall be readily available at the courts, and at State, county, and municipal law enforcement agencies.

Prior to filing a petition with the court, a family or household member may request assistance from a State, county, or municipal law enforcement agency which shall advise the petitioner of the procedure for completing and signing a petition for a temporary extreme risk protective order. A law enforcement officer from the agency may assist the family or household member in preparing or filing the petition. This assistance may include, but not be limited to, providing information related to the factors set forth in subsection f. of this section, joining in the petition, referring the matter to another law enforcement agency for additional assistance, or filing the officer's own petition with the court.

Filing a petition pursuant to this section shall not prevent a petitioner from filing a criminal complaint or applying for a restraining order pursuant to the "Prevention of Domestic Violence Act of 1991," P.L.1991, c.261 (C.2C:25-17 et seq.) or prevent any person from taking any action authorized pursuant to P.L.1987, c.116 (C.30:4-27.1 et seq.) based on the circumstances forming the basis of the petition.

A petitioner may apply for relief under this section in accordance with the Rules of Court.

b. A petition for a temporary extreme risk protective order shall include an affidavit setting forth the facts tending to establish the grounds of the petition, or the reason for believing that they exist, and, to the extent available, the number, types, physical description, and locations of any firearms and ammunition currently believed by the petitioner to be controlled or possessed by the respondent.

c. The court shall not charge a fee to file the petition.

d. The court, before issuing a temporary extreme risk protective order, shall examine under oath the petitioner and any witness the petitioner may produce. The court, in lieu of examining the petitioner and any witness, may rely on an affidavit submitted in support of the petition.

e. A judge shall issue the order if the court finds good cause to believe that the respondent poses an immediate and present danger of causing bodily injury to the respondent or others by having custody or control of, owning, possessing, purchasing, or receiving a firearm.

f. The county prosecutor or a designee of the county prosecutor shall produce in an expedited manner any available evidence including, but not limited to, available evidence related to the factors set forth in this section, and the court shall consider whether the respondent:

(1) has any history of threats or acts of violence by the respondent directed toward self or others;

(2) has any history of use, attempted use, or threatened use of physical force by the respondent against another person;

(3) is the subject of a temporary or final restraining order or has violated a temporary or final restraining order issued pursuant to the "Prevention of Domestic Violence Act of 1991," P.L.1991, c.261 (C.2C:25-17 et seq.);

(4) is the subject of a temporary or final protective order or has violated a temporary or final protective order issued pursuant to the "Victim's Assistance and Survivor Protection Act," P.L.2015, c.147 (C.2C:14-13 et al.);

(5) has any prior arrests, pending charges, or convictions for a violent indictable crime or disorderly persons offense, stalking offense pursuant to section 1 of P.L.1992, c.209 (C.2C:12-10), or domestic violence offense enumerated in section 3 of P.L.1991, c.261 (C.2C:25-19);

(6) has any prior arrests, pending charges, or convictions for any offense involving cruelty to animals or any history of acts involving cruelty to animals;

(7) has any history of drug or alcohol abuse and recovery from this abuse; or

(8) has recently acquired a firearm, ammunition, or other deadly weapon.

g. The temporary extreme risk protective order shall prohibit the respondent from having custody or control of, owning, purchasing, possessing, or receiving firearms or ammunition, and from securing or holding a firearms purchaser identification card or permit to purchase a handgun pursuant to N.J.S.2C:58-3, or a permit to carry a handgun pursuant to N.J.S.2C:58-4 during the period the protective order is in effect and shall order the respondent to surrender firearms and ammunition in the respondent's custody or control, or which the respondent

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possesses or owns, and any firearms purchaser identification card, permit to purchase a handgun, or permit to carry a handgun held by the respondent in accordance with section 7 of P.L.2018, c.35 (C.2C:58-26). Any card or permit issued to the respondent shall be immediately revoked pursuant to subsection f. of N.J.S.2C:58-3.

h. A temporary extreme risk protective order issued under this section shall remain in effect until a court issues a further order.

i. The court that issues the temporary extreme risk protective order shall immediately forward:

(1) a copy of the order to the petitioner and county prosecutor in the county in which the respondent resides; and

(2) a copy of the order and the petition to the appropriate law enforcement agency in the municipality in which the respondent resides, which shall immediately, or as soon as practicable, serve it on the respondent.

If personal service cannot be effected upon the respondent, the court may order other appropriate substituted service. At no time shall a petitioner who is a family or household member be asked or required to serve any order on the respondent. The law enforcement agency serving the order shall not charge a fee or seek reimbursement from the petitioner for service of the order.

j. Notice of temporary extreme risk protective orders issued pursuant to this section shall be sent by the county prosecutor to the appropriate chiefs of police, members of the State Police, and any other appropriate law enforcement agency or court.

k. Any temporary extreme risk protective order issued pursuant to this section shall be in effect throughout the State, and shall be enforced by all law enforcement officers.

l. (1) A petition for a temporary extreme risk protective order filed against a law enforcement officer shall be filed in the law enforcement agency in which the officer is employed. The law enforcement officer or employee receiving the petition shall advise the petitioner of the procedure for completing and signing a petition.

(2) Upon receipt of the petition, the law enforcement officer's employer shall immediately initiate an internal affairs investigation.

(3) The disposition of the internal affairs investigation shall immediately be served upon the county prosecutor who shall make a determination whether to refer the matter to the courts.

(4) The law enforcement officer's employer shall take appropriate steps to implement any findings set forth in the disposition of the internal affairs investigation.

The law enforcement officer shall not be terminated during the pendency of the internal affairs investigation.

8. Section 2 of P.L.2019, c.103 (C.52:4B-60.2) is amended to read as follows:

C.52:4B-60.2 Findings, declarations relative to the rights of victims of sexual violence.

2. The Legislature finds and declares that:

a. The enactment of the "Crime Victim's Bill of Rights," P.L.1985, c.249 (C.52:4B-34 et seq.) and the "New Jersey Campus Sexual Assault Victim's Bill of Rights Act," P.L.1994, c.160 (C.18A:61E-1 et seq.) have resulted in significant advances in the recognition and protection of the rights of crime victims and survivors once they enter the criminal justice system;

b. Nonetheless, victims of sexual violence in particular often face circumstances where they may be blamed for the crime, assumed to be fabricating the crime, or taken less seriously than their injuries warrant. These victims are sometimes discouraged from proceeding with their complaints and as a result may not be afforded the protections and rights in the criminal justice system to which they are entitled;

c. Therefore, with no diminution of the legislatively-recognized rights of crime victims, it is the public policy of this State that the criminal justice system accord victims of sexual violence the following rights:

(1) To have any allegation of sexual assault treated seriously; to be treated with dignity and compassion; and to be notified of existing medical, counseling, mental health, or other services available for victims of sexual assault, whether or not the crime is reported to law enforcement;

(2) To be free, to the extent consistent with the New Jersey or United States Constitution, from any suggestion that victims are responsible for the commission of crimes against them or any suggestion that victims were contributorily negligent or assumed the risk of being assaulted;

(3) To be free from any suggestion that victims are to report the crimes to be assured of any other guaranteed right and that victims should refrain from reporting crimes in order to avoid unwanted personal publicity;

(4) When applicable, to no-cost access to the services of a sexual assault response team comprised of: a certified forensic nurse examiner, a confidential sexual violence advocate, and a law enforcement official as provided in accordance with the Attorney General's Standards for Providing Services to Victims of Sexual Assault, and the choice to opt into or out of any of the team's services;

(5) To be informed of, and assisted in exercising, the right to be confidentially or anonymously tested for acquired immune deficiency syndrome (AIDS) or infection with the human immunodeficiency virus (HIV) or any other related virus identified as a probable causative agent of AIDS; and to be informed of, and assisted in exercising, any rights that may be provided by law to compel and disclose the results of testing of a sexual assault suspect for communicable diseases;

(6) To have forensic medical evidence, if collected, retained for a minimum of five years, and to receive information about the status of the evidence upon request;

(7) To choose whether to participate in any investigation of the assault;

(8) To reasonable efforts to provide treatment and interviews in a language in which the victim is fluent and the right to be given access to appropriate assistive devices to accommodate disabilities that the victim may have, whether temporary or long term;

(9) To information and assistance in accessing specialized mental health services; protection from further violence; other appropriate community or governmental services, including services provided by the Victims of Crime Compensation Office; and all other assistance available to crime victims under current law;

(10) To be apprised of the availability and process by which a court may order the taking of testimony from a victim via closed circuit television in accordance with section 1 of P.L.1985, c.126 (C.2A:84A-32.4); and

(11) To be apprised of the availability and process by which to seek protections through a temporary or final protective order under the "Victim's Assistance and Survivor Protection Act," P.L.2015, c.147 (C.2C:14-13 et al.), if the victim believes that the victim is at risk for re-victimization or further harm by the perpetrator.

9. Section 3 of P.L.2019, c.103 (C.52:4B-60.3) is amended to read as follows:

C.52:4B-60.3 Publication of notice of rights on Internet website, posting at certain locations.

3. The Attorney General, in consultation with the New Jersey Coalition Against Sexual Assault, shall publish a notice of the rights enumerated in the "Sexual Assault Victim's Bill of Rights" pursuant to subsection c. of section 2 of this act, and shall make this notice available to the public on the Internet website of the Department of Law and Public Safety. All hospital emergency departments, police stations and other law enforcement agencies, sexual violence service organizations, and any other entity informing victims of sexual violence of their rights shall post a copy of this notice in a conspicuous location that is available to the public.

The Attorney General shall incorporate the rights and services enumerated in the "Sexual Assault Victim's Bill of Rights" pursuant to this act and in the "Victim's Assistance and Survivor Protection Act," P.L.2015, c.147 (C.2C:14-13 et al.), in the Attorney General Standards for Providing Services to Victims of Sexual Assault to ensure the compassionate and sensitive delivery of services to all sexual violence victims.

Repealer.

10. Section 2 of P.L.1999, c.47 (C.2C:12-10.2) is repealed.

11. This act shall take effect on the first day of the sixth month next following enactment.

Approved July 24, 2023.

ATTACHMENT 2
VASPA Combined Packet
(CN13133)

New Jersey Victim's Assistance and Survivor Protection Act (VASPA)
Filing Packet
Superior Court of New Jersey - Chancery Division - Family Part

Who Should Use This Packet?

A. **To file for a Temporary Protective Order (TPO) or amend your Verified Complaint you may use the forms in this packet if you are:**

- A victim of nonconsensual sexual contact, sexual penetration, lewdness, cyber-harassment, or stalking (see definitions on page 4) or any attempt at such conduct.

- A parent or guardian filing on behalf of your child who is less than 18 years of age **or** has a developmental disability or a mental disease or defect that renders them temporarily or permanently incapable of understanding the nature of the defendant's conduct, including, but not limited to, being incapable of providing consent, or of understanding the nature of the alleged conduct.

- Filing an amended verified complaint to include additional information about the acts the defendant committed or attempted to commit against you.

Do NOT use this packet if:

You meet the definition of a "victim" under the Prevention of Domestic Violence Act (PDVA)- N.J.S.A. 2C:25-19 (d)(a) which is as follows:

A person protected by the PDVA includes any person:

1. **Who** is 18 years of age or older, **or** who is an emancipated minor, and who has been subjected to domestic violence by:

a. A spouse, or

b. A former spouse, or

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c. Any other person who is a present household member or was at any time a household member, **or**

2. **Who, regardless of age,** has been subjected to domestic violence by a person:

a. With whom the victim has a child in common, or

b. With whom the victim anticipates having a child in common, if one of the parties is pregnant, or

c. Has been subjected to domestic violence by a person with whom the victim has or has had a dating relationship.

B. **You may file to amend your existing VASPA TPO for the following reason:**

- Add additional locations you would like the defendant to be barred from.
- Add or remove protected parties: or
- Other relief.

This packet contains instructions and forms for the following:

1. How to File *a New Jersey Victim's Assistance and Survivor Protection Act (VASPA) Verified Complaint* (page 8)
2. How to File a *New Jersey Victim's Assistance and Survivor Protection Act (VASPA)* ***Amended*** *Verified Complaint* (page 8)
3. How to request to amend an existing *VASPA Temporary Protective Order (TPO)* (page 18)

Note: If you are a victim of domestic violence and want to file for a domestic violence restraining order and it is after normal court hours, please contact your local law enforcement agency.

If you are filing on behalf of a minor child and the person you are filing against is a parent or guardian of the minor child, you cannot file under the Victim's Assistance and Survivor Protection Act. You must call the Division of Permanency and Protection at: 1-877 NJ ABUSE (1-877-652-2873); TTY/TDD 1-800-835-5510

Note: These materials have been prepared by the New Jersey Administrative Office of the Courts for use by self-represented litigants. The guides, instructions, and forms will be periodically updated as necessary to reflect current New Jersey statutes and court rules. The most recent version of the forms will be available at the county courthouse or on the Judiciary's Internet site njcourts.gov. However, you are ultimately responsible for the content of your court papers.

Completed forms are to be submitted to your local Family Division. A list of Family Division Offices can be found on njcourts.gov

Things to Think About Before You Represent Yourself in Court

Try to Get a Lawyer

The law, the proofs necessary to present your case, and the procedural rules governing cases in the Family Division are complex. It is recommended that you make every effort to obtain the assistance of a lawyer. If you cannot afford a lawyer, you may contact the legal services program in your county to see if you qualify for free legal services. Their telephone number can be found online under "Legal Aid" or "Legal Services."

If you do not qualify for free legal services and need help in locating an attorney, you can contact the bar association in your county. The telephone number can also be found in your local yellow pages. Most county bar associations have a Lawyer Referral Service.

The County Bar Lawyer Referral Service can supply you with the names of attorneys in your area willing to handle your case and will sometimes consult with you at a reduced fee.

There are a variety of organizations of minority lawyers throughout New Jersey, as well as organizations of lawyers who handle specialized types of cases. Ask the Family court staff in your county for a list of lawyer referral services that include these organizations.

What You Should Expect If You Represent Yourself

While you have the right to represent yourself in court, you should not expect special treatment, help or attention from the court. The following is a list of some things court staff can and cannot do for you. Please read it carefully before asking court staff for help.

- We *can* explain and answer questions about how the court works.
- We *can* tell you what the requirements are to have your case considered by the court.
- We *can* give you some information from your case file.
- We *can* provide you with samples of court forms that are available.
- We *can* provide you with guidance on how to fill out forms.
- We *can* usually answer questions about court deadlines.

- We *cannot* give you legal advice. Only your lawyer can give you legal advice.
- We *cannot* tell you whether you should bring your case to court.
- We *cannot* give you an opinion about what will happen if you bring your case to court.
- We *cannot* recommend a lawyer, but we can provide you with the telephone number of a local lawyer referral service.
- We *cannot* not talk to the judge for you about what will happen in your case.
- We *cannot* let you talk to the judge outside of court.
- We *cannot* change an order issued by a judge.

Keep Copies of All Papers

Make and keep copies for yourself, any signed orders and any other important papers that relate to your case.

Definitions of Court Terms Used in VASPA Cases

Amended Complaint: An *amended complaint* is when you want to add additional details to your original complaint for the court to consider at the hearing.

Application: An *application* is a written request in which you ask the court to issue an order or to change an order that has already been issued.

Attempt: A specific effort to commit a crime and an act that takes a step toward completing the crime.

Certification - A *certification* is a written statement made to the court when you file papers with the court, swearing that the information contained in the filed papers is true subject to penalty if any statement is willfully false.

Complaint - A *complaint* is a formal document filed in court that starts a case. It typically includes the names of the parties and the issues you are asking the court to decide.

Court Order - A *court order* is the written decision issued by a court of law. For example, a child support court order sets forth how often, how much, and what kind of support is to be paid.

Cyber-Harassment – Means conduct that occurs, while making one or more communications in an online capacity via any electronic device or through social networking site and with the purpose to harass another, that involves: threatening to inflict injury or physical harm to any person or the property of any person; knowingly sending, posting, commenting, requesting, suggesting, or proposing any lewd, indecent, or obscene material to or about a person with the intent to emotionally harm a reasonable person or place a reasonable person in fear of physical or emotional harm; or threatening to commit any crime against a person or a person's property.

Defendant - the party sued in a civil lawsuit, or the party charged with a crime in a criminal prosecution. In some types of cases (such as divorce) a defendant may be called a respondent.

Docket Number - The *docket number* is the identifying number assigned to every case filed in the court.

File - To *file* means to give the appropriate forms to the court to begin the court's consideration of your request.

FV: The letters the court uses to identify a VASPA Protective order.

Intimate Parts - Means the following body parts: sexual organs, genital area, anal area, inner thigh, groin, buttock, or breast of a person.

Lewdness - Means the exposing of the genitals for the purpose of arousing or gratifying the sexual of the actor.

Modification: A change made to court order.

Party - A *party* is a person, business, or governmental agency involved in a court action.

Plaintiff - *Plaintiff* is another name for the person starting the court action by filing the appropriate papers the court will consider.

Relief: To ask for *relief* is to ask the court to grant something such as custody, parenting time, or support.

Repeatedly: Two or more occasions

Sexual Contact - Means an intentional touching by the victim or actor, either directly or through clothing, of the victim's or actor's intimate parts for the purpose of degrading or humiliating the victim or sexually arousing or sexually gratifying the actor.

Sexual Penetration - Means vaginal intercourse, cunnilingus, fellatio, or anal intercourse between persons or insertion of the hand, finger, or object into the anus or vagina either by the actor or upon the actor's instruction.

Stalking – Means purposefully or knowingly engaging in a course of conduct directed at or toward a person that would cause a reasonable person to fear for their safety or the safety of a third person, or suffer other emotional distress, because the conduct involves: repeatedly maintaining a visual or physical proximity to a person; directly, indirectly, or through third parties, by any action, method, device or means, following, monitoring, observing, surveilling, threatening, or communicating to or about, a person, or interfering with a person's property; repeatedly committing harassment against a person; or repeatedly conveying, or causing to be conveyed, verbal or written threats implied by conduct or a combination thereof directed at or towards a person.

The numbered steps listed below tell you what forms you will need to fill out and what to do with them. Each form should be typed or printed clearly on 8 ½ x 11 white paper only. Forms cannot be filed on a different size or color paper. Use only the forms included in this packet. **Be sure to keep a copy for your records.Steps for Filing a Verified Complaint or Amended Complaint**

STEP 1: Fill out the *Confidential Information Sheet* (Form A)

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The Confidential Information sheet provides your, the defendant's and/or the incapacitated adult/minor child's demographic information. This information will be kept confidential and will not be shared with the defendant.

STEP 2: Fill out the *Verified Complaint or Amended Complaint* (Form B)

The *Verified Complaint* is a written request in which you ask the court to establish a court order on your behalf or on a minor child's behalf. The court will establish an order based on testimony of the parties and written documentation submitted. Please check the appropriate box. If you are filing for the first time, check the Verified Complaint box. If you are amending your complaint, check the Amended Verified Complaint box.

STEP 3: Fill out the *Additional Information Sheet* if needed (Form C)

This form is provided if you need additional space to type the details of the incident for which you are filing for a protective order.

STEP 4: Provide the court with the most recent address of the other party.

If the court grants a temporary order of protection, the court will send the order to police department where the defendant resides, works or frequents to serve the defendant with the order and court date. Your appearance on the court date is **mandatory**.

Note: The other party will receive copies of all the papers you attach (except for the *Confidential Information Sheet*) to your complaint with the *Notice to Appear*, unless court rules prohibit this information from being shared.

You must provide the court with the most current address(es) (that you know of) for the other party when you file your complaint.

STEP 5: Check your completed forms and make copies.

Check your forms and make sure they are complete. Remove all instruction sheets. Make sure you have signed all the forms wherever necessary.

STEP 6: Submit your completed paperwork.

Submit your completed packet through the Judiciary Electronic Document System (JEDS). In JEDS please select the county where you would like to file your application. You may file your complaint in the county where the conduct or attempted conduct occurred, where the defendant resides, or where you reside or are sheltered.

You may also submit your completed application ***in person*** to the courthouse where the conduct or attempted conduct occurred, where the defendant resides, or where you reside or are sheltered.

STEP 7: Hearing

A hearing on your request for a VASPA order will be held either the same day as your submitted application or as soon after as practicable. You *must* be available for this hearing.

If you submit the application through JEDS during the **normal court business hours**, the Family Division staff will contact you at telephone number or email address that you provided in your application to inform you of the time of the hearing. This hearing will take place the same day of your submitted application unless the application is submitted **after 4pm**. If the application is submitted after 4pm or on a weekend or a holiday, the court staff will contact you on the **next business day** to inform you of the time of the hearing. If you do not hear from the court by the next business day, call the Family Division in the county in which you filed your application.

The hearing may be in person, by video or by telephone. If you are unavailable when court staff try to contact you to set the hearing time, your application may be dismissed.

If you submit your application in person, the hearing will be held that same day. Court staff will inform you of the time of the hearing upon submission of your application.

Note: These applications will only be processed in the Family Division of the Superior Court during normal business hours.

These applications may only be taken at the Superior Court and are not to be accepted at Municipal Courts and/or police departments.

All courthouse addresses can be found on njcourts.gov.

1. **Instructions for Completing the VASPA Confidential Information Sheet (Form A)**

2. Part I of the VASPA Intake form (left side) is for the Plaintiff/Victim information. If you are the victim, enter your own information. If you are a **parent** or **guardian enter the minor child's** or **incapacitated adult's** information.

3. Part II of the form (right side) is for the Defendant's information. Please fill this side out with as much information that you have available. This will assist in serving the defendant with the Temporary Order if it is granted by the court.

4. Part III of the form should **only** be filled out if you are a parent/guardian filing on behalf of a minor child or incapacitated adult. Please complete the following fields on the second portion of the form under Parent/Guardian section.

5. Part IV of the form should be filled out if the Plaintiff has an attorney.

6. Part V of the form should be filled out with any identifiers you know about the defendant. This will assist in serving the defendant with the Temporary Order if it is granted by the court.

Part VI of the form should be filled out if either party requires an interpreter. Please specify type of interpreter. **Note:** The *Confidential Information Sheet* (Form A) will be kept confidential and will not be given to the other party/defendant.

New Jersey Judiciary
Victim's Assistance and Survivor Protection Act (VASPA)
Confidential Information Sheet

Do Not Give to Defendant

Date:

Part I. Your Information (Party Filing - Plaintiff)		**Part II. Information of Person you're filing against (Defendant)**	
Name		Name	
Any Prior Names or Also Known As (AKAs)		Any Prior Names or Also Known As (AKAs)	
Street Address		Street Address	
City		City	
State	Zip Code	State	Zip Code
Home Phone	Cell Phone	Home Phone	Cell Phone
Email		Email	
Social Security Number xxx-xx-		Social Security Number xxx-xx-	
Birth Date	Sex ☐ M ☐ F ☐ X	Birth Date	Sex ☐ M ☐ F ☐ X
Race		Race	
Ethnicity ☐ Hispanic ☐ Non-Hispanic		Ethnicity ☐ Hispanic ☐ Non-Hispanic	

Employment Information		**Employment Information**	
Employer Name		Employer Name	
Employer Address: Street		Employer Address: Street	
City		City	
State	Zip Code	State	Zip Code
Work Phone		Work Phone	
Email		Email	
Work Days	Work Hours	Work Days	Work Hours
Emergency Contact: Name		Other Place(s) Defendant May Be Reached	
Emergency Contact: Phone			

Continued on next page

NOTICES TO THE BAR

Continued from previous page

Part III. Filing on Behalf of a Minor or Incapacitated Adult			
I, _____ am the ☐ parent / ☐ guardian. I am filing on behalf of the plaintiff because the plaintiff is: ☐ A minor ☐ Incapacitated adult			
Parent/Guardian Name			
Prior Name	Birth Date	Sex ☐ M ☐ F ☐ X	
Parent/Guardian Address: Street			
City	State	Zip Code	
Home Phone / Work Phone	Email		
Race	Ethnicity ☐ Hispanic ☐ Non-Hispanic		
Part IV. Plaintiff's Attorney Information Attorney Name			
Attorney Address: Street			
City	State	Zip Code	
Office Phone	Email		
Part VI.			
The Judiciary will provide reasonable accommodations to enable individuals with disabilities to access and participate in court events. Please contact the local ADA coordinator to request an accommodation. Contact information is available at njcourts.gov.			
The New Jersey Judiciary provides court-interpreting services. If you need an interpreter, notify the court as soon as possible.			
☐ spoken language interpreter required	language:		

You will be asked about the incident which brought you here today. Please be prepared to discuss the incident, plus any prior history, if applicable.

Instructions for Completing a Verified Complaint/Amended Complaint (Form B)

1. Leave the Docket Number blank. The court will provide this number for you.

2. On the right side of the form, enter the County where you are filing the application.

3. Please indicate if you are filing a Verified Complaint for a Victim's Assistance and Survivor Protective order for the first time or if you are amending an existing complaint.

4. Enter your name or the incapacitated adult or the minor's name, if you are filing a complaint on the behalf of an incapacitated adult or a minor child, in the space marked "Plaintiff".

5. If you are filing on behalf of a minor child or an incapacitated adult, enter your name in the space marked "Parent/Guardian".

6. If you are filing on behalf of a minor child or an incapacitated adult, please enter their date of birth in the space provided.

7. If you are represented by an attorney enter that information in the space provided.

8. In the Defendant's Information section, please complete with as much information as you can provide.

9. In the Current Allegation section:

a. Start by entering the date(s) and time(s) the defendant committed the act(s). Enter the details of the act(s) the defendant committed in the space provided. You can continue to use as many lines as necessary to state the exact details of the act(s) the defendant committed against you, minor child, or incapacitated adult. If you need more space for your allegation(s) there is an **Additional Information Sheet (Form C)** in this packet.

b. Check off the act or acts the defendant committed or attempted to commit: *"Sexual Contact, Sexual Penetration, Lewdness, Stalking, Cyber-Harassment"*. See definitions of each act in the definitions section of this packet (on page 15).

c. Answer *"Yes"* or *"No"* regarding if a criminal complaint has been filed in this matter. If you select *"Yes"*, enter the date, docket number and the county and state where the case is being heard in item c.2.

10. If you are filing to amend a complaint that was previously filed you will need to fill out **sections 1 and 3, Amending my Verified Complaint**. Under *subsection a* fill in the date your Verified Complaint was previously filed and under *subsection b* include the additional information about the act(s) the defendant committed or attempted to commit. If you need more space for your allegation(s) there is an *Additional Information Sheet* (Form C) in this packet.

11. If you are the parent/guardian filing on behalf of a minor or incapacitated adult who is not present, fill out the section above the Certification with your name, the name of the person you are filing on behalf of and the reason the Plaintiff is not present.

12. In the Certification box, the signature of the party filing must be on the complaint. If you cannot scan a signed copy of this document, please type your name in the signature line.

Superior Court of New Jersey Chancery Division - Family Part		
_____	_____	County
Plaintiff,	Docket Number:	**FV -** _____
_____ Plaintiff: Parent/Guardian, vs. _____ Defendant.	**Complaint for Victim's Assistance and Survivor Protective Order** ☐ **Verified Complaint for Victim's Assistance and Survivor Protective Order** ☐ **Amended Verified Complaint for Victim's Assistance and Survivor Protective Order**	
Plaintiff's Name		
Is the Plaintiff a minor or an incapacitated adult? ☐ Yes ☐ No If yes, Guardian's Name _____		
Is the Plaintiff represented by an attorney? ☐ Yes ☐ No If yes, Name: Phone number: Email:		
If you are filing for a New Complaint, complete sections 1 and 2 If you are amending your Complaint, complete sections 1 and 3		
Section 1: Defendant's Information		
Name	Date of Birth	Sex ☐ M ☐ F ☐ X
Aliases	Social Security Number	
Race	Ethnicity ☐ Hispanic ☐ Non-Hispanic	
Height / Weight / Eye Color / Hair Color		
Distinguishing Features (Scars, facial hair, tattoos, etc.) Please be specific:		
Defendant Home Address: Street		
City	State	Zip Code

NOTICES TO THE BAR

Other places the defendant can be located (gym, friend's house, restaurant/bar). Please specify times and addresses:		
Home Phone Number	Work Phone Number	Employer Phone Number
Cell Phone Number	Email Address	
Employer Name		
Employer Address: Street		
City	State	Zip Code

Section 2: Current Allegation(s)

a. The undersigned complains that the defendant did commit or attempt to commit the following acts (be specific including the date and time the incident(s) occurred)

b. The above constitutes the following criminal offenses were committed or attempted (Check all boxes that apply):

☐ Sexual Assault ☐ Criminal Sexual Contact ☐ Lewdness

☐ Stalking ☐ Cyber-Harassment

c. Has a criminal complaint been filed in this matter? ☐ Yes ☐ No

1. If No, do you plan on filing a criminal complaint? ☐ Yes ☐ No
2. If Yes, case number:
   charges:
3. If Yes, was a Sex Offender Restraining Order (Nicole's Law) issued? ☐ Yes ☐ No
4. Is the defendant in jail? ☐ Yes ☐ No ☐ Unknown

d. How do you know the defendant? (Neighbor, co-worker, friend, acquaintance, etc.) Please specify.

Section 3: Amending my Verified Complaint

a. On _____ date I filed a Verified Complaint**.**

b. I am filing this amended Verified Complaint to include the following act(s) that the defendant committed or attempted to commit (be specific including the date and time the incident(s) occurred).

I, _____, am the parent or legal guardian of incapacitated adult or a minor plaintiff, _____, and am filing this complaint on their behalf. The incapacitated adult or minor is not present for the following reason(s):

Certification

I certify that the foregoing responses made by me are true. I am aware that if any of the foregoing responses made by me are willfully false, I am subject to punishment.

		s/_____
Date		Signature: ☐ Plaintiff / ☐ Parent/Guardian

New Jersey Judiciary
Victim's Assistance and Survivor Protection Act (VASPA)
Additional Information Sheet

Full Name:		**Date:**	

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

		s/_____
Date		Signature: ☐ Plaintiff / ☐ Parent/Guardian

Instructions for Completing the Application to Amend VASPA TPO (Form D)

1. Fill out the *Confidential Information Sheet* (Form A) – this must be completed even if you have done so in the past. See instructions on page 8.

2. Enter the names of the parties in the correct order on the "Plaintiff" and "Defendant" lines. You are the "Plaintiff" and the person you filed the victim's assistance and survivor protection complaint against is the "Defendant. If you are the parent/guardian filing on behalf of a minor or incapacitated adult, you will need to fill out both lines.

3. On the right side of the form, enter the "County" where you are filing the application.

4. Enter the Docket Number that has been issued in your case. You can find that number on your granted temporary VASPA order, it starts with FV.

5. In the first paragraph, select the appropriate box of plaintiff or parent/guardian, enter the date your temporary VASPA order was granted on the line between the words "protective order dated to include".

6. For item #1, list the addresses and location names that you would like the defendant barred from. Please indicate the reason.

7. For item #2, if you are requesting to add protected parties to your order, please indicate their name(s), relationship to you, and reason why they should be included on your TPO.

8. For item #3, if you are requesting a relief that is not granted or listed on your TPO please indicate what you are requesting and the reason why it should be granted by the court.

9. In the Certification section, enter your name on the line for I _____, certify…

10. Sign and date the form.

	Superior Court of New Jersey Chancery Division - Family Part	
_____	_____	County
Plaintiff,	Docket Number:	**FV -** _____

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NOTICES TO THE BAR

Continued from previous page

Parent/Guardian (if applicable), vs. Defendant.	**Application to Amend Victim's Assistance and Temporary Protective Order**

I am the ☐ Plaintiff / ☐ Parent/Guardian in the above matter, and I am requesting to amend my Victim's Assistance and Survivor Protective complaint and/or Temporary Protective Order dated _____ to include one or all the below:I would like the defendant barred from the following locations (include address, name, and reason):

1. _____

I would like to add the following person(s) to my Protective Order (include name, relationship, and reason):

2. _____

I am requesting other relief (include reason):

_____

Certification

I (name) _____ certify that the foregoing responses made by me are true. I am aware that if any of the foregoing responses made by me are willfully false, I am subject to punishment.

	s/ _____
Date	Signature: ☐ Plaintiff / ☐ Parent/Guardian

ATTACHMENT 3
VASPA Complaint
(CN13134)

Superior Court of New Jersey
Chancery Division - Family Part

_____	_____	County
Plaintiff,	Docket Number:	**FV -** _____
_____ Plaintiff: Parent/Guardian, vs. _____ Defendant.	**Complaint for Victim's Assistance and Survivor Protective Order** ☐ **Verified Complaint for Victim's Assistance and Survivor Protective Order** ☐ **Amended Verified Complaint for Victim's Assistance and Survivor Protective Order**	

Plaintiff's Name

Is the Plaintiff a minor? ☐Yes ☐ No

If yes, Guardian's Name _____

Is the Plaintiff represented by an attorney? ☐ Yes ☐ No

If yes, Name:

Phone number:

Email:

If you are filing for a New Complaint, complete sections 1 and 2
If you are amending your Complaint, complete sections 1 and 3

Section 1: Defendant's Information

Name	Date of Birth	Sex
		☐ M ☐ F ☐ X

Aliases	Social Security Number

Race	Ethnicity
	☐ Hispanic ☐ Non-Hispanic

Height	Weight	Eye Color	Hair Color

Distinguishing Features (Scars, facial hair, tattoos, etc.) Please be specific:

Defendant Home Address: Street

City	State	Zip Code

Other places the defendant can be located (gym, friend's house, restaurant/bar). Please specify times and addresses:

Home Phone Number	Work Phone Number	Employer Phone Number

Cell Phone Number	Email Address

Employer Name

Employer Address: Street

City	State	Zip Code

Section 2: Current Allegation(s)

a. The undersigned complains that the defendant did commit or attempt to commit the following acts (be specific including the date and time the incident(s) occurred)

b. The above constitutes the following criminal offenses were committed or attempted (Check all boxes that apply):

☐ Sexual Assault ☐ Criminal Sexual Contact ☐ Lewdness

☐ Stalking ☐ Cyber-Harassment

c. Has a criminal complaint been filed in this matter? ☐ Yes ☐ No

1. If No, do you plan on filing a criminal complaint? ☐ Yes ☐ No
2. If Yes, case number:
   charges:
3. If Yes, was a Sex Offender Restraining Order (Nicole's Law) issued? ☐ Yes ☐ No
4. Is the defendant in jail? ☐ Yes ☐ No ☐ Unkown

d. How do you know the defendant? (Neighbor, co-worker, friend, acquaintance, etc.) Please specify.

Section 3: Amending my Verified Complaint

a. On _____ date I filed a Verified Complaint**.**

b. I am filing this amended Verified Complaint to include the following act(s) that the defendant committed or attempted to commit (be specific including the date and time the incident(s) occurred).

I, _____, am the parent or legal guardian of minor or incapacitated adult plaintiff, _____, and am filing this complaint on their behalf. The minor is not present for the following reason(s):

Certification

I certify that the foregoing responses made by me are true. I am aware that if any of the foregoing responses made by me are willfully false, I am subject to punishment.

		s/ _____
Date		Signature: ☐ Plaintiff / ☐ Parent/Guardian

NOTICES TO THE BAR

ATTACHMENT 4
VASPA Additional Form
(CN13136)

New Jersey Judiciary **Victim's Assistance and Survivor Protection Act (VASPA)** **Additional Information Sheet**			
Full Name:		**Date:**	

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

		s/
Date		Signature: ☐ Plaintiff / ☐ Parent/Guardian

ATTACHMENT 5
VASPA Application to Amend Temporary Protective Order
(CN13137)

Plaintiff

Parent/Guardian (if applicable)

v.

Defendant ^

Superior Court of New Jersey
Chancery Division – Family Part
County of _____
Docket FV - _____

Application to Amend Victim's Assistance and Temporary Protection Order

I am the ☐ plaintiff ☐ parent/guardian in the above matter, and I am requesting to amend my Victim's Assistance and Survivor Protection complaint and/or Temporary Protection Order dated ^ to include one or all the below:

1. I would like the defendant barred from the following locations (include address, name, and reason):

^ ^ ^ ^ ^ ^ ^ ^ ^ ^ ^ ^ ^ ^ ^ ^ ^

2. I would like to add the following person(s) to my Protection Order (include name, relationship, and reason):

^ ^ ^ ^ ^ ^ ^ ^ ^ ^ ^ ^ ^ ^ ^ ^ ^

3. I am requesting Other relief (include reason):

^ ^ ^ ^ ^

Certification

I ^ (name) certify that the foregoing responses made by me are true I am aware that if any of the foregoing responses made by me are willfully false, I am subject to punishment.

^ ^ s/ ^ ^

Date ^ ^ ☐ Plaintiff ☐ Parent/Guardian (if applicable)

ATTACHMENT 6
VASPA Confidential Information Sheet
(CN13136)

New Jersey Judiciary **Victim's Assistance and Survivor Protection Act (VASPA)** **Confidential Information Sheet** **Do Not Give to Defendant**			
Date:			
Part I. Your Information (Party Filing - Plaintiff)		**Part II. Information of Person you're filing against (Defendant)**	
Name		Name	
Any Prior Names or Also Known As (AKAs)		Any Prior Names or Also Known As (AKAs)	
Street Address		Street Address	
City		City	
State Home Phone	Zip Code Cell Phone	State Home Phone	Zip Code Cell Phone
Email		Email	
Social Security Number xxx-xx-		Social Security Number xxx-xx-	
Birth Date	Sex ☐ M ☐F ☐X	Birth Date	Sex ☐M ☐F ☐X
Race		Race	
Ethnicity ☐ Hispanic ☐ Non-Hispanic		Ethnicity ☐ Hispanic ☐ Non-Hispanic	

Employment Information		**Employment Information**	
Employer Name		Employer Name	
Employer Address: Street		Employer Address: Street	
City		City	
State	Zip Code	State	Zip Code
Work Phone		Work Phone	

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Email		Email	
Work Days	Work Hours	Work Days	Work Hours
Emergency Contact: Name		Other Place(s) Defendant May Be Reached	
Emergency Contact: Phone			

Part III. Filing on Behalf of a Minor or Incapacitated Adult

I, _____ am the ☐ parent / ☐ guardian. I am filing on behalf of the plaintiff because the plaintiff is:

☐ A minor

☐ Incapacitated adult

Parent/Guardian Name			
Prior Name		Birth Date	Sex ☐ M ☐ F ☐ X
Parent/Guardian Address: Street			
City		State	Zip Code
Home Phone	Work Phone	Email	
Race		Ethnicity ☐ Hispanic ☐ Non-Hispanic	

Part IV. Plaintiff's Attorney Information

Attorney Name		
Attorney Address: Street		
City	State	Zip Code
Office Phone	Email	

Part VI.

The Judiciary will provide reasonable accommodations to enable individuals with disabilities to access and participate in court events. Please contact the local ADA coordinator to request an accommodation. Contact information is available at njcourts.gov.

The New Jersey Judiciary provides court-interpreting services. If you need an interpreter, notify the court as soon as possible.

☐ spoken language interpreter required	language:	

You will be asked about the incident which brought you here today. Please be prepared to discuss the incident, plus any prior history, if applicable.

ATTACHMENT 7
VASPA How to Enforce or Request a Change of VASPA Final Protective Order (CN13142)

Family - Chancery
How to Enforce or Request a Change of a Victim's Assistance Survivor Final Protection Order
Effective: January 01, 2024

How to Enforce or Request a Change on Victim's Assistance and Survivor Final Protection Order (VASPA) or Sexual Assault Survivor's Protection Act Order (SASPA)

Superior Court of New Jersey - Chancery Division - Family Part

Who Should Use This Packet?

You can use this packet if your **docket number starts with the letters "FV,"** and you have a VASPA or Sexual Assault Survivor's Protection Act (SASPA) order from the court that you want to change. Some types of changes you can request with this packet include but are not limited to:

- Prohibition against contact with others
- Remove or Add a Protected Party (Please note to do this you must be either the Plaintiff or Defendant)
- Barring the Defendant from certain locations
- Allowing Defendant access to certain locations

Important Notice: Look over the entire form and **check only the reliefs you are seeking**. You may seek more than one relief, but only the ones you check will be considered on the day of your hearing.

Note: These materials have been prepared by the New Jersey Administrative Office of the Courts for use by self-represented litigants. The guides, instructions, and forms will be periodically updated as necessary to reflect current New Jersey statutes and court rules. The most recent version of the forms will be available at the county courthouse or at njcourts.gov. However, you are ultimately responsible for the content of your court papers. With limited exceptions, any paper filed with the court can be looked at by the public.

Things to Think About Before You Represent Yourself in Court

Try to Get a Lawyer
The court system can be confusing, and it is a good idea to get a lawyer if you can. If you cannot afford a lawyer, you may contact the legal services program in your county to see if you qualify for free legal services. Their telephone number can be found online or in your local yellow pages under "Legal Aid" or "Legal Services."

If you do not qualify for free legal services and need help in locating an attorney, you can contact the bar association in your county. Most county bar associations have a Lawyer Referral Service. The County Bar Lawyer Referral Service can supply you with the names of attorneys in your area willing to handle your case and will sometimes consult with you at a reduced fee.

There are a variety of organizations of minority lawyers throughout New Jersey, as well as organizations of lawyers who handle specialized types of cases. Ask the Family court staff in your county for a list of lawyer referral services that include these organizations.

If you decide to proceed without an attorney, these materials explain the procedures that must be followed to have your papers properly filed and considered by the court. These materials do not provide information nor other procedural and evidentiary rules governing guardianship matters.

What You Should Expect If You Represent Yourself
While you have the right to represent yourself in court, you should not expect special treatment, help or attention from the court. You must still comply with the Rules of the Court, even if you are not familiar with them. The following is a list of some things court staff can and cannot do for you. Please read it carefully before asking court staff for help.

- We *can* explain and answer questions about how the court works.
- We *can* tell you what the requirements are to have your case considered by the court.
- We *can* give you some information from your case file.
- We *can* provide you with samples of court forms that are available.
- We *can* provide you with guidance on how to fill out forms.
- We *can* usually answer questions about court deadlines.

- We *cannot* give you legal advice. Only your lawyer can give you legal advice.
- We *cannot* tell you whether you should bring your case to court.
- We *cannot* give you an opinion about what will happen if you bring your case to court.
- We *cannot* recommend a lawyer, but we can provide you with the telephone number of a local lawyer referral service.
- We *cannot* talk to the judge for you about what will happen in your case.
- We *cannot* let you talk to the judge outside of court.
- We *cannot* change an order issued by a judge.

Keep Copies of All Papers
Make and keep copies for yourself, of any signed orders, written agreements and other important papers that relate to your case.

These Papers Are for Filing an Application to Modify a Victim's Assistance and Final Protection Order.
The word application used in this packet means a written request in which you ask the court to change or enforce an order it has already made. The court will change an order only if important facts or circumstances have changed from the time the order was issued.

Notice to Appear
When you file this application with the court, you must provide the court with the most current address of the other party (if known). The court will notice the plaintiff, defendant, and any attorney connected to your case of the hearing date. Your appearance is mandatory.

NOTICES TO THE BAR

How to File an Appeal
An appeal is a written request asking a higher court to look at the decision of the judge and change that judge's decision. You must make that written request for an appeal within 45 days after the judge decided the case and signed a judgment in the Superior Court.
If you want to file an appeal of a court order, do not use this packet of materials. Instead, you should contact the Appellate Division in writing or by phone:

Appellate Division, Superior Court
Hughes Justice Complex
P.O. Box 006,
Trenton, NJ 08625-0006

Their telephone number is (609) 292-4822. The Appellate Division staff will provide you with information on how to file an appeal.

"My Case is an Emergency" (Emergent Application Order to Show Cause)
An emergent hearing in family court is meant to protect children from substantial and irreparable harm. You must file for an emergent hearing at the courthouse. You cannot file for an emergent hearing through the mail. Only a judge can determine if your case will qualify as an emergent matter.

Where to Submit Your Papers
You can mail, electronically submit or bring your completed packet to the courthouse where your case was last heard.

To electronically submit your papers, use the Judiciary Electronic Document Submissions (JEDS) system. Visit njcourts.gov for more information about the JEDS system (including FAQs) and how to register to use the system: njcourts.gov.

When mailing, make sure you specify the "Family Division" in your address, so your papers arrive at the correct division in the court.

Sample Address
(Name of County) Courthouse
Family Division
1234 Street
PO Box#
City, State, Zip code

All courthouse addresses can be found on njcourts.gov.

Definitions of Words Used in This Packet
Application: An *application* is a written request in which you ask the court to issue an order or to change an order that has already been issued.
Award: An *award* is the final decision of a judge granting damages or other relief to a party.
Certification: A *certification* is a written statement made to the court when you file papers with the court, swearing that the information contained in the filed papers is true.
Court Order: A *court order* is the written decision issued by a court of law. For example, a child support court order sets forth how often, how much, and what kind of support is to be paid.
Docket Number: The *docket number* is the identifying number assigned to every case filed in the court.
Exhibits: *Exhibits* are written documents you provide to the court to support what you want the court to decide.
FV: The letters the court uses to identify a VASPA protection order.
File: To *file* means to give the appropriate forms to the court to begin the court's consideration of your request.
Modification: A change made to court order.
Party: A *party* is a person, business, or governmental agency involved in a court action.
Relief: To ask for *relief* is to ask the court to grant something such as custody, parenting time, or support.

Instructions for Completing the Application to Modify a Court Order

Important Notice: Look over the entire form and **check only the reliefs you are seeking**. You may seek more than one relief, but only the ones you check will be considered on the day of your hearing.

1. Fill out the *Confidential Information Sheet*. This must be completed even if you have done so in the past.

2. Enter the names of the Plaintiff and Defendant as they appear on your final order.

3. Select the County where you are filing the application.

4. Fill in the Docket Number that has been issued in your case. You can find that number on the previous court order you received.

5. If you are a parent/guardian filing on behalf of a minor or incapacitated adult, please fill in your name.

6. Type or print your name on the line that says "I". This tells the court who is filing the application to modify the existing court order.

7. Select the appropriate checkbox as to whether you are the plaintiff, parent/guardian, or defendant filing this application.

8. Enter the Plaintiff's Attorney information (Name, Address, Phone Number)

9. Enter the Defendant's Attorney information (Name, Address, Phone Number)

10. Enter the date that the current order was entered (mm/dd/yyyy format)

11. Describe in detail the change requested to your order.

12. Check all the boxes you would like the court to consider for modification. Please give a complete explanation for your request. If you need more space for your explanation, please use the Additional Information Sheet in this packet. (**Note**: if attaching the additional information sheet, please select the checkbox on the last page of the Application form.)

13. Sign and date the application and select the appropriate checkbox as to whether you are the plaintiff or defendant.

14. All your supporting documentation should be included with this packet.

Please make two copies, keep one complete copy for your records and send the original and one complete copy (including attachments) to the appropriate courthouse via mail or electronically through JEDS, addressing it to the Family Division. The Family Division will then serve the packet to the other party. You will receive your court date in the mail. You may also hand deliver your packet to the Family Division in the county where you received your order.

New Jersey Judiciary
Victim's Assistance and Survivor Protection Act (VASPA)
Confidential Information Sheet

Do Not Give to Defendant

Date:			
Part I.	**Your Information (Party Filing - Plaintiff)**	**Part II.**	**Information of Person you're filing against (Defendant)**
Name		Name	
Any Prior Names or Also Known As (AKAs)		Any Prior Names or Also Known As (AKAs)	
Street Address		Street Address	
City		City	
State	Zip Code	State	Zip Code
Home Phone	Cell Phone	Home Phone	Cell Phone
Email		Email	
Social Security Number xxx-xx-		Social Security Number xxx-xx-	
Birth Date	Sex ☐ M ☐ F ☐ X	Birth Date	Sex ☐ M ☐ F ☐ X
Race		Race	
Ethnicity ☐ Hispanic ☐ Non-Hispanic		Ethnicity ☐ Hispanic ☐ Non-Hispanic	

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Employment Information		**Employment Information**	
Employer Name		Employer Name	
Employer Address: Street		Employer Address: Street	
City		City	
State	Zip Code	State	Zip Code
Work Phone		Work Phone	
Email		Email	
Work Days	Work Hours	Work Days	Work Hours
Emergency Contact: Name		Other Place(s) Defendant May Be Reached	
Emergency Contact: Phone			

Part III. Filing on Behalf of a Minor or Incapacitated Adult

I, _____ am the ☐ parent / ☐ guardian. I am filing on behalf of the plaintiff because the plaintiff is:

☐ A minor

☐ Incapacitated adult

Parent/Guardian Name			
Prior Name		Birth Date	Sex ☐ M ☐ F ☐ X
Parent/Guardian Address: Street			
City		State	Zip Code
Home Phone	Work Phone	Email	
Race		Ethnicity ☐ Hispanic ☐ Non-Hispanic	

Part IV. Plaintiff's Attorney Information

Attorney Name			
Attorney Address: Street			
City		State	Zip Code
Office Phone		Email	

Part VI.

The Judiciary will provide reasonable accommodations to enable individuals with disabilities to access and participate in court events. Please contact the local ADA coordinator to request an accommodation. Contact information is available at njcourts.gov.

The New Jersey Judiciary provides court-interpreting services. If you need an interpreter, notify the court as soon as possible.

☐ spoken language interpreter required — language: _____

You will be asked about the incident which brought you here today. Please be prepared to discuss the incident, plus any prior history, if applicable.

_____
Plaintiff

Superior Court of New Jersey
Chancery Division - Family Part

_____
Docket Number:

County
FV - ____

_____
Parent/Guardian (if applicable)
vs.
_____
Defendant.

Application for Modification of a Victim's Assistance and Final Protective Order

I _____, of full age, hereby certify as follows:I am the ☐ Plaintiff / ☐ Parent/Guardian / ☐ Defendant in this matter.

Plaintiff's Attorney:

Name: _____

Address: _____

_____

Phone: _____

Email: _____

Defendant's Attorney:

Name: _____

Address: _____

_____

Phone: _____

Email: _____

1. The current Victim's Assistance and Protective Order was entered on _____.
I am requesting a change in the following conditions of the Protective Order:

☐ Barring the Defendant from the following locations:

_____
_____
_____

☐ Allowing the Defendant access to the following locations:

_____
_____
_____

☐ Add the following person(s) as protected parties to the Protective Order:

_____
_____
_____

☐ Add the following person(s) as protected parties to the Protective Order:

_____
_____
_____

☐ Remove the following person(s) as protected parties on the Protective Order:

_____
_____
_____

☐ 2. Other relief requested:

_____
_____
_____
_____
_____
_____

Attached is a copy of the Order I request to modify.

☐ Additional Information Form attached.

I certify that **all** the statements made above are true. I am aware that if **any** of the statements made by me are willfully false, I am subject to punishment.

		s/_____
Date		Signature: ☐ Plaintiff / ☐ Parent/Guardian / ☐ Defendant

NOTICES TO THE BAR

New Jersey Judiciary
Victim's Assistance and Survivor Protection Act (VASPA)
Additional Information Sheet

Full Name:		**Date:**	

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment

		s/
Date		Signature: ☐ Plaintiff / ☐ Parent/Guardian

ATTACHMENT 8
VASPA Certification to Dismiss Protective Order
(CN13151)

Superior Court of New Jersey
Chancery Division - Family Part

Plaintiff,

Plaintiff: Parent/Guardian (if applicable),

vs.

Defendant.

County

Docket Number: FV -

Certification for Dismissal of Victim's Assistance and Survivor Protective Order

1. ☐ I am the Plaintiff in the above captioned matter.
   ☐ I am the Parent/Guardian in the above captioned matter.

☐ 2. On _____ I appeared in Superior Court and signed a Complaint and Application for a Temporary Protective Order on ☐ my behalf / ☐ incapacitated adult/my child's behalf.

☐ 3. On _____ the court entered a Final Protective Order.

☐ 4. I am asking the Court to dissolve all the restraints against the Defendant.

☐ 5. I am asking for this dismissal voluntarily, of my own free will and without coercion or interference from any person.

☐ 6. I am further aware that should I wish to contact an attorney or counseling group that I may do so prior to completing this Certification.

☐ 7. I understand that if criminal charges were filed by me or the police, dismissal of the Protective Order does not dismiss the criminal charges.

☐ 8. I am aware that if there are further acts of ☐ Sexual Penetration, ☐ Sexual Contact,
☐ Lewdness, ☐ Stalking, or ☐ Cyber-Harassment, and I want a new Protective Order, I must reapply for a Protective Order at the courthouse.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

		s/
Date		Signature

Notice - Continuing Legal Education (CLE) - Judiciary Real-Time Virtual Courses on the Reduction, Interruption, and Elimination of Bias

NOTICE TO THE BAR

Continuing Legal Education – Judiciary Real-Time Virtual Courses on the Reduction, Interruption, and Elimination of Bias

The Judiciary's Diversity, Inclusion, and Community Engagement Program will offer another series of real-time virtual courses on the reduction, interruption, and elimination of bias in the administration of justice and practice of law for 2023-2024. The current schedule is as follows:

"Tools for Advancing Equity I:
Engaging in the Elimination of Bias"

- Thursday, December 21, 2023, 8 a.m. to 10 a.m. Register here.
- Friday, December 29, 2023, 8 a.m. to 10 a.m. Register here.
- Saturday, December 30, 2023, 10 a.m. to noon. Register here.
- Friday, March 22, 2024, 3 p.m. to 5 p.m. Register here.

"Tools for Advancing Equity II:
Examining, Exploring, and Understanding Microaggressions
in Professional Legal Contexts"

- Tuesday, January 30, 2024, 3 p.m. to 5 p.m. Register here.
- Wednesday, May 29, 2024, 1 p.m. to 3 p.m. Register here.

"Tools for Advancing Equity III:
Procedural Fairness and Quality Service
through LGBTQ+ Inclusive Practices"

- Friday, April 12, 2024, 10 a.m. to noon. Register here.
- Wednesday, July 31, 2024, 4 p.m. to 6 p.m. Register here.

"Tools for Advancing Equity IV:
An Advanced Workshop on the Reduction, Interruption, and
Elimination of Bias in the Law"

- Friday, May 31, 2024, 6 p.m. to 8 p.m. Register here.
- Saturday, September 21, 2024, 8 a.m. to 10 a.m. Register here.

The "Tools for Advancing Equity" series was custom designed to offer qualifying continuing legal education in diversity, inclusion, and elimination of bias. The numbering in the course titles is offered to distinguish the courses in the series. Attorneys may take as many of the courses as they wish and are not required to take the courses sequentially. These programs are presented by DI&CE Program Officer Lisa R. Burke and the DI&CE training team.

The Judiciary's DI&CE Program is a New Jersey-certified CLE provider (Provider #1720). Each of the courses listed qualifies for 2.0 CLE credits in diversity, inclusion, and elimination of bias. All of these courses, which will be offered via Zoom, are available free of charge. Seating is available on a first-come first-served basis. Advance registration is required. Confirmation of registration will be sent from CCR.Webinar1@njcourts.gov.

This calendar will be updated periodically to include other qualifying diversity, inclusion, and elimination of bias. Updates to this schedule can be accessed via the Judiciary's DI&CE Program webpage here.

Questions about this notice, program registration, and other logistics should be directed to Diversity, Inclusion, and Community Engagement Program Officer Lisa Burke at diversity.mailbox@njcourts.gov.

/s/ Glenn A. Grant
Glenn A. Grant ^
Administrative Director of the Courts
Dated: December 14, 2023

NOTICES TO THE BAR

Order — Amendments to Rule 1:20A-1 to Permit District Fee Arbitration Committee Members to Serve a Second Four-Year Term; Conforming Language Amendments to Rule 1:20-3 Regarding District Ethics Committee Members

SUPREME COURT OF NEW JERSEY

It is ORDERED that the attached amendments to Rules 1:20-3 ("District Ethics Committees; Investigations") and 1:20A-1 ("[District Fee Arbitration Committees;] Appointment and Organization") of the Rules Governing the Courts of the State of New Jersey are adopted to be effective immediately.

For the Court,
/s/ Stuart Rabner
Chief Justice
Dated: December 5, 2023

1:20-3. District Ethics Committees; Investigations

(a) … no change

(b) Appointments. Members of Ethics Committees shall be appointed by [, and shall serve at the pleasure of] the Supreme Court for a term of four years, except that members who are subsequently designated to serve as officers pursuant to paragraph (c) shall serve for an additional two years from the date of such designation or until the end of their initial appointment term, whichever is longer. The [With the approval of the] Supreme Court may reappoint [,] a member or officer who has served a full term [may be reappointed] to one successive term. A member serving in connection with an investigation pending at the time the member's term expires may continue to serve in such matter until its conclusion. In order that, as nearly as possible, the terms of one-quarter of the members shall expire each year, the Supreme Court may, when establishing a new Ethics Committee, appoint members for terms of less than four years and members so appointed shall be eligible for reappointment to a full successive term.

(c) … no change
(d) … no change
(e) … no change
(f) … no change
(g) … no change
(h) … no change
(i) … no change
(j) … no change

Note: Former Rule redesignated as Rule 1:20-4 January 31, 1984 to be effective February 15, 1984. Source -- Former Rule 1:20-2 adopted February 23, 1978, to be effective April 1, 1978; paragraphs (a), (h), (l) and (m) amended January 17, 1979, which were superseded on March 2, 1979, to be effective April 1, 1979; and paragraphs (n) and (o) restored on March 22, 1979, to be effective April 1, 1979; subparagraph (l)(3) deleted and new paragraph (p) adopted June 19, 1981, to be effective immediately; paragraphs (c), (h), (j) and (l)(1)(i) amended July 16, 1981, to be effective September 14, 1981; Rule redesignated as Rule 1:20-3; paragraphs (a) through (e) amended; paragraphs (f), (g) and part of (k) deleted; paragraphs (h), (i), (j), (k), (l), (m), (n), (o) and (p) amended and redesignated (f), (h), (i), (j), (k), (l), (m), (n) and (o) and new paragraphs (g) and (p) adopted January 31, 1984, to be effective February 15, 1984; paragraphs (f), (g), (h), (i), (l), (n), (o) and (p) amended November 5, 1986, to be effective January 1, 1987; paragraph (e) and (m) amended June 26, 1987 to be effective July 1, 1987; paragraphs (i), (j) and (o) amended November 7, 1988 to be effective January 2, 1989; paragraphs (f) and (i) amended, and paragraph (n)(3) caption and text amended June 29, 1990 to be effective September 4, 1990; paragraph (f) amended July 13, 1994 to be effective September 1, 1994; paragraphs (g) and (n)(2) captions and text amended August 8, 1994, to be effective immediately; paragraphs (a), (b), (c) and (d) amended, paragraphs (e) through (p) deleted and new paragraphs (e) through (j) adopted January 31, 1995 to be effective March 1, 1995; paragraphs (f), (g)(5), and (h) amended July 5, 2000 to be effective September 5, 2000; paragraph (g)(1) amended July 12, 2002 to be effective September 3, 2002; paragraphs (a), (b), (c), (e), (f), (g), (h), (i) (text and caption), and (j) amended July 28, 2004 to be effective September 1, 2004; paragraph (b) amended June 15, 2007 to be effective September 1, 2007; paragraphs (b) and (c) amended July 22, 2014, to be effective September 1, 2014; subparagraph (e)(2)(B) amended May 9, 2019 to be effective immediately; subparagraph (i)(2)(B) amended May 11, 2023 to be effective immediately; paragraph (b) amended December 5, 2023 to be effective immediately.

1:20A-1. Appointment and Organization

(a) … no change

(b) Appointments. Members of Fee Committees shall be appointed by the Supreme Court and shall serve a term of 4 years. A member [who has served a full term shall not be eligible for reappointment to a successive term but a member] appointed to fill an unexpired term shall be eligible for reappointment to a full successive term. The Supreme Court may reappoint a member who has served a full four-year term to one successive four-year term. A member serving in connection with a proceeding in which testimony has begun at the time the member's term expires shall continue in such matter until its conclusion and the filing of an arbitration determination or stipulation of settlement unless relieved by the Supreme Court. In order that, as nearly as possible, the terms of one-quarter of the members shall expire each year, the Supreme Court may, when establishing a new fee committee, appoint members for terms of less than 4 years and members so appointed shall be eligible for reappointment to a full successive term.

(c) … no change
(d) … no change
(e) … no change

Note: Adopted February 23, 1978 to be effective April 1, 1978; amended January 31, 1984 to be effective February 15, 1984; text of R. 1:20A-1 amended and incorporated into 1:20A-1(e), new paragraphs (a)(b)(c) and (d) adopted January 31, 1995 to be effective March 1, 1995; paragraph (c) amended July 28, 2004 to be effective September 1, 2004; paragraph (b) amended December 5, 2023 to be effective immediately.

ANNOUNCEMENT OF VACANCIES ON THE CRIMINAL JUSTICE ACT PANEL FOR THE DISTRICT OF NEW JERSEY AND THE CRIMINAL JUSTICE ACT TRAINING PANEL PROGRAM FOR THE DISTRICT OF NEW JERSEY

NOTICE TO THE BAR

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY

Since 1971, the United States District Court for the District of New Jersey has maintained a list of attorneys to be appointed as counsel for eligible defendants pursuant to the Criminal Justice Act ("CJA"), 18 U.S.C. §3006A. The Court has adopted a CJA Plan, revised as of April 26, 2018 and effective August 22, 2018, which "particularize(s) the requirements of the CJA, the USA Patriot Improvement and Reauthorization Act of 2005 . . . and Guide, Vol. 7A, in a way that meets the needs of this district." In summary, the CJA Plan has established a Panel Selection and Management Committee which shall meet annually to consider applications for the District's CJA Panel. The District's CJA Panel will consist of attorneys, divided by vicinage, who are members in good standing of the Bar of this District and the Third Circuit Court of Appeals, who maintain a primary, satellite, or shared office in this District and who possess strong litigation skills and demonstrate proficiency with the federal sentencing guidelines, federal sentencing procedures, the Bail Reform Act, the Federal Rules of Criminal Procedure, and the Federal Rules of Evidence. The CJA Committee will select attorneys for the CJA Panel based upon merit and experience.

All current members of the CJA Panel whose terms are expiring are required to reapply for membership on the Panel. Membership on the CJA Panel is ordinarily for a term of three years. Pursuant to the CJA Plan, "Presumptively, a panel member will serve no more than two consecutive terms." *See* Criminal Justice Act Plan, Sections IX(C)(6)(7).

Attorneys seeking membership on the CJA Panel who need experience to meet the eligibility requirements outlined in the Criminal Justice Act Plan, Section IX (3), may pursue membership on the CJA Training Panel. The CJA Training Panel has been established to, "increase diversity and ensure the availability of qualified applicants to the CJA Panel by providing attorneys who do not have the required experience for membership on the CJA Panel with an opportunity to gain the experience necessary to provide high quality representation in federal criminal cases…" *See* Criminal Justice Act Plan, Section XIII(C).

The Court invites all attorneys interested in becoming members of the CJA Panel to submit an application to Melissa E. Rhoads, Clerk, United States District Court, via e-mail at **njcja@njd.uscourts.gov**; on or before **January 12, 2024**. The application must be in PDF format. The application form and copies of the CJA Plan may be downloaded from the Court's website at: http://www.njd.uscourts.gov/panel-information, located under "CJA Panel Application Form". No application will be considered unless it is received in PDF format no later than **January 12, 2024.**

The Court, in conjunction with the Office of the Federal Public Defender, the Association of the Federal Bar of the State of New Jersey and the Association of Criminal Defense Attorneys of New Jersey, will arrange annual training programs for new and experienced panel members. It is anticipated that the application and selection process will be completed on or before **March 31, 2024.**

All qualified attorneys are encouraged to apply for membership on the CJA Panel. Any inquiries regarding the CJA Plan or the application process should be directed to Melissa E. Rhoads, Clerk, United States District Court, Martin Luther King, Jr. Building & U.S. Courthouse, 50 Walnut Street, Room 4015, Newark, New Jersey, 07102, telephone number 973- 645-6697, or Michelle Bilardo, Court Services Manager, 402 E. State Street, Room 2020, Trenton, NJ 08608, telephone number 609-989-2363, email njcja@njd.uscourts.gov.

NOTICES TO THE BAR

SUPREME COURT OF NEW JERSEY
D-25 September Term 2023
088748

In the Matter of
Adrian Ja Waun Johnson:
O R D E R
An Attorney at Law:
(Attorney No. 000592012):

This matter having been duly presented pursuant to Rule 1:20-10(b), following a granting of a motion for discipline by consent in DRB 23-186 of **Adrian Ja Waun Johnson** of **Iselin**, who was admitted to the bar of this State in 2012;

And the Office of Attorney Ethics and respondent having signed a stipulation of discipline by consent in which it was agreed that respondent violated RPC 1.3 (lacking diligence); RPC 1.4(b) (failing to keep a client reasonably informed about the status of a matter and to comply with reasonable requests for information); RPC 1.16(d) (failing to refund the unearned portion of a fee upon termination of representation); and RPC 8.1(a) (knowingly making a false statement of material fact to disciplinary authorities);

And the parties having agreed that respondent's conduct was in violation of the stipulated RPCs and that said conduct warrants a reprimand or such lesser discipline as the Disciplinary Review Board deems appropriate;

And the Disciplinary Review Board having determined that respondent's conduct violated RPC 1.3, RPC 1.4(b), RPC 1.16(d), and RPC 8.1(a), and that a reprimand is the appropriate discipline for respondent's unethical conduct, and having granted the motion for discipline by consent in District Docket No. VIII 2023-0901E and XIV-2020-0394E;

And the Disciplinary Review Board having submitted the record of the proceedings to the Clerk of the Supreme Court for the entry of an order of discipline in accordance with Rule 1:20-16(e);

And good cause appearing;

It is ORDERED that **Adrian Ja Waun Johnson** of **Iselin** is hereby reprimanded; and it is further

ORDERED that the entire record of this matter be made a permanent part of respondent's file as an attorney at law of this State; and it is further

ORDERED that respondent reimburse the Disciplinary Oversight Committee for appropriate administrative costs and actual expenses incurred in the prosecution of this matter, as provided in Rule 1:20-17.

WITNESS, the Honorable Stuart Rabner, Chief Justice, at Trenton, this 19th day of December, 2023.

FILED 12/19/23 ^ **CLERK OF THE SUPREME COURT**

SUPREME COURT OF NEW JERSEY
D-24 September Term 2023
088747

In the Matter of:
William Frederick Henning:
O R D E R
An Attorney at Law:
(Attorney No. 053481993):

This matter having been duly presented pursuant to Rule 1:20-10(b), following a granting of a motion for discipline by consent in DRB 23-181 of **William Frederick Henning** of **South Orange**, who was admitted to the bar of this State in 1993;

And the Office of Attorney Ethics and respondent having signed a stipulation of discipline by consent in which it was agreed that respondent violated RPC 1.15(a) (engaging in negligent misappropriation of client funds) and RPC 1.15(d) (failing to comply with the recordkeeping requirements of Rule 1:21-6);

And the parties having agreed that respondent's conduct was in violation of the stipulated RPCs and that said conduct warrants a reprimand or such lesser discipline as the Disciplinary Review Board deems appropriate;

And the Disciplinary Review Board having determined that respondent's conduct violated RPC 1.15(a) and RPC 1.15(d), and that a reprimand is the appropriate discipline for respondent's unethical conduct, and having granted the motion for discipline by consent in District Docket No. XIV-2022-039E;

And the Disciplinary Review Board having submitted the record of the proceedings to the Clerk of the Supreme Court for the entry of an order of discipline in accordance with Rule 1:20-16(e);

And good cause appearing;

It is ORDERED that **William Frederick Henning** of **South Orange** is hereby reprimanded; and it is further

ORDERED that the entire record of this matter be made a permanent part of respondent's file as an attorney at law of this State; and it is further

ORDERED that respondent reimburse the Disciplinary Oversight Committee for appropriate administrative costs and actual expenses incurred in the prosecution of this matter, as provided in Rule 1:20-17.

WITNESS, the Honorable Stuart Rabner, Chief Justice, at Trenton, this 19th day of December, 2023.

FILED 12/19/23 ^ CLERK OF THE SUPREME COURT

SUPREME COURT OF NEW JERSEY
D-21 September Term 2023
088740

In the Matter of
John M. Mavroudis:
O R D E R
An Attorney at Law:
(Attorney No. 005071974):

This matter having been duly presented pursuant to Rule 1:20-10(b), following a granting of a motion for discipline by consent in DRB 23-173 of **John M. Mavroudis,** formerly of **Hackensack**, who was admitted to the bar of this State in 1974;

And the Office of Attorney Ethics and respondent having signed a stipulation of discipline by consent in which it was agreed that respondent violated RPC 1.15(d) (failing to comply with the recordkeeping requirements of Rule 1:21-6);

And the parties having agreed that respondent's conduct was in violation of RPC 1.15(d) and that said conduct warrants a reprimand or such lesser discipline as the Disciplinary Review Board deems appropriate;

And the Disciplinary Review Board having determined that respondent's conduct violated RPC 1.15(d) and that an admonition is the appropriate discipline for respondent's unethical conduct and having granted the motion for discipline by consent in District Docket No. XIV-2022-0391E;

And the Disciplinary Review Board having submitted the record of the proceedings to the Clerk of the Supreme Court for the entry of an order of discipline in accordance with Rule 1:20-16(e);

And good cause appearing;

It is ORDERED that **John M. Mavroudis**, formerly of **Hackensack**, is hereby admonished; and it is further

ORDERED that the entire record of this matter be made a permanent part of respondent's file as an attorney at law of this State; and it is further

ORDERED that respondent reimburse the Disciplinary Oversight Committee for appropriate administrative costs and actual expenses incurred in the prosecution of this matter, as provided in Rule 1:20-17.

WITNESS, the Honorable Stuart Rabner, Chief Justice, at Trenton, this 19th day of December, 2023.

FILED 12/19/23 ^ CLERK OF THE SUPREME COURT

NOTICE TO THE BAR
IOLTA FUND OF THE BAR OF NEW JERSEY
ALL NEW JERSEY ATTORNEYS ENGAGING IN THE PRIVATE PRACTICE OF LAW
2024 IOLTA ONLINE REGISTRATION

Pursuant to Rule 1:28A, participation in the IOLTA program is mandatory for every attorney engaged in the private practice of law. Regulations of the IOLTA Fund of the Bar of New Jersey approved by the Supreme Court require that trust accounts subject to Rule 1:28A shall be registered annually with the IOLTA fund.

The IOLTA online registration system will be available for licensed New Jersey attorneys and designated Law Firm Administrators beginning on January 4, 2024. Please visit www.ioltanj.org and click on the IOLTA Registration Link under the For Attorneys drop down menu. Instructions for IOLTA registration will be emailed late December to billing email addresses on file with attorney registration as well as all designated firm administrators. The instructions will also be posted on www.ioltanj.org in early January. The 2024 deadline for IOLTA registration is March 31, 2024.

If your status changed since last registering with IOLTA and you are no longer in private practice, or are otherwise now exempt from maintaining a trust account, you will have the ability to update your status on the IOLTA registration site.

Please email info@ioltanj.org with any questions.

Mary E. Waldman
For the IOLTA Board of Trustees
December 19, 2023

NOTICES TO THE BAR

Notice - Lawyers' Fund for Client Protection — Attorneys Reinstated from the 2023 Ineligible List

ATTORNEYS REINSTATED FROM THE NEW JERSEY LAWYERS' FUND FOR CLIENT PROTECTION INELIGIBLE LIST

The New Jersey Lawyers' Fund for Client Protection declares that the following New Jersey attorneys, having fully satisfied the requirements of the annual assessment, are hereby removed from the list of those declared ineligible by order of the New Jersey Supreme Court dated June 20, 2023 and effective upon publication on June 26, 2023.

Attorney Name ^	Admission Year	County
ANDREWS, NATACHA N	1998	O/S
BIANCO BEZICH, COLLEEN P	2010	Camden
BUGG, ROBERT EDWARD	2011	Essex
CARPENTER, CHRISTINE A	1977	Hudson
CIMONE, KATHRYN ELIZABETH	2007	O/S
CULHANE, HAILEY NICOLE	2019	O/S
FAURE, SHARIFAH FATIN	2000	O/C
FRARY, BRENT ALAN	2019	O/S
HALLMARK, ALLIE JORDAN	2013	O/S
HLADKI, JOSEPH JR	2014	O/S
MC LELLAN, ROBERT D	1979	Sussex
NICOL, KRISTEN ALYSSE	2019	O/S
OTIS, ADRIANA NICOLE	2021	O/S
ROTHENBERG, JOY M	1989	O/C
SHARE, ADAM M	1986	O/S
STASIK, LAURA R	2010	O/S
THOMPSON, THOMAS A	1989	O/S
TRELA, REBECCA L	2013	O/S
VOLKMAN, RACHEL	2001	O/S
WILLIAMS, STEVEN DOUGLAS	2015	O/S

Dated: December 18, 2023
New Jersey Lawyers' Fund for Client Protection

UNPUBLISHED OPINIONS

Continued from page 45

2021, shared a business address with DVCR and JLDI, had the same members and now owned the cranes previously owned by JLDI. Defendants argued fact discovery closed almost four years ago and disputed the importance of the alleged evidence. Court found good cause did not exist to reopen discovery and denied plaintiffs' motion. Plaintiffs' application did not show when or how it learned of the transfer of the cranes and its vague claims of diligence rang hollow. Additionally, they also failed to establish the importance of the evidence sought, any concerns regarding the collection of a potentially favorable judgment were premature and the logistical burdens and resulting prejudice weighed against plaintiffs. [Filed December 1, 2023]

LABOR LAW

Castillero v. Xtend Healthcare, LLC, D.N.J. (Castner, U.S.D.J.) (29 pp.) Defendants moved to dismiss plaintiffs' complaint alleging that they were not provided with proper notice before being terminated as part of a mass layoff, or alternatively to compel arbitration of plaintiff Sheila Castillero's claims. Plaintiffs filed suit on behalf of themselves and other similarly situated individuals, alleging that defendants violated the federal and New Jersey Worker Adjustment and Retraining Acts when they were let go as part of reductions in force without written notice. The court granted defendants' motions in part and denied them in part. Specifically, the court granted defendant Xtend Healthcare LLC's motion to dismiss plaintiff Bambi Young's claims for lack of personal jurisdiction. However, the court declined without prejudice to dismiss Castillero's claims against defendants and ordered limited discovery regarding the arbitrability of her claims. The court found that it lacked personal jurisdiction over Xtend for Young's claims since Young did not perform any work for the company in New Jersey and was not a party to the company's contract to provide services to the New Jersey government. The court found that Young's claims were not sufficiently related to the Xtend-New Jersey contract to support personal jurisdiction. However, the court found that Castillero did work for Xtend in New Jersey. But the court found that it was not apparent from the face of the complaint whether Castillero signed an arbitration agreement covering her employment. Thus, the court ruled that limited discovery was necessary to resolve the arbitrability of Castillero's claims under the summary judgment standard. [Filed November 29, 2023]

CRIMINAL LAW

United States v. Torres, 3d Cir. (Bibas, J.) (3 pp.) Defendant appealed the sentence imposed following his conviction for child pornography offenses, challenging the substantive reasonableness of the sentence. The court affirmed defendant's sentence, noting that the district court did not have to analyze the empirical or deliberative basis for the child pornography Guidelines enhancements. The court further found that the district court tailored the sentence to defendant's individual characteristics but found that his mental problems were outweighed by the harm suffered by his victims. [Filed December 14, 2023]

CRIMINAL LAW | INSURANCE LAW

The Prudential Ins. Co. of Am. v. Quadrel, D.N.J. (Wigenton, U.S.D.J.) (4 pp.) Interpleader insurance company moved for summary judgment on behalf of defendants. The case arose from the death of decedent and the distribution of the death benefit from his life insurance policy. Decedent's son shot decedent 23 times. Son pled guilty to third-degree murder. Decedent was survived by three children who were designated as equal beneficiaries under the life insurance policy. Insurer paid two of the children their one third shares and filed an interpleader complaint concerning the killer's share. Insurer asked court to hold that killer son was not entitled to the remaining death benefit since he pled guilty to third-degree murder of decedent. Court found that while the killer's plea was not conclusive as to his intentional killing of decedent, the facts were since he went to his car to retrieve the gun and paused multiple times to reload the gun while shooting decedent. Killer's one third share of the insurance passed to decedent's other children under the New Jersey Slayer Statute. [Filed December 1, 2023]