

## PRESIDENT'S MESSAGE

### *MARK A. SALOMAN, ESQ.*

Though Hurricane Sandy ravaged much our State, I was thrilled to see the rapid response of our membership community. Within days of the storm, the New Jersey Defense Association kept the lines of communication open, promoting office sharing to allow members without power to continue to help clients in need. (If only the power companies were that coordinated!) We also received substantial donations for the Hurricane Sandy New Jersey Relief Fund at our holiday party, once again illustrating our collective generosity and commitment to our neighbors. The turnout for that event New Brunswick's own Doll's Place on December 18 was inspiring.



It was equally exciting to meet so many new faces at our New Leaders Networking Event in October. The New Leaders event truly reenergized some long-standing substantive committees, led to new members joining the organization, and created synergy and opportunities to get involved. Not coincidentally, the NJDA enjoyed near record attendance at our November "Women and the Law" and "Auto Insurance" CLE seminars. Kudos again to all of the fantastic speakers at those two events.

The New Year is proving to be another busy one. "Save the Date" for the NJDA's annual Trial College to be held again at the Union County Court House. It will be held on Saturday, March 23, 2013. You will not find a more intensive, educational, and interactive (not to mention cost-effective) way to hone your legal skills and garner valuable CLE credits. And it's not too early to start thinking about our annual convention, to be held on June 27 - 30, 2013 at the beautiful Skytop Lodge in the nearby Poconos. Please visit [www.skytop.com](http://www.skytop.com) for an overview of this spectacular destination.

On behalf of the entire Board, please let me wish you all a healthy, happy, and safe holiday season and a prosperous and joyous 2013.

*Mark Saloman*

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# THE APPELLATE DIVISION SLAYS THE BAD FAITH DRAGON IN UM LAWSUIT

BY: MICHAEL A. MALIA, ESQ., LL.M. \*



Since the Appellate Division's decision in Taddei v. State Farm, 401 N.J. Super. 449, (App. Div. 2008), the defense bar has seen an increase in bad faith claims alleged in uninsured (UM) and underinsured (UIM) motorist suits. The Appellate Division's holding in Taddei did not create a bad faith cause of action in UM/UIM claims; rather, bad faith was merely referenced in *dicta*. However, the increase in these claims is more likely due to the plaintiffs' bar's concern about being later precluded from raising a bad faith claim under the entire controversy doctrine if not initially alleged, rather than the actual merits of such a claim. The recent Appellate Division decision in Badiali v. New Jersey Mfrs. Ins. Grp., 2012 N.J. Super. LEXIS 182 (App. Div. Nov. 28, 2012), dealt a significant blow to claims that a carrier acted in bad faith where the carrier's argument was supported by an unpublished Appellate Division decision, regardless of whether the carrier even relied upon that decision.

In Badiali, the plaintiff was injured as a result of an uninsured driver's negligence and sought UM coverage against policies from Harleysville Insurance Company and NJM. 2012 N.J. Super. LEXIS 182 at \*1. The UM arbitration resulted in an award in favor of the plaintiff for \$29,148.62, of which Harleysville paid its half, and NJM rejected the award, thereby demanding a trial. Id. at \*2. Plaintiff filed suit claiming that NJM was bound by the decision because half of the award was less than \$15,000. Id. The trial judge agreed that the award was final because NJM was liable for less than \$15,000, notwithstanding the arbitration award being in excess of that amount. On appeal, NJM's position was that the policy language required the award to be based on the size of the arbitration award and not on NJM's liability. Specifically, the policy language stated:

[T]he arbitrators' [decision] will be binding *unless the arbitration award exceeds the minimum limit for liability specified by the Financial Responsibility Law of New Jersey. If the arbitration award exceeds that limit, either party may demand the right to a trial by jury on all issues.*

Id.

Although NJM agreed that its liability was limited to half of the arbitration award because Harleysville also provided UM coverage (N.J.S.A. 17:28-1.1(c)), which was less than \$15,000, NJM argued that pursuant to the policy language the monetary threshold for fixing the finality of the arbitration award should be the amount of the award, not the extent of its liability. Id. at 3.

The Appellate Division in Badiali I disagreed with NJM, claiming that a "similar argument" was made in D'Antonio v. State Farm Mutual Automobile Ins. Co., 262 N.J. Super. 247, (App. Div. 1993).<sup>1</sup> D'Antonio arose from a UIM arbitration award rejected by the carrier wherein the gross award was \$40,000 and the underlying credit from the tortfeasor's policy was \$25,000, resulting in a net UIM award of \$15,000. As this amount did not exceed the mandatory minimum for rejecting the award, the Appellate Division in D'Antonio held that the insurer did not have the right to reject the award. Id. Since the phrase "amount of damages" was undefined, the Court in D'Antonio found that the parties' purpose in foreclosing trials in modest cases would be substantially frustrated if the right to demand a trial turned on the damages attributable to the underinsured tortfeasor. Id. at 249-50.

In Badiali I, NJM argued that D'Antonio was distinguishable because the policy language was different and since D'Antonio involved a UIM and not a UM arbitration claim/award. 2012 N.J. Super. LEXIS 182 at \*4.<sup>2</sup> Even though the court in Badiali

(Continued on page 4)

## BAD FAITH

(Continued from page 3)

I agreed with NJM on these distinguishing factors, the court still relied upon D'Antonio to reach a contrary conclusion. Despite the differences in policy language, the court in Badiali I found that the parties' purpose of foreclosing trials in modest cases was still the same. Id. at 5. The court in Badiali I went on to further claim that there were only "minor differences" in the policy languages at issue; even though the NJM policy clearly identified the "arbitration award" as the determining factor, contrary to the policy language in D'Antonio. In concluding that NJM was bound by the award, the court in Badiali I seemed to ignore the contract's plain meaning, as it was required to do in interpreting the contract language. Regardless, the value of the unpublished opinion (in Badiali I) lies more in the foundation for its successor published bad faith opinion (in Badiali), which as the Appellate Division noted was the "crux of this appeal."

The plaintiff in Badiali argued that NJM failed to act in good faith when it refused to pay its share of the arbitration award and in rejecting the award. Id. at \*5-6. NJM opposed, citing the 2004 unpublished decision of Geiger v. New Jersey Mfrs. Ins. Co., No. A-5135-02 (App. Div. Mar. 22, 2004), which found D'Antonio distinguishable; and further found that the insurer (also NJM) was entitled to reject the arbitration award and demand a trial de novo. Id. The court in Badiali found that NJM did not need to base its decision on the unpublished opinion as "Geiger's mere existence precludes a finding that NJM's position was either instituted or pursued in bad faith." Id. at \*7. The court further found that the "plaintiff cannot persuasively argue that NJM's position was posited or persecuted in bad faith when that very position was endorsed by another panel of this court". Id. The court also did not need to determine whether the judge erred in precluding discovery of the formulation of NJM's strategy in the prior suit. Id. at \*8. The court affirmed the trial judge's decision of summary judgment in NJM's favor.

While the court claimed to issue a tiebreaker between the "dueling unpublished opinions in Geiger

and Badiali I" so insurers would not continue to reject arbitration awards that result in liability less than \$15,000, in doing so, it pronounced that a carrier may avoid bad faith if its decision was supported by an unpublished opinion, even if the carrier did not rely upon that opinion in making its decision. A supporting unpublished opinion in and of itself renders the carrier's decision "fairly debatable."

### END NOTES

<sup>1</sup> This matter previously resulted in an unpublished opinion herein referenced in the published opinion as Badiali I (Badiali v. New Jersey Mfrs. Ins. Co., No. A-4870-09, 2011 N.J. Super. Unpub. LEXIS 460 (App. Div. Feb. 28, 2011)).

<sup>2</sup> The relevant policy language at issue in D'Antonio was:

***2. The amount of damages. This applies only if the amount does not exceed the minimum limit for liability specified by the financial responsibility law of New Jersey. If the amount exceeds that limit, either party may demand the right to a trial...***

Id. at 248.

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# NJDA LETTER TO SUPREME COURT COMMITTEE ON RULES OF EVIDENCE



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November 9, 2012

Hon. Jack M. Sabatino, J.A.D., Chair  
Supreme Court Committee on the Rules of Evidence  
Hughes Justice Complex  
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**Re: Proposed Amendments to N.J.R.E. 104 and 702**

Dear Judge Sabatino:

I am President of the New Jersey Defense Association (“NJDA”) and submit this letter to the Committee in regards to Proposed Amendments to New Jersey Rules of Evidence 104 and 702. I have been authorized by the Board of Directors of the NJDA to submit this letter to Your Honor’s attention in regard to any proposed Rule changes that the Committee is contemplating.

By way of introduction, the NJDA is a non-profit membership organization established in 1966. Our membership consists of approximately 600 New Jersey attorneys who devote a substantial portion of their practices to representing companies and insureds in defending against liability and damages claims in a wide variety of contexts, including general negligence, personal injury, automobile liability, construction liability, employment law, professional liability and products liability matters. NJDA’s membership also includes four companies that manage claims in New Jersey and elsewhere. The NJDA provides a forum and communication link among New Jersey defense attorneys, executives, managers and supervisory employees of insurance companies, self-insurers and other businesses.

The core purposes of the NJDA include encouraging the prompt, fair and just disposition of tort claims; supporting and working for the improvement of the adversary system of jurisprudence in the operation of the Courts; promoting improvements in the administration of justice and enhancing the service of the legal profession to the public; and in carrying on other related similar activities in the public interest. The issues addressed in this letter involve matters of public importance and directly implicate principles of fundamental fairness and justice to litigants in the disposition of claims in this State.

## NJDA LETTER TO SUPREME COURT COMMITTEE ON RULES OF EVIDENCE

The NJDA proposes that N.J.R.E. 104 and 702 be amended in order to better ensure that expert evidence admitted in a civil trial is based on sufficient data and reliable principles and methods, and that such principles and methods are applied reliably to the facts of the case.<sup>1</sup>

Specifically, the NJDA respectfully requests that the Court amend N.J.R.E. 702 to incorporate the text of Federal Rule of Evidence 702 governing the admissibility of expert evidence, and adopt the standards articulated in *Daubert* and its progeny to interpret it. *See Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 589 (1993); *General Electric v. Joiner*, 522 U.S. 136 (1997); *Kuhmo Tire Co. v. Carmichael*, 526 U.S. 137 (1999). In addition, in order to ensure proper consideration of the admissibility of expert evidence, and establish a full record thereon, the NJDA also requests that a new subsection (f) be added to N.J.R.E. 104 to require that trial courts conduct *Daubert* hearings if requested by a party. The proposed amended rules would provide:

### **N.J.R.E. 104(f). Expert Qualification Hearing.**

If a witness in a civil matter is testifying as an expert, then upon motion of a party, the court shall hold a hearing to determine whether the witness qualifies as an expert and whether the expert's testimony satisfies the requirements of Rule 702. The court should allow sufficient time for a hearing before the start of trial and shall rule on the qualifications of the witness to testify as an expert and on whether the proposed testimony satisfies the requirements of Rule 702. The trial court's ruling shall set forth the findings of fact and conclusions of law upon which the order to admit or exclude the expert evidence is based.

### **N.J.R.E. 702. Testimony by Experts**

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training or education, may testify thereto in the form of an opinion or otherwise, if (1) the testimony is based upon sufficient facts or data, (2) the testimony is the product of reliable principles and methods, and (3) the witness has applied the principles and methods reliably to the facts of the case.

Finally, the NJDA proposes that the Court make clear, whether by note accompanying the adoption of the amended Rule 702, or in a new Rule 707, that:

In interpreting Rule 702, the courts of this state shall follow the opinions of the Supreme Court of the United States in *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), *General Electric Co. v. Joiner*, 522 U.S. 136 (1997), *Kumho Tire Co. Ltd v.*

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<sup>1</sup> This proposal is not intended to apply to criminal cases.

## NJDA LETTER TO SUPREME COURT COMMITTEE ON RULES OF EVIDENCE

*Carmichael*, 526 U.S. 137 (1999), and their progeny; moreover the courts of this state may draw from other precedents binding in the federal courts of this state applying the standards announced by the Supreme Court of the United States in the foregoing cases.

The NJDA previously requested these rule changes in 2008. In 2009, when the prior Committee considered changes to N.J.R.E. 702, it did not recommend our proposed language but, instead, recommended that N.J.R.E. 702 be amended as underlined below:

If scientific, technical or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify thereto in the form of an opinion or otherwise, provided that the basis for the testimony is generally accepted or otherwise shown to be reliable.<sup>2</sup>

The Supreme Court, however, declined to adopt the prior Committee's proposed change, and N.J.R.E. 702 remains as it has been since 1991. NJDA believes that, should the present Committee recommend NJDA's proposed rule changes, the Court will adopt them.

The NJDA is renewing its request for the proposed changes for two principal reasons.

First, many New Jersey defendants face simultaneous litigation in both New Jersey state court and in various federal courts. The standards governing the admissibility of expert evidence currently are very different depending on whether the cases are filed on one side of the street or the other. This is unfair and leads to forum shopping. Given that plaintiffs perceive the current state evidentiary rules to be more favorable for them than the federal rules, they will continue to burden our judiciary by filing claims here on behalf of non-New Jersey residents.

Second, Federal Rule 702 and *Daubert* and its progeny have a proven track record. In the words of one court, "the *Daubert* trilogy, in shifting the focus to the kind of empirically supported, rationally explained reasoning required in science has greatly improved the quality of the evidence upon which juries base their verdicts." *Rider v. Sandoz Pharmaceuticals Corp.*, 295 F.3d 1194, 1197 (11th Cir. 2002).

### Importance of Expert Evidence

Expert evidence is often the most important evidence in a civil case. Indeed, many causes of action are subject to dismissal if the plaintiff does not provide expert evidence. Yet, courts and commentators have recognized that expert evidence presents many dangers. For example, as the

<sup>2</sup> 2007 - 2009 Report of the Supreme Court Committee on the Rules of Evidence at 2 ([www.judiciary.state.nj.us/reports2009/3\\_2007-09%20Evidence%20Committee%20Report.pdf](http://www.judiciary.state.nj.us/reports2009/3_2007-09%20Evidence%20Committee%20Report.pdf)). As an aside, NJDA disagrees with the prior Committee's proposed language because, instead of providing a clear and predictable test for admissibility as NJDA has proposed, it would have allowed trial courts to admit expert evidence based on either finding that the basis for the testimony is (1) generally accepted, or (2) "otherwise" shown to be reliable – without any guiding standard. Such a wide-open rule would be a step in the wrong direction.

## NJDA LETTER TO SUPREME COURT COMMITTEE ON RULES OF EVIDENCE

United States Supreme Court has noted, “[e]xpert evidence can be both powerful and quite misleading because of the difficulty in evaluating it.” *Daubert*, 509 U.S. at 595. Experts are given tremendous power in our system. Unlike lay witnesses, experts may testify regarding events and issues for which they have no first-hand knowledge in contravention of a general rule described as the “‘most pervasive manifestation’ of the common law insistence upon ‘the most reliable sources of information.’” *Daubert*, 509 U.S. at 592 (quoting Advisory Committee’s Notes on Fed. Rule Evid. 602, 28 U.S.C. App., p. 755). Experts may also present certain evidence to the jury that would ordinarily be inadmissible at trial because that evidence forms part of the basis of their opinions. The “battle of the experts” is a common feature of the modern trial, especially in complex cases.

### The Need to Change the Rules of Evidence

The need to change the evidence rules is clear. The rules as written do not reflect landmark rulings such as *Rubanick v. Witco Chem Corp.*, 125 N.J. 421 (1991), *Landrigan v. Celotex*, 127 N.J. 404 (1992), and *Kemp v. State*, 174 N.J. 412 (2002). Nor do they reflect current practice. For example, the rules make no mention of what are commonly known as “*Kemp* hearings,” hearings designed to provide sufficient evidentiary records on which courts may rely when evaluating the proffered expert testimony.

The *Daubert* standard provides flexibility, while providing courts with the tools to weed out junk science more effectively. Under the proposed Rule 702, New Jersey trial courts would have the same discretion in making reliability determinations that federal courts enjoy under the federal counterpart. Trial courts would have the ability to tailor their inquiry to the particular facts of the case under examination and probe the expert’s opinions as they relate to the unique circumstances of the cases at issue. See *Kuhmo Tire Co.*, 526 U.S. at 150; *Joiner*, 522 U.S. at 144. But, at the same time, trial courts would have the responsibility to ensure that speculative, unreliable expert testimony does not reach the jury. *In re Paoli R.R. Yard PCB Litig.*, 35 F.3d 717, 732 (3d Cir. 1994) (“*Daubert* requires the district court to act as ‘gatekeeper’ and to assure that the scientific methodology upon which the expert opinion is founded is reliable, i.e., that the expert’s conclusion is based on good grounds (the methods and principles of science).”); *Magistrini v. One Hour Martinizing Dry Cleaning*, 180 F. Supp 2d 584, 593 (D.N.J. 2002) (“In *Daubert* the Supreme Court held that Fed. R. Evid. 702 imposes a special obligation on the trial judge to ‘ensure that any and all scientific testimony or evidence admitted is not only relevant, but reliable.’”); *Lithuanian Commerce Corp., Ltd. v Sara Lee Hosiery*, 179 F.R.D. 450, 457 (D.N.J. 1998) (“Thus, pursuant Rule 104(a) of the Federal Rules of Evidence, a court must serve as an evidentiary gatekeeper and make a preliminary determination as to the reliability of expert testimony.”).

While *Daubert* and its progeny do not contain a definitive list of the factors that courts may consider while exercising their gatekeeper function over the admission of expert evidence, the trial courts would be able to consider in the appropriate situations

- Whether the expert’s technique or theory can be or has been tested;
- Whether the technique or theory has been subject to peer review and publication;



## NJDA LETTER TO SUPREME COURT COMMITTEE ON RULES OF EVIDENCE

- The known or potential rate of error of the technique or theory when applied;
- The existence and maintenance of controls;
- Whether the technique or theory has been generally accepted in the scientific community;
- Whether the expert formed his opinion for the express purpose of testifying in litigation; and
- Whether the field of expertise claimed by the expert is known to reach reliable results for the type of opinion the expert would give.

*See, e.g., Daubert*, 509 U.S. at 593-95; *Kuhmo Tire Co.*, 526 U.S. at 151.

Adoption of the *Daubert* standard would provide litigants and trial courts with much clearer guidelines for determining the admissibility of expert testimony, and would improve the quality of expert testimony presented to jurors.

By contrast, many perceive the current New Jersey standards as lax and as more favorable to plaintiffs than the federal standards. Based on a filing by the New Jersey Lawsuit Reform Alliance to the Supreme Court in connection with its consideration of *Kendall v. Hoffman[n]-La Roche Inc.*, 209 N.J. 173 (2012), more than 90% of the multicounty litigation claims in New Jersey (at the time of the review) were filed by out-of-state residents. Indeed, New Jersey has become a favored venue for plaintiffs.<sup>3</sup> At least one plaintiffs' law firm has, in the context of pharmaceutical multi-county litigation, actively promoted the notion that New Jersey courts employ a more lax application of the standards of admissibility for scientific evidence than other jurisdictions, thus making New Jersey a "better venue" for cases that might otherwise not withstand judicial gatekeeping in other jurisdictions. The Supreme Court has often noted that the Legislature is particularly concerned about fairness in this area because it involves "an industry with a significant relationship to our economy and public health." *Rowe v. Hoffman[n]-La Roche Inc.*, 189 N.J. 615, 626 (2007). While the public policy of our state "is not to encourage tort recoveries," that is in effect what we are doing by maintaining different standards from the federal courts across the street.

Moreover, defendants may face litigation venued in both the courts of this state as well as in federal courts. For example, Atlantic City is home to the Accutane, Fosamax, and Levaquin litigations, among others. The defendants in these litigations also litigate in Federal Multidistrict Litigations in Tampa, Florida, New York, New York, Minneapolis, Minnesota, respectively. In fact, the New Jersey Judiciary's website lists a dozen federal MDL counterparts to New Jersey

<sup>3</sup> Beth S. Rose & Steven R. Rowland, *Preference for New Jersey Law in Products Liability Claims Draws Out-of-State Plaintiffs*, 184 N.J.L.J. 363 (May 1, 2006). Indeed, a survey conducted by the Eagleton Institute of Politics found that tort litigation is making New Jersey a hostile environment for in-state corporations and that the vast majority of New Jersey corporations think this state is on the "wrong track." Rutgers University Eagleton Institute of Politics, *Attitudes Towards Litigation Climate in New Jersey, A Representative Survey Among Business in New Jersey* (December 2007). Furthermore, the survey noted that 89% of respondents believed that lawsuits are driving up the cost of doing business in New Jersey, and nearly 25% have considered relocating outside of New Jersey. *Id.*

## NJDA LETTER TO SUPREME COURT COMMITTEE ON RULES OF EVIDENCE

multicounty litigations.<sup>4</sup> In addition to the issues of fairness to defendants facing two different sets of rules, New Jersey courts lose an opportunity for efficiency. Multicounty litigation judges are increasingly communicating with their federal counterparts and some have participated in federal *Daubert* hearings. But because the presentations at those hearings were geared specifically to establishing or refuting the proffered evidence's admissibility under *Daubert*, the New Jersey courts could well have to allow for additional presentations geared toward the current different standard. If New Jersey adopted *Daubert*, the New Jersey and federal courts could preside over a combined hearing, and, while they could still reach different results, they would benefit from the efficiency of a single hearing.

*Daubert* is a proven standard that works. As of 2011, thirty-one states had adopted *Daubert*, including Connecticut, Delaware, and Massachusetts. See *State v. Porter*, 698 A.2d 739, 742 (Conn. 1997); *M.G. Bancorporation, Inc. v. Le Beau*, 737 A.2d 513, 522 (Del. 1999); *Commonwealth v. Santoli*, 680 N.E.2d 1116, 1120 (Mass. 1997); see also George Vallas, *A Survey of Federal and State Standards for the Admission of Expert Testimony on the Reliability of Eyewitnesses*, 39 Am. J. Crim. L. 97, 136-145 (2011). The NJDA respectfully submits that New Jersey should join them.

On behalf of our membership, the NJDA appreciates this opportunity to be heard on this important issue.

Respectfully submitted,



Mark A. Saloman  
President

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<sup>4</sup> See [www.judiciary.state.nj.us/mass-tort/mdl.htm](http://www.judiciary.state.nj.us/mass-tort/mdl.htm).

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November 15, 2012

Mark A. Saloman, Esq.  
President, New Jersey Defense Association  
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One Newark Center  
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Re: Proposed Amendments to N.J.R.E. 104 and 702

Dear Mr. Saloman:

Judge Jack Sabatino forwarded me your letter dated November 9, 2012, asking the Supreme Court to reconsider amendments to New Jersey Rules of Evidence 104 and 702, relating to the admission of expert testimony.

Judge Carmen Messano, Chair of the Supreme Court Committee of the Rules of Evidence (Evidence Committee), asked me to place this issue on the agenda of the upcoming Evidence Committee meeting on November 29, 2012. As you may know, the Evidence Committee is charged with making recommendations to the Supreme Court on changes to the Rules of Evidence. You will be advised of the Committee's recommendation on this matter, if any, at the time the Committee's report is published in January of 2013.

Thank you for your interest in the Rules of Evidence. Please do not hesitate to contact me if you have any questions.

Very truly yours,

Carol A. Welsch, Esq.  
Staff to the Evidence Committee

cc: Carmen Messano, P.J.A.D.  
Jack Sabatino, J.A.D.  
Steven D. Bonville, Chief of Staff

## NOVEMBER 2012 NJDA EVENTS

### NJDA's 3<sup>rd</sup> Annual Women and the Law Seminar

NJDA held the third annual Women and the Law seminar on November 12, 2012 at the Hilton Woodbridge in Iselin. Attended by over 90 attorneys, including an increasing number of our male colleagues, this seminar once again surpassed expectations. Judge Mary Costello gave an excellent ethics presentation and Judge Margaret Mary McVeigh offered extremely helpful and insightful judicial perspectives. Martha Lynes, Jeanne Marino, Kate Reilly, Marie Carey and Elizabeth Flanagan continued to enlighten all of the attorneys present, whether new or seasoned, with their trial experiences. Yvette Gordon and Jody Riger also detailed how they made the jump from private practice to corporate in-house counsel positions and the pros and cons of each. Debra Baseil provided her tips and guidance on searching for legal positions and how to keep all doors open for potential networking opportunities. All of the presenters spoke with thoughtfulness, grace and humor. We are looking forward to Women and the Law 2013. Be there!



Left to Right: Jeanne Marino, Elizabeth Flanagan, Marie Carey, Kate Reilly, Martha Lynes, Jody Riger, Yvette Gordon

### Auto Liability Seminar

On November 20, 2012, the New Jersey Defense Association co-sponsored its annual Auto Liability Seminar with the Insurance Council of New Jersey. Topics included healthcare, Medicare and Medicaid liens, determining what is boardable at trial, and related ethical considerations. Also, the New Jersey Defense Association's Philanthropy Committee held a canned food drive to benefit local, community food banks in time for the Thanksgiving holiday.



Speakers: Left to Right: Thaddeus Hubert, III, Chad Moore, Stephen Foley, Jr., Gregory McGroarty

## NEW LEADERS NETWORKING EVENT

On October 18, 2012, the New Jersey Defense Association hosted its first New Leaders Networking Event at Due Mari in New Brunswick. Attendees were encouraged to learn more about the NJDA and get more involved by making publishing, speaking and substantive committee leadership opportunities available. Additionally, non-member attendees that satisfied all membership criteria were offered one full year of free membership. This event not only increased NJDA's membership but, more importantly, enticed all members, new and seasoned, to get involved and make an impact!



*NJDA Office*

**Maryanne Steedle**

*Executive Director*

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**[njdefenseassoc.com](http://njdefenseassoc.com)**

The NJDA fondly remembers our friend and supporter, Patricia "Tish" Pierson, Director of Marketing & Client Relations for ExamWorks, Inc., who passed away on October 16, 2012



## **NJDA Annual Trial College Saturday March 23, 2013**



**Union County Court House**

**Extended Format — 8:30 am to 2:30 pm**

**6 CLE Credits for full day session**

**3.6 CLE Credits for morning session**

**\$150.00 Full Day    \$100 Morning Session Only**

# ONE FOR THE GOOD GUYS



Mark Saloman of Proskauer's Newark Office has been named among the New Jersey Super Lawyers for 2013 for Employment Law and was recognized by ALM as one of the "New York Area's Top Rated Lawyers."

Michele Haas of Hoagland Longo has been named among New Jersey Super Lawyers for 2013 in the field of Workers' Compensation.

The NJDA has been invited by the New Jersey Supreme Court to file amicus briefing in O'Boyle v. Borough of Longport, 426 N.J.Super. 1 (App. Div. 2012). The Association has accepted this invitation.

The NJDA is introducing a new column for the association's Newsletter titled ONE FOR THE GOOD GUYS which will include recent defense trial victories in New Jersey Courts—or anywhere else. If you would like to submit a case for this article, please contact Michele Haas, Esq. at [mhaas@hoaglandlongo.com](mailto:mhaas@hoaglandlongo.com) or 732-545-4717.

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The NJDA is pleased to announce that we have established a Premises Liability Committee, which will be chaired by Jeff Maziarz, Esq.. If you wish to join the committee, please contact us at [njda@comcast.net](mailto:njda@comcast.net) or 609-927-1180. Jeff can be contacted directly at [jmaziarz@hoaglandlongo.com](mailto:jmaziarz@hoaglandlongo.com) or 732-545-4717.

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## SANTA V. SANDY

BY BRIAN O'TOOLE, ESQ.

As we leave the Christmas season we have much to be thankful for, but some substantial obstacles to overcome. New Jersey is still in need of “a little Christmas right this very minute.” The Jersey Shore has been devastated by Sandy and many have lost everything they own. This year, probably like no other, we are depending on that jolly old fat man to make things right.



I have spent quite a bit of time at our house in Manasquan, trying to restore some type of normalcy. My first visit did not come until one week after Sandy because the beach front area was completely closed off due to danger from gas leaks and downed electrical wires. There were also numerous buildings in unstable condition and the entire boardwalk was cracked and broken like so many shortbread cookies. This perimeter was diligently monitored by local police, state police and the New Jersey National Guard. There to protect the public from itself and also to prevent looting. (I should add that every encounter I had with law enforcement left me impressed with their high degree of training and courteousness. One of their stock lines was, “I have some good news and some bad news for you. The good news is that we’re still here, the bad news is that you can’t be here.) The effectiveness of their performance is evidenced by the fact that no one was hurt, nor was there any looting in Manasquan.

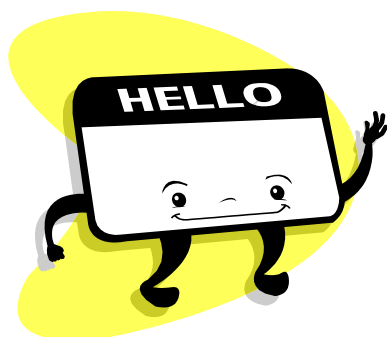
The municipal authorities did a great job in trying to get things cleaned up, but the job was enormous and will continue far into the future. In addition, there was an army of contractors engaged in their areas of expertise. But by far the most heartwarming part of the array were the volunteers. They were of all ages and from all backgrounds. A little girl of no more than 6 years of age was using her small wagon to haul sand from the porch of an elderly woman. A group of students from Manasquan High School were rebuilding a cinderblock wall. Several churches provided members of their congregation to haul away garbage and bring people’s possessions back in their homes. Particularly gratifying were the large number of professional people, plumbers, electricians, carpenters, who volunteered their services. Obviously, these artisans were vital because they were able to give guidance to the unskilled.

The significance of all of this free labor was particularly felt by the modest and low income residents of Manasquan. While Manasquan is thought to be an affluent town, a substantial part of its population lives in small bungalows that were built in the 1930’s and 40’s. I spoke to one woman who told me that she had no flood insurance and could not afford to repair her home. Just after she said that an extremely large man wearing a red flannel shirt with a flowing white beard stepped forward and handed her a card that read “North Pole Productions.” (C’mon folks, it’s Christmas time and you’ve all heard of literary license.) It was also inspiring to see a number of local restaurants dispensing hot food and coffee from curbside to volunteers and people displaced from their homes.

The moral to this story is how much good can come out of tragedy. The New Jersey Shore will be back, thanks to the indomitable spirit of the American people and enormous generosity of the American heart. Yes, Virginia, there is a Santa Claus and he’s presently strutting his stuff in Manasquan, New Jersey.

On behalf of the New Jersey Defense Association, we take this opportunity to wish you all a happy New Year, filled with peace and joy.





## **The NJDA would like to welcome our new members since May 2012:**

**Frank Caruso, Esq., Hoagland Longo Moran Dunst & Doukas, L.L.P.**

**Ryan T. Clark, Esq., Slater Tenaglia Fritz & Hunt, P.A.**

**Francesca DAnnunzio, Esq., Law Offices of John Kennedy**

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**Carl Figueroa, Esq., Hoagland Longo Moran Dunst & Doukas, L.L.P.**

**Jean Harris, Coverys**

**Blaise Lacca, Coverys**

**Brett J. Lean, Esq., Burns White**

**Jeffrey Maziarz, Esq., Hoagland Longo Moran Dunst & Doukas, L.L.P.**

**Edwin J. McCreedy, Esq., McCreedy & Cox**

**Regina Norato, Coverys**

**Jennifer Passannante, Esq., Hoagland Longo Moran Dunst & Doukas, L.L.P.**

**Patrick J. Reilly, III, Nelson Levine Deluca & Hamilton**

**Ryan Richman, Esq., McCarter & English**

**Peter M. Rozano, Esq.**

**Stephanie Sgambati, Esq., Duane Morris**

**Kevin M. Shanahan, Esq., Law Offices of Kevin M. Shanahan**



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