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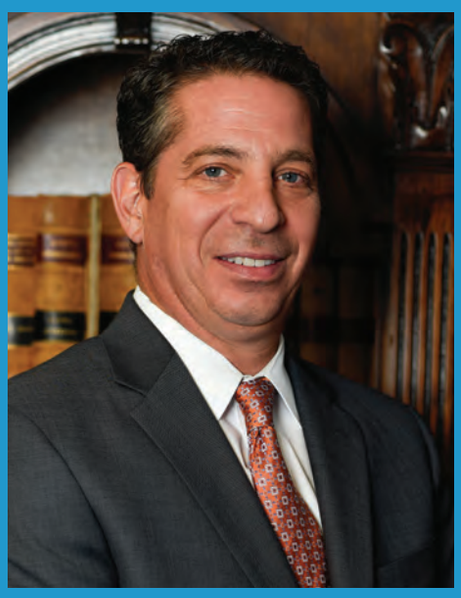

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ALDO J. RUSSO, ESQ.

NEW JERSEY SUPREME COURT'S LANDMARK ACCUTANE DECISION RAISES THE BAR FOR EXPERT TESTIMONY

BY EDWARD J. FANNING, JR., DAVID R. KOTT, AND AMANDA M. MUNSIE

Not only does the New Jersey Supreme Court's decision in In re: Accutane pave the way to ending a fifteen-year litigation, it sends a clear message to trial courts regarding the critical importance of their role as the gatekeepers of expert testimony in civil cases. The landmark decision adopted the Daubert[1] factor-based approach to assess the methodology and reliability of an expert's proffered opinions. This more "rigorous" gatekeeping and analysis for expert testimony brings New Jersey jurisprudence in line with the thirty-nine states, the District of Columbia, and the federal courts that require an expert's testimony be based on sound reasoning and valid methodology that are applied reliably to the facts in issue. This decision provides clear direction for New Jersey trial courts to follow in deciding issues of expert admissibility in civil cases.

The New Jersey Supreme Court's In re: Accutane decision made two important rulings: (1) it "reaffirm[ed] that the abuse of discretion standard must be applied by an appellate court assessing whether a trial court has properly admitted or excluded expert scientific testimony in a civil case"; and (2) held that New Jersey trial courts should be guided by Daubert's requirements for admissibility of expert testimony. In re: Accutane, No. A-25-17, slip op. at 6, 81-82 (N.J. Aug. 1, 2018). Though the Court stopped short of declaring New Jersey a "Daubert jurisdiction," it instructed trial courts to be guided by the Daubert factors to assess the reliability, and in turn admissibility, of expert testimony in civil cases. In the Court's view:

> proper gatekeeping in a methodology-based approach to reliability for expert scientific testimony requires the proponent to demonstrate that the expert applies his or her scientifically recognized methodology in the way that others in the field practice the methodology. When a proponent does not demonstrate the soundness of a methodology, both in

> terms of its approach to reasoning and to its use of data, from the perspective of others within the relevant scientific community, the gatekeeper should exclude the proposed expert testimony on the basis that it is unreliable.

Id. at 84.

Before the United States Supreme Court's Daubert decision, New Jersey courts were among the first to move from exclusive use of the general acceptance standard[2] for testing the reliability and admissibility of scientific expert testimony in a civil case. Over twenty-five years ago, the New Jersey Supreme Court adopted a methodology-based approach and named the trial court the gatekeeper for unreliable expert testimony. In re: Accutane, slip op. at 4, 8-9 (internal citations omitted). According to the Court, "[t]here is not much light between New Jersey's standard and that which has developed in the federal sphere under Daubert's initial instruction." Id. at 80.

Until now, though, the problem with the state of the law in New Jersey was a lack of clear guidelines for trial courts to follow when carrying out its gatekeeper role. In light of the Accutane decision, moving forward, trial courts have well-defined factors to assess reliability and admissibility of expert testimony. Specifically, the Court found:

> little distinction between Daubert's principles regarding expert testimony and our own, and [we] believe that its factors for assessing the reliability of expert testimony will aid our trial courts in their role as the gatekeeper of scientific expert testimony in civil cases. Accordingly, we now reconcile our standard under N.J.R.E. 702, and relatedly N.J.R.E. 703, with the federal Daubert standard to incorporate its factors for civil cases.

Id. at 5-6. In adopting the Daubert factor-based approach, and affirming the trial court's detailed opinion and analysis excluding the plaintiffs' experts, the Court held "[p]roper gatekeeping . . . requires the proponent to demonstrate that the expert applies his or her scientifically recognized methodology in the way that others in the field practice the methodology." Id. at 84. Importantly, the Court endorsed Judge Nelson C. Johnson, J.S.C.'s methods in employing the trial court's gatekeeping function and found the following "non-exclusive 'general factors' applicable to expert admissibility" to be:

> (1) Whether the scientific theory can be, or at any time has been, tested;
> (2) Whether the scientific theory has been subjected to peer review and publication, noting that publication is one form of peer review but is not a "sine qua non";
> (3) Whether there is any known or potential rate of error and whether there exist any standards for maintaining or controlling the technique's operation; and
> (4) Whether there does exist a general acceptance in the scientific community about the scientific theory. Id. at 81-82.

In re: Accutane Litigation and the New Jersey Supreme Court's Decision

The Court's August 1, 2018 Accutane decision involved more than 2,100 plaintiffs who claimed their ingestion of Accutane, a prescription medication used to treat recalcitrant nodular acne, caused them to develop Crohn's disease, a chronic gastrointestinal illness. The exact cause of Crohn's disease is unknown and all of the epidemiological studies published during the pendency of the long-running litigation show no causal link between Accutane and the disease. Regardless, the plaintiffs presented two expert witnesses who rejected the epidemiological studies and instead relied upon lesser forms of evidence, namely case reports and animal studies, in an effort to prove general causation. After holding a Rule 104 pretrial evidentiary hearing, Judge Nelson C. Johnson, J.S.C., the trial judge overseeing the multi-county litigation venued in Atlantic County, ruled that the experts' opinions were flawed and unreliable and barred their testimony. Id. at 41. In a detailed opinion, Judge Johnson "found plaintiffs' experts' testimony lacking" and determined that the experts' resistance of the epidemiological findings to rely upon "less reliable form[s] of evidence" (i.e. case reports and animal studies) was "seriously flawed." Id. at 42. Ultimately, after examining the expert testimony and scientific studies and applying the relevant standard for the admission of expert witness testimony in a civil case, the trial court reasoned plaintiffs' experts' examination of the evidence was a "conclusion-driven attempt to cherry-pick evidence supportive of their opinion while dismissing other, better forms of evidence that did not support their opinion." Id. at 43. In evaluating the reliability of the proffered experts' methods and testimony, the trial court fully embraced and relied heavily on the Federal Judicial Center's Reference Manual on Scientific Evidence (3d ed. 2011).

On appeal, the Appellate Division applied a"somewhat less deferen[tial] standard of review" (essentially a *de novo* review) to reverse the trial court's decision finding that plaintiffs' experts may testify at trial. Id. at 43-45. In reversing, the Appellate Division applied what they called a more "relaxed" standard of admissibility and seemed to focus more on the qualifications of the plaintiffs' experts rather than the methodological inconsistencies inherent in the plaintiffs' experts' reasoning. The appellate panel found that "the experts relied on methodologies and data of the type reasonably relied upon by comparable experts" and "evaluated all of the evidence in accordance with established scientific standards and methodology." Id. at 44.

After granting certification, the New Jersey Supreme Court reversed the Appellate Division's decision and affirmed the trial court's exclusion of the plaintiffs' experts. In so holding, the Court "reinforce[d] the proper role for the trial court as the gatekeeper of expert witness testimony" and "the rigor expected of the trial court in that role." Id. at 67. The Court found the trial court's assessments as to the unreliability of plaintiffs' experts' testimony to be supported by the record in this case, chiefly the fact that both experts disregarded eight of the nine epidemiological studies that showed no causal link between the medicine and Crohn's disease to instead rely on reports that fall at the bottom of the evidence hierarchy as well as other less probative forms of evidence. Id. at 73-74. "[E]xperts cannot selectively choose lower forms of evidence in the face of a large body of uniform epidemiological evidence." Id. at 77.

The Court emphasized that it expects "trial court[s] to assess both the methodology used by the expert to arrive at an opinion and the underlying data used in the formation of the opinion. That will ensure that the expert is adhering to norms accepted by fellow members of the pertinent scientific community." Id. at 79. "Methodology, in all its parts, is the focus of the reliability assessment, not outcome." Ibid. In "incorporating" the Daubert factors "for use by our courts" the Court reasoned they "would provide a helpful – but not necessary or definitive – guide for our courts to consider when performing their gatekeeper role concerning the admission of expert testimony." Id. at 82. The trial court's gatekeeper role is to "determine whether the scientific community would accept the methodology employed by [the] experts and would use the underlying facts and data as did [the] experts." Id. at 84-85.

When assessing the reliability of the plaintiffs' experts' methodology, the New Jersey Supreme Court again relied heavily on the Federal Judicial Center's Reference Manual on Scientific Evidence (3d ed. 2011). See, e.g., id. at 12-18, 24, 73-74, 77-78. For example, the Court took a firm stance on case reports and animal studies versus epidemiological studies: "case reports are at the bottom of the evidence hierarchy . . . [and] animal studies [are] far less probative in the face of a large body of uniform epidemiological evidence." Id. at 74, 77. Indeed, due to the Court's substantial reliance, it will be beneficial for New Jersey practitioners, along with Superior Court judges, to become comfortable with the Manual.

What Happens Now and Lessons Learned

Practically speaking, New Jersey has adopted Daubert as the governing standard for determining the admissibility of expert testimony in all civil cases. While the Court declined to officially declare New Jersey a "Daubert jurisdiction," the Court has fully embraced the Daubert factors, and its insistence that, in addition to being well-qualified, an expert employ a proven methodology in a scientifically sound and reliable manner. Further, the Court instructed other trial courts to follow Judge Johnson's methods for conducting a Rule 104 hearing and analysis and recognized it as an example of proper gatekeeping. Id. at 70.

Prior to this decision, New Jersey trial courts did not have as clear a standard to apply in exercising their gatekeeper role and deciding whether to allow an expert to testify in a civil case. This contributed to the perception that New Jersey law on expert admissibility was weaker than the Daubert standard, which encouraged forum shopping. This perception, coupled with the fact that the state is home to many pharmaceutical and medical technology companies, lead to New Jersey becoming a magnet for mass tort litigation often based on unproven science and unreliable expert testimony. This was true even before the United States Supreme Court's decisions in Daimler AG v. Bauman, 571 U.S. __, 134 S. Ct. 746 (2014) and Bristol-Myers Squibb Co. v. Superior Court, __ U.S. __, 137 S. Ct. 1773 (2017), which effectively limit where a product liability plaintiff can bring his or her claim to either the plaintiff's home state or the defendant's home state, which would only bring more product liability and mass tort lawsuits to New Jersey. The Accutane decision will now better equip companies and their counsel to defend against these claims in New Jersey. By incorporating the Daubert factors into New Jersey jurisprudence, the Court has provided trial courts with more robust guidance in performing their vital gatekeeping role. This decision will go a long way in keeping junk science posing as expert testimony, and the meritless cases it often supports, out of New Jersey courtrooms.

The importance of requesting a Rule 104 pretrial evidentiary hearing cannot be understated. While the "Kemp hearing" (though perhaps now it's more properly called an "Accutane hearing") is a common pretrial occurrence to decide issues of expert admissibility, it is up to the defense attorneys to request this relief from the court and to become comfortable with the science and methodologies in order to effectively communicate flaws in methodology and issues of reliability to trial judges. While science is always evolving and novel theories of causation can, on occasion, have a place in New Jersey courtrooms if they are supported by reliable methodologies and analysis, potential experts cannot be allowed to employ methods inside the courtroom that they would not use in practice outside the courtroom.

An example can be found here, where the plaintiffs' gastroenterologist expert opined in the courtroom that it was biologically plausible for Accutane to cause Crohn's disease but did not publish his causation theory or submit it for peer review. In re: Accutane, slip op. at 25. The Court recognized that an expert's opinions can often carry significant weight based upon his or her credentials alone, especially in complex matters. "The gatekeeping role necessitates examination of a methodology espousing a new theory in medical cause-and-effect cases" and "properly exercised," it "prevents the jury's exposure to unsound science through the compelling voice of an expert." Id. at 68-69. To keep unreliable expert testimony out of the courtroom, it is imperative that defense attorneys request a Rule 104 hearing to allow the trial court to exercise its gatekeeper role as now clearly defined by the Supreme Court in In re: Accutane.

Edward J. Fanning, Jr. and David R. Kott appeared, and Mr. Fanning argued, in In re: Accutane on behalf of *amici curiae* the HealthCare Institute of New Jersey, the New Jersey Business and Industry Association, the Commerce Industry Association of New Jersey, and the New Jersey State Chamber of Commerce.

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[1] Daubert v. Merrell Dow Pharms., Inc., 509 U.S. 579 (1993).

[2] Frye v. United States, 293 F. 1013 (D.C. Cir. 1923).

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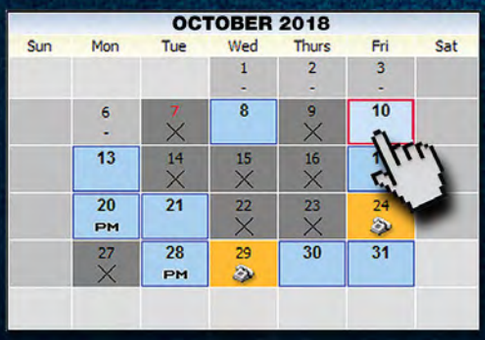

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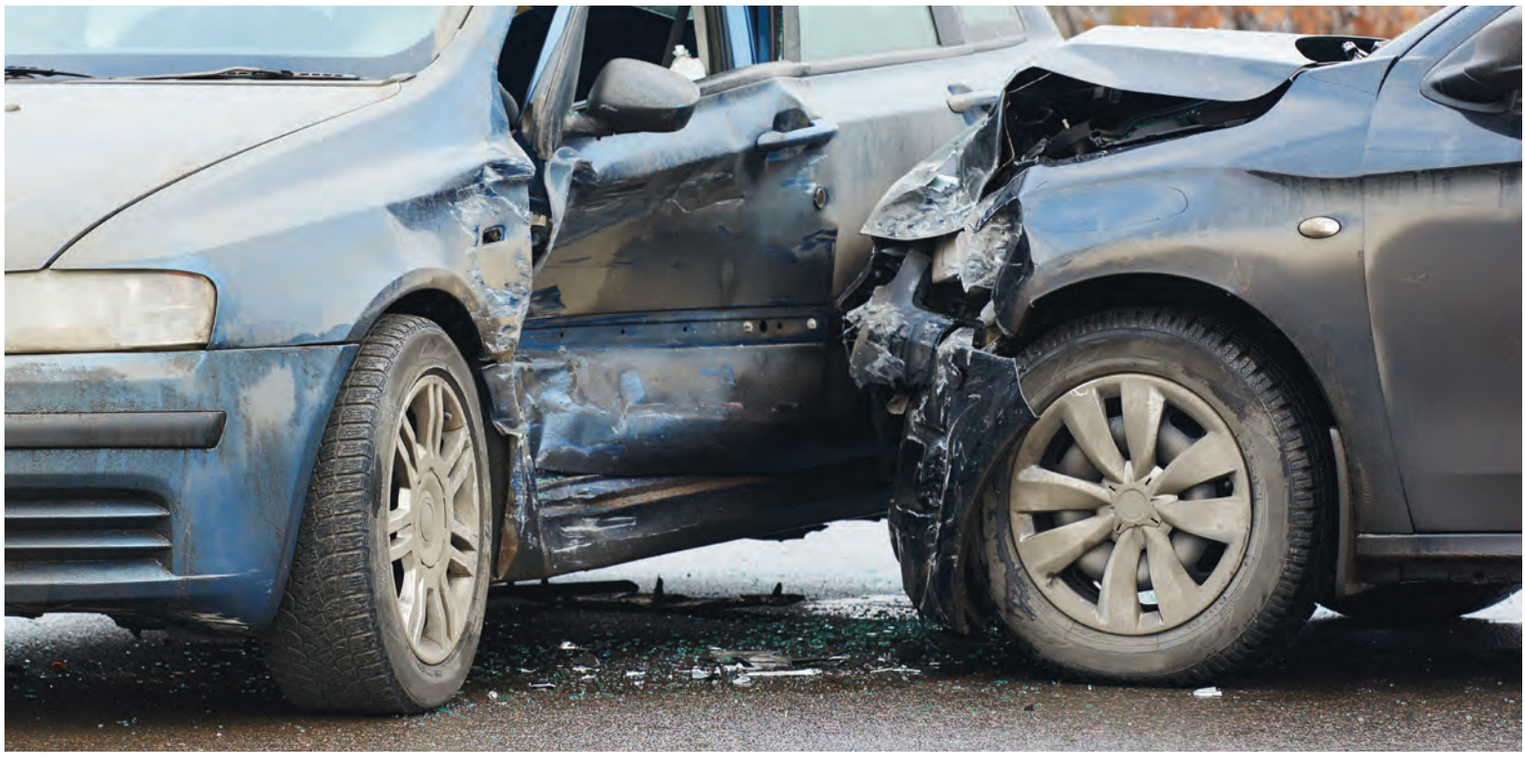


A ROSE IS A ROSE: OR IS IT? THE APPLICATION OF THE VERBAL THRESHOLD DEFENSE TO A DOMESTIC PARTNER PURSUANT TO THE NEW JERSEY CIVIL UNION ACT.

BY DENISE M. LUCKENBACH, ESQ.

Mysteriously, the New Jersey Courts continue to grapple in determining the rights and responsibilities of domestic or civil union partners in our State, despite the enactment of the Civil Union Act [N.J.S.A. 37:1-28 to -36] in February 2007. The Act clearly and unequivocally states "Civil union couples shall have all the same benefits, protections, and responsibilities under law whether they derive from statute, administrative or court rule, public policy, common law or any other source of civil law, as are granted to spouses in a marriage." N.J.S.A. 37:1-31a.

N.J.S.A. 37:1-33 expressly states, "Whenever in any rule, regulation, judicial or administrative proceeding or otherwise, reference is made to 'marriage,' 'husband,' 'wife,' 'spouse,' 'family,' 'immediate family,' 'dependent,' 'next-of-kin,' 'widow,' 'widower,' 'widowed' or another word in which a specific context denotes a marital or spousal relationship, the same shall include a civil union pursuant to the provisions of this act." Pursuant to Section 34, New Jersey also recognizes civil unions entered into validly in foreign jurisdictions. One wonders then why a plaintiff would ever attempt to advocate that he or she is not a resident relative for the purposes of an automobile insuring policy as it avails the individual of many advantages of coverage under the policy. The natural conclusion, of course; is so as to not avail the defendant of a potential verbal threshold defense. N.J.S.A. 39:6A-8.1; Echeverri v. Blakely, 384 N.J. Super. 10, 16 (App. Div. 2006).

Traditionally, the otherwise uninsured "resident relative" of an insured automobile owner, whose automobile insurance policy does, in fact, carry the "lawsuit" or "tort" limitation, is also bound by that election. N.J.S.A. 39:6A-8.1. It therefore **requires** that person to prove to a fact finder, through objective credible medical evidence, that he or she has sustained a permanent injury in order to be permitted to recover for non-economic – better known as pain and suffering – damages. The statute and Model Jury Charge (5.33B) contain the following definition: "An injury shall be considered permanent when the body part or organ, or both, has not healed to function normally and will not heal to function normally with further medical treatment."

Interestingly, a number of instances have arisen where tort plaintiffs involved in auto accidents have attempted to remove themselves from the definition of "resident relative," despite the clear language of the New Jersey Civil Union Act, contending that a domestic partner should not be bound by the tort limitation selection of their partner's automobile liability policy. Discovery requests, predominantly in the form of Requests for Admissions, are frequently served attempting to lock the defense into concessions that the domestic or civil union partner is, in fact, not to be bound to the lawsuit limitation election:

1. At the time of the within accident, Plaintiff was not the registered owner of a motor vehicle.
2. At the time of the within accident, Plaintiff was not married.
3. At the time of the within accident, Plaintiff was not a named insured under an automobile policy.
4. The declaration sheet attached hereto is a true and accurate copy of Plaintiff's declaration sheet at the time of the accident.
5. Plaintiff is not subject to the verbal threshold.

While it does not appear that logic, the language of N.J.S.A. 39:6A-8, or the ensuing case law on the interpretation of the meaning of "resident relative" support such an assertion, interestingly to date there is no decision (published or unpublished) on the issue in New Jersey. Rather, *ad hoc* decisions in Law Divisions around the State through either decisions by way of declaratory motions for partial summary judgment (the more prudent course and practice tip) or *in limine* motions appear to be the method pursuant to which the issue has been handled to date.

Savvy insurers have attempted to address the issue as directly as possible (for not only tort limitation but also PIP, UM/UIM and direct liability coverage purposes) by addressing it in the policies themselves. Typically, at present this will be found in the Definitions section (such as in the following examples):

J. "Family Member" means:

1. A person who is related to you by…a lawfully recognized civil union under New Jersey law and **resides** in **your** household.

W. "You", "your" and "named insured" mean:

(b) Domestic partner who is registered as such under any state's domestic partner or civil union law;

If that person **resides** in the same household as the **named insured** and is not a **named insured** under a New Jersey Basic Automobile Policy…

So while there are still a number of members of the plaintiffs' bar who apparently will continue to challenge the applicability of the verbal threshold to their client's claims, despite an election by domestic partners in respective automobile policies, defense counsel should not abandon the availability of the defense to their client. Rather, counsel should engage in the necessary discovery, including exploring the partnership; and subpoena the necessary insurance policies (including complete underwriting files) as an additional source to support the responsibilities that a domestic partner carries under the Act, and serve as the basis of additional defenses to claims filed against their clients. Counsel should then utilize these tools and proactively file the appropriate Requests for Admissions where possible or where necessary, motions for partial summary judgment seeking the necessary declarations as early as possible in the litigation to resolve the issue and confirm in fact that the defendant is availed the verbal threshold defense.

Denise M. Luckenbach, Esq. is a Partner with Sellar Richardson, P.C. in Livingston. She is a member of the NJDA Philanthropy and ADR Committees and regularly litigates and tries automobile liability cases.[1]

[1] With thanks to Frank J. Caruso, Esq. of Hoagland, Longo, Moran, Dunst & Doukas, LLP, who generously shared his research and knowledge upon receipt of the inquiry on this issue. I hope my motion is equally successful.

PLAIN ERROR, PREJUDICE AND PUNISHMENT

BY MICHAEL J. MCCAFFREY, ESQ.

Consider this issue: could a court's failure to order a new trial constitute an abuse of discretion, where the testimony said to be unduly prejudicial was presented without objection and where the failure to object was the consequence of an informed, reasoned, tactical decision to forego such objection? Two of three appellate jurists say so, in T.L. v. Goldberg, 453 N.J. Super. 539, 183 A.3d 259 (App. Div. 2018). Attorneys who try cases would benefit from reading the opinion's discussion of "plain error" and the dissenting opinion's discussion of why implementation of a strategy at trial should preclude a finding of plain error.

In short, in that case the plaintiff, T.L., alleged that she suffered neurologic injury by her doctor's negligent prescription of a drug, Pegasys. In discovery, that doctor denied knowledge of any study in which patients such as plaintiff had been prescribed Pegasys. During the deposition of that doctor, plaintiffs' attorney referred to published "studies" of Pegasys, expressing by his questions his own familiarity with the conclusions of such studies.

At trial, the court granted a motion *in limine* and barred the defendant from "using" medical literature not provided in discovery. In his opening statement, plaintiffs' attorney vaguely referenced a "clinical trial" supporting his theory that defendant should not have prescribed Pegasys. Then, during his testimony, the defendant identified a clinical trial of Pegasys, reported in medical literature upon which, he said, he had relied in prescribing Pegasys. In so doing, he did not testify as an expert witness, but rather explained why he had prescribed Pegasys. During cross-examination, plaintiffs' attorney questioned the defendant about two "clinical trials" and suggested knowledgeably that in one trial "depression" had been an "exclusion" from treatment.

At oral argument of the motion for new trial, plaintiffs' attorney said that he had failed to object because he did not "know" what was reported in the study to which defendant had referred and "wasn't sure" how the jury would "perceive" an objection. Apparently, the record provides neither confirmation nor denial expressly of what medical article had been possessed by the plaintiff at the start of trial. Upon appeal it seemed obvious to the dissenting jurist that among the "studies" and "clinical trial" known well to the plaintiffs' attorney was the very clinical study reported in the medical literature to which the defendant had referred when he explained why he had prescribed Pegasys. The dissenting opinion identifies evidence by which the dissenting judge concludes that plaintiffs' attorney indeed did know what was reported in the published study, his professed ignorance at oral argument notwithstanding.

Nevertheless, on appeal the court ordered a new trial. The majority held that "defense counsel's failure" to disclose that defendant would testify to his reliance upon a study, ignorance of which he had previously expressed, "resulted in plain error…that deprived plaintiffs of a fair trial" and that the trial court had abused its discretion in denying the motion for a new trial. Almost the entirety of the opinion is directed at justifying the court's conclusion, in dictum, that the defendant's reference to the clinical study of Pegasys deprived plaintiffs' counsel of the opportunity to prepare cross-examination. The majority writes that "even if counsel decided for strategic reasons not to object at trial, the absence of an objection is not dispositive of whether the client has been prejudiced by improper testimony."

The opinion and the dissent in the T.L. case present potentially conflicting principals of law. Counsel has a continuing duty to disclose to the court and adverse counsel anticipated testimony that would be a material change from a witness's previous testimony or assertions in discovery. McKenny v. Jersey City Med. Ctr., 167 N.J 359, 371 (2001). However, the absence of an objection to testimony suggests that trial counsel perceived no error or prejudice, and in any event may prevent the trial judge from timely remedying any possible confusion or prejudice. See, State v. Macon, 57 N.J. 325 (1971); Bradford v. Kupper Assocs., 283 N.J. Super. 556 (App. Div.1995).

Surely plaintiffs' attorney in the T.L. case was surprised by the defendant's testimony. Yet the dissent proposes in its argument that the attorney had read the study in question, had mentioned it in his opening statement, wanted the jury to know about it, easily could have cross-examined the defendant (and did) on the conclusion of the study, and thought that the conclusion of the study benefited the plaintiff. Therefore, if the dissent is correct, defendant's summary reference to the clinical study, while likely influential of the jury, in itself cannot possibly have prevented a fair trial. Defendant's reference produced a miscarriage of justice, concluded the appellate majority, because the plaintiffs' attorney was unfamiliar with the study and unprepared to cross-examine, a conclusion, the dissent would say, that is contradicted by the words of the plaintiffs' attorney at trial and at oral argument. One could conclude that plaintiffs wanted for nothing necessary to the full presentation of their case and to an effective cross-examination and impeachment of the defendant at trial.

The majority implies that its holding is motivated by antipathy for a decision under which the defense would be "rewarded for violating a duty of candor to the court and other counsel." Yet some would say that the order of a new trial rewards the plaintiffs for either an error of tactical judgment, their attorney's possibly inaccurate recollection during argument of the motion for new trial or, some would say, a disingenuous *post hoc* claim of harmful and irremediable surprise. The conclusion of value to those who try cases: even in the absence of an objection, not all is lost to an adverse verdict if one can vilify the opposing counsel and plausibly identify surprising, prejudicial testimony.

An issue not specifically contemplated in the opinion is what reference to a clinical study would constitute the "using" prohibited the defense at the start of trial. Defense counsel told that court that the only "medical literature" he intended to use would be "such as may be necessary during…direct testimony." A more inclusive quip would be difficult to express. The defendant recited his thoughts, without identifying a specific medical article and did not otherwise "use" medical literature.

The opinion in T.L. also presents an insightful and instructive discussion of error created by irrelevant or evidentially incompetent testimony of the psychiatrist for the defense. Among other things, the psychiatrist opined that plaintiff was sometimes malingering and was motivated by the goal of secondary gain, opinion prohibited by Rodriguez v. Wal-Mart Store, Inc., 449 N.J. Super. 577 (App. Div.), certif. granted, 230 N.J. 565 (2017). The psychiatrist opined that plaintiff "tended to be rather immature, superficial and unskilled with the opposite sex," had engaged in "doctor shopping" and had a "history" of uttering complaints that had "no physiological basis." Addressing those remarks the appellate court writes, in restrained but cutting *obiter dictum*, that in view of the "incompatibility" in many instances between the psychiatrist's view of what is psychiatrically relevant and law's view of what is relevant or unduly prejudicial, on retrial her testimony must be "carefully circumscribed," citing N.J.R.E. 403 and 703; Hayes v. Delamott, 231 N.J. 373 (2018); and James v. Ruiz, 440 N.J. Super. 435 (App. Div. 2015).

An example of similar improper and prejudicial testimony would be the commonly offered, unctuous opinion that the plaintiff "demonstrated no sign of overt symptom magnification." That utterance would be a lay opinion on credibility, guised as medical opinion. Such chicanery has been prohibited. See, State v. Henderson, 208 N.J. 208, 297 (2011); State v. Abronski, 281 N.J. Super. 390, 403 (App. Div. 1995), aff'd 145 N.J. 265 (1996). A suggestion for the attorney at trial: object *in limine* to proposed testimony and during trial to testimony of an expert witness that would be or is in reality irrelevant, unsupported, incompetent lay opinion, citing the cases presented here.

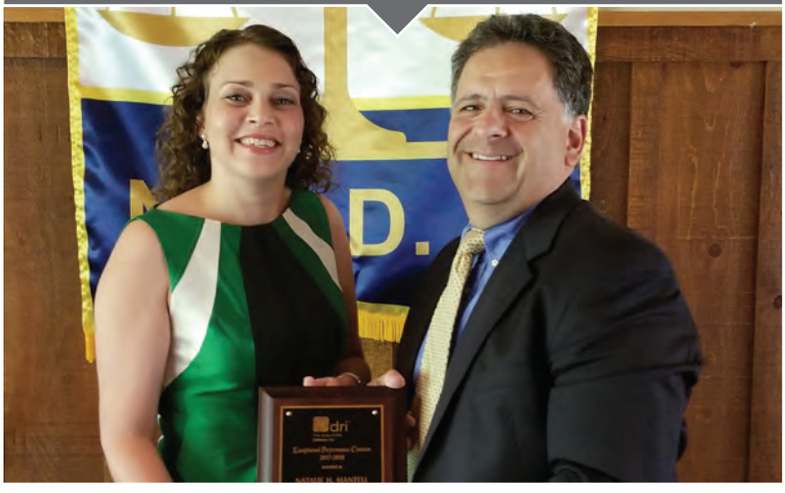
NJDA 52ND ANNUAL CONVENTION JUN

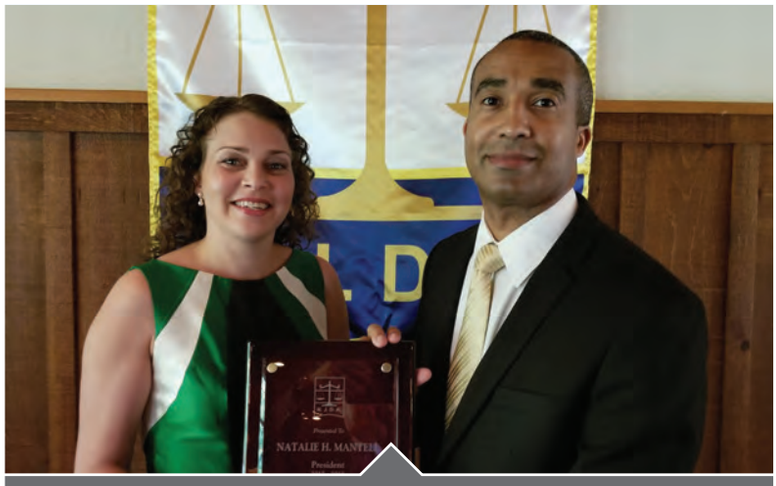
The New Jersey Defense Association held its 52nd Annual Convention June 28-July 1, 2018 at the Whiteface Lodge in beautiful Lake Placid, NY.

In addition to enjoying this lovely Adirondack location, the Convention included two CLE sessions on Friday and Saturday mornings covering a wide variety of topics, including employment law, construction, trial practice skills, accident reconstruction, ethics and professionalism, and more. NJDA wishes to thank DRI for sponsoring an outstanding keynote speaker, Matthew G. Moffett, whose "Reptile Theory for the Defense" presentation was invaluable to our members and Convention attendees.

Outgoing President and now Chairperson of the Board, Natalie H. Mantell, received the NJDA Distinguished Service Award for her vision and leadership of our Association during her term. She was also presented with the DRI Exceptional Performance Award by our DRI State Representative, Mario Delano.

Outgoing President Natalie Mantell receiving DRI Exceptional Performance Award from Mario Delano, NJDA DRI State Rep





Natalie Mantell receiving NJDA Distinguished Service Award from Chad Moore, Outgoing Chairperson of the Board

Attorney of the Year Marie Carey receiving the award from Gregory McGroarty and Edward Fanning, Jr.

Young Lawyer of the Year Katelyn Cutinello receiving the award from Gregory McGroarty and Edward Fanning, Jr.

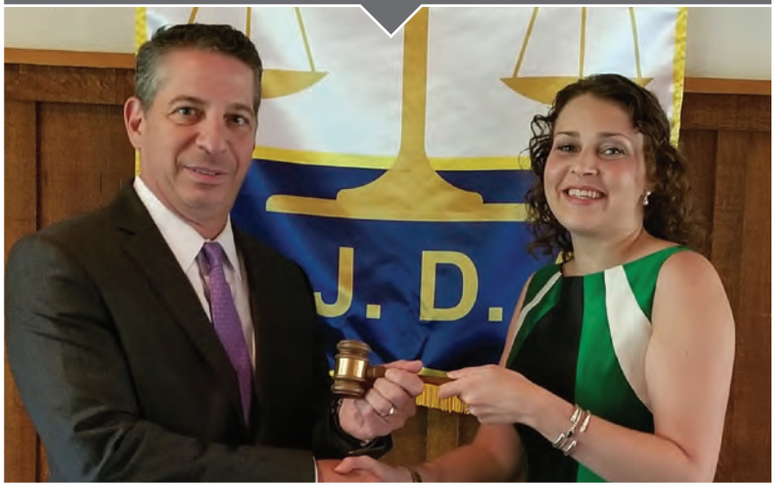
E 28-JULY 1, 2018 / LAKE PLACID, NY

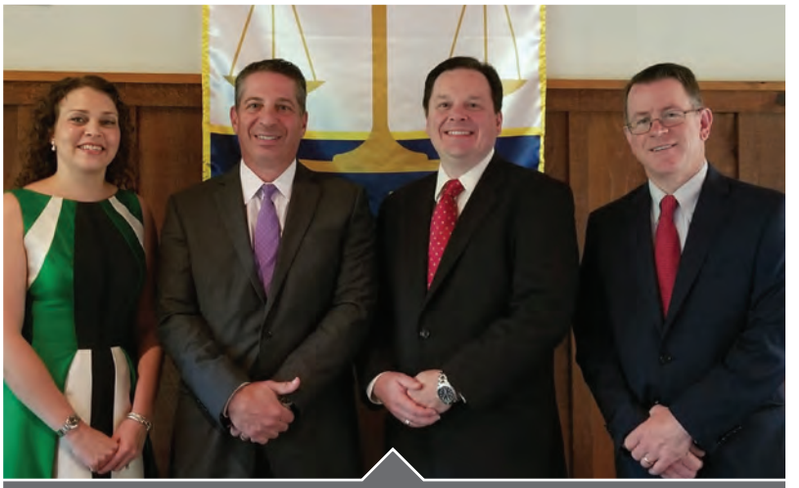
Aldo J. Russo was installed as President of the NJDA for the term 2018-2019, Michael A. Malia was installed as President-Elect. John V. Mallon moved into the Chairs as Secretary-Treasurer. Other Officers and Directors installed were: Vice President Northern Region Nicole Cassata, Vice President Central Region Juliann Alicino, Vice President Southern Region Robert M. Cook, Directors Ryan Richman, Katelyn E. Cutinello and Brian J. Chabarek.

Marie A. Carey, NJDA Past President, Co-Chair of our Trial College and Chair of our Women and the Law Committee, received our annual Attorney of the Year award, and Katelyn E. Cutinello, Co-Chair of our Professional Liability and Young Lawyers Committee, received our annual Young Lawyer of the Year award.

Congratulations to all Officers, Directors and award winners, and thank you to everyone who made our 52nd Annual Convention a great success.

President Aldo Russo receiving the gavel from Natalie Mantell





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CONGRATULATIONS FOR THE DEFENSE WINS!

NEW JERSEY SUPREME COURT VICTORY

Congratulations to NJDA Past Presidents and Officers, Edward Fanning and Natalie Mantell, on their defense win in the New Jersey Supreme Court's August 1, 2018, decision In re: Accutante Litigation, which adopted the Daubert factors for New Jersey's standard for the admissibility of expert testimony.

APPELLATE DIVISION VICTORY

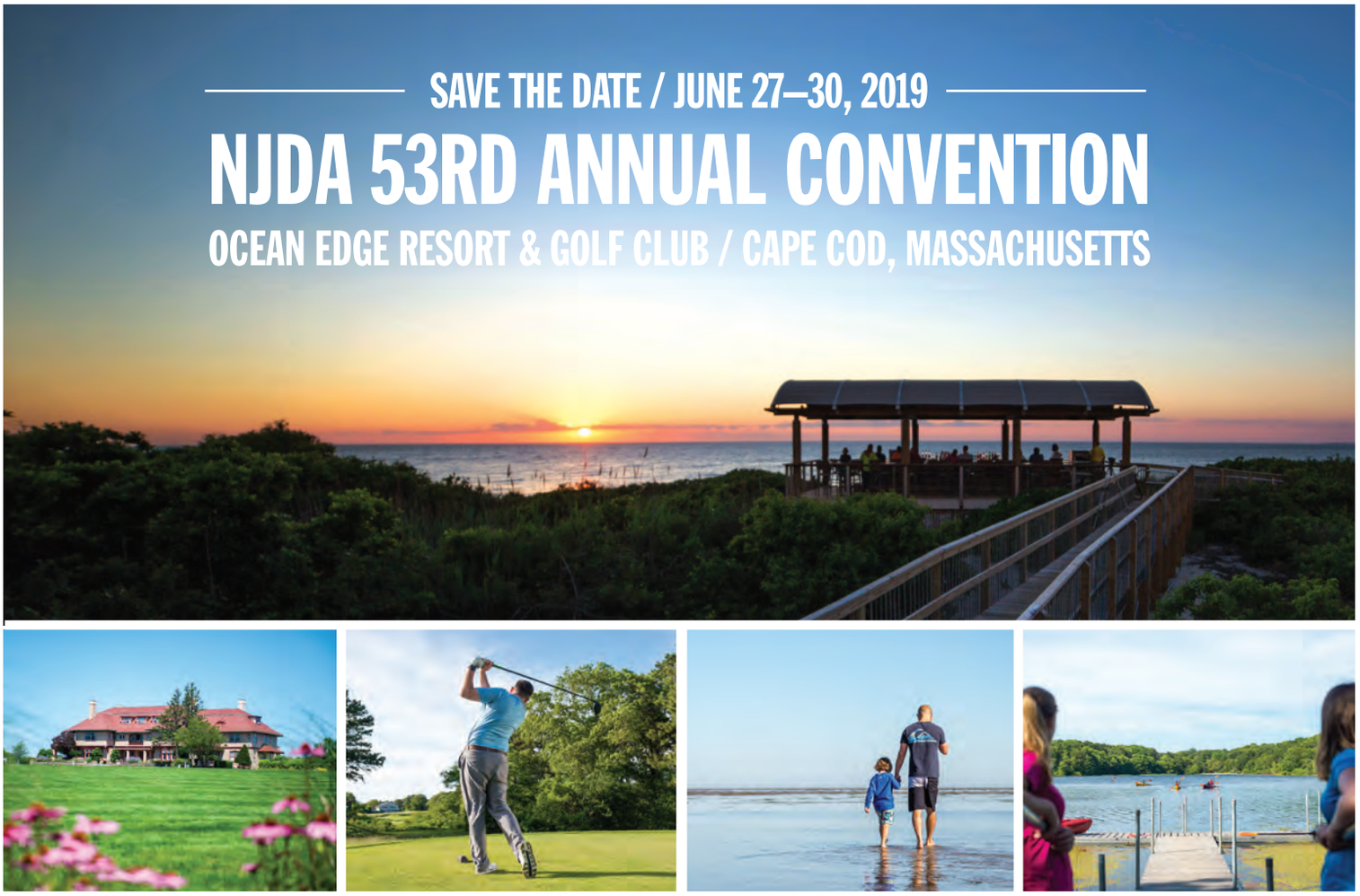
Congratulations to NJDA Committee Co-Chairs Anthony Cocca and Katelyn Cutinello on their defense win in the New Jersey Supreme Court's July 25, 2018 decision in Jannell Brugaletta v. Calixto Garcia, D.O.

TRIAL COURT VICTORY- CHAD MOORE WINS SUCCESSFUL LIABILITY VERDICT FOR CLIENT ON REAR END COLLISION

Congratulations to Chad Moore, current NJDA member and Past President, who successfully obtained a verdict in favor of his client at trial in Atlantic County Superior Court. Chad's case involved two Plaintiffs that claimed his client was negligent in the operation of his vehicle and that they both sustained permanent injuries due to that negligence. Chad's client denied negligence and contended that the Plaintiff's sudden stop was the cause of the incident. With the use of trial presentation software, Chad was able to deliver an effective defense and presentation to the jury. After 3 days of trial and 30 minutes of deliberations, the jury rendered a unanimous verdict in favor of Chad's client finding he was not negligent.

JULIANN ALICINO PREVAILS AT TRIAL IN MIDDLESEX COUNTY

Julie, Associate in Hoagland Longo's Civil & Commercial Litigation group, recently prevailed in a jury trial in Middlesex County for personal injuries. The plaintiff claimed new injuries and an aggravation of prior injuries to his neck, back, and hand as a result of a motor vehicle accident. Julie successfully defended the claim and the jury returned a unanimous verdict finding the Plaintiff did not sustain a permanent injury as a result of the subject accident.



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O'TOOLE'S COUC

Being country music fans, Sunny and I have always wanted to tour Nashville and Memphis to attend the Grand Ole Opry and visit Graceland. We weren't disappointed.

Flying out of Newark at 5 a.m. wasn't ideal, but we did arrive in Nashville with an entire day ahead of us. Our accommodations were at the Gaylord Opryland Resort and Convention Center, a magnificent hotel with 2800 rooms. (OK, we did spend a lot of the first day trying to get oriented and constantly asking the staff for directions.) The high-ceilinged atrium in the center of the resort consists of endless palm trees and beautiful water falls. It was the perfect spot for a cocktail while listening to live music and observing the endless fish swimming in the streams between the waterfalls.

The weather was beautiful for touring the city and we did plenty of walking. The Johnny Cash Museum was great. This, and all the museums we visited, included old videos of the early artists and progressed through their careers. Rooms filled with gold albums, family photos and videos, interviews and endless memorabilia made it very personal. (I even posed for a picture with Patsy Kline's daughter at Patsy's Museum.)

Although we had never heard of the Ryman Auditorium, it was the original home of the Grand Ole Opry, dating back to the 1880s. Our backstage tour included videos and photos of country western stars, but also represented were past entertainers such as Rudolph Valentino, Katherine Hepburn, Mae West, Bob Hope, Harry Houdini and Eleanor Roosevelt. It was moving to walk on the stage where so many famous people throughout history had also walked. During its heyday this auditorium was known as the "Carnegie Hall of the South." However, as demand grew for people wanting to attend these performances, the 2800 seated auditorium was not sufficient, and thus the Grand Ole Opry, which can accommodate 6,600 people, was built in 1974. (The Ryman does continue to operate as a premier concert venue.)

Between touring, we did have to take a break and have lunch (and a few cold beers) at Ole Red's. This is Blake Shelton's newly opened pub named after his dog. Of course, there was live entertainment and even roof-top seating. It was hard to pull ourselves away, but there was much more to see!

The Country Music Hall of Fame has something for every fan. It surely must be the greatest country collection of music memorabilia in the world. Belongings of Garth Brooks, Trace Adkins, Willie Nelson, Blake Shelton, Roy Orbison, and each member of the Million Dollar Quartet (Johnny Cash, Carl Perkins and Jerry Lee Lewis) and, of course, Elvis Presley (whose 1955 pink Cadillac was on display) were everywhere. Many young artists were also represented. In all, 133 entertainers have been inducted into the Country Music Hall of Fame. Each member has a personal plaque hanging in the rotunda (similar to the Baseball Hall of Fame). In addition, there are short film clips of hundreds of entertainers. Nearby is the Johnny Cash Museum that documents his entire career in music, television, movies and concerts; and also depicts his personal life along that entertainment journey.

Okay, before you get tired of reading this, the greatest thrill of Nashville was attending the Grand Ole Opry. Our tour group was seated in the seventh row. Really, out of 6,600 seats, we got to be here? It was

H GONE COUNTRY

exciting! The entire show was broadcast live on the Opry's own radio station as well as on Syrius Radio. Several entertainers perform and each one is followed by a commercial. (Humana was a big sponsor the night we were there.) The lead and final performer was Trace Adkins. He is really tall and, Sunny assures me, very good looking in his tight country jeans, clinging white shirt and large cowboy hat. Most importantly, he has one powerful voice and sings with such emotion. The applause never stopped when he finished singing and, thankfully, encouraged him to sing one more song!

From Nashville we traveled on to Memphis where our first stop was Sun Studios. This is probably the most famous recording studio in the world, where Rock 'N' Roll was first memorialized. In addition to "The Million Dollar Quartet," countless country western singers got their start at this iconic location.

We then stopped at the Lorraine Motel, the site of Martin Luther King's assassination. There were cars parked in the lot, reminiscent of that era, and a large map- indicating the trajectory of the fatal bullet from across the street.

Next it was on to Beale Street, which is the Memphis' answer to Bourbon Street in New Orleans. Walking down the street, live music can be heard coming from every storefront. We had lunch at BB King's restaurant where an eight-piece band entertained us. (We enjoyed this so much we even returned for dinner!) After 9 p.m., the entire street is only open to pedestrian traffic. The crowds and decorative lights would lead you to believe it is Christmas!

Our final stop in Memphis was Graceland, where we spent nearly an entire day taking in all there was to see about the King's life. My thought had always been that Elvis' residence would be a huge mansion sitting in a country club setting. Actually it was a rather modest house in size, but not in décor. The inside was quite eclectic with each room having its own theme and color scheme. The central room of the house was the kitchen, where food preparation took place nearly round the clock, due to the large number of guests Elvis entertained. Brightly decorated billiard room, indoor squash courts, paddle ball and a personal gym were part of the dwelling. (Elvis did have a black belt in karate.) We also learned that he had a twin brother who died at birth. The baby was buried in the family cemetery on the Graceland grounds. There was also a swimming pool, a stable of horses and tennis courts. The planes and luxury cars are stored at the Elvis Airport and Presley Motors on the same property. A video recording of Elvis' pilot stated that the flight crew was summoned one night to fly to Colorado because Elvis wanted his daughter Lisa Marie to experience snow. We certainly walked away from Graceland with the impression that Elvis could not have been more generous to his family, friends and staff. Nor could anyone deny he truly was the King of rock 'n' roll, whose legend will live forever.

Across the street, at the Graceland Hotel, we enjoyed round-the-clock Elvis music. On the television, Elvis movies, concerts and interviews were always available. There was a live band in the evenings that stopped playing at 10 p.m., which is when the trays of peanut butter and jelly sandwiches were served. Apparently, that was the favorite snack of the King.

Sunny and I certainly enjoyed our seven-day vacation and would highly recommend it as a fun trip. By the way, if you're planning on taking the trip, give me a call. I'll lend you my cowboy hat, which I wore every day of our stay.

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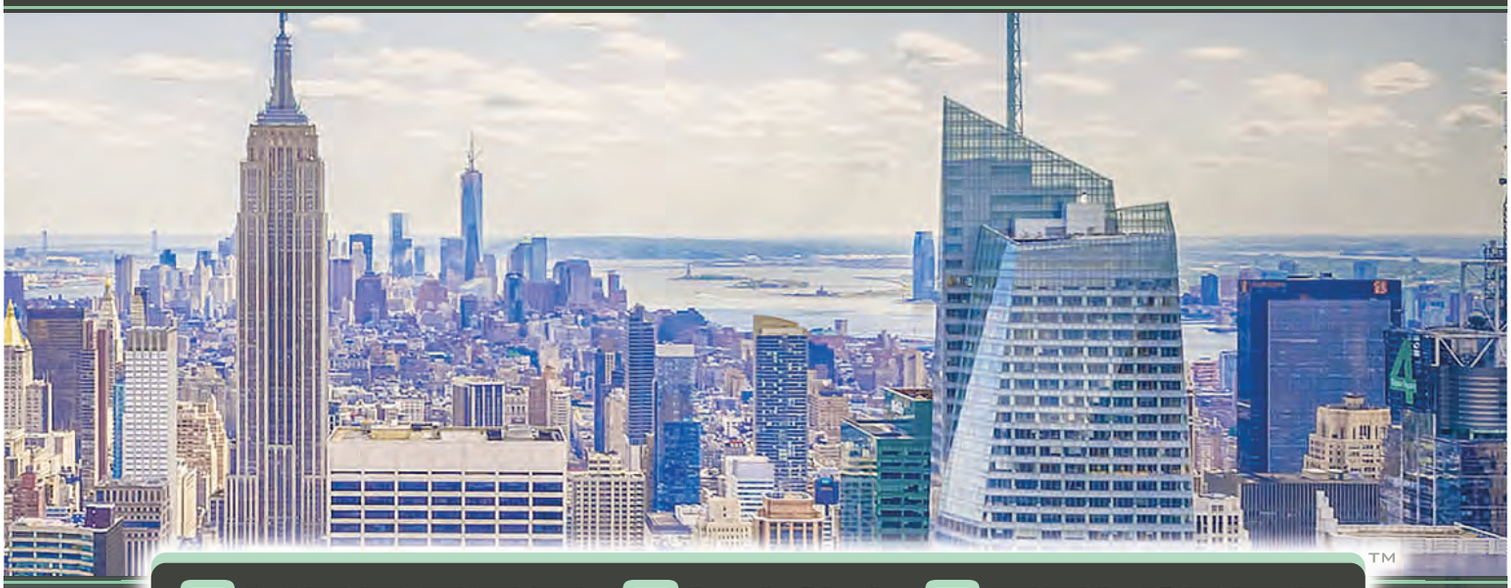

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CONNECT

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UPCOMING EVENTS

OCTOBER 8

TRIAL COLLEGE
8:30 am - 12:30 pm
Union County Court House
4.0 CLE Credits

OCTOBER 16

NJDA ANNUAL GOLF CLASSIC
7:00 am
Jumping Brook Country Club
2010 Jumping Brook Road
Neptune, NJ

NOVEMBER 12

WOMEN AND THE LAW
8:30 am - 1:00 pm
APA Hotel Woodbridge
4.5 CLE Credits, including 2.0 Ethics

NOVEMBER 20

JOINT AUTO LIABILITY SEMINAR NJDA & ICNJ
8:30 am - 1:00 pm
APA Hotel Woodbridge
4.7 CLE Credits, including 1.0 Ethics

DECEMBER 7

ANNUAL HOLIDAY PARTY
7:00 pm
Spring Lake Golf Club

DECEMBER 14

1ST ANNUAL SEMINAR DAY OF TRIAL STRATEGIES AND ETHICS
8:30 am - 1:00 pm
Renaissance Woodbridge Hotel
4.7 CLE Credits, including 1.0 Ethics

FEBRUARY 1, 2019

PRODUCTS LIABILITY SEMINAR NJDA & ACC-NJ
8:30 am - 12:30 pm
McCarter & English, Newark, NJ / 4.0 CLE Credits