NEW JERSEY

DEFENSE

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PRESIDENT'S LETTER

To all NJDA Members and to New Jersey's esteemed Judiciary:

Happy New Year! It is an exciting time for NJDA. During the past six months, we have achieved many milestones. We have had record-breaking attendance at our seminars, we have sought and have been granted leave to appear as *amicus curiae* in more cases in one year than ever before, we have new members at all stages of their careers who practice in various areas, and several new sponsors. There is a buzz about NJDA, and it's because of you. Thank you to our membership for taking advantage of all NJDA has to offer, and for telling your friends and colleagues to do so as well.

As many of you know, NJDA hosts great networking events—we always have. Access to a large network of defense attorneys is a key membership benefit. Our 2018 networking event will take place on April 19 at Steakhouse 85 in New Brunswick. Share strategies with other defense attorneys who face similar issues in their cases, learn from others' experience, expand your professional network, or just enjoy a night out with friends. I encourage all NJDA members to attend, and hope to see some new faces.

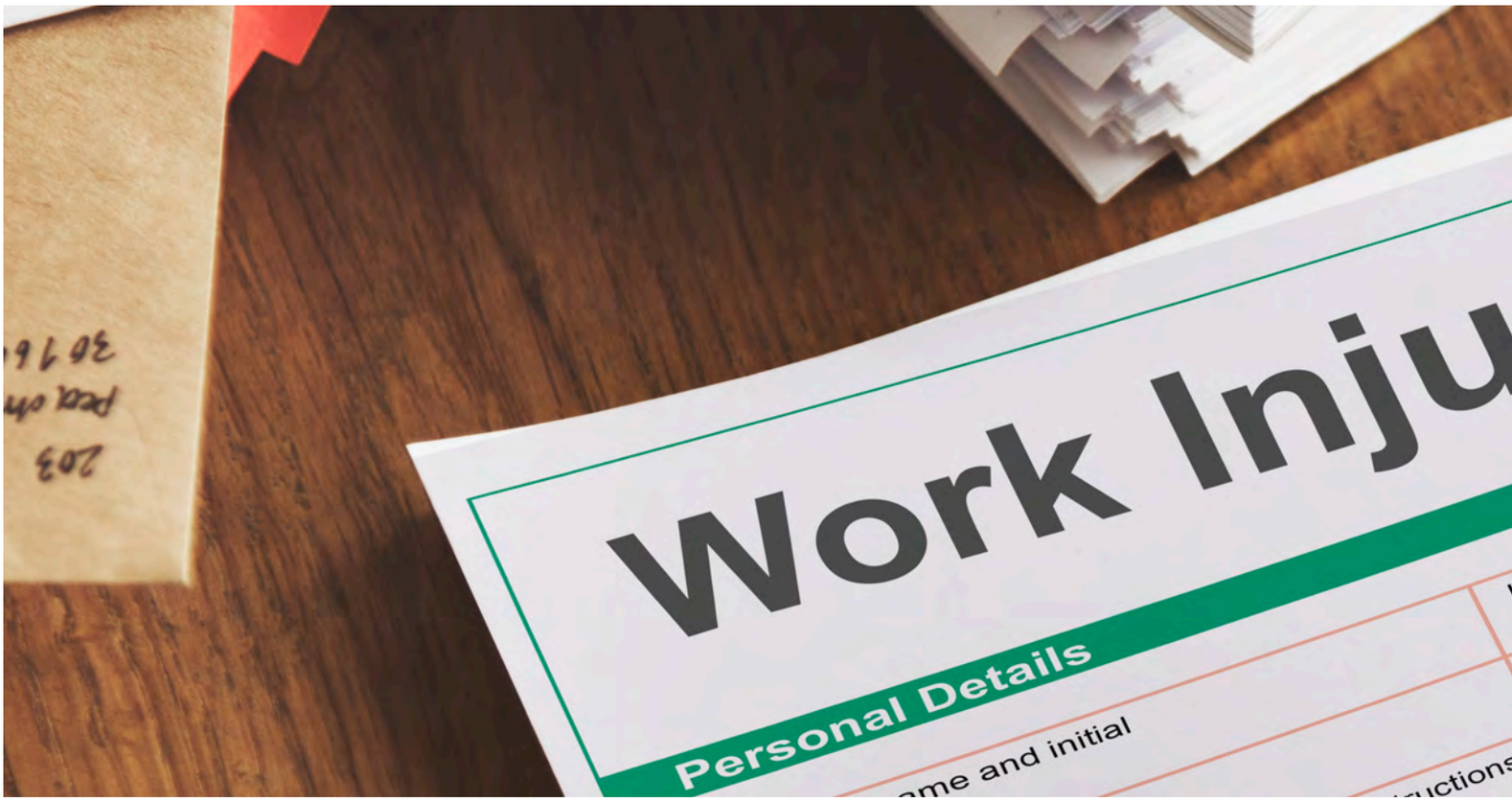
As promised, during my tenure, NJDA will do a few new things to raise our profile within New Jersey's legal community. On May 17, NJDA will sponsor the Young Lawyers Luncheon at the New Jersey State Bar Association Annual Meeting in Atlantic City. Please join us to spread the word about how NJDA can help its members, particularly young lawyers, advance their careers.

Our substantive law committees will also undergo a few changes in 2018. To start, we will implement a four-position leadership slate on each committee: Chair, Vice Chair, Secretary and Liaison to the Board. If you are interested in serving as a leader of any of these committees, please contact the committee Chair or reach out to me directly. A list of our substantive law committees and their Chairs are listed on NJDA's website at www.njdefenseassoc.com/committees/. If you have additional ideas about how NJDA can help you fulfill your professional goals, please do not hesitate to contact me.

Finally, I must continue to share my excitement about our Annual Convention at the Whiteface Lodge in Lake Placid, NY, from June 28 to July 1. We have an incredible lineup of speakers who will present a on a wide variety of topics, from defending plaintiffs' growing attempts to disguise non-economic damages as economic damages, to accident reconstruction, controlling your witness during cross-examination, construction liens, marijuana in the workplace, and more. The Annual Convention offers **6 CLE credits, including 1 Ethics credit.** Our hotel room block is selling out quickly, and we have reserved an additional block at the Crowne Plaza in downtown Lake Placid to accommodate all members who would like to attend. To learn more and register, please visit www.njdefenseassoc.com/upcoming-events/2018/6/njda-52nd-annual-convention. We hope to see you there!

Natalie H. Mantell

NATALIE H. MANTELL, ESQ.



BURDENS OF PROOF AND THE NEW JERSEY WORKERS' COMPENSATION SECOND INJURY FUND

BY ROBERT J. FITZGERALD, ESQ.

KEY POINTS:

- The Second Injury Fund pays permanent-total disability benefits in certain workers' compensation cases.
- These benefits are not applicable when the final disabling medical condition is not from a work injury.
- The petitioner always has the burden of proof in proving entitlement for Second Injury Fund Benefits.

The Appellate Division recently revisited a petitioner's burden of proof for Second Injury Fund benefits in *McLaughlin v. Active Disposal Service, Inc.*, 2017 N.J. Super. Unpub. LEXIS 173 (App.Div. Jan. 26, 2017). The petitioner in *McLaughlin* received a permanency award as the result of injuries he sustained to his left leg during a work-related accident that occurred in 1999. Additional injuries were suffered in 2000, and the petitioner received another partial-total award for lumbosacral and cervical injuries.

In 2005, the petitioner suffered injuries to his right arm as a result of a third work-related accident and filed a new petition. During the pendency of the 2005 claim petition, the petitioner filed an application to modify the 1999 and 2000 awards, claiming an increase in his permanent disability to his left leg and lumbar and cervical spines. Finally, in 2008, he filed an application for Second Injury Fund benefits, claiming his last compensable accident—in 2005—rendered him permanently and totally disabled.

The petitioner's three cases were the subject of a consolidated trial before a Workers' Compensation Judge, who heard testimony from the petitioner and his medical experts, Dr. Vijaykumer Kulkarni and Dr. Cheryl Wong. The respondent presented Dr. Robert Morrison. Following the hearing, the judge issued a detailed written decision in which he concluded the petitioner failed to sustain his burden of establishing an entitlement to a modification of the 1999 and 2000 awards.

The judge also found that the petitioner was not entitled to Second Injury Fund benefits because he "[b]ecame totally disabled as a result of his diabetic condition, not his lumbar, cervical, left knee or right elbow injuries." Specifically, the judge noted that the petitioner was unable to continue working because he took insulin for his diabetes. Therefore, taking insulin barred his use of the commercial driver's license that was essential to the performance of his job duties.

In his appeal, the petitioner argued that the judge's rejection of his request for modifications of the 1999 and 2000 awards was not supported by credible evidence. However, the Appellate Division noted that the judge was presented with voluminous and conflicting testimony and evidence concerning the injuries that were the subject of the awards and their alleged progression. There was sufficient credible evidence supporting the judge's determination that there was no increase in permanent disability to the petitioner's left leg, for which he received the 1999 award, or to his lumbar or cervical spines, for which he received the 2000 award. The Appellate Division added that, giving due weight to the judge's expertise and opportunity to view the witnesses and evidence, there was sufficient credible evidence supporting these determinations.

For the same reason, the Appellate Division also affirmed the denial of the petitioner's application for Second Injury Fund benefits. Here, the judge found that the petitioner became totally disabled, but not as the result of a work-connected action or occupational illness but, rather, due to his diabetic condition. The Appellate Division noted that the burden of proof was on the petitioner to prove entitlement to Second Injury Fund benefits and that the petitioner failed to meet his burden.

As a side note, the Appellate Division emphasized that, for the first time on appeal, the petitioner sought reimbursement for medical expenses he incurred for treatment received at a Veteran's Administration hospital. Citing long established precedent, the Appellate Division declined to consider this argument because it was not properly raised before the Division and did not involve jurisdictional or public interest concerns. *Zaman v. Felton*, 98 A.3d 503,519 (N.J. 2014); *see also Nieder v. Royal Indem. Ins. Co.*, 300 A.2d 142, 145 (N.J. 1973).

While this case does not present any new concepts for Second Injury Fund benefits, it does remind us of the petitioners' burden of proof for such benefits. In order for a petitioner to be eligible for these benefits, one or more pre-existing injuries or conditions must combine with a last compensable accident to render an individual permanently and totally disabled. If the last disabling condition was not the compensable work injury/condition, as in the *McLaughlin* case, then Second Injury Fund benefits are not applicable. Similarly, if the last compensable accident by itself renders an individual permanently disabled, regardless of the amount of prior disability, the Second Injury Fund is also not applicable. In practice, the Second Injury Fund considers a wide range of pre-existing conditions in evaluating entitlement to benefits. However, it also aggressively defends against those cases that do meet this basic criteria. Second Injury Fund claims are often the most complicated and extensive claims to litigate or resolve given the complexity of the statute. Employers often prepare to defend these anticipated claims long before the Second Injury Fund Petition is filed. If you have a severe injury case and you think that a claim for Second Injury Fund or total disability benefits may be down the road, speak with your defense counsel immediately. A little preparation now can save a lot of future benefit exposure.

Bob is a shareholder in the Mount Laurel office of Marshall Dennehey Warner Coleman & Goggin. A member of the Workers' Compensation Department, he may be reached at 856.414.6009 or rjfitzgerald@mdwcg.com.

CROSS-EXAMINATION AND (TAYLOR) SWIFT JUSTICE

BY: MICHAEL J. MCCAFFREY, ESQ.

The famous jurist, Wigmore, wrote that "Cross-examination is beyond any doubt the greatest legal engine ever invented for the discovery of truth."[1] That is so because the witness may be controlled on cross-examination. As with any engine, the force and the friction generated by the moving parts must be contained and directed or the consequence likely is to be only anarchic sound and smoke. Let us consider what techniques or rules are available by which to control the witness in cross-examination.

Every legal scholar, to my knowledge, agrees that the witness must be controlled. Of course, cross-examination permits the use of the leading question (contains or implies the answer). The majority of writers or lecturers, such as Thomas Mauet[2] or Irving Younger,[3] say that we should on cross-examination control the witness by asking only the leading question, asking the question only if we know the answer or how to enforce the desired answer and by interrupting every effort of the witness to embellish his answer. Younger suggests that one question on cross-examination is better than two and that none is better than one. Mauet suggests making an objection to the narrative answer and then moving for an order striking the unresponsive or volunteered verbiage.

Some skilled attorneys, such as Herbert Stern,[4] or Louis Nizer,[5] have agreed that the witness must be controlled but suggest that cross-examination should not usually or often employ the leading question. Stern suggests that the cross-examiner sometimes or often ask a question to which he knows not the

answer, let the witness talk to impeach his own impartiality or credibility and then control the witness by crafting the telling content of the next question to show prevarication or improbability or by repeating the previous question as necessary. Wellman[6] suggests that the manner of cross-examination should differ between a witness who has made an honest mistake and one who has engaged in willful deception.

It has been my observation at many trials that only rarely does the cross-examiner use either mode, or any mode, to control the witness. Most often the examiner eschews the leading question and allows the witness to prattle, digress, dodge and expostulate in response to the question. If we have means available to control the witness, why so common is the failure of control? The usual answer given to me is that the attorney fears the jury would perceive him or her to be rude. In my opinion that sentiment is founded upon a failure of confidence or a misapprehension of the jury's fair appreciation of drama played with courtesy.

The failure to lead is simply a correctable failure of foresight and preparation. The failure to step in aggressively when the witness elopes from the confines of the question seems usually to be the result of a desire to avoid confrontation or the mistaken opinion that the witness is permitted to "explain" his answer to a leading question. Very often, at the deposition of an expert witness, when I have interrupted the witness as he starts his deviation, the other attorney has declared, "He has a right to explain his answer." Well, no, he does not, not in response to a leading question, does he?

The question has no specific answer in the rules of court, in the rules of evidence, or in the common law, but N.J.R.E. 611 authorizes the court to "exercise reasonable control" over the "mode" of interrogating a witness and other matters at trial.[7] The timely motion for an order striking the unsolicited "explanation" of a witness is authorized by R.1:7-2. Narrative testimony may be properly excluded by the court.[8] The problem with any objection subsequent to a narrative answer is that the jury has heard the answer.

It is perhaps obvious that the force of a leading question is its denial of the opportunity to "explain" the simple, unambiguous answer. Does the word "yes" require an explanation? What the objecting attorney means, when he says that the witness must be permitted to explain his answer, is that the witness must be permitted to say whatever he wants in an effort to repeat or bolster his testimony on direct examination. Cross-examination would be of weak or even pernicious effect were the witness permitted to "explain."

Generally when the answer of a witness is more than "yes" or "no," that is, when the witness volunteers in narration his opinion, in an effort to assist the party who has proffered him, available objections would be "non-responsive" and perhaps "surprise," "argumentative," or "narrative." The objection that the answer is "non-responsive" is unavailable to one who has not asked the question. The proper objection then is that the witness is "incompetent" (although the substance of the objection would be sufficient, by any one-word description, would be sufficient for the court to rule).

In practice, not every judge understands or sustains those objections. Therefore, a method of control I have used, when a witness has started to answer a question heard only in his deviously bigoted imagination, is to calmly but firmly interrupt the witness, point out to him expressly that the question had nothing to do with the answer he has started to deliver and repeat the question. Often the other attorney has leapt aright and declared with great indignation that the witness cannot be interrupted in his answering. The judge most often then has endeavored to maintain "civility" in the courtroom but usually has agreed that the witness should not be permitted to set sail for an ocean distant from the narrow channel of my leading question. The cross-examiner must control the witness and step in.

An example of what some would consider a failure to control the witness comes from testimony given by the singer Taylor Swift in the U.S. District Court for Colorado, in August 2017. David Mueller sued Swift for defamation. She countered with a claim for assault, seeking in damages $1.00. Gabriel McFarland was Mueller's attorney. His objective was to show that Swift's story was implausible. You may wish to consider, did he: ask leading questions; object to the non-sequitur, incompetent of argumentative answer; or request the court's limiting instruction to the witness? Did he effectively impeach Swift's credibility by allowing her, as he did, to talk at will and then by posing a cutting question in response?

GABRIEL MCFARLAND: You contend that Mr. Mueller inappropriately touched you on one occasion.

TAYLOR SWIFT: Yes.

MCFARLAND: I think you said it was more of a grab.

SWIFT: It was a definite grab. A very long grab.

MCFARLAND: You contend that Mr. Mueller put his hand underneath your skirt and grabbed your bare bottom.

SWIFT: Yes. He stayed latched on to my bare ass cheek as I lurched away from him, visibly uncomfortably.

MCFARLAND: Can you describe how you moved away from Mr. Mueller?

SWIFT: The three of us were standing in a row, like you would pose for a photo. I felt him grab onto my ass cheek underneath my skirt. The first couple of milliseconds, I thought it must be a mistake, and so I moved to the side very quickly so that his hand would be removed from my ass cheek, and it didn't let go.

MCFARLAND: And you were trying to get as far away from Mr. Mueller as you could?

SWIFT: I got as far away from him as I possibly could, being that I was intertwined with two people with my hands on their upper backs.

MCFARLAND: Mr. Mueller never grabbed you butt outside of your clothing?

SWIFT: He grabbed my ass underneath my skirt.

MCFARLAND: So you acknowledge that Mr. Mueller never grabbed your butt outside of your clothing.

SWIFT: Rather than grabbing my ass outside of my clothing he grabbed my ass underneath my clothing.

MCFARLAND: And Mr. Mueller never otherwise touched your rear outside of your clothing.

SWIFT: He was busy grabbing my ass underneath my skirt, so he didn't grab it outside of my skirt.

MCFARLAND: And other than the incident underneath the skirt, Mr. Mueller didn't otherwise touch you inappropriately?

SWIFT: Other than grabbing my ass underneath my skirt against my will and refusing to let go, he did not otherwise touch me inappropriately.

MCFARLAND: After Mr. Mueller exited the photo booth with Ms. Melcher, you continued on with the meet and greet.

SWIFT: Yes.

MCFARLAND: You continued on as if nothing happened?

SWIFT: As soon as Mr. Mueller and Ms. Melcher exited the meet-and-greet area, there was another group of fans in the photo booth, and I would have had to say to them, "Excuse me, can you please leave while I talk to my team."

MCFARLAND: You think the fans would not have understood that you needed just a couple of seconds, so they step out and then they step back in? You think that would have ruined their experience?

SWIFT: I think that when people are excited and they've been waiting in line for hours and they've shown up early for the concert, I don't want to make anything awkward or uncomfortable or make them feel insecure. I want people to have a good time at my meet and greets and my concerts. I do not want people to stick their hands up skirt and grab my ass.

MCFARLAND: You could have looked at the next guests and said, "I'm really excited to meet you guys, I just need two seconds."

SWIFT: Yes, and your client could have taken a normal photo with me.

MCFARLAND: Do you think it's odd that your personal, professionally trained bodyguard let this big guy get close to you, put his hand under your skirt, grab your butt, stayed latched on as you tried to get away, and not do anything?

SWIFT: What Mr. Mueller did was very intentional, and the location was very intentional, and it happened very quickly. I wasn't going to blame Greg Dent for something that Mr. Mueller did. None of us could have expected this to happen.

MCFARLAND: But if Mr. Dent was watching and paying attention, do you agree that he had to see you try to get away from him?

SWIFT: I feel like these are questions for him.

MCFARLAND: So you're not critical of your body guard for allowing Mr. Mueller to grope you and then waltz out of the photo booth?

SWIFT: No, I'm critical of your client for sticking his hand under my skirt and grabbing my ass.

MCFARLAND: What was your reaction when you learned that Mr. Mueller had been fired?

SWIFT: I just wanted to never see him again, and yet here we are, years later, and he and you are suing me, and I'm being blamed for the unfortunate events of his life that are a product of his decisions, not mine.

MCFARLAND: Do you think Mr. Mueller got what he deserved?

SWIFT: I don't feel anything about Mr. Mueller.

MCFARLAND: You don't care about Mr. Mueller?

SWIFT: I don't have any feelings about a person that I don't know.

MCFARLAND: Let's talk about the photo for a minute. You contend that this photograph shows Mr. Mueller's hand under you skirt grabbing your bare butt as you're trying to get away.

SWIFT: Yes.

MCFARLAND: Yesterday we heard from your mom that this dress is stiff like a lampshade, or something like that.

SWIFT: Yes.

MCFARLAND: Can you explain to me how, given the stiffness of this skirt, if Mr. Mueller's hand is actually grabbing you bare cheek in this photograph, why isn't the front of your skirt someplace else?

SWIFT: Because my ass is located in the back of my body.

MCFARLAND: But the skirt is stiff, so we just talked about when you lift up one side, the whole skirt comes up like a lampshade.

SWIFT: He didn't lift up the front. He put his hand underneath the back of my skirt, latched onto my ass cheek, and wouldn't let go.

MCFARLAND: In this picture, you're obviously closer to Ms. Melcher than you are to Mr. Mueller.

SWIFT: Yes. She did not have her hand on my ass.

MCFARLAND: Ms. Swift, have you ever watched police shows?

SWIFT: Yes. I named my cat after detective Olivia Benson from *Law and Order: SVU*.

MCFARLAND: Have you ever wondered why, in the police shows, when they show a lineup, they include five or six guys, they don't put just one in the lineup?

SWIFT: In order to create an accurate lineup for this, we would have had to have other men in the meet and greet who had stuck their hand up my skirt and grabbed onto my ass cheek, but there was no one else like this. That was the only person who did that, in my whole career, my whole life.

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1 A Treatise On The Anglo American System of Evidence (Wigmore on Evidence), Wigmore, J. (Little Brown and Co., 1940), noted with agreement in State v. Benitez, 360 N.J. Super 101 (App. Div. 2003) (dissent).
2 Trial Techniques, Mauet, T. (Aspen Coursebooks, Ninth ed. 2013)
3 10 Commandments of Cross-Examination, Younger, I., (lecture UC Hastings College of Law, late 1970s)
4 Trying Cases To Win, Stern, H. (Wiley Law Publications, 1995)
5 My Life In Court, Nizer, L. (Doubleday 1961)
6 The Art of Cross Examination, Wellman, F. (The Macmillan Company 1903)
7 See, e.g., Cestero v. Ferrara, 110 N.J.Super 264 (App. Div. 1970) aff'd 57 N.J 497 (1971)
8 See, e.g., State v. Farrior, 14 N.J.Super 555, 557 (App. Div. 1951)

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UNDERSTANDING TOWN OF KEARNY V. BRANDT

BY ALDO J. RUSSO, ESQ. AND ROBERT D. KRETZER, ESQ.

Recently I had the opportunity to argue a motion to dismiss a third party complaint that was filed against one of my clients in a personal injury action stemming from construction work that was done at the premises occupied by the injured plaintiff.

I will not bore you with the details of the underlying facts of the case. I will tell you that the plaintiff filed her complaint on the last day of the running of the statute of limitations. I will also tell you that the complaint only named the General Contractor and the property owner. Plaintiff did not file against my client, a subcontractor, nor did she ever move to amend her complaint to add my subcontractor as a direct defendant. (Keep in mind that my client's identity was readily available to the plaintiff and the General Contractor).

One year and six months into discovery, the General Contractor decided to amend his answer and add as third party defendants, my client as well as various other subcontractors. (One year and six months after the statute of limitations expired) After the exchange of written discovery, I moved to dismiss the third party complaint based on the statute of limitations, however, preserving the rights of the third party plaintiff to assess negligence against my client at the time of trial. My motion was based on the seminal case of Town of Kearny v. Brandt, 214 N.J 76 (2013). At first glance this seems like the run of the mill oral argument. However, my motion was summarily denied.

In Town of Kearny v. Brandt, supra, the essential facts are as follows. Following structural failures in its public safety facility, the plaintiff, Town of Kearny, sued the project's architectural firm (hereinafter Brandt). Both the Town and Brandt also filed claims against the project's soil engineering firm (hereinafter SESI), one of its individual engineers, and a structural

engineering firm (hereinafter Harrison) and its principal. Prior to the trial, Motions were filed by both SESI and Harrison seeking summary judgment based upon the fact that they had completed all of their work with respect to the project more than 10 years prior to the institution of the action which was therefore barred as to them under the provisions of N.J.S.A. 2A:14-1.1(a). (a/k/a the Statute of Repose). Both Motions were granted.
The architectural firm filed a similar Motion which was denied based upon that Court's finding that the architect's work (unlike that of SESI and Harrison) was not completed more than 10 years prior to the institution of the action. Thereafter, the architect applied for an apportionment of fault at the time of trial to both SESI and to Harrison. The trial court denied Brandt's Motion. Subsequently, the Town appealed and Brandt filed a cross-appeal. On appeal, the Appellate Division affirmed the trial court's application of the Statute of Repose with respect to Brandt. But it reversed the trial court's denial of Brandt's application for an apportionment of fault to the dismissed co-defendants. These rulings were affirmed by the Supreme Court.

The first part of the Supreme Court's decision dealt with the issue of the proper application of the Statute of Repose with respect to the defendant Brandt. Suffice it to say, the Statute of Repose is closely akin in its purpose to the Statute of Limitations. i.e. N.J.S.A. 2A:14-2. Both Statutes provide specific defenses to persons brought before the Court. The Statute of Repose is more limited in that it only applies to actions in which plaintiff seeks to recover damages for any deficiency in the design, planning, supervision or construction of an improvement of real property or for any injury to property, real or personal, or an injury to the person, or for bodily injury or wrongful death, arising out of the defective and unsafe condition of an improvement to real property. All such claims are absolutely barred against any party whose work was completed more than 10 years before the commencement of the action. (See N.J.S.A. 2A:14.1.19a)). The Statute of Limitations is more broad in that it covers any claim for personal injury but provides for a shorter limitation period. It is the interplay of these two Statutes along with the Joint Tortfeasor's Contribution Law that concern the Court in the second part of its opinion.

The Court noted that the Contribution Law and the Comparative Negligence Act are intended to provide for a just apportionment of damages between those who may have been at fault for the happening of the incident and also to prevent plaintiffs from arbitrarily selecting his/her target. See Town of Kearny v. Brandt supra at 97-98. Clearly, third part plaintiff is entitled to the benefit and the protection of those Statutes. At the same time, our client is clearly entitled to the protection provided in N.J.S.A. 2A:14-2, the Statute of Limitations. And it is that right which we sought to enforce in the Motion without in any way impairing third party plaintiff's right to seek contribution in this matter.

Our Supreme Court noted initially, that when interpreting multiple Statutes governing the same matter, the Court should attempt to harmonize their provisions. In the Town of Kearny case, the Court sought to harmonize the provisions of the Comparative Negligence Act and the Joint Tortfeasor's Contribution Law with the Statute of Repose. Here we asked the Court to harmonize the third party plaintiff's legitimate claims for contribution with the Statute of Limitations.

In Town of Kearny, the Court reviewed a number of cases involving different situations in which one part obtained dismissal under one Statute or another and the manner in which a Court would deal with how to apportion the percentage of that party's fault in the lawsuit. The Court arrived at "several guiding principles" for protecting parties in situations such as that presently before the Court. See 214 N.J. at 102-104. The first principle was that the Comparative Negligence Act and the Joint Tortfeasor's Contribution Law were intended to promote the distribution of loss in proportion to the respective faults of the parties causing the loss. 214 N.J. at 102. Further, this objective is best served when a fact finder evaluates the fault of all potentially responsible parties. Ibid. Second, no such apportionment is permitted where the defendant who is no longer a party to the case could not under any circumstances be a joint tortfeasor. Ibid. Third, the apportionment of fault under the Comparative Neglience Act and the Joint Tortfeasor Contribution Law does not turn on whether or not the plaintiff is in a position to recover damages from the defendant at issue. In this regard, the Court noted that our courts have authorized the fact finder to assess the fault of a defendant against whom the plaintiff is barred from seeking recovery by virtue of the Bankruptcy Law or from a plaintiff who cannot recover for failure to meet the statutory element for municipal liability. Fourth and finally, a claimant's failure to conform to a statutory requirement for asserting claims against a given defendant does not necessarily bar apportionment of that defendant's fault at trial. 214 N.J. at 103.

The Supreme Court then went on to apply those principles to the case before it. Specifically, it held that the jury should have been allowed to consider the potential liability of those defendants who had obtained summary judgment based upon the Statute of Repose and, if the jury determined that they were at fault, the jury was to assess a percentage of liability against them. In this way, the right of the defendant to receive the benefit of the Statute of Repose was preserved while at the same time, protecting the right of the remaining defendants to obtain the benefit of their crossclaims for contribution. Thus, the Supreme Court insured that both Statutes would be allowed to achieve their purpose.

Town of Kearny v. Brandt, 214 N.J. 76 (2013) stands for the proposition that when two Statutes can apply to the same incident, the Court must seek to harmonize those Statutes so that the purpose of both Statutes are fulfilled to the best of the Court's ability.

In a more recent case, Jones v. Morey's Pier, Inc., 230 N.J. 142 (2017), the Court once again made it clear that it will not deny to a Defendant or a Third Party Defendant the protection of Statutes to which they are entitled and when to enforce such a Statute would undermine the purposes of the Joint Tortfeasor Contribution Law, they will and have adopted the same remedy applied in the Town of Kearny case.

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O'TOOLE'S COUCH A

Back in "the good ole days," when my father was sports editor for The Newark Evening News, he frequently received complimentary tickets to sporting events the city was hosting. The Newark Armory was a familiar venue for top boxing prospects whose next stop might be Madison Square Garden, if they won in Newark. We were ring-side at some excellent fights with contenders such as heavyweights Chuck Wepner and Jesse Ferguson; and subsequent middleweight champion Joey Giardello. We enjoyed top wrestling shows with crowd pleasers such as Bruno Sanmartino, Antonio Rocca and Nature Boy, Buddy Rodgers.

Despite all of these celebrity combatants, the rodeo and the circus, our favorite attraction was The Harlem Globetrotters. Sometimes we would have special passes to go back into their dressing rooms and meet the players. On one such occasion we met Marques Haynes and Meadowlark Lemon. (When we shook hands with Meadowlark, his fingers extended all the way to our elbows. I have never seen a hand this big.) Marcus challenged five players at a time to take the ball from him. Needless to say, no one ever touched the ball. Before the game against The Washington Generals, their usual foil, the team performed the "Magic Circle" to the tune of "Sweet Georgia Brown." Now that was a crowd pleaser! What really impressed us about the Trotters was how respectful and accommodating they were. Every kid even got an autographed poster to take home.

Some ten years later, I had the opportunity to see the "Magic Circle" at the Seton Hall University vs. LaSalle basketball game at Walsh Auditorium in South Orange. At the time, Seton Hall was a top-five school with superstars Art Hicks and Hank Gunter. They may not have been as good as the Trotters, but the pre-game show was great and the crowd went wild! I firmly believe I have the Harlem Globetrotters to thank for my life-long fascination with basketball. So, fast-forwarding to the year 2009, Villanova made it to the Final Four in Detroit. I hocked my shirt to get there, accompanied by my son, Kevin, and my Villanova classmate, Bruce. We decided to drive, providing us with more flexibility with respect to coming and going. Unfortunately, we ran into some trouble when we got on Interstate 80, which was CLOSED in both directions. This is not an exaggeration – We sat in traffic, moving no more than one mile in four hours! There were no exits to leave the highway. Really – It was four hours. This four-hour traffic jam necessitated an unscheduled stop at Motel 6 to spend the night. It wasn't until the next morning that we finally arrived at Ford Field in Detroit.

BASKETBALL STORY

The four schools participating in this tournament were all having outdoor parties and PEP rallies at the same time. I have never seen anything more electric in my life. The younger, less responsible party-goers, were consuming beer at break-neck speed, and I wondered how they were even standing let alone making it into the stadium.

At last we made it to our seats, and yes, the players looked like ants from our upper deck viewpoint. Once we got accustomed to this and the game wore on, the players looked a little bigger, but not much. In any event, Villanova lost, getting outplayed by North Carolina, but we certainly did not regret making the journey. Right then and there, Kevin, Bruce and I vowed to return to the Final Four if/when Villanova ever made it again.

Sure enough, Houston 2016, Villanova was once again pitted against their arch enemy, North Carolina, in the final game. No, we didn't drive to the tournament. Kevin, Bruce and I flew to Houston for the semi-final and final games. (Unbeknownst to me, my daughter, Erin, boarded a charter flight to Houston with many of her Villanova friends, arriving a few hours before the final game. What a great surprise to see her at the pre-game party, and how special to share the game with both my son and daughter, also graduates of Villanova!) Okay, the game was drawing to an end, and the score was tied. Drum roll please ……. Villanova's guard, Chris Jenkins, made an incredible 35-foot buzzer shot winning the game for Villanova! As the buzzer sounded, Kevin actually picked me up and spun me around – Not an easy task. Thankfully, I did not go over the guard rail. Talk about exciting! The post-game celebrations were like nothing I had ever seen. The bars and restaurants were open all night and filled to capacity with tournament revelers.

Needless to say, the next day, which was our get-away day, was a nightmare. We were, however, able to get through on the exhilaration of a Villanova National Championship win. (This was their second such win. The first being in 1985.) A few days after returning home, we also attended the ticker-tape parade in Philadelphia.

So, now we are approaching the 2018 tournament with Villanova being (at press time) the number one team in the country with a 21–1 record. We are quite optimistic, but don't want to jinx ourselves. Rest assured, if Villanova makes it to San Antonio, we will be there! (By the way, does anyone have any tickets?)

GO CATS!

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