A PUBLICATION BY THE NEW JERSEY DEFENSE ASSOCIATION / WINTER 2017-2018

5
Protect Your Clients' Executives From Unnecessary Depositions: A New Jersey Tax Court Adopts the

6
Subrogation of Workers' Compensation Section 40 Liens Where Injuries Arise from Motor Vehicle Accidents

9
Report of the Amicus Committee

14
Redefining Gross Negligence: Can Recreational Sport Operators Insulate Themselves From Liability With Pre-Injury Waivers?

20
O'Toole's Couch: Scotland

Engineering and Scientific Consulting

About Exponent

Exponent, Inc. is a leading engineering and scientific consulting firm. Our multi-disciplinary organization of scientists, physicians, engineers, and regulatory consultants performs in-depth investigations in more than 90 technical disciplines. We analyze failures and accidents to determine their causes and to understand how to prevent them, and we evaluate complex human health and environmental issues to find cost-effective solutions. Our integrated approach offers a multifaceted perspective that leads to insight, revelation, and innovative solutions that produce bottom-line results.

We pride ourselves on the high quality of our staff of approximately 900 employees. More than 700 are degreed technical professionals, and over 425 have earned an M.D. or Ph.D. Exponent is publicly traded on the NASDAQ exchange under the symbol EXPO. Exponent is certified to ISO 9001 and is authorized by the General Services Administration (GSA) to provide professional engineering services.

How Can We Help You

Exponent provides professional consulting services in the following practice areas:

- » Biomechanics
- » Biomedical Engineering
- » Buildings & Structures
- » Chemical Regulation & Food Safety
- » Civil Engineering
- » Construction Consulting
- » Ecological & Biological Sciences
- » Electrical Engineering & Computer Sciences
- » Engineering Management Consulting
- » Environmental & Earth Sciences
- » Epidemiology & Computational Biology
- » Exposure Assessment
- » Human Factors
- » Materials & Corrosion Engineering
- » Mechanical Engineering
- » Polymer Science & Materials Chemistry
- » Statistical & Data Sciences
- » Technology Development
- » Thermal Sciences
- » Toxicology & Mechanistic Biology
- » Vehicle Engineering

Office Locations

United States:

Atlanta | Boston | Chicago | Denver | Detroit | Houston | Los Angeles | Miami | New York | Phoenix | Philadelphia | San Francisco | Seattle | Washington, DC

International:

Basel, Switzerland | Harrogate and Derby, UK | Düsseldorf, Germany | Shanghai and Hong Kong, China

888.656.EXPO | www.exponent.com | info@exponent.com

PRESIDENT'S LETTER

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

This fall, NJDA again provided superb CLE presentations on cutting edge legal issues. Our 8th Annual Women and the Law seminar was truly incredible. We had record attendance, filling the largest ballroom at the Hotel Woodbridge. I want to express my sincere appreciation to all presenters and attendees – men and women, plaintiff and defense attorneys, in-house and outside counsel, distinguished Judges, and Commissioner Badolato. Our discussion about working together to achieve diversity and advance women in the legal profession has brought us closer to effectuating change.

Our Automobile Liability seminar received a similarly enthusiastic response. As always, there were engaging presentations on timely issues facing the defense bar. Thank you to all speakers for providing fantastic CLE year after year. You continue to help NJDA raise its profile within and outside of New Jersey.

But we didn't just work hard this fall; we played a bit, too. In October, we enjoyed a day out of the office at our Annual Golf Outing, and on one evening in early December, we celebrated the holidays at the Spring Lake Golf Club with our spouses and significant others. I hope you all can join us next year for these wonderful events.

It's hard to believe that 2018 is right around the corner. This year's Annual Convention will be held at the Whiteface Lodge in Lake Placid, NY, from June 28 to July 1. I am very excited to announce that our top-notch roster of speakers includes Matthew G. Moffett, a distinguished trial lawyer and the immediate past President of the Georgia Defense Lawyers Association, who will present defense strategies for combating the plaintiff bar's use of the "reptile theory" to obtain significant damages awards even in meritless cases. Please join us for this valuable keynote presentation, and, bring your families for some fun in one of the most idyllic destinations in the US!

I hope you all have a wonderful holiday season and a happy and healthy new year.

NATALIE H. MANTELL, ESQ.

PROTECT YOUR CLIENTS' EXECUTIVES FROM UNNECESSARY DEPOSITIONS: A NEW JERSEY TAX COURT ADOPTS THE APEX DOCTRINE

BY NATALIE MANTELL AND AMANDA MUNSIE

Plaintiffs have not been shy about noticing depositions of defendants' C-suite executives, known as "apex depositions," even when the intended deponents know nothing about the facts that led to the litigation. Over the past several years, case law has been developing around the country to help state trial level and federal magistrate judges analyze motions to quash, but no New Jersey state court had spoken on this subject until recently. Interestingly, the first published opinion in New Jersey comes from the Tax Court, but it is helpful to defendants in tort litigation. *See HD Supply Waterworks Grp. Inc. v. Dir., Div. of Taxation*, 29 N.J. Tax 573 (2017).

In *HD Supply Waterworks*, the plaintiffs-corporations alleged they were entitled to refunds of taxes paid under the New Jersey Corporation Business Tax Act for the 2007 to 2011 tax years. Plaintiffs claimed they did not have the necessary substantial nexus to New Jersey to be subjected to this Act. As the case proceeded, the New Jersey Division of Taxation served a notice in lieu of a subpoena for a deposition of the plaintiffs' President, Chairman and CEO. The notice sought information "with respect to all matters relevant to the subject matter involved in this action . . ." The plaintiffs filed a motion to quash the Division's notice.

Finding substantial similarity between N.J. Ct. R. 4:10-3 and FED. R. CIV. P. 26(c), the court expressly adopted federal precedent known as the apex doctrine to issue a protective order and quash the notice. In so doing, the court established the standard by which a New Jersey state court should measure whether good cause exists to preclude an apex deposition: "whether the deponent has unique first-hand, non-repetitive knowledge of the facts at issue." *HD Supply Waterworks*, 29 N.J. Tax at 588. The court further held that before a party can notice an apex deposition, it must, "first seek discovery through other less intrusive means." *Id.* at 588-89.

To prevail on a motion to quash, the moving party must demonstrate "with a particular and specific demonstration of fact" why "good cause" exists for preclusion of discovery, which the court described as a "heavy burden." *Id.* at 587 (citing *Nemir v. Mitsubishi Motors Corp.*, 381 F.3d 540, 550 (6th Cir. 2004)). Generally, an affidavit of the corporate officer will suffice. The court should then weigh the likelihood that the deposition will lead to the discovery of admissible evidence against the risk of harassment and annoyance of the corporate executive. *Id.*

In quashing the notice, the *HD Supply Waterworks* court provided a road map for an effective affidavit, which should affirm that the corporate officer: (1) has no specific knowledge of the entity's day-to-day activities; (2) has no detailed knowledge of the litigation; (3) was not personally involved in the subject matter of the litigation; and (4) has no personal knowledge of the specific legal claims or issues relevant to the litigation. *Id.* at 588.

Although this published Tax Court opinion is non-binding on other trial courts, it serves as a guide to defense practitioners seeking to quell unnecessary discovery expeditions and reasonably protect high-level corporate officers from depositions. This decision can also assist in developing similar appellate precedent in other cases pending in New Jersey state courts.

Natalie Mantell is a Director at Gibbons P.C. in Newark and the President of the NJDA. She defends pharmaceutical and medical device companies in product liability and mass tort litigation, and handles appeals in a variety of practice areas. Amanda Munsie is a mid-level Associate in Gibbons' Products Liability Department in Newark. Her practice is focused in the areas of products liability litigation and general commercial litigation at the trial and appellate levels, including pharmaceutical, mass tort, and asbestos litigation.

SUBROGATION OF WORKERS' COMPENSATION SECTION 40 LIENS WHERE INJURIES ARISE FROM MOTOR VEHICLE ACCIDENTS

BY JESSE D. LUBIN

New Jersey Courts recently examined the situation where a workers' compensation carrier has the right to subrogate medical benefits paid to an employee as a result of a work-related motor vehicle accident. These cases remind us that plaintiffs are not entitled to a double recovery of medical benefits from both the workers' compensation carrier and the tortfeasor. Initially, courts determined that where personal injury protection ("PIP") benefits would normally be applicable, the benefits are not subject to recovery by the workers' compensation carrier (from a UIM carrier). However, courts now routinely enforce workers' compensation carriers' statutory right of reimbursement.

The common scenario: A person is injured in an accident that occurs in the course of his employment. He files a workers' compensation claim and his medical bills are paid for by his employer's workers' compensation carrier. The injured employee also files a third-party action against the tortfeasor, and although his medical bills have all been paid, he still seeks reimbursement of his medical expenses from the tortfeasor. By statute barring the admissibility of medical bills paid, or payable by PIP, this double recovery for medical expenses is not permissible in New Jersey following a motor vehicle accident.

The New Jersey State Legislature took affirmative steps to bar double recoveries. Pursuant to the New Jersey's Workers' Compensation Act, *N.J.S.A.* 34:15-40 ("Section 40"), when a person sustains a work-related injury, and the injured worker also brings a third-party claim, the workers' compensation carrier has a right to subrogate against the recovery obtained by the injured worker against the tortfeasor. This procedure ensures that the injured party's medical bills are not paid twice, once by workers' compensation and then again by the tortfeasor.

Typically this "Section 40 lien" is enforceable against any medical, temporary and permanent disability benefits provided by the workers' compensation carrier. Traditionally, the workers' compensation insurer is able to recover all benefits paid out, less any attorney's fees paid in the tort action (i.e. paid back at two-thirds the lien).

However, when the employee's injuries arise from a motor vehicle accident, the employee's PIP carrier also has an obligation to pay covered medical expenses. Under the scheme provided by the Automobile Insurance Cost Reduction Act ("AICRA"), *N.J.S.A.* 39:6A-1, et seq., personal injury protection is available regardless of fault. Thus, PIP benefits are not considered "damages" when the tort action is litigated. As a result, plaintiffs have argued that if these medical expenses are not considered "damages," then workers' compensation medical benefits should not be subject to subrogation against recovery from the tortfeasor. As discussed below, workers' compensation coverage trumps AICRA coverage for medical expenses in work-related automobile accidents.

EARLY ARGUMENT THAT MEDICAL BENEFITS FOR ALL MOTOR VEHICLE ACCIDENTS WHERE PIP APPLIES ARE NOT SUBJECT TO REIMBURSEMENT

New Jersey Courts have adjudicated several actions addressing various scenarios where workers' compensation carriers are, or are not, entitled to recover the lien. The first of these cases, *Dever v. New Jersey Mfrs. Ins. Co.*, 2013 N.J. Super. Unpub. LEXIS 2553, 2-13 WL 5730033 (App. Div. 2013), was a controversial unpublished case in which the Appellate Division confirmed that when an employee is injured in a motor vehicle accident, workers' compensation is the primary method for payment of medical expenses. The court also decided that a workers' compensation carrier has no right to recover medical benefits from an underinsured motorist ("UIM") carrier under Section 40. Although the holding in *Dever* was limited to recovery from UIM carriers, plaintiffs have attempted to use this argument to contend that medical benefits for **all** motor vehicle accidents where PIP would normally apply are not subject to reimbursement. Their arguments have failed and *Dever* is no longer followed by the courts.

In *Dever*, an on-duty Atlantic City police officer sustained injuries when his police vehicle was struck at an intersection. Dever's medical bills were paid in full by his workers' compensation carrier. Additionally, Dever filed and settled a third-party action against the tortfeasor for his $25,000 policy limit. He then filed a claim with his UIM carrier. The jury found that Dever had not suffered a permanent injury as a result of the accident, and could not recover non-economic damages (e.g., pain and suffering). However, Dever was awarded lost wages of $275,000, which was to be paid by the defendant/UIM carrier.

Following the verdict, Dever moved for the defendant/UIM carrier to pay the workers' compensation lien, contending that he should not be forced to absorb his medical expenses out of a lost wages award; the trial judge agreed. On appeal, the Defendant/UIM carrier argued that the plaintiff was statutorily (under the AICRA/PIP scheme) precluded from recovering medical expenses from the defendant, as the defendant stood in the shoes of the tortfeasor.

The Appellate Division discussed the three avenues for the payment of medical bills after a work-related automobile accident: no-fault PIP benefits, workers' compensation and the tortfeasor. The court noted that a beneficiary of PIP benefits cannot recover medical bills paid by the PIP carrier. Pursuant to *N.J.S.A.* 39:6A-12, "evidence of the amounts collectible or paid under a standard automobile insurance policy" is inadmissible. Further, under *N.J.S.A.* 39:6A-6, workers' compensation is the primary source of satisfaction of an injured employee's medical bills, as opposed to PIP.

The court stated that "the reimbursement provision" of Section 40 was enacted to prevent a double recovery, and further advised that reimbursement was required when an employee obtained a recovery from the tortfeasor. However, in *Dever*, the court held that there could be no recovery by the workers' compensation carrier from the UIM carrier because it would be contrary to the legislative intent of the statutory reimbursement scheme for a no-fault insured.

NEW LINE OF CASES WHERE WORKERS' COMPENSATION CARRIERS ARE ENTITLED TO THEIR STATUTORY RIGHT OF REIMBURSEMENT

In the more recent case, *Talmadge v. Burn*, 446 N. J. Super 413, 142 A.3d 757 (App. Div. 2016), the plaintiff was injured when the vehicle that she was driving was struck by the defendant's vehicle while in the course of her employment. She underwent cervical fusion surgery; her workers' compensation carrier paid her medical bills. The workers' compensation carrier sought reimbursement of two-thirds of the bills. The plaintiff argued that the carrier had no right to a lien because the plaintiff was a no-fault insured and she herself could not recover the medical benefits from the defendant as another no-fault insured (a *Dever*-type argument).

The Appellate Division disagreed, holding that the workers' compensation lien must be recovered from the proceeds of the plaintiff's recovery from the tortfeasor. The court stated, "When an employee suffers an automobile accident while in the course of her employment, workers' compensation is the primary source of satisfaction of the employee's medical bills, as provided by the collateral source rule, *N.J.S.A.* 39:6A-6, which relieves the PIP carrier from the obligation of making payments for expenses incurred by the insured which are covered by workers' compensation benefits."

The Court addressed the New Jersey Legislature's intent to overcome the "inequity of double recovery" of Section 40, which "requires an injured employee to refund paid workers' compensation benefits once recovery is obtained by the tortfeasor, thereby avoiding duplication of the workers' compensation benefits by the tort recovery."

Following the *Talmadge* decision, in an unpublished case, *Dorflaufer v. PMA Management Corp.*, No. A-1727-14T3 (App. Div. August 9, 2016), the court again recognized the right of a workers' compensation carrier to recover its Section 40 lien in a third party action. There, the plaintiff was hit by a vehicle while working as a school crossing guard. She filed a workers' compensation claim and an action against the tortfeasor driver. The action against the tortfeasor settled for $95,000 and the workers' compensation carrier asserted a Section 40 lien for medical expenses. The Appellate Division held that based upon the plain language of Section 40, "there is no bar to a workers' compensation lien for reimbursement of medical expenses from an employee's settlement" in a negligence action. Further, "[t]here is nothing in Section 40 that prevents a lien from applying where the settlement represents payment for pain and suffering." Thus, the workers' compensation carrier was again permitted to subrogate against the plaintiff's recovery in the tort action.

THE ISSUES ARE STILL NOT RESOLVED

A recent unpublished Bergen County decision has come to the opposite conclusion. In *New Jersey Transit Corporation, a/s/o David Mercoliano v. Sandra Sanchez et al.*, BER-L-8504-16 (Ber. Sup. September 11, 2017), the Court addressed whether the workers' compensation carrier could subrogate against a tortfeasor where the employee was barred from pursuing a claim against the tortfeasor due to the limitation on lawsuit threshold in his automobile policy. The court reasoned that because the injured employee had no claim against the tortfeasor, as he was unable to overcome the threshold, the workers' compensation lien was not recoverable either.

The Bergen Court discussed *Lambert v. Travelers Indem. Co. of America*, 447 N.J. Super. 61 (App. Div. 2016), which offered a look at three consolidated actions in which plaintiffs settled personal injury cases and were able to defeat repayment of workers' compensation carriers' Section 40 liens. In *Lambert*, the Court discussed the unfairness of the scenario where a plaintiff recovers an award for pain and suffering, but is then obligated to reimburse the workers' compensation carrier for a medical lien that could not have been considered by the jury because the medical bills were inadmissible by statute. The *New Jersey Transit Corporation* Court, analyzing *Lambert*, held that where a plaintiff faces the obligation of paying a workers' compensation lien from the proceeds of a pain and suffering award, it is appropriate that the medical bills paid by the workers' compensation carrier be admissible at trial so that they can be compensated by the tortfeasor. That theory would apply even when both parties are insured under the AICRA no-fault scheme. However, the court maintained that where the injured employee is unable to establish a cause of action against the tortfeasor (e.g., plaintiff does not meet the limitation on lawsuit threshold), the workers' compensation carrier does not have the right to subrogate against the tortfeasor.

As can be seen from these decisions, the competing interests of plaintiffs, tortfeasors, UIM and workers' compensation carriers are being regularly challenged. Workers' compensation laws meant, in part, to prevent injured workers from obtaining a double recovery for their medical expenses are clearly at odds with the statutory prohibition against the admissibility of medical bills paid, or collectible, by PIP. The courts have confirmed that under these two conflicting statutes, where an employee is injured in a motor vehicle accident, workers' compensation insurance is primary. No-fault insurance laws were enacted to reduce the cost of automobile insurance. It is only a matter of time before these statutory issues are further addressed by the Legislature.

THE NATIONAL ACADEMY OF DISTINGUISHED NEUTRALS

NEW JERSEY CHAPTER

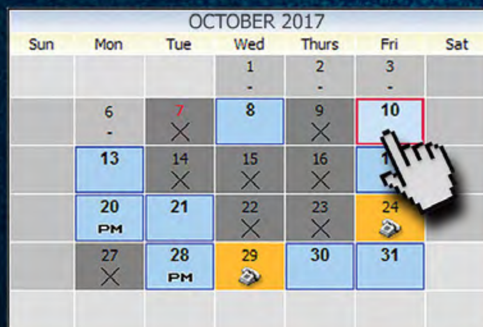
www.NJMEDIATORS.ORG

The following attorneys are recognized for

Excellence in the field of Alternative Dispute Resolution

NAME	BASED IN	PHONE	CALENDAR
N. Janine Dickey	Bridgewater	(908) 295-7900	☐
Hon. William Dreier (Ret.)	Bridgewater	(908) 722-0700	☑
James D. Hamilton Jr	Cherry Hill	(856) 795-6400	☑
Hon Joel B. Rosen (Ret.)	Cherry Hill	(856) 488-7716	☐
Hon Peter Boggia (Ret.)	Clifton	(973) 470-0800	☑
Sheryl Mintz Goski	Florham Park	(973) 520-8520	☑
Hon. Anthony Sciuto (Ret.)	Fort Lee	(201) 585-9111	☐
Hon Norman Peer (Ret.)	Freehold	(732) 414-0300	☑
Bonnie Blume Goldsamt	Hackensack	(201) 487-1622	☑
Dennis A. Estis	Iselin	(732) 476-2512	☑
Robert E. Margulies	Jersey City	(201) 333-0400	☑
Harold I. Braff	Jersey City	(201) 333-0400	☐
Hon. Virginia Long	Lawrenceville	(609) 895-3335	☐
Suzanne M. McSorley	Lawrenceville	(609) 987-6663	☑
Lewis Pepperman	Lawrenceville	(609) 895-7260	☑
Hon. Deanne Wilson (Ret.)	Mendham	(908) 879-2013	☑
F. Peter Phillips	Montclair	(973) 509-9667	☑
Vincent A. Cino	Morristown	(973) 538-6890	☑

NAME	BASED IN	PHONE	CALENDAR
Hon. Mark B. Epstein (Ret.)	New Brunswick	(732) 545-4717	☐
Hon. Barbara B. Wecker (Ret.)	Newark	(973) 643-3700	☐
Katherine Benesch	Princeton	(609) 375-2603	☐
Laura A. Kaster	Princeton	(609) 921-0095	☑
Richard H. Steen	Princeton	(609) 895-0071	☑
Hon. John Keefe (Ret.)	Red Bank	(732) 224-9400	☐
Roger B. Jacobs	Roseland	(973) 226-6663	☑
Nicholas Stevens	Roseland	(973) 403-9200	☑
Hon. Benjamin Cohen (Ret.)	Somerset	(908) 333-6208	☑
Jennifer L. Brandt	Springfield	(908) 507-0890	☑
Hon.Marguerite Simon (Ret.)	Springfield	(973) 379-4200	☑
Hon. Tom Cavanagh, Jr. (Ret.)	Tinton Falls	(732) 733-6200	☑
Elliot M. Baumgart	Upp. Montclair	(973) 744-4000	☐
Hon. Harriet Derman (Ret.)	Warren	(908) 757-7800	☐
Terri Reicher	Wayne	(973) 865-1069	☑
Hon. John M. Boyle (Ret.)	Westfield	(908) 233-6800	☑
Steven J. Blumenthal	Williamstown	(856) 809-1235	☑
Maureen S. Binetti	Woodbridge	(732) 855-6034	☑



Check preferred available dates or schedule appointments online directly with the state's top neutrals

Avoid hours of scheduling phone tag with parties...

www.NJMediators.org is free, funded by Academy members

The National Academy of Distinguished Neutrals is an invitation-only professional association of over 900 litigator-rated mediators & arbitrators throughout the US and Neutral Database Partner to the national defense bar (DRI) and sponsor of the trial bar (AAJ). For info, visit www.NADN.org/about

REPORT OF THE AMICUS COMMITTEE

BY STEPHEN FOLEY, JR.

The NJDA currently is active as amicus counsel in a number of cases pending before appellate courts. A brief outline follows:

Russell v. Croscill Home, LLC
U.S. Court of Appeals, 3rd Circuit,
Case Number: 16-3939

Plaintiff filed a putative class action alleging that the terms and conditions of defendant's website violated New Jersey's Truth-in-Consumer Contract, Warranty and Notice Act ("TCCWNA"), N.J.S.A. § 56:12-14 et. seq., by imposing "unfair, one-sided provisions." Plaintiff did not claim that the product he purchased was defective, that any of the offensive terms and conditions were invoked against him or even to have read the website's terms and conditions. On defendant's motion to dismiss, Judge Sheridan in the District Court raised issues regarding plaintiff's standing to bring the action and his status as an "aggrieved" consumer under the statute. Following argument, the Court held that plaintiff did not have standing and that if standing had existed, plaintiff failed to state a claim under TCCWNA because having had no personal, pecuniary or property rights impacted by the terms and conditions of defendant's website, he was not "aggrieved."

Plaintiff filed a Notice of Appeal. On behalf of the Association, Ed Fanning and David Kott of McCarter & English sought and obtained leave to appear as Amicus. The Appeal presently is stayed pending the New Jersey Supreme Court's decision on the question certified to it in two related Third Circuit cases regarding the statutory definition of an aggrieved consumer. See Spade v. Select Comfort Corp., case number 16-1558; and Wenger v. Bob's Discount Furniture, LLC, case number 16-1572.

Haines v. Taft/Little v. Nishimura
New Jersey Supreme Court,
Docket Number: 079600

Separate appeals were taken by plaintiffs from trial court decisions barring recovery of medical expenses pursuant to section 12 of the No-Fault Act. N.J.S.A. 39:6A-12. In each instance, plaintiffs were insured under the terms of Standard automobile policies for which reduced medical expense benefits of $15,000.00 had been selected. In both cases, plaintiffs' claims for non-economic damages were subject to the Limited tort threshold of N.J.S.A. 39:6A-8.a. Plaintiff Haines voluntarily dismissed his non-economic damage

claims, and the trial court thereafter dismissed his medical expense claim on defendant's motion. Prior to the trial of plaintiff Little's non-economic claims, the Court barred introduction of evidence of her excess medical expenses. Plaintiff was "no-caused" on the tort threshold. She did not appeal that portion of the judgment against her.

Plaintiff appealed the dismissal of their excess medical expense claims. On behalf of the NJDA, Stephen J. Foley, Jr., of Campbell, Foley, Delano & Adams sought and obtained leave to appear as Amicus. Susan Stryker of Bressler, Amery & Ross appeared for Amici Insurance Council of New Jersey and the Property & Casualty Insurers Association of America. The Appellate Division reversed. Haines v. Taft, 450 N.J. Super. 295 (App. Div. 2017). Defendants have filed Petitions for Certification with the New Jersey Supreme Court. The NJDA, the Insurance Council and the Property & Casualty Insurers support for defendants' Petitions. The Supreme Court granted Certification on November 14, 2017.

Decter v. Hejib
Appellate Division, A-3073-16

The trial court granted Summary Judgment to the defendant residential property owners in a suit arising from a fall on the public sidewalk adjacent to their home. The Court's decision was based upon well-established precedent recognizing that homeowners do not have a duty to maintain sidewalks abutting their land. It specifically rejected plaintiff's argument calling for the adoption of the Restatement (Third) Torts, § 54's treatment of public sidewalk liability. Under that standard, residential property owners would face liability for sidewalk conditions which posed risks either known to them or obvious. Plaintiff appealed, and the New Jersey Association for Justice has been granted leave to appear as Amicus urging the Court to adopt the Restatement standard. McCarter & English's Matthew Tharney, Natalie Watson, Ryan Richman, Ryan Richman, Christopher Rojao and Elizabeth Monahan prepared and filed NJDA's motion to appear as Amicus which was granted on November 17, 2017.

Rodriguez v. Wal-Mart Stores
New Jersey Supreme Court,
Docket Number: 079470

Certification was granted to defendant Wal-Mart following the Appellate Division's' reversal of a defense verdict on liability. Defendant's medical expert testified at trial concerning signs of malingering, symptom magnification and somatoform disorder observed during plaintiff's examination. He did not diagnose any of those conditions and acknowledged he would need to involve a mental health professional to make that diagnosis. The Appellate Division held that the testimony was inherently prejudicial because it improperly offered opinions as to plaintiff's overall credibility and called into question the validity of the verdict on liability. A new trial on all issues was ordered. The Appellate Division drew a "bright line" prohibiting such testimony. The Supreme Court granted Certification to consider whether a blanket prohibition was appropriate.

The Supreme Court also granted Plaintiff's cross-petition on the issue of the admissibility of proofs concerning prior injuries. The Appellate Division affirmed the Trial Court's decision to permit defendant to introduce evidence concerning past injuries. Plaintiff took the position that absent opinion testimony that plaintiff's complaints were caused by prior injuries/conditions, the jury should not hear about them. The Appellate Division held that defendant did not have to prove by reasonable medical probability that the prior injuries were the cause of plaintiff's problems but only needed to raise the possibility that they were related. In essence, the Court held that possible other causes provide a basis to challenge plaintiff's expert's opinion on causation.

The NJDA's Board determined to seek leave to appear as Amicus at its November meeting. Katelyn Cutinello of Bubb, Grogan & Cocca will be preparing the Association's motion and brief.

Oasis Therapeutic Centers v. Wade
Appellate Division, A-000711-17T3

The trial court granted summary judgment to defendant property owners on claims brought against them under the New Jersey Law Against Discrimination. Plaintiff, a non-profit, sought to purchase a property in a riverfront section Middletown on which to operate a group home for autistic adults. Neighbors made an offer on the property which was not accepted. Thereafter, the neighbors objected to the Monmouth County Conservation Foundation awarding a grant to the plaintiff for the purchase of a conservation easement across the property. The grant was essential to the non-profit's funding of the purchase. The non-profit ultimately received the grant, purchased the property and operated the group home. The defendants then instituted suit in the Chancery Division challenging a property line. The plaintiff filed a counterclaim alleging multiple violations of the LAD. The LAD claims were sent to the Law Division and dismissed on defendants' motions for summary judgment. In essence, the trial court held that the LAD does not apply to disputes among neighbors. Plaintiff has appealed.

At its November meeting, the Board also decided to seek leave to appear in this case. Counsel for the Association will be identified in the near future.

By its Charter, NJDA is committed to promoting improvements in the administration of justice. Participation as Amicus Curiae in matters of importance to its members, their clients and the public is one of the means by which the Association historically has pursued that goal, and the membership is encouraged to identify for the Board cases which may benefit from the Association's involvement. Members wishing to do so may contact **Committee Chair Steve Foley at sfoleyjr@campbellfoley.com.**

THE CENTER FOR
FORENSIC ECONOMIC STUDIES
Research ■ Analysis ■ Litigation Support

There is only room for one on the stand.

Have the Best in the Box.

CFES

2010-2016 winner of the Legal's Best Of Survey for Forensic Economics.

215.546.5600
cfes@cfes.com
www.cfes.com

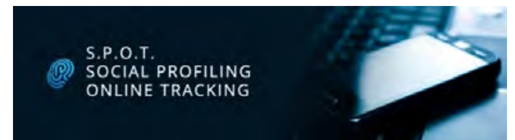
NEW JERSEY OFFICE
4 Industrial Way West
Eatontown, NJ 07724
P: (732) 544-2008
F: (732) 544-2038

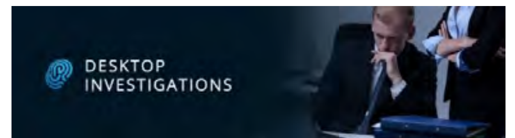
PROFESSIONAL CLAIMS SOLUTIONS

PENNSYLVANIA OFFICE
175 Strafford Avenue
Suite 1
Strafford, PA 19087
Toll Free: (877) 277-2008

TRUSTED BY THE LEADING INSURANCE & LEGAL PROFESSIONALS

Professional Claims Solutions field services New Jersey, New York, Eastern Pennsylvania and Northern Delaware. PCS also provides numerous nationwide services.



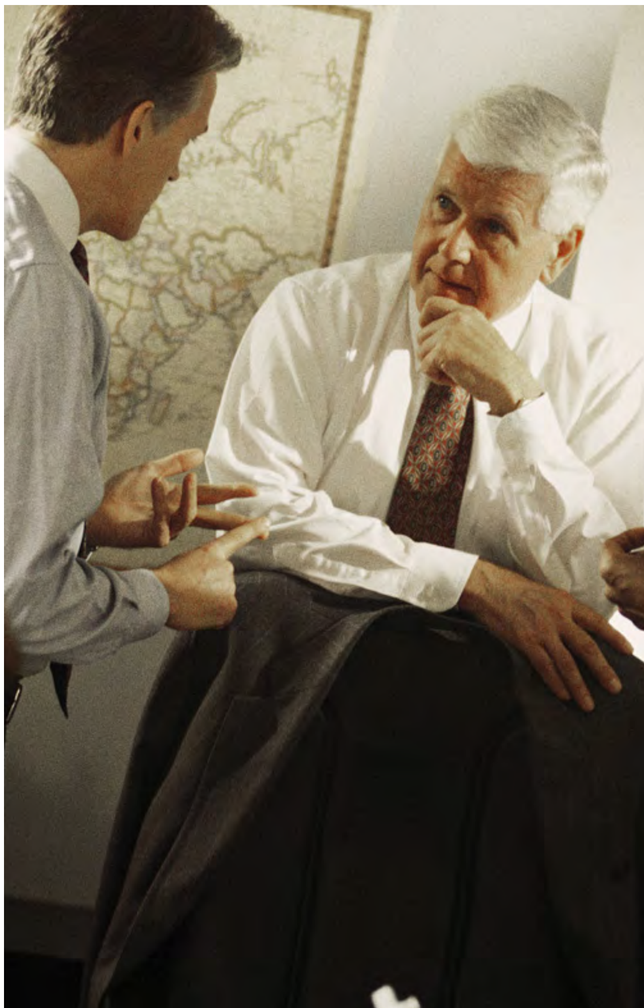


WWW.PROCLAIMSSOLUTIONS.COM

ADM
Information Services, LLC
When you need to know, you need to know us

Surveillance
Claims Evaluation
Insurance Fraud SIU
Locate Persons
Process Serving
Trial Preparation
Database Research
Asset Profile
Due Diligence
Pre-Employment Background
Background Research
Civil/Criminal Research

6 Pomptom Ave Ste 15 Cedar Grove NJ 07009
570 Taxter Road, Suite 275, Elmsford, NY 10523
Phone: 800.691.7020 / Fax:973.239.1999 /info@adminfoservices.com / www.adminfoservices.com



Complex Questions. Answered.

Rimkus Consulting Group, Inc. is a worldwide provider of forensic consulting services to insurance companies, law firms, corporations and government agencies. Rimkus assists clients in the responsive and timely resolution of claims and disputes. The company's team of professional engineers, scientists, and technical specialists is recognized for its commitment to service excellence by local, national and international business communities.

Offices Nationwide

RIMKUS
CONSULTING GROUP, INC.
Forensic Engineers and Consultants

800.580.3228 www.rimkus.com

THE ART
AND SCIENCE OF
FORENSIC ENGINEERING

WHEN YOU NEED TO ANSWER
HOW, WHEN AND WHY

FCNA
FORENSIC CONSULTANTS
OF NORTH AMERICA

520 Fellowship Road • Suite A-110
Mount Laurel, NJ 08054
www.fc-na.com

- Civil/Structural Engineering
- Mechanical Engineering
- Electrical/Electronic Engineering
- Construction Defect and Construction Liability/OSHA Claims
- Vehicle Accident Reconstruction
- Toxicology/Pharmacology
- Product Liability
- Premises Liability including Slip/Trip and Fall
- Vocational Rehabilitation Assessments
- Forensic Accounting/Loss of Income
- Fire Origin and Cause
- Hail Claims

Consulting Engineers & Scientists, Inc.
Professionalism, Experience, Credibility . . . Since 1969

Experienced Forensic Engineers, Scientists & Professionals

Accident Reconstruction
Architecture
Biomechanical/Biomedical
Construction Accidents
Exercise/Personal Training
Failure Analysis/Metallurgy
Fire Origin & Cause
Firearm & Range Safety

Hazardous Materials
Hospital Accidents
HVAC
Industrial Accidents
Industrial Hygiene
Machine Guarding
Medical Devices
Mold Investigation

Premises Liability
Product Liability
Roadway/Highway
Site Security
Slip, Trip & Fall
Structural Failures
Toxicology
Water/Wastewater Treatment

The Commons at Great Valley
41 General Warren Boulevard
Malvern, PA 19355

ces-experts.com
info@ces-experts.com
610-296-2250

REDEFINING GROSS NEGLIGENCE: CAN RECREATIONAL SPORT OPERATORS INSULATE THEMSELVES FROM LIABILITY WITH PRE-INJURY WAIVERS?

BY MICHAEL A. ALBERICO, ESQUIRE

KEY POINTS

- Pre-injury liability waivers are unenforceable against gross negligence claims.
- Gross negligence is now more akin to negligence on the liability continuum resulting in the erosion of pre-injury liability waiver enforceability.
- Failure to supply the most up-to-date manufacturers' warnings to consumers and to train employees on the most up-to-date safety protocols can be evidence of gross negligence.

Plaintiffs' attorneys are baiting the hook with arguments conflating gross negligence with negligence, and the judicial system is biting. If recreational sport entity operators wish to remain insulated from negligence claims with pre-injury waivers, an examination of gross negligence's modified definition must be considered.

In *Steinberg v. Sahara Sam's Oasis, LLC*, 142 A.3d 742, 744-745 (N.J. 2016), the plaintiff, a patron of the defendant's indoor water park, suffered a spinal cord injury on FlowRider, a simulated surfing ride created by pumping water over a stationary surface. Prior to participating, the plaintiff signed a pre-injury waiver acknowledging the risks associated with FlowRider and waiving liability for any injury caused by the defendant's negligence. In a prior opinion, *Stelluti v. Casapenn Enters., LLC*, 1 A.3d 678-681-682 (N.J. 2010), the New Jersey Supreme Court held that pre-injury waivers executed for participation in recreational activities are enforceable for injuries sustained during such activity.

The plaintiff brought suit alleging his injuries were caused by the defendant's negligence and gross negligence, among other things. The defendant filed a motion for summary judgment, which the trial court granted, determining the liability waiver "[e]xtinguished [plaintiff's] right to file a negligence action" and that the facts did not support the plaintiff's claim for gross negligence. The Appellate Division affirmed in a split decision, adding that the trial court "[d]id not err in characterizing gross negligence as the

equivalent of willful conduct." The dissenting appellate judge disagreed, stating the evidence "provided sufficient support for a gross negligence action" and proof of gross negligence did not require a showing of "willful conduct."

In the plaintiff's appeal to the New Jersey Supreme Court, he argued that the record contained sufficient evidence to support a gross negligence claim. Specifically, the defendant's employees failed to inform the plaintiff, as a first-time rider, to lay flat rather than stand on the surfboard and, if standing, to hold onto the balance rope with one hand rather than two. Additionally, the plaintiff contended that the defendant failed to post the most up-to-date manufacturer warning signs.

On the accident date, the defendant displayed the manufacturer's older warning for the ride, which stated, "PARTICIPATION ON THIS RIDE AND CONSENT OF WAIVER INDICATES YOU UNDERSTAND THE POTENTIAL TO GET INJURED SHOULD YOU FALL WHILE PARTICIPATING," instead of the most up-to-date signage, which included the statement "YOU WILL FALL." The newer un-posted signage also instructed riders to watch a safety video before riding and contained drawings illustrating the ride's dangers, including an image of a participant striking his head on the ride's surface. The video referenced on the sign was not available to riders.

Before the ride opened to the public, its manufacturer sent an instructor to educate the defendant's employees on the ride's safe operation. He instructed that first-time riders should participate in a prone position and should not hold onto the balance rope with both hands.

In its opinion, the New Jersey Supreme Court agreed with the Appellate Division's dissenting judge, holding that "gross negligence is a higher degree of negligence" and "does not require willful or wanton misconduct or recklessness." It also determined that "[n]egligence, gross negligence, recklessness, and willful conduct fall on a spectrum, and the difference between negligence and gross negligence is a matter of degree." The Supreme Court endorsed the New Jersey Civil Model Jury Charge's gross negligence definition, which states that gross negligence is:

> **An act or omission, which is more than ordinary negligence, but less than willful or intentional misconduct. Gross negligence refers to a person's conduct where an act or failure to act creates an unreasonable risk of harm to another because of the person's failure to exercise slight care or diligence.**

[Model Jury Charge (Civil) § 5.12 "Gross Negligence" (2009).]

With gross negligence definitively defined, the Supreme Court then concluded that the trial court and Appellate Division majority erred in granting summary judgment and reversed, stating, "[t]he relevant evidence, presented in the light most favorable to plaintiff, demonstrates that a rational fact finder could conclude that [defendant's] conduct constituted gross negligence."

In forming its opinion, the court determined that the defendant's failure to post the updated signage, provide patrons with the safety video, and properly instruct the plaintiff on how to ride could have demonstrated to a rational fact finder that it "failed to exercise slight care or diligence." The court further held that, "[a] liability waiver ... in a consumer agreement that exculpates a business owner from liability for tortious conduct resulting from the violation of a duty imposed by statute or from gross negligence is contrary to public policy and unenforceable."

Steinberg confirmed that pre-injury liability waivers are unenforceable against gross negligence claims. This opinion also expanded the range of conduct considered grossly negligent by sliding gross negligence closer to negligence and further from recklessness on the liability scale. The court demonstrated this slide by concluding the defendant's failure to provide up-to-date warnings could be evidence of gross negligence despite facts showing that the plaintiff signed a liability waiver explaining the ride's hazards and that the defendant provided signage describing the FlowRider's dangers. As a result of *Steinberg*, pre-injury liability waivers signed before participation at recreational sporting facilities no longer carry the same protections as they did upon *Stelluti's* release.

Nevertheless, recreational sport entity operators and insurers can still insulate themselves from liability. They must train their employees on the most up-to-date safety protocols, post the most up-to-date manufacturer recommended signage, and familiarize themselves with the most up-to-date manufacturer operating manuals.

Mike is an associate in the Casualty Department in the Mount Laurel office of Marshall Dennehey Warner Coleman & Goggin. He may be reached at 856.414.6016 or maalberico@mdwcg.com.

Defense Digest, Vol. 23, No. 1, March 2017.
Defense Digest is prepared by Marshall Dennehey Warner Coleman & Goggin to provide information on recent legal developments of interest to our readers. This publication is not intended to provide legal advice for a specific situation or to create an attorney-client relationship. ATTORNEY ADVERTISING pursuant to New York RPC 7.1. © 2017 Marshall Dennehey Warner Coleman & Goggin. All Rights Reserved. This article may not be reprinted without the express written permission of our firm. For reprints, contact tamontemuro@mdwcg.com.

MEMBERSHIP BENEFITS

- Expand your professional network
- Hone your skills at cutting edge CLE seminars
- Stay abreast of legal and legislative developments with NJ Defense magazine
- Discuss practice area specific issues by joining a substantive law committee
- Raise your professional profile through speaking and publication opportunities
- Enjoy a weekend away at our Annual Convention
- Obtain amicus curiae support at the Board's discretion
- Access member-only resources:
- Emails exchanging information and advice
- Medical Directory to help you find an expert
- Expert Database to help you research an expert

2017 NJDA PROFESSIONAL LAWYER OF THE YEAR AWARD

Mario J. Delano is the 2017 NJDA recipient of the Professional Lawyer of the Year award. The awards are presented to lawyers who are respected by their colleagues for their character, competence and exemplary professional behavior. The award was presented at the New Jersey Commission on Professionalism annual awards luncheon held on November 9, 2017 at The Imperia in Somerset, NJ. Congratulations Mario!

MANY THANKS TO ALL OUR 2017 GOLF CLASSIC SPONSORS

ADM Information Services, LLC
Capital Investigating
Chasan Lamparello Mallon & Cappuzzo, P.C.
Connell Foley LLP
Consulting Engineers & Scientists, Inc.
Economic Damage Advisory Services, LLC
Hoagland Longo Moran Dunst & Doukas, LLP
John Desch Associates
Kaplan Leaman & Wolfe Court Reporting and Litigation Services
Leyden Capotorto Ritacco & Corrigan
Nelson Forensics
Professional Claims Solutions
Purcell Mulcahy & Flanagan LLC
Rimkus Consulting Group, Inc.
Sellar Richardson, P.C.
Support Claim Services
Varhley Court Reporting

SAVE THE DATE

52ND ANNUAL CONVENTION
AT WHITEFACE LODGE RESORT LAKE PLACID, NY
JUNE 28-JULY 1, 2018

WOMEN & THE LAW SEMINAR

Left to Right: Vivan Demas, Katelyn Cutinello, Melissa Steedle Bogad, Annabelle Steinhacker, Michelle O'Brien, Maureen Mahoney, Richard Badolato, Marita Erbeck, Kate Reilly, Marie Carey, Natalie Watson, Diane Cardoso, Natalie Mantell

Left to Right: Diane Cardoso, Kate Reilly, Vivian Demas

Left to Right: Marita Erbeck, Diane Cardoso, Kate Reilly

Left to Right: Katelyn Cutinello, Michelle O'Brien, Richard Badolato, Annabelle Steinhacker, Marie Carey

Top Left: Natalie Watson, Top Middle: Kelly Ann Bird, Top Right: Melissa Steedle Bogad, Bottom: Kelly Ann Bird

AUTO LIABILITY SEMINAR

Left to Right: John Mallon, Juliann Alicino, Aldo Russo

Left to Right: Kenneth Pringle, Loni Hand, Mike Knox, Christopher Iu, John Butchko, Juliann Alicino

Since the only knowledge most of us have of Scotland is limited to what we learned in the movie, "Braveheart," I hope this article gives you a little overview of what a beautiful country Scotland is. (I must admit, however, that the first thing I did when I got to Edinburgh Square was to bellow out, "FREEDOM!")

Scotland is still part of the British Empire and 53 percent of the population voted to remain with Britain in the National Referendom of September 18, 2014. It is a country of the approximate size of Vermont.

Our first destination in this small country was the industrial city of Glasgow that sits on the river Clyde. The city flourished in Victorian times due to the shipbuilding industry and international trade. The heart of the city is at George's Square with its ornate city chambers dating back to medieval times. The present- day city still consists of the magnificent buildings and churches, truly giving a taste of times past. (We happened to stop in an old cathedral when the choir was practicing. Their voices reverberated throughout the old stone walls and stained-glass windows. It was very moving.)

The next part of our trip took us through the scenic Highlands, which include Inverness and Glen Coe Valley; an area renowned for its breath-taking mountain scenery. (The country of Scotland is actually 25% woodlands.) Of course, no tour would be complete without local shopping, and in Scotland the specialty wares include cashmere scarves and sweaters, and, of course, kilts. (Since I am a guy who doesn't even wear shorts, a kilt was out of the question!)

Unlike Ireland, which is renowned for its Irish whiskey and stouts, Scotland is known for its high-quality Scotch whisky. A tour of the Blair Athol Distillery educated us in the precise making of this product and, of course, a taste sampling of the various finished products. (Since many of the people on this tour were women who didn't drink hard alcohol, I was forced to step into the breach and consume their share. We certainly didn't want to insult our hosts by not finishing their generous gifts.) Yes, I did buy a couple bottles of this fine scotch.

Loch Lomond and Fort Augustus were along our route to Loch Ness, another peaceful, scenic ride. As you all must be aware, Loch Ness is the home of "Nessie," more formally known as "the Loch Ness Monster." Throughout the years there have been many claimed sightings of the monster, all proven to be bogus. However, much of the Lake is shrouded in fog and if there was ever going to be a place where a monster could be inhabiting, this would be it. One of the theories our Captain suggested was that Loch Ness is the deepest body of water in the British Isles and certain areas at the bottom of the lake cannot be scanned by sonar. So, a Loch Ness Monster is not likely, but you never know.

Our trip continued to St. Andrews, best known as the "home of golf." (Did you know that a round of golf originally consisted of 21 holes and was changed to 18?) A European Women's Tournament was taking

place while we were there so we were able to watch a bit of the action from a distance. The town of St. Andrews is quaint and offers numerous shopping and dining opportunities. We actually had lunch at a café that claims to be one of Jack Nicklaus' favorites.

After St. Andrews we headed toward Edinburgh, staying at the Manor House, which sits on 1000 acres. That evening we took in a dinner show, consisting of traditional Scottish food, music and dancing. (Sunny was even selected to go on stage at the end of the show to partake of the Scottish dancing – She would be a delight if she was just a little more out-going.)

The next two days were spent in Edinburg, the zenith of this vacation. The castle is magnificent and it would be impossible to tour everything it has to offer. It has a breath-taking panoramic view of the entire city below. (At 1:00 each afternoon a canon is shot from atop the castle, reverberating throughout the mountaintop and the city below.) The sites within the castle included the Scottish Crown Jewels and the Stone of Scones behind which the jewels were hidden. There was a medieval prison dungeon with etchings on the walls that have lasted throughout the ages. In this area was also a war memorial with ancient large ledgers, each of different countries, depicting the names of the men who fought and died for Scotland. Another wing was filled with ancient armor worn by Scottish warriors throughout the ages, as well as swords and shields of those times.

When we exited the castle, we walked down a very long hill, known as the Royal Mile. Although the street was filled with shops selling beautiful Scottish goods, one of the most interesting sites was an area of human mannequins in various costumes, the headless horseman, the invisible man, and a gravity-defying four-man pyramid – definitely a Kodak moment!

Part of our last day of vacation was spent walking through the Royal Bottanic Gardens of Edinburgh. (It seems appropriate to mention here that, as we were told, "people don't come to Scotland for the weather, but rather in spite of the weather." It rains part of every day. On a positive note, that is what makes Scotland's hillsides so plush and green.)

The end of our trip was spent on the Royal Yacht, the Britannia, that was commissioned in 1954 and decommissioned in 1997. To our surprise, it was not ornately decorated. OK, a dining room table set for 40 people was a bit much, but the rest of the yacht was filled with what we would consider everyday furniture. (I did pose in a yachtsman cap, holding a pint of beer.) Throughout the yacht were royal family photos, and yachtsmen, both at work and at play.

It seemed appropriate to end our vacation at "The Jolly Judge Restaurant" for a meal of Shepherd's Pie and a pint or two of Tenant Scottish Lager to toast a memorable vacation.

I hope I have described this vacation in such a way as to entice your interest. Who knows, you might be the next person to spot "Nessie."

OFFICERS & COMMITTEES

OFFICERS

CHAIRMAN OF THE BOARD
Chad M. Moore, Esq.
Hoagland Longo Moran Dunst & Doukas, LLP
40 Paterson Street
New Brunswick, NJ 08902
732-545-4717
cmoore@hoaglandlongo.com

PRESIDENT
Natalie H. Mantell, Esq.
Gibbons, P.C.
One Gateway Center
Newark, NJ 07102
973-596-4533
nmantell@gibbonslaw.com

PRESIDENT-ELECT
Aldo J. Russo, Esq.
Lamb Kretzer LLC
110B Meadowlands Parkway
Secaucus, NJ 07094
201-798-0400
ajr@lambkretzer.com

SECRETARY-TREASURER
Michael Malia, Esq.
Peri & Stewart, LLC
One Passaic Avenue
Fairfield, NJ 07004
973-521-7426
mmaliaesq@gmail.com

VICE PRESIDENTS
NORTHERN REGION
Katelyn E. Cutinello, Esq.
Bubb Grogan & Cocca, LLP
25 Prospect Street
Morristown, NJ 07960
973-539-6500
kcutinello@bgc-law.com

CENTRAL REGION
Juliann Alicino, Esq.
Hoagland Longo Moran Dunst & Doukas
40 Paterson Street
New Brunswick, NJ 08902
732-545-4717
jalicino@hoaglandlongo.com

SOUTHERN REGION
Brian Chabarek, Esq.
Davison Eastman Muñoz Lederman & Paone, P.A.
100 Willow Brook Road, Suite 100
Freehold, NJ 07728
732-410-2350
bchabarek@demlplaw.com

DIRECTORS

2015 – 2018
Ryan Richman, Esq.
McCarter & English, LLP
100 Mulberry Street
Newark, NJ 07102
973-622-4444
rrichman@mccarter.com

John V. Mallon, Esq.
Chasan Lamparello Mallon & Cappuzzo, P.C.
300 Lighting Way
Secaucus, NJ 07094
201-348-6000
jvmallon@chasanlaw.com

2016 – 2019
Michelle O'Brien, Esq.
Purcell Mulcahy & Flanagan
One Pluckemin Way
Bedminster, NJ 07921
908-306-6707
mobrien@pmhfl.com

Natalie S. Watson, Esq.
McCarter & English, LLP
100 Mulberry Street
Newark, NJ 07102
973-622-4444
nwatson@mccarter.com

2017 – 2020
Melissa Steedle Bogad, Esq.
Winston & Strawn, LLP
200 Park Avenue
New York, NY 10166
(212)294-6674
mbogad@winston.com

C. Robert Luthman, Esq.
Weir & Associates, LLP
108 Straube Center Blvd.
Pennington, NJ 08534
609-737-9511
rluthman@weirattorneys.com

DRI STATE REPRESENTATIVE
Mario J. Delano, Esq.
Campbell Foley Delano & Adams, LLC
601 Bangs Avenue
Asbury Park, NJ 07712
732-775-6520
mdelano@campbellfoley.com

COMMITTEES

AMICUS CURIAE
Stephen J. Foley, Jr., Esq.
Campbell Foley Delano & Adams, LLC
601 Bangs Avenue
Asbury Park, NJ 07712
732-775-6520
sfoleyjr@campbellfoley.com

BY-LAWS
J.R. Peter Wilson, Esq.

CONVENTION
Natalie H. Mantell, Esq.
Gibbons, P.C.
One Gateway Center
Newark, NJ 07102
973-596-4533
nmantell@gibbonslaw.com

DIVERSITY
Natalie Watson, Esq.
McCarter & English, LLP
100 Mulberry Street
Newark, NJ 07102
973-622-4444
nwatson@mccarter.com

FINANCE
Michael A. Malia, Esq.
Peri & Stewart, LLC
One Passaic Avenue
Fairfield, NJ 07004
973-521-7426
mmaliaesq@gmail.com

LEGISLATIVE
Jeffrey A. Bartolino, Esq.
NJM
301 Sullivan Way
West Trenton, NJ 08628-3496
609-883-1300
jbartolino@njm.com

LONG TERM PLANNING
Kevin J. DeCoursey, Esq.
Cooper Maren Nitsberg Voss & DeCoursey
485 Route 1 South, Bldg. A, Suite 200, Iselin, NJ 08830
732-726-7180
kDecour1@progressive.com

MEDICAL DIRECTORY
Michael J. Leegan, Esq.
Goldberg Segalla
902 Carnegie Center
Princeton, NJ 08540
609-986-1320
mleegan@goldbergsegalla.com

MEMBERSHIP
Michael J. Leegan, Esq.
Goldberg Segalla
902 Carnegie Center
Princeton, NJ 08540
609-986-1320
mleegan@goldbergsegalla.com

Kevin J. DeCoursey, Esq.
Cooper Maren Nitsberg Voss & DeCoursey
485 Route 1 South, Bldg. A, Suite 200, Iselin, NJ 08830
732-726-7180
kDecour1@progressive.com

NEW JERSEY DEFENSE
Aldo J. Russo, Esq.
Lamb Kretzer LLC
110B Meadowlands Parkway
Secaucus, NJ 07094
201-798-0400
ajr@lambkretzer.com

PUBLIC RELATIONS
Ryan Richman, Esq.
McCarter & English, LLP
100 Mulberry Street
Newark, NJ 07102
973-622-4444
rrichman@mccarter.com

Michelle O'Brien, Esq.
Purcell Mulcahy & Flanagan
One Pluckemin Way
Bedminster, NJ 07921
908-306-6707 mobrien@pmhfl.com

SEMINARS
Gregory F. McGroarty, Esq.
Cooper Maren Nitsberg Voss & DeCoursey, 485 Route 1 South, Bldg. A, Suite 200, Iselin, NJ 08830
732-362-3289 gregory_f_mcgroarty@progressive.com

TECHNOLOGY
Charles P. Hopkins, II, Esq.
908-601-3100
Charles.hopkins.esq.bc.edu

TRIAL COLLEGE
C. Robert Luthman, Esq.
Weir & Associates
108 Straube Center Blvd.
Pennington, NJ 08534
609-737-9511
rluthman@weirattorneys.com

TRIAL COLLEGE & WOMEN AND THE LAW
Marie A. Carey, Esq.
Law Offices of Marie A. Carey, Esq.
325 Columbia Turnpike
Florham Park, NJ 07932
973-443-9100
marie.carey@usaa.com

YOUNG LAWYERS
Christopher A. Rojao, Esq.
McCarter & English, LLP
100 Mulberry Street
Newark, NJ 07102
973-622-4444
crojao@mccarter.com

Katelyn E. Cutinello, Esq.
Bubb Grogan & Cocca, LLP
25 Prospect Street
Morristown, NJ 07960
973-539-6500
kcutinello@bgc-law.com

SUBSTANTIVE COMMITTEE

CHAIRS AND VICE CHAIRS

ADR
Michael A. Malia, Esq.
Peri & Stewart, LLC
One Passaic Avenue
Fairfield, NJ 07004
973-521-7426
mmaliaesq@gmail.com

APPELLATE PRACTICE
Kelly P. Corrubia, Esq.
Norton Murphy Sheehy & Corrubia, P.C.
1 Garrett Mountain Plz., Ste 502
Woodland Park, NJ 07424
973-881-1101
Kcorrubia@nashnj.com

Anthony Cocca, Esq.
Bubb Grogan & Cocca, LLP
25 Prospect Street
Morristown, NJ 07960
973-539-6500
acocca@bgc-law.com

AUTOMOBILE LIABILITY
Juliann Alicino, Esq.
Hoagland Longo Moran Dunst & Doukas, 40 Paterson Street
New Brunswick, NJ 08902
732-545-4717
jalicino@hoaglandlongo.com

CONSTRUCTION LAW
Michael J. Leegan, Esq.
Goldberg Segalla
902 Carnegie Center
Princeton, NJ 08540
609-986-1320
mleegan@goldbergsegalla.com

EMPLOYMENT LAW
Brian Chabarek, Esq.
Davison Eastman Muñoz Lederman & Paone
100 Willow Brook Road, Suite 100
Freehold, NJ 07728
732-462-7198
bchabarek@demlplaw.com

ENVIRONMENTAL LAW
Joanne Vos, Esq.
Maraziti Falcon, LLP
150 JFK Parkway
Short Hills, NJ 07078
973-912-9008
jvos@mfhenvlaw.com

Jacob Grouser, Esq.
Hoagland Longo Moran Dunst & Doukas, LLP
40 Paterson Street
New Brunswick, NJ 08903
732-545-4717
jgrouser@hoaglandlongo.com

FRAUD
Michael A. Malia, Esq.
Peri & Stewart, LLC
One Passaic Avenue
Fairfield, NJ 07004
973-521-7426
mmaliaesq@gmail.com

INSURANCE LAW
Nathan Buurma, Esq.
NJM, 301 Sullivan Way
West Trenton, NJ 08628-3496
609-883-1300 nbuurma@njm.com

PHILANTHROPY
Denise M. Luckenbach, Esq.
Sellar Richardson, P.C.
293 Eisenhower Parkway, Suite 170
Livingston, NJ 07039 973-992-6677
dluckenbach@sellarrichardson.com

PIP
Nicole R. Cassata, Esq.
Chasan Lamparello Mallon & Cappuzzo, P.C.
300 Harmon Meadow Blvd.
Secaucus, NJ 07094
201-348-6000
ncassata@chasanlaw.com

PREMISES LIABILITY
Jeffrey Maziarz, Esq.
Hoagland Longo Moran Dunst & Doukas, LLP
40 Paterson Street
New Brunswick, NJ 08903
732-545-4717
jmaziarz@hoaglandlongo.com

PRODUCTS LIABILITY
Robert M. Cook, Esq.
Goldberg Segalla
902 Carnegie Center
Princeton, NJ 08540
609-986-1380
rcook@goldbergsegalla.com

Natalie H. Mantell, Esq.
Gibbons, P.C.
One Gateway Center
Newark, NJ 07102
973-596-4533
nmantell@gibbonslaw.com

PROFESSIONAL LIABILITY
Herbert Kruttschnitt, Esq.
Law Offices of Gerard Green
200 Schultz Drive
Red Bank, NJ 07701
732-933-7900
Herbert.kruttschnitt@cna.com

Katelyn E. Cutinello, Esq.
Bubb Grogan & Cocca, LLP
25 Prospect Street
Morristown, NJ 07960
973-539-6500
kcutinello@bgc-law.com

PUBLIC ENTITY LAW
Natalie Watson, Esq.
McCarter & English, LLP
100 Mulberry Street
Newark, NJ 07102
973-622-4444
nwatson@mccarter.com

Aldo J. Russo, Esq.
Lamb Kretzer, LLC
110B Meadowlands Parkway
Secaucus, NJ 07094
201-798-0400
ajr@lambkretzer.com

TRUCKING LAW
Robert M. Cook, Esq.
Goldberg Segalla
902 Carnegie Center
Princeton, NJ 08540
609-986-1320
rcook@goldbergsegalla.com

WORKERS' COMPENSATION
Michele G. Haas, Esq.
Hoagland Longo Moran Dunst & Doukas
40 Paterson Street
New Brunswick, NJ 08902
732-545-4717
mhaas@hoaglandlongo.com

George C. Roselle, III, Esq.
Lamb Kretzer, LLC
110B Meadowlands Parkway
Secaucus, NJ 07094
201-798-0400
ger@lambkretzer.com

www.robsonforensic.com | 800.695.3139

THE EXPERTS

Robson Forensic

A NATIONAL LEADER IN EXPERT WITNESS CONSULTING, PROVIDING TECHNICAL EXPERTISE ACROSS MANY FIELDS WITHIN ENGINEERING, ARCHITECTURE, SCIENCE, AND AN EXPANSIVE RANGE OF SPECIALTY DISCIPLINES.

Admiralty / Maritime
Aquatics
Architecture
Aviation
Biomechanics
Building Systems
Civil Engineering
Construction
Dram Shop
Electrical Engineering
Elevator & Escalator
Environmental
Equine Science
Fire & Explosion
Food Safety
Healthcare
Highway Engineering
Human Factors
Mechanical Engineering
Medical Device
Metallurgy
Meteorology
Police Practices
Premises Safety & Security
Product Liability
Questioned Documents
Railroad & Trains
Sports & Recreation
Structural Engineering
Supervision & Education
Tire Failure Analysis
Toxicology
Tree Forensics
Trucking & Warehousing
Vehicle Engineering
Workplace Safety

150 Experts | 16 Locations | More Than 50,000 Cases Since 1987

NEW JERSEY
DEFENSE ASSOCIATION
P.O. BOX 463
LINWOOD, NJ 08221

FPO
INDICIA
GOES HERE

NEW MEMBERS

LAWRENCE BERKELEY
STANLEY FISHMAN
CHRISTOPHER MCINTYRE
SCOTT RUSS
SCOTT SAMANSKY
ANDREW STERN

CONTACT

MARYANNE R. STEEDLE
Executive Director
New Jersey Defense Association
P.O. Box 463
Linwood, NJ 08221
(609) 927-1180
njda@comcast.net

UPCOMING EVENTS

MARCH 23

INSURANCE COVERAGE SEMINAR

8:30 a.m. – 12:30 p.m.
APA Hotel Woodbridge
Iselin, NJ

MAY 4

MEDICAL COLLEGE

8:30 a.m. – 2:30 p.m.
APA Hotel Wood bridge
Iselin, NJ

JUNE 28 - JULY 1

52ND ANNUAL CONVENTION

Whiteface Lodge Resort
Lake Placid, NY

FOLLOW US VISIT WWW.NJDEFENSEASSOC.COM