A PUBLICATION BY THE NEW JERSEY DEFENSE ASSOCIATION / WINTER 2022-23

NEW JERSEY DEFENSE

PRESIDENT'S LETTER

As 2022 comes to a close, I would like to gratefully pause and reflect on the past few months and highlight some of the NJDA's recent accomplishments. The association had a very eventful and successful fall due in no small part to our Executive Director, Maryanne Steedle and her ongoing efforts, and our active members.

The Golf Classic at Copper Hill Golf Club, while initially postponed due to weather, ended up being a huge success with beautiful weather. Thank you to our sponsors and to Chad Moore for organizing the wonderful outing!

In November, our Women and the Law Seminar proceeded both in-person and virtually with a dynamic group of presenters, including judges, discussing cutting-edge issues related to attorney-conducted voir dire, trial technology and the current status of court proceedings. The seminar also included an impactful presentation on diversity, equity and inclusion.

The NJDA's Auto Liability Committee, chaired by Juliann Alicino, partnered with the Insurance Council of New Jersey for the Auto Liability Seminar on November 22, 2022. The well-attended in-person seminar covered legal considerations related to automated vehicles, ethics in the automobile liability context, a presentation on radiological film review, in addition to the NJ Insurance Fair Conduct Act (IFCA) and its impact on UM/UIM claims.

Our philanthropy committee held a virtual food drive to benefit the Community Food Bank of NJ as well as a clothing collection for Dress for Success, continuing the NJDA's annual tradition of giving back to our community, especially during the holiday season.

As part of this year's ongoing membership drive, we have seen an increase in participation throughout the organization. The expertise and experience of our members is unparalleled, so again I encourage you to extend an invite to a new member, attend a board meeting or join a committee and share your wealth of knowledge with us all. As we approach the new year, let's keep the momentum going! Please consider becoming more active with the NJDA and contact me if you have ideas for upcoming seminars or outings.

On behalf of the board members and membership, I am delighted to congratulate our Chairperson of the Board, Ryan Richman, as the NJDA recipient of the New Jersey State Bar Association's 2022 Professionalism Award. This accolade will be presented to Ryan and the other award recipients at an annual luncheon this spring hosted by the New Jersey Commission on Professionalism in the Law. The award is presented to lawyers who are respected by colleagues for their character, competence and exemplary professional behavior, all of which Ryan exemplifies.

Finally, I would like to thank our President Elect, Rob Luthman, for his time and effort in publishing this edition of New Jersey Defense. I encourage you and your colleagues to submit an article for publication to Rob Luthman at: rluthman@weirattorneys.com

On behalf of the entire NJDA board, I want to extend our warmest wishes to you and your loved ones for a joyous holiday season and a happy New Year. I hope that you and your families stay safe and healthy through the winter months. Look forward to seeing you in 2023!

Michelle O'Brien

MICHELLE O'BRIEN, ESQ.

THE LEGAL RISKS OF GREEN BUILDING

BY MARK D. SHIFTON[1]

All construction projects involve elements of legal risk – insurance and indemnity claims, delay claims, and professional negligence claims are simply accepted risks when involved in construction. Green building projects are no exception to this rule, and often involve unique issues that are not present in typical construction projects. Green building projects commonly employ new or untested construction materials, require construction methods that lack significant track records, and ultimate building performance often fails to meet design expectations. As such, green building projects may give rise to entirely new types of legal risk that should be considered and allocated early in the process.

In the past fifteen years, the number of buildings for which green certifications have been sought has grown exponentially, and the growth rate of green building and sustainable construction has far outpaced the growth rate of the construction industry as a whole. As green building projects become increasingly common (and often increasingly required by the federal, as well as state and local governments), the unique legal risks presented by green building projects take on an increase importance.

BUILDING CERTIFICATION ISSUES

Green building projects may create unique issues of building certification that are completely foreign to typical construction projects. Ultimately, in a typical (non-green) construction project the various parties are obligated to deliver a building that may be put to its intended use and that is substantially in conformance with the contract documents. Developers of many green building projects, however, often aim to receive a specific certification from a green building certifying agency. There are many certifications from several such agencies, such as the LEED® certification (from the U.S. Green Building Counsel), or Green Globes (from the Green Building Initiative). These certifications are independent verifications that a building, once substantially complete and put to its intended use, meets certain specified criteria, such as indoor air quality, energy savings, or grey-water usage.
Green building certifications – in addition to providing a certain "cachet" in a competitive market – may allow a Developer to qualify for certain tax breaks or favorable financing terms. Failing to achieve a desired certification, therefore, often carries significant negative financial consequences.
As a result, significant legal issues may arise after a Developer spends significant resources with the intent of developing a building that meets certain green building criteria, yet the building ultimately falls short of receiving that certification.

As a result, Owners failing to receive a certain green building certification may seek to seek to shift the blame to their design professionals and green building consultants for their "failure" to achieve a desired result. In allocating for this risk, Owners may seek to negotiate with design professionals and construction managers to make green building certification a contractual requirement (with concomitant penalties should the building not qualify for the certification). Accordingly, failing to achieve a desired green building certification (which is often an ever-moving targets) can have costly ramifications, and the risk of failure can lead to significant legal issues after substantial completion.

CONTRACTUAL INDEMNITY ISSUES

Green building projects—and the issue of green building certifications in particular—will likely give rise to significant contractual indemnity questions. Indemnity allows a party to shift its liability risk to another party (such as the Owner to the General Contractor, or the General Contractor to its subcontractors), so that the downstream party bears more of the risk. Contractual indemnity and risk transfer issues are significant in any construction project, and are likely to be more complex in green building projects.

In a typical construction project, questions of indemnity (such as which party is ultimately responsible for something, and is thus liable), are generally answered by reference to the contract documents, which usually incorporate the project's specifications. Because green building projects often incorporate novel construction materials and techniques, however, construction materials and techniques are often determined "on the fly," based on fit in the field. Because of this, the original project specifications often do not ultimately reflect the building after substantial completion. As a result, when a building fails to achieve a desired certification, the contract documents do not necessarily shed much light on which parties are responsible, leading to complex questions of responsibility and indemnity.

PROFESSIONAL LIABILITY ISSUES

Finally, as the green building market continues to expand, green building projects are increasingly likely to give rise to significant professional liability issues. As the green building industry is relatively novel (and continues to quickly evolve), issues regarding the standard of care to which design professionals are measured against will be complicated.

In a typical construction project, design professionals are held to a specific standard of care. The American Institute of Architects, for example, holds the standard against which Architects are to be measured to be "consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances." Because green building projects often include novel or untested construction techniques and materials (or at least techniques and materials lacking a significant track record), determining whether the design professional acted with the skill "ordinarily provided" by other professionals may be difficult, if not impossible, and will almost always result in a fact-intensive inquiry. From a design perspective, green building projects often occupy the bleeding edge of the industry, and without a significant track record and history, it can be difficult to determine whether a subsequent failure in building performance is due to professional negligence, or is simply because a novel construction method ultimately did not work.

CONCLUSION

There is little dispute that green building and sustainable development is the future of the construction industry. As a result, the industry is likely to see more (and more complex) claims of contractual indemnity and professional liability. Many of these claims will ultimately be resolved through litigation. As the market continues to expand, increasing efforts should be taken to recognize and allocate these risks early in the process.

---

[1]Mark D. Shifton is a Partner in the Princeton, New Jersey and New York City offices of Gfeller Laurie LLP. Mark represents owners/developers, contractors, and design professionals in construction and professional liability disputes, and advises and represents clients on sustainable development and green building issues. He also represents a variety of clients, including those in the construction and trucking industry, in catastrophic accident claims.

THE NATIONAL ACADEMY OF DISTINGUISHED NEUTRALS

NEW JERSEY CHAPTER

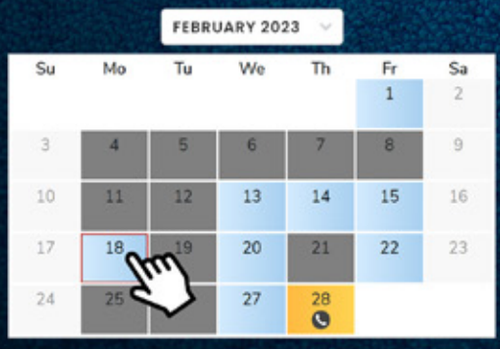
www.NJMEDIATORS.ORG

The following attorneys are recognized in 2022 for

Excellence in the field of Alternative Dispute Resolution

NAME	BASED IN	PHONE	CALENDAR
Robert E. Bartkus	Florham Park	(973) 635-6300	☑
Hon. Raymond Batten (Ret.)	Haddonfield	(856) 795-2121	☐
Maureen Binetti	Woodbridge	(732) 855-6034	☑
Steven J. Blumenthal	Mt. Laurel	(856) 581-4134	☑
Hon. Peter F. Boggia (Ret.)	Clifton	(973) 470-0800	☑
Hon. John M. Boyle	Westfield	(908) 233-6800	☑
Jennifer L. Brandt	Mountainside	(973) 912-9292	☑
Hon. Tom Cavanagh, Jr. (Ret.)	Tinton Falls	(732) 733-6200	☑
Theo Cheng	Princeton Jct.	(917) 459-3669	☑
Hon. R. Benjamin Cohen (Ret.)	Somerset	(908) 333-6208	☑
Hon. Harriet E. Derman (Ret.)	Metuchen	(732) 261-0501	☐
N. Janine Dickey	Bridgewater	(908) 295-7900	☐
Hon. Peter Doyne (Ret.)	Hackensack	(201) 489-9110	☐
Neal M. Eiseman	Roseland	(201) 612-4444	☑
Hon. Mark B. Epstein (Ret.)	New Brunswick	(732) 545-4717	☐
Dennis A. Estis	Iselin	(732) 476-2512	☑
Felicia T. Farber	Wayne	(973) 868-2219	☑
Cataldo F. Fazio	E. Rutherford	(201) 223-9000	☑

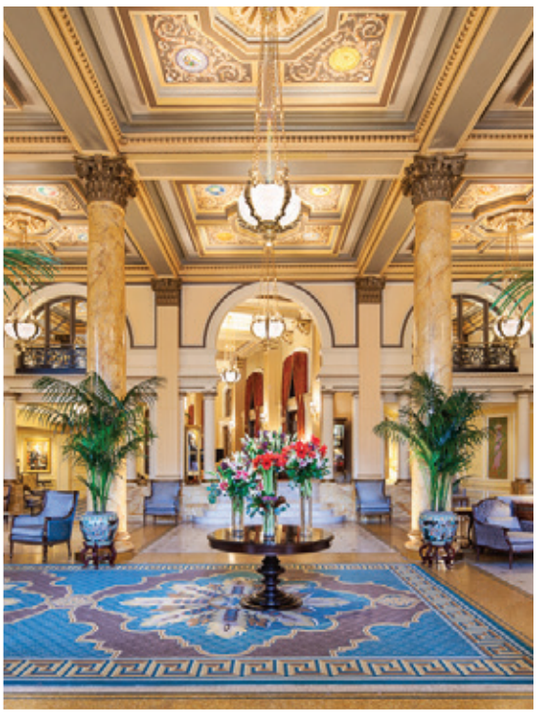
NAME	BASED IN	PHONE	CALENDAR
Hon. Michael Brooke Fisher (Ret.)	Avalon	(856) 332-7741	☐
Angela Foster	N. Brunswick	(732) 821-9363	☐
Sheryl Mintz Goski	Florham Park	(973) 520-8520	☑
Laura A. Kaster	Princeton	(609) 921-0095	☑
Hon. John Keefe (Ret.)	Red Bank	(732) 224-9400	☐
Hon. Donald Kessler (Ret.)	Roseland	(973) 577-1872	☑
Hon. Virginia Long	Lawrenceville	(609) 895-3335	☐
Robert E. Margulies	Jersey City	(201) 333-0400	☑
Suzanne M. McSorley	Lawrenceville	(609) 987-6663	☑
Peter L. Michaelson	Rumson	(732) 758-6500	☐
F. Peter Phillips	Montclair	(973) 509-9667	☑
Terri Reicher	Wayne	(973) 865-1069	☑
Hon. Marguerite Simon (Ret.)	Hackensack	(973) 379-4200	☑
Andrew Smith	Somerville	(908) 246-9766	☑
Richard H. Steen	Princeton	(609) 895-0071	☑
Hon. Barbara B. Wecker (Ret.)	Newark	(973) 643-3700	☐
Hon. Deanne Wilson (Ret.)	Mendham	(908) 879-2013	☑



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 1000 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



SAVE THE DATE / JUNE 22–25, 2023

NJDA 57TH ANNUAL CONVENTION

WILLARD INTERCONTINENTAL / WASHINGTON D.C.

DEFENDING WORKERS' COMPENSATION CLAIMS FOR COVID-19 EXPOSURE

BY RICHARD W. FOGARTY, CHASAN LAMPARELLO MALLON & CAPPUZZO, PC

The COVID-19 pandemic has affected all of us in one way or another. Within the Workers' Compensation system, COVID-19 has not just resulted in interrupted court schedules, virtual appearances, and the occasional unavailability of parties, attorneys, or witnesses. It has also given rise to a significant number of new claims. When an employee files a Claim Petition with the Workers' Compensation Court alleging that they contracted COVID-19 in the course of their employment and that it has resulted in permanent disability, issues arise that are somewhat unique in our system.

Of course, the first issue that must be addressed, as with any matter, is whether the claim is compensable. Under the workers' compensation statutory scheme, injuries and illnesses to employees are compensable when they occur "in the course of employment". According to the Center for Disease Control, COVID-19 is mainly spread from person to person through respiratory droplets produced when an infected person coughs, sneezes, or talks.[1] In many cases, this makes it nearly impossible to determine exactly when and where a person became infected.

The legislature addressed this uncertainty, when N.J.S.A. 34:15-31.11 to 34:15-14 was enacted in 2020. That statute, known as the Essential Employees Act provides that during the COVID-19 public health emergency declared by the Governor, certain workers that fall within the statutory definition of "essential employee" will be entitled to a rebuttable presumption that the disease is work-related and compensable for the purposes of workers' compensation benefits. Notably, the presumption does not apply to an employee working from home at the time of exposure.

This statute is significant, in that the burden of proof is shifted from the petitioner to the respondent, who is now tasked with disproving compensability. As noted in N.J.S.A. 34:15-31.12, the presumption "may be rebutted by a preponderance of the evidence showing that the worker was not exposed to the disease while working in the place of employment other than the individual's own residence." Obviously, this can be somewhat difficult to prove.

As referenced above, the statutory definition of "essential employees" includes public safety workers, first responders (including any fire, police or other emergency responders), workers providing medical and healthcare services, emergency transportation, social care services, and other care services, as well as employees performing functions involving close proximity to the public that are essential to the public's health, safety, and welfare. The statute then contains a catchall category of "any other employee deemed an essential employee by the public authority declaring the state of emergency." N.J.S.A. 34:15-31.11.

The terms of the Essential Employees Act further state that this presumption of compensability remains in place "during the public health emergency declared by an executive order of the Governor". Governor Murphy signed Executive Order 244 in June 4, 2021,

which became effective 30 days thereafter. That Order announced the end of the public health emergency in New Jersey. For this reason, it is imperative that the correct timeframe of the alleged exposure be identified so it can be determined whether or not it occurred while the public health emergency was in effect and the appropriate arguments can be made regarding the presumption.

When defending COVID-19 claims, employers may be able to challenge whether or not an employee is an "essential worker" under the statute. While there will likely be little dispute for some employees specifically identified in the statute (i.e., police, fire, and medical workers), there are some jobs that do not as clearly fall within the terms of the statute. In those instances, it would be recommended to obtain all information possible about the nature of the employment and the services the employee was providing during the alleged exposure.

Next, respondents may be able to challenge that the exposure took place at work through discovery. As stated above, this could prove difficult given the nature of how COVID-19 is contracted. Investigation by the employer or insurance carrier to determine potential exposure at the workplace may clarify whether or not the exposure was likely to have occurred at work. Interrogatories are also a useful tool in assisting in this defense. Of course, under N.J.A.C. 12:235-3.8 interrogatories may only be served without a motion in limited circumstances. One such circumstance is where the employee brings an occupational disease claim. While some petitioners file COVID-19 claims as occupational claim petitions, many do not, categorizing them instead as traumatic claims. Even when occupational interrogatories are available, they are mostly irrelevant to COVID-19 exposure (although they can provide some insight as to the employee's medical condition). Specialized interrogatories can be served and can be tailored to determine potential other sources of exposure, as well as prior medical conditions and treatment rendered. Since these interrogatories are only able to be served with leave of Court, a motion may be necessary if petitioner's counsel is not willing to engage in such discovery voluntarily.

If COVID-19 interrogatories are appropriate, they can be extremely useful in determining the onset of symptoms, so that the employee's work schedule can be crosschecked for reference to determine potential workplace exposure. They can also assist in determining if there was any other potential source of exposure through petitioner's family or another source outside of work.

Once the compensability investigation is complete, a determination must be made as to compensability. In some instances, depending on the results of the investigation and discovery, the respondent may elect to accept the claim based on the investigation conducted and discovery provided. In other cases, particularly where the burden of proof is not shifted and remains on the employee, the circumstances may be such that petitioner will be unable to prove his or her case. Further, in some matters, judicial intervention may be needed to determine if the claim is going to be compensable.

Moving on from the issue of compensability, discovery must then be conducted to determine the employee's medical condition and course of treatment. Early on in the pandemic, many of those who contracted COVID-19 received treatment on an emergency or urgent basis outside of the workers' compensation system. Testing was typically done on this basis as well. Many COVID-19 patients also treated with various specialists, depending on their symptoms, without going through the workers' compensation claims process. This is understandable, considering the uncertainty of the disease, particularly early in the pandemic. Nevertheless, gathering these records for litigation, several years later, is often difficult. However, such discovery is essential and the claims typically cannot proceed until all such records are obtained.

Even in those instances where COVID-19 claims are quickly accepted by the employers and authorized treatment is provided, difficulties can still arise. In 2020, employers and insurance carriers were required to quickly identify and utilize authorized providers in specialties that are not typical used in workers' compensation cases. Instead of orthopedists, pain management specialists, and physical therapists, COVID-19 claims often involve authorized treatment with pulmonologists, cardiologists, psychiatrists, and neurologists. Unfortunately, some of these practitioners are not familiar with treating workers' compensation patients. This unfamiliarity can lead to delays in providing medical records and in submitting treatment notes, work statuses, or prescription requests.

After all authorized and unauthorized providers are identified, and medical records have been obtained, it must be determined if the matter can proceed to permanency examinations as in any other case. Because the long-term effects of COVID-19 are still somewhat unknown, some petitioners' attorneys are reluctant to move their clients' cases on to permanency.

Once treatment has concluded and the parties agree that permanency examinations are warranted, practitioners have to determine which specialties are necessary and what doctors to use. Again, those who routinely handle workers' compensation cases often have multiple experts in common areas such as orthopedics and neurology, from which to choose. Pulmonologists, internists, and psychiatrists who are willing to perform permanency exams and able to do so in a timely manner may be more difficult to come by and may not be as familiar with performing such examinations.

When both parties have obtained their reports and the matter is ready to proceed, settlement negotiations may begin as in any other matter. Although due to the novelty of COVID-19 long-term effects, evaluating such claims can prove difficult. Another complication is that even in instances where the symptoms appear to be relatively mild, some practitioners are hesitant to enter into settlements under Section 20 due to a fear that the employee's symptoms could worsen and would require further treatment in the future. Of course, if the employee's symptoms appear to be resolved and if the court and all parties are willing to do so, this type of resolution would certainly be favorable to the employer, as it would preclude an application to reopen the matter in the future.

As can be seen, COVID-19 claims present some unique challenges in the workers' compensation system and can differ significantly from the typical case. Early investigation and gathering of all available medical records is likely the best course of action in order to determine what discovery is needed. With these items in place, employers can be in the best position to defend compensability where appropriate and to mitigate damages for any potential permanent disability.

---

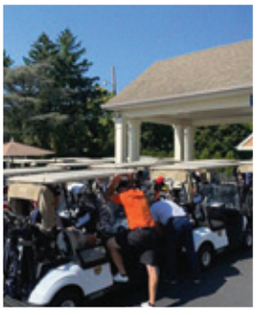
[1]https://www.cdc.gov/dotw/covid-19/index.html

NJDA GOLF CLASSIC

TUESDAY, OCTOBER 11, 2022 • COPPER HILL COUNTRY CLUB

THANK YOU TO ALL OF OUR PARTICIPANTS & SPONSORS!






DINNER SPONSORED BY:

Epstein Ostrove, LLC

LUNCH SPONSORED BY:

John Desch Associates

HOLE SPONSORS:

Cocca & Cutinello, LLP
Consulting Engineers & Scientists, Inc.
D'Arcy Johnson Day, P.C.
ExamWorks
Garvey Ballou, P.A.
FCNA DOVE
Flanagan Barone & O'Brien, LLC
Golden Rothschild Spagnola Lundell Boylan Garubo & Bell, P.C.
Harwood Lloyd, LLC
Hoagland Longo Moran Dunst & Doukas, LLP
Levinson Axelrod, P.A.
LGI Forensic Engineering, P.C.
Novak Trial Services, LLC
Rimkus Consulting Group, Inc.
Tompkins McGuire Wachenfeld & Barry
Varhley Vittor & Associates, LLC
Weir Attorneys
Zimmerer Murray Conyngham & Kunzier

ACCESS DENIED: ACCESS LIMITATIONS WHEN INVESTIGATING CONTAMINATED AREAS

BY: PAOLA TORO, ESQ.

The case of *Solvay Specialty Polymers USA, LLC v. Paulsboro Refining Company, LLC* addresses the extent to which a party, ordered by the New Jersey Department of Environmental Protection ("NJDEP") to perform certain remedial and investigative activities within an area impacted by per- and polyfluoroalkyl substances[1] ("PFAS") contamination, is entitled to obtain access pursuant to *N.J.S.A.* 58:10B-16 to investigate an off-site property suspected of contributing to PFAS contamination.[2]

Plaintiff Solvay Specialty Polymers USA, LLC ("Solvay") owned and operated a manufacturing plant along the Delaware River in West Deptford Township (the "Solvay Facility").[3] Defendant Paulsboro Refining Company, LLC ("PRC") owned and operated a refinery, which previously used fire-fighting foams, a common source of PFAS, located approximately two miles downriver from the Solvay Facility (the "PRC Facility").[4] Since 1990, the Solvay Facility, in the course of Solvay's manufacturing processes, used PFAS chemicals, including perfluorononanoic acid ("PFNA") and perfluorooctanoic acid ("PFOA").[5] In 2013, Solvay began investigating possible PFAS contamination of a potable water supply that could have been attributable, at least in part, to Solvay's Facility.[6]

In March 2019, DEP sent a Directive to Solvay asserting that it is responsible for "[discharging] massive amounts" of PFNA into the surrounding air and water, along with PFOA.[7] The Directive instructed Solvay to (1) reimburse NJDEP for costs that NJDEP has incurred in conducting sampling for PFAS compounds and installing a residential drinking water treatment system in the area surrounding the Solvay Property; (2) take over operation and maintenance of residential water treatment systems in several municipalities, including Greenwich Township, where the PRC Property is located; (3) "[i]dentify the nature, extent, source and location of discharges" of PFNA and PFOA compounds in the air, surface waters, groundwater, and drinking water sources; and (4) sample all potable wells within 500 feet downgradient, 500 feet side gradient, and 250 feet upgradient from each previously impacted potable well.[8] The Directive did not suggest that contaminants from the Solvay Facility may be comingled with any release or discharge of PFAS from any other property.[9]

In response, Solvay requested, pursuant to N.J.S.A. 58:10B-16, that PRC grant it access to the PRC Property to conduct environmental sampling for PFAS.[10] PRC refused to grant access and maintained that under N.J.S.A. 58:10B-16 Solvay must have a legal responsibility for remediating the PRC Property in order to gain access to it for environmental sampling.[11]

On February 12, 2020, Solvay filed a complaint and order to show cause in the Chancery Division seeking an order compelling PRC to give Solvay access to the PRC Property pursuant to N.J.S.A. 58:10B-16.[12] Solvay alleged it needed access to the PRC Property to (1) conduct environmental sampling in order to meet its obligations under the Directive to delineate PFAS contamination in the area of the Solvay Facility; (2) investigate the source of PFAS contamination in groundwater near the PRC Property, which may stem from PRC's use of firefighting foams; and (3) access the PRC Property to investigate whether PFAS contamination has migrated from the property and intermingled with PFAS contamination from the Solvay Facility downgradient from the PRC Property.[13]

Ultimately, the trial court granted Solvay's application and held that Solvay was statutorily entitled to seek access to the PRC Property because Solvay demonstrated that there was a reasonable possibility that PFAS contamination migrated from the PRC Property to the area identified by DEP as contaminated by PFAS from the Solvay Facility.[14] PRC appealed the ruling.

N.J.S.A. 58:10B-16 allows a remediating person physical access to a property that is suspected to have or has contamination so long as the remediating party requires access to conduct the remediation.[15] The Court held that Solvay is a "person who undertakes the remediation of suspected or actual contamination" for purposes of N.J.S.A. 58:10B-16(a)(1) because its purpose is "to investigate, clean up or respond to any . . . suspected . . . discharge of contaminants" from the Solvay

Facility, both on-site and in the surrounding area, and sought to do so through "sampling" and "the gathering of any other . . . relevant information necessary to determine the necessity for remedial action…".[16] The question that remained is whether the trial court's grant of access comported with the statute.

Section (b) of N.J.S.A. 58:10B-16 sets forth the standard that a court must use when determining whether access is warranted. The statute states, in relevant part:

> "[t]he court shall promptly issue any access order sought pursuant to this section upon a showing that (1) a reasonable possibility exists that contamination from another site has migrated onto the owner's property, or (2) access to the property is reasonable and necessary to remediate contamination. The presence of an applicable [DEP] oversight document or a remediation obligation pursuant to law involving the property for which access is sought shall constitute prima facie evidence sufficient to support the issuance of an order." [N.J.S.A. 58:10B-16(b).]

Here, Solvay conceded that subsection (b)(1) of the statute was inapplicable and that the Directive did not allege PFAS migrated from the Solvay Facility to the PRC Property, require Solvay to remediate contamination on the PRC Property, or expressly direct Solvay to conduct sampling on the PRC Property for contamination from the Solvay Facility.[17] Instead, Solvay asserted that in order for it to comply with the Directive, it "is reasonable and necessary" to determine if PFAS compounds from the PRC Property comingled with PFAS compounds from the Solvay Facility in the remediation area.[18] Thus, Solvay sought access to the PRC Property under subsection (b)(2) of statute.

However, the Appellate Court reversed the trial court's holding[19] and found that the trial court's decision was based primarily on its finding that there was a reasonable possibility that contamination migrated from the PRC Property to the area DEP directed Solvay to remediate.[20] In other words, the Court held that the trial court used the wrong standard because the "reasonable-possibility-of-contamination" standard in N.J.S.A. 58:10B-16(b), only applies to access requests under subpart (b)(1) of the statute and not subsection (b)(2).

To gain access to the Property under subsection (b)(2), Solvay had to show that access to the PRC Property "is reasonable and necessary to remediate contamination."[21] Under the Directive, Solvay had to "[i]dentify the nature, extent, source and location of discharges" of PFAS in the air, surface waters, groundwater, and drinking water sources as a result of " its historic use of PFNA [and] PFOA...in New Jersey…" (emphasis added).[22] Ultimately, the Court held that the Directive pertained to Solvay's historic use of its own property, and therefore, it was unnecessary for it to identify other potential sources of PFAS contamination in the area it was directed to remediate. The Court also explained that Solvay could satisfy its obligation under the Directive by identifying the PFAS compounds traceable to the Solvay Facility without invading the private property of other potential sources of PFAS contamination for intrusive environmental sampling.[23] The Court did not find that it was "reasonable and necessary" for Solvay to enter the PRC Property because the Directive did not order PRC to remove contamination from the PRC facility.

Clearly, DEP directives must be adequately drafted so that a remediating party can investigate all use of the contaminants at issue in an area and not limit the directive to the remediating parties' own use. This point is evidenced by the Court's implication that a remediating party must be deputized with DEP's investigatory authority. If the directive is not so drafted then our courts are likely to protect neighboring property owners from intrusive investigation.

Paola Toro is an associate at Maraziti Falcon LLP in Cedar Knolls. Paola focuses her practice on environmental law, including regulatory compliance, transactions and environmental litigation, as well as redevelopment.

[1]PFAS is a group of widely used, long lasting chemicals, the components of which break down very slowly over time. PFAS is commonly found in the blood of people and animals all over the world and are present at low levels in a variety of food products and in the environment. Scientific studies have shown that exposure to some PFAS in the environment may be linked to harmful health effects in humans and animals. PFAS have been commonly used to make nonstick cookware, water-repellent clothing, stain resistant fabrics and carpets, some cosmetics, some firefighting foams, and products that resist grease, water, and oil. See Environmental Protection Agency, PFAS Explained, PFOA, PFOS and Other PFAS, available at https://www.epa.gov/pfas/pfas-explained.; Department of Environmental Protection, PFAS 101, PFAS, available at https://www.nj.gov/dep/pfas/about.html.

[2]*Solvay Specialty Polymers USA, LLC v. Paulsboro Refining Company, LLC*, No. A-3981-19 (N.J. Super. Ct. App. Div. Sept. 23, 2022) ("Solvay").

[3]Solvay at 2.

[4]*Id.*

[5]*Id.*

[6]*Id.* at 3.

[7]*Id.* at 4.

[8]*Id.* at 4-5.

[9]*Id.* at 5.

[10]*Id.* at 6.

[11]*Id.*

[12]*Id.*

[13]*Id.*

[14]*Id.* at 8

[15]Under *N.J.S.A.* 58:10B-16, "Any person who undertakes the remediation of suspected or actual contamination and who requires access to conduct such remediation on real or personal property that is not owned by that person, may enter upon the property to conduct the necessary remediation if there is an agreement, in writing, between the person conducting the remediation and the owner of the property authorizing the entry onto the property. If, after good faith efforts, the person undertaking the remediation and the property owner fail to reach an agreement concerning access to the property, the person undertaking the remediation shall seek an order from the Superior Court directing the property owner to grant reasonable access to the property and the court may proceed in the action in a summary manner." Additionally, *N.J.S.A.* 58:10B-1 defines a "Person" as "[a] . . . corporation, company, . . . firm, or other private business entity…" and "Remediation" or "remediate" as "all actions to investigate, clean up, or respond to any known [or] suspected . . . discharge of contaminants, including the preliminary assessment, site investigation, remedial investigation, and remedial action, or any portion thereof…". The statute also provides that a "[r]emedial investigation" means "a process to determine the nature and extent of a discharge of a contaminant at a site or a discharge of a contaminant that has migrated or is migrating from the site and the problems presented by a discharge, and may include…sampling…and the gathering of any other sufficient and relevant information necessary to determine the necessity for remedial action and to support the evaluation of remedial actions if necessary…". *N.J.S.A.* 58:10B-1.

[16]*Id.* at 13; See also N.J.S.A. 58:10B-1.

[17]*Id.* at 14.

[18]*Id.*

[19]During the pendency of this appeal, Solvay commenced a civil action against PRC in the Law Division seeking past and future cleanup and removal costs under the New Jersey Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 to -23.24, and a declaratory judgment as to PRC's liability related to the alleged migration of PFAS from the PRC Property to areas remediated by Solvay.

[20]*Id.* at 15.

[21]*N.J.S.A.* 58:10B-16(b)(2).

[22]*Id.* at 16.

[23]*Id.*

DEFENSE WINS

Hua v. Hager: Trial June 13, 2022 - June 14, 2022. Liability only trial. MVA, plaintiff traveling behind defendant on a two lane road attempted to pass on the left side of the defendants vehicle in an area where passing was permitted. Defendant attempted to make a left turn into his driveway just as the plaintiff attempted to pass. Plaintiff claimed the defendant slowed his vehicle and pulled over to the right side of the roadway signaling that he was acquiescing to the plaintiff passing on the left side. The defendant claimed that he did not pull over to the right and was slowing in anticipation of making his left turn. No cause verdict on liability. Defense attorney Robert J. Ritacco, Esq. of Leyden, Capotorto, Ritacco, Corrigan & Sheehy, PC, Toms River, NJ.

Joseph v. Kumar: Trial July 12, 2022 – July 14, 2022. Limited threshold matter. Plaintiff alleged permanent spinal injuries related to the rear-end motor vehicle accident. No cause verdict on permanency. Defense attorney Kevin F. Sheehy, Esq. of Leyden, Capotorto, Ritacco, Corrigan & Sheehy, PC, Toms River, NJ.

Timbra v. Scarola: Trial August 2, 2022 – August 4, 2022. Limited threshold matter. Plaintiff involved in two accidents. Settled the second accident claim. No pre-existing history. Plaintiff alleged cervical and lumbar injury inclusive of five herniations and underwent facet and epidural injections and radiofrequency ablation with recommendations for future treatment. MRI's taken before second accident were reported as revealing herniations, however, all pain management injections were performed after the second accident. Defense argued pre-existing degenerative changes and that plaintiff sustained a non-permanent sprain. No cause verdict on permanency. Defense attorney Robert J. Ritacco, Esq. of Leyden, Capotorto, Ritacco, Corrigan & Sheehy, PC, Toms River, NJ.

Valdez-Martinez, MID-L-5894-17. Trial resulting in directed verdict on August 23, 2022. Plaintiff, a roofer, fell thirty feet through a translucent skylight the morning that patch repair work was to have begun suffering spinal injuries and paraplegia. At the close of Plaintiff's case defendants moved for involuntary dismissal pursuant to Rule 4:40-1 arguing that no duty of care for the defendant property owner because defendant did not control the means or methods of the contractor's work and because Plaintiff's employer – with whom the property owner had a long-term business relationship - was not an incompetent contractor. Further, that Plaintiff's fall resulted from the very hazard created by performing the contracted work. See Muhammad v. New Jersey Transit, 176 N.J. 185 (2003); Tarabokia v. Structure Tone, 429 N.J. Super. 103 (App. Div. 2012). As to the property manager, defendants argued plaintiff's employer was actually a "prime" contractor and the only contractor performing work on the roof. See 29 CFR 1926.16(b). Further, that the property management agreement that Plaintiff's expert relied upon to assert the existence of a duty as a controlling employer did not apply and failed to contain the required "explicit" contractual language with respect to the power to correct safety violations or force others to do so, to make the Multi-Employer Citation Policy applicable. See CPL 02-00-124. Plaintiff is appealing the directed verdict ruling. Defense counsel Kennedys CMK LLP (Teresa Cinnamond, Esq. and Adam Kenny, Esq.), Riker Danzig, LLP, and O'Toole Scrivo, LLC (Craig Compoli, Esq. and Ed Ryan, Esq.)

Gutman v. Delia: Trial September 13, 2022 – September 15, 2022. Limited threshold matter. Plaintiff claimed permanent neck and low back injuries related to this rear-end motor vehicle accident. Defendant claimed that plaintiff stopped short contributing to the accident. Permanency was also disputed. The jury found that the defendant was not negligent. Defense attorney Kevin F. Sheehy, Esq. of Leyden, Capotorto, Ritacco, Corrigan & Sheehy, PC, Toms River, NJ.

Giunta v. Walther: Trial September 19, 2022 – September 22, 2022. Limited threshold matter. Plaintiff claimed permanent spinal injuries related to the rear-end motor vehicle accident. No cause verdict on permanency. Defense attorney Kevin F. Sheehy, Esq. of Leyden, Capotorto, Ritacco, Corrigan & Sheehy, PC, Toms River, NJ

Jackson, De'Aja v. Cuino: MER-L-2204-19. Trial October 17, 2022 – October 20, 2022. Limited threshold matter. Plaintiff, 18 years old at the time of the accident, alleged permanent neck injuries with disc pathology and radiculopathy. Verdict: 7-0 no cause on permanency. Length of deliberations: Approx. 20 minutes. Defense attorney Rob Luthman, Esq. of Weir Attorneys, Ewing, NJ.

LITIGATION SURROUNDING "JAB OR JOB" MANDATORY VACCINATION POLICIES

BY: NICOLE S. CRODDICK, ESQ.[1]

Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, and the New Jersey Law Against Discrimination prohibit harassment and discrimination in employment against enumerated legally protected classes. These protected classes include both disability and religion. The laws further mandate employers to attempt to provide employees with "reasonable accommodations" for either disability or religious reasons. A "reasonable accommodation" is an employee-requested job adjustment, exception, modification or change made to a job, the work environment, the way a job is done, or the processes, rules, practices and policies that are implemented and enforced in a workplace. Employees' request "reasonable accommodations," in oral or written form, when they believe that an employment modification or change is necessary for either "sincerely held religious beliefs" (practices or observances) or for certain medical conditions (disability reasons).

Once an employee requests a "reasonable accommodation," this does not mean that the employer must automatically provide the requested modification. That said, it does mean that the employer and employee must begin the legally required interactive process. Once an employee takes the first step in the process, by requesting a "reasonable accommodation," both the employee and employer must engage in an "interactive process" to endeavor to find a "reasonable accommodation" that would be both suitable for the employee's religious or medical needs as well as the performance of the essential requirements of the job, while balancing the hardship such an accommodation would place on the employer. An employer must grant the agreed upon "reasonable accommodation" as long as doing so would not cause the employer an "undue hardship."

During the COVID-19 pandemic, once COVID-19 vaccines were readily available, through the present time, numerous public and governmental agencies and private companies required employees to be "fully vaccinated" against the COVID-19 virus as per CDC guidelines. This mandatory vaccination requirement was at times rooted in various state, local and federal laws, but was at other times simply based on an employer's implemented policy. The purpose of mandatory COVID-19 vaccination policies is to protect the health and safety of all employees, clients, customers, and visitors from COVID-19 and to prevent / limit the spread of the COVID-19 virus.

In response to employer implemented mandatory vaccination requirement policies and the corresponding anti-discrimination laws, employees could apply for an exemption by way of a "reasonable accommodation" from the mandatory vaccination policy for religious or medical reasons. Often the reasonable accommodation would be a request for an exemption from the vaccination policy coupled with additional health and safety requirements for employees to reduce the spread of COVID-19. Examples of additional measures could include: weekly COVID-19 testing; the wearing of a face covering; and working from home. The "reasonable accommodation" could be requested by the employee for either a medical condition or a "sincerely held religious belief." Generally, once the "reasonable accommodation" was requested (for example, an exemption to the vaccine mandate), the employee was required to fill out a form formally requesting the accommodation / exemption. Thereafter, the employer and the employee should engage in an informal and interactive discussion to see if an accommodation was possible, reasonable and appropriate without causing the employer "undue hardship." In the end, the employer could either grant or deny the employee's request for a reasonable accommodation / exemption to the policy.

Requests for reasonable accommodations, in the form of exemptions based on medical conditions (disabilities) were generally granted, by most employers, without much thought or concern. This is because such requests were usually accompanied by supporting medical documentation from a treating physician that supported the claim that the COVID-19 vaccine would pose a health risk to the employee because of their particular medical condition / disability. An example would be if an individual could not be administered the vaccine because the employee was allergic to certain ingredients in it.

On the other hand, numerous employers struggled with requests for exemptions based on "sincerely held religious beliefs." There are several reasons for the challenges employers faced with these requests. One reason is because the request for a reasonable accommo-

dation is for a "sincerely held religious belief," even if the religious belief is not "accurate." For example, certain employees claimed that they did not want to be vaccinated because the vaccine, or the vaccine prototypes, contained cells from unborn fetuses. Another complexity is because religious reasonable accommodation / exemption requests are personal in nature and did not have to be supported by documentation from a place of worship or a religious leader. These accommodation requests would often contain reasons for the request accompanied by personal beliefs and quotes from the bible. An example may include the bible verses such as: "my body is a temple that should not receive foreign or unnatural substances" and "God will protect the body from illness."

Such religious-based "reasonable accommodation" requests were often scrutinized by employers due to the sincerity of the religious belief. That said, the majority of such requests were granted, after the proper interactive process was followed, because of the personal nature of the sincerely held religious belief.

Once vaccination mandates became routine, especially in health care and higher education fields, there were various employers, including Indiana University, United Airlines and a local pharmaceutical company, Bristol-Meyers Squibb ("BMS") that denied "reasonable accommodation" requests based on "sincerely held religious beliefs." As such, those employees who refused the COVID-19 vaccination and whose request for a "reasonable accommodation" were denied, were terminated from employment. A number of those terminated employees filed class action lawsuits against their employer.

The legal trends that correspond with COVID-19 vaccination litigation are that the majority of the lawsuits are based on the employer's response to religious objections to the vaccine mandate, where the desired relief was a court-ordered injunction to stop enforcement of the vaccination policy. The majority of the courts did not grant the requested injunctions. This trend undoubtedly sent the message to many private-sector employers that they do not have to fear liability for rejecting "reasonable accommodation" requests that they believe lack merit or would cause an undue hardship. Despite this message, it is clear that lawsuits still cost significant money to defend and / or settle and that the informal, interactive process must be followed by both employer and employee in all cases.

In July 2022, a $10.3 million legal settlement was approved for lead plaintiffs / former employees, in a class action lawsuit. Those employees were previously denied religious accommodations / exemptions from mandatory COVID-19 vaccination requirements by healthcare employer Illinois-based NorthShore University HealthSystem. Those employees were then terminated because the employer did not grant them a "reasonable accommodation" by way of an exemption to the mandatory vaccination requirement and they did not get vaccinated. In the NorthShore case, the plaintiffs alleged that the employer made a general statement that it would deny any religious exemption requests based on "aborted fetal cell lines" and thereafter only permitted remote work as a reasonable accommodation where feasible. This settlement included the option for the employee's rehire, which was approved by a judge in the U.S. District court for the Northern District of Illinois.

The significance of this class action settlement is that it was the first-class action settlement in the U.S. against a private employer who mandated a COVID-19 vaccine policy (informally known as "jab or job" policies). The practical take away, and strong warning, is that employers must follow the legal mandates of Title VII and other anti-discrimination laws. Specifically, employers cannot implement blanket policies that mandate the COVID-19 vaccine or be terminated. Rather, employers must individually consider each particular request for a religious or medical reasonable accommodation / exemption on a case-by-case basis guided by the applicable laws and policies.

Recently, and in our own jurisdiction, litigation continues against pharmaceutical giant Bristol-Meyers Squibb ("BMS") surrounding their COVID-19 vaccination mandate. The lawsuit alleges religious discrimination and failure to accommodate under Title VII of the Civil Rights Act and the New Jersey Law Against Discrimination. In the BMS case, former BMS employees (originally 4 employees but that number is now increasing) allege that BMS failed to follow the informal interactive reasonable accommodation process by refusing to entertain vaccination exemption requests based on sincerely held religious beliefs. The employees opposed vaccination based on a variety of religious reasons including alleged links to aborted fetus and stem cells; Born Again Christian religious tenets; and the bible passage indicating "my body is my temple." The employees allege that BMS did not engage in the required back and forth discussion with the employee to ascertain if a "reasonable accommodation" would be possible. The plaintiffs stated that instead, BMS advised them that they failed to proffer a sincerely held religious belief that would qualify for a reasonable accommodation / policy exemption. The plaintiffs additionally alleged that BMS asserted that there was not a possible "reasonable accommodation" that could be implemented which would enable the employees to perform their essential job duties; would not risk the health and safety of the workforce and those they serve; and would not cause BMS an undue hardship (unreasonable expense / operational hardship). The essence of the BMS lawsuit is not whether or not the religious exemption request was valid, but rather whether BMS followed the legally-required interactive process and did not even try to find a "reasonable accommodation" for the former employees. Legal precedent dictates that employers should not judge the personal and sincere nature of the employee's religious beliefs. Therefore, the central legal question is, did the employer endeavor to find a "reasonable accommodation" using the interactive process or simply resist the request.

It is predicted that we will be seeing many more similar lawsuits in the near future as the U.S. Equal Employment Opportunity Commission is finally issuing the required "right to sue letters" to plaintiffs.

What can we as employers learn from all of this? First, COVID-19 litigation is far from over, but rather is just beginning, so employers would be prudent to follow the legal trends. Next, employers can implement mandatory COVID-19 vaccination policies, but said policies must be consistently applied and must allow for reasonable accommodation / exemption requests for sincerely held religious beliefs and for medical reasons. Finally, employers are required to have a "reasonable accommodation" request process in place in which the employer considers each request individually and each request is subject to an informal and interactive process, in which the employee and employer endeavor to ascertain in ernest if a reasonable accommodation can be implemented.

---

[1]Nicole S. Croddick, Esq. is Of Counsel in the Labor and Employment Law Department of Davison, Eastman, Muñoz, Paone, P.A., with offices in Freehold and Toms River, NJ

CONSTRUCTION
(DEFECTS, DELAYS, FAILURES, INJURIES)
ELECTRICAL (ACCIDENTS, INJURIES, EQUIPMENT
FAILURES, FIRES)
EXPLOSIONS
FIRES
MARINE ENGINEERING
MECHANICAL
(ACCIDENTS, INJURIES, DEFECTS, FAILURES)
METALLURGICAL CONSULTATION AND TESTING
PROPERTY AND CASUALTY INVESTIGATIONS
STRUCTURAL ENGINEERING
FIRE PROTECTION SYSTEMS

LGI FORENSIC ENGINEERING, P.C.
Engineers, Architects, Consultants, and Investigators

Steve Pietropaolo,
MS, P.E., CFEI, DFE
Board Certified Diplomate in
Forensic Engineering
President & CEO

914-670-0208
getinfo@lgiforensic.com
lgiforensic.com

Licensed Engineers and Investigators
for Insurance, Legal, and Product
Defects.
Fully Equipped & Accredited Lab.

THE EXPERTS
Robson Forensic

Robson Forensic is a multidisciplinary Forensic Firm offering a broad range of specialty experts. The majority of our technical experts are full-time employees; this is an important distinction for both our experts and our clients.

www.robsonforensic.com | 800.631.6605

Jessica Maddii
Business Development
jmaddii@robsonforensic.com
973.527.1783

AREAS OF EXPERTISE

Admiralty / Maritime
Aquatics
Architecture
Aviation
Biomechanics
Civil Engineering
Construction Claims
Crash Reconstruction
Electrical Engineering
Elevator & Escalator
Environmental
Equine Science
Facilities Engineering
Fire & Explosion
Healthcare
Highway Engineering
Human Factors
Machine Guarding
Mechanical Engineering
Medical Device & Pharma
Metallurgical Science
Meteorology
Police Practices
Premises Safety
Product Liability
Questioned Documents
Railroad & Trains
Sports & Recreation
Structural Engineering
Supervision & Education
Toxicology
Trucking & Warehousing
Vehicle Engineering
Workplace Safety

O'TOOLE'S COUCH:
HERE COMES DA JUDGE

More than 40 years ago (how is that possible?) my family and I moved to Whippany. I knew from the outset that this was where I wanted to make our home. After a few months, I started to attend Township Meetings to get the lay of the land and decide where my talents would fit the best. Soon after, I became a member of the Hanover Sewerage Authority, where we oversaw the administrative duties of the sewerage plant. This Authority was made up of all volunteers. I learned a great deal and made manylife-long friends. After several years of serving in this capacity, I was approached by the Mayor and asked to be the Township Prosecutor. I was honored and knew this would be a challenging undertaking.

Ultimately this experience led to me being appointed as Township Municipal Judge. I was being asked to fill the shoes of the Honorable August Maffei, who served as a good example of what a municipal judge's responsibilities should be, and the demeanor with which they should be carried out. I tried to follow this credo for the 35 years of my judicial appointment. Judges attend mandatory meetings both locally and state-wide to share our experiences and to acquire mandatory continuing education credits.

As the years moved on, I found it difficult to continue this role, which was no longer done in person. Virtual and zoom techniques were put in place and seem to be continuing. It was difficult to get a feel for the parties involved when they were not before me in person.

Certainly retiring from this appointment has been difficult. I felt like I was making a difference in people's lives. Don't get me wrong, police calls requesting arrest warrants at 2 in the morning were hard to take. As a new judge, once the conversations were completed with the arresting officer and the other parties involved, I would attempt to go back to sleep; which wasn't always possible. Unfortunately, there were so many variables in these situations, and I always had a strong desire to protect those involved.

One case that immediately comes to mind is when I received an early morning call from the police requesting protection for a young woman whose father wanted to take her back to their homeland for a prearranged marriage. She definitely wanted no part in this, but her father wouldn't take no for an answer. How to proceed legally? Who knew? I certainly never had this request before. I contacted the Sheriff's Office for their support. The solution was to put her in protective custody. At first she was kept in Hanover Township and then was transferred to Social Services. This may have been unorthodox, but it did guarantee her protection and safety. The young woman was extremely thankful. Talk about being able to make a difference in someone's life.

Although these tasks were often difficult, I would willingly do it all again.

GOD BLESS YOU ALL!

OFFICERS & COMMITTEES

OFFICERS

CHAIRPERSON OF THE BOARD
Ryan Richman, Esq.
McCarter & English, LLP
100 Mulberry Street
Newark, NJ 07102
973-622-4444
rrichman@mccarter.com

PRESIDENT
Michelle M. O'Brien, Esq.
Flanagan, Barone & O'Brien, LLC
4 Essex Avenue, Suite 200
P.O. Box 259
Bernardsville, NJ 07924-0259
908-306-6707
mobrien@fbolawfirm.com

PRESIDENT-ELECT
C. Robert Luthman, Esq.
Weir Attorneys
2109 Pennington Road
Ewing, NJ 08638
609-594-4000
rluthman@weirattorneys.com

SECRETARY-TREASURER
Katelyn E. Cutinello, Esq.
Cocca & Cutinello, LLP
36 Cattano Avenue, Suite 600
Morristown, NJ 07960
973-828-9000
kcutinello@coccalaw.com

VICE PRESIDENTS
NORTHERN REGION
Timothy R. Freeman, Esq.
Tanenbaum Keale, LLP
100 Mulberry Street, Ste 1301
Newark, NJ 07201
973-242-8099 tfreeman@tktrial.com

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

SOUTHERN REGION
Amy L. Hansell, Esq.
Ward Greenberg
701 East Gate Drive, Ste. 220
Mt. Laurel, NJ 08054
856-866-8920
ahansell@wardgreenberg.com

DIRECTORS

2020 - 2023
Brian J. Chabarek, Esq.
Davison Eastman Muñoz Paone, P.A.
100 Willow Brook Road, Suite 100
Freehold, NJ 07728
732-462-7198
bchabarek@respondlaw.com

Robert M. Cook, Esq.
Goldberg Segalla
301 Carnegie Center Drive
Suite 200, Princeton, NJ 08540
609-986-1380
rcook@goldbergsegalla.com

2021 - 2024
Juliann M. Alicino, Esq.
Hoagland Longo Moran Dunst & Doukas, LLP
40 Paterson Street
New Brunswick, NJ 08902
732-545-4717
jalicino@hoaglandlongo.com

Kelly P. Corrubia, Esq.
Hall Booth Smith, PC
15 E. Midland Ave., Suite 3A
Paramus, NJ 07652
973-881-1101
kcorrubia@hallboothsmith.com

2022 - 2025
Nicole R. Cassata, Esq.
Chasan Lamparello Mallon & Cappuzzo, P.C.
300 Lighting Way
Secaucus, NJ 07094
201-348-6000
ncassata@chasanlaw.com

Katherine Lyons, Esq.
NJ Manufacturers Insurance Co.
301 Sullivan Way
Trenton, NJ 08649
609-883-1300
klyons@njm.com

DRI STATE REPRESENTATIVE
Michael A. Malia, Esq.
Peri & Stewart LLC
2150 Highway 35, Suite 250
Sea Girt, NJ 08750
973-521-7426
mmalia@peristewart.com

COMMITTEES

AMICUS CURIAE
Stephen J. Foley, Jr., Esq.
Campbell Foley Delano & Adams, LLC
1599 Highway 34, Bldg. E
P.O. Box 1570, Wall, NJ 07719
732-775-6520
sfoleyjr@campbellfoley.com

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

CONVENTION
Michelle M. O'Brien, Esq.
Flanagan, Barone & O'Brien, LLC
4 Essex Avenue, Suite 200
P.O. Box 259
Bernardsville, NJ 07924-0259
908-306-6707
mobrien@fbolawfirm.com

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

FINANCE
Katelyn E. Cutinello, Esq.
Cocca & Cutinello, LLP
36 Cattano Avenue, Suite 600
Morristown, NJ 07960
973-828-9000
kcutinello@coccalaw.com

LEGISLATIVE
Katherine Lyons, Esq.
NJM
301 Sullivan Way
West Trenton, NJ 08628-3496
609-883-1300
klyons@njm.com

LONG TERM PLANNING
Kevin J. DeCoursey, Esq.
Voss, Nitsberg, DeCoursey & Hawley
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
301 Carnegie Center Dr., Suite 200
Princeton, NJ 08540
609-986-1320
mleegan@goldbergsegalla.com

MEMBERSHIP
Michael J. Leegan, Esq.
Goldberg Segalla
301 Carnegie Center Dr., Suite 200
Princeton, NJ 08540
609-986-1320
mleegan@goldbergsegalla.com

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

NEW JERSEY DEFENSE
C. Robert Luthman, Esq.
Weir Attorneys
2109 Pennington Road
Ewing, NJ 08638
609-594-4000
rluthman@weirattorneys.com

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

Michelle M. O'Brien, Esq.
Flanagan, Barone & O'Brien, LLC
4 Essex Avenue, Suite 200
P.O. Box 259
Bernardsville, NJ 07924-0259
908-306-6707
mobrien@fbolawfirm.com

Amanda M. Rochow, Esq.
Lamb Kretzer, LLC
110B Meadowlands Pkwy, Ste. 201
Secaucus, NJ 07094
(201)798-0400 Ext. 221
amr@lambkretzer.com

SEMINARS
Gregory F. McGroarty, Esq.
Goldberg Segalla
1037 Raymond Boulevard, Ste 1010
Newark, NJ 07102-5423
973-681-7035
gmcgroarty@goldbergsegalla.com

SPONSORSHIPS
Gregory F. McGroarty, Esq.
Goldberg Segalla
1037 Raymond Boulevard, Ste 1010
Newark, NJ 07102-5423
973-681-7035
gmcgroarty@goldbergsegalla.com

Mario J. Delano, Esq.
Campbell Foley Delano & Adams, LLC
1599 Highway 34, Bldg. E
P.O. Box 1570, Wall, NJ 07719
732-775-6520
mdelano@campbellfoley.com

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

TRIAL COLLEGE
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

C. Robert Luthman, Esq.
Weir Attorneys
2109 Pennington Road
Ewing, NJ 08638
609-594-4000
rluthman@weirattorneys.com

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
Samuel A. James, Esq.
McCarter & English LLP
100 Mulberry Street
Newark, NJ 07102
973-622-4444
sjames@mccarter.com

SUBSTANTIVE COMMITTEE

CHAIRS AND VICE CHAIRS

ADR
Michael A. Malia, Esq., Chair
Peri & Stewart LLC
2150 Highway 35, Suite 250
Sea Girt, NJ 08750
973-521-7426
mmalia@peristewart.com

APPELLATE PRACTICE
Kelly P. Corrubia, Esq.
Hall Booth Smith, PC
15 E. Midland Ave., Suite 3A
Paramus, NJ 07652
973-881-1101
kcorrubia@hallboothsmith.com

Anthony Cocca, Esq., Co-Chair
Cocca & Cutinello, LLP
36 Cattano Avenue, Suite 600
Morristown, NJ 07960
973-828-9000
acocca@coccalaw.com

AUTOMOBILE LIABILITY
Juliann M. Alicino, Esq., Chair
Hoagland Longo Moran Dunst & Doukas, 40 Paterson Street
New Brunswick, NJ 08903
732-545-4717
jalicino@hoaglandlongo.com

CANNABIS LAW COMMITTEE
Elizabeth A. Dalberth, Esq., Chair
Sweeney & Sheehan, P.C.
216 Haddon Ave., Ste 300
Westmont, NJ 08108
856-869-5600
Elizabeth.dalberth@sweeneyfirm.com

CONSTRUCTION LAW
Michael J. Leegan, Esq., Chair
Goldberg Segalla
301 Carnegie Center Dr., Suite 200
Princeton, NJ 08540
609-986-1320
mleegan@goldbergsegalla.com

Mark D. Shifton, Esq., Co-Chair
Seiger Gfeller Laurie LLP
100 Overlook Center, Second Floor
Princeton, New Jersey 08540
609-375-2653
mshifton@sgllawgroup.com

EMPLOYMENT LAW
Brian J. Chabarek, Esq., Chair
Davison Eastman Muñoz Paone, P.A.
100 Willow Brook Road, Suite 100
Freehold, NJ 07728
732-462-7170
bchabarek@respondlaw.com

Leslie A. Koch, Esq., Co-Chair
Methfessel & Werbel
2025 Lincoln Highway, Suite 200
P. O. Box 3012
Edison, NJ 08817
732-248-4200
Koch@methwerb.com

ENVIRONMENTAL LAW
Joanne Vos, Esq., Chair
Maraziti Falcon LLP
240 Cedar Knolls Road, Suite 301
Cedar Knolls, NJ 07927
973-912-6801
jvos@mfhenvlaw.com

Jacob Grouser, Esq., Co-Chair
Hoagland Longo Moran Dunst & Doukas LLP
40 Paterson Street
New Brunswick, NJ 08902
732-545-4717
jgrouser@hoaglandlongo.com

FRAUD
Michael A. Malia, Esq., Chair
Peri & Stewart, LLC
2150 Highway 35, Suite 250
Sea Girt, NJ 08750
973-521-7426
mmalia@peristewart.com

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

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

Ellen Camburn, Esq., Co-Chair
Chasan Lamparello Mallon & Cappuzzo
300 Lighting Way
Secaucus, NJ 07094
201-348-6000
ecamburn@chasanlaw.com

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

PREMISES LIABILITY
Amy L. Hansell, Esq., Chair
Ward Greenberg
701 East Gate Drive, Suite 220
Mt. Laurel, NJ 08054
856-866-8920
ahansell@wardgreenberg.com

Laura E. Nicolette, Co-Chair
Zarwin Baum
30 Montgomery St., Ste 960
Jersey City, NJ 07302
267-273-7386
lenicolette@zarwin.com

PRODUCTS LIABILITY
Natalie H. Mantell, Esq., Chair
McCarter & English LLP
100 Mulberry Street
Newark, NJ 07102
973-622-4444
nmantell@mccarter.com

Robert M. Cook, Esq.,
Immediate Past Chair
Goldberg Segalla
301 Carnegie Center Dr., Suite 200
Princeton, NJ 08540
609-986-1300
rcook@goldbergsegalla.com

H. Lockwood Miller, III, Esq., Vice-Chair
Goldberg Segalla
301 Carnegie Center Dr., Suite 200
Princeton, NJ 08540
609-986-1300
hmiller@goldbergsegalla.com

PROFESSIONAL LIABILITY
Herbert Kruttschnitt, III, Esq., Chair
Dughi Hewit & Domalewski, PC
340 North Avenue
Cranford, NJ 07106 908-272-0200
hkruttschnitt@dughihewit.com

Katelyn E. Cutinello, Esq., Co-Chair
Cocca & Cutinello LLP
36 Cattano Avenue, Suite 600
Morristown, NJ 07960
973-828-9000
kcutinello@coccalaw.com

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

TRUCKING LAW
Rey O. Villanueva, Esq., Chair
Golden, Rothschild, Spagnola, Lundell, Boylan, Garubo & Bell, P.C.
1011 Route 22 West, Suite 300
PO Box 6881
Bridgewater, NJ 08807
908-722-6300
rvillanueva@grsl.com

WORKERS' COMPENSATION
Michele G. Haas, Esq., Chair
Malamut & Associates
457 Haddonfield Road
Cherry Hill, NJ 08002
856-424-1808
mhaas@malamutlaw.com

Richard W. Fogarty, Esq., Co-Chair
Chasan Lamparello Mallon & Cappuzzo PC
300 Lighting Way,
Secaucus, NJ 07094
201-348-6000
rfogarty@chasanlaw.com

877.800.5888

Support Claim Services™

RAISING THE BAR – REDUCING THE COST

Our mission at Support Claim Services (SCS) is to provide efficient medical cost containment services that utilize our state of the art technological systems in order to maximize savings for our clients. SCS is committed to raising the bar of quality service while reducing the cost of medical claims. Our dedicated medical management team and staff provide national service for No-Fault, Liability and Workers Compensation Claims in the area of Bill Review, Document Management Solutions, Functional Capacity Evaluations, Independent Medical Examinations, Peer Reviews (Medical Records Review, Surgical Review), MRI Referral Services and Radiology Reviews throughout the United States.

WE PROUDLY SUPPORT

THE NEW JERSEY DEFENSE ASSOCIATION

Support Claim Services
125 BAYLIS RD. SUITE 100 MELVILLE NY 11747
SUPPORTCLAIMSERVICES.COM

URAC
ACCREDITED
INDEPENDENT REVIEW
ORGANIZATION

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

If recipient is no longer at this address, please do not black out the recipient's name before returning to sender.

CONTACT

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

FOLLOW US

VISIT US

WWW.NJDEFENSEASSOC.COM

SAVE THE DATE / JUNE 22–25, 2023

NJDA 57TH ANNUAL CONVENTION

WILLARD INTERCONTINENTAL / WASHINGTON D.C.

NEW MEMBERS

ALAN ALBERT
JOHN CROOT
SUZANNE MAYER ASPIR
GEORGE C. GODFREY III