

A PUBLICATION BY THE NEW JERSEY DEFENSE ASSOCIATION / SUMMER 2020

NEW JERSEY DEFENSE



5

Can We Talk?

8

The MCS-90 Endorsement –
A Safety Net For When A
Motor Carrier Has No Other
Insurance

14

Workers' Comp Update: The
NJ Supreme Court Once
Again Affirms an Employers'
Subrogation Rights

18

O'Toole's Couch: A Science
Fiction Movie

Exponent®

Engineering and Scientific Consulting

Engineering and scientific consulting firm specializing in the investigation, analysis and prevention of accidents and failures, as well as third party support for issues related to products, process, health, and the environment.

Explore Exponent

www.exponent.com



Exponent works on a variety of litigation matters including:

- Product Liability
- Personal Injury
- Construction Defect/Delay
- Patent Infringement
- Environmental/Toxic Tort
- Insurance Claim
- Food Safety

For more information, contact:

Bette McKenzie

Client Services Manager

508.652.8582 • bmckenzie@exponent.com

Exponent is certified to ISO 9001



PRESIDENT'S LETTER



Dear New Jersey Defense Association members and New Jersey's respected Judiciary,

As I prepare this final, President's letter on Juneteenth, I cannot help but reflect on Martin Luther King, Jr.'s powerful words, "If you can't fly then run, if you can't run then walk, if you can't walk then crawl, but whatever you do you have to keep moving forward." Dr. King's words are apropos for our current climate, including his stating, "Life's most persistent and urgent question is: 'What are you doing for others?'"

It has been an honor and privilege to serve the NJDA as its 54th President. We have encountered a year of unimaginable challenges. What I have learned most is that while we count among our members the very best lawyers in our profession, we have even better people. We collaborated as colleagues

and friends to help each other during this difficult time.

For example, since our first call on March 18th, our weekly, Wednesday COVID-19 managing attorney/senior attorney conference calls, fifteen during my term, along with our newly enacted list serve, provided platforms for members to share ideas, more effectively communicate, and move our practices and the NJDA, forward. Since we could not meet in person, we also advanced our organization in other ways, including providing CLE webinars showcasing our sponsors' expertise. I urge our members to support our webinars and to use the list serve. Thank you again to Rob Luthman for many hours of hard work setting up and managing our list serve.

The NJDA also celebrated its tenth year of our Women and the Law Seminar, which has grown to such success under Marie Carey's leadership, for which she deserves the highest praise. Our other successes included: the Trial College, Auto Liability Seminar, and Civil Trial Seminar. We enjoyed camaraderie at our Asbury Park networking event and holiday party.

We also moved the NJDA forward by enhancing our brand by adding to our logo, "New Jersey's Defense Voice", along with promoting the NJDA through an online badge for our members and sponsors' websites. Our Sponsor Spotlight emails highlighted our sponsors' value and expertise.

This year could not have been as successful without the help of Maryanne Steedle, who celebrated her 25th Anniversary with the NJDA. Maryanne's title, Executive Director, certainly does not do her justice; for her, I am forever grateful. I also thank the Board for its support and thank each of our members who have taken the time out of their busy schedules to help during this difficult time. I ask that you also provide the same support to our incoming President, John Mallon, whom I know will do a great job leading the NJDA. I encourage our members to become more involved in the NJDA by writing articles and sending them to our new editor, Ryan Richman.

Finally, although for the first time in the NJDA's history we could not hold our annual convention in June, I am hopeful that we will celebrate together (socially distant of course) at the base of the beautiful, Equinox Mountain in Vermont at the end of August. I hope to see you there and if not, look forward to seeing you at one of our seminars this fall.

If I can assist you in any other way, please do not hesitate to call (973-521-7426) or email me (mmalia@peristewart.com). My best wishes to you and your families. Wishing you all health and safety,



MICHAEL A. MALIA, ESQ.



THE NATIONAL ACADEMY OF DISTINGUISHED NEUTRALS

NEW JERSEY CHAPTER

www.NJMEDIATORS.ORG

*The following attorneys are recognized in 2020 for
Excellence in the field of Alternative Dispute Resolution*

| NAME | BASED IN | PHONE | CALENDAR | NAME | BASED IN | PHONE | CALENDAR |
|-----------------------------------|-----------------|----------------|-------------------------------------|-------------------------------|---------------|----------------|-------------------------------------|
| Robert E. Bartkus | Florham Park | (973) 635-6300 | <input checked="" type="checkbox"/> | John F. Gelson | Little Silver | (732) 919-1044 | <input checked="" type="checkbox"/> |
| Hon. Raymond Batten (Ret.) | Haddonfield | (856) 795-2121 | <input type="checkbox"/> | Sheryl Mintz Goski | Florham Park | (973) 520-8520 | <input checked="" type="checkbox"/> |
| Elliot M. Baumgart | Upper Montclair | (973) 744-4000 | <input type="checkbox"/> | Roger B. Jacobs | Roseland | (973) 226-6663 | <input checked="" type="checkbox"/> |
| Steven J. Blumenthal | Mt. Laurel | (856) 581-4134 | <input checked="" type="checkbox"/> | Laura A. Kaster | Princeton | (609) 921-0095 | <input checked="" type="checkbox"/> |
| Hon. Peter F. Boggia (Ret.) | Clifton | (973) 470-0800 | <input checked="" type="checkbox"/> | Hon. John Keefe (Ret.) | Red Bank | (732) 224-9400 | <input type="checkbox"/> |
| Hon. John M. Boyle | Westfield | (908) 233-6800 | <input checked="" type="checkbox"/> | Hon. Virginia Long | Lawrenceville | (609) 895-3335 | <input type="checkbox"/> |
| Jennifer L. Brandt | Mountainside | (973) 912-9292 | <input checked="" type="checkbox"/> | Robert E. Margulies | Jersey City | (201) 333-0400 | <input checked="" type="checkbox"/> |
| Hon. Tom Cavanagh, Jr. (Ret.) | Tinton Falls | (732) 733-6200 | <input checked="" type="checkbox"/> | Suzanne M. McSorley | Lawrenceville | (609) 987-6663 | <input checked="" type="checkbox"/> |
| Theo Cheng | Princeton Jct. | (917) 459-3669 | <input checked="" type="checkbox"/> | Peter L. Michaelson | Rumson | (732) 758-6500 | <input type="checkbox"/> |
| Hon. R. Benjamin Cohen (Ret.) | Somerset | (908) 333-6208 | <input checked="" type="checkbox"/> | Lewis Pepperman | Lawrenceville | (609) 895-7260 | <input checked="" type="checkbox"/> |
| Hon. Harriet E. Derman (Ret.) | Warren | (908) 757-7800 | <input type="checkbox"/> | F. Peter Phillips | Montclair | (973) 509-9667 | <input checked="" type="checkbox"/> |
| N. Janine Dickey | Bridgewater | (908) 295-7900 | <input type="checkbox"/> | Terri Reicher | Wayne | (973) 865-1069 | <input checked="" type="checkbox"/> |
| Hon. Peter Doyne (Ret.) | Hackensack | (201) 489-9110 | <input type="checkbox"/> | Hon. Anthony Sciuto (Ret.) | Fort Lee | (201) 585-9111 | <input type="checkbox"/> |
| Neal M. Eiseman | Roseland | (201) 612-4444 | <input checked="" type="checkbox"/> | Hon. Marguerite Simon (Ret.) | Hackensack | (973) 379-4200 | <input checked="" type="checkbox"/> |
| Hon. Mark B. Epstein (Ret.) | New Brunswick | (732) 545-4717 | <input type="checkbox"/> | Richard H. Steen | Princeton | (609) 895-0071 | <input checked="" type="checkbox"/> |
| Dennis A. Estis | Iselin | (732) 476-2512 | <input checked="" type="checkbox"/> | Hon. Barbara B. Wecker (Ret.) | Newark | (973) 643-3700 | <input type="checkbox"/> |
| Hon. Michael Brooke Fisher (Ret.) | Avalon | (856) 332-7741 | <input type="checkbox"/> | Hon. Deanne Wilson (Ret.) | Mendham | (908) 879-2013 | <input checked="" type="checkbox"/> |



**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

CAN WE TALK?

BY JOHN C. MACCE, ESQ., MACCE & CRESTI, P.C.

Can an attorney converse with their client if that client has been presenting testimony at trial and the trial day ends?

“Communication” is probably the most ubiquitous term when one examines an attorney’s obligations in the attorney-client relationship. R.P.C. 1.4 is actually entitled “Communication” and subsection (c) of this Rule states that “A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.” So one would think that this need to communicate would be most protected when an attorney is guiding his or her client through arguably the ultimate stage of their relationship – trial.

A. Criminal Law

1. Yes You Can

In New Jersey this issue was answered by the Supreme Court in State v. Fusco, 93 N.J. 578 (1983). In Fusco, the Defendant was charged with murder as a result of the death of one Vincent Marolda on July 15, 1979. While imprisoned on this charge the Defendant was indicted again for conspiring with another inmate to have key witnesses against the Defendant murdered. Prior to trial **defense counsel** requested that all witnesses be sequestered.

At trial the Defendant took the stand in his defense. During his cross-examination the court announced that they would recess for the day. The witness, the judge and the attorneys then had the following exchange:

THE WITNESS [Defendant]: Your Honor, could I ask you a question?

THE COURT: Yes, Mr. Fusco.

THE WITNESS: Your Honor, Mr. Menz asked me the question before and I never got to completely finish. He went completely away from it on this here.

THE COURT: So you say this here, you mean what?

THE WITNESS: The Statements like this me here saying that the Police did it on August 23 and then yet it’s typed August 22. He went away from the question completely on me.

THE COURT: You may review that.

THE WITNESS: It just baffles me, sir. I’m trying to understand a little bit too because it’s my life on the line.

THE COURT: You may review that with your attorney.

MR. MENZ: Excuse me, your Honor. He may not as I understand the Court ruling most respectfully.

THE COURT: Yes, that is correct.

MR. GROSS: I’m not allowed to talk to my client?

THE COURT: You’ll recall I believe it was your request in fact, Mr. Gross that no witness would be spoken to until after direct until the time—

MR. GROSS: It was my request but I certainly didn’t interpret that to mean my client. I can’t imagine the [S]ixth [A]mendment going to serve by saying any time a defendant in a criminal case should be barred from speaking to his counsel.

MR. MENZ: Your Honor, that was counsel’s request and it’s on the record.

MR. GROSS: No, sir, there’s nothing on the record that I said that I couldn’t talk to my client any time.

Id., 93 N.J. at 581.

Following this exchange, both counsel argued their respective positions and the court directed defense counsel not to discuss anything about the case, including his client’s testimony, until his testimony was concluded. The jury subsequently found the Defendant guilty and he was sentenced to life imprisonment.

The Defendant raised numerous issues on appeal. All but one were dismissed without comment. The Appellate Division concluded that the trial judge erred by directing defense counsel not to speak with his client, but found this error did not prejudice the Defendant, describing the Defendant’s guilt as “inescapably apparent”. Id. at 582.

The Supreme Court granted certification. It began its analysis with a discussion of an individual’s right to counsel both under the Sixth Amendment of the United States Constitution

and Article I, Paragraph 10 of the New Jersey Constitution.

The Court then referenced the United States Supreme Court decision in Geders v. United States, 425 U.S. 80, 96 S.Ct. 1330, 47 L.Ed. 2d 592 (1976). The same situation arose in Geders with the trial court instructing the Defendant “not to talk with counsel about anything nor to discuss his testimony with anyone”. Id. at 82. The United States Court of Appeals affirmed the Defendant’s conviction finding that the Defendant was not prejudiced by the judge’s decision.

The United States Supreme Court unanimously held that such an Order violated the Defendant’s right to counsel under the Sixth Amendment and, more importantly, that under such circumstances the Defendant need not demonstrate that this error prejudiced their defense. As a result the Supreme Court in Geders reversed the lower court’s decision and remanded for a new trial. The Geders Court went on to explain their decision by finding a discernable difference between the sequestration of a non-party witness as opposed to a Defendant in a criminal trial. The Court noted “a defendant in a criminal case must often consult with his attorney during the trial” and based on the fundamental difference between the sequestration of a witness versus a Defendant (party) stated that the “sequestration of a witness is used primarily to prevent that witness from being exposed to other witnesses’ testimony. Since a criminal Defendant has the Constitutional right to be present during the entire trial, the important reason for sequestering a witness is not applicable to a Defendant”. Geders, 425 U.S. at 88.

Based on the foregoing the New Jersey Supreme Court held that the trial court committed a reversible error by prohibiting the Defendant from speaking with his attorney:

We hold that a court-imposed restriction on a defendant’s right to communicate with counsel during an overnight recess, whether the restriction is total or limited only to the defendant’s testimony, constitutes the deprivation of a right so fundamental that it is reversible error and no prejudice need not be shown.

Fusco, 93 N.J. at 589-90. The Court further concluded that although prejudice need not be demonstrated the court’s failure to allow Mr.

Fusco to speak with his attorney at a break in his testimony when he had obviously expressed confusion about what was happening would in the Supreme Court's mind constitute prejudices.

2. What if the Break is Shorter?

A decade later the Appellate Division was asked to apply Fusco to a slightly different set of circumstances. In State v. Carroll, 256 N.J. Super. 575 (App. Div. 1992) the Defendant was convicted at trial of first degree murder. The Defendant filed an appeal and in his Brief asserted that the trial court committed thirteen (13) errors. Among those errors the Defendant claimed that he was denied the right to effective assistance of counsel when the judge's instructed the Defendant that during a break in his cross-examination he was "not to discuss your testimony with no one until your testimony is finished. With no one." Id. at 591. In reviewing this issue the court referenced Gedders, supra. and then, of course, the Fusco decision. The Carroll court differentiated their circumstances from Fusco. It also cited to another United States Supreme Court case that was decided thirteen years after Gedders, Perry v. Leeke, 488 U.S. 272, 109 S.Ct. 594, 102 L.Ed. 2d 624 (1989).

In Perry, the United States Supreme Court held that the Defendant does not have "a constitutional right to consult with counsel during a brief recess". Id. at 274 (emphasis supplied). The Court held that there was no constitutional right to confer with your attorney during a 15-minute break.

The Appellate Division concluded, in line with Perry, that a "Defendant's right to counsel would not have been violated even if the court had directed that he not discuss his testimony with counsel during the short recess." Carroll, 256 N.J. Super. at 593.

Fortunately New Jersey courts have provided guidance in criminal cases on how attorneys and judges court should address a situation where the Defendant's testimony is subject to interruption. Now on the civil side

B. Civil Law

1. Can an attorney in a civil trial speak with his client if a recess is taken for the day and his client's testimony is to begin on another day?

One school of thought is that once a witness (be it a party or a non-party) is sworn to provide trial testimony it would be unfair to allow the witness the benefit of conferring with counsel to help "guide" his or her testimony once resumed. The other camp consists of attorneys who state that the rationale that one finds in New Jersey's criminal cases, primarily the fundamental right of an attorney to communicate

with his or her client, especially at the time of trial, would justify allowing such communications.

This specific question has not been the subject of any reported trial or appellate decision in our state. This author's informal poll on the topic has yielded very mixed results.

While no court has squarely addressed the issue as set forth above, one court did have the opportunity to address whether in a civil trial an attorney may speak to his client during short in-day recesses. In Horn v. Village Supermarkets, Inc. 260 N.J. Super. 165 (App Div. 1992), certif. denied 133 N.J. 435 (1993) the Plaintiff Curtis Horn filed suit against the Defendant supermarket and two of its security officers alleging that the Defendants falsely accused the Plaintiff of shoplifting. The Plaintiff was subsequently acquitted of all charges in Municipal court and then brought a civil action claiming malicious prosecution, false imprisonment and false arrest.

During the trial one of the Defendant's security guards, Edward Price, was being cross examined by the Plaintiff's attorney when the court ordered first a mid-morning recess and then a lunch break from 12:30 to 1:30. Prior to these breaks the court and counsel engaged in the following colloquy:

THE COURT: All right. 10 after 11. Please everybody be back by 25 after 11. All right. Just because of the nature of the cross examination and I know we would not have interrupted it. Mr. Gold¹, you are directed not to speak with your client.

* * * * *

THE COURT: All right. We'll take a luncheon recess then. 1:30 please for everyone.

THE COURT: Continue with the instruction Mr. Bianchi² has just reminded. Request that you (Indiscernible .. mumbled word(s))] this cross examination. That there be no discussion between you and Mr. Price please. We'll maintain the integrity of this record.

MR. BIANCHI [Plaintiff's Counsel]: Your Honor, my main question went not to counsel but to Mr.--discussions with Mr. [Milteer]³ .

THE COURT: Mr. [Milteer] and your partner. I think everybody should have their lunch separate. This is—this is getting very touch and go Mr. Gold.

MR. GOLD [Defendant's Counsel]: All right Your Honor. I mean, they'll have lunches separate and alike. I'm not permitted to stay—I thought

you said—indicated I could not lunch with my partner?

THE COURT: I didn't say you couldn't.

MR. GOLD: I'm sorry.

THE COURT: I don't want any—I don't want either of you talking to either of them or either of them talking together.

MR. GOLD: That will be fine. Thank you, Your Honor.

Id. 265 N.J. Super. at 174.

The jury returned a verdict in Plaintiff's favor. On appeal the Defendants raised several arguments, one of which being that the Defendant Mr. Price was deprived of his right to counsel by being barred from speaking with his attorney during the short recesses in his cross-examination. The Appellate Division disagreed:

Ordinarily cross-examination occurs immediately following direct examination, and there is no intervening time period. In these two instances, the trial judge was particularly conscious of the fact that the two defendant security guards had been sequestered and apparently had changed their stories on various days of the trial. The trial judge legitimately attempted to limit their conferences in order to preserve the truthfinding function of cross-examination. This is not reversible error. [citations omitted] A trial judge has the ultimate responsibility to control the trial in the courtroom and is given wide discretion to do so. We see no abuse of the judge's discretion.

Id. at 175.

The Horn court fell in lockstep with its criminal counterpart State v. Carroll, supra. , (decided the same year) that similarly held that the court could prohibit discussions between counsel and client during **short** trial recesses.

At least three jurists disagree. In an unreported decision our Appellate Division held that in a civil trial communication between an attorney and client during a short break in his client's testimony **was** acceptable. In Rice v. Town Tavern, Docket Number. A-3423-14T3 (App. Div. 2017) the Plaintiff Brian Rice filed an appeal following an adverse jury verdict. The Plaintiff, a police officer, had responded to call from the Defendant, a tavern, that there was an unruly customer who needed to be removed. According to the Plaintiff while he attempted to remove the customer he sustained personal injuries. The jury did not agree and the Plaintiff appealed. On appeal the Plaintiff claimed, inter alia,

that the trial court erred by not barring the Defendant's attorney from speaking to his client after his client's testimony was interrupted to accommodate the schedule of another witness and for similarly not instructing counsel to also refrain from any communications during a lunch recess later that day. Upon returning to the courtroom the judge did ask defense counsel if he had any discussions with his client and counsel refused to answer the question citing attorney-client privilege.

In affirming the trial court's decision of not ordering counsel to refrain from communicating with his client the court was particularly swayed by the Plaintiff's failure to demonstrate that anything untoward actually occurred during the recesses which influenced the witness's testimony:

In this matter, plaintiff could have challenged Prokapus' credibility by asking whether the witness discussed his testimony during the break. That question standing alone would not violate any recognized privilege. Importantly, plaintiff presents no hint Prokapus altered his testimony following the lunch recess. In fact, plaintiff fails to identify one post-break inconsistency in the witness's testimony, suggesting a need for further examination.

Price, at Page 19. Under these circumstances the Price court held that it was not an abuse of the trial judge's discretion to allow discussions between the Defendant and his attorney. The Appellate Division then retroactively found support for the decision by citing to the Plaintiff's failure to demonstrate that court's failure to do so had any material effect on the Defendant's testimony.

Finally, while not in the context of a trial, there has been a reported decision by the Chancery Court, which addressed the limits imposed on an attorney's ability to communicate with their client during a deposition.

In In Re PSE&G Shareholder Litigation, 320 N.J. Super. 112 (Ch. Div. 1998), the Chancery Division addressed several discovery disputes between the parties. The Plaintiffs (shareholders bringing a claim against their company) objected to defense counsel conversing with their clients (mostly members of the board of directors) during deposition recesses. The Plaintiffs claimed that such conversations ran afoul of R. 4:14-3(f), which states:

(f) Consultation with the Deponent. Once the deponent has been sworn, there shall be no communication between the deponent and counsel during the course of the

deposition while testimony is being taken except with regard to the assertion of a claim of privilege, a right to confidentiality or a limitation pursuant to a previously entered court order.

The plain language of this Rule clearly prohibits any substantive conversations between an attorney and client once the client has been sworn in at their deposition. The only exceptions to this Rule involve an "assertion of a claim of privilege", claims of confidentiality or conversations that would be permitted if same were allowed pursuant to a court order.

After discussing this Rule, as well as examining several Federal Court cases, Judge Weiss held the following:

Although this court believes that the decision of the court in Hall v. Clifton Precision is laudatory, this court does not believe that blanket restrictions should be imposed in every case. Each case must be dealt with on the basis of the individual facts presented to the court. In the present cases, the court believes that the following restrictions should apply to the depositions of the defendant directors: once the deposition commences there should be no discussions between counsel and the witness, even during recesses, including lunch recess, until the deposition concludes that day. However, at the conclusion of the daily deposition, counsel and the witness should be permitted to confer and to prepare for the next day's deposition. Id. at 116-117.

Here the judge drew a distinction between breaks at a deposition during the day and depositions that continue on a day-to-day basis. In the latter context he held that the attorney should be allowed to consult with the witness prior to the next day's deposition. At all breaks that occur within the deposition day, however, the witness would be prohibited from speaking with his or their counsel.

2. Where does that leave us with respect to civil trials? One person's view.

This is a great question. As stated above, this author could not find any reported New Jersey judicial decision that addressed this issue. The PSE&G Shareholder Litigation case provides a balanced and workable framework. In the undersigned's opinion, an attorney should have the absolute right to confer with their client during breaks in his client's testimony at the time of trial. Here is why.

A. The Attorney Client Relationship Trumps Other Concerns

To be clear, if a party is testifying at the time of trial (be it on direct or cross-examination) and the trial day is completing and is intended to resume on another day, it would be a violation of the fundamental right of an attorney to consult with his client for any court to prohibit an attorney from doing so under these circumstances. There are many aspects to a case that go beyond a party's own testimony. It would be unfair to the client if he or she would be barred from speaking with their attorney about any aspect of the trial during such a break.

Consider a bench trial. In some instances there will be cases where a party will be testifying and may not come back to resume their testimony for days or even weeks. Is it really practical to order an attorney not to speak with their client during this prolonged period? I think not.

Balancing the right of all parties involved the importance of the attorney-client relationship far outweighs the concerns of "coaching" or "guiding" a party who through no fault of their own has had their testimony interrupted because the trial day has ended.

B. How Can a Prohibition of Such Communications Really Be Enforced?

As officers of the court attorneys are expected to have complete candor before the tribunal. Should this candor be extended to a trial judge asking the attorney what the attorney and client spoke about in breaks between days in a trial? Such an inquiry, in my mind, completely minimizes the attorney-client privilege and to allow the court to breach that confidentiality would seriously impair an attorney from properly representing his client at trial.

C. This Is A Trial

It is generally accepted that a very small fraction of civil lawsuits go to trial. It is usually reserved for those cases where the potential verdict value is very high, where there are complex issues to be litigated, or to put it simply, there is a lot at stake. Submitting disputes to the trial process is a costly and risky proposition that requires a great deal of time (and money) for the litigants to bear. It would be counter-intuitive therefore to tell a client that in this environment that he or she will not be allowed to speak to their attorney for what could be a period of days.

¹Mr. Gold was the Defendant's attorney.

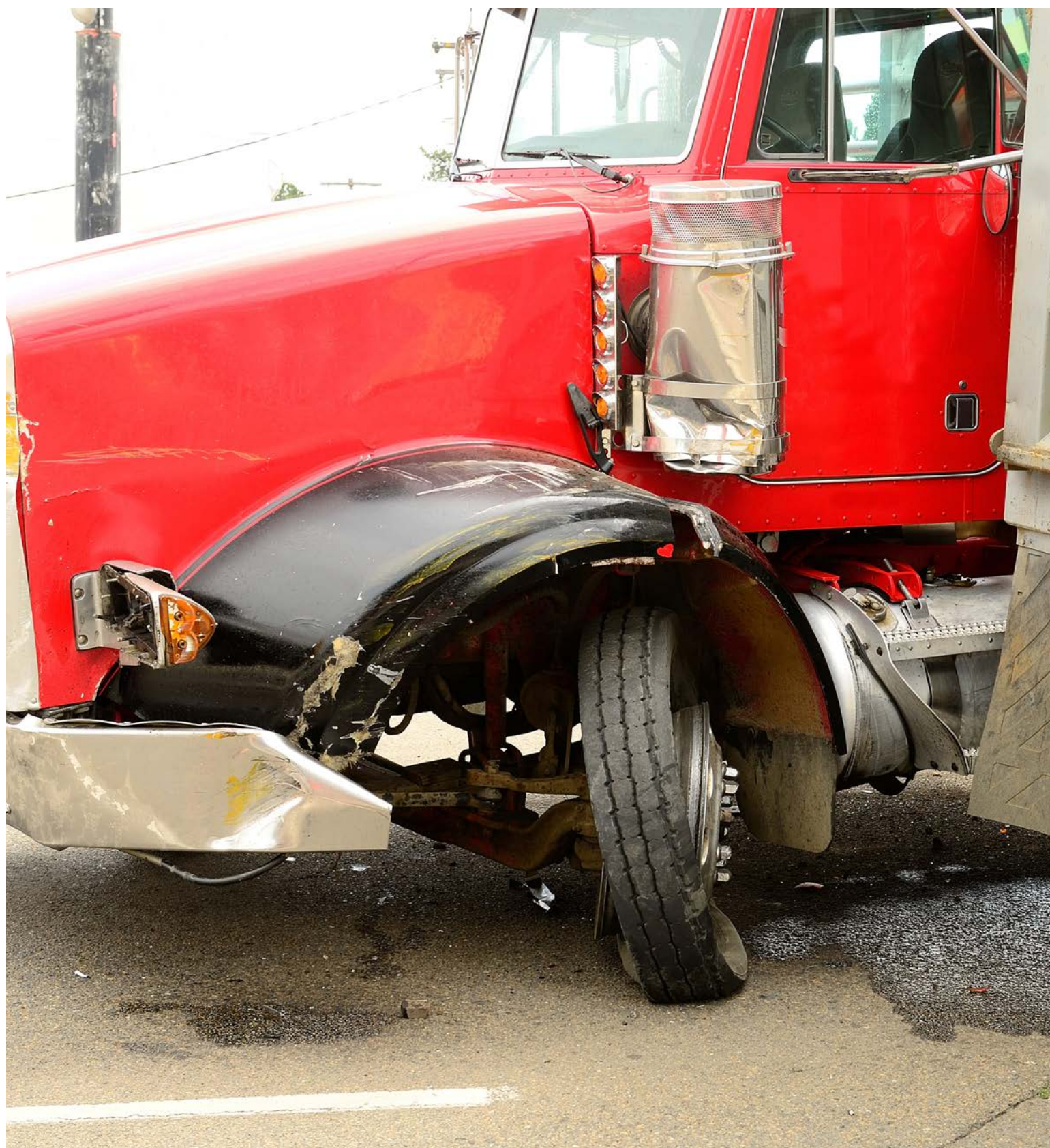
²Mr. Bianchi was the Plaintiff's attorney.

³Mr. Milteer was another security guard at the Defendant's store and was also named as a Defendant in this lawsuit.

⁴Prokapus was the owner of the Defendant Town Tavern.

THE MCS-90 ENDORSEMENT — A SAFETY NET FOR WHEN A MOTOR CARRIER HAS NO OTHER INSURANCE

BY NICOLE M. CROWLEY, ESQ., GOLDBERG SEGALLA



A new case comes in: your client was driving down the interstate when it becomes involved in a multi-car accident ultimately caused by a tractor-trailer rear-ending plaintiff's vehicle. Your client and the trucking company are the only defendants, and your initial assessment is that your client's liability is limited. You expect any judgment would be issued against the trucking company. However as discovery develops, you learn the trucking company's insurance carrier cancelled its policy the week before the accident and the trucking company has skipped town. It appears the trucking company has no other insurance. Or does it? The trucking company may still have available insurance to pay a judgment issued against it if its policy contained an MCS-90 Endorsement.

The MCS-90 Endorsement is a federally mandated insurance endorsement that interstate motor carriers must obtain to ensure that there is a source of recovery for those injured in accidents involving the motor carrier. Once obtained, the endorsement effectively turns the insurance company into a surety. The insurer's obligation to pay a judgment becomes independent from the policy; it arises from the endorsement's guarantee that there will be a source of recovery for the injured member of the public. *Carolina Cas. Ins. Co. v. Yeates*, 584 F.3d 868, 877-78 (10th Cir. 2009). The endorsement will apply when there is no coverage pursuant to the underlying policy.

The MCS-90 Endorsement is only required for motor carriers that are subject to the Motor Carrier Act of 1980's insurance requirements. A motor carrier is subject to the MCA's insurance requirements if it is for-hire, has a gross vehicle weight rating (GVWR) of 10,001 or more pounds, and operates in interstate commerce (for non-hazardous materials) or intrastate commerce (certain hazardous materials). A gross vehicle weight rating is a vehicle's maximum operating weight – i.e., a vehicle's maximum load weight. The ubiquitous tractor of any tractor-trailer combo almost always has a GVWR that exceeds 10,000 pounds, and thus it may come within MCA's insurance requirements. The federal minimum insurance requirements for such motor carriers is \$750,000 for interstate carriers hauling non-hazardous property and \$5,000,000 for motor carriers that haul hazardous materials.

The motor carrier may not have the required insurance available because of a variety of circumstances, including: the motor carrier obtained a policy with lesser limits, it failed to

notify its insurance company of the claim and the insurer disclaims coverage due the policy's notice requirements, or the policy has an endorsement or exclusion that limits coverage, such as a schedule of vehicles to which the insurance applies.

The MCS-90 endorsement will pay a final judgment to a member of the public, **when the underlying insurance does not apply or contains insufficient limits**, so long as the following three factors are met:

- 1) At the time of the accident, the motor carrier was operating for-hire in interstate commerce;
- 2) A final judgment is entered; and
- 3) That final judgment is entered against the named insured.

The motor carrier must be operating for-hire in interstate commerce at the time of the accident in order for the endorsement to apply. The Motor Carrier Act defines interstate commerce as "commerce between any place in a State and any place in another State or between places in the same State through another State." 49 U.S.C. § 303(a). While seemingly straight forward, there is a vast body of case law discussing whether a motor carrier is operating in interstate commerce. The majority of courts look "at trip-specific information to determine whether a vehicle is transporting property in interstate commerce." *Allstate N.J. Ins. Co. v. Penske Truck Leasing*, No. A-5900-11T3, 2013 N.J. Super. Unpub. LEXIS 2863 (Super. Ct. App. Div. Dec. 2, 2013). The crux of the analysis is "the essential character of the commerce, manifested by the shipper's fixed and persisting intent at the time of shipment and ascertained from all circumstances attending to the transportation." *Progressive Cas. Ins. Co. v. Hoover*, 570 Pa. 423, 436, 809 A.2d 353, 360 (2002).

Additionally, the MCS-90 only applies to a final judgment. Unlike a typical commercial auto policy, there is no requirement that the insurance company must provide a defense to a lawsuit. *Canal Ins. Co. v. YMV Transport, Inc.*, 867 F. Supp. 2d 1099, 1105 (W.D. Wash. 2011). However, an insurer can provide a gratuitous defense if it believes the MCS-90 endorsement is implicated in an effort to limit any judgment against the insured.

Once a final judgment is entered, it must be entered against the named insured. 70 Fed. Reg. § 58065-01. Prior to the Federal Motor Carrier Safety Administration's guidance on this

issue, several federal circuit courts held that the endorsement also applied to permissive users of a tractor trailer. See, e.g. *Pierre v. Providence Wash. Ins. Co.* 730 N.Y.S.2d 550, 551 (App. Div. 2001). This situation would arise if, for example, Company A let Company B borrow a tractor not listed on its schedule of covered autos. While using the tractor, Company B is in an accident while making a delivery in Boston, Massachusetts. Because Company B was driving a truck that was not listed on the policy, Company A's insurance company denied coverage for the accident. Prior to the FMCSA guidance, several courts held that the MCS-90 endorsement would apply to cover this accident. After the FMCSA guidance, an insurance company could deny coverage to Company B for the accident because the MSC-90 only applies to the insurance policy's named insured.

Once an insurer issues an MCS-90 endorsement, the endorsement remains in effect until the endorsement is cancelled. Courts strictly construe the cancellation requirements. The insurer must give the trucking company 35 days' notice, in writing, that it intends to cancel the policy, and 30 days' notice to the FMCSA's office in Washington, D.C. An insurance company can remain on the hook for any final judgment entered against a former insured if it fails to send the proper cancellation notice. *Nat'l Indep. Truckers Ins. Co. v. Gadway*, 860 F. Supp. 2d 946, 954 (D. Neb. 2012).

Returning to the introductory example, the trucking company's insurance company may still be required to pay any judgment entered against the trucking company if 1) the trucking company was operating for-hire in interstate commerce at the time of the accident and 2) the policy contained an MCS-90 Endorsement.

The next time you are involved in litigation with what appears to be an uninsured commercial vehicle, make sure to obtain a complete copy of any insurance policy that insured the vehicle at the time of and prior to the incident in order to determine if insurance proceeds may be available pursuant to an MCS-90 endorsement.



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



INVESTIGATIONS

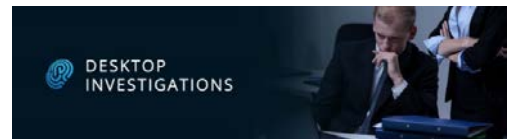
Professional Claims Solutions field services New Jersey, New York, Eastern Pennsylvania and Northern Delaware. PCS also provides numerous nationwide services.



S.P.O.T.
SOCIAL PROFILING
ONLINE TRACKING



SURVEILLANCE



DESKTOP
INVESTIGATIONS



TOXIC TORT
INVESTIGATION



PIP ELIGIBILITY
INVESTIGATIONS

WWW.PROCLAIMSSOLUTIONS.COM

YOUR NATIONWIDE RECORD RETRIEVAL PARTNER

- Fast Turnaround Times
- Dedicated Client Services Rep
- Accurate Document Production
- Missing Record Review
- E-Sign for HIPAA Authorizations
- Subpoena Prep and Service
- Facility Charges Prepaid
- User-Friendly & Secure Portal
- 24/7 Status Updates
- Access OCREd Records Online
- Approve/Deny Facility Charges
- Automated Status Reports
- Chronological Sorting/Indexing
- E-Pay invoice and payment history

Record Retrieval is all we do, trust the experts!
Send your next request to LCS and experience our one of a kind customer service.



Cristina Sampson, Regional Account Manager
 csampson@teamLCS.com

877-949-1113 | www.teamlcs.com



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





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 Pompton Ave Ste 15 Cedar Grove NJ 07009

570 Taxter Road, Suite 275, Elmsford, NY 10523

Phone: 800.691.7020 / Fax: 973.239.1999 / info@admininfoservices.com / www.admininfoservices.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 PARTNERS
FORENSIC CONSULTING

520 Fellowship Road • Suite E-504
Mount Laurel, NJ 08054
856-780-5658

www.FCNAPartners.com

- Civil/Structural Engineering
- Mechanical/Auto Mechanical Engineering
- Construction Defect and Construction Liability/OSHA Claims
- Forensic Accounting/Loss of Income
- Electrical/Electronic Engineering
- Vehicle Accident Reconstruction
- Passenger/Cargo Transportation/Fleet Management
- Toxicology/Pharmacology
- Product Liability
- Metallurgy/Materials
- Premises Liability including Slip/Trip and Fall
- Human Factors
- Security/Recreational Safety
- Vocational Rehabilitation Assessments
- Fire Origin and Cause
- Catastrophe/Hail Claims



**Consulting Engineers
& Scientists, Inc.**

Your expert witness partner



**Our highly qualified team of experts
boasts a 50-year track record of success.**

**Construction & Architecture • Slip, Trip & Fall • Biomechanics
Accident Reconstruction • Product Liability • Industrial Hygiene**

Visit our website for more information and additional areas of expertise: ces-experts.com

41 General Warren Boulevard
Malvern, PA 19355
610-296-2250



923 Haddonfield Road, Suite 300
Cherry Hill, NJ 08002
856-324-8246

Email us at: info@ces-experts.com



WORKERS' COMPENSATION CLAIM

Employer (Name & Address incl. zip)

WORKERS' COMP UPDATE: THE NJ SUPREME COURT ONCE AGAIN AFFIRMS AN EMPLOYERS' SUBROGATION RIGHTS

BY ROBERT J. FITZGERALD, MARSHALL DENNEHEY WARNER COLEMAN & GOGGIN

KEY POINTS:

- Employers have a right of subrogation to recover workers' compensation benefits paid as a result of a negligent third party.
- When an injured employee fails to pursue a third-party negligence action on their own, an employer can pursue subrogation directly against the negligent party.
- An employer can pursue subrogation of economic damages against a negligent party in a motor vehicle accident claim, even when the employee is barred from pursuing a non-economic recovery due to the verbal threshold.

In New Jersey, the Supreme Court has once again affirmed an employer's right to subrogation for economic losses related to workers' compensation claim. Further, the right to subrogation exists even when the injured worker is precluded from pursuing damages for pain and suffering under the New Jersey

Automobile Insurance Cost Reduction Act (AICRA). New Jersey Transit Corporation, a/s/o David Mercogliano v. Sandra Sanchez and Chad Smith, (A-68 September Term 2018, no. 082292) (May 12, 2020).

In this case, David Mercogliano was involved in a motor vehicle collision during the course of his employment with NJ Transit. Mercogliano was driving a bus owned by NJ Transit. Mercogliano was struck by a vehicle driven by Sandra Sanchez and owned by Chad Smith. Following the accident, NJ Transit's workers' compensation carrier paid Mercogliano \$33,625.70 in workers' compensation benefits under the Workers' Compensation Act. Mercogliano did not pursue a negligence action.

At that point, NJ Transit initiated a Section 40 subrogation action, which gives the employer the right to pursue the third-party tortfeasors for recovery of damages paid to injured employees. During the litigation of the subroga-

tion claim, it was stipulated that Mercogliano was not permanently injured under AICRA—a/k/a the verbal threshold—and therefore, he was barred from pursuing non-economic damages for pain and suffering. Sanchez and Smith then filed for summary judgment, relying on Continental Insurance Co. v. McClelland, 288 N.J. Super. 185 (App. Div. 1996). The defendants argued that since Mercogliano was barred from filing a third-party claim for non-economic damages because of the verbal threshold, NJ Transit's subrogation claim for economic damages must also be barred.

The motion judge held AICRA trumped the Workers' Compensation Act. The court noted that since NJ Transit, as subrogee, stands in the shoes of the injured employee, they have no rights superior to the injured employee under AICRA. Mercogliano was fully compensated by the workers' compensation carrier for his medical expenses and wage loss, and he suffered no uncompensated economic

WORKER'S COMPENSATION CLAIM FORM

| | |
|------------------------------------|------------------------|
| Carrier/Administrator Claim Number | Report Purpose Code |
| Jurisdiction | Jurisdiction Claim No. |
| Insured Report | Location No. |

loss. Finally, the judge dismissed the subrogation action concluding the workers' compensation carrier does not have an independent right to subrogate against a tortfeasor when the injured employee is unable to establish a cause of action against the tortfeasor.

At the Appellate Division level, the court analyzed the conflict between the Workers' Compensation Act and AICRA on the issue of subrogation. The court noted that the Workers' Compensation Act is the exclusive remedy for an employee who suffers a work-related injury. As long as the employee's injuries were caused by a third-party and not the employer, the act gives the workers' compensation carrier an absolute right to seek reimbursement from the tortfeasor for the benefits it has paid to the injured employee. Under Section 40, the workers' compensation carrier is entitled to reimbursement whether or not the employee is fully compensated. Utica Mut. Ins. Co. v. Maran & Maran, 667 A.2d 680, 682 (N.J. 1995). Moreover, under AICRA, the workers' compensation benefits are the primary source of recovery for injuries suffered by employees in a work-related automobile accident, and PIP insurers are relieved from the obligation to pay medical expenses. Accordingly, the Appellate Division reversed the dismissal of the subrogation action and remanded the matter to the trial court to enter partial

summary judgment in favor of NJ Transit on the verbal threshold issue.

On further appeal to the Supreme Court, the analysis focused on what was the legislative intent behind the relevant provisions of the WCA and the AICRA. The Court spent a considerable amount of time on analyzing Section 40 of the WCA and its focus on barring double recoveries by a petitioner in obtaining both workers' compensation benefits and damages from a negligent party arising out of the same accident. Further, the Court noted that under the AICRA, the employer remains the primary payer for medical and disability benefits from a work-related motor vehicle accident versus the "automobile-owing public." Further, the WCA was designed to pay those benefits promptly. What was very significant to the Court was that when AICRA was enacted by the Legislature, it chose not to address the Section 40 subrogation provisions of the WCA. After analyzing the legislative intent of each Act, as well as several unsuccessful appellate challenges to the employer's rights of subrogation, the Supreme Court affirmed the right of subrogation for the employer:

We concur with the Appellate Division that the Workers' Compensation Act reflects the Legislature's clear intent to allow employers and carriers that have

paid workers' compensation benefits to assert subrogation rights against third-party tortfeasors.... The Legislature's objective is clear: protected by their statutory subrogation rights, employers and workers' compensation carriers will promptly pay benefits for medical expenses and other economic loss to employees injured in the course of their employment.

In affirming the appellate court's rationale, the Supreme Court finished its analysis by stating that any changes to the WCA and the Section 40 subrogation provision are for the legislature to amend.

Like the appellate decision before it, the Supreme Court's affirmation once again confirms that an employer's Section 40 subrogation rights are relatively absolute. Again, from the beginning of their investigation of claims, employers should note when a potential third-party recovery exists so they can fulfill the statutory notice requirements to preserve their subrogation rights. These subrogation rights are a great tool for employers and worker compensation carriers to reduce their exposure.

OFFICERS & COMMITTEES

OFFICERS

CHAIRPERSON OF THE BOARD

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

PRESIDENT

Michael A. Malia, Esq.
Peri & Stewart, LLC
2150 Highway 35, Suite 250
Sea Girt, NJ 08750
973-521-7426, ext. 204
mmalia@peristewart.com

PRESIDENT-ELECT

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

SECRETARY-TREASURER

Ryan Richman, Esq.
McCarter & English, LLP
100 Mulberry Street
Newark, NJ 07102
973-622-4444
richman@mcarter.com

VICE PRESIDENTS

NORTHERN REGION

Kelly P. Corrubia, Esq.
Norton Murphy Sheehy &
Corrubia, P.C.
1 Garrett Mountain Plaza, Suite 502
Woodland Park, NJ 07424
973-881-1101 kcorrubia@nashnj.com

CENTRAL REGION

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

SOUTHERN REGION

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

DIRECTORS

2017 – 2020

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

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

2018 – 2021

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

Katelyn E. Cutinello, Esq.
Cocca & Cutinello, LLP
89 Speedwell Avenue, Suite 1450
Morristown, NJ 07960
973-532-7700
kcutinello@coccalaw.com

2019 – 2022

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

2019 – 2022

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

DRI STATE REPRESENTATIVE

Natalie H. Mantell, Esq.
McCarter & English, LLP
100 Mulberry Street
Newark, NJ 07102
973-639-7926
nmantell@mcarter.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

Michael A. Malia, Esq.
Peri & Stewart, LLC
2150 Highway 35, Suite 250
Sea Girt, NJ 08750
973-521-7426, ext. 204
mmalia@peristewart.com

DIVERSITY

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

FINANCE

Ryan Richman, Esq.
McCarter & English, LLP
100 Mulberry Street
Newark, NJ 07102
973-622-4444
richman@mcarter.com

LEGISLATIVE

Katherine Lyons, Esq.
NJMJ
301 Sullivan Way
West Trenton, NJ 08628-3496
609-883-1300
klyons@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

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

PUBLIC RELATIONS/ SOCIAL MEDIA

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

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

SPONSORSHIPS

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

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

TECHNOLOGY

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

TRIAL COLLEGE

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

Nicole Crowley, Esq.
Goldberg Segalla
301 Carnegie Center Drive, Suite 200
Princeton, NJ 08540
609-986-1390
ncrowley@goldbergsegalla.com

SUBSTANTIVE COMMITTEE

CHAIRS AND VICE CHAIRS

ADR & FRAUD

Michael A. Malia, Esq.
Peri & Stewart, LLC
2150 Highway 35, Suite 250
Sea Girt, NJ 08750
mmalia@peristewart.com

ADR

Michael J. Needleman, Esq.
Reger Rizzo Darnall LLP
2929 Arch Street
Philadelphia, PA 19104
215-495-6513
mneedleman@regerlaw.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.
Cocca & Cutinello, LLP
89 Speedwell Avenue, Suite 1450
Morristown, NJ 07960
973-532-7700 acocca@coccalaw.com

AUTOMOBILE LIABILITY

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

Dawn M. Ritter, Esq.
Cooper Maren Nitsberg Voss &
DeCoursey
485 Route 1 South, Bldg. A, Suite 200
Iselin, NJ 08830
732-726-7180
Dawn_m_ritter@progressive.com

CONSTRUCTION LAW

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

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

EMPLOYMENT LAW

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

Leslie Koch, Esq.
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.
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

Andrew Brewer, Esq.
Maraziti Falcon LLP
150 JFK Parkway
Short Hills, NJ 07078
973-912-9008
abrewer@mfhenvlaw.com

INSURANCE LAW

Nathan Buurma, Esq.
NJMJ, 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@sellarj.com

PIP

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

PREMISES LIABILITY

Theresa Giamanco, Esq.
Bennett Bricklin & Saltzburg, LLC
600 Sagemoor Drive, Suite 1609
Marlton, NJ 08053
856-751-5285
giamanco@bbs-law.com

PRODUCTS LIABILITY

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

H. Lockwood Miller, Esq.
Goldberg Segalla LLP
301 Carnegie Center Drive, Ste 200
Princeton, NJ 08540
609-986-1380
hmliller@goldbergsegalla.com

Natalie H. Mantell, Esq.
McCarter & English
100 Mulberry Street
Newark, NJ 07102
973-639-7936
nmantell@mcarter.com

PROFESSIONAL LIABILITY

Herbert Kruttschnitt, Esq.
Dughi Hewit & Domalewski, P.C.
340 North Avenue
Cranford, NJ 07016
908-272-0200
hkruttschnitt@dughihewit.com

Katelyn E. Cutinello, Esq.
Cocca & Cutinello, LLP
89 Speedwell Avenue
Suite 1450
Morristown, NJ 07960
973-532-7700
kcutinello@coccalaw.com

PUBLIC ENTITY LAW

Natalie Watson, Esq.
McCarter & English, LLP
100 Mulberry Street
Newark, NJ 07102
973-622-4444
nwatson@mcarter.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
301 Carnegie Center Drive, Ste 200
Princeton, NJ 08540
609-986-1320
rcook@goldbergsegalla.com

WORKERS' COMPENSATION

Michele G. Haas, Esq.
Hoagland Longo Moran Dunst &
Doukas, LLP
40 Paterson Street
New Brunswick, NJ 08903
732-545-4717
mhaas@hoaglandlongo.com

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

SAVE THE DATE / AUGUST 27-30, 2020

NJDA 54TH ANNUAL CONVENTION

THE EQUINOX GOLF RESORT & SPA / MANCHESTER VILLAGE, VERMONT



WELCOME TO ALL OF OUR NEW NJDA MEMBERS

Candace Johnson

Matthew Minor

Joseph Natale

Anthony Pasquarelli

Mark Scirocca

Nicole Varisco



O'TOOLE'S COUCH: A SCIENCE FICTION MOVIE

This article was written in May. Any hope that all of this will be a thing of the past by the time the NJDA Magazine is published? Of course not, but we can pray it continues to get better!

"We didn't know how good we had it until we lost it." "There's no use crying about the world's current condition, so let's make the best of it." What is the post popular saying now? "We're all in this together." Oh shut up! Here is a summary of the current situation in our personal lives.

Spring is the season when Sunny and I enjoy watching our grandchildren play baseball. Wrong – There is no baseball this year, Little League or professional. We also like taking in a movie and having dinner at Chili's. Wrong - No movie theatres or restaurants are open. Thank goodness, we can still stop at Molly Malone's for a Guinness when we're passing by. Wrong - No pubs are open. An occasional trip into New York for a play and dinner. Wrong – New York is essentially shut down. Monmouth Racetrack is fun this time of year. Wrong – We don't know when the track will open. When all else fails, we can enjoy dinner and a cocktail at home in front of the fire. Wrong – We're avoiding food stores and forget to order liquor from Bottle King for curb-side pick-up. Attending weekly mass can help get a person through anything. Father Paddy's sermons are always thought-provoking and encouraging (with a bit of an Irish brogue.) Wrong – For the first time in our lives, churches are closed. On-line mass

doesn't seem to work for us. In case you haven't noticed, we're rather interactive.

Municipal Court every week certainly fills in the gaps. Wrong again – There hasn't been court in five weeks. At an average of 75 cases a week, that means we are now 375 cases behind and still counting. (We have just begun Zoom court sessions to move the calendar along.) A weekly chess club is a mentally stimulating activity. Wrong – Social distancing shut this down. Volunteering at the Lyons Veterans' Hospital is a great source of satisfaction for me, even during these difficult times. Wrong – No visitors are allowed in. (My closest buddy at Lyons passed away during this pandemic. George was the one who tracked me down when I missed two Tuesdays to make sure I was all right. After that, I arranged my schedule to always be available on Tuesdays. I didn't get to say good bye to George, but take pleasure knowing how much he enjoyed our visits.)

Also, on Tuesdays, Sunny volunteers at P.G. Chambers, a school for children with special needs. Wrong again – Schools are closed for the rest of the year. God bless the teachers and parents who are now teaching these wonderful, special-needs children virtually at home.

We are not ashamed to say we enjoy watching evening television. We record an endless list of popular series, documentaries, sporting events and good movies; thank goodness we can still do this. Wrong – It seems that much of

the television time is now taken up with Governors Murphy and Cuomo's daily death totals.

A year ago, we made reservations for a family cruise – Not an easy task since it involves 17 members of the clan. Miraculously, we were able to find a week when everyone could make it and all were enthusiastic about such a great trip together. Wrong again – Obviously this trip has been cancelled, and we don't know when we can all make it again. This is a big disappointment!

For three generations we have enjoyed going to the Jersey Shore. That time is quickly approaching. – Wrong. We are only hesitantly looking forward to this. "Hesitantly" because the restrictions are still being determined. What beaches will be open? Possibly no walking on boardwalks will be allowed. Trying to practice social distancing on the beach could be a challenge. Only people with Season Badges will be allowed. No bathrooms will be open, or shops selling pizza, tacos, ice cream, etc. No nice ocean-view restaurants will be available for our dining pleasure.

Certainly, we know how blessed we really are. And only time will tell how it all works out. Meanwhile, do we have family and friends who need our help? What fund-raising activities might we engage in? Where can we volunteer? This science fiction movie can't last forever, but we must help. My favorite pandemic saying is "Rise Up!" We can do this! Stay healthy and happy!



SUPPORT CLAIM SERVICES TM

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



ACCREDITED
INDEPENDENT REVIEW
ORGANIZATION



New Jersey's Defense Voice

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

PRSR STD
U.S. POSTAGE
PAID
LOS ANGELES, CA
PERMIT NO. 3389

CONTACT

MARYANNE R. STEEDLE

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

VISIT

WWW.NJDEFENSEASSOC.COM

FOLLOW US



UPCOMING EVENTS

AUGUST 27-30, 2020

54TH ANNUAL CONVENTION

The Equinox Golf Resort & Spa
Manchester Village, Vermont

SEPTEMBER 25, 2020

INSURANCE COVERAGE SEMINAR

8:30 am – 12:30 pm
APA Hotel Woodbridge
Iselin, NJ

OCTOBER 12, 2020

ANNUAL TRIAL COLLEGE

8:30 am - 12:30 pm
Location to be announced.

NOVEMBER 11, 2020

WOMEN & THE LAW

8:30 am – 1:00 pm
APA Hotel Woodbridge
Iselin, NJ

NOVEMBER 24, 2020

NJDA/ICNJ JOINT AUTO LIABILITY SEMINAR

8:30 am – 1:00 pm
APA Hotel Woodbridge
Iselin, NJ