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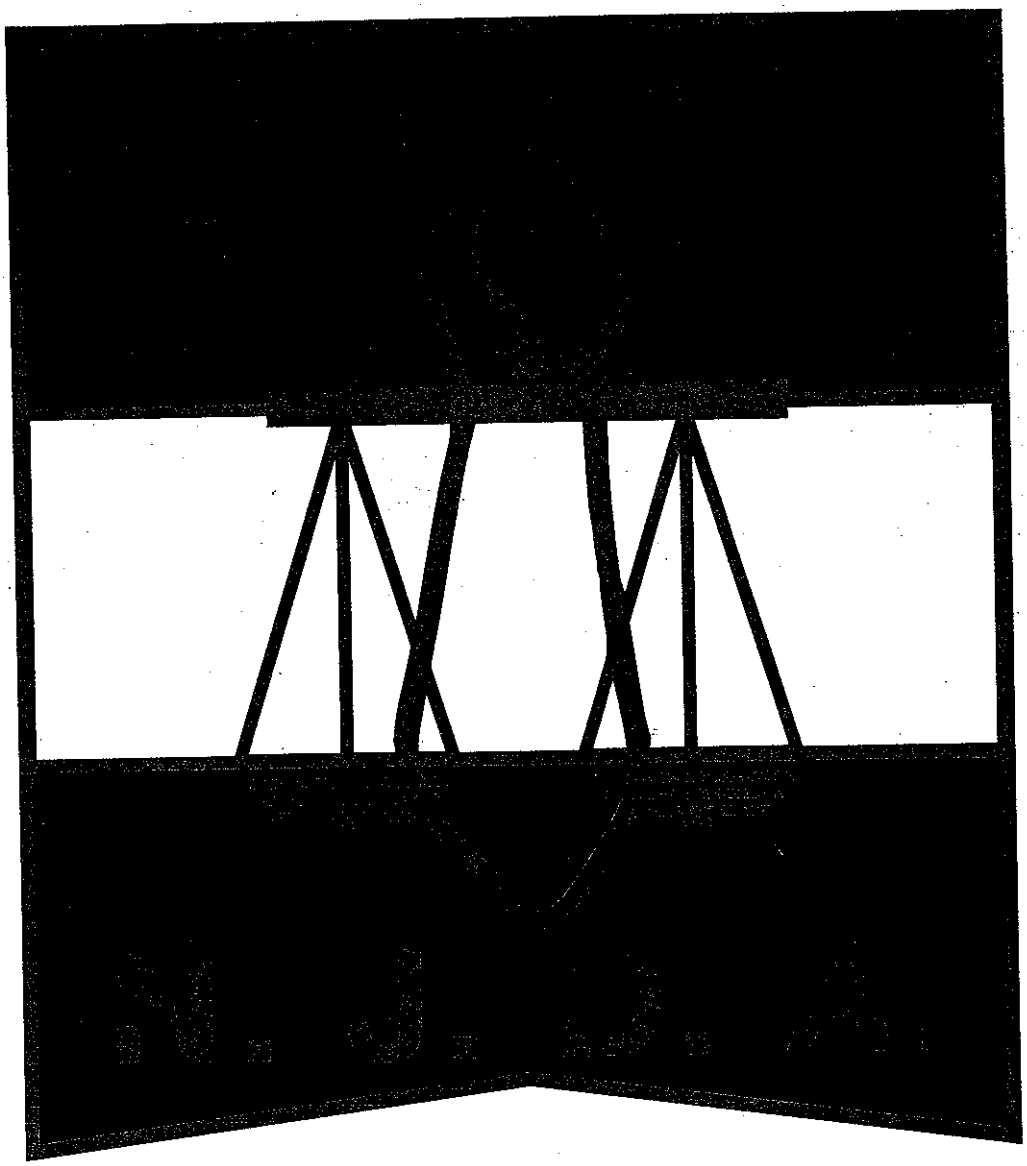
New Jersey Defense

~~ A Publication of The New Jersey Defense Association ~~



inside...

PRESIDENT'S MESSAGE

George Sesso, Esq.

The year 2000...still hard to believe that we are there!

The New Jersey Defense Association has reached the milestone of achieving 1000 members.

Thus, we enter our new millennium with a solid base upon which we can both expand and provide the necessary services to our membership.

Our year 2000 convention was held in Hershey, Pennsylvania and was a great success. Our convention capped off an outstanding year of leadership by our past President, Bruce Helies. I know that we all can look forward to a super time at our 2001 convention in Montreal, Canada. Please mark down the dates, which are June 21 – 24.

As I look forward to our new millennium, I see the need for continuing change as circumstances and times change. Going forward change will be continuous relative to how we function within our profession. We work in a profession where change can be downright scary. Thus, the challenge for our organization going forward will be to help our membership both deal with and proactively handle the necessary changes that will occur.

What changes can we anticipate?

First and foremost will be the continuing impact of technology. This issue will not fade away. The ramifications and impact of technology will become increasingly more significant going forward. This will impact the foundations of our practice and profession.

Changes will include:

How we handle the paper facets of our profession.

This will involve online filings, service, and how we handle the paper within our offices.

How we deal with and communicate with our clients, carriers and fellow firms.

Email communications will continue to grow at an increasing rate. Your files will become more and more electronic and be stored on a server. You will access your files while outside your office via the internet. Your clients will also have access to your files via the internet. All of this is presently available and already being utilized.

How our membership deals with the need and difficult challenge of obtaining the necessary technology is a key issue.

Especially for the small and medium sized firms. We need to see if we can assist the small and medium sized firms through negotiated discounts for our membership, or by helping form purchasing groups.

Today this need is not rocket science. Firm websites can be set up for less than $1,000. You can link your website to the NJDA site. You can use your website to let clients have access or communicate with your attorneys. You will need to take advantage of free online research tools in order to stay competitive in our very competitive marketplace. By using technology as a tool you can simplify how you operate and reduce your overhead expenses. Being able to access your electronic files via the internet and your laptop....will make your attorneys more time efficient and cost effective.

It is imperative that, as we go forward, our Association plays a functional and constructive role with our membership in each of these areas. This is how we can add significant value to the benefits of our membership. Going forward I hope to implement a change in our technology committee's focus ..... toward membership implementation.

We also need to identify a technology liaison within our member firms in order to better pool our resources. Our technology chairperson, Chuck Hopkins, is well equipped for these challenges.

I see three additional areas for our focus as we enter our new millennium:

1 Our substantive committees created under Chuck, and improved under Bruce, remain a critical component of our future. Our

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PRESIDENT'S MESSAGE

(Continued from page 2)

Chairman, Bruce Helies, has agreed to focus on this important area this year.

2 We have a need to be more proactive! As an Association I see a need for us to get more proactive on certain issues and a need to jump into some controversial issues, when and where appropriate. Our Board may be asking for help from our membership so we have credibility in our position.

3 Our educational function has always been and always will be one of our most important responsibilities. We need to continue our nuts-and-bolts focus within our Seminars.

The next year should be both exciting and challenging for all of us. I know that I speak for our entire Board of Directors when I state that we all are committed to assisting our membership meet the challenges ahead.

George Sesso

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Congratulations to Bill Garrigle, winner of the State Shorthand Reporting Service Trophy for low gross, and Jack Palise, winner of the Francis H. Wolff Memorial Trophy for low net.

LETTER FROM THE EDITOR

Bruce E. Helies, Esq.

It has been quite some time since we have presented a Case Law Summary for the **NEW JERSEY DEFENSE**. One of the seminars at our Convention in Hershey in June dealt with that topic and it was well received. We took the opportunity to adopt the seminar idea into an issue for the New Jersey Defense.

The cases advanced are significant in their areas of decision and have impact on the day-to-day practice of our members. Clearly, with the Appellate Division decision in Hubbard v. Reed, the Appellate Division has finally given us some guidance in whether Affidavits of Merits will be required in the common-knowledge type of professional liability claim.

In Velazquez v. Portadan, the Supreme Court has indicated that the "medical judgment" charge is viable but that trial courts should not allow the charge to be given relative to issues that merely involve the standard of care and thus the Supreme Court establishes guidelines to assist trial courts and practitioners to separate the various facts of the case and allow the medical judgment charge only relative to those specific allegations in the case involving areas of medical judgment. Since the "judgment" issue is viable in legal malpractice cases as well a practice point can be taken from the Velazquez case by attorneys representing legal defendants. In McGrogan v. Till, Judge D"Annunzio suggests that perhaps the Statute of Limitations for legal malpractice should be two (2) years under circumstances where the underlying case allegedly mishandled by the defendant/attorney (such as a personal injury case) had a two (2) year Statute of Limitations. The suggestion is the six (6) year Statute of Limitations be reserved for circumstances where the defendant is being sued for mishandling a transactional matter.

The Appellate Division in Schick v. Ferolito reminds all of us "duffers" to announce our "Mulligans" before taking them. The Moore and Jiminez cases provide us with stark differences in landowner liability cases where the property owner is a corporation or a homeowner. It would appear that the Appellate Division is beginning to break down the classical duty classifications of invitee, licensee and trespasser and going more to the Hopkins v. Fox & Laszo Realtors, 132 N.J. 426, analysis of the relation of the parties, the risk, the opportunity to exercise care and the public interest in the resolution.

Of critical importance were the Beninato v. Achor and Perreria v. Rediger cases where the Appellate Division has provided either for subrogation or equitable subrogation in the favor of health care carriers for reimbursement of medical expenses for treatment of plaintiffs injured in tort actions. This intrusion in the Collateral Source Rule will require all of us to carefully negotiate personal injury settlements and either have our clients pay off the expected subrogation claims of the health care carriers, become involve in negotiating their resolution and/or in the alternative obtaining the appropriate releases from plaintiff and plaintiff's counsel to be indemnified and defended for such claims as a part of the settlement. In Conduit & Foundation Corporation vs. The Hartford Insurance Company, the Appellate Division ruled that as between a General Liability carrier and an automobile carrier for the same insured, the automobile carrier would be responsible to pay the claim of an injured worker injured on a construction site notwithstanding the fact that it was the general liability policy that had the contractual liability coverage for the indemnity provisions in the Contract between the defendant and the general contractor and it was the general liability policy on which the general contractor would have been the additional insured. The ruling of the Court was the incident involved an automobile accident which is excluded under the general liability coverage and therefore must be accepted by the automobile carrier. The case presents a broad impact of additional exposure to our client's who write exclusively automobile coverage if those automobiles may be found on a construction site.

It is hoped that the cases we have selected have some interest to you and that this issue is one that you can place in your trial bag for easy reference while in court.

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What's New . . .

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NJDA Seminars

Saturday, October 21, 2000

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Saturday, January 27, 2001

Saturday, March 23, 2001

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at
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CASE LAW UPDATES

Bruce E. Helies, Esq.

PRODUCTS LIABILITY

Cavanaugh v. Skil Corporation, et al.
A-30, N.J. Supreme Court
Dec'd: May 24, 2000

In this products liability action plaintiff suffered injuries when he placed a portable circular saw on the floor which then "traveled" across the floor running over his foot causing him to lose a toe. A jury awarded $160,000.00.

The Appellate Division upheld the jury's verdict and the Supreme Court affirms except with regard to the modification it makes concerning the State of the Art Defense under N.J.S.A. 2A:58C-3.

The Court held that when contending that the State of the Art rendered the technology urged by the plaintiff unfeasible, the defendant must prove the technological State of the Art at the time the product left its control and the plaintiff bears the burden of proving that when the product was manufactured it did not conform to whatever may have been the feasible technology. Those allocations of the burden of proof are approved on the basis of the Appellate Division decision.

The Court held that the New Jersey Product Liability Act requires the plaintiff to show a practical and technically feasible alternative design that would have prevented the harm without doing substantial damage to the intended function of the product. In asserting a State of the Art defense, the defendant must establish the State of the Art at the time of distribution; the plaintiff must prove the products non-conformity with the feasible technology to over come what is otherwise an absolute bar to recovery. The defendant retains the prerogative of asserting the State of the Art defense but this requires a specifically stated affirmative defense in the Answer. A defendant, at trial, may present rebuttal evidence concerning a products reasonable design but that, without more, is not an assertion of the State of the Art defense.

In this case the Trial Court charged the State of the Art requirement although the defendant not only entered evidence of reasonable design. The Supreme Court ruled that a product defendant challenging only the practicality of the alternative device and not its technological feasibility has not asserted a State of the Art defense.

Although the Supreme Court ruled it was error for the Trial Court to charge the jury on the State of the Art defense when the defendant had only attempted to introduce evidence as to the practicality, the plaintiff's alternative design, it did not reverse the verdict that was rendered in plaintiff's favor.

The defendant also argued it was entitled to the defense of comparative negligence and the Supreme Court ruled that the Doctrine of Suter v. San Angelo Foundry & Machine Company which bans the contributory negligence defense in actions where a factory worker is injured while using a defective machine for a foreseeable purpose has been broadly interpreted in subsequent cases and, therefore, that ban is not limited to plaintiffs who were working in a factory at an assigned task or on a plant machine and, therefore, the plaintiff should not be barred from recovery solely because he did

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CASE LAW UPDATES

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not work in a factory.

AFFIDAVIT OF MERIT

Hubbard vs. Reed
P81, App. Div. A-5827-98T1
Dec'd May 15, 2000

Plaintiff received treatment from the defendant/dentist who instead of extracting an incisor extracted an mandibular left second bicuspid. Plaintiffs sued the dentist who moved for and were granted Summary Judgment because plaintiff had failed to file an Affidavit of merit under N.J.S.A. 2A:53(a)-26 et seq.

The trial court ruled that the legislature in enacting the Affidavit of Merit statute did not exempt common knowledge malpractice cases. The trial court felt the purpose of the statute was to weed out frivolous claims and thus the Affidavit is required so as not to frustrate the statute. Although the court concedes that the common-knowledge doctrine exists in professional malpractice cases, the Affidavit of Merit statute requires an Affidavit be supplied in all actions governed by the statute and there is no express exception within the statute. The statute requires an Affidavit regardless of the method that will be used to prove the claim (expert or common knowledge). The Appellate Division held the statute is clear and unambiguous and mandates that an Affidavit of Merit is required in all malpractice cases against licensed persons including those in which a plaintiff intends to establish liability without the use of expert testimony.

MEDICAL MALPRACTICE

Velazquez v. Portadan
A-12, N.J. Supreme Court
Dec'd: May 18, 2000

In this case the Supreme Court considered the defense of the exercise of medical judgment in the malpractice case where the allegations were essentially:

1. Whether the defendants monitored the development of the pregnancy while the mother was Pitocin, or
2. Whether the monitoring strips were readable; and,
3. If the strips were not readable should the delivery of Pitocin have been stopped; and,
4. If the strips were in fact readable whether they revealed fetal distress and if distress was evident whether continuing the Pitocin without remedying the distress exhibited on the tapes comported with the appropriate standard of care.

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There was also an allegation in the case as to whether an internal fetal monitor rather than an external fetal monitor should have been used.

Because of deprivation of oxygen, the child was born with cerebral palsy.

The trial court provided the jury with the general charge that physicians or nurses cannot be found negligent so long as they employ such judgment as is alleged by accepted medical nursing practice. Thus, the jury was instructed that if the provider adopts one or more courses of action each of which under the circumstances has substantial support as a proper practice, the doctor or nurse cannot be found negligent even if the selected course provides a poor result.

The Appellate Division affirmed by the Supreme Court reversed the finding that the trial court failed to untangle the facts of the case in relation to the medical judgment charge and therefore left the jury free to excuse defendants based on the evidence of judgment in the areas where no judgment was exercised. The Court found that in all of the four allegations listed above, there was no element of medical judgment but simply whether standards of care had been violated. The Court indicated that the only area of medical judgment involved was the use of the internal verses the external monitor.

MEDICAL MALPRACTICE - AFFIDAVIT OF MERIT - LIMITATION OF ACTIONS

Burns vs. Belafsky
Appellate Division
Dec'd December 20, 1999

Plaintiff instituted a medical malpractice action on October 6, 1997, defendant filed an Answer on December 18, 1997 and December 29, 1997 respectively. Plaintiff had the expert report in his possession since June of 1997 but failed to obtain and file an Affidavit of Merit within 60 days of the Answers of the defendants. On March 4, 1998, defendants moved to dismiss; on March 23, 1998, plaintiff filed the expert's Affidavit of Merit incorporating the June 6, 1997 report. The Affidavit was 35 days late as to Dr. Stark and 25 days late with regard to Dr. Belafsky. The trial judge eventually dismissed as to both defendants for plaintiff's failure to timely provide an Affidavit.

The case deals with that part of 2A:53A-27 which allows a Motion to be filed to extend the time to file an Affidavit an additional 60 days but it is silent as to when the Motion must be filed. It noted that the Affidavit was served on both defendants in this case inside of 120 days (95 days and 85 days respectively) and at the same time there were motions pending on the issue which the Court could have considered to be motions to allow an additional 60 days. By inference the case appears to be saying that the Motion to extend for 60 days must be filed somewhere within the original 120 days after the filing of defendant's answer and the Affidavit of Merit must be supplied within the 120 day period.

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CASE LAW UPDATES

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LEGAL MALPRACTICE

McGrogan vs. Till
Appellate Division
Judge D'Annunzio
Dec'd February 1, 2000

The plaintiff plead guilty to a charge on December 18, 1989, he was sentenced on January 27, 1992 and he filed this Malpractice Complaint on his criminal defense attorney on September 27, 1997. The Trial Court dismissed utilizing the six (6) year Statute of Limitations from the date of the plea of December 18, 1989.

The plaintiff appeared to argue that under Grunwald v. Bronkesh, 131 N.J. 483 (1993), the statute not begin to run until he sustained a damage.

The Court appeared to indicate the plaintiff was aware that he had a claim at the time of his plea but certainly no later than March 22, 1991 when he authored a letter to Judge Lechner criticizing his counsel's legal advice.

The Court affirmed on the basis that certain the plaintiff was aware of a cause of action against his attorney more than six (6) years prior to the filing of the Complaint. The Court suggested an alternative ground for affirming the judgment by applying the two (2) year Statute of Limitations. The Court said the six (6) year Statute has been applied in legal malpractice cases in which the primary injury is economic and thus it applied in Grunwald because that was a real estate transaction. The Court said since medical malpractice is gauged by the two (2) year Statute of Limitations as a personal injury claim so should the legal malpractice area. The Court held that the consequence of plaintiff's case against the defendant here is a personal injury (emotional harm, stress, anxiety and embarrassment and the impairment of personal relationships). The Court thus ruled that since the Complaint was not timely filed under either the six (6) year or two (2) year statute it should be dismissed.

The interesting aspect of this case is that piercing of the fallacy that all legal malpractice claims are controlled by a six (6) year Statute of Limitations.

MALPRACTICE - EMOTIONAL DISTRESS DAMAGES

Vasilik vs. Federbush
327 N.J. Super. 6 (App. Div. 1999)

In this decision the Appellate Division held that a suicide occurring 15 hours after an alleged act

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of malpractice did not have sufficient connection with the malpractice to support a by-stander's claim for negligent infliction of emotional distress. The Court considered Frame v. Kothari, 115 N.J. 638 (1989) and Gendek & Poblete, 139 N.J. 291 (1995). In Frame, the Court held emotional distress damages could be recovered in a malpractice case if the plaintiff observed the malpractice, its effect and made the connection between the two on an immediate basis.

In Vasilik plaintiff observed the defendant's failure to admit her son for observation after two suicide attempts. The plaintiff also observed her son after a successful suicide but the Court found the suicide occurred too long after the failure to admit for the plaintiff to make the connection. Thus, it would appear the suicide and the malpractice have to occur very close to each other.

CONSUMER FRAUD

Wanetick v. Gateway Mitsubishi
Supreme Court
Dec'd May 10, 2000

The case involves a question as to whether a jury in a consumer fraud case should be told by way of ultimate outcome that their award may be trebled. The argument was it was prejudicial to the defendant and/or in any event it is a judicial function. The counter-argument is that under Roman v. Mitchell, 82 N.J. 336 (1980), jurors are given the ultimate outcome charge in personal injury cases and they should be given such a charge in consumer fraud cases.

STATUTE OF LIMITATIONS

Miller v. Sperling
326 N.J. Super. 572 (App. Div. 1999)

In this case the Court dismissed a wrongful death action even though it had been brought within the two (2) year Statute of Limitations on the basis that a concurrent lifetime claim had not been brought within the two (2) year Statute of Limitations. The facts involved a woman prescribed birth control pills who was provided with a story that the medication was for her nerves, such pills were last given to the plaintiff in 1985, she died on March 30, 1996 of a heart attack. The plaintiff filed suit on March 17, 1998, claiming malpractice against the doctor who prescribed birth control pills on the theory that the pills caused plaintiff's heart attack.

The Appellate Division ruled that the lifetime claim was barred under the discovery rule and

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CASE LAW UPDATES

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that the wrongful death action was also time barred relying on Kanabe vs. Hudson Bus Transportation Company, 111 N.J.L. 333 (E&A 1933), on the basis that since the plaintiff had not asserted a timely malpractice claim, the wrongful death action was also out of time (although instituted within two (2) years from the date of death). The Court distinguished Alfone vs. Sarno, 87 N.J. 99 (1981). In Alfone plaintiff filed a malpractice action and obtained a judgment while plaintiff was still alive, after she died, the wrongful death action was instituted. In the instant case, however, since the plaintiff never filed an underlying suit, the subsequent wrongful death case was also barred by the Statute of Limitations.

LOSS OF CONSORTIUM FOR ADULT CHILDREN

Mealey v. Marella
_____ N.J. Super. _____, (Law Div. 1999)

A plaintiff, 18 years and 4 months old living with his parents who helped his parents was rendered a quadriplegic in an accident that occurred on December 16, 1994. Plaintiffs sued for the loss of his services; the Trial Court ruled that plaintiff's claim for the loss of services of an adult child were compensable. The Court held parents can obtain monetary damages for the loss of services and companionship of both minor and adult children in a wrongful death case. The Court held such damages could also be obtained in a case where the child sustained devastating injuries (quadriplegia).

This appears to be an extension of a loss of consortium claim for wrongful death to a loss of consortium for devastating injuries rather than a creation of a cause of action.

NEGLIGENCE - GOLF

Schick vs. Ferolito
Appellate Division
Judge Arnold
Dec'd January 26, 2000

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If you are interested in serving on any of these committees, please contact our Executive Director at (609) 927-1180.

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Plaintiff was hit in the face by a golf ball; this case was dismissed by the Trial Court on Summary Judgment in favor of the defendant who had hit the ball that struck the plaintiff. Plaintiff testified that he and his father were playing golf at the East Orange Golf Course, they joined a group consisting defendant and another golfer at the 10th Tee; at the 16th Tee the plaintiff tee'd off first followed by his father, then the third member and finally the defendant. The defendant hit his first Tee shot to the woods but on the right but it was not out of bounds, plaintiff and his father then moved their cart to the front of the tee approximately 16 feet away from the front of the tee and at a 45 degree angle to the left; plaintiff assumed that since defendant's ball was not out of bounds that the defendant would play his second shot from the woods, instead, unbeknownst to the plaintiff the defendant hit a second shot (Mulligan), this ball hooked to the left and struck the plaintiff in the face.

The plaintiff notes that Crawn v. Campo, 136 N.J. 494 (1994), requires a heightened standard of recklessness or intentional conduct to have liability found against the defendant. This opinion does not refer to golf or other non-contact sports.

The plaintiff relies on Zurla v. Hydel, 681 N.E. 2d 148 (Illinois App. Crt. 1997) which states that a golfer injured by a golf ball need only allege and prove traditional negligence in order to recover damages rather than willful or wanton conduct.

In looking at other states the Appellate Division noted that Connecticut does not apply a reckless standard to golf. California, Texas and Ohio have extended the reckless standard to golf. California, Texas and Ohio have extended a reckless standard of injuries caused by errant shots and Texas even applies the reckless standard to unannounced Mulligan tee shots similar to the facts of this case.

Historically, New Jersey has held golfers to the ordinary negligent standard, that is a golfer must exercise reasonable care before executing a swing to first observe whether there is anybody else in the line of fire and if so, to provide adequate warning. Crone deals with issues where injury is an inherent risk of the sport and thus the heightened standard of recklessness rather than ordinary negligence. The Appellate Division held that hitting an unannounced Mulligan from a tee after all four members of the team have teed off creates an unanticipated risk that cannot be found to be inherent or an integral part of the game and thus plaintiff's case should not have been dismissed, it should be allowed to proceed to a jury and the jury should access the conduct of the defendant under ordinary theories of negligence. Judge Arnold was the judge in this case in the Appellate Division

LANDOWNER LIABILITY

Moore v. Schering Plough, Inc.
App. Div. A 1642-98T3
Dec'd February 7, 2000

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CASE LAW UPDATES

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Plaintiff worked as a security guard and was hired by the defendant, Schering, as an independent contractor to provide around-the-clock security for its facility. The plaintiff slipped and fell on an accumulation of snow during the course of doing this work. The co-defendant, A & L Services, Inc., as the snow removal contractor, asserted it was only responsible for cleaning the parking lot and evidence indicated the plaintiff fell on the sidewalk. It had been snowing heavily for approximately seven (7) hours at the time of plaintiff's accident and he indicated he never saw anyone plowing or shoveling snow in the area where he fell. Schering was closed on the date of the incident because of the Christmas holidays. The Motion Judge granted Summary Judgment to Schering on the theory that it had no duty to the plaintiff and likewise granted A & L Motions, not on the merits, but on the basis that if Schering had no liability,
A & L had no liability.

The Appellate Division reverses holding that under Blessing v. T. Shiver & Co., 94 N.J. Super. 426 (App. Div. 1967), Schering had a duty to the security guard. In Blessing, the security fell on a hazardous but transitory condition from a water leak because the guard is not a special employer of the owner and the owner had knowledge of the condition through its foreman.

In Rigatti v. Reddy, 318 N.J. Super. 537 (App. Div. 1999), the Court stated a landowner has a non-delegable duty to use reasonable care to protect invitees against known or reasonably discoverable condition. The Court agrees, however, that a landowner is not responsible to a person who is injured during the course of the very work for which the contractor was hired to perform. The Court disagrees with the Motion Judge finding that a security guard has to risk the weather in which he is expected to walk through the premises. Judge Yanoff as the Motion Judge described this as the risk of employment. The Appellate Division agrees that arguments that the business was closed for Christmas, a decision to clean up only after the snow fall ends rather than during it, the nature and extent of plaintiff's foot wear and plaintiff's actions for his own safety are all questions of fact for the jury. A & L is included in a remand because it is not clear the reasons why it was granted Summary Judgment.

LANDOWNER LIABILITY/HOMEOWNERS

Jiminez vs. Maisch
App. Div. - Judge Arnold
Dec'd April 3, 2000

On January 12, 1996 at 2:30 p.m., the plaintiff was delivering mail and slipped on the driveway of defendant's home. 30 inches of snow had fallen on January 7 and 8, 1996 and a state of emergency was in effect from January 8 through January 13, 1996. The plaintiff alleged defendant was negligent in failing to shovel his driveway.

The defendant moved for summary judgment saying the plaintiff was not an invitee. Plaintiff stated that he was and whether he was or not created a question of fact.

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CASE LAW UPDATES

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The Appellate Division held that the judicial common law approach to landowner liability is predicated on the status of the plaintiff (trespasser, licensee or business invitee). Citing Hopkins vs. Fox & Laszo Realtors, 132 N.J. 426 (1993).

No New Jersey case had dealt with whether a post man was an invitee but the jurisdictions that have consider them to be invitees. The Appellate Division holds that a postman is an invitee but states the case must still be decided on an abiding sense of fairness under all of the circumstances in light of the considerations of public policy, again citing Hopkins.

The court holds that as a result of the very heavy snowfall, the risk was obvious to the plaintiff and any burden on homeowners to shovel under those circumstances would appear to establish an unreasonable burden and thus the dismissal of the plaintiff's case is affirmed.

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CASE LAW UPDATES

AUTO INSURANCE/GENERAL CONTRACTORS INSURANCE INDEMNIFICATION

Conduit & Foundation Corporation v.
Hartford Insurance Company
Appellate Division
Judge Conley
Dec'd March 8, 2000

The case involved one where a subcontract's employee was killed in an automobile accident that occurred on a construction site. Suit was brought against the contractor responsible for maintaining safety; that defendant filed a Third Party Complaint against another subcontractor based on an indemnification clause in the Contract. The dispute developed between the third party defendant subcontractor who submitted the claim to both its auto carrier and its CGL carrier. The argument was that the indemnification obligation proceeds from the third party defendant's CGL policy although that policy has an exclusion for actions arising out of automobile accidents. Further, the argument was the incident occurred because the general contractor had failed in its general contractor duty to supervise the construction site. The Appellate Division ruled that clearly the injury arose out of an automobile accident and the general liability policy of the insured specifically excludes that coverage.

Here, the decedent was employed by Universal and was killed by a vehicle owned and operated by his employer, Universal. That vehicle was insured by Providence Washington. Hartford provided CGL coverage for Universal.

The Court considered whether in deciding whether the CGL or auto policy coverage would apply or whether it should look to the allegations of negligence against Conduit or Universal. If it emphasized the allegations against Conduit there was negligent supervision of the construction site. If it looked at the allegations against Universal it would have been with regard to the operation of the vehicle. The Trial Court emphasized Conduit's liability and ruled against the CGL carrier. The Appellate Division reverses for the following reasons:

(1) This was an automobile accident that caused the death more than a failure to supervise the work site.

(2) The Hartford policy excluded incidents arising out of automobile accidents.

The problem with the decision appears to be the Worker's Compensation defense and the fact that the premium for Universal's CGL carrier could reflect the additional insured endorsement and contractual liability coverage which do not exist on the automobile policy.

CHAIRMAN OF THE BOARD'S MESSAGE

Bruce E. Helies, Esq.

ANNUAL CONVENTION

As you are aware the New Jersey Defense Association conducted its 34th Annual Convention at the Hotel Hershey, Hershey, Pennsylvania. As always the opulence of the hotel and its grounds as well as the adjacent activities for adults and children together provided an excellent background for what proved to be a most successful convention.

We were particularly fortunate in have a trilogy of excellent seminar programs. The Association is grateful to the efforts of Michael J. Leegan, Esq., Connie A. Matteo, Esq., and Christopher Santomassimo, Esq., of the Young Lawyers Committee of the New Jersey Defense Association for their excellent presentation on the Restatement (Third), Products Liability and the New Jersey Products Liability Act which was presented on Friday afternoon, June 2, 2000.

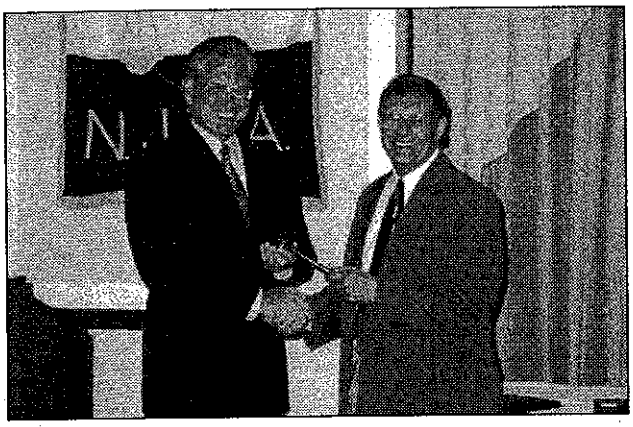
The prospect of having to commence a seminar at 8:00 a.m. on Saturday morning did not prevent an excellent turn out for the program presented by Charles M. Miller, Chairman of the Professional Liability Committee of the New Jersey Defense Association on Environmental Engineering Malpractice and the presentation of Robert DiPasquale, C.P.A., dealing with issues of accountant malpractice. Finally, we were provided with a product liability update and a presentation of the appropriate way to deliver a "opening statement" in a product liability case by Michael B. Oropollo, Esq., Vice Chairman of the Products Liability Committee of the New Jersey Defense Association and Deborah Metzger-Mulvey, Esq.

The attendees were also provided with a case law update for the first half of the year 2000.

We thank all participants in the seminars for their excellent presentations. Their hard work certainly saw to it that the business aspect of the Convention was most worthwhile. Please accept the thanks of our Board of Directors for your efforts.

We hope you enjoy the following Convention photographs!

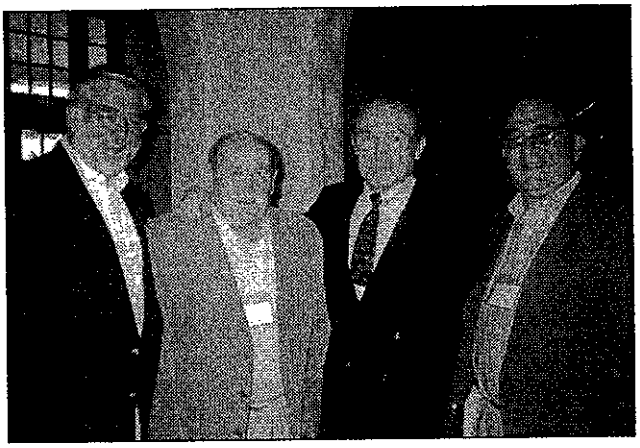
Convention Memories



Bruce Helies presenting gavel to President George Sesso

Chuck Hopkins presenting NJDA award to outgoing President Bruce Helies

Liz Hopkins, Chuck Hopkins, Bruce Helies, Robert Kelly and Noreen Kelly



Roger Steedle, George Meyers, Tom Chappell, Michael Cernigliaro

John Kearney, Jane Kearney, Daniel Pomeroy

Francis Garrity, Lisa Garrity, Tim Burke, Patricia Burke and Donald Burke

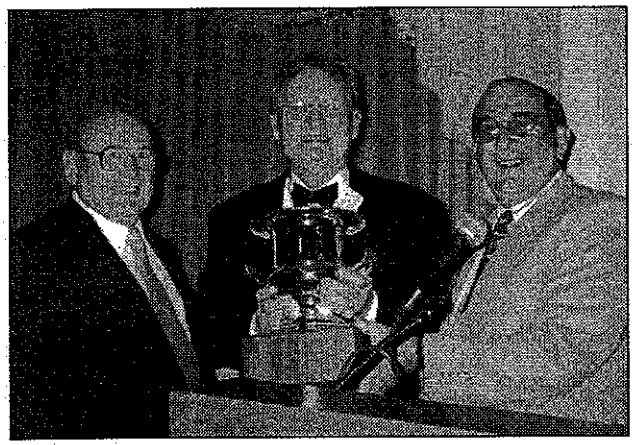
Convention Memories

Brian O'Toole, Kevin O'Leary, Kevin DeCoursey,
Andrew Toulas, Christopher Hughes,
John O'Donnell, Alan Conrad, Kevin Couch

Debbie Palm, John Palm,
Kathy Hight, Tom Hight

Susan Pomeroy, Evie Powers, Lisa Castellani

John Breslin, Terry Breslin, Kelly Durkin,
Daniel McNerney



George Meyers, Bill Garrigle,
Michael Cernigliaro

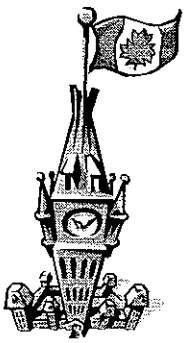
Past Presidents:
Seated – Chuck Hopkins, Tom Chappell, Bill Powers
Standing – Stephen Foley, Jr., Bruce Helies,
George Meyers, Roger Steedle, Michael Cernigliaro

Convention 2001

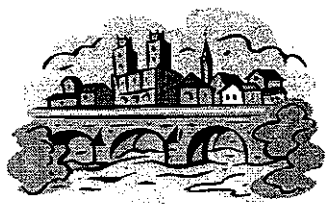
June 21 – 24
Montreal, Canada

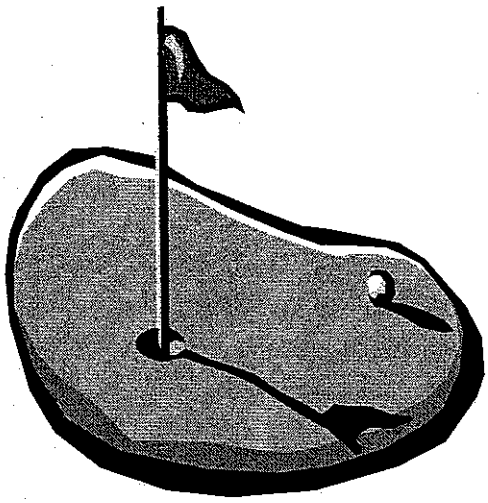
Please join the New Jersey Defense Association for its 35th Annual Convention at the Montreal Marriott Chateau Champlain.

- *Montreal is on the St. Lawrence River*
- *Visit the Old City*
- *See Notre Dame Cathedral*
- *Excellent Metro system*
- *18 mile Underground City full of shops, restaurants, movie theaters and more!*



Watch for more details in upcoming NJDA publications.





NJDA Golf Outing

Friday, August 4, 2000

12:00 p.m.

OLD ORCHARD COUNTRY CLUB

Eatontown, NJ

54 Monmouth Road

732-542-7666

All NJDA Members and their guests are invited to attend.

6:30 P.M. CASH BAR – HORS D'OEUVRES – BUFFET DINNER

GOLF PRIZES AWARDED!

Register ASAP!

Call Maryanne Steedle at (609)927-1180 for information.

Golf Only #_____ @ $90.00 per person Total _____

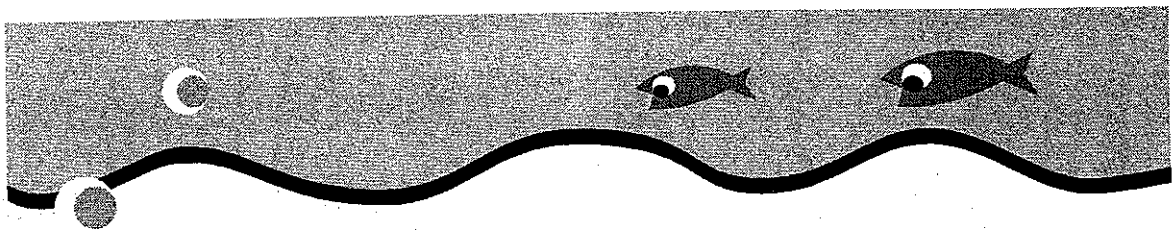
Golf & Dinner #_____ @ $140.00 per person Total _____

Dinner Only #_____ @ $50.00 per person Total _____

Please make checks payable to NJDA and mail to: P. O. Box 463, Linwood, NJ 08221
Or charge to: Visa MasterCard American Express Discover

Account No. _____ Exp. Date _____

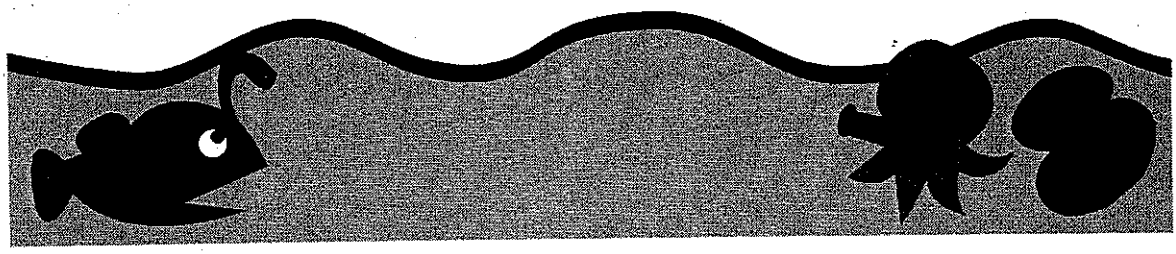
Cardholder Name_____ Signature_____



Summer Fun is almost over....
Get ready for upcoming NJDA seminars!

October 21
November 21
January 27
March 23

Rookie Seminar — May 5



New Jersey Defense

New Jersey Defense Association
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