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New Jersey Defense

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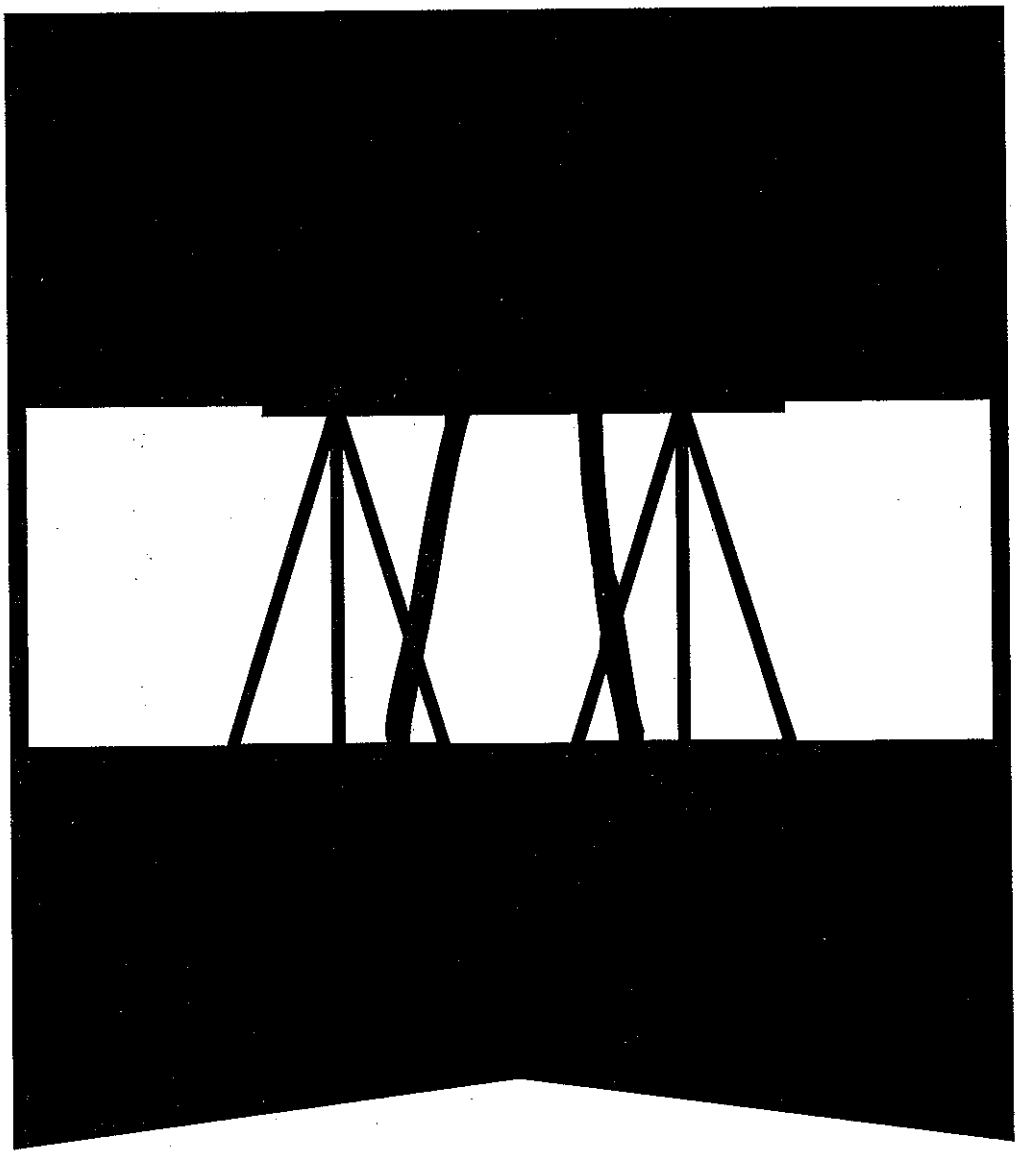

inside...

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PRESIDENT'S MESSAGE

Brian O'Toole, Esq.

The first half of my term has flown by quickly. It has been both interesting and challenging. We have had two successful seminars on jury selection and trial presentation. I was very fortunate to gain the assistance of two of our most experienced and esteemed members, Mike Cernigliaro and Bruce Helies. We were also joined by two of the best plaintiffs' attorneys in the State, John Collins and Jerry O'Connor. This two-part seminar was extremely informative, and was a great deal of fun. I personally learned more about jury selection then I had ever learned in all my previous years of practice. Our audience got the chance to understand the rationale top attorneys use in this educated guessing game we all engage in. We are also co-sponsoring a seminar with ICLE on alcohol evidence in a civil case. This is our first time working with ICLE and I hope this becomes an annual event. We will also be publishing a new medical directory, which will be available in April 2002.

Our organization also had the opportunity to take an active part in opposition to proposed legislative amendments to our wrongful death statutes. The new proposal, driven by ATLA, is to allow for damages for emotional pain and suffering for the loss of the person. The so-called "grieving widow" damages. I had the able assistance of Heidi Currier, Jerry Hanson and Chuck Hopkins in getting our position out front. Jerry testified before the Assembly Judiciary Committee, Chaired by John Russo, and I testified before the Senate Judiciary Committee, Chaired by William Gormley. Chuck and Heidi attended meetings and participated in getting the information out to our Board of Trustees. Maryanne Steedle, our Executive Director, was also instrumental in organizing this entire effort. As a result, this bill has now been tabled until later in 2002. The ATLA effort to obtain quick passage of a potentially disastrous bill to our industry was temporarily thwarted. The plaintiffs' bar will continue to push this bill, but we are now ready to effectively oppose it. I am a member of the legal committee comprised of the New Jersey Hospital Association, the New Jersey Business and Industry Association, and the Alliance of American Insurers. We will be keeping the Association apprised of new developments.

My wife, Sunny, and I had the opportunity to attend the DRI annual meeting in Chicago and the DRI Atlantic Regional meeting in New York. The Chicago convention was nothing short of sensational. We were joined at these meetings by the Sessos, the Hopkins and Art Leyden. We plan on attending next year's meeting in San Francisco.

On the social side, we had great attendance at our golf outing in August and we are planning a mid-winter dinner dance in February. We also have great expectations for our convention at The Sagamore in Lake George. In addition to several outstanding seminars, we are planning a Friday night cocktail party on the hotel's excursion boat which tours Lake George. We will also be having a sumptuous cocktail party and dinner dance Saturday night, featuring a raw bar in addition to outstanding selections of Irish whiskeys. We're looking forward to an outstanding turnout.

All in all, it has been a busy 2001 for the NJDA and 2002 promises to be just as hectic. I'm confident with the outstanding effort of Maryanne Steedle, and our Board of Trustees, 2002 will be a year of growth and prosperity.

WRONGFUL DEATH STATUTE AMENDMENTS

Brian O'Toole, Esq.

Chuck Hopkins presented a copy of the proposed Legislative Amendment to our existing Wrongful Death Statute to the Board at our December 5th meeting. This amendment would allow damages for loss of the relationship with the decedent, including consideration for mental anguish and emotional pain and suffering. The Board discussed the amendment and we were advised that this bill would probably be set down for hearings sometime in January or February 2002. Little did we know! What subsequently transpired can only be described as a Christmas odyssey. The Alliance of American Insurers and several other lobbying groups, including the New Jersey Business and Industry Association and New Jersey Hospital Association asked us to take a position on this bill. These requests were received on December 11th. On December 12th, we received notice that the Assembly would take testimony on their version of the bill on Thursday, December 13th. With essentially no notice, Gerard Hanson stepped to the fore and appeared on behalf of the NJDA. He testified in opposition to the proposed amendment in front of the Assembly Judiciary Committee, chaired by Assemblyman, David Russo. He then e-mailed the Executive Board of the NJDA his report on the hearings. I supplemented our position with a letter to Chairman Russo, dated December 14, 2001. I sent an identical letter to Senator William Gormley, the Chairman of the Senate Judiciary Committee.

We subsequently learned on December 14th that the Senate would conduct a hearing in front of their Judiciary Committee on December 17th. I appeared at that hearing and gave testimony. Subsequent to that hearing, I attended a meeting of those opposed to the amendment and agreed to serve on the legal committee. At the request of the committee, I forwarded them the NJDA proposals for compromise legislation by letter dated December 18, 2001. It was the consensus of the legal committee that changes were going to be made to the Wrongful Death Statute and we should try and counter ATLA's position with a more reasonable proposal that we could live with.

A follow-up meeting of the legal committee was scheduled for December 20th in Trenton. Gerard Hanson and Heidi Willis Currier of the NJDA attended this meeting. As a result of that meeting, I wrote to Daniel Waldman, President of the State Bar by letter of December 20th and asked him to reconsider the State Bar's approval of the proposed amendments. I also asked him for an opportunity to allow the NJDA to address the issues in front of the State Bar's Board of Trustees.

Since that time, Jerry Hanson, Heidi Currier and I have had numerous phone conferences and e-mails on counter proposals. Senator Gormley had scheduled a second hearing for January 3, 2002, in front of his Committee, but we learned the day before that the bill had been withdrawn for consideration, so it remains in his Judiciary Committee. The Assembly voted their amendment out of Committee, but at the time of this article, we are unaware of when this might be scheduled for a floor vote. Another meeting of the Legal Committee is scheduled for January 10, 2002.

I would like to thank both Jerry and Heidi for their excellent efforts during the Christmas season, and I can assure you that the three of us will continue to represent the interests of our association in presenting thoughtful opposition to the proposed amendments.

WRONGFUL DEATH STATUTE

New Jersey Defense Association

December 14, 2001

VIA FAX 609-407-1357

Senator William L. Gormley
Chairman-Senate Judiciary Committee
6814 Tilton Road, Unit H
Egg Harbor, New Jersey 08234

Please reply to:

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After reviewing the proposed amendments to N.J.S.A. 2A:31-5, it is difficult to imagine how our present concepts of providing insurance coverage can endure. The basic concept of insurance is predicated upon an insurable risk and a recognized methodology of calculating the probability that this occurrence might happen. This is what we all commonly understand to be the underwriting function. Given the proposed new amendments, it seems impossible to identify the insurable risk in a wrongful death situation, based upon the extremely broad category of potential claimants. In addition to parents, the amendment talks about the persons standing "in loco parentis", a designation which inventive plaintiff's attorneys could turn into almost anyone. In the alternative, surviving brothers and sisters are added, without any qualification or parameter that the sibling relied on the decedent for support, either financial or emotional. Hypothetically, a newborn infant could sue for the loss of his 18-year-old brother, whom he never knew!

While these concerns are problematic, the real difficulty with the new amendments relate to the underwriting dilemmas. How do you calculate a premium insuring a risk when the risk is compensating someone for the loss of the person. How do you answer the question that plaintiffs attorneys will pose "How much would you pay to have your husband back for even an hour, much less his probable life expectancy?" Obviously, using our time-unit argument, these numbers would be virtually limitless. How does an underwriter begin to calculate a probable risk, when any given claimant might collect $100 million dollars for any given claim. Quite simply, our present concepts of insurance will cease to exist. It will simply be impossible for any company to write a policy that the consumers can afford to pay for. Policies will have to be written with an exclusion for wrongful death claims or premiums will have to be charge that the public cannot afford to pay. The third alternative is that companies will restrict the amount of coverage that is available in wrongful death lawsuits. In any of these cases, the new amendments will leave the injured claimants with less recoverable benefits, rather than more, which seems to defeat the real reason for the amendments.

Our present statute seeks to reimburse claimants for their pecuniary loss and for loss of guidance, nurturing and counsel. (Green v. Bittner, 85 N.J. 1 (1980). It is a rational method of compensating plaintiffs for their actual loss, without adding the speculative and incalculable loss of the special relationship between the survivor and decedent. As our Supreme Court has stated, it is impossible to put a dollar value on the loss of the actual person. New legislation should not place this impossible burden on the citizens of the State of New Jersey and our New Jersey jury system. On behalf of the New Jersey Defense Association, I would urge your committee to maintain our present statute and reject the proposed amendments.

I would be happy to discuss this with you further if your committee seeks any additional information from our association.

Sincerely,

Brian R. O'Toole, President
New Jersey Defense Association

BOT:bko

WRONGFUL DEATH STATUTE

New Jersey Defense Association

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December 20, 2001

VIA FAX-732-842-1592
Daniel M. Waldman, Esq.
Waldman and Moriarty
212 Maple Street
PO Box 578
Red Bank, New Jersey 07701

Re: Senate Bill 2520 Amendments to the Wrongful Death Act

Dear Mr. Waldman:

On behalf of the New Jersey Defense Association, I would urge you to reconsider the State Bar's position endorsing the amendment. I am advised that the vote on this issue was close, and I believe it is misleading to characterize the State Bar's position, without indicating that it is a majority with substantial opposition. I am also disappointed that the NJDA was not consulted or asked for input on an issue that all of our membership deals with on a daily basis.

Accordingly, I would ask you to set this matter down for additional discussion in which our organization could participate. I would also urge you to advise the Senate Judiciary Committee that the State Bar would like additional time to further consider this matter.

I am at your disposal.

Sincerely,

Brian R. O'Toole, President
New Jersey Defense Association

BOT:bko

WRONGFUL DEATH STATUTE

New Jersey Defense Association

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December 18, 2001

VIA FAX

John P. Sheridan, Jr., Esq.
Riker, Danzig, Scherer, Hyland and Perretti LLP
Headquarters Plaza
One Speedwell Avenue
Morristown, New Jersey 07962-1981

Dear John:

It was a pleasure meeting you. Pursuant to your request, here are my proposals for some compromise legislation.

1. Our present statute deals fairly with all claims, except perhaps for children under the age of five and the aged who no longer contribute to their families, either financially or in any counseling type capacity. We could offer to agree to an amendment that would allow some form of recovery for people in these categories. We could propose allowing children under five and adults over 70, who could not prove a case under our statute or under Green v. Bittner, 85 New Jersey 1 (1980) (pecuniary loss for loss of guidance and counseling) to be able to collect up to $25,000 upon a showing that the individual plaintiff had an ongoing relationship with the decedent.

   This should only be offered as a compromise for as we discussed, plaintiffs are able to generate pecuniary losses for the very young based on IQ tests and family background and the very old also can generate economic loss under Green v. Bittner for even a phone conversation a couple times a month.

2. Persons standing in loco parentis should be deleted since the category could easily be subject to abuse. If the concept is to be used, it must specifically be limited to situations where the natural parents are either dead or completely out of the picture, either by court order, disability or illness or abandonment. The foster parent in this example must also be that person who is legally responsible for the child.

3. There must be mandatory joinder of all claims, meaning all plaintiffs must pursue their remedies in the same cause of action. The present amendment is silent as to this.

4. The reference to damages for unemancipated minor children should be deleted in that under the Green v. Bittner case, parents can presently be adequately compensated, even if the child does not provide financial support for family members. Our proposal set forth in #1 should also cover this area.

5. We should probably be willing to live with a cap of $100,000 for all categories of plaintiff, but I suggest we start with $25,000 in our proposed compromise.

WRONGFUL DEATH STATUTE

I have advised my association of your meeting on December 19, 2001 at 8:00 a.m. We will advise if anyone will be attending. I also enclose a copy of my December 14, 2001 letter to Chairman Gormley.

Please feel free to call me at any time. I hope you all have a wonderful Holiday season.

Sincerely,

Brian R. O'Toole, President
New Jersey Defense Association

BOT:bko

150 YEARS OF TRIAL EXPERIENCE

Charles P. Hopkins, II, Esq.

Over the course of two days four of New Jersey's top trial lawyers showed their skills in a mock trial. The trial involved a fight in a bar arising and injuries allegedly sustained by the plaintiff at the hands of the bar bouncer.

Michael Cernigliaro, of Campbell, Foley, Murphy, Lee & Cernigliaro represented the Bar. Bruce Helies, Wolfe, Helies, Duggan , Spaeth & Lucas represented the bouncer. John B. Collins of Bongiovanni, Collins & Warden and Gerald B. O'Connor of O'Connor & Demas, represented the plaintiffs. Brian O'Toole of O'Toole & Couch presided as Judge.

The first day of trial involved jury selection. A host of jurors, each with their own background by way of occupation, law suit experience, personality traits, family background and opinions about alcohol consumption were presented to the lawyers. Each of the lawyers discussed their impressions of how each of these different jurors would receive their respective arguments. They then gave thumbs up or thumbs down to each of the jurors based on these impressions. As each of the witnesses were reviewed it became there was an amazing consistency among these experts. Those whom the plaintiff's liked the defendant's would generally reject and vice-versa. The audience was also invited to present their opinions and to explore in detail the reasoning behind the preferences expressed by the lawyers trying the case.

On the second day of trial witnesses were presented including the plaintiff and bouncer. Direct and cross-examination of the witnesses took place. A mixture of good humor and serious legal talent was in evidence. Both sides scored a number of points. A number of objections were raised with Judge O'Toole ruling mostly in favor of the defense.

At the close of the trial closing arguments were made. The arguments presented by all were cogent, persuasive and filled with passion. It was readily apparent to all attendees why all four of these trial lawyers are at the top of their game.

N. J. D. A.

What's New . . .

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NJDA Seminars

Saturday, March 21, 2002
Educational Seminar - Insurance Coverage
Sheraton Woodbridge Place - Iselin, NJ

Saturday, May 4, 2002
Rookie Seminar
Union County Courthouse

June 27 - 30, 2002
36th Annual Convention
The Sagamore at Lake George
Bolton Landing, New York

www.njdefenseassoc.com

WORKERS COMPENSATION

Edward Herman, Esq.

Aside from a very busy fall calendar, there have been major changes in the Division of Workers'Compensation during the past few months. Of course, with the election of James E. McGreevy as Governor of our State, a new Commissioner of Labor has been appointed, and we now await the appointment of a new Chief Judge and Director of the Division of Workers'Compensation. Our former Director and Chief Judge, Paul Kapalko, resigned in December to accept an appointment the Superior Court bench. At the same time, the Workers' Compensation Judges' Association led a spirited campaign to amend the pension system for workers compensation judges. That bill was approved by both houses of the legislature and signed by Governor DiFrancesco, giving our Judges a new and improved pension plan, but it also contained a mandatory retirement at age 70. Therefore, the Division lost, at one time, approximately seven experienced Judges, in addition losing Judge Kapalko and Judge Fred Kumpf to the Superior Court, for a total of nine Judges. Governor DiFrancesco, as one of his final acts as Governor, appointed eleven new Judges to the workers' compensation bench. As of this time a new schedule assigning the new Judges to specific counties has not been released. No doubt, the next few months will prove very interesting in the Workers' Compensation Courts. We wish the retired Judges and the newly appointed Judges well.

As to the substantive decisions affecting the workers' compensation system, it has been a busy term. First, you should be aware of New Jersey Attorney General Opinion 1-0170. In that Opinion, it was held that the New Jersey Courts must honor a stay of proceedings issued by the New York Supreme Court for a New York insurance company (Frontier Insurance Co.) in bankruptcy pursuant to the Uniform Insurance Liquidation Act. With the country in a recession, we can expect to find more insurance companies file for bankruptcy protection, and this Opinion would require our workers' compensation courts to honor a stay in proceedings during the pendency of the rehabilitation period, if requested.

John Kinley v. Toppan Printing was decided by the Appellate Division on December 21, 2001. This was an appeal from an Order denying temporary disability to the petitioner. In addition to an orthopedic injury, the petitioner alleged that he also suffered from a bipolar disorder caused by acute back pain over a long period of time. The treating doctor testified that this condition was caused by the back pain, while the respondent's doctor testified that it was not related and could not be caused by the orthopedic injury. In affirming the denial of temporary disability benefits, the Court stated that the nature and extent of the disability was not the issue and therefore there was no requirement to give the treating doctor preference over the examining doctor. The Court sustained the trial judge's findings based on the credible believable evidence presented at the time of the trial.

Two interesting cases involving firemen from Jersey City, Lindquist and Culbert, were decided by the Appellate Division on November 20, 2001. Both were occupational pulmonary exposure cases, with Lindquist working for the Jersey City Fire Department from 1972 until his retirement in 1995, and Culbert working for the same department from 1968 to 1976. In each case, petitioner was awarded benefits by the workers' compensation court, and both cases were reversed essentially for the

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WORKERS COMPENSATION

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same reason. The Court found that there was insufficient credible evidence of causal relationship to sustain an award of disability. The petitioner failed to meet the standard of proof as set forth in the Fiore and Laffey cases. Therefore, both cases were reversed and dismissed.

Another case of interest is Edwin Rutland v. General Elevator, decided by the Appellate Division on November 30, 2001. In this case, the trial judge denied an award of psychiatric disability even though medical experts on both sides testified that petitioner did have a psychiatric disability. The trial judge found that since there was no treatment for the psychiatric condition from the time of the accident, there was no permanent psychiatric disability. The Appellate Division, in reversing the trial court, held that a lack of medical treatment for the psychiatric condition was not a sufficient reason to deny benefits in light of the fact that both experts testified that petitioner did have a psychiatric disability. The case was remanded for the trial court to set the extent of the psychiatric disability to be awarded to the petitioner.

MID-WINTER DINNER A GREAT SUCCESS!

The NJDA Mid-Winter Dinner Dance was held on Friday, February 1, 2002 at the Meyner Reception Center at the PNC Arts Center in Holmdel. It included a wonderful and plentiful array of hors d'oeuvres during the cocktail hour followed by a delicious buffet dinner with carving stations. The low price of $50 per person included all food and an open bar during the cocktail hour and the entire evening. The DJ succeeded in getting everyone on the dance floor. The Young Lawyers group was in attendance and reported that they thoroughly enjoyed the social evening. The membership eagerly looks forward to next year's Mid-Winter Dinner Dance. It's an event all members should not miss!

The Young Lawyers Committee

Providing educational, social and professional opportunities within the defense community.

We are actively searching for new members to become involved with the N.J.D.A. as young lawyers. Our Committee provides an excellent opportunity for young lawyers to take a more active role in the profession by participating in seminars, writing substantive articles for the N.J.D.A. newsletter and interacting with veteran members of the N.J.D.A.

As young lawyers, we need to take an affirmative role in ensuring our development and education. The Young Lawyers Committee of the N.J.D.A. provides the vehicle in which one can learn and mature into an experienced attorney within the civil defense litigation field.

Below is a list of our Committee Chairs and highlights of past and upcoming events. Please feel free to contact me with any questions or comments regarding the Young Lawyers Committee of N.J.D.A. Thank you.

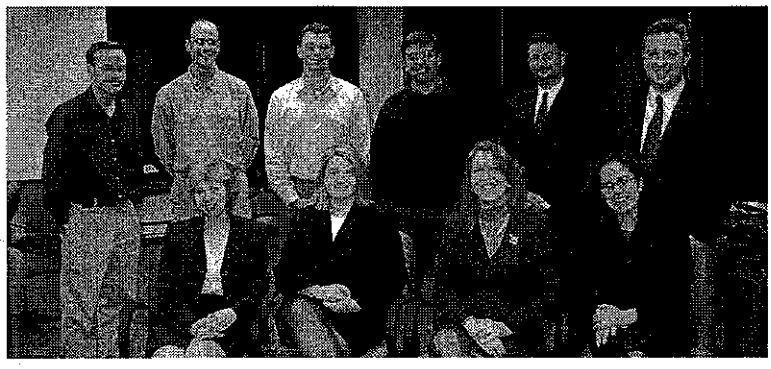
Joanne Vos, Esq.
HACK, PIRO, O'DAY, MERKLINGER, WALLACE & MCKENNA
30 Columbia Turnpike Florham Park, N.J. 07932-0941 (973) 301-6500

Committee Chairs:

Vice-Chair: Edward J. Flanning, Jr. Membership: Edward J. Fanning, Jr.
Publications: Mark Saloman Seminars: Connie Matteo

UPCOMING EVENTS

March 21, 2002 Happy Hour following NJDA Seminar at the Sheraton, Iselin
April 4, 2002 Committee Meeting / Pizza Dinner at Hack Piro in Florham Park
June 28, 2002 Seminar during NJDA Convention in Lake George presented by Edward J. Flanning, Jr. and Mark Soloman



Front Row (left to right):
Connie A. Matteo, Joanne Vos (Chairperson), Linda Pissot Reig, Grace Eisenberg

Back Row (Left to right):
Brian P. Sharkey, Anthony R. Christiano, John E. Gregory, Richard S. Reig, Mark Soloman, Edward Fanning

New Jersey Defense Association Young Lawyers Committee Holiday Party and Charity Event

On Thursday, December 6, 2001, New Jersey Defense Association's Young Lawyers Committee hosted its annual holiday party and charity event. The event was held at the law firm of Porzio, Bromberg & Newman in Morristown, NJ. This year's event featured a presentation by Lucia Panzarella of Animation Technologies. At the event, the Young Lawyers Committee collected winter scarves, hats and gloves for the Market Street Mission in Morristown, which provides assistance to needy people in the surrounding communities.

The New Jersey Defense Association Young Lawyers Committee was formed in 1998. Committee members attend bi-monthly meetings and have the opportunity to network, as well as to speak and to write on legal issues. The current chairperson is Joanne Vos of Hack, Piro, O'Day, Merklinger, Wallace & McKenna, in Florham Park, NJ.

THE EXPECTED OR INTENDED EXCLUSION IS REVISITED

Bruce E. Helies, Esq.

Defense attorneys have long dealt with the standard Homeowners policy statement that it will not provide coverage for bodily injury "which is expected or intended by the insured".

The New Jersey Supreme Court and Appellate Division have considered that exclusion and have ruled that where the intentional act does not have an inherent probability of causing the degree of injury actually inflicted, a factual inquiry into actual intent of the actor who caused the injury is required.

In Prudential Property & Casualty Insurance Company v. Karlinski, 251 N.J. Super. 457 (App. Div. 1991) the minor son of the Prudential insured participated in a pre-arranged voluntary physical confrontation with another young man who suffered a hip fracture as a result of the incident. Prudential's policy contained the standard exclusion with regard to bodily injury which is expected or intended by the insured. The Trial Court granted the carrier's Motion for Summary Judgment but the Appellate Division reversed. The Appellate Court held that when the result of the action resulted in an injury that could be predicted the demonstration of a subjective intent to injure is sufficient to preclude coverage without further inquiry into the intent to cause the actual injury that resulted. However, the Appellate Division ruled that in situations where an insured engages in activity which is unlikely to result in the degree or type of injury that in fact occurred, the inquiry into the subjective intent to cause the resulting injury must take place. Thus, where the insured subjectively intends or expects to cause some sort of injury that intent will generally preclude coverage. If there is evidence that the extent of the injury was improbable, however, then the court must inquire as to whether the insured subjectively intended or expected to cause that particular injury. Our courts have held that an insured who lacks that specific intent has perpetrated an injury which is "accidental" and coverage is to be provided.

S.L. Industries, Inc., v. American Motorists Insurance Company, 128 N.J. 188 (1992) adopted the Karlinski standard in a case where an employee alleged age discrimination and common law fraud arising out of the elimination of his position. There was an alleged bodily injury claim. The employer settled the suit and sought a declaration of coverage against its carrier. Although this case involved a CGL policy it contained the expected/intended exclusion. The Appellate Division reversed the Trial Court's grant of Summary Judgment finding that there needed to be a determination as to whether the employee's emotional distress claim was an intended or expected result of plaintiff's discharge. The Supreme Court affirmed the Appellate Division decision requiring a factual inquiry and its decision adopted the Karlinski language.

Voorhees v. Preferred Mutual Insurance Company, 128 N.J. 165 (1992) involved a teacher's claim alleging wrongful conduct against a parent that damaged the teacher's reputation and caused emotional distress with physical symptoms. The Appellate Division reversed a Trial Court Judgment in favor of the carrier and the Supreme Court said the issue in the case is whether the Court must find a subjective intent to injure or whether it can presume an intent to injure from the evidence.

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EXPECTED OR INTENDED EXCLUSION

(Continued from page 12)

The Voorhees Court ruled that the "general trend" in the case law required an inquiry into the actor's subjective intent to cause the injury; but it described a critical departure from that trend when it stated that "particularly reprehensible act would create a situation where the intent to injure could be presumed by the act itself without the requirement of inquiry into the actor's subjective intent to injure".

The issue that has caused the carriers and defense attorneys difficulty in this area is that the exclusion is for "bodily injury which is expected or intended by the insured." The exclusion is not one reserved merely for "reprehensible" acts and clearly it does not require the expectation of a specific injury. Nevertheless, Trial Courts have been admonished by the Supreme Court to refrain from granting carriers Summary Judgment as to whether an insured intended or expected to cause the actual injury to a third party unless the record undisputedly demonstrates that such an injury was an inherently probable consequence of the insured's conduct. The Trial Courts have been told that only when the actor's conduct is particularly reprehensible can it be presumed that an intent to injure took place without an inquiry into the actor's actual intent.

It was with the background of that body of law that the Supreme Court has recently decided the case of Harleysville vs. Garitta, 170 N.J. 223 (2001). In this case the insured became involved in an altercation and was handed a knife by a third party. During what was expected to be a fist fight, the victim approached the insured who drew his knife and stabbed the victim twice in the chest. One of the wounds perforated the heart and the victim died. The insured was charged with criminal homicide under the Pennsylvania statutes which included as an element both intentional, reckless or negligent acts leading to the death of another. The Supreme Court held that the carrier had demonstrated that its insured had intended to cause some injury and that the injury that lead to decedent's death was an inherently probable consequence of his actions. The insured argued that his plea to criminal homicide included the elements of recklessly or negligently causing the victim's death. The Supreme Court ruled that the criminal plea was not dispositive on the issue of coverage. In reaching its conclusion the Court does not appear to rely upon a finding that the insured's acts in stabbing the victim were reprehensible but rather on what the Court describes as undisputed facts which demonstrated that the stabbing of the victim by the insured resulted in injuries that lead to his death and that this result was an inherent probable consequence of the insured's conduct. On this finding the Supreme Court ruled that the policy exclusion for the expected or intended result would apply.

The lesson that can be drawn from this case is the ruling of the Court that coverage would not apply because the act (stabbing) had an inherent probability of causing an injury (death). The insured protested loudly that he had no intent to kill and, thus, relied upon his plea of reckless conduct. This case can be used to defeat the requirement of a carrier to argue that the act was so reprehensible that intent could be inferred and argue more that the nature of the action (reprehensible or not) was one that could lead to the expected result (whether or not intended by the insured). This case should be one that could be utilized in a broad spectrum of cases that are brought under the guise of coverage in a Homeowners' Policy such as physical fights and other types of altercations where blows to the body expected only to injure lead to fractures or more serious

(Continued on page 14)

EXPECTED OR INTENDED EXCLUSION

(Continued from page 13)

injuries. In that regard the Supreme Court totally rejected the insured's testimony as to his lack of intent and concentrated more on the issue of the injury being one that could be expected from the act. Therefore, this case provides an argument for an exclusion of coverage that comes from the Supreme Court and presents at least equal authority to argue against coverage as against Voorhees and SL Industries which had previously ruled in favor of coverage.

Attention NJDA Members:

Make your plans now for the 36th Annual NJDA Convention! Join us from June 27th through June 30th at the beautiful and historic resort of The Sagamore at Lake George, NY. Play golf on the championship Donald Ross course or enjoy the Sagamore Spa. Educational seminars will take place Friday afternoon and Saturday morning. Friday evening, join us for a cocktail party cruise on Lake George. Saturday evening will be the annual President's Reception and Banquet. Children's programs will be provided these evenings.

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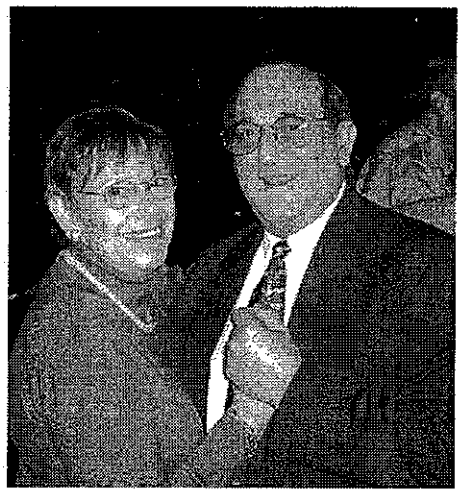






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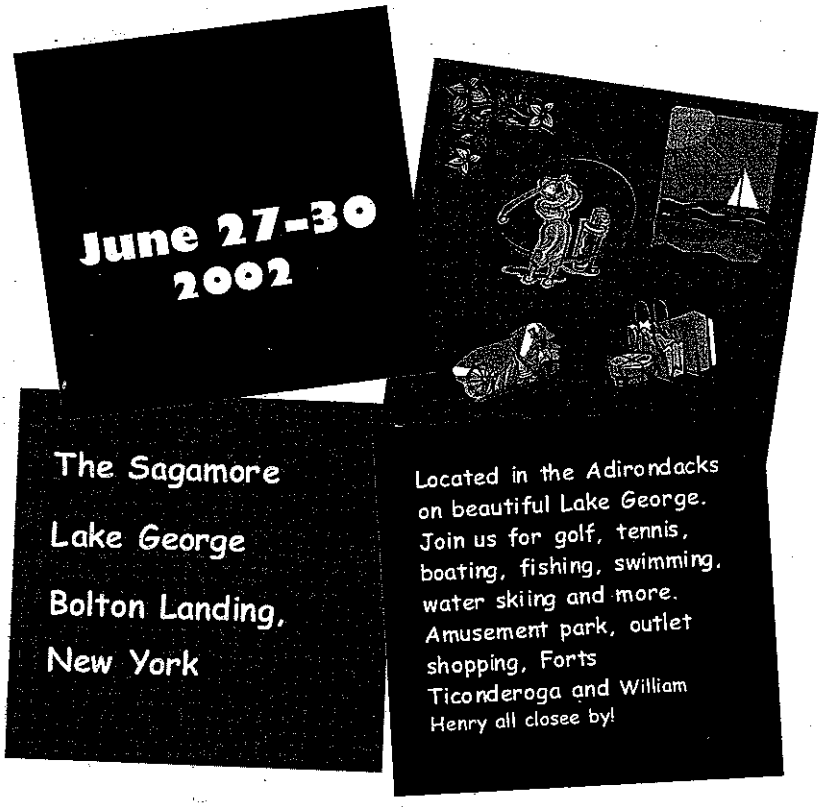

Watch for more details coming in future NJDA publications.

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