

## Adopt-A-Family for the Holidays *'Tis the season of sharing*

Share your good fortune and make the holidays special for an underprivileged family in the City of Camden by "adopting" a deserving family at this special time of year. The Public Benefits committee is asking for your support of this

*(Continued on Page 2)*



Please Support The  
Coats for Camden's Kids Campaign



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## Come Frolic With Us! Fall Frolic set for November 26th

Get into holiday celebration mode and join colleagues and friends from the bench and bar at the Coastline for one of the Foundation's most popular events — **Fall Frolic!**

Your Support is Important!

- Frolic proceeds are used to purchase gifts for Santa to give to more than 200 disadvantaged children on December 7th at our annual Children's Christmas Breakfast & Party, also hosted by the Coastline.
- Our average cost over the past 5 years to treat the children was \$6,200.
- Your support helps reduce the cost of a not-to-be-forgotten day!

**So, Come Frolic With Us and Invite Your Colleagues, Friends and Clients!**

To purchase tickets, please send a check to:

CCBF Fall Frolic

1040 N. Kings Highway, Suite 201  
Cherry Hill, NJ 08034.

To pay by credit card or for questions,  
call bar headquarters – 856.482.0620, or  
email Kathy at [kdp@camdencountybar.org](mailto:kdp@camdencountybar.org).

## Sharing the Season with Deserving Kids Children's Holiday Party set for December 7

The Bar Foundation's Annual Children's Holiday Breakfast and Party at the Coastline in Cherry Hill has been set for Saturday, December 7, and volunteers are needed to help ensure a festive party for hundreds of less fortunate children from Camden.

Beginning at 9 am, busses will start unloading our special guests for a full breakfast, compliments of the Coastline and its staff, followed by a few magical hours of fun, gifts, and a visit with Santa.

A cast of volunteer attorneys and judges, many in holiday and elf costumes, will lead a carol-sing to get everyone in the holiday spirit.

The children will also be treated to a magic show before Santa (a.k.a. U.S. District Court Senior Judge Joseph Rodriguez) and his sleigh full of goodies arrive. Every child will have a chance to tell Santa what they want for Christmas and then be sent off with a photo and a wrapped gift.

With that many gifts to wrap, it takes time and hands! To ensure a beautifully wrapped gift awaits each child, a wrapping party is scheduled for 5 pm on Thursday, December 5th at Bar headquarters. Volunteer wrappers are needed to assist in wrapping and filling goody bags. If you can't join us on Saturday for the party but want to help, please stop by and help us wrap.

No volunteer has ever been turned away from this incredible experience. If you are inspired to make a positive difference in the lives of those who need it most and you can spare several hours, please call or email Kathy at Bar Headquarters, 856.482.0620/[kdp@camdencountybar.org](mailto:kdp@camdencountybar.org).

## THE DOCKET

### Tuesday, November 5th

12th Annual Forum

Hot Trends in Estate Litigation

Noon – 2 pm

McCormick & Schmick's, Cherry Hill

Young Lawyer Committee Lunch

12:30 – 2 pm

Bar Headquarters, Cherry Hill

### Thursday, November 7th

Debtor/Creditor Committee Meeting

8 am

Bar Headquarters, Cherry Hill

### Tuesday, November 12th

Cybersecurity & The Law:

Are You and Your Clients Safe?

4 – 6:15 pm

Tavistock Country Club, Haddonfield

### Tuesday, November 19th

Ethics Across the Board

4 – 6:15 pm

Post Seminar Cocktail Reception

Sponsored by Partner in Progress – TDBank

### Wednesday, November 20th

What's New in Civil Practice?

4 – 6:15 pm

Tavistock Country Club, Haddonfield

## Tentative agenda for November 26 Trustees Meeting

A tentative agenda for this month's regular Board of Trustees meeting follows. The meeting will begin at 5 pm, at The Coastline in Cherry Hill. All meetings are open to the membership. Anyone interested in attending should notify and confirm their attendance by calling Bar Headquarters at 856.482.0620.

- I. Call to Order
- II. Minutes from Previous Meeting
- III. Treasurer's Report
- IV. President's Report
- V. Executive Director's Report
- VI. Membership Committee Report
- VII. Young Lawyer Committee Report
- VIII. Standing Committee Reports
- IX. Foundation Update
- X. NJSBA Update
- XI. New Business (if any)
- XII. Old Business
- XIII. Adjourn

### Thursday, November 21st

CLE on Tap! New Jersey Family Law

3 – 6:15 pm

McCormick & Schmick's, Cherry Hill

### Tuesday, November 26th

CCBA Board of Trustees Meeting

5 pm

The Coastline Bar & Grill,

1240 Brace Rd., Cherry Hill

Fall Frolic

6 – 8 pm

The Coastline Bar & Grill,

1240 Brace Rd., Cherry Hill

## Adopt-A-Family for the Holidays

*'Tis the season of sharing*

*Continued from Page 1*

year's Adopt-A-Family program. Our goal is to bring the joy of the season to 100 families and with your help we can do it!

Adopting a family is easy! You can choose to provide food and gifts for a small, medium or large family. Although you will not meet the family in person, you will be provided with the ages of the children, their clothing sizes, and in some cases, their Christmas "wish list." All you have to do is shop, pack, and deliver your donations to St. Joseph's Pro Cathedral Church in Camden.

In addition to gifts, we are also asking that you include enough food for Christmas dinner. The amount you spend is up to you, and everything is appreciated.

St. Joseph's Pro Cathedral Church helps needy families throughout the year, regardless of creed, and your generous support will help brighten the holidays for those most in need in our community. We are thrilled to be working with St. Joseph's again this year, and look forward to meeting or surpassing our goal of 100 adopted families.

We urge all Bar members to consider adopting a family in 2013 either through their firm or individually. Your participation is guaranteed to make you feel wonderful, and it's tax deductible!

**Refer to the flier included with this month's inserts for contact information to adopt YOUR family, and thank you!**

## THE BARRISTER

Published monthly, except July and August, by the Camden County Bar Association.

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## MEMBER ON THE SPOT



**NAME:**

**PRACTICE AFFILIATION:**

**YEAR ADMITTED TO BAR:**

**OTHER BAR ADMITTANCES:**

**Drake P. Bearden, Jr.**

**Employment Law and Civil Rights Law**

**2010**

**Pennsylvania, NJ District Court,  
Eastern District of Pennsylvania, Third Circuit**

**PRIOR OCCUPATION:** Journalist

**RESIDENCE:** Maple Shade

**HIGH SCHOOL:** Phoenixville HS in Phoenixville, Pennsylvania

**COLLEGE:** Temple University School of Communication and Theater

**LAW SCHOOL:** Temple University Beasley School of Law

**WHAT LED YOU TO A LEGAL CAREER:** Classes that I took while I was an undergrad

**BEST PERSONAL/PROFESSIONAL ATTRIBUTE:** I have a personal interest in the success of my clients' cases, and am passionate about the kind of cases that I work on

**GREATEST FAULT:** At times I get frustrated a little too easily

**WHAT I DO TO RELAX:** Read, watch sports, walk around the city (Philadelphia) on a nice day

**HOBBIES:** Read, watch sports, go to a good restaurant

**FAVORITE RESTAURANT:** Anything Italian

**FAVORITE TELEVISION SHOW:** *Boardwalk Empire* and *The Daily Show*

**FAVORITE MOVIE(S):** (So far this year) *Zero Dark Thirty* and *Django Unchained*

**FAVORITE AUTHOR/BOOK:** John Grisham

**FAVORITE VACATION PLACES:** Jersey Shore with my family

**FAVORITE WEBSITE:** www.zefflawfirm.com

**FAVORITE MUSEUM:** Philadelphia Art Museum

**FAVORITE WEEKEND GETAWAY:** Philadelphia or the Jersey shore

**ENJOY MOST ABOUT PRACTICING LAW:** Helping people who otherwise may not be able to get help

**MOST ADMIRER PERSON AND WHY:** Martin Luther King, Jr. — he helped change the face of America forever, and did it in a dignified manner

**WHEN AND WHERE HAPPIEST?:** When I'm with my friends and family

**CHERISHED MEMORIES:** Watching my nieces and nephews grow up (I don't have kids yet)

**GREATEST FEAR:** Being a disappointment

**ALTERNATE CAREER CHOICE:** A journalist

**GREATEST LESSON LEARNED FROM PRACTICE OF LAW:**

If your goal is to make a lot of money, you should not become a lawyer, because in this profession you will never be happy if you spend your entire career chasing the almighty dollar

**PERSON YOU'D MOST LIKE TO DINE WITH:** President Barack Obama

**PET PEEVE(S):** People who act one way to a person's face and then another way behind the person's back

**LIFE'S HIGHLIGHTS:** Graduating law school

**GREATEST ACCOMPLISHMENT:** Scoring three touchdowns in a little league football game

**#1 PROFESSIONAL GOAL:** Become the best I can at what I do

**#1 PERSONAL GOAL:** To one day be a great husband and father

**LIFE EXPERIENCE(S) WITH GREATEST IMPACT:** Going to church on Sunday with my family when I was younger

**ADVICE TO YOUNG LAWYER:** If your goal is to make a lot of money, you should not become a lawyer, because in this profession you will never be happy if you spend your entire career chasing the almighty dollar

**HOPE TO BE DOING IN 10 YEARS:** Practicing employment and civil rights law in South Jersey

**FAVORITE QUOTATION:** None

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## LEGAL LINE TO CRIMINAL LAW

# Steal Only \$1,000 and Go To State Prison How? Commit Insurance Fraud

By G.D. Zidow, Assistant Camden County Prosecutor

It is no secret that insurance premiums in New Jersey are among the highest in the nation. Rampant insurance fraud is the lead contributor to the premium problem. To combat this, between 1998 and 2003 New Jersey enacted a series of criminal statutes targeting insurance fraud.<sup>1</sup> The traditional laws that had been used in prosecuting insurance fraud (e.g., Theft by Deception, N.J.S. 2C:20-4, Forgery, N.J.S. 2C:21-1, Falsifying Records, N.J.S. 2C:21-4.1, Unsworn Falsification to Authorities, N.J.S. 2C:28-3) did not focus attention on the crime of insurance fraud and were deemed an insufficient deterrent. Unlike Theft by Deception, where a second degree charge requires a theft or attempted theft of at least \$75,000, N.J.S. 2C:20-2b.(1)(a) and 20-4, second degree Insurance Fraud requires five or more acts of deception and a theft or attempted theft of only \$1,000. N.J.S. 2C:21-6.b. Again, unlike Theft by Deception, where a third degree charge requires a theft or attempted theft of at least \$500, third degree Insurance Fraud requires only one act of deception and has no minimum dollar amount requirement. N.J.S. 2C:21-6.a.

For health care practitioners, in particular, the stakes are very high. Just a single act of Health Care Claims Fraud can result in a ten-year state prison sentence, a criminal penalty of \$150,000, a fine of five times the amount obtained or sought to be obtained, and permanent license forfeiture. See N.J.S. 2C:21-4.2a and N.J.S. 2C:51-5a(1). The forfeiture of license is not discretionary with the court. "A practitioner convicted of [second degree] health care claims fraud ... shall forfeit his license and forever be barred from the practice of the profession. ..." N.J.S. 2C:51-5a(1).<sup>2</sup>

The crime of insurance fraud, regardless of the type of insurance involved (e.g., auto, property/casualty, health care, life, disability, workers compensation, Medicaid), is straightforward. It is insurance fraud if one obtains or attempts to obtain a benefit from an insurance company (or the government) by lying either directly to the insurance company or to anyone else who will unwittingly convey the lie to the insurance company.<sup>3</sup> For example, if an insured calls his insurance company and tells the lie that his car was stolen, that would be one act of third degree insurance fraud, regardless of the dollar amount involved. If the insured tells the police the same lie, that also would be one act of third degree insurance fraud because the insured knows that the false police report will be submitted to the insurance company in support of the fraudulent claim. If the claim is worth at least \$1,000 and the insured lies on three more occasions (each constituting a single act of insurance fraud), the five acts taken together would be second degree insurance fraud.

It is not difficult to go quickly from third to second degree insurance fraud. The ordinary course of the claim process offers numerous opportunities to lie. In support of a fraudulent stolen car claim, an insured would have to lie on the requisite "Affidavit of Loss," and lie to the claim adjuster in the routine telephone interview. Calling the insurance company to inquire about the status of the claim would be an act of insurance fraud, as would endorsing and cashing the benefit payment check.

The Insurance Fraud statutes are applicable to a wide range of conduct. Premiums to insure high risk workers, such as window washers, are higher than premiums to insure low risk workers, such as accountants. When applying for workers compensation insurance coverage, the employer who misrepresents the risk classification of her employees is guilty of insurance fraud. Public adjusters receive as compensation a percentage of the cost of repairing insured property. The adjuster who inflates that cost is guilty of insurance fraud. Registering and operating vehicles on the state's roads are not rights, but benefits conferred by the government upon the fulfillment of specific requirements that are in place for the public's safety. The person who presents fake proof of insurance when registering a vehicle or during a traffic stop is arguably guilty of insurance fraud.

The illegal prescription drug trade and the unfortunate epidemic of prescription drug addiction have resulted in a steady stream of fraudulent insurance claims that originate at the pharmacy counter. Criminal Complaints charging the crime of Obtaining Controlled Dangerous Substances by Fraud, N.J.S. 2C:35-13, flow unendingly to prosecutors' offices from both urban and suburban municipalities. Most Criminal Complaints do not contain insurance fraud charges. However, a quick telephone call to the pharmacy often yields evidence that the patient whose name is on the fraudulent prescription has prescription drug coverage either through a private insurer or through a government program. An insurance fraud charge could be included in any subsequent indictment.

One Insurance Fraud statute addresses the conduct of persons who find and supply patients and clients for professionals who routinely commit insurance fraud. The "Runners Law" is designed specifically to prevent the solicitation of patients/clients for the purpose of committing insurance fraud by attorneys and medical

(Continued on Page 8)



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# Anatomy of a Business Valuation

## What to Look for When Reading a Valuation Report

By Martin H. Abo, CPA/ABV/CVA/CFF

Your client is in the beginning stages of selling his wholesale dry cleaner company, How My Wife Took Me to the Cleaners, Inc. He hired a valuator to get an idea of what the business is worth. The business appraiser delivers the report to your client (who naturally provides you, as counsel, a copy). Now what?

The value appears to be in the ballpark, but what do the report's details mean? Whatever his reason for a valuation, a basic understanding of the report's content means there's no need to merely take it at face value.

### Four Abo Points of Interest

In today's fast-paced business environment, it's not uncommon for entrepreneurs and other executives to quickly scan a valuation report, searching for the final figure. But you can learn much more from a report if you know what to look for throughout. Here are four key areas within the document we think you should consider focusing on:

**1. Procedures.** We in the business appraisal community will typically visit the actual site as well as perform a detailed financial

analysis. Any information a valuator uses should have been available—or at least foreseeable—at the valuation's "as of" date.

**2. Methodology.** With various valuation approaches available, valuers choose one based on a company's unique characteristics. The valuation report should discuss all of the valuator's options, including why some methodologies may be more appropriate than others.

**3. Discounts.** Once the valuator applies a methodology, he or she determines whether to apply valuation discounts (or premiums) to the preliminary value. Common discounts include the minority interest and marketability although there is quite an array of others. If the valuator applies discounts, he or she should detail why each was chosen, based on empirical evidence and the company's unique characteristics.

**4. Conclusion.** After all is said and done, the value conclusion should make economic sense, considering both the hypothetical buyer and the hypothetical seller (talk to

me separately to drill down further into *standards of value* such as "fair market value" or "fair value" which is the space we are considering here).

In addition to these four areas, also look for the definition of the entity being valued. This definition should include the valuation's purpose, the company's name, the number of shares or ownership interest, the entity type and the "as of" date.

### Dig Into the Details

If you've ever received a business valuation report and wondered, "What does all this really mean?"—you're not alone. The right resources can help you decipher the report's details. Confer with a business appraiser if you need help evaluating a valuation report—we love to talk.

*Martin H. Abo, CPA/ABV/CVA/CFF is a principle of Abo and Company, LLC Certified Public Accountants – Litigation and Forensic Accountants. The firm is a Partner in Progress of the Camden County Bar Association. With offices in Mount Laurel, NJ and Morrisville, PA, Marty can be reached at [marty@aboandcompany.com](mailto:marty@aboandcompany.com) or by calling 856-222-4623.*

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  - The National Business Institute (NBI) at their two days of seminars entitled "Accounting 101 For Attorneys"
  - NYC, NJ, Camden County and Chester County PA Bar seminars on "Buy-Sell Agreements" (includes our 122 point checklist on buy-sells)
  - The Sharper Lawyer's seminar entitled "Practical Strategies to Improve Your Law Firm's Bottom Line"
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To learn more or to receive any of the above, please contact by phone, fax or e-mail:

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## FOUNDATION UPDATE

# Childhood Adventures

By Louis R. Lessig

Have you ever read the children's book "If You Give A Moose A Muffin"? It is a cute story about a child who tosses a homemade muffin out the window to a waiting moose in the forest and the ensuing adventure that takes flight from that one act of kindness. Moving from a mother's homemade jam, to sock puppets made by grandparents, and of course, a desire to be a ghost for Halloween (we all wanted that at some point, didn't you?). It is also interesting to note in this tale how the author brings it back around at the end, and weaves in a desire by the moose for another muffin, arguably suggesting how things will continue based upon the initial act by the child.

I continue to find it truly amazing what a child might say or ask, seemingly out of the blue. Perhaps it is out of a desire to not go to bed while mom and dad are out or maybe going to the bathroom is just not on their agenda at the moment. Of course, as you wait for the coffee to brew while you sit at the breakfast table, well, there is arguably no better time for a child to ask about the meaning of life or how electricity works. Because in that haze of the morning, before you have even considered the next brief you need to draft, the little boy or girl has you right where they want you ... guard down, sluggish, waiting for the Pavlovian response to the ding on the coffee maker. In that moment you might just answer with anything to give yourself a few more moments to bring the world into focus without having to think very hard.

Do you recall those discussions with your parents when you were young? Where were you when you would ask those meaning of life questions (pre-internet and social media) and look with wonder at your parent to respond in some all-knowing way that seemed so profound at the time? Can you remember what your mind did with that information? Can you recall a time when a child, niece, nephew or other relation or friend of the family asked you such a question? If you think about that moment for a second (yes, stop reading) ... Now, can you see their face in your mind? They had that inquisitive look on their face, did they not? The one that makes you feel all important and as if it is truly an honor to even be asked the question in that moment.

Those moments are some of the very things that the Foundation seeks to foster through a multitude of avenues during the year. In reality there are children who live near us who may never fully get a chance to grow up and answer the simple questions posed here because they were not quite as fortunate as you or I. So here we are reading together, reflecting on what our parents did for us and what we can do for the next generation. As we move into the holiday season, there are two distinctly different events I would ask you to consider: The first is support for our Fall Frolic.

I know that some of you are thinking, "Now Louis, I cannot get out to Frolic this year." But I am here to tell you that it is perfectly ok if you cannot frolic, because I bet a member of your staff or a client or a friend can, and what a nice thing you can do for them by grabbing a ticket to send them to the Fall Frolic for a fun evening after work. Your support makes a direct impact on what we do as a Foundation, so please consider getting a few tickets and making it a nice thank you to someone for a job well done, even if it is for someone else, so we can all support the philanthropic efforts of the Foundation.

Secondly, I am incredibly excited to share with you another opportunity to directly impact the life of a child. You see, while we make sure that everyone in our family is warm when they go outside, not every child is so fortunate. As a direct result of that reality, the Foundation in partnership with the Woodland Community Development Corporation and ARI are working together to provide winter coats to children in eight of Camden's elementary schools who could use our assistance to make sure they are warm this Winter.

How can you help, you ask? Well, that is very simple. Between now and December 1st we will be accepting either a clean, gently-used children's coat in good condition OR you can make a tax-deductible donation of \$30 or more to the CCBF and we will use all of the funds to purchase new coats for these wide-eyed children who ask the same meaning of life questions we all asked when we were their age. Perhaps your generous donation will be that initial act of kindness, like the child in the story who gave his muffin away that will foster a whole new adventure for these youngsters. Please use the Coat Drive insert and help us ensure that the coming cold months are warm for the children in need in Camden.

## LAULETTA BIRNBAUM WELCOMES THE HONORABLE JAMES E. RAFFERTY (Retired Judge, Superior Court)



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# Potomac Ins. Co. of Ill. Ex. Rel. One Beacon Inc. Co. v. Pa. Mfrs. Ass'n Ins. Co.<sup>1</sup>

## Allocation of Defense Costs of Common Insured Among Several Carriers In Continuous Trigger Construction Defect Cases

By William H. Tobolsky, Esq. & Aaron Penrod, Esq.

In a case of first impression, the New Jersey Supreme Court was faced with the issue in a continuous-liability construction defect case of whether a) defense costs should be equitably allocated among all Commercial General Liability (CGL) carriers responsible during the policy years in which the damage occurred, and b) whether a settlement agreement between the insured and a carrier responsible for part, but not all, of the exposure period which excluded costs of defense is a defense to a contribution action for costs of defense. The answers, given in a unanimous decision authored by Justice Patterson on September 16, 2013, are a) Yes, and b) No.

Roland Aristone, Inc. (Insured) and the Township of Evesham (Owner) contracted for the construction of a school in 1991. A dispute arose regarding roof damage, which caused continuous damages for eight years.

In December 2001, Owner sued Insured for negligence and breach of contract. Insured provided notice to the five insurance carriers which provided CGL coverage during the eight years in which the damage slowly accrued, including Pennsylvania Manufacturers Association (PMA) and OneBeacon.

OneBeacon<sup>2</sup> paid Aristone's one-half of Insured's defense costs during the action. PMA refused to defend. Aristone sued PMA for a declaratory judgment. They arbitrated and settled, agreeing that PMA would indemnify Aristone for the judgment or settlement amount, but releasing Aristone from obligation for defense costs. Shortly after that settlement, the underlying claim with Evesham settled. OneBeacon then sought contribution from PMA and Royal Ins., another responsible CGL carrier, for its fair share of the bill. PMA and Royal refused to pay. PMA rested on its settlement with

Aristone. OneBeacon sued.

OneBeacon argued that contribution from a co-insurer in this type of claim was permissible, citing Owens-Illinois, Inc. v. United Insurance Co.<sup>3</sup>, which relied upon "continuous trigger" liability for an indivisible injury which occurs over a number of years. The allocation of the "occurrence" liability is equitably prorated over those years and therefore implicates the CGL policies in existence during each year of progressive injury. Under that approach, equitable principles do not permit a co-insurer to shirk its duty to pay its fair share of indemnity.

OneBeacon acknowledged the lack of New Jersey precedent in applying the equitable allocation doctrine of Owens-Illinois, Inc. to defense costs. However, it found support in a California decision, Fireman's Fund Insurance Co. v. Maryland Casualty Co.<sup>4</sup>, in

(Continued on Page 8)

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# Potomac Ins. Co. of Ill. Ex. Rel. One Beacon Inc. Co. v. Pa. Mfrs. Ass'n Ins. Co.<sup>1</sup>

## Allocation of Defense Costs of Common Insured Among Several Carriers In Continuous Trigger Construction Defect Cases

Continued from Page 7

which the Court recognized a direct right of action by one insurer of a common insured against another insurer for contribution for the defense costs arising out of the same risk.

PMA countered that permitting a contribution action from a co-insurer against another is not only unprecedented in New Jersey, it would violate the settlement and release between the insured and the co-insurer. PMA further contended that the California reference is inapposite since California uses a different method of allocating indemnity amongst successive insurers than New Jersey does ("vertical" vs. "horizontal"). Finally, PMA argued that Childs v. New Jersey Manufacturers Co.<sup>5</sup>, barred OneBeacon's claim.

The New Jersey Supreme Court acknowledged the reasoning of Owens-Illinois is equally applicable to contribution for defense costs in continuous property damage litigation. In Owens-Illinois, an asbestos case, the Court held that "when progressive indivisible injury or damage

results from exposure to injurious conditions for which civil liability may be imposed, courts may reasonably treat the progressive injury or damage as an occurrence within each of the years of a CGL policy." It cited multiple New Jersey cases where co-insurers were permitted to bring contribution claims against co-insurers for indemnification. The policies fostered by this methodology are four-fold: a) the conservation of the parties' resources; b) prompt and fair resolution of litigation; c) incentives for policy holders to maintain coverage; and d), the fair and equitable allocation of the cost of litigation to all responsible carriers. The Court found no reason that these policies were not equally applicable to defense costs, and adopted the rule of allocation of Owens-Illinois to costs of defense.

New Jersey relied upon the Fireman's Fund reasoning as well. Note California uses a horizontal pro rata allocation system (each primary carrier's coverage must be exhausted before any surplus carriers must contribute),

whereas New Jersey uses a vertical system, wherein the surplus carrier for each year must pay even though all the primary's limits have not been exhausted. Notwithstanding this important practical distinction, it does not alter the underlying fundamental reasoning behind Owens-Illinois.

Finally, the Court dismissed the defendant's contention that the settlement agreement and release of defense acts as a bar to a contribution. The co-insurer seeking contribution was not a party to the agreement and thus not bound by it. The claim for contribution among carriers insuring a common risk is a direct independent cause of action, and not a claim arising from subrogating to the insured's claims against other carriers. As such, the independent cause of action could not be released by the Insured.

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### LEGAL LINE TO CRIMINAL LAW

## Steal Only \$1,000 and Go To State Prison How? Commit Insurance Fraud

Continued from Page 4

services providers. The law defines a runner as any "person who, for pecuniary benefit, procures ... a client, patient, or customer at the direction of ... or in cooperation with a provider whose purpose is to seek...benefits [from an insurance company or the government] for providing services to the client, patient, or customer. ..." N.J.S. 2C:21-22.1a.

Under the Runners Law, a person who acts as a runner or uses a runner is guilty of a third degree crime. N.J.S. 2C:21-22.1b. Despite the fact that this is a third degree offense, in keeping with the state's earnest efforts to deter insurance fraud, a conviction under this statute carries a presumption of incarceration. N.J.S. 2C:21-22.1c. If the court imposes a probationary or noncustodial sentence, the prosecution is given ten days to appeal the sentence before it becomes final. Id.

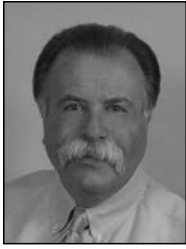
Insurance fraud is not a victimless crime. Its cost is passed on to the public in increased insurance premiums and difficulty in obtaining coverage. But insurance fraud is not merely a financial crime. There are public safety concerns, as well. Fraudsters commit arson, stage accidents and perform unnecessary medical procedures. With its aggressive and consolidated approach, New Jersey leads the nation in fighting insurance fraud and is a model for other states.

<sup>1</sup> Health Care Claims Fraud, N.J.S. 2C:21-4.2 and N.J.S. 2C:21-4.3 (1998); License Suspension/Forfeiture, N.J.S. 2C:51-5 (1998); Runners, N.J.S. 2C:21-22.1 (1999); and Insurance Fraud, N.J.S. 2C:21-4.6 (2003). The Health Care Claims Fraud and Insurance Fraud statutes do not replace traditional statutes that otherwise may be applicable to specific conduct. Both statutes provide that nothing therein precludes "an indictment or conviction for any other offense defined by the laws of this State." N.J.S. 2C:21-4.2i and N.J.S. 2C:21-4.6e, respectively.

<sup>2</sup> If the court finds that permanent forfeiture would be a "serious injustice which overrides the need to deter such conduct by others," a shorter period of forfeiture may be imposed but not less than one year. N.J.S. 2C:51-5a(1).

<sup>3</sup> In pertinent part, N.J.S. 2C:21-4.6a, provides: "A person is guilty of the crime of insurance fraud if that person knowingly makes, or causes to be made, a false, fictitious, fraudulent, or misleading statement of material fact in, or omits a material fact from, or causes a material fact to be omitted from, any record, bill, claim or other document, in writing, electronically, orally or in any other form, that a person attempts to submit, submits, causes to be submitted or attempts to cause to be submitted as part of, in support of or opposition to or in connection with: (1) a claim for payment, reimbursement or other benefit pursuant to an insurance policy, or from an insurance company [including the government] ... (2) an application to obtain or renew an insurance policy; (3) any payment made or to be made in accordance with the terms of an insurance policy or premium finance transaction; or (4) an affidavit, certification, record or other document used in any insurance or premium finance transaction."





## SPINNING MY WHEELS

By Andrew Kushner

# A Hybrid Opinion

The automotive world has been changing more rapidly in the last five years than perhaps in the last 100 years that preceded them. The industry, at least facially in response to consumer demand, is offering non-traditional vehicles that are not wholly or, in some cases, even partially powered by the venerable internal combustion engine. We may think of this as innovation but really, at the dawn of the automotive age, now a century past, it was by no means certain that gasoline would be the fuel of the future. Proven petroleum reserves were relatively small at that time and competition from traditional steam power and new electric power were each vying to become the industry standard. By the '20s, the game was over, at least for the next 80 years, and the internal combustion engine became the almost sole means of motor vehicle power. The infrastructure needed to support an increasingly mobile population was created and the huge oil companies began their seemingly inexorable growth. Now, with the coming of electric and "hybrid" vehicles—those designed to employ both electric and internal combustion—the public has even greater choices.

What then is the "right" answer to this dilemma of choice? Simply put, there is none. The type of car you will purchase depends upon a host of factors and a prioritizing of those factors is important in making the decision. What I thought I would try to do is see how a hybrid, when compared to its gasoline-only sibling, compares from an economic point of view. What follows then, is but one type of analysis in a buying decision focused only on dollars. For, since hybrid models of the same vehicle are almost uniformly more expensive, it is not a simple matter of choosing one over the other to satisfy non economic concerns, like the affect on the environment. I thought I would take some real world examples of gas and hybrid cars and compare their base prices, fuel economies and see what the "long term" benefit would be.

A couple of *caveats*, though: First, I am trying to do a basically "apples to apples" comparison. If fuel economy and,

by extension, environmentally friendly results are all that mattered, you would most likely purchase a fully electric car or, better yet, get on your bicycle or take public transportation. Second, while the models I am using for comparison are basically the same except for their power unit, there will inevitably be differences in content even within the same model. Lastly, I have made some assumptions. I pegged the price of gas at \$3.50 per gallon and the annual mileage at 15,000. The calculations were based upon these two variables. MPG was figured as an average of city and highway as reported by the EPA. The cliché of "Your mileage may vary" is never more applicable than here. I have chosen three cars: two fairly common family mid-size sedans, a Toyota Camry and a Ford Fusion. Both of these are sold as gas-only and as hybrids. I also added for giggles, a Porsche Panamera, four door sedan which also is sold in both versions. My goal is to see what the "payback" period is using these variables to see if the price of the hybrid can be justified *on cost alone*. So, here goes. If my math is wrong please point it out. While my fingers make mistakes, my computer pop up calculator does not.

**Toyota Camry.** The best-selling car in America for years running, only dethroned when either GM or Ford decided to sell a ton of their monsters to car rental fleets to cook the books. The Camry's gas model carries a four cylinder engine with average of 30mpg. Base price is \$23,490. It's sister hybrid Camry uses both a four cylinder engine and electric motor and averages 46mpg but its base price is \$26,950 or a \$3,460 difference. Using the price point of gasoline and 15,000 miles per year, the hybrid saves \$609 annually so the "payback" period is 5.68 years.

**Ford Fusion.** Ford stole a page from the front of the Aston Martin in styling the new Fusion which has turned the ugly duckling into one sleek sports type sedan. In gasoline mode, the Fusion sports a four cylinder engine and average mpg of 28. Base price is \$24,650. Compared to its hybrid *doppelganger*, mpg is 47 and base price is \$27,995. That works out to a \$3,345

price spread and annual gas cost increase of \$619.50. Payback time: 4.5 years, a bit better than the Camry.

**Porsche Panamera.** Perhaps you have seen one in your rear view mirror overtaking you. From that vantage point, you can be forgiven if you thought that a 911 was behind you but once the svelte four door sedan placed you in its rear view mirror, you could take in the way the other half lives while mobile. The Porsche base model S-GT has a price of \$94,175.00 and average mpg of 22. Price: \$99,175. Compared to the hybrid S-Ehybrid GT, the base price rises to \$99,975, a full \$5,800 more, and mpg of—wait for it—26 miles per gallon. Gasoline costs for the hybrid save a full \$367 annually and the payback period stretches to 15.8 years.

So class, what have we learned? The easiest lesson is that you don't buy a Porsche Panamera to save on gasoline and it is unlikely that you will keep the car long enough to amortize the higher investment. But what about the more plebian models? At 5.68 and 4.5 years the Camry and Fusion, respectively take about the term of an average car loan for the customer to justify the added initial expense of the hybrid. Add to that the potential cost of battery replacement after 5+ years and at least 75,000 miles and the cost of being environmentally friendly seem to have gone up. Of course if the price of gas jumps, or the mileage goes way up, the payback times will be shorter and one cannot discount those possibilities. I also understand that some of this is not solely a financial proposition but lets the buyer contribute to reduction of the now overused "carbon footprint." I can't say that is not a valid reason to consider a hybrid but not from my simplistic calculations, higher mpg does not necessarily translate into financial savings when looked at even in the "medium term."

I welcome your thoughts, comments, snide comments and the like if this has piqued your interest. Remember: Your mileage may vary.

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# “Social” Networking At Its Finest!

The annual Meet the Judges & Law Clerks Reception attracted over 200 members of the bench and bar to Colleen’s at the Savoy in Pennsauken on September 18 for an enjoyable evening of back to the bar-year networking, camaraderie and introductions. The surroundings were beautiful, the crowd was lively and the food was plentiful and outstanding. Invited guests included Judges and law clerks of the Superior Court, United States District court for the District of New Jersey, and Workers’ Compensation Court.



Mark Natale, Judge Rodriguez & Assignment Judge Fernandez-Vina



Sara Cohen & Mark Gulbranson



Judge Pugliese, NJSBA Trustee Linda Eynon & Lauren Tedesco



CCBA President Gary Boguski, Judge Schneider & Judge Stein



Tyler Williams, Brian Fishman, Christopher Gulla, Judge Katz, Arielle Katz, Katherine Morris, Alexander Levin & Thomas Hagner



Young Lawyer Committee Chair Rachel Brekke, Amanda Hopkins, Suzanne Davies and Julia Melle

David Hasner, Judge Blue & CCBA Secretary Ron Lieberman

## Lobstermania!

An idyllic late summer day greeted 175 lobster lovers for the Young Lawyer Committee’s Lobster Bake presented by Flaster Greenberg on Saturday, September 21st at the TapRoom in Haddonfield. Even the threat of evening showers didn’t dampen the spirits of the crowd of Lobster enthusiasts who had a great time in support of the YLC’s Scholarship Fund for disabled students attending the Larc School in Bellmawr.



Fran Kasen & Friend!



Laura & Andy Ballerini



Judges Schuck, Colalillo, Fox & Stein



Event committee members Jeanette Kwan, David Hasner & YLC Chair Rachel Brekke



CCBA President & First Lady Gary and Patti Boguski, Ron and Lilly Zweibbaum, Tina and Bob Tate



Sheila Dyan & Charles Gaglia



Mike and Michelle Dinella, Surrogate Jones and George Jones

# WINE & FOOD

By Jim Hamilton

With Halloween already behind us – a scary thought – we enter November thankful for many things, our career opportunities certainly among them. Autumn not only is a busy time of year-end planning, sporting events and leaf watching/raking/cursing (pick two out of three); it also is when wine distributors present their portfolios for those in the trade and press to sample and, they hope, order.

I was fortunate to attend a number of these wine extravaganzas, so allow me to provide scouting reports on wines worth your search. Six hours of non-stop tasting at the “Vintner’s Harvest” of top flight distributor, Winebow, yielded more than a few wine finds. Space constraints require that I feature but a few.

**2012 Fairvalley Chenin Blanc** features a grape that is widely planted in South Africa

and here offers excellent value. As one often finds with Chenin Blanc, a grape that perhaps is at its finest in France’s Loire Valley, there is a lactic quality running across the palate. The fruit leans toward lime and honeydew melon and is delivered with a deft grip. The abundant fruit is conveyed with ample weight, and enjoys vibrancy from the acidity that promotes its welcome balance.

For the many fans of California Chardonnay, a wine to consider is **2012 Split Creek Farms Chardonnay**. This is a fairly new label for value priced wines from Sonoma County. The wine eschews oak and its impressions, which continue to fall out of favor, and delivers crisp, round, fleshy fruit resembling Thompson grape, ripe pear and barely ripe apple. The clean profile should pair well with a variety of food



partners such as chicken and fish dishes.

A winery I have mentioned previously and regret not making the time to visit when I was touring France’s Languedoc region is **Chateau de Lascaux**. All wines I have tasted are very well made, but let me confine

*(Continued on Page 16)*

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# PRESIDENT'S PERSPECTIVE

by Gary W. Boguski

## Just Because You Can't Do Everything, Doesn't Mean You Shouldn't Do Something

Last month I had the opportunity to hear retired Justice Virginia Long speak at the Rutgers School of Law annual Mary Philbrook Award Ceremony. The title of my article is a quote from her very inspiring speech. Justice Long, whose long and distinguished career benefitted the lives of New Jersey citizens throughout the State, implored those in attendance to consider ways large or small to impact those around us, particularly the disenfranchised. The award ceremony also honored nine students or recent graduates for their pro bono or public interest efforts ranging from volunteering at a soup kitchen to establishing mentoring or fundraising programs in Camden or in their home communities. Each of the student honorees who has dedicated their young careers to "doing something" are already a credit to our profession.

As for the Camden County Bar Association, fall has been a busy time. In September Jim Hamilton moderated our annual Opening of Court Memorial Ceremony. This is a wonderful tradition where members of our Association who have died over the preceding year are eulogized in front of the entire Camden County Superior Court Bench, families, friends and colleagues. As has been the case every year, we learned interesting, surprising and at times humorous facts about the colleagues who we lost. I would urge all Association members to try to attend the 2014 ceremony next September.



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September also saw our annual Meet the Judges and Law Clerks Reception that was very well attended at the Savoy (formerly the Woodbine). The event featured excellent food, drinks and a chance to meet and mingle with members of the Federal and Superior Court Benches along with their law clerks.

The Young Lawyer Committee held its fourth annual Lobster Bake at the TapRoom to raise money for the Larc School. One hundred and seventy five people enjoyed the delicious lobsters and the YLC raised approximately \$15,000 for the school. Quite an accomplishment. Congratulations to YL Committee chair, Rachel Brekke and the hard working committee.

On October 29, the Honorable John J. Hughes (ret.) received the Gerry Award at Tavistock Country Club.

The Board of Trustees also established a new Women in the Profession Committee. The kick off luncheon was held on October 30. I would encourage all women lawyers and judges to join this important committee.

Please check the Association's website for upcoming CLE seminars and other upcoming Association and Foundation events.

Also, this fall I traveled to Australia to visit with my daughter who is spending her junior year abroad there. This was a fabulous trip well worth the long flight to Los Angeles and then Sidney. Besides enjoying the time with my daughter and a great adventure, I experienced two personal firsts. One was drinking a cup of coffee (a national past-time in Australia) and the other was finding a wireless connection and connecting my daughter's laptop to it. I guess you are never too old to learn. Some random thoughts and observations about Australia and Australians:

1. Australians are very friendly and polite.
2. Australians do not jay-walk.
3. Australians do not have much use for the letter "R" (the resort town of Cairns is pronounced "Cans," the city of Melbourne is pronounced "Melbin"), but they do like the letter "Q" (Circular Quay in Sydney, Quantas).
4. Voting in elections is mandatory. If you do not vote, you are fined. The national election was on Saturday to minimize potential conflicts with work.
5. Speaking of work, Australians, like many European Countries, cannot believe the American tradition of two week vacations only. Six weeks is the norm.
6. The minimum wage in Australia is more than twice ours.
7. Their retirement system is means tested.
8. Australia has universal health care which some supplement with private insurance if they can afford it.
9. Being in Australia for nearly two weeks is not enough time to get used to driving and walking on the left side.

As the holiday season approaches, let us all commit ourselves to "do something."

# YOUNG LAWYER HAPPENINGS



## YOUNG LAWYER CHAIR

# November—Thankful and Giving

By Rachael Brekke

To kick off the month of October, we were invited to the Rutgers Bar Association mixer. I must say our bar association was well represented by myself, Lisa Cunningham (YLD Social Chair), Jeanette Kwon, Harry Chung, and Rich Ramones. It was a great night to meet our fellow bar associations and bounce ideas around for the upcoming year. In fact, we recruited the Philadelphia Bar Association to play in a charity kickball tournament with us next summer. Should be a great event for a great cause! More to come...

We also co-hosted happy hour with Burlington County Young Lawyers at the Victor Pub in mid-October. It was an absolutely gorgeous time of year to spend outside with colleagues, law clerks, and law students. The Victor Pub was more than accommodating and that event will likely become an annual event to kick off the fall season.

We ended October by bringing our Halloween spirit back to the Anna Sample House, a women's shelter in Camden, for our annual Halloween pizza party and cake baked by the very talented Mrs. Craig Becker. Many thanks to Jenny Kasen (YLD Charity Chair) for coordinating with our volunteers and making the event such a fun Saturday for the kids. Lorenzo the Magician captivated the kids with his balloon animals and magic tricks. After a few years, I still can't figure out how he does it!

November is always a time spent with family and friends. We hope that everyone will join us at the Coastline on November 26th for the Fall Frolic. I cannot believe the first night of Hanukkah is before Thanksgiving this year! Here is your three week notice to get a jump start on your shopping so we can enjoy the Fall Frolic together before the holiday season takes over.

I'd like to take this time to start planting the seeds for a new event coming up in February. Upon the suggestion by David

Hasner for a fun night out, and the support of our CCBA President Gary Boguski, the Young Lawyers will be hosting a night out for everyone to relax, have a few drinks, and show off your best dance moves. We're still very much in our planning stages so if you have any ideas on how to make this event a big hit please don't hold back!

I'd like to recognize our young lawyers ALREADY and let our bar association know that we have a greater presence than ever in Camden County this year. Your enthusiasm has truly become contagious. Recently, someone asked me how many evenings per week am I devoting to "networking" and I really had to take a minute to think about it. After a few years, this doesn't feel like work anymore. Our time spent together, whether it be a happy hour chatting about our latest cases or at an event with kids in Camden, it is something that we genuinely look forward to. We not only learn from each other, but we care about each other. Take this month to be thankful for the love that you have, and be giving to those who may need it more.

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By Hon. Richard S. Hyland (ret.)

## Back in the Day

Some lawyers have an affinity for politics for better or worse, and mine began at an early age. My family had been involved in Democratic Party politics for decades, and I wanted to follow in their footsteps. At 16, I stood on the corner of Broadway and Market in Camden on a chilly November evening, handing out campaign literature for Adlai Stevenson, although Mayor George Brunner's "machine" insured a big margin for him. Back in the day there was considerable foot traffic there, but hardly any now.

He had electrified the 1952 Convention, which for the first time was on national TV, with his eloquence, self-deprecating wit and pledge to "talk sense to the American people." How quaint compared to our present day era of personal and negative ads.

He was soundly trounced by Dwight D. Eisenhower, which broke the hearts of his supporters. However, a major flaw was his indecisiveness and in retrospect, "Ike" probably made a better president, historians now say.

The 1956 Convention was notable for the emergence of a handsome war hero junior Senator from Massachusetts who made an unsuccessful attempt to secure the Vice-Presidential nomination. However, it was a ploy to gain exposure and lay the ground work for his successful nomination for President in 1960.

JFK came to Camden's Convention Hall for an exuberant rally for which my band provided the music, mostly "Happy Days Are Here Again" from FDR days which was far more stirring than the Clintons' later "Don't Stop Thinking about Tomorrow."

That November was my first presidential vote (having attained 21 years) by absentee military ballot from Ft. Dix while serving in the Army via the NJ National Guard. By then, I had joined the Young Democrats and later met a 3rd year Rutgers law student whose future was bright. He was very astute, had shrewd political instincts, and good looks to boot so it wasn't surprising that Jim Florio was elected our Congressman, and later Governor.

That year I moved to Delaware Twp. (later changed to Cherry Hill), became a District Leader and joined the local Democratic Club. Cherry Hill was then a Republican stronghold with a Commission form of government headed by Mayor Chris Weber. He was handsome with a perpetual tan a la George Hamilton, and loaded with charm.

A Study Commission had recommended a change in the form of government to Council-Manager and the question was put on the ballot. We were for it and the Republicans against and a Republican operative kept telling me that the "Commission form of government was the most corrupt form known to man" and I couldn't tell whether



L-R Hon. James Florio, Daniel Toll, Harvey Mitnick

he thought that was good or bad. He also had some kind of secret handshake and since I didn't belong to any fraternal organization I didn't know how to respond. What characters you can find!

On election eve I stopped at Cinelli's Restaurant (as a single guy, it was becoming one of my haunts), and Chris called me over to the bar. He was confident the change was going to lose and offered to bet \$100 on the outcome. I was usually not a betting man, but equally confident and we raised the ante with each round of drinks until I bailed out at \$1000. I drove home in near panic wondering how I could put my hands on that amount overnight.

On election night I went to Town Hall (now McDonald's on Route 70) for the results and the change won overwhelmingly. The Mayor did not hesitate to come over wearing his beautiful election day Chesterfield topcoat and pulled out a wad of bills to pay me in front of everyone. The next day there were rumors that he paid me off to take a "dive," and although it made no sense, I learned that political types love juicy gossip.

The next year we ran candidates for Council, including Steve (and later Judge) Fluharty, then a bankruptcy attorney and partner with Dave Epstein. Steve was a dynamic candidate who was not above jumping into a manhole to inspect a sewer problem for a resident-voter. I was appointed campaign manager and the next day ran into Dave who asked me if we had any money for the campaign. In my idealism I was slightly taken aback, but quickly learned that the adage that "money is the mother's milk of politics" was true.

Money was needed for literature, signs, newspaper ads, bumper stickers, coffees and "street money." The latter was another test of my innocence when I learned that it was necessary to pay cash on the barrelhead to "loyal" workers to get out the vote even in the suburbs on election day. As manager, I enjoyed speaking at meetings about our candidates and writing ads and press releases, but I was neglecting my practice in the process.

A professional writer who had worked for Camden Mayor Al Pierce was hired to work with me. He was a Damon Runyon-esque character and veteran reporter who had knocked around in the business and was known as "poison pen Charley." This was before *Sullivan v. The New York Times* landmark libel case and I had to keep Charley in check. He was fascinating to work with and we put out some pretty terrific stuff which played a part in our victory, and without being on the receiving end of any Republican defamation suit.

Please send any comments to [rhylandatlaw@aol.com](mailto:rhylandatlaw@aol.com)



## ELDER LAW

# Are Annuities a Viable Option in New Jersey Medicaid Planning?

By Laura L. Ergood

A review of *Geston v. Anderson*<sup>1</sup>, a September 10, 2013 Eighth Circuit Court of Appeals decision, indicates they are. Prior to the Deficit Reduction Act (DRA) of 2005<sup>2</sup>, New Jersey courts permitted the purchase of Medicaid compliant commercial annuities as a method married couples could employ to convert resources into an income stream for the community spouse. This reduced the community spouse's resource allowance (CSRA) within limits allowing Medicaid eligibility for the nursing home bound spouse. Likewise, the Third Circuit Court of Appeals in *James v. Richman*, 547 F.3rd. 214 (3rd Cir. 2008), held that pursuant to **federal law** a non-revocable, non-transferable, commercial annuity's income stream could not be treated as a resource of the couple's as the PA Dept. of Public Welfare argued and the nursing home spouse could not be denied Medicaid eligibility on that basis. The PA DPW had argued that the annuity's income stream could be sold and thus constituted a resource. The 3rd Circuit disagreed that the income stream could be legally sold based on the terms of the annuity.

However, following the enactment of the DRA, the New Jersey Appellate Division decided in *N.M. v. DMAHS*, 405 N.J. Super 353 (App. Div. 2009), that the DRA had changed the law with regard to the use of annuities in Medicaid planning. The Court, relying on the

Center for Medicaid and Medicare Services' (CMS) interpretation of the DRA, held that because the commercial annuity's income stream could be sold on the secondary market the value of the income stream constituted a resource of the couples' and to the extent the value of the income stream exceeded the CSRA, the nursing home spouse could be denied Medicaid. In this case, the parties had stipulated that the income stream could be sold on the secondary market. N.M. had relied upon *James v. Richman*, but the Court distinguished *James* finding the Medicaid application in that case was made *prior* to the enactment of the DRA.

*Geston v. Anderson*, interprets the federal law consistently with the 3rd Circuit in *James v. Richman*. The North Dakota Dept. of Human Services denied Mr. Geston's Medicaid application finding that he and his wife's assets exceeded resource eligibility limits because his wife owned an annuity. Mr. Geston entered a nursing home in July, 2010. Before he applied for Medicaid, Mrs. Geston purchased a commercial annuity paying her a monthly income stream. The annuity contract provided that it was irrevocable, non-transferable, non-assignable and could not be surrendered or commuted during Mrs. Geston's life nor could she revoke the recipient of the payment stream. The Dept.,

(Continued on Page 19)

## WINE & FOOD

Continued from Page 12

my observations to the **2010 Chateau de Lascaux Coteaux du Languedoc Blanc**. The wine is fashioned from four grape varieties and freely yields a nuanced flavor profile featuring chalky, flowery, ripe fruit impressions primarily resembling white peaches. It is a delightfully clean wine that should win more than a few fans who are able to find it.

Hailing from southern Italy's Basilicata region is a winery that is among Winebow's Leonardo LoCascio Selections, Bisceglia. Mr. LoCascio is Winebow's founder and he has a keen eye for Italian producers, many of whom enjoy long relationships with him and, consequently, Winebow. While Bisceglia offers a number of wines made from Aglianico, a red grape that can have tannins that need taming for early approachability, something Bisceglia does very well, I thought it worth featuring a white wine they produce. **2011 Bisceglia Terra di Vulcano Dry**

**Muscat** offers the floral aromatics for which the Muscat grape is known, and adds to that impression a creamy fruit redolent of orange zest notes that are at once crisp yet plump. This wine deftly avoids the sharp edges one can find in dry Muscats.

Since the colder weather inspires more red wine consumption, let us talk about a few prospects. Oliver Conti hales from Spain's Catalan region and among several of their wines being imported to our country is **2010 Oliver Conti Turo Negro**. This is another four grape blend (the plurality Merlot) that displays vivid, dark berry fruit with veins of cocoa and underbrush delivered with a forward ripeness but also a poise reflective of its structure.

For fans of Italy's Tuscan wines (the region famous for Chianti and Brunello di Montalcino), I think you might enjoy **2010 Pratesi Locorosso**. Like the more famous wines of the region, this is a Sangiovese based wine that is driven by persistent red cherry and red currant fruit, a slight touch of all spice and a firm acid-derived backbone that results in a wine that is lively and enduring.

As Robert Frost explained, taking the road less traveled can be rewarding. In the world of wine, we are finding more opportunities

to stray from well-worn wine trails and venture into less traditional (for us at least) wine regions. While Chateau Musar long has enjoyed international recognition for producing top class wines from a country that has had its share of strife, Lebanon, other producers from that country have wines coming to our market. From Lebanon's Bekaa Valley, Massaya is offering wines that merit consideration not simply as curiosities, but rather for their quality. A value entry is **2011 Massaya Classic Rouge**, crafted from the Cinsault grape with healthy components of Syrah and Cabernet Sauvignon. The wine expresses a mouthwatering mélange of red and black berries, plump and ripe but with shadows of black pepper adding another dimension.

Let's finish with a wine from France's Rhone region—**2011 Chateau de Montfaucon Les Gardettes**. This is yet another four grape wine, here led by Syrah. The fruit is mostly blackberry, abundantly so, but it is influenced by herbs and spices that are neatly woven throughout. Again, the wine represents both good versatility and true value.





## LAW PRACTICE MARKETING

# Why Most Lawyers Need a Coach

## Part 1 of 2

By Kimberly Alford Rice

Over the past few years, firms have begun to recognize the importance and value of investing in their talent to empower their lawyers to learn distinctly how to effectively attract and win new clients. The skill set involved in this career-long exercise is not found in most law school curriculum nor inside law firms. What follows is a case for lawyers to consider when weighing their career goals and their current skill set for developing their own client base.

If you are swimming in profitable clients and lucrative work with no end in sight, this article is not for you. If new clients flock to you wherever you go, no need to read any further. However, if this does not describe you, read on.

With reports pouring out almost daily on how the economy continues to hammer the legal services sector, lawyers are scratching their heads wondering what they should do that they are not or what else they can do to build and expand their book of business.

They often think by delivering a good work product to their clients and entertaining them occasionally that the work will continue to flow their way. The reality is, however, that clients' legal budgets have been slashed, there is a diminished demand for legal services in some areas, and lawyers are not always effective in expanding work with existing clients and attracting new work.

Given these tough truisms, professional business development skills training and coaching can be a viable solution to educate and support attorneys in bringing cohesion to their business development efforts, assisting them in practicing more productive behaviors which

result in expanded relationships with existing clients, and attracting new clients. Often, effective coaching can be the "boots on the ground" of growing a practice.

According to David Freeman, CEO of the David Freeman Consulting Group and Terri Mottershead, Principal at Mottershead Consulting, "More firms are realizing that training requires ongoing follow up to yield desired results. Personal coaching and accountability systems can provide the kind of implementation support needed to turn new skills into new habits and behaviors. Firms are also recognizing the need to focus their limited resources on top performers who can make the biggest impacts."

## What is Coaching, Anyway?

Many have heard the buzz about the value of partnering with a professional coach but there is still a limited understanding of the collaborative nature of working with a coach and how it can bring greater strategic focus to a lawyer's practice. The professional coach is focused solely on helping her lawyer clients assess their practice, evaluate client expansion, new business and cross-selling opportunities, and objectively direct them to develop a targeted plan on how to realize their business goals. This does not happen overnight but through taking steady, measured steps and developing a marketing mindset by becoming sensitized to business opportunities. It is often in those "measured steps" (aka execution) that most plans

(Continued on Page 18)

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## LAW PRACTICE MARKETING

# Why Most Lawyers Need a Coach

## Part 1 of 2

Continued from Page 17

falter. A professional coach helps her clients to follow through on stated action steps.

Rainmaking lawyers are often too busy or their personalities too formidable to actually ask for help or support. Yet, they could grow their book substantially if they took the time to evaluate succinctly where existing opportunities lie. A coach can help with that.

Likewise, a professional coach works hard to understand a lawyer's goals and target clients (and guides the attorney to develop concrete practice goals) and helps her to be more strategic in her approach and business development efforts. A coach can offer support and motivation to help attain targeted goals, help instill discipline to an otherwise hectic schedule and introduce a level of accountability where there is little.

A successful coaching program can help:

- Clarify client development goals
- Create goal-focused action plans
- Develop leadership and business development skills
- Promote relationship-focused activities
- Build stronger communication, networking, and presentation skills

In the second installment of this article, we will outline what you can reasonably expect from a coaching relationship and how to evaluate whether a professional coach may be a good fit for you and your practice development goals.

## SEMINARS



### NJ Real Estate Closing

**New Jersey Real Estate Closing Procedures**, a required course for newly admitted lawyers, was presented as part of the Young Lawyer Committee's *CLE on Tap!* program. **Chuck Resnick**, Law Office of Charles G. Resnick in Cherry Hill, and **Jeffrey R. Gans**, Law Offices of Jeffrey R. Gans in Gibbsboro, were the presenters.

### Solo Practice

#### Solo Practice 101: How to Make it on Your Own

was the subject of a recent seminar co-sponsored by the Young Lawyer Committee. Seminar presenters were **Charles H. Nugent, Jr.**, Nugent Law, Marlton; **Rocco C. Cipparone, Jr.**, Law Offices of Rocco C. Cipparone, Jr., Haddon Heights; Moderator **Megan J. Davies**, Law Offices of Megan J. Davies, Westmont; and **Steven J. Peterson**, Haddon Heights.



### IEP Seminar

The recently held seminar, **Anatomy of the IEP**, provided an in depth analysis of the special education programming document. Presenters for this timely and informative program were: **John B. Comegno, II**, Comegno Law Group, P.C., Moorestown; **Paul Kalac**, Schwartz, Simon, Edelstein & Celso, LLC, Whippany; **Brett DiNovi, BCBA**, Brett DiNovi & Associates, LLC, Cherry Hill; **Will Donio**, Cooper Levenson April, et.al., Atlantic City; **Gerald Mingin, PhD**, Educational Consultant, Eastampton; and Moderator/Presenter **Craig David Becker**, Craig David Becker—Attorney at Law, LLC, Mt. Laurel.

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## ELDER LAW

## Are Annuities a Viable Option in New Jersey Medicaid Planning?

Continued from Page 16

relying upon North Dakota's Medicaid statute, decided the corpus of the annuity constituted a countable resource that brought the couple's combined resources above the permissible Medicaid eligibility limit. The North Dakota statute stated, "annuity payments received by a community spouse will be treated as income **only if** they do not raise the community spouse's total income over a certain threshold." Since Mrs. Geston's income including the annuity income exceeded that threshold, the Department deemed the annuity a countable resource causing Mr. Geston to be denied Medicaid.

The Eighth Circuit reiterated that when a State accepts federal funding for its Medicaid program, the State must comply with federal statutes and regulations as to eligibility for care...and "that the state methodologies for determining eligibility must be '**not more restrictive**' than federal methodology that would be employed under the supplemental security income program. 42 U.S.C. 1396a(1)(10) (c)(i)" *Geston*, Id. The Court explained that the resources of both spouses must be considered when one is applying for Medicaid for nursing home care but that the Medicare Catastrophic Coverage Act of 1988, 42 U.S.C. 1396 et. seq. allows the community spouse to keep a certain amount of assets in order to avoid impoverishment, known as the community spouse resource allowance (CSRA). The Court stated that, "the Act excludes, however, the community spouse's income from eligibility determinations: 'during any month in which an institutionalized spouse is in the institution,... Id. 1396r-5(b)(1).'" *Geston*, Id. The Court highlighted how this distinction between an asset as a resource versus income of the community spouse impacts

the institutionalized spouse's eligibility for Medicaid.

The *Geston* Court held that, "because Mrs. Geston had no legal right, authority or power to liquidate the annuity,<sup>3</sup> the annuity benefits are not a resource, but rather are income as indicated by the statute defining 'unearned income.'"<sup>4</sup> The Court found that North Dakota was utilizing a more restrictive methodology for determining eligibility than federal methodology because the Dept. had misclassified the annuity income stream as a resource rather than the community spouse's income which would have placed the couple's resources within Medicaid eligibility limits.

In support of its position, the North Dakota Dept. cited to the section of the DRA that the NJ Appellate Division relied upon in *N.M.*, Id., which provides: "Nothing in this subsection shall be construed as preventing a State from denying eligibility for medical assistance for an individual based on the income or resources derived from an annuity described in paragraph (1)."<sup>5</sup> 42 U.S.C. 1396p(e)(4). Unconvinced, the Eighth Circuit found that this paragraph of the DRA did not change the eligibility criteria of whether an annuity benefit constitutes income or a resource. Rather, the Court explained that it merely clarifies that the DRA does not prevent a State from denying eligibility on other grounds such as that an annuity was not actuarially sound, was revocable, or failed to name the State as primary remainder beneficiary.

In conclusion, the federal courts have consistently held that States may not employ Medicaid eligibility requirements that are more restrictive than federal requirements. Further, the federal courts have held that otherwise Medicaid compliant annuities paying an income stream to the community spouse should not be treated as a resource of either spouse based upon the current federal Medicaid statutes and regulations.<sup>6</sup>

## New York Attorney Discipline Practice and Procedure

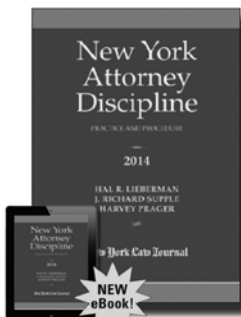
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## VERDICTS OF THE COURT

*Superior Court of New Jersey*

VERDICT: Liability Verdict: \$20,097 Against Defendant (9/17/13)

Case Type: Tort - Other  
Judge: John T. Kelley, J.S.C.  
Plaintiff's Atty: Sander Friedman, Esq.  
Defendant's Atty: Vair Hubara, pro se  
L-6278-11 Bench

VERDICT: Damage Verdict Against Defendant: \$170,290, molded to \$127,717.50; Liability Verdict: 25% Against Plaintiff, 75% Against Defendant (9/18/13)

Case Type: Personal Injury  
Judge: Louis R. Meloni, J.S.C.  
Plaintiff's Atty: Ann Madden Tufano, Esq.  
Defendant's Atty: Charles Reynolds, Esq.  
L-5274-11 Jury

VERDICT: Damage Verdict: \$10,527 Against Defendant (9/25/13)

Case Type: Auto Negligence  
Judge: John A. Fratto, J.S.C.  
Plaintiff's Atty: Alan Taylor, Esq.  
Defendant's Atty: Daniel Danielewicz, Esq.  
L-3724-11 Jury

VERDICT: No Cause (9/25/13)

Case Type: Auto  
Judge: John T. Kelley, J.S.C.  
Plaintiff's Atty: Daniel K. Snyder, Esq.  
Defendant's Atty: Charles Blumenstein, Esq.  
L-4680-11 Jury (6)

VERDICT: No Cause (9/26/13)

Case Type: Personal Injury  
Judge: Robert G. Millenky, P.J. Cv.  
Plaintiff's Atty: Scott Goldberg, Esq.  
Defendant's Atty: Frank Calo, Esq.  
L-4034-11 Jury

VERDICT: No Cause Damage Verdict: \$0 Against Changa Whitney and \$0 Against William Reed (9/26/13)

Case Type: LAD  
Judge: Anthony M. Pugliese, J.S.C.  
Plaintiff's Atty: Toni Telles, Esq.  
Defendant's Atty: Brian Turner, Esq.  
L-2320-11 Jury

VERDICT: Damage Verdict: \$15,000 Against Defendant (9/26/13)

Case Type: Auto Negligence  
Judge: Louis R. Meloni, J.S.C.  
Plaintiff's Atty: Randy Catalano, Esq.  
Defendant's Atty: Catherine Schmutz, Esq.  
L-1185-11 Jury

VERDICT: No Cause (10/1/13)

Case Type: Other  
Judge: John T. Kelley, J.S.C.  
Plaintiff's Atty: Donald Ryan, Esq.  
Defendant's Atty: John DeMasi, Esq.  
L-3876-12 Bench



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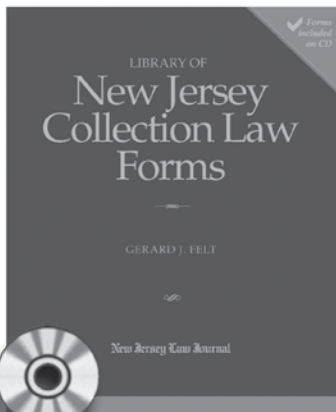
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by Gerard J. Felt

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# LEGAL BRIEFS

We rely on members to provide announcements for the Legal Briefs section. If you have a new member of the firm, you've moved or you or a member of your firm has received an award or recognition for a professional or community activity, we want to know and share it with fellow bar members. Please email your submissions to [lbp@camdencountybar.org](mailto:lbp@camdencountybar.org).

**Lloyd Freeman** of Archer & Greiner has been elected to serve on the Board of Directors of the Garden State Bar Association (GSBA), which works to enhance and improve the status of minority attorneys in New Jersey. An affiliate of the National Bar Association, the nation's oldest and largest association of African American lawyers and judges, the GSBA assists African-Americans and other ethnic minorities in becoming an effective part of the judicial and legal systems. The Association seeks to advance the science of jurisprudence, improve the administration of justice, support initiatives designed to improve economic condition of all individuals, and eliminate discrimination and inequality based on racial, ethnic or sexual considerations. The GSBA establishes programs and projects to pursue, support and facilitate the implementation of these goals.

Mr. Freeman currently holds numerous leadership positions with professional and civic organizations, including as Chairman of the Board of Trustees of Big Brothers Big Sisters of Burlington, Camden & Gloucester Counties, and as a member of the Rutgers Law Pro Bono/ Public Interest Advisory Committee and the Rutgers Law Alumni Association Board of Directors. He practices litigation in state and federal courts in New Jersey and Pennsylvania, and has experience in complex commercial litigation, litigation related to intellectual property and real estate transactions, and consumer fraud actions.

Mount Laurel, N.J. – Parker McCay announces that **Melissa M. Ferrara** and **Valerie N. Smaldone** have joined the firm as Associates based out of the Mount Laurel office. Ms. Ferrara joins the Labor and Employment practice department and Ms. Smaldone joins the Medical Malpractice department.

Prior to joining Parker McCay, Ferrara served as a staff agent for the New Jersey Public Employment Relations Commission and also was a senior consultant for the Labor Relations Department of the New Jersey School Boards Association in Trenton. She has a master's degree in Labor and Employment Relations from Rutgers University and earned her law degree from Seton Hall University School of Law. She is admitted to practice law in New Jersey and Pennsylvania. Ferrara also served as a law clerk to the Honorable Georgia M. Curio, who swore her in as the Young Lawyer Trustee for the Gloucester County Bar Association on September 12.

Prior to joining Parker McCay, Smaldone served as a New Jersey Appellate Division law clerk for the Honorable Michael J. Haas. She earned her law degree from Rutgers University School of Law as well as a bachelor's degree from Montclair State University. Smaldone is admitted to practice law in New Jersey.

Capehart Scatchard Executive Committee Member, **Betsy G. Ramos** and shareholder, **Michelle L. Corea** spoke on "Hold Harmless and Indemnity Agreements" at a CLE seminar sponsored by the South Jersey Claims Association. Their presentation focused on New Jersey

cases and statutes pertaining to these types of agreements.

Certified by the Supreme Court of New Jersey as a Civil Trial Attorney, Ms. Ramos is a Shareholder of Capehart Scatchard's Litigation Department, where she concentrates her practice in business litigation, estate litigation, tort defense, employment litigation, insurance coverage, and general litigation. Ms. Corea, a previous Camden County Assistant Prosecutor, is a shareholder of the Litigation Department, where she focuses her practice in the areas of insurance defense and construction litigation representing governmental entities, specifically under New Jersey Statute Title 59 and Civil Rights Litigation brought under 42 U.S.C. section 1983, as well as insured parties, including self insured and insurance companies in the federal and state courts of New Jersey and Pennsylvania.

**Leonard Baker** has joined Greenblatt, Pierce, Engle, Funt & Flores, LLC (GPEFF) and will serve as the Director of our New Jersey Office. Certified by the Supreme Court of New Jersey as a Criminal Trial Attorney, he will direct GPEFF's office in Haddonfield, NJ where he will oversee all aspects of the firm's New Jersey practice.

He received his law degree from Rutgers School of Law in Camden where he has been an Adjunct Professor of Law for over 20 years, teaching Criminal Practice and Procedure to second and third year students. After graduating from Rutgers, he worked as a public defender in Camden County for the next 15 years, where he served as Chief Litigator and supervised the other attorneys in the office.

Blank Rome LLP is pleased to announce that **Stephen M. Orlofsky** has been reappointed to the Board of Trustees of the New Jersey Lawyers Assistance Program ("NJLAP"). Mr. Orlofsky's term began September 1, 2013, and will end August 31, 2016. The NJLAP provides free and confidential assistance to attorneys, members of the judiciary, law students, and law graduates with alcohol, drug, gambling, emotional, behavioral, and other personal problems that affect well-being and professional performance.

Mr. Orlofsky, a former U.S. District Judge for the District of New Jersey (1996-2003) and U.S. Magistrate Judge for the District of New Jersey (1976-1980), leads Blank Rome's Appellate practice and is the Administrative Partner of the Firm's Princeton, office. He concentrates his practice in the areas of complex litigation and ADR, counseling clients throughout the U.S. in federal and state civil and criminal courts, both at the appellate and trial level.

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The Young Lawyer Lobster Bake Committee thanks everyone who attended the Lobster Bake on September 21<sup>st</sup>, and especially the following sponsors who ensured another successful event in support of The Larc School.



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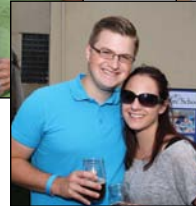
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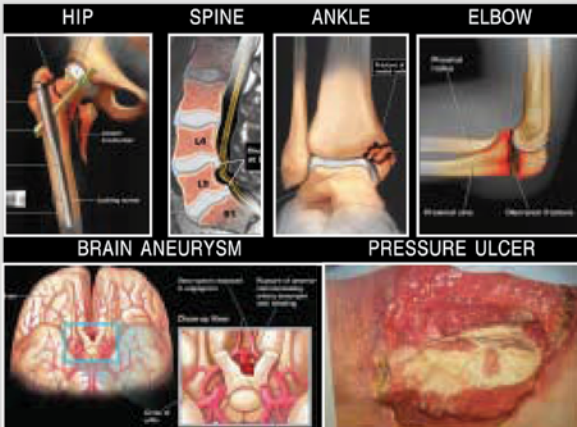
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