



## Madden Named Camden County's Professional Lawyer of the Year

Following a review of nominations received from the membership, the CCBA's Committee on Professionalism has selected **Michael P. Madden** the 2011 Camden County Professional Lawyer of the Year.

President of Madden & Madden, P.A. in Haddonfield, Mike will receive his award at the annual Professionalism Awards Luncheon on October 4th at the Pines Manor in Edison.

Sponsored by the New Jersey Commission on Professionalism in the Law, the award recognizes and honors attorneys who are considered by their peers to exhibit the highest professional character and competency, are respected in the community, and are considered to be models of professional behavior.

Congratulations Mike! You are truly deserving of this special award.



## Honorable Maryanne Trump Barry to Receive Gerry Award October 26

*Senior Judge, U.S. Court of Appeals, Third Circuit to receive prestigious award*

The Honorable Maryanne Trump Barry has been named the 2011 recipient of the prestigious Judge John F. Gerry Award. The award will be presented at the 16th annual Gerry Award dinner on Wednesday, October 26, at the Westin Hotel in Mount Laurel.

Beginning with a cash bar cocktail reception at 6 p.m., the award will be presented during the dinner, which begins at 7 p.m. The 2011 Judge John F. Gerry Memorial Scholarship recipient will also be announced and presented with a check during the dinner.

"Senior Judge Barry's long and very distinguished record of public service exemplifies the same dedication reflected in the life and times of Judge Gerry and serves as a shining example for all of us in the legal profession," said retired Superior Court Judge John B. Mariano, who chairs the Gerry Award Committee. "Judge Gerry



*Continued on Page 14*

## IN MEMORIAM

The Association was saddened to learn of the passing of the Hon. I.V. DiMartino on August 22nd, at the age of 89.

Judge DiMartino was a retired assignment judge for the Superior Court of New Jersey, Camden Vicinage. Judge DiMartino was a United States Army Veteran of World War II, serving with the 100th Infantry Division, and was also associated with various civic organizations.

The Association extends its sincere condolences and sympathies to the family, friends and colleagues of Judge DiMartino. He will be missed.

Sign up Today!

Camden County Bar Foundation

*Autumn Scramble*

**Columbus Day  
October 10th  
The Links, Marlton**

## Fall Frolic Set For November 15th

Thanks to the unfailing generosity of our good friends at The Coastline, the Camden County Bar Foundation will be hosting two annual events there again this year.

On December 3rd, 250 or more wide-eyed children from Camden will be treated to a very special holiday celebration featuring a sumptuous Coastline breakfast, an always dazzling magic show, and a visit with Santa who, with the help of his many elves, gives each child a beautifully wrapped Christmas gift and a photograph of themselves sitting on Santa's lap. While the Coastline and its employees donate the food and their time to prepare and serve it, the Bar Foundation underwrites the entertainment and, of course, the

*Continued on Page 25*

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# The Docket

## Monday, October 3rd

*Class Action Committee Luncheon Meeting*

Noon

Bar Headquarters, Cherry Hill

## Tuesday, October 4th

*Young Lawyer Committee Meeting*

Noon

Bar Headquarters, Cherry Hill

*Committee Leadership Cocktail Reception*

5 – 7 pm

Tavistock County Club, Haddonfield

## Thursday, October 6th

*Association Trustees' Strategic Planning*

*Retreat*

Tavistock Country Club, Haddonfield

## Monday, October 10th

*Autumn Scramble Golf Outing*

Links Golf Club

100 Majestic Way, Marlton, NJ

## Tuesday, October 11th

*Executive Committee Meeting*

8:30 am

Bar Headquarters, Cherry Hill

## Wednesday, October 12th

*So You're a Business Owner Too?*

*Pressing Issues of Law Firm Managers & Owners Seminar*

4 – 6:15 pm

Tavistock Country Club, Haddonfield

## Monday, October 17th

*Crossroads of a Disability Practice Seminar*

4 – 6:15 pm

The Mansion, Voorhees, NJ

## Wednesday, October 19th

*Professionalism Day CLE Seminar*

2 – 4 pm

Courtroom 63, Hall of Justice, Camden

*Association Board of Trustees Meeting*

4 pm

Bar Headquarters, Cherry Hill

## Thursday, October 20th

*Young Lawyer/South Jersey Society of CPAs*

*Networking Happy Hour*

6 – 8 pm

PJ Whelihan's, Cherry Hill

## Saturday, October 22nd

*Wills for Heroes*

11 am – 5 pm

Clark Commons

Rutgers School of Law – Camden

## Tuesday, October 25th

*Real Estate Tax Appeal Seminar*

4 – 6:15 pm

The Mansion, Voorhees, NJ

## Wednesday, October 26th

*Judge John F. Gerry Award Dinner*

6 pm

The Westin Hotel, Mt. Laurel

## Thursday, October 27th

*CLE on Tap! for Newly Admitted Lawyers*

*NJ Civil Trial Preparation*

4:00 – 7:15 pm

Tavistock Country Club, Haddonfield

## Friday, October 28th

*Social Security Committee Meeting*

Noon

Bar Headquarters, Cherry Hill

## Tentative Agenda for September 20, Trustees Meeting

A tentative agenda for this month's regular Board of Trustees meeting follows. The meeting will begin at 4 p.m., at Bar Headquarters. 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. Membership Committee Report
- VI. Executive Director's Report
- VII. Young Lawyer Committee Report
- VIII. Standing Committee Reports
- IX. Foundation Update
- X. NJSBA Update
- XII. New Business (if any)
- XIII. Old Business
- XIV. Adjourn

## The Barrister

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## Out & About

### Lobster Bake



Dan Mellor & Levi, Julie Mellor,  
Beth & Craig Becker



Trevor Cooney,  
Kelly & Mark  
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Jessica Friscia,  
Arykah Asheley  
& Ryan Trabosh



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Fran Kasen



## 2011 Camden County Bar MCLE Planner

### Notice Regarding Seminar Materials

CCBA seminars have gone green. Paper course materials will no longer be available for pick up at seminars. Pre-registrants **must** choose one of two options: 1) An advance email with a pdf attachment of the materials that can be printed; or 2) Receive a compact disk containing the materials at seminar check-in. **YOUR CHOICE MUST BE SELECTED AT THE BOTTOM OF THE SEMINAR RESERVATION FORM.**

**Walk-in attendees only:** Compact disks will be available at check-in. A limited number of paper materials packets will also be available for an additional \$10 charge.

#### Wednesday, October 12th – Tavistock CC So, You're a Business Owner Too? Pressing Issues of Law Firm Managers & Owners

**New Jersey Credit:** This program has been approved by the Board on Continuing Legal Education of the Supreme Court of New Jersey for **2.4** hours of total CLE credit. Of these, **0** qualify as hours of credit for ethics/professionalism. *The actual credits earned may be less if the course time is less than 135 minutes.*

**Pennsylvania Credit:** Seminar includes **2.0** hours of SUBSTANTIVE credit from the Pennsylvania CLE Board.

#### Monday, October 17th – The Mansion Crossroads of a Disability Practice

Representing an individual with disabilities or the family of a disabled individual requires an understanding of the laws of disability and the programs available to assist the disabled individual throughout his/her lifetime. Three primary areas of law deal with the issues of disability: Medicare and Medicaid, Social Security Disability and Supplemental Security Income (SSI).

There are also programs for Developmentally Disabled and Brain-Damaged Individuals.

**New Jersey Credit:** This program has been approved by the Board on Continuing Legal Education of the Supreme Court of New Jersey for **2.4** hours of total CLE credit. Of these, **0** qualify as hours of credit for ethics/professionalism. *The actual credits earned may be less if the course time is less than 135 minutes.*

**Pennsylvania Credit:** Seminar includes **2.0** hours of SUBSTANTIVE credit from the Pennsylvania CLE Board.

#### Tuesday, October 25th – The Mansion Real Estate Tax Appeals

New Jersey has the highest property taxes in the nation. What, if anything, can be done to reduce real property taxes? This seminar will provide attendees with a keen understanding of the Real Estate Tax Appeal process, and is recommended for anyone living in New Jersey.

**New Jersey Credit:** This program has been approved by the Board on Continuing Legal Education of the Supreme Court of New Jersey for **2.4** hours of total CLE credit. Of these, **0** qualify as hours of credit for ethics/professionalism. *The actual credits earned may be less if the course time is less than 135 minutes.*

**Pennsylvania Credit:** Seminar includes **2.0** hours of SUBSTANTIVE credit from the Pennsylvania CLE Board.

#### Thursday, October 27th – Tavistock CC New Jersey Civil Trial Preparation CLE on Tap! for Newly Admitted Lawyers

The Camden County Bar Association is YOUR one stop shop for those fifteen "Bridge the Gap" CLE credits required of newly admitted lawyers. The "CLE on Tap" program is an easy, affordable and enjoyable way to complete your requirements.

**New Jersey Credit:** This program has been approved by the Board on Continuing Legal Education of the Supreme Court of New Jersey for **3.9** hours of total CLE credit. Of these, **0** qualify as hours of credit for ethics/professionalism. *The actual credits earned may be less if the course time is less than 195 minutes.*

**Pennsylvania Credit:** Seminar includes **3.0** hours of SUBSTANTIVE credit from the Pennsylvania CLE Board.

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\*NY Law Journal and Legal Intelligencer Polls, 2011; Ct. Law Tribune Poll, 2011; Harvey Research Study, 2010

# Closing the Personal Injury File and Keeping It Closed

## Avoiding legal malpractice



By Thomas D. Begley, Jr., CELA  
TBegleyJr@begleylawgroup.com

When a case is settled, the Personal Injury Attorney's work is not necessarily complete. There are a number of issues that must be considered prior to closing the file. These decisions have a significant impact on the client's future life and could result in legal malpractice claims against the Personal Injury Attorney, if not

adequately addressed. These issues include the following:

- Allocation of settlement proceeds
- Is a Special Needs Trust required?
- Is a Settlement Preservation Trust appropriate?
- Is a Medicare Set-Aside required?
- Are all Liens satisfied?
- Can any Liens be negotiated?
- Is a Structured Settlement appropriate?
- Is the client receiving good investment management advice?
- If there is a trust, is there a professional trustee?
- Income and estate tax issues
- Estate planning documents
- Medical insurance

This is the first of a series of articles that will discuss these and other issues pertaining to finalizing a personal injury settlement.

**Special Needs Trust.** It is important to make a determination as to whether a Special Needs Trust is required. If the Plaintiff is receiving means-tested public benefits, a Special Needs Trust will preserve those benefits. The settlement proceeds can be deposited into the trust and will not be counted as assets for public benefit purposes. In determining whether a Special Needs Trust is required, the Personal Injury Attorney should ask the following questions:

- Is the plaintiff a "disabled person" within the meaning of the Social Security Act?
- Has the person received a Disability Determination by the Social Security Administration or the State Medicaid Agency?
- Has the person or could the person apply for a Determination of Disability by the Social Security Administration?
- Is the disabled person receiving or likely to receive any of the following means-tested public benefits?
  - ~ SSI
  - ~ Medicaid
  - ~ Medicaid Waiver Program
  - ~ Section 8 Housing
  - ~ SNAP (Food Stamps)
  - ~ Veterans Benefits
  - ~ Group Home
  - ~ Psychiatric Institutionalization

**NOTE:** A Special Needs Trust is not required if the plaintiff is receiving SSDI and/or Medicare

A person receiving a personal injury settlement needs to do a Self-Settled Trust as opposed to a Third Party Special Needs Trust. There are six requirements for a Self-Settled Special Needs Trust. These are:

**Assets of the individual** – The trust must be funded from the assets of the individual. A personal injury settlement constitutes the asset of the individual who is the beneficiary of the trust.

**Under Age 65** – A Self-Settled Special Needs Trust cannot be utilized if the plaintiff has reached his 65th birthday.

**Disabled** – The person must have received a disability determination by the Social Security Administration or the State Medicaid Agency. While waiting for such a determination, it may be appropriate to fund a trust based on a letter from a physician or an attorney specializing in Social Security Disability appeals that the individual meets the Social Security definition of disability.

**"Sole Benefit of" Such Individual** – Social Security has interpreted this language to mean that the trust must be for the "Sole Benefit Of" the disabled plaintiff. This means that the trust cannot serve as the family bank account. Other family members benefiting from the trust must pay their pro rata share.

**Established By** – The trust must be established by parent, grandparent, guardian or court. For a pooled trust, the trust cannot be established by the disabled plaintiff. Payback on the death of the disabled individual or upon the early termination of the trust during the beneficiaries lifetime, Medicaid must be repaid for all Medical Assistance provided on behalf of the individual.



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**Bette E. Uhrmacher** was a Judge of the Superior Court of New Jersey for more than 15 years, serving in all three divisions. Seven of those years were served in the Civil Division where she recently managed the medical malpractice calendar. Judge Uhrmacher has handled a broad spectrum of civil cases as well as handling some probate and general equity matters. For four years, Judge Uhrmacher was Presiding Judge of the Criminal Division.

Prior to joining the bench, Judge Uhrmacher served as the Chief of the Civil Division of the U.S. Attorney's Office for the District of New Jersey. Additionally, she was Attorney-in-Charge of the Trenton U.S. Attorney's Office, and appointed to a Senior Litigation Counsel position. She also served as an Assistant U.S. Attorney for the District of New Jersey.

Throughout her career, Judge Uhrmacher has been active in Teaching and Continuing Legal Education programs. Currently, she serves as Chair, Haydn Proctor Inn of Court, Monmouth County and will be teaching a Trial Advocacy course in the Fall.

Judge Uhrmacher has received consistently high ratings from attorneys appearing before her in each of the New Jersey Law Journal surveys of the Judiciary.

Judge Uhrmacher received a JD from the University of Texas at Austin and a BS from Simmons College, Boston, Massachusetts.

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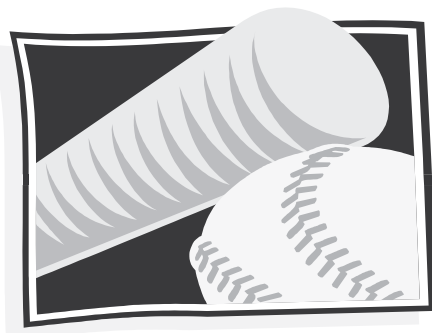
Please call Mike Carney at (215) 564-1775 to submit your case for Judge Uhrmacher.

## Par Four the Course

By Barry W. Rosenberg  
bwrlaw@verizon.net

Sometimes it's good to be the boss or, in this case, the commissioner, especially when your team wins seven out of eight games against three tough playoff opponents to win a championship. This was accomplished by Jeff Klinger's Par 4 team, which won its first CCBA Softball League championship on August 30, 2011. Far from being an expansion team, Par 4 combined the talents of players from Parker McCay, which won seven championships, Harbor League, which won in 2001, and some newly added players. While denying Harvey Mitnick's Barristers team the distinction of achieving the all-time CCBA League record of nine championships, Par 4 exceeded the unofficial League record for most home runs during playoff competition.

Demonstrating that all good things



come to those who wait, Par 4 outfielder Charles "Butch" Block watched and waited until being sent-up to pinch hit in the bottom of the seventh inning in the championship clinching game. His line drive single through the box knocked in the tying run and advanced another runner to third base.

Long time CCBA Softball League standout Jim Fullerton then won the game by singling to right field. This year's title allowed Par 4 to "get the monkey off our

backs," stated Commissioner Klinger, whose team had lost to the Barristers and its prior playoff opponent, PBA #227, in all four regular season games this year.

The final regular season ended as follows:

### A Division

Barristers 9-1

PBA 8-2

Par 4 6-4

Young Lawyers 4-6

### B Division

Prosecutors 6-4

Brown & Connery 5-5

Archer & Greiner 1-9

Law Clerks 1-9

This year's championship team included Charles Block, Paul Bryson, Bob Cleaver, Joe D'Aversa, K.J. DiMuzio, Jim Fullerton, Frank Funari, Tom Givins, Ron Harrison, Eric Holloway, Jeff Klinger, John Mayer, Brad Parker, Jim Pietras, Sol Roca, Andy Spell and Bill Wiley.

Only six more months until the 2012 season starts. Keep your gloves oiled, your backs limber, and your batting eyes sharp. The CCBA will look forward to sponsoring its 35th season starting next April.

## Abo and Company, LLC

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Partner Marty Abo recently gave an ICLE seminar entitled *"The Financial Side of a Law Practice—What They Forgot To Tell You in Law School."* The session prepared attendee attorneys for the business of law. They knew how to practice law but wanted to learn how to make money doing it. Whether you are a sole practitioner, in a boutique firm, thinking about leaving a firm to start your own, just beginning in the legal profession or have been running your own firm for years, the handouts authored by Marty are available to members of the Camden County Bar by requesting at [www.aboandcompany.com](http://www.aboandcompany.com). The seminar was full of essential, easy to understand information designed to help you become successful.

Let us know if you:

- Need our technical experience and professional insight for projects on accounting, tax, auditing, valuation, investigative or litigation support;
- Need help with estate or trust tax returns;
- Would like us to confidentially assess your own personal tax situation or run multiple scenario tax projections for you;
- Have a company or individual you'd like us to meet with;
- Would like any of the many articles and handouts of particular interest to lawyers and law firms published by Abo and Company.

To learn more or to receive any of the above, please contact by phone, fax or e-mail:

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# Income? Says Who?

By Martin H. Abo, CPA/ABV/CVA/CFF  
marty@aboandcompany.com



Nothing too technical. I'm just trying to make a point here, folks. That is, there's often a difference between what you see or perceive as income by merely looking at someone's income tax return as opposed to what is an individual's *real* take away cash. The difference can sometimes be substantial.

Take a look at the schedule I've included below. I prepared it as an example for a presentation to New Jersey's Family Court judges at their annual retreat. While this was

to illustrate a matrimonial matter, attorneys should be able to easily see that this line of thinking would prevail equally in analyzing income for purposes of a personal injury case, wrongful discharge matter, shareholder dispute or other situations where we would need to discern available or disposable cash flow/income versus that revealed on an income tax return (albeit assumed filed legitimately and credibly).

Space doesn't permit me to include the underlying full pro-forma tax return which I created for my participation in a 2011 presentation to the State Bar's labor and employment section.

My suggestion? Just give us a call or email me at [marty@aboandcompany.com](mailto:marty@aboandcompany.com) and I'll shoot you a copy so you can see the return underlying the schedule, which should give you the insight you'd need.

*The above article was retrieved from the "E-mail alerts" disseminated to clients and friends of CCBA Partner in Progress Abo and Company, LLC, Certified Public Accountants - Litigation & Forensic Consultants. With offices in Mount Laurel, NJ and Morrisville, PA you can check them out at [www.aboandcompany.com](http://www.aboandcompany.com) or by calling 856-222-4723 for their newsletters or updates.*

MR. AND MRS. TAX E. VADER			
RECONCILIATION OF INCOME TAX RETURN WITH ACTUAL DISPOSABLE INCOME			
	PER TAX RETURN	ACTUAL DISPOSABLE INCOME	COMMENTS
Salary (Line 1, 1040, per W-2)	\$ 397,000	\$ 397,000	
401(k) (per W-2)	-	16,500	
Dependent care (per W-2)	-	5,000	Also shown on form 2441, Child & Dependent Care Expenses
Interest Income			
Taxable interest (line 8a, 1040)	5,731	5,731	
Tax-exempt interest (schedule B)	-	13,898	Should also be shown at line 8(b) for information only
Original issue discount on bonds (sched B)	-	(4,926)	Non cash item but look into asset value
Non-cash pass thru from K-1 (sched B)	-	(2,000)	Look at actual distributions from the K-1 of the partnership/S corp.
Refunds of state income taxes (line 10, 1040)	3,474	3,474	May be non-cash if merely credited from prior year
Profit from business (line 12, 1040-Sched C)	38,702	38,702	
Car expenses not being deducted	-	(1,317)	Assume 15% personal use & not deducted on CIS
Meals & entertainment not deducted	-	(7,465)	Only 50% of meals & entertainment are deductible
Home office deduction (line 30, Sched C)	-	9,877	Shown as shelter expenses on CIS (not incremental expenses incurred)
Depreciation (section 179, line 13, Sched C)	-	-	In this case actually paid out for asset and limited useful life
Capital gain or loss (line 13, 1040)	100	100	
Cost basis (per Sched D)	-	3,100	Add to gain to compute net proceeds received
IRA distributions (line 15, 1040)	10,000	-	Taxable conversion to Roth IRA but left intact in IRA
Partnership income (line 17, 1040)	-	-	Loss non-deductible due to passive loss rules
Partnership cash distributions	-	15,000	Actual cash distributions reflected on K-1
Other income (line 21, 1040)			
Slot machine winnings at Borgata	2,000	-	Offsetting losses as itemized deduction on sched A
Parent's election to report child's interest	2,000	-	Kiddie tax income merely taxed at parents' rate but no cash to them
Less one-half of self employment tax	(2,734)	-	Non-cash item
<b>TOTAL INCOME</b>	<b>456,273</b>	<b>492,674</b>	
Less Taxes:			
Federal income tax	(114,846)	(114,846)	Actual taxes to be paid (not merely withholding)
Self-employment tax	(5,468)	(5,468)	
Social security withheld (max)	(6,622)	(6,622)	
Medicare tax withheld	(5,996)	(5,996)	
New Jersey Gross Income Tax	(23,096)	(23,096)	Actual taxes to be paid (not merely withholding)
NJ Unemployment	(126)	(126)	
NJ Disability	(148)	(148)	
NJ Fam	(35)	(35)	
<b>NET AFTER TAXES BEFORE LIVING EXPENSES</b>	<b>\$ 299,936</b>	<b>\$ 336,337</b>	

## NJSBA UPDATE

# Accountability



By Arnold Fishman  
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com

I just hung up from a conversation with a lawyer who complained that he felt a municipal prosecutor, to the detriment of his client, had targeted him. He protested that he was defending a person near and dear to him on a charge of DWI with a marginal reading, and the sovereign's representative, who was happily dispensing early holiday presents to others, in his case, was intractable. He opined that if it were my case, it would be over. I told him that my experience with this chap was that he ran hot and cold. On occasion, he would agree to my offer without any quibbling to the point that I had the feeling that I should have asked for more; on others, there was no satisfying him. This got me to thinking—always a most lamentable pastime. Why should this be so?

I try to approach my cases with a plan. I think every lawyer should appear in court knowing what needs to be accomplished and how that result can be realized. If there is no way to bring about that result you need to lower your sights. There must be a path. It may be long and circuitous—as only we minions of the law could endure—but each twist and turn needs credibility. Having created such a structure, selling it to your adversary should be painless. Yet, this is not the case! Municipal prosecutors treat attorneys, and thereby the defendant they represent, differently. The law is clear that the State has an obligation to see that justice

is done. Implicit in that statement is that the law deal with the defendant without considering the reputation or agreeability of the lawyer. There is an infinite number of factors that may be considered in treating a litigant, but the difficulty of the attorney is not one of them. There are cases that hold judges to that mark. For example a court may not impose a "trial tax." A defendant must not receive a harsher sentence for requiring the State to prove his guilt. That is his right. In short the sins of the lawyer shall not be visited upon the client.

In the municipal courts, are similar cases treated similarly? We all know that some lawyers will not try their case. Bitching and moaning, either because they don't charge enough or because they don't know enough, they will accept the State's last best offer. Likewise, assuming the reasonableness of the plan and the attorney's willingness to do battle, most prosecutors will sweeten the terms as trial approaches. On the other hand, I have been told that seeing the name of a particular attorney on their docket, spurs some prosecutors to greater preparation. One told me that it's like the Eagles with the Dallas Cowboys coming to town on a Monday night. As complimentary as that might sound, does a defendant need the extra attention? A judge recently confessed that he analyzes his list according to the lawyers. Some names prompt him to make a date for lunch and for some the court administrator orders in. Clarence Darrow said, "Judges are not struck with blindness and prevented from knowing as judges what they see as men." I have a trial coming up where the prosecutor snarled, "Your client will get the maximum!" because I had the temerity to press on. In

another the prosecutor said, "I was doing the right, and he respected me for it, but his blood was boiling."—which, I assume, is why he doesn't return my phone calls. Why? Because I sought, and the court actually granted, on my third motion, a discovery order under *State v. Holup*, 253 N.J. Super 320, 325 (App. Div. 1992) after ameliorating the dismissal language from "shall" to "may." That is problematic on two levels. First, you are free to get mad if I do the wrong thing, but right, wrong or indifferent, my defendant may not suffer because I do my job.

In the upper courts, because of the layers of bureaucracy, there are some checks and balances on the discretion of the attorney wielding the awesome power of the State. That is absent at the municipal court level, and it, along with everything else, falls on the shoulders of the court. Prior to *State v. Clark*, 162 N.J. 201 (2000) which prevents municipal prosecutors from having a meaningful defense practice, municipal prosecutors paid their overhead with the money they made defending in other municipal courts. This served to ameliorate unreasonableness. That lawyer knew he would be depending on the fair treatment of another prosecutor in his case pending in another municipal court. That is no longer the case. Since *Clark* we have a cadre of municipal prosecutors who do not defend.

Accordingly, until some system of checks and balances can be injected into the system, our municipal court and de novo appeal Judges must remain constantly vigilant that the unfettered discretion of the prosecutor is not abused. Presently there is no other means of accountability.

## Be sure to check this month's inserts



## BANKRUPTCY UPDATE

## In Re Taylor



By Ellen M. McDowell and Devin O'Leary  
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As many firms increasingly employ new technologies to manage their bankruptcy practice, the Third Circuit Court of Appeals has recently issued a caution to both attorneys and creditors who utilize highly-automated information systems. In *In re: Niles C. Taylor*, Docket No. 10-2154, a three-judge panel reaffirmed sanctions imposed on

HSBC Bank and its counsel, the Udren Firm, by the Bankruptcy Court for the Eastern District of Pennsylvania. Though the Court acknowledges that technology saves both litigants and attorneys time and money, it emphasizes the need for attorneys to make a reasonable, independent inquiry into the accuracy of information provided by clients.

As described in *Taylor*, the facts were as follows: HSBC, a major mortgagee, contracts its foreclosure litigation needs to various firms using a third-party program. This program provides information to the different firms, such as the Udren firm, including client names and addresses, loan numbers, payment amounts, late fees and delinquency amounts. Importantly, HSBC provides this information to its outside counsel but discourages them from contacting HSBC directly with inquiries regarding the debtors and their accounts.

In this instance, the Taylors were engaged in a bona fide dispute with HSBC regarding whether flood insurance was required on their home, and accordingly made their monthly mortgage payments without the amount HSBC requested for flood insurance. Because of the dispute and the lower payments made by the Taylors, HSBC considered the Taylors to be making partial payments and instructed the Udren Firm to seek relief from the automatic stay imposed by the Taylors' bankruptcy to foreclose on the property. The third-party program that conveyed the Taylors' information to the Udren Firm, however, contained only the bare minimum information and specifically included nothing relating to the flood insurance dispute. Thus, when the managing attorney at the Udren Firm filed the motion for relief from stay, she averred to the Court that the Taylors had failed to make monthly mortgage payments for a three month period from 2007-2008.

In objecting to HSBC's proof of claim, the Taylors argued that HSBC had miscalculated the amount owed under the mortgage due to the flood insurance dispute (which was ultimately decided in their favor); however, the Taylors' attorney did not respond to certain Requests for Admission (RFAs) which included the miscalculated

mortgage amount and erroneous listing of missed payments. The Udren Firm responded to the objection by ignoring the flood insurance issue and reaffirming the statements it made in the motion for relief from stay. At a hearing on the issue, a junior associate from the Udren Firm admitted that HSBC had received payments for the months that it alleged the Taylors were delinquent, but nonetheless pressed the court to deem the statements in the RFAs to have been admitted despite evidence of their falsehood.

The bankruptcy court held hearings inquiring into communications between HSBC and the Udren Firm and the third-party system employed by HSBC. The Court concluded that Rule 9011 sanctions were appropriate against Udren's managing attorney, the Udren Firm and Udren himself for failing to make reasonable inquiry into the assertions in the motion for relief from stay and the response to the claim objection, as well as against HSBC for the practices that caused such violations.

Bankruptcy Rule 9011, like Rule 11, provides that attorneys signing pleadings filed with the Court are implicitly certifying that their statements have or are likely to have evidentiary support based upon an inquiry reasonable under the circumstances. The Third Circuit Court of Appeals makes clear that this rule applies to conduct or statements the "reasonably foreseeable effect" of which are to mislead the Court, whether or not the statements are "literally true." *Taylor* at 4. More importantly, though, the Court emphasized the duty of the attorney to make reasonable inquiry into the validity of information provided by its client.

Attorneys regularly rely on information provided by their clients, as indeed it would be nearly impossible to practice without doing so; thus it is usually reasonable for attorneys to rely on information supplied by their clients. *Id.* at 18. However, the attorney must make an independent evaluation of what facts are necessary for any given filing, and should not rely on a client's determination of what facts are relevant – especially when that determination is made by way of an automated system. *Id.* at 19. Moreover, a reasonable attorney should inquire into whether a client has information relevant to the basis for the alleged cause for the filing; in this instance, had the Udren managing attorney made "even that most minimal of inquiries," she may have included the correct information in her filings. Indeed, this case is even more problematic because Udren was not relying on its client specifically but rather a third-party system which afforded "no capacity to check the data against the original documents if any of it seemed implausible." *Id.* at 20-21.

When a client utilizes a third-party system to relay information to its attorneys, all involved may attempt to absolve themselves of responsibility for misrepresentations or erroneous information being filed with the Court. Attorneys, as the "final link in the chain of transmission of this information to the court," must be held responsible where they "have certified that the representations they are making are 'well-grounded in law and fact.'" *Id.* at 23-24. Though the Court of Appeals declined to extend liability to Mark Udren as an individual, it affirmed sanctions to his firm as a whole and to the managing attorney herself. To be sure, reasonable practice "requires more than a rubber-stamping of the results of an automated process[.]" *Id.* at 26. The lesson in all of this? Technology may help us practice and may increase efficiency, but the responsibility for reasonable inquiry into the validity and sufficiency of information will always rest on our shoulders.

### Depositions — Mediations — Meetings

The CCBA has two conference rooms available that are conveniently located and reasonably priced\* with plenty of free parking.

Call or email Kathy for availability and pricing. **856.482.0620**  
or [kdp@camdencountybar.org](mailto:kdp@camdencountybar.org).

\* Reduced rates for CCBA members.



## FOUNDATION UPDATE

# Thriving Even When Disaster Hits



By Richard A. DeMichele, Jr.  
rick@southjerseylawfirm.com

We have been greeted by two natural disasters to start our bar year. Fortunately or unfortunately I experienced my first earthquake earlier this year. I'm constantly reminded of this because even in September people are still talking about where they were when they felt the earth move under their feet before they realized there was an earthquake. Some in New Jersey, including me, are wondering how likely it would be that we could experience another earthquake.

Unfortunately, the talk of earthquakes was quickly replaced by discussions of high velocity winds and flooding rains. Yes, hurricane Irene was coming to New Jersey and some of the projections were absolutely devastating. This time Camden County was fortunate that there was relatively little damage. Those of us who were fortunate enough to be at the Jersey shore were inconvenienced by an evacuation but thankfully the region suffered minor property damage.

While these natural disasters may have been frightening and seemed daunting at the time, their effects on our community were minimal and are now becoming a distant memory. Unfortunately, there are still many people in Camden County who need our help even with the lack of a "natural disaster." Your Bar Foundation continues to work for the benefit of the profession and for those less fortunate in our community. We don't need a natural disaster to be active and working hard for the benefit of those less fortunate.

One of the hallmark events for the Foundation is our annual Autumn Scramble. If you haven't considered participating in this year's event you should. Many law firms have already contributed

generously to sponsor the event; and we still need your support. Our Autumn Scramble involves a great day of golf at the Links Golf Club in Marlton followed by a cocktail reception and dinner. Of course (pun intended) the event is not complete without the raffle and other assorted golf prizes.

Even if you're not a golfer you can still participate by attending the cocktail party and dinner. The best part about the golf outing is that it is on Columbus Day. So if you're looking at your calendar and wondering why you had no court appearances and no depositions scheduled for Monday, October 10 it is because you knew that you would want to play in this year's Autumn Scramble. Time is wasting so don't delay, contact the Bar Headquarters and reserve your foursome right now.

The Autumn Scramble is not the only annual Camden County Bar Foundation event in October. This year the Judge John F. Gerry Award will be presented to Senior Judge Mary Anne Trump Barry, United States Court of Appeals for the Third Circuit, at the awards dinner on Wednesday, October 26, at the Westin Regency Ballroom in Mount Laurel. We will also award the Judge Gerry Memorial Scholarship to a deserving New Jersey law student. Advance registration is only \$75 and reservations for tables of eight or 10 are available. This event annually attracts hundreds of federal court judges and lawyers from around the state of New Jersey. You won't want to miss it!

Lastly we're always looking for volunteers to help with our Foundation events. If you are interested in helping with the Fall Frolic, the Children's Christmas party or any other foundation event please contact Bar Headquarters. Volunteering to help with a Foundation event is not only a good way to feel great about giving back but also an excellent opportunity to network with other local attorneys who share a common commitment to giving back to their community.

## LEGAL LINE TO CRIMINAL COURT LAW

## Community Caretaking and Private Homes

### Still alive and well in New Jersey

By Assistant Camden County Prosecutors  
Lee Brownstein and Christopher Sarson

Warrantless searches executed while officers are performing their community caretaking function were first recognized in *Cady v. Dombrowski*.<sup>1</sup> In *Cady*, the U.S. Supreme Court held that, "[l]ocal police officers...engage in what, for want of a better term, may be described as community caretaking functions, totally divorced from the detection of, investigation, or acquisition of evidence relating to the violation of a criminal statute."<sup>2</sup> The *Cady* Court recognized that law enforcement officers perform "dual roles," in part serving an investigative function, as well as preserving the public's general welfare.<sup>3</sup>

Initially addressed within the automobile

context, community caretaking has been applied as the basis for warrantless entry into a private residence where it is objectively reasonable for the police to execute their caretaker duty.<sup>4</sup> As long as law enforcement officers possess "an independent purpose for entering [a residence] under the community caretaking exception that [is] not a pretext for carrying out an investigatory search...[,]" then the entry does not violate the Fourth Amendment to the United States Constitution or Article I, paragraph 7 of the New Jersey Constitution.<sup>5</sup> The *Bogan* Court emphasized that the community caretaking function must be a legitimate basis for the warrantless entry in order to validate an otherwise unlawful warrantless search.<sup>6</sup>

The Appellate Division has discussed

*Bogan* in two recent decisions regarding the warrantless entry of a residence by police engaged in their community caretaking function.<sup>7</sup> In both *Witczak* and *Kaltner*, the Appellate Division noted a current split of authority among the federal courts of appeals regarding the application of the community caretaking exception to warrantless residential searches.<sup>8</sup> The Third Circuit Court of Appeals weighed in last year in *Ray v. Township of Warren*,<sup>9</sup> joining the Seventh, Ninth, and Tenth Circuits, refusing to extend the community caretaking exception to the warrantless entry of a private residence.<sup>10</sup> The *Ray* court essentially reduced the *Cady* decision to a generic recognition of the constitutional difference between houses and cars, citing

Continued on Page 23

# The New Jersey Consumer Fraud Act

## Is there change in the air?



By Kristen E. Polovoy, Esq.  
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New Jersey's Consumer Fraud Act, *N.J.S.A.* 56:8-1, *et seq.* ("NJCFA"), is recognized as one of the strongest in the country. *Cooper v. Samsung Elec. Am., Inc.*, 374 Fed. Appx. 250, 256 (3d Cir. 2010). Our courts have noted that the State legislature intended the Act to "be one of the strongest consumer protection laws in the nation." *New Mea Constr. Corp. v. Harper*, 203 N.J. Super. 486, 501-502 (App. Div. 1985); *Cox v. Sears Roebuck & Co.*, 138 N.J. 2 (1994) (citing Governor's Press Release (Apr. 19, 1971)). Several of the NJCFA's key provisions make the Garden State fertile ground for would-be statutory consumer protection claim class action plaintiffs: *i.e.*, the Act's definition of "consumer" includes both individuals and businesses; and mandatory treble damages and attorneys' fees for successful plaintiffs (*N.J.S.A.* 56:8-1(d) and 56:8-19). This statutory breadth has been coupled with directive from our Supreme Court that the CFA, as remedial legislation, be construed liberally in favor of consumers. *Allen v. V and A Bros, Inc.*, 414 N.J. Super. 152, 156 (App. Div. 2010). As a result, the CFA's history has been one of "constant expansion of consumer protection." *Jefferson Loan Co., Inc. v. Session*, 397 N.J. Super. 520, 502, 533-34 (App. Div. 2008); *Gennari v. Weichert Co. Realtors*, 148 N.J. 582, 604 (1997).

New Jersey's courts have repeatedly held that this liberal interpretation of the NJCFA is particularly appropriate in allowing consumer fraud claim class actions. "For nearly thirty years, our highest court has instructed trial courts to liberally allow class actions involving allegations of consumer fraud." *Varacallo v. Massachusetts Mut. Life Ins. Co.*, 332 N.J. Super. 31, 45 (App. Div. 2000).

However, some of the NJCFA's bite may be softened in the coming year. Bipartisan activity in the Senate and General Assembly in late 2010 signaled that the winds of change may be coming. For example:

- 1) Assembly Bill A-3333 and Senate Bill S-2855 contain the most significant changes of all the proposed legislation: (a) *Only individuals may sue* — The Act's private cause of action would be available only to individuals and not to businesses; (b) *Plaintiffs must prove detrimental reliance on the unlawful commercial practice* — This sets up a new burden for NJCFA plaintiffs (and tort reform for would-be targets of NJCFA class actions); (c) *Discretionary, not mandatory, trebling and fees* — Courts would have discretion in awarding damages, which would not be permitted to exceed threefold the consumer's actual damages sustained. If the court found that an NJCFA violation occurred, award of attorneys' fees and costs is still required, but only for those costs reasonably attributable to the prosecution of the NJCFA claim that results in judgment. These Bills further limit the award of attorneys' fees and costs to the greater of \$150,000 or one-third of the judgment; and (d) *New Jersey-only transactions* — The NJCFA would apply only to transactions that take place within the State.

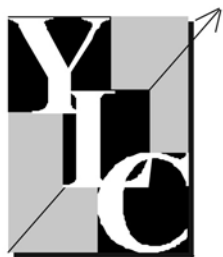
As of August 29, 2011 (the date this article was submitted for print), the New Jersey Office of Legislative Services reported that Bills S-2855 and A-3333 have not yet been scheduled for a vote or other legislative action in the Assembly or Senate.

- 2) Assembly Bill A-1401 requires that an NJCFA plaintiff with an ascertainable loss of \$250 or less must first request a refund in writing before commencing suit. No action could be filed until the 35th day following the mailing of the refund request. As of August 29, 2011, the New Jersey Office of Legislative Services reported that Bill A-1401 has not yet been scheduled for a vote or other legislative action in the Assembly.
- 3) On May 20, 2010, the General Assembly (by a vote of 76 - 2) passed Bill No. A-1064, which eliminates the award of attorneys' fees, filing fees and costs of suit for technical violation of the NJCFA, meaning "any violation where the person held in violation made a good faith effort to comply with [the NJCFA] and the resulting violation did not: (a) impact the quality of the product or service provided; or (b) result in an ascertainable loss to the consumer." The caveat is that attorneys' fees, filing fees and costs of suit could still be awarded in an action brought by the Attorney General. Bill S-1790 awaits action by the Senate Commerce Committee.

These legislative developments are tempered by a July 7, 2011 precedent-setting decision of the New Jersey Supreme Court that officers, owners, managers and employees of businesses providing services to consumers can be sued individually (alongside the company) and can be held personally accountable for statutory violations, even though they were acting through a corporation at the relevant time. *Allen v. V & A Brothers, Inc.*, No. A-30-10, 2011 WL 2637270, at \*1 (N.J. July 7, 2011). Nevertheless, because many NJCFA-class-action-targeted companies doing business in the Garden State or with its residents have accused the Act of being one of the most abused pieces of consumer protection legislation in the nation, they regard Bills A-3333/S-2855, A-1401 and A-1064/S-1790 as important first steps toward allowing honest businesses to serve consumers — free of the threat of frivolous lawsuits — while still protecting consumers from fraud where warranted.

Kristen Polovoy chairs the CCBA's Class Action Practice Committee. She serves as Of Counsel in the Litigation Department of Montgomery, McCracken, Walker & Rhoads, LLP in Haddonfield





By Bill Cook  
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## Lobsters, Lawyers and Larc



### Young Lawyer Corner

Lobsters! They were everywhere at this year's Lobster Bake! What a party! We were cracking for a cause at the **TapRoom** in Westmont on September 10th. With well over 150 guests, the Young Lawyer Committee was able to raise thousands of dollars—and let loose a little bit—in support of the Larc School.

Larc is a unique, non-profit special education school serving children and adult students with a wide range of moderate to severe disabilities. Larc was founded in 1968 by a group of concerned parents and is renowned for its warm, family-like atmosphere focused on each student's individual goals and capabilities. Larc's programs are provided at no cost to the families of its students. The Lobster Bake was created last

year to combine the hard work of the YLC with a philanthropic mission.

A very big thank you to our generous event sponsors: **Flaster Greenberg; Brown & Connery; Rothamel Bratton; Madden & Madden; Chris Tucci, Esquire of Connell Foley; UBS Financial Services – Jamison A. Licausi; The Ferrara Law Firm; Craig David Becker, Esquire; Asbell & Eutsler; North American Title; and New Jersey Legal.** This event would simply not have been possible without their generosity and support!!

Finally, a very special thank you to our Lobster Bake team of Rachel Licausi, Mike Madden, Adam Gersh, Sarah Barnwell, Craig Becker, Doug Fisher, Kristen Sinclair, and all who showed up to lend a hand. It was a team effort all the way!

The YLC was out and about throughout September. On September 16th we took to the field with a trip to the Phillies game, and on September 20th we were on hand at the Meet the Judges & Law Clerks reception. A special thanks to Kristen Sinclair for helping to get our folks out. On September 22nd, we had our CLE on Tap seminar at Tavistock on the topic

of NJ Real Estate Closing Procedures. Thank you to Chuck Resnick, Esquire for coordinating this program.

Keep an eye out for can't-miss events throughout October and November. We expect to have another joint happy hour with the Philly young lawyers as well as other networking events. We will also have our annual Halloween Party to benefit underprivileged kids in our area.

This is a great time to be part of the Young Lawyer Committee. I encourage all newly admitted attorneys to join us at Bar Headquarters for our monthly lunch meetings at noon on the first Tuesday of every month. Come for a free lunch, mingle with other young lawyers, get practice tips and job updates, and get involved with everything that's going on with our Committee. Also, please stay connected by joining our YLC listserv. Please contact Kathy DelPrato at Bar Headquarters or me for further details. I look forward to seeing you!



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# Crackin' For A Cause!

## 2nd Annual YLC Lobster Bake an overwhelming success!

Sunny, warm weather greeted a sold out crowd for the Young Lawyer Committee's Lobster Bake on Saturday, September 10th at the TapRoom in Haddon Township. Lobster enthusiasts enjoyed a terrific day of fun, friendship and food to support the YLC's Scholarship Fund for disabled students attending the Larc School in Bellmawr. "The response was awesome" said Bill Cook.

If you didn't attend this year's event, talk to someone who did and you'll probably want to be there next year!



Lobster Bake Committee members (l-r) Doug Fisher, Bill Cook, Rachel Licausi, Mike Madden, Sarah Barnwell & Adam Gersh. Great job gang!



Time to eat!



Jim Rhoades, Pepe Piperno, Jim Madden, Freeholder Ed McDonnell & Judge Schuck



CCBA President Lou Lessig, Past President Andy Kushner, Megan & Andrew Lessig & Immediate Past President Linda Eynon.



Anastasia Rusanovska, Dominic Fahey, Jen & Chris Fowler



Amy Bielecki, Justin Cunnane, Trevor Cooney & Marcin Bielecki.



Pasquale Guglietta, Erica Stec, Delia Dougherty & Chris Tucci



Judge Colalillo, Judge Fox & Don Fox



Mike Madden



Joe Cordova, Greg DeMichele, John Rothamel, Erica DeMichele & Jon Conrey



Jamison & Rachel Licausi

## Honorable Maryanne Trump Barry to Receive Gerry Award October 26

*Continued from Page 1*

would be delighted to know that she will receive the award that bears his name.” Those words were echoed by Camden County Bar Foundation President, Richard A. DeMichele, Jr. who stated “Senior Judge Barry is universally respected throughout the legal community. Anyone who knows Judge Barry would certainly agree that she is most deserving of this prestigious award.”

The Judge Gerry Award is presented annually by the Camden County Bar Foundation to recognize the continuing outstanding contributions of a member of the Bar of the State of New Jersey, or a member of the State or Federal Judiciary, who exemplifies the spirit and humanitarianism for which Judge Gerry is remembered.

Now in its 16th year, previous recipients include: Donald A. Robinson, 1996; Judge William Lipkin, 1997; Judge Dickinson Debevoise, 1998; former Attorney General George F. Kugler, Jr., 1999; Ambassador and former Congressman William J. Hughes, 2000; Judge Stanley S. Brotman, 2001; Judge John B. Mariano, 2002; Judge Joseph Irenas, 2003; Judge Michael P. King, 2004; Chief Judge John W. Bissell, 2005; Joseph H. Kenney, Esq. and posthumously to Chief Judge Edward R. Becker, 2006; Hon. Joseph H. Rodriguez, Senior Judge, United States District Court, District of New Jersey, 2007; Hon. Joel B. Rosen, former United States Magistrate, 2008; Thomas R. Curtin, Past State Bar President, 2009 and Justice John E. Wallace, Jr., New Jersey Supreme Court (ret), 2010.

In September 1999, Judge Maryanne Trump Barry was appointed to the U.S. Court of Appeals for the Third Circuit by President William J. Clinton. She had previously served for sixteen years as

a U.S. District Judge for the District of New Jersey, having been appointed in October 1983 by President Ronald Reagan. Prior to her appointment to the bench, Judge Barry served as First Assistant U.S. Attorney for the District of New Jersey, and was the highest ranking woman prosecutor in a major United States Attorney's Office in the country. Judge Barry also served as Executive Assistant U.S. Attorney and Chief of the Appeals Division.

In 1993, Chief Justice William H. Rehnquist appointed Judge Barry as Chair of the Committee on Criminal Law of the Judicial Conference of the United States. The Committee on Criminal Law oversees the nationwide federal probation and pretrial services system, reviews legislation and other issues relating to the criminal law, and provides oversight and recommendations with respect to the U.S. Sentencing Guidelines. In 1998, the Chief Justice appointed Judge Barry to be one of seven Commissioners of the Supreme Court Fellows Commission, a position which she held for six years. By means of a video tape prepared under the auspices of the Federal Judicial Center, Judge Barry has, for many years, taught all new federal judges how to try a complex criminal case. She has served on the Board of Directors of the American Judicature Society, on the Judicial Advisory Group of the U.S. Sentencing Commission, as Co-chair of the National Conference of the American Inns of Court, as President of the Association of the Federal Bar of the District of New Jersey, and as Chair of the New Jersey Chapter of the Fellows of the American Bar Foundation.

*Continued on Page 20*

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## PRESIDENT'S PERSPECTIVE

by Louis Lessig

llessig@brownconnery.com

### Shape Your Home Court Advantage

In any good organization, company or law firm most people would say that the quintessential piece indicative of success is strong leadership that sets a course and has the vision and tenacity to weather any storm, while moving the entity ahead. Over the years there are numerous examples of organizations that flourished based on their leadership, as was the case for Apple and Microsoft. Of course while some found incredible success others were not so fortunate. In either case, the individuals remembered for the rise or fall of an organization are its leadership. In a bar association, especially a county bar association like ours, leadership comes from many different areas. Arguably our democratic model is more one of consensus building as opposed to a dictatorship, despite any Napoleon jokes that may be made during this year. The communal leadership we enjoy comes right from the officers and members of your Board of Trustees who are all volunteers and all give their time, effort and financial support to represent all of our members.

Part of the responsibility that lies with the Association Board of Trustees is to direct the activities of the association in the most beneficial manner for our constituents, you the members. In the past we have tried all sorts of ways to figure out exactly what our colleagues want from our Home Court Advantage, the CCBA. Of course, this year we are taking a much more direct approach to learn what you, the member, want from your bar association to justify your time, energy, and financial support. In recent

weeks you have probably seen an email from the bar asking you to participate in a brief on-line survey to better understand your wants and desires as we plan what we can do as an association to better represent you, better serve your needs and above all, deliver value to you and your practice.

The survey was not tedious or incredibly long, but was purely designed to learn more about you our member and what you are looking for at this time in your legal or professional career, whether you are a solo practitioner or in a regional office of a national firm, everyone's voice is important. Now, just in case you are thinking that the information will go no where, let me assure you that the critical information we are gathering will be used as part of your association's work this month on our new strategic plan. This map will guide our activities for the next several years, so your input was more important than you may realize.

In addition to the work on our strategic plan this month, the bar also has some really fantastic CLEs planned, as well as hosting the 16th Annual Judge John F. Gerry Award Dinner, honoring Sr. Judge Maryanne Trump Barry from the United States Court of Appeals for the Third Circuit on October 26th. To learn more about these and other events, please refer to this month's inserts, visit the bar association's website or check out our Facebook page. On behalf of the entire Board of Trustees, we thank you for letting us hear your voice in the survey and hope to see you at a future event or seminar.

## Diversity Mixer

The President's Commission on Diversity Mixer drew nearly 100 members of the CCBA and specialty bar associations to Rutgers-Camden School of Law on September 8th. The Mixer was designed to provide law students with an opportunity to learn more about the important mission of the Commission on Diversity and what can be done to promote full and equal access and participation in the legal system.

This relaxed, networking mixer was also an opportunity for future lawyers to meet and network with representatives of the CCBA and specialty bar associations to gain an understanding of how involvement in these organizations can benefit them professionally and personally.

*Special thanks to our sponsors: Asbell & Eutsler, P.A., Blank Rome, The Asian-Pacific American Bar Association and the Hispanic Bar Association for providing the evening's refreshments.*



L to R:

**Phil Cha**, Archer & Greiner / Asian-Pacific American Bar Association of Pennsylvania (APABA-PA) Executive Committee Member

**John Kahn**, Archer & Greiner / Regional Director for the Garden State Bar Association (GSBA)

**Rick DeMichele**, Camden County Bar Foundation President

**Stella Tsai**, Archer & Greiner / President of APABA-PA

**Ahmed Soliman**, Fleischer, Fleischer & Suglia / Executive Board Member of the New Jersey Muslim Lawyers Association (NJMLA)

**Dan Mateo**, Reed Smith LLP / President-Elect of the Hispanic Bar Association

**Eric Fikry**, Blank Rome, LLP / CCBA Diversity Committee Chair / NJSBA Diversity Committee Co-Chair

**Florelee Wan**, Executive Board Member for APALA-NJ

**Moly K. Hung**, Law Offices of Moly K. Hung / Vice-President APALA-NJ

**Brenda Lee Eutsler**, CCBA President-Elect

# WINE & FOOD

By Jim Hamilton  
JimHamilton@dshllaw.com

Since most of you probably did not make it to the Finger Lakes to visit some of the wineries mentioned in last month's column but *are* interested in wines that *might* be available locally, I thought I would offer some suggestions for wines you may want to acquire for those fall-defying days weather folks like to call Indian summer.

When the temperatures are elevated, in real or relative terms, wine drinkers often prefer to drink chilled wines, so let us talk about some white wines you may want to try with lighter, warm weather fare or while you enjoy the more fleeting sun's appearance from the patio furniture you resisted storing.

I had the chance recently to taste with Giuseppe Santarelli of Dalla Terra Winery Direct, and enjoyed a number of wines he distributes through Martin Scott Wines. One wine was the **2009 Inama Soave** from northern Italy. I have consumed past vintages of this wine and unlike most Soave wines they seemed to be more perfumed and

spice-driven, with a slight oxidative edge. Perhaps because of this wine's freshness, it seemed more mainstream, with very clean and forward fruit that displayed none of that slight touch of Sherry impression one finds when the fruit/oxygen exchange has turned the wine's fruit inward. The wine is made from 100% Garganega grapes, rather than a blend that includes Trebbiano, and it conveys a delightful sense of early ripened white peaches in a supple frame that is round and unadorned by the use of oak.

Another Dalla Terra wine to search out is the **2009 Marco Felluga Molamatta**. There are at least four Fellugas making wine in and around Gorizia, Italy, an area in the far northeastern tip of the country adjacent to Slovenia. The Collio wine region (as it is known in abbreviated terms) not only is somewhat remote geographically, but also is rarely on most consumers' wine radar. This wine is a blend of three of the most widely planted white grapes in the Collio, Pinot Bianco, Friulano (f/ka/ Tocai) and Ribolla. It is effusively fruity, once again with a



profile that offers little oak impressions (although the Pinot Bianco is oak fermented). It is almost weighty enough to be called lush, and offers a body that should allow it to stand up to more fully sauced dishes.

At Martin Scott's Spring Portfolio tasting, considerably held in South Jersey, there was a bevy of wine opened from the company's increasingly broad lineup which includes more than a few big name producers. There were a number of white wines that impressed me, so let me offer a few that might pique your interest as well. **2007 Caves Naveran Cava Dama** is a Methode Champenoise Cava from Spain that not only uses the "French" method for creating the bubbles, but also one of the best Champagne grapes, Chardonnay—85% in fact. Aided by two years of aging on the lees (the dead yeast cells remaining after fermentation), the wine exhibits what one might call breed. It shows a fine balance between fruit and elegance at a fraction of the cost of Champagne.

As you may know from past columns, I am a fan of Muscadet, a typically unoaked, mineral driven wine from the region of France where the Loire River ends its run at the Atlantic Ocean. It was not difficult, therefore, for me to embrace the virtues of **2009 Domaine de la Louvetrie Muscadet de Sevre-et-Maine Sur Lie**. As noted in describing the Naveran wine above, the "sur lie" designation found on Muscadet labels reflects the use of extended lees contact to add an additional element of complexity, and this wine achieves that well. There is crispness to the wine, with touches of iodine and chalk framing generously ripe fruit resembling citrus and green apples. Beyond the fruit impressions, there are undercurrents of slate and vanilla. Muscadets are quintessential seafood wines, commonly accompanying oysters at outdoor bistros, and while the clean lines of this bottling will fit that bill, it also has the fruit to provide added versatility.

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## LAW PRACTICE MANAGEMENT

# Successful Rainmakers Stay the Course



By Kimberly Alford Rice  
kimberly@klamarketing.net.

Taking proactive and consistent steps to build and strengthen professional relationships is imperative to developing a solid practice. In fact, research teaches us that in order to even appear on prospects' mental radar, one must make contact with them at least 7-10 times in a calendar year. Yet when some lawyers sense they are not yielding the results they expect, they often become frustrated and simply give up. To that I say, stay the course.

One of the distinguishing characteristics between lawyers who become frustrated and give up on their client development activities and successful rainmakers is committing to stay the course despite lackluster short-term gains. We all intellectually understand that there is no substitute or short cut to building solid professional relationships than thoughtful efforts targeted to getting in front of qualified prospects on a regular and consistent basis over a certain amount of time. Despite that simple truth, lawyers (especially those who do not have and/or execute an integrated marketing plan) frequently employ a gunshot approach which renders few or no meaningful results.

Though I am not the greatest sports fan, I do know that in baseball if a batter hits 30 home runs in a full season of 600 at bats, he will most likely be named an All Star and receive a hefty salary increase. An important point to remember, then, is that in addition to implementing a focused approach to building professional relationships which are likely to result in increased client retentions, you must be prepared to strike out on occasion. Do not be dissuaded.

Successful rainmakers understand this concept thoroughly and embrace it. They build relationships constantly with clients, referral sources, and prospects by being helpful to others and by making connections for others in recognition that to develop a healthy relationship is to stay top of mind when business and legal issues arise.

They also know that generating work means taking calculated risks and that only 20% of their activity will yield direct results; and that while it is critical to be strategic about where to invest their time and energy, it is impossible to know in advance which of the 80% of their activity will be wasted.

In many ways, direct rejection is easiest to accept. "Our company has decided to hire firm Y because they have more experience handling securities fraud" does not leave much room for ambiguity. You will not be retained. However, you can leave the door open for other types of work (e.g. perhaps the client will retain your services when they have matters in which you do have extensive experience); but it's clear when you receive this feedback, it is time to move on.

Another matter altogether, though, is the unanswered phone call or email. This is much more challenging and presents some of the greatest obstacles for lawyers working diligently to build a practice. As we all struggle to effectively manage our communications, everyone has a preference in how they want to communicate. In light of that and the sheer volume, some folks simply do not respond or even acknowledge all of their messages.

It is frustrating when someone does not respond to a message that we have sent via e-mail, left on voice mail or with a secretary, it looks like rejection. When two or three messages go unanswered, most will give up. To save our bruised egos any further indignity, we simply stop trying. However, to do so, we leave opportunity on the table.

Here is the good news: Silence is not no; it can merely be the temporary absence of yes.

Until a prospect tells you directly that she or he is not interested, you have no idea why they are not responding; and if the individual is someone with whom you really want to do business, you should keep trying.

Using a "multimedia" approach can also be helpful (send an e-mail first, then call and leave voice mail followed by checking with a secretary third and then possibly even send a letter—mix up your approach). Be sure they are on your frequent contact list to receive articles and updates, etc.

In some ways, it is vain to perceive that a lack of response has anything to do with you. There are many reasons why someone may not be returning your call, responding to your email or other communication.

Coaching lawyers over many years, I have heard countless anecdotes along the theme "I met this potential client nearly 5 years ago, hadn't connected in months and out of the blue, I receive a call that he has a matter he wants me to handle." Who hasn't experienced or at least heard a similar story?

In most cases, my clients were eventually retained and the new clients apologized for being so unavailable for a time. In these scenarios, the potential clients' unresponsiveness had nothing to do with my clients and they would have forfeited a new client had they not persisted.

Bottom line is this: Building a healthy practice requires you to forge on despite immediate circumstances. If you have a strategic plan of action, are targeting qualified prospects in a meaningful way in a consistent and persistent manner, you will ultimately develop the business you are working for and your professional satisfaction will grow as a result of it.

*Kimberly Alford Rice is Principal of KLA Marketing Associates (www.klamarketing.net), a business development advisory firm focusing on legal services. As a law marketing authority, Kimberly helps law firms and lawyers develop practical business development and marketing strategies which lead directly to new clients and increased revenues. Additionally, Kimberly provides career management services to lawyers in transition. She may be reached at 609.458.0415 or via email at kimberly@klamarketing.net.*



## Wine & Food

Continued from Page 16

New Zealand Sauvignon Blancs can polarize consumers. Some enjoy the often extroverted personality many exhibit, while others find them too “grassy” or infused with aromas more suitable to a cat’s litter box (in polite circles described as boxwood). Mindful of this, there are producers who tame the more savage elements the grape can impart to offer a more broadly embraced flavor profile. 2009 Momo may be one such wine. The Seresin Estate produces this easy drinking, gently priced Sauvignon Blanc to emphasize tart, lime fruit with touches of brioche. The attack is restrained and the fruit expands nicely as the wine lingers on the palate. From both its cost and civility, the wine offers painless pleasure.

Staying in the Southern Hemisphere, I was even more impressed by **2009 Iona Vineyards Sauvignon Blanc** from South Africa. If the Momo exhibits a California cool and laidback approach to the varietal, this wine is more New York frenetic, albeit also without the, ahem, boxwood notes. Rather, this wine is really spicy with layers of what resembles very ripe grapefruit that build on the palate to culminate in a persistent finish. It is one of those wines that lingers well after the wine has passed one’s palate.

A reliable favorite summer wine I long have admired is made by the well-regarded Spanish producer, Telmo Rodriguez. **2009 Basa** is one of the many value-priced wines being made in the white wine region of north central Spain known as Rueda. Like many Rueda wines, this is a blend of Verdejo, Viura and Sauvignon Blanc. As is usually the case, Verdejo is the dominant grape in the blend. This vintage offers round, ripe fruit, both citric in impression, especially lime, and under-ripe peaches, with nutty nuances and a plump, uncomplicated finish.

I don’t know about you, but I was pleased to see how many different rosé wines area retailers are making available for our warm weather consumption. I enjoyed more than a few different offerings this summer made from a number of different grape types. One wine I regret I did not get to drink other than at the Martin Scott portfolio tasting was **2010 Domaine Houchart Côtes de Provence Rosé**. Provençal rosés, in both color and weight, tend to be lighter than many of today’s offerings from other countries, a function of both style and grapes employed. This is a textbook Southern France rosé, offering lithe fruit of faint strawberries and watermelon carried crisply to a deceptively extended finish. While the body is by no means muscular, it may be slightly bolder than many from this region.

Recognizing that we are running out of space, but also accepting that fall weather often prompts wine drinkers to eat heartier food calling for a red wine accompaniment, let me quickly mention one fairly priced Martin Scott-distributed red wine.

**2009 Gilles Ferran Côtes du Rhone Les Sablierres** provides an affordable introduction to a highly regarded vintage in France’s southern Rhone region. The wine provides that earthy element with underbrush the French like to call *garrigues*, accompanied by fruit that brings to mind small, black berries that are ripe but not overly so. There can be no concern the wine will seem flabby with food since there is a vibrant acidity that keeps the fruit in check and the secondary characteristics in balance.

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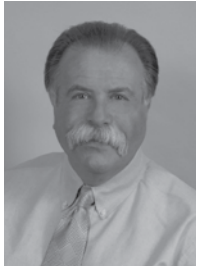
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Christopher Tucci at (856) 988-5487 or  
email [ctucci@connellfoley.com](mailto:ctucci@connellfoley.com).

## SPINNING MY WHEELS

## Fiat



By Andrew Kushner

F. Scott Fitzgerald famously said, "There are no second acts in American lives." True or not, the automobile industry has seen some pretty strange happenings in the past five years.

General Motors' and Chrysler's bankruptcies and their apparent resurgence, among them are but two examples. From the "You Can't Make this Stuff Up" file comes confirmation that *Fabbrica Italiana Automobili Torino* or as the world knows it, Fiat, has returned to North America after an almost thirty year absence. Fiat last ended its stormy affair with the US in 1984 after decades of trying to shift exciting but sometimes poorly constructed cars with even poorer dealer support. The company packed it in along with its corporate ward, Lancia, and, it appeared, never to return to these shores.

During Fiat's first tenure here the company seemed unfazed by the differences in both American vs. European driving needs and habits and must have believed that its cars would reach buyers despite rumors that some units began rusting on the ships on the way over. This was also the attitude of the French, neither of whom learned any lessons about the US market. The Japanese and later the Koreans met with the same initial problems but developed their products and

dealer service to become standards for the industry. Labor strife in Italy, especially in the seventies, contributed to poor craftsmanship and a dealer network that treated its customers with a Latin "shrug." Fiat never realized that, while Americans were passionate about their cars, they weren't particularly fastidious about maintenance. That failing was something that a well engineered, but sometimes highly strung, Italian design could not endure. Lost in the fine engineering was the American "take away" that Fiats were not to be trusted mechanically and resale value suffered as a result. Instead the name "Fiat" gave rise to some less than positive acronyms for the company including "Fix It Again Tony" and "Flimsy Italian Attempt at Transportation."

To be fair, Americans were never educated to recognize that Fiat, one of the oldest automobile makers, had historically produced some of the most cutting edge engineering products. It gave the world one of the first fully formed cars of the modern era: the Fiat 128. The 128 was a four door sedan that embodied all of the hallmarks of the modern front wheel drive car. Though introduced in 1969, a decade after the BMC Mini, the 128 was fitted with improved suspension, a SOHC engine with aluminum head and rubber toothed drive belt. While these features became standard in other European and Japanese cars by the 1980s, Fiat was a pioneer.

What a shame then that this proud company could not succeed in the largest potential

market in the world at the time: the United States and Canada. I have separately recited in these columns my own Italian car experience, which includes six Alfa Romeos as well as a Fiat 131 Mirafiori. I also learned to drive a manual transmission on my sister's 124 Spider. The 131 was purchased new in 1978 but we parted company after only six months after suffering through a failed fuel pump, battery, leaking windshield seals and other quality defects. Though fun and engaging with its five speed gearbox, I couldn't manage what seemed almost weekly failures resulting more from abysmal quality control than a failure of design. Fiat packed up in 1984 and Alfa Romeo followed 11 years later. The absence of mainstream Italian manufacturers was followed within 10 years by the French when Renault and Peugeot took their respective ball games and went home.

The recent merger of Chrysler with Fiat several years ago has been a godsend both to Chrysler and appears to be benefitting the American driving public as well. Alfa Romeo is nominally back in the US although only for its supercar, the 8C. Fiat, on the other hand has returned in earnest to sell reasonably priced cars again to Americans. Fiat has also determined not to make a mess of the dealership experience as it did on its first go round. Product and service need to be up to the task if it hopes to compete with the Asian and the newly resurgent American manufacturers.

Continued on Page 21

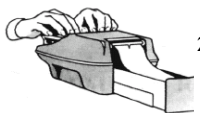
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## Back in the Day

By Hon. Richard S. Hyland (ret.)  
rhylandatlaw@aol.com

Last August we celebrated the 66th anniversary of V.J. Day, which ended World War II. I remember being glued as a 9 year old to the mahogany floor model RCA radio in our living room for several days in mid-August 1945 awaiting news of the impending Japanese surrender. Our family was elated, especially since my two older brothers were in the service. Ever since I have been fascinated by the stories of courage of many of the men I came to know in my career.

For instance, Judge Neil F. Deighan was a Marine lieutenant who hit the beaches of Japanese held islands and, as an officer, was a prime target of enemy snipers. Judge Donald Palese and the recently departed Art Montano each flew at least 25 bomber missions over Germany. There are too many others to list here but I learned more for the first time from the eulogies for deceased members at our annual Opening of Court Memorial Ceremonies.

And I would be remiss if I didn't mention John "Rocky" Donovan, my Court Clerk when I sat on the County District Court. A more congenial Irishman you could never meet and never learn he was awarded the Navy Cross—the next highest award to the Congressional Medal of Honor, for his exploits as a "frogman" (the forerunner of our present Seals) for his D-Day underwater demolition work off Normandy.

On the other hand, another Camden lawyer, Josiah DuBois, exemplified moral courage in his fight to save European Jews. He went to Washington as a young government attorney before the war and gained access to secret documents which demonstrated Hitler's extermination policy. A non-Jew, he was frustrated by the administration's inaction about their plight, so he confronted top officials and, at the risk of his career, he warned he would release this information unless something was done. As a result, FDR created the War Refugee Board to help rescue Jews and Joe was made General Counsel.

The Board accomplished the following: (1) sent Swedish diplomat Raul Wallenberg to Hungary where he saved 100,000 Jews; (2) encouraged then Monsignor Angelo Roncalli and as a later Pope to rescue Jewish children and; (3) created a safe haven for refugees at Oswego, N.Y. In all, the Board rescued 200,000 lives.

After the war he was one of the chief prosecutors at the Nuremberg trials of Nazi war criminals and then returned to Camden City to practice law with his brothers Herb and Matt who had also served in the armed forces. In recognition of his extraordinary efforts, our local Jewish community honored Joe in the Holocaust Museum at the Community Center in Cherry Hill. Also, Springdale Road from Route 70 to Evesham Ave. was officially renamed the "Josiah Du Bois Road" and a marker so identifies it. If you ever wondered why it was—now you know.

Joe died in 1983 and didn't live to see this honor. However, when he was alive, he not only honored, but lived the command from the Torah: "JUSTICE, JUSTICE SHALL YOU PURSUE."

Please send any comments to: rhylandatlaw@aol.com



## Trump Barry to Receive Gerry Award

Continued from Page 14

Judge Barry graduated with honors from Mount Holyoke College, and received an M.A. from Columbia University and a J.D. from Hofstra University School of Law, where she was a member of the National Moot Court Team and Editor of the Law Review. She has been awarded honorary Doctor of Laws degrees by Fairfield University, Hofstra University, Seton Hall University, and Kean College, and an Honorary Doctor of Humane Letters degree by Caldwell College. In 2004, Justice Sandra Day O'Connor honored Judge Barry by traveling to Seton Hall Law School to present her with the Sandra Day O'Connor Medal of Honor. Judge Barry has received numerous other awards, including the Woman of Substance Award from the Women's Law Forum of Seton Hall Law School, the President's Award from the Federal Probation and Pretrial Service Officers Association and the "I Care Award" from the Newark Renaissance House. Most recently, she received the Platinum Award from the New Jersey Women Lawyers Association.

Judge Barry's late husband, John J. Barry, was a partner in Tompkins, McGuire, Wachenfield & Barry, a prominent New Jersey law firm. Her son, Dr. David W. Desmond, is a clinical neuropsychologist, novelist and newspaper columnist.

The Judge John F. Gerry Memorial Scholarship Award, established in 2002, will also be presented at the dinner. The award is available to students enrolled at any New Jersey law school. Scholarship recipients must have demonstrated academic achievement and genuine financial need, coupled with a verifiable history of and/or a desire to practice in the public service sector.

Tax deductible donations to support the Gerry Memorial Scholarship may be sent to the Camden County Bar Foundation, 1040 N. Kings Highway, Suite 201, Cherry Hill, NJ 08034.

Tickets for the Award Dinner are \$75 in advance and \$85 at the door, with a portion of the ticket price going to the Gerry Scholarship Fund. Reservations may be made by calling Bar Headquarters at 856.482.0620, or by using the flyer insert in this issue of the Barrister. Reservations must be received by Wednesday, October 20.



## SPINNING MY WHEELS

### Fiat

*Continued from Page 19*

Fiat's first entry into our market is the *cinquecento*, or as is known in the US, the "500." It is another "retro" incarnation of a famous model imported to the US from the late fifties through the seventies. The original 500, like the Mini, was tiny—about 10 feet in length—and was intended as an urban car in Europe. At this point the original 500s can most often be seen working with clowns under the big top or sometimes parked outside pizzerias as a display. The new 500, like the New Mini, gives a nod to its origins but is a modern car in all respects.

As soon as I knew that the new Maple Shade Fiat was up and essentially running, I got a hold of Scott Snyderman at the dealership (who I did not know but whom, it would develop, resides directly behind me and two houses over. His wife is a local realtor with who I have some familiarity. Failure to know this previously might serve as an indictment of the state of suburbia these days, I suppose. Scott has many years in the business and I found him at the new Fiat Store on Route 38 in Maple Shade. The dealership had been open for less than a week and was still under renovation when I arrived. There was no signage save a red tape sign in the front window displaying the new dealership name. There were, however, over 70 500s lining the front row facing the highway and on the side lots. That's a lot of Fiats! Even without signage, advertisement or, for that matter, public consciousness of the brand, he had already sold 8 cars.

The 500 comes with one engine and two transmission choices. The engine is the now famous Fiat "multiair" which provides essentially infinitely variable valve timing through mechanical means. It is a 1.4L, 16 valve engine producing 101 horsepower (compared to my 1978 131 with a 1.8L DOHC engine, without fuel injection and only 8 valves producing but 80 bhp). Transmission choices include the 5 speed manual or a six speed automatic. More goodness will be coming next year when Fiat introduces a sportier version of the 500 with revised suspension and a turbo charged 160 hp version of the 1.4 engine all done by Fiat's in house tuner, Abarth.

The 500's front fascia is very reminiscent of the original although, like the new VW Beetle, the engine and drive wheels are in the front. There is no getting around it though; the car is small on the outside in the same way that a MINI is small, at least at first

glance. Open the driver's door and the entire perception changes. Although the car is billed as a four seater, that won't work for anyone in the rear seats except for the youngest of children. With the rear seats folded, however, the car is like a mini station wagon.

The front cabin is very roomy and, unlike the MINI, the ergonomics and switchgear are straightforward and intuitive. I asked to drive a "sport model" coupe which came loaded with 16" alloy wheels, premium cloth/vinyl seats and four-wheel disk brakes (with red calipers, no less). The model was also equipped with a glass moon roof, automatic climate control, XM radio, Bose speakers, steering wheel mounted cruise and audio controls and integral Bluetooth, together with other goodies. This pushed the base price up from \$17,500 to \$19,500. You can also specify a "Pop" (read: base) model for about \$16,000.

Scott tossed me the keys and wished me happy motoring. I sat in the car for a couple of minutes and oriented myself to the controls which all came to hand and sight very quickly and easily. This is not the Fiat of my youth. The fit and finish were excellent and the materials, considering the price point, were at least adequate and usually above that mark. The dash was economically but handsomely turned out with plastic panel inserts that complemented the other interior colors of the car. As I write this I realize that it probably is a mistake to describe it without it implying something negative. That is not the case. The design works.

Italian quirkiness seemed to have been bled out of the car until I noticed the steering wheel, surmounted by a central "Fiat" badge, at the same "bus driver" position, (angled towards the horizontal) as is their habit. The usual Italian simian driving position of knees in the chest and arms straight out was slightly ameliorated by the manual, but multi adjustable seat. I was home.

The transmission lever was an old style long affair rising from a floor mounted circular surround and capped by a proper chrome ball knob with the shift pattern imprinted on the top. The light clutch allowed easy engagement and I was off into rush hour traffic. Dash gauges included a round cluster directly ahead of the driver that had three concentric information parts: an inner ring with digital information of time and a fuel and temperature gauge. The middle ring contained a circular tachometer and the outer ring contained the speedometer.

The information display was simple, concise, and provided the least distraction this side of a heads up display.

I had expected an anemic response from the engine in light of the modest displacement and horsepower but the car accelerated happily and reasonably swiftly to about 50 mph without any complaint and the engine noise was pleasant. I worked my way onto Route 295 NB and took the on ramp as quickly as I dared, not knowing the limits of the car. I felt front wheel drive plow to be sure but I was again pleasantly surprised by the car's grip and the confidence it inspired. Ah, but what of stability and noise at interstate speeds? I can report that the car merged with traffic without any difficulty as I rowed through the gears, finishing in fifth. I pressed on the gas until I had leveled out at about 85 mph. The little engine was revving only at about 3K rpm (6500 redline) and the noise, while not as quiet as a Lexus, was certainly not annoying. On a straight section, I let go of the wheel at speed and found that the car was rock solid stable. Braking was easy and appropriate. My only thought was to the 10.8 gallon fuel tank. Even with an EPA estimate of 30 city/38 highway, fill ups would be a little more frequent.

When I returned the car to the dealer, I spent some time just kicking the tires and opening all doors, engine hood and hatchback and came away seriously impressed that Fiat had brought us a winner. When you add to the model mix a "convertible" with a stylish canvas roof that electronically folds into three positions with the door and window frames remaining upright, you have a very cute and unusual car that turns heads without trying. The premium for the convertible is about \$4,000—quite hefty but still manageable. You can't help but smile after driving the car. Like the MINI it wouldn't fit my needs but I don't believe that I am in any way the target market. Rumors of other more mainstream Fiat models in the pipeline will flesh out the lineup and provide Fiat with a realistic chance to take on the more well known players in the market.

So, for Fiat, the long intermission is over; the lobby lights are blinking to signal the beginning of the second act. What might have started out as tragedy may well end happily for Fiat. I have no doubt that with the new cast, director and stage manager; we will all enjoy the second act much more than the first.

## VERDICTS IN THE COURT

### Superior Court of New Jersey

VERDICT: No Cause (8/3/11)  
Case Type: Auto Negligence  
Judge: Michael J. Kassel, J.S.C.  
Plaintiff's Atty: Deborah S. Dunn, Esq.  
Defendant's Atty: Lawrence Berger, Esq.  
L-6008-08 Jury

VERDICT: No Cause: Liability Verdict:  
30% against Defendant Ronald  
Jasner; 70% against Defendant  
Vanessa Cipolone (8/10/11)  
Case Type: Auto Negligence  
Judge: Deborah Silverman Katz, J.S.C.  
Plaintiff's Atty: David Schrager, Esq.  
Defendant's Atty: Thomas Murphy, Esq.  
L-2245-09 Jury

VERDICT: No Cause (8/11/11)  
Case Type: Auto Negligence  
Judge: Kathleen Delaney, J.S.C.  
Plaintiff's Atty: Ronald Edelman, Esq.  
Defendant's Atty: Ronald DeWitt, Esq.  
L-2158-08 Jury

VERDICT: Damage Verdict: \$35,000 Against  
Defendant (8/11/11)  
Case Type: Auto Negligence  
Judge: F.J. Fernandez-Vina, J.S.C.  
Plaintiff's Atty: Scott Goldberg, Esq.  
Defendant's Atty: Karin Coger, Esq.  
L-5748-9 Jury (7)

VERDICT: No Cause (8/23/11)  
Case Type: Auto Negligence  
Judge: Michael J. Kassel, J.S.C.  
Plaintiff's Atty: Dennis Crawford, Esq.  
Defendant's Atty: Dan Distasi, Esq.  
L-5787-08 Jury

VERDICT: No Cause (8/23/11)  
Case Type: Auto Negligence  
Judge: Louis R. Meloni, J.S.C.  
Plaintiff's Atty: Michael D. Pomerantz, Esq.  
Defendant's Atty: Raymond F. Danielewicz, Esq.  
L-6023-09 Jury (6)

VERDICT: Liability Verdict: 100% Against  
Defendant; Damage Verdict:  
\$12,500 Against Defendant  
(8/23/11)  
Case Type: Auto  
Judge: Steven M. Holden, J.S.C.  
Plaintiff's Atty: Kevin Costello, Esq.  
Defendant's Atty: Mark Molz, Esq.  
L-5893-07 Jury

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## LEGAL LINE TO CRIMINAL COURT LAW

## Community Caretaking and Private Homes

Continued from Page 10

*Cady's* dictum that "a search of a vehicle may be reasonable 'although the result might be the opposite in a search of a home.'" <sup>11</sup>

New Jersey state courts, however, have embraced the rationale of the Fifth, Sixth, and Eighth Circuits, in recognizing that the community caretaking exception applies to an individual's home. Noting that the Court's decision in *Cady* contains no language explicitly limiting its scope exclusively to automobiles, those circuits recognized that the peacekeeping and community caretaking role of police likewise conferred the right to be present on premises on occasion without requiring a warrant. One court explained that "[t]o require a warrant under these circumstances would be to promote rigid formalities over important community interests..." <sup>12</sup>

In its two most recent opinions on this issue, *Witczak* and *Kaltner*, the New Jersey Appellate Division explicitly declined to follow the Third Circuit's ruling in *Ray*, reasoning that, "[S]tate courts and the lower federal courts

have the same responsibility and occupy the same position; there is parallelism but not paramountcy for both sets of courts are governed by the same reviewing authority of the Supreme Court." <sup>13</sup> The Appellate Division maintained its divergence from the Third Circuit for the reason that the United States Supreme Court has not yet decided whether the community caretaking exception applies to homes. <sup>14</sup> Despite the outcome in both *Witczak* and *Kaltner*, the Appellate Division made it abundantly clear that the community caretaking exception does indeed apply to homes. Whether the exception applies in a particular situation requires a fact-sensitive analysis, on a case-by-case basis. <sup>15</sup>

The New Jersey Supreme Court has not yet addressed this issue since the Third Circuit's ruling in *Ray*, however, the opportunity may present itself on the Court's agenda for the current term. On May 12, 2011, the New Jersey Supreme Court granted certification in *State v. Shareef Edmonds*. <sup>16</sup> The issue to be decided in

that case is whether the warrantless search of a residence was justified under the emergency aid or the community caretaking exception. <sup>17</sup> It is uncertain whether the Court will actually address the federal split of authority highlighted in the Third Circuit's decision in *Ray*. In *Edmonds*, the Appellate Division did not consider this issue because, according to the court, the search could not be justified under the community caretaking exception regardless of whether the exception applied to private residences. <sup>18</sup> If the Court decides to address the split in authority, particularly the Third Circuit's decision in *Ray*, it is unlikely that it would overturn years of precedent simply because the issue appears to be in flux within the federal courts. Therefore, until the United States Supreme Court holds to the contrary, it appears that the community caretaking exception should continue to apply to homes, as well as automobiles, in New Jersey.

<sup>1</sup> 413 U.S. 433, 439-48, 93 S. Ct. 2523, 37 L. Ed. 2d 706 (1973).

<sup>2</sup> *Id.* at 441, 93 S. Ct. at 2528.

<sup>3</sup> See *State v. Witczak*, 421 N.J. Super. 180, 195 (App. Div. 2011); see also *State v. Diloreto*, 180 N.J. 264, 276 (2004).

<sup>4</sup> *State v. Bogan*, 200 N.J. 61, 80-81 (2009); *State v. Kaltner*, 420 N.J. Super. 524, 541-42 (App. Div. 2011).

<sup>5</sup> *Witczak*, *supra*, 421 N.J. Super. at 191.

<sup>6</sup> *Bogan*, *supra*, 200 N.J. at 77.

<sup>7</sup> See *Witczak*, *supra*, 421 N.J. Super. at 180 and *Kaltner*, *supra*, 420 N.J. Super. at 524.

<sup>8</sup> *Witczak*, *supra*, 421 N.J. Super. at 193-95 and *Kaltner*, *supra*, 420 N.J. Super. at 539 n. 2.

<sup>9</sup> 626 F.3d 170 (3d Cir. 2010).

<sup>10</sup> *Id.* at 177.

<sup>11</sup> *Id.* at 175 (citing *Cady*, *supra*, 413 U.S. at 440, 93 S. Ct. at 2527).

<sup>12</sup> *United States v. Rohrig*, 98

<sup>13</sup> *Witczak*, *supra*, 421 N.J. Super. at 194 (quoting *State v. Coleman*, 46 N.J. 16, 36 (1965), cert. denied, 383 U.S. 950, 86 S. Ct. 1210, 16 L. Ed. 2d 212 (1966)).

<sup>14</sup> See *Witczak*, *supra*, 421 N.J. Super. at 194-95.

<sup>15</sup> See *Kaltner*, *supra*, 420 N.J. Super. at 541-42.

<sup>16</sup> 206 N.J. 70 (2011).

<sup>17</sup> In that case, officers were responding to a 9-1-1 call that a man with a gun was beating his girlfriend; upon learning that a child was inside of the residence, the police entered the home over the domestic violence victim's objection. A subsequent search of the area where the man was found revealed a handgun. No. A-2886-09T3, slip op. 2-4, n. 2 (App. Div. March 3, 2011).

<sup>18</sup> *Id.* slip op. at 8, n. 2.

## Bankruptcy Breakfast Held For Pro Bono Bankruptcy Project

The Honorable Judith H. Wizmur, Chief Judge of the United States Bankruptcy Court for the District of New Jersey, hosted a September breakfast for volunteer attorneys who participate in the Pro Bono Bankruptcy Project. The Pro Bono Bankruptcy Project is a joint Project among the bankruptcy bench, the private bankruptcy bar, South Jersey Legal Services, Inc. (SJLS) and Rutgers School of Law - Camden.

The breakfast was held at Rutgers School of Law-Camden. The Honorable Gloria M. Burns was also in attendance. Both Judge Wizmur and Judge Burns spoke on the importance of the Project and thanked the attorneys, law school staff and the staff at SJLS for their dedication and service. Eve Biskind Kloth, Assistant Dean for Pro Bono and Public Interest Programs, thanked all in attendance and reiterated the importance of the collaborative efforts of all those involved.

Michelle T. Williams, Esq., Director of Pro Bono Services and Centralized Intake at SJLS, spoke on the recent termination notices sent to another sixteen employees of SJLS and stated that the bankruptcy waitlist was upwards of three hundred individuals. She also thanked the dedicated efforts of all those who have been involved in the Project over the years.

Thank you to all those who participate in The Pro Bono Bankruptcy Project and those who take direct pro bono bankruptcy referrals through SJLS. If you or your firm would like to volunteer, please contact Michelle T. Williams, Esquire, Director of Pro Bono Services and Centralized Intake at SJLS, at 856.964.2010, ext. 6229 or mtwilliams@lsnj.org.



The Honorable Gloria M. Burns, Eve Biskind Kloth, Assistant Dean for Pro Bono and Public Interest Programs, Rutgers School of Law - Camden, Ann M. Gorman, Esquire, Deputy Director, SJLS, Michelle T. Williams, Esquire, Director of Pro Bono Services and Centralized Intake, SJLS, the Honorable Judith H. Wizmur

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## Fall Frolic Set For November 15th

*Continued from Page 1*

gifts. To enable us to pay the costs associated with this important and appreciated holiday celebration, the Bar Foundation turns yet again to our caring Coastline friends.

Each year, the Coastline opens its doors to Association members, their staff, clients and friends for a happy two hours featuring a hot buffet. Once again, we will frolic at the Coastline (1240 Brace Road, Cherry Hill) between 6 and 8 p.m. on Tuesday, November 15th and **WE NEED YOU TO JOIN US!** Due to ABC regulatory changes there now must be a minimal charge per drink so the \$15 ticket price *includes* one drink ticket. **PLEASE** understand why your support is so vital:

1. Fall Frolic proceeds will be used to purchase gifts for Santa to give our guests on December 3rd.
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Thanks to The Coastline and YOU, this will be a great *FUN*draiser – fun for you and for the children who will benefit from your kindness.

To help ensure another “Merry Christmas” for those kids in need, please be sure to join us. Tickets may be reserved by sending a check to **CCBF Fall Frolic, 1040 N. Kings Highway, Suite 201, Cherry Hill, NJ 08034**. To pay by credit card or to ask questions, please call bar headquarters – (856) 482-0620, or email Kathy at [kdp@camdencountybar.org](mailto:kdp@camdencountybar.org).

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**John D. Cranmer**, a Partner with Archer & Greiner P.C. and member of the Board of Directors of the New Jersey Apartment Association (NJAA), played a key role in the NJAA's successful campaign for historic new utility rules designed to achieve significant conservation of potable water in New Jersey. With the BPU's order, New Jersey becomes the last of the 50 states to allow utility sub-metering. Mr. Cranmer and the NJAA worked with BPU Commissioners and staff for nearly 10 years to get the measure approved.

Mr. Cranmer concentrates his practice in real estate law, including real estate development, real estate transactions, commercial real estate, commercial lending, real estate brokerage, fair housing, affordable housing, land use and environmental permitting and utility law.

**Bruce Zamost**, previously a partner with Stark & Stark in Marlton, joins Pellettieri Rabstein & Altman as a partner in its medical malpractice and personal injury litigation departments in Mt. Holly. In addition to those areas of specialty, Mr. Zamost's practice emphasizes civil remedies for victims of sexual assault and product defects.

**Christopher J. Tucci**, recently joined Connell Foley LLP, to manage the firm's new office in Cherry Hill and its Philadelphia office.

Mr. Tucci, a nationally recognized authority in complex banking litigation, specializes in matters involving Uniform Commercial Code 3, 4 and 4a, Federal Regulation CC, Federal Regulation E, the Bank Secrecy and Patriot Acts, data & security breach issues involving the Gramm-Leach-Bliley Act and state privacy statutes, E-Discovery, corporate and regulatory investigations, check fraud and bank operations. He serves as national counsel to clients in banking law related areas and has notable experience in rapid response and crisis management.

Prior to joining Connell Foley, Mr. Tucci was employed as Of Counsel with the law firm of Brown & Connery, LLP in Westmont.

**John P. Kahn, Esq.**, an attorney with Archer & Greiner P.C., has been elected to the Board of Directors of the Garden State Bar Association (GSBA). Mr. Kahn also serves as a Regional Director of the GSBA, representing Camden, Gloucester and Salem Counties in New Jersey. The purpose of the GSBA is to assist African-Americans and other ethnic minorities in becoming an effective part of the judicial and legal systems.

Mr. Kahn is an Associate in the Commercial Litigation Practice Group at Archer & Greiner in Haddonfield. He concentrates his practice in the defense of civil rights claims, class action litigation, health care fraud and abuse claims, and claims arising under employment and health care plans.

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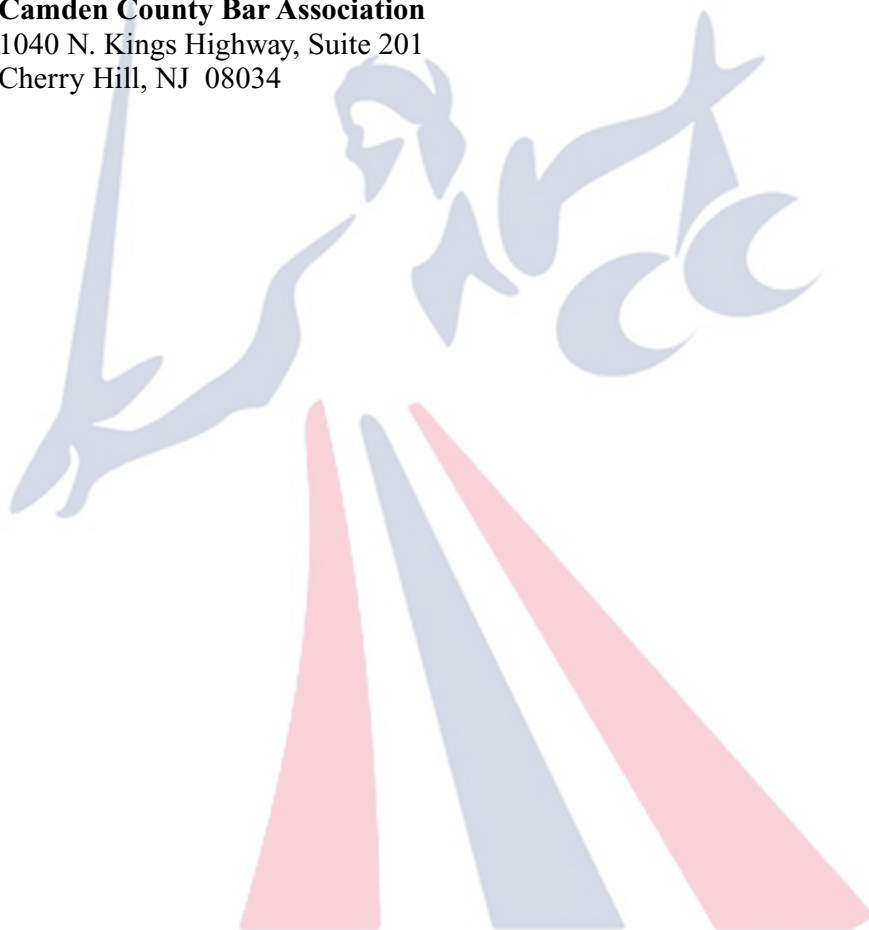
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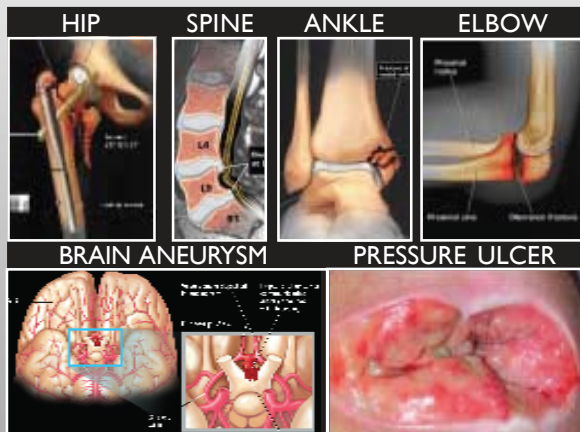


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