

## Come Frolic With Your Friends at the Bar!

**Fall Frolic set for  
Tuesday,  
November 13th**

Join us on **Tuesday, November 13** for the Camden County Bar Foundation's annual Fall Frolic! The festivities get underway at **5:30 p.m. at the Pub** located at the old airport circle in Pennsauken.

Kick off the holiday season with this annual event and enjoy an evening out for a great cause. At just \$20 per person, this is the best deal around and helps raise money for the upcoming Children's Holiday Party on December 1 at the Boys and Girls Club of Camden. Tickets include your first drink and a delicious buffet! Visit our member portal at <https://camden.intouchondemand.com> to register or use the flier attached in this month's inserts! **See you there!**

## Children's Holiday Party set for December 1 *Sharing the Season with Deserving Kids*

The Bar Foundation's Annual Children's Holiday Breakfast and Party is returning to the Boys & Girls Club, Marjorie & Lewis Katz East Camden Clubhouse on Dudley Street in Camden. Scheduled for **Saturday, December 1**, breakfast will be provided by Chick Fil A and the Public Benefits Committee is hoping for another good showing of volunteers to help the party run smoothly for our young guests—hundreds of less fortunate children from Camden and the surrounding area.

Beginning at 9 a.m., busses will start unloading our special guests for a full breakfast, followed by a few magical hours of fun, gifts, caroling and holiday cheer. Of course, no holiday party would be complete without a visit with Santa!

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

The children will also be treated to a magic show before Santa (a.k.a. Hon. Stephen

Holden) and his sleigh full of goodies arrive. Every child will have a chance to tell Santa what they want for Christmas and then be sent off with a photo and a wrapped gift.

With that many gifts to wrap, it takes time and hands! To ensure a beautifully wrapped gift awaits each child, a wrapping party is scheduled for Thursday, November 29 at 5 p.m. at Bar Headquarters. Volunteer wrappers are needed to assist in wrapping and filling goody bags. If you can't join us on Saturday for the party but want to help, please stop by and help us wrap.

We can never have too many volunteers! If you are inspired to make a positive difference in the lives of those who need it most and you can spare just a couple hours of your time, please call or email Krystal at Bar Headquarters, **856.482.0620 / [klw@camdencountybar.org](mailto:klw@camdencountybar.org)**. The look on the faces of these terrific kids will be all the thanks you need!

## Adopt-A-Family For the Holidays *Give the gift of JOY this holiday season*

Share your good fortune and help make the holidays special for an underprivileged family in the City of Camden by "adopting" a deserving family at this special time of year. The Public Benefits Committee is again asking for your support of their annual Adopt-A-Family program. Our goal is to bring the joy of the season to over 100 underprivileged families and with your help we can do it!

Adopting a family is easy! You can choose to provide food and gifts for a small, medium or large family. Although you will not meet the family in person, you will be provided with the ages of the children, their clothing sizes and, in some cases, their Christmas "wish list." All you do is shop, pack, and deliver your donations to St. Joseph's Pro Cathedral Church in Camden on **Friday, December 21** and leave knowing you've brightened the holidays for a family in need.

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

St. Joseph's Pro Cathedral Church helps needy families throughout the year, regardless of creed, and your generous support will brighten the holidays for those most in need in our community. We are thrilled to be working with St. Joseph's again this year and look forward to meeting or surpassing our goal of 100 adopted families. We urge all Bar members to consider adopting a family this year either through your firm or individually. Your participation is guaranteed to make you feel wonderful, and it's tax deductible!

Refer to the flier included with this month's inserts for contact information to adopt a family. **Thank you—together we are making a difference!**

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## THE DOCKET

### Tuesday, November 6th

NJ Municipal Court

4 - 6:15 pm

Tavistock Country Club, Haddonfield, NJ

### Wednesday, November 7th

Multi-Unit Residential Property—

What Is It Really Worth?

12 - 1:15 pm

Tavistock Country Club, Haddonfield, NJ

### Thursday, November 8th

Jumping the Wall—Current Immigration Options  
for Foreign Nationals

12 - 2:15 pm

Tavistock Country Club, Haddonfield, NJ

### Tuesday, November 13th

Camden County Bar Foundation

Board of Trustee's Meeting

4 pm

The Pub, Pennsauken, NJ

### Tuesday, November 13th

Fall Frolic 2018

5:30 - 7:30 pm

The Pub, Pennsauken, NJ

### Wednesday, November 14th

The Zen of Practicing Law: How to Be Happy

While Practicing Law

4 - 7:15 pm

Tavistock Country Club, Haddonfield, NJ

### Thursday, November 15th

Bridge the Gap—NJ Family Law

3 - 6:15 pm

Bar Headquarters

### Tuesday, November 27th

Avoiding Ineffective Assistance of Counsel

4 - 6:15 pm

Tavistock Country Club, Haddonfield, NJ

### Wednesday, November 28th

Camden County Bar Association—

Board of Trustee's Meeting

4 pm

Bar Headquarters

### Thursday, November 29th

Appeals on Property Assessments

4 - 6:15 pm

Tavistock Country Club, Haddonfield, NJ

### Thursday, November 29th

CCBF Wrapping Party

5 pm

Bar Headquarters

## Tentative Agenda for November 28<sup>th</sup> Board 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 in Cherry Hill. All meetings are open to the membership. Anyone interested in attending should notify and confirm their attendance by calling Bar Headquarters at 856.482.0620.

I. Call to Order

II. Approval of Minutes from Meeting

III. Treasurer's Report

IV. President's Report

V. Executive Director's Report

VI. Committee Reports

a. Membership Committee

b. Young Lawyers Committee

c. Standing Committee Reports

VII. Foundation Update

VIII. NJSBA Update

IX. Old Business (if any)

X. New Business (if any)

XI. Adjournment

## THE BARRISTER

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Camden County Bar Association.

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## CCBF'S Autumn Scramble a Hole-in-One!

Golf enthusiasts took to the links for the Foundation's annual Autumn Scramble on October 8th at the beautiful Riverton Country Club in Cinnaminson to help raise money for the Foundation's many community service projects. The weather was just right for golf—not too hot, not too cold—and, by all accounts, it was a great day of golf, sportsmanship, camaraderie, and fundraising. Special thanks to all those who generously donated and participated in this terrific annual event!



# Autumn Scramble '18 Thank You!

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### Raffle Items

Barry Epps • Brenda Eutsler

Janifer Fowler • Jim Hamilton

James Herman • Mark Oddo

Alan Schwalbe

### SPECIAL THANKS

To Lynn Dougherty for her time and creative talents in designing the raffle baskets



# PRESIDENT'S PERSPECTIVE

## If Change is Coming, are you Running Toward it or Away From it?

By Ronald G. Lieberman

**T**here are many aspects of the legal profession that have changed recently and undoubtedly more change is still to come. People have said not to mistake change for progress, however. But, what are these changes confronting the legal profession and are we going to face them head on or run away from them?

One such change that has been discussed across the country is non-lawyer partners in law firms or non-lawyers or businesses owning law firms. Is it possible then to know whether legal professional privileges apply to legal services if they are mixed with non-legal services or owned by non-lawyers?

Many practice areas have faced legal process outsourcing including legal research, document review, paralegal work, due diligence and drafting of pleadings. No doubt, clients will likely demand that tasks be outsourced to save costs and increase efficiency. Those outsourcing efforts then affect the recruitment or retention of young lawyers so young lawyers need to be more detail oriented.

Perhaps one of the biggest changes to come about in the legal profession is time-based billing. Numerous articles and lectures have been written and discussed regarding the billable hours which creates and perpetuates unfair stereotypes about lawyers. Certain practice areas such as the area I practice, Family Law, do not allow fixed price billing or percentages, so time sheets and traditional billing practices remain important. But, perhaps law firms no longer need to set billable targets for their lawyers which then creates pressure on the lawyers to "bill baby bill." It also then de-prioritizes pro bono work, strains the attorney-client relationship, and places negative mental health and physical health pressures on the lawyer. What client would want to go to a frazzled lawyer? Would anybody want to go to a doctor who is frazzled?

Another important change facing the legal profession is technological change. By technological change I include new technology such as cloud computing; electronic document management systems; artificial intelligence; virtual law firms; on-line dispute resolution; electronic courts; and electronic filing of court documents; and the use of social media. Cloud computing as most readers know refers to the delivery of hosted services over the internet with data being stored "in the cloud." The advantages to cloud computing are many, including on-demand access to data and reduced costs that otherwise would be spent on hardware and software. The questions and challenges with cloud computing become how to protect client confidential information from data breaches or instability and access by the practitioner to such documents and data.

Many law firms have taken up the use of electronic document and records management systems that create an automated software application regarding the storage and disposal of records. Sometimes, electronic copies have hidden information such as metadata which does not show up on a hard copy and hard copies can be viewed by the naked eye whereas documents online may need special software not to mention that documents online could be susceptible to forgery or the electronic version of "Photo Shopping."

Artificial intelligence involves large, sophisticated computers that can seemingly digest infinite amounts of information and then provide it in context. Certain programs can undertake tasks that legal practitioners and law graduates have been doing to read, interpret, and extract information from documents. There really can be no expectation that artificial intelligence will replace the legal practitioner although it may be helpful to find relevant information in voluminous documents.

Virtual Law Firms provide professional services through virtual environment meaning the law firm exists on line. The costs of a virtual law firm are dramatically reduced as compared to the "brick and mortar" firms. Virtual

offices must be held to the same ethical rules and obligations as conventional ones meaning confidentiality, rules of professional conduct, and supervision of employees. Face-to-face meetings with clients will always be required in situations where the client capacity is in question or where identification and in-person signing of documents are necessary.

There have been discussions about e-courtrooms which is the equivalent of appearing in an ordinary courtroom and this occurs commonly through the idea of ex-parte applications regarding discovery and perhaps most commonly the virtual courtroom occurs when defendants are being granted or denied bail or facing preliminary hearings. Although the advantages seem numerous such as speed, convenience, and dramatically increasing time, those uses must only be where expedition is necessary and not in a time-consuming process of plenary hearings or trials.

Finally, social media has changed the way that lawyers communicate with the public at large. Such platforms are used not only for career development and networking but education and case investigation. Those communications may not be adequately confidential and networking on social media can be considered unprofessional not to mention the inadvertent creation of an attorney-client relationship by a back and forth question and answer session. Courts have also permitted Facebook and other social media to be a method for substituted service on people who are avoiding service.

It remains to be seen how the legal profession will look in the years ahead, however, neither lawyers nor the legal profession can afford to be complacent. The legal profession must be able to adapt to societal changes just as society itself is adapting to changes.

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## FOUNDATION UPDATE

# Let me count the ways...

## ...To support your Camden County Bar Foundation.

By Louis R. Moffa, Jr.

**F**irst and foremost **PARTICIPATE!** Come out to the events, enjoy food, drink and friendship, network with your peers and show the Foundation that you believe in our mission and goals. There is no better way to help the Foundation carry out its mission to serve the Bar and the community than to buy tickets to our events and show up. So far, our events have been well attended and successful.

Once again, the Young Lawyers did a fantastic job with the Lobster Bake. Great weather, great location and great food. A good time was had by all who attended. As usual, the Meet the Judges and Law Clerks event was a smashing success. So many people, so little parking, but we still had a great time meeting and greeting members of the judiciary and their clerks. Kudos also go to Mark Oddo, the entire Golf Committee and Bar Association staff for pulling off another successful Golf Outing despite questionable weather. With some last minute sponsorships and donations, I am sure the final accounting will be good.

It has been a very busy Fall and it is not over yet. We are looking forward to a great crowd for the **Gerry Award and Scholarship Presentation on October 23 at Tavistock**. That will be followed closely by the **Fall Frolic on November 13 at The Pub**. Remember, proceeds from the Fall Frolic help support the **Children's Holiday Party**. Speaking of which, that event will be **December 1 at the Boys and Girls Club Facility** in Camden. If you need another reason to volunteer, come out to see our "new" Santa Claus! So, get out and get involved.

Second, **SPREAD THE WORD**. When you are out and about in the legal community, encourage your friends and colleagues to support

the Foundation and its many events and activities. There is no better marketing than grass roots promotion. We welcome all comers and hope to see many few faces.

Finally, **GIVE!** Of course, we need your money. Don't just buy tickets for the social and award events, but help us out with donations for auction items, sponsorships and other items. From the Children's Holiday Party to Adopt A Family, your time and money does great work, and we need more of it. And, do not forget that the Foundation graciously accepts and encourages planned giving donations, as well as just plain checks. The more we get the more we can give back to the community.

## Nominations Sought for Devine Award

*The Association's Highest Honor for Service*



The Hon. Peter J. Devine, Jr. Award Committee is accepting nominations for this year's award. The Devine Award is the highest honor afforded to the membership and is bestowed upon a member for distinguished service to the Camden County Bar Association. The Committee is chaired by Past President **Louis R. Moffa, Jr.**

Please use the Devine Award Nomination Form included in this month's Barrister inserts to nominate a colleague who has provided distinguished service to the Association and the legal community in Camden County. **Deadline extended to November 14!**

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**CCBA + YOU = WORKING TOGETHER**



## OUT AND ABOUT

### Judges, Law Clerks and Members Connect at Meet the Judges

Nearly 200 members of the Bench and Bar came out for the annual Meet the Judges & Law Clerks Reception at the lovely Il Villaggio on Haddonfield-Berlin Road in Cherry Hill on September 27th for an enjoyable evening of back to the bar-year networking and camaraderie. Guests met the new law clerks for the 2018-19 court year and enjoyed open bar and delicious food all evening. As the pictures show, a wonderful time was had by all!



*Dominique Kilmartin, Mary Bessemer,  
Hon. Christine Orlando, Justice Lee Solomon  
and Jason Russell*



*Dawnn Briddell, John Kahn  
and Michelle Badolato*



*Jeremy Zacharias, Kiera Hartwell  
and James Greenberg*



*Blair Lane, Sr., Jennifer Johnson  
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*David Cedar, Kenneth Andres,  
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and Karen Berger*



*James Herman, Hon. Charles Rand and  
Michael Madden*



*Brian Herman, Neel Bhuta, Jenifer Fowler  
and Tom Hagner*



# YOUNG LAWYER HAPPENINGS



## YOUNG LAWYER CHAIR

By Neel Bhuta

## Being Thankful

As we move into November, we come upon my favorite holiday of the year, Thanksgiving. I love everything about Thanksgiving. I love the chance to see family from far-flung areas. I love the football during the day. I love the excess of food. I love the day off from work. Most of all, I love the opportunity to take stock of my year (and my life) and think about all of the reasons I have to feel thankful.

First and foremost, I am thankful for my health. We all work really hard at our jobs, in high stress positions, and it can be easy to neglect your well-being in favor of your work.

We as lawyers do a bad job of taking care of ourselves. Just two years ago, the American Bar Association sponsored a study to evaluate mental health concerns among lawyers, and *its findings were reported in the Journal of Addiction Medicine*. Twelve thousand eight hundred and twenty-five attorneys participated in this study and completed surveys, and the findings were horrifying: lawyers are drinking too much, struggling with substance abuse, and suffering from depression, anxiety, and stress.

The specifics of the study should not make anyone in our professional feel good. Twenty-one to thirty-six percent of lawyers qualify as problem drinkers. Approximately 28% of lawyers are struggling with some level of depression. Approximately 19% of lawyers are struggling with anxiety.

I have the privilege of being the Young Lawyer Trustee for the 2018/2019 term, and the study's findings on young lawyers were especially disheartening. The study suggested that younger lawyers in their first 10 years of practice and those working in private firms experience the highest rates of problem drinking and depression. Specifically, junior associates reported the worst results, followed by senior associates, junior partners, and senior partners. Forty-four percent of those surveyed "indicated that the problems began within the first 15 years of practice."

The inattention to these markers of ill health must stop. Your physical, emotional, and psychological health is your most important asset. Stress is inevitable in our law practice, but we must find more productive ways of coping with that stress—for the sake of our health. Your career only lasts so long, and it is how we make our living, but if we do not take care of ourselves, then we will not be around to enjoy the fruits of our labor.

And this is especially important because what we do is valuable. We have the ability (and privilege) to do good work for our clients and our communities. I really like being a lawyer. There is a lot of noise out there in the world about all of the negative aspects of our profession. We have all heard the jokes and the insults and different ways that some people can imply that we do not provide anything of value to society.

But that is wrong. The laws and regulations that we live by form the bones of our civil communities. They provide the rules that govern our interactions with the world around us. And as lawyers, we are the guides that help people navigate those rules. We assist people in difficult situations, and we serve as their counselors and advocates to ensure that their interests are protected.

It's true that sometimes our day-to-day work isn't great. Sometimes we get caught up in the grind with clients or adversaries, and we lose sight of the ultimate goals. Sometimes we get lost in the gamesmanship that can come with our profession, and we forget the substantive ends that we are trying to meet.

But let's not forget that we get to navigate people through some of the most important and traumatic experiences in life: planning for death and a person's last days, preparing for inheritance after the death of a loved one, securing justice and medical treatment and compensation after an injury, protecting interests and concerns during large purchase and investments. All of these situations are governed by legal frameworks that are unfamiliar to most people, and we have a duty to look after our clients in those important areas.

That's an awesome responsibility. And a great privilege.

So this Thanksgiving, let's remember to say thanks for the ability to do what we do, to serve as legal guides for our clients and friends. And let's also say thanks for the good health that allows us to continue serving that way.



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## PERSONAL INJURY LAW

# Issues to Consider in a New Jersey Wrongful Death Case

By Thomas D. Begley, Jr., Esquire, CELA

New Jersey wrongful death cases can be complex. A number of issues arise and the statutes are not always clear. This article will discuss several important considerations. Cases under the Wrongful Death Act have two components. One is the wrongful death component, and the other is the survival claim. Each is treated differently for many purposes.

### Plaintiff

Who can be the Plaintiff in a New Jersey wrongful death case? If there is a Will, the Executor would be the Plaintiff. If there is not a Will, an Administrator ad Prosequendum must be named to bring the action on behalf of an estate. That action may be brought in the Surrogate's Court of the County where the Intestate resided or, if he/she lived outside the State, the Surrogate's Court in which the accident resulting in the death occurred. The role of the Administrator ad Pros is somewhat confusing. The Surrogate issues Letters of Administration ad Prosequendum. The Letters give the authority to the Administrator ad Pros to bring the action and institute proceedings or make a claim, and the litigation may be pursued.

### Payment of the Survival Claim

The payment of the survival claim is made either to the Executor of the estate, if there is a Will, or to the Administrator of the estate, if there is no Will. Payment cannot be made to the Administrator ad Pros. This is because the Administrator ad Pros actually has no authority over the estate. If the Plaintiff died without a Will and there is no Executor, an Administrator of the Estate must be appointed. The duties of the Administrator of the Estate are much more extensive than the authority of the Administrator ad Pros.

### Release of Survival Claim

The Release of the survival claim must be signed by the Executor of the estate, if there is a Will, or the Administrator of the estate, who must be appointed by the County Surrogate if there is no Will. Again, the Administrator ad Pros has no authority to sign the Release.

### Bond

A question arises as to whether a bond is required with respect to the survival claim under the Wrongful Death Act. Generally, if there is a Will the Executor, by terms of the document, is not required to post a bond. However, the Administrator of an estate does have to post a bond, unless this requirement is waived by the Court.

### Survival Claim Distribution

How are the monies recovered under the survival claim ultimately distributed? The check from the Defendant or the law firm is written to the estate. The estate then distributes the funds in accordance with the Will, if there is a Will, and if not, then under the terms of the New Jersey Intestacy Act.

### Creditors

If the Decedent has creditors, the funds recovered under the survival claim are subject to claims of those creditors. Creditors have a right to file claims against the estate of the Decedent.

### Federal Estate Tax

If the recovery is extremely large, it could be subject to federal estate tax. In 2018, the exclusion from the federal estate tax is \$11,180,000. Anything less than that amount is not subject to federal estate tax.

### State Estate Tax

The New Jersey estate tax has been repealed as of January 1, 2018. However, the New Jersey inheritance tax remains in effect. If the beneficiaries of the estate are not the spouse or lineal ascendants or descendants, then the New Jersey inheritance tax would apply to the survival claim portion of the estate.

### Wrongful Death Claim

If the Decedent left dependents, including a spouse and/or children, the award would be divided by Court Order. If the Decedent left no dependents, then the spouse and descendants would share equally. This means that if a husband died leaving a spouse and three children, the spouse and each child would receive 25%. If there were no spouse or descendants, then the wrongful death claim would be distributed pursuant to the terms of the Intestate statute.

Under the wrongful death claim, creditors of the Decedent have no claim. However, creditors of the wrongful death claim recipients would have a claim. There would be no federal estate tax, New Jersey estate tax or New Jersey inheritance tax against the wrongful death claim.

### Court Order Factors

Factors that the Court considers in determining Wrongful Death Act claims include age, physical and mental condition, educational requirements, financial conditions, and other means of support. If a jury makes the determination, it does so as the jury deems fair.

(Continued on Page 10)

## VERDICTS OF THE COURT *September 2018*

*Superior Court of New Jersey*

VERDICT: No Cause (9/5/18)  
Case Type: Auto Negligence  
Judge: Steven J. Polansky, P.J.Cv.  
Plaintiff's Atty: Justin H. Sperling, Esq.  
Defendant's Atty: Beth M. Csontos, Esq.  
L-1223-17 Jury

VERDICT: No Cause (9/12/18)  
Case Type: Personal Injury  
Judge: Richard F. Wells, J.S.C., Ret./Rec  
Plaintiff's Atty: Ronald DeSimone, Esq.  
Defendant's Atty: Christopher Marcucci, Esq.  
L-4050-16 Jury

VERDICT: No Cause (9/12/18)  
Case Type: Civil Rights  
Judge: Anthony M. Pugliese, J.S.C.  
Plaintiff's Atty: Justin T. Loughry, Esq.  
Defendant's Atty: William F. Cook, Esq.  
L-3505-15 Jury

VERDICT: No Cause (9/13/18)  
Case Type: Contract  
Judge: Daniel A. Bernardin, J.S.C.  
Plaintiff's Atty: Lawrence J. Luango, Jr, Esq.  
Defendant's Atty: Zainab K. Ali, Esq.  
L-4549-17 Jury

VERDICT: Liability Verdict \$12,500 (9/18/18)  
Case Type: Summary Action  
Judge: Richard F. Wells, J.S.C., Ret./Rec  
Plaintiff's Atty: Laura Ruccolo, Esq.  
Defendant's Atty: David Khawam, Esq.  
L-2047-17 Bench

VERDICT: Liability Verdict \$51,484.17 (9/18/18)  
Case Type: Auto Negligence  
Judge: Michael J. Kassel, J.S.C.  
Plaintiff's Atty: Brett Walker, Esq.  
Defendant's Atty: Sungkyn Lee, Esq.  
L-2788-16 Jury

VERDICT: No Cause (9/20/18)  
Case Type: Lemon Law  
Judge: Anthony M. Pugliese, J.S.C.  
Plaintiff's Atty: Michael D. Power, Esq.  
Defendant's Atty: R. Mark Armbrust, Esq.  
L-2113-17 Jury

VERDICT: Damages Verdict \$130,609.31 (9/25/18)  
Case Type: 599 Contract  
Judge: Steven J. Polansky, P.J.Cv.  
Plaintiff's Atty: Bob Kasolas, Esq.  
Defendant's Atty: Jeffrey Randolph, Esq.  
L-1128-17 Bench

VERDICT: No Cause (9/25/18)  
Case Type: Personal Injury  
Judge: Sherri L. Schweitzer, J.S.C.  
Plaintiff's Atty: Thomas Chansky, Esq.  
Defendant's Atty: John Dingle, Esq.  
L-4832-14 Jury

## PERSONAL INJURY LAW

# Issues to Consider in a New Jersey Wrongful Death Case

(Continued from Page 9)

Under the New Jersey Intestate statute, assets of an estate are divided as follows:

<b>Spouse and parent(s), but no children:</b>	<b>Spouse:</b> the first 25% (but not less than \$50,000 nor more than \$200,000) plus three-fourths of the balance <b>Parent(s):</b> One-fourth to parent(s)
<b>Spouse and children of the decedent, all of whom are also children of the spouse (and spouse has no children by any other relationship) or Spouse, no children or surviving parents of the decedent:</b>	<b>Spouse:</b> 100% of estate
<b>Spouse and children of decedent, some of whom are not children of spouse:</b>	<b>Spouse:</b> the first 25% (but not less than \$50,000 nor more than \$200,000) plus one-half of the balance <b>Children of decedent:</b> one-half
<b>Spouse and stepchildren (children of Spouse who are not decedent's children):</b>	<b>Spouse:</b> 100%
<b>No spouse or domestic partner:</b>	<b>Descendants by representation</b> <b>Parents:</b> Decedent's parents share equally. If only one parent survives, that parent receives the remaining estate. <b>Siblings or their descendants by representation</b> <b>Grandparents</b> <b>Descendants of grandparents</b> <b>Stepchildren or their descendants by representation</b>

**NOTE:** Shares of predeceased children pass to descendants by representation.

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# WINE & FOOD

By Jim Hamilton



Since this is being written as the baseball playoffs (sans *Phillies*) are in full swing (yes, literally and figuratively), I thought given the season I might throw you a curve and talk about a different type of fruit fermented into an alcoholic beverage—apples. As with the craft beer craze, craft cider making is beginning to establish a foothold in our area, albeit in baby steps. I recently attended a trade tasting that, while focused on Champagne featured tables of ciders, so I thought if I tasted those being poured, in some cases by the cider maker, it would allow us to discuss what Monty Python might call something completely different.

First, let's cover some very basic craft cider facts. Apples used to make cider are not the varieties we are likely to find in the supermarket. Most are not meant for eating, but rather are grown specifically to transform into an alcoholic drink. The transformation of the fruit into the beverage is similar to the manner in which grapes become wine. Fruit is picked, pressed and fermented, with either wild or cultured yeasts used to kickstart the process of converting the fruit's sugar into alcohol (and carbon dioxide). Typically, the amount of sugar in apples is proportionately less than in grapes, so when the juice is fully fermented (i.e. all sugar is converted) the alcohol level (typically 6.5% – 8.5%) is less than in most wines. As with wine, some cider makers will allow the fermented juice to rest on the dead yeast cells (lees) to add flavors or textures. Even though the cider is clear or yellow in color, because apple skins have tannins the cider produced can, to varying degrees, exhibit tannic grip.

Other similarities with wine are that cider can be either still or sparkling and can be made to achieve varying levels of sweetness. Many ciders are bone dry while in others the fermentation will be shortened to allow some residual sugar to remain. Those that are “semi-dry,” however, should not be confused with the apple juice you may enjoy, particularly during the autumn holidays. As one cider proprietor said, you should not look for apple flavors in their cider any more than you find grape flavors in wine. I suspect the point intended is more to explain the distinction between craft cider and apple juice than to say that one won't find apple impressions in the glass, but clearly there is much more complexity to craft cider that one might expect.

Over the years, I have taken a break from tasting wines at trade tastings to sample ciders. Probably the first to impress me, and prompt me to seek it out to buy, was one from the Normandy region of France made by Eric Bordelet. In 1992, he

took his knowledge of wine (he was a sommelier at the Michelin three star restaurant Arpege in Paris) to his family's orchards and set about to make serious cider (along with poirés cider, the pear fruit equivalent). Since Normandy is ground zero for the production of Calvados, an *eau de vie* distilled from dry cider, Bordelet also makes a bit of this as well.

I did not have the chance to taste any of Bordelet's latest cider releases (he is represented by a different distributor), but I do want to share some thoughts about a number I tasted from producers represented by Skurnik Wines and Spirits. As with the standard bottle of wine, most of these ciders are sold in 750 ml. bottles.

**2017 Eve's Cidery Autumn's Gold** is a dry sparkling cider made from European cider apple varieties brought in and grafted to their trees in 2002. I found this tasted of crisp, crunchy apples framed by an undercurrent of apple peel with tannins that are present without undermining the dry, gently effervescent delivery of the flavors. Eve's Cidery was founded in 2001 in upstate New York by the appropriately named Autumn Stoscheck.

Kite & String is a cidery located by Cayuga Lake in New York's Finger Lakes region. I have tasted these ciders before and continue to be impressed. To select one to mention, the **2017 Kite & String Semi-Dry Sparkling Rosé Cider** would be a good choice for oenophiles. While this technically is a cider, the apple juice is blended with 18% unfermented Riesling juice and, to get its reddish color, 10% Marechal Foch grape wine. Even before reading the description of the blend I found this to be the most wine-like cider I tasted. The fruit flavors are more red berry-like and the body of the cider if full and lively.

Farnum Hill Ciders, located in New Hampshire, became a cider producer when competition for eating apples became too challenging and the owner, Steve Wood (hmm...another appropriate name) converted his trees to yield cider apples and then proceeded to learn the craft. My favorite of those poured was the **NV (non-vintage) Farnum Hill Ciders Extra Dry Sparkling Cider**. This very dry bubbly exhibits real weighty flavors evoking a mélange of fruits with a stony minerality, a long, clean finish and an overall bold personality.

On Washington's Olympic Peninsula we find Finnriver Cidery. While it makes a traditional cider, let me highlight something that may cause a few cider makers to cry foul. **NV Finnriver Cidery Solstice Saffron Cider** is fashioned

from a dessert apple variety and is fermented to be semi-dry, to which locally grown saffron is added along with anise and fennel. It sounds a bit mad scientist, but if, like Donovan, you're mad about saffron you may want to give this a try for that is the distinctive impression in conveys.

Let's turn to the Old World where cider traditions can be long held. First there is Perry's Cider, located not far from Torquay (a seaside town in southwestern England made (in)famous as the site of *Fawlty Towers*). This cidery is run by the fourth generation of the Perry family and sells its ciders in 500 ml. bottles. I found all to be of equal quality, but to choose one let's talk about **NV Perry's Cider Puffin**. This is a cider I would recommend for beer fans, since it exhibits subtle hops notes in a very clean, chalky way. It is made using wild yeasts and is matured in wood for months and then bottle aged (or “conditioned”). Another English producer located near Wales in the West Midlands is Celtic Marches. As with Perry's Cider, this producer uses 500 ml. bottles and offers a reasonably priced semi-dry sparkling cider called **Celtic Marches Thundering Molly**. This is a soft cider that while lacking sharpness retains appeal, exhibiting more of a red fruit impression following a nose of tart apples. It is from a family steeped in cider tradition and that approach is sensed in the glass.

Evidencing the sturdiness cider apple trees enjoy compared to grapevines, Brännland Cider is located in northern Sweden. The producer sought to take advantage of its cold temperatures by making ice cider but then decided to create a more traditional product. The **NV Brännland Cider Just Cider** displays honey, curds and sour milk overtones (in a good, lactic way) with a soft yellow fruit impression found more in the background. This 750 ml. offering represents very good value. The **NV Brännland Cider Pernilla Perle** is subtly sparkling and very lush, ripe and round with its unobtrusive residual sugar helping to escort a compote of fruit flavors in a weighty but balanced way.

I am sure you can find a holiday dish (hint: turkey) with which a cider will work nicely so why not give one a try? If you find none on your favorite retailer's shelves, tell him or her to get with it and order some. Speaking of holidays, December is a time when people turn to sparkling wines more than any other time of year so next month we will be talking bubbly. Until then...cheers!





## FINANCIAL FORENSICS

# Measuring Damages

## Lost Profits vs. Lost Business Value

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

**B**usiness damages are calculated by two common damage measurement concepts- lost profits and lost business value. We thought you'd find of interest these key considerations in damage measurement from our presentation to the trial attorneys at the New Jersey Association for Justice's Boardwalk Annual Conference.

- In either of these two approaches we want to put the plaintiff, the injured party, in an economically equivalent position. In both a tort matter and a contract matter, we, as damage experts, have to get direction from the lawyer and consider liability, proximate causation, and reasonable certainty. If solely in the contract arena, we also need to consider foreseeability (i.e. explicit or implicit expectation damages).
- *Montage Group, Ltd. V. Athletech Computer Systems, Inc.*, 889 So. 2d 180, 191 (Fla.Ct.App.2004) stated it appropriately "...If a business is completely destroyed, then the proper total measure of damages is the market value of the business on the date of the loss. If the business is not completely destroyed, then it may recover lost profits. A business may not recover both lost profits and the market value of the business."
- *Protectors Insurance Service, Inc. v. United States Fidelity Guarantee Company*, 132F3<sup>rd</sup> 612 (10<sup>th</sup> Cir. 1998) also said it quite well: "Numerous jurisdictions hold to the view that "when the loss of business is alleged to be caused by the wrongful acts of another, damages are measured by one of two alternative methods: (1) the going concern value; or (2) lost future profits. The courts allow a plaintiff to

recover either the present value of lost future earnings or the present market value of the lost business, but not both. The "going concern value" is the price a willing buyer would pay and a willing seller would accept in a free marketplace for this business. It measures damages by awarding the difference between. The award of lost profit damages besides this amount, however, was an improper double recovery."

- Courts will often see the real purpose of compensatory damages for lost business value to place an injured party in the same position as it would have been had there been no injury. The decrease in value will be measured by the value prior to and after the defendant's misconduct. This should be the same as compensatory damages for lost profits or the amount required to make the injured party whole and put it in the same position it would have been but for the defendant's action.
- We don't believe there will be a universally accepted definition or standard of value in a lost profits case. If the purpose of compensatory damages for lost business value is to place the injured party in the same position it would have been but for the injury, then the use of a fair market value standard, for example, may to be modified. Counsel needs to discover what the courts or controlling case law require in applying a particular standard of value.
- Analyzing a "lost profits" case as contrasted with a "lost value" case may even affect the injured parties. With a "lost profits"

(Continued on Page 14)

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## Measuring Damages

### Lost Profits vs. Lost Business Value

(Continued from Page 13)

approach, the Plaintiff is most likely the business entity. With a "lost value" approach, the injured parties may be the actual shareholders, partners, members, etc.

- An exception to trying to put a plaintiff in an economically equivalent position "but for the alleged bad act" would be where punitive damages are called for.
- The United States Supreme Court provided us guidance on dealing with the lack of precision in this arena in considering its "wrongdoer's rule." In *Story Parchment Company v. Paterson Parchment Paper Company*, et al., 282 U.S. 555 (1931) it stated "...Whatever ...uncertainty there may be in a mode of estimating damages it is an uncertainty caused by the defendant's own wrongful act; and justice and sound public policy alike require that he should bear the risk of the uncertainty thus produced."
- When determining lost value and computing lost profits, using estimates and projections are required throwing more variables into the mix. Corroborating the underlying assumptions of any such projections is a critical component and we need to effectively focus in on the accuracy of such calculations and their underlying assumptions. Counsel, through us as experts, should review:
  - o Management provided projections done in the normal course of business;
  - o Projections prepared for third party vendors, banks, analysts, and others not involved in the litigation;
  - o Projections used in any M&A activity of the enterprise (i.e. acquiring a target company, sale of the entire company/division/particular product line, etc.);

- o Annual operating budgets, multi-year business plans, rolling budgets, etc.;
- o Projections used in applying for business interruption coverage.

- Counsel must assess and guide us, as experts, on how a particular jurisdiction will deal with owner/employee compensation in required calculations. If the owner cannot perform services in his/her own business because of the defendant's actions, factoring in the owner's reasonable compensation and related benefits may be necessary to make the "plaintiff whole".
- Contrast this with how we business appraisers will consider "reasonable compensation" in determining value. Revenue Ruling 59-60 states "...in the final analysis, goodwill is based upon earning capacity." In determining that capacity, Revenue Ruling 68-609 provides that "...there should be deducted from the earnings of the business a reasonable amount for services performed by the owners or partners engaged in the business." The appraiser will try to establish what an employee of comparable experience, expertise, education and age would earn under similar circumstances working elsewhere in the same locale.
- "Lost profits" damages are generally considered taxable income to the Plaintiff (there may be exceptions when damage measurement by use of "lost profits" is used in a personal injury or wrongful death action. See Abo's separate handout on this). Courts will typically not reduce the gross award from the Defendant. Doing such would certainly not leave the Plaintiff whole "but for" the alleged wrong resulting in incurring an effective double tax. In addition, public policy is considered better served by the defendants having to pay the full damages they caused. The Plaintiff company would receive the award pre-tax, then pay taxes and would presumably be left in the same after-tax position it would have been "but for" the alleged wrong. Such is why we experts would, usually compute the benefits stream for a "lost profits" calculation *before income taxes*.
- Conversely, in valuing a company in a lost business computation, an appraiser will often apply income taxes to the benefit stream being used in the income approach. A shareholder will also typically receive cash flow after-tax and any lost value from the appraisal is based on after-tax earnings.
- In lost profits damage calculations, we generally use a specific time period computing what the enterprise would have earned during the limited period of loss rather than the actual loss suffered. Losses into the future are discounted to present value at

(Continued on Page 15)



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## Measuring Damages

### Lost Profits vs. Lost Business Value

(Continued from Page 14)

an applicable discount rate, risk adjusted or court determined, generally to trial. If the business is destroyed than, in a business appraisal, the "but for" income is computed into perpetuity rather than a specific time period as under the lost profit's methodology. An appraiser may reconcile how this lost income translates to the lost value of the business. Desirous of assessing "economic certainty," Courts are obviously hesitant to grant lost profits damages for long periods where such projections become more and more imprecise too far into the future.

- In performing a typical business valuation, even in a "but for" mode, appraisers will generally perform their work using facts that are "known or knowable" at the date of appraisal. Subsequent events or facts deemed not known as of the valuation date are disregarded. In computing lost profit damages, the period under examination starts on the date of the injury/triggering event and lasts until the losses brought about by the injury have ended. This might be when the injured party has either mitigated the damage or operations resume back to normal. Using subsequent information when doing a valuation as a measure of damages is often very case and jurisdiction case specific. Regardless, generally an "ex-post" approach is used for lost profits computations and an "ex-ante" approach when a business valuation is done to calculate the damages. Ex-ante does not directly include hindsight information into the expected stream of economic income. If one wants to put the damaged party back to the same financial position he or she was before the triggering event, then one would want to use an "ex-post" measure of damages which considers all up to and through the time of trial.
- A well written and reasoned article on this topic is available by contacting us at Abo Cipolla Financial Forensics, with permission, by dear colleagues, Everett Harry, CPA and Robert Dunn, Esq., from Dunn on Damages.

*Abo and Company, LLC and its affiliate, Abo Cipolla Financial Forensics, LLC, Certified Public Accountants – Litigation and Forensic Accountants are Partners in Progress of the Camden County Bar Association. The above article was retrieved from the "E-mail alerts" disseminated to clients and friends of the firm. With offices in Mount Laurel, Morrisville, PA and Franklin Lakes, NJ, tips like the above can also be accessed by going to the firm's website at [www.aboandcompany.com](http://www.aboandcompany.com) or by calling 856-222-4723.*

## Seminars

The Association hosted a seminar, "An Ethics Doubleheader – 1. Avoiding R.P.C. 'Errors' 2. Preventing Billing 'Strikeouts'" on October 2, 2018 at Tavistock Country Club in Haddonfield. Program participants were: Daniel McCormack, Esq., Law Office of Daniel McCormack; John M. Palm, Esq., Law Office of John M. Palm; Anne F. Picker Esq., Assistant Deputy Public Defender; Nicole T. Donoian-Pody, Esq., Charny, Karpousis, Altieri & Donoian; Christopher L. Soriano, Esq., Duane Morris; and Faculty/Moderator Barry W. Rosenberg, Esq.



The CCBA hosted a lunch and learn, "Students with Emotional Issues" at Bar Headquarters in Cherry Hill on October 16, 2018. Speakers included: Faculty / Moderator: Craig David Becker, Esq., Craig David Becker, Attorney at Law; Kevin M. Costello, Esq., Costello & Mains; and William S. Donio, Esq., Cooper Levenson



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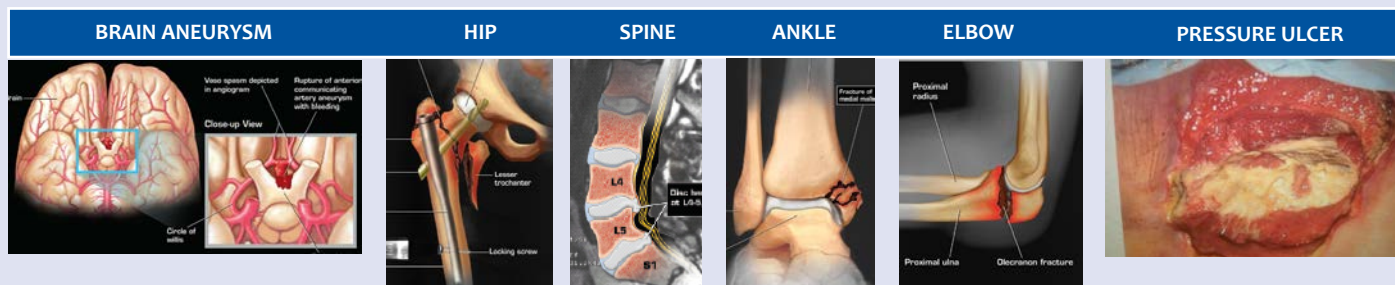


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- \$750K Nursing Home Neglect During Rehab Admission-Infected Pressure Ulcer-Surgery
- \$950K Nursing Home Neglect-Failure to Recognize and Act Upon Signs of Stroke
- \$400K Nursing Home Neglect-Pressure Ulcer Developed on Cancer Patient During Rehab Admission
- \$400K Hospital and Nursing Home Neglect - Pressure Ulcers
- \$550K Nursing Home Neglect/Violations of Rights-Fractured Hip During Transfer-Pressure Ulcers
- \$850K Nursing Home Neglect/Violations of Rights-Bed Sores
- \$1 Million-Nursing Home Neglect/Violations of Rights-Pressure Ulcer and Fracture

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