



## Opening of Court & Memorial Ceremony Set for September 24<sup>th</sup>

*The Court & CCBA pay tribute to departed friends & colleagues*

Members and former members of the Camden County Bar Association who passed away during the past year will be remembered and memorialized at the Bar's annual Opening of Court & Memorial Ceremony at 9 am, Monday, September 24th in Courtroom 63 of the Hall of Justice in Camden.

All bar members, family and friends are invited and urged to attend the ceremony, which will be presided over by Assignment Judge Deborah Silverman Katz. A coffee and pastry reception immediately sponsored by the CCBA follows the ceremony.

"The Opening of Court and Memorial Ceremony is one of the Association's oldest and most meaningful traditions," said Bob Greenberg, chair of the Memorials Committee. "It is the one opportunity we have to come together and pay respects to the memory of cherished friends and colleagues who are no longer with us. I urge every Bar member to take the time and make every effort to join us on September 24th."

Those being memorialized and remembered, are: **Jane H. Kenny, Anthony M. "Tony" Bezich, Hon. Michael Patrick King, Stephen D. Morgan, William Mackin, Hon. Mary Ellen Talbott** and CCBA staff member **Denise Susan Whybark**.

Tate & Tate Certified Shorthand Reporters in Medford will donate their services to transcribe the proceedings and provide a complimentary transcript to the families of those memorialized.

The court will be closed until the ceremony concludes, so we hope you to make every effort to attend this special ceremony.



## Honorable Stephen M. Orlofsky to Receive Gerry Award October 23<sup>rd</sup>

*Former U.S. District Court for the District of New Jersey*

Former Judge of the United States District Court for the District of New Jersey, Honorable Stephen M. Orlofsky, has been named the 2018 recipient of the prestigious Judge John F. Gerry Award. The award will be presented at the **23rd Annual Gerry Award presentation cocktail party on Tuesday, October 23<sup>rd</sup> at Tavistock Country Club**. This event features a three-hour cocktail party with food stations and open bar sponsored by Law Clerks of Hon. James Hunter, III (United States Court of Appeals for the Third Circuit, 1971-1989.) Judge Orlofsky, will receive his award during a brief formal program, at which time the 2018 Judge John F. Gerry Memorial Scholarship(s) will also be presented.

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.

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Newly installed CCBA President Ron Lieberman presents Immediate Past President Eric Fikry with the President's Plaque at the June Installation of Officers & Trustees Celebration.

See [Page 5](#) for more photos from the evening.

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See [Page 10](#) or more Details!



## THE DOCKET

### Thursday, September 6th

*Debtor-Creditor Relations Committee Meeting*  
8–9am

Bar Headquarters

*Young Lawyer Committee Meeting*

12:30 – 1:30 pm

Bar Headquarters

### Wednesday, September 12th

*CCBA Executive Committee Meeting*

4 pm

Bar Headquarters

### Thursday, September 13th

*Immigration CLE- Jumping the Wall*

Noon – 2:15 pm

Tavistock Country Club, Haddonfield

### Sunday, September 16th

*9<sup>th</sup> Annual Lobster Bake*

*to benefit The Larc School*

4:30 – 8:30 pm

LaScala's Birra, Pennsauken

### Monday, September 17th

*Foundation Board of Trustees Meeting*

4:30 pm

Bar Headquarters

### Monday, September 24th

*Opening of Court & Memorial Ceremony*

9 – 11am

Hall of Justice, Camden

### Tuesday, September 25th

*Bridge the Gap -*

*NJ Real Estate Closing Procedures*

3 – 6:15 pm

Tavistock Country Club, Haddonfield

### Thursday, September 27th

*Association Board of Trustees Meeting*

4 pm

IL Villaggio Restaurant, Cherry Hill

*Meet the Judges & Law Clerks Reception*

5:30-7:30 pm

IL Villaggio Restaurant, Cherry Hill

## Tentative agenda for September 27<sup>th</sup> Trustees Meeting

A tentative agenda for this month's regular Board of Trustees meeting follows. The meeting will begin at 4 pm at Il Villaggio in Cherry Hill. All meetings are open to the membership. Anyone interested in attending should notify and confirm their attendance by calling Bar Headquarters at 856.482.0620.

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



## Farewell

As Association President Ron Lieberman announced, after 14 years as Executive Director of the Camden County Bar Association I retired on August 31st. Having spent 42 years in Association management, I can honestly say that the past 14 were the best.

I am proud to have been associated with the finest county bar association in New Jersey and have always been impressed by the dedication to excellence and professionalism displayed by this organization's leaders and members.

Although I plan to kick back and do some traveling, I will miss my time with the CCBA and the many friendships I have made over the years.

I thank you for your support during my tenure, and I wish all of you the very best life has to offer. I would be remiss if I didn't also extend a big thank you to my Bar Headquarters team, Roseanne Riley, Krystal Widman and those who have worked so diligently throughout the years to serve you in an efficient and professional manner.

So again, thanks for 14 great years. It has been an honor for me to represent you and I hope our paths will cross again.

I know my successor, Kara Edens, will do a great job!

Regards. LP

## The Association's Highest Honor for Service

### Nominations Sought for Devine Award

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 and current Foundation 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. Nominations must be received by **October 19**, to be considered.

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## THE BARRISTER

Published monthly, except July and August, by the  
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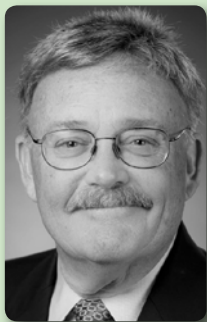
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## Harbeson Named Camden County's 2018 Professional Lawyer of the Year

*Camden County Award Named in Memory of Harvey M. Mitnick*

Following a review of nominations received from the membership, the CCBA's Committee on Professionalism and Board of Trustees have named Robert G. Harbeson the **2018 Camden County Harvey M. Mitnick Professional Lawyer of the Year**.

Camden County's Professional Lawyer Award was named by the trustees in memory of past CCBA President Harvey M. Mitnick who passed away in 2014. Harvey was the 1998 Camden County Professional Lawyer of the Year.

Bob received his Juris Doctor in 1971 from Rutgers University where he was a published editor of the Law Journal. He joined Archer in 1971 and has been a partner since 1976, and currently serves as Of Counsel for the firm.

For over 40 years Bob has been engaged in jury trial litigation. His primary emphasis has been with Personal Injury related trial work in both State and Federal Courts. With a background in medicine and anatomy, he has specialized in the general areas of Insurance Litigation, Contract Interpretation, Workers' Compensation and a wide spectrum of bodily injury claims. He has been a Certified Civil Trial Attorney by the Supreme Court of the State of New Jersey from the original certification class in 1982 continuously to the present.

He is also certified as a Mediator by the State of New Jersey and an Arbitrator by the United States District Court for the District of New Jersey. He has a substantial practice in arbitrating and mediating a wide variety of cases designated by the Court and/or by fellow counsel.

Bob will receive his award on October 11th at the NJ Commission on Professionalism in the Law's annual awards luncheon.

Congratulations Bob! Well deserved.

## Honorable Stephen M. Orlofsky to Receive Gerry Award October 23<sup>rd</sup>

*(Continued from Page 1)*

Steve leads the appellate practice and is the administrative partner of Blank Rome's Princeton office. He concentrates his practice in the areas of complex litigation and alternative dispute resolution, and counsels clients throughout the United States in federal and state civil and criminal courts, both at the appellate and trial level. He has experience litigating, arbitrating, mediating, and serving as a special master in a wide variety of matters.

Prior to leaving the federal bench in 2003, Steve served as one of three federal judges on a 13-member Judicial Assessment Team, which traveled to Iraq to evaluate the Iraqi judicial system to assist the Coalition Provisional Authority in reconstructing the Iraqi court system.

In 2005, he was appointed by the president-elect of the New Jersey State Bar Association to serve as the vice-chair, South Jersey, of the New Jersey State Bar Association's Judicial and Prosecutorial Appointments Committee. He served in that capacity from 2005 to 2007. He was also appointed by the chair of the ABA Litigation Section to serve as a member of its Ethical Standards for Mediation Task Force. He currently serves on the Uniform Law Commission, the national body that considers the adoption of uniform state laws, where he is one of New Jersey's three Uniform Law Commissioners.

In 2008, Steve was honored by the Camden County Bar Association with the Hon. Peter J. Devine Award for distinguished service.

Steve served as a captain in the U.S. Army, Field Artillery, from 1966 to 1970, and was inducted into the U.S. Army Artillery OCS Hall of Fame (Durham Hall) on May 21, 1999.

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 Presentation are \$80 in advance and \$90 at the door, with a portion of the ticket price going to the Gerry Scholarship Fund. To make reservations for the Gerry Award presentation, use the Gerry Award flyer or reserve and pay online at <https://camden.intouchondemand.com>. Reservations must be received by Friday, October 19th.



The Association was saddened by the passing of Long time bar headquarters staff member

**Denise K. Whybark**  
on Wednesday June 27th.

**Hon. M. Allan Vogelson, P.J.Ch. (Ret.)**  
On Friday, July 20th.



We extend our sincere sympathies to the families, friends and colleagues of these two longtime members of the Association.

They will be missed.

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By Ronald G. Lieberman

# PRESIDENT'S PERSPECTIVE

## Perception Matters

Lawyers consider themselves to be in the service of law and the administration of justice. There is an ever-growing dissatisfaction with the legal profession and one only need to read articles or listen to comedians to know that such dissatisfaction is common place. But, such dissatisfaction and cynicism threaten to erode the historic contribution of lawyers in the administration of justice and the lawyer's crucial role in a free and democratic society. This criticism of attorneys is not just limited to the attorneys individually but to the Bar Association that is believed not to adequately handle lawyer misconduct. It is personally painful to speak of the dissatisfaction with lawyers and the present decline of professionalism because I believe lawyers are key participants in our profession and it is a profession that is honorable and noble. The law is a vocation which comes from its root word "vocar" meaning "to call." That is why British colleagues assert that they are called to the Bar.

One should not forget that of the 56 signers of the Declaration of Independence, 35 were lawyers and that of the 55 members of the Constitutional Convention, 34 were lawyers.<sup>1</sup>

But what could cause the dissatisfaction that the public has about lawyers? Is it the "hired gun" approach to litigation where individuals believe that a lawyer has no core beliefs and is merely a vessel for argument? The public does not understand that a layperson can sit in a courtroom and hear the same attorney argue both sides of the same issue for different clients, both arguments being made with a straight face. That is not an attorney being a "hired gun," but instead the attorney being a zealous advocate.

Could dissatisfaction with lawyers lie in the increasing incidence of uncivil and discourteous behavior among lawyers? Such negative betrayal of lawyers causes the public to think that the adversarial system for the presentation of cases is not designed to ascertain the truth but designed for lawyers to yell and scream and ignore the principles of professional ethics.

You may remember your law school days when you were taught that the adversarial system is the focus of the study of law. You had to read cases and learn how to read a case to receive those crucial lessons to be learned and the skills to be acquired. We are taught from a very early stage in our legal education that winning cases is the goal and the sign of success. These introductory lessons are reminiscent of battle in the old days by gladiators. Law students are not trained or taught to search for a just and equitable solution to legal problems but instead for the zealous advocacy and the resolution of the case through litigation. Is that why the public distrusts attorneys as a whole?

No. Lawyers are viewed by the public as being materialistic and concerned only about billable hours. It appears from the public's point of view that materialism is the predominant motivation behind litigation and that lawyers are aiding and abetting litigation and injustice instead of justice and a search for truth.

The readers of this Article can be excused for thinking that the constant drumbeat in the New Jersey Law Journal about the profitability of law firms, the amount of billable hours, the billable rates, and the number of associates would lead the public to think money drives the legal profession. The costs of maintaining a law firm keep going up. These costs reflect increasing associates' salaries and the costs of training, office space, equipment, libraries and computers, to say nothing of trying to keep up with technology.

Over the years, there has been a lawyer explosion and critics of the legal profession cite the large number of lawyers as a cause for dissatisfaction with the legal profession. Any practitioner that litigates knows there is a large quantity of cases being brought to court and this "litigation explosion" reveals itself through calendar congestion. But is it really a negative that people have confidence in the judicial system and are resorting to going to court to resolve them? Regardless, lawyers are regarded as instigators of strife and not peacemakers and problem solvers.<sup>2</sup>

There is another issue, and that is the competence of the attorneys. Incompetence may reflect a lack of knowledge of the law or lack of experience. The only solution then is study, training, and experience which would seem to be the driving force behind the mandatory continuing legal education requirements. But staring at an iPad or a phone and marking time until a course is over does not provide one with training and competence in the law. Competence includes adequate preparation and care in the representation of clients. Whether due to the lack of preparation or lack of time, lawyers who are over-extended are violating these duties to their clients.

The public does not necessarily know how to differentiate between the competent lawyer and the incompetent lawyer or what the fundamental values are of the legal profession in order to differentiate between the "good lawyer" and the lazy or over-extended lawyer.

So what is the solution to the lousy picture the public has of lawyers? The solution is the Bar Association. A Bar Association that insists that its members adhere to the highest ethical standards of conduct. A Bar Association that never questions that the idea of the profession is service not the maximization of profits and billable hours. I am a proud member

of a law firm and I am proud of making a living in the law. But I am equally proud, if not more so, of my firm's service to the community. The law is a profession to administer justice and to serve clients. Lawyers must resist the temptation to make their own self-interest the primary goal of the practice of law. As was stated many years ago by Dean Pound, a profession is "no less a public service because it may incidentally be a means of livelihood."<sup>3</sup>

The lawyer, him or herself, is responsible for preparing the client for Court, being a thoughtful advisor, a careful planner, and a skilled negotiator. The lawyer must inform the client of the legal consequences of a contemplated action. It is our obligation to provide this information, advice, and service when called upon. The lawyer must be able to provide his or her professional opinion on the legal consequences of any contemplated act or conduct and to the extent possible inform the client of practical and social consequences of those proposed actions.

And yes, the lawyer must tell his or her client of solutions which are the least costly and most likely to provide maximum satisfaction.

There is one final note. Our law schools are required to join in this effort. It is in law school that the lawyer first learns the rules of law, the practice of law, and the ideal of law as a profession. Therefore, law professors are potential role models and have the opportunity to instill in their students notions of fair dealing and professional conduct. Law schools must play a more active and sustained role in molding attitudes and values. Not only must they teach professional ethics effectively but professional values with ethics as an integral part of the legal education. I do not think that this being a part of law school curriculum is too much to ask.

These ideas are certainly steps in the right direction but they will be meaningless if the lawyer's conduct and the manner in which the lawyer conducts his or her practice is deficient. I call on everyone to acknowledge the problem that lawyers face in our profession, face this problem together along with a commitment together to take these corrective actions, and change the perception of lawyers in the eyes of the public.

<sup>1</sup> Charles A. Goodrich, *Lives of the Signers of the Declaration of Independence* (1976)

<sup>2</sup> Nina Bernstein, *Crooked Lawyers Protected: Discipline slow, soft, secretive*, News Day, January 21, 1992 at page 4; Washington Post, March 15, 1992 at C8.

<sup>3</sup> Roscoe Pound, *The Lawyer From Antiquity to Modern Times* 5 (1953)

# A New Sheriff in Town

## Ron Lieberman

becomes the 92<sup>nd</sup> President of the Association

The evening of **Thursday, June 7th** was hot, muggy and sunny as members of the bench and bar, family and friends of incoming CCBA President Ronald G. Lieberman arrived at the Katz Jewish Community Center in Cherry Hill to celebrate the changing of the CCBA guard. During a festive cocktail party, guests witnessed the swearing in of Association and Foundation Officers & Trustees by Hon. Lee A. Solomon, Associate Justice, New Jersey Supreme Court.



Lou Moffa, incoming Foundation president; Jenifer Fowler, outgoing Foundation president; Eric Fikry, outgoing Association president; Ron Lieberman, incoming Association president.



Judge Dortch, Judge Eynon, Andy Kushner



Lou Moffa & Jen Fowler toasting to the Foundation changing of the guard



Rick DeMichele, Jenifer Fowler, Michelle Badolato, Brenda Eutsler, Justice Solomon



Rachael Brekke, Partner in Progress Marty Abo & Katheryn Eisenmann



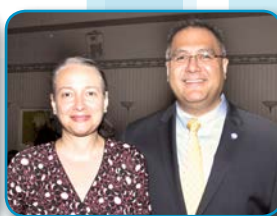
Maisie Smith, Jaime Santos, Melanie Santos Grant



Brian & Jennifer Barr



Matthew Podolnick & Lee Perlman



Immediate Past First Couple Roseanna Seriano & Eric Fikry



Peter Halden & Alexandra Rigden



Pat McShane & Jim Herman



Bob & Tina Tate, Jim & Linda Hamilton



Newly installed Association officers & trustees: Neel Bhuta, Young Lawyer Trustee; Katheryn Eisenmann, Trustee; Daniel Mellor, Trustee; Ron Lieberman, President; Dan DeFiglio, Trustee; Michelle Badolato, Vice President; Tom Hagner, Trustee; Rachael Brekke, Secretary; Mike Dennin, President-Elect. Not pictured, Dawnn Briddell, Treasurer



Newly installed Foundation President Lou Moffa with newly installed Foundation Trustees Tina Tate, Tate & Tate Certified Court Reporters and Barry Epps, Investors Bank (CCBA Partner in Progress)



Haleh Rabizadeh, Judge Fox, Ron Lieberman, Judge Eynon

## OUT AND ABOUT

### Installation Dinner Dance



Jeff Resnick & Donna Bell



Blair & Rhea Brekka, Neel Bhuta



Bill O'Kane & Lou Moffa



Dan DeFiglio, Raquel DeStefano, Michael Sweeney



Chris Keating & Claudia Bustamante



Vince Ciecka & Mike Dennin



Craig & Beth Becker, Brian Herman, Tom Hagner



Casey Price & Glenn Henkel





## FOUNDATION UPDATE

# Lobster, Laughs and Links in the Fall

By Louis R. Moffa, Jr.

Greetings, salutations and welcome to another year of great events sponsored by the Camden County Bar Foundation. It is my honor, privilege and pleasure to take over from Jen Fowler as President of the Bar Foundation, and I am looking forward to a successful and rewarding year. We congratulate and thank Jen Fowler for her tireless and inspiring service as President of the Bar Foundation this past year. She faced challenges with grace and tenacity, a winning combination for the job. She delivered truly positive results and great events. I have a high standard to meet.

The Foundation is an exceptional organization that provides community service activities including our annual Holiday Adopt-a-family program, Children's Holiday Breakfast and Party in which Santa hands out toys to 200 children and the Children's June Picnic where 200 children enjoy hot dogs, burgers, cotton candy, ice cream, pony rides and so much more. In addition, the Foundation provides scholarships for law, college and high school students. There are countless other Foundation events such as the Lobster Bake which supports the Larc School, the Chili Cook Off which supports our Veterans and the annual Wills for Heroes.

This Foundation year started early with the First Tee Golf Outing with kids on July 9. By all accounts, it was a great success. That event was followed closely by "Festivus II" on July 18. Through the generosity of CCBA Partner in Progress Marty Abo and his wife Jane, the Foundation hosted a "Festivus in July" networking party with proceeds being used to purchase toys for the Public Benefits Committee's Children's Holiday Breakfast and Party on December 1. There was plenty of food, drink, laughter and conversation, and a little Abo silliness.

Next on the agenda will be the Lobster Bake on September 16 at a great new location on the Cooper River, La Scala's Birra. This is a fantastic way to enjoy good food, drink and friendship, and support the Larc School. Let's make it a sell-out!

I would also like to remind and encourage everyone to attend the Opening of Court and Memorial Ceremony on September 24. There is no better way to pay respects to and honor our deceased members and friends.

Hit the links on Columbus Day, Monday, October 8, for our annual Autumn Scramble Golf Outing. This year's event will be at Riverton Country Club and should be great. Finally in October, sign up for the 23rd Annual Camden County Bar Foundation Judge John F. Gerry Award & Scholarship Presentation Honoring Hon. Stephen M. Orlofsky Former United States District Judge for the District of New Jersey at Tavistock Country Club. Stay tuned for more information about the Fall Frolic, Children's Holiday Breakfast and a soon-to-be-announced event for Spring 2019.

The leaders of the Association and Foundation continue to amaze me with their commitment to fulfilling the mission of those organizations, and I am humbled to be part of that team. Together with the membership at large, we can truly make a positive difference in the law, the judiciary, and the community. We must strive to bring meaningful, effective representation and access to justice to our clients; to bring a better understanding of the law to our community; and to bring our spirit of service and giving to those less fortunate. That must be our goal, our mission and our passion.

I look forward to continuing to work with all of you as Foundation President, and I urge you to participate in all of our events and be as generous with your time and money as circumstances permit.

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# YOUNG LAWYER HAPPENINGS



## YOUNG LAWYER CHAIR

### It's Time for September and the Lobster Bake!

By Neel Bhuta

I hope that everyone had a great summer. Those who had the opportunity were able to spend some time down the shore or on vacation. I know that we have a lot to look forward to this year, starting in September (not least of which is the Eagles championship defense and hopefully Phillies postseason baseball as well!).

I know that I am looking forward to a great year as the Young Lawyer Trustee. We will be hosting the Lobster Bake in September, which is discussed in more detail below. We also get to take part in Halloween and Easter parties at the Anna Sample House in Camden, as well as a Chili Cook-Off in February that supports our veterans at Veterans Haven in South Jersey.

For the bar, September is the start of the new court calendar, and we have the wonderful introductory events that we have every year. On September 24, 2018, at 9 AM, we will have the Opening of Court & Memorial Ceremony in Courtroom 63 at the Hall of Justice in Camden, where we get to honor those in the legal community that passed away in the last year. And on September 27, 2018, at 5:30 PM, we will have the Meet the Judges and Law Clerks Reception at Il Villagio Restaurant in Cherry Hill when we get to interact with the judges and law clerks who will be refereeing our interactions with the local courts over the next year. For me, both of these events have always signified that it is time to buckle down and get back to work after what was hopefully a fun summer.

For the Young Lawyers, we have our largest event of the year in September: on September 16, 2018, we will be hosting the 2018 Lobster Bake. This year, we will be having the event at LaScala's Birra on the Cooper River in Pennsauken. That's actually functionally the same place as last year—

at the location of the old Cooper House. Same great place, new ownership. Those of you who have come before know that it is a terrific venue, right on the banks of the river, and we will serve terrific food, with lobster and all the fixings.

Most importantly, the event and its proceeds go toward supporting the Larc School in Bellmawr, New Jersey. This wonderful event is held to benefit the great students there and those who teach and care for them.

The Larc School is a private Approved Private Special Education School serving students with a wide range of moderate to severe disabilities, ages 3 to 21. Founded in 1966 in response to the extraordinary education needs of a group of concerned families, Larc School provides educational and therapeutic services to families from six counties in the South Jersey region. The school strives to meet the needs of all its students and adults with varying disabilities in a dignified manner by providing opportunities for growth, development, and independence. The school recognizes that an individual's success soars when a strong connection is built between the family, the school, and the community.

And we in the Bar can help strengthen that connection by supporting this event with both our presence and our wallets. The school and the kids there need our help. Teaching and caring for the students requires a monumental expense, and any dollar raised through this event can help the development of someone with a disability and

**SAVE THIS DATE!**

Young Lawyer Committee  
Camden County Bar Foundation  
9th Annual Larc School Fundraiser

# Lobster Bake

September 16th  
LaScala's Birra

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help point that individual toward independence. We are fortunate to practice law in a great place like Camden County, and we have the opportunity to serve the people of our community. This event allows us to do so, while also celebrating the end of summer with all of our friends. It's a special end-of-summer day of great food, great camaraderie, and great fun, all for a great cause!

We are looking for people to buy tickets--last year, we were fortunate enough to sell out our ticket allocation, so buy them now before the event sells out again. We are also looking for people to buy sponsorships. They are a great opportunity to connect you and your business with the marquee even on the Young Lawyer calendar, all while supporting an incredibly worthy cause.

You will see flyers for both purchasing tickets and for sponsorship opportunities in this Barrister. Please sign up today!

## Lobstermania Is Back!

*All members and friends invited to attend*

Plans are just about complete for the Bar Foundation and Young Lawyer Committee's **Lobster Bake** for Larc on Sunday, September 16, from 4:30-8:30 p.m. at The Cooper House in Pennsauken and **ALL members and friends are invited.**

Proceeds from the Lobster Bake will be used to continue the **Scholarship Fund** for students with a wide range of moderate to severe disabilities attending the **Larc School** in Bellmawr. The scholarship was established through the Bar Foundation with proceeds resulting in over \$50,000 being donated to the school from first eight events.

There are also a number of **marketing/sponsorship opportunities** associated with the Lobster Bake. **Click** to learn more about how you and/or your firm can further ensure the success of this important event.

So grab your family and friends and come on down to the LaScala's Birra for a traditional New England lobster dinner with beer, wine, dessert and games, all for one low price!

To make reservations for this potentially sold out event, use the **Lobster Bake flyer** or **reserve and pay securely online.**



# OUT AND ABOUT

## Retirement

On Monday evening, August 13th Association and Foundation officers, trustees, former trustees and Partners in Progress gathered at Il Villaggio in Cherry Hill for a dinner and to say farewell to retiring Executive Director, **Larry Pelletier**.



**Larry Pelletier** accepts a Resolution recognizing his retirement from President **Ron Lieberman**



**Past President Joe McCormick**, President **Ron Lieberman** & **Larry Pelletier**



**Past President Tom Hagner** & former trustee **Ira Deiches**



**Past Presidents Jim Hamilton** & **Rick DeMichele**



(**Pennworth Financial Services**) **Mike Craig** & **Loren Kagan**.



**Past Presidents Tom Hagner**, **Brenda Eutsler**, **Lou Moffa** & **Andy Kushner**



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**Former trustee Lou Guzzo**, current trustee **Brian Herman** & **Rick DeMichele**



**Current trustee Tom Hagner** & **Tom Hagner**



**Current trustee Matt Rooney** & **Lou Guzzo**



**Lou Moffa**, **Immediate Past President Eric Fikry** & former trustee **Arnold Fishman**



**Trustees Dan Mellor**, **Chris Keating** & **Dan DeFiglio**



The "Young Guns" trustees **Tom Hagner**, **Matt Rooney**, **Abe Tran**, **Brian Herman** & **Chris Keating**



**Patti** & **Past President Gary Boguski**





By Greg Spadea

## 50% or 100%

### 10 Exceptions Allowing You to Deduct 100% of Your Business Meals in 2018 and Beyond

Beginning in 2018 Entertainment is no longer deductible but business meals are still 50% deductible. Most clients are aware of the tax rule that disallows 50% of their business meals. What is not nearly as widely known is that there are 10 exceptions to this 50% disallowance rule. When one of these exceptions applies, you get a 100% deduction for the business meal expense.

#### 1. Meals Served on the Employer's Premises

An employer may provide employees with meals at work and claim a full deduction without the employees having to report the value of the meals in their income. The key is the meals have to be provided (a) for a valid business reason, (b) on or near your businesses premises, and (c) primarily for the convenience of the employer rather than merely as an added fringe benefit for employees. An example would be a hospital providing meals to hospital staff so they are nearby if a patient needs immediate care.

#### 2. Employee's reimbursed expenses

If you are an employee, you are not subject to the 50% limit on expenses for which your employer reimburses you under an accountable plan. The employer can deduct the expenses although it is subject to the 50% limit.

#### 3. Reimbursed Expenses Treated as Compensation to the Employee

If the employer does not have an accountable plan and the employer includes the reimbursed expenses in the employee's wages the expenses are not subject to the 50% limit for the employer. A reimbursement or expense allowance arrangement is an "accountable plan" if it satisfies the requirements of business connection, substantiation, and requires the employee to return amounts in excess of the substantiated expenses.

#### 4. Meals and Entertainment Expenses for Employees

Employers can deduct the full cost of providing food and beverages at recreational, social, or entertainment gatherings primarily for the benefit of rank and file employees. Examples include company golf outings, Christmas parties, or other gatherings for employees and their guests.

#### 5. Items Available to the Public

Expenses incurred for meals available to the general public are 100% deductible. Examples include free food at concerts hosted by a Cable Company, free dinners for potential restaurant customers, free hot dogs at a Furniture store promotion, free wine and food at an exhibition sponsored by a winery, and free brownies furnished by a realtor at an open house.

#### 6. Meals and Entertainment Sold to Customers

When services are provided to a client the service provider can deduct 100% of job-related meal and entertainment expenses by billing the client separately for these costs. However the client is then stuck with the 50% disallowance limit. If separate billing doesn't occur, the 50% disallowance rule applies to the service provider. For example, many of our clients adequately account for meal and entertainment expenses to a client who reimburses them for these expenses. They are not subject to the directly-related or associated test, nor are they subject to the 50% limit. If the client can deduct the expenses, that client is subject to the 50% limit.

#### 7. Sale of meals or entertainment to the Public

You are not subject to the 50% limit if you actually sell meals, entertainment and services. For example, if you run a nightclub, your expense for the food and entertainment you furnish to your customers is not subject to the 50% limit.

#### 8. Meals Provided to Raise money for Charity Through Sports Events

The allowable deduction for the cost of a ticket to a qualifying charity sports event isn't reduced by the 50% meal disallowance rule even when meals are included. The ticket package must include admission to the event, but it can also include meals and refreshments. To qualify, the charitable event must give 100% of its net proceeds to a charity and use volunteers to do almost all the work. The classic example is a charity golf tournament with a meal included in the deal.

#### 9. Meeting of Business Leagues Exempt under Internal Revenue Code Section 501(c)(6)

Section 501(c)(6) of the Internal Revenue Code provides for the exemption of business leagues, chambers of commerce, real estate boards, boards of trade and professional football leagues, which are not organized for profit to deduct the entire cost of meals provided to members at meetings.

#### 10. Department of Transportation Hours of Service Limitations are 80% Deductible

In lieu of the regular 50% disallowance, individuals whose work is subject to the hours of service limitations of the Department of Transportation (e.g., interstate truck drivers, certain air transportation employees, certain railroad employees) can deduct 80% of their business food and beverage expenses.

As you can see, there are enough exceptions to the 50% disallowance rule that most businesses can meet at least one, if not more of them. If you have any questions please contact Gregory J. Spadea at 610.521.0604.



# Columbus Day Holiday AUTUMN SCRAMBLE GOLF OUTING

Monday, October 8<sup>th</sup>





## PERSONAL INJURY LAW

# The Two Trusts Solution for Saving the House in a Birth Injury Case

By Thomas D. Begley, Jr., CELA

Many birth injury cases result in significant recoveries for the plaintiff(s). As in most personal injury cases, the family usually has three wishes: a house, a car and a trip to Disney World. Frequently, the family is of modest means and the injured parties receiving means-tested public benefits such as SSI and Medicaid. In those cases, a Special Needs Trust is usually drafted to hold the settlement proceeds in order to enable the injured child to maintain those benefits.

### Payback

One of the requirements under both federal and state law for a Self-Settled Special Needs Trust is that on the death of the beneficiary of the trust Medicaid be repaid for all medical assistance rendered to the trust beneficiary since birth. As a result, upon the death of the child with disabilities, the home that was purchased with the proceeds of the settlement of the lawsuit must be sold to repay Medicaid, and the family living with the injured child is left homeless. How can this result be avoided?

### Two Trusts

Suppose at the time of settlement an allocation was made of the proceeds and paid into a First Party Special Needs Trust, and a portion was allocated to the parents to be paid into a Settlement Protection Trust for the benefit of the parents? If necessary, the parents' trust could be restricted to the purchase and maintenance of a home for the parents and the parents' family. If the parents had sufficient income, the trust could purchase the home and the parents could pay the expenses of maintaining the home. The First Party Special Needs Trust for the benefit of the child could contribute a pro rata share of the maintenance costs. For example, if four people lived in the home, the Self-Settled Special Needs Trust could pay 25% of the cost of maintaining the home, such as real estate taxes, insurance, utilities and maintenance. If the parents' income combined with contributions from the First Party Special Needs Trust was not sufficient to pay all of the expenses of maintaining the home, then the trust would have to be funded with sufficient additional monies to pay the differential in maintaining the home. A Structured Settlement could even be obtained for that purpose. There is no payback required from a Settlement Protection Trust. The Settlement Protection Trust could contain language establishing a Third Party Special Needs Trust for the benefit of the child with disabilities upon the death of the surviving parent. There is no payback to Medicaid required from a Third Party Special Needs Trust.

If the child with disabilities died, the funds in the Self-Settled Special Needs Trust would go to repay Medicaid, but the funds allocated to the parents' Settlement Protection Trust would not be subject to the Medicaid payback on the death of the child and the family could continue to occupy the home. In fact, there would be no Medicaid payback even on the deaths of the parents.

If the parents predecease the child with disabilities, the home could be held in the Third Party Special Needs Trust established under the terms of the parents' Settlement Protection Trust. The Third Party Special Needs Trust would be for the benefit of the child with disabilities, and the trustee of that trust could be authorized to retain the home for the benefit of the child with disabilities, if that would be appropriate. Otherwise, the trustee could be authorized to sell the home and deposit the proceeds of sale in the Third Party Special Needs Trust for the benefit of the child with disabilities. Under this arrangement, the child is guaranteed a residence for so long as he or she is capable of living there, and the parents do not lose the residence upon the premature death of their child.

### Allocation

The key to this strategy is the allocation to the parents. If the injured party is a minor or an incapacitated person, the settlement must be approved by the court. The court will want to see that the allocation between the parents and the child is reasonable. The parents of a child with disabilities have a legal obligation to support the child. Parents are required to provide a normal amount of care for their children. However, in the case of a child with disabilities, the parents will be providing an "extraordinary" level of care. Parents are entitled to some form of compensation for that care. A Pediatric Care Manager or a Life Care Planner can quantify the level of extraordinary care that is expected to be provided by the parents to the child. This plan can be presented to the court as a basis for the allocation to the parent. In addition, parents are entitled to a loss of companionship by reason of the birth injury. This is similar to the loss of consortium claim of a spouse that the courts frequently approve. (See *Thalman v. Owens Corning Fiberglass Corp.*, 290 N.J. Super 676.)

*Begley Law Group, P.C. has served the Southern New Jersey and Philadelphia area as a life-planning firm for over 85 years. Our attorneys have expertise in the areas of Personal Injury Settlement Consulting, Special Needs Planning, Medicaid Planning, Estate Planning, Estate & Trust Administration, Guardianship, and Estate & Trust Litigation. Contact us today to begin the conversation.*

## Pay Your Dues, Don't Miss Out!

The Association's dues policy states: *Members, whose dues remain unpaid as of September 1, will not be entitled to the benefits of membership. As long as dues are outstanding, unpaid members will not be able to attend member-only events, will pay non-member tuition rates for Association-sponsored CLE seminars and events, will be removed from the Barrister mailing list, will not be able to serve on a committee, and will not receive discounts and services provided by Association Partners in Progress.*

*All benefits will be restored when dues are paid in full.*

Paying promptly enables your Association to continue serving you and the community with its many important programs and services, and the CCBA's new Member Portal (<https://camden.intouchondemand.com>) makes it easy to securely renew online.

Think about the many benefits you receive—offering NJ & PA credits, opportunities to network with judges and colleagues at member only events, opportunities to affect the future of the association by serving on a number of important committee

and discounts on many legal products and services – AND beginning this year, every member will receive a voucher good for **6 FREE NJ CLE Credits** (approx. three 2-hr. seminars), which may be used for all live CLE programs.

Should you have questions or need another renewal form call 856.482.0620.

**REMEMBER: The Meet the Judges & Law Clerks Reception on September 27th is a Member Only event, which requires that dues be current to attend.**



# WINE & FOOD



By Jim Hamilton

In the boomer familiar words of John Sebastian, *welcome back*. I hope you were able to find a dry day or two among the seemingly daily forecasted rainfalls to enjoy your favorite outdoor activities and regain any lost enthusiasm to prepare for the busy run to the year's end.

Our last column focused on wines for summer consumption, and I hope you were able to enjoy more than a few bottles to take the edge off the nineties – if the temperatures fell short, invariably the percentage of humidity did not. I thought this month I would return to some additional wines I tasted at the Skurnik Wines Portfolio event that I thought would be worth searching out for their quality and value.

Since the heat will be with us this month and beyond, and since many associate rosé wines with summer, here are a few decidedly different rosés to consider.

**Schneider Spätburgunder Rosé Feinherb** is a German Pinot Noir that while not completely dry (hence Feinherb) deftly balances generous and forward red cherry fruit with a steely penetration that creates a dry impression. While you may have experience with Pinot Noir rosés, many of you may be unfamiliar with the occasional German rosé that finds its way to our area so here is one to try. Taking the short trip to neighboring Austria, the **2017 Prieler Rosé vom Stein** is an affordable entry worth pursuing. The red raspberry fruit with a slight touch of watermelon is presented in a medium body with notions of dried roses wafting with each sip.

Among some of the exceptional white wine values is the **2016 Gini Soave Classico**, a wine made from 100% Garganega, one of the primary grapes from Italy's Soave region. This wine regularly delivers quality and enjoys good distribution so it may be easier to locate than some of the wines we discuss. The fruit is relatively hefty, featuring spiced apples and ripe melon overtones that are quite expansive. It is not a shy wine, but should pair well with a variety of dishes, particularly if sauce is a component. Another nicely performing Soave is **2017 Tenuta**

**Santa Maria Soave Lepia**. This wine is a project of the Bertani family, better known for their Amarone, and like the Gini is made from the Garganega grape. It is a medium weight wine that offers a perception of white flowers. It is perhaps a bit more understated than the Gini, but this should not be viewed as lessening the enjoyment it can deliver.

As you may recall from past columns, the white wines from Italy's Campania region outside Naples made a comeback from near extinction. One of those grapes is handled with considerable skill by Benito Ferrara. It may not be easy to source, but if you find it I think you will enjoy the **2017 Benito Ferrara Greco di Tufo Terre d'Uva**. There is a bounty of white peach and melon fruit that impresses with its extracted feel. While there is a boldness to the flavors, it has enough acidity to make it a lively wine to enjoy, particularly for those who are oak-averse, since it is raised in stainless steel.

An Austrian wine of some charm, particularly for the varietal, is the **2017 Hirsch Gruner Veltliner Hirschvergnugen**. As mentioned previously, 2017 was an excellent vintage for Austrian wines, and this lithely endowed version crafted from the country's most widely planted white grape is a good example of the success achieved. The wine has a nice texture, eschewing the greener notes and white pepper qualities the grape sometimes can impart for ample apple and pear fruit that is particularly inviting.

A wine that is delightful in the affordable pleasure it provides is **2017 Joostenberg "J" Chenin Blanc**. The fruit is round and ripe, resembling citrus and apples, with a clean structure unadorned by oak or overt acidity that nevertheless is carried to a lingering finish. Think of this as a less expensive alternative to France's Vouvray wines. This South African winery, now run by the fifth generation of the Myburgh family, seems to be on its game at all price points year after year. The **2017 Joostenberg Family Blend Red** is every bit as impressive as its white counterpart, with its predominantly Syrah fruit offering telltale black pepper edges to the solid, prickly black fruit. The winery also offers wine bargains under its two "Little J" bottlings. The **2017 Little J White** is very fruity and round, perhaps slightly off-dry but only subtly so. It is an uncomplicated wine for everyday consumption. The **2016 Little J Red** resembles a more unstructured version of the Joostenburgh Family Blend Red, although again



the Syrah fruit dominates showing some very ripe, enveloping tart berry fruit nuanced by the varietal's peppery notes.

Lighter reds often are preferred during the warmer weather, and the Zorzal winery from Argentina offers some worth a look. This is a small, relatively new winery in Argentina's Uco Valley employing grapes that because of the high altitude are less jammy than those below that are able to soak up more heat. Confusingly, Zorzal is also the name of a Spanish winery whose wines I have found to be quite impressive. When I asked co-owner Juan Pablo Michelini, who was pouring the wines, whether there was any relationship between the wineries, he said there was not and they decided to simply coexist in the marketplace. Imagine that! Zorzal is a type of bird for which the families behind each winery apparently share an affection (Viña Zorzal of Spain uses a graphic depiction of the bird on its labels). The Argentinean Zorzal makes a wine from a grape that often can be pricey, so their value entry is a winner worth discussing. **2014 Zorzal Pinot Noir Gran Terroir** conveys black cherry fruit backed by a loamy sensation that manages to be fruit forward and rich without the candied quality that inexpensive Pinot Noirs often will express.


As always, while reading about wines that are recommended and perhaps described by others can be a very useful tool for purchasing guidance, the best way to determine wines worth acquiring is by experiencing them. I am fortunate to have the opportunity to attend tastings where many hundreds of wines are available to sample, often being poured by people who are behind the wines' creation, and I hope at least some of the wines suggested here find their way to our stores and ultimately to your home or your favorite BYOB restaurant dinner table. Cheers!

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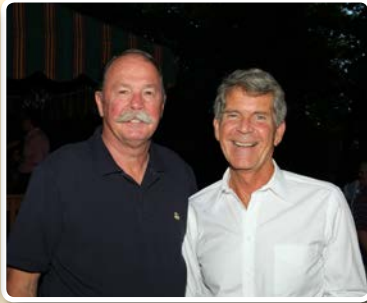
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# OUT AND ABOUT



*Our Hosts, Marty & Jane Abo, roll out the Welcome Mat*



*Lou Moffa, Don Fox*



*Heather & Barry Epps  
(Partner In Progress - Investors Bank),  
Cathy Cardozo*



*Rich Cohen, Andy Kushner*



*Jamie Mulholland, Rhea Brekke, Brekke*

## FESTIVUS for the Rest of Us II

July 18th was a beautiful summer evening for a party—a **FESTIVUS PARTY!** Through the generosity of CCBA Partner in Progress Marty Abo and his wife Jane and Partner in Progress Investors Bank, the Bar Foundation was able to raise funds to purchase toys for the Children's Holiday Breakfast & Party on December 1st. The mood was festive and the food and beverage were terrific! Attendees also had a chance to explore the ABO Wonderland as featured in SJ Magazine.

**Thanks Marty, Jane and Barry Epps (Investors Bank).**

**We appreciate it!**



*Jim Badaloto, Judge Eynon,  
Andy Kushner*



*Jessica Starkman, Peter Boyer*



*Judge Fox, Jim Hamilton*



*Lou Moffa, Marty Abo  
(Partner In Progress)*



*Peter Boyer, Lisa Moore, Marty Abo,  
Ben Folkman*



*Amy & Mike Schiff*



*Jane Abo, Beth Folkman*



*Jim Herman, Judge Lihotz*



*Mark Kravitz, Paul Slotkin, Rich Cohen*



*Beth & Craig Becker*



*Jane & Marty Abo*





**EXPERT WITNESSES**

**New Jersey Law Adopts the *Daubert* Expert Witness Standard**

*Same Gatekeeping Process, or a New Gate Altogether?*

By Benjamin R. Kurtis, Esq.

Since the Supreme Court of the United States decided the seminal case of *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579 (1993) a quarter-century ago, New Jersey law had not fully embraced that case's well-known, multi-factor test for evaluating the reliability of expert witness testimony. Until now. Last month, the Supreme Court of New Jersey issued its decision in *In Re: Accutane Litigation* ("Accutane"), expressly adopting the *Daubert* framework. But beyond the clear structure that *Accutane* created and mandated for future cases, does this decision matter for New Jersey litigants? On one hand, New Jersey law has long employed a *Daubert*-like analysis, and did so before *Daubert* was even decided. On the other, *Accutane* may signal an important, restrictive shift in New Jersey's approach to the admissibility of scientific expert testimony.

In *Accutane*, the plaintiffs alleged a causal nexus between *Accutane* and Crohn's disease. That argument contravened several epidemiological studies, which had found no such connection. When the plaintiffs offered two expert witnesses who questioned those studies, the defendants challenged those experts' methodologies and moved to exclude their testimony as unreliable. The trial court granted the defendants' motion to exclude, but the Appellate Division reversed. The Supreme Court of New Jersey granted certification, not only to evaluate the trial court's decision to exclude, but also to delineate the correct standards for such decisions—both at the trial and appellate levels.

The Supreme Court began its analysis by noting that, before *Daubert*, it had twice rejected the *Frye* "general acceptance" test for evaluating the reliability of

expert testimony in areas of emerging science, first in *Rubanick v. Witco Chem. Corp.*, 125 N.J. 421 (1991) and then in *Landrigan v. Celotex Corp.*, 127 N.J. 404 (1992). Under those cases, regardless of whether a scientific community generally accepts a theory, an expert can present it at trial so long as the expert relies "on a sound, adequately-founded scientific methodology involving data and information of the type reasonably relied on by experts in the scientific field." *Rubanick*, 125 N.J. at 449. While the *Accutane* Court noted that those principles were well established under New Jersey law, it determined that the lower courts needed "more clear direction...on how the gatekeeping function [of evaluating expert witness testimony] is properly performed."

That led to an examination of *Daubert*, which the Court perceived as very similar to the *Rubanick/Landrigan* framework that had been used in New Jersey: "our law and the *Daubert* trilogy are aligned in their general approach to a methodology-based test for reliability. Both ask whether an expert's reasoning or methodology underlying the testimony is scientifically valid," only *Daubert* evaluates reliability through the following, non-exhaustive factors: (1) whether the scientific theory can be/has been tested; (2) whether the theory has been subjected to peer review and publication; (3) whether the theory has any known/potential rate of error, and whether there are standards for maintaining or controlling the technique's operation; and (4) whether the scientific community generally accepts the theory. Finding that those factors dovetail with New Jersey's approach, the *Accutane* Court

(Continued on Page 14)

**VERDICTS OF THE COURT** May 2018

Superior Court of New Jersey

VERDICT: Damages Verdict:  
\$9,000 Defendant Bonnette (5/1/18)  
Case Type: Tort-Other  
Judge: Anthony M. Pugliese, P.J.C.V.  
Plaintiff's Atty: David J. Khawam, Esq.  
Defendant's Atty: John B. Kearney, Esq.  
L-315-17 Jury

VERDICT: No Cause (5/3/18)  
Case Type: Personal Injury  
Judge: Michael J. Kassel, J.S.C.  
Plaintiff's Atty: Theodore C. Levy, Esq.  
Defendant's Atty: Timothy J. Galanaugh, Esq.  
L-1694-16 Jury

VERDICT: No Cause (5/4/18)  
Case Type: UM/UIM  
Judge: Donald J. Stein, J.S.C.  
Plaintiff's Atty: Evan Lide, Esq.  
Defendant's Atty: Rachel Vicari, Esq.  
L-3383-15 Jury

VERDICT: Damages Verdict:  
\$25,000 Defendant Tran (5/8/17)  
Case Type: Book Account  
Judge: Michael E. Joyce, J.S.C.  
Plaintiff's Atty: Keith West, Esq.  
Defendant's Atty: Andrew Viola, Esq.  
L-137-17 Bench

VERDICT: Liability Verdict: 35% Plaintiff and  
65% Defendant (5/9/18)  
Case Type: Auto Negligence  
Judge: Michael J. Kassel, J.S.C.  
Plaintiff's Atty: Michael Weiss, Esq.  
Defendant's Atty: Emma Brady, Esq.  
L-2144-16 Jury

VERDICT: Damages Verdict:  
\$10,000 Defendant: Amanda &  
Anthony Keener (5/9/18)  
Case Type: Personal Injury  
Judge: Michael E. Joyce, J.S.C.  
Plaintiff's Atty: David J. Cowhey, Esq.  
Defendant's Atty: Jessica D. Adams, Esq.  
L-543-17 Jury

VERDICT: No Cause (5/16/18)  
Case Type: Auto Negligence  
Judge: Anthony M. Pugliese, P.J. Cv.  
Plaintiff's Atty: Jeffrey S. Simons, Esq.  
Defendant's Atty: Sungkyu S. Lee, Esq.  
L-2310-16 Jury

VERDICT: Damages Verdict:  
\$10,000 Defendant: Beers (5/16/18)  
Case Type: Auto Negligence  
Judge: Steven J. Polansky, J. S. C.  
Plaintiff's Atty: David Cuneo, Esq.  
Defendant's Atty: Laura Gifford, Esq.  
L-1224-16 Jury

VERDICT: Damages Verdict:  
\$50,000: Defendant (5/17/18)  
Case Type: Personal Injury  
Judge: Michael J. Kassel, J.S.C.  
Plaintiff's Atty: William O'Kane, Esq.  
Defendant's Atty: Joseph DeDanato, Esq.  
L-1694-16 Jury

VERDICT: No Cause (5/23/18)  
Case Type: UM/UIM  
Judge: Michael J. Kassel, J.S.C.  
Plaintiff's Atty: David J. Schragr, Esq.  
Defendant's Atty: Rachel Vicari, Esq.  
L-2814-16 Jury

VERDICT: Damages Verdict:  
\$2,000,000 Defendant Toro (5/31/18)  
Case Type: Auto Negligence  
Judge: Michael E. Joyce, J.S.C.  
Plaintiff's Atty: John D. Borbi, Esq.  
Defendant's Atty: Ada S. Gallicchio, Esq.  
L-1507-16 Jury



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## EXPERT WITNESSES

# New Jersey Law Adopts the *Daubert* Expert Witness Standard

## Same Gatekeeping Process, or a New Gate Altogether?

(Continued from Page 13)

adopted the *Daubert* test, and stated that the *Daubert* factors should be incorporated for use by New Jersey courts.

Notably, however, the New Jersey Supreme Court stopped short of declaring New Jersey a “*Daubert* jurisdiction” and would not embrace the massive body of existing *Daubert* case law, in part, because the general acceptance test remains operative for evaluating the reliability of evidence in New Jersey criminal cases.

The trial court’s responsibility under both *Daubert* and *Accutane* is to serve as a “gatekeeper,” ensuring “that an expert’s testimony...rests on a reliable foundation,” “is relevant to the task at hand,” and is based on valid scientific principles. *Daubert*, 509 U.S. at 597. The challenge for the court, under this standard, is not to judge the credibility of the expert’s *opinion*, which is the province of the jury, but to assess the reliability of the expert’s *methodology*.

Finally, in addition to its *Daubert* decision, the Court reiterated the appellate standard for reviewing a trial court’s decision admitting or excluding scientific expert testimony: abuse of discretion. The Appellate Division had suggested it owed “somewhat less deference” to the trial court, but the Supreme Court rejected that looser standard.

There are several notable takeaways from *Accutane*. First, by establishing a discrete framework for evaluating expert testimony, this case might lead to more predictability for attorneys and their clients. However, the *Accutane* Court characterized the *Daubert* factors as a “helpful – but not necessary or definitive – guide for [the] courts,” so how and whether the factors will be applied will depend on the facts of each case. Moreover, as the Supreme Court noted, “there are discordant views about the [Daubert] gatekeeping role,” and where the New Jersey courts will land is unclear.

Second, incorporating the *Daubert* factors introduces general acceptance as a factor that courts will consider. The *Accutane* Court explained that, if a theory has

“minimal support,” it can “be viewed with skepticism.” This is an important change in New Jersey law because the New Jersey Supreme Court had repeatedly gone even beyond *Daubert* in embracing a methodology-based approach. See *Rubanick*.

Indeed, the Supreme Court Committee on the Rules of Evidence has noted that the *Daubert* and pre-*Accutane* New Jersey standards can yield different results: “federal cases...[applying *Daubert*] are sometimes overly restrictive in the admission of expert testimony, tending to exclude evidence that, under current New Jersey law, would be properly admitted as having a reliable basis.” *2007–2009 Report of the Supreme Court Committee on the Rules of Evidence*, p. 3. Time will tell whether *Accutane* creates a noticeably higher bar for the admission of expert testimony.

Third, by reiterating the abuse of discretion standard of appellate review, the Supreme Court brought certainty to the law, but set a high bar for parties against whom trial courts rule on expert reliability issues. Parties offering expert testimony in emerging fields of science will potentially face a relatively uphill battle under the *Daubert* test, and this standard of review makes the hill even steeper.

So what does this all mean? In areas of emerging science, parties must be increasingly diligent in selecting expert witnesses who check some, if not all, of the *Daubert* boxes. To some extent, this could stifle litigation creativity. On the flipside, *Accutane* could result in additional, or even more aggressive, motions to strike experts who do not easily fit within the *Daubert* framework.

When deciding *Accutane*, the Court said it did not intend to effectuate significant changes to New Jersey’s expert witness laws (“We perceive little distinction between *Daubert*’s principles regarding expert testimony and our own...”), but ironically, may have done just that. How much so is unclear, as New Jersey courts are operating with a blank slate, committed to using the *Daubert* methodology, but untethered to prior *Daubert* case law. New Jersey trial attorneys – especially those practicing in fields of science – should stay tuned.

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# Attacking the Reliability of Canine Sniffs

By Raquel DeStefano

The United States Supreme Court ruled that a dog sniff is not a search for Fourth Amendment purposes, thereby opening the door to searches of citizen's property by law. *United States v. Place*, 462 U.S. 696 (1983). While a dog sniff does not constitute a Fourth Amendment search, a canine alert alone is sufficient to establish probable cause and allow a search. *Illinois v. Caballes*, 543 U.S. 405, 409 (2005).

Courts have placed great trust in the alert of a narcotics detection dog. Unlike other scientific methods that must be satisfied by principles of scientific validity, police utilizing dog sniffs to detect illegal substances is simply accepted without a true showing of reliability. If a bona fide organization has certified a dog after testing his reliability in a controlled setting, or if the dog has recently and successfully completed a training program that evaluated his proficiency, a court can presume that the dog's alert provides probable cause to search. *Florida v. Harris*, 568 U.S. 237 (2013).

While a dog may be a man's best friend, they should not be regarded as sources of probable cause because canine alerts are subject to error and misinterpretation. Drug-detection dogs can alert for many reasons other than the odor or presence of drugs: they alert when they smell other dogs, they alert to the lingering odor of drugs no longer present, and they alert when they think humans want them to alert. Lisa Lit, et al., *Handler beliefs affect scent detection dog outcomes*, *Anim. Cogn.* (2011) 14:387-394. Also, some dogs are more accurate than others, and, like humans, dogs have good days and bad days. John J. Ensminger, *Police and Military Dogs: Criminal Detection, Forensic Evidence, and Judicial Admissibility* 11 (2012).

A major problem with drug-sniffing dogs is a dog's desire to read and please its handler. A dog will read its handler's body language and confirm its handler's suspicions about who is and who isn't hiding drugs. This is referred to as "cueing."

Cueing generally refers to the phenomenon of a handler, or someone else in a dog's presence, providing a conscious or unconscious signal to the dog that

induces the dog to perform a trained behavior pattern. These signals can lead a detection dog to where the handler thinks drugs are located.

In a study published by *Animal Cognition*, "Handler Beliefs Affect Scent Detection Dog Outcomes," three researchers set up testing environments in a church and told 18 handlers that the testing environments would contain markers for scent locations and decoy scents, when in fact no scents to which the dogs had been trained to respond were present. Of the 18 canine teams, all but one alerted in at least some of the trials. Since all alerts were deemed incorrect responses, the researchers concluded that handler beliefs "that scent was present potentiated handler identification of detection dog alerts." The researchers concluded that human "more than dog influences affected alert locations" confirming that "handler beliefs affect outcomes of scent detection dog deployments."

A dog's alert, therefore, should not become an easy means of justifying a search when the handler or an officer involved in the incident has a hunch that something is awry and needs an excuse to take additional actions. Thus, attorneys should focus on two areas when attacking a dog sniff in a motion to suppress. The first area to focus on is the reliability of the narcotics-detection team, such as experience, training, and certifications of both the handler and the canine. The second area to focus on is the alleged alert by a trained narcotics-detection canine: was the alert to the narcotics sufficiently reliable to establish probable cause for the search? Because there is a very low threshold for showing that the team was trained and certified, the heart of a suppression motion should focus on the later.

Police dash-cam videos are vital to attacking the alert. These videotapes are changing the ability of witnesses, attorneys, and courts to challenge handlers' interpretations of their dogs' actions. If a video exists, the attorney should retain a defense canine expert to view it and consult on the content of the record. A quick checklist of things to look for on a K9 video include: (1) the actions of a handler and canine in the 10-20 seconds before the alert; (2) the canine should be showing "active sniffing behavior" and not just following along with the handler's hand presentations; (3) fluid motions of the handler; (4) handlers doing a "tap back"—i.e. going back to an area where a canine has already checked and making them do it again (the canine will take this as a cue and respond even if nothing is there); and (5) the canine should not be looking at the handler constantly. This is a sign of a very dependent and unreliable canine and an indication of a canine looking for some sort of "cue" from the handler about where he is expected to respond. Additionally, cueing arguments are an attack on a dog's reliability and refer to actions of the handler inducing the dog to indicate or alert, such as words or hand gestures.

It is a danger to surrender Fourth Amendment discretion to a dog. A dog's response to conscious or unconscious signals of its handler allows invasive searches based on no more than an officer's hunch which is precisely what the Fourth Amendment is supposed to guard against. Thus, the cultural myth of a canine as an infallible detector should repeatedly come under rigorous scrutiny by defense attorneys by attacking the reliability of canine sniffs.

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# LEGAL BRIEFS

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**Louis R. Lessig**, a partner with Brown & Connery, LLP in their labor & employment group is the recipient of the 2018 HR Consultant of the Year Award. Developed in 2001, the Delaware Valley HR Person of the Year Awards spotlight the region's human resources industry and recognize the HR professionals and consultants who exemplify performance excellence and outstanding achievement in the field. Lessig focuses his practice in labor & employment law.

The law firm of BorgerMatez, PA is proud to announce that **Bruce P. Matez** was presented with the Honorable Joseph M. Nardi, Jr Award, which is presented to a member of the South Jersey Family Law community whose commitment to the practice of law encourages and exemplifies civility, humility, compassion and a moral/ethical obligation to the welfare of children and families, in general.

Capehart Scatchard is pleased to announce that effective July 1, 2018, **Sanmathi (Sanu) Dev**, became the firm's new Hiring Shareholder, replacing Mary Ellen Rose, Managing Shareholder, who was the firm's Hiring Shareholder for 18 years.

Ms. Dev concentrates her practice on school law and labor and employment law. She is experienced in representing, advising, and defending boards of education and charter schools in all areas of school law including: labor and employment, special education, Section 504, student discipline and civil rights. She leads Capehart Scatchard's School Law Blog, which focuses on cases, court decisions, and current developments affecting education law in the state of New Jersey. She is also the Chair of the Firm's Diversity and Inclusion Committee.

Archer Partner, **Stephanie J. Zane**, has been elected as Treasurer of the American Inns of Court,

one of the fastest growing legal organizations in the country. There are nearly 400 chartered American Inns of Court in 48 states, the District of Columbia, Guam and Tokyo, with more than 35,000 members, including judges, lawyers, law students, and law school faculty actively participating and more than 100,000 alumni members. Ms. Zane began her two-year term on July 1st.

Ms. Zane focuses her practice on complex matrimonial litigation and represents clients in all aspects of divorce, custody, child support and related issues, and domestic violence litigation.

Appointed by the Supreme Court of New Jersey, Ms. Zane is also presently serving her third three-year term as a member of the State of New Jersey Committee on Character. She is the current Vice President and Master member of the Thomas S. Forkin Family Law American Inns of Court.

## VERDICTS OF THE COURT June 2018

Superior Court of New Jersey

VERDICT: No Cause (6/7/18)  
Case Type: Auto Negligence  
Judge: Anthony M. Pugliese, P.J.Cv.  
Plaintiff's Atty: Erik S. Neiman, Esq.  
Defendant's Atty: Rachel Vicari, Esq.  
L-2103-16  
Jury

VERDICT: Liability Verdict: 50% Plaintiff Young and 50% Defendant Gross (6/13/18)  
Case Type: Auto Negligence  
Judge: Anthony M. Pugliese, P.J.Cv.  
Plaintiff's Atty: Kimberly Hoehing, Esq.  
Defendant's Atty: Anthony Di Guilio, Esq.  
L-2194-16  
Jury

VERDICT: No Cause (6/13/18)  
Case Type: Auto Negligence  
Judge: Steven J. Polansky, J.S.C.  
Plaintiff's Atty: Mark S. Nathan, Esq.  
Defendant's Atty: Francis T. Devitt, Esq.  
L-1418-16  
Jury

VERDICT: No Cause (6/13/18)  
Case Type: Auto Negligence  
Judge: Donald J. Stein, J.S.C.  
Plaintiff's Atty: Mark Gerted, Esq.  
Defendant's Atty: Robert Kaplan, Esq.  
L-1875-16  
Jury

VERDICT: No Cause (6/13/18)  
Case Type: Auto Negligence  
Judge: Michael J. Kassel, J.S.C.  
Plaintiff's Atty: Michael Gallagher, Esq.  
Defendant's Atty: John Dingle, Esq.  
L-4664-15  
Jury

VERDICT: No Cause (6/14/18)  
Case Type: Civil Right  
Judge: Daniel A. Bernardin, J.S.C.  
Plaintiff's Atty: Mark Frost, Esq. and Ryan Lockman, Esq.  
Defendant's Atty: John Connell, Esq. and Daniel Rybeck, Esq.  
L-1350-10  
Jury

VERDICT: No Cause (6/14/18)  
Case Type: Personal Injury  
Judge: Francisco Dominguez, J.S.C.  
Plaintiff's Atty: Jeffrey Simon, Esq.  
Defendant's Atty: Denise Tanney, Esq.  
L-2696-17  
Jury

VERDICT: Damages Verdict: \$50,000 Defendant  
Allstate Insurance Co. (6/14/18)  
Case Type: Auto Negligence  
Judge: Michael E. Joyce, J.S.C.  
Plaintiff's Atty: Melissa M. Baxter, Esq.  
Defendant's Atty: Rachel Vicari, Esq.  
L-2735-16  
Jury

VERDICT: Damages Verdict: \$19,449.84: Defendant  
Figueroa (6/21/18)  
\$9,015.91: Defendant  
Moore Value Properties  
\$19,042.00: Plaintiff  
Garden State Property

Case Type: UM/UIM  
Judge: Donald J. Stein, J.S.C.  
Plaintiff's Atty: Evan Lide, Esq.  
Defendant's Atty: Rachel Vicari, Esq.  
L-408-17  
Bench

VERDICT: Liability Verdict: 30% Plaintiff Guzman, 70% Dolce (6/21/18)  
Damages Verdict: \$15,750 Defendant Dolce  
Case Type: Auto Negligence  
Judge: Anthony M. Pugliese, P.J.Cv.  
Plaintiff's Atty: David Cuneo, Esq.  
Defendant's Atty: Queen Stewart, Esq.  
L-3813-16  
Jury

VERDICT: No Cause (6/22/18)  
Case Type: Auto Negligence  
Judge: Daniel A. Bernardin, J.S.C.  
Plaintiff's Atty: Jose W. Hernandez, Esq.  
Defendant's Atty: Charles Blumenstein, Esq. and Daniel Lewbart, Esq.  
L-4551-15  
Jury

VERDICT: Damages Verdict: \$2,175,000 Defendant  
Robertson (6/28/18)  
Case Type: Auto Negligence  
Judge: Donald Stein, J.S.C.  
Plaintiff's Atty: Lisa Bowles-Marrone, Esq.  
Defendant's Atty: Brad Hoffman, Esq.  
L-3873-16  
Jury





## FINANCIAL FORENSICS

# What is the Value of My Law Practice Anyway?

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

I was delighted to recently share my expertise at a live seminar and webcast entitled "**Law Practice Valuation: What You Need to Know**" for the New Jersey Bar Association's ICLE. The 3-hour CLE was a much-needed primer to valuing a law practice and took on heightened significance to the 75 professionals who attended or saw my passion for this topic by webcast (in the middle of August, vacation time, not even a reporting CLE deadline approaching? Go figure, I must have hit a nerve). Of course, this seminar was equally applicable to law firm administrators, controllers, accountants and any other consultants in the law firm space and not just lawyers. Regardless, the focus was on the ethical and industry specific issues peculiar to garnering a law practice's value – quantifying it—managing it—enhancing it—buying it—selling it—holding on to it. A partner retiring? A partner's death or disability? An associate buying in? A merger? The seller in a sale? The buyer in a sale? All should so know.

Not to reproduce the exhaustive manual I prepared but the typical reasons we've been brought in to evaluate or even appraise a law practice has included:

1. To evaluate an offer and negotiate a strategic sale of the entire practice or partial interest.
2. To value a practice for a bankruptcy or creditor action (yes, it happens)
3. For estate planning/gifting/reporting
4. For obtaining insurance
5. For shareholder/partnership agreements
6. For litigation support purposes, divorce, determining economic damages, lost profits, uncover fraud or value of a firm in a shareholder or partnership dispute, damage from breach of a restrictive covenant, intellectual property infringement or even to quantify damages due

to the personal injury, wrongful death or wrongful termination of a practicing lawyer

7. To identify weaknesses in a practice to refocus the operational efforts to improve profitability and the bottom line.

Soooo...here some of the typical characteristics that I've seen that affect valuations of a law practice and which we addressed in the 140 pages of materials which I started the program by saying to so refer to in case I put you to sleep:

- As a service business, a relatively significant investment in equipment and other fixed assets is not required
- Financial data is typically prepared on a cash basis of accounting (we suggest accrual basis)
- Reliance on individual professional practitioners, usually highly educated and licensed to practice in the profession (may even have specific certification)
- Business decisions often influenced by income tax considerations
- Purchases of law practices often paid out over time and may include some function of consulting services
- Need to identify non-operating expenses and perks
- Need to consider unique characteristics of attorney-client privilege and other ethical requirements
- The valuation approach is similar to other professional or service-oriented businesses, but may also require analysis considering certain peculiarities rather specific to law practices such as the following:
  - 1) Professional reputation
  - 2) Reliance on referrals

(Continued on Page 18)

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## FINANCIAL FORENSICS

# What is the Value of My Law Practice Anyway?

(Continued from Page 17)

- 3) Significant proportion of value may be in intangible assets such as goodwill, client base, etc.
- 4) Licensed/protected market
- 5) Client relationships and practice transition alternatives
- 6) Use of trust accounts
- 7) Client costs advanced
- 8) Retainers received in excess of services rendered
- 9) Law firms are not valued like other businesses because of the legal restrictions on purchase and sale. Unlike just about every other type of professional services firms, lawyers are free to leave the firm and take the firm's revenue source – clients - with them.
- 10) Leverage of staff can certainly impact valuation. For example, a collection firm with a solo lawyer owner, 3 associate lawyers, and 25 paraprofessionals will have differing valuation characteristics when compared to yet another law firm in a specialty niche requiring a specific skillset such as an IP practice or a medical malpractice firm.
- 11) Work in process (i.e. performance of work on matters not billed – need analysis to determine if amounts computed are billable and/or collectable)
- 12) Use of alternative billing structures with a hybrid of full contingency and modified time billing arrangements
- 13) Contingent fees, especially in personal injury/negligence may require a third-party analysis to determine a reasonable expectation of results of case(s). Requires the valuator to do a statistical “look-back” analysis to determine probable value of cases at various points along time-line for a) Intake; b) Filing a

claim; c) Completion of discovery; d) Completion of depositions; and e) Date of trial

- 14) Effect of substantial advertising or significant website and SEO rankings in branding the firm vs. personal goodwill. (i.e. is it the excellent reputation or relationships attached to the individual or has it transcended individuals to become part of the firm).

Larry Pelletier usually asks me to limit these articles to 750 words so I guess I'll wrap up with four applicable quotes at the seminar:

“All values are anticipations of the future” – Justice Oliver Wendell Holmes

“Something is only worth what somebody is willing to pay for it” – Economist Jonathan Reeves

“When you leave this presentation and then read all of my materials, you'll certainly know more but, alas, don't expect to necessarily know the specific value of your practice. It's a process” – Martin H. Abo, CPA

“Thank you Captain Obvious” – Dr. Benjamin Abo (son of Martin Abo)

*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.*

## VERDICTS OF THE COURT July 2018

Superior Court of New Jersey

VERDICT: No Cause (7/2/18)  
Case Type: Auto Negligence  
Judge: Francisco Dominguez, J.S.C.  
Plaintiff's Atty: Justin H. Sperling, Esq.  
Defendant's Atty: Robyn A. Barkow, Esq.  
L-2990-16  
Jury

VERDICT: No Cause (7/11/18)  
Case Type: Auto Negligence  
Judge: Donald J. Stein, J.S.C.  
Plaintiff's Atty: Christopher Green, Esq.  
Defendant's Atty: Brittany McCloskey, Esq.  
L-3277-16  
Jury

VERDICT: No Cause (7/11/18)  
Case Type: Auto Negligence  
Judge: Daniel A. Bernardin, J.S.C.  
Plaintiff's Atty: Abraham Tran, Esq.  
Defendant's Atty: Queen Stewart, Esq.  
L-2549-16  
Jury

VERDICT: Damages Verdict: \$70,000 Defendant (7/11/18)  
Case Type: UM/UIIM  
Judge: Michael J. Kassel, J.S.C.  
Plaintiff's Atty: William Martin, Esq.  
Defendant's Atty: Rachel Vicari, Esq.  
L-1467-16  
Jury

VERDICT: Liability Verdict: \$500,000 Plaintiff (7/17/18)  
Case Type: Medical Malpractice  
Judge: Michael E. Joyce, J.S.C.  
Plaintiff's Atty: Caroline Turner, Esq.  
Defendant's Atty: John Rigden, Esq.  
L-2338-15  
Jury

VERDICT: No Cause (7/17/18)  
Case Type: Other Insurance  
Judge: Francisco Dominguez, J.S.C.  
Plaintiff's Atty: Philip J. Mammano, Jr., Esq.  
Defendant's Atty: Jessica D. Adams, Esq.  
L-1987-17  
Jury

VERDICT: Damages Verdict: \$63,999.77 Defendant: PNCH Associates (7/17/18)  
Case Type: Contract  
Judge: Anthony M. Pugliese, P.J.Cv  
Plaintiff's Atty: Arthur Armstrong, Esq.  
Defendant's Atty: Albert Ciardi, Esq.  
L-3103-17  
Bench

VERDICT: No Cause (7/25/18)  
Case Type: Auto Negligence  
Judge: Anthony M. Pugliese, P.J.Cv  
Plaintiff's Atty: William C. Popjoy, III, Esq.  
Defendant's Atty: Catherine Schmutz, Esq.  
L-1014-17  
Jury

VERDICT: Liability Verdict: 50% Plaintiff (7/26/18)  
Damages Verdict: \$85,000 Defendant  
Case Type: Auto Negligence  
Judge: Michael E. Joyce, J.S.C.  
Plaintiff's Atty: Cristie R. Nastasi, Esq.  
Defendant's Atty: Queen Stewart, Esq.  
L-3823-167  
Jury

VERDICT: No Cause (7/26/18):  
Case Type: UM/UIIM  
Judge: Steven J. Polansky, J.S.C.  
Plaintiff's Atty: Kimberly Hoehing, Esq.  
Defendant's Atty: Rachel Vicari, Esq.  
L-3319-16  
Jury

VERDICT: No Cause (7/27/18)  
Case Type: Auto Negligence  
Judge: Donald J. Stein, J.S.C.  
Plaintiff's Atty: Robert A. Greenberg, Esq.  
Defendant's Atty: Daniel Gee, Esq.  
L-2279-16  
Jury

VERDICT: Liability Verdict: 100% Defendant (7/31/18)  
Case Type: Civil Rights  
Judge: Michael J. Kassel, J.S.C.  
Plaintiff's Atty: Patrick J. Whalen, Esq.  
Defendant's Atty: William F. Cook, Esq.  
L-2767-15  
Jury

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### SPINNING MY WHEELS

By Andrew Kushner

## Would you Subscribe To This?

SUBSCRIPTION SERVICE

You may have seen the TV commercial for Volvo: The screen is mostly dark while the outline of the side view of an auto emerges in stages. The voice over reminds you that “You used to buy songs too.” A vague reference to “subscription” appears on the screen and the short spot ends with Volvo’s logo and a clear side view of the new XC40. The first few times I saw the spot, I knew that there was something different but couldn’t put my finger on it. It reminded me of the original roll out of the Infiniti brand in 1990 when they went all Haiku and Zen in their commercials without any display of the product.

Didn’t work.

After several views and a couple of on-line articles, I understood that the commercial heralded a new, or third means of acquiring or using a car: Subscription service. I performed what passes for research in the twenty first century—entered some terms in a google search which returned numerous articles on the subject, each hitting the same points. A subscription service (“SS”) is intended to appeal, I would assume, to the younger generation who are used to replacing their durable goods on a much more frequent basis and have no attachment—emotional or otherwise—when it comes to cars. It is also true that, in a society where premium luxury cars continue to be unaffordable to the traditional buyer or lessee, SS is another device to pander, perhaps to that demographic. At its base, the concept is quite simple, although each vendor has different takes on the idea. SS allows a consumer to ‘sign up’ for the use of a car for a fixed monthly rate (sometimes with an additional initiation fee) which covers not only the use of the car but also insurance, taxes, maintenance and repair. Depending upon the arrangement, the consumer can “swap out” his ride multiple times during the term of the SS for a different vehicle, although there are mileage and time limits.

Now, if this is sounding vaguely like a cross between a traditional car lease and a car rental contract, you are correct. Theoretically you could rent a different car from Hertz every day of the year if you were willing to pay the cost and could be satisfied with the somewhat limited menu that they provide. Where SS likes to believe that it differs is that the consumer, by signing up, can ensure a ride for a relatively short period of time with the added bonus of changing out the car at will for the same price.

Of course the price for this arrangement is typically going to be more expensive than a more traditional car acquisition but that is precisely the

trade-off that the vendor hopes will encourage customers to choose this option. SS plans are new and are continuing to roll out across the country both from manufacturers as well as unrelated businesses. For instance, Volvo will do an SS for its new XC40 SUV for \$600.00 per month with the recipient paying only for gas, tax and registration. The customer must keep the car for one year (a one year lease?) and can either swap out after that or extend it for two more years. “Book by Cadillac” allows its customers to change cars up to 18 times a year for a starting fee of \$1,800 per month and an initiation fee of \$500. “Porsche Passport” allows customers to choose from 22 different vehicles at a starting price of \$2,000 per month from its Atlanta offices.

I suppose it is time to make my “old man” disclaimer. I think that the concept is both stupid and wasteful. Over my half century of driving I have had pride in ownership (not so much in leased vehicles) but I believed I appreciated a the technology and craftsmanship that went into the design and construction, and I treated and maintained the car accordingly. Using the SS model, a consumer is likely to treat a car like the appliance that it is with no sense of ownership and no attachment. I think that the 8<sup>th</sup>, 10<sup>th</sup> or 20<sup>th</sup> user of an SS vehicle will see the result. And what of the used car market? When the bloom is off the rose, which is likely to be sooner than later with SS vehicles, what is it going to take when the dealer or manufacturer has to flog these to potentially naïve buyers who acquire a car with the same history as those sold by Hertz and Avis after a year or two of abuse. It reminds me of how Ford gave a whole bunch of Shelby GT Mustangs to Hertz in the mid-60s and the smart money would rent them on Friday, race them for the weekend and return them to Hertz on Monday with the vinyl stickers removed.

If you want to learn more about SS arrangements a simple search will provide you with more than you need to know. A particularly good site that evaluates the plans of the upscale manufacturers can be found at [www.cnet.com/roadshow/news/new-car-subscription-service-guide-buying-leasing-2018](http://www.cnet.com/roadshow/news/new-car-subscription-service-guide-buying-leasing-2018)

In a sense, I am glad that I am closer to the end of my driving career than the beginning. Short term, convenient but expensive engagement with the SS concept may certainly appeal to my children’s’ generation and may even fit a particular situation where more traditional purchase or lease arrangements would not. But I doubt, it.

# CLASSIFIEDS

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### REFERRALS

Attorney with 25 years of Appellate experience invites referrals. Available for arbitrations & per diem work. R. 1:40 Mediator. Richard C. Borton, Esq. [www.bortonlaw.com](http://www.bortonlaw.com) 856.428.5825

### OFFICE SPACE

#### MARLTON OFFICES FOR RENT

Large first floor sunny office space in Marlton available for sub-let. Separate entrance, access to modern conference room, as well as space for assistant. Call us at 856-216-0390

## Need Meeting Space?

Call 856.482.0620

Email [klw@camdencountybar.org](mailto:klw@camdencountybar.org)

# Coming Next Fall!



Enjoy your summer and watch your Email for additional information and registration materials for these and other events and programs.



