DATE NAME OF CASE (DOCKET NUMBER)

09-22-11 GEORGE C. RILEY VS. NEW JERSEY STATE PAROLE BOARD
A-1004-09T1

Retroactive application of the Sex Offender Monitoring Act to persons who committed sex offenses before its enactment violates the Ex Post Facto Clauses of the United States and New Jersey Constitutions. Dissent by Judge Parrillo.

09-09-11 TADEUSZ JATCZYSZYN VS. MARCAL PAPER MILLS, INC., ET AL.
A-0938-09T1

In this product liability action, the trial court granted defendants' summary judgment motion and dismissed plaintiff's case after excluding plaintiff's expert report as a net opinion. We reverse because the deficiency in the expert's report was caused by the trial court's error in denying plaintiff the 450 days of discovery he is entitled to receive under Track III. R. 4:24-1(a).

Initially filed in the Law Division, the case was temporally removed to the United States District Court by one of the named defendants. The federal court thereafter granted plaintiff's motion to remand the case to the Law Division. Under the facts presented here, the Law Division erred by not tolling the running of the discovery period under Track III during the time the case was under the exclusive jurisdiction of the federal court.

09-07-11 DONALD J. TRUMP VS. TIMOTHY L. O'BRIEN, ET AL.
A-6141-08T3

We affirm the trial court's order of summary judgment in favor of defendants Timothy L. O'Brien, the author of the book TrumpNation, The Art of Being The Donald, and his publishers, determining that Trump failed to demonstrate by clear and convincing evidence that O'Brien acted with actual malice when he reported that three unnamed sources had estimated Trump's net worth as between $150 million and $250 million, not the $5 to $6 billion that Trump claimed. In doing so, we focus principally on when an inference of actual malice may arise when an allegedly false report is published solely in reliance on confidential sources.

08-31-11 NEW JERSEY DIVISION OF YOUTH AND FAMILY SERVICES VS. I.S.
A-5793-09T3

In this appeal, defendant challenges the order entered by the Family Part judge granting custody of one of defendant's twin daughters to her former spouse and the twins' biological father. Defendant contends that in the absence of a finding of abuse or neglect, the minor child should have been returned to defendant, from whom she had been removed.

We hold that the court's jurisdiction over the matter was appropriately continued, notwithstanding the absence of a finding of abuse or neglect, because the court's continued assistance was required. In addition, because the Division of Youth and Family Services initiated proceedings against defendant and her former spouse under both Title 9 and Title 30, the court's jurisdiction was also appropriately invoked pursuant to Title 30.

We additionally hold that as long as appropriate procedural due process is satisfied and the requisite standards and burdens of proof attendant to each statutory scheme are satisfied, overlapping or hybrid proceedings brought pursuant to both Title 9 and Title 30 will not be set aside.

08-30-11 AXA AND EDUARDO KIEFFER VS. HIGH POINT INSURANCE COMPANY
TAMESHA BROWN VS. FIRST TRENTON INDEMNITY COMPANY
SANDRA KOZUSKO VS. NEW JERSEY MANUFACTURERS INSURANCE COMPANY
A-2720-09T2;A-2721-09T2;A-2722-09T2(CONSOLIDATED)

In these consolidated appeals, plaintiffs challenge provisions in their respective auto insurance policies excluding coverage for the diminution in the value of their autos damaged as a result of vehicular mishaps. Plaintiffs claim the exclusion provisions are ambiguous, contrary to the reasonable expectations of insureds, unconscionable, and also contrary to public policy.

We conclude the exclusion provisions are specific, plain, and clear, and provide no basis for plaintiffs to reasonably expect that diminution-in-value coverage is included in the policies. Additionally, we hold that exclusion of diminution-in-value coverage is not contrary to public policy.

08-30-11 IN THE MATTER OF SUZANNE HESS
A-2408-09T1

This case involved a public employee who appealed from the final decision of the Board of Trustees of the Public Employees' Retirement System, which denied her application for deferred retirement benefits pursuant to N.J.S.A. 43:15A-38. We determined that the Board erred in ruling that appellant's deferred retirement benefits were forfeited as a result of her conviction of two counts of assault by auto. We conclude that where the removal from employment for cause is based on charges of misconduct or delinquency not related to the employee's official duties, the public employee is entitled to his or her vested deferred retirement allowance.

08-26-11 STATE OF NEW JERSEY VS. COREY MISURELLA
A-1439-10T4

In this appeal from a DWI conviction, the State concedes that the right not to be subjected to unreasonable delay applies to an appeal, see State v. Le Furge, 222 N.J. Super. 92, 98 (App. Div.), certif. denied, 111 N.J. 568 (1988), and therefore, to a trial de novo in the Superior Court. We apply the factors established in Barker v. Wingo, 407 U.S. 514, 92 S. Ct. 2182, 33 L. Ed. 2d 101 (1972), and conclude that defendant's speedy trial right was not violated by a 798-day delay from the time he filed his notice of appeal in the Law Division under R. 3:23 until a trial de novo was actually held.

08-25-11 CECELIA MAVICA INGRAHAM VS. ORTHO-McNEIL PHARMACEUTICAL, ET AL.
A-2216-10T2

Although the employment relationship is a factor to be considered, Taylor v. Metzger, 152 N.J. 490, 511 (1998), the elements of proof on a claim of intentional infliction of emotional distress, in accordance with Buckley v. Trenton Saving Fund Society, 111 N.J. 355, 366 (1988), are not altered by the "power dynamics of the workplace." Plaintiff's evidence that defendant supervisor directed her to remove pictures and ballet slippers of her deceased teenage daughter from her cubicle at work, and that she not talk about her daughter to co-workers, did not rise to the level of extreme and outrageous conduct, "to be regarded as atrocious, and utterly intolerable in a civilized community." Also, plaintiff's evidence was not sufficient to prove that the employer acted intentionally or recklessly to cause her emotional distress.

08-22-11 L.M.F. VS. J.A.F., JR.
A-0121-10T3

In this appeal from a final domestic violence restraining order, we apply the principles articulated by the Court in J.D. v. M.D.F., _____ N.J. _____ (2011), and conclude the trial court erred in finding the predicate offense of harassment. The parties are divorced parents. They used text messaging as the primary means of exchanging information about their two children. The domestic violence complaint alleged harassment based on defendant sending plaintiff eighteen text messages over a three-hour period. The content of the messages was not threatening or menacing in any way. We also hold there was insufficient evidence of a history of domestic violence to substantiate that a restraining order was necessary to prevent further abuse as required under Silver v. Silver, 387 N.J. Super. 112 (App. Div. 2006).

08-22-11 STATE OF NEW JERSEY VS. ERIC CLEMENTE RANGEL
A-2051-09T3

N.J.S.A. 2C:14-2(a) elevates the offense of sexual assault to first-degree aggravated sexual assault if

> an act of sexual penetration of another person is committed under any one of the following circumstances: . . . (3) [t]he act is committed during the commission, or attempted commission . . . of robbery, kidnapping, homicide, aggravated assault on another, burglary, arson or criminal escape . . . .

We construe the phrase "of another," which modifies "aggravated assault" in section (3), to mean aggravated assault of a third person, such as a spouse or child, committed for the purpose of compelling the submission of the sexual assault victim, and not an aggravated assault on the sexual assault victim, which is covered in another section of the statute.

08-19-11 STATE OF NEW JERSEY VS. PHILLIP JOHNSON
A-5686-08T4

The prosecutor committed prejudicial error, contrary to State v. Bankston, 63 N.J. 263 (1973), and State v. Branch, 182 N.J. 338 (2005), when he remarked in summation that the State

was precluded by the rules of evidence from explaining why a police detective chose defendant's picture to include in a photo array, and the court compounded the error by instructing the jury to the same effect. Additionally, defendant's right to a fair trial was prejudiced when the detective volunteered on direct examination that he selected the photo from a computer database that he called a "Mug Master."

08-18-11 ALFRED HEHRE VS. ROBERT DEMARCO, JR., ET AL
A-2812-10T4

Plaintiff was injured in a car accident while being driven to a school-sponsored track meet by a fellow student-athlete. He sued the track coach, Holy Spirit High School, and the Catholic diocese of Camden, claiming these defendants failed to provide him with a safe means of transportation to the school-sponsored event and, under principles of agency, were vicariously liable for the driver's negligence.

By leave granted from the trial court's denial of defendants' motion for summary judgment based on the Charitable Immunity Act, we hold that the exemption to immunity provided in N.J.S.A. 2A:53A-7(c)(2) applies only to a "trustee, director, officer, employee, agent, servant or volunteer" of a charitable entity who causes "damage as the result of the negligent operation of a motor vehicle." By its plain and clear language, N.J.S.A. 2A:53A-7(c)(2) does not vitiate the immunity otherwise granted by the Legislature in N.J.S.A. 2A:53A-7(a) to an associated charitable entity.

08-18-11 DRINKLER BIDDLE & REATH LLP VS. NEW JERSEY DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF LAW
A-2387-09T3

In this appeal, plaintiff Drinker Biddle & Reath LLP sought access to unfiled discovery (the deposition transcripts of three experts) in an environmental lawsuit brought by the New Jersey Department of Environmental Protection against ExxonMobil Corp. pursuant to OPRA. We hold that N.J.S.A. 47:1A-9b exempts unfiled discovery from public disclosure. However, we reverse and remand for the trial court to conduct the appropriate balancing test to determine whether the transcripts are accessible under the common-law right-of-access.

08-16-11 SENTINEL INSURANCE COMPANY, LTD. VS. EARTHWORKS LANDSCAPE CONSTRUCTION, L.L.C., ET AL.
A-0748-10T1

This case involved a declaratory judgment action seeking to void a workers' compensation insurance policy on the grounds of misrepresentation. We determined that the Law Division judge did not err in dismissing the complaint without prejudice and transferring the issue to the Division of Workers' Compensation for determination by it in connection with the adjudication of the compensation claim.

08-15-11 IN RE ADOPTION OF HIGHLANDS REGIONAL MASTER PLAN
A-1054-08T1

The Highlands Act authorizes the Highlands Council to adopt a transfer of development rights program for the Highlands Region that does not strictly conform with the provisions of the State Transfer of Development Rights Act.

08-15-11 IN RE HIGHLANDS MASTER PLAN, EXECUTIVE ORDER 114, ETC.
A-1026-08T1

The Highlands Council was not required to follow the rule-making procedures of the APA in adopting the regional master plan for the Highlands Region. The Council on Affordable Housing violated the APA by adopting a resolution and accompanying "Guidance document" that substantially changed the affordable housing obligations of municipalities in the Highlands Region without complying with the rule-making procedures of the APA.

08-12-11 MARTIN O'BOYLE VS. DISTRICT I ETHICS COMMITTEE, ET AL.
A-4599-09T4

Rule 1:20-3(h) provides that in cases where a grievance that was found by the district ethics committee to allege unethical behavior was docketed and dismissed following an investigation, a grievant may appeal that decision to the Disciplinary Review Board. In contrast, Rule 1:20-3(e)(3) allows the secretary of a district ethics committee to decline to docket a grievance against an attorney which the secretary, with the concurrence of a public member, has determined fails to allege conduct violative of the Rules of Professional Conduct. The issue presented in this appeal is whether Rule l:20-3(e)(6), which precludes an appeal of an undocketed grievance, violates a grievant's right to due process or equal protection of the laws. As the plaintiff-grievant fails to assert a viable

constitutional basis for his challenge, we affirm the Law Division's dismissal of his complaint.

08-11-11 NAVILLUS GROUP, ET AL. VS. ACCUTHERM INCORPORATED, ET AL.
A-4754-08T1;A-0568-09T1(CONSOLIDATED)

The Industrial Site Recovery Act does not establish an alternative ground upon which a party who has obtained a final judgment in a tax foreclosure action under the Tax Sale Law may secure relief from the judgment based on environmental contamination of the site; the Tax Sale Law provides the exclusive grounds upon which a tax foreclosure judgment may be vacated.

08-10-11 GARY SMITH, ET AL. VS. JERSEY CENTRAL POWER & LIGHT COMPANY, ET AL.
A-2801-08T2

The determination whether an electric utility's intermittent interference with a property owner's use of his property is so substantial that a taking has occurred depends on all the circumstances of that interference, which requires development of a full record and fact finding. Therefore, a jury's finding that the utility's distribution of electricity to a property owner's home, which caused stray current that interfered with the use of his property, constituted a nuisance, is insufficient to support a judgment on an inverse condemnation claim.

A showing of negligence is not an essential element of the tort of nuisance. Therefore, an electric utility may be found liable on the basis of nuisance to a property owner for interfering with the property owner's use of his property due to stray current even though the utility exercised due care in its efforts to control the stray current.

08-09-11 DEUTSCHE BANK NATIONAL TRUST COMPANY, ETC. VS. CONSTANCE LAWRENCE MITCHELL, ET AL.
A-4925-09T3

The grant of summary judgment to plaintiff in this foreclosure case involving a "mortgage rescue scam" was appealed by the homeowner victim after a sheriff's sale back to plaintiff. Nonetheless, given the importance of the issue, we reverse the trial court's decision that, although plaintiff filed its original complaint before being assigned the mortgage,

it acquired standing by filing an amended complaint after the assignment. Holding that either an assignment or possession of the note prior to the filing of the complaint is required to obtain standing to foreclose, we remand to the trial court to allow plaintiff to submit proof that it had possession of the note before filing the original complaint.

08-09-11 WILLINGBORO MALL, LTD, VS. 240/242 FRANKLIN AVENUE, L.L.C., ET AL.
A-4598-09T2

A settlement reached at a complementary dispute resolution session, such as a mediation, must be reduced to writing expeditiously, but not necessarily at the mediation session. When the mediator and the parties waive the confidentiality afforded to such proceedings, as in this case, an oral settlement agreement reached through mediation may be enforced by the court.

08-08-11 BANK OF NEW YORK AS TRUSTEE FOR THE CERTIFICATE HOLDERS CWALT 2004 26T1 VS. SARAH G. LAKS, ET AL
A-4221-09T3

N.J.S.A. 2A:50-56(c)(11), a provision of the Fair Foreclosure Act, requires that a notice of intention to foreclose state "the name and address of the lender and the telephone number of a representative of the lender whom the debtor may contact if the debtor disagrees with the lender's assertion that a default has occurred or the correctness of the mortgage lender's calculation of the amount required to cure default." We held that a notice of intention that does not state the name and address of the "lender" as that term is defined in the Fair Foreclosure Act, and instead only states that of the lender's mortgage servicer, is deficient. We further held that the remedy for a deficient notice of intention where the deficiency had been raised in the trial court is dismissal of the foreclosure complaint without prejudice.

08-04-11 STATE OF NEW JERSEY VS. ROBERT HANDY
A-0401-09T4

After a bench trial, defendant was found not guilty of murder and other related offenses by reason of insanity. Defendant had preferred and unsuccessfully sought to have a jury trial to seek acquittal on a theory of self-defense. In rejecting defendant's motion to be tried first on his self-defense claim, and instead proceeding solely with the insanity

issue, the trial court was guided by State v. Khan, 175 N.J. Super. 72 (App. Div. 1980), which prescribes a bifurcated procedure that gives primacy to the adjudication of an insanity defense.

We decline to adhere to the bifurcation sequence set forth in Khan because that opinion conflicts with several aspects of our State's Criminal Code; relied upon District of Columbia case law that is no longer valid; and is contrary to the approach of other states that have addressed the question.

We instead hold that a defendant who wishes to present a substantive defense based upon at least some evidence, or who otherwise wishes to put the State to its burden of proving the elements of the offense beyond a reasonable doubt, should not be required to first submit to a trial restricted to the issue of insanity. Consequently, we remand for a bifurcated trial in which the insanity defense, if necessary, is tried in a second phase before the same jury, with appropriate cautionary instructions.

08-02-11 NAACP OF CAMDEN COUNTY EAST, ET AL. VS. FOULKE MANAGEMENT CORP.
A-1230-09T3

This appeal concerns the enforceability of arbitration provisions in various form documents that a consumer signed in connection with her purchase of a new motor vehicle from a New Jersey dealership. After disputing several charges that she had been billed, the consumer and a local chapter of the NAACP brought a class action, alleging that the dealership's practices violated numerous statutes and, in particular, that the arbitration provisions were unenforceable.

We affirm the trial court's specific ruling that the class action waiver provisions should not be invalidated on public policy grounds, a conclusion in keeping with the United States Supreme Court's recent decision in AT&T Mobility LLC v. Concepcion, 563 U.S. ___, 131 S. Ct. 1740, 179 L. Ed. 2d 742 (2011). However, we also conclude that the disparate arbitration provisions here were too confusing, too vague, and too inconsistent to be enforced. We therefore reverse the trial court's dismissal of the complaint directing the parties to binding arbitration. We also vacate as premature the court's dismissal of the NAACP chapter for lack of standing.

08-01-11 LAKESIDE MANOR AND MOUNTAIN LAKES ESTATES VS. STATE OF NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION
A-0843-09T3

A violation of a condition of a permit does not render the permit "null and void"; it only provides a possible ground for revocation of the permit. The DEP erred in concluding that developers were not entitled to an exemption from the Highlands Act because, even though they completed construction of the sewer lines for the development before the deadline for the exemption, they failed to obtain EPA approval of the revised wetlands mapping required by the permits for that construction.

07-26-11 JOSEPH J. TRIARSI, ET AL. VS. BSC GROUP SERVICES, LLC, ET AL.
A-5047-09T1

We affirmed the dismissal of two counts of a three-count complaint alleging that an insurance broker and its agent failed to prevent the cancellation of a life insurance policy, and then failed to assist with its reinstatement. All three counts had been dismissed for failure to serve a timely affidavit of merit. The first count alleged breach of a fiduciary duty. The second alleged professional negligence. We determined that the count alleging the breach of fiduciary duty was essentially the same as the professional negligence count, relying on Aden v. Fortsh, 169 N.J. 64, 78-79 (2001), and that an affidavit of merit was required for both.

We reversed the dismissal of the third count, which alleged a breach of a "special relationship" based upon the insurance agent having "assume[ed] duties in addition to those normally associated with the agent-insured relationship" by conduct that invited plaintiff's detrimental reliance. Finding that the claim does not require proof of a deviation from a professional standard of care, but rather proof of the parties' conduct, we concluded that an affidavit of merit was not required.

We rejected plaintiff's assertion that there were "extraordinary circumstance" warranting a dismissal without prejudice, largely because plaintiff's counsel made a "judgment call" that an affidavit of merit was not required for the first two counts.

07-26-11 STEVEN JECKER VS. HIDDEN VALLEY, INC., ET AL.
A-3898-09T3

Plaintiffs filed suit under the Uniform Fraudulent Transfer Act (the UFTA), N.J.S.A. 25:2-7 to -19, seeking to impose a constructive trust on the proceeds from the sale of a ski resort, Hidden Valley, Inc. (Hidden Valley), to a group of investors. The principal of Hidden Valley held two mortgages and other security interests on all assets of the ski resort. The mortgages and security interests were recognized and preserved during bankruptcy reorganization that pre-dated plaintiffs' claims.

While plaintiffs' lawsuits against Hidden Valley were pending, the principal foreclosed on his mortgages, was the sole bidder at the sheriff's sale, and ultimately transferred the resorts assets. The trial judge concluded that plaintiffs failed to prove any fraudulent intent.

We affirmed, but for other reasons. We concluded that under the UFTA, the foreclosure was not a "transfer" of an "asset" of the debtor. And, the subsequent sale had none of the "badges of fraud" discussed in Gilchinsky v. Nat'l Westminster Bank N.J., 159 N.J. 463 (1999).

07-26-11 STATE OF NEW JERSEY VS. JOHN RAY WILSON
A-3826-09T3

The principal issue in this is case is whether the personal use defense for manufacturing a controlled dangerous substance, N.J.S.A. 2C:35-2, applies to the growing of marijuana under N.J.S.A. 2C:35-5. After reviewing the relevant statutory language, as well as the purpose for the personal use exemption, we affirm the trial court's determination that there is no personal use exemption for growing marijuana.

07-25-11 LARRY PRICE VS. MARTIN T. MARTINETTI, ET AL.
A-1834-10T3

A landowner who obtains the land use approvals required for a development project, and subsequently obtains the land use approvals required for a different form of development project on the site, does not lose the benefit of the approvals authorizing construction of the originally planned project.

07-25-11 JOAN B. FUTTERMAN VS. BOARD OF REVIEW, ET AL.
A-3888-09T2

The principal issue presented in this case is whether a State employee who is obligated by a union contract to take several mandatory furlough days may qualify for unemployment benefits by scheduling several days in a single work week. We affirm the Board of Review's denial of benefits and hold that the employee is ineligible for unemployment compensation because (1) she was bound by the terms of her union contract, which was freely and voluntarily negotiated, see N.J.S.A. 34:13A-5.3 (granting union representatives the authority "to act for and negotiate agreements" for all bargaining unit employees), and (2) she did not do everything necessary and reasonable to remain employed, see In re Adoption of N.J.A.C. 12:17-9.6 by the N.J. Dep't of Labor, 395 N.J. Super. 394, 401 (App. Div. 2007).

07-19-11 LOCAL BAKING PRODUCTS, INC. VS. KOSHER BAGEL MUNCH, INC.
A-3923-09T2

The Telephone Consumer Protection Act (TCPA or the Act), 47 U.S.C.A. § 227, enacted by Congress in 1991, prohibits the use of "any telephone facsimile machine, computer, or other device to send, to a telephone facsimile machine, an unsolicited advertisement . . . ." 47 U.S.C.A. § 227(b)(1)(C). The Act provides for a "[p]rivate right of action" and fixes the damages for each violation at $500 or actual damages, whichever is greater. 47 U.S.C.A. § 227(b)(3).

The narrow issue raised on this appeal is whether a plaintiff may maintain a class action to enforce the private cause of action. We conclude that a class action may not be maintained. The proposed class action does not meet the "superiority" prong of Rule 4:32-1(b)(3), governing class actions.

07-19-11 STATE OF NEW JERSEY BY THE COMMISSIONER OF TRANSPORTATION VS. 200 ROUTE 17 L.L.C
A-6208-08T1

In this condemnation case, we hold that the State is required to compensate a property owner for the land and improvements in their present condition, and the trier of fact may consider the reasonable probability of future renovations and approvals required to improve the property to its highest and best use, discounted by the value of the risks and costs of making such improvements.

07-18-11 DURGESH GUPTA, ET AL. VS. ASHA ENTERPRISES, L.L.C. d/b/a MOGHUL EXPRESS & CATERING, CO.
A-3059-09T2

In this opinion, we discuss whether vegetarian Hindus, mistakenly served meat-filled samosas, can recover damages for their emotional distress and the costs that they would incur in obtaining purification of their souls in India. We affirmed the dismissal of plaintiffs' claims for products liability, consumer fraud and negligent infliction of emotional distress. However, we recognized their claim for breach of express warranty, and we held that damages for emotional distress, if proven, were available. We held additionally that, to prevail on their claim for purification costs, plaintiffs would have to establish that such damages were reasonably foreseeable to the contracting parties at the time that the sale of the samosas took place.

07-18-11 STATE OF NEW JERSEY IN THE INTEREST OF B.P.C.
STATE OF NEW JERSEY IN THE INTEREST OF B.V.C
A-4322-08T4;A-5855-08T4(CONSOLIDATED)

In these consolidated appeals, two fourteen-year-old boys were adjudicated delinquent based on an offense that, if committed by an adult, would have constituted fourth degree criminal sexual contact, N.J.S.A. 2C:14-3. Because the victims were less than thirteen-years old, the Family Part directed the juveniles to register as sex offenders for the remainder of their lives as mandated by N.J.S.A. 2C:7-2b(2) and In Re Registrant J.G., 169 N.J. 304, 339 (2001).

The principal question we have been asked to determine is whether the conduct of these two juveniles constitutes "sexual contact" as defined in N.J.S.A. 2C:14-1d, or merely youthful "horseplay" that, although patently offensive, is nevertheless devoid of the sexual connotation underpinning the offense of criminal sexual contact. The core salient facts presented by the State established the two juveniles physically held down and placed their bare buttocks on the faces of the two victims, resulting in physical contact between their bare buttocks and the victims' faces. The trial court found the juveniles committed these acts for the purpose of degrading or humiliating the younger boys. This finding supports an adjudication of delinquency based on criminal sexual contact.

The Family Part erred, however, when it denied a post-conviction relief petition filed by the juvenile who stood for trial. Because the petition made a prima facie case of

ineffective assistance of trial counsel, we remand for the court to conduct a Preciose hearing to resolve the factual and legal issues raised by the ttorney's inadequate performance.

We also remand the adjudication of delinquency of the juvenile who pled guilty because he was not fully informed of the registration requirements under N.J.S.A. 2C:7-2b(2) at the plea hearing. Pursuant to State v. Johnson, 182 N.J. 232, 244 (2005), the juvenile must demonstrate how the omission of this information "materially affected his decision to plead guilty."

07-14-11 CAPE MAY HARBOR VILLAGE AND YACHT CLUB ASSOCIATION, INC. VS. DEBORAH L. SBRAGA, ET AL.
A-6122-09T1

Applying the reasonableness standard, we held that an amendment to a declaration of covenants and restrictions governing a private residential community that prohibited leasing to third parties, adopted nine years after the homeowner challenging the amendment bought into the community and fourteen years after the original declaration was recorded, (1) did not constitute an impermissible restriction on the alienation of a fundamental property right, (2) satisfied the test of reasonableness by applying to the facts of the case factors prescribed by the Restatement of Property, and (3) was enforceable against the aggrieved homeowner.

07-14-11 OPEN MRI & IMAGING OF ROCHELLE PARK a/s/o CARMEN HERNANDEZ VS. MERCURY INSURANCE COMPANY
A-5760-09T2

Mercury Insurance Group denied Open MRI's assigned PIP claim for medical services on the ground that the insured's policy limits had been exhausted. Open MRI demanded arbitration pursuant to the Alternative Procedure for Dispute Resolution Act, seeking an award reforming Mercury's policy to permit payment. The arbitrator ruled that there was no legal basis for payment, and she lacked the power to reform Mercury's policy. An award in Mercury's favor was thus entered. Open MRI then instituted an action in the Law Division seeking an order summarily vacating the arbitrator's award and granting reformation. The judge granted the relief sought.

On appeal, we determined that the bar on appeals provided by N.J.S.A. 2A:23A-18b was inapplicable when the relief sought in arbitration (reformation) was beyond the power of the arbitrator to award, and the Law Division action was, in

essence, a de novo proceeding as to which a right of review exists in order for us to carry out our supervisory powers. We also held that reformation was not available, and recognized that remedies available to a successful claimant for denial of PIP benefits were limited to interest and attorney's fees.

07-13-11 GAYLE ANN LIVECCHIA VS. BOROUGH OF MOUNT ARLINGTON
A-4501-09T2

In this matter arising under the Open Public Records Act (OPRA), N.J.S.A. 47:1A-1 to -13, we affirmed the order of the Government Records Council, determining that when balancing the competing interests of access and redaction of records to protect a person's right of privacy, the destination location of cellular calls made by municipal employees using government-issued cellular phones was not encompassed by a reasonable right to privacy protecting telephone numbers and persons called, warranting the release of the information.

07-13-11 SHONDA HAYES VS. BOARD OF TRUSTEES OF THE POLICE AND FIREMEN'S RETIREMENT SYSTEM
A-2967-09T1

Petitioner, a former Trenton police officer, suffered a traumatic event and resulting mental health disability which would ordinarily entitle her to accidental disability benefits. The Board of Trustees of the Police and Firemen's Retirement System found, however, that the disability arose, or "manifested" itself, four months shy of the five-year filing limit found in N.J.S.A. 43:16A-7. Since petitioner did not file for benefits until seven months after the expiration of the limit, the Board denied the application as untimely. We reverse, concluding that the disability did not manifest itself until petitioner was told by her employer, more than five years after the traumatic event, that she was permanently disabled. Therefore, her claim fell within the "delayed manifestation" exception to the five-year filing limit pursuant to In re Crimaldi, 396 N.J. Super. 599 (App. Div. 2007).

07-13-11 ESTATE OF CLAUDIA L. COHEN, ET AL. VS. BOOTH COMPUTER, ET AL.
A-0319-09T2

A family partnership agreement that provides for a buyout based on net book value may be enforced where the disparity between book value and market value is significant. Even with a significant disparity, the terms of the agreement prevail and

the disparity does not render the agreement unconscionable or unenforceable.

07-12-11 MANUEL GUAMAN, ET AL. VS. JENNIFER VELEZ, ET AL.
A-1870-10T2
M-3432-10

Plaintiffs, representatives of a putative class of legal, resident immigrants who have resided in this country for less than five years, sought emergent injunctive relief staying the enforcement of N.J.A.C. 10:78-3.2. That regulation adopted the standard of eligibility for federal Medicaid benefits contained in the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA), 8 U.S.C.A. §§ 1601 to 46, and applied it to New Jersey's FamilyCare Program, a State-funded Medicaid program. Pursuant to PRWORA, legal, resident immigrants who have not resided in this country for at least five years essentially are ineligible for federally-funded Medicaid benefits.

Plaintiffs argued that N.J.A.C. 10:78-3.2, and a concurrent Medicaid Communication issued by the Division of Medical Assistance and Health Services, violated the FamilyCare program's enabling legislation, as well as the federal and State constitutions on equal protection grounds.

Applying the standards for preliminary injunctive relief set forth in Crowe v. DiGioia, 90 N.J. 126, 132-34 (1982), we denied plaintiffs' request, concluding that they failed to demonstrate a well-settled legal right to the relief sought, and a reasonable probability of ultimate success.

07-12-11 LVNV FUNDING, L.L.C. VS. MARY B. COLVELL
A-1313-10T3

We reverse the grant of summary judgment, holding that when suing to collect the balance allegedly owed on an unpaid revolving credit card account, the creditor must prove more than merely the total amount remaining unpaid. Instead, as required to obtain a default judgment by Rule 6:6-3(a), the creditor must set forth the previous balance, and identify all transactions and credits, as well as the periodic rates, the balance on which the finance charge is computed, other charges, if any, the closing date of the billing cycle, and the new balance. We also conclude that the Special Civil Part judge erred by failing to afford defendant the oral argument she requested.

07-12-11 KINDERKAMACK ROAD ASSOCIATES, LLC VS. MAYOR AND COUNCIL OF THE BOROUGH OF ORADELL, ET AL.
A-4453-09T2

The issue presented in this case is whether plaintiff, the owner of commercial property, can obtain a variance to use an adjoining residential lot as a "landscaped buffer" to satisfy commercial setback requirements. We hold that the governing body's rejection of plaintiff's use variance application was not arbitrary, capricious, or unreasonable because the residential lot was not particularly suitable for the proposed use in accordance with N.J.S.A. 40:55D-70(d) and Saddle Brook Realty, LLC v. Township of Saddle Brook Zoning Board of Adjustment, 388 N.J. Super. 67 (App. Div. 2006).

07-11-11 STATE OF NEW JERSEY VS. THOMAS W. EARLS
A-2084-07T4

The use of cell phone site information, obtained by the police without a warrant from a suspect's cell phone provider to determine his general location, does not violate the Fourth Amendment or its counterpart in the New Jersey Constitution because a person has no constitutionally protected right of privacy in his general location on roadways or other public places.

07-08-11 700 HIGHWAY 33 LLC VS. JOSEPH POLLIO, ET AL.
A-1889-10T3

In this appeal, we reverse the trial court's summary judgment dismissal of the complaint based on the party joinder rule (R. 4:5-1 (b)(2)) of the entire controversy doctrine. We hold that a trial court may not rely upon its experience with construction claims in determining whether successive actions are based on the same transactional facts, but instead must rely upon a competent motion record. We also provide an analytical framework for deciding entire controversy dismissal motions based on non-joinder of parties.

07-08-11 T & C LEASING, INC. VS. WACHOVIA BANK, N.A.
A-5405-09T1

At issue in this appeal is whether a post-judgment bank account levy creates an ongoing restraint in the creditor's favor under Article 7 of the State's execution statutes,

N.J.S.A. 2A:17-50 to -56.66, requiring the bank to turn over to the creditor funds deposited into the debtor's account after service of the writ on the bank. The trial court held the bank had no such continuing obligation. We affirm.

07-07-11 KENNETH R. VILLANOVA VS. INNOVATIVE INVESTIGATIONS, INC., ET AL.
A-0654-10T2

The placement of a GPS device in the vehicle of one's spouse without the spouse's knowledge, but in the absence of evidence that the spouse drove the vehicle into a private or secluded location that was out of public view and in which he had a legitimate expectation of privacy, does not constitute the tort of invasion of privacy.

07-06-11 ANTHONY BADALAMENTI, ET AL. VS. VICTOR C. SIMPKISS, ET AL.
A-5571-09T1

The primary issue addressed in this appeal is whether the driver of a delivery truck owed a duty of care to a secreted trespasser, who fell off the back of the truck and was injured. We hold that the driver had no duty to inspect the rear of the vehicle for unauthorized riders.

07-05-11 STATE OF NEW JERSEY VS. KAREN WEIL
A-5999-09T4

In this appeal, defendant urges us to revisit State v. Bringhurst, 401 N.J. Super. 421 (2008), and hold, in essence, that a defendant who files a Laurick post-conviction relief petition to obtain relief from enhanced penalties for driving while intoxicated based on a purported uncounseled prior DWI conviction is absolved from establishing a prima facie case for relief where her time delay has resulted in destruction of most of the records pertaining to the prior conviction. We decline to do so and affirm defendant's conviction.

07-05-11 MAHWAH REALTY ASSOCIATES, INC., ET AL. VS. TOWNSHIP OF MAHWAH, ET AL.
A-1726-10T1

In this appeal, the court considered whether the adoption of an ordinance inconsistent with a municipality's master plan met the requirements of the Municipal Land Use Law, N.J.S.A. 40:55D-1 to -163, and specifically, whether the governing body's

reasons for adopting the ordinance were "set forth in a resolution and recorded in its minutes," N.J.S.A. 40:55D-62a. Because the minutes summarized the argument heard by the governing body and memorialized the governing body's vote on the ordinance and its adoption of a resolution, which detailed its reasons for adopting the ordinance, the court held that the governing body's actions met the statute's requirements and reversed the trial court's contrary conclusion.

07-01-11 JANET DUDDY VS. GOVERNMENT EMPLOYEES INSURANCE COMPANY (GEICO)
A-4293-09T4

Plaintiff sought coverage under her automobile policy for the loss she incurred when she received a fraudulent cashier's check for the auto she was selling privately. We held her loss was covered under the comprehensive coverage clause, which included theft, and not excluded under the clause which excluded loss from the sale of a covered auto.

07-01-11 MARK W. MURNANE VS. FINCH LANDSCAPING, LLC
A-5156-09T1

A homeowner who contracts with multiple contractors for a home improvement project and characterizes himself as the general contractor may assert a claim against one of those contractors under the Consumer Fraud Act and Contractor's Registration Act. Messeka distinguished.

06-30-11 JUDITH A. MESSICK VS. BOARD OF REVIEW, ET AL.
A-3849-09T2

Internal appeals to the Board of Review from Appeal Tribunal determinations on unemployment compensation claims are plenary and de novo. The Board of Review is empowered to make new findings of fact, and may conduct new evidentiary proceedings.

Appeals from the Board of Review to the Appellate Division are governed by the substantial evidence rule and the principle of deference to the Board of Review's subject matter expertise.

06-29-11 STATE OF NEW JERSEY VS. DEREK J. KALTNER
A-2337-10T4

There is no broad "nuisance abatement" exception under the community caretaking doctrine to the general rule that warrantless entries into private homes are presumptively

unreasonable. In assessing the constitutional tolerance of entry into and search of a home in response to a noise complaint, we employ the "objectively reasonable test," balancing the nature of the intrusion necessary to handle the perceived threat to the community caretaking concern, the seriousness of the underlying harm to be averted, and the relative importance of the community caretaking concern.

We hold the test was not met where police officers, responding in the early morning hours to a noise complaint, lawfully entered the home, but thereafter fanned out and searched the entire residence for someone in control, while other less intrusive options were available and no compelling need was presented.

06-29-11 DRIVE NEW JERSEY INSURANCE COMPANY, ET AL
VS. GENNADIY GISIS, ET AL.
A-0951-10T1

Insurer that paid personal injury protection (PIP) benefits to persons injured in a motor vehicle accident may seek reimbursement of those payments pursuant to N.J.S.A. 396A-9.1 from the insurer for the tortfeasor because, although the tortfeasor maintained medical expense coverage for the school bus involved in the accident, it was not "required" to do so.

06-29-11 GOVERNMENT EMPLOYEES INSURANCE COMPANY, ET AL
VS. COMMUNITY OPTIONS, INC., ET AL.
A-5904-09T1

Insurer that paid personal injury protection (PIP) benefits to persons injured in an automobile accident may seek reimbursement of those payments pursuant to N.J.S.A. 396A-9.1 from the insurer for the tortfeasor because, although the tortfeasor maintained PIP coverage for the automobiles in its fleet, it was not "required" to maintain such coverage for the van involved in the accident.

06-29-11 IN THE MATTER OF THE ADOPTION OF N.J.A.C.
7:15-5.24(b) AND N.J.A.C. 7:15-5.25(e)
A-3262-08T1

We uphold the validity of two provisions of the DEP's Water Quality Management Planning Rules. The first regulation, N.J.A.C. 7:15-5.24, prohibits the extension of sewage lines in environmentally sensitive areas. The other regulation, N.J.A.C.

7:15-5.25(e), sets a minimum nitrate level for septic system discharge.

We reject the developer's contention that these provisions are ultra vires and constitute non-water related land use regulation, and conclude that the rules are authorized by a host of statutes that empower DEP to set water quality standards and in doing so to consider related environmental, social and land use policies. The agency's decision, that structuring sewage lines to limit the density of development in environmentally sensitive areas is the most efficient and beneficial way to address water quality concerns in environmentally sensitive areas, represents a valid and reasonable exercise of the DEP's statutory authority.

06-28-11 CALCO HOTEL MANAGEMENT GROUP VS. PATRICIA GIKE
A-2308-10T4

We affirm the grant of summary judgment to the owners of a hotel solely as to the finding that the renter of a hotel room is an "occupant" under the regulatory scheme contained in the Hotel and Multiple Dwelling Law, N.J.S.A. 55:13A-l to -28, and its regulations, N.J.A.C. 5:10-1.1 to -28.1. The renter may, therefore, be responsible for violation penalties as a result of the fire code hazard created by her guest even though the renter never entered the room and was not present when the conduct occurred. Because we are not convinced this finding in itself mandates the renter be strictly liable for compensatory damages to the room as a matter of law, summary judgment is not appropriate at this juncture on this issue. Accordingly, we remand for further briefing and consideration as to whether, and to what extent, the regulations impose a private cause of action for civil damages. We do not retain jurisdiction.

06-28-11 SANFORD CANTER VS. LAKEWOOD OF VOORHEES, ET AL.
A-1759-10T1

This is a nursing home negligence action. Defendant Seniors Healthcare, Inc. is a limited partner of a New Jersey limited partnership that owns the nursing home. Plaintiff sought to hold Seniors Healthcare liable for the limited partnership's negligence through corporate veil-piercing principles.

By leave granted, Seniors Healthcare appeals from the denial of its motions for partial summary judgment and reconsideration on the issues of whether corporate veil-piercing

principles apply to a New Jersey limited partnership, or alternatively, whether there is a genuine issue of material fact as to whether plaintiff established the veil-piercing factors.

We hold that equitable principles, such as veil piercing, may apply to a New Jersey limited partnership but in limited circumstances, such as where a limited partner takes or attempts action not within the safe harbor of N.J.S.A. 42:2A-27b, or dominates and uses the limited partnership to perpetrate a fraud, injustice, or otherwise circumvent the law. Because the record does not establish such circumstances, we reverse.

06-27-11 ROSEMARIE MISCHE VS. BRACEY'S SUPERMARKET, ET AL.
A-5293-09T1

An out-of-state business entity's membership in and purchase of goods and services from a New Jersey-based retailer's cooperative does not provide a sufficient foundation for the New Jersey courts to exercise long-arm jurisdiction over a claim against that business entity that is unrelated to its agreement with the retailer's cooperative.

06-27-11 IN THE MATTER OF PROTEST OF AWARD OF NEW JERSEY STATE CONTRACT A71188 FOR LIGHT DUTY AUTOMOTIVE PARTS
A-5626-07T1

In this appeal, we consider a challenge by former suppliers of auto parts to the State of New Jersey to a contract awarded by the Director of the Division of Purchase and Property pursuant to N.J.S.A. 52:34-6.2. This statute authorizes the Director to enter into cooperative purchasing agreements between multiple public entities in various states and a vendor. Here, the Director awarded a contract to AutoZone to supply auto parts to the State of New Jersey in accordance with a Master Agreement awarded by Charlotte, North Carolina, following a competitive bidding process.

We held that suppliers of auto parts to the State of New Jersey, whose contracts with the State had recently expired, and their business association have standing to challenge not only the specifications of the cooperative purchasing agreement but also the award of the contract. To effectuate this holding, the Director must provide notice to prospective bidders of the intention to consider utilization of the cooperative purchasing procurement method and notice of any award pursuant to this authority.

We also hold that the record supports the Director's determination that the AutoZone Contract meets the statutory standard as the "most cost-effective method of procurement."

06-22-11 STATE OF NEW JERSEY IN THE INTEREST OF V.A.
STATE OF NEW JERSEY IN THE INTEREST OF T.H.
STATE OF NEW JERSEY IN THE INTEREST OF C.T.
STATE OF NEW JERSEY IN THE INTEREST OF M.R.
A-1407-10T4;A-1408-10T4;A-1409-10T4;AND A-1410-10T4(CONSOLIDATED)

We reversed the denial of the State's motions to waive four juveniles to the Law Division, because after finding probable cause, the judge impermissibly allowed his personal opinions and views, and his antipathy to the waiver statute, to color his evaluation of whether the Prosecutor's waiver decision constituted a patent and gross abuse of discretion. We also concluded that the judge erred when he considered factors not articulated in the Attorney General's Waiver Guidelines.

06-22-11 STEPHEN VOELLINGER, ET AL. VS. PAULA T. DOW, ETC.
A-5768-09T3

In this appeal, the court examined whether or to what extent the Division of Criminal Justice may be liable for losing or destroying evidence properly seized years earlier during a criminal investigation. Although the court affirmed the dismissal of plaintiffs' action, the court rejected the trial judge's determination that plaintiffs were limited to seeking replevin and concluded that the judge should have found that a gratuitous bailment was created that imposed a gross negligence standard, which the Division did not breach as a matter of law.

06-20-11 J.M.S. AND G.S. AND S.S. VS. J.W. AND E.W.
A-0938-10T3

Plaintiffs are the paternal grandparents of two children adopted by defendants. This appeal requires us to consider plaintiffs' request for grandparent visitation where (1) plaintiffs were the children's temporary foster parents for almost two years; (2) the children were later adopted by defendants who are relatives of the children's mother; and (3) defendants afforded plaintiffs visitation for two years following the adoptions and then terminated visitation for personal reasons. We conclude that the Adoption Act, N.J.S.A. 9:3-38 to -56, does not bar plaintiffs from seeking visitation

under the grandparent visitation statute, N.J.S.A. 9:2-71, as the motion judge found largely in reliance upon In re Adoption of a Child by W.P., 163 N.J. 158 (2000). W.P. addressed the issue of grandparent visitation in the context of a nonrelative adoption and, therefore, is not dispositive of plaintiffs' claims. We therefore reverse the order granting summary judgment to defendants dismissing plaintiffs' complaint and remand for further proceedings.

06-20-11 BROCKWELL & CARRINGTON CONTRACTORS, INC. VS. KEARNY BOARD FOR EDUCATION AND HALL CONSTRUCTION, INC., ET AL.
A-1806-10T4

In this appeal from a public bidding dispute regarding a school building project, the central issue is the construction and application of N.J.A.C. 17:19-2.13(c). This regulation provides in pertinent part that, "[a] firm shall not be awarded a contract which, when added to the backlog of uncompleted construction work . . . would exceed the firm's aggregate rating." The dispute is whether this requirement applies to subcontractors as well as general contractors. We hold that the regulation applies to both subcontractors and contractors pursuant to the Public Schools Contract Law (PSCL), N.J.S.A. 18A:18A-1 to -59, and the Educational Facilities Construction and Financing Act (EFCFA), N.J.S.A. 18A:7G-1 to -48.

06-15-11 STATE OF NEW JERSEY VS. ARTHUR TELFORD
A-0286-10T2

In this appeal, the court considered whether defendant was deprived of the effective assistance of counsel because -- prior to his guilty plea to third-degree child endangerment in 2004 -- his attorney only advised he "might" rather than "would" be deported. In affirming, the court held that the deportation consequences at the time did not require more specific advice because the situation was too complex, observing: (1) the split in the federal circuits regarding the scope of "sexual abuse of a minor," 8 U.S.C.A. § 1101(a)(43)(A), as a type of "aggravated felony," 8 U.S.C.A. § 1227(a)(2)(A)(iii), which presumptively mandates deportation; (2) unsettled questions surrounding the type of analysis that would be undertaken by the tribunals charged with determining whether a noncitizen has committed an "aggravated felony"; and (3) the growing tendency in those courts to give little weight to the rule of construction adopted in Fong Haw Tan v. Phelan, 333 U.S. 6, 10, 68 S. Ct. 374, 376, 92 L. Ed. 433, 436 (1948), which resolves statutory ambiguities

in favor of noncitizens facing deportation. These questions were unsettled when defendant pled guilty and, indeed, are largely unsettled now. As a result, counsel here could do no more than he did, which was to advise defendant of the likelihood rather than the certainty of deportation.

06-14-11 PATRICK DEROSA, ET AL. VS. ACCREDITED HOME LENDERS, INC., ET AL.
A-3727-09T3

The Millville Dallas Airmotive Plant Job Loss Notification Act, N.J.S.A. 34:21-1 to -7 (the New Jersey WARN Act or the Act), generally provides that under certain conditions employees are entitled to notice, or alternatively, severance pay, in the event of a transfer or termination of operations, or a mass layoff by an employer. On this appeal, we consider the novel question of whether the Act applies to parent and affiliated companies. We conclude that consistent with its federal analogue, The Worker Adjustment and Retraining Notification Act of 1988 (the federal WARN Act), 29 U.S.C.A. §§ 2101 to -2109, the New Jersey Act does apply to parent and affiliated companies, and in reaching this conclusion, we adopt the "five-factor" test enunciated in 20 C.F.R. § 639.3(a)(2).

On motion for summary judgment, the motion judge dismissed plaintiffs' complaint. We reversed and remanded for a hearing on the application of the Act consistent with our holding.

06-14-11 CLUB 35, L.L.C. VS. BOROUGH OF SAYREVILLE
A-5932-09T3

We consider a local ordinance that is a counterpart to N.J.S.A. 2C:33-27, a provision of the Code of Criminal Justice. The Code offense and the ordinance regulate a practice commonly known as BYOB — bringing one's own beer or wine to drink in premises that serves other drinks or food but does not have a license or permit authorizing sale of alcohol for on-premises consumption. Applying N.J.S.A. 2C:1-5d, we conclude that the ordinance's regulations of BYOB are preempted.

Because the Code offense preserves a municipality's right to prohibit BYOB, we also address the scope of that authority. We hold that the reserved right permits a municipality to prohibit BYOB in all but a clearly, objectively and rationally defined class of unlicensed establishments but that regulation of BYOB where a municipality permits it is governed exclusively by N.J.S.A. 2C:33-27.

06-13-11 SHARON KELLY O'BRIEN VS. TELCORDIA TECHNOLOGIES, INC.
A-4021-07T3

In this case alleging age discrimination in employment occurring as the result of a force reduction, we discuss the current state of federal law regarding mixed motive analysis as initially articulated in Price Waterhouse.

06-13-11 SHAKOOR SUPERMARKETS, INC. VS. OLD BRIDGE TOWNSHIP PLANNING BOARD, ET AL.
A-3765-09T3

In this case, we review the sufficiency of a public notice for an application for preliminary and final site plan approval. In Perlmart of Lacey, Inc. v. Lacey Twp. Planning Bd., 295 N.J. Super. 234, 237 (App. Div. 1996), the public notice was challenged because it failed to inform the public that the commercial lots planned for a commercial zone were to be used as "a conditional use K-Mart shopping center," and was found insufficient. This case presents the question whether public notice of an application for site plan approval that included the construction of "a main retail store of 150,000 [square feet]" was legally insufficient because the application failed to identify the store as a Walmart. We conclude that the notice was sufficient.

06-10-11 FRANK J. NOSTRAME VS. NATIVIDAD SANTIAGO, ET AL.
A-2298-10T2

An attorney who is discharged by his client may not maintain an action for tortious interference with contract against the successor attorney unless that attorney used wrongful means, such as fraud or defamation, to induce the client to discharge the original attorney.

06-09-11 SARA LAPIDOTH VS. TELCORDIA TECHNOLOGIES, INC.
A-1545-09T1

We reverse the grant of summary judgment to defendant-employer, holding that although plaintiff's year-long maternity leave was not covered by the federal Family and Medical Leave Act, 29 U.S.C.A. §§ 2612 to 2654, or the New Jersey Family Leave Act, N.J.S.A. 34:11B-1 to -16, a reasonable employee could interpret the two letters sent by defendant authorizing plaintiff's tenth maternity leave as a promise of reinstatement.

06-07-11 AMY RYAN VS. GINA MARIE, L.L.C., ET AL.
A-1342-09T3

Defendant purchased in 2005 the apartment building in which plaintiff had resided since 1993. After defendant assumed ownership, plaintiff learned that from the time of her initial occupancy, her rent exceeded what was permissible under Hoboken's rent control ordinance. We reversed the trial court's holding that defendant was liable for the entire excess and remanded the matter for further proceedings with respect to defendant's contract claim against the prior owner and its third-party claims against others in the chain of title.

06-03-11 STATE OF NEW JERSEY VS. EDWARD J MIERZWA
A-3455-09T2

After defendant's indigency application was denied, he proceeded to trial without an attorney and was convicted of several offenses in municipal court and the Law Division. We reverse and remand for a new trial because orders entered by this court and the Law Division established defendant's right to assigned counsel. Additionally, the trial courts failed to evaluate defendant's request for assigned counsel in accordance with N.J.S.A. 2B:24-9 and N.J.S.A. 2A:158A-14.

05-31-11 IN THE MATTER OF SUBPOENA DUCES TECUM ON CUSTODIAN OF RECORDS, CRIMINAL DIVISION MANAGER, MORRIS COUNTY
A-0924-10T3

In a case in which a defendant's application for representation by the Public Defender and supporting materials may contain information the State could use against him in the prosecution of the charges for which he sought such representation, defendant may invoke the attorney-client privilege to prevent disclosure of those materials.

05-31-11 NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION VS. EXXON MOBIL CORPORATION
A-0314-09T2

In N.J. Dep't of Envtl. Prot. v. Exxon Mobil Corp., 393 N.J. Super. 388 (App. Div. 2007), we held that "an entity may be strictly liable under [the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 to -23.11z (Spill Act)] for damages for the loss of natural resources adversely affected by its discharge of hazardous substances[.]" Id. at 391. This appeal addresses the

issue of whether plaintiff Department of Environmental Protection (DEP) is barred by the statute of limitations, N.J.S.A. 2A:14-1.2, from pursuing a common law strict liability claim against defendant Exxon Mobil seeking to obtain natural resource damages under the Spill Act. We granted leave to appeal and now conclude that N.J.S.A. 58:10B-17.1 (the extension statute) applies to a claim for relief based on common law strict liability.

05-23-11 STATE OF NEW JERSEY VS. JOSEPH ADUBATO
A-3419-09T1

We affirmed the denial of a motion to suppress in a DWI case.

The police officer received a dispatch that a specific car was driving around the neighborhood, and that the driver kept exiting the vehicle. He may also have been told that the driver might be intoxicated. When the police arrived at the scene, the car was parked with its lights on and the engine running. The driver was speaking loudly on his cell phone. It was after 10 p.m.

The police officer, who was not then aware that the driver was parked in front of his residence, activated his flashers and pulled up behind the car. As he approached the driver, the police officer detected the odor of alcohol. He determined that it was coming from the driver's breath. In addition, the driver's eyes were watery and bloodshot, his speech was affected, and he told the police officer he had been drinking at a pub. After field-sobriety tests, the driver was arrested and charged with DWI.

05-20-11 STATE OF NEW JERSEY VS. G.L.
A-1380-08T1

Because it appeared that defendant, a juvenile, had not been adequately advised of the Megan's Law consequences of his plea of guilty to conduct that, if he were an adult, would constitute aggravated sexual assault, his plea was vacated and he was permitted to plead guilty to fourth-degree child abuse, an offense that was not subject to Megan's Law. Following this second plea, defendant moved to vacate two convictions for failure to register that had occurred in the interval between the first and second pleas. His motion was denied, and we affirmed that determination, basing our opinion on California and United States Supreme Court precedent.

05-19-11 STATE OF NEW JERSEY VS. MICHAEL STEELE
A-3295-09T1

As required by the plain language of the new mandatory pension forfeiture statute, we interpreted N.J.S.A. 43:1-3.1a as mandating forfeiture of only the portion of the defendant's pension that was earned as a member of the retirement fund that he participated in at the time he committed the offense and that covered the position involved in the offense. We rejected the trial court's determination that it had the discretion to limit the forfeiture to the credit earned from the date of the first criminal act alleged in the indictment forward, and the State's interpretation that the statute requires forfeiture of all pension credit, including credit earned as a member of a separate pension system that did not cover the position involved in the offense.

05-17-11 STATE OF NEW JERSEY VS. JULIO HEISLER
A-6281-08T4

We held that the ten-day period in which a defendant must object to the admission into evidence of a lab certificate, or else waive his right to confront the laboratory analyst, begins to run only after the State has provided "all reports relating to the analysis in question." N.J.S.A. 2C:35-19. We resolved ambiguity in the statute that requires the State to serve its notice of intent to use a lab certificate and supporting data twenty days before trial, but requires a defendant to object within ten days of receiving only the notice of intent. As the defendant's objection was timely under our statutory construction, we reversed his convictions for being under the influence of CDS, and operating a vehicle while knowingly having CDS in his possession or in the vehicle.

05-16-11 ALON FRUMER, ET AL. VS. NATIONAL HOME INSURANCE COMPANY, ET AL.
A-1379-10T4

The primary issue in this appeal is whether binding arbitration is the exclusive remedy for a dispute involving claims covered by a new home buyer's warranty issued by a private warranty plan. We conclude the warranty provides an election of remedies for a dispute involving a workmanship/systems defects claim; however, where the homeowner files a claim against the warranty, binding arbitration is the

exclusive remedy. We also conclude the warranty provides no election of remedies for a dispute involving a major structural defects claim and binding arbitration is the exclusive remedy.

05-16-11 IN THE MATTER OF THE DENIAL OF THE APPLICATION OF GILES W. CASALEGGIO FOR A RETIRED LAW ENFORCEMENT OFFICER PERMIT TO CARRY A HANDGUN
A-4924-09T4

The issue presented in this case is whether a former assistant prosecutor and deputy attorney general is eligible for a permit to carry a handgun under N.J.S.A. 2C:39-6(l), which covers retired law enforcement officers. Based on our interpretation of the statute and its underlying purpose, we hold that neither an assistant prosecutor nor a deputy attorney general qualifies as a "full-time member of a State law enforcement agency" for the purpose of this exemption. Additionally, as used in N.J.S.A. 2C:39-6(l), the federal Law Enforcement Officers Safety Act of 2004, 18 U.S.C.A. § 926C, does not encompass retired assistant prosecutors or deputy attorneys general.

05-13-11 HAROLD M. HOFFMAN, ETC. VS. SUPPLEMENTS TOGO MANAGEMENT, LLC, ET. AL.
A-5022-09T3

We reverse the trial court's enforcement of a forum selection clause within the internet webpage of the defendant product sellers, where the webpage was structured in a manner that "submerged" the clause so that it would not appear on a potential purchaser's computer screen unless he or she scrolls down to display it before adding a product to his or her electronic "shopping cart."

05-13-11 JAMES BARACIA VS. BOARD OF TRUSTEES OF THE STATE POLICE RETIREMENT SYSTEM
A-3611-09T2

An employer's payment of its pro rata share of petitioner's attorney's fees incurred in the prosecution of a third-party action in which the employer received reimbursement of its statutory workers' compensation lien and was relieved of its future workers' compensation liability does not constitute a payment of compensation under N.J.S.A. 34:15-40(b). As a consequence, petitioner's accidental disability retirement allowance from the State Police was not subject to a dollar-for-

dollar reduction under N.J.S.A. 53:5A-38.1(b) because it was not compensation or payment of a periodic benefit under the workers' compensation scheme, but represented a credit for the employer's portion of the attorney's fee in the third-party recovery lawsuit.

05-13-11 STATE OF NEW JERSEY VS. KEITH V. PITTMAN
A-5867-08T4

New Jersey has not considered the admissibility in a criminal case of the results of the phenolphthalein presumptive test for the presence of blood on a person or object or any other presumptive test utilized for that purpose. Nonetheless, in this case, evidence of a positive result was introduced, without objection, by a police detective with no prior experience in conducting the test and no understanding of how it functioned or of the possibility of false positive results occurring as the result of the presence of substances other than blood. We found the introduction of the test results to constitute reversible error, and in the course of our discussion of the issue, canvassed precedent from other states discussing the conditions for admissibility of the phenolphthalein test and other presumptive tests for the presence of blood.

05-12-11 NICKEMEA WHITFIELD VS. BONANNOREAL ESTATE GROUP, ET AL.
A-2830-09T1

Plaintiff was injured at work and received workers' compensation benefits from her employer. She instituted a third-party negligence action against a number of parties, including the lessee of the premises, a general partnership in which her employer was a partner. The partnership sought summary judgment, arguing that the immunity provided by N.J.S.A. 34:15-8 applied. It contended that because the partnership shared liability for the actions of its agents, i.e., the individual partners, it was entitled to share in the immunities provided to those partners.

We concluded that the partnership was a separate entity, a third-party, under the Worker's Compensation Act. Further, the Revised Uniform Partnership Act reflected an evolution in the legal theory of partnerships, rejecting the common law notion of a partnership being an aggregate of its partners, and adopting the entity theory. Pursuant to the express language of both statutes, and the general policies of the Workers' Compensation

Act, the partnership was not entitled to the immunity provided by N.J.S.A. 34:15-8 to its partner, the employer of plaintiff.

05-12-11 VALERIA HEADEN VS. JERSEY CITY BOARD OF EDUCATION
A-5947-09T1

In this appeal, we are asked to determine whether school districts that have adopted the New Jersey Civil Service Act, N.J.S.A. 11A:1-1 to :12-6, are required to extend vacation leave to the district's ten-month food service employees pursuant to N.J.S.A. 11A:6-3, and an implementing regulation, N.J.A.C. 4A:6-1.1(e). We concluded the statute addressed to full-time State and political sub-division employees was not intended to include local school district employees whose employment is subject to the provisions of Title 18A, and whose leave is defined by the terms of the applicable collectively negotiated agreement.

05-10-11 NEW JERSEY DIVISION OF YOUTH AND FAMILY SERVICES VS. A.R., J.R., W.B., AND J.H.
IN THE MATTER OF N.R., I.R., AND J.H.
A-3161-10T4

The undisputed facts revealed that defendant left his ten-month child to sleep on a twin bed without railings, while a ten-year old child also slept in the bed, near an operating radiator; the ten-month old child was found the next morning on the floor suffering severe burns from the hot radiator. The trial court found defendant was merely negligent and the child neither abused nor neglected within the meaning of N.J.S.A. 9:6-8.21(c). The court granted leave to appeal and reversed, concluding in its application of the statutory standard, as interpreted in G.S. v. Dep't of Human Servs., 157 N.J. 161 (1991), that defendant was grossly negligent because "an ordinary reasonable person" would understand the situation posed dangerous risks and defendant acted without regard for the potential serious consequences.

05-10-11 STATE OF NEW JERSEY VS. TERRENCE MILLER
A-6243-07T4

Defendant's conviction need not be reversed merely on the ground that the first time he met the Assistant Public Defender who was substituted to represent him in place of his previous assigned counsel was the date scheduled for a suppression hearing and trial. To be entitled to a new hearing and trial,

defendant must show ineffective assistance of counsel or other prejudice in violation of his due process rights.

In dissent, Judge Fuentes would hold that principles of fundamental fairness require a new hearing and trial without a showing of ineffective assistance or prejudice beyond the late initial contact with defendant's trial attorney.

05-09-11 STATE OF NEW JERSEY IN THE INTEREST OF A.D., A MINOR
A-3720-09T4; A-3721-09T4

We reverse the trial court's denial of the State's motion to transfer jurisdiction from the Family Part to the Law Division. Both defendants were just shy of eighteen when they were charged with Chart 1 offenses, including murder. Defendants' claims of duress and renunciation do not negate the existence of probable cause to believe they committed a delinquent act and are insufficient to defeat waiver.

05-09-11 PRIME ACCOUNTING DEPARTMENT VS. TOWNSHIP OF CARNEY'S POINT
A-4994-09T4

We uphold dismissal of a tax appeal complaint for lack of jurisdiction under N.J.S.A. 54:3-21, which confers limited jurisdiction upon the Tax Court for direct review of real property assessments only after timely filing of a complaint by an aggrieved taxpayer. Under the statute, the complaint must satisfy the State Uniform Tax Procedure Law and the Court Rules, including Rule 8:3-5(a), which requires identification of the taxpayer and subject property. We find the complaint, which named as plaintiff a non-legal entity with no relation to the subject property but identified on the municipal tax list, improper, rendering taxpayer outside the prescribed statutory time limits. The relation back doctrine, Rule 4:9-3, is inapplicable because the named plaintiff is entirely unrelated to taxpayer and would thus not be a routine substitution as permitted by the Rule.

05-06-11 STATE OF NEW JERSEY VS. JAMES E. BARLOW
A-2593-09T3

We find that counsel rendered ineffective assistance to defendant when she declined to file a motion on his behalf to retract his guilty plea and, at the sentencing hearing when retraction was raised, she denigrated defendant's position by disclosing to the judge the independent investigation that she

and her office had undertaken that demonstrated defendant's guilt. Because the judge's determination regarding retraction was made on the basis of the unfavorable record created by defense counsel, we remanded for reassignment of counsel and a hearing on the issue of retraction before a different judge, using pre-sentencing standards.

05-05-11 IN THE MATTER OF TOWNSHIP OF PARSIPPANY-TROY HILLS AND PARSIPPANY PUBLIC EMPLOYEES LOCAL 1
A-0471-10T2

We affirm the Public Employment Relations Commission's decision that a town cannot as a matter of statutory or managerial right require a union employee to fill out a Family Medical Leave Act (FMLA) medical certification if that employee expressly declines FMLA leave.

05-04-11 ONE STEP UP LTD, VS. SAM LOGISTIC, INC., ET AL.
A-2494-09T3

The primary issue in this case is whether a bailee can escape liability for conversion under the UCC's good faith exception, N.J.S.A. 12A:7-404. We hold that a bailee faced with adverse claims cannot avail itself of this exception where it failed to follow the procedure set forth in Capezzaro v. Winfrey, 153 N.J. Super. 267, 273 (App. Div. 1977). Specifically, in order to establish that the property was released in "good faith," the bailee must show that it either (1) investigated the competing claims and confirmed the validity of the claim underlying the release, or (2) filed an action for interpleader.

05-04-11 STATE OF NEW JERSEY VS. GERALD E. NUNNALLY
A-6031-09T1

In this appeal we addressed the statute governing refusal by a commercial vehicle driver to submit to a breath test (CDL refusal), N.J.S.A. 39:3-10.24, and the general statute penalizing refusal to submit to a breath test (general refusal), N.J.S.A. 39:4-50.4a. We held that a charge of CDL refusal or general refusal requires, as a predicate, an arrest under the corresponding DUI statute, N.J.S.A. 39:3-10.13 or N.J.S.A. 39:4-50. Here, where defendant was arrested under the CDL statute, N.J.S.A. 39:3-10.13, and then refused to submit to a breath test, he could not be prosecuted for general refusal, N.J.S.A. 39:4-50.4a. We also held that, because citing the wrong refusal statute is not a technical defect, R. 7:2-5, and because CDL

refusal is not a lesser included offense of general refusal, R. 7:14-2, the State was precluded from amending the complaint to charge defendant with CDL refusal after the ninety-day statute of limitations expired. For future guidance, we noted that a commercial vehicle driver whose conduct violates both the CDL and general DUI statutes may be arrested and charged under either or both statutes.

05-03-11 NEW JERSEY DIVISION OF YOUTH AND FAMILY SERVICES VS. K.L.W. AND P.L.J.
A-5178-09T3, A-5234-09T3 (CONSOLIDATED)

Although the Division of Youth & Family Services knew that this child's siblings were in the custody of their maternal grandparents and had their address, the Division did not contact them as required by N.J.S.A. 30:4C-12.1. Because the Division's non-compliance affected the trial judge's analysis of the child's best interests under N.J.S.A. 30:4C-15a(1)-(4), we reverse.

05-02-11 STATE OF NEW JERSEY VS. JEROME KENNEDY
A-5677-09T3

The offense of tampering with physical evidence is "an offense involving dishonesty," which requires the forfeiture of public office or employment under N.J.S.A. 2C:51-2(a)(1).

05-02-11 PORT IMPERIAL CONDOMINIUM ASSOCIATION, INC. VS. K. HOVANIAN PORT IMPERIAL URBAN RENEWAL, INC., ET AL.
A-1013-10T1

We uphold summary judgment in favor of defendants under the statute of repose, N.J.S.A. 2A:14-1.1, which precludes construction defect claims against subcontractors who completed improvements to real property more than ten years before the filing of complaints against them, regardless of when the injury occurred or the cause of action otherwise accrued. For the statute to apply, these improvements must have resulted in a defective and unsafe condition that is hazardous to the well-being and safety of persons or property. Here, we reject plaintiff condominium association's contention that ongoing settlement of buildings into the soil created merely expensive and inconvenient repairs. We find the nature of the allegations and the supporting evidence substantiate the finding that defendants' improvements caused both functional impairment, with consequential economic losses, and a hazardous condition, qualifying defendants for protection under the statute.

04-29-11 ESTATE OF NANCY Z. PALEY VS. BANK OF AMERICA (f/k/a FLEET BANK, f/k/a FIRST JERSEY BANK, f/k/a WESTMINSTER BANK, f/k/a SUMMIT BANK), ET AL.
A-4391-07T3, A-5519-07T3, A-5864-07T3 (CONSOLIDATED)

We held that the Consumer Fraud Act (CFA) does not apply to a claim by a bank depositor for payment by the bank of multiple checks presented to and paid by it to the depositor's medical aide. We held that the CFA provides no remedy to the depositor when a bank adopts a check presentation and clearance procedure consistent with the Uniform Commercial Code (UCC), specifically Articles 3 and 4 of the UCC, N.J.S.A. 12A:3-101 to -605 and 4-101 to -504, has acted in conformity with those procedures, and does not have an agreement with the depositor that creates a special relationship with duties beyond those imposed by the UCC.

04-29-11 STATE OF NEW JERSEY VS. WILLIAM REHMANN, JR.
A-3291-09T3

In seeking to prove defendant's blood alcohol content in this DWI prosecution, the State called an expert to testify about the results of a laboratory test performed on defendant's blood sample by another technician. In considering defendant's argument that the failure to produce the other technician violated the rights guaranteed him by the Confrontation Clause of the Sixth Amendment, the court held that in such circumstances the State must call a witness who has made an independent determination as to the results offered. The court concluded that a surrogate witness knowing nothing but what is stated in another's report will not satisfy a defendant's confrontation rights but nevertheless affirmed and found that the State called an appropriate witness because the witness supervised the testing process and signed the laboratory certificate.

04-28-11 THERESA MEIER, ET AL. VS. PASQUALE D'AMBOSE
A-2555-09T1

In the absence of a lease provision to the contrary, defendant-landlord had a duty to the lessee of a single-family dwelling to maintain the furnace and to inspect periodically for defects in order to prevent a hazardous condition leading to a fire and the lessee's death. Although the lease was for the entirety of the premises, the controlling law is that expressed in Restatement (Second) of Torts § 358, rather than the holdings

of Patton v. Texas Co., 13 N.J. Super. 42 (App. Div.), certif. denied, 7 N.J. 348 (1951), and Szeles v. Vena, 321 N.J. Super. 601 (App. Div.), certif. denied, 162 N.J. 129 (1999).

04-27-11 JEFFREY McDANIEL, ET AL. VS. MAN WAI LEE, ET AL.
A-5900-09T1

In this multi-vehicle auto negligence action, we conclude N.J.S.A. 34:15-8, the fellow-servant provision of the Workers' Compensation Act, N.J.S.A. 34:15-1 to -128, bars a third-party tortfeasor's action against the co-worker seeking indemnification and contribution.

04-26-11 STEVEN ORNER, ET AL. VS. GUANG LIU, ET AL.
A-6185-09T4

This action, which concerned disputes about plaintiffs' sale of certain rental properties to defendants, was settled and dismissed on June 8, 2009. The parties' settlement agreement provided for the execution of new contracts within three days and a closing no later September 15, 2009, after which -- if the closing did not occur -- the parties would have no further obligations. The parties failed to agree on the form and content of new contracts, and plaintiffs sold the properties to others.

Defendants filed a motion for relief, pursuant to Rule 4:50-1, on June 7, 2010, one day short of a year from the order in question. The trial judge denied the motion and the court affirmed, concluding among other things that the motion was untimely. In affirming, the court emphasized that Rule 4:50-2 requires that all motions for relief pursuant to Rule 4:50-1 must be filed within "a reasonable time." Rule 4:50-2's declaration that motions based on subsections (a), (b), or (c) of Rule 4:50-1 may not be filed more than one year from the order in question represents only an outer limit; such motions must still be filed within "a reasonable time," which may be less than one year.

04-25-11 IN THE MATTER OF THE STATE BOARD OF EDUCATION'S DENIAL OF PETITION TO ADOPT REGULATIONS IMPLEMENTING THE NEW JERSEY HIGH SCHOOL VOTER REGISTRATION LAW
A-5681-09T3

We construe N.J.S.A. 18A:36-28, which prescribes that the Commissioner of Education "shall adopt pursuant to the

'Administrative Procedure Act' . . . rules and regulations necessary to implement the provisions" of the High School Voter Registration Law (the "HSVRL"), N.J.S.A. 18A:36-27, to impose a mandatory, not a directory, obligation upon the Commissioner to adopt regulations implementing the statute.

We affirm the denial of appellants' petition for rulemaking because respondents have enacted regulations under N.J.A.C. 6A:30, Appendix A and B, to monitor compliance with the HSVRL by public school districts. Although appellants contend that those regulations are insufficient, we do not find respondents' chosen method to implement the statute with respect to public schools to be arbitrary or capricious. However, we reverse the denial of appellants' petition with respect to nonpublic schools because N.J.S.A. 18A:36-27 explicitly applies to both public and nonpublic schools, and respondents have not adopted any regulations to implement the HSVRL as to nonpublic schools.

04-25-11 DEAN SMITH VS. HUDSON COUNTY REGISTER, ET AL.
JEFF ZEIGER VS. HUDSON COUNTY REGISTER, ET AL.
A-4113-09T3, A-4114-09T3, (CONSOLIDATED)

A requestor who is charged an excessive amount to obtain copies of public records under the Open Public Records Act ("OPRA"), N.J.S.A. 47:1A-1 to -13, who then prevails in an OPRA action against the public entity that engaged in the overcharging, or whose OPRA action acts as a catalyst to a change in the public entity's practices, is entitled to receive reasonable attorney's fees pursuant to N.J.S.A. 47:1A-6. The requirement within the fee-shifting provision, N.J.S.A. 47:1A-6, that the requestor be "denied access" to the records is not restricted to instances where physical access has been denied, but also encompasses instances where a requestor has been forced to pay excessive copying charges to obtain the records at rates above those prescribed by OPRA in N.J.S.A. 47:1A-5(b). Applying these standards, we hold that plaintiff Dean Smith, who was a prevailing party in Smith v. Hudson County Register, 411 N.J. Super. 538 (App. Div. 2010), which produced a change in defendants' practices, is entitled to an award of reasonable trial and appellate counsel fees.

04-21-11 BARBARA A BOTIS VS. ESTATE OF GARY G KUDRICK VS. WELLS FARGO BANK
A-5562-09T4

Effective January 18, 2009, the statute of frauds, N.J.S.A. 25:1-5 to -16, was amended to include palimony agreements among the types of "agreements or promises" that must be in writing and signed by the parties in order to be enforceable. N.J.S.A. 25:1-5(h); L. 2009, c. 311, § 1. This case requires us to determine whether to accord the amendment retroactive effect in a case filed against the deceased promisor's Estate prior to the effective date of the amendment on an alleged palimony agreement enforceable when the complaint was filed. We conclude that the amendment applies prospectively and affirm the June 9, 2010 order denying the Estate's motion to dismiss the complaint, which is before us on leave granted.

04-20-11 DOVER-CHESTER ASSOCIATES, ETC. VS. RANDOLPH TOWNSHIP AND RANDOLPH TOWN CENTER ASSOCIATES, L.P. ET AL. VS. RANDOLPH TOWNSHIP (CONSOLIDATED)
A-3445-09T3, A-3446-09T3

These appeals from the judgment of a county board of taxation to the Tax Court are governed by N.J.S.A. 54:51A-1(b), which requires that all taxes due for the year for which review is sought must have been paid "[a]t the time that a complaint has been filed with the Tax Court[.]" In contrast, direct appeals to the Tax Court and initial appeals to a county board of taxation are governed by N.J.S.A. 54:3-27, which requires the appealing taxpayer to pay all taxes due, up to and including the first quarter of the taxes assessed against him for the current tax year. However, because N.J.S.A. 54:3-27 does not specify when such payment must be made, we have found the requirement satisfied when payment is made by the return date of a motion to dismiss the appeal. The Legislature amended the statutes in 1999, adding provisions that permitted the relaxation of the tax payment requirements in the "interests of justice" but did not define that term. As we have not previously considered the application of that provision and a conflict has arisen in decisions in the Tax Court, we address the question whether relaxation is required in the "interests of justice" under N.J.S.A. 54:51A-1(b) if the tax obligation is satisfied before the return date of a motion to dismiss its complaint. We conclude that it is not.

04-19-11 E.M.B. VS. R.F.B
A-1155-09T1

Plaintiff's stated reasons for seeking a final restraining order against her 56 year old son were that he had stolen her car keys, cell phone, bank book, money and some jewelry. In

addition, plaintiff testified that defendant had locked her out of the house on one occasion and called her a "senile old bitch." The trial court entered a final restraining order based upon harassment. We reverse because theft is not one of the enumerated predicate acts under N.J.S.A. 2C:25-19 and because the evidence was insufficient to prove the thefts or other acts were committed with the requisite purpose to harass.

04-15-11 REZEM FAMILY ASSOCIATES, LP VS. THE BOROUGH OF MILLSTONE, ET AL.
A-2290-09T2

The primary issue on appeal is whether a plaintiff must exhaust administrative and judicial remedies, and obtain a final ruling on its land use claims, before it can pursue a cause of action for alleged violation of its substantive due process rights. We hold that a substantive due process claim in a land use dispute requires both governmental misconduct that "shocks the conscience" and exhaustion of remedies available under our land use law.

04-15-11 STATE OF NEW JERSEY VS. HAI KIM NGUYEN
A-2311-09T2

If a person incarcerated in another state is transferred to New Jersey in accordance with the Extradition Clause of the United States Constitution and the Uniform Criminal Extradition Act to stand trial in this State, that person is not entitled to a dismissal of the charges based on this State's alleged failure to bring him to trial within the time required by the Interstate Agreement on Detainers. Suppression is not required if evidence was discovered by a search in another state that conformed with the Fourth Amendment and the New Jersey Constitution, but violated a statute of the other state that requires a warrant to be executed only by a police officer of the jurisdiction where the search is conducted.

04-12-11 STATE OF NEW JERSEY VS. FABIO SIMON
A-3142-04T2

We hold that a third year law student enrolled in an internship program pursuant to Rule 1:21-3(b) may present a case to a grand jury in the course of an approved program.

04-12-11 SEAN WOOD, L.L.C. VS. HEGARTY GROUP, INC., ET AL.
A-1134-09T2

In a Special Civil Part action, Sean Wood, L.L.C., sought payment in the amount of $14,583.25 from the Hegarty Group, Inc. and Kenneth Hegarty, individually, that it alleged was owed on two contracts for rigging out, loading and delivering industrial machinery and tanks to two of the Hegarty Group's customers. The Hegarty Group counterclaimed, alleging lost profits as the result of a breach of contract by Wood, resulting in the Hegarty Group's inability to completely satisfy a purchase order by its customer, Perry Videx Company.

04-12-11 STATE OF NEW JERSEY VS. JEFFREY WITCZAK
A-2735-10T2

We reviewed an interlocutory order denying defendant's motion to suppress a handgun seized from his residence. The primary question presented is whether the community caretaker exception enunciated in Cady v. Dombrowski[1] applied to a warrantless search in the home. Defendant contended that the motion judge erred by applying the exception, and urged us to follow the rationale expressed in Ray v. Township of Warren,[2] which held that the exception does not extend to searches of homes. We declined to follow Ray and continued to apply New Jersey precedent which permitted the exception in the home context on a case-by-case, fact-sensitive basis. We reversed, however, because no exigencies existed for the warrantless entry into defendant's home and the State did not demonstrate that the search was performed for the legitimate purpose of fulfilling a community caretaker responsibility.

04-11-11 STATE OF NEW JERSEY VS. CHRISTOPHER KORNBERGER
A-0859-07T4, A-0679-08T4 (CONSOLIDATED)

It was not error for the trial court to instruct the jury on the law of attempt before instructing on the substantive crime defendant was accused of attempting. However, in charging the jury on attempt, the court must consider the three types of attempt set forth in N.J.S.A. 2C:5-1a(1) to -1a(3), and must only charge the jury as to the section(s) that apply in light of the evidence presented. In this case, the judge charged the jury as to all three types of attempt when only the "substantial

---

[1] 413 U.S. 433, 93 S. Ct. 2523, 37 L. Ed. 2d 706 (1973).
[2] 626 F.3d 170 (3d Cir. 2010). Ray was decided after the motion judge denied defendant's suppression motion.

step" instruction was appropriate, but the error did not warrant reversal of defendant's conviction.

04-11-11 CHASE BANK USA, N.A. VS. JENNIFER STAFFENBERG
A-4488-09T3

Credit card companies and banks are entitled to recover statutory counsel fees from a debtor in the Special Civil Part, pursuant to N.J.S.A. 22A:2-42, in the amount of five percent of the first $500 recovered and two percent of the excess above $500, even where they utilize the services of in-house attorneys in procuring the judgment. The prohibitions in the Retail Installment Sales Act of 1960, N.J.S.A. 17:16C-42(d), and in the Market Rate Consumer Loan Act of 1996, N.J.S.A. 17:3B-40, on the recovery of contract-based attorney's fees where in-house counsel and salaried employees are utilized do not expressly or impliedly repeal or nullify a plaintiff's entitlement to the modest fees awarded in the Special Civil Part as taxed costs under N.J.S.A. 22A:2-42.

04-07-11 STATE OF NEW JERSDY VS. CARYN BRADLEY, ET AL.
A-043-09T4

A private citizen is not a "prosecuting attorney" as defined in Rule 3:23-9. Accordingly, if a municipal court administrator or municipal court judge finds no probable cause to issue a complaint at the request of a private citizen, that citizen lacks standing to appeal the decision.

04-07-11 MARY HYLAND VS. TOWNSHIP OF LEBANON
A-4139-09T2

This dispute over the Township's decision to eliminate further payments of the tax collector's vacation, sick and leave days was not a matter within the exclusive jurisdiction of the Public Employee Relations Commission; and the elimination of further payments for the tax collector's vacation, sick and leave time violated N.J.S.A. 40A:9-165 because it reduced the amount of "salary" the Township had previously agreed to pay the tax collector.

04-05-11 STATE OF NEW JERSEY VS. NICOLE HOLLAND
A-4384-09T3

STATE OF NEW JERSEY VS. KENNETH PIZZO, JR
A-4775-09T3

In these back-to-back appeals from DWI convictions, we held that Alcotest results are not per se inadmissible simply because the device has been calibrated with a Control Company temperature probe instead of the Ertco-Hart thermometer validated by the Supreme Court in State v. Chun. Because the record in these matters, however, is insufficient to support a finding that the digital thermometer used was substantially similar to the Ertco-Hart device, we remand to the Law Division for a consolidated hearing to determine the reliability of the Control Company probe, including whether differences between the two had any impact at all on the accuracy of the ultimate results.

04-01-11 NUTLEY POLICEMEN'S BENEVOLENT ASSOCIATION LOCAL # 33, ET AL. VS. TOWNSHIP OF NUTLEY, ET AL.
A-3730-09T2

The Fair Labor Standards Act, 29 U.S.C.S. §§ 201-219, requires a public employer to allow an employee awarded compensatory time off in lieu of overtime pay "to use such time within a reasonable period after making [a] request if the use of the compensatory time does not unduly disrupt the operations of the public agency." 29 U.S.C.S. § 207(o)(5). This appeal required us to consider whether an employer who denies permission to use compensatory time on the date requested but permits use within the "reasonable period" defined in its agreement with its employees must also show that a grant would "unduly disrupt" operations. 29 C.F.R. § 553.25(c)(2), (d). We concluded that the employer need not do so and affirmed the order granting summary judgment to the employer.

03-30-11 GERALDINE MURRAY, ET AL. VS. PLAINFIELD RESQUE SQUAD, ET AL.
A-2906-08T1

Although members of a municipal rescue squad who responded to a shooting were not entitled to immunity under N.J.S.A. 2A:62A-1, the Good Samaritan Act, because they had a duty to respond, they were entitled to immunity under N.J.S.A. 26:2K-29 because plaintiffs failed to establish the members either did not act in an objectively reasonable manner or lacked subjective good faith.

Plaintiffs also failed to present a prima facie case against the owner and operator of a mobile intensive care unit dispatched to the scene. Plaintiffs' expert report with respect to causation contained only a net opinion, and plaintiffs' expert with respect to negligence expressed no opinion regarding the mobile intensive care unit.

The trial court correctly granted summary judgment and dismissed the complaint.

03-25-11 STATE OF NEW JERSEY VS. RAMON A. RODRIGUEZ-ALEJO
A-0815-09T3

We afforded State v. Marquez, 202 N.J. 485 (2010) pipeline retroactivity and reversed a breathalyzer refusal conviction because the Spanish-speaking defendant was not read the standard form information in Spanish. Although not raised on appeal, we also noted that the conviction was flawed pursuant to our recent holding in State v. Schmidt, 414 N.J. Super. 194 (App. Div. 2010), because he was not read the second portion of the standard form when he did not produce a sufficient breath sample.

03-21-11 STATE OF NEW JERSEY VS. JAMES D. PENNINGTON
A-2637-09T2

Based upon its derivation from the Model Penal Code, we hold that, when read together, N.J.S.A. 2C:44-5(b)(1) and N.J.S.A. 2C:44-5(a)(2) prohibit the imposition of a second extended term on a defendant who is serving an extended term for a crime committed after the one for which the sentence is being imposed, subject to the statutory exception for crimes committed while incarcerated.

03-18-11 NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION, ET AL. VS. OFRA DIMANT, ET AL.
A-3180-09T2

We uphold the dismissal with prejudice of the DEP's lawsuit seeking to hold a dry cleaning establishment responsible for groundwater contamination on neighboring property. Spill Act strict liability requires proof of some nexus between use or discharge of a hazardous substance and its contamination of the surrounding area. In other words, there must be some resultant damage from the discharge that triggers the need for remediation. In this case, the DEP failed to prove that any

discharge from defendant's operation of PCE, a volatile organic compound that evaporates quickly when exposed to air, interacted with the environment to cause injury necessitating the incurrence of regulatory response costs.

03-17-11 PASCACK COMMUNITY BANK VS. UNIVERSAL FUNDING, LLP
UNIVERSAL FUNDING, LLP VS. ANTHONY E NESTICO
A-2501-09T3

This case presents the competing interests of two secured creditors - a factoring company and a bank that issued a line of credit - in the accounts receivable of a debtor. After the debtor defaulted, the bank sought to collect the amount due and owing to it on the letter of credit from the factoring company, arguing that the factoring company collected proceeds of the accounts receivable after the bank had perfected its security interest. The trial court granted summary judgment to the bank and entered judgment against the factoring company for the full amount due. We reverse because the competent evidence was insufficient to support an award of summary judgment to the bank. In addition, a review of the facts in light of the perfection and priority rules of the Uniform Commercial Code reveals the existence of genuine issues of fact.

03-16-11 STATE OF NEW JERSEY VS MELANIE McGUIRE
A-6576-06T4

Defendant's conviction and life sentence are affirmed on charges including murdering her husband and desecrating his body. Among the issues discussed in the opinion are: (1) admissibility of expert testimony, including tool mark analysis, that matched garbage bags in which sections of the body were found with ones used by defendant in her apartment; (2) exclusion of testimony about a statement the victim allegedly made several months before his death, proffered by the defense under the hearsay exceptions for state of mind and statements against penal interest, N.J.R.E. 803(c)(3) and 803(c)(25); (3) alleged prosecutorial misconduct in summation, in which the prosecutor commented about the excluded defense evidence and also speculated about some facts without adequate support in the circumstantial evidence; and (4) jurors' knowledge of an internet Court TV message board and of blogs discussing the jurors.

03-15-11 RAB Performance Recoveries, L.L.C. v. AMINATA GEORGE
A-2849-09T1

In a case arising under the Door-to-Door Retail Installment Sales Act of 1968 (DDRISA), N.J.S.A. 17:16C-61.1 to -61.9, we held that where a seller subject to DDRISA failed to give a buyer the required written notice as to how the buyer could cancel the contract, the buyer's prompt telephone notice of her decision to cancel the contract was effective under the statute.

03-14-11 PAULINE JENNINGS v. THE BOROUGHOF HIGLANDS, ET AL.
A-0941-09T1

Harmonization of the Municipal Land Use Law with the Condominium Act invests a condominium association, not individual condominium unit owners, with the right to participate in a zoning protest petition pursuant to N.J.S.A. 40:55D-63. Also, the obligation of a governing body to review a report of a planning board pursuant to N.J.S.A. 40:55D-26(a) requires, at minimum, an acknowledgment on the record that the report was reviewed.

03-11-11 TOWNSHIP OF WHITE v. CASTLE RIDGE DEVELOPMENT CORPORATION
A-2790-09T3

We interpret a provision in a developer's agreement to impose a maintenance obligation, including snow and ice removal, on the developer for a development roadway not yet dedicated to or accepted by the township.

We also reject the developer's argument that such a provision is void for public policy because the township is collecting property tax revenue on the completed houses in the development. Prior to accepting dedication of the road pursuant to a municipality's zoning ordinance, and unless a "private community" is involved, N.J.S.A. 40:67-23.3, the road remains the private property of the developer and the township has no responsibility for the maintenance of private property.

03-08-11 NICHOLAS SAFFOS v. AVAYA INC., ET AL.
A-3189-08T2

Defendants urged that the trial judge erred by refusing to vacate the jury's punitive-damage award or, alternatively, by failing to remit that amount to a sum equal to the compensatory damages. Plaintiff cross-appealed the remittitur of the punitive-damage award to five times the compensatory award. We found no abuse of discretion in the remittitur of the $10 million punitive-damage award or the use of a multiplier of five

times the compensatory damages as allowed by the Law Against Discrimination (LAD), N.J.S.A. 10:5-3, and the Punitive Damages Act (PDA), N.J.S.A. 2A:15-5.14(b). However, we concluded that the award of $250,000 for emotional distress damages should be excluded from the multiplier on substantive due process grounds because plaintiff suffered no physical consequences from the distress caused by the discrimination and the loss of his job and did not seek medical or psychological treatment, creating the inference that the large award for emotional-distress damages contained some punitive component, as recognized by the United States Supreme Court in State Farm Mut. Auto. Ins. Co. v. Campbell, 538 U.S. 408, 426, 123 S. Ct. 1513, 1525, 155 L. Ed. 2d 585, 606-07 (2003).

With respect to the award of attorney's fees, we excluded hours from the lodestar that were devoted to an unsuccessful motion to bar defense counsel from representing Avaya because the hours were not a productive use of time, Rendine v. Pantzer, 141 N.J. 292, 335 (1995), but otherwise affirmed the amount of the lodestar. Finally, we determined that plaintiff's counsel was not entitled to a contingency-fee enhancement because counsel's retainer agreement provided for an hourly fee of $325 plus a 100% fee enhancement, or one-third of the amount recovered, whichever was higher. In this case, the alternative fees provided by the retainer agreement in excess of the lodestar make an additional twenty-five-percent contingency-fee enhancement inconsistent with the purposes served by such enhancements under Rendine.

03-07-11 ESTATE OF NAITIL DESIR, ET AL. v. JEAN ROBERT VERTUS, ET AL. VS. EARL EASTERLING, ET AL.
A-2132-09T2

In this negligence action, we hold that one who has reason to believe that an intruder on his premises poses a danger to others owes a duty of reasonable care to a friend whom he brings to the danger by a request for assistance.

03-04-11 JOSEPH VAS v. JOSEPH J. ROBERTS, JR., ETC.
A-0399-09T3

Speaker of the New Jersey General Assembly suspended a member's salary and benefits while still holding office but following his indictment for crimes of public corruption. The Assemblyman filed this direct appeal, arguing that the Speaker's unilateral action in withholding a member's constitutionally-

guaranteed salary was not legally authorized and therefore ultra vires.

We hold that although the Speaker's action was not a final decision of a "state administrative officer" within the meaning of Rule 2:2-3(a)(2), and therefore should have been brought in the Law Division as an action in lieu of prerogative writs (mandamus) pursuant to Rule 4:69-1, we nevertheless elect to exercise our original jurisdiction, Rule 2:10-5, to address a strictly legal issue of general public interest and to avoid further litigation. On the merits, we conclude that the Speaker's unilateral action was without any constitutional or statutory authority and clearly contravened the Assembly's own internal rules for disciplining its members.

03-04-11 MID-ATLANTIC SOLAR ENERGY INDUSTRIES ASSOC. v. CHRIS CHRISTIE, GOVERNOR OF THE STATE OF NEW JERSEY
A-3374-09T4

IN RE COMPREHENSIVE ENERGY EFFICIENCY AND RENEWABLE ENERGY RESOURCE ANALYSIS FOR 2009-2012, REVISED 2010 BUDGETS
A-4047-09T4

IN RE COMPREHENSIVE ENERGY EFFICIENCY AND RENEWABLE ENERGY RESOURCE ANALYSIS FOR 2009-2012, REVISED 2010 BUDGETS
(SECOND REVISION)
A-5948-09T4

IN RE P.L. 2010, CH. 19, APPLICATION OF CLEAN ENERGY FUNDS TO GENERAL FUND FOR FISCAL YEAR 2010
A-5949-09T4

The Legislature has authority through enactment of an Appropriations Act to supersede the provisions of the Electric Discount and Energy Competition Act that limit the uses of money collected under the social benefits charge to the purposes set forth in that Act and instead transfer a portion of the money into the General Fund.

03-03-11 STATE OF NEW JERSEY v. PIERCE DAIQUAN BRYANT
A-1480-09T4

The endangering the welfare of a child statute, N.J.S.A. 2C:24-4(a), does not require proof that a defendant knew his sexual conduct would impair or debauch the morals of a child. The mental culpability element of "knowingly" applies only to the "engages in sexual conduct" portion of the statute.

02-28-11 STATE OF NEW JERSEY v. BOYCE SINGLETON, JR.
A-1782-08T4

At trial, defendant did not dispute shooting and stabbing the victim to death but instead asserted an insanity defense. Defendant testified and presented other evidence to suggest his murderous actions were brought about by a delusional deific command. In appealing his conviction, defendant argued that the jury instructions were incomplete. Even though defendant did not make this argument until he filed a post-trial motion, the court reversed and remanded for a new trial because the absence of the amplified instruction required in these circumstances by State v. Worlock, 117 N.J. 596 (1990), and State v. Winder, 200 N.J. 231 (2009), was capable of producing an unjust result. In such an instance, a judge must instruct that a defendant may not be held responsible -- even if he understands his actions are contrary to law -- where a delusional deific command could be objectively recognized to confound his understanding of the difference between lawful behavior and a moral imperative.

02-25-11 KATHLEEN JONES, ET AL. v. GEORGE W. HAYMAN, ET AL.
A-3173-09T3

In this appeal, we consider under what circumstances a plaintiff, who brings an action pursuant to statutes containing fee-shifting provisions, may be deemed a prevailing party under the catalyst theory when the underlying action is dismissed as moot without a final judicial determination on the merits of the case. Under Mason v. City of Hoboken, 196 N.J. 51, 70-79 (2008), and as more recently reaffirmed and explained in our opinion in D. Russo, Inc. v. Township of Union, 417 N.J. Super. 384 (App. Div. 2010), in order to be awarded counsel fees under the catalyst theory, a plaintiff must demonstrate (1) a factual causal nexus between the litigation and the relief ultimately achieved; and (2) that the relief ultimately secured by plaintiff had a basis in law.

The trial court erred by accepting at face value the factual allegations and legal positions advanced by defendants in their certifications, without affording plaintiffs the opportunity to challenge the veracity of the allegations

proffered in an evidentiary hearing. The "basis in law" prong should be construed as providing a check against groundless or harassing litigation, and in a manner that promotes the public policy underpinning fee-shifting statutes.

02-25-11 C.M.F. v. R.G.F.
A-4826-08T2

Defendant admittedly shouted offensively coarse names at his wife at their children's basketball game but argued that he was motivated by anger rather than an intent to harass her. Pursuant to State v. Hoffman, 149 N.J. 564 (1997) and N.J.S.A. 2C:33-4(a), the requisite intent was "to disturb, irritate or bother." We affirm the final restraining order against defendant because his anger did not negate an intent to harass and, considering the totality of the circumstances, the evidence supported the conclusion that defendant's purpose in directing the offensively coarse language at plaintiff was to harass her.

02-24-11 IN RE ADOPTION OF REGIONAL AFFORDABLE HOUSING DEVELOPMENT PROGRAM GUIDELINES BY THE COUNCIL ON AFFORDABLE HOUSING
A-0970-09T3

An agency pronouncement may be a "statement of general applicability and continuing effect that implements or interprets law or policy," and therefore must be adopted in conformity with the rule-making procedures of the APA, even though it is not binding upon regulated parties. The Regional Affordable Housing Development Guidelines adopted by COAH to prescribe standards and conditions for regional planning, under which a municipality subject to the jurisdiction of a regional planning entity may transfer up to 50% of its affordable housing obligation to another municipality in the region, are administrative rules that should have been adopted under the APA's rule-making procedures.

02-23-11 YA GLOBAL INVESTMENTS, L.P. v. JULIANN HACKETT CLIFF, ET AL.
A-3033-09T2

The trial judge correctly ruled as a matter of law that defendants, New York State residents with no contacts with New Jersey, were not parties to a contract signed by plaintiff and Seaway Valley Capital Corporation and thus were not bound by the contract's forum selection clause agreeing to suit in Hudson

County, New Jersey. Discovery was not necessary to resolve the legal issue.

02-23-11 IN THE MATTER OF THE PARENTAGE OF A CHILD BY T.J.S. AND A.L.S.
A-4784-09T4

We hold that the provisions of the Parentage Act, N.J.S.A. 9:17-39 to -59, conferring paternity upon a husband either presumptively, where the child is born to the wife during marriage, N.J.S.A. 9:17-43(a), or by operation of law, where the wife is artificially inseminated with donor sperm, N.J.S.A. 9:17-44, do not extend to automatically confer maternity on an infertile wife whose husband has a child via in vitro fertilization of a gestational carrier. Sections 43(a) and 44 do not offend constitutional principles of equal protection because their different treatment of infertile married men and women is grounded in real physiological differences between the sexes and is necessary to protect the interests of the gestational carrier. Absent legislative reform, the infertile wife's sole means of obtaining parentage to her husband's child remains through adoption.

02-22-11 DOUGLAS TRAUTMANN, ET AL. v. CHRIS CHRISTIE, ETC.
A-3139-09T3

This appeal challenges Chapter 37 of the Laws of 2009 which requires a driver under the age of twenty-one who holds a permit or provisional license to display a decal so indicating on the automobile he or she drives. We hold that a person's age or age group is not "personal information" protected under the Federal Drivers Privacy Protection Act, 18 U.S.C.S. §§ 2721-2725 and that Chapter 37 is therefore not preempted by the federal act. We also reject allegations that Chapter 37 violates the affected driver's rights to equal protection and freedom from unreasonable search and seizure.

02-18-11 FRANCIS J. McGOVERN, JR., ESQ v. RUTGERS, ET AL.
A-2531-09T1

Construing the Open Public Meetings Act, N.J.S.A. 10:4-6 to -21, we conclude: 1) a public body violates the requirements of the Act by routinely scheduling a five-minute public session, followed by a closed session of indeterminate duration, followed by another public session; 2) the Rutgers Board of Governors is not a "board of education" within

the meaning of N.J.S.A. 10:4-12(a), and is therefore not required to set aside a portion of its meetings for public comment; and 3) the notice issued to advise the public of an upcoming special meeting contained an insufficient description of the matters that were expected to be discussed in closed session.

02-17-11 SOCIETY OF THE HOLY CHILD JESUS d/b/a OAK KNOLL SCHOOL v. CITY OF SUMMIT
A-1126-09T3

Plaintiff is a non-profit entity affiliated with the Holy Roman Catholic Church and operates the Oak Knoll School of the Holy Child, a Catholic institution that provides an education for both boys and girls from kindergarten through the sixth grade, and for girls from the seventh through twelfth grades. Plaintiff owns property adjacent to the school which it utilizes for school purposes, including the offices of the facilities director. The property had been exempt from taxation pursuant to N.J.S.A. 54:4-3.6, and it undisputed that the property, as used, continues to qualify for exemption under that statute.

Pursuant to Summit's zoning ordinance, however, educational institutions are not permitted uses in the zone, although they are recognized as permitted conditional uses. Plaintiff, however, had never sought a variance from certain standards applicable to conditional uses. In 2005, Summit revoked the tax exemption on the property.

In a reported decision, Soc'y of the Holy Child Jesus v. Summit City, 23 N.J. Tax 528, 530 (Tax 2007), the tax court judge analogized the situation to that presented in a number of reported decisions dealing with favorable tax treatment pursuant to the Farmland Assessment Act, N.J.S.A. 54:4-23.1 to -23.23. Those cases essentially concluded that a taxpayer may be denied a reduction in taxes if the property is in violation of the municipal zoning ordinance. See, e.g., Cheyenne Corp. v. Twp. of Byram, 248 N.J. Super. 588, 595 (App. Div. 1991), certif. denied, 137 N.J. 312 (1994).

We reversed. We concluded that the exemption provided by N.J.S.A. 54:4-3.6 does not require, as a prerequisite, compliance with the municipal zoning ordinance.

02-17-11 INVESTORS SAVINGS BANK v. WALDO JERSEY CITY, LLC, ET AL.

A-6201-09T3

Plaintiff commenced this action, seeking damages based upon defendants' alleged default on a loan agreement; defendants filed a counterclaim, alleging plaintiff's material breach of the loan agreement. The trial judge dismissed the counterclaim by enforcing a contract provision, which proclaimed the loan agreement was to be "free from any right of setoff, counterclaim or other defense." Because this waiver provision was not intended to extinguish defendants' claims -- only relegate them to a separate suit -- the court found it conflicted with the rules of procedure and was, thus, unenforceable.

02-15-11 STATE OF NEW JERSEY v. EMMANUEL MERVILUS
A-5812-07T3

Admission of a polygraph expert's testimony, which was couched in terms of "innocent" and "guilty" test takers, was plain error and warranted reversal of defendant's conviction. If the State intends to rely on polygraph test results at the retrial, it must first establish the reliability of polygraph evidence at a Frye hearing, as required by State v. A.O., 198 N.J. 69 (2009).

02-14-11 AMB PROPERTY, LP ET AL. v. PENN AMERICA INSURANCE COMPANY, ET AL
A-1248-09T2

An insured who funds its liability insurance policy through a premium financing agreement, which authorizes the lender to act as the insured's attorney-in-fact, is bound by the lender's subsequent action in effectuating cancellation of the policy for the insured's non-payment of premium, despite the fact that the power of attorney issued pursuant to the Insurance Premium Financing Company Act, N.J.S.A. 17:16D-1 to -16, did not conform to the technical requirements of the Power of Attorney statute, N.J.S.A. 46:2B-8.9, in that it was not signed and acknowledged by the insured.

We also held that, even assuming the power of attorney could only have been created if validly acknowledged, the insurer nevertheless had the right to rely on it in canceling the policy because of the lender's apparent authority to act on behalf of the insured.

02-10-11 STATE OF NEW JERSEY v. DIANE O'BRIEN
A-4190-09T2

The question presented is whether a defendant who previously received supervisory treatment under the conditional discharge statute, N.J.S.A. 2C:36A-1, and who later applied for and obtained an order vacating the conditional discharge, may thereafter be admitted into PTI. We answer the question in the negative, concluding that N.J.S.A. 2C:43-12g and Rule 3:28, Guideline 3(g) prohibit any person previously placed into supervisory treatment under the conditional discharge statute from subsequent admission into PTI, whether the conditional discharge is later vacated or not.

02-09-11 OHIO CASUALTY INSURANCE COMPANY v. ISLAND POOL & SPA, INC.
A-3216-09T2

We construe the "ongoing operations" j(5) exclusion contained in the comprehensive general liability insurance policy issued by Ohio Casualty to its insured, a company that maintains and installs swimming pools. During the course of the repainting project Island Pool had been hired to perform, the swimming pool was damaged when it popped out of the ground. We held that j(5) "ongoing operations" exclusion entitled the carrier to deny coverage for the expenses Island Pool incurred in repairing the pool because, as specified in the j(5) exclusion, the property damage occurred while Island Pool's work was ongoing, the damage arose out of the work Island Pool was performing, and the damage was to the particular part of the real property on which Island Pool was working.

02-09-11 MARK PETERSEN v. TOWNSHIP OF RARITAN
A-3290-09T3

We are asked to examine whether the terms of a collective negotiation agreement, which was in effect upon the retirement of a municipal police officer, mandates that the retiree is vested in the specific insurance benefit plan offered at the time of retirement. As a cost cutting measure, defendant municipality who paid for its employees' and retirees' health benefits pursuant to N.J.S.A. 40A:10-23, discontinued participation in the traditional indemnity insurance plan in favor of a point of service plan. Plaintiff, who was enrolled

in the traditional plan, filed this action asserting the municipality could not alter the type of insurance coverage he received at retirement.

We affirmed the summary judgment dismissal of plaintiff's complaint, determining the agreement required that he be provided with the same benefits defendant offered all of its current municipal employees and that defendant's contractual obligation to pay the cost of health insurance premiums did not create an entitlement to a particular plan or level of coverage.

02-08-11 JUDITH CARRIE RUSAK v. RYAN AUTOMOTIVE, L.L.C., ET AL.
A-2002-09T1

Plaintiff's complaint alleged violations of the LAD and the common law tort of intentional infliction of emotional distress. At the close of the plaintiff's case, and at the end of the case, the trial judge rejected defendants' motions to dismiss plaintiff's punitive damages claim. The jury found for plaintiff on her LAD claims and awarded her compensatory damages for back pay. It rejected, however, he claim for LAD emotional distress damages.

As to plaintiff's common law tort claim, the jury interrogatory asked: "Did the acts of the [d]efendants constitute such willful, wanton and reckless conduct that you find for [plaintiff] on the legal theory of intentional infliction of emotional distress as defined by the Court?" The jury answered no.

After receipt of the verdict, the judge dismissed the jury. Plaintiff objected, arguing that the punitive damages phase should commence. The judge disagreed, concluding that the jury's answer to the above-cited interrogatory, and its rejection of plaintiff's LAD emotional distress claim, meant that the jury found that defendants' conduct did not support an award under the Punitive Damages Act.

We reversed, concluding that the judge's interpretation of the jury's response to the interrogatory was error, and that defendants' conduct, viewed in a light most favorable to plaintiff, supported an award of punitive damages under the LAD.

We also provided guidance as to what instructions should be provided to a second jury if the matter is tried again.

02-07-11 IN RE DENIAL OF REGIONAL CONTRIBUTION AGREEMENT BETWEEN GALLOWAY TWP. AND CITY OF BRIDGETON
A-1252-08T1/A-1290-08T1 (Consolidated)

In an earlier appeal, we reversed a resolution adopted by the Council on Affordable Housing (COAH) approving a regional contribution agreement (RCA). We held that resolution lacked the requisite findings of fact and remanded to the agency. On remand, COAH denied further review due to an intervening statutory amendment prohibiting any RCA approval after the effective date of amendment. We affirmed holding that the absence of findings of fact could not be considered a procedural flaw and our prior disposition rendered the prior approval without force or effect. We also held that the Legislature had clearly expressed its intention that COAH lacked authority to consider any RCA not approved prior to the effective date of the amendment.

02-07-11 STATE v. FRENSEL GAITAN
A-0197-09T4

Defendant filed a petition for post-conviction relief, arguing his attorney failed to discuss with him the deportation consequences of his guilty plea. The trial judge denied the petition, concluding without the benefit of an evidentiary hearing that defendant's responses to the plea form as well as his testimony at the plea hearing demonstrated he understood the deportation consequences. In reversing that determination, the court also considered the impact of Padilla v. Kentucky, 559 U.S. __, 130 S. Ct. 1473, 176 L. Ed. 2d 284 (2010), and State v. Nuñez-Valdéz, 200 N.J. 129 (2009), both of which were decided after defendant pled guilty and after his PCR petition was denied.

The court recognized that certain aspects of Padilla -- namely, its holding that counsel's failure to give any deportation advice is no different than the rendering of bad deportation advice, and its holding that the direct/collateral methodology regarding deportation advice had never applied to Sixth Amendment claims of ineffectiveness -- did not create new rules insofar as the Sixth Amendment is concerned. Because defendant was entitled to the benefit of that federal rule, the argument that Nuñez-Valdéz's rejection of the direct/collateral methodology as a matter of New Jersey constitutional law constituted a new rule was irrelevant in determining whether defendant received the effective assistance of counsel when he pled guilty.

The court also concluded that Nuñez-Valdéz should at least be given pipeline retroactivity, and that defendants with appeals pending from the denial of post-conviction relief at the time Nuñez-Valdéz was decided are entitled to the benefit of its holding. As a result, defendant was entitled to a hearing on the claims set forth in his PCR petition, and the court remanded for that purpose.

02-03-11 TWENTY-FIRST CENTURY RAIL CORPORATION, ET AL. v. THE NEW JERSEY TRANSIT CORPORATION, ET AL.
A-0975-10T3

In this interlocutory appeal we address in a plenary and de novo fashion the question of attorney disqualification in the context of successive representation under Rule of Professional Conduct 1.9. In so doing, we affirm the denial of the motion for disqualification because the side-switching law firm was not shown to be engaged in a present representation that is substantially related to its former representation, within the principles of City of Atlantic City v. Trupos, 201 N.J. 447 (2010).

02-03-11 STATE OF NEW JERSEY v. THOMAS J. SHANNON
A-2549-08T4

We reverse defendant's conviction of possession of cocaine, finding his motion to suppress the cocaine found in a warrantless search of his Jeep should have been granted. The search was not incident to arrest, did not occur late at night, the stop was in a residential area, and four Asbury Park Police Officers were at the scene with defendant, who was alone. We find no exigency existed pursuant to State v. Pena-Flores, 198 N.J. 6 (2009).

02-02-11 N.H. v. H.H.
A-4124-09T2

In this matrimonial action we affirm the Family Part's enforcement of the parties' Martial Settlement Agreement, finding that its resolution of child custody and parenting time issues was consistent with Fawzy v. Fawzy, 199 N.J. 456 (2009), as refined by Johnson v. Johnson, ___ N.J. ___ (2010).

02-02-11 PAUL G. SKLODOWSKY v. JOHN F. LUSHIS, JR., ESQ.
A-3918-09T3

The entire controversy doctrine does not require a client to assert legal malpractice claims against his or her attorney in this action, which arose from the attorney's alleged negligent advice, even though the attorney is a party to that action. Furthermore, if the doctrine could be applied in such a case, it would not be fair to do so here because the assertion of the legal malpractice claims in the underlying action would have further compromised an already strained attorney-client relationship and prejudiced the parties' ability to advance their respective interests in that lawsuit.

02-01-11 WADE STANCIL v. ACE USA
A-1438-09T1

The enforcement remedies in the Workers' Compensation Act and corresponding regulations constitute the sole relief available to an aggrieved claimant for willful noncompliance by an employer or its insurer with an order of the compensation court. The compensation court order is enforceable in Superior Court, but the claimant has no common law claim for pain, suffering and increased disability. We therefore affirmed the dismissal of the Law Division complaint for failure to state a claim upon which relief can be granted.

01-31-11 ALLSTATE NEW JERSEY INSURANCE COMPANY v. NEUROLOGY PAIN ASSOCIATES a/s/a MARIANNE TUBELIS, ET AL.
A-3104-09T2

The National Arbitration Forum, which has been designated by the Commissioner of Banking and Insurance to administer arbitration proceedings relating to PIP benefits, has the "interest" required to intervene as of right under Rule 4:33-1 in an action that seeks judicial review of an intermediate ruling by a NAF administrator in order to argue that the court lacks jurisdiction. The rules and regulations adopted by the Commissioner of Banking and Insurance to govern PIP arbitration proceedings do not incorporate the section of the Alternative Procedure for Dispute Resolution Act that authorizes judicial review of an intermediate ruling of an arbitrator or arbitral forum.

01-31-11 MOSES SEGAL v. CYNTHIA LYNCH
A-2134-09T3

As a prevailing party, and under the retainer agreement, a parenting coordinator was properly paid for the time spent in

answering a party's grievances filed against her and reporting that response to the court which were found by the court to be without merit. The fees sought by the parenting coordinator were in her role as a parenting coordinator and not as an attorney pro se.

Under the Guidelines of the Pilot Parenting Coordinator Program, the court was not required upon request to hold a hearing on a party's grievances, but it was left to the discretion of the court. Where, as here, there were no material issues of disputed fact, the court was well within its discretion not to hold a hearing. It was not inappropriate to test the merits of the grievances by utilizing the summary judgment model.

Likewise, the court was not required to hold a hearing on the amount of the payment to be made to the parenting coordinator for the services performed.

01-31-11 JOHN SIMMONS, ET AL. v. LARRY LOOSE, ET AL.
A-6382-08T3

In this appeal, we conclude that an innocent property owner is not entitled to compensation under the New Jersey Tort Claims Act (TCA), N.J.S.A. 59:1-1 to 12-3, as well as 42 U.S.C.A. § 1983 (section 1983), or in the alternative, just compensation from the State under the Fifth and Fourteenth Amendments of the United States Constitution and Article I, paragraph 20 to the New Jersey Constitution when property damage occurs as a result of the execution of a lawful search warrant. While we recognize that innocent third-parties suffered damages as a result of lawful government action, we conclude that such loss is not a "taking" under either the federal or state constitutions, and the proper remedy must result from legislative action to provide relief.

01-28-11 WELLS FARGO BANK, N.A. v. SANDRA A. FORD
A-3627-06T1

To establish standing to foreclose upon a mortgage, a party must demonstrate by competent evidence that it owns or controls the underlying debt secured by the mortgage. The right to enforcement of a debt evidenced by a negotiable instrument is governed by the UCC. The determination whether a "holder" of a negotiable instrument is a "holder in due course," who can avoid defenses that would be available in an action by the original

payee, depends on that party's knowledge of those defenses at the time of indorsement of the note.

01-26-11 S.Z. v. M.C.
A-3841-09T2

We reverse the trial court and find jurisdiction under the "household member" provision of the Prevention of Domestic Violence Act in a situation where the male defendant was a guest in the male plaintiff's home, living with plaintiff and his wife and children for seven months. While living with plaintiff, defendant allegedly climbed a ladder placed against the home to peep through a window at plaintiff coming out of the shower. Ten months after being thrown out of the home, defendant allegedly followed plaintiff and planted a secret camera in plaintiff's truck to surreptitiously record him. Although the two men never had a traditional familial, romantic or sexual relationship, we find that neither the incompatible sexual orientations of the two men nor the timeframes involved defeat jurisdiction.

01-25-11 JEFFREY MARRERO, ET AL. v. HOWARD FEINTUCH, ESQUIRE, ET AL.
A-5879-09T3

We reviewed an order quashing a subpoena for deposition testimony in this professional negligence action against criminal defense counsel. Plaintiff's conviction was reversed on appeal and the State declined to pursue retrial. Defendants anticipated the proffered witness's testimony would challenge plaintiff's alibi and possibly implicate him in the criminal offense, disproving the claimed negligent representation.

We settled a question first discussed in McKnight v. Office of Pub. Defender, 397 N.J. Super. 265, 267 (App. Div. 2007), rev'd., 197 N.J. 180 (2008), by holding a plaintiff need not prove actual innocence of criminal charges as a prerequisite to pursue legal malpractice claims against former criminal defense counsel. However, we concluded this would not necessarily preclude defendants' pursuit of evidence relevant to defend the malpractice claims. In view of the sweeping nature of our discovery rules designed to ensure, with few exceptions, the ability to obtain all relevant facts before trial, we reversed the order quashing the subpoena as unwarranted, representing a misguided exercise of discretion.

01-24-11 PAUL PORRECA v. CITY OF MILLVILLE
A-1185-09T1

We address whether plaintiff is entitled to a counsel fee award pursuant to Rule 4:42-9(a)(2) ("fund in court") following settlement of his prerogative writs litigation seeking watchdog relief from the City, where the agreement did not mention attorney's fees. We hold plaintiff has a viable claim for such fees under Henderson v. Camden County Municipal Utilities Authority, 176 N.J. 554 (2003), because he obtained "a tangible economic benefit" for the taxpayers. We view this Rule as encompassing a two-step process: (1) the court must determine as a matter of law whether plaintiff is entitled to seek such award under the Rule and (2) if plaintiff has met the threshold, the court has the discretion to award the amount, if any, it concludes is a reasonable fee under the totality of the facts.

We also decline to engraft the bright-line federal rule that a prevailing party's claim for such fees will survive unless specifically and expressly waived in the settlement agreement to a counsel fee request not premised on a fee-shifting statute.

We reverse and remand.

01-19-11 BARR v. BARR
A-1389-09T2

We reversed the Family Part's post-judgment order regarding the distribution of defendant's military pension, concluding a plenary hearing was necessary to determine whether defendant's post-judgment, pre-retirement promotion resulted in demonstrable increases to the pension excludable from plaintiff's equitable distribution interest because they resulted from defendant's separate post-divorce work efforts.

01-14-11 OCEANSIDE CHARTER SCHOOL v. NEW JERSEY STATE DEPARTMENT OF EDUCATION OFFICE OF COMPLIANCE INVESTIGATION
A-2528-09T2

Where a federal grant recipient fails to comply with N.J.S.A. 18A:18A-4 and N.J.S.A. 18A:18A-5 of the Public School Contracts Law, the decision of the Commissioner of the Department of Education ordering repayment of such grant funds is neither arbitrary nor capricious.

01-13-11 MORRIS COUNTY SHERIFF'S OFFICE AND COUNTY OF MORRIS v. MORRIS COUNTY POLICEMEN'S BENEVOLENT ASSOCIATION, LOCAL 298
A-3174-09T3

The Morris County Sheriff's Office unilaterally implemented —— without collective negotiations —— a change in its staff's work schedule to eliminate premium payments for working nonoperational posts on holidays. We reverse the finding of unfair labor practices by the Public Employment Relations Commission, which determined that such implementation was mandatorily negotiable and was enjoined by N.J.S.A. 34:13A-21 during the pendency of interest arbitration.

01-13-11 LARRY PRICE v. HUDSON HEIGHTS DEVELOPMENT, ET. AL.
A-1527-09T2

Despite successfully challenging a zoning board's approval of a developer's application to construct a 96-residential unit structure in Union City's mixed residential zone, plaintiff, a local resident and taxpayer, nevertheless appeals because dissatisfied with the Law Division's rationale, not its final result. Lacking the requisite adversity and genuineness of controversy, and because appeals are taken from judgments and not opinions, we dismissed the appeal for want of jurisdiction.

01-12-11 DYFS v. M.D. and S.D., I/M/O N.D., S.D., and G.D.
A-2419-09T4

While in the midst of a contentious divorce and bitter custody dispute, defendant/mother entered a stipulation at a fact-finding hearing in this Title Nine litigation. She admitted using her oven and stove to heat her home while her children were present. The record revealed, however, that at the time, defendant's husband, also a defendant in the Title Nine litigation, was in arrears of his child support payments and had refused to make repairs to the furnace in the marital home. Based upon her admission, the judge entered an order finding that defendant had abused/neglected her children.

On appeal, defendant, among other things, argued that her attorney did not provide her with effective assistance. We concluded that defendant established her attorney provided ineffective assistance at the fact-finding hearing. We noted, for example, that neither the attorney nor the judge ever advised defendant that by entering the stipulation, she was admitting to abuse/neglect under Title Nine and the consequences

of such a finding. Indeed, the words "abuse" or "neglect" were never used during the entire proceeding. We further determined that given the totality of the circumstances presented at the time of the fact-finding hearing, defendant had established her claim and there was no need to remand the matter for an evidential hearing.

We also noted the frequency with which similar issues regarding stipulations at fact-finding hearings arise on appeal. We now require that the judge conduct a specific inquiry of a defendant who intends to enter a stipulation, similar to the line of inquiry posed to a criminal defendant who enters a guilty plea, to ensure that the defendant is voluntarily and knowingly waiving those rights available at a fact-finding hearing.

We also suggest that the Committee on Practice in the Family Part and the Administrative Office of the Courts implement the use of a form, similar to the one now being used in cases in which a parent agrees to a voluntary surrender, in all cases in which a defendant is stipulating to a finding of abuse and neglect.

01-12-11 TRIFFIN v. LICCARDI FORD, INC., d/b/a THE CAR GIANT
A-1849-09T1

Robert J. Triffin purchased a dishonored check from a check cashing service and sued the issuer to collect on the check. Because the check was post-dated, and the check cashing service from which Triffin purchased it had made payment in violation of the Check Cashers Regulatory Act of 1993, N.J.S.A. 17:15A-47c, we held that the service was not a holder in due course. Therefore, Triffin took the check subject to the issuer's defense that the check was stolen, and his complaint was properly dismissed.

01-11-11 PEREZ v. FARMERS MUTUAL FIRE INSURACE CO. AND ENCOMPASS PROPERTY & CASUALTY INSURANCE CO.
A-0490-09T3

A fifteen-passenger van owned by a church, which the church used to transport members of its congregation to services, does not fall within the definition of an "automobile" contained in N.J.S.A. 39:6A-2, thus requiring the van's insurer to provide coverage for PIP benefits, because such a vehicle must be "owned by an individual or by a husband and wife who are residents of

the same household" to be an "automobile" under the statutory definition.

01-07-11 NEW JERSEY MANUFACTURERS INSURANCE GROUP v. HOLGER TRUCKING CORPORATION
A-0365-09T3

N.J.S.A. 39:6A-9.1 requires that an insurer, which has provided personal injury protection (PIP) benefits, must commence suit for reimbursement from a tortfeasor within two years of "the filing of the claim." In this appeal, the court recognized that this phrase was ambiguous and held, in interpreting the statute, that "the filing of the claim" is an insured's submission of a completed claim form to the insurer and not the first notice of the accident or either the first or last request for payment of a medical bill.

01-07-11 STATE OF NEW JERSEY v. OMAR TINDELL
A-5457-07T4

Defendant was charged, inter alia, with the murder of a police officer in the line of duty. He was convicted after a jury trial of second degree reckless manslaughter as a lesser included offense of murder, third degree receiving stolen property, third degree possession of cocaine, third degree unlawful possession of a handgun, and third degree terroristic threats. The court sentenced defendant to the maximum sentence on each offense and ordered that each term be served consecutive to each other, resulting in an aggregate sentence of thirty years, with eighteen and one-half years of parole ineligibility.

We affirm defendant's conviction except for third degree terroristic threats and third degree receiving stolen property.

On the charge of terroristic threats, we hold that because the evidence demonstrated that the alleged threats were directed at multiple possible victims, the trial court erred in failing to instruct the jury that the State needed to identify the particular victim or victims of the crime. The court's instructions left the jury unacceptably vulnerable to reaching a fragmented verdict, without the unanimous agreement of all twelve jurors.

On the charge of receiving stolen property, we vacate the conviction and remand for the entry of a judgment of acquittal because the State failed to present specific evidence that the automobile found in defendant's possession was in fact stolen.

Applying the bedrock principles articulated in State v. Roth, we vacate in its entirety the sentence imposed by the court and remand for re-sentencing before a different judge because the sentence was irreparably tainted by the improper comments made by the judge at the sentencing hearing attacking the jurors' character and independence and questioning the credibility of a police officer witness using sarcastic and inappropriate language.

12-29-10 IN THE MATTER OF THE TRUSTS TO BE ESTABLISHED IN THE MATTER OF MARGARET A. FLOOD, DECEASED
A-1643-09T1

Even though the decedent had engaged in estate planning, she never executed a will. Nevertheless, the trial judge utilized the doctrine of probable intent to permit the establishment and funding of supplemental benefit trusts for decedent's two disabled daughters to insulate their inheritances from reimbursement liens. The court reversed, holding that the doctrine of probable intent is a rule of will construction which cannot be used to create a testamentary disposition when a decedent dies intestate.

12-29-10 D. RUSSO, INC., d/b/a HOTT 22, EXPO VIDEO UNLIMITED, LLC AND BOKRAM, INC., d/b/a VIDEO EXTRA v. TOWNSHIP OF UNION
A-0763-09T1

A party who brings an action under the New Jersey Civil Rights Act that results in a change in defendant's conduct may qualify, under the catalyst theory, as a "prevailing party" entitled to attorney's fees and costs, even though the action is dismissed as moot rather than being concluded by a judgment in plaintiff's favor.

12-27-10 MANGER v. MANGER
A-2919-09T1

As recognized in Johnson v. Johnson, ___ N.J. ___ (2010), parties in a matrimonial proceeding may agree to arbitrate disputed issues and may identify the manner in which the arbitration will proceed by designating the Alternate Procedure for Dispute Resolution Act (APDRA), N.J.S.A. 2A:23A-1 to -30, or the Uniform Arbitration Act (Arbitration Act), N.J.S.A. 2A:23B-1 to -32. If the parties fail to designate a statute, the arbitration will proceed according to the Arbitration Act.

12-21-10 EDWARD STONEY v. JOSEPH P. McALEER and ABERDEEN TWP.
A-1187-09T2

While that portion of plaintiffs' LAD complaint alleging that defendants issued summonses to them for violating Township ordinances in retaliation for their suit against the Township was barred by the two-year limitations period, their claim that the prosecution in municipal court violated the LAD was not time-barred, the complaint having been filed within two years of the municipal court proceeding. The prosecution in municipal court was a separate event, not a continuing effect of the original summonses.

12-17-10 STATE v. LEE
A-1246-09T2

To charge the act of masturbation in view of an adult as fourth-degree criminal sexual contact under N.J.S.A. 2C:14-3b and 2C:14-2c(1), rather than disorderly persons lewdness under N.J.S.A. 2C:14-4, the State must have evidence that the actor used physical force or coercion. Defendant's touching himself does not satisfy that element of the offense. The holding of State in the Interest of M.T.S., 129 N.J. 422 (1992) – that physical force is equivalent to the act of sexual contact or penetration without affirmative and freely-given consent of the victim – applies to invasion of the bodily integrity of the victim.

12-17-10 COMMUNICATIONS WORKERS OF AMERICA v. ROUSSEAU
A-4194-07T3

In this Open Public Records Act (OPRA) appeal, we hold that the agreements relating to investments made by the Division of Investment in private equity funds with money from State-employee pension funds are not government records under OPRA because these agreements, either in whole or in substantial part, contain proprietary commercial or financial information, trade secrets, or information that would provide competitors an unfair competitive advantage. We also hold that the common law right to access public documents does not require access by plaintiffs to these agreements because the State's interest and intervenors' interest in confidentiality outweighs plaintiffs' interest.

12-16-10 COMMERCE BANCORP v. INTERARCH AND KLUMB
A-2832-09T3

We hold that a corporation that voluntarily indemnifies its agent under the New Jersey Business Corporation Act, N.J.S.A. 14A:1-1 to 16-4, upon advice of counsel and after its own due diligence investigation, may not sue, six years later, for restitution of that payment made after a civil jury verdict finding the corporate agent had acted in bad faith and outside the scope of her agency. We find, under the plain meaning of N.J.S.A. 14A:3-5(2), that such an adverse civil verdict creates no statutory presumption against indemnification.

12-14-10 PAUL CORTESINI & THOMAS ZOLA v. HAMILTON TWP. PLANNING BOARD AND WAL-MART ESTATE BUSINESS TRUST
A-3309-09T1

If an applicant for subdivision or site plan approval fails to apply for and obtain a necessary bulk variance, the land use approval may be challenged on that ground. However, if no party brings a timely challenge to the land use approval on that ground, a new site approval for a renovation of the premises, which does not increase or affect the existing nonconformity with the zoning ordinance, is not subject to attack on the ground that original land use approval did not include a necessary bulk variance.

12-13-10 STATE v. REEVEY
A-5316-08T4

We affirm the denial of post-conviction relief based on alleged ineffective assistance of counsel, who failed to secure defendant's presence in the courtroom during an allegedly critical stage of the proceedings. During a break in jury selection when defendant was not in the courtroom, the judge conducted a hearing to determine whether a material witness intended to appear and testify. The witness, who was in the courtroom, was placed on the witness stand and examined with respect to his intention to comply with the subpoena allegedly issued to him. Although denying receipt of a subpoena, the witness indicated he would appear and testify if a subpoena were served upon him. The judge then briefly questioned the witness respecting the statement he gave to the police and concluded from the witness's answers that a hearing pursuant to State v. Gross, 121 N.J. 1 (1990), was required and would be conducted in defendant's presence. Defendant was brought into the courtroom, and the Gross hearing was then conducted.

In his PCR petition, defendant raised multiple issues, which the PCR judge determined adversely to defendant. On

appeal, defendant raised only the issue of his absence from the material-witness hearing, which he characterized as "a critical stage of the proceedings." Because this was an issue that could have been raised on direct appeal, we considered whether enforcement of the Rule 3:22-4 bar to preclude this claim would result in fundamental injustice. R. 3:22-4(a)(2).

We found that the witness's testimony outside defendant's presence concerned only his obligation to testify at trial and whether he recalled the content of the statement he had given to the police. We noted that defendant was present for the Gross hearing and his counsel had an opportunity to cross-examine the witness at that time, including the very issues raised outside of defendant's presence. As a consequence, we found that there was neither an injustice nor a substantial denial of defendant's rights because his absence did not affect the fairness of the proceeding.

12-13-10 ESTATE OF STEPHEN J. KOMNINOS, THOMAS J. KOMNINOS, WINIFRED KOMNINOS, Individually as Administrators, and as Administrators ad prosequendum of the ESTATE OF STEPHEN J. KOMNINOS v. BANCROFT NEUROHEALTH, INC., et al.
A-4041-09T2

The Charitable Immunity Act, N.J.S.A. 2A:53A-7, bars a plaintiff from bringing negligence claims against a nonprofit provider of services for the developmentally disabled and persons affiliated with that nonprofit provider. The present lawsuit was brought by the parents of a developmentally disabled young adult who died after choking on a bagel while in the company of defendant's staff member.

As reflected in the decedent's individual habilitation plan ("IHP") and the provider's charter, the provider supplies its disabled clientele with vocational and life skills training encompassed within the meaning of "educational" and "charitable" purposes immunized under the Act. In addition, we conclude that the decedent was a "beneficiary" of the provider's services at the time of his fatal incident, despite plaintiffs' contentions that the incident was outside of the scope of his beneficiary status.

12-13-10 STATE OF NEW JERSEY v. JASHOWN WALKER
A-1137-08T4

Defendant was convicted of second-degree conspiracy to commit robbery and second-degree robbery. He is African-American and the victim is Caucasian. Defense counsel requested a cross-racial identification charge which the judge refused to give, concluding, in part, that the victim, who had worked in downtown Newark for several years, had "substantial connections" to African-Americans and people of other races.

We reversed. First, we concluded that a cross-racial identification charge should have been given because identification was the critical issue in the case and there was no independent corroboration of the victim's identification. Second, although it presented a close question, we concluded that the error was harmful under the facts presented and in light of the recent Special Master's Report in State v. Henderson, A-08, that discusses recent scientific analyses of the reliability of identification testimony and jurors' misconceptions in that regard.

12-9-10 MARIONI v. 94 BROADWAY, INC. et al.
A-1492-09T3

In a prior appeal, the court reversed the denial of plaintiff's application for specific performance and remanded for an adjustment of the compensation to be paid by plaintiff to regain the property -- a task complicated by the fact that the interloping purchaser had substantially renovated and leased the property. Marioni v. 94 Broadway, Inc., 374 N.J. Super. 588 (App. Div.), certif. denied, 183 N.J. 581 (2005). The Chancery judge thereafter conducted a hearing to determine how best to "reassemble Humpty Dumpty," id. at 622, and fixed the compensation due from plaintiff to the interloping purchaser. The court reversed because the trial judge's final adjustment required plaintiff to pay an entrepreneurial profit inconsistent with the interloper's position as a constructive trustee.

12-9-10 IN THE MATTER OF THE ISSUANCE OF ACCESS CONFORMING LOT PERMIT NO. A-17-N-N040-2007 BY THE NEW JERSEY DEPARTMENT OF TRANSPORTATION FOR BLOCK 136, LOTS 2 AND 3 IN MAHWAH TOWNSHIP, NEW JERSEY
A-0605-09T3

The APA confers a right upon any objector with a sufficient interest in issuance of a highway access permit to qualify as an "interested person" within the intent of N.J.S.A. 52:14B-3.1(a) to submit relevant "data, views or arguments" to the DOT and a

corresponding obligation upon the DOT to consider those materials. Even when an evidentiary hearing is not required, an administrative agency may be required to set forth basic findings of fact and conclusions of law for the purpose of informing interested parties and any reviewing tribunal of the basis on which the final decision was reached.

12-9-10 STATE OF NEW JERSEY v. BERNARD E. LOPEZ
A-4118-08T4

The trial court held that, because defendant waived his right to testify at his trial for unlawful possession of a weapon, N.J.S.A. 2C:39-5b, he was precluded from testifying at the immediately-following trial for possession of a firearm by a convicted felon, N.J.S.A. 2C:39-7b. Acknowledging that the proceedings were two separate trials and not phases of the same trial, we held that defendant's waiver of the right to testify in the first trial did not operate to waive his right to testify in the second trial.

12-8-10* STATE v. JOSEPH N. MARICIC
A-5247-08T4

This case was filed on August 31, 2010 as a per curiam opinion. However, a request for publication has been made that has been granted.

In this DWI matter, we hold that defendant has the right to discover downloaded Alcotest results from the subject instrument from the date of last calibration to the date of defendant's breath test and any repair logs or written documentation relating to repairs of the subject Alcotest machine, without a showing of prior knowledge of flawed procedures or equipment. Although the requested items were not included in either Special Master King's list of fundamental documents that must be produced by the prosecutor in discovery or the list adopted by the Court in State v. Chun, 194 N.J. 54, 145, cert. denied, ___ U.S. ___, 129 S. Ct. 158, 172 L. Ed. 2d 41 (2008), they are nonetheless of unquestionable relevance to a determination of the reliability of the Alcotest machine and procedures utilized. [*Approved for Publication date]

12-03-10 KYLE J. MOSTELLER v. GELLA NAIMAN AND COYNE TREE SERVICE, INC.
A-2546-09T2

Defendant negligently removed six mature trees, which the parties thereafter discovered had been situated on plaintiff's adjoining property, which he leased to two tenants.

The trial court correctly ruled that a diminution-of-market-value measure of damages, rather than a replacement-cost measure, would be sufficient to compensate plaintiff for his loss. Plaintiff failed to demonstrate that the trees had special or peculiar value to him, as required under Huber v. Serpico, 71 N.J. Super. 329, 345 (App. Div. 1962). In addition, the trial court's chosen method of calculating damages avoided economic waste, given that the estimated costs to replace the trees nearly exceeded plaintiff's costs to purchase the premises approximately a year earlier.

11-30-10 STATE v. RICHARD LYONS
A-4893-09T2

We reversed an order dismissing two counts of an indictment charging defendant with offering and distributing child pornography, N.J.S.A. 2C:24-4b(5)(a), which was accomplished by defendant's placement of the images in his shared folder on a peer-to-peer file sharing network, which defendant knew made the images available over the Internet to all other users of the network. We rejected the argument that defendant's "passive" conduct was only an omission to prevent others from accessing his computer files, which is not criminalized by N.J.S.A. 2C:24-4b(5)(a).

11-30-10 ATFH REAL PROPERTY, LLC v. WINBERRY REALTY PARTNERSHIP
A-1189-09T1

In this action to foreclose a tax sale certificate, one member of the defendant-partnership, who was not an attorney, filed an answer. Rather than deem the matter uncontested in light of Rule 1:21-1(c), the judge indulged the partner and considered his arguments regarding the alleged insufficiency of service of process and the merits. The judge ultimately found the answer failed to contest the grounds for foreclosure and struck it. Following entry of final judgment, the defendant-partnership through counsel sought relief pursuant to Rule 4:50, arguing among other things that the trial court had not acquired jurisdiction due to the ineffective service of process. The trial judge granted relief on the conditions that the defendant-partnership (a) reimburse plaintiff for its counsel fees and other expenses and (b) indemnify plaintiff from any future claims resulting from the fact that that the plaintiff had

contracted to sell the property to a third person after entry of judgment.

In the defendant-partnership's appeal concerning the conditions imposed, the court affirmed, concluding that the slim grounds upon which relief was sought justified the imposition of conditions and that the conditions were not punitive but appropriately addressed the potential prejudice to plaintiff. In addition, the court held that even though the manner in which the partnership appeared in the case was impermissible, the partnership nonetheless appeared; accordingly, service of process pursuant to Rule 4:4-4(c) was sufficient.

11-29-10 STATE OF NEW JERSEY v. DONALD R. HAND
A-3901-09T3

In this appeal by the State, we determine whether a guilty plea to fourth-degree creating a risk of widespread injury or death, N.J.S.A. 2C:17-2(c), precluded defendant's subsequent prosecution for driving under the influence (DWI), N.J.S.A. 39:4-50. The municipal court judge denied defendant's motion to dismiss the DWI and reckless driving charges on double jeopardy grounds. On appeal de novo to the Law Division, Judge Kryan Connor, citing the "same evidence" test, found defendant's prosecution for DWI and reckless driving was barred. He vacated the guilty pleas and dismissed the charges.

We affirmed, rejecting the State's argument that the "same evidence" test set forth in State v. De Luca, 108 N.J. 98, cert. denied, 484 U.S. 944, 108 S. Ct. 331, 98 L. Ed. 2d 358 (1987), should not apply to guilty pleas but should instead apply to the actual evidence to be presented at trial. Because defendant's operation of his motor vehicle under the influence of alcohol was the reckless act upon which the indictment was based and also because the State required defendant, as part of his plea to the indictment, to admit that he operated his motor vehicle under the influence of alcohol, his subsequent prosecution for DWI was barred on double jeopardy grounds.

11-29-10 N.J. DIV. OF YOUTH AND FAMILY SERVICES v. N.D. AND E.W., I/M/O T.W.
A-0553-09T2

This appeal is from an order entered in protective services litigation that did not comport with due process or the provisions of Title 9 or Title 30 granting and limiting the authority of the Division of Youth and Family Services in

custody matters. We detail the deviations to avoid repetition and remand for further proceedings.

This order of disposition was entered in an action for abuse and neglect under Title 9. It transfers custody of a child from his mother to his father for an indefinite period of time, cf. N.J.S.A. 9:6-8.51, and is based on a finding that the modification is in the child's best interests under the standards applicable in private custody disputes, N.J.S.A. 9:2-4. Although there was a stipulation to circumstances warranting services under Title 30, it did not justify entry of an order under Title 9 without a finding of abuse or neglect or adequate notice and opportunity to present evidence relevant to the child's safety in his mother's care. N.J. Div. of Youth and Family Servs. v. G.M., 198 N.J. 382 (2009).

11-24-10 JOHN SEALS AND JULIA SEALS v. COUNTY OF MORRIS, ET AL.
A-5433-08T3/A-0475-09T3 (consolidated)

In these appeals, we considered the liability of a utility company and the County of Morris for injuries sustained by a motorist whose vehicle struck a utility pole after veering off a county road. The motion judge denied summary judgment, concluding that the Court's decision in Contey v. New Jersey Bell Telephone Co., 136 N.J. 582 (1984), did not apply to the utility company under the particular facts of the case and, as to the County, the immunity provisions of the Tort Claims Act did not apply. The judge reasoned that liability on the part of both defendants must be resolved by applying ordinary negligence principles and disputed factual issues precluded the grant of summary judgment.

We reversed the denial of summary judgment to the utility company, finding that under Contey and N.J.S.A. 48:3-17.1, it owed no legal duty to plaintiff. We vacated the denial of summary judgment to the County and remanded for further proceedings. We concluded the arguments that the County may be liable for or immune from plaintiff's claim have not been sufficiently developed. We affirmed the denial of summary judgment to plaintiff.

11-24-10 MATTHEW G. CARTER APTS. v. KATHY RICHARDSON
A-1992-09T3

Plaintiff/landlord served a written notice to cease upon defendant/tenant regarding her habitual late rental payments. After receipt, defendant paid her rent in a timely fashion for

the next four months. She was then eight days late with the rent, and plaintiff served a "1st violation." Defendant paid on time the next month, but was two days late in paying the rent the following month. Plaintiff served a notice to quit and refused to accept any further rental payments which were tendered in a timely fashion and ultimately escrowed with defense counsel. In sum, defendant was late in the payment of her rent a total of ten days during the eleven-month period.

The trial judge granted plaintiff judgment of possession finding a cause of action was proven under N.J.S.A. 2A:18-61.1(j) (defendant had "after written notice to cease, . . . habitually and without legal justification failed to pay rent which [wa]s due and owing") because a second late payment was made after receipt of the notice to cease.

While we reaffirmed our prior holding in Ivy Hill Park v. Abutidze, 371 N.J. Super. 103 (App. Div. 2004), that general equitable defenses are not available to defeat the landlord's cause of action for habitual late payment of rent, we nevertheless reversed, finding that under the factual circumstances, plaintiff had failed to prove the statutory cause of action.

11-22-10 DYFS V. J.D. AND J.B. I/M/O GUARDIANSHIP OF J.B., J.D. AND J.D.
A-1163-09T4

In this procedurally unique matter, we examine the trial court's application of the Supreme Court's holding in New Jersey Division of Youth & Family Services v. G.M., 198 N.J. 382 (2009). For reasons other than those determined by the trial judge, we affirm the order granting custody of the child to the non-offending parent after removal.

In our discussion, we concluded the Family Part erred in reopening the litigation sua sponte following publication of our opinion New Jersey Division of Youth & Family Services v. G.M., 398 N.J. Super. 21 (App. Div. 2008). Because the offending parent had not appealed or otherwise challenged the order granting custody, the court lacked authority to unilaterally revisit its determination.

In the course of the reopened proceeding, the Supreme Court's G.M. opinion was issued. The trial judge's decision to ignore the precedent under the "law of the case" doctrine was error.

11-19-10 GENSOLLEN v. PAREJA
A-0401-10T3

The court granted leave to appeal in this personal injury action to consider the extent to which a party may inquire into an expert's finances and litigation history in gathering information to prove at trial the expert's positional bias. Because defendants' expert acknowledged at his deposition that more than ninety-five percent of his litigation work was for defendants, the court held the trial judge abused his discretion in compelling the expert to create and produce, at his own cost, documentation more precisely defining the percentage of his work that is defendant-related, the frequency with which he has found plaintiffs to have sustained permanent injuries, and the amount of income derived from performing independent medical examinations.

11-18-10 SPECTRASERV, INC. v. MIDDLESEX COUNTY UTILITIES AUTHORITY, ET AL.
A-1080-09T2

County Utilities Authority is not liable to its general contractor for attorney's fees under OPRA where the request for public documents was overbroad, non-specific and encompassed both privileged and confidential (trade secret) materials. Moreover, in light of pending construction litigation between the parties in the Law Division, the government agency's proposed compromise to coordinate the production of non-exempt documents to satisfy both the contractor's OPRA request and its discovery demands in the ongoing lawsuit was a reasonable solution under N.J.S.A. 47:1A-5(g), that accommodated the interests of the requestor in securing public information on a timely basis, and the agency is not having its operations substantially disrupted.

11-16-10 JOAN MCGEE V. TOWNSHIP OF EAST AMWELL
A-1233-09T2

On this appeal from a final decision of Government Records Council (GRC or the Council) under Open Public Records Act (OPRA or the Act), N.J.S.A. 47:1A-1 to -13, we conclude that records created by a former public official are subject to the "deliberative process privilege" under OPRA. In addition, where an employee now claims that she has waived her privilege as to her "personnel records" but did not raise the issue before the Council, we remand this matter to the Council to determine

whether the employee waived the confidentiality under the "personnel records" exception or whether there are countervailing concerns or policies that would preclude release of such records.

11-12-10 WASHINGTON COMMONS, LLC VS. CITY OF JERSEY CITY, ET AL
A-0779-09T1

We hold that a violation of a condition to a variance constitutes a violation of the land use ordinance itself, enforceable by the municipality by way of complaint for injunctive relief, specific performance, or other appropriate action.

Here, because Jersey City chose to enforce its Board of Adjustment's resolution (requiring a developer to convey fee simple title to seven affordable housing units to the City for $1.00 each) via motion rather than complaint, we vacated the Law Division's enforcement order. Should the City pursue the matter further, given the developer's failure to identify any material fact in the Board's resolution that remains unresolved, we suggested that the matter may be disposed of in a summary manner, Rule 4:67-1(b), with the filing of a complaint accompanied by the appropriate request for relief. R. 4:67-2.

11-10-10 JAMES RACANELLI v. COUNTY OF PASSAIC, ET AL.
A-5350-08T3

The notice of claim provisions of the Tort Claims Act, N.J.S.A. 59:1-1 to 12-3 do not apply to actions brought under the Conscientious Employee Protection Act (CEPA), N.J.S.A. 34:19-1 to -8; and plaintiff was not barred from pursuing his CEPA claim in the Law Division because he did not raise his whistle-blowing claim in an administrative challenge to his layoff.

11-09-10 STATE OF NEW JERSEY v. JOHN GREEN
A-6199-08T4

In this case, we decide that a motorist who has been charged with speeding is entitled to discovery respecting (1) the speed-measuring device's make, model, and description; (2) the history of the officer's training on that speed-measuring device, where he was trained, and who trained him; (3) the training manuals for the speed-measuring device and its operating manuals; (4) the State's training manuals and

operating manuals for the speed-measuring device; (5) the officer's log book of tickets written on the day of defendant's alleged violation; (6) the repair history of the speed-measuring device used to determine defendant's speed for the past twelve months; and (7) any engineering and speed studies used to set the speed limit at the section of highway where defendant's speed was measured. We also found that the Stalker Lidar speed-measuring device had not been proven to be scientifically reliable and, as such, the results of its operation should not have been admitted during the municipal court proceedings or considered by the Law Division. We remanded the matter to the Law Division for a plenary hearing on the scientific reliability of the Stalker Lidar. If it is determined to be reliable, then the matter is remanded to the municipal court for trial after the State has provided all of the discovery required by this opinion.

11-09-10 LEONARD L. FREDERICK, ET AL. v. MAXWELL BALDWIN SMITH, ET AL.
A-1620-09T2

Plaintiffs were defrauded by defendant Maxwell Baldwin Smith, who convinced them to invest in a fictitious entity, and requested that their financial contributions be paid into his personal account with defendant Merrill Lynch, Pierce, Fenner & Smith. After discovering the fraud, plaintiff brought this action, which included a claim that Merrill Lynch was negligent in failing to monitor Smith's account for indicia of fraud. The court affirmed the dismissal of this claim due to the absence of any relationship between plaintiffs and Merrill Lynch, thereby extending the courts' "reluctance to impose a duty of care on banks in respect of a total stranger," Brunson v. Affinity Fed. Credit Union, 199 N.J. 381, 403 (2009), to brokerage firms.

11-04-10 MENDEZ V. SOUTH JERSEY TRANSPORTATION, ET AL. and FELIX V. MENDEZ, ET AL.
A-3403-09T2/A-3409-09T2 (consolidated)

We consider whether "extraordinary circumstances" existed for the extension of the ninety-day Tort Claims deadline, N.J.S.A. 59:8-9, where plaintiffs' attorneys waited until they viewed the videotape depicting events relating to the motor vehicle accident, which they diligently requested, before filing the claims notices. The motion judge found such circumstances did exist. We agree.

10-27-10 WELLS FARGO BANK, NA v. JAYNE A. GARNER

A-4250-08T2

In a foreclosure matter, an order granting summary judgment, striking defendant's contesting answer, entering default and returning the matter to the Office of Foreclosure is interlocutory. Final judgment fixes the amount due after which defendant will have the right to appeal.

10-27-10 IN THE MATTER OF ANTHONY HEARN, DEPARTMENT OF EDUCATION
A-5780-07T1

Upon successful appeal to the Civil Service Commission of disciplinary action taken against him under the State's workplace anti-discrimination policy applicable to all employees, a State employee was entitled to recover his reasonable attorney's fees under the regulatory provisions of Title 4A of the New Jersey Administrative Code. A mandatory fee-shifting regulation applied to the employee in this case although he was not in the permanent career service.

10-25-10 SUSSEX COMMONS ASSOCIATES, ET ALS. V. RUTGERS, THE STATE UNIVERSITY, ET ALS.
A-1567-08T3

Plaintiffs filed a formal request under OPRA with the Custodian of Records for Rutgers, the State University, seeking access to eighteen categories of documents concerning the Environmental Law Clinic operated by Rutgers Law School in Newark. The request sought documents related to the Clinic's finances and its representation of two private citizens' groups that were opposing plaintiffs' proposed development of an outlet mall.

The trial court ruled that the Clinic was not subject to OPRA and dismissed plaintiffs' complaint. We reverse the trial court's ruling exempting the Clinic from the provisions of OPRA and remand for the court to determine whether the specific documents requested by plaintiffs are exempt from disclosure under the definition of "government record" in N.J.S.A. 47:1A-1.1. The trial court shall also review and decide plaintiffs' requests under our State's common law right of access.

10-25-10 DYFS v. T.S. and DYFS v. K.G.
IN THE MATTER OF THE GUARDIANSHIP OF M.S.
A-5902-08T3/A-5903-08T3 (consolidated)

In this termination of parental rights challenge involving a now twelve-year-old girl, an unusual culmination of post trial events, when taken together, called into question whether the defendant mother had removed the harm precluding reunification and whether the possible detriment posed by keeping the parent-child relationship intact was outweighed by the potential benefits of terminating the mother's parental rights. We are persuaded the additional facts, although not present at the time of trial, must nevertheless be assessed by the trial court before a judgment of guardianship can be entered. We vacated the judgment and remanded to the trial court for further review regarding the evidence bearing on prongs two and four of the best interest test.

10-22-10 STEVEN SANTANIELLO V. NJ DEPT. OF HEALTH & SR. SERVS.
A-4948-08T1

We hold that regulations of the Department of Health and Senior Services governing the recertification of EMT-Paramedics do not impermissibly delegate the Department's oversight authority to private hospitals from which the applicant must obtain an endorsement and to which the applicant must demonstrate his or her proficiency skills for pre-hospital care.

We also hold that the challenged regulations are not overly vague and do not violate due process by not providing for a pre-denial hearing.

10-14-10 STATE OF NEW JERSEY V. HENRY LEE CONWAY
A-2771-07T4

We held it was error for the trial court to permit the State to withdraw from a plea bargain, over defendant's objection, where the State had not specifically conditioned its acceptance of defendant's plea agreement on the co-defendants also accepting a plea bargain.

10-13-10 BONNIER CORPORATION d/b/a BONNIER CORPORATION V. JERSEY CAPE YACHT SALES, INC.
A-2404-09T2

Plaintiff, a Delaware corporation headquartered in Florida and the publisher of numerous special-interest national magazines, filed a collection action in the Law Division against defendant, a New Jersey yacht retailer, after defendant failed to pay for certain advertising published nationally in one of plaintiff's magazines. The trial court granted defendant's

motion to dismiss plaintiff's complaint for lack of standing because plaintiff had not obtained a certificate of authority to do business in New Jersey pursuant to N.J.S.A. 14A:13-11.

Because the limited record as developed in the trial court does not establish that plaintiff is engaged in intrastate business within New Jersey, as defined by Eli Lilly & Co. v. Sav-On Drugs, Inc., 366 U.S. 276, 280, 81 S. Ct. 1316, 1319, 6 L. Ed. 2d 288, 291-92 (1961), plaintiff could not be constitutionally obligated under the Commerce Clause to obtain a certificate of authority because of its purely interstate business activities. Consequently, the dismissal of the complaint is reversed and the matter is remanded for further proceedings.

10-13-10 BRADFORD SCOTT v. NEW JERSEY DEPARTMENT OF CORRECTIONS
A-3332-08T2

We hold, after a review of regulatory history, that an inmate who has sustained a "permanent loss of contact visits" as the result of committing two or more zero tolerance offenses may apply to the Administrator for reinstatement of such visits after completing all consecutive sanctions imposed.

10-08-10 IN THE MATTER OF THE ADOPTION OF N.J.A.C. 5:96 AND 5:97 BY THE NEW JERSEY COUNCIL ON AFFORDABLE HOUSING
A-5382-07T3, ET ALS.

COAH's "Growth Share" methodology for allocating the prospective need for affordable housing in the revised third round rules is invalid. Therefore, COAH is ordered to adopt new third round rules that use a methodology for determining prospective need similar to the methodology used in the prior rounds rather than a growth share methodology. The parts of the revised third round rules that authorize bonus credits for rental units that were never built and that do not provide sufficient incentives for the construction of inclusionary developments are also invalid. The other parts of the revised third round rules challenged in these appeals, including those dealing with the calculation and allocation of present need and prior round obligations, are sustained.

10-07-10 SELECTIVE INSURANCE COMPANY OF AMERICA, ET AL. V. HUDSON EAST PAIN MANAGEMENT OSTEOPATHIC MEDICINE AND PHYSICAL THERAPY, ET AL.
A-0433-09T1

We hold that a private automobile insurer providing PIP coverage is not entitled to declaratory relief compelling expansive discovery from assignee health care providers in its internal investigation of suspected insurance fraud. Neither the PIP statute's limited discovery provision, N.J.S.A. 39:6A-13(g), nor the cooperation clause of the insurance policies in which medical providers are assigned the rights of the insureds, support the imposition of a corresponding duty on the assignees to produce extensive documentation beyond that authorized in the PIP statute.

We also found no entitlement to the requested information under the umbrella of statutory schemes mandating that insurance carriers investigate putative fraud. Such discovery may be appropriate in an insurer's private cause of action under the Insurance Fraud Protection Act (N.J.S.A. 17:33A-1 to -30), seeking to recover compensatory damages for violations by medical providers of statutes or regulations governing their profession. Here, however, the insurer filed a declaratory judgment action exclusively for the purpose of obtaining information to further its investigation, alleging no violation of governing law and seeking no compensatory damages as a result thereof.

10-05-10 DEPARTMENT OF CHILDREN AND FAMILIES, DIVISION OF YOUTH AND FAMILY SERVICES v. C.H.
A-4786-08T1

An ALJ found that a parent's corporal punishment of a four-year-old who reported to a neighbor that there was no electricity in their home was insufficient to sustain an allegation of abuse under N.J.S.A. 9:6-8.21(c). The Director disagreed, finding that given the reason for inflicting the corporal punishment, the fact that the child was struck multiple times, and the parent's history of questionable corporal punishment, the abuse had been substantiated. We affirmed and agreed the Director properly considered the parent's past admitted history of corporal punishment inflicted upon the child.

10-04-10* STATE v. ENRIGHT
A-4630-08T4

After defendant's conviction and sentence in the municipal court as a third-time DWI offender, he obtained a post-conviction order from a different municipal court in which his

second DWI conviction had occurred confirming that conviction but directing that no court could use it to enhance his sentence on a subsequent DWI conviction. We held that the municipal court order was an erroneous application of State v. Laurick, 120 N.J. 1, cert. denied, 498 U.S. 967, 111 S. Ct. 429, 112 L. Ed. 2d 413 (1990), and that on de novo review of the third DWI conviction, the Law Division correctly declined to follow the municipal court's order. [*Approved for Publication date]

09-30-10 Arthur Andersen, LLP v. Federal Insurance Company, et al.
A-2155-08T1

Although Arthur Andersen, LLP neither owned nor leased any space at the World Trade Center or the Pentagon on September 11, 2001, it filed a claim with its insurers for $204 million in business losses, contending that such losses were caused as a result of the property damage to the WTC and the Pentagon and covered under the Contingent Business Interruption (CBI) clause and the Interdependency clause of its policy. The loss claimed was a generalized revenue shortfall that represented the difference between expected revenue trends and actual revenue earned in the three and one-half months that followed the terrorist attacks. Andersen appealed from orders granting summary judgment to the insurer. We affirm.

Because Andersen failed to show that its claimed business loss was caused by damage to property that prevented a client from accepting its services, its loss was not covered under the CBI provision of its policy. We also reject Andersen's argument that it had an "insurable interest" in the World Trade Center and therefore conclude that its claim was not covered under the Interdependency provision of the policy.

09-27-10 W.J.A. v. D.A.
A-0762-09T3

In this appeal from the grant of summary judgment dismissing plaintiff's defamation action, we determine whether Internet postings by defendant accusing plaintiff of sexually molesting him and another male are the type of defamatory statements for which damages may be presumed and therefore do not require proof of actual harm to reputation. The motion judge concluded that although the Internet postings were defamatory per se, the statements were akin to libel rather than slander, and as such, plaintiff was required to prove actual injury to reputation, which plaintiff admittedly had not done.

We reversed. Although acknowledging a trend away from the notion of presumed damages in defamation cases, we concluded that existing law in this state still remains that libel is actionable without proof of actual harm to reputation.

09-17-10 BOROUGH OF SAYREVILLE VS. 35 CLUB, L.L.C. ET AL.
A-3537-08T1

Defendant operated a sexually oriented business featuring live nude erotic dancing. Applying N.J.S.A. 2C:34-7 and the licensing requirements of the Borough's local ordinance, the trial court permanently enjoined defendant from operating this business at this location. The court also ordered that the injunction be recorded in the office of the county registrar of deeds as a restriction on the use of this property in perpetuity.

Applying the Court's decision in Township of Saddle Brook v. A.B. Family Center, Inc., 156 N.J. 587 (1999), we reverse. We also hold that the internet is not a reasonably viable alternative forum for this constitutionally protected form of expression. Finally, we disapprove of the trial court's consideration of Staten Island as an alternative suitable forum under the test articulated by the Court in Saddle Brook.

Judge Skillman concurs in our decision to reverse and remand under Saddle Brook, including the rejection of the internet as an alternative forum, but dissents with respect to our rejection of Staten Island as an alternative suitable site.