DATE NAME OF CASE (DOCKET NUMBER)

09/11/15 DENISE BROWN VS. STATE OF NEW JERSEY AND JOHN STEET DETECTIVE (NJSP), ET AL.
A-4796-12T3

This is a civil suit under the New Jersey Civil Rights Act, N.J.S.A. 10:6-2c, to redress injuries arising out of a warrantless entry State Police detectives made into plaintiff Denise Brown's home in order to "secure the apartment" while they sought a search warrant for the premises. A jury returned a verdict for defendants and the judge denied plaintiff's motion for judgment notwithstanding the verdict (JNOV).

Brown appeals from the denial of her JNOV motion contending that she is entitled to judgment and an injunction "because it is indisputable the [State Police] seized and entered her residence absent a warrant, consent, or exigent circumstances according to policy and training." The court affirms the denial of the motion as to the State, as well as the denial of an injunction because the State is immune from suit under the Civil Rights Act. The court reverses the denial of the motion as to the individually named detective and remands for a trial on damages because the troopers' testimony establishes, indisputably, that their entry into Brown's residence before securing the warrant was unlawful as a matter of law.

09/10/15 LISA VAN HORN VS. HARMONY SAND & GRAVEL, INC.
A-2794-13T2

In this appeal we considered whether the agreement to allow Harmony to build a quarry operation and remove gravel from property in return for royalties was a lease, as the trial court found, or a license, as the property owner argued. We determined that as the agreement between the parties, although called a lease, conveyed less than exclusive possession of the property but conveyed an interest that was alienable, assignable and inheritable for an indeterminate time, it was a profit a prendre.

09/10/15 STATE OF NEW JERSEY VS. DESHAUN P. WILSON
A-2097-12T4

Admission of an official park-zone map, see N.J.S.A. 2C:35-7.1(e), does not violate the Confrontation Clause.

09/09/15 N.T.B. VS. D.D.B.
A-4542-13T2

In this appeal, we determine that a spouse's damage of a door within the couple's jointly-owned marital home may constitute the predicate act of "criminal mischief," N.J.S.A. 2C:17-3, through harm to the "property of another," thereby supporting a finding of an act of domestic violence pursuant to the Prevention of Domestic Violence Act (PDVA), N.J.S.A. 2C:25-17 to -35.

09/09/15 WILLIAM W. LISOWSKI, ET AL. VS. BOROUGH OF AVALON AND STATE OF NEW JERSEY TIDELANDS RESOURCE COUNCIL/ STATE OF NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION VS.TOWNSHIP OF DELANCO
A-0065-13T1/ A-3947-13T2

The 1981 amendment to the New Jersey Constitution, N.J. Const. art. VIII, § 5, ¶ I, required the State to specifically define and assert its claim to tidelands within forty years after the land was no longer tidal flowed. No legislative action was taken to establish a procedure the State should follow to satisfy the delineation and assertion requirements. In 1983, the Supreme Court decided Dickinson v. Fund for the Support of Free Public Schools, 95 N.J. 65, 84 (1983), addressing challenges to the validity of the Amendment and the methodology employed by the State to define and assert its tidal claims. Although the Supreme Court broadly described the constitutional imperatives, it did not define with particularity a procedure that was constitutionally required. However, the Court held compliance with the arduous procedures dictated by Title 13 to map the meadowlands was not required and that the State had satisfied constitutional requirements as to claimed areas shown on a particular exhibit, P-13, that were accompanied by base photomaps with claim overlays. Further, the Court repeatedly acknowledged that the exercise of administrative authority in this context is entitled to deference.

Some thirty years after Dickinson, these appeals challenge the sufficiency of the State's effort to delineate and assert its claims to certain tideland property within the time restriction established by the Amendment. Both Lisowski and Delanco challenge the sufficiency of the State's proofs that it provided timely notice of its claim and, in Delanco, the Township also challenges the methodology used in delineating the claim.

Finding Dickinson dispositive, we reverse the order granting summary judgment to the Lisowskis, clearing their title. We affirm the order in Delanco, based upon the holdings in Dickinson and City of Jersey City v. Tidelands Resource Council, 95 N.J. 100 (1983), and the principles underlying our deference to administrative decisions as exemplified by City of Newark v. Natural Resource Council in Department of Environmental Protection 82 N.J. 530, cert. denied, 449 U.S. 983, 101 S. Ct. 400, 66 L. Ed. 2d 245 (1980).

09/08/15 STATE OF NEW JERSEY VS. KASSEY BENJAMIN
A-1569-13T3

In this Graves Act case the court reversed and remanded for further proceedings. The court held that defendant should be given the opportunity to pursue an Alvarez motion; i.e. whether the State's decision to not consent to a waiver was arbitrary and discriminatory. The court was persuaded defendant was denied a full and fair opportunity to pursue the Alvarez motion because the State claimed it did not maintain, and thus could not produce, other case files involving waiver decisions despite the Attorney General's Directive requiring the retention of all such files.

The court held that hereafter the State shall be required to provide, in writing, the reasons for a denial of a waiver similar to the requirement for PTI decision in order to promote procedural fairness and to ensure meaningful judicial review.

09/08/15 STATE OF NEW JERSEY VS. SHAQUILLE A. NANCE
STATE OF NEW JERSEY VS. TAJA L. WILLIS-BOLTON
STATE OF NEW JERSEY VS. ALVIN D. WILLIAMS
A-5715-12T3/A-0479-13T3/A-0715-13T3(CONSOLIDATED)

In these consolidated Graves Act cases the court held that after a motion for waiver by the State was approved by the Assignment Judge or the designee judge, the sentencing judge, notwithstanding a plea agreement, had the discretion to impose either a probationary sentence or a one-year parole disqualifier. N.J.S.A. 2C:43-6.2, State v. Alvarez, 246 N.J. Super. 137, 142 (App. Div. 1991).

The court held the plea in these circumstances is not a "contract plea" and does not have a binding effect on the court.

09/08/15 STATE OF NEW JERSEY VS. GEORGE A. MYERS
A-4295-12T4

The odor of marijuana has long been held to provide probable cause of the commission of a marijuana offense. Under the New Jersey Compassionate Use Medical Marijuana Act (CUMMA), N.J.S.A. 24:6I-1 to -16, registered qualifying patients receive registry identification cards, and their medical use of marijuana as authorized by the CUMMA is exempt from criminal liability under N.J.S.A. 2C:35-18. Where, as here, there is no evidence that the person suspected of possessing or using marijuana has a registry identification card, the odor of marijuana still provides probable cause of the commission of a marijuana offense. Here, the odor of burnt marijuana emanating from defendant's car gave the officer probable cause to arrest him for a marijuana offense committed in the officer's presence.

09/03/15 JOAN MERNICK AND JOHN MERNICK VS. WANDA MCCUTCHEN AND HUDSON NEWS DISTRIBUTORS, LLC
A-3683-14T2

In this interlocutory appeal we considered a trial court order requiring the defendant to provide video surveillance of a plaintiff to her before the plaintiff's deposition. Based on the reasoning in Jenkins v. Rainer, 69 N.J. 50 (1976), we determined that as a general rule the defendant is not required to provide the surveillance video until after the plaintiff's deposition.

09/01/15 IN THE MATTER OF PROBATION ASSOCIATION OF NEW JERSEY AND PETER TORTORETO AND ROBYN GHEE
A-2101-13T3

The sole issue on this appeal is whether the Public Employment Relations Commission (PERC) was correct as a matter of law in determining that because the Charging Parties were not expelled but only suspended from their union, the allegations of their unfair practice charge, even if true, concern only internal union disputes that do not support even a potential violation of the Employer-Employee Relations Act, and thus are beyond the scope of PERC's unfair practice jurisdiction.

Because nothing in the language of N.J.S.A. 34:13A-5.3, -5.4b(1), which provides that "public employees shall have, and shall be protected in the exercise of, the right, freely and without fear of penalty or reprisal, to form, join and assist any employee organization," suggests that PERC's jurisdiction is invoked only when a member is expelled or permanently excluded from union membership, the court reverses.

08/31/15 STATE OF NEW JERSEY VS. RASHON BROWN
STATE OF NEW JERSEY VS. MALIK Q. SMITH
A-0211-12T1
A-3356-13T1 (CONSOLIDATED)

In these consolidated appeals, defendants were tried together before the same jury and convicted of first degree carjacking and other related offenses. We reverse the jury's verdict because the trial judge failed to remove a deliberating juror who disclosed her racial bias to two of her fellow jurors and to the judge. Independent of this error, the trial judge also failed to take proper measures to determine whether the two other jurors harbored similar, latent racial biases.

Once a juror's latent or overt racial bias is discovered, the juror must be removed from the jury. Thereafter, the judge must conduct a comprehensive, fact-sensitive inquiry to determine whether the removed juror's odious beliefs are shared by any other member of the jury or has otherwise tainted the remaining jurors to such an extent that a mistrial is warranted. Judge Ashrafi concurs.

08/18/15 DAVID W. OPDERBECK VS. MIDLAND PARK BOARD OF EDUCATION
A-2520-13T3

In this appeal we are asked to construe the term "agenda" as used in the "adequate notice" requirements imposed on public bodies by the Open Public Meeting Act (OPMA), a/k/a the Sunshine Law. The OPMA does not define the term "agenda." The Law Division construed the term "agenda" to include the attachments and supplemental documents mentioned therein and, as a result, permanently enjoined the Midland Park Board of Education to post on its website copies of any appendices, attachments, reports, and other documents referred to in its agenda.

We reverse and construe the term "agenda" by giving it its plain, ordinary meaning: a list or outline of things to be considered or done. This definition of "agenda" is also consistent with the definition of the term contained in a formal advisory opinion issued by the Attorney General shortly after the Legislature adopted the OPMA, and has guided public bodies on the meaning of "agenda," as used in N.J.S.A. 10:4-8(d), for nearly forty years.

08/14/15 HIGHPOINT AT LAKEWOOD CONDOMINIUM ASSOCIATION, INC. VS. THE TOWNSHIP OF LAKEWOOD

A-2118-13T2

In this quiet title case, we address novel issues under the New Jersey Condominium Act, N.J.S.A. 46:8B-1 to -38, regarding the status of unbuilt units described in a master deed, and associated land. We hold that these so-called "phantom units" are subject to real estate tax, and to foreclosure if taxes are unpaid; and the association, as distinct from unit-owners, is not entitled to personal notice. We also hold that phantom unit-owners may be liable for common area assessments. We question the enforceability of powers of attorney, granted under a master deed by unit owners to a developer, purporting to authorize the developer to remove undeveloped units and the related land from the condominium. We also question whether such powers run with the land so as to grant removal authority to a subsequent title owner. We hold such powers of attorney are not self-executing.

We remand for application of the principles set forth in our opinion, and reverse the trial court's order declaring that Lakewood Township, which foreclosed on tax sale certificates associated with the phantom units, owns the associated land removed from the condominium.

08/12/15 <u>GIVAUDAN FRAGRANCES CORPORATION VS. AETNA CASUALTY & SURETY COMPANY A/K/A TRAVELERS CASUALTY AND SURETY COMPANY, ET AL.</u>
A-2270-12T4

The Givaudan Corporation contaminated the groundwater and soil with hazardous materials in the vicinity of its plant in Clifton over many decades. Between 1964 and 1986, defendant insurance companies issued occurrence-based policies to this company, which later merged into another company in the 1990s. The successor by merger to the Givaudan Corporation acquired the rights under those policies. Various environmental actions were brought against plaintiff, an affiliate of the successor by merger, for the environmental damage the Givaudan Corporation caused between 1964 and 1986. The successor by merger assigned its rights under the insurance policies to plaintiff, which sought coverage under the policies.

Defendants denied coverage, raising a number of defenses. Primarily they argued the policies could not be assigned because of a no-assignment provision in the respective policies. The trial court found in favor of defendants and dismissed plaintiff’s declaratory judgment action.

We reversed, noting that under settled principles, an insured may assign its rights under a policy after a loss because an insurer's risk remains the same regardless of the insured's identity. Further, once an insurer's liability has become fixed due to a loss, an assignment of rights to collect under an insurance policy is not a transfer of the actual policy but a transfer of the right to a claim of money.

08/11/15 J.I. VS. NEW JERSEY STATE PAROLE BOARD
A-1293-14T2

This case involves a convicted sex offender who is monitored by the Parole Board as an offender subject to conditions of community supervision for life (CSL) that ban his use of Internet-capable devices and access to social networking websites and the Internet pursuant to N.J.S.A. 10A:71-6.11(b)(22), and ban his viewing or possessing pornography and using, possessing and purchasing alcohol. We rejected appellant's constitutional facial challenges to N.J.S.A. 10A:71-6.11(b)(22) for the reasons expressed in J.B. v. N.J. State Parole Bd., 433 N.J. Super. 327, 338 (App. Div. 2013), certif. denied sub nom, B.M. v. N.J. State Parole Bd., 217 N.J. 296 (2014), and further held that our holding applies to all offenders serving a CSL, regardless of whether their sex crimes were Internet-related.

We also rejected appellant's as-applied challenges to the regulation, concluding there was no ex post facto violation. We further concluded that the Board's decision to impose the conditions was not arbitrary, capricious or unreasonable.

08/11/15 JOHNNY MEDINA VS. CEASAR G. PITTA, M.D., ET AL.
A-5023-12T1

In this medical malpractice action, plaintiff retained an expert who was "fully retired" before any of the defendant physicians treated him. Plaintiff appeals from an order granting summary judgment to defendants on the ground that, pursuant to the New Jersey Medical Care Access and Responsibility and Patients First Act (PFA), N.J.S.A. 2A:53A-37 to -42, his proposed expert was not qualified to give expert testimony on the appropriate standard of care. He also appeals from the denial of his motion for reconsideration. For the reasons that follow, we conclude the proposed expert did not meet the qualification requirements of the PFA. We further consider plaintiff's argument that the doctrines of substantial

compliance and extraordinary circumstances should preclude the dismissal of his complaint. We conclude that these doctrines are inapplicable when summary judgment is sought based upon a plaintiff's failure to secure an expert witness who is "statutorily authorized to testify" about the standard of care in a medical malpractice case. Therefore, a dismissal with prejudice was appropriate.

08/11/15 <u>NEW JERSEY DIVISION OF CHILD PROTECTION AND PERMANENCY VS. I.B. AND A.E. IN THE MATTER OF R.B.</u>
A-2114-12T2

The central issue in this Title Nine trial was whether a licensed psychologist retained by the Division of Child Protection and Permanency to evaluate a five-year old could offer his opinion on the nature of her reported symptoms and his diagnosis to corroborate the child's hearsay report that her father made her touch his genitals. The trial judge heard the testimony pursuant to N.J.R.E. 104 but determined to exclude it based on a line of criminal cases starting with State v. J.Q., 130 N.J. 554 (1993), in which the Supreme Court rejected the use of Child Sexual Abuse Accommodation Syndrome evidence as substantive proof of child abuse.

The State's expert in this case, however, did not offer an opinion on Child Sexual Abuse Accommodation Syndrome. He testified that the child, whom he evaluated within a month of the alleged abuse, suffered from Adjustment Disorder with mixed disturbance of emotions and conduct and concluded her "statements and presentation are consistent with a child who has experienced sexual abuse." We reverse and remand for the judge to consider the testimony offered by the Division's expert. We hold the psychological opinion evidence offered here is admissible to corroborate the child's allegation of abuse subject, of course, to whatever weight the judge deems appropriate to accord the testimony.

08/10/15 <u>ESTATE OF JACK D'AVILA BY TIAGO D'AVILA, ADMINISTRATOR AD PROSEQUENDUM AND DENISE ROCHA, INDIVIDUALLY VS. HUGO NEU SCHNITZER EAST, ET AL.</u>
A-4439-11T2/4705-11T2/4713-11T2 (CONSOLIDATED)

These consolidated appeals arise out of a four-month jury trial in a wrongful death case against multiple defendants, including a general contractor, brought by the estate of a subcontractor's worker. The worker became paralyzed after being struck in the head by an unsecured metal ladder on a

construction site. The worker was then given inadequate medical care at a nearby hospital, and he died three years later.

In the published portion of this opinion, we hold that the trial court properly allowed the injured worker's employer to participate in the negligence trial. Such participation was appropriate to resolve the employer's fact-dependent contractual duty to indemnify the general contractor and did not violate the exclusive remedy provision of the Workers' Compensation Act, N.J.S.A. 34:15-8.

We distinguish Kane v. Hartz Mountain Industries, Inc., 278 N.J. Super. 129, 134 (App. Div. 1994), aff'd o.b., 143 N.J. 141 (1996) (disapproving the employer's participation at trial). Instead, we approve using, in this unusually complex and expansive case, the unitary trial approach endorsed in White v. Newark Morning Star Ledger, 245 N.J. Super. 606 (Law Div. 1990).

The trial court did err in not permitting the jury to ascertain the employer's percentage of fault, if any, on the verdict form. However, given appellant's failure to object below and the broad scope and protracted length of the trial, that omission does not require a retrial of this entire case. Instead, we order only a limited remand to sort out any lingering indemnification issues.

08/06/15 <u>TIMBER GLEN PHASE III, LLC AND JSM AT TIMBER GLEN, LLC VS. TOWNSHIP OF HAMILTON</u>
A-1775-13T1

The parties disagree on the scope of municipal authority granted by N.J.S.A. 40:52-1 (the Licensing Act). Plaintiffs Timber Glen Phase III, LLC and JSM at Timber Glen, LLC appeal from the summary judgment dismissal of their complaint in lieu of prerogative writs that challenged an ordinance adopted by defendant Township of Hamilton, assessing an annual $100 licensing fee on residential apartment units.

Obligated as we are to seek an interpretation that will make the most consistent whole of the statute, we conclude the 1998 amendment adding subsection (n), permitting licensure of the "rental of real property for a term less than 175 consecutive days for residential purposes by a person having a permanent place of residence elsewhere," and the accompanying bill statement serve as powerful evidence of an intention to limit licensing residential rentals and constrains the provisions of subsection (d), which includes "[h]otels,

boardinghouses, lodging and rooming houses, . . . motels, furnished and unfurnished rented housing or living units" to refer to short term living arrangements.

07/28/15 FAIR SHARE HOUSING CENTER, INC., VS. THE ZONING BOARD OF THE CITY OF HOBOKEN, ET AL
A-1535-12T2/ A-1537-12T2/ A-1538-12T2/ A-1731-12T2/ A-1732-12T2 (CONSOLIDATED)

These are five consolidated appeals filed to determine the enforceability of an affordable housing ordinance adopted by the City of Hoboken. The trial court held the ordinance was unenforceable, invalidated the zoning approval conditions imposed by the Zoning Board of Adjustment, relieved the developers from their obligation to provide affordable housing, and enjoined the City from imposing any requirement to construct affordable housing units and/or collect any monetary contribution related to affordable housing.

We now reverse the trial court's order invalidating the City's affordable housing ordinance. We hold the trial court erred in invalidating the zoning approval conditions related to compliance with the ordinance's provisions as to all of the developers named as defendants by plaintiff Fair Share Housing Center and remand for the trial court to adjudicate the remaining legal issues raised by the parties.

07/23/15 PAUL JAWORSKI, ALEXANDER HAGGIS AND ROBERT HOLEWINSKI VS. ERNST & YOUNG US LLP, TRACEY GUNTER AND RICHARD BAKER
A-5259-13T2

Plaintiffs challenge the enforceability of Ernst & Young's mandatory arbitration policy on constitutional, statutory and common law grounds. The employees were provided notice of changes to the arbitration policy by electronic distribution. We determine, since the policy states assent is given by continued employment, remaining employed with the company evinces an unmistakable indication that the employee affirmatively has agreed to arbitrate his claims pursuant to the changed policy.

We reject plaintiffs' arguments and affirm the trial court's decision that plaintiffs' age-discrimination claims are subject to mandatory arbitration.

07/22/15 ANTHONY A. GONZALES VS. ELLEN I. HUGELMEYER, ET AL.

A-2602-13T4

Because of multiple trial errors, we reverse the judgment in this automobile negligence case and remand for a new jury trial.

Extending State v. McLean, 205 N.J. 438, 460 (2011) (construing the lay opinion rule in N.J.R.E. 701) to a civil context, we hold that the trial court should have disallowed a State Trooper, who was not qualified as an expert witness, to provide and express to jurors his opinion concerning which driver was at fault in causing the accident. The court also erroneously permitted the Trooper to testify about and rely upon hearsay statements made to him by an unidentified eyewitness that he interviewed at the accident scene. The prejudice stemming from these errors was compounded by counsel's summation spotlighting this inadmissible evidence.

We further hold that the trial court erred in preventing defense counsel from moving into evidence the relevant office notes of plaintiff's treating physician, on the basis that the jury had already heard about plaintiff's treatment in the physician's testimony. The admission of the doctor's testimony does not preclude the admission of relevant portions of the notes.

Lastly, although not shown to be an independent basis for reversal here, we clarify this court's recent opinion in James v. Ruiz, 440 N.J. Super. 45, 73 n.17 (App. Div. 2015), regarding testimony from a chiropractor that discussed the hearsay MRI findings made by a non-testifying radiologist.

07/22/15 IN THE MATTER OF THE REALLOCATION OF THE PROBATION OFFICER AND PROBATION OFFICER, BILINGUAL IN SPANISH AND ENGLISH TITLES FROM THE COMPETITIVE TO THE NON-COMPETITIVE DIVISION OF THE CAREER SERVICE
A-0056-13T2

The Civil Service Commission approved the request by the Administrative Office of the Courts (AOC) for the transfer of two titles, from its competitive division to its noncompetitive division. The Probation Association of New Jersey appealed the Commission's decision, arguing that the transfer was unconstitutional under the provisions of article VII, section 1, paragraph 2 of the New Jersey Constitution, which requires public employees to be selected on the basis of "merit and fitness to be ascertained, as far as practicable, by

examination, which, as far as practicable, shall be competitive." It further argued that the AOC had not established a sufficient factual basis for the transfer under the applicable statutory and regulatory requirements.

The panel reversed and remanded for further consideration by the Commission. It concluded that the Commission had failed to consider the constitutional issue at all and that the AOC had failed to establish a sufficient factual justification for the transfer under the applicable statutes and regulation. The panel also instructed the Commission to consider the appropriateness of the proposed transfer for each title separately.

07/20/15 IN THE MATTER OF REGISTRANT V.L.
A-0816-14T1

V.L., a registered sex offender, appeals an order reclassifying his risk of re-offense, previously low or Tier 1, to moderate or Tier 2. He contends the trial court erred in scoring the Registrant Risk Assessment Scale (RRAS) by including a recent non-sex offense, burglary, in RRAS criterion seven – length of time since last offense. V.L. argues that criterion seven involves only sex offenses. Our review of the Att'y Gen. Guidelines for Law Enforcement for the Implementation of Sex Offender Registration and Cmty. Notification Laws (June 1998, rev'd Feb. 2007) leads us to agree. Accordingly, we reverse and remand for a new tier hearing.

07/20/15 IN THE MATTER OF REGISTRANT A.D./IN THE MATTER OF REGISTRANT J.B./ IN THE MATTER OF REGISTRANT C.M.
A-5671-13T1/ A-2312-14T1/ A-2313-14T1 (CONSOLIDATED)

Sex offenders may apply to the court under N.J.S.A. 2C:7-2(f) to terminate their registration obligations if, among other requirements, they "ha[ve] not committed an offense within 15 years following conviction or release . . . and [are] not likely to pose a threat to the safety of others." Appellants' applications were denied because each appellant had committed an offense – though not a sex offense – within the fifteen year period. These appeals require us to decide whether the term "offense" in N.J.S.A. 2C:7-2(f) means "a crime, a disorderly persons offense or a petty disorderly persons offense unless a particular subsection in the code is intended to apply to less than all three" - the definition given in the general definitional subsection of the Criminal Code; or a "sex offense" as defined in N.J.S.A. 2C:7-2(b), a provision of Megan's Law.

Concluding that N.J.S.A. 2C:7-2(f) is unambiguous, we hold that the term offense means what the Code's general definitional subsection defines it to mean. Accordingly, we affirm the trial courts' orders.

07/17/15 NEW JERSEY DIVISION OF CHILD PROTECTION AND PERMANENCY VS. K.N.S. IN THE MATTER OF E.J.S.
A-4394-13T3

In this abuse or neglect case, the mother was grossly negligent in that she failed to provide adequate care and protection for her seven-month-old son when she left him in the care of a boyfriend while she worked and the child was seriously injured by the boyfriend.

Despite the appropriate finding of neglect in this case, one might question the discrepancy between the permanent disqualifications resulting from Title Nine's Central Registry for abuse and neglect cases and the opportunity that exists under our Criminal Code for expungement of criminal convictions and relief from Megan's Law registration requirements. The Title Nine registry is a permanent record of the parent's misconduct and imposes a lifetime of disqualifications. It provides no opportunity for the remorseful and rehabilitated parent to expunge the record or ever to remove her name from the registry, even if the parent proves to be of good character for many years and even if the past incident of abuse or neglect does not cause lasting harm to the child.

07/09/15 CYPRESS POINT CONDOMINIUM ASSOCIATION, INC. VS. ADRIA TOWERS L.L.C., ET AL.
A-2767-13T1

Subcontractors performed defective work causing consequential damages to the common areas of a condominium complex and the unit owners' property. The condominium association sued the developer and the developer's insurers. Construing the developer's commercial general liability ("CGL") policy, we held that the consequential damages constituted "property damage" and an "occurrence" under the policy. We reached that conclusion by viewing the policy as a whole and distinguishing Weedo v. Stone-E-Brick, Inc., 81 N.J. 233 (1979), and Firemen's Insurance Co. of Newark v. National Union Fire Insurance Co., 387 N.J. Super. 434 (App. Div. 2006), two opinions construing a CGL policy with different insuring language. We reversed orders dismissing the complaint, with

instructions to consider the insurers' alternate contentions that plaintiff's claims are otherwise excluded under the policy.

07/07/15 CLAUDIA CASSER VS. TOWNSHIP OF KNOWLTON, ET AL.
A-1815-13/2127-14T4 (CONSOLIDATED)

Plaintiff landowner failed to file a timely prerogative writs action challenging variances granted to her by the local planning board. Three years later, she filed a complaint against the board and other defendants, asserting various causes of action - including inverse condemnation, the New Jersey Civil Rights Act, and RICO - seeking relief from certain restrictive conditions on the variances, or money damages. She later sought to amend her complaint to include an in-lieu-of-prerogative writs challenge to the variances. The trial court held that the proposed amendment was untimely under Rule 4:69-6(a), and there was no basis to relax the forty-five day time limit under Rule 4:69-6(c).

The trial court dismissed plaintiff's complaint for failure to exhaust administrative remedies. We affirmed. Plaintiff could not circumvent the exhaustion doctrine by waiting until it was too late to file an action in lieu of prerogative writs, and then claiming that exhaustion would be futile because the action was time-barred.

07/06/15 STATE OF NEW JERSEY IN THE INTEREST OF N.H., A JUVENILE
A-0433-14T2

The court considered at what point in the proceedings a juvenile was entitled to full and complete discovery. The trial court ordered that the State provide full and complete discovery based upon the filing of the complaint. The State, predicated upon its motion for waiver subsequent to the complaint, argued the juvenile was only entitled to limited discovery or that relevant to defend against the waiver application. The State would determine the scope of the discovery for that purpose. The court concluded that in the absence of a specific discovery statute or rule, a juvenile's right to discovery vests at a critical stage in the proceeding; upon the filing of the complaint.

07/01/15 STATE OF NEW JERSEY VS. AARON JESSUP
A-2458-14T2

Defendant had no expectation of privacy in a zip-lock bag containing controlled dangerous substances that the police saw him place on top of a parked car's rear tire.

06/26/15 PREETI GUNDECHA VS. BOARD OF REVIEW AND DB SERVICES NEW JERSEY, INC.
A-3128-13T1

In this case of first impression we discuss the localization rule contained in the unemployment benefits statute, N.J.S.A. 43:21-19(i)(5), and its application to telecommuters. Claimant was employed by a New Jersey company. At all relevant times she worked from her home in North Carolina. When her employment was terminated, she applied for unemployment benefits in New Jersey.

We find the employee's physical presence to be the determinative factor in construing the localization rule when applied to an interstate telecommuter. Claimant did all of her work from her home in North Carolina. Therefore, she should pursue her application for benefits in North Carolina, not New Jersey.

06/24/15 STATE OF NEW JERSEY VS. CHARLES PURYEAR/ STATE OF NEW JERSEY VS. MARKUS BROWN
A-2433-14T3/ A-2434-14T3

We address the admissibility of custodial statements two co-defendants gave to law enforcement. Puryear and Brown were charged with crimes related to a fatal shooting in Newark, and an armed robbery that took place several days later in Sussex County. Each of them gave two custodial statements, which they moved to suppress.

After a hearing, the trial court initially denied suppression in all respects. Following motions for reconsideration, the court ultimately suppressed Puryear's first statement, admitted Puryear's second statement, admitted Brown's first statement, and suppressed Brown's second statement. We affirm those rulings, as the court had the authority to reconsider and change its interlocutory decisions, and properly did so because of misleading advice given by the interrogating officers.

Puryear's first statement was suppressed because a detective told him at the start of the interview that he could not hurt himself by giving a statement. The court reasoned that

the detective's statement improperly neutralized the Miranda warnings. Under the totality of the circumstances, the detective's advice was misleading and the State failed to prove that Puryear's Miranda rights were knowingly waived.

Puryear, however, was re-given his full Miranda rights before his second interview. The court found that he knowingly, voluntarily and intelligently waived those rights and gave a statement. We reject Puryear's contention that his second statement, given hours later and to different detectives, should also have been suppressed.

As to Brown, the court ultimately suppressed his second statement because when Brown asked for a clarification of what was meant by "anything you say can be used against you in a court of law," a detective told him that meant "if you lie, it can be used against you." Under the totality of the circumstances, the detective incorrectly explained one of the required Miranda warnings and, thus, the resulting waiver by Brown was not knowingly given.

06/24/15 BRIAN DUNKLEY VS. S. CORALUZZO PETROLEUM TRANSPORTERS
A-3252-12T1

On March 16, 2015, the Supreme Court remanded this matter, in light of its recent opinion in Aguas v. State, 220 N.J. 494 (2015), which discussed the viability of an employer's anti-harassment policy as an affirmative defense to vicarious liability amidst an employee's claims for supervisory sexual harassment and hostile work environment.

We reconsidered plaintiff's appeal from the summary judgement dismissal of his complaint asserting claims against his employer for direct negligence, vicarious liability, and constructive discharge under the Law Against Discrimination (LAD), N.J.S.A. 10:5-1 to -49. Plaintiff maintained he was the victim of multiple racially discriminating remarks made by his supervisor and alleged the employer's policy failed to effectively respond to and redress the harassing conduct. The LAD claims, as well as the employer's asserted defenses, were examined in light of the standards presented in Agaus.

06/23/15 STATE OF NEW JERSEY VS. DONNA JONES
A-0793-13T1

In Missouri v. McNeely, ___ U.S. ___, 133 S. Ct. 1552, 185 L. Ed. 2d 696 (2013), the United States Supreme Court considered whether "the natural metabolization of alcohol in the bloodstream presents a per se exigency that justifies an exception to the Fourth Amendment's warrant requirement for nonconsensual blood testing in all drunk-driving cases." Id. at ___, 133 S. Ct. at 1556, 185 L. Ed. 2d at 702 (emphasis added). Concluding that fact alone did not present a "per se exigency," the Supreme Court held, "consistent with general Fourth Amendment principles, that exigency in this context must be determined case by case based on the totality of the circumstances." Ibid. This matter was summarily remanded to us by the Supreme Court for reconsideration in light of the Court's decision in State v. Adkins, ___ N.J. ___ (2015), holding that the totality of the circumstances analysis described in McNeely should be given pipeline retroactivity.

In our earlier decision, we reviewed the United States Supreme Court's analysis in McNeely and discussion of its holding in Schmerber v. California, 384 U.S. 757, 771-72, 86 S. Ct. 1826, 1836, 16 L. Ed. 2d 908, 920 (1966). We concluded "the application of McNeely to the facts of this case" did not warrant the suppression of the blood test results. Jones, supra, 437 N.J. Super. at 75-78.

This was not a routine DWI case in which the dissipation of blood alcohol was the sole basis for determining an exigency existed. To the contrary, defendant caused a multiple vehicle accident at a busy intersection and crashed into a building, raising concern the building would collapse. Numerous police, firefighters and emergency medical services personnel responded to the scene, where the investigation took hours. It took one-half hour to extricate defendant, who was unconscious, from her badly damaged vehicle. Both she and a passenger in another car had to be transported to the hospital.

Viewing the totality of the circumstances, we are satisfied that an objective exigency existed and that the officer "might reasonably have believed that he was confronted with an emergency, in which the delay necessary to obtain a warrant, under the circumstances, threatened 'the destruction of evidence[.]'" Schmerber, supra, 384 U.S. at 770, 86 S. Ct. at 1835, 16 L. Ed. 2d at 919-20 (citation omitted). We find no reason to disturb our prior decision reversing the order that suppressed the results of the blood sample analysis.

06/22/15 STATE OF NEW JERSEY VS. DATRELL T. WILLIAMS
A-5953-13T3

After concluding that a prosecution was not barred by either double jeopardy or the mandatory joinder rule, the trial court dismissed an indictment with prejudice against defendant, relying upon the "doctrine of fundamental fairness and equitable treatment." We agree with the trial court that prosecution of the cocaine charges was not barred by double jeopardy or the mandatory joinder rule, N.J.S.A. 2C:1-8(b) and R. 3:15-1(b). The question presented by the State's appeal is whether, under the facts of this case, the rarely applied doctrine of fundamental fairness is properly relied upon to protect the defendant from oppression and harassment. We conclude that the application of the doctrine here was a mistaken exercise of discretion and reverse.

06/19/15 EWING OIL, INC. VS. JOHN T. BURNETT, INC., ET AL.
A-2770-13T1

We examine the enforceability of a foreign judgment entered pursuant to a cognovit provision, which implicates the Full Faith and Credit clause and a defendant's due process rights of notice and an opportunity to be heard.

Despite this state's refusal to permit judgments entered under confession clauses, courts remain bound to recognize judgments entered in another state whose procedure complies with due process. We decline to overturn precedent and reject defendant's "public policy" concerns. We affirm domestication of foreign confessed judgments is permissible so long as due process was knowingly and voluntarily waived and the judgment was obtained pursuant to the procedure of the forum state. We recite the analysis to determine whether the due process requirements of reasonable notice and opportunity to be heard are knowingly and voluntarily waived, as well as the necessary post-judgment procedure in the sister state.

06/18/15 ABIGAIL GINSBERG, ET AL. VS. QUEST DIAGNOSTICS, INC., ET AL.
A-1387-14T3/A-1388-14T3/A-1389-14T3/A-1390-14T3
(CONSOLIDATED)

Plaintiffs, residents of New Jersey who previously lived in New York, have asserted claims of wrongful birth, wrongful life, medical malpractice and negligence in connection with their now-deceased daughter's birth in 2008 in New York and her subsequent

diagnosis of Tay-Sachs disease, a genetically-inherited and fatal condition. Plaintiffs claim defendants each erred in the health care, genetic testing services, or genetic counseling provided before the couple conceived their daughter upon a mistaken belief that the father was not a Tay-Sachs carrier. The trial court ruled that New Jersey law, which differs from New York law in several material respects, applies to all of the parties and claims in this case.

As a matter of first impression, the panel held that a court may adopt a defendant-by-defendant approach to choice of law in a tort case such as this one involving conduct and parties that straddle multiple states.

Applying principles of the Restatement (Second) of Conflicts of Laws (1971), the panel reversed the trial court in part. The panel held that New York law applies to the claims against the defendant laboratory and third-party defendant New York hospital that tested the father's blood sample in New York, but New Jersey law applies to the claims against the New Jersey health care defendants who provided the couple with services in New Jersey.

06/17/15 <u>ROSENTHAL & ROSENTHAL, INC. VS. VANESSA BENUN, ET AL.</u>
<u>A-2890-13T3</u>

In this foreclosure action, applying the common law rules of priority for future advance mortgages, Riker Danzig's later-recorded mortgage has priority over the earlier-recorded mortgages of Rosenthal & Rosenthal because Rosenthal & Rosenthal made optional, not obligatory, advances to the debtor with actual knowledge of Riker Danzig's mortgage.

06/17/15 <u>P.M. VS. N.P.</u>
<u>A-1947-12T2</u>

In this appeal, plaintiff-wife argues the Family Part Judge, who decided a number of post-judgment motions, erred in denying her application to recuse himself. Plaintiff claims the judge's impartiality was tainted when his law clerk engaged in employment discussions with and ultimately accepted an offer of employment from the attorney who represents defendant-husband. Plaintiff claims defense counsel discussed employment opportunities with the judge's law clerk during the time in

which the judge was managing this contentious post-divorce motion practice. Plaintiff also alleges the law clerk is related to the trial judge in some undisclosed degree of consanguinity, which the judge refused to clarify despite plaintiff's counsel's repeated requests.

We remand for the judge to address the Court's concerns in Comparato v. Schait, 180 N.J. 90 (2004). The judge must then determine the extent to which his familial relationship with his law clerk created an appearance of impropriety under In re Reddin, 221 N.J. 221 (2015), DeNike v. Cupo, 196 N.J. 502 (2008), and Rule 1:12-2.

06/11/15 NORTH JERSEY MEDIA GROUP, INC. VS. TOWNSHIP OF LYNDHURST, ET AL.
A-2523-14T1

In this interlocutory appeal, we reversed an order compelling the New Jersey State Police and several other law enforcement agencies (LEAs) to release various documents pertaining to an ongoing criminal investigation related to a fatal police shooting of criminal suspect. The trial court held release was mandated by OPRA and the common law right of access.

We concluded the trial court interpreted too narrowly the definition of "criminal investigatory records," which are excluded from the definition of "government record" generally subject to disclosure under OPRA. N.J.S.A. 47:1A-1.1. Also, the trial court's balancing of the requesters' interest in disclosure, and the LEAs' interest in confidentiality, was flawed, because the court refused to consider an in camera submission supporting defendants' claim that release would undermine the ongoing investigation into the shooting. On the other hand, we affirmed in part the holding that defendants failed to comply with their obligation under N.J.S.A. 47:1A-3(b) to release specified information about the investigation.

06/11/15 MELODY FAITH MAZUR, ETC. VS. CRANE'S MILL NURSING HOME, ET AL.
A-2072-14T2/A-2495-14T2

In this medical malpractice action, we reverse the trial court's order dismissing the complaint due to a deficient affidavit of merit. The trial court based its decision on the misstatement in an answer that a defendant was board certified when he treated the patient; a misstatement repeated by defense

counsel in the certification and throughout the brief filed in support of the motion to dismiss.

We conclude that the appropriate remedy on remand is to require defendant to amend the answer to correct the misstatement and to permit plaintiff to file an affidavit of merit within sixty days, extendable by sixty days for good cause. We also review the procedural requirements concerning affidavits of merit as well as those of Rule 1:6, particularly the requirement of Rule 1:6-6 that affidavits intended to establish facts not appearing of record be based on personal knowledge.

06/10/15 STATE OF NEW JERSEY VS. TALADEEN ROSS, ET AL.
A-3026-13T4/A-5460-13T4 (CONSOLIDATED)

During the pretrial stage of this criminal prosecution, the trial judge entered orders pursuant to a motion filed by the Public Defender's Office directing a non-party – the County of Middlesex – to provide the means by which defendants incarcerated in the county jail could accept, access and examine electronic discovery. Although the court agreed with the County that these criminal proceedings did not present an adequate framework for granting relief against a non-party and although the court also determined that the judge should not have further entertained these matters once the County filed an appeal, the court concluded that the appeal had been rendered moot because the County complied with the orders in question and any ruling the court may make in reviewing the orders would have no practical bearing on the parties at this time.

06/08/15 NEW JERSEY DIVISION OF CHILD PROTECTION AND PERMANENCY VS. J.C. AND C.M. IN THE MATTER OF T.M.
A-2436-13T3

The Family Part judge entered a finding that a mother neglected her three-year old son after she drank alcohol and remained in her bedroom the following morning with the bedroom door closed, while the child was in the next room unsupervised, wearing a dirty diaper, with the apartment door ajar.

Because there was no harm to the child and the mother's conduct did not rise to the level of gross negligence or reckless disregard for the child's safety, we reversed.

06/08/15 NEW JERSEY STATE (DIVISION OF STATE POLICE) VS. NEW JERSEY STATE TROOPER CAPTAINS ASSOCIATION

A-6095-11T3

The State of New Jersey, Division of State Police (Division), challenges on appeal a final agency action of the New Jersey Public Employment Relations Commission (PERC) which held that, with some exceptions, captains are not "managerial executives" as that term is defined in the 2010 amendment to N.J.S.A. 34:13A-3(f), and thus may engage in collective bargaining. The Division argues that PERC employed a flawed "two-pronged" analysis in reaching its conclusion and that if it had restricted its analysis to deciding whether captains occupy a position akin to an "assistant commissioner" in other executive branch departments, its result would have been different.

We disagree with the Division's characterization of the PERC holding and we affirm.

05/27/15 STATE OF NEW JERSEY VS. ANTHONY F. STALTER
A-5674-12T4

The Law Division denied defendant's request for jail credits based on his time at a residential treatment program, which was a condition of his sentence of probation as a Track 2 participant in Drug Court. We affirmed, determining that only a Track 1 participant is eligible for jail credit under those circumstances. N.J.S.A. 2C:35-14(f)(4) provides that Drug Court defendants subject to a presumption of incarceration, who are assigned to Track 1 and must be sentenced to "special probation," are entitled to receive jail credit for such participation. However, they are also subject to prosecution for escape if they leave the program without permission. N.J.S.A. 2C:35-14(d). Track 2 defendants are sentenced to general probation, N.J.S.A. 2C:45-2, and are not subject to prosecution for escape if they leave a residential program without permission. N.J.S.A. 2C:35-14 does not apply to them and Rule 3:21-8 does not provide for jail credits under those conditions, absent unusual circumstances not present in this case. State v. Reyes, 207 N.J. Super. 126, 141-43 (App. Div.), certif. denied, 103 N.J. 499 (1986).

05/21/15 STATE OF NEW JERSEY VS. DION E. ROBINSON
A-5600-12T3

The court reverses an order denying defendant's motion to suppress the handgun seized in a "protective sweep" of his car.

Following a routine late-night traffic stop on the Garden State Parkway, police dispatch advised the patrol officer that defendant driver and one of his three passengers had open warrants and were known to carry weapons. Deciding to proceed "tactically," five officers approached with guns drawn and ordered all occupants out of the car. The two men with warrants were arrested and placed in patrol cars. Neither of the two remaining passengers possessed a driver's license. Because there are no facts in the record to support a reasonable suspicion on the part of the officer that the unlicensed drivers were dangerous and could return to the car to obtain immediate access to a weapon, the court deems the search unreasonable.

Judge Nugent dissents, concluding the totality of circumstances justified both the officer's belief that a gun was in the car and his protective sweep for the safety of the officers on the scene as well as the public under the community caretaking doctrine.

05/19/15 <u>BRIAN BEYER VS. SEA BRIGHT BOROUGH AND SEA BRIGHT POLICE DEPARTMENT</u>
A-4061-13T4

The Law Division denied plaintiff's motion for late filing of a Tort Claims Act notice, in part finding that the terminal illness of his attorney, which required emergency surgery, did not constitute extraordinary circumstances. We reversed and remanded, concluding that the serious illness and resulting incapacity of the attorney in this case cannot be equated with inattentiveness or negligent conduct. On remand, the Law Division is to hold an evidentiary hearing for the purpose of determining whether the facts support the plaintiff's assertion that the late filing resulted from his attorney's severe medical condition.

05/19/15 <u>ESTATE OF PATRICIA GRIECO, BY ITS ADMINISTRATOR VINCENT GRIECO AND VINCENT GRIECO, INDIVIDUALLY, VS. HANS J. SCHMIDT, M.D. AND ADVANCED LAPAROSCOPIC ASSOCIATES</u>
A-2392-13T4

In this medical malpractice action, plaintiffs – the estate and husband of the late Patricia Grieco – obtained leave to appeal an interlocutory order that barred witnesses from recounting what Patricia said her doctor's staff told her in response to her complaints of chest pains following surgery. The court reversed because the trial judge could not properly

determine the trustworthiness of the statements, as required by N.J.R.E. 804(b)(6), without having listened to the witnesses testify at a N.J.R.E. 104 hearing. In addition, the court found the trial judge's concerns about the "hearsay within hearsay" problem were mistaken since the inner hearsay – what defendant's staff allegedly told Patricia – was admissible, N.J.R.E. 803(b)(4).

05/19/15 <u>FELICIA PUGLIESE VS. STATE-OPERATED SCHOOL DISTRICT OF THE CITY OF NEWARK/ EDGARD CHAVEZ VS. STATE-OPERATED SCHOOL DISTRICT OF THE CITY OF NEWARK</u>
A-0857-13T2/A-1012-13T2

In these appeals from termination, two tenured teachers assert that their legal defenses were not considered by the Commissioner of Education, the arbitrator hearing the case, or the trial court. The arbitration hearings were conducted pursuant to the then-recently enacted Teacher Effectiveness and Accountability for the Children of New Jersey Act (TEACHNJ), which replaced Administrative Law Judges with arbitrators and immediate appellate review with trial court review. The evaluations upon which the tenure charges were based took place prior to TEACHNJ.

The matters are remanded for the Commissioner to explicitly decide those legal defenses that the Commissioner does not expressly delegate to the statutorily-mandated arbitrators to decide. The Commissioner must also inform the arbitrators what legal standards to apply to teachers who have received tenure charges after the effective date of TEACHNJ alleging inefficiency occurring prior to the effective date of the statute.

05/18/15 <u>STATE OF NEW JERSEY VS. A.L.</u>
A-4429-13T2

In this case of first impression, we determine the procedures that should be used to review the indigency status of a defendant who has been convicted of a crime and who requests the services of the Office of the Public Defender (OPD) to file an appeal on her behalf. During the pendency of defendant's appeal from her conviction, the State filed a motion with the trial court, rather than this court, seeking to prohibit the OPD from continuing to represent defendant in the appeal based upon its assertion that defendant was not indigent. We conclude that, pursuant to the clear language of Rule 2:9-1(a), this

motion should have been filed with the Appellate Division in the first instance.

05/18/15 STATE OF NEW JERSEY VS. JAMES L. LEGETTE
A-1207-13T3

Washington v. Chrisman, 455 U.S. 1, 102 S. Ct. 812, 70 L. Ed. 2d 778 (1982), and State v. Bruzzese, 94 N.J. 210, 234 (1983), cert. denied, 465 U.S. 1030, 104 S. Ct. 1295, 79 L. Ed. 2d 695 (1984), allow the police to accompany arrestees who want to go into their residence to retrieve identification or personal items. We hold the same is true in a valid investigatory stop based on reasonable suspicion, at least if the officer has a reasonable belief that the detainee is armed and dangerous. In that situation, accompaniment by the officer is reasonable to avoid the possible danger to the officer and risk of escape if the detainee is allowed to go into the residence unaccompanied. If the detainee decides not to enter the residence once he learns he will be accompanied, the officer may not enter without satisfying the warrant requirement or an exception.

If the detainee seeks to conceal evidence while in the residence, the officer may prevent the concealment, and secure the evidence.

05/15/15 STATE OF NEW JERSEY VS. GREGORY A. MARTINEZ
A-5019-12T4

We again examine the tension between a trial court's discretionary "authority to control its own calendar" by denying an adjournment request and the need to safeguard "a defendant's Sixth Amendment right to a fair opportunity to secure counsel of his own choice" in light of State v. Miller, 216 N.J. 40, 62, 65 (2013) (citation and internal quotation marks omitted), cert. denied, __ U.S. __, 134 S. Ct. 1329, 188 L. Ed. 2d 339 (2014).

Guided by the framework for review set forth in State v. Hayes, 205 N.J. 522 (2011), we conclude the denial of defendant's request to adjourn trial, without weighing the facts presented supporting the requested adjournment, reflects an arbitrary exaltation of expedience in case processing at the expense of defendant's right to counsel. Accordingly, we vacate the judgment of conviction and remand the matter for a new trial.

05/14/15 STATE OF NEW JERSEY VS. MICHELLE TOUSSAINT

A-3654-13T1

When a defendant is convicted under N.J.S.A. 39:3-40(e) (being involved in an accident that causes injury to another, while driving with a suspended license), or N.J.S.A. 39:6B-2 (driving without insurance), the court has discretion to permit the defendant to serve the sentence in an electronic monitoring program instead of in the county jail. In construing those provisions, we distinguished State v. French, 437 N.J. Super. 333, 335 (App. Div. 2014), certif. denied, 200 N.J. 575 (2015), which held that N.J.S.A. 2C:40-26(c) did not permit sentencing alternatives for driving during a second or subsequent license suspension imposed for DWI.

05/14/15 IN THE MATTER OF THE DENIAL FOR A NEW JERSEY FIREARMS PURCHASER IDENTIFICATION CARD AND PERMIT TO PURCHASE A HANDGUN BY Z.K.
A-5851-12T1

Appellant applied for a firearms purchaser identification card and a permit to purchase a handgun. The local police department (East Brunswick) denied both because of his refusal to complete an additional form required by the department of all gun permit applicants. Appellant requested a hearing in the Superior Court. Finding that the additional form did not "add[] anything to the [Superintendent of the Division of State Police's] form or the requirements of Chapter 58," the court upheld the denial of the permits based on appellant's failure to complete the local form.

Because the court concludes that the plain meaning of subsections e and f of N.J.S.A. 2C:58-3 prohibits local police departments from creating their own forms to supplement the form promulgated by the Superintendent of the Division of State Police pursuant to N.J.S.A. 2C:58-3e, it reverses.

05/13/15 PATRICIA GILLERAN VS. THE TOWNSHIP OF BLOOMFIELD AND LOUISE M. PALAGANO
A-5640-13T4

The Open Public Records Act (OPRA) does not include a blanket exemption for video recordings made from an outdoor security camera. To justify denying an OPRA request pursuant to the definitional exclusions contained in N.J.S.A. 47:1A-1.1 for "security information," "procedures," "measures," and "techniques," the government agency must make a specific showing

of why disclosure would jeopardize the security of the facility or put the safety of persons or property at risk.

Because we agree with the trial court that the township did not make a sufficiently specific showing for an exemption, we need not decide whether N.J.S.A. 47:1A-5(g) requires a government agency to review requested recordings and redact only actual confidential information, as argued by plaintiff and the ACLU. Such a requirement of review and redaction seems impractical and virtually impossible to implement when the request is for lengthy surveillance recordings, such as the fourteen hours of recordings requested here by plaintiff.

05/13/15 VINCENT DANIELS VS. HOLLISTER CO.
A-3629-13T3

In this interlocutory appeal, the court expressed its doubt whether the "ascertainability" doctrine adopted by some federal courts should ever be utilized in determining class certification but specifically concluded in this matter of first impression that "ascertainability" must play no role in considering certification of a low-value consumer class action.

In addition, the court held that although orders granting or denying class certification are not appealable as of right, appellate courts will ordinarily grant leave to appeal: (1) when denial effectively ends the case; (2) when granting certification raises the stakes of the litigation so substantially that the defendant likely will feel irresistible pressure to settle; and (3) when permitting leave to appeal will lead to a clarification of a fundamental issue of law.

05/12/15 STATE OF NEW JERSEY VS. DQWAN A. TAYLOR
A-1883-13T4

The court considered whether the defendant, a passenger in a motor vehicle determined to be stolen, had a reasonable expectation of privacy in the vehicle's contents. U.S. Const. amend. IV; N.J. Const. art. I, ¶ 7. The court declined the State's invitation to formulate a bright-line rule as a matter of law, that an individual operating or occupying a stolen motor vehicle, regardless of their knowledge of its status, does not have a reasonable expectation of privacy. The question whether

defendant had a reasonable expectation of privacy required a fact sensitive inquiry.

The matter was remanded to develop facts on the issue of defendant's knowledge.

05/11/15 STATE OF NEW JERSEY VS. THOMAS TAYLOR
A-3923-13T2

In 2013, defendant Thomas Taylor entered a conditional guilty plea to refusal to submit to a breath test, N.J.S.A. 39:4-50.2, reserving the right "to appeal [] any and all issues, including sentencing." Although defendant had no prior convictions for refusal, he had two prior convictions for driving while intoxicated (DWI), N.J.S.A. 39-4-50, in 1985 and 1996. The trial court sentenced defendant as a "third offender," using his DWI convictions to enhance the penalty for his refusal conviction.

On appeal, defendant argues that the "step-down" provision of the DWI statute, N.J.S.A. 39:4-50(a)(3), should apply so as to reduce his refusal conviction from a third to a second offense for sentencing purposes since it followed more than ten years after his second DWI conviction. We agree, and hold that where the penalty attendant to a driver's refusal conviction is enhanced by a prior conviction under the DWI statute, fairness dictates that it be similarly reduced by the sentencing leniency accorded a driver under the "step-down" provision of that statute when there is a hiatus of ten years or more between offenses.

05/08/15 PATRICIA C. MYSKA, DAX MORALES, KATHERINE K. WAGNER AND JOHN B. OTDISCO VS. NEW JERSEY MANUFACTURERS INSURANCE COMPANY, AAA MID-ATLANTIC INSURANCE COMPANY OF NEW JERSEY AND PALISADES INSURANCE COMPANY
A-4398-13T4/A-0275-14T4 (CONSOLIDATED)

On remand from the Supreme Court, we consider these appeals, calendared back-to-back and consolidated for purposes of our opinion, reviewing orders dismissing plaintiffs' putative class action complaints, attacking defendant-insurers alleged denial of diminution in value damages, as a covered component of the underinsured and uninsured motorist provisions in their respective automobile insurance policies. Plaintiffs argue striking class allegations prior to discovery was premature and unprecedented. Although we agree courts must liberally view class allegations, allowing reasonable inferences to be gleaned

from the complaint's allegations, and must also search for a possible basis for class relief so as to avoid premature dismissals, Lee v. Carter-Reed Co., 203 N.J. 496, 505-06, 518 (2010), we do not abide a view that precludes dismissal of a complaint at the incipient stage of litigation, upon a determination claims do not properly lend themselves to class certification, when made following the required searching analysis. See Riley v. New Rapids Carpet Center, 61 N.J. 218, 225 (1972) (holding "a class action should lie unless it is clearly infeasible"). We flatly reject plaintiffs' urging to impose a bright-line rule prohibiting examination of the propriety of class certification until discovery is undertaken.

Our review also examines whether plaintiffs allege cognizable claims under the Consumer Fraud Act and whether the arbitration clause in one policy withstands scrutiny, under Atalese v. U.S. Legal Servs. Grp., L.P., 219 N.J. 430 (2014), petition for certiorari filed Jan. 21, 2015.

05/08/15 THE PITNEY BOWES BANK, INC. VS. ABC CAGING FULFILLMENT
A-2287-13T3

In this case we consider the effect of N.J.S.A. 34:11-31 and -32 on a levy of a debtor's bank account, which the debtor claimed was used to pay employees' wages. As the statutes hold that wages owing at the time of the levy must be paid before the sheriff disburses funds to the creditor, we hold that the wages owed at the time of the levy were exempt funds. On the other hand, we hold that wages that became due after the date of the levy, but before the levied funds were turned over to the creditor, were not exempt under N.J.S.A. 34:11-32.

04/28/15 STATE OF NEW JERSEY VS. CHRISTOPHER MAZZARISI
A-1860-13T4

In this case, we examine the application of the Supreme Court's decisions in State v. Sugar (Sugar I), 84 N.J. 1 (1980), and State v. Sugar (Sugar II), 100 N.J. 214 (1985) to a case in which police surreptitiously recorded conversations between a defendant and his attorney when defendant surrendered after charges had been filed, a witness reported defendant had fired a gun at her, a search warrant was issued, and officers executing the warrant at defendant's residence observed a bullet hole in the wall and seized a gun and shell casing. Although we conclude the intrusion did not constitute a violation of the Sixth Amendment, we affirm the order excluding the testimony of

three police witnesses and reverse an order that dismissed the indictment without prejudice.

04/22/15 IN RE APPEAL OF THE DENIAL OF THE APPLICATION OF Z.L. FOR A FIREARMS PURCHASER IDENTIFICATION CARD AND THREE HANDGUN PERMITS
A-5848-12T1

We clarify that an application for a firearms purchaser identification card and handgun permits may be denied in circumstances where the applicant had been accused of assaulting his wife, but acquitted at trial, and where the police responded to his home on several occasions thereafter to address domestic dispute complaints brought by his wife. The application was properly denied pursuant to N.J.S.A. 2C:58-3(c)(5).

04/16/15 STATE OF NEW JERSEY VS. TAWIAN BACOME
A-3734-12T1

Based on speculation that defendant and a passenger in his vehicle were involved in illegal drug activity, police officers attempted to follow but lost sight of the vehicle in or near Newark and waited in Woodbridge for its return. Once the vehicle returned, the officers stopped it, ostensibly because the passenger was not wearing his seatbelt. On approaching, an officer, who did not testify, observed defendant reach under his seat. Both driver and passenger were then ordered out of the vehicle; after the passenger exited, an officer was able to observe in plain view materials that suggested drug usage. Based on that observation, a warrantless search of the vehicle ensued, and illegal drugs were found.

Because defendant's mere entry into and departure from Newark did not permit a reasonable suspicion of illegal drug activity and because the State had failed to present facts "that would create in a police officer a heightened awareness of danger" if the passenger were allowed to remain in the vehicle, State v. Smith, 134 N.J. 599, 618 (1994), the court found no sufficient ground for the ordering of the passenger out of the vehicle and reversed the denial of the suppression motion.

Judge Nugent filed a dissenting opinion regarding this determination.

In addition, the court noted that only hearsay testimony supported the assertion that the driver reached underneath his seat. Despite the understanding that N.J.R.E. 101(a)(2)(E)

permits the admission of hearsay at a suppression hearing, the court suggested there may be circumstances where the consequences resulting from the suppression hearing are of such magnitude that the admission of hearsay may create a Confrontation Clause deprivation. The court, however, did not further consider this point because it had not been raised by defendant.

04/15/15 I/M/O TOWN OF HARRISON AND FRATERNAL ORDER OF POLICE,LODGE NO. 116;I/M/O VERNON TOWNSHIP PBA LOCAL 285 CONTRACT;I/M/O BOROUGH OF RAMSEY AND PBA LOCAL NO. 155;I/M/O TOWNSHIP OF WOODBRIDGE AND PBA LOCAL 38;I/M/O CITY OF LINDEN AND FMBA LOCAL NO. 234;I/M/O TOWN OF HARRISON AND FMBA LOCAL NO. 22;I/M/O TOWN OF HARRISON AND PBA LOCAL NO. 22;I/M/O TOWN OF HARRISON AND FMBA LOCAL NO. 22;I/M/O CITY OF LINDEN AND FMBA LOCAL 234
A-0083-11T2/A-0099-11T2/A-0123-11T2/A-0124-11T2/A-0157-11T2/A-0158-11T2/A-0159-11T2/A-0195-11T2/A-0208-11T2(CONSOLIDATED)

Five municipalities and the unions that represent police officers and firefighters employed by them have mounted a collective legal challenge to the Acting Director of the Division of Pensions and Benefits' decision to refuse to implement the final determination of the Board of Trustees of the Police and Firemen's Retirement System, which found certain senior officer and longevity pay provisions in the collective bargaining agreements entered into by appellants were creditable compensation for pension purposes under N.J.S.A. 43:16A-1(26)(a).

The singular legal question before us is whether the Acting Director of the Division of Pensions and Benefits has the legal authority to refuse to implement a final decision of the PFRS Board of Trustees because the Acting Director has independently concluded that the decision of the PFRS Board of Trustees is legally incorrect. We hold the action of the Acting Director to refuse to implement a final determination made by the PFRS Board of Trustees concerning what constitutes creditable compensation for pension purposes under N.J.S.A. 43:16A-1(26)(a) in these cases was ultra vires, without legal force or effect. Final determinations of the PFRS Board of Trustees are reviewable only by this court. N.J.A.C. 17:4-1.7(e); R. 2:2-3(a)(2).

Judge Ashrafi has filed a separate concurrence.

04/14/15 ENVIROFINANCE GROUP, LLC AND EARTHMARK NJ KANE MITIGATION, LLC VS. ENVIRONMENTAL BARRIER COMPANY, LLC
A-2475-12T4/A-6202-12T3(CONSOLIDATED)

In this complex litigation, plaintiff EFG, provided construction financing to plaintiff Earthmark, to develop an environmental mitigation bank on wetlands owned by the Meadowlands Conservation Trust. Defendant, the primary contractor, filed construction liens against Earthmark's leasehold interest in the project when payment was not made. Defendant later moved for a default judgment against Earthmark and EFG attempted to oppose the motion. We concluded, as did the trial judge, EFG's secured creditor status was not a sufficient financial stake in the outcome to confer standing to challenge the nature and amount of obligations between Earthmark and defendant. EFG had the opportunity but chose not to invoke provisions of its financing agreements allowing it to assume Earthmark's role in the project.

Also examined were respective contract and equitable relief claims, including whether the construction liens were barred by the public works exception of N.J.S.A. 2A:44A-5(b). We upheld the liens, determining they did not attach to the public property, but to Earthmark's private leasehold interest.

04/13/15 LISA LLEWELYN VS. JAMES SHEWCHUK
A-0596-13T1

In this case, we consider whether an adult child made a sufficient showing that she is not emancipated and entitled to continued support from her father, who had adopted her at an early age and later became divorced from her mother. The daughter voluntarily left her mother's home at the age of twenty to live with her biological father, obtained part-time employment, sporadically attended school and arranged for her support in reliance upon the financial relationship she entered into with her biological father and his wife, who were under no obligation to support the daughter. We reject the daughter's argument she is not emancipated and that she has not moved beyond her parents' sphere of influence or responsibility or obtained an independent status of her own. While we recognize a child's right to pursue support from a parent, even if the child no longer resides with either, we affirm the Family Part's order, granting the father's motion to terminate child support because his adult daughter was emancipated.

04/10/15 TOWNSHIP OF FAIRFIELD VS. STATE OF NEW JERSEY DEPARTMENT OF TRANSPORTATION
A-2390-13T1

In this appeal, the court considered whether the objection by Fairfield to a private helistop through the denial of a use variance by the Board of Adjustment should have precluded the DOT from issuing a "Special Use License." The court held in accord with the Supreme Court's decision in Garden State Farms, the Department of Transportation (DOT) is tasked with the ultimate authority as to the placement of aeronautical facilities and, after consultation with Fairfield, the DOT gave appropriate consideration to its objections, problems and suggestions prior to issuance of the license. The court concluded the decision was not arbitrary, capricious, nor unreasonable.

Judge Fisher filed a concurring opinion.

04/09/15 IN RE FAILURE OF THE COUNCIL ON AFFORDABLE HOUSING TO ADOPT TRUST FUND COMMITMENT REGULATIONS
A-5257-11T4/A-0122-13T3(CONSOLIDATED)

Despite the Legislature's clear and unambiguous direction that the Council on Affordable Housing (COAH) promulgate regulations defining when affordable housing trust funds are committed, and despite previously expressing its intention to comply with that command, COAH failed and refused to adopt regulations, leaving municipalities in a morass of uncertainty while facing the prospect of an arbitrary seizure of affordable housing trust funds. In light of both COAH's inaction and the Supreme Court's recent determination that "there no longer exists a legitimate basis to block access to the courts" in affordable housing matters, In re Adoption of N.J.A.C. 5:96 and 5:97, __ N.J. __ (2015) (slip op. at 4), and absent some change in these circumstances, the court enjoined the seizure of any trust funds by COAH or the executive branch and directed that the future disposition of trust funds must come from the courts on a case-by-case basis.

04/01/15 O.P. VS. L.G-P.
A-0835-13T4

In Part I of this decision reversing the motion court's enforcement of certain parts of the divorce property settlement agreement (PSA), the details of the child support provisions of the PSA and related motions between the parties is provided.

This history is given not only to resolve this case, but also to illustrate how untenable constantly-changing child support payments may become, particularly after the entry of a final restraining order (FRO). In Part II, an explanation is provided for why the provisions of the preexisting PSA requiring mediation and parental communication should not be enforced after an FRO prohibiting contact between the parties is entered.

03/31/15 NEW JERSEY HEALTHCARE COALITION, ET AL. VS. NJ DEP'T OF BANKING AND INSURANCE // NEW JERSEY COALITION FOR QUALITY HEALTHCARE VS. NJ DEP'T OF BANKING AND INSURANCE // NEW JERSEY ASS'N FOR JUSTICE VS. NJ DEP'T OF BANKING AND INSURANCE // UNITED ACUPUNCTURE SOCIETY OF NEW JERSEY VS. NJ DEP'T OF BANKING AND INSURANCE
A-1038-12T2/A-1445-12T2/A-1636-12T2/A-1792-12T2(CONSOLIDATED)

On a facial challenge by health care providers and other interested parties, we upheld Department of Banking and Insurance regulations, governing reimbursement to health care providers in PIP cases and related issues. We noted that, in some important respects, the Department had clarified its interpretation of the regulations in ways that appeared to satisfy appellants' concerns, and we found the Department's interpretation of the regulations reasonable. We also considered the Department's expressed commitment to monitor the regulations as implemented, to ensure that accident victims are not prevented from obtaining prompt and appropriate medical treatment. We declined to adjudicate a challenge to a portion of the regulations that had not become effective pending planned further amendments.

03/30/15 RACHEL A. PARSONS, ET AL. VS. MULLICA TOWNSHIP BOARD OF EDUCATION, ET AL.
A-0643-14T4

Plaintiffs sued the Board of Education and the school nurse for failing to report the results of a school vision acuity screening as required by N.J.A.C. 6A:16-2.2(k)(6). We hold the nurse was not immune under N.J.S.A. 18A:40-4.5 as it applies only to the Act requiring scoliosis examinations. We hold the nurse and the Board are immune under N.J.S.A. 59:6-4 of the Tort Claims Act (TCA) for "failure . . . to make an adequate physical or mental examination." A vision screening is a physical examination under the TCA, and failure to report the results is a failure to make an adequate examination.

Reporting the results is a ministerial act, but N.J.S.A. 59:2-3 and 3-2 only exempt ministerial acts from the general discretionary immunity in those sections, not the specific immunities in the TCA. N.J.S.A. 59:6-4 provides absolute immunity, including for ministerial acts. That specific immunity trumps the TCA's general liability provisions, which are subject to any immunity provided by law.

03/30/15 STATE OF NEW JERSEY VS. WESTERN WORLD, INC.
A-3007-12T2/M-0474-13

As a matter of first impression, we hold that the Office of the Public Defender (OPD) is not required to represent an "indigent" corporation charged with an indictable offense, because construing the Public Defender Act (PDA), N.J.S.A. 2A:158A-1 to -25, to require OPD's representation of indigent defendants who are not natural persons is repugnant to the subject and context of the PDA, and contrary to the Legislature's intent.
We also hold, however, that, when charged with a crime or when facing a "consequence of magnitude," an "indigent" corporation has a right to appointed counsel under our state Constitution and prior precedent.

03/25/15 WILLIAM JAMES VS. ROSALIND RUIZ
A-3543-13T2

We address in this appeal the propriety of questioning an expert witness at a civil trial, either on direct or cross-examination, about whether that testifying expert's findings are consistent with those of a non-testifying expert who issued a report in the course of an injured plaintiff's medical treatment. We also consider the propriety of counsel referring to the non-testifying expert's findings in closing argument.

We hold that a civil trial attorney may not pose such consistency/inconsistency questions to a testifying expert, where the manifest purpose of those questions is to have the jury consider for their truth the absent expert's hearsay opinions about complex and disputed matters. Even where the questioner's claimed purpose is solely restricted to impeaching the credibility of an adversary's testifying expert, spotlighting that opposing expert's disregard or rejection of the non-testifying expert's complex and disputed opinions, we hold that such questioning ordinarily should be disallowed under N.J.R.E. 403.

Lastly, we hold that the closing arguments of counsel should adhere to these restrictions, so as to prevent the jury from speculating about or misusing an absent expert's complex and disputed findings.

03/20/15 STATE OF NEW JERSEY VS. D.G.M.
A-5783-12T4

In this appeal of a contempt conviction, the court considered whether defendant violated the "no contact or communication" provision of an amended domestic violence final restraining order by sitting near and briefly filming the victim at their child's soccer game. Although the court held that such conduct falls within the restraining order's prohibition on "communication," the court concluded that defendant could not have fairly anticipated this interpretation; therefore, in applying the doctrine of lenity, the court reversed defendant's conviction.

03/20/15 MARTHA C. PTASZYNSKI, ETC. VS. ATLANTIC HEALTH SYSTEMS, INC., D/B/A MT. KEMBLE REHABILITATION AT MORRISTOWN MEMORIAL HOSPITAL
A-0245-12T3

We reverse the judgments entered for plaintiff on the claims asserted under the Nursing Home Responsibilities and Residents' Rights Act (the "NHA" or the "Act"), N.J.S.A. 30:13-1 to -17. We conclude that an individual may maintain an action under N.J.S.A. 30:13-8a for a violation of a nursing home resident's "rights" under the Act, but may only assert a cause of action under N.J.S.A. 30:13-4.2 for a violation of the statutory provisions pertaining to security deposits.

We also reverse the judgments entered for plaintiff on her negligence and wrongful death claims. We determine that the trial judge erred by: (1) qualifying plaintiff's witness as an expert in nursing law and allowing the witness to testify as to the meaning of a statute; (2) refusing to provide the jury with an instruction pursuant to Scafidi v. Seiler, 119 N.J. 93 (1990), concerning the decedent's pre-existing conditions; and (3) failing to instruct the jury to avoid the possibility for a double recovery on plaintiff's separate claims, based on the same injuries or harm.

03/17/15 DANNY CAICEDO, ET AL., VS. FABIAN CAICEDO, ET AL.
A-6163-12T2

This case arises out of a jury verdict for damages sustained by a thirteen-year-old boy when the bicycle he was riding was struck by a police car driven by a Newark police detective. The officer had arrested an individual for a disorderly persons offense, and was transporting the prisoner to police headquarters for processing when the collision occurred.

On appeal, we are called upon to determine whether the municipal defendants are entitled to good-faith immunity under N.J.S.A. 59:3-3, which provides that "[a] public employee is not liable if he acts in good faith in the execution or enforcement of any law." On this record, which is devoid of any showing of emergent circumstances, we conclude that the police officer was not acting in the "execution or enforcement of any law" so as to afford him immunity under N.J.S.A. 59:3-3 while merely transporting the prisoner to police headquarters when the collision occurred.

03/17/15 BRUNSWICK BANK & TRUST VS. AFFILIATED BUILDING CORP/ BRUNSWICK BANK & TRUST VS. HELN MANAGEMENT, LLC/ BRUNSWICK BANK & TRUST VS. HELN MANAGEMENT,LLC, AND AFFILIATED BUILDING CORP.
A-5225-12T2/A-1893-13T3/A-2109-13T3(CONSOLIDATED)

Because commercial lenders are excepted, N.J.S.A. 2A:50-2.3(a), from the "foreclosure first" rule, N.J.S.A. 2A:50-2, in seeking to collect a debt secured by a mortgage, plaintiff here convoluted the parties' rights and obligations by choosing to first sue defendants in the Law Division for a money judgment and later in foreclosure actions in the Chancery Division in two different vicinages on the four parcels of property in question. In defendants' appeals of an order that granted summary judgment in one action and of orders denying stays of sheriff sales in the others, the court concluded that the Law Division judgment capped the amount due plaintiff on the items subsumed within that judgment and, therefore, barred plaintiff from seeking or collecting any greater amount in the foreclosure actions. The court also held that defendants were entitled to a credit for the fair market value of any property obtained by plaintiff through the foreclosure proceedings. And, because of the convoluted circumstances and the absence of clarity regarding the amount of cash and the value of property plaintiff obtained through its collection efforts, the court remanded the matter for the creation of a full and complete record of all relevant facts before a single judge to ensure that plaintiff has not received a windfall.

03/17/15 FRANCES PARKER, Individually and as General Administratrix of the ESTATE OF DALE S. PARKER v. JOHN W. POOLE, M.D.
A-1874-12T4(NEWLY PUBLISHED OPINION FOR MARCH 17,2015)

In this medical malpractice suit, we conclude the trial court's exclusion of defendant treating physician's deposition testimony on a critical issue of causation constituted reversible error. The trial court excluded the critical deposition testimony, finding that it was speculative. We hold that a party's answer to a valid deposition question is admissible to impeach contrary trial testimony, even if the answer is speculative. Following analogous federal precedent, hearsay statements admitted under the N.J.R.E. 803(b)(1) party-opponent exception are not subject to N.J.R.E. 701 personal-knowledge, trustworthiness, or lay-opinion requirements.

03/16/15 LORI A. WACKER-CIOCCO AND MICHAEL J. CIOCCO VS. GOVERNMENT EMPLOYEES INSURANCE COMPANY, D/B/A GEICO
A-2547-13T4

In Procopio v. Government Employees Insurance Company, 433 N.J. Super. 377 (App. Div. 2013), the plaintiff insured asserted a claim for underinsured motorist (UIM) benefits and a bad faith claim against his carrier. Although the trial court bifurcated the claims for trial, holding the bad faith claim in abeyance, it compelled discovery to proceed on all claims. We held it was an abuse of discretion for the trial court to order that discovery on both claims proceed simultaneously. In this case, the initial decision to deny the severance motion came after some discovery related to the bad faith claim had been provided and before Procopio was decided. This interlocutory appeal presents the question whether the disclosure of some bad faith-related materials brings the denial of a severance motion and the decision to compel related discovery within the scope of the trial court's proper exercise of discretion. We hold that it does not.

03/16/15 L.C. VS. BOARD OF REVIEW, DEPARTMENT OF LABOR AND LAKELAND BANK
A-5997-12T2

In this unemployment insurance appeal, we construe L. 1999, c. 391, § 1, codified at N.J.S.A. 43:21-5(j), which allows a person to receive unemployment insurance benefits when "the individual has left work or was discharged due to circumstances

resulting from the individual being a victim of domestic violence." The statute requires a claimant to present at least one of six kinds of proof that he or she was a domestic violence victim, including "documentation or certification of the domestic violence provided by a social worker, member of the clergy, shelter worker or other professional who has assisted the individual in dealing with the domestic violence." We conclude that an attorney may serve as an "other professional." Regarding the statute's causation element, we conclude that being a victim of domestic violence must be a substantial factor in the claimant's decision to resign, but need not be the sole reason. Applying these principles, we reversed the Board of Review's denial of benefits and remanded for a new hearing.

03/10/15 BRIAN ROYSTER VS. NEW JERSEY STATE POLICE, ET AL.
A-3357-12T3

Plaintiff asserted claims under the Americans with Disabilities Act (ADA), 42 U.S.C.A. §§ 12101 to 12213, and the Conscientious Employee Protection Act (CEPA), N.J.S.A. 34:19-1 to -14. We held that the doctrine of state sovereign immunity barred the ADA claim, even though defendants did not seek dismissal of the claim on this basis until they filed a motion for judgment notwithstanding the verdict. We also concluded that plaintiff's job responsibilities did not preclude him from asserting a CEPA claim and he presented sufficient evidence for the jury to consider this claim. But we reversed the judgment on the CEPA award and remanded for a new CEPA trial because the jury instructions were fatally flawed.

03/05/15 PAUL AND BARBARA MILLER VS. BANK OF AMERICA HOME LOAN SERVICING, L.P.
A-0169-13T2

Reaching the same conclusion as our colleagues in Arias v. Elite Mortg. Grp., Inc., ___ N.J. Super. ___ (2015), we hold the federal Home Affordable Modification Program's (HAMP) preclusion of private causes of action would not prevent a borrower from pursuing state law claims arising from the breach of an underlying temporary contractual arrangement pending the lender's review under the HAMP guidelines, rejecting the trial judge's reliance on unreported opinions by the United States District Court for the District of New Jersey to the contrary.

Summary judgment was affirmed, however, because plaintiffs' deposition allegations of timely payment, which were otherwise unsupported by documents referenced but never produced, were

insufficient to defeat the business record produced by the lender showing a failure to comply with the terms of the temporary payment agreement.

03/05/15 NEW JERSEY DIVISION OF YOUTH AND FAMILY SERVICES VS. P.C.
A-1045-14T4(NEWLY PUBLISHED OPINION FOR MARCH 5, 2015)

Defendant P.C. appeals from a Family Part order determining she neglected the emotional needs of her teenaged daughter O.B. (Olivia). At the commencement of a fact-finding hearing on the complaint filed by the Division of Youth and Family Services (the Division) concerning conduct by B.C., defendant's former husband, the trial judge suggested sua sponte the facts "could rise" to support a finding of neglect against defendant, even though the Division's complaint had not alleged substantive allegations that she had abused or neglected Olivia. Following an adjournment, although the Division's complaint was not amended, the same judge presided over the reconstituted fact-finding hearing reviewing the conduct of both defendant and B.C. We conclude this was error and reverse.

03/04/15 IN THE MATTER OF DECEMBER 9, 2014 SPECIAL SCHOOL ELECTION
A-0653-14T2

The Lower Cape May School District is a limited purpose school district educating students in grades seven through twelve who reside in the Borough of West Cape May (West Cape May), the City of Cape May (Cape May) and the Township of Lower (Lower). Cape May sought to withdraw from the regional school district. Accordingly, a special school election was scheduled pursuant to N.J.S.A. 18A:13-57 to afford the voters of Cape May and the constituent districts the opportunity to vote on whether Cape May should be permitted to withdraw. However, the statute is silent as to whether Cape May or the regional school district should bear the cost of the special election. As a matter of first impression, we conclude that N.J.S.A. 19:60-12 obligates the regional school district to pay the cost of the special school election to determine Cape May's proposed withdrawal from the Lower Cape May School District.

03/04/15 STATE FARM INDEMNITY COMPANY VS. NATIONAL LIABILITY & FIRE INSURANCE COMPANY
A-5972-13T1

In an inter-company arbitration between insurers over contribution for PIP benefits, pursuant to N.J.S.A. 39:6A-11, all issues, including disputes over coverage, are to be decided by the arbitrator. Given the purpose of the no-fault law to expedite the resolution of PIP disputes, we infer that the Legislature intended to permit summary actions to enforce arbitration under N.J.S.A. 39:6A-11. Hence, the trial court properly allowed plaintiff to proceed by order to show cause, filed pursuant to Rule 4:67-1(a).

03/03/15 STATE OF NEW JERSEY VS. IDRIS R. PERRY; STATE OF NEW JERSEY VS. CARMEN NAY; STATE OF NEW JERSEY VS. RAYMOND EVANS; STATE OF NEW JERSEY VS. CHERYL PAPP; STATE OF NEW JERSEY VS. TAMMY M. MCINTYRE; STATE OF NEW JERSEY VS. BRADLEY BREWER; STATE OF NEW JERSEY VS. RICHARD J. WISSER
A-1767-13T2/A-1768-13T2/A-1769-13T2/A-1770-13T2/A-2531-13T2/A-2533-13T2/A-2536-13T2(CONSOLIDATED)

N.J.S.A. 2C:40-26(a) and (b) make driving while suspended under specified circumstances a fourth-degree crime, punishable by a mandatory minimum jail term of 180 days, where the underlying suspension arose from driving while intoxicated (DWI), N.J.S.A. 39:4-50, and/or refusal to submit to chemical testing, N.J.S.A. 39:4-50.4(a). We conclude in these appeals, consolidated for decision, that prosecutions under the statute can be brought only if the act of driving while suspended occurs during the court-imposed term of suspension.

03/02/15 DELRAY HOLDING, LLC AND BAY DOCK HOLDINGS, LLC VS. SOFIA DESIGN AND DEVELOPMENT AT SOUTH BRUNSWICK, LLC, ET AL.
A-0203-13T3

Members of and investors in two LLCs lacked standing as individuals to pursue claims that belonged to the LLCs and that had been settled in other litigation, notwithstanding the individuals' characterization of the claims as tortious interference with their investment agreements with the LLCs.

02/27/15 STATE OF NEW JERSEY VS. GALE SORENSEN
A-3797-13T4

After the Law Division suppressed defendant's blood alcohol content (BAC) results, it sentenced her on her guilty plea to driving under the influence. Nonetheless, the State's appeal of the suppression was not barred by double jeopardy because

defendant had entered a conditional plea to, and been sentenced for, the per se violation in Municipal Court.

The Law Division suppressed the BAC results because the Alcotest operator did not give a copy of the Alcohol Influence Report (AIR) to the arrestee in the police station. Although State v. Chun, 194 N.J. 54, 82 (2008), said the operator "must" do so, that comment about recommended Alcotest procedure did not override the statutory standard only requiring the police to give a copy of the breath test results upon request. N.J.S.A. 39:4-50.2(b). In any event, the timing of copy delivery does not affect the validity of the test results. Moreover, police must advise arrestees of their ability to request a copy and to get an independent test. Therefore, suppression is not warranted in the absence of prejudice. Furthermore, a suppression remedy should not be imposed retroactively.

Judge Sabatino concurs in the result. Given the time-sensitive dissipation of alcohol in the bloodstream, he believes Chun sensibly requires the operator to provide a copy of the AIR contemporaneously, consistent with the policies of the Attorney General and the State Police, and that the statute does not foreclose affording such added procedural protection to tested drivers. He agrees that suppression in this case and retroactive relief are not warranted.

02/26/15 STATE OF NEW JERSEY, BY THE COMMISSIONER OF TRANSPORTATION VS. CHERRY HILL MITSUBISHI, INC., ET AL.
A-2899-13T2

In a summary proceeding filed by the State seeking to remove encroachments from its right-of-way pursuant to N.J.S.A. 27:7-44.1, the named defendants filed a counterclaim against Department of Transportation officials for monetary damages resulting from the alleged violation of their constitutional right to equal protection of the laws, recovery for unjust enrichment, and injunctive relief. We find that the doctrine of qualified immunity bars recovery because there is no cognizable property interest in the activity in these circumstances, nor any basis in the record for injunctive relief. The New Jersey Contractual Immunity Act, N.J.S.A. 59:13-3, waived sovereign immunity only for express contracts or contracts implied in fact, not for a contract implied in law which might support defendants' claim for unjust enrichment. The counterclaim is dismissed in its entirety.

02/26/15 GARDEN HOWE URBAN RENEWAL ASSOCIATES, L.L.C. VS. HACBM ARCHITECTS ENGINEERS PLANNERS, L.L.C. AND DEL-SANO CONTRACTING CORP.
A-1144-13T2

In this case, in which plaintiff is asserting claims of professional negligence against defendant architects, we hold that: (1) plaintiff's principal expert report should not have been barred because the report was written by two professional engineers and a code enforcement official rather than a licensed architect; (2) plaintiff established exceptional circumstances to extend the time for discovery pursuant to Rule 4:24-1(c) because its principal expert report was barred on the eve of trial; and (3) plaintiff's architectural expert should have been permitted to testify at trial concerning one of plaintiff's claims because, although the expert had not explicitly opined as to the standard of care applicable to this claim, that opinion was implicit in the expert's report.

02/23/15 TELMA MORAES VS. DIDI WESLER & SIMONY WESLER
TELMA MORAES VS. WILLIAM TAYLOR AND STATE FARM INSURANCE COMPANY
A-5786-13T4

We granted plaintiff Telma Moraes' motion for leave to file an interlocutory appeal from the Law Division orders that denied her motion to consolidate her two personal injury actions and her motion for reconsideration, both unopposed. The trial court denied plaintiff's consolidation motion on a record that disclosed no significant or complex liability issue in either action, overlooked that trying the actions separately could result in inconsistent verdicts, and provided no appropriate explanation for the decision. Explaining and applying the abuse of discretion standard, we concluded that the trial court misapplied its discretion, and we reversed and remanded to the trial court to consolidate the cases for discovery and trial.

02/23/15 JORDANA ELROM VS. ELAD ELROM
A-4565-12T4

In this appeal of alimony and child support provisions contained in a final judgment of divorce, we review the methods

and basis for imputing income to parties, who recently or currently hold full-time employment. We find no error in the trial judge's application and use of different methods to input income to each party.

However, we reject as unsupported the addition of child-care expenses when the residential parent was unemployed. The Child Support Guidelines recognize the need for child care when imputing income to the residential parent by equitably adjusting that parent's imputed income by his or her share of necessary child-care costs. Child Support Guidelines, Pressler & Verniero, Current N.J. Court Rules, comment 12 on Appendix IX-A to R. 5:6A at 2635. Further, such costs may be added when an unemployed parent obtains full-time employment.

Finally, we vacate the addition of the cost of the children's extracurricular activities, as no support was provided for separate treatment of these expenses, which generally are included in the Guidelines support award.

02/20/15 NEW JERSEY DIVISON OF CHILD PROTECTION AND PERMANENCY VS. K.T.D. I/M/O THE GUARDIANSHIP OF A.K.S.
A-2646-13T1

Before the trial to terminate defendant's parental rights, defendant informed the court that a maternal ancestor was part Cherokee and a paternal one was "half Indian." Despite this knowledge, the DCPP failed to notify any of the three recognized Cherokee tribes or the Bureau of Indian Affairs of the pending guardianship proceeding, as required under the Indian Child Welfare Act, 25 U.S.C.A. §§ 1901-1963. Under the Act, a tribe has the right to intervene in a parental rights termination proceeding if any child involved is a member of its tribe, as tribes have an interest in its minor members that is deemed to be on parity with that of their parents. Tribes have exclusive authority to determine who its members are. A judgment terminating parental rights is vulnerable to being set aside if a tribe was not given notice and one of its minor members was involved.

The court proceeded with the guardianship trial and terminated defendant's parental rights. While we agreed with the trial court that termination of the mother's parental rights was warranted, nevertheless we were compelled to remand the

matter so that notice could be issued to the Cherokee tribes and the Bureau of Indian Affairs. If no tribe responds to the notice or if the pertinent tribes determine the child is not one of its members, the judgment terminating parental rights shall be deemed affirmed. Otherwise, the judgment has to be vacated.

02/18/15 STATE OF NEW JERSEY VS. HOWARD MYEROWITZ
A-6032-12T2

Defendant appeals from the judgment of the Law Division finding him guilty of harassment after conducting a de novo review of the trial record developed in the municipal court. We reverse and hold defendant's conviction in the municipal court was void ab initio because he was prosecuted by a private attorney who did not comply with the requirements in State v. Storm, 141 N.J. 245 (1995) and codified in Rule 7:8-7(b). Without cross-complaints from complaining witnesses there are no legal grounds to permit a private attorney to represent the State. Public policy favors prosecutions conducted by independent prosecutors. A municipal court judge should obtain an on-the-record statement confirming the prosecutor's recusal in the case. However, if the municipal prosecutor insists on proceeding with the prosecution, the prosecutor's decision should be final. Use of the form approved by the Administrative Director of the Courts is not discretionary. The questions contained therein, including the precise phraseology used, constitutes the expressed method adopted by the Supreme Court to accommodate the public policy concerns expressed in Storm.

02/18/15 STATE OF NEW JERSEY VS. WASAN BROCKINGTON
A-2760-11T2

After police officers observed defendant give a suspected buyer two bags of heroin and two bags of cocaine, they arrested defendant and the suspected buyer and recovered the heroin and cocaine. We reverse his convictions because a police officer testifying as a fact witness was permitted to give his opinion that he observed defendant give heroin and cocaine to suspected buyers in prior transactions in which no drugs were seized.

Because the matter must be retried, we consider whether evidence of the officer's observations of encounters between defendant and persons who approached him prior to the transaction that resulted in his arrest may be admitted into evidence without the improper lay opinion testimony. We conclude that such evidence is admissible pursuant to Rule 403

as intrinsic evidence because it is relevant to the essential elements of the offenses charged.

In a separate opinion, Judge Fisher agrees that defendant's convictions must be reversed but disagrees with the conclusion that the officer's observations of defendant's earlier encounters would be admissible at the next trial because that testimony does not qualify either as "other crime" or intrinsic evidence and, even if it did, its prejudicial impact far outweighs any probative value.

02/10/15 <u>STATE OF NEW JERSEY VS. IBRAHIM J. ELDAKROURY</u>
A-5802-12T4

We granted the State's motion for leave to appeal a trial court order dismissing an indictment without prejudice. In affirming the trial court's order, we construed N.J.S.A. 2C:34-7(a), which provides in relevant part that "no person shall operate a sexually oriented business . . . within 1,000 feet of any area zoned for residential use." The statute does not state a mens rea requirement, and we concluded that the standard is "knowingly." We also concluded that the location of the business is a material element of the offense and the State must prove that defendant acted knowingly with respect to that element. Because the State's instructions to the grand jury as to that issue were blatantly wrong, the trial court properly dismissed the indictment without prejudice. We declined to address defendant's constitutional challenge to the statute, which sought a with-prejudice dismissal, because defendant did not file a cross-motion for leave to appeal on that issue.

02/04/15 <u>STATE OF NEW JERSEY VS. JOHN D. HARRIS, III</u>
<u>STATE OF NEW JERSEY VS. SABRINA KING</u>
<u>STATE OF NEW JERSEY VS. ROBERT M. KACZAK</u>
<u>STATE OF NEW JERSEY VS. KRISTIN L. MITCHELL</u>
<u>STATE OF NEW JERSEY VS. WILLIAM HANGSTORFER</u>
<u>STATE OF NEW JERSEY VS. MANDI FILER</u>
A-3591-12T1/A-4003-12T1/A-5957-12T1/A-6112-12T1/A-0162-13T1/A-1523-13T1(CONSOLIDATED)

Following our recent opinion in State v. French, 437 N.J. Super. 333 (App. Div. 2014), we hold that a defendant convicted of violating either N.J.S.A. 2C:40-26a or N.J.S.A. 2C:40-26b must be sentenced to at least 180 days in jail without parole. French held that a sentence to an in-patient drug rehabilitation program in lieu of jail was an illegal sentence under section 26b. We conclude that, under section 26a or 26b, a sentence to

any other non-custodial alternative program, such as a home detention program (HEDS) or a community service program (CSLS), is likewise illegal.

01/30/15 <u>STATE OF NEW JERSEY VS. ANTWAIN T. WATERS</u>
A-2021-13T2

Defendant, from Georgia, unlawfully possessed a handgun while driving through New Jersey. A judge denied PTI, and defendant pled guilty, but the sentencing judge granted PTI. However, the statute and rules governing PTI do not contemplate the granting of PTI after a valid guilty plea.

It is defendant's burden to show that he could lawfully carry the gun in Georgia, and that he was unaware it was illegal to carry it in New Jersey or the states between which he was traveling. His residence in Georgia weighed against PTI, as persons under PTI are ineligible for transfer of supervision under the Interstate Compact for Adult Offender Supervision.

The 2008 Attorney General Directive to Ensure Uniform Enforcement of the "Graves Act" does not compel the granting of PTI to a person traveling between states if the person does not meet all the criteria in its example, or if there are other valid bases for denying PTI. Neither party on appeal may use the Attorney General's 2014 Clarification of "Graves Act" 2008 Directive to affect the validity of a PTI order entered prior to the issuance of the Clarification.

01/29/15 <u>MICHAEL WOLFF VS. SALEM COUNTY CORRECTIONAL FACILITY AND COUNTY OF SALEM</u>
A-0543-13T3

In Winters v. N. Hudson Reg'l Fire & Rescue, 212 N.J. 67 (2012), the Supreme Court held that a plaintiff who unsuccessfully raised retaliation as a defense in an administrative disciplinary proceeding was barred by collateral estoppel from thereafter raising a retaliation claim under the Conscientious Employee Protection Act. We hold that Winters has pipeline retroactivity, and bars plaintiff's retaliation claim brought under N.J.S.A. 10:5-12(d) of the Law Against Discrimination. We rule that plaintiff raised the retaliation defense in his administrative disciplinary proceeding when he testified in response to neutral questions on cross-examination, and that the ALJ necessarily rejected that defense.

Judge Sabatino has issued a concurring opinion, stating that an employee has no obligation to raise a defense of retaliation in the administrative disciplinary proceeding and that an employee's failure to raise the issue should not have res judicata (claim preclusion) effects.

01/23/15 NEWFIELD FIRE COMPANY NO. 1 VS. THE BOROUGH OF NEWFIELD
A-0751-13T4

We consider the scope of N.J.S.A. 40A:14-68, which allows a municipality to exercise "supervision and control" over a volunteer fire company designated as its official firefighting organization. Rejecting challenges by the plaintiff fire company, we conclude the statute allows the defendant borough to use an ordinance to set forth the terms and conditions upon which it would engage the volunteer fire company to perform the governmental function of firefighting.

Further, the plain language of this statute reflects the Legislature's intent to assure governmental supervision and control over volunteer fire companies to the extent they are charged with performing public functions funded by public taxpayer resources and the ordinance under review, as excised by the trial judge, does not exceed the designated authority.

Finally, we note the fire company can reject the proposed terms and cease its role as the designated fire organization in the borough. If so, the borough is free to attempt to resolve the disagreements or contract with a neighboring fire company under the required terms.

01/23/15 NEW JERSEY DIVISION OF YOUTH AND FAMILY SERVICES VS. S.H. AND M.H., IN THE MATTER OF S.H.
A-0080-13T3

After her son directed an expletive at her, defendant mother threw shoes at him, hit him with her hands, struck him in the legs with a golf club, and bit him three times on the shoulder. After a fact-finding hearing, the trial court determined that the mother did not abuse or neglect the child because his use of profanity provoked her and her actions were justified.

The child was diagnosed with ADHD and was enrolled as a special education student in his high school's behavior disability program. The judge relied on our decision in New

Jersey Division of Youth & Family Services v. K.A., 413 N.J. Super. 504, 511 (App. Div. 2010), certif. dismissed, 208 N.J. 355 (2011), noting that the child was "out of control" and presenting challenges to his parents.

We distinguished K.A. based on the severity of the child's injuries, the mother's use of instrumentalities in inflicting those injuries, and the unreasonable and disproportionate nature of the response. We also noted our view that K.A. should not be read to suggest that the test for determining excessive corporal punishment should be any different when the child has a disability.

We reversed and remanded for the entry of an order finding that the mother abused or neglected the child.

01/23/15 LEONARDO ARIAS, ET AL. VS. ELITE MORTGAGE GROUP, INC, ET AL.
A-4599-12T1

This case concerns the legal status of a Trial Period Plan (TPP) Agreement issued to plaintiffs under the federal Home Affordable Mortgage Program (HAMP). The issue is novel in New Jersey. Relying on Wigod v. Wells Fargo Bank, N.A., 673 F. 3d 547 (7th Cir. 2012), and the line of cases following Wigod, we concluded that the TPP Agreement was a unilateral offer pursuant to which the bank promised to give plaintiffs a loan modification, provided they complied fully and timely with their obligations under the Agreement. Those obligations included timely submission of the lower payments required of them during the trial period. We found that summary judgment was properly granted, because plaintiffs failed to make timely or complete payments during the trial period.

01/22/15 ANDREA N. FRAZIER VS. BOARD OF REVIEW, DEPARTMENT OF LABOR AND CENTER FOR FAMILY SERVICES, INC.
A-6228-12T3

Claimant, who was simultaneously working both full-time and part-time, was terminated from her full-time job through no fault of her own. The part-time job was not suitable as her sole employment due to the low hourly pay and unreliable schedule. Seven months later she quit her part-time job to take another part-time job that offered her higher pay, a regular schedule and a possible path to full-time employment. When she had to leave that second part-time job due to unsafe working conditions, the agency determined she was partially disqualified

from benefits because she voluntarily quit her earlier part-time job even though it did not interfere with her quest for full-time employment. N.J.A.C. 12:17-9.2(a)(2), however, explains that partial disqualification may be avoided when the claimant leaves part-time employment for personal reasons "which arise from the loss of the full-time employment[.]" Thus the reasons given by the agency for partial disqualification were insufficient and reversal was required.

01/16/15 JOHN E. MYERS, TRUSTEE, AND DIANE D. MYERS, TRUSTEE, VS. OCEAN CITY ZONING BOARD OF ADJUSTMENT AND CITY OF OCEAN CITY
A-2568-13T2

The City of Ocean City challenged the trial court's order compelling it to respond to a proposed zoning change recommended by the Ocean City Planning Board in its master plan reexamination report. Construing N.J.S.A. 40:55D-62(a), the trial court concluded that a governing body must adopt an ordinance consistent with a change proposed in a reexamination report, or the governing body must affirmatively reject the change after a hearing. We reverse, holding that the statute does not require a governing body to affirmatively act in response to a master plan recommendation, so long as the existing ordinance is substantially consistent with the master plan's land use and housing plan elements.

01/15/15 FELIX PEGUERO VS. TAU KAPPA EPSILON LOCAL CHAPTER, TAU KAPPA EPSILON NATIONAL CHAPTER, GREG SPINNER AND THOMAS PRICE, ET AL.
A-5419-12T4

Plaintiff attended a large party hosted at a private residence rented by several fraternity members. After consuming several drinks, plaintiff interceded in an argument that erupted in the backyard among other persons who were at the party. While trying to assist a friend involved in that argument, plaintiff was shot and wounded by another person who was at the party. The shooter was never apprehended or identified. There was no evidence that the fraternity had any past incidents involving guns on the premises or involving violent criminal behavior. There was also no proof that the shooter was a minor or a visibly intoxicated person who had been served alcohol at the party.

Plaintiff brought a negligence action against the national fraternity, the local fraternity chapter, and several students

who were leaders or members of the fraternity. Defendants moved for summary judgment, which the trial court granted.

We affirm the summary judgment order because we agree with the motion judge that there was no evidence showing that it was reasonably foreseeable that plaintiff would have been shot by a third party while attending an event hosted by the fraternity members. Hence, defendants breached no legal duty to plaintiff and were entitled to a judgment dismissing his negligence claims. For various reasons, the circumstances presented here are distinguishable from those in Clohesy v. Food Circus Supermarkets, 149 N.J. 496 (1997) and Butler v. Acme Markets, Inc., 89 N.J. 270 (1982), in which the Supreme Court recognized that the defendant supermarket owners owed a duty to protect their patrons from foreseeable criminal acts occurring on their premises.

01/15/15 STATE OF NEW JERSEY VS. JEROME L. FAUCETTE
A-6123-11T3

In reviewing the Law Division's order denying defendant's motion to suppress his custodial statement, we consider not only whether defendant's statement was voluntarily and knowingly made, but also whether the fourteen-day break-in-custody period following a defendant's invocation of the right to counsel, announced in Maryland v. Shatzer, 559 U.S. 98, 130 S. Ct. 1213, 175 L. Ed. 2d 1045 (2010), and applied by our Supreme Court in State v. Wessells, 209 N.J. 395 (2012), must also be applied when a defendant invokes the right to remain silent. In Shatzer, the United States Supreme Court specifically recognized an enhanced protective period must follow a break in custody caused by a suspect's invocation of the right to counsel. We conclude such an extensive period of protection need not accompany a break in custody caused by a defendant's request to cease the interrogation.

01/13/15 STATE OF NEW JERSEY VS. JACOB R. GENTRY
A-2481-11T4

Defendant was acquitted of murder but convicted of aggravated manslaughter and endangering an injured victim. We reversed the conviction and remanded for retrial due to several trial errors. We found plain error, where the trial judge failed to instruct the jury that self-defense applied to manslaughter as well as murder, and the evidence, viewed favorably to the defense, would support a claim of self-defense. In the course of our discussion, we addressed the issue of self-

defense in the context of mutual combat. During mutual combat, a defendant may use deadly force in self-defense, when he has not previously used or threatened deadly force against his opponent but the opponent begins using deadly force, defendant cannot safely retreat, and defendant reasonably believes he needs to use deadly force to save himself from death or serious bodily injury.

We also found reversible error where the prosecutor improperly cross-examined defendant about a statement made by an absent co-defendant. When defense counsel attempted, in his closing argument, to mitigate the prejudicial impact of that cross-examination, the trial judge erroneously permitted the prosecutor to tell the jury, in summation, that the court had precluded the co-defendant's statement from being admitted in evidence.

01/12/15 SANDRA COSTA VS. PAULO A. COSTA
A-2078-13T4

A parent's relocation to another country, while normally a change of circumstances warranting modification of that parent's physical custody, does not necessarily constitute a change of circumstances warranting modification of joint legal custody. Modern communications can enable the distant parent to remain a joint decision-maker in the major decisions regarding the children's welfare.

A change in joint legal custody is not justified by difficulties in renewing the children's passports, where the foreign parent consents to a court order authorizing the domestic parent to obtain a passport for the children regardless of the custodial arrangements, and authorizing the minor to travel. See 22 C.F.R. § 51.28(a)(3)(ii)(E) (2014). Accordingly, the trial court did not err in denying the domestic parent's motion to obtain sole legal custody for such purposes.

01/08/15 WILSON BERMUDEZ VS. KESSLER INSTITUTE FOR REHABILITATION
A-1610-13T4

In this interlocutory appeal, the panel determined that the motion judge had erred as a matter of law in determining that a licensed comprehensive rehabilitation hospital such as Kessler is subject to the provisions of the Nursing Home Act, N.J.S.A. 30:13-1 to -17, including an award of treble damages and attorneys' fees to a successful litigant against it.

01/07/15 JESSE L. MICKENS, JR. VS. TIMOTHY S. MISDOM AND CITY OF ELIZABETH
A-0326-13T3

Plaintiff sustained a herniated disc as a result of defendants' truck collision with plaintiff's parked vehicle. The jury heard evidence that the herniated disc was surgically removed but the forty-year-old plaintiff has and will continue to live with persistent back pain and discomfort. The jury awarded plaintiff $2,400,000 for his disability, impairment, loss of enjoyment of life, and pain and suffering. In deferring to the jury's assessment of the evidence and the trial judge's "feel of the case," the court affirmed the decision denying a new trial or remittitur because the trial judge found the verdict was not shocking to "the judicial conscience." The court also recognized the judge's decision was supported by his own conscience, which was derived, as permitted by He v. Miller, 207 N.J. 230 (2011), from the judge's own experiences as a trial judge and practicing attorney.

01/07/15 IN THE MATTER OF COMMISSION PROCEEDING ON REVOCATION OF LICENSE OF PASQUALE PONTORIERO
A-1006-12T4

Appellant sought review of the order of the Waterfront Commission of New York Harbor (Commission), which revoked his license to work as a hiring agent on the New Jersey waterfront under the Waterfront Commission Act (Waterfront Act), N.J.S.A. 32:23-1 to -225. Appellant's license was revoked for an association with two career offenders, members of the Genovese crime family, "inimical to the policies" of the Waterfront Act, contrary to N.J.S.A. 32:23-93(6) to -(7), and for lack of good character and integrity, contrary to N.J.S.A. 32:23-14(a), -18(a).

We conclude that the Commission's findings that appellant associated with career offenders, and lacked good character and integrity, were supported by the evidence.

01/06/15 STATE OF NEW JERSEY VS. HUGO FIERRO
A-4641-12T4

Defendant, a Newark police officer, was convicted by a jury of assault charges and official misconduct as a result of an incident recorded by an outdoor surveillance camera during which defendant drew his service weapon while off-duty and struck a

man in the face with the gun, causing the man's nose to bleed. On his conviction for official misconduct, defendant was sentenced to a mandatory five-year term of imprisonment without parole.

The conviction is affirmed. The trial court did not force defendant to testify in order to provide his version of the incident when it declined to instruct the jury after the State's case-in-chief on a justification defense pursuant to N.J.S.A. 2C:3-7(a), use-of-force by a police officer. Also, the split verdict — conviction on aggravated assault with a deadly weapon but acquittal on possession of a weapon for an unlawful purpose — did not require reversal on the ground that the jury did not understand the elements of the aggravated assault charge.

01/02/15 ROBIN B. WOJTKOWIAK VS. NEW JERSEY MOTOR VEHICLE COMMISSION AND NEW JERSEY DIVISION ON CIVIL RIGHTS
A-5341-12T4

In this LAD case, complainant asserted that her agoraphobia required the MVC to exempt her from appearing to be photographed for her driver's license. Because a court must determine whether the accommodations demanded are required to afford the services sought, the court holds that a LAD claimant has the burden to prove the extent of the disability where it is relevant to the reasonableness of the accommodations offered or demanded. When the extent of the disability is not readily apparent, expert medical evidence is required.

Because complainant's medical evidence did not clearly specify the extent of her limitations, she failed to show the accommodations offered by the MVC were unreasonable. However, given her ongoing need for a driver's license, a new claim of future acts of discrimination, supported by new and materially different evidence of her limitations at that time, would not be barred as "the same grievance" under N.J.S.A. 10:5-27.

01/02/15 NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION VS. ALLOWAY TOWNSHIP, ET AL.
A-3835-12T3

In this appeal, we interpret provisions of the Safe Dam Act, N.J.S.A. 58:4-1 to -14, in particular DEP's authority to bring a civil enforcement action against an "owner or person having control of a reservoir or dam." N.J.S.A. 58:4-5(a). The Chancery Judge granted DEP summary judgment, concluding that the owner of the land upon which the dam was constructed, who also

owned the reservoir created, as well as the county, which had constructed works appurtenant to the earthen dam, and the township, which maintained a road that traversed the crest of the dam, were all responsible under the statute and assessed civil penalties accordingly. We affirmed the judge's decision in all respects.

In so doing, we specifically overruled that portion of a published opinion of the Chancery Division, New Jersey Department of Environmental Protection v. Mercer County Soil Conservation District, 425 N.J. Super. 208 (Ch. Div. 2009), which held that ownership of the land upon which the dam was constructed was not, in and of itself, a sufficient basis for liability under the Act.

12/31/14 PANAGIOTI L. GIANNAKOPOULOS VS. MID STATE MALL, ET AL.
A-1955-13T2

Plaintiff suffered serious injuries, including brain damage and paraplegia, after an automobile turning left out of a mall parking lot collided with his motorcycle. Plaintiff filed a timely complaint against the mall and an untimely complaint against the engineering firm that designed the mall. Construing Rule 1:13-7(a), we find that the trial court erred in reconsidering a prior judge's order reinstating plaintiff's complaint against the mall, which had been administratively dismissed for lack of prosecution. We also find the trial court erred in granting summary judgment in favor of the engineering firm.

We conclude that the good cause standard of Rule 1:13-7(a) applies here, rather than the exceptional circumstances standard. We also find that, before departing from the first judge's order tolling the statute of limitations under N.J.S.A. 2A:14-21, the trial court should have held a N.J.R.E. 104 hearing on plaintiff's claim that he was either incapacitated contemporaneously with the accident or became incapacitated shortly thereafter due to the accident.

12/31/14 HETTY ROSENSTEIN, LABOR CO-CHAIRPERSON OF THE STATE HEALTH BENEFITS PLAN DESIGN COMMITTEE AND CHARLES WOWKANECH, PRESIDENT, NEW JERSEY STATE AFL-CIO VS. STATE OF NEW JERSEY, DEPARTMENT OF TREASURY, DIVISION OF PENSIONS AND BENEFITS
A-0945-12T1

Because 2011 amendments to the pension and benefits laws provided the State Health Benefits Plan Design Committee (SHBPDC) – which consists of six labor and six administration appointees – with the authority to create, modify or terminate the state health benefit plan or any of its components, the State Health Benefits Commission (SHBC) was not authorized to exercise its former authority in increasing retiree prescription copayment levels, and the Division of Pension and Benefits (the Division) erred in applying the SHBC's ultra vires determination regardless of the fact that the SHBPDC had reached an impasse yet to be resolved through super-conciliation. The court determined that, until resolution of the impasse, the prior copayment levels had to be maintained. The court also rejected the Division's arguments that appellants, who are members of the SHBPDC, lacked standing or that the exhaustion doctrine counseled against this court's intervention until completion of super-conciliation.

12/30/14 HILL INTERNATIONAL, INC. VS. ATLANTIC CITY BOARD OF EDUCATION
COBRA CONSTRUCTION COMPANY, INC. VS. ATLANTIC CITY BOARD OF EDUCATION
A-4139-13T3

When a professional in one of the categories listed in N.J.S.A. 2A:53A-26 has been sued for malpractice or negligence, a supporting affidavit of merit ("AOM") is required from a "like-licensed" professional. This "like-licensed" requirement applies even where the functions of one profession may overlap with those of another profession. However, such an AOM is not required for claims (1) solely involving matters of common knowledge; (2) based on a defendant's conduct outside the scope of his or her professional duties; (3) of intentional wrongdoing; or (4) based exclusively on theories of vicarious liability or agency.

Applying these principles here, we reverse the trial court's interlocutory order permitting a licensed engineer to issue an AOM against defendant architects regarding alleged negligence in design and construction contract administration. Even though there is some overlap between these two professions, the statute requires an AOM from a like-licensed architect. We remand to allow plaintiff to obtain such an affidavit.

12/30/14 ESSEX COUNTY CORRECTIONS OFFICERS PBA LOCAL 382 VS. COUNTY OF ESSEX, ET AL.
A-4309-12T2

This is an appeal from a summary action pursuant to Rule 4:67 in which plaintiffs allege that Essex County has unlawfully "privatized" its jail operations. We hold that Essex County can lawfully contract for rehabilitative and similar treatment services for county jail inmates at two privately owned and operated inmate facilities, Delaney Hall and Logan Hall. Without express Legislative authority, however, the county cannot lawfully delegate to private entities its core governmental function of confining and "keeping" county inmates who are not in need of such services.

Plaintiffs did not prove the unlawfulness of the five-year, $129-million-plus contract for the operation of Delaney and Logan Halls. Although plaintiffs initiated the request that the litigation proceed as a summary action, the importance of the issue and the likelihood of similar future contracts warrants a remand to permit further proceedings as a plenary case.

12/29/14 STATE OF NEW JERSEY VS. MAYTEE CORDERO
A-4061-12T1

In this third-degree shoplifting case, the State sought an in limine ruling permitting it to introduce evidence of a previous alleged shoplifting incident involving defendant and her codefendant to prove intent and the absence of mistake. The trial judge declined to rule on the admissibility of the 404(b) evidence until after the defense case, although the judge provided his tentative view that the evidence would be admissible if defendant testified that she unknowingly removed the unpurchased merchandise. On appeal, defendant challenges the court's procedure, which she claims chilled her exercise of her right to testify. We affirm, holding that a trial court may, in its discretion, await the conclusion of a defendant's case before deciding the admissibility of 404(b) evidence to prove intent, or lack of mistake. Awaiting the rebuttal case enables the court to confirm the defense will actually be offered, and to assess the contours of the defense, which informs the court's decision regarding the relevance of the 404(b) evidence, and whether the risk of undue prejudice outweighs its probative value.

12/24/14 NEW JERSEY DIVISION OF YOUTH AND FAMILY SERVICES VS. N.M. AND J.K.IN THE MATTER OF J.K, JR. AND J.K.
A-0349-13T3

We reverse the trial court's finding that a mother abused or neglected her two children by bringing them to a public park to meet her former boyfriend, who followed her home and raped her in the children's presence. The former boyfriend had earlier refused to provide his address for a background check, and a caseworker advised the mother not to allow him around the children.

A prior substantiation of abuse or neglect against the mother for leaving her youngest son with the child's father who seriously injured him, did not support the court's conclusion that the mother demonstrated a history of exercising poor judgment and exposing her children to violence.

The Division failed to establish that the children suffered harm as a result of defendant's actions, and her conduct was neither reckless nor grossly negligent.

12/23/14 NEW JERSEY DIVISION OF CHILD PROTECTION AND PERMANENCY VS. R.W. IN THE MATTER OF M.W. AND Z.W.
A-4545-12T3

A mother's admission to a one-time use of marijuana, while accompanied by her infant, is not proof by the preponderance of the evidence that she abused and neglected her child within the meaning of N.J.S.A. 9:6-8.21(c)(4)(b). Furthermore, the manner in which the New Jersey Division of Child Protection and Permanency attempted to prove the conduct——by moving into evidence a document containing a caseworker's summary of an interview with a staff member at the residential placement where the mother had been living——raised critical evidential issues.

12/22/14 STATE OF NEW JERSEY VS. SHERRONE H. ROBINSON
A-5490-12T4

This appeal calls upon us to determine the proper sentence that survives merger of defendant's two convictions. Defendant pled guilty to second-degree burglary, N.J.S.A. 2C:18-2, and second-degree possession of a weapon for an unlawful purpose, N.J.S.A. 2C:39-4a. Pursuant to the negotiated plea agreement, defendant was sentenced to a four-year prison term on the burglary charge, subject to an eighty-five percent parole ineligibility period under the No Early Release Act (NERA), N.J.S.A. 2C:43-7.2, and to a concurrent five-year prison term on the weapon offense, subject to a mandatory minimum term of three years under the Graves Act, N.J.S.A. 2C:43-6(c).

Defendant appealed, arguing that the convictions should merge since the sole intended purpose of the weapon involved commission of the burglary. Defendant further argues that, upon merger, the burglary sentence should survive and the sentence on the weapon offense should be vacated. The State agrees that merger is appropriate, but that the most severe aspect of each sentence should survive.

On the specific facts of this case, we conclude that imposing the more severe aspects of the sentence for each offense is consistent with the plea agreement. Accordingly, on the merged convictions, defendant's sentence shall be modified to a five-year term of imprisonment, of which four years shall be subject to an eighty-five percent parole ineligibility period under NERA.

12/22/14 D.A. VS. R.C.
A-4030-12T2

In this custody and parenting time case, we reverse the custody order entered by the Family Part and remand for the judge to refer this matter to mediation as required under Rule 5:8-1. The informality that permeated all of the court's interactions with the parties and their respective attorneys precluded the court from adjudicating this hotly disputed custody case, and ultimately undermined the solemnity and decorum necessary for effective courtroom management.

The Family Part judge did not interview the fourteen-year-old boy at the center of this custody dispute, despite allegations that: (1) the custodial parent used excessive corporal punishment and a confrontational parenting style as a means of disciplining the child; and (2) the non-custodial parent regularly exposed the child to domestic violence. Under Rule 5:8-6 and N.J.S.A. 9:2-4(c), the judge had a duty to interview this teenage boy, or place on the record the reasons for his decision not to interview him.

Finally, the judge entered a final custody order awarding residential custody of this fourteen-year-old boy to each parent on a 50/50 basis, without placing on the record the factual findings and conclusions of law explaining how this decision was in the best interest of this child or how he resolved the conflicting material factual assertions made by the parties in their respective certifications without conducting a plenary hearing, as required by N.J.S.A. 9:2-4(f) and Rule 1:7-4(a).

12/19/14 NEW JERSEY DIVISION OF CHILD PROTECTION AND PERMANENCY VS. B.O. AND T.E. IN THE MATTER OF T.E.E.
A-4780-12T1/ A-4946-12T1

The court affirms the trial judge's finding of neglect against both parents based on evidence that, with the father's knowledge, the mother slept with her seven-week-old infant in the same bed while she was under the influence of illegal drugs. The baby was partially smothered, causing brain damage. The opinion emphasizes the deference owed to the judge's credibility findings and the risk impaired parents pose to an infant in their care.

12/17/14 STATE OF NEW JERSEY VS. GREGORY MAURER
A-3527-13T2

In this appeal we reversed the Law Division's denial of defendant's appeal from the prosecutor's rejection of his application for "Track Two" sentencing into Drug Court for CDS offenses. In rejecting defendant's appeal, the Law Division relied solely on defendant's prior conviction for a weapons crime, which the judge found rendered him ineligible, pursuant to the guidelines set forth in the Administrative Office of the Courts' "Manual for Operation of Adult Drug Courts in New Jersey" (July 2002).

We considered the history of New Jersey's successful Drug Court program, the application of the Manual's guidelines, and the Drug Court Statute, N.J.S.A. 2C:35-14 as recently amended. Having done so, we determined barring defendant from consideration for Drug Court was unfair and, if permitted, would constitute disparate sentencing because "Track One" offenders as facing sentencing for crimes such as second-degree robbery could be considered for entry into Drug Court but defendant could not. We therefore, reversed the Law Division's order and remanded the matter for further consideration of defendant's application, including the extent of his drug addiction, if any, and his dangerousness, including his criminal history, as provided for in the Drug Court Manual for "Track Two" offenders.

12/16/14 NEW JERSEY DIVISION OF CHILD PROTECTION AND PERMANENCY VS. N.C.M. AND T.E. AND J.C. ET AL.
A-3666-13T3

In this guardianship case, we reject defendant's argument that the Division's failure to provide services, including mental health evaluations and treatment when she was a minor

under the Division's care, can be considered in evaluating the Division's reasonable efforts, now that she is a defendant in a guardianship proceeding.

Although the Division apparently failed to provide these services to defendant after her removal from a Division placement when she was fourteen, we are aware of no statutory authority or precedent holding that this failure can be considered in a subsequent guardianship proceeding involving that same child in her later capacity as a parent when assessing the adequacy of services required under prong three of the best-interests test. N.J.S.A. 30:4C-15.1(a).

We take this opportunity, however, to discuss the Division's obligation to provide services, specifically mental health evaluations and treatment, to minors under its care.

12/08/14 C.J.R., ET AL. VS. G.A., ET AL.
A-2771-13T3

In this case of first impression, we address the standards of tort liability to apply when a plaintiff minor is injured by another minor during the course of a youth sports activity. We adopt a "double-layered" analysis that combines the relevant principles separately pertaining to adult sporting activities and to the injurious conduct of minors.

In particular, we hold that the court must consider: (1) whether the opposing player's injurious conduct would be actionable if it were committed by an adult, based on sufficient proof of the defendant's intent or recklessness as required by the Supreme Court's case law; and, if so, (2) whether it would be reasonable in the particular youth sports setting to expect a minor of the same age and characteristics as defendant to refrain from the injurious physical contact.

Here, plaintiff, a twelve-year-old child playing in a recreational youth lacrosse game, was injured upon being struck on the forearm by an opposing player who was eleven years old. Plaintiff stresses that the manner in which the defendant struck him violated the rules of the game. Regardless of whether the conduct would be actionable if it were committed by an adult, we conclude that the conduct did not rise to the level of intentional or reckless behavior that could support liability of an eleven-year-old child in this youth sports setting. We therefore affirm the trial court's summary judgment order entered in favor of the defendant-minor.

11/26/14 UNITED WATER NEW JERSEY, INC. VS. BOROUGH OF HILLSDALE, ET AL.
A-0299-13T4

In view of the authority conferred upon the New Jersey Department of Environmental Protection (NJDEP) by the Safe Dam Act, N.J.S.A. 58:4-1 to -14, regarding dam construction, operation and maintenance, and the Water Supply Management Act, N.J.S.A. 58:1A-1 to -26, with regard to the management of the State's water supply, the Borough is preempted from applying its conditional use and tree removal ordinances to United Water's Woodcliff Lake dam improvement project.

11/26/14 STATE OF NEW JERSEY VS. MARKEES PRUITT
A-5716-12T4

In State v. Pruitt, 430 N.J. Super. 261 (App. Div. 2013) (Pruitt I), we determined that defendant could establish a prima facie Gilmore violation even if there was only one African-American juror on the panel and the prosecutor used a peremptory challenge to excuse that juror. Following the remand ordered in Pruitt I, the trial court held a hearing concerning the prosecutor's reasons for excusing the lone African-American juror. The trial court found that the prosecutor gave a non-discriminatory explanation which was not a pretext to exclude African-Americans from the jury. On this appeal (Pruitt II) we affirmed that decision.

During the remand hearing, defense counsel did not argue that there were allegedly comparable non-African-American jurors whom the prosecutor did not challenge. However, defendant raised the issue on this appeal. Our opinion in Pruitt II emphasizes that failure to raise that issue during the Gilmore hearing, which in this case was the remand hearing, unfairly deprived the prosecutor of the opportunity to explain his reasons for not challenging the allegedly comparable jurors and deprived the trial court of the opportunity to consider those reasons. Although we found the defendant was not entitled to raise his comparison argument for the first time on appeal, we nonetheless reviewed the record de novo and found no basis to disturb the result reached by the trial court.

11/25/14 JAMES MORAN VS. BOARD OF TRUSTEES, POLICE AND FIREMEN'S RETIREMENT SYSTEM
A-1041-13T1

In the absence of the unit that normally forced entry into structures, and having no battering tools at his disposal, a firefighter rescued two people from a burning building by kicking in the reinforced front door. He was permanently disabled as a result, but was denied an accidental disability pension. Finding that the PFRS Board took too narrow a view of the standards set forth in Richardson v. Board of Trustees, Police and Firemen's Retirement System, 192 N.J. 189 (2007), we reversed the Board's decision that the firefighter was not disabled due to a traumatic event because the incident was not undesigned and unexpected. We concluded that the incident was undesigned and unexpected, and qualified as a traumatic event within the meaning of N.J.S.A. 43:16A-7.

11/24/14 JAMES B. HURWITZ, M.D. VS. AHS HOSPITAL CORP., ET AL.
A-5112-12T2

Plaintiff, a surgeon, challenged a hospital's review and investigation of perceived shortcomings in the care he provided to certain patients. After extensive administrative hearings within the hospital, in which the surgeon and his attorney participated, the hospital's Board of Trustees revoked his clinical privileges. The surgeon contended that the hospital's actions were arbitrary, unreasonable, and unduly punitive, and he sought relief in the trial court based on several legal theories.

11/24/14 J.T., ET AL. VS. DUMONT PUBLIC SCHOOLS, ET AL.
A-2424-12T1

We considered an appeal brought under the New Jersey Law against Discrimination by the parent of a child receiving special education and related services. The parent claimed that the child had a right under the LAD to attend his or her neighborhood school even when the child's special education placement provided an appropriate education pursuant to the Individuals with Disabilities Education Act. We determined, based upon cases brought under Section 504 of the Rehabilitation Act and the Americans with Disabilities Act, that the program or benefit a school district must provide to a special education child is a free and appropriate public education. We preclude the isolation of specific components of an Individual Education Plan, such as neighborhood placement or mode of transportation, as separate benefits under the LAD.

11/21/14 STATE OF NEW JERSEY VS. AAKASH A. DALAL
A-3715-13T3

The court granted leave to examine an interlocutory order which denied defendant's motion to recuse the Bergen County judiciary from presiding over a prosecution that included a charge of conspiring to murder a Bergen County assistant prosecutor. The issue reached an acute stage when the State informed it would offer evidence at trial that defendant threatened the lives of two Bergen judges. Even though the court acknowledged the trial judge, who was not one of the threatened judges, appeared able to fairly and impartially preside, the court held that defendant is entitled to the relief sought because, in the final analysis, "justice must satisfy the appearance of justice" and a reasonable person would harbor doubts about the fairness of the proceedings.

11/21/14 CHRISTINE A. DISPENZIERE, ET AL. VS. KUSHNER COMPANIES, ET AL.
A-3022-13T4

Plaintiffs, who purchased condominium units in a real estate development that the project developer allegedly failed to complete, appeal from an order directing their statutory and common-law claims to arbitration. Following Atalese v. United States Legal Services Group, L.P., 219 N.J. 430 (2014), we conclude that the arbitration provision in the parties' purchase agreements is unenforceable because it lacked any language that would inform unit buyers that they were waiving their right to seek relief in court. We also hold that the fact that many of the purchasers were represented by counsel during the real estate transaction does not suffice to cure the inadequacy of the contractual arbitration provision.

11/21/14 STATE OF NEW JERSEY VS. J.M., JR.
A-2562-13T2

Defendant, a masseuse, has been charged with second-degree sexual assault and fourth-degree criminal sexual contact based on an allegation that he improperly touched a female customer. After conducting a pretrial hearing, the trial judge held the State would be permitted to elicit testimony at trial, pursuant to N.J.R.E. 404(b), from a woman who claimed she was improperly touched by defendant while receiving a massage in Florida six years earlier. Because defendant was acquitted of the Florida charge, the court reversed the trial judge's interlocutory order, concluding, among other things, that the evidence did not suggest defendant's motive, intent or a plan, and was highly prejudicial. The court also disagreed with earlier Appellate

Division decisions that permitted the use of "acquittal evidence," and concluded that the proper respect for the presumption of innocence and the particular significance the law attaches to an acquittal, required exclusion of "acquittal evidence" when offered to show the accused actually committed the prior offense.

11/19/14 RUTGERS UNIVERSITY STUDENT ASSEMBLY (RUSA), ET AL. VS. MIDDLESEX COUNTY BOARD OF ELECTIONS, ET AL.
A-2383-13T3

In this case of first impression, plaintiffs appeal from the December 11, 2013 order of the Chancery Division, granting defendants' motion for summary judgment and dismissing plaintiffs' complaint challenging the constitutionality of N.J.S.A. 19:31-6.3b, which requires all eligible persons to register to vote no later than twenty-one days prior to an election. Plaintiffs also appeal the denial of their motion for summary judgment. Because the trial court did not make adequate findings of fact and conclusions of law concerning defendants' justification for maintaining the twenty-one-day advance registration requirement in the face of the evidence submitted by plaintiffs that the requirement is no longer necessary to protect the integrity of the electoral process, we are constrained to reverse both decisions and remand for further proceedings.

11/14/14 MORTGAGE GRADER, INC. VS. WARD & OLIVO, L.L.P., AND JOHN OLIVO, ESQ., AND JOHN WARD, ESQ.
A-3777-13T3

In this legal malpractice case, in which plaintiff asserts claims against two attorneys who practiced law as a limited liability partnership ("LLP"), we hold that the direct claims against defendant John Ward must be dismissed because Ward is not vicariously liable for the alleged malpractice of his partner John Olivo. Ward was shielded from liability under the Uniform Partnership Act, N.J.S.A. 42:1A-1 to -56, and the LLP did not revert to a general partnership, as the judge had concluded, notwithstanding the LLP's failure to maintain professional liability insurance covering the claims in this lawsuit, as required by Rule 1:21-1C(a)(3). We also hold that plaintiff failed to comply with the Affidavit of Merit Statute ("AMS"), N.J.S.A. 2A:53A-26 to -29, by not serving an affidavit of merit on Ward or otherwise substantially complying with the AMS.

11/14/14 STATE OF NEW JERSEY VS. SCOTT ROBERTSON
A-0296-13T1

In this appeal from a DWI conviction, we reject defendant's argument that the Alcotest results should have been excluded because he was denied discovery of certain repair records, which were created by the Alcotest's manufacturer, and certain downloaded data, which the State routinely erases. We conclude the records were not discoverable under Rule 7:7-7, nor did they constitute Brady material.

We also address the unexplained decisions of both the municipal court and the Law Division to stay defendant's license suspension pending appeal. We instruct trial courts that any stay of a license suspension after a DWI conviction should be supported by adequate findings of fact and conclusions of law, and should comply with standards governing the grant of a stay pending appeal set forth in Garden State Equality v. Doe, 216 N.J. 314, 320 (2013).

11/14/14 L.T. VS. F.M.
A-2422-12T1

Plaintiff obtained a final restraining order (FRO) against defendant in the Family Part and subsequently brought an action in the Law Division seeking to recover damages for injuries allegedly inflicted upon her by defendant in the assaults that were the subject of the Family Part proceedings. In this appeal, we address the issue of whether defendant was collaterally estopped from arguing in the Law Division action that he did not assault plaintiff. We also consider whether evidence of a prior alleged assault that was not raised in plaintiff's complaint was admissible as habit evidence, and whether plaintiff should have been permitted to introduce the FRO into evidence. Based upon our review of the record and applicable law, we hold that the doctrine of collateral estoppel did not bar defendant from challenging plaintiff's claims in the Law Division action. We also hold that evidence of the prior alleged assault and the FRO should not have been admitted into evidence. Therefore, we reverse and remand for a new trial.

11/13/14 STRATEGIC ENVIRONMENTAL PARTNERS, LLC VS. NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION
A-5283-12T3

This case involves an emergency order issued by the Commissioner of the Department of Environmental Protection pursuant to N.J.S.A. 13:1E-9.5(c) and -125.9. The order enjoined the owner of a solid waste landfill located in the Township of Roxbury from accepting any material onto the landfill, and authorized the Department to immediately seize control of the landfill to abate an alleged imminent threat to the environment arising from continued emissions of hydrogen sulfide.

We concluded that the Department exceeded its authority under N.J.S.A. 13:1E-125.4 by seizing control of the landfill without first obtaining judicial approval, and erred in basing the emergency order on past hydrogen sulfide emissions by applying a statutory emissions standard that did not yet exist until the applicable statute was enacted the same morning the order was issued. We also concluded the Department had not made the requisite showing to justify an emergency order under N.J.S.A. 13:1E-125.9. Accordingly, we vacated the emergency order and remanded to the trial court for further proceedings.

We specifically rejected the landfill owner's contention that the new statute on which the Department relied constituted unconstitutional special legislation, and declined to address other constitutionally-based challenges to the Department's actions.

11/12/14 EDUCATION LAW CENTER ON BEHALF OF ABBOTT V. BURKE PLAINTIFF SCHOOLCHILDREN VS. NEW JERSEY STATE BOARD OF EDUCATION AND CHRISTOPHER D. CERF, COMMISSIONER, NEW JERSEY DEPARTMENT OF EDUCATION
A-2816-12T3

The New Jersey State Board of Education had statutory authority and did not act arbitrarily and capriciously in amending and repealing certain regulations promulgated under the Charter School Program Act of 1995 to permit existing, successful charter schools in under-performing school districts to open satellite locations within the same districts.

11/03/14 NEW JERSEY DIVISION OF CHILD PROTECTION AND PERMANENCY VS. Y.A. IN THE MATTER OF R.A., I.A., S.A., AND Y.A.
A-0238-13T2

In this appeal, we address the issue of whether N.J.S.A. 9:6-8.46(a)(4) requires that the in camera testimony of a child victim of sexual abuse be independently corroborated in order to prove abuse or neglect under Title 9. N.J.S.A. 9:6-8.21 to -8.73. Based upon our review of the record and applicable law, we hold that the corroboration requirement of the statute does not apply where the child victim testifies to the abuse at a fact-finding hearing. We therefore affirm the trial judge's finding that the Division of Child Protection and Permanency (Division) met its burden of proving that defendant Y.A. committed an act of sexual abuse against his daughter, R.A.

10/31/14 STATE OF NEW JERSEY VS. PEDRO PERALTA
A-5761-12T1

In this appeal, defendant argued the police failure to read to him the standard statement referred to in N.J.S.A. 39:4-50.2(e) – which, in its current iteration, largely but not entirely advises of the consequences of refusing to provide a breath sample – requires reversal of his DWI conviction based solely on an Alcotest reading. The court held this alleged failure was not fatal to the DWI conviction because defendant did not refuse to provide a breath sample.

10/31/14 IN THE MATTER OF THE DENIAL OF THE APPLICATION BY GEORGE WINSTON, JR., FOR A FIREARMS PURCHASER IDENTIFICATION CARD
A-1512-12T1

The question presented by this appeal is whether the Full Faith and Credit Clause of the United States Constitution requires New Jersey to treat appellant George Winston's New York criminal convictions, for which he has obtained certificates of relief from disabilities, as not disqualifying him from obtaining a firearms purchaser identification card or a permit to purchase a handgun under N.J.S.A. 2C:58-3c(1). We conclude that the Constitution does not compel that result and affirm the denial of those firearms permits.

10/28/14 MANHATTAN TRAILER PARK HOMEOWNERS ASSOCIATION, INC., ET AL. VS. MANHATTAN TRAILER COURT AND TRAILER SALES, INC., ET AL.
A-6169-12T1

We review the parties' respective rights and obligations under the Mobile Home Protection Act (the Act), N.J.S.A. 46:8C-2

to -21, which grants homeowners residing in a private residential leasehold community a right of first refusal to acquire park property from the owner who has either decided to sell the park property, N.J.S.A. 46:8C-11, or has received a bona fide offer to buy the park property, N.J.S.A. 46:8C-12. Under the latter provision, the Act provides a procedure to allow park residents to purchase the park property upon the same terms as a third-party offer.

In this matter, plaintiffs failed to comply with the statutory requirements which create a contract by operation of law. Accordingly, defendant was free to pursue a third-party sale. We further reviewed and rejected plaintiffs' assertion the Act's provisions are not subject to waiver.

10/28/14 NEW JERSEY NATURAL GAS COMPANY VS. BOROUGH OF RED BANK AND RED BANK RIVERCENTER SPECIAL IMPROVEMENT DISTRICT
A-1096-12T4

The trial judge granted plaintiff-utility summary judgment, entering an order in the nature of mandamus that required defendant-borough to issue construction permits allowing plaintiff to open streets and sidewalks, remove gas regulators previously contained in underground vaults, and install them on stanchions that ran through the sidewalk, thereby leaving the gas lines and regulators approximately fifteen inches from storefronts and in the public right-of-way. The judge accepted plaintiff's argument that pursuant to N.J.S.A. 48:9-17 and binding Supreme Court precedent, because the regulators were part of the utility's distribution system, the borough could not subject their installation to local land use regulations, and, instead, could only impose "reasonable regulations with respect to the opening of streets, alleys, squares and public places . . . ." Ibid.

We reversed, finding that the installations exceeded that permitted by the consent agreement between the utility and the borough entered pursuant to the statute, and, as a result, implicated the borough's land use regulations. We concluded that the entire legislative scheme, including provisions of the Municipal Land Use law, anticipated greater regulatory control by the municipality, and permitted the utility, if dissatisfied, to seek review by the Board of Public Utilities.

10/27/14 STATE OF NEW JERSEY VS. JUSTIN A. LEE
A-3906-11T4

We reject defendant's argument that the trial court reviewing a prosecutor's denial of admission to the Pretrial Intervention Program ("PTI") should conduct an evidentiary hearing to resolve factual disputes concerning the PTI applicant's conduct. Although the prosecutor may not completely disregard evidence from eyewitnesses proferred by defendants, the prosecutor may choose to accept the competing factual versions of the State's witnesses in analyzing the various factors for PTI eligibility under N.J.S.A. 2C:43-12(e) and Rule 3:28. A "mini-trial" to resolve those factual discrepancies is not appropriate.

We also reject defendant's claim that PTI Guideline 3(i) in Rule 3:28, providing for a presumption against PTI where the defendant's offense was "deliberately committed with violence or threat of violence against another person," is inconsistent with and preempted by the statutory criteria for PTI listed in N.J.S.A. 2C:43-12(e).

10/24/14 LAMONT W. GARNES AND ROBERT A. KLEIN VS. PASSAIC COUNTY AND THE PASSAIC COUNTY SHERIFF'S DEPARTMENT, ET AL.
A-2186-12T3

Plaintiffs Robert A. Klein and Lamont W. Garnes filed a complaint alleging that Passaic County (the County), the Passaic County Sheriff's Department (the PCSD) and the former Sheriff, Jerry Speziale, violated the Law Against Discrimination (LAD), N.J.S.A. 10:5-1 to -42. Specifically, they contended that their employer used age as a determinative factor in identifying the sheriff's investigators whose employment would be terminated to reduce personnel costs in a budgetary crisis. Plaintiffs dismissed their claims against Sheriff Speziale, but not the PCSD, prior to trial, and the jury found that Klein, but not Garnes, established his claim.

On defendants' appeal, we reject the following claims: that plaintiffs, having dismissed their claim against the sheriff, should not have been permitted to maintain an action against them based on vicarious liability; that the LAD should be interpreted as the United States Supreme Court interpreted the Age Discrimination in Employment Act (ADEA) in Gross v. FBL Financial Services, 557 U.S. 167, 129 S. Ct. 2343, 174 L. Ed. 2d 119 (2009), and, if it had been, would have required a different result; and that Klein, who served at the pleasure of the sheriff, had no expectation of continued employment and, therefore, cannot establish damages.

10/17/14 E&J EQUITIES, LLC VS. BOARD OF ADJUSTMENT OF THE TOWNSHIP OF FRANKLIN AND TOWNSHIP OF FRANKLIN
A-2432-12T3

The trial court ruled that an ordinance, which prohibited multiple message digital billboards throughout the township was unconstitutional. We reverse because, applying the time, manner and place analysis, see Ward v. Rock Against Racism, 491 U.S. 781, 109 S. Ct. 2746, 105 L. Ed. 2d 661 (1989); Hamilton Amusement Ctr. v. Verniero, 156 N.J. 254, 264 (1998); we conclude the restriction is content-neutral; and the regulation leaves open ample alternative channels for communication of the information.

10/16/14 BENJORAY, INC. VS. ACADEMY HOUSE CHILD DEVELOPMENT CENTER
A-5162-12T3

The defendant discovered the commercial premises it leased from the plaintiff were fifteen percent smaller than represented in the lease. The trial court denied defendant's motion to transfer a summary dispossess action filed by plaintiff to the Law Division, where defendant sought to pursue an action for negligent misrepresentation and breach of contract. The trial court found defendant's claims sufficiently simplistic to be handled in a summary proceeding.

We reversed, finding under the applicable legal standards that the trial court should have granted the motion, given the complexity of the issues and the equitable relief defendant sought.

10/10/14 SALVATORE PUGLIA VS. ELK PIPELINE, INC., ET AL.
A-0886-13T1

We consider the propriety of the summary judgment dismissal of plaintiff's retaliatory discharge claim under the Conscientious Employee Protection Act (CEPA), N.J.S.A. 34:19-1 to -14, based on his lay-off at the near completion of a public works construction project. We conclude plaintiff's claim is dependent on the interpretation of the parties' collective bargaining agreement (CBA). Accordingly, redress is governed by federal law and the state CEPA claim is preempted by section 301(a) of the Labor Management Relations Act of 1947 (LMRA), 29 U.S.C.A. § 185(a), and the National Labor Relations Act of 1935 (NLRA), 29 U.S.C.A. §§ 151-166.

10/10/14 <u>STATE OF NEW JERSEY VS. GERALDO RIVERA</u>
A-4887-11T1

We reverse defendant's convictions because of the cumulative prejudicial impact of the prosecutor's litigation tactics. The misconduct addressed, among other things, includes: the prosecutor's use of a PowerPoint presentation during opening statements that ended with a slide displaying defendant's photograph and a declaration of his guilt of the crimes charged; the prosecutor's climbing into the jury box during defense counsel's cross-examination of the State's first witness; and the prosecutor's violation of a pre-trial order requiring sanitization of the defendant's prior convictions.

10/09/14 <u>RAJNIKANT PATEL, ET AL. VS. KARNAVATI AMERICA, LLC, ET AL.</u>
A-2737-13T4

In this products liability matter, we examined whether New Jersey could exercise specific jurisdiction over defendant Karnavati Engineering, Ltd., the manufacturer of a machine, whose alleged defective design caused plaintiff's injury. Karnavati is a corporation located in India, and had insufficient contacts to result in general jurisdiction. Karnavati was shown to have made a single sale of the subject machine to defendant GlobePharma, Inc. in India, using a purchase order that identified the machine was to be sold onto Neil Labs, plaintiff's New Jersey employer. The purchase order specified Neil Labs retained the right to inspect and test the machine prior to Globe's acceptance, and modifications suggested by Neil Labs were "of essence" for its acceptance. No evidence of any inspection or modification was produced.

Finding these facts distinguishable, we concluded the holding in J. McIntyre Machinery, Limited v. Nicastro, __ U.S. __, 131 S. Ct. 2780, 180 L. Ed. 2d 765 (2011), addressing specific jurisdiction based upon the "stream of commerce" theory, was inapposite. We also did not find the repeated contacts found essential to the exercise of specific jurisdiction in Cruz v. Robinson Engineering Corporation, 253 N.J. Super. 66 (App. Div.), certif. denied, 130 N.J. 9 (1992). Other than pointing to the general language in the purchase order, Globe and plaintiff failed to identify specific actions by Karnavati which demonstrate its desire to conduct business in New Jersey.

Applying traditional jurisdictional jurisprudence, we conclude the facts do not support Karnavati purposefully availed itself of "'the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws.'" Nicastro, supra, __ U.S. at __, 131 S. Ct. at 2787, 180 L. Ed. 2d at 774 (plurality op.) (quoting Hanson v. Denckla, 357 U.S. 235, 253, 78 S. Ct. 1228, 1240, 2 L. Ed. 2d 1283, 1298 (1958)). The totality of the contacts did not satisfy due process such that New Jersey's exercise of jurisdiction over the nonresident manufacturer would "not offend 'traditional notions of fair play and substantial justice.'" Ibid. (quoting Int'l Shoe Co. v. Washington, 326 U.S. 310, 316, 66 S. Ct. 154, 158, 90 L. Ed. 95, 102 (1945)).

10/03/14 IN THE MATTER OF THE APPLICATION OF Y.L. TO PRACTICE MASSAGE AND BODYWORK THERAPY IN THE STATE OF NEW JERSEY
A-1226-13T1

The court affirms the Board of Massage and Bodywork Therapy's (Board) denial of Y.L.'s license application because she misinformed the Board in her sworn application that she had never been arrested, although in fact she had been arrested for prostitution in a massage establishment. The court rejects Y.L.'s argument that the Board must find that she had an intent to deceive.

10/03/14 IN RE PETITION OF BOFI FEDERAL BANK TO ASSIGN LOTTERY PRIZE PAYMENT RIGHTS OF MICHELLE A. GLOVER PURSUANT TO N.J.S.A. 5:9-13
A-1694-12T3/A-1695-12T3/A-2494-12T3/A-2689-12T3 (CONSOLIDATED)

The court affirms the Law Division's determination that N.J.A.C. 17:20-7.9(j), which states "no one shall have the right to assign prize payments due during the last two years of the annuity term," is in accord with N.J.S.A. 5:9-13 prohibiting assignment of a lottery winner's last two annual prize payments.

09/30/14 IMO INDUSTRIES, INC. V. TRANSAMERICA CORPORATION ET AL.
A-6240-10T1

This lengthy opinion addresses many issues about liability insurance coverage for asbestos-related personal injury claims and the "continuous trigger" allocation methodology established by the Supreme Court in Owens-Illinois, Inc. v. United Insurance

Co., 138 N.J. 437 (1994), and Carter-Wallace, Inc. v. Admiral Insurance Co., 154 N.J. 312 (1998). With respect to the lead "exhaustion issue" in these appeals, we hold that insurance policies providing coverage of the insured's defense costs "outside the limits" of the indemnification coverage of the policies are exhausted by allocation of responsibility under the Owens-Illinois and Carter-Wallace methodology, and that defense costs are not payable for an indefinite time until the insurer actually makes indemnification payments reaching the limits of those policies.

09/26/14 VALLEY NATIONAL BANK VS. J. RONALD MEIER, ET AL.
A-0305-13T1

The court held that defendant's pay off of a first mortgage – assigned to him rather than discharged – merged into defendant's ownership of the burdened property and, if anything, preserved only defendant's right to reimbursement from his wife, the cotenant. Accordingly, the trial judge correctly determined that the plaintiff-bank, which foreclosed on the second mortgage, was entitled to a post-judgment order barring defendant's demand for relief from the bank on the assigned first mortgage.

09/23/14 R. NEUMANN & CO. VS. CITY OF HOBOKEN, ET AL.
A-2775-12T1

This appeal concerns a resolution delineating an area in need of rehabilitation pursuant to N.J.S.A. 40A:12A-14, a provision of the Local Redevelopment and Housing Law (LRHL), N.J.S.A. 40A:12A-1 to -49. Because the resolution, on its face, raises a significant question as to whether the resolution is arbitrary, capricious or unreasonable due to the governing body's disregard or misunderstanding of the statutory standard upon which it relied, we vacate the resolution without prejudice to reconsideration in conformity with the law.

09/16/14 BRIAN DUNKLEY VS. S. CORALUZZO PETROLEUM TRANSPORTERS
A-3252-12T1

We affirm the summary judgment dismissal of plaintiff's LAD complaint, alleging claims of hostile work environment and constructive discharge. Plaintiff experienced racial discrimination by a fellow employee assigned to train him. When the incidents were disclosed to defendant, its mechanisms, including a formal anti-harassment and anti-discrimination policy, a developed complaint procedure and an investigation process,

effectively resolved the discriminatory treatment identified by plaintiff and he precluded any further racial harassment. However, plaintiff maintains as a result of his disclosures, co-workers avoided him, which he insisted caused his constructive discharge.

We held plaintiff's complaints of perceived ostracism by fellow employees after he reported a co-worker's acts of racial discrimination are insufficient to support LAD claims of hostile work environment, retaliation or impose vicarious liability on the employer.

09/09/14 STATE OF NEW JERSEY VS. JUNE GORTHY
A-2678-09T2

We affirm a trial judge's refusal to allow a defendant who was otherwise competent to stand trial to waive the insanity defense. As called for in State v. Handy, 215 N.J. 334 (2013), the judge engaged in a thorough and searching inquiry of the defendant, her psychiatric history, and the circumstances of the offense. His conclusion was amply supported by the record. Despite defendant's competence to stand trial and to raise substantive defenses to other crimes simultaneously tried, she was unable to make a knowing, voluntary, and intelligent waiver of the insanity defense on the charge of stalking.

09/08/14 IN THE MATTER OF AN INITIATIVE PETITION FOR THE ADOPTION OF AN ORDINANCE TO AMEND THE JACKSON TOWNSHIP ADMINISTRATIVE CODE
A-0517-13T1

This appeal involves a governing body's pre-election challenge to an ordinance proposed in an initiative petition. The trial court declared a section of the ordinance unlawful but, notwithstanding a severance clause in the ordinance, declined to sever the unlawful section and order that the excised ordinance be placed on the ballot. We affirm. We conclude that the trial court had the authority to hear the pre-election challenge to the proposed ordinance. We further conclude that the court did not have the authority to revise the ordinance and order that the altered ordinance be placed on the ballot.

09/08/14 ERIC G. HANISKO VS. BILLY CASPER GOLF MANAGEMENT, INC., ET AL.
A-5053-12T4

In this appeal, we revisit the application of the special employer-special employee relationship addressed in Blessing v. T. Shriver & Co., 94 N.J. Super. 426 (App. Div. 1967), and, in doing so, affirm the grant of summary judgment to defendants. Plaintiff, the superintendent of a golf club, sustained injuries in his employer-provided residence. Applying the Blessing factors, we found plaintiff was employed by both the management company that managed the golf club, and the golf club. We rejected plaintiff's contention that judicial estoppel precluded the golf club from asserting the exclusivity provisions of the Workers' Compensation Act, N.J.S.A. 34:15-1 to -128, as a bar to plaintiff's action in Superior Court against the golf club. In addition, we found no error in the trial court's consideration, for summary judgment purposes, the fully executed employment agreement, which was not turned over to plaintiff during the course of discovery. We agreed, as the motion judge found, the parties did not dispute the authenticity of the document.

09/08/14 PRINCETON SOUTH INVESTORS, LLC VS. FIRST AMERICAN TITLE INSURANCE INSURANCE COMPANY
A-0850-12T3

In a dispute over title insurance coverage, we held that a municipality's pending tax appeal, concerning the alleged under-assessment of plaintiff's property, did not render plaintiff's title unmarketable or constitute a defect in or an encumbrance on the title. In addition, based on the language of the title insurance policy, we held that the claim was not covered.

09/05/14 ALLIED BUILDING PRODUCTS CORP. VS. J. STROBER & SONS,LLC, ET AL.
A-1113-12T4

This is a suit on a surety bond. Dobco, Inc. (Dobco) appeals from a final judgment denying its motion for partial summary judgment against Colonial Surety Company (Colonial), surety for J. Strober & Sons, LLC (Strober), Dobco's subcontractor, and granting Colonial's motion for summary judgment dismissing Dobco's claims against Colonial. The Law Division dismissed Dobco's claims against Colonial under the bond on the ground that the bond did not name Dobco as the obligee and because Dobco had rejected the bond as not in the form required by its subcontract with Strober. We deem neither of those facts material because we conclude that in entering into its surety contract with Strober, Colonial obligated itself to issue a performance bond to Dobco in the form annexed to the Dobco/Strober subcontract. Accordingly, we reverse.

09/05/14 <u>STATE OF NEW JERSEY VS. SALADIN THOMPSON</u>
A-1375-11T4/A-2154-11T4 (CONSOLIDATED)

In this appeal, we set aside defendant's convictions for murder and weapons offenses, after our earlier remand to the trial court to conduct a hearing pursuant to State v. Gilmore, 103 N.J. 508 (1986). Based upon our review of the remand record, we determined that we were unable to determine whether the State's exercise of seven of its nine peremptory challenges to excuse African-Americans was the product of impermissible discrimination as opposed to situation-specific bias, because the court failed to engage in the requisite "third-step" analysis established in Gilmore.