

DATE NAME OF CASE (DOCKET NUMBER)

8-11-08 Simmermon v. Dryvit Systems, Inc. (A-55-07)

A Tennessee court is the proper forum to address whether James Simmermon received sufficient notice of the nationwide class action against Dryvit Systems, Inc., and whether prosecuting an individual suit against Dryvit in New Jersey constituted an effective opt-out of the class action. Only if a Tennessee court decides that Simmermon is not bound by the class action settlement may he proceed with his New Jersey action. However, because it violated Rule 4:5-1(b)(2), Dryvit will be responsible for Simmermon's litigation expenses, including attorneys' fees.

8-7-08 Pizzullo v. New Jersey Manufacturers Insurance Company
(A-21-07)

Under the unique factual record of this case, which demonstrates that the Pizzulos requested certain coverage and New Jersey Manufacturers promised to provide that coverage but then failed to do so, New Jersey Manufacturers is not entitled to immunity from suit under N.J.S.A. 17:28-1.9(a).

8-6-08 Ronald Jamgochian v. New Jersey State Parole Board
(A-63-07)

A community-supervised-for-life offender, who, for some time, has been released into the community, must be afforded due process of law before the Parole Board can impose a curfew confining the offender to his home. The level of process will depend on a number of variables and the unique circumstances of each case. At a minimum, a supervised offender must be provided reasonable notice and a meaningful opportunity to be heard.

8-5-08 State v. Nazario Ventura (A-45-07)
State v. Leidy Granados (A-74-07)

A motion for remission of forfeited bail is assessed in a fact-sensitive manner, weighing a multitude of factors outlined in State v. Hyers and its progeny. A crucial factor in every bail remission case is whether the defendant remains a fugitive. In each of these cases, there was no abuse of discretion in the denial of the separate motions to remit the forfeited bail.

8-4-08 Blase Toto, et al. v. Sheriff's Officer Rolando Ensuar, et al. (A-53-07)

When a public employee's actions constitute willful misconduct, the plaintiff need not satisfy the verbal threshold of the New Jersey Tort Claims Act and may instead recover the full measure of damages applicable to a person in the private sector. The trial court's failure to give that instruction to the jury was error. The failure to instruct the jury that the good faith defense incorporated into the Act does not apply to claims for false arrest or false imprisonment also was error and the error was clearly capable of producing an unjust result.

8-4-08 Beth Godfrey, et al. v. Princeton Theological Seminary (A-64-07)

Plaintiffs' case fell short of the proofs necessary to state a hostile work environment claim based on sexual harassment because they failed to satisfy the severe-or-pervasive prong of the test set forth in Lehmann v. Toys 'R' Us, Inc., 132 N.J. 587 (1993). The Appellate Division majority correctly affirmed the trial court's involuntary dismissal of the claims.

7-31-08 Jason Cutler v. Theodore Dorn (A-51-07)

The threshold for demonstrating a religion-based, discriminatory hostile work environment is no more stringent than the threshold that applies to sexually or racially hostile workplace environment claims. Here, plaintiff's case satisfied the standards for a hostile work environment claim to warrant, and subsequently uphold, a jury determination.

7-30-08 New Jersey Society for the Prevention of Cruelty to Animals, et.al. v. New Jersey Department of Agriculture, et. al. (A-27-07)

The facial challenge to the regulations in their entirety is rejected. The Department of Agriculture, however, failed, in part, to carry out its mandate. The specific challenges to the reliance on "routine husbandry practices" as defined in the regulations, and to the reliance on "knowledgeable individual and in such a way as to minimize pain" are sustained. The specific challenges to the practices, with the exception of the practice of tail docking, are otherwise rejected.

7-29-08 State v. Scott E. Schnabel (A-13-07)

The Child Sexual Abuse Accommodation Syndrome (CSAAS) evidence was properly admitted and, in light of that evidence, evidence of third-party sexual abuse should have been admitted.

7-28-08 In the Matter of the Application of Robert L. Taylor, etc. (A-30-07)

N.J.S.A. 2A:158-7 authorizes the Assignment Judge to approve expenses of the prosecutor that exceed the funds appropriated by the county only when the expenses are "reasonably necessary."

7-22-08 Elizabeth Mason v. City of Hoboken (A-22-07)

The Open Public Records Act and common law right of access actions filed in Superior Court have a 45-day statute of limitations. Requestors qualify for attorney's fees under OPRA and the common law if they can show that the lawsuit was causally related to the relief obtained and the relief had a basis in law. The burden of proof shifts to the agency if it failed to respond at all to a request within seven business days. Applying those standards here, plaintiff is not entitled to attorney's fees.

7-22-08 In the Matter of the Estate of Madeleine Stockdale, Deceased (A-121-06)

Actions arising from disputed wills and related documents designed to dispose of estate assets and which rest on allegations of undue influence are most often resolved through the equitable remedies available in the Probate Part. Although a finding that a party in an estate has engaged in undue influence may also, consistent with common-law notions of making an injured party whole and deterring particularly egregious behavior, support an award of punitive damages, the circumstances in which a punitive damage award is permitted is limited. Because the Appellate Division based its analysis on the assumption that punitive damage remedy is broadly available, its judgment is affirmed with modifications.

7-21-08 Board of Education of the City of Sea Isle City, Cape May County v. William J. Kennedy (A-37-07)

Not all controversies and disputes that may erupt between a local school district and a parent who is also a sitting board

of education member concerning the special education program for the member's own child should require the member's removal from office. In this matter, however, removal was necessary and appropriate because of the concrete pecuniary aspects to the dispute between the parties.

7-21-08 State v. Shariff Ingram (A-58/59-07)

When a defendant is charged as an accomplice and lesser-included offenses already are charged in an indictment, the trial court comprehensively must charge the jury on the elements both of the lesser-included crimes and of accomplice liability.

Nevertheless, the failure to so separately charge the jury here did not constitute reversible error. The prosecutor did not misstate the applicability of the statutory affirmative defense to felony murder. In these circumstances, it was error for the trial court to instruct the jury that the defendant's voluntary absence from the trial could be construed by the jury as evidence of consciousness of guilt, and that error mandates a new trial.

7-17-08 Edward R. McMahon v. City of Newark (A-39-07)

When a taxpayer and a municipality have agreed in a detailed, arm's length writing that their disputes are to be resolved in a forum other than the Tax Court, the forum selection agreement will take precedence and its terms must be honored. Because plaintiff was entitled to have his case heard in the Superior Court in the first instance, the Tax Court lacked jurisdiction to determine the controversy.

7-16-08 Amerada Hess Corporation v. Burlington County Planning Board (A-41-07)

If a county planning board fails to render a timely decision on a completed land use application within the timetable set forth in the County Planning Act (CPA), N.J.S.A. 40:27-6.7, the application is subject to automatic approval unless the board can establish that the delay was inadvertent or unintentional.

7-15-08 Carole Brundage v. Estate of Carl V. Carambio
(A-56-07)

The behavior of plaintiff's attorney, although certainly calculated to work an advantage for his client based on information that was uniquely his, approached but did not exceed the bounds of acceptable behavior identified by our ethical

rules. It was a course of conduct the Court neither applauds nor encourages, but one that our rules do not prohibit. Thus, the imposition of a litigation sanction on the attorney's client cannot be condoned.

7-14-08 New Jersey Division of Youth and Family Services v. E.P. (A-112/113-06)

The Division of Youth and Family Services did not prove by clear and convincing evidence that termination of the mother's parental rights would not do more harm than good. In the unique circumstances of this case, a parent-child relationship that continued to provide emotional sustenance to the child should not have been severed based on the unlikely promise of a permanent adoptive home.

7-14-08 Hunterdon Medical Center v. Township of Readington (A-17-07)

Any medical or diagnostic service that a hospital patient may require, whether pre-admission, during a hospital stay, or post-admission, presumptively constitutes a core "hospital purpose" under the tax exemption statute (N.J.S.A. 54:4-3.6). When an off-site facility provides such services, the test for tax exemption also requires consideration of the degree to which the off-site facility's activities operationally are integrated and supervised by hospital personnel.

7-10-08 State v. Darren L. Bradshaw (A-46-07)

The judgment of the Appellate Division is affirmed, but for different reasons. The trial court abused its discretion when it denied defendant from fully presenting his alibi testimony and the preclusion of that testimony constituted harmful error, requiring a new trial; consequently, the Court need not reach the constitutional issue. At any retrial, the prosecutor should neither argue facts that are not in the record, nor expressly or implicitly vouch for the credibility of the victim.

7-8-08 State v. Janet Gelman, n/k/a Caitlin Ryerson (A-42-07)

The current N.J.S.A. 2C:34-1 is insolubly ambiguous concerning whether a defendant can be charged with the fourth-degree crime of prostitution based on a prior petty disorderly persons conviction under the predecessor statute. The Court is thus compelled to apply the doctrine of lenity and dismiss the

indictment.

7-1-08 State v. Michael Taffaro (A-8-07)

The trial judge's questioning of defendant suggested disbelief of his testimony and could have had a critical impact on the verdict, warranting reversal of his conviction. Also, although the prosecutor's questions about defendant's pre-arrest silence were permissible, on retrial the State may not use defendant's post-arrest silence against him.

7-1-08 Richard A. Pulaski Construction Co., Inc. v. Air Frame Hangars, Inc. (A-40-07)

Assuming, without deciding, that New Jersey common law may admit of a cause of action for prima facie tort, its availability is limited exclusively to those instances that do not fall within a traditional tort cause of action. Because Pulaski had available another cause of action, the separate claim for a prima facie tort must fail.

6-30-08 State v. Kenneth Nero (A-32-07)

To convict a defendant of first-degree robbery involving the threat of the immediate use of a deadly weapon by simulation, the jury must find that the simulation was undertaken with a purposeful state of mind. The trial court's jury instructions sufficiently imparted the requisite mental state.

6-26-08 Chubb Custom Insurance Company, et al. v The Prudential Insurance Company of America, et al.
(A-47-07)

Although a service of suit clause in an insurance policy is an agreement by the insurer to submit to personal jurisdiction in the court in which the insured has filed a coverage dispute, the clause does not preclude the insurer from instituting its own suit in the first instance, nor does it allow the insured to trump the insurer's first filing with a later filing of its own. Both parties remain free to seek relief from inappropriate filings under doctrines of judicial economy, including the doctrine of forum non conveniens.

6-26-08 State v. Charles S. Thomas (A-62-07)

The extended-term-sentencing statute provides that a judge must place on the record his or her reasoning for applying an extended term to a different charge than that sought by the prosecutor. Therefore, this matter must be remanded to the trial court for an explanation of why it declined to accept the prosecutor's application to apply an extended term sentence to the eluding count and instead applied the extended term to the robbery count.

6-25-08 Melvin Rosen, et al. v. Smith Barney, Inc. (A-49-07)

The judgment of the Appellate Division is affirmed substantially for the reasons expressed in Judge Lihotz's majority opinion.

6-24-08 State v. Diara Barden (A-23-07)

The evidence that defendant sold drugs to the co-defendant over a six-month period prior to the robbery was evidence of other crimes that was unduly prejudicial and should have been excluded.

6-23-08 State v. Ryan Buda (A-4/5-07)

The trial court did not abuse its discretion in determining that the child's statements to his mother and the DYFS worker were properly admitted into evidence as "excited utterances" under N.J.R.E. 803(c)(2). The Child's statements were not testimonial and, hence, their admission at trial did not run afoul of the Confrontation Clause.

6-23-08 State in the Interest of J.A. (A-2-07)

The hearsay statements were a narrative of past events and made while neither the declarant nor victim was in imminent danger. The statements were testimonial and, because the declarant was not produced as a witness or subject to cross-examination, the admission of the statements violated J.A.'s Sixth Amendment right to confront the witnesses against him.

6-23-08 State v. William Sweet (A-1-07)

State v. James Dorman (A-38-07)

The ampoule testing certificates and the breath testing instrument inspection certificates are hearsay statements admissible under the business records exception to the hearsay rule. Those records also are nontestimonial and thus are admissible under the Confrontation Clause.

6-19-08 Raymond Van Duren v. Leigh Rzasa-Ormes (A-52-07)

The judgment of the Appellate Division is affirmed substantially for the reasons expressed in Judge Parrillo's opinion below.

6-18-08 State v. Luis Garcia (A-120-06)

The trial court abused its discretion in not granting an adjournment to enforce the order to produce the defense witness from a prison. The Court remands the matter to the trial court for a hearing at which defendant will be given the opportunity to call the witness. At that hearing, if the witness gives testimony that would have been favorable to defendant at his trial, then defendant will have shown that his constitutional right to compulsory process was violated. In that case, the trial court must vacate defendant's convictions and order a new trial.

6-18-08 Carol Bedford v. Anthony L. Riello, D.C.

N.J.A.C. 13:44E-1.1(a) permits manipulation of articulations beyond those of the spine when there is a causal nexus between a condition of the manipulated structure and a condition of the spine. Whether adjustment of a particular portion of the body is permissible as a "related structure" under the rule must be determined and demonstrated by the practitioner on a case-by-case basis, focusing on whether a condition to the adjusted structure bears a causal relationship to a condition of the spine.

6-17-08 Helen M. Devaney v. Francis A. L'Esperance

Cohabitation is one of the many factors a trial judge should consider in determining whether a plaintiff has proven a marital-type relationship to support a cause of action for palimony. In these highly personalized cases, it is conceivable

that a plaintiff, even in the absence of cohabitation, may establish a marital-type relationship and prove a cause of action for palimony. In the present, however, there was sufficient credible evidence for the trial judge to reject plaintiff's palimony claim.

6-16-07 State v. Tykim Kemp (A-124-06)

The details of Kemp's confession to having engaged in a two-day robbery spree were admissible, but the admission of evidence of a prior uncharged robbery involving Kemp was error requiring a retrial.

6-11-07 State v. Franklin Jack Burr, II (A-36-07)

The proffered expert testimony on defendant's diagnosis with Asperger's Disorder was relevant and material to his explanation of himself and his conduct. Preclusion of that evidence constituted reversible error necessitating a new trial. Also, if on remand the trial court is faced with a request by the jury for a replay of the videotaped pretrial interview of A.A., the court first should inquire whether the jury would be satisfied with a readback of the testimony. If the jury persists in its request for a video playback, then the court must determine whether the jury must also hear a readback of any testimony that the court concludes is necessary to provide the proper context for the video playback.

6-10-07 Halina Jablonowska v. David P. Suther (A-9-07)

Jablonowska's negligent-infliction-of-emotional-distress claim, fashioned on the liability theory set out in Portee v. Jaffee, is independent of the requirements imposed by the Automobile Insurance Cost Recovery Act's verbal threshold and, therefore, Jablonowska's claim was improperly dismissed.

6-9-07 State v. Wilberto Rodriguez (A-25/26-07)

Based on the New Jersey Code of Criminal Justice, a person who kills in the honest and reasonable belief that the protection of his own life requires the use of deadly force does not kill recklessly. The State's failure to prove beyond a reasonable doubt that defendant did not act in self-defense in repelling

his attacker entitles defendant to an exoneration of criminal liability on the murder, aggravated manslaughter, and manslaughter charges.

6-9-07 Luz M. Cruz v. Central Jersey Landscaping, Inc.
A-34-07)

The 2004 amendment to the schedule of workers' compensation benefits is to be applied prospectively. The higher benefits established by the amendment are to be awarded to claimants whose decedents died on or after the effective date of the amendment.

6-5-07 Henry J. Shotmeyer, et al. v. New Jersey Realty Title Insurance Company (A-125-06)

The title insurance policy obtained by the general partnership when it purchased the property lapsed when the property was voluntarily conveyed to the separate and distinct limited partnership formed by the same individuals, and the limited partnership did not have standing to sue under the policy.

6-5-07 Danielle M. Villa v. John F. Short (A-7-07)

The homeowner's policy language that excludes coverage for the "intentional or criminal acts of an insured person" operates to exclude coverage for all insureds under the policy, and not merely for the insured who committed the intentional or criminal act.

6-4-07 Phyllis Sinclair v. Merck & Co., Inc. (A-117-06)

The Products Liability Act, which is the sole source of remedy for plaintiffs' defective product claim, does not include the remedy of medical monitoring when no manifest injury is alleged.

6-3-08 Brian Scott Owens, Sr., et al. v. Gerald Feigin, M.D., et al. (A-43-07)

Nothing in the language or legislative history of New Jersey's Civil Rights Act (CRA), N.J.S.A. 10:6-1 to -2, convincingly evidences that the Legislature meant to import the requirements

for suit contained in the New Jersey Tort Claims Act (TCA), N.J.S.A. 59:1-1 to 12-3, as necessary predicates for bringing a CRA claim. Therefore, the notice of claim requirement in the TCA does not apply to causes of action under the CRA.

6-2-08 Richard Romagnola v. Gillespie, Inc. (A-57-07)

The Court applies Rule 1:1-2 to relax Rule 4:58-2, as amended effective September 1, 2004, in this rare instance where plaintiff fully complied with the letter and spirit of a Rule, but that Rule changed after plaintiff could no longer alter or modify his position to comply with the amended Rule. Application of the amended Rule would violate fundamental principles of fairness. Plaintiff's entitlement to an award of remedies under the offer of judgment rule is to be gauged by the provisions of Rule 4:58-2 as it existed on the last day plaintiff could make a timely offer of judgment.

5-28-08 John Cicchetti v. Morris County Sheriff's Office
(A-102-06)

A law enforcement employee's failure to disclose an expunged conviction does not prohibit the employee from pursuing a workplace discrimination complaint, but evidence of the conviction can be used to limit or potentially eliminate economic damages. The individual supervisory defendants do not bear any personal liability because the statutory basis for personal liability by an individual is limited to acts that constitute aiding or abetting, and this record reveals no act by either of the individual supervisory defendants sufficient to meet that statutory test.

5-15-08 John M. Utley v. Board of Review, Department of Labor
(A-126-06)

The undisputed facts support the conclusion that John Utley resigned from Myron Manufacturing Corporation for work-related rather than personal reasons, entitling him to his statutory unemployment benefits.

5-14-08 Glen Reilly v. AAA Mid-Atlantic Insurance Company
(A-122-06)

The Department of Banking and Insurance's application of its regulations to assign insurance eligibility points to an insured for an accident in which the insured was not negligent or culpable exceeded the scope of its statutory authority.

5-14-08 Rutgers Casualty Insurance Company v. Robert LaCroix, et al. (A-128-06)

The Appellate Division correctly found error in the trial court's determination that it lacked discretion to fashion a rescission remedy to provide minimal PIP benefits to an injured young driver, who was unaware that the automobile her father was allowing her to drive was insured as to every resident family member except her.

5-6-08 State v. Mylee Cottle (A-111-06)

An attorney has a per se conflict of interest when both the attorney and the client are simultaneously under indictment in the same county and are being prosecuted by the same prosecutor's office. Without an informed waiver made in court and on the record, prejudice will be presumed, rendering the representation ineffective. The undisclosed conflict in this case denied the juvenile the effective representation of counsel guaranteed to him under Article I, Paragraph 10 of the New Jersey Constitution and he is entitled to a new trial.

4-23-08 In re Application of Virtua-West Jersey Hospital Voorhees for a Certificate of Need (A-127-06)

N.J.A.C. 8:33-4.1, with its regularized schedule allowing providers to submit certificates of need applications for maternal and child health needs, provided ample basis for the Commissioner's determination to accept and process Virtua's application, including its request for a designation change. The Court remands the matter to the Commissioner, however, for a full analysis and complete explanation of the effects of a decision to grant this CN, specifically in respect of assessing the impact on competing urban hospitals and their ability to provide free or low-cost care to indigent patients.

4-22-08 State v. Michael Lisa (A-12-07)

The grand jury instructions incorporating duty principles from the Restatement of Torts suffered from a fatal flaw that could have been the substantial motivation for the return of the reckless manslaughter charge, and dismissal was the only correct course of action under the circumstances.

4-21-08 State v. Shirley Reid (A-105-06)

Pursuant to Article I, Paragraph 7, of the New Jersey Constitution, the Court holds that citizens have a reasonable expectation of privacy in the subscriber information they provide to Internet service providers. Accordingly, the motion to suppress by defendant Reid was properly granted because the police used a deficient municipal subpoena. Law enforcement officials can obtain subscriber information by serving a grand jury subpoena on an Internet service provider without notice to the subscriber. The State may seek to reacquire the information with a proper grand jury subpoena because records of the information existed independently of the faulty process used by the police, and the conduct of the police did not affect the information.

4-14-08 Howard Wein, et al. v. Jack Morris, et al. (A-104-06)

The trial court erred in ordering the parties to arbitrate; the order compelling arbitration was a final order appealable as of right, and even if the order were not final, under the circumstances presented defendants waived their right to contest the arbitrator's jurisdiction; and, the arbitrator lacked the authority to modify the arbitration award to include future damages.

4-10-08 Denise Sciarrotta, et al. v. Global Spectrum, et al. (A-28-07)

The limited duty rule, which concerns the provision of screened seating in certain areas of sports venues, applies to all activities on the field of play, including pre-game warm-ups. If a sports venue owner or operator complies with the limited duty rule, it has satisfied its duty of care to patrons in the stands and no action in negligence will lie for the peril of objects leaving the field of play. Furthermore, the limited duty rule does not impose a separate duty to warn of the risk of objects leaving the field of play.

4-9-08 Port Authority of New York and New Jersey v. Port Authority Employment Relations Panel (A-6-07)

The Port Authority's plan to lease the international terminal, which resulted in the redeployment of Port Authority police officers, directly implicated the Port Authority's management and operating policies. It thus was excluded, pursuant to the Labor Relations Instruction, from any mandatory collective bargaining requirement. Even if the Panel had authority to resolve the dispute and even if the Port Authority transferred unit work, application of the Panel's "fireboard plus substantial impact" test leads to the conclusion that there was no obligation to collectively bargain that transfer.

4-8-08 State v. Carlos Feal (A-16-07)

The holding of Daniels should be given pipeline retroactivity but, in this case, the Daniels violation does not warrant reversal of Feal's convictions.

4-3-08 In the Matter of the Trust Created by Agreement Dated December 20, 1961, by and between John Seward Johnson, Grantor, et al. (A-70/71/72-06)

Notwithstanding the trial judge's reliance on some testimony that should not have been admitted, there was substantial credible evidence in the record as a whole to support the trial judge's conclusion that J. Seward Johnson wanted a broad class of possible beneficiaries, including surviving spouses. The trial court's finding that the word "spouses" was intended to include widows and widowers is affirmed substantially for the reasons expressed by the Appellate Division majority.

3-31-07 Toll Bros., Inc. and Laurel Creek, L.P. v. Board of Chosen Freeholders of the County of Burlington and the Planning Board of the County of Burlington (A-123-06)

Under the Municipal Land Use Law, a developer cannot be compelled to shoulder more than its pro-rata share of the cost of off-tract improvements. Imposing a condition of approval that is unrelated to the needs generated by a development violates the law even if the developer agrees to the condition in a separate developer's agreement. Moreover, when a significant reduction in the scope of a proposed development affects the need for off-tract improvement, the developer is entitled to an opportunity to demonstrate that a recalculation of its contribution is warranted, and the existence of a

developer's agreement is of no consequence to that entitlement.

3-27-08 Carol Tarr v. Bob Ciasulli's Mack Auto Mall, Inc.
(A-19-07)

The Court agrees with the Appellate Division's analysis of the application of the Punitive Damages Act, N.J.S.A. 2A:15-5.9 to - 5.17, to the facts of this matter. It affirms substantially on the basis of the thorough and thoughtful majority opinion crafted by Judge Lefelt.

3-26-08 State v. Adams (A-103-06)
State v. Comer (A-116-06)

On this record, the Court declines to reevaluate the standards for the admissibility of out-of-court identifications. Under current standards, there was sufficient credible evidence to affirm the trial court's decision to admit the identification testimony. It was not plain error for the trial court to fail to give a cautionary charge on the use of Harrison's testimony and guilty plea. Finally, defendants' presumptive sentences, imposed prior to State v. Natale, do not require remands.

3-19-08 Julie Greely v. Sean Greely (A-54-07)

Voluntary dismissals in the Family Part of the Chancery Division are governed by Rule 4:37-1 and plaintiff's stipulation of dismissal failed to follow the dictates of that Rule. In addition, under the Uniform Child Custody Jurisdiction and Enforcement Act, a motion to dismiss a child custody matter on inconvenient forum grounds may be made by any party, by the court on its own motion, or by another state's court.

3-17-08 State v. Jane H. Chun, et al. (A-96-06)

The Court adopts, as modified, the Special Master's reports and recommendations. Subject to certain conditions, the Court holds that the Alcotest is scientifically reliable and that its results are admissible in drunk driving prosecutions. The Court contemporaneously issues an Order vacating its January 10, 2006, stay of drunk driving prosecutions, appeals, and sentencing, which shall proceed in accordance with the directives set forth therein.

3-11-08 Patterson v. Board of Trustees, State Police
Retirement System (A-99-05)
Moore v. Board of Trustees, State Police Retirement
System (A-101-05)
Guadagno v. Board of Trustees, Police and Firemen's
Retirement System (A-123-05)

A member of the State Police Retirement System or the Police and Firemen's Retirement System who suffers from a permanent and total mental disability as a result of a mental stressor, without any physical impact, is entitled to accidental disability retirement if the disability was the direct result of a mental stressor that was identifiable as to time and place, that was undesigned and unexpected, that was external to the member (not the result of a pre-existing disease aggravated or accelerated by the work), that occurred during and as a result of the member's duties, and that was not the result of the member's willful negligence. Additionally, the disability must result from direct personal experience or a terrifying or horror-inducing event that involved actual or threatened death or serious injury, or a similarly serious threat to the physical integrity of the member or another person.

3-6-08 Hajrie Hisenaj, et al. v. Amanda L. Kuehner, et al.
(A-86-06)

Based on the record and arguments presented to the trial court, and applying the abuse-of-discretion standard, the trial court's evidential ruling on the admissibility of scientific evidence pursuant to N.J.R.E. 702 was within the range of sustainable trial determinations that the reviewing court should have affirmed.

2-27-08 Robert Oberhand v. Director, Division of Taxation
(A-106-06)

The July 2002 Amendment to N.J.S.A. 54:38-1 applies to the estates, but under the circumstances presented, the doctrine of manifest injustice bars retroactive application of the Amendment to plaintiffs.

2-26-08 State v. Andre Johnson (A-81-06)

Defendant has standing under state law to challenge the

warrantless search of the duffel bag in the home in which he was present, and the fruits of the search are suppressed for failure to comply with the warrant requirements of Article I, Paragraph 7 of the New Jersey Constitution.

2-21-08 State v. Charles A. Watkins, III (A-118-06)

Individuals acting alone in furtherance of their own criminal interests who commit a series of offenses such as thefts or forgeries are not "part of a continuing business or enterprise" because they are not part of a larger whole and are not acting in concert with others.

2-21-08 U.S. v. Barbara Scurry (A-14-07)

In the circumstances presented in this case, the doctrine of laches cannot serve to bar relief to this homeowner.

2-11-08 State v. Sulaiman A. Sloane (A-40-06)

During a motor vehicle stop, the passenger, like the driver, is seized under the federal and state constitutions. Police do not need a reasonable suspicion before they may access the NCIC database and, because accessing the NCIC database was within the scope of the traffic stop and did not unreasonably prolong the stop, there was no basis to suppress the evidence found.

2-6-08 In re Opinion 710 of the Advisory Committee on Professional Ethics (A-130-06)

Advisory Committee on Professional Ethics Opinion 710 provides that fraudulent transactions by attorneys in connection with real estate closings will violate the Rules of Professional Conduct. The opinion does not suggest that disclosed seller's concessions are, in and of themselves, fraudulent or unethical.

1-31-08 State v. David L. Wilder (A-87-06)

Based on the State's evidence and giving the State the benefit of all favorable inferences, a jury reasonably could have convicted defendant of serious-bodily-injury murder; thus, the trial court did not err by sending the murder charge to the

jury. The Court rejects continued use of the Christener rule; overcharging errors must be reviewed under the "unjust result" standard established in Rule 2:10-2.

1-30-08 Ronald W. Sahli, Esq. v. Woodbine Board of Education, et al. (A-92-06)

N.J.S.A. 18A:16-6, which provides for indemnification in defense of a civil action for "any person holding any office, position or employment" with a board of education, does not mandate that the Board of Education indemnify its attorney for actions taken in his capacity as Board solicitor but does not entitle him to indemnification for his conduct as secretary pro tem to the Board. Similarly, the insurance policy at issue in this case provides coverage to the attorney volunteering to act as secretary, but does not provide coverage for the Board solicitor.

1-30-08 Patricia Morella v. Grand Union Company (A-10-07)

The judgment of the Appellate Division is affirmed substantially for the reasons expressed in Judge Gilroy's opinion.

1-29-08 Sensient Colors, Inc. v. Allstate Insurance Company, et al. (A-99/100/101-06)

Despite New Jersey's strong adherence to principles of comity, the special equities in this case heavily favor New Jersey courts exercising jurisdiction. Because of its dominant interests, New Jersey is the natural forum for resolving insurance coverage issues concerning hazardous-waste-infested property located within its borders.

1-29-08 State v. William J. Allegro (A-119-06)

Allegro's ineffective assistance of counsel claims arising from defense counsel's failure to investigate potential witnesses and to call those witnesses do not satisfy the two-pronged Strickland/Fritz standard. His claims in respect of counsel's ineffectiveness in the plea discussions and negotiations requires a remand for development of a more comprehensive record and the PCR court's conclusions based on that record.

1-28-08 State v. George Jenewicz (A-78-06)

The cumulative impact of the trial court's preclusion of testimony from two defense witnesses and the prosecution's improper cross-examination of the defense expert and disparagement of the defense expert during summation prejudiced the fairness of defendant's trial and cast doubt on the propriety of the jury's verdict, warranting a new trial.

1-18-08 In the Matter of Russell T. Kivler, an Attorney at Law
(D-162-06)

For his unethical conduct, his history of discipline and disregard for the attorney disciplinary system, and his unexcused failure to appear on the Court's Order to Show Cause, Russell T. Kivler is suspended from the practice of law for a period of three years and until he complies with conditions imposed by the Court.

1-17-08 State v. Manuel B. Ortiz (A-109-06)

Krol periodic review hearings must be held for those defendants acquitted by reason of insanity who are committed under N.J.S.A. 2C:4-8(b)(3) as well as for those who are released subject to supervision or conditions pursuant to N.J.S.A. 2C:4-8(b)(2), but not for those who are released without supervision or conditions as provided in N.J.S.A. 2C:4-8(b)(1).

1-16-08 State v. Frederick T. Hamilton (A-57-06)

The trial court erred in concluding that it had no ability to ameliorate the undue prejudice to defendant through sanitization of his earlier conviction. This Court's prior holding that sanitization is mandatory in situations in which a prior conviction is the same or similar to the present charge did not foreclose from trial courts the discretion to consider sanitization in other circumstances that pose a risk of undue prejudice to a defendant.

1-15-08 Township of Middletown v. Richard Simon, et al.
(A-85-06)

The Park lot was dedicated land and the sale of the tax sale certificate and the subsequent foreclosure on the lot did not prohibit the Township from accepting the dedication of the land as a park

1-10-08 State v. Morgan Scott (A-115-06)

The judgment of the Appellate Division is affirmed substantially for the reasons expressed in the Appellate Division's majority opinion.

12-20-07 State v. Michael A. O'Neill (A-79-06)

As a matter of state law, when Miranda warnings are given *after* a custodial interrogation has already produced incriminating statements, the admissibility of post-warning statements will turn on whether the warnings functioned effectively in providing the defendant the ability to exercise his state law privilege against self-incrimination.

12-19-07 State v. Daniel Luna (A-68-06)

It is not possible to infer that defendant knowingly waived his right to be present at trial because the trial court did not conduct an inquiry to determine whether defendant willingly absented himself. For that reason, defendant's convictions must be reversed.

12-13-07 In the Matter of the Liquidation of Integrity Insurance Company (A-91-06/A-29-07)

Claims against the liquidated estate of an insolvent insurer that have been incurred but not reported (BNR claims) are not cognizable as "absolute" claims pursuant to N.J.S.A. 17:30C-28(a)(1) and thus cannot share in the distribution of the estate's assets.

12-12-07 Robert Maglies v. Estate of Bertha Guy, et al.
 (A-50-06)

A functional co-tenant - one who can show that she has been continuously in residence; that she has been a substantial

contributor toward satisfaction of the tenancy's financial obligations; and that her contribution has been acknowledged and acquiesced to by her landlord - is entitled to invoke the protections of the Anti-Eviction Act.

12-12-07 State v. Stacey Froland-Kindt (A-8-06)

A person who acts with the permission of a parent is not guilty of non-consent kidnapping unless the person uses force, threat or deception.

12-11-07 Barbara Basil, etc. v. Frank A. Wolf, et al.
 (A-80-05/A-110-06)

Summary judgment dismissing all claims against the workers' compensation carrier for the decedent's employer was properly granted. Under the facts of this case, there was no basis for a direct action against the insurer for deficient medical care provided to the decedent after his workplace injury.

12-4-07 State v. Ambrose Harris (A-95-06)

Defendant Ambrose Harris is not entitled to any relief under State v. DiFrisco. His petition for post-conviction relief is denied. To the extent that Harris seeks an extension of DiFrisco, the application also is denied.

12-3-07 Middletown Township PBA Local 124 v. Township of Middletown (A-98-06)

N.J.S.A. 40A:10-23 grants municipalities discretion to assume the cost of retiree's health benefits so long as the retiree has accrued twenty-five years of any combination of government service credit. Only when the municipality chooses to require a particular period of service within its borders will a resolution or ordinance be required. Accordingly, the arbitrator's award did not violate any law and was subject only to the "reasonably debatable" standard. Measured against that standard, the award was properly confirmed.

11-8-07 In Re the Contest of the November 8, 2005 General Election for the Office of Mayor of the Township of

Parsippany-Troy Hills

This election contest petition is sufficient to withstand the motion to dismiss for failure to state a claim.

11-5-07 State v. Thomas Lykes (A-80-06)

Because Lykes placed his knowledge as to the contents of the four vials directly at issue, N.J.R.E. 404(b) does not bar the limited impeachment use of Lykes' admission of having earlier held cocaine vials and the questions allowed in this area were proper. Furthermore, taken as a whole, the trial court's response to the jury's question in respect of Lykes' knowledge as to the contents of the vials fairly and adequately instructed the jury and, therefore, was improper.

10-29-07 Pascack Valley Regional High School Board of Education v. Pascack Valley Regional Support Staff Association
(A-96-05)

When the parties have agreed that nontenured school employees may be disciplined only for just cause and have defined any dismissal as a disciplinary action subject to the grievance procedures at the employees' option, a mid-term contract termination imposed as punishment for behavior that would otherwise call for imposition of discipline falls within the collective agreement's definition of dismissal subject to the grievance procedures.

10-29-07 Northvale Board of Education v. Northvale Education Association, et al. (A-97-05)

The members of the Supreme Court being equally divided, the judgment of the Appellate Division is affirmed.

10-25-07 State v. Howard Parks (A-39-06)

The amended Three Strikes Law applies to defendant's sentencing. Because defendant "committed" only one predicate offense prior to the subject offense, he did not qualify for enhanced sentencing under the Three Strikes Law.

9-26-07 In re Referendum Petition to Repeal Ordinance 04-75

(A-94-06)

Trenton Ordinance 04-75 is subject to voter approval in a referendum. The judicially-created exception for administrative ordinances is not supported by the statute, its legislative history, or its place in the overall statutory scheme.

9-19-07 State v. Jason G. Meyer (A-122-05/A-43-06)

"Special probation" under N.J.S.A. 2C:35-14 is a type of disposition for certain non-violent drug offenders, but it is not the exclusive route to admission into Drug Court. Consistent with the Drug Court Manual and the general sentencing provisions of the Code of Criminal Justice, N.J.S.A. 2C:45-1, a trial court has discretion to admit non-violent drug-dependent offenders into Drug Court.

9-12-07 Rose Acuna v. Sheldon C. Turkish, M.D., et al.
(A-15-06)

A physician has a common law duty to provide a woman with material information concerning the medical risks of terminating her pregnancy; however, there is no common law duty requiring a physician to inform a pregnant patient that an embryo is an existing, living human being and that an abortion results in the killing of a family member.

9-6-07 International Union of Operating Engineers Local No. 68 Welfare Fund v. Merck & Co., Inc. (A-22-06)

Certification of a nationwide class is not appropriate because common questions of fact or law do not predominate and a class action is not superior to other available mechanisms for redress.