DATE **NAME OF CASE (DOCKET NUMBER)**

8-25-22 Miriam Rivera v. The Valley Hospital, Inc. (A-25/26/27-21; 085992/085993/085994)

As a matter of law, the evidence presented, even affording plaintiffs all favorable inferences, does not establish that defendants' acts or omissions were motivated by actual malice or accompanied by wanton and willful disregard for Ruscitto's health and safety. A reasonable jury could not find by clear and convincing evidence that punitive damages are warranted based on the facts of this case, and partial summary judgment should have been granted.

8-24-22 State v. Steven L. Bookman (A-32-21; 085775)

Under the totality of the circumstances reviewed here, the State Police detectives who entered the neighboring residence without a warrant did not have grounds to invoke the hot pursuit doctrine. The warrantless entry violated the Fourth Amendment of the United States Constitution and Article I, Paragraph 7 of the New Jersey Constitution. Although the Court is disturbed by the manner of execution of this warrant, it declines to adopt a rigid, one-size-fits-all approach to the execution of all ATS arrest warrants.

8-18-22 State v. A.L.A. (A-3-21; 085500)

The jury could not have understood that the reasonable corporal punishment language in the child endangerment charge also applied to the simple assault charge. The trial court erred in failing to instruct the jury, in the context of the simple assault charge, that reasonable corporal punishment is not prohibited. Because that error in jury instructions could have led the jury to an unjust result, the Court vacates defendant's conviction and remands for further proceedings.

8-17-22 Larry Schwartz v. Nicholas Menas, Esq. (A-54/55-20; 085184)

The Court joins the majority of jurisdictions that reject a per se ban on claims by new businesses for lost profits damages, and it declines to follow Weiss to the extent that it bars any claim by a new business for such damages. Claims for lost profits damages are governed by the standard of reasonable certainty and require a fact-sensitive analysis. Because it is substantially more difficult for a new business to establish lost profits damages with reasonable certainty, a trial court should carefully scrutinize a new business's claim that a defendant's tortious conduct or breach of contract prevented it from profiting from an enterprise in which it has no experience and should bar that claim unless it can be proven with reasonable certainty. The Court remands these matters so that the trial court may decide defendants' motions in accordance with the proper standard.

8-10-22 Norman International, Inc. v. Admiral Insurance Company (A-24-21; 086155)

The policy's broad and unambiguous language makes clear that a causal relationship is not required in order for the exclusionary clause to apply; rather, any claim "in any way connected with" the insured's operations or activities in a county identified in the exclusionary clause is not covered under the policy. Richfield's operations in an excluded county are alleged to be connected with the injuries for which recovery is sought, so the exclusion applies. Admiral has no duty to defend a claim that it is not contractually obligated to indemnify.

8-3-22 State v. F.E.D. (A-12-21; 086187)

The Compassionate Release Statute does not require that an inmate prove that he is unable to perform any activity of basic daily living in order to establish a "permanent physical incapacity" under N.J.S.A. 30:4-123.51e(*l*). Rather, the statute requires clear and convincing evidence that the inmate's condition renders him permanently unable to perform two or more activities of basic daily living, necessitating twenty-four-hour care.

8-2-22 East Bay Drywall, LLC v. Department of Labor and Workforce Development (A-7-21; 085770)

The Commissioner's finding that East Bay did not supply sufficient information to prove the workers' independence under the ABC test's prong C was not arbitrary, capricious, or unreasonable, but rather was supported by the absence of record evidence as to that part of the test. The Court is satisfied that all sixteen workers in question are properly classified as employees, and it remands to the Department for calculation of the appropriate back-owed contributions.

7-18-22 Crystal Point Condominium Association, Inc. v. Kinsale Insurance Company (A-76-20; 085606)

Crystal Point may assert direct claims against Kinsale pursuant to the Direct Action Statute in the setting of this case. Based on the plain language of N.J.S.A. 17:28-2, however, Crystal Point's claims against Kinsale are derivative claims, and are thus subject to the terms of the insurance policies at issue, including the provision in each policy mandating binding arbitration of disputes between Kinsale and its insureds. Crystal Point's claims against Kinsale are therefore subject to arbitration.

7-6-22 Linden Democratic Committee v. City of Linden (A-30-21; 086255)

In amending in 1990 Sections 11 and 13 of the Municipal Vacancy Law, N.J.S.A. 40A:16-11 and -13, the Legislature removed the governing body's discretion to keep vacant a seat previously occupied by a nominee of a political party. Instead, the Legislature empowered the municipal committee of the political party whose nominee previously occupied the vacant seat to submit three names to the governing body. N.J.S.A. 40A:16 11. Section 11 mandates that the governing body choose one of the municipal committee's three nominees.

7-5-22 State v. Nazier D. Goldsmith (A-77-20; 085636)

The information the officers possessed at the time of the stop did not amount to specific and particularized suspicion that defendant was engaged in criminal activity. Therefore, the officers did not have reasonable and articulable suspicion to initiate an investigatory detention of defendant, and the evidence seized must be suppressed.

6-30-22 Thomasenia L. Fowler v. Akzo Nobel Chemicals, Inc. (A-5-21; 085939)

As to the duty to warn, an asbestos manufacturer or supplier that places inadequate warnings on asbestos bags used in the workplace has breached its duty to the worker, regardless of whether it provides the employer with the correct information, which is reasonably intended to reach its employees. As to medical causation, the trial court's modified Model Jury Charge on proximate cause sufficiently guided the jury.

6-29-22 State v. Quinnizel J. Clark (A-67-20/A-37-21; 085271)

Once defendant invoked his right to counsel, the interrogation should have stopped. Not only did the interrogation continue, but during the questioning, the detective strongly suggested that defendant would give them the information they sought if he were truly innocent. Allowing that entire exchange to be played for the jury was harmful error. In addition, the error was compounded when the prosecutor commented on that portion of the statement that should have never been before the jury in the first place. The Court discerns no error regarding the witness testimony or any of the prosecutor's other comments during summation.

6-28-22 State v. David L. Smith (A-4-21; 085635)

The stop was not supported by a reasonable and articulable suspicion of a motor vehicle violation. N.J.S.A. 39:3-75, which governs automotive safety glass, does not apply to window tint violations. Consistent with the plain language of N.J.S.A. 39:3-74, reasonable and articulable suspicion of a tinted windows violation arises only when a vehicle's front windshield or front side windows are so darkly tinted that police cannot clearly see people or articles within the car.

6-27-22 State v. Marcus Mackroy-Davis (A-43-21; 086626)

Defendants have the right to be released two years after a judge orders them detained, excluding delays attributable to the defendant, if the prosecutor is not ready to proceed to trial. N.J.S.A. 2A:162-22(a)(2)(a). The statute is silent about what happens if the parties are ready but there are not enough courtrooms or judges to try the case. In addressing that dilemma, the Court attempts to balance the relevant interests in a way that comports with defendants' rights under the CJRA.

6-23-22 Robert Sipko v. Koger, Inc. (A-74-20; 085022)

In light of all the defendants' conduct regarding KDS and KPS to strip Robert of his rightful interests, equity cannot abide imposing a marketability discount to the benefit of defendants. The trial court's acceptance of Robert's expert's valuation of the company fell within its broad discretion and was fully supported by the record. Defendants were given the opportunity to present an expert valuation of the companies on remand but made the strategic decision not to do so. The Court declines to provide defendants with another bite of this thoroughly chewed apple and reinstates the judgment of the trial court.

6-22-22 State v. Abayuba Rivas (A-15-21; 086051)

Once Rivas invoked his right to counsel on March 18, however ambiguously, the detectives were required to clarify the ambiguity or cease questioning. The detectives did neither. Instead, the detectives interrogated Rivas for nearly six hours, eliciting a confession. After the improper interrogation and Rivas's tainted confession -- a confession Rivas had reason to believe was lawful -- Rivas asked to see the detectives again. Those remarks cannot be fairly characterized as Rivas voluntarily initiating further communications with the detectives because the questioning never truly ceased. The interrogation and the request to speak again with the detectives were inextricably intertwined.

6-21-22 State v. Ashley D. Bailey (A-60-20; 085342)

The crime-fraud exception cannot be properly applied to marital communications that preceded the Legislature's amendment of N.J.R.E. 509. The Court finds no evidence that the Legislature intended that amendment to retroactively apply to otherwise privileged marital communications that occurred prior to that amendment. The trial court's admission of the text messages therefore constituted error. However, that error was harmless given the extensive evidence presented by the State in support of defendant's official misconduct convictions.

6-13-22 Ann Samolyk v. Dorothy Berthe, III (A-16-21; 085946)

After reviewing the noble principles that infuse the public policy underpinning this cause of action, the Court declines to consider property, in whatever form, to be equally entitled to the unique value and protection bestowed on a human life. The Court nevertheless expands the rescue doctrine to include acts that appear to be intended to protect property but are in fact reasonable measures ultimately intended to protect a human life.

6-9-22 John C. Sullivan v. Max Spann Real Estate & Auction Co. (A-57-20; 085225)

A residential real estate sale by absolute auction is distinct from a traditional real estate transaction in which a buyer and seller negotiate the contract price and other terms and memorialize their agreement in a contract. In an absolute auction or an auction without reserve, as is the issue here, the owner unconditionally offers the property for sale and the highest bid creates a final and enforceable contract at the auction's conclusion, subject to applicable contract defenses. Imposing the three-day attorney review prescribed in State Bar Ass'n on residential real estate sales conducted by absolute auction would fundamentally interfere with the method by which buyers and sellers choose to conduct such sales.

6-8-22 State v. Mykal L. Derry; State v. Malik Derry (A-13/14-21; 085795)

Based on the differences between the federal and state proceedings, the trial court did not abuse its discretion in denying defendants' motion to dismiss the indictment. Like the Appellate Division, the Court finds that Special Agent Kopp's interpretations were expert rather than lay opinions, but that the error in admitting them as lay opinion testimony was harmless. The Court bases its finding of harmless error, however, upon the overwhelming evidence of defendants' guilt presented at trial, rather than on the hypothetical qualifications of the agent.

6-7-22 IMO Dionne Larrel Wade (D-132-20; 085931)

In the four decades since Wilson, the Court has consistently disbarred attorneys who knowingly misappropriated client funds regardless of their motives or other mitigating factors. The rule has remained inviolate because of the critical aims it seeks to serve: to protect the public and maintain confidence in the legal profession and the Judiciary. 81 N.J. at 461. If a lawyer knowingly misappropriates client funds, both the attorney and the public should know that the person will be disbarred.

6-2-22 State v. Bradley C. Thompson (A-41-20; 085260)

A plain reading of N.J.S.A. 2C:1-6(c) reveals that the Legislature intended the statute of limitations to begin to run once the State was in possession of both the physical evidence from the crime and the suspect's DNA. To hold otherwise would contradict the language of the statute which directs the statute of limitations to begin when the State is in possession of both items needed to generate a match. To find that the statute of limitations begins when a match is confirmed would render the second half of the provision superfluous. Here, the statute of limitations began to run in 2010, when the FBI's updated scientific guidance rendered the Lab capable of generating a match based on the DNA samples in its possession.

5-31-22 Mack-Cali Realty Corp. v. State of New Jersey (A-8/9/10/11-21; 085465)

The Court affirms the judgment of the Appellate Division substantially for the reasons expressed in Judge Messano's published opinion.

5-16-22 State v. Rashaun Bell (A-75-20; 084657)

N.J.S.A. 2C:11-5.1 applies to the act of fleeing from the scene of an accident. The number of fatalities that may result from the accident is not an element of the offense and thus only one count of the offense may be charged per accident, regardless of the number of victims. Although the Appellate Division correctly reversed the trial court's judgment with regard to the number of counts that could be charged, the appellate court should have remanded the case to the trial court to permit the parties to negotiate a new plea agreement or go to trial rather than amend the sentence in a manner not contemplated by the plea agreement.

5-10-22 Sundiata Acoli v. New Jersey State Parole Board (A-73-20; 083980)

Under N.J.S.A. 30:4-123.53 (1979), at the time of Acoli's parole hearing, he was presumptively entitled to release; to overcome that presumption, the Parole Board had the burden of demonstrating that there was a substantial likelihood that, if released, Acoli would commit another crime. The Parole Board did not meet that burden. The record does not contain substantial credible evidence to support the Parole Board's decision to deny parole to Acoli. Accordingly, the Court is compelled to overturn the judgment of the Appellate Division and grant Acoli parole, consistent with his established release plan.

5-2-22 State v. O.D.A.-C. (A-78-20; 085608)

Because a detective here repeatedly contradicted and minimized the significance of the Miranda warnings -- starting at the outset of the interrogation and continuing throughout -- the State cannot shoulder its heavy burden of proving defendant's waiver was voluntary. The Appellate Division majority correctly concluded defendant's statement had to be suppressed.

4-28-22 Dobco, Inc v. Bergen County Improvement Authority (A-18/19-21; 086079)

The Court affirms the judgment of the Appellate Division substantially for the reasons expressed in Judge Messano's published opinion. The Court requires that, going forward, a plaintiff claiming taxpayer standing in an action challenging the process used to award a public contract for goods or services must file a certification with the complaint. As to the merits of this appeal, the Court departs from the Appellate Division's decision in only one respect: the Court does not rely on the leasing and financing arrangements contemplated by the BCIA and defendant County of Bergen.

4-12-22 Troy Haviland v. Lourdes Medical Center of Burlington County, Inc. (A-70-20; 085419)

The AOM statute does not require submission of an AOM to support a vicarious liability claim against a licensed health care facility based only on the conduct of its non-licensed employee.

4-11-22 In the Matter of Proposed Construction of Compressor Station (CS327) (A-44-21; 086428)

Appellants should have included Tennessee as an "interested party" pursuant to Rule 2:5-1(d) when they filed their initial Notice of Appeal and Case Information Statement in the Appellate Division. Accordingly, the Court declines to reach the arguments advanced under Rules 4:33-1 and -2. The matter is remanded to the Appellate Division to permit appellants to file an amended Notice of Appeal and Case Information Statement that names Tennessee as an interested party pursuant to Rule 2:5-1(d).

4-5-22 State v. Michael Konecny (A-21-20; 084880)

Laurick relief and the principles underlying the prohibition against the use of uncounseled DWI convictions extend to the enhanced sentencing scheme in Section 26(b), and prior uncounseled convictions cannot be used as predicates to increase a loss of liberty for DWS. Furthermore, if a defendant obtains traditional PCR on a prior DWI or Refusal conviction and the State does not pursue a second prosecution, that vacated conviction cannot be used as a predicate in a Section 26(b) prosecution. In the present case, however, defendant was not entitled to Laurick relief in the first instance because he had counsel during his prior proceedings. Laurick is available only to defendants who were without counsel and not advised of their right to counsel during their DWI-related prosecutions.

3-30-22 Hamid Harris v. City of Newark (A-59-20; 085028)

The trial court's order in this case was a decision premised on factual findings as well as legal conclusions, not an exclusively legal determination. A trial court's order rejecting as a matter of law a claim of qualified immunity should not be designated as a final order appealable as of right under Rule 2:2-3(a), and federal law does not require the contrary result. In an NJCRA action, a defendant seeking to challenge a trial court's order denying qualified immunity prior to final judgment must proceed by motion for leave to file an interlocutory appeal in accordance with Rules 2:2-4 and 2:5-6.

3-17-22 Aleice Jeter v. Sam's Club (A-2-21; 085880)

The mode of operation rule does not apply to the sale of grapes in closed clamshell containers. Selling grapes in this manner does not create a reasonably foreseeable risk that grapes will fall to the ground in the process of ordinary customer handling. The Court stresses that dispositive motions should not be made or decided on the eve of trial, without providing the parties with a reasonable opportunity to present their cases through testimony and argument.

3-16-22 State v. Anthony Sims, Jr. (A-53-20; 085369)

The Court declines to adopt the new rule prescribed by the Appellate Division and finds no plain error in the trial court's denial of defendant's motion to suppress his statement to police. The Court also concurs with the trial court that the victim's testimony at the pretrial hearing was admissible under N.J.R.E. 804(b)(1)(A)'s exception to the hearsay rule for the prior testimony of a witness unavailable at trial, and that the admission of that testimony did not violate defendant's confrontation rights.

3-14-22 Richard Rivera v. Union County Prosecutor's Office (A-58-20; 084867)

*OPRA does not permit access to internal affairs reports, but those records can and should be disclosed under the common law right of access -- subject to appropriate redactions -- when interests that favor disclosure outweigh concerns for confidentiality. The Court provides guidance on how to conduct that balancing test.

3-8-22 Kathleen M. Moynihan v. Edward J. Lynch (A-64-20; 085157)

The palimony agreement, as written and signed, without the attorney review requirement, is enforceable. That portion of N.J.S.A. 25:1-5(h), which imposes an attorney-review requirement to enforce a palimony agreement, contravenes Article I, Paragraph 1 of the New Jersey Constitution. The parties did not enter an oral palimony agreement.

3-7-22 Libertarians for Transparent Government v. Cumberland County (A-34-20; 084956)

Most personnel records are confidential under OPRA. But under the law's plain language, certain items qualify as a government record including a person's name, title, "date of separation and the reason therefor." N.J.S.A. 47:1A-10. To the extent that information appears in a settlement agreement, the record should be available to the public after appropriate redactions are made.

2-9-22 Thomas J. Stewart v. New Jersey Turnpike Authority/Garden State Parkway (A-61/62-20; 085416)

The Court agrees with the trial court that plaintiffs' new theory should not have been considered given its late presentation. The Court nonetheless holds, for completeness, that plaintiffs' new theory did not raise an issue of material fact. The Court reinstates summary judgment in favor of defendants and dismisses the complaint with prejudice. The Court also finds that Earle is entitled to derivative immunity.

2-8-22 State v. Laura Gonzalez (A-47-20; 085132)

Defendant's question about the attorney was an ambiguous invocation of her right to counsel. Under settled New Jersey law, see, e.g., State v. Reed, 133 N.J. 237, 253 (1993), the detective was required to cease questioning and clarify whether defendant was requesting counsel during the interview. Because the State played defendant's recorded statement at trial and read the apology note -- written at the detective's suggestion -- to the jury, the error in failing to suppress that evidence was harmful. The Court also finds plain error in the trial court's admission of certain challenged evidence, and it provides guidance for the proceedings on remand.

2-7-22 State v. Samuel Ryan (A-65-20; 085165)

The Three Strikes Law and the mandatory life-without-parole sentence imposed upon defendant under that statute do not violate the constitutional prohibition on cruel and unusual punishment. Further, Miller and Zuber have no application to adult defendants sentenced under the Three Strikes Law.

1-25-22 State v. Peter Nyema (A-39-20; 085146)

The only information the officer possessed at the time of the stop was the race and sex of the suspects, with no further descriptors. That information, which effectively placed every single Black male in the area under the veil of suspicion, was insufficient to justify the stop of the vehicle and therefore does not withstand constitutional scrutiny.

1-25-22 State v. Jamar J. Myers (A-40-20; 082858)

The only information the officer possessed at the time of the stop was the race and sex of the suspects, with no further descriptors. That information, which effectively placed every single Black male in the area under the veil of suspicion, was insufficient to justify the stop of the vehicle and therefore does not withstand constitutional scrutiny.

1-20-22 State v. Christopher Radel (A-44-20; 085129)

When an arrest occurs outside a home, the police may not enter the dwelling or conduct a protective sweep in the absence of a reasonable and articulable suspicion that a person or persons are present inside and pose an imminent threat to the officers' safety. This sensible balancing of the fundamental right to privacy in one's home and the compelling interest in officer safety will depend on an objective assessment of the particular circumstances in each case, such as the manner of the arrest, the distance of the arrest from the home, the reasonableness of the officers' suspicion that persons were in the dwelling and likely to launch an imminent attack, and any other relevant factors. A self-created exigency by the police cannot justify entry into the home or a protective sweep. Here, a protective sweep was not warranted in the Radel case but was constitutionally justified in the Terres case.

1-20-22 State v. Keith Terres (A-45-20; 084778)

When an arrest occurs outside a home, the police may not enter the dwelling or conduct a protective sweep in the absence of a reasonable and articulable suspicion that a person or persons are present inside and pose an imminent threat to the officers' safety. This sensible balancing of the fundamental right to privacy in one's home and the compelling interest in officer safety will depend on an objective assessment of the particular circumstances in each case, such as the manner of the arrest, the distance of the arrest from the home, the reasonableness of the officers' suspicion that persons were in the dwelling and likely to launch an imminent attack, and any other relevant factors. A self-created exigency by the police cannot justify entry into the home or a protective sweep. Here, a protective sweep was not warranted in the Radel case but was constitutionally justified in the Terres case.

1-18-22 Diane S. Lapsley v. Township of Sparta (A-68/69-20; 085422)

Lapsley's injuries arose out of and in the course of her employment because the parking lot where she was injured was owned and maintained by the Township, adjacent to her place of work, and used by Township employees to park. Lapsley was therefore entitled to benefits under the Workers' Compensation Act.

1-10-22 State v. James C. Zarate (A-43-20; 084516)

*The statutory framework for sentencing juveniles, if not addressed, will contravene Article I, Paragraph 12 of the State Constitution. To remedy the concerns defendants raise and save the statute from constitutional infirmity, the Court will permit juvenile offenders convicted under the law to petition for a review of their sentence after they have served two decades in prison. At that time, judges will assess a series of factors the United States Supreme Court has set forth in Miller v. Alabama, which are designed to consider the "mitigating qualities of youth." 567 U.S. 460, 476-78 (2012).

1-10-22 State v. James Comer (A-42-20; 084509)

*The statutory framework for sentencing juveniles, if not addressed, will contravene Article I, Paragraph 12 of the State Constitution. To remedy the concerns defendants raise and save the statute from constitutional infirmity, the Court will permit juvenile offenders convicted under the law to petition for a review of their sentence after they have served two decades in prison. At that time, judges will assess a series of factors the United States Supreme Court has set forth in Miller v. Alabama, which are designed to consider the "mitigating qualities of youth." 567 U.S. 460, 476-78 (2012).

12-30-21 State v. William A. Gerena (A-72-20; 085359)

The Court affirms the judgment of the Appellate Division substantially for the reasons expressed in Judge Sabatino's published opinion. The determination of whether to admit, under N.J.R.E. 701, lay opinion testimony estimating the perceived ranges of children's ages or heights is best suited for case-by-case assessment. The Court disapproves of State v. Koettgen and its categorical approach to the admission of such lay opinion evidence about age. Henceforth, the trial court, acting as gatekeeper, shall assess whether there exists a proper foundation for the lay opinion being offered, and if so, allow its admission subject to a Rule 403 balancing of the relative probative value and prejudicial effect of the testimony. The Court generally endorses and adds to the Appellate Division's helpful guidance to trial courts when performing that gatekeeping role and protecting against the admission of unreliable age-related lay opinion testimony.

12-30-21 Michele Meade v. Township of Livingston (A-52-20; 085176)

Here, sufficient evidence was present for a reasonable jury to find that what Livingston Township Councilmembers perceived to be Police Chief Handschuch's discriminatory attitude toward Township Manager Meade influenced the Council's decision to terminate her, in violation of the LAD. Accordingly, the Court reverses the grant of summary judgment and remands this matter for trial.

12-29-21 State v. Cynthia Rivera (A-7-20; 084419)

A defendant's youth may be considered only as a mitigating factor in sentencing and cannot support an aggravating factor. On resentencing, the sentencing court should consider mitigating factor fourteen -- that "the defendant was under [twenty six] years of age at the time of the commission of the offense." N.J.S.A. 2C:44-1(b)(14). The weight to be given to that factor is within the sentencing court's discretion.

12-27-21 State v. Jose Carrion (A-14-20; 084390)

The State's reliance on an affidavit by a non-testifying witness to introduce over defendant's objection the results of the database search violated defendant's right to confront the witnesses against him. And, under the totality of the circumstances, Carrion's second statement should have been suppressed because the Miranda warnings issued to Carrion prior to his second statement to police were insufficient in these circumstances to ensure that his waiver of rights was voluntary and knowing. Because of its holding on the suppression issue, the Court cannot conclude that the denial of defendant's right to confrontation constituted harmless error. For the purposes of future matters, to ensure protection of defendants' confrontation rights and the orderly production of essential witnesses in judicial proceedings, the Court addresses a method to avoid confrontation violations in these settings.

12-27-21 State v. Tywaun S. Hedgespeth (A-22-20; 084892)

A violation occurred when the State was allowed to enter into evidence information set forth in the affidavit of a non-testifying officer concerning the no-permit results from a search of the State firearm registry, and that violation was not cured by testimony concerning the search of an Essex County firearm database. Further, the trial court's incorrect N.J.R.E. 609 ruling constituted harmful error requiring reversal of the conviction. However, the Court declines to adopt the position that an evidentiary ruling that results in a defendant's decision not to testify can never be harmless.

12-23-21 Todd B. Glassman v. Steven P. Friedel, M.D. (A-48/49/50/51-20; 085273)

The Court agrees with the Appellate Division that the Ciluffo pro tanto credit does not further the legislative intent expressed in the Comparative Negligence Act and does not reflect developments in case law over the past four decades. In its stead, the Court sets forth a procedure to apportion any damages assessed in the trial of this case and future successive-tortfeasor cases in which the plaintiff settles with the initial tortfeasors prior to trial.

12-22-21 Cooper Hospital University Medical Center v. Selective Insurance Company of America (A-46-20; 085211)

Because Mecouch was a Medicare enrollee in 2016, Cooper -- a Medicare provider -- was required to bill and accept payment from Medicare, which promptly covered Mecouch's medical expenses in accordance with its fee schedule. Cooper could not seek payment from Selective other than for reimbursement of the Medicare co-payments and deductibles.

11-18-21 G.C. v. Division of Medical Assistance and Health Services (A-35/36/37-20; 084417)

The Court affirms the Appellate Division's invalidation of N.J.A.C. 10:72-4.4(d)(1) as inconsistent with its state enabling legislation and contrary to legislative intent. But the Court has grave concerns that the regulation's method of operation is also inconsistent with the federal Medicaid law. The Court accordingly vacates that portion of the Appellate Division's analysis that rejected the federal-law argument by cross-petitioners.

9-28-21 C.R. v. M.T. (A-58-19; 083760)

The appropriate standard to determine whether sexual activity was consensual under SASPA is not the prostration of faculties standard, which focuses on the mental state of the defendant, but rather the standard articulated in State in Interest of M.T.S., 129 N.J. 422 (1992), which is applied from the perspective of the alleged victim. The M.T.S. standard requires a showing that sexual activity occurred without the alleged victim's freely and affirmatively given permission to engage in that activity. The standard for consent for an alleged victim in a SASPA case should be no different than the standard for consent for an alleged victim in a criminal sexual assault case. The Court reverses and remands this matter to the trial court for assessment under the standard articulated in M.T.S.

9-27-21 New Jersey Division of Child Protection and Permanency v. J.R.-R. and G.R.-R (A-56/57-19; 083807)

The Legislature placed on DCPP the burden of proving by a preponderance of the evidence that a parent abused or neglected a child, N.J.S.A. 9:6-8.46(b)(1), and the Judiciary has no commission to exercise equitable powers to alter the statutory burden of proof set forth by the Legislature. The Court disapproves of the Appellate Division cases that have imported the doctrine of conditional res ipsa loquitur from the common law into a comprehensive statutory scheme to relieve DCPP of its burden of proving that a particular parent abused or neglected a child. The Court remands for a new hearing.

9-23-21 State v. Michelle Paden-Battle (A-13-20; 084603)

The Court reverses in Melvin and affirms in Paden-Battle. Article I, Paragraph 1 of the New Jersey Constitution bestows upon all citizens certain natural and unalienable rights. From those rights flows the doctrine of fundamental fairness, which protects against arbitrary and unjust government action. Fundamental fairness prohibits courts from subjecting a defendant to enhanced sentencing for conduct as to which a jury found that defendant not guilty.

9-23-21 State v. Mark Melvin (A-44-19; 083298)

The Court reverses in Melvin and affirms in Paden-Battle. Article I, Paragraph 1 of the New Jersey Constitution bestows upon all citizens certain natural and unalienable rights. From those rights flows the doctrine of fundamental fairness, which protects against arbitrary and unjust government action. Fundamental fairness prohibits courts from subjecting a defendant to enhanced sentencing for conduct as to which a jury found that defendant not guilty.

9-21-21 IMO John J. Robertelli (D-126-19; 084373)

*After conducting a de novo review of the record and affording deference to the credibility findings of the Special Master, the Court concludes that the OAE has failed to establish by clear and convincing evidence that Robertelli violated the RPCs. The disciplinary charges must therefore be dismissed.

9-20-21 Ernest Bozzi v. City of Jersey City (A-12-20; 084392)

Owning a dog is a substantially public endeavor in which people do not have a reasonable expectation of privacy that exempts their personal information from disclosure under the privacy clause of OPRA.