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

8-13-19 OPEX REALTY MANAGEMENT, LLC V. ROBERT TAYLOR AND MILDRED TAYLOR (LT-034082-18)

In this landlord-tenant case, the court was charged with deciding whether the City of Newark's rent control ordinance prohibited the assessment of "additional rent," for purposes of a summary dispossess action, if the total amount assessed, including this contractually provided for "additional rent," exceeded the maximum rent permitted by the ordinance. The court answered the question in the affirmative.

This was an action seeking eviction for non-payment of rent. The tenant brought a motion arguing that the local rent control ordinance prohibited the incorporation of additional rent of the kind that was at issue in a summary dispossess action. The tenant argued that the ordinance established a maximum rent cap and any rent that exceeded that amount could not form a basis for eviction. The tenant further argued that regardless of whether defined as "additional rent," fees should be considered in the ordinance's definition of "rent" and thus capped thereby. The landlord countered that assessing the additional rent was not contrary to the subject ordinance and the lease expressly provided for such assessment. The landlord further argued that the fees sought are such a common form of additional rent that the local ordinance's failure to specifically exclude it in the definition should be understood to be mean that the ordinance does not prohibit it.

The court held that the landlord was not entitled to evict the tenant based upon the failure to pay the "additional rent," notwithstanding that the lease memorialized that legal and late fees were collectible as "additional rent." The court found that the total amount of rent that could be assessed and thus put at issue in a summary dispossess case was limited by the local ordinance. The court established that the assessment of "additional rent" is still the imposition of rent, and because the ordinance governs all rent without exception, the rent could not exceed the municipal ordinance rate cap. Accordingly, the landlord was disallowed from seeking any rents in excess of the maximum rent permitted by the ordinance in a summary dispossess action. The landlord's contractual remedy was preserved.

8-12-19 STATE OF NEW JERSEY IN THE INTEREST OF T.D., A JUVENILE. (FJ-15-0476-18/FJ-15-0569-18)

Following juvenile T.D.'s admission to committing the offense of shoplifting, under N.J.S.A. 2C:20-11, the court placed T.D. on a twelve-month deferred disposition and imposed a condition that T.D. complete thirty hours of community service. In light of the plain language of N.J.S.A. 2C:20-11(c) indicating that "any person convicted of a shoplifting offense shall be sentenced to perform community service[,]" the parties expressly contemplated that the community service hours imposed in this case were mandatory.

The matter was returned to court post-disposition on probation's recommendation, due to T.D.'s failure to complete the community service hours. The court concluded that the community service hours were not mandatory, notwithstanding the language within subsection (c) of the shoplifting statute. The court reasoned that the Legislature did not explicitly apply the mandatory penalty provisions of the shoplifting statute to juveniles, as it has done with other statutory schemes. The court further found that the imposition of mandatory community service hours for shoplifting offenses was incompatible with the imposition of a deferred disposition resulting in the dismissal of the complaint, in the absence of any specific requirement to impose such a penalty on juveniles. Upon consideration of T.D.'s representations that she and her mother were experiencing homelessness, and mindful of the rehabilitative goals of the Juvenile Code, the court vacated the imposition of the community service hours as a condition of T.D.'s deferred disposition.

7-15-19 E.S. v. C.D. (FV-02-1094-19)

This case is a domestic violence action in which plaintiff had employed defendant as a nanny. The issue is whether plaintiff is a party entitled to protection under the Prevention of Domestic Violence Act, N.J.S.A. 2C:25-17 to -35, given the economic relationship of the parties. It is held that under the circumstances, plaintiff is a party entitled to such protection.

6-13-19 RACETRACK SUPERMARKET, LLC. V. THE MAYOR AND TOWNSHIP COUNCIL OF CHERRY HILL (L-003400-16)

Plaintiffs sought recusal of assigned trial judge based upon alleged violation of "objectively reasonable" standard of impropriety set forth in DeNike v. Cupo, 196 N.J. 502 (2008) based on the alleged personal animus of the judge against plaintiffs' counsel. Before becoming a member of the judiciary, the judge had been a candidate for local office in his town approximately 14 years prior. Plaintiffs' counsel was a member of the opposite party and also resided in the same town and was politically active. Plaintiffs' counsel alleged that anonymous and other sources had indicated the judge held him responsible for campaign materials which called into question the judge's character and fitness for office during the campaign in 2004. Plaintiffs' counsel alleged the judge, when he was county chairman, took action to thwart his renomination to a state commission in 2013 four years before joining the judiciary, which was alleged to evidence the judge's personal animus. Additionally, the judge had also served as county chairman of his political party for the 6 years prior to joining the judiciary. During this time, the son of the principal member of plaintiff LLC was an elected official in the judge's home town and a member of the judge's opposite party during which time the judge, as county chairman, had supported the members of his own party over the principal member's son.

The court held that, under the DeNike standard, a reasonable, fully-informed person would not have doubts about the judge's impartiality under the circumstances in this matter. The court considered the lack of a prospective financial benefit to the judge, the remoteness in time of the alleged statements by the judge to the present matter, the lack of evidence of a continuous personal animus, the professional dealings between Plaintiff's counsel and the judge when he was a practicing attorney, and the fact that Plaintiffs' counsel's firm, of which Plaintiffs' counsel was a named partner, had previously appeared before the judge without objection or incident, all weighed against recusal under the standard. The court also found political motive is not objective evidence of personal animus. The motion to recuse was denied.

6-3-19 STATE OF NEW JERSEY V. DANIEL MARKS. (INDICTMENT NO.17-03-00575)

Defendant was charged with third degree theft of services for the alleged violation of N.J.S.A. 2C:20-8(a). The indictment resulted from defendant's use of EZ Pass only lanes on 220 occasions without possessing an EZ Pass transponder. Defendant moved to dismiss the indictment.

The court concluded that the evidence presented to the grand jury was sufficient to establish a prima facie case for violation of the statute. The court first found that traveling through the EZ Pass only lane was a representation that the vehicle operator possessed a valid EZ Pass. The court further held that N.J.S.A. 2C:20-2(b), the theft grading statute, permitted the aggregation of 220 bridge crossings for purposes of establishing that the crime fell within the third degree range. Finally, the court rejected defendant's argument that the existence of civil penalties precluded criminal responsibility for the same conduct.

5-23-19 CAMPBELL V. ALLSTATE INSURANCE CO. (L-000610-15)

Plaintiff seeks damages for personal injuries allegedly sustained in an automobile accident. Prior to trial, defendant had the plaintiff examined by a board certified orthopedic surgeon who prepared a written report describing his examination and conclusions. In the report, the physician identified a number of published medical articles that presumably supported the opinions contained in the report. Plaintiff's counsel demanded that defendant supply copies of the articles. The orthopedic surgeon refused to produce copies of the articles claiming that to provide copies of the articles would violate unspecified copyright laws.

The court ordered the defendant to supply plaintiff's counsel with copies of the articles within 20 days. If the defendant fails to supply copies of the articles to plaintiff's counsel within 20 days, the orthopedic surgeon is precluded from referring to the articles during his testimony at trial.

4-2-19 WELLMAN V. ROAD RUNNER SPORTS, INC., ET AL. (L-002822-16)

A three-year-old girl sustained personal injuries while on property owned by defendant Road Runner Sports, Inc. Her parents then filed suit against Road Runner and many others on her behalf. Defendants sought an Order compelling plaintiff, now seven years old, to attend two independent medical examinations without the presence of her parents, or any recording device. Plaintiff then cross-moved to permit either an audio or video recording of the examination and that a third party be present.

The court held that under R. 4:19 this decision lies within the court's discretion. The court held that the benefits of an unobtrusive video recording by a cell phone or a small video recording device by the child's parents or counsel far outweighs any prejudice that may befall the defendants. As such, the court denied defendants' motion and granted plaintiffs cross-motion.

3-8-19 STATE OF NEW JERSEY V. S.A. (12-11-01278)

The question presented is whether or not defendant is entitled to jail credit for time spent detained outside of New Jersey to answer foreign charges. Defendant was arrested and detained in New Jersey on New Jersey charges. He was thereafter transferred to the Metropolitan Correctional Center to answer federal charges which were lodged subsequent to his New Jersey charges. Because defendant's transfer was performed pursuant to the Interstate Agreement on Detainers, defendant was always in New Jersey custody and is entitled to jail credit for time spent detained outside of New Jersey to answer foreign charges.

2-25-19 HAROON RASHID V. JILLIAN G. REED (L-002890-15)

The issue in this opinion is whether plaintiff's counsel can question his client about whether a passenger in plaintiff's vehicle sustained an injury in order to help establish that plaintiff was also injured in the accident. The court ultimately ruled that the question was not relevant. There are many variables that factor into whether an individual sustains an injury in a motor vehicle accident. Some individuals are frail while others are not readily susceptible to injury. Certain individuals involved in the same accident may sustain the brunt of the impact from the other vehicle or may be positioned in such a way to cause them be more susceptible to being injured. In short, simply because one person gets injured in an accident does not mean that someone else in the same vehicle must have also sustained an injury.

2-19-19 MARIUSZ KUZIAN VS. STEVEN TOMASZEWSKI (L-006624-14)

The issue in this opinion is whether it is appropriate, in the context of an automobile negligence case, for plaintiff's counsel to question his client as to whether his vehicle was "totaled" as a result of the accident with defendant's vehicle. The court determined this was not an appropriate inquiry. Because the term "totaled" has a colloquial meaning and an objective meaning within the insurance industry, whether a car was totaled does not provide the jury with meaningful information with respect to the severity of the impact. Accordingly, any line of inquiry regarding whether a vehicle was totaled in an accident in the context of a personal injury action is irrelevant.

2-19-19 IN THE MATTER OF THE ESTATE OF JOHN E. TRAVERS, JR. (P-2253-2017)

Decedent's parents, who are divorced, each filed petitions seeking control over their son's remains pursuant to N.J.S.A. 45:27-22. Decedent's father wished his son's remains to be buried, while decedent's mother wished her son's remains to be cremated. Decedent was unmarried and died without issue, without a will, and without any written directive regarding his funeral or disposition of remains. While the Statute provides the order of persons to be granted the right to control the funeral arrangements and disposition of human remains, and the court is empowered to resolve disputes, there is no guidance in the Statute, or in New Jersey case law, on how to resolve a dispute that arises between even numbers of next-of-kin of equal statutory standing (i.e., surviving adult children, parents, siblings or other next-of-kin according to the degree of consanguinity). Finding that the statutory intent of the Statute is to adhere to the wishes and desires of the decedent, the court held that where next-of-kin of equal statutory standing find themselves in dispute over funeral arrangements and/or disposition of remains, the court should consider the following factors when selecting the person in control under N.J.S.A. 45:27-22: (1) Who is more likely to abide by the wishes and desires of the decedent as expressed through communications with another, to the extent the decedent made those communications; (2) Who established a closer relationship to the decedent and is thereby in a better position to surmise the decedent's desires and expectations upon death; (3) Who is more likely to adhere to the religious beliefs and/or cultural practices of the decedent, to the extent that funeral arrangements and/or disposal of remains are addressed by such beliefs and practices, and to the extent that those beliefs and practices are relevant to inform the court as to the wishes, desires and expectations of the decedent upon death; and (4) Who will ultimately be designated administrator(s) of the estate and act in the best interests of the estate to: (a) determine the costs of funeral arrangements and/or disposition of human remains; (b) assess the ability of the estate to pay for the costs of funeral arrangements and/or disposition of human remains; and (c) arrange for alternative funding and/or resources to effectuate the funeral and/or disposition in the event that the estate does not have the ability to pay for the costs of human remains (i.e., locating funding from other next-of-kin, charities, fraternal organizations, religious institutions, governmental agencies, etc.). If material facts are in dispute, an expeditious plenary hearing should be

held. When rendering its decision, the court should conduct a qualitative analysis of each factor, giving due weight to each as appropriate. Upon review of all relevant factors, the court granted relief to decedent's father who had been the next-of-kin with a closer relationship, as he had lived with the decedent for several years up until his death.

2-11-19 MARIA I. TIRPAK v. BOROUGH OF POINT PLEASANT BEACH BOARD OF ADJUSTMENT, ET AL. (L-002918-17)

This is an appeal from the decision of the trial court which found that a condition attached to a variance approval, which required the property owner to file a deed with restrictive covenants permitting only one of two units in this two family home to be rented to a tenant, was illegal and unenforceable. The court found it was contrary to public policy to impose as a condition of zoning board approval a restriction that treated a tenant different from an owner-occupant of property. The trial court reasoned the condition was arbitrary, capricious and unreasonable because it was based upon the status of the occupant of the property, rather than the use of the property. The court further found the condition reflected an illegal bias based upon a perceived notion that tenant occupied use was a less desirable use of property than occupancy by an owner.

2-7-19 STATE OF NEW JERSEY v. W.A. (17-08-00506)

This case presents the court with an issue of first impression in New Jersey. Namely, whether, after a defendant has been detained pretrial, a later defense attack on the state's detention hearing proffer can be sufficient to reopen the detention hearing. On June 6, 2017, the trial court ordered defendant detained pending trial. The thrust of defendant's motion to reopen the detention hearing attacks the state's detention hearing proffer related to probable cause. The court ultimately held that a defendant who has been detained pretrial cannot attack the initial detention decision by seeking to undermine the state's probable cause proffer. Unless some new information would create serious doubt about the state's initial proffer, and only where a grand jury has not yet handed up an indictment, would the court consider disturbing an initial finding of probable cause.

2-7-19 STATE OF NEW JERSEY v. E.R. (15-08-02549)

The State sought to introduce into evidence the statements made by the mother of the victim to a physician providing treatment to her child. The court held that N.J.R.E. 803(c)(4) permits the admission into evidence not only of statements made by a patient to a physician for purposes of obtaining medical treatment, but also statements made by others to a physician for the purpose of providing medical treatment where sufficient indicia of reliability exists.

1-10-19 ROBERT STROUGO, on behalf of himself and all others similarly situated, v. OCEAN SHORE HOLDING CO., ROBERT PREVITI, STEVEN BRADY, CHRISTOPHER FORD, FREDERICK DALZELL, DOROTHY MCCROSSON, JOHN VAN DUYNE, SAMUEL YOUNG, and OCEANFIRST FINANCIAL CORP. (C-000045-16)

The main issue before the court is whether a non-monetary class-action settlement is "fair and reasonable" to the class pursuant to Rule 4:32-2. The parties agreed to settle the matter for "Supplemental Disclosures" and attorneys' fees. Stockholders received no financial compensation. In the analysis, the court formally adopts the nine Girsh factors to determine whether to approve the non-monetary settlement. Girsh v. Jepson, 521 F.2d 153 (3d Cir. 1975).

11-5-18 STATE OF NEW JERSEY v. SHAWN JOHNSON and RUMIEJAH UKAWABUTU (17-04-00232)

Three issues were presented to the court as part of, or as a result of, the State's speedy trial motion, each requiring application or interpretation of the Criminal Justice Reform Act, N.J.S.A. 2A:162-15 to 2A:162-26: first, whether the case should be designated complex pursuant to N.J.S.A. 2A:162-22(b)(1)(g) and Rule 3:25-4(i)(7); second, whether any portion of time since indictment should be deemed excludable from speedy trial calculation due to extraordinary circumstances pursuant to N.J.S.A. 2A:162-22(b)(1)(f) and Rule 3:25-4(i)(6); and third and finally, whether excludable time attributable to one defendant should be attributable to all defendants who are joined for trial, even over their objection or opposition. The court found that the case should be designated complex and excluded 60 days from speedy trial computation. The court excluded an additional 8 days from speedy trial computation due to extraordinary circumstances. Finally, the court held that all post-indictment periods of exclusion are attributable to each defendant since defendants Johnson and Ukawabutu are joined for trial.

11-5-18 STATE OF NEW JERSEY v. BENTEE M. GOINES (MA-37-2016)

Rutgers University police arrested the defendant in New Brunswick and charged him with drunk driving. Rutgers and New Brunswick had an agreement that allowed Rutgers to patrol only certain streets within New Brunswick. The defendant was arrested on a street that fell outside that agreement raising a jurisdictional question. The jurisdictional question on appeal from municipal court turned upon interpreting two conflicting statutes. The first gives "any law enforcement officer" authority to arrest those committing Title 39 infractions, and more specifically, jurisdiction to arrest those who drive while intoxicated. See N.J.S.A. 39:5-25. The second statute limits university police jurisdiction to the boundaries of their campuses, unless the towns within which the universities are located agree to permit additional jurisdiction. See N.J.S.A. 18A:6-4.7. The court held that Rutgers University police had jurisdiction to make the stop and arrest the defendant, as well as charge him with driving while intoxicated. It reached this decision, in part, based upon the Legislature's decision to amend N.J.S.A. 39:5-25 to allow "any law enforcement officer" to arrest drunk drivers, while knowing that case law had interpreted the statute to give statewide jurisdiction to municipal officers to make these arrests.

11-5-18 UNIVERSAL NORTH AMERICAN INSURANCE CO. and UNIVERSAL NORTH AMERICAN as subrogee of THOMAS LASPADA v. BRIDGEPOINTE CONDOMINIUM ASSOCATION, INC. (L-000771-18)

The issue before the Law Division, was whether an insurance carrier is barred from maintaining a subrogation claim on behalf of a unit owner against a condominium association if the association's by-laws compel a waiver of such claims. The facts are straightforward. A unit owner at a condominium association obtained homeowner's insurance. The unit owner's unit sustained damages as the result of a fire. The carrier paid $222,172.84 to the unit owner. Thereafter, the carrier, as the unit owner's subrogee, filed suit against various entities, including the condominium association, alleging that the condominium association failed to properly maintain the premises, which contributed to the fire. The carrier sought to recover the insurance monies it paid to the unit owner.

The association's by-laws prohibited such subrogation claims. Based on the reasoning adopted by the Appellate Division in Skulskie v. Ceponis, 404 N.J. Super. 501, 514 (App. Div. 2009), which upheld a waiver scheme in a condominium community, the Law Division held that the carrier's claim was barred and granted the association's motion for summary judgment. The Law Division held that a contrary result would penalize all of the unit owners regardless of fault and pit unit owner against unit owner, and unit owners against the association--a result contrary to the concept of a condominium.

10-23-18 T.M. v. R.M.W. (FV-15-0506-18)

Plaintiff obtained a temporary restraining order against defendant under the Prevention of Domestic Violence Act based upon a "dating relationship" and allegations of simple assault and harassment by offensive touching. At the final hearing, plaintiff testified she engaged in a long-term consensual, but secret and sporadic intimate relationship with defendant which, in her words, involved "consensual rough sex." Defendant disputed the existence of a dating relationship. The court held (1) plaintiff qualified as "victim of domestic violence" under the PVDA based upon her long-term but secret intimate relationship with defendant (2) defendant was entitled to assert the defense of consent to the allegations of bodily injury and offensive touching; and (3) plaintiff did not prove a final restraining order was "necessary" as she conceded defendant only visited her when invited to her home for "rough sex."

10-23-18 Taing v. Braisted (L-002689-15)

The issue in this opinion is whether defense counsel can question plaintiff about whether or not the airbags deployed in his vehicle at the time of the accident in the context of an automobile negligence case. The questioning by defense counsel is a common line of inquiry in automobile negligence cases and is often the subject of in limine motions and/or objections at the time of trial. The court ultimately determined the question was improper. The court determined that whether or not the airbags deployed is not relevant in the absence of expert testimony because it does not, without more information, tend to prove or disprove an issue in the case. In the absence of expert testimony, the jury would not know the amount of force needed to trigger the specific airbag contained in the subject vehicle. Moreover, without an expert providing an explanation as to how an airbag system functions, a jury would not know the location of the airbag sensors on the subject vehicle. Accordingly, a jury would not be able to understand why an airbag system did, or did not activate, in a particular accident.

10-23-18 Abdurraheem v. Koch (L-002190-16)

The issue in the opinion is whether it is appropriate in an automobile negligence case to utilize a modified version of Model Jury Charge (Civil) §5.34, "Photographic Accidents in Motor Vehicle Accidents," when there is testimony regarding the damage to both of the motor vehicles involved in the subject accident, but no photographs were entered into evidence. In most automobile negligence cases, either the plaintiff or defendant produces photographs of the vehicles from the accident and requests the jury instruction set forth in Model Jury Charge (Civil) §5.34, "Photographic Accidents in Motor Vehicle Accidents." This charge is commonly referred to as a Brenman charge because it is derived from our Supreme Court's decision in Brenman v. Demello, 191 N.J. 18 (2006). The court ultimately permitted the charge to be given having determined the importance of the charge is not so much based on the existence of photographs in a particular case, but rather how a jury should evaluate motor vehicle damage in relation to the alleged injuries. In short, that evidence of vehicle damage is in the form of testimony rather than photographs should not govern whether the charge is given.

10-23-18 Garden State Anesthesia v. Sibilly (DC-003294-11)

The court granted defendant's objection to a levy on a bank account as to the part of the funds deposited from child support. Child support is exempt from levy because those funds belong to the child rather than the judgment-debtor parent. The court granted plaintiff's motion to turn over funds as to the non-exempt funds.

10-23-18 Liberty Mutual v. Borgata (L-001491-16)

The issue in the opinion is whether an individual who expects to named as a defendant in a law suit cognizable in the State of New Jersey may file a petition pursuant to Rule 4:11-1 for pre-suit discovery. The court ultimately determined the rule allows both defendants and plaintiffs to obtain pre-suit discovery in limited circumstances. The opinion further addresses a recurring issue with respect to the propriety of utilizing Rule 4:11-1 to obtain discovery to investigate facts relevant to a potential claim prior to a law suit being filed. In the court's view, this rule is often improperly utilized and misunderstood. The court attempts to provide some insight as to the proper circumstances under which a party may properly file a petition as contemplated by the rule. Rule 4:11-1 is routinely misunderstood because the plain language of the rule does not alert attorneys that the rule may only be utilized in those limited circumstances when there exists a genuine risk that testimony could be lost or evidence destroyed before the suit can be filed.