DATE NAME OF CASE (DOCKET NUMBER)

01-30-17 I/M/O THE APPLICATION OF THE TOWNSHIP OF SOUTH BRUNSWICK FOR A JUDGMENT OF COMPLIANCE AND REPOSE AND TEMPORARY IMMUNITY FROM MOUNT LAUREL LAWSUITS
L-3878-15

Following the Supreme Court's decision in In re Adoption of N.J.A.C. 5:96 & 5:97 by the N.J. Council on Affordable Housing, 221 N.J. 1 (2015), (hereinafter "Mount Laurel IV"), the judiciary resumed its role as the "forum of first instance", to adjudicate a municipality's compliance with its affordable housing obligations under Mount Laurel. Pursuant thereto, South Brunswick filed a declaratory judgment action seeking: (1) an interim order of immunity from builder remedy litigation; and (2) a judgment that its proposed housing element and fair share plan created a realistic opportunity for the production of its fair share of the region's present and prospective need for affordable housing.

After granting the Township an initial five-month month period of immunity and several extensions thereafter, its immunity was revoked, as authorized by Mount Laurel IV, based on the Township's "abuse of the process", and a judicial finding that the Township was "determined to be non-compliant".

During the bifurcated trial that followed, the parties addressed, and the court adjudicated for the first time, the proper methodology by which a town's affordable housing obligations would be calculated. Relying on the methodologies previously used by COAH, South Brunswick's unadjusted (and "uncapped") fair share of the region's present and prospective housing need was computed to be 1,533 low and moderate income units.

In addition, the framework for Phase II of the trial was addressed along with the mechanisms to be used to satisfy the Township's adjusted fair share obligation – specifically the inclusion, timing and prioritization of potential builders' remedy sites, the adjudication of which will not be dependent upon which builder filed first, but rather, will be guided by sound environmental and planning principles, and sequenced so as to avoid a "sudden and radical transformation" of the municipality.

01-25-17 PEARSON, ET AL. V. DMH 2, LLC
C-151-15

Plaintiffs, a collection of homeowners, filed a complaint in the Chancery Division of Essex County seeking to prevent the defendant from commercially developing a property located on Bloomfield Avenue in Verona, based upon a restrictive covenant contained in the chain of title to said lot and which plaintiff argued was part of a neighborhood scheme of development, prohibiting commercial uses, established by the original grantor in the 1890s. Defendant filed a counterclaim seeking to quiet title to the property and deeming the restriction unenforceable. Plaintiff moved for summary judgment on their enforcement action and defendant cross-moved for summary judgment. After reviewing the parties' respective motions and entertaining argument, this court issued an opinion and order granting defendant's motion and finding that the restrictive covenant at issue was not part of a neighborhood plan of development and that enforcement of the restriction was no longer reasonable.

01-13-17 STATE V. ELLISON
01-06-2564-I

The trial court considered the issue of how the Rules governing relaxing the time-bar for post-conviction relief (PCR) applications relate to a New Jersey Supreme Court Opinion that was given only limited retroactive effect.

PCR applications must be filed within five years of sentencing. The rules that allow for filing outside the five-year period are strictly construed. Except as provided in the Rules, the time limit is not subject to relaxation.

Petitioner in this case filed outside of the five-year time period. Petitioner was sentenced in 2001 and the petition was filed in 2015 – fourteen years later. Petitioner asserted ineffective assistance of counsel based on the new rule of law established by the New Jersey Supreme Court in State v Bellamy, 178 N.J. 127 (2003. The rule announced in Bellamy was given only limited retroactivity, which did not apply to Petitioner's case.

Petitioner argued that his fourteen-year delay in filing was the result of excusable neglect. The trial court rejected petitioner's argument. Given that the new rule announced in Bellamy does not apply, the court found that relaxing the time

bar to allow pardoner's PCR application would effectively give the ruling in Bellamy greater retroactivity than was expressly given by our Supreme Court.

10-14-16 HERNANDEZ V. CHEKENIAN
L-11038-14

This opinion arises from a personal injury case involving a three car accident. Prior to trial, one of the defendants settled with the plaintiff. The issue addressed is the appropriateness of giving the jury the Settling Defendant Jury Charges. Model Civil Jury Charge 1.11 and 1.17 in a situation in which a jury never sees the settling defendant.

10-07-16 MILLS V. MILLS
FM-15-1263-12

This case presents legal issues involving an alimony obligor's loss of employment, and interpretation of recent 2014 amendments to New Jersey's alimony statute, N.J.S.A. 2A:34-23(k). Specifically, defendant seeks a reduction of his alimony obligation to plaintiff, based upon losing his prior long-term employment, and subsequent obtaining of a new job at a significantly reduced salary. In turn, plaintiff opposes a reduction in alimony.

For the reasons set forth in this opinion, the court grants defendant's application for a reduction in his alimony obligation, and holds the following:

(1) Under the recent 2014 amendments to New Jersey's alimony statute, and newly enacted subsection N.J.S.A. 2A:34-23(k), a court may reduce an alimony obligation when the obligor loses his or her prior W-2 employment, and thereafter makes reasonable attempts to find substitute employment;

(2) In interpreting and applying the new statutory language to a case when an obligor loses his job and obtains replacement employment at a substantially lower salary, a fundamental approach to addressing such a situation inherently involves two questions of equity: (A) Was the supporting spouse's choice in accepting particular replacement employment objectively

reasonable under the totality of the circumstances? (B) If so, what if any resulting adjustment in support is fair and reasonable to both parties under the facts of the case?

(3) The terms and spirit of part of the 2014 amended alimony statute, N.J.S.A. 2A:34-23(k) are relevant and applicable in this case, where the parties were divorced prior to September 10, 2014, but where (a) the parties' agreement contained no contractual provision defining or limiting the standards for reviewing a modification of support based upon loss of employment and decrease in financial circumstances, and (b) the issue has not already been litigated and adjudicated by the court in prior post-judgment proceedings.

09-01-16 DELACRUZ V. ALFIERI, ET ALS.
L-1128-13

This case involves claims arising out of a mortgage loan transaction that occurred in 2007. It addresses the application of preclusionary doctrines to claims by mortgage debtors related to the loan, filed after a final judgment of foreclosure was entered against them.

In February 2007 plaintiffs Juan C. Delacruz and Madharshini Delacruz signed a mortgage document, mortgaging their home in Bergenfield as security for a $570,000 refinance loan Mr. Delacruz borrowed from defendant GE Money Bank ("GEMB"). Defendant WMC Mortgage Corporation ("WMC") was identified as a corporate affiliate of GEMB. Through a series of transactions not relevant to this decision, defendant Lynx Asset Services, LLC ("Lynx") acquired the note and mortgage by assignment in or about August 2008.

Lynx filed a foreclosure action in April 2011, alleging the Delacruzes had failed to make payments due under the note and were in default. The Delacruzes filed a contesting answer to the complaint, listing fifteen affirmative defenses and asserting a counterclaim alleging that Lynx or its predecessor had violated the Federal Truth in Lending Act ("TILA") by, inter alia, underdisclosing the actual finance charges and by not properly advising the Delacruzes of their right to cancel the loan. The Delacruz's affirmative defenses included fraud by Lynx or third parties, that the contract was procedurally and substantively

unconscionable and unenforceable, that Lynx or Lynx's agents fraudulently induced the Delacruzes to enter into the contract, that the mortgage and/or note were fraudulently created and therefore unenforceable, and that Lynx "stands in the shoes" of the original lender, who obtained the note and mortgage under false pretenses or fraudulent, tortious, or criminal acts. The Delacruzes did not at any time while the foreclosure matter was pending seek to amend their answer or to join other parties to the action through a third-party complaint. Plaintiffs admit they were aware of the facts underlying their current complaint at the time the foreclosure action was filed and pending. Plaintiffs were aware of the entire controversy doctrine, as they themselves raised it as an affirmative defense.

Lynx moved for summary judgment in the foreclosure action, and summary judgment was granted on March 2, 2012. Final judgment of foreclosure was entered on October 24, 2012.

Plaintiffs filed their complaint in this matter on February 8, 2013, and an amended complaint on November 6, 2013. The amended complaint pleaded counts in breach of contract, Consumer Fraud Act violations, and common law fraud. The main factual thrust of plaintiffs' complaint is that they were presented at the closing with loan documents that differed from the terms to which they had agreed, that they thereafter rescinded and/or modified the loan, and that defendants failed to honor the modifications/rescission.

Defendants Lynx, GEMB, and WMC moved for summary judgment, which the court granted. The court ruled that the entire controversy doctrine, as reflected in R. 4:30A, barred plaintiffs' claim as to Lynx, that the doctrine of res judicata barred the claims as to Lynx and, by virtue of their privity with Lynx, as to defendants GEMB and WMC, and that the doctrine of collateral estoppel barred the claims as to defendants GEMB and WMC.

Application of the entire controversy doctrine is limited in foreclosure actions by R. 4:64-5, which limits joinder in foreclosure actions (without leave of court) to "germane counterclaims and cross-claims." Plaintiffs argued the claims they were bringing in this action were not germane to the foreclosure claim and therefore should not be barred by preclusionary doctrines. The court ruled that germane claims include claims related to the validity of the mortgage, the amount of indebtedness, and the right of the mortgagee to resort to the collateral, Great Fall Bank v. Pardo, 263 N.J. Super. 388

(Ch. Div. 1993), and that plaintiffs' claims all came under that umbrella. The court rejected plaintiffs' arguments that the claims brought in this action were not germane. See Leisure Technology-Northeast, Inc. v. Klingbeil, 137 N.J. Super. 353, 358 (App. Div. 1975) ("The use of the word "germane" in the language of the rule undoubtedly was intended to limit counterclaims in foreclosure actions to claims arising out of the mortgage transaction which is the subject matter of the foreclosure action. We see no intention to prohibit or restrict counterclaims in a more narrow sense.")

08-22-16 BORDINO V. INSIGHT GLOBAL, INC.
C-121-15

An employment agency sued a competitor for poaching its employees. The amended complaint was dismissed for failure to file the requisite registration in New Jersey, pursuant to the Private Employment Agency Act (PEAA). The trial court held that the PEAA required dismissal of all claims that relate to the operation of plaintiff's employment agency services.

08-18-16 ALBERTS V. GAECKLER, ET ALS.
L-1707-14

The opinion addresses: (1) whether a person asserting a bystander liability claim must file a separate Notice of Claim under the New Jersey Tort Claims Act to file suit against a public entity; and (2) the plaintiff's claim that an amended complaint asserting a bystander liability claim that is filed after the expiration of the Statute of Limitations, relates back to the date of the filing of the original complaint.

08-17-16 MUELLER V. MUELLER
FM-15-619-05

Under New Jersey's recently amended alimony statute, a party may seek to terminate or modify his or her spousal support obligation based upon an actual or "prospective" retirement. N.J.S.A. 2A:34-23(j)(1-3). What, however, does the term, "prospective" retirement" actually mean? The court holds:

1) The amended alimony statute does not set a specific minimum or maximum time period for obtaining an advance ruling on a prospective retirement and its effect upon an existing support obligation. The spirit of the amended statute, however, inherently contemplates that the prospective retirement will

take effect within reasonable proximity to the application itself, rather than several years in advance of same.

2) In the present case, an application by an obligor to terminate alimony based upon a prospective retirement, filed five years before the applicant's anticipated retirement date, is filed too far in advance for the court to undertake an objectively reasonable analysis of the application, as contemplated under the statute, for termination of alimony based upon prospective retirement. In order for a court to reasonably consider the issue of termination or modification of alimony based upon a prospective rather than actual retirement, the court logically needs to review reasonably current information, relative to the time period of the proposed retirement itself, in order to appropriately analyze the various factors and comparative equities set forth for consideration under the amended statute.

3) An order for prospective termination or modification of alimony based upon reaching a certain retirement age inherently contemplates that the obligor would have to not only reach a specific age, but also will actually retire at that point. If an obligor reaches the statutory retirement age, but does not actually retire at that point, then the "retirement age" provisions triggering a potential termination or modification of alimony are inapplicable until such time as the obligor actually retires or submits an application regarding a prospective retirement in the near future, for the court's consideration under N.J.S.A. 2A:34-23(j).

08-09-16 HARRINGTON V. HARRINGTON
FM-15-343-12

This case presents issues concerning retroactive emancipation and modification of previously unallocated, court-ordered child support, when the parties have multiple unemancipated children. The court holds the following:

1) When parties have multiple unemancipated children covered under an unallocated child support order, and a child becomes emancipated, such emancipation is a change of circumstance, for which either party may seek review and modification of the existing unallocated child support order;

2) New Jersey's anti-retroactivity statute generally prohibits retroactive modification of an existing child support order prior to the filing date of a motion, (or forty-five days earlier upon written submission of intent to file such motion). While New Jersey case law has created a potential exception relating to retroactive emancipation of a child and termination of the obligation to support that child, there are no known reported cases which address a hybrid circumstance where (A) a non-custodial parent seeks a retroactive modification of an unallocated child support order, based upon a child's emancipation while (B) there are still one or more remaining unemancipated children.

3) In a situation where a parent seeks a retroactive modification of an unallocated child support for multiple children based upon a child's emancipation, while there are still other unemancipated children, the court has the discretion to retroactively modify, or not modify, child support back to the date of a child's emancipation, depending upon certain equitable factors set forth in this opinion.

07-29-16 STATE OF NEW JERSEY V. ROBERT HALLORAN
11-10-1173-I

This de minimis application implicates the issue of whether, under Megan's Law, a sex offender is obligated to register more than one residence. The Court concludes that a secondary residence must be registered, and that a failure to do so is not a de minimis violation.

05-17-16 SOCIETY HILL AT PISCATAWAY CONDOMINIUM ASSOCIATION, INC., CRAIG WISDO, MICHELLE PINHEIRO, NANCY NOVACK, DUSHYANT PATEL AND MONIKA PATEL VS. THE TOWNSHIP OF PISCATAWAY AND THE MAYUOR AND COUNCIL OF THE TOWNSHIP OF PISCATAWAY
L-4192-15

This opinion construes for the first time, the reach of New Jersey's Uniform Housing and Affordability Controls (N.J.A.C. 5:80-26.1 to -26.26) (UHAC) in the context of whether and to what extent a municipality may unilaterally extend the thirty-year deed restrictions regulating the resale and rental prices of those affected "Mount Laurel" units so that those units may continue to remain available and affordable to low and moderate income families in the Township.

Since none of these Mount Laurel units were constructed or approved pursuant to, or under the auspices of, COAH (The Council On Affordable Housing) or the HMFA (Housing and Mortgage Finance Agency), but rather, were constructed prior to the adoption of the Fair Housing Act and the regulations promulgated thereunder, the UHAC regulations do not apply, and as such, any attempt to extend the deed restrictions on these units so as to retain them in the Township's affordable housing stock, whether through the adoption of municipal ordinances or through amendments to its affordable housing plan, are deemed ultra vires and invalid.

04-13-16 HARRY AND GINA ZELNICK V. MORRISTOWN-BEARD SCHOOL, EDWARD SHERMAN, ALEX CURTIS, DARREN BURNS, JOHN MASCARO, PETER CALDWELL, TRACEY WETMORE, EDDIE FRANZ, M. THOMAS CONWAY, JOANNE GOLDBERG
L-1947-13

In this case, the parents of a now adult former student at a private high school brought suit seeking to recover damages arising out of allegations of sexual misconduct between the school's teacher and their daughter. The court dismissed the parents' claims on summary judgment on several bases, including: 1) the student, having reached the age of majority, was the only individual with standing to recover damages arising out of the school's alleged misconduct; 2) even if the parents had standing, the school owed a duty to the student, not the parents, to prevent and/or address staff misconduct; and 3) even if the parents had standing and were owed a duty, expert testimony was required to establish the standard of care that should have been exercised by the school in response to allegations of staff sexual misconduct.

04-12-16 Michael Ferguson, Benjamin Unger, Chaim Levin, Sheldon Bruck, Jo Bruck, Bella Levin v. JONAH (Jews Offering New Alternatives for Healing f/k/a Jews Offering New Alternatives to Homosexuality), Arthur Goldberg, Alan Downing, Alan Downing Life Coaching, LLC
L-5473-12

Defendant JONAH is a nonprofit corporation dedicated to educating the Jewish community about the social, cultural, and emotional factors that lead to same-sex attractions. JONAH uses counseling and other methods to assist individuals to purge unwanted same-sex attractions. Plaintiffs allege that JONAH's business practices violate the New Jersey Consumer Fraud Act

("CFA"), N.J.S.A. 56:8-1 to -20. Plaintiffs' CFA claim is based on two separate forms of ascertainable loss. The first is money spent on JONAH's services. The second is money spent on reparative therapy necessitated by JONAH's services. JONAH moved for partial summary judgment, asserting that the second category of loss is not recoverable under the CFA. This court held that reparative therapy can form the basis of an ascertainable loss under the CFA.

03-14-16 CORA CHILDS AND GENERAL MAJORITY POLITICAL ACTION COMMITTEE V. EDWARD MCGETTIGAN, COUNTY CLERK AND NEW JERSEY REPUBLICATION STATE COMMITTEE, INTERVENTOR
L-2362-15

The issue before the court is whether a party that pre-prints a registered voter's name and address on a vote by mail ballot application is an assistor under N.J.S.A. 19:63-6(a) and, if so, whether, under the circumstances of this case, the failure of that party in completing the assistor section of the vote by mail ballot application renders it invalid. The court holds that, under the circumstances of this case, while there was a technical violation in General Majority Political Action Committee's (hereinafter "GMP") failure to complete the assistor section of the vote by mail ballot application, nonetheless, this technical violation does not render the applications distributed by GMP invalid.

03-02-16 STATE OF NEW JERSEY V. MICHAEL THOMPSON AND TIFFANY TUCKER
14-09-2228

The issue raised here is whether employees can be held criminally liable for their unauthorized access to other employees' emails under N.J.S.A. 2C:20-25. In this case, the defendants were alleged to have utilized their administrative passwords to open and read the emails of several high-ranking employees in excess of their authorization. The court considered and rejected the decision in State v. Riley, 412 N.J. Super. 162 (Law Div. 2009), which held that N.J.S.A. 2C:20-25 does not apply to employees who are granted password-protected access to a computer system and use that information for purposes prohibited by their employer.

This court found that the defendants' alleged violations of employee access to internal computer data constituted a breach of the agreement between the employer and the employee which

dictates the terms of appropriate access at work. The court held that the term "unauthorized access" under N.J.S.A. 2C:20-5 is directly applicable to employees who already possessed password-protected access in the scope of their employment.

02-19-16 FICHTER V. FICHTER
FM-15-469-11

In 2013, the State of New Jersey amended the Child Support Guidelines to include additional provisions relating to the cost of motor vehicle insurance. These amendments, however, have arguably raised further debate and question as to whether a parent who is already paying guideline-level child support is, or is not, obligated to also contribute to the additional cost of an unemancipated teenage child's car insurance as a newly licensed driver. As there is apparently no case law addressing this issue subsequent to the 2013 amendments, the court addresses this issue in the case at bar.

For the reasons set forth in this opinion, the court holds the following:

1) Reasonable car insurance is one of the most important expenditures which two responsible parents may make for the protection of a newly licensed teenage driver.

2) For an unemancipated child under eighteen years of age, New Jersey's Child Support Guidelines generally cover child support including, at the very least, technical consideration of the general cost of "insurance" as part of a family budget. A court in its reasonable discretion, however, may increase or otherwise adjust guideline level child support in a particular case to account for the very critical, specialized and unique nature of car insurance, based upon multiple considerations, and the need for both parents to financially contribute to same in furtherance of the child's best interests.

3) For an unemancipated child over eighteen years of age, the court in its discretion may generally determine child support under N.J.S.A. 2A:34-23, without application of the Guidelines, and may direct parents to contribute to some or all of the cost of reasonable car insurance as well based upon the factual circumstances of the case.

02-12-16 I/M/O ADOPTION OF THE HOUSING ELEMENT FOR:
THE TOWNSHIP OF MONROE
L-3365-15

THE TOWNSHIP OF SOUTH BRUNSWICK
L-3878-15
THE TOWNSHIP OF EDISON
L-3944-15
THE BOROUGH OF SOUTH PLAINFIELD
L-3994-15
THE TOWNSHIP OF OLD BRIDGE
L-3997-15
THE TOWNSHIP OF PLAINSBORO
L-4007-15
THE BOROUGH OF SAYREVILLE
L-4010-15
THE TOWNSHIP OF EAST BRUNSWICK
L-4013-15

The novel issues adjudicated in these eight Mount Laurel cases (consolidated for the purposes of oral argument only) concern: (1) the applicability and implementation of N.J.A.C. 5:97-5.8 [the 1000 unit cap rule promulgated by the Council on Affordable Housing (COAH)] in the context of Municipal compliance with their respective Third Round affordable housing obligations; (2) whether and to what extent that rule requires those municipalities to address the unmet need for affordable housing that was generated between 1999 and the present date (the gap period), during the time that COAH had ceased to function; and (3) how credits shall be applied.

In this regard, the court concluded that a municipality's affordable housing obligations must include the accumulated unmet need. However, in order to give effect to the competing legislation and judicial concerns that an excessive influx of housing may cause a radical transformation to that town, a balance was struck so as to give effect to the intent and dual purposes of the Legislature and the Supreme Court – providing affordable housing while at the same time minimizing the potential for a radical transformation – by permitting the need that accumulated during the gap period (1999-2015) to be phased in, presumptively for up to three consecutive ten-year compliance cycles, starting with the ten-year period following the anticipated 2015 grant of compliance. That time period may, on motion, be reduced for good cause, based upon the criteria identified in N.J.A.C. 5:97-5.8 and sound environmental and planning principles.

In addition, any excess credits that were earned during the prior rounds (1987-1999), or since 1999, are to be applied first to the sixteen-year gap period between 1999 and 2015, while COAH

was, for all intents and purposes, inactive during which a municipality's affordable housing obligation, if eligible for the "cap", would be limited to 1600 units, and, if not exhausted, could thereafter be applied against the prospective need obligation for the 2015 to 2025 cycle. Those municipalities ineligible for the cap may likewise seek to phase in their obligations, but the presumption shall be against doing so, which presumption may be overcome only by clear and convincing environmental and/or planning evidence that a radical transformation would occur.

This construct fairly reconciles the constitutional imperatives with the competing interests of those municipalities (whether eligible for the 1,000 unit cap or not) that their towns will not be radically transformed overnight, while protecting the constitutional mandates of the Supreme Court, and by tracking, as closely as possible, the intent and purposes of the FHA and COAH regulations.

02-05-16 D.G. AND S.H. V. K.S.
FD-15-1386-14-S

This case involves issues of custody, removal and support surrounding an unusual agreement entered into between three friends to conceive, and jointly raise, a child in a tri-parenting arrangement. O.S.H. is a female minor child born in 2009. Plaintiff, D.G., is the biological father of O.S.H., and K.S. is the child's biological mother. Plaintiff, S.H., is D.G.'s male partner, who has bonded with and has become a psychological parent of O.S.H. Following a lengthy plenary hearing, and for the reasons stated in the opinion, the court awards joint legal and joint residential custody of O.S.H to all three parties, and denies the application of K.S. to remove and relocate the child to a different state.

02-03-16 V.H. AND C.H. V. NEW JERSEY DIVISION OF CHILD PROTECTION AND PERMANENCY

Where almost seven years have elapsed since the entry of the final judgment of adoption, adoptive parents may not vacate the final judgment based upon alleged failure of the New Jersey Division of Children Protection and Permanency to disclose all the child's pertinent information.

01-08-16 C.G. AND R.G. V. WINSLOW TOWNSHIP BOARD OF EDUCATION
L-3909-13

This opinion details competing public policy issues, specifically involving the nexus that exists between the Open Public Records Act ("OPRA") and the Federal Family and Educational Records Privacy Act ("FERPA"). This issue is not only of continuing public interest and importance, but also one which explains and defines the often competing interests of governmental transparency and the expectancy of privacy afforded to educational records. Of greater relevance to the State's Judiciary is the interplay that exists between federal and state law, specifically, FERPA and New Jersey's Pupil Records Act ("NJ PRA"), which is outlined and addressed in this opinion.

12-29-15 HOWARD E. FLECKER, III V. STATUE CRUISES, LLC, ET AL. (RECONSIDERATION)
L-4522-09

Defendant operates a passenger ferry service from ports in New Jersey and New York located on the Hudson River to Ellis Island. Plaintiff was a deckhand employed by defendant and a member of a collective-bargaining unit. Plaintiff filed a single-count class action complaint against Defendant alleging that the Collective Bargaining Agreement entered between the parties was contrary to the New Jersey Wage and Hour Law ("NJWHL"). Subsequently, defendant reduced plaintiff's hours, and plaintiff filed suit. The Law Division held that plaintiff's wage and hour claim was preempted by federal law. Plaintiff appealed.

The Appellate Division affirmed in part and reversed in part, and remanded to the Law Division to make findings regarding the extent to which Statute Cruise's operations extend into federal waters and whether New Jersey's Wage and Hour Law is pre-empted by federal law.

On remand, the Law Division reviewed precedent regarding what constitutes "federal waters" and found that the Hudson River is in federal waters. In a matter of first impression, the Court then determined that federal law pre-empted New Jersey's Wage and Hour Law. The Law Division also conducted a choice of law analysis and determined that, in the event federal law did not apply, the NJWHL would be applicable. Finally, the Law Division concluded that that the New Jersey Conscientious Employee Protection Act ("CEPA") is not pre-empted by the National Labor Relations Act ("NLRA"). Both parties filed motions for reconsideration.

The Law Division determined that its prior rulings did not fail to appreciate the significance of probative, competent evidence, and that the court did not express its decision on a palpably incorrect or irrational basis. Therefore, the Law Division denied both motions for reconsideration.

12-29-15 HOWARD E. FLECKER, III V. STATUE CRUISES, LLC, ET AL. (REMAND)
L-4522-09

Defendant Statute Cruises operates a passenger ferry service from ports in New Jersey and New York located on the Hudson River to Ellis Island. Plaintiff was a deckhand employed by defendant and a member of a collective-bargaining unit. Plaintiff filed a single-count class action complaint against defendant alleging that the Collective Bargaining Agreement entered between the parties was contrary to the New Jersey Wage and Hour Law ("NJWHL"). Subsequently, defendant reduced plaintiff's hours, and plaintiff filed suit. The Law Division held that plaintiff's wage and hour claim was preempted by federal law. Plaintiff appealed.

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10-23-15 IN THE MATTER OF THE ADOPTION OF THE MONROE TOWNSHIP HOUSING ELEMENT AND FAIR SHARE PLAN AND IMPLEMENTING ORDINANCES
L-3365-15

Monroe Township's affirmative step in filing a declaratory judgment action to obtain judicial approval of its housing element and fair share plan (which includes a

request for approval of its affordable housing trust fund expenditures), shall be "deemed" the legal and equitable equivalent to having sought COAH's "approval", thereby satisfying N.J.S.A. 52:27d-329.2(a) and "triggering" the start of the four-year clock within which the municipality must "spend or commit to spend" the collected funds per N.J.S.A. 52:27D-329.2(d), which period will be "tolled" until such time as the court has either: (1) granted a judgment of compliance; or (2) adjudicated a municipality's fair share plan to be deficient; and has, in addition, concluded (3) that the municipality is· "determined to be non-compliant" by failing to amend or correct its plan's deficiencies.

Where a judgment of compliance includes an approved trust fund spending plan, four-year time period will begin to run from the filing date of that judgment. If a municipality is adjudged to be non-compliant, the tolling will cease simultaneously, and the four-year period will relate back to, and be calculated from the filing date of the original declaratory judgment action, although any future forfeiture proceeding must be by way of a separate, independent action, consistent with In re: Failure of the Council on Affordable Housing to Adopt Trust Fund Commitment Regulations, 440 N.J. Super. 220 (App. Div. 2015).

This conclusion fairly reconciles and harmonizes the applicable statutes, avoids an anomalous result, and properly affords deference to the Legislature's primary intent and dual purposes of: (1) discouraging the stockpiling of affordable housing funds; and (2) insuring that there be independent oversight of municipal efforts to utilize those collected trust funds.

10-20-15 LOGIC PLANET, INC. V. UPPALA
L-1397-14

The issue raised here requires the Court to interpret for the first time, whether the statutory requirements that regulate an "Employment Agency" (a defined term under the Employment and Personnel Services Act (the "Act")) and which prohibit such businesses from recovering fees or commissions or enforcing restrictive covenants or liquidated damage clauses unless "licensed" by the Department of Consumer Affairs, apply with equal force to a "Temporary Help Service Firm" ("THSF"), a separately defined business category which, under the Act, engages in distinctly different activities.

Unless a THSF engages in conduct which, in its "totality" is the functional equivalent of that practiced by an Employment Agency, thereby triggering the need to be licensed as an Employment Agency before pursuing the types of claims enumerated above (which has not been alleged here, and is not supported by the undisputed facts), Logic Planet need not be "licensed." Rather, because it is "registered" as a THSF, it is entitled to seek enforcement of its employment agreement against its former employee, Uppala, including any fees, liquidated damage clauses or restrictive covenants as may be contained therein.

10-15-15 KAKSTYS V. STEVENS
FM-15-1199-14

This case presents a significant issue of New Jersey divorce law regarding the effective date for the retroactive establishment of an initial child support obligation. Specifically, the legal question is whether the court may retroactively set an obligor's child support obligation (a) only as far back as the filing date of an actual child support motion, or (b) back further to the filing date of the divorce complaint itself. In many cases this distinction is financially substantial, particularly when there is a large time gap between the filing date of the divorce complaint and the filing date of a pendente lite motion for child support.

For the reasons set forth in this opinion, the court holds that when a party files a divorce complaint which contains an explicit written request for child support from the other party, the court may retroactively establish the other parent's child support obligation back to the filing date of the complaint for divorce. Further, a retroactive order of this nature does not legally violate either the terms or spirit of New Jersey's anti-retroactivity statute, N.J.S.A. 2A:17-56.23a.

09-29-15 IN RE: T. KENNA, TRANSFER OF STRUCTURED SETTLEMENT PROCEEDS TO PEACHTREE SETTLEMENT FUNDING, LLC
L-1004-15

This opinion interprets the term "best interest" and discusses what satisfied "express findings" as those terms are used in the Structured Settlement Act at N.J.S.A. 2A:16-63. The court concludes that the trial court's obligation is greater than merely inquiring into whether or not the payee is competent, and has voluntarily entered into the agreement with

knowledge of the significant financial sacrifice being made through the sale.

Trial Courts must make "express findings" that the proposed sale is in the payee's "best interest" by improving his or her life (or addressing an urgent need), making the loss of future income and the receipt of a lesser sum now, comparable to an investment which will enhance the payee's life in a meaningful way, by augmenting the payee's circumstances in a manner that waiting for the money would not do.

09-23-15 NL INDUSTRIES V. STATE OF NEW JERSEY
L-1296-14

In a case of first impression, the State of New Jersey moved to dismiss plaintiff's complaint against it under the Spill Act (N.J.S.A. 58:10-23.11) for contribution toward the costs of remediating a contaminated site, based on the State's contentions that (1) the Spill Act did not retroactively abrogate its sovereign immunity; and (2) the procedural and substantive requirements of the previously enacted Tort Claims Act (N.J.S.A. 59:1-1) must be, but were not complied with.

Since the Spill Act's definition of a "person" subject to the provisions of the Act expressly includes the State of New Jersey, and because later amendments to the Spill Act extended strict liability to any person who is "in any way responsible" for discharging a hazardous substance, and, granted a right of contribution against such other "persons" who are "in any way responsible," it would be illogical to conclude that the strict liability provisions of the Act did not include the State. Inasmuch as the Supreme Court has upheld the retroactive application of the Spill Act (see Ventron), absent a clear expression of legislative intent to the contrary, the Tort Claims Act cannot be construed so as to immunize the State from liability.

If proven, plaintiff's contentions that the State: (1) played a significant part in the planning and construction of a sea wall using hazardous materials; (2) had actual knowledge of the use of hazardous materials at the project site; (3) actively operated and maintained the project; and (4) failed to intervene to prevent or abate the risk of contamination after being notified of the potential harms – could expose the State to strict liability under the Spill Act, and as such, the State's motion to dismiss is denied.

08-28-15 ALPERT V. PORT AUTHORITY OF NEW YORK AND NEW JERSEY, ET ALS.
L-3960-13

In this motion for summary judgment, the trial court considered whether the Conscientious Employee Protection Act and common law retaliation claims apply to a bi-state agency. In his complaint, plaintiff alleged retaliatory discrimination against his former employer, Port Authority of New York and New Jersey, and his former supervisor. Among other challenges, the Port Authority argued that, as a bi-state agency, it is not subject to CEPA, a single-state statute, nor is there a substantially similar common law in the State of New York.

The trial court granted defendants' motion for summary judgment finding, among other things, that CEPA and New York's whistleblower statute are not substantially similar, complimentary nor parallel and, as such, the Port Authority is not subject to CEPA. Moreover, since New York does not recognize a common law cause of action for wrongful termination of an employee-at-will, plaintiff cannot advance a common law claim of retaliation against the defendants.

08-26-15 JUSINO V. LAPENTA
L-7213-12

This opinion addresses the factors to be considered by the court in setting a reasonable fee for an expert for attending a discovery deposition under Rule 4:10-2(d)(2). This opinion is of particular significance because it addresses two issues that often arises during civil litigation:(1) whether an expert can charge a flat fee for attending the deposition; and (2) how does a court calculate a reasonable hourly rate for an expert attending a deposition. The opinion offers an analysis of a number of federal opinions interpreting a federal rule that contains language similar to our Rule 4:10-2(d), and also addresses whether an expert can charge a flat fee for attending a discovery deposition.

The only reported New Jersey opinion that addresses "reasonable fee" hourly fee for an expert attending a discovery deposition is Johnston v. Connaught Labs, 207 N.J. Super. 360 (Law Division 1985). Obviously, the Johnston, opinion was published almost thirty years ago and is a trial level opinion. The opinion does not address the propriety of an expert charging a flat fee for attending a discovery deposition. The opinion does not address how to set a reasonable fee but holds that a

reasonable hourly fee for a pediatric neurologist is $250 per hour. The Johnston opinion's brevity renders it of limited utility to a trial judge when setting a fee for an expert's discovery deposition. The court simply determined what it viewed to be a reasonable hourly rate without providing any description of the reasoning the court should employ in order to determine whether the fee charged by the expert is reasonable.

08-13-15 T.M. V. A.S.
FD-16-000650-15

This case concerns an application filed by the Passaic County Board of Social Services, on behalf of the mother, for child support for her twin girls from the defendant. DNA paternity test results returned showing that the defendant is the father of one twin but not the other, the result of a scientifically and statistically rare phenomenon known as heteropaternal superfecundation. In this case of first impression, the court focused its inquiry on practical problems associated with DNA collection and genetic testing and more specifically on the sampling, handling, processing and analysis of DNA. After laying forth various factors and analyzing them, the court was satisfied that the general concept of using DNA to establish paternity is widely accepted in the relevant scientific communities and was valid. Furthermore, the court was also satisfied by clear and convincing evidence that the current method of DNA collection, handling, testing, and analysis in New Jersey is satisfactory, and as such, DNA paternity tests results in most instances may be accepted as reliable and accurate without any expert testimony. However, in rare or unusual occurrences, such as the one presented before this court, before accepting the DNA paternity results, the court considered expert testimony and additional factors to assess the integrity of a DNA test and the validity of its results. The court found paternity test conducted in the present case was accurate and reliable. The court established paternity for one child, A.M., and ordered A.S. to pay child support.

06-24-15 LUCCA V. WELLS FARGO BANK, N.A., ET ALS.
L-3113-12

This case addresses a scam perpetrated upon an eighty-two-year-old customer of Wells Fargo Bank in which she wire transferred the sum of approximately $330,000.00 from her account at the bank to individuals whose names were given to her in a telephone call by someone who identified himself as a lawyer. The customer did not know either the caller or the

individuals to whom the money was ultimately sent. In this issue of first impression, the court addresses whether N.J.S.A. 17:16T-1 to -4 creates a statutory cause of action for a bank customer against a bank if a bank fails in good faith to report a suspected scam against the bank customer to either the police or the county department of adult protective services. The court concluded that the statute does not impose such a duty upon a financial institution.

06-09-15 DOBCO, INC. V. BROCKWELL & CARRINGTON CONTRACTORS, INC., ET ALS.
L-4684-14

This application raises a novel question concerning the financial qualifications of bidders for governmental contracts. More specifically, prospective bidders for public work are required to be preclassified by the Division of Property Management and Construction (DPMC) in the Department of the Treasury in accordance with the provisions of N.J.A.C. 17:19-2.1 to -2.7. Each classified bidder's aggregate rating must then be calculated in accordance with the formula prescribed by N.J.A.C. 17:19-2.8. At the conclusion of the classification process DPMC issues the bidder a notice of classification which includes the maximum amount of public work on which it is qualified to bid. The dispute is whether a bidder who has been adjudicated the low bidder on a particular contract must disclose as much in subsequent bid submissions if the combination of such projects would cause it to exceed its aggregate rating. This court answers that issue in the affirmative and also holds that a bidder's failure to disclose precludes it from providing, post-bid, clear and convincing evidence that it would nonetheless be able to perform both contracts.

05-20-15 DARA BALTUSKONIS V. THE CITY OF WILDWOOD
L-491-14

The issue presented is whether voters have the right to challenge and put to referendum a municipal "cap bank" ordinance adopted pursuant to N.J.S.A. 40A:4-45.15a. In finding that such ordinances are not subject to referendum, the court examines the legislative intent behind Local Budget Law and how a "cap bank" ordinance fits into the overall municipal budget planning scheme.

05-11-15 AMERICAN HUMANIST ASSOCIATION, ET ALS. V. MATAWAN-ABERDEEN REGIONAL SCHOOL DISTRICT, ET ALS.
L-1317-14

This case presents the question of whether a public school district violates the equal protection provisions of the New Jersey State Constitution by following the mandates of a state statute requiring its pupils on every school day to salute the United States flag and repeat the Pledge of Allegiance to the flag. Plaintiffs, who identify as atheists, contend that the words "under God" contained in the Pledge of Allegiance violate their equal protection rights because the words define patriotism in terms of God-belief and thus do not allow children who hold non-theistic beliefs to participate fully in the recitation of the Pledge with other children. The Court concludes that although Plaintiffs may bring this action directly against the School District because they allege violations under the New Jersey Constitution, the Complaint should be dismissed because New Jersey's Pledge Statute does not violate Plaintiffs' equal protection rights under either Article 1, Paragraph 1 or Article 1, Paragraph 5, of the New Jersey Constitution.

04-29-15 DEWAN S. KHAN, M.D. V. CONVENTUS INTER-INSURANCE EXCHANGE, ET ALS.
L-1253-13

The plaintiff in this putative class action sought recovery under the Consumer Fraud Act (CFA), N.J.S.A. 56:8-1, for alleged violations of the CFA relating to the defendant Coventus' sale and servicing of her medical malpractice insurance policy among other claims. The court dismissed those claims, and held that medical malpractice insurance policies were not subject to the CFA.

04-02-15 SCHROEDER V. COUNTY OF ATLANTIC, ET ALS.
L-2291-14

The issue presented is the applicability of a local pay-to-play ordinance where the contributions in question were made to the State campaign rather than the county campaign of a current holder of county public office. The opinion examines the public policy behind pay-to-play ordinances, as well as the interplay between the State pay-to-play statute and local ordinances adopted pursuant to the authority granted by the State legislature.

03-30-15 WINNS V. ROSADO
LT-9188-14

This opinion addresses a landlord's duty to comply with federal notice requirements prior to instituting a summary proceeding for possession against a Section 8 tenant. The court holds that the landlord's failure to comply with the federal notice requirement to the state housing agency under a lease addendum required by United States Department of Housing and Urban Development ("HUD"), pursuant to a housing assistance program, is jurisdictional. Therefore, the tenant's order to show cause was granted, vacating the judgment of possession, quashing the warrant of removal, and dismissing the complaint without prejudice.

03-26-15 IN RE REGISTRANT J.M.
99-020027

In this matter the court addressed the novel issue as to whether a convicted sex offender, who is subject to a lifetime bar to termination of Megan's Law registration, may nevertheless be eligible for termination from the requirements of Community Supervision for Life/Parole Supervision for Life (CSL/PSL).

N.J.S.A. 2C:7-2(g), enacted in 2002, provides that any person convicted of aggravated sexual assault (and other offenses) is subject to Megan's Law registration for life, without possibility of termination. In 1995, registrant pled guilty to the offense of aggravated sexual assault.

Registrant moves to be relieved of his registration obligation and his CSL obligations, arguing that the retroactive application of the N.J.S.A. 2C:7-2(g) is unconstitutional. The Supreme Court has already held that the registration requirements of Megan’s Law may be retroactively applied. However recently, in Riley (219 N.J. 270 (2014)) and Schubert (212 N.J. 295 (2012)), the court held certain provisions of the CSL/PSL statute are punitive and cannot be retroactively applied.

In this instance, the court did not decide the motion on constitutional grounds. Rather, although the Legislature amended the Megan’s Law registration statute to retroactively bar termination for certain offenses, it did not amend the CSL/PSL statute (N.J.S.A. 2C:43-6.4). Based upon the clear statutory language, a person may be removed from ALL of the obligations of CSL/PSL although he/she cannot be relieved of the registration requirements.

03-25-15 CAMERON V. CAMERON

FM-15-1412-08

This case presents a legal issue of first impression regarding the statutory interpretation of N.J.S.A. 2A:17-56.21(a) ("information provided to credit reporting agencies"), and the reporting of child support arrears as a delinquency on an obligor's credit report. For the reasons set forth in this opinion, the court holds that the statute applies in cases where a parent fails to honor an existing child support order, but does not equitably apply in situations where an obligor suddenly owes arrears as the result of a retroactively imposed or increased support order.

03-13-15 SKEY & BHATTACHARYA LLC V. MURSHADA EHSAN

DC-4083-14

Attorney retainers for legal services are not subject to the Truth in Lending Act, and an attorney who advances legal services without receipt of the retainer funds is not considered a lender.

01-22-15 HARRISON BOARD OF EDUCATION V. NETCHERT, ET ALS.
L-4074-14

This case presents an interesting conundrum: whether a referendum question that plaintiff concedes has no actual legal effect on the relationship between the parties nonetheless should be barred. Plaintiff Town of Harrison Board of Education filed a verified complaint in lieu of prerogative writs seeking an order restraining defendant Barbara Netchert, in her capacity as Hudson County Clerk, from printing a nonbinding referendum question submitted by the Borough of East Newark's Mayor and Governing Body on the ballot for the General Election in November 2014. The central issue involves the legislative division of power at the municipal level between the local governing body and the board of education. In a case of first impression, the court held that the Borough Clerk acted improperly in submitting an interpretive statement without a resolution by the Borough Council; the Interpretive Statement was invalid and the public question was to proceed standing alone.

01-20-15 GROH V. GROH
FM-15-1222-13

This case presents a legal issue regarding same-sex rights and statutory interpretation of N.J.S.A. 2A: 34-2.1, which sets forth a list of statutory grounds for dissolution of a civil union. Absent from this list is the no-fault ground of irreconcilable differences. Notwithstanding same, and for the reasons set forth in this opinion, the court holds that same-sex couples can legally dissolve their civil unions based upon irreconcilable differences.

12-22-14 HARTE V. HAND
FM-01-112-09

This decision sets forth the methodology to equitably determine child support in cases of multiple family obligations, expanding on the Appellate Division's recent decision in Harte v. Hand, 433 N.J. Super. 457 (App. Div. 2013). Additionally, it clarifies the effect of the self-support reserve in modifying child support awards. Finally, it sets out the procedure to modify and equitably distribute child support among multiple children when the obligor's income falls below the self-support reserve.

The Court finds that once multiple child support awards are set using the methodology set forth in Harte v. Hand, supra, it must determine whether any party falls below the self-support reserve. Should both the custodial and non-custodial parent fall below the self-support reserve, no adjustment shall be made to the child support award. If the custodial parent is above the self-support reserve but the non-custodial parent falls below it, an adjustment must be made. The Court shall then order a modified amount between $5 and the "support amount at $170 combined net weekly income for the appropriate number of children," found on the first column of the child support awards schedule of Appendix IX-F. Once appropriate self-support reserve modifications are made, the Court holds that it should then equitably distribute multiple family obligations among the children proportionately based upon the income of the custodial parents.

This case is the first of its kind in explaining the methodology in determining child support for individuals with multiple family obligations while taking into account the effect of the self-support reserve. It further describes an equitable

method to distribute child support among children whose parents have multiple family obligations.

11-06-14 J.C. V. M.C.
FM-15-1322-13N

This case involves a circumstance when a plaintiff files a divorce complaint, but cannot verify defendant's address for service of process due to an active domestic violence restraining order. Accordingly, the legal issue involves a clash of two distinct rules and policies in New Jersey: (1) the obligation of a plaintiff seeking to serve a divorce complaint upon a defendant to make "diligent inquiry" of the defendant's whereabouts to effectuate service of process, and (2) the right of a domestic violence victim to confidentiality of his or her location.

For the reasons set forth in this opinion, the court finds that since the second policy involves issues of physical safety while the first policy does not, the second policy must be given priority over the first. The court orders that the plaintiff shall not be required to demonstrate personal "diligent inquiry" to locate defendant in the traditional sense, and in fact is prohibited from personally making such inquiry on his own. Instead, as a manner of substituted service, the Domestic Violence Unit of the Family Court will forward a copy of the summons and complaint to defendant at her last known address in the Unit's records, via certified and regular mail. If unable to effectuate service in this fashion, the court in its discretion will determine alternate methods of substituted service under the circumstances.

10-09-14 MADISON V. DAVIS
FM-15-1152-13-N

This case presents legal issues of first impression regarding the rights and obligations of divorced parents when their child attends pre-school. For the reasons set forth in the opinion, the court holds the following:

1. When a child attends pre-school as a form of work-related day care, and the parents cannot agree on which pre-school a child should attend, the primary residential custodian generally has the initial right to make the selection. If the non-custodial parent objects to the choice of pre-school, he or she has the burden of proof to demonstrate that the choice is

unreasonable under the circumstances and contrary to the child's best interests.

2. When a non-custodial parent sporadically has extra time to spend with the child during pre-school hours, he or she may generally do so upon reasonable notice. However, once the child is of school age and begins attending formal schooling, the child generally should not be removed from the classroom to accommodate additional "parenting time" absent extenuating circumstances.

3. When two divorced parents, as joint legal custodians, demonstrate ongoing contentiousness and litigiousness by repeatedly returning to court against each other, the court may, in its discretion, compel both parents to attend mandatory co-parenting counseling, over parental objection and at joint parental cost, in furtherance of the child's best interests.

08-01-14 TRIFFIN V. STATE OF MARYLAND, ET AL.
DC-5237-13

Co-defendant Rashad Jemal Christmas cashed a check at Friendly Check Cashing Service ("Friendly") within the ninety-day deposit limitation period placed on the check by the drawer, co-defendant Maryland Child Services Enforcement Administration ("CSEA"). Friendly attempted to deposit the check after the ninety-day deposit period expired and the check was dishonored by the bank. Plaintiff then purchased the check from Friendly and instituted this action against the defendants. Plaintiff received a default judgment against the defendants after both Christmas and CSEA failed to file an answer to plaintiff's complaint. CSEA subsequently filed a motion to vacate default judgment three months after the entry of default. CSEA's first claim was that plaintiff did not effectuate proper service, but the court determined that CSEA had been properly served and did not file a timely answer. CSEA also argued that it could show excusable neglect due to its delay in finding a New Jersey attorney to support CSEA's attorney's application to practice pro hac vice in New Jersey. The court found that CSEA's attorney had ample time to find the necessary support, but failed to do so before default was entered. CSEA also asserted that it had a meritorious defense by challenging plaintiff's status as a holder in due course. In the alternative, CSEA claimed the check was void due to the "VOID AFTER 90 DAYS" notation on the memorandum line of the check. The court disagreed with CSEA, finding that plaintiff was a holder in due course under the shelter rule. The court also held that setting

a ninety-day limitation on the check was unenforceable because the defendant was liable for the check until the expiration of the three year statute of limitations for unaccepted drafts under the New Jersey UCC. The court, therefore, ultimately denied CSEA's motion to vacate default judgment.

07-25-14 STATE OF NEW JERSEY IN THE INTEREST OF M.L.
FJ-13-1524-13B

The issue in this case is whether the court must impose the mandatory $500 fine for possession of alcohol under N.J.S.A. 2C:33-15(a) on a juvenile who is granted a deferred disposition.

After reviewing other cases involving mandatory penalties for different statutes in which the issue was mandatory license revocation, this court concludes that the mandatory $500 fine is not applicable to a juvenile who is granted and who successfully completes a deferred disposition.

07-21-14 LEGGIO V. LEGGIO
FM-16-1229-04

This was a pro se motion for a name change filed by plaintiff on March 8, 2014. No opposition was filed by the defendant. As part of plaintiff's submission she had provided a copy of a dual judgment of divorce from bed and board entered on July 15, 2004. The court has been unable to find any published opinion which addresses the meaning of "divorce from the bonds of matrimony" in the context of a name change. However, absent proof to the contrary, the marital bond between the plaintiff and the defendant continues to remain intact during the entire period of time from entry of the limited judgment of divorce from bed and board. The "bonds of matrimony" continue in full force and effect today. Under the facts of this case, since the parties continue to be married in the eyes of the law, it is not proper for a name change application to be granted in this court under N.J.S.A. 2A:34-21.

07-15-14 MARSICO V. MARSICO
FM-15-1152-13-N

This case presents the novel question of whether a litigant may appear and testify in divorce proceedings through a designated power of attorney (POA). For the reasons set forth in this opinion, the court declines to authorize such a procedure in this case.

Pursuant to Rule 1:36-2(d)(2) and (6), the opinion addresses issues of law which is of continuing public interest and importance in family law jurisprudence. The court's opinion was incorporated into an order on July 24, 2013. A judgment of divorce was entered on April 28, 2014, and there is no further litigation pending between the parties.

06-13-14 BLACK V. BLACK
FM-15-310-10-N

This case presents three significant legal issues regarding a divorced parent's obligation to contribute to the cost of a child's college education. For the reasons set forth in this opinion, the court holds the following:

1. When there is a damaged relationship between a college-age student and a parent, the court may order the student to attend joint counseling with the parent as a condition of the student receiving ongoing financial assistance from that parent for college tuition, so long as there is no compelling reason to keep the parent and student physically apart.

2. The option of attending college at a state college or a private college, at substantially less cost than the student's school of first preference, is a relevant issue for the court's consideration. The Appellate Division's reported opinion in Finger v. Zenn, 335 N.J. Super. 438 (App. Div.2000) does not hold to the contrary.

3. While the Supreme Court case of Newburgh v. Arrigo, 88 N.J. 529 (1982) sets forth a list of factors for a court to consider on the issue of college contribution, a case may present additional equitable factors for consideration as well. One such additional factor is whether the student has younger siblings of relatively close age who are also likely to attend college in the near future. In such circumstance, there may be a need for the implementation of a reasonable financial plan which fairly allocates present and future contemplated funding resources among all of the parties' children, rather than exhausting such resources primarily or exclusively on the oldest child who happens to be first in line for college.

05-30-14 DONOVAN V. BERGEN COUNTY BOARD OF CHOSEN FREEHOLDERS, ET AL.

L-2313-12

County Executive brought suit to declare resolution of Freeholder Board appointing accountant to conduct audit required by Local Fiscal Affairs Law to be an unlawful exercise of powers given to County Executive under the Optional County Charter Act. County Executive also seeks ruling that her "designee" can fully participate in Freeholder meetings. The court held (1) appointment of auditor was exercise of administrative power reserved for Executive; (2) section of County Code authorizing appointment of auditor by Freeholder Board and resolution of Freeholder Board was null and void; and (3) under Optional County Charter Act only County Executive, and not her designee, could participate in Freeholder Board meetings.

05-12-14 SALEM COUNTY IMPROVEMENT AUTHORITY V. SALEM COUNTY BOARD OF FREEHOLDERS
L-234-13

The court addressed the extent of a freeholder director's veto power under N.J.S.A. 40:37A-50. Specifically, whether there was authority to veto county improvement authority meeting minutes awarding professional services contracts for 2014.

Since no New Jersey decision has addressed a veto in this context, the court reviewed legislative history of N.J.S.A. 40:37A-50, considered the presumption of validity of local government actions and the substantial burden upon plaintiffs in actions in lieu of prerogative writs. The court concluded that the veto power is expansive and is the type of oversight the legislature intended the freeholder director and board to have and to exercise. The court did not disturb the freeholder director's veto which was confirmed by the majority of the freeholder board.

05-01-14 STATE OF NEW JERSEY V. DAVID W. YOUNG
10-08-00846

Letters written by defendant, a self-proclaimed gang member and an inmate at the Union County Jail, were properly seized and read by the institution's gang investigation unit, and may potentially be admissible under N.J.R.E. 404 (b) to demonstrate "consciousness of guilt" of his pending charges.

Neither New Jersey's Administrative Code regulations, N.J.A.C. 10A: 18-2.14 (disapproved correspondence); N.J.A.C. 10A: 18-2.7 (inspection of outgoing correspondence); N.J.A.C.

10A:31-19.6 (inspection of outgoing mail); and N.J.A.C. 10A: 18-2.5 (correspondence to or from other inmates)) nor the Federal or State constitutional protections against unreasonable search and seizure or infringement of free speech, operate to bar or suppress the contents of these letters where, as here, the letters were mailed to other known or suspected gang members, to other inmates, or were mailed in envelopes with fraudulent addressee or prison identification numbers.

While outgoing mail presents a somewhat lesser security risk to the institution than may attach to incoming mail, the presence and activity of gangs in a correctional facility present a serious and inescapable threat, not only to other incarcerated individuals and correction staff, but also to the surrounding communities as well.

Because the seizure and review of the correspondence was based upon a reasonable suspicion that "disapproved content" or "criminal activity" was involved, the letters will not be suppressed, although their ultimate admissibility, either to demonstrate "consciousness of guilt" or for other purposes, shall abide the trial judge's application of N.J.R.E. 404(b) after a proper N.J.R.E. 104 hearing.

03-18-14 DONOHUE V. DONOHUE
FM-04-605-13

The issue involves equitable distribution of a PERS pension. Plaintiff sought to force defendant, as part of the final judgment of divorce, to select a specific pension option which would guarantee payments to plaintiff if the spouse holding the pension predeceased plaintiff. Plaintiff sought to impose the full costs of that option on defendant. The court identifies the factors to be considered and concludes that there is no basis for granting the relief plaintiff seeks.

03-10-14 PLOTNICK V. DELUCCIA
FD-16-000008-14

The issues involved in this case involve substantial questions under the United States and New Jersey Constitutions concerning the privacy rights and the maternal rights of a mother and putative father before the birth of the child. The court found that the mother enjoys a fundamental right to privacy until her child's birth.

02-25-14 JOHNSON V. BRADSHAW

FD-16-01950-11

The issues involved in this case are whether New Jersey has continuing exclusive jurisdiction over a Uniform Interstate Family Support Act ("UIFSA") application to enter a new order when there is a temporary child support order, but no party presently lives in New Jersey. The court found that while the court had jurisdiction to enforce the 2011 order it did not have continuing exclusive jurisdiction to modify it. The court found that the statutory definition of child support did not distinguish between final and temporary orders. Finally, the court did not use equitable estoppel to bar the defendant's argument as the court cannot use equity to establish jurisdiction.

02-13-14 GOURDINE V. CUMMINGS/TERRY V. CUMMINGS
FD-15-1150-06/FD-15-53-13-N (CONSOLIDATED)

What happens when a county probation department successfully collects a lump sum of money via tax refund intercept from a child support obligor, who owes child support arrears to multiple claimants under different accounts, including custodial parents and a county welfare agency? To whom does probation pay the money?

This case presents this question, in the context of the respective claims and rights of two different custodial parents as well as a county welfare agency to reimbursement of child support arrears from the same delinquent defendant. Pursuant to Rule 1:36-2(d) (2) and (6), the opinion addresses important questions of law which are of continuing public interest and importance in family law jurisprudence.

02-12-14 CLEMENTI V. CLEMENTI

FM-15-1242-13N

This case addresses how defendant's non-appearance at a default divorce proceeding impacts plaintiff's burden of proof regarding equitable distribution. For the reasons set forth in this opinion, the court holds the following:

1) When a defaulting defendant fails to participate in a divorce proceeding, the plaintiff is not automatically entitled to a default judgment granting all requests regarding equitable distribution. Rather, plaintiff still has an ongoing obligation to persuade the court, by a preponderance of the evidence, that

the proposal for equitable distribution is fair and equitable under the specific facts of the case;

2) Defendant's failure to object to plaintiff's proposed equitable distribution in a notice of final judgment is not necessarily the same as an express written consent, and generally cannot be the sole and exclusive basis for a court to determine that the proposal is fair, reasonable, and equitable. However, defendant's failure to object is one of many relevant factors a court may appropriately consider in determining the overall reasonableness of plaintiff's proposal for equitable distribution.

3) The value of a marital asset, relative to the remainder of the marital estate, is a legitimate and significant factor for a court to consider in determining whether a defaulting party, who has not appeared in a divorce proceeding, may lose all interest in such asset in favor of the appearing party by way of equitable distribution.

11-22-13 GARDEN STATE EQUALITY, ET AL. V. DOW
L-1729-11 (Summary Judgment Motion)

Plaintiffs brought a constitutional challenge to New Jersey's parallel marriage/civil union structure, in which same-sex couples could not marry but could enter into civil unions. The New Jersey Supreme Court had held, in a previous case, that under the New Jersey Constitution, same-sex couples are entitled to the same rights and benefits available to opposite-sex married couples, but not to the label "marriage." After plaintiffs brought this action, several federal agencies implementing a United States Supreme Court decision chose to limit marital benefits to same-sex couples who are "married" under state law. The court found that same-sex couples were ineligible for federal marital benefits as a result of New Jersey's refusal to label their relationships "marriage." The court held that this impact violated their equal protection rights, guaranteed by the New Jersey Constitution, by rendering those couples ineligible for the same benefits enjoyed by opposite-sex couples. The court ordered New Jersey to begin recognizing same-sex marriages.

11-22-13 GARDEN STATE EQUALITY, ET AL. V. DOW
L-1729-11 (Application for Stay)

Defendants moved for a stay, pending appeal, of the order requiring New Jersey to begin recognizing same-sex marriages.

The court denied the application, holding that the applicable factors did not favor granting the stay. Though the underlying issue was a constitutional issue of public importance, the court held that this was not enough to support the application, particularly in light of the deprivation of constitutional rights suffered by plaintiffs and other same-sex couples as a result of New Jersey's refusal to recognize same-sex marriage, which constituted irreparable harm.

11-19-13 A.W. V. T.D.
FM-842-10-N

This case presents the impact which a parent's terminal illness may have on an existing custody arrangement. The plaintiff-father, who is the non-custodial parent, seeks an order granting emergency transfer of residential custody of the parties' three minor children from the defendant-mother, on the grounds that she now has incurable stage IV breast cancer requiring various medical interventions. The defendant objects to plaintiff's application, and requests to retain custody of the children at this time.

The court denies plaintiff's application, and directs that the defendant shall remain the children's primary caretaker unless and until further order of the court, or as otherwise agreed by the parties in the future.

Pursuant to Rule 1:36-2(d) (2) and (6), the opinion determines new and important questions of law which are of continuing public interest and importance in family law jurisprudence. In particular, the case provides guidance for future courts on issues to consider when a custodial parent is terminally ill, including the interplay between (a) the children's need for a primary caretaker, (b) consideration of the children's emotional need to be with the dying parent as much as possible, and (c) the need for an appropriate transition plan, if and when necessary, which accommodates the children's needs and best interests.

09-10-13 CALREATHER GRAHAM and WILLIE E. GRAHAM V. NEHAL MEHTA, M.D.
L-1087-09

The issue presented in this medical negligence case is whether the sole defendant at trial would be entitled to a credit against any verdict returned against him in an amount equivalent to the aggregate for which the other named defendants

settled prior to the commencement of trial. The court determined that because defendant will be the only defendant for which the jury will determine liability, defendant is not entitled to such credit.

08-19-13 IN RE JANUARY 11, 2013 SUBPOENA BY THE GRAND JURY OF UNION COUNTY
DOCKET NO. 13-0001

The issue implicated in this matter is whether a blogger is entitled to the protections of the "newspaperman's privilege," as codified in the New Jersey Shield Law, N.J.S.A. 2A:84A-21, and N.J.R.E. 508. The opinion holds that under the specific facts of this matter, the blogger met the statutory factors and the criteria enumerated in the seminal New Jersey Supreme Court Case, Too Much Media, LLC v. Hale, 206 N.J. 209 (2011). As such, the court granted the movant blogger's motion to quash the grand jury subpoena, which was served upon the blogger by the Union County Prosecutor's Office.

08-09-13 I/M/O MINOR CHILDREN J.E. AND J.C.
FD-01-1286-13

In this case the court confronts the issue of whether there is a sufficient basis to exercise jurisdiction to make special findings antecedent to an application for Special Immigrant Juvenile Status ("SIJS"), pursuant to 8 U.S.C.A. § 1101(a)(27)(J) and 8 C.F.R. § 204.11, when children already are in a safe placement with petitioner.

The court concludes that it can exercise jurisdiction over the minor children J.E. and J.C. even when the children are already in a safe placement with one of the parents, the petitioner. The court grants petitioner custody of her two minor sons, J.E. and J.C. The court also makes the special findings needed for the boys to qualify for SIJS, allowing them to petition the United States Customs and Immigration Services for SIJS pursuant to 8 U.S.C.A. § 1101(a)(27)(J) and 8 C.F.R. § 204.11.

07-12-13 BARATTA, ET ALS. V. DEER HAVEN, LLC,ET ALS.
L-3682-09

The issue is whether it is possible under New Jersey law for defendants to assert a counterclaim against plaintiffs because plaintiffs sued to recoup their investment in the defendants' enterprise. The opinion also helps clarify N.J.S.A.

2A:15-59.1 and Rule 1:4-8, as it awards legal fees without proof that the offending party was either motivated by "ill will" or acted "for the purpose of harassment, delay a malicious injury"; rather, fees were awarded because the offending party acted for litigation leverage, and did not have a "reasonable belief in law or equity", that the claim could prevail.

07-05-13 BOOKER V. RICE
L-8586-12/L-8536-12 (consolidated)

The narrow issue implicated in this matter is the legal effect of abstention, specifically whether a governing body, here the Newark Municipal Council, has the authority to deem a member's abstention to be a "negative" vote in order to create a tie vote that allows for statutory mayoral intervention. The context of abstention here is grounded in the purpose of frustrating the appointment process and preventing the Mayor from exercising his statutory powers.

The court found the actions of the Mayor Booker Plaintiffs to be in violation of the Council's adopted procedural rules and the Municipal Vacancy Law provisions that empowered it to adopt such rules. The court granted the relief sought by the Baraka Plaintiffs, thereby voiding the Council's declaration of a "tie" vote, nullifying Mayor Booker's vote, and invalidating Ms. Speight's appointment. Moreover, the tolling of the thirty day period for the Council to fill the vacancy previously granted by me was lifted as of the date of the Order.

05-16-13 DUHAMELL V. RENAL CARE GROUP EAST, INC., RCG SOUTHERN NEW JERSEY, LLC, PHILADELPHIA SUBURBAN DEVELOPMENT CORP. AND NEY V. RENAL CARE GROUP EAST, INC., RCG SOUTHERN NJ, LLC, PHILADELPHIA SUBURBAN DEVELOPMENT CORP.
L-871-09/L-1138-09 (consolidated)

The issue is whether the court should enforce the parties' settlement agreements and declare Medicare's interests adequately protected pursuant to the Medicare Secondary Payer Statute, 42 U.S.C.A. §1395(y)(b)(2) without Medicare's participation in the matter.

The court makes a finding that Medicare's interests are adequately protected and enforces the Settlement Agreement reached in both cases notwithstanding Medicare's issuance of no-

review letters to the plaintiffs regarding the proposed set-aside amounts.

05-14-13 Drinker Biddle & Reath v. New Jersey Department of Law & Public Safety, Division of Law
L-63-09

Plaintiff Drinker Biddle & Reath sought access to unfiled discovery in an environmental lawsuit brought by the New Jersey Department of Environmental Protection against ExxonMobil Corp. pursuant to OPRA and the common-law right of access. The court holds that the unfiled discovery is exempt from public disclosure under N.J.S.A. 47:1A-9b and the common-law right of access.

05-03-13 B.C. V. T.G.
FV-15-1033-13

This case presents the following legal issue of first impression: When a victim of domestic violence is assaulted while pregnant, may the court enter a final restraining order which includes the victim's unborn child as an additional protected "person" under New Jersey's Prevention of Domestic Violence Act, N.J.S.A. 2C:25-17?

Under New Jersey law, a fetus is not considered a person. Nonetheless, when a domestic violence victim is assaulted while pregnant, the court may enter a restraining order containing an advance protection provision, which states that the victim's unborn child shall, upon birth, be automatically included as an additional person protected from the defendant unless and until further court order.

03-15-13 JACOBSEN, ET ALS. V. PARVEZ, ET ALS.
L-2575-09

This motion addressed the applicability of the offer of judgment rule in a multi-plaintiff medical negligence case. The issue is whether Rule 4:58-4 allows multiple plaintiffs to file a single, aggregate offer of judgment as to all of their claims.

03-07-13 SLOTNICK V. CLUB ABC TOURS, INC.
L-11000-10

This matter discusses the liability of travel agents/bookers for negligence of third parties.

02-25-13 STATE OF NEW JERSEY V. MARK J. ECKEL
12-02-00098

Prosecutor made comments regarding the quantum, quality, and significance of evidence to the grand jury subsequent to its vote to indict, but prior to its return of the indictment. Defendant motioned to dismiss the indictment on this ground. The court granted the motion, finding such comments constituted prosecutorial misconduct that impermissibly intruded on the function of the grand jury.

02-04-13 BENJAMIN V. BENJAMIN
FM-15-1212-08-N

When a custodial parent wishes to relocate with a child to another state, and will be leaving an existing job in New Jersey, must he or she already have another job in place in the new state before the court permits relocation?

The court holds in this case that having a guaranteed job in another state is not a mandatory prerequisite for relocation. However, the likelihood that the custodial parent can provide the child with a financially stable household in the new state, including obtaining employment as necessary, is a relevant factor in determining whether a proposed relocation is reasonable or inimical to a child's interests.

01-24-13 I/M/O THE ESTATE OF PAKDEE B. PECK, DECEASED
P-825-12

This case requires that the court examine the impact of the elective share statute, N.J.S.A. 3B:8-1 to -19, on the actual intent of the decedent expressed in a foreign will disposing of decedent's assets in Thailand, prior to the execution of a Last Will and Testament in New Jersey. The court concludes that decedent's assets located in Thailand must be included within the augmented estate in New Jersey for the purpose of calculating the elective share of decedent's surviving spouse under the New Jersey will.

12-28-12 HERRICK V. WILSON
l-1913-10

The issue in the opinion is whether or not a defendant, in the context of a personal injury action, must produce a copy of video surveillance of the accident at issue in the lawsuit prior

to the deposition of the plaintiff. The court concludes that defendant must produce the videotape surveillance.

09-21-12 LAVINE V. LANZA
FV-05-209-12

The issue presented is whether N.J.S.A. 2C:25-29(b)(3)(a), requiring a risk assessment when requested prior to the entry of an order for parenting time unless arbitrary or capricious, applies in the context of an application to modify a final restraining order that already provides for parenting time. The court concludes that given the facts presented in this case it does.

09-20-12 LEONARD V. LEONARD
FM-15-450-15

This case presents a novel issue regarding the ability of a custodial parent to collect support arrears via levy against her ex-spouse's minority member interest in a limited liability corporation (LLC) without piercing the corporate veil. In 1993, the New Jersey Legislature enacted N.J.S.A. 42:2B-45, which addresses the issue. However, the statute has never been interpreted or applied in any subsequent reported opinion of the New Jersey family court.

08-20-12 ORT V. ORT
FM-15-990-00-N

Once a child of divorced parents turns eighteen, it is very common for a non-custodial parent to immediately attempt to emancipate the child and terminate child support. This case, however, presents a completely opposite legal issue of first impression: What happens when a child who turns eighteen seeks her own emancipation over parental objection, i.e., when a parent asserts that emancipation is premature or otherwise inappropriate because the child is allegedly still within the sphere of parental influence?

Pursuant to Rule 1:36-2(d)(2) and (6), Ort addresses important questions of family law and the right of an eighteen year old "child" (now adult) to independence from her parents.

08-14-12 GILLIGAN V. GILLIGAN
FM-15-807-02N

The case at bar presents issues of fact and law requiring interpretation and close analysis of the principles set forth in Golian, 344 N.J. Super. 337 (App. Div. 2001). Specifically, when a divorced parent owes child support under a court order, but then contends that due to a subsequent disability he/she is unable to work at all and pay any child support beyond any derivative disability benefits paid by the SSA to the children, does the parent satisfy the burden of proof of inability to work by simply submitting proof of an Social Security Disability (SSD) award letter to the family court confirming qualification for disability benefits? Further, since the SSA allows a person to earn a certain level of income (i.e., the "SGA threshold") without losing one's disabled status; can the court impute such income to an SSD recipient for purposes of paying child support and arrears?

Pursuant to Rule 1:36-2(d)(2) and Rule 1:36-2(d)(6), Gilligan addresses important questions of family law regarding the interpretation of Golian and the impact of an SSA determination of disability in a child support proceeding.

07-20-12 B.R. V. VAUGHAN, ET ALS.
L-5393-11

Female domestic partner of HIV positive patient filed suit against her partner's doctor, the State of New Jersey, and various health agencies alleging defendants failed to notify plaintiff of her partner's HIV status or the necessity to get tested after potential exposure. Defendants filed a motion to dismiss for failure to state a claim upon which relief may be granted. The court held that as a matter of first impression, the State of New Jersey and its various health agencies did not owe a duty to plaintiff to notify nor counsel her regarding her partner's HIV status due to the laws of confidentiality regarding persons infected with HIV or AIDS in the State of New Jersey where no prior written consent was given.

06-25-12 STURY SAVINGS BANK V. GARY W. ROBERTS, ET ALS.
F-15764-10

This opinion interprets the term "residential mortgage" as it appears in the Fair Foreclosure Act and the court rules. The court concludes that the protections available under the Fair Foreclosure Act do not apply to the circumstances presented - where the debtor had occupied the property as his residence at the time the loan originated, but elected to vacate the property with no intention to return as of the date the foreclosure

complaint was filed. The court reaches a different conclusion as to the court rules, determining that the specific rules in question should be interpreted more expansively.

06-22-12 IN RE CONTEST OF NOVEMBER 8, 2011 GENERAL ELECTION OF OFFICE OF NEW JERSEY GENERAL ASSEMBLY, FOURTH LEGISLATIVE DISTRICT
L-5995-11

This opinion involves a substantial question under the United States and New Jersey Constitutions, namely whether the one-year durational residence requirement in the New Jersey Constitution violates the Equal Protection Clause of the United States Constitution. This opinion seriously questions the soundness of a federal court ruling which declared unconstitutional that provision of the New Jersey Constitution, and which created a conflict of authority. The opinion also determines new and important questions of law concerning the application of the New Jersey Constitution and the election laws of New Jersey regarding challenges to and replacement of candidates who are elected despite failing to meet the constitutional qualification.

Although the Supreme Court's decision obviously provides the final and precedential resolution to the case, this trial court opinion provides the background to the Supreme Court's decision. This opinion also provides additional analyses of certain issues, including reapportionment, latches, election challenges, and election remedies.

06-20-12 STATE OF NEW JERSEY V. THOMAS R. AYTON
1904-BT-035828/1904-BT-035829

The defendant was convicted of driving while suspended, in violation of N.J.S.A. 39:3-40. It was a third or subsequent such violation for the defendant. N.J.S.A. 39:3-40(c) sets forth the punishments for a third or subsequent violation of N.J.S.A. 39:3-40. They include imprisonment in the county jail for ten days. The defendant moved for permission to serve those ten days in a S.L.A.P. program. The court held that S.L.A.P. was not available to third time violators of N.J.S.A. 39:3-40, and that the defendant must serve the ten day term in jail.

06-11-12 IN THE MATTER OF THE STATE OF NEW JERSEY, THROUGH THE ESSEX COUNTY PROSECUTOR'S OFFICE, COMPELLING THE JURY MANAGER TO PROVIDE INFORMATION ON PROSPECTIVE JURORS
L-8900-11

The State made an application to have court employees provide it with the dates of birth of members of the petit jury pools in order to run criminal background checks on those potential jurors. The application was denied. Prospective jurors have a reasonable expectation of privacy in their dates of birth, which is not waived by submitting information on a juror qualification form. Even if there were no privacy concerns, the State's proposal raises due process issues. No compelling public interest would be served by providing this private data.

05-18-12 DOCK ST. SEAFOOD, INC. V. CITY OF WILDWOOD, ET ALS.
L-17056-06

In this inverse condemnation action involving a property in a redevelopment zone, plaintiff appeals from a judgment in favor of defendant following a bench trial. Judge Michael Winkelstein found plaintiff's failure to file a redevelopment application for its property precluded its inverse condemnation claims and purported comments by individual municipal officials that no building permits would be issued to the property owners did not excuse plaintiff's obligation to exhaust administrative remedies; plaintiff's continued use of the property for the same purpose as when purchased and its rejection of an offer to purchase by the redeveloper belied its claim of destruction of all beneficial use; and defendant's inability to redevelop the area despite diligent attempts did not significantly interfere with plaintiff's property rights. We affirm substantially for the reasons set forth by Judge Winkelstein in his comprehensive written opinion and supplemental letter opinion, which we now publish.

05-17-12 STATE OF NEW JERSEY V. EDWARD ATES
07-09-1606

Defendant, charged with homicide, moved to dismiss the indictment on the basis that the State, during the course of its wiretap investigation, illegally intercepted and recorded a privileged attorney-client communication. Following an evidentiary hearing the court concluded that the State unlawfully intercepted and recorded a confidential communication falling within the attorney-client privilege, in violation of the order of authorization granted by the issuing judge and the New Jersey Wiretap Act. The court, finding that the improper interception was inadvertent rather than intentional, that the conversation had not been listened to by any member of the

Prosecutor's Office, and that there was no interference with the attorney-client relationship, declined to dismiss the indictment. Rather, the court concluded that the proper remedy was the suppression of the contents of the subject communication as well as all intercepted communications which thereafter followed and any evidence derived therefrom.

05-11-12 MUSICO V. MUSICO
FM-15-532-07N

When divorcing parties initially consent to an above-guideline level of child support in their settlement agreement, but then there is a post-judgment change of circumstances warranting a support review, the child support guidelines apply. However, the analysis does not automatically end at that point. Rather, the parties' prior above-guideline agreement is an additional equitable factor for judicial consideration, and the court may require the obligor to continue paying a level of above-guideline support as fairness requires.

04-30-12 LABROSCIANO V. LABROSCIANO
FM-04-269-09

This opinion addresses the situation where the primary residential custody of the children shifted from the disabled parent to the other parent during the period of disability for which the lump sum of Social Security Disability (SSD) payments was paid. The opinion addresses the new question of law of how the lump sum SSD benefits are to be distributed in that situation, which is important because of the relatively large sums involved and the effect on child support. The opinion also collects and reviews the existing case law regarding such SSD benefits.

04-27-12 STATE OF NEW JERSEY - IN THE INTEREST OF A.C.
FJ-13-1392-11W

This opinion involves a challenge to the constitutionality of the prohibition of jury trials in juvenile cases set out in N.J.S.A. 2A:4A-20 under both the State and United States Constitution. The defendant's motion was denied and the Appellate Division affirmed the trial court opinion for the reasons expressed in that decision.

03-30-12 REID V. FINCH
L-6402-07

This matter involves a ruling on calculating damages under Rule 4:58, the offer of judgment rule. There is no comparable Federal Court case law since the Federal Rule only provides for costs, not attorneys fees, and is, therefore, only sparingly litigated. Thus, this opinion will provide useful guidance to the Bar on the amount of damages to be awarded whenever a verdict is more than 120% of, or less than 80% of, the offer of judgment. The holding in this case - - that when plaintiff achieves a verdict of less than 80% of the offer of judgment, he may be assessed counsel fees sufficient to reduce his net recovery to zero, but not below zero - - may help lawyers and judges in other cases.

03-16-12 KOCH V. KOCH
FM-19-378-10

This matter involves a child custody dispute and whether child custody evaluations must or may be recorded at the request of one of the party's. Both parties hired experts to conduct child custody evaluations. The defendant filed a motion to require that all interviews of all parties, including the children, conducted by the custody experts, be audio recorded. In support of his motion, defense counsel relied on the case B.D v. Carley, 307 N.J. Super. 259 (App. Div. 1998). The B.D v. Carley, however, is distinguishable because B.D v. Carley involved audio recording a psychological evaluation of a party and the case did not involve or address a child custody dispute. The court held that a party did not have the right to require that all interviews be recorded and that parties would need the permission of the court to record the interviews of a child.

02-14-12 WISE V. MARIENSKI, ET ALS.
L-2741-09/L-3397-09 (consolidated)

These consolidated cases address the issue of whether plaintiffs with limited Personal Injury Protection coverage may enter evidence of his/her medical bills incurred in excess of the policy limit. The court answers in the affirmative.

01-26-12 NEWARK HOUSING AUTHORITY V. VEGA, ET ALS.
LT 20023-11

This is an opinion of first impression, relating to the factors that must be considered before a summary action for possession is commenced when a tenant resides in a federally subsidized publicly owned apartment, as these defendants do. This opinion discusses those factors and their relevance to the

decision by plaintiff to proceed with the eviction of a family group.

11-03-11 MOHAMED V. IGLESIA EVANGELICA OASIS DE SALVACION
L-5871-10

The plaintiff sought damages for physical injuries suffered when she tripped and fell on a defect in the sidewalk abutting a church. Although churches do not ordinarily have a duty to maintain the abutting sidewalk, they can if the property is used partially for commercial purposes. In this case, the church allowed members and friends and family of members to use its basement for parties and spaces in its parking lot for the purposes of shopping or obtaining public transportation. In exchange, the church sometimes took donations. The court ruled that these exchanges did not meet the "commonly accepted" definition of "commercial." The complaint was therefore dismissed.

11-01-11 DUDAS V. DUDAS
FM-15-1692-10N

In pre-judgment divorce litigation, what if any impact should a supporting spouse's post-complaint increase in income have on his/her alimony obligation?

In this case, the court holds that the husband's post-complaint increase in income is in fact relevant, and will be considered in determining the extent of his alimony obligation to his wife.

10-31-11 FAY V. MEDFORD TWP. COUNCIL, MEDFORD TWP., ET ALS.
C-24-11

In the decision, there is a discussion and interpretation of the Municipal Vacancy Law, N.J.S.A. § 40A:16-3. Factually, plaintiff, a local council person, removed herself to a residence to the adjoining township. Her colleagues on the council found out and removed her from the council pursuant to the statute. This case discusses the issue of local domicile under an unusual set of facts, but clearly a factual pattern that is likely to be repeated. The decision held that plaintiff had changed her domicile, and affirmed the council, after remanding the matter back to them to conduct a hearing and issuing findings of fact and conclusions of law.

10-26-11 NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION V. MERCER COUNTY SOIL CONSERVATION DISTRICT, ET ALS.
C-100-08

This matter essentially focuses upon the meaning of the term "owner" in the context of the New Jersey Dam Safety Act, N.J.S.A. 58:4-1 to 11.

10-25-11 J.L. V. G.D.
FV-15-816-11

In a contested domestic violence case where the plaintiff is a minor, what if any special procedures should the court implement to provide plaintiff with adult representation in the courtroom?

The court holds the following:

a) The minor is entitled to appointment of a guardian ad litem, to provide her with an adult voice and assistance at the domestic violence hearing;

b) The plaintiff's guardian ad litem can be – but does not have to be – her parent. A minor plaintiff in a domestic violence case will not be compelled to utilize her own parent as her adult representative in court. Under New Jersey law, the minor plaintiff does not need her parents' consent to seek a restraining order against a former dating partner.

c) In this case, where the plaintiff is a minor and the defendant is an adult represented by private counsel, the court shall appoint a licensed New Jersey attorney to represent the minor's interests at trial.

Pursuant to Rule 1:36-2(d) (2) and(6), the opinion addresses important questions of law which are of continuing and compelling public interest and importance in the realm of family court practice. Societal awareness of the widespread problem of teen dating violence is growing rapidly. National and state public policies are being established to protect teenagers from domestic violence and abuse by dating partners. Consistent with these policies, it is vital that a minor who claims to be a victim of date violence cases have an adult voice in courtroom proceedings.

09-29-11 BAILEY (#2) V. WYETH, INC., ET ALS.; DEBOARD V. WYETH, INC., ET ALS.; KOSITSKY V. WYETH, INC., ET ALS.
L-0999-06/L-1147-06/L-1019-06 (consolidated)

The trial court in this case dismissed plaintiff's failure to warn claim because plaintiff could not overcome the presumption of adequacy of FDA-approved labels created by the New Jersey Products Liability Act (PLA). The court held that the labels used by defendants Wyeth and Upjohn were adequate as a matter of law.

The trial court reviewed in detail prior New Jersey case law, N.J.R.E. 301, and the PLA and provides a comprehensive decision of how the presumption of adequacy applies to FDA-approved labeling. In applying this presumption, the court also provides a detailed review of the regulatory and labeling history of hormonal drugs.

09-29-11 BAILEY V. WYETH, INC., ET ALS.; DEBOARD V. WYETH, INC., ET ALS.; KOSITSKY V. WYETH, INC., ET ALS.
L-0999-06/L-1147-06/L-1019-06 (consolidated)

Three choice-of-law motions were filed by the defendants in three separate actions which are part of the mass tort hormone replacement therapy litigation. The court issued a consolidated opinion to address whether defendants had waived the choice-of-law issue or if the motions were filed timely.

Early determination of which state law governs a case is essential for judicial economy, efficiency and fairness to the parties. The court rules require parties to "set forth specifically and separately a statement of facts constituting an avoidance or affirmative defense." An affirmative defense is waived if not pled or otherwise timely raised. Principles of equity and public policy can justify departing from the rule of waiver. A defense pled may nonetheless be waived if the defendant's conduct is inconsistent with reliance on the defense. The assertion of a new defense is generally prejudicial after substantial time, energy and money have been spent preparing for trial.

Determining whether choice-of-law is in fact an affirmative defense within R. 4:5-4 is unnecessary because the Supreme Court in Rowe affirmed the motion judge's discretion to consider the defense although not previously pled. To facilitate the

organization of hundreds of complex mass tort cases for trial, it is imperative that counsel timely advise the court of all choice-of-law issues. Defendants had ample opportunity to timely inform the court of this legal issue, but did not. Defendants' inaction caused the parties to expend substantial time, energy and money preparing for trial with the understanding that the court would apply New Jersey law.

Early determination of a choice-of-law issue allows the parties to develop appropriate legal strategy and efficiently conduct discovery. Defendants participated in the extended and expensive litigation process for a significant period of time. Defendants maintain the right to defend against these actions before the court. To prevent undue prejudice to the plaintiffs and to avoid any interference with the administration of justice, defendants' motions were denied.

09-09-11 HERITAGE AT TOWNE LAKE, LLC V. PLANNING BOARD OF THE BOROUGH OF SAYREVILLE
L-2522-10

This case involves an application by Heritage at Towne Lake, LLC to convert a previously approved age-restricted development to a non-age-restricted development pursuant to the provisions of the "conversion statute", N.J.S.A. 45:22A-46.3 to -46.16. The court notes that the conversion statute does not amend the Municipal Land Use Law, N.J.S.A. 40:55D-1, et seq. However, the conversion statute does not allow the approving board to consider the creation of a "d" variance resulting from the conversion from age-restricted units to non-age-restricted units.

In this case the court considers the Planning Board's contention that since the initial approval granted a density bonus for age-restricted residential units a density variance is required pursuant to N.J.S.A. 40:55D-70(d). This case analyzes the provisions of the conversion statute, and considers the standards to be applied.

This case may be of interest to those attorneys and judges involved in land use cases and particularly those involving the application of the "conversion statute".

07-20-11 DeBENEDETTO V. DENNY'S, INC.
L-6259-09

Defendant moved to dismiss plaintiff's Second Amended Complaint for failure to state a claim. Plaintiff's Second Amended Complaint alleges he and others similarly situated suffered strictly economic and treble damages after purchasing meals that contained an excessive amount of sodium. Plaintiff argued that excessive levels of sodium are dangerous, that such levels cause an increased risk of bodily harm, and that defendant failed to disclose the sodium content and warn of those risks.

Relying on the Legislative intent in the creation of the Products Liability Act and subsequent case law on the issue, namely In re Lead Paint Litigation, the Court held that the core allegation in plaintiff's Complaint is that defendant failed to adequately warn consumers of the dangerous levels of sodium in his meals. A cause of action for the withholding of safety information related to ingestion of a product is not actionable under the Consumer Fraud Act. Moreover, the Court found that plaintiff's exclusion of personal injury allegations is not enough to permit an action to proceed under the Consumer Fraud Act when it is merely a disguised products liability claim.

The Court determined that the allegations in plaintiff's Second Amended Complaint are Consumer Fraud Act claims subsumed by the Products Liability Act. Thus, the Court concluded that a plaintiff may not avoid the requirements of the Products Liability Act by asserting his claim as a Consumer Fraudulent Act claim in the food industry.

06-29-11 BOROUGH OF ROCKY HILL, ET ALS. V. STATE OF NEW JERSEY, ET ALS.
C-12051-09

L. 2009, c. 78 (N.J.S.A. 18A:8-43), authorizing the elimination through merger of non-operating school districts is not violative of the Equal Protection Clause or Article 1, Paragraph 1 of the New Jersey Constitution, and does not constitute special legislation. Plaintiff's claim of taxation without representation is not justiciable.

06-10-11 E.E. v. O.M.G.R.
FD 01-1112-11

The question presented to the court is whether two parties can enter into a private contract regarding a self-administered "artificial insemination" procedure whereby one party may contract with another to terminate their parental rights. This

court has determined, first, that parties cannot by contract terminate their parental rights under common law. Rather, the termination of parental rights is controlled by statute. Second, the Legislature did not intend for this type of procedure to lead to the termination of parental rights under the New Jersey Artificial Insemination statute N.J.S.A. 9:17-44, and therefore the parental rights of the donor in this matter will not be terminated.

06-09-11 COMMUNICATIONS WORKERS OF AMERICA, ET ALS. V. STATE OF NEW JERSEY, ET ALS.
C-72-10

In this case, the court finds P.L. 2010, Chapter 2, Section 8 (enacted on March 22, 2010)--which generally imposes any changes to the State Health Benefits Program ("SHBP") negotiated by majority representatives for State employees, on all State and local employees--fully complies with all constitutional provisions. Accordingly, defendant's motion to dismiss the complaint with prejudice is granted.

Article I, Paragraph 19 of the New Jersey Constitution grants public employees the right to present grievances and proposals, regarding the terms and conditions of employment, to their employers, through representatives of their own choosing. Plaintiffs claim Section 8 violates Article I, Paragraph 19 of the New Jersey Constitution, because it imposes on State (and local) employees SHBP changes negotiated by the majority representative selected by another State employee negotiating unit.

The Due Processes Clauses of the Fifth and Fourteenth Amendments of the United States Constitution require that statutes are sufficiently clear and specific such that they provide notice to a person of ordinary understanding as to what is covered by the statutes and how the statutes will be implemented. Plaintiffs claim Section 8 violates the Due Process Clauses of the United States Constitution, because it does not make clear which State negotiating unit's majority representative(s) will be negotiating on behalf of all State employees, nor when and how the negotiated changes will be imposed upon local employees.

The court disagrees. Section 8 makes clear that it applies to "all [negotiated] changes" to the SHBP made via collective negotiations agreements between the nineteen majority representatives for the various State employees' negotiations

units and the State. It also makes clear that such negotiated changes are to be applied on all public employees "at the same time and in the same manner." As such, Section 8 does not alter existing rights under Article I, Paragraph 19 of the New Jersey Constitution. Rather, it merely memorializes the state's longstanding goal of ensuring uniformity in health benefits among all levels of public employers.

P.L. 2010, Chapter 2, Section 8, therefore, comports with Federal Due Process requirements because it provides sufficient clarity as to when, to whom, and how it applies, and it makes no changes to public employees' rights under Article I, Paragraph 19 of the New Jersey Constitution.

05-19-11 HINSINGER V. SHOWBOAT ATLANTIC CITY
L-3460-07

Plaintiff's attorney sought permission from the court to take fees from money allocated to a Medicare Set Aside Trust created after the trial of a liability action. In a case of first impression, the court held that the same statutes that apply to Medicare recipients in workers compensation actions apply to Medicare recipients in liability actions. As such, attorneys' fees may be deducted from money allocated to a Medicare set aside per 42 C.F.R. § 411.37.

05-16-11 OJINNAKA V. CITY OF NEWARK, ET AL.
L-1473-07

This opinion attempts to reconcile the case law on the liability of a municipality for alleged negligence in responding to a reported motor vehicle accident.

04-15-11 VAN BRUNT V. VAN BRUNT
FM-15-091-08N

Does a court order requiring an unemancipated college student to produce proof of college attendance, course credits and grades to his/her parents as a condition for ongoing child support and college contribution violate the student's right to privacy under the Family Educational Rights and Privacy Act (FERPA)?

When a non-custodial parent pays court-ordered child support and/or college costs for an unemancipated college student, is the responsibility to provide that parent with

ongoing proof of college attendance/credits/grades that of (a) the student, (b) the custodial parent, or (c) both?

04-13-11 McKINLEY V. NATERS
FM-15-1692-06N

This case addresses significant pre-trial issues in child custody/removal litigation. Specifically, the party seeking to permanently relocate a child to another state has applied for an order permitting the temporary removal of the child to the proposed new state, prior to trial and over the other party's objection, for "extended vacation purposes."

In particular, the opinion focuses on the often-overlooked need to provide a child "of sufficient age", when possible, with hands-on exposure to different proposed living arrangements prior to his/her court interview under R. 5:8-6. During such interview, the court may need to inquire as to the child's preferred living arrangements pursuant to applicable law.

04-04-11 BANK OF NEW YORK MELLON, ET ALS. V. ELGHOSSAIN

Failure by a mortgage servicer to comply fully with the notice requirements of the Fair Foreclosure Act will result in dismissal (without prejudice) of the Complaint for Foreclosure: substantial compliance is not sufficient.

03-02-11 MILGRAM V. ORBITZ WORLDWIDE, INC., ET ALS.
C-142-09

This opinion addresses whether the Communications Decency Act of 1996 (CDA), in particular 47 U.S.C.A. § 230, immunizes information content providers from being sued where the information posted on the website had inaccurate or misleading ticket listings. The court held that defendants, Orbitz Worldwide, Inc. and Ticket Network, Inc., were not information content providers, but rather were service providers and were thus protected under 47 U.S.C.A. § 230 immunity.

02-09-11 STATE V. HENRY
2010-16

In determining the term of incarceration for a defendant convicted of a second DUI offense, the court held that aggravating and mitigating factors prescribed by the Criminal Code, N.J.S.A. 2C:44-1, if appropriately tailored, provide an appropriate guide for the exercise of sentencing discretion,

although the factors are not mandated. The court also held that a driver's extremely high blood alcohol level may be considered an aggravating factor, and does not constitute impermissible double-counting an element of the offense. The court also held that a probationary sentence conditioned on a jail term is authorized by N.J.S.A. 39:5-7, so long as the court imposes at least the mandatory custodial term under N.J.S.A. 39:4-50.

12-17-10 COMMUNICATIONS WORKERS OF AMERICA, ET ALS. V. JOHN MCCORMAC, ET ALS.
L-3217-05

In this case, plaintiffs alleged defendants violated the Open Public Records Act ("OPRA"), N.J.S.A. 47:1A-1 et seq. in withholding partnership agreements with private equity firms relating to the State's Alternative Investment Program. Plaintiffs sought injunctive relief for access to the agreements under OPRA and the common law right of access. Alternatively, plaintiffs sought the agreements in a redacted form. The court holds that it was proper to withhold the agreements in their entirety. Accordingly, the court affirms the denial to access to the partnership agreements.

N.J.S.A. 47:1A-1.1 grants access to government records but deems certain categories of records not government records and confidential for the purposes of OPRA. These categories include proprietary commercial or financial information from any source, trade secrets and information which, if disclosed, would give an advantage to competitors or bidders. The partnership agreements with private equity firms on file with the Department of Treasury can be characterized under any one of these categories and are therefore not government records.

Furthermore, N.J.S.A. 47:1A-1.1 and -5(g) provide that items deemed government records may be redacted to conceal inter- or intra-agency advisory, consultative, or deliberative material; and information which discloses the social security number, credit card number, unlisted telephone number or driver license number of any person. Only government records, which the partnership agreements are not, are subject to redaction.

Finally, N.J.S.A. 47:1A-8 preserves the common law right of access to public documents, which grants access to private parties when their interest outweighs the public interest in confidentiality. The partnership agreements qualify as public documents; however, the public's interest in protecting their confidentiality outweighs plaintiffs' interest in access.

11-23-10 KLEINMAN AND MARTIN V. MERCK & CO., INC.
L-3954-04/L-24-05 (consolidated)

In this class action suit concerning the pharmaceutical drug Vioxx, the class representatives sought certification of a class of individual consumers under New Jersey's Consumer Fraud Act, claim that the manufacture of Vioxx—Merck—defrauded consumers who would have otherwise not purchased Vioxx if not for the misrepresentations and/or omissions of Merck. The court denied class certification on several grounds. First, the court found insufficient common-ground predominance of issues because there was not a uniform common nexus on the Consumer Fraud Act. Second, the class representatives claimed injuries were not typical of the class as a whole. Finally, class action was not the superior method of adjudication because individual issues of proofs were central to establishing liability.

11-22-10 D.C. V. A.B.C., I/M/O P.C., A MINOR
FD-13-20-10

This opinion involves an application for custody of a minor child pursuant to N.J.S.A. 9:6-1 and N.J.S.A. 9:6-8.9(d) so that the child, who entered the country illegally, would be able to apply for Special Immigrant Juvenile Status pursuant to 8 U.S.C.A. §1101(a)(27)(J) and 8 C.F.R. §204.11.

11-16-10 BANK OF NEW YORK V. RAFTOGIANIS, ET ALS.
F-7356-09

This opinion deals with a dispute over standing in an action to foreclose a mortgage which secures a debt evidenced by a negotiable note. The opinion discusses the Uniform Commercial Code, the Mortgage Electronic Registration System and the securitization of mortgage loans. The opinion addresses plaintiff's standing as a "real party in interest," the use of presumptions, and an argument as to the alleged "separation" of the note and mortgage, related to the use of the Mortgage Electronic Registration System. The court did conclude that a plaintiff which seeks to foreclose on a mortgage secured by a negotiable note should generally be prepared to establish that it was in possession of the note at the time the foreclosure complaint was filed.

08-05-10 IN THE MATTER OF NOEL DOE, A MINOR
FG-06-23-10

In this opinion the court addresses N.J.S.A. 30:4C-15.5 to 15-11, known as the New Jersey Safe Haven Infant Protection Act. This is an issue of first impression in New Jersey, as there is no published case law considering the Act. This opinion considers the scope and application of the Safe Haven Act in termination of parental rights proceedings filed by the Division of Youth and Family Services under N.J.S.A. 30:4C-15.1(b).

The opinion addresses the scope of the Safe Haven Act, the legislative intent, and issues of notice and due process for both the surrendering mother and the unknown father.

08-04-10 IN THE MATTER OF J.M.
P-036-10

This opinion deals with a woman's refusal of dialysis on religious grounds. The opinion deals with determining a patient's capacity to refuse a specific medical procedure, especially when she has capacity to make other medical decisions. The patient has declined to appeal the decision.

07-08-10 STATE OF NEW JERSEY V. RAQUEL GEBBIA
BMA-003-18-09

This is a case of first impression in New Jersey regarding whether an off-duty, privately employed law enforcement officer has the authority to issue a police officer’s complaint without a judicial probable cause hearing. The Court held that an officer may issue a police officer’s complaint for a violation observed during the officer’s off-duty, private occupation because the officer’s experience, training, and knowledge are constant factors that bestow upon him the ability to recognize probable cause regardless of whether he is on-duty.

This case warrants publication under Rule 1:36-2(d)(2) and 1:36-2(d)(6). Existing New Jersey case law does not address this issue, and furthermore the issue is of continuing public interest because the scenario is capable of repetition.

Relevant but distinguishable New Jersey case law places high standards on police officer conduct. The Appellate Division has held that an off-duty police officer who is privately employed as a security guard, but exhibiting evidence of his authority, may arrest an individual. State v. DeSanto, 172 N.J. Super. 27 (App. Div. 1980). The Appellate Division later expounded on that, holding that “[a]n off-duty police

officer has a duty to arrest persons committing a crime in the officer's presence." State v. Corso, 355 N.J. Super. 518, 526 (App. Div. 2002). Yet there is no clear authority as to whether a police officer who is in the course of his off-duty, private employment, not exhibiting any evidence of official authority, may issue a police officer's complaint without a judicial probable cause hearing. The opinion asserted herein unambiguously states that a police officer may do so because he possesses an immutable understanding of probable cause that does not dissipate while off-duty.

This Court recognizes the fact that a great number of police officers seek private employment while off-duty and that it is imperative to clarify the ambit of their authority while privately employed. For the aforementioned reasons, this Court respectfully requests that this opinion be considered for publication.

05-21-10 Cicchine v. Township of Woodbridge, et als.
L-416-09

Whether a planning board has jurisdiction to consider a second development application where an appeal is pending on the same property. This decision opines that a planning board does not have jurisdiction to consider an application on property that is subject of an appeal to the Law Division to overturn the planning board's action.

04-23-10 State of New Jersey v. Meghan White
1904-BT-033744

The question presented is, "May the term of imprisonment set forth in N.J.S.A. 39:3-40 (f) (2) for a person whose license has been suspended for violating N.J.S.A. 39:4-50 be served in a Sheriff's Labor Assistance Program (S.L.A.P.) or other noncustodial program?" This court holds that it may not.

03-02-10 I/M/O W.R. and L.R. For The Adoption of S.W.
FA-06-08-10A

Granting of a final adoption judgment nunc pro tunc to the date of filing of the adoption complaint when a prospective adoptive parent has died prior to the final adopting hearing. This opinion directly challenges the trial court opinion in In re Adoption of a Child by N.E.Y., 267 N.J. Super. 88, 630 A. 2d

835 (Ch. Div. 1993), which denied, based upon equitable adoption principles, an application by a surviving parent for a final judgment of adoption after the death of the other prospective adoptive parent. In contrast, this opinion grants the final legal adoption of the deceased prospective adoptive parent effective the date of the filing of petition for adoption by crafting a four-part test designed to protect the best interests of the child and the prospective adoptive parents.

02-09-10 State of N.J. v. Riley
08-09-0802

Dismissing an indictment, the court held that the computer crime law, N.J.S.A. 2C:20-25(a) and -31(a), does not cover an employee who enjoys password-protected access to computerized information, but who views or uses such information in ways or for purposes that his employer prohibits, absent additional harms, such as fraud, theft of trade secrets or other proprietary information, or malicious destruction of data or computer systems. The indictment charged a police sergeant with unauthorized access to computerized data because he violated departmental policy by viewing and disclosing to fellow officers the digital recording of another sergeant's traffic stop. The sergeant was authorized to access the department's data base of digital recordings of traffic stops only for the purpose of viewing stops of officers within his own command.

10-21-09 D.R. Horton Inc., New Jersey v. J.J. DeLuca Co., Inc.
C-105-08

This case determines the applicability of N.J.S.A. 2A:23B-10, "Consolidation of Separate Arbitration Proceedings" where parties have as part of a construction contract agreed to arbitrate disputes through the American Arbitration Association and specifically AAA's rules for construction arbitration. These rules provide a specific fair mechanism for resolving the issue of whether two or more arbitrations should be consolidated. The plaintiff argued that N.J.S.A. 2A:23B-10 effectively preempts an agreement by the contractual parties to engage in comprehensive arbitration which provides consolidation procedures. There are no published cases which have determined this issue.

The plaintiff sought injunctive relief to prevent the defendant from moving forward with the consolidation process through the American Arbitration Association.

The holding of the Court is that N.J.S.A. 2A:23B-10 is not to be read as an exclusive procedure for determining consolidation of arbitration proceedings where the parties to a contract have agreed to arbitration and the arbitrating authority has implemented procedural rules consistent with fundamental fairness which allow for an arbitrator or arbitrators to make that determination.

The language of N.J.S.A. 2A:23B-10, while perhaps less clear in its grammatical meaning, is sufficiently clear in its textual meaning. When read in the context with the full Arbitration Act and the Statement of the legislature as to its intent in the original bill, it is clear that the Legislative intent was not to interfere with a well-crafted contract that calls for institutional arbitration with organizations that provide a fair mechanism for consolidation.

The Court denied the injunctive relief, and the matter was dismissed.

10-01-09 DeVivo v. Anderson
L-5169-08

Plaintiff Sandra DeVivo contends that defendants' unleashed dog bit her on the forearm as she was walking past defendants' residence. Plaintiffs moved for summary judgment, alleging that defendants are strictly liable pursuant to N.J.S.A. 4:19-16, the "dog bite" statute, for Sandra's injuries. On cross motion for summary judgment, defendants contend that Sandra cannot meet the statutory requirements of the statute since "there was no broken skin or evidence of any type of bite caused" by the dog. Whether the skin must be broken to constitute a dog bite sufficient to impose strict liability upon a dog owner under N.J.S.A. 4:19-16 is an issue of first impression in New Jersey. Determining that the only reasonable conclusion a rational jury can draw from the evidence is that a dog bite occurred sufficient to meet the elements of N.J.S.A. 4:19-16., the court found defendants strictly liable for Sandra's injuries.

09-02-09 Board of Education of the City of Clifton v. Zoning Board of Adjustment of the City of Clifton
L-1674-06

The issue is whether the traditional power of a municipal zoning board of adjustment in assessing negative criteria, in connection with a proposed school, has been circumscribed by the New Jersey State Board of Education acting pursuant to N.J.S.A.

18A:7G-1, et seq., and subsequent administrative code regulations promulgated thereunder. Also implicated in this case is the role of a municipal planning board in assessing the adequacy of a proposed school where a master plan has been enacted.

07-31-09 Martin v. Martin
FM-03-1172-03

This opinion establishes that a party is not entitled to an automatic judicial modification of a child support order based merely upon the passage of three years since the time of the entry of the existing support order. Parties remain eligible for automatic administrative cost-of-living adjustments every two years under Rule 5:6B. Otherwise, a party must establish that there has been a substantial change of circumstances since the time of the last order before a modification of support can be considered.

07-22-09 State v. Ian Filson
18425

In a DUI municipal appeal, the court held that before Alcotest results may be admitted into evidence, the State must prove, by clear and convincing evidence, that the defendant was observed for twenty minutes before taking the test. Eye-to-eye monitoring is not necessarily required, if the defendant is observed by sound and smell. Yet, if the observer leaves the room during the twenty minutes, observation must begin anew. What suffices as observation must be determined in view of the observation requirement's purpose to assure that the suspect has not ingested or regurgitated substances that would confound the test results.

07-20-09 Andrew Pek v. Donna Prots
FM-20-001186-04

The primary issue presented by this post judgment matrimonial motion is whether New Jersey courts retain continuing exclusive jurisdiction to modify a spousal support order which was established in the State of New Jersey pursuant to the parties' judgment of divorce and property settlement agreement ("PSA"), despite a provision in the parties' PSA, which provides that the State of Ohio should exercise all future jurisdiction over all the parties' post judgment matrimonial matters. Accordingly, this court holds that under the principle of the Uniform Interstate Family Support Act ("UIFSA"), N.J.S.A. 2A: 4-30.72(f) confers continuing exclusive jurisdiction to the court issuing the initial spousal support order

such that the parties may not choose or contract an alternate forum for purposes of future spousal support modifications.

07-13-09 State of New Jersey v. Giovanni Coppola
49-08

On September 6, 2006, Giovanni Coppola (hereafter "defendant") who was represented by William Sitzler, Esq., appeared before the Honorable Robert T. Zane, J.M.C., in the Borough of Merchantville, at which time, defendant entered a guilty plea to violating N.J.S.A. 39:4-50. The guilty plea was entered with the caveat of a Chun stay. Following the Supreme Court's holding in Chun, the defendant sought to withdraw his guilty plea on the grounds that Chun adopted Judge King's Special Masters Report which stated that higher scrutiny must be given to cases where the Alcotest results are at the threshold levels (.04, .08, or .10).

The Court found that the Special Masters Report was only adopted as modified within the Chun opinion and that the Chun opinion found that the Alcotest was reliable. The Court held that the Chun holding did not adopt Judge King's Special Masters Report in toto and as such, a per se violation remains a per se violation. The purpose of the per se violation is to prevent pretextual defenses where the defendant has been found to be at or above the threshold blood alcohol limit. The Court held that the Chun decision did not open the door for pretextual defenses and no additional scrutiny must be given to threshold level cases.

06-26-09 UPS Capital Credit v. Kenneth J. Abbey, Washington Mutual Bank FA and American Express Travel Related Services Co., Inc.
F-2055-07

The doctrines of equitable subrogation and strict foreclosure were implicated in the Court's determination of the priority between two liens in the context of a "Postponement of Mortgage" agreement and in fashioning the appropriate remedy where a junior lienholder was not joined by mistake or negligence to a foreclosure complaint. The Court held that where a mortgagee accepted a mortgage whose proceeds were used to pay off an older mortgage, equitable subrogation applied, even where the lack of knowledge of other encumbrances was due to the mortgagor's negligence. The Court ordered that the senior lienholder commence a proceeding de novo, also known as

reforeclosure, to extinguish the rights of the junior encumbrance.

06-25-09 Natasha Algarin v. Haledon Board of Education
L-1145-09

Plaintiff Natasha Algarin challenged the refusal by defendant Haledon Board of Education to accept her nominating petition for the local school board election. Plaintiff signed a candidate's acceptance and oath of allegiance certifying that she was qualified to be a member of the Haledon Board of Education. One of the qualifications for a candidate to run for a seat on the school board is that the candidate must be a registered voter in the district. At the time plaintiff executed the oath, she mistakenly believed she was registered to vote in the district of Haledon when in fact she had been deleted from the list of eligible voters on account of voter inactivity. Upon becoming alerted to her voting status, plaintiff registered to vote and consequently was a registered voter before filing her nominating petition. Nevertheless, the Board determined that plaintiff's nominating petition was invalid because she was not registered to vote in the district when she signed the candidate's acceptance and oath of allegiance.

The question of first impression presented here is whether plaintiff's nominating petition was invalid because she was unregistered to vote in the district of Haledon when she assented to the candidate's acceptance and oath of allegiance even though she properly registered to vote before timely filing her nominating petition.

The court concluded that plaintiff's nominating petition should not have been invalidated by the Board under the circumstances presented.

06-08-09 Centanni v. Centanni
FM-13-1723-03A

The issue coming before the court in this case is whether child support may be amended retroactive to the date of death of one of the parties' children. After an analysis of the relevant statute and existing case law, this court concludes that a retroactive amendment of child support is warranted in this matter.

05-27-09 Tanenbaum v. Township of Wall Board of Adjustment, et als.
L-1049-06

Plaintiffs, Steven and Deborah Tanenbaum, were homeowners in a Mount Laurel development constructed pursuant to the settlement of a builders' remedy suit. When the Tanenbaums sought to subdivide their property, they were informed by the Township's Board of Adjustment that they could not take advantage of the small-lot zoning that had been permitted as the result of the Mount Laurel litigation. Instead, their proposed subdivision was governed by the large-lot zoning otherwise applicable to the property. The Tanenbaums unsuccessfully challenged the Board's conclusion in a prerogative writs action. An appeal followed and was affirmed.

05-26-09 Eltrym Euneva, LLC v. Keansburg Planning Board of Adjustment and Borough of Keansburg
L-947-08

Property owner successfully argued that Borough officials were estopped from denying the existence of a pre-existing, non-confirming use that was proven by Borough documents relied on by Borough officials, and the record before the Board and the court precluded a finding that the multi-family use of the property was abandoned due to a tax lien sale.

05-11-09 IMO APPLICATION OF J.D. TO PURCHASE A HANDGUN
G-01-09

This arose from the appeal of the denial of an application for a firearm permit. The seminal issue is whether a court, after becoming aware that a firearm applicant has a prior psychiatric diagnosis and commitment that has been expunged, may inquire into whether the applicant has overcome the psychiatric disability that would ordinarily accompany the diagnosis. Put differently, this issue requires a determination of the extent to which the beneficiary of an expungement order can rely on the benefit of the order.

04-30-09 State of New Jersey v. Jermaine Wright
08-07-00162-S

The court held that the State bears the burden of persuasion in a so-called bail source hearing under N.J.S.A. 2A:162-13. After the State makes a prima facie case that the

bail the defendant has offered is inadequate, the defendant bears the burden of producing evidence to the contrary. The State must prove that the bail is inadequate by a preponderance of the evidence. The Supreme Court Criminal Practice Committee expressly left these issues undecided when it proposed the court rule, adopted as Rule 3:26-8, implementing the bail source statute.

04-21-09 Shri Sai Voorhees, LLC v. Township of Voorhees, et al.
L-2321-08

An application to erect a principal structure exactly ten percent higher than the zoned height limit requires a special needs D variance which must be presented to the zoning board of adjustment.

04-13-09 Wunsch-Deffler v. Deffler
FM-03-214-07

Establishes the three-step formula that should be employed to adjust the paying parent's child support obligation in cases where the parties equally share parenting time to take into account that both parents, not just the parent who receives the support, pay certain "controlled expenses," like clothing, entertainment and personal care expenditures. This will result in a fair calculation of support for the child and the parties.

04-07-09 Pagnani-Braga-Kimmel Urologic Assoc., P.A. v. Lynne Chappell, et als.
DC-4740-08

Defendant sought treatment at a local hospital. The hospital staff told defendant that her insurance would cover the cost, but failed to mention that the surgeon, plaintiff, was an independent contractor who would bill her separately. Defendant later received plaintiff’s bill and refused to pay it. Plaintiff argued defendant owed him compensation because she received the benefit of his services. The court agreed, but noted that the hospital also received the benefit of plaintiff’s services since it had a duty to treat defendant. The court dismissed plaintiff’s complaint, holding plaintiff’s proper recourse was against the hospital.

04-07-09 In the Matter of Registrant, N.N.
03-130082

Megan's Law registrant's motion to reduce his tier was denied, because the Superior Court cannot reevaluate the tier classification of a Megan's Law registrant unless the Appellate Division orders a reevaluation on remand; the registrant makes an application pursuant to N.J.S.A. 2C:7-2(f); the registrant is a juvenile and makes an application pursuant to In re J.G., 169 N.J. 304 (2001); the registrant changes employment; or the registrant relocates.

01-15-09 New Jersey Sports Productions, Inc. v. Bobby Bostick Promotions, L.L.C., et al.
C-397-06

Prelitigation letter written by plaintiff's attorney to adverse parties, which asserted client's rights under contract and was related to the subject matter of the complaint filed shortly thereafter, was entitled to the same absolute privilege afforded statements made in the course of litigation.

01-14-09 In Re the Monday Grand Jury Panel of Monmouth County Vicinage 9
M-2008-1145

Articles published in two newspapers which discussed a letter written to the Assignment Judge by a member of the grand jury panel led to the dismissal of the panel as tainted after an extensive voir dire of the entire panel by the judge and an assistant prosecutor.

01-07-09 State of New Jersey v. David A. O'Connor, Dustin Walton, and Patrick Nadeau
Summonses Nos. 1904SC002750, 1904SC002751, 1904SC002752, 1904SC002753, 1904SC002754, and 1904SC002755

Addressing an issue of first impression, the court held that municipal courts do not have jurisdiction to hear charges of violations of N.J.S.A. 13:9-19. Hearings on such charges must be conducted by the Department of Environmental Protection.

12-04-08 State of New Jersey v. Michael R. Fannelle, Sr.
03-11-1544

On remand from the Appellate Division, State v. Fannelle, 385 N.J.Super. 518 (App.Div.2006), the Superior Court, Law Division, Criminal Part, held that: (1) in determining whether the deployment of a flash-bang device in the execution of a no-

knock search warrant was reasonable, a court may rely on facts beyond those asserted to establish probable cause for issuance of the warrant; (2) the failure of the police to exercise due diligence in the acquisition of information relevant to the deployment decision was unreasonable, requiring suppression of evidence subsequently seized; and (3) unreasonableness of the manner of deployment provides independent grounds for suppression.

11-17-08 State of New Jersey v. Arthur Woodruff
18177

Deciding an issue of first impression, the court construed N.J.S.A. 39:4-88(b), which requires drivers to maintain a lane "as nearly as practicable" and to change lanes safely. In sustaining a traffic stop, the court held that safety impact is not an essential element of a failure-to-maintain-a-lane violation. To determine whether the driver maintained his lane "as nearly as practicable," the court must make a fact-specific inquiry into such matters as driving and vehicle conditions, human nature, and the nature and extent of the lane deviation.

10-28-08 U.S. Bank National Assoc. v. Hylton, et als.
F-14030-07

This is a decision that contrasts the equitable doctrine of "equitable subrogation," with the "constructive notice" provision of the "Recording Act" (N.J.S.A. 46:21-1).

The matter arises in a contested foreclosure action brought upon a $400,000.00 mortgage loan made to defendant Hylton, by Mortgage Lenders and thereafter assigned to U.S. Bank. The mortgage was made at a time when Hylton's property was already encumbered by a prior mortgage held by Countrywide. In anticipation of obtaining a new first lien, Mortgage Lenders paid more than $300,000.00 to Countrywide, discharging that mortgage. Prior to its payment, Mortgage Lenders obtained assurances from both Hylton and from New Jersey Title Insurance Company that its "new" mortgage would succeed to an intended first lien position.

However, contrary to assurances from both Hylton and the title company, it was discovered that Hylton had, a short time before Mortgage Lenders made its loan, obtained a $35,000.00 "home equity" mortgage loan from American General, who had recorded its mortgage first. The evidence presented to the Court by the title company (by way of a summary judgment

motion), was that the title search did not find the American General mortgage, and therefore the title commitment did not report the existence of that mortgage, and therefore at the time it made its loan, Mortgage Lenders had no "actual knowledge" of American General's technically prior lien.

What the title company also established, was that American General (due to the relatively modest amount of its loan) could not have had a "reasonable expectation" that its "home equity" mortgage would obtain a first lien superior to that of Countrywide, unless someone else paid off Countrywide. Indeed, at the time of its loan, American General was content to remain a subordinate lienor, behind Countrywide. Because American General always intended to hold a subordinate lien position behind *Countrywide*, the Court found no prejudice in adjudicating that American General remain in that subordinate lien position. By employing the doctrine of "equitable subrogation," the Court allowed the Mortgage Lenders mortgage to "step into the shoes" of Countrywide, and thereby retain a subrogated lien priority ahead of American General.

The importance of the Court's decision to the title industry lies in the Court's rejection of the Recording Act's rigid imputation of constructive notice as to an undiscovered prior lien, in favor of a more equitable "actual notice" test. The Court also rejected American General's argument that the title company's negligence tainted the granting of "equitable subrogation" relief to an otherwise innocent lender.

10-27-08 State of New Jersey v. Aashima Rastogi
17712

The Law Division rejected a proposed plea agreement to resolve a municipal appeal from a drunk-driving conviction. Faced on appeal with defendant's claim that the initial stop was unlawful, the State proposed to dismiss the DUI charge and vacate the conviction below, in return for defendant's guilty plea to reckless driving. Relying upon the Supreme Court's strict enforcement of drunk-driving laws, the Law Division held it should abide by the plea bargaining ban embodied in the Guidelines for Operation of Plea Agreements in the Municipal Courts, although the guidelines expressly govern only municipal courts.

10-20-08 In the Matter of the Expungement of the Criminal Records of H.M.H.
17422

Petitioner sought to expunge his record of a domestic violence simple assault conviction in order to obtain a Firearms Identification Card and Permit to Purchase a Handgun. The question which was decided in this action was whether a person who has pled guilty to a disorderly persons offense of simple assault is barred from having that offense expunged because the offense constituted an act of domestic violence. The Mercer County Prosecutor contends that N.J.S.A. 2C:52-14(b) coupled with N.J.S.A. 2C:58-3(c), and in consideration of the Lautenberg Amendment to the Federal Gun Control Act of 1968, 18 U.S.C.A. sect. 922(g)(9), evinces a public policy against expungements of domestic violence convictions. The Petitioner argues that N.J.S.A. 2C:52-2 does not prohibit the expungement of convictions which involve domestic violence, and that the Prosecutor has failed to sustain the burden of demonstrating that the availability of the records outweighs the desirability of having Petitioner freed from any disabilities of the conviction. The Court concludes that the Prosecutor has failed to demonstrate a basis to deny the expungement, and the Petitioner is entitled to the relief sought.

07-03-08 Richard Matera, et al. v. M.G.C.C. Group, Inc., et al.
L-1812-04

In case of first impression, court held that, in order for a viable consumer fraud action to lie, plaintiff must establish that defendant committed an unlawful act in connection with the sale of real estate which causes plaintiff an ascertainable loss; however, there need be no contact between the parties.

07-02-08 Christopher E. Hageman v. 28 Glen Park Assoc., LLC, et als.
C-387-06

Plaintiff's applications as a defendant in a foreclosure action within the year prior to his institution of suit, in which he had obtained injunctive relief based upon false representations, were sufficiently related to the facts and issues of this matter so as to require dismissal of his complaint under the doctrine of unclean hands.

06-12-08 Block 268 LLC v. City of Hoboken Rent Leveling and Stabilization Board, et als.
L-3146-06

Plaintiff property owner sought judicial review of a defendant municipal board's actions at a prior hearing regarding co-defendant tenant's request for rent control exemption which plaintiff argues was in violation of N.J.S.A. 2A:42-84.1 et seq. Plaintiff owned residential buildings in which it sought to convert certain rental units into condominiums. At the time plaintiff originally purchased the buildings, they consisted solely of rental units. Co-defendant tenant lived in plaintiff's building and made a request to defendant municipal board seeking to apply rent control to their unit. Defendant municipal board supported co-defendant tenant's request and also applied rent control to other units in the other buildings pursuant to a local ordinance. At trial, plaintiff argued that the municipal board's actions were improper because the buildings were exempt from rent control pursuant to N.J.S.A. 2A:42-84.1 et seq. Defendant municipal board argued that N.J.S.A. 2A:42-84.1 et seq. did not apply to the buildings because the statutory exemption does not run with the land and/or because the plaintiff relinquished their entitlement to the exemption by converting the buildings from rental units into condominiums. The Court held that the language of N.J.S.A. 2A:42-84.1 et seq. was clear and unambiguous regarding its broad application of exemption from rent control. Further, the Court held that the statute preempted the local ordinance on which the municipal board based its prior action. The Court **GRANTED** plaintiff's motion for partial summary judgment on grounds that the defendant municipal board's unauthorized actions in a prior hearing regarding the applicability of rent control exemption to the buildings in question were in disaccord with and preempted by the plain language of N.J.S.A. 2A:42-84.1 et seq.

06-09-08 Welch v. Welch
FM-13-1006-94C

In a post judgment motion for change of custody, the father subpoenaed police records relating to the mother without prior court authorization and when no hearing had been ordered. The court discussed the history of discovery in family actions and concluded that while there has been a significant expansion of the right to discovery in matrimonial matters, post judgment matrimonial motions continue to have little or no discovery absent a court order. The court found that the subpoena was not authorized by court rule and refused to consider the police documents. The father's motion was denied.