

DATE NAME OF CASE (DOCKET NUMBER)

7-31-07 Tracey A. Johnson and Christopher Johnson v. Benedict A. Scaccetti (A-36-06)

Chipped teeth are not "displaced fractures" under the lawsuit threshold of the Automobile Insurance Cost Reduction Act (AICRA), N.J.S.A. 39:6A-1.1 to -35. Once a plaintiff suffers a single bodily injury that satisfies a threshold category under AICRA, the jury may consider all other injuries in determining noneconomic damages. As a matter of law, plaintiff's spinal injury in the within matter satisfied the limitation on lawsuit threshold. Finally, the trial court failed to articulate sufficient reasons to justify a remittitur in this action.

7-30-07 State v. Michelle L. Elders, et al. (A-42-06)

The "reasonable and articulable suspicion" standard of State v. Carty, 174 N.J. 351 (2002), which governs consent searches of cars that are validly stopped applies equally to disabled vehicles on the State's roadways. In this case, the Court concludes that there was sufficient credible evidence in the record to support the trial judge's findings that the troopers engaged in an unconstitutional investigatory detention and search.

7-26-07 State of New Jersey v. Ronald Burns (A-27-06)

When faced with the difficult dilemma of handling a recalcitrant witness who had no valid basis to refuse to testify, the trial court did not abuse its discretion by allowing the prosecutor to call a witness who declined to answer specific questions before the jury. In addition, the trial court properly instructed the jury not to consider the facts in the questions that the witness declined to answer, and that any error not objected to in the charge does not require reversal of defendant's conviction.

7-26-07 Committee for a Better Twin Rivers v. Twin Rivers Homeowners' Association (A-118/122-05)

In applying the Schmid/Coalition multifaceted standard, the twin Rivers Homeowners' Association's policies, as set forth in its rules and regulations, do not violate the New Jersey constitutional guarantees of free expression.

7-25-07 Stomel v. City of Camden (A-45/46-06)

Mayor Milan was the policy-maker for the City in respect of Stomel's removal as municipal public defender, and thus the § 1983 claim against the City based on Milan's actions is reinstated. Also, Stomel set forth a prima facie case that, as municipal public defender, he was an "employee" of the City for purposes of advancing his CEPA claim.

7-25-07 George D'Annunzio, D.C., et al. v. Prudential Insurance Company of America, et al. (A-119-05)

D'Annunzio presents many facts that support the creation of an employment relationship for CEPA purposes, notwithstanding that his agreement described him as an independent contractor.

7-25-07 New Jersey Division of Youth and Family Services v. B.R. (A-76-06)

Parents who are the subject of a termination action have the right to effective counsel. A claim of ineffective assistance of counsel is to be evaluated in light of the standard articulated by the United States Supreme Court in Strickland v. Washington, 466 U.S. 668 (1984). Such a claim must be raised on the parent's direct appeal from an order of termination.

7-24-07 Stewart A. Richardson v. Board of Trustees, Police & Firemen's Retirement System (A-100-05)

To establish that a disability is "a direct result of a traumatic event" for purposes of the accidental disability retirement statutes, a member must prove that the event is (a) identifiable as to time and place; (b) undersigned and unexpected; and (c) caused by a circumstance external to the member (and not the result of pre-existing disease that is aggravated or accelerated by the work).

7-19-07 In re: Advisory Committee on Professional Ethics Opinion 705 (A-74-06)

Because N.J.S.A. 52:13D-17 serves a legitimate governmental purpose and does not improperly encroach on judicial interests, the Court defers to the Legislature in the spirit of comity and holds that attorneys formerly employed by the State must comply

with both the Act and the RPCs.

7-18-07 Division of Alcoholic Beverage Control v. Maynards, Inc. (A-120-05)

The Alcoholic Beverage Control Act, N.J.S.A. 33:1-1 to - 97, imposes strict liability on a licensee for a violation of the Act's provisions by the licensee's employees. The measure of punishment is determined by considering all relevant facts, including the licensee's knowledge, efforts taken to prevent violations, and character and reputation; whether excessive hardship would result; and whether repeated violations were the direct product of governmental action.

7-17-07 R.A.C. v. P.J.S., Jr., et al.

The doctrine of equitable tolling is not applicable and the action against the biological father is barred by the Parentage Act's statute of repose.

7-16-07 In the Matter of Tammy Herrmann (A-77-06)

The Merit System Board decision recognized legitimate public policy reasons for not insisting that DYFS retain an employee who, in so short a time, lost the trust of her employer. The Appellate Division impermissibly imposed its own judgment as to the proper penalty in this matter when the Merit System Board's penalty could not be said to be either illegal or unreasonable, let alone "shocking" any sense of fairness. Therefore, the Appellate Division's reversal of Herrmann's removal was in error.

7-12-07 State v. Marcellus Williams (A-26-06)

Marcellus R. Williams' resistance and flight, which amounted to obstruction, broke the link in the chain between the initial unconstitutional investigatory stop and the later seizure of the handgun. Under such circumstances, suppression of the evidence is not warranted by the exclusionary rule.

7-11-07 State v. Raheem Means (A-21-06)

A trial court may not set aside a plea agreement solely because the prosecutor failed to notify the victims prior to entering

into the plea agreement.

7-9-07 New Jersey Division of Youth and Family Services v. G.L. (A-83-06)

The Division of Youth and Family Services failed to meet its burden of satisfying by clear and convincing evidence the four prongs of the statute authorizing the termination of parental rights.

6-27-07 State v. Alturik Francis (A-31/63-06)

Because the misuse of grand jury occurred before Francis' indictment, the inquiry should have been whether the testimony of the family members was relevant to the crimes under investigation and not whether the grand jury was used for the sole or dominant purpose of securing additional evidence against the defendant for use in the upcoming trial. The trial court is to determine whether the testimony of Francis' family members is relevant to the charges against Francis.

6-26-07 John Daidone, et al. v. Buterick Bulkheading, et al. (A-60-06)

If design or construction services relating to an improvement to real property are completed before a certificate of occupancy is issued, and the designer or contractor has no further work to perform on that construction project, then the start date for purposes of the Statute of Repose, N.J.S.A. 2A:14-1.1(a), is the date on which the designer or contractor has completed his or her portion of the work. The complaint against Lepley and Buterick was properly dismissed because it was filed more than ten years after they completed their work.

6-25-07 Patricia Liguori v. Elie M. Elmann, M.D., et al. (A-52-06)

The trial judge's instruction to the jury on the appropriate standard of care applicable to Dr. Hunter, though not entirely in keeping with the Model Jury Charge, nonetheless did not result in error; the Court is satisfied that the jury concluded that Hunter's actions were reasonable in light of all of the facts relating to the emergency he confronted; the Court finds

no error in the trial court's dismissal of the fraud claim or in the Appellate Division's analysis of plaintiffs' argument on appeal; and, because the change in the expert's opinion, although significant, was one which brought his opinion into alignment with plaintiffs' expert, the Court does not perceive, in these circumstances, any prejudice to plaintiffs.

6-21-07 State v. Joseph M. Clark, et al. (A-9-06)

The chief investigator of the Court's Advisory Committee on Judicial Conduct must comply with a subpoena ad testificandum in respect of the criminal trial at issue in the within matter. Compliance with a subpoena after an indictment has issued and a trial is poised to commence will not harm the ACJC's investigatory flexibility or risk unfairness to the judge involved. More importantly, the interests of respect for, and public confidence in, the Judiciary require public disclosure in this instance.

6-21-07 Trooper Ronald Roberts, Jr. v. State of New Jersey, Division of State Police (A-62-06)

When a criminal investigation of a State Trooper has ended with a decision not to prosecute, the statutory "applicable time limit" within which disciplinary charges against the Trooper must be filed is forty-five days after the Superintendent of the State Police has obtained the report of the internal disciplinary investigation.

6-20-07 In the Matter of John Carter
John Carter v. Township of Bordentown (A-16-06)

The Appellate Division erred in treating the principle of progressive discipline as a mandate of law. The offending behavior alone supported the police officer's removal.

6-20-07 Michelle Thurber v. City of Burlington (A-66/67-06)

Under the circumstances presented in this appeal, the deputy municipal court administrator's position was not a confidential judicial position under the disciplinary authority of the Assignment Judge. The six-month suspension imposed by the Merit System Board was not arbitrary, capricious or unreasonable.

6-19-07 Fairway Dodge, LLC v. Decker Dodge, Inc. (A-47-06)

The evidence presented failed to establish that either Bibbo or Decker acted purposefully or knowingly in any conduct that violated the Computer Related Offenses Act. In addition, the trial court should have permitted defendants to call fact witnesses who would have testified that they were not solicited by defendants -relevant testimony on the issue of damages.

6-18-07 State v. Porfirio Jimenez (A-75-06)

In a capital cause prosecution, if a single juror finds that the defendant has proved his or her mental retardation by a preponderance of the evidence, the defendant is not eligible to receive the death penalty.

6-15-07 In re Lead Paint Litigation (A-73-05)

Plaintiffs cannot state a cognizable claim consistent with the well-recognized parameters of the common-law tort of public nuisance. To find otherwise would be directly contrary to legislative pronouncements governing both lead paint abatement programs and products liability claims.

6-14-07 Joseph Jerkins, etc., et al. v. Board of Education of Pleasantville Public Schools, et al. (A-49-06)

Schools have a duty to exercise reasonable care for supervising students' safety at dismissal. That duty requires school districts to adopt and comply with a reasonable dismissal supervision policy, provide adequate notice of that policy to parents and guardians, and comply with parents' reasonable requests regarding dismissal.

6-14-07 Ezrina Shim v. Rutgers-The State University of New Jersey (A-32-06)

A student who has lived in New Jersey for twelve months prior to enrollment is presumed to be a domiciliary for tuition purposes under N.J.S.A. 18A:62-4. If that student is dependent on out-of-state parents, the presumption in the student's favor is neutralized. In that situation, all of the evidence must be considered to determine if the student's domicile is in New Jersey.

6-13-07 Gallenthin Realty Development, Inc. v. Borough of Paulsboro (A-51-06)

Because the New Jersey Constitution authorizes government redevelopment of only "blighted" areas, the Legislature did not intend N.J.S.A. 40A:12A-5(e) to apply in circumstances where the sole basis for redevelopment is that the property is "not fully productive." Rather, subsection 5(e) applies only to areas that, as a whole, are stagnant and unproductive because of issues of title, diversity or ownership, or other similar conditions. Therefore, the Borough of Paulsboro's redevelopment classification in respect of the Gallenthin property is invalidated.

6-13-07 In re Verified Petition of Michael G. Venezia (A-63-05)

Once a news reporter speaks outside of the news gathering and reporting process about his conversations with his source, the reporter cannot seek refuge in the newsperson's privilege to deny disclosure of what he had already told others.

6-12-07 Michael J. Raspa, Jr. v. Office of the Sheriff of the County of Gloucester (A-53-06)

An employee must possess the bona fide occupational qualifications for the job position that employee seeks to occupy in order to trigger an employer's obligation to reasonably accommodate the employee to the extent required by the Law Against Discrimination (LAD). An employer may reasonably limit light duty assignments to those employees whose disabilities are temporary, and the availability of light duty assignments for temporary disabled employees does not give rise to any additional duty on the part of the employer to assign a permanently disabled employee indefinitely to an otherwise restricted light duty assignment.

6-11-07 Ronald A. MacKinnon v. Erika MacKinnon (A-114-06)

The Baures factors apply to the international removal context, and the trial court properly applied those factors to the present circumstances in granting the removal request.

6-11-07 Salvatore Vergopia, et al. v. Corey E. Shaker, et al.
Hometown Auto Retailers, Inc. v. Stephen A. Zelnick
(A-10-06)

Under the broad indemnification provision contained in appellant's Delaware certificate of incorporation, under the facts of this matter respondent is entitled to indemnification as a corporate officer.

6-6-07 Gary Potenzzone v. Annin Flag Company, et al. (A-54-06)

Based on long-standing case law invalidating the exclusion for loading and unloading activities, that exclusion in the Penn National's policy is treated as if it were not part of the policy; therefore, the insurer is responsible for coverage up to its full policy limit.

6-5-07 State v. Donald Loftin (Capital Cause)

The trial court erred by not excusing a juror who appeared to be biased and who, by his own words, predetermined Loftin's guilt. The trial court was obliged to question the remaining jurors to make certain that none had been tainted. The failure of the court to ensure that the jury's impartiality had not been compromised requires reversal of Loftin's guilt and penalty phase verdicts.

6-4-07 State v. D.A. (A-23-06)

The offense of tampering in violation of N.J.S.A. 2C:28-5(a) is committed only when a person acts believing that an investigation or proceeding is underway or is about to begin. Because there was no evidence that D.A. held such a belief, his conviction of tampering must be reversed.

5-31-07 Michelle Iliadis, et al. v. Wal-Mart Stores, Inc., et al. (A-69-06)

The trial court abused its discretion in declining to certify the punitive class action. Common questions of law and fact predominate over individualized questions, the class-action

vehicle is superior to other methods of adjudicating this dispute, and the trial court's manageability misgivings can be overcome.

5-31-07 Cooper University Hospital, et al. v. Fred M. Jacobs, M.D., J.D., etc., et al. (A-88/89-06)

Although N.J.A.C. 8:33-3.11(e) authorized the call, the regulation, as applied, violates fundamental principles relating to the regulatory process. Under the circumstances, the Court cannot sustain the grant of Certificates of Need for the Atlantic C-PORT-E study. The projects may continue through November 30, 2007. However, a proper regulation must be promulgated – after appropriate adherence to the principles of rulemaking – before any such “demonstration project” can be continued beyond that date.

5-30-07 Rena Brenman, et al. v. Michael Demello, et al. (A-13-06)

The admissibility of any relevant photographs rests on whether the photograph fairly and accurately depicts what it purports to represent, an evidentiary decision that properly lies in the trial court's discretion. The Court rejects a per se rule that requires expert testimony as a foundation for the admissibility of a photograph of vehicle damage when the photograph is sued to show a correlation between the damage to the vehicle and the cause or extent of injuries claimed by an occupant of the struck vehicle.

5-30-07 University Cottage Club of Princeton New Jersey Corp. v. New Jersey Department of Environmental Protection (A-65-06)

Public access is an essential component of historic-site tax exemption. However, because Cottage satisfied all of the relevant standards in effect when it perfected its petition for tax-exempt status, Cottage was entitled to certification as a tax-exempt historic site.

5-24-07 Totaro, Duffy, Cannova and Company, L.L.C. v. Lane, Middleton & Company, L.L.C. (A-14-06)

Totaro is entitled to compensatory damages for the loss of compliance work resulting from the breach of the non-solicitation agreement. The loss of compliance work was a foreseeable consequence of Lane's breach. The record supports only the trial court's conclusion that each of the clients would have remained a client of plaintiff's in the first year following Lane's departure. Therefore, damages should be based only on the first-year losses.

5-22-07 State v. Rahmil O'Neal (A-94/95-05)

Based on the observations made by law enforcement officers, there was probable cause to search and arrest O'Neal. The police officer's question to O'Neal that elicited his response without prior Miranda warnings violated Miranda, but was harmless under the circumstances.

5-21-07 State v. Christopher Romero (A-109-05)

The jury received ample instruction about the need to examine carefully the identification made by the eyewitness, and Romero was not denied a fair trial without a tailored cross-ethnic identification charge. The Court uses this opportunity to refine the out-of-court identification charge so that it will alert jurors in all eyewitness identification cases that such testimony requires close scrutiny.

5-17-06 Melissa Phillips v. John Gelpke (A-1-06)

Melissa Phillips' case did not require expert proof about her recall of the earlier sexual abuse as a condition of its submission to the jury. Melissa's ability to recall the events went to the weight to be accorded her testimony, not its admissibility.

5-16-07 Thompson v. City of Atlantic City, et al. (A-44-06)

Atlantic City's settlement with its own mayor was so infected with conflicts of interest that it is void as a matter of state law. Because the City's unlawful agreement with Lorenzo Langford and William Marsh is a nullity, the monies disbursed to both must be returned to the municipal coffers. Any further relief sought by Langford and Marsh, such as reinstating the

civil rights suit, must be pursued in federal court.

5-10-07 First Union National Bank v. Penn Salem Marina, Inc.
(A-11-06)

When there is an action on a note followed by an action to foreclose on the security, the trial court in the second action should be bound by the judgment entered in the first action to the extent the same categories of damages are claimed in the second as in the first. In this instance, issue preclusion requires that both judgments contain the same amounts for those categories of damages that cover the same period of time.

5-7-07 State v. Brian Wakefield (A-37-04)

Wakefield's penalty phase proceedings were fair, the death sentence was properly imposed, and his death sentence is not disproportionate.

5-2-07 Robert J. Triffin v. TD Banknorth, N.A. (A-84-06)

The judgment of the Appellate Division is affirmed substantially for the reasons expressed in Judge Coburn's published opinion in Triffin v. Bridge View Bank, 330 N.J. Super. 473 (App. Div. 2000), on which the Appellate Division relied in this case. Where an assignee of all rights arising from a dishonored check becomes the assignee after the check's untimely return and with full knowledge of its dishonor, the assignee has no vested interest in the timely payment or return of the check and thus has no standing to bring a cause of action for the bank's violation of N.J.S.A. 12A:4-302.

5-1-07 Joseph Panetta v. Equity One, Inc. (A-2/3-06)

A riparian grant is a conveyance in fee simple of real property. As such, without specific mention in the deed or other evidence that the parties intended its inclusion, a riparian grant will not pass as appurtenant to another distinct parcel.

4-26-07 State v. Robert a. Figueroa (A-38-06)

The trial court's supplemental jury charge, which did not

include any repetition of the language from the appropriate initial charge that jurors "not surrender your honest convictions as to the weight or effect of the evidence solely because of the opinion of your fellow jurors, or for the mere purpose of returning a verdict," and which suggested that deliberations might continue through the end of the week and into the weekend, had the effect of coercing the dissenting juror or jurors into agreeing with the verdict announced shortly after the supplemental charge and thus Figueroa is entitled to a new trial.

4-25-07 State v. Abdul Webster (A-37-06)

Judgment of the Appellate Division is affirmed substantially for the reasons expressed in Judge Payne's written opinion in the Appellate Division. If a sentence is subject to the No Early Release Act's mandatory-minimum-sentence provision, making Webster ineligible for parole during the first eighty-five percent of his sentence, the commutation and work credits cannot be used to reduce that eighty-five percent parole disqualifier.

4-24-07 State v. Jeffrey Drury (A-110-05)

Carjacking is not a predicate offense that serves to elevate a sexual assault to the first-degree offense of aggravated sexual assault; and Drury must be resentenced on the kidnapping convictions.

4-23-07 New Jersey Turnpike Authority v. Local 196, I.F.P.T.E.
(A-41-06)

The public policy exception to the review of labor arbitration awards, and heightened judicial scrutiny, are triggered only when the arbitrator's award - not the grievant's underlying conduct - violates a clear mandate of public policy embodied in statute, regulation, or legal precedent. The Court reverses the Appellate Division's judgment because no clear mandate of public policy was implicated by the present award reinstating the employee to his position as a toll collector.

4-19-07 State v. Calvin Lee (A-34-06)

A defendant is entitled to discovery to support racial profiling

claims and the attenuation doctrine should be considered only after it is determined that a defendant is a victim of racial profiling.

4-18-07 Ginger Pacifico v. James Paul Pacifico (A-61-06)

The doctrine of contra proferentem (which provides that when a contract term is ambiguous, a court is required to adopt the meaning that is most favorable to the non-drafting party) should not have been applied in this case.

4-17-07 State v. Lawrence A. Brown (A-7-06)

When there is no governmental compulsion involved, the State may cross-examine a defendant concerning his pre-arrest silence to challenge his self-defense testimony.

4-17-07 State v. Michael Tucker (A-6-06)

The prosecutor's comments about inconsistencies in Tucker's statements did not constitute an unconstitutional comment on silence.

4-17-07 State v. Ahmed F. Elkwisni (A-24-06)

A prosecutor can cross-examine a defendant concerning inconsistencies between his or her post-Miranda statement to the police and his testimony at trial.

4-11-07 State v. Jayson S. Williams (A-12-06)

The post-crime consciousness of guilt evidence is relevant to the mental state of Williams at the time of the shooting and is admissible to prove the crime of reckless manslaughter.

4-4-07 Township of Holmdel v. New Jersey Highway Authority
(A-64-06)

Because the current operation of the amphitheater furthers the Arts Center's original purposes of providing public access to performing arts and generating revenue, the amphitheater and its attendant facilities are exempt from local property taxation.

However, because the construction and privatization of the reception center were dramatic, unanticipated departures from the Authority's statutory mandate, the reception center is subject to taxation for all years under appeal.

4-4-07 State v. Michael Colbert (A-108-05)

The procedural methodology recognized in State v. W.A. was intended for purely prospective application. The Court is satisfied that defendant received his constitutional entitlement as he was fully present during voir dire and no error occurred.

4-3-07 Toll Brothers, Inc. v. Township of West Windsor
(A-48-06)

Rule 1:4-8(f) requires a court that hears an application for frivolous litigation sanctions against a party to assess whether it is practicable to comply with the rule's safe harbor provision.

3-29-07 Robert Rowe v. Hoffman-LaRoche, Inc. (A-19-06)

Michigan law applies to the failure-to-warn claim brought by a Michigan resident alleging injuries in Michigan involving an FDA-approved prescription drug prescribed and used in Michigan. Michigan's interest in promoting the availability of affordable prescription medications to its citizens outweighs New Jersey's interest in deterring New Jersey corporations from providing inadequate warnings.

3-28-07 State v. Steven R. Fortin (A-112-05)

The State may introduce material details of the sexual assault committed by Fortin in Maine to present the bite-mark evidence of this crime in context, subject to specific jury instructions explaining the limited use of such evidence. The FBI's Violent Criminal Apprehension Program database is not admissible to prove a signature crime.

3-26-07 R.M. v. Supreme Court of New Jersey (A-35-06)

Because the trial court did not explain how or why it arrived at the amount of counsel fees awarded, this Court cannot ascertain whether the appropriate methodology was used to determine the award. For that reason, the trial court's order is vacated and

the matter is remanded for disposition of R.M.'s counsel fees claim.

3-21-07 Maria Soto v. Lisa Scaringelli and James Scaringelli
 (A-17-06)

No rational fact-finder would find that plaintiff's scar or surgically implanted plate and screw constituted disfigurement of scarring sufficiently "significant" to justify vaulting the limitation on lawsuit threshold of New Jersey's Automobile Insurance Cost Reduction Act of 1998 (AICRA), thus overriding AICRA's exemption from liability.

3-20-07 Richard M. Wilson v. General Motors Corporation, et
 al. (A-58-06)

The allegations in these class-action complaints essentially assert an anti-competition scheme in violation of the New Jersey Antitrust Act. There are no allegations or communications with, or directed to, consumers "in connection with the sale or advertisement" of vehicles that would entitle plaintiffs to relief under the Consumer Fraud Act.

3-19-07 State v. Randi Fleischman (A-4-06)

When a defendant provides to officials in connection with a fraudulent claim a document or oral narrative that contains material facts relating to the claim, each such document or narration is a "statement" equating to an "act" of insurance fraud. The Court rejects the assertion that every discrete fact within a narrative about a single claim amounts to an "act" of insurance fraud.

3-13-07 Harry Ruiz v. Angel Mero (A-28/29-06)

N.J.S.A. 2A:62A-21 abolished the firefighter's rule. First responders may recover damages from a property owner for any injury sustained when answering an emergency.

3-8-07 State of New Jersey v. Pascal DuBois (A-102-05)

The record amply demonstrates that defendant was sufficiently informed to knowingly and intelligently waive his right to counsel. Our careful review of the record satisfies us that the trial court did not abuse its discretion in finding that defendant knowingly and intelligently waived his right to

counsel.

3-7-07 Robert Wayne Tarus v. Borough of Pine Hill, et al.
(A-93-05)

There is a common law right to videotape a municipal council meeting subject to reasonable restrictions. The Borough and its Mayor violated that right by imposing arbitrary and unreasonable restrictions that prevented Tarus from videotaping the Council meetings in question.

3-1-07 T.H. v. Division of Developmental Disabilities
(A-114-05)

There is no statutory requirement that an applicant for services develop substantial functional limitations in three major life areas before age 22, and the Division of Developmental Disabilities contrary interpretation, codified in N.J.A.C. 10:46-1.3, exceeded its authority and is invalid. In addition, it was inappropriate to reject the eyewitness testimony of the applicant's sister as anecdotal and the expert's conclusions because lacking in medical documentation.

2-28-07 Liberty Surplus Insurance Corporation, Inc. v. Nowell Amoroso, P.A., et al. (A-91-05)

The question whether an insured had "knowledge of any circumstance, act, error or omission that could result in a professional liability claim" is subjective in nature. Nevertheless, there was no genuine issue of material fact requiring submission of the issue to a fact-finder, and thus summary judgment denying insurance coverage was properly granted, because the insured knew at the time it completed the application for insurance that one trial court and two Appellate Division decisions indicated that it had missed the statute of limitations in filing a complaint.

2-27-07 J.D.A. v. N.J. Department of Corrections (A-22-05)

The Department of Corrections (DOC) has the ultimate responsibility for the medical care of inmates and for the maintenance of complete and accurate medical records. In addition to the medical summaries protocol currently in effect under N.J.A.C. 10A:22-2.7, DOC must expeditiously enact comprehensive rules and regulations codifying its obligations

for medical care and record keeping, and the methods by which they will be satisfied.

2-21-07 L.W. v. Toms River Regional Schools Board of Education
 (A-111-05)

The New Jersey Law Against Discrimination recognizes a cause of action against a school district for student-on-student affectional or sexual orientation harassment. A school district is liable for such harassment when the school district knew or should have known of the harassment but failed to take actions reasonably calculated to end the mistreatment and offensive conduct.

2-21-07 Reinaldo Carmona v. Resorts International Hotel, Inc.
 (A-83-05)

In a case alleging retaliation under the LAD, plaintiff bears the burden of proving that his complaint was made reasonably and in good faith. When an employer defends against a claim that an employee's discharge was the product of retaliation, an investigative report prepared by the employer that purports to demonstrate a non-retaliatory purpose for the employee's termination is not hearsay and is admissible.

2-8-07 New Jersey Division of Youth and Family Services v.
 M.M. (A-115/116-05)

The standard for the determination of this appeal is the best-interests-of-the-child. The record demonstrates that the separation of the son from his foster parents, who have comprehensively cared for his special needs almost since birth, combined with his return to the unstable and at times dangerous home of his severely-limited biological parents, is not in the son's best interests.

1-31-07 Rochelle Hodges, et al. v. Feinstein, Raiss, Kelin &
 Booker, L.L.C. (A-113-05)

Based on the Act's broad statutory language, a law firm that regularly files summary dispossess actions for nonpayment of rent is a "debt collector" under the Federal Debt Collection Practices Act.

1-31-07 State of New Jersey v. Brian W. Samuels (A-88-05)

The State submitted sufficient evidence from which a jury could conclude beyond a reasonable doubt that Samuels conspired to and did commit an armed robbery. Nonetheless, the convictions for conspiracy and armed robbery must be reversed and retried in view of the trial court's failure to charge the lesser-included offense of attempted robbery and the court's improper charge on the elements of conspiracy and accomplice liability.

1-30-07 Davidson v. Slater (A-84-05)

Plaintiff was under no obligation under the Automobile Insurance Cost Reduction Act (AICRA) to produce, as part of her prima facie presentation in this non-aggravation cause of action, a comparative analysis in order to satisfy the verbal threshold proof requirements. As between defendant's medical proofs and those presented by plaintiff, the trial court was obliged to determine whether a genuine issue of proximate cause had been presented. As to the issue of permanency, the matter is remanded for further explication of this record by the Appellate Division in light of the proof requirements for objective medical evidence of permanency.

1-29-07 Simon v. Cronecker, et al. (A-105/106-05)

The Tax Sale Law, N.J.S.A. 54:5-1 to -137, does not prohibit a third-party investor from redeeming a tax sale certificate after the filing of a foreclosure action, provided that the investor timely intervenes in the action and pays the property owner more than nominal consideration for the property. Because Cherrystone did not satisfy the procedural requirements of the Tax Sale Law, the Court imposes constructive trusts in favor of defendant property owners, granting the tax certificate holders the opportunity to assume Cherrystone's contractual rights.

1-29-07 Simon v. Rando, et al. (A-121/122-04)

A third-party investor who acquires prior tax certificates in the post-foreclosure complaint stage and fails to intervene in the foreclosure proceeding commenced by holders of the subsequently issued tax certificates is barred from participating in the redemption process.

1-29-07 Malinowski v. Jacobs (A-46-05)

The Court's decisions in Cronecker and Rando must be given retroactive effect.

1-24-07 State v. John O'Hagen (A-70-05)

The New Jersey DNA Database and Databank Act of N.J.S.A. 53:1-20.17-20.28, as amended, does not violate the rights guaranteed by the Fourth and Fourteenth Amendments to the United States Constitution and Article I, Paragraphs 1 and 7 of the New Jersey Constitution.

1-24-07 A.A., by his parent and guardian B.A., v. Attorney General of the State of New Jersey et als.(A-105-05)

DNA test results lawfully obtained pursuant to the New Jersey DNA Database and Databank Act of 1994, N.J.S.A. 53:1-20.17-20.28, as amended, may be used to solve crimes committed prior to the taking of the DNA test.

1-18-07 State v. Vincent Dispoto (A-103-05)

Because there was insufficient evidence to support the issuance of the underlying domestic violence search warrant, the criminal search warrant was invalid as fruit of the poisonous tree. While this holding renders moot the Appellate Division's finding that failure to re-administer Miranda warnings at the time of arrest required suppression of Dispoto's post-arrest incriminating statements, the Court adds in respect of the issue of the Miranda warnings only that no bright line or per se rule governs whether re-administration is required following a pre-custodial Miranda warning.

12-21-06 Board of Education of the Borough of Alpha, Warren County v. Alpha Education Association (A-79-05)

The arbitrator did not exceed his authority in applying the continuing violation doctrine to reach the procedural conclusion that the Board's failure to provide paid health benefits to certain part-time employees was a separate and continuing violation that should not be dismissed as untimely.

12-20-06 State v. Breane Starr Blakney (A-117-05)

We agree with Judge Weissbard substantially for the reasons expressed in his dissenting opinion. We therefore reverse defendant's murder conviction and remand for a new trial on that

charge. In addition, we underscore the importance of well-crafted limiting instructions when the State introduces other-crime evidence pursuant to N.J.R.E. 404(b), and remind prosecutors of their obligation to keep their summation remarks within acceptable bounds of advocacy.

12-13-06 John Wiese and Elizabeth Wiese v. Jamir D. Dedhia, et al. (A-92-05)

All costs as a result of the rejection of an offer of settlement, including those incurred in Appellate Division and Supreme Court proceedings, fall within the scope of Rule 4:58-2.

12-8-06 In re Supreme Court Advisory Committee on Professional Ethics Opinion No. 697 (A-98-05)

If the scope of an attorney's engagement by a governmental entity is limited and not plenary, that attorney and his or her law firm are not per se prohibited from representing private clients before the governmental entity or one of the boards or agencies of that governmental entity (including the municipal court), and the provisions of R.P.C. 1.8(k) shall govern all instances in which the attorney or law firm seeks to undertake such representation

12-7-06 Mount Laurel Township v. MiPro Homes, L.L.C. (A-85/86-05)

A municipality has statutory authority to condemn property for open space, and its selection of properties on which residential development is planned is a proper exercise of the eminent domain power.

12-4-06 Charles Beseler Company v. O'Gorman & Young, Inc., et al. (A-75-05)

The C.5. exclusion of New Jersey Manufacturer's Workers' Compensation and Employers Liability Insurance Policy does not apply to the type of conduct alleged in this case - an unintended injury caused by an intentional wrong.

12-4-06 New Jersey Manufacturers Insurance Company v. Delta
Plastics Corporation, et al. (A-87-05)

For the reasons set forth in Beseler v. O’Gorman & Young, Inc., also decided today, the Court affirms the judgment of the Appellate Division. The C.5. exclusion of New Jersey Manufacturer’s Workers’ Compensation and Employers Liability Insurance Policy does not apply to the type of conduct alleged in this case – an unintended injury caused by an intentional wrong.

11-30-06 IMO Wilbur H. Mathesius, a Judge of the Superior Court
of New Jersey (D-166-05)

By clear and convincing evidence, Judge Mathesius’s conduct violated Canons 1, 2A, 3A(3), 3A(6) and 3A(10) of the Code of Judicial Conduct and R. 2:15-8(a)(6), and Judge Mathesius is suspended from his judicial duties without pay for a period of thirty days.

10-25-06 Mark Lewis and Dennis Winslow, et al. v. Gwendolyn L.
Harris, etc., et al. (A-68-05)

Denying committed same-sex couples the financial and social benefits and privileges given to their married heterosexual counterparts bears no substantial relationship to a legitimate governmental purpose. The Court holds that under the equal protection guarantee of Article I, Paragraph 1 of the New Jersey Constitution, committed same-sex couples must be afforded on equal terms the same rights and benefits enjoyed by opposite-sex couples under the civil marriage statutes. The name to be given to the statutory scheme that provides full rights and benefits to same-sex couples, whether marriage or some other term, is a matter left to the democratic process.

10-24-06 State v. Porfirio Jimenez (A-50-05)

The absence of mental retardation is not akin to a capital trigger, and Jimenez has the burden to prove by a preponderance of the evidence that he is retarded.

10-19-06 American Fire & Casualty Company v. New Jersey
Division of Taxation (A-134-04)

The tax benefits of the premium cap afforded to foreign insurers should not be included in calculating the retaliatory tax. Both the retaliatory tax and the premium tax cap must be harmonized to effectuate their respective purposes; therefore, the Court adopts the methodology proposed by the plaintiff/foreign insurers, which preserves the benefit of the premium tax cap and properly furthers the purposes of both statutes.

10-12-06 Lanco, Inc. v. Director, Division of Taxation
(A-89-05)

Judgment of the Appellate Division is affirmed substantially for the reasons expressed in Judge Stern's written opinion below. New Jersey may constitutionally subject a foreign corporation to the Corporation Business Tax notwithstanding the taxpayer's lack of physical presence in New Jersey.

10-12-06 Victor Dziuba and Alexandra Dziuba, husband and wife v. Scott J. Fletcher, et al. (A-90-05)

Judgment of the Appellate Division is affirmed substantially for the reasons expressed in Judge Weissbard's written opinion. N.J.S.A. 39:6A-4.5a does not preclude an injured uninsured motorist from recovering non-economic damages under a defendant's policy of automobile insurance when the uninsured motorist was not operating his uninsured vehicle at the time of the accident involving defendant's car.

10-3-06 In the Matter of Registrant T.T.: Application for Judicial Review of Notification and Tier (A-58-05)

T.T.'s lack of sexual motivation does not alter the fact that he committed the predicate offense of aggravated sexual assault and Megan's Law therefore applies. The intra-familial nature of T.T.'s offense, however, is a circumstance that warrants the less stringent community notification of a Tier One classification.

9-20-06 State v. Keith R. Domicz (A-42-05)

Under the circumstances, the warrantless thermal scan and seizure of electricity records did not constitute prior unlawful conduct that could tainted the later search. Grand jury subpoena procedures adequately protect any privacy interest in

utility records. Law enforcement officers are not required to have a reasonable and articulable suspicion that criminal activity is occurring within a home before seeking consent to search the residence.