

# **NOTICE TO THE BAR**

## **SUPREME COURT OF NEW JERSEY**

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SUPREME COURT CASES ADDED BETWEEN DECEMBER 21, 1999 AND APRIL 7, 2000

### **A-53-99 State v. Charles Hackett**

Can a defendant be convicted of endangering the welfare of a child for an act of nudity without proof that the nudity caused harm to the child? (Notice of appeal filed 9/9/99)

### **A-54/55-99 Riding v. Town Mills Craft Center**

Is a plaintiff who succeeds in arbitration on her LAD claim but who did not seek counsel fees in the arbitration precluded from requesting counsel fees in a motion to the Law Division to confirm the award? (Notice of appeal filed 10/13/99)

### **A-56-99 Gilhooley v. County of Union**

Could the scar on plaintiff's knee be deemed to constitute a permanent and substantial disfigurement that would satisfy the statutory threshold of N.J.S.A. 59:9-2(d) of the Tort Claims Act, and permit her to proceed with this negligence action against a public entity? (Certification granted 1/19/00)

### **A-57-99 IMO Township of Middletown v. Middletown PBA Local 124**

Is a public entity that has a long-standing policy of hiring police officers at a specific step of the salary guide required to negotiate with the policemen's bargaining unit before changing the policy? (Certification granted 1/20/00)

### **A-58/61-99 Rosenblitt v. Zimmerman**

In this action alleging chiropractic malpractice, was the failure to admit evidence that defendant had altered plaintiff's medical chart reversible error? In plaintiff's claim for spoliation of evidence, did the relatively low out-of-pocket expenses of additional discovery and additional legal preparation satisfy the element of harm to plaintiff? (Certification granted 1/20/00)

### **A-59-99 Green Party of New Jersey v. Hartz Mountain Industries**

Can the owner of a mall limit the frequency of a person's distribution of protected materials at the mall and require the person to provide insurance coverage of \$1 million? (Certification granted 1/20/00)

### **A-60-99 In re Proportionality Review Project II**

Should the Supreme court adopt the recommendations of the Special Master in respect of systemic issues that have arisen in the context of the proportionality review phase of death penalty prosecutions? (Report filed 5/3/99)

### **A-62-99 Roman Check Cashing v. Department of Banking and Ins.**

Is N.J.S.A. 17:15A-41e of the New Jersey Check Cashers Regulatory Act of 1993, which requires that a new check casher business be located no less than 2,500 feet from an existing business, unconstitutional because lacking a rational basis? (Notice of appeal filed 9/20/99)

### **A-63-99 Reed v. Bojarski**

Did the defendant doctor have a duty to inform plaintiff directly of an abnormality in plaintiff's chest x-ray indicating the possibility of Hodgkin's disease, where the doctor was hired as a subcontractor to conduct medical examinations of plaintiff and his coworkers pursuant to OSHA regulations by an entity that had, in turn, contracted with plaintiff's employer; or was it sufficient for the doctor to forward the x-ray to the intervening contractor noting the abnormality? (Certification granted 2/3/00)

### **A-64-99 In re: Interpretation of Rule 1:21(a)**

Does this proposal by members of the Pennsylvania Bar comply with the Court Rule that requires attorneys practicing in New Jersey to have an office located in the State? (Petition for review granted 2/15/00)

### **A-65/66/92-99 LaFage v. Jani**

In a claim under the Wrongful Death Act, is the statute of limitations tolled for minors during their infancy? Were the claims of all plaintiffs against the nurses tolled until plaintiffs received an expert opinion identifying the nurses as negligent? (Leave to appeal granted 2/10/00)

### **A-67-99 Mahoney v. Podolnick**

Did the refusal of one of the seven jurors to participate in a portion of the jury's deliberations warrant a new trial? (Certification granted 2/15/00)

### **A-68-99 Ali v. Rutgers State University**

Was plaintiff's LAD complaint timely under *Montells v. Haynes*, 133 N.J. 282 (1993) (LAD claims subject to two-year statute of limitations, but decision given prospective application only and not applicable to pending LAD claims or claims the operative facts of which arose before the date of the Court's decision - July 27, 1993), where the alleged discrimination began in 1980 and ended on the last day of plaintiff's work, September 13, 1993, and plaintiff's complaint was not filed until June 3, 1996? (Certification granted 2/16/00)

### **A-69/70-99 IMO Trust of John Seward Johnson**

Can third parties challenge the paternity of a contingent beneficiary on distribution of the Trust corpus in 1997, where the beneficiary was born in 1961, her birth certificate identifies the grantor of the Trust as her father, and the grantor acknowledged paternity in 1965 in his consent divorce proceedings and the divorce court found that the beneficiary was born of the marriage? (Certification granted 2/17/00)

### **A-71-99 DeLisa v. County of Bergen**

Does CEPA protect an employee from retaliatory discharge for the employee's cooperation in the investigation of wrongdoing by co-employees? (Certification granted 2/16/00)

### **A-72/102-99 IMO The Liquidation of Integrity Insurance Co.**

In a challenge to the plan of the Commissioner of Banking and Insurance to liquidate an insolvent insurer, is the

Commissioner required to produce in discovery the Department's intra-agency memoranda concerning the development and implementation of the plan? (Leave to appeal granted 2/23/00)

### **A-73-99 Pfenninger v. Hunterdon Central Regional High School**

Did the architect for this drainage construction project owe a duty to the contractor in respect of safety at the site where the contracts stated that the contractor was responsible for the methods and means of construction and all safety precautions, and the architect did not have any obligation for on-site inspection? (Certification granted 2/23/00)

### **A-74-99 Roach v. TRW, Inc.**

Does CEPA protect an employee from retaliatory discharge for the employee's disclosure of wrongdoing by co-employees? (Certification granted 2/23/00)

### **A-75-99 State v. Simon Lau**

### **A-76-99 State v. Chao L. Feng**

### **A-77-99 State v. Cho L. Lin**

### **A-78-99 State v. Xin D. Lin**

### **A-79-99 State v. Jeffrey Zhu**

Did the extraordinary security measures implemented in the courtroom during defendants' trial prevent a fair and impartial trial? Did the substantial pretrial and trial publicity create a presumption of prejudice? (Certification granted 2/29/00)

### **A-80-99 State v. Tyrone Wilson**

Where the jurors requested transcripts of the testimony of certain State witnesses during deliberations, was it reversible error for the trial court to play back only the direct examinations of these witnesses and not their cross-examinations? (Certification granted 2/29/00)

### **A-81-99 Bushnell v. Allstate Insurance Co.**

Where plaintiff had subdivided his property of eight acres and established a partnership with a builder for the purpose of developing new homes on the subdivided lots, and plaintiff and his family had moved out of the farmhouse located on the property to live in several converted garages on the property, and where the partnership was in negotiations to sell the farmhouse at the time of the fire, was defendant correct to deny coverage for fire damage to the farmhouse because it was no longer plaintiff's residence and was being used for business purposes? (Certification granted 2/29/00)

### **A-82-99 State v. Gino DeLuca**

Were the phone numbers retrieved from defendant's pager after his arrest but without a warrant admissible under the exigent circumstances exception to the warrant requirement? (Certification granted 2/29/00)

### **A-83-99 State v. Martel Johnson**

Is the No Early Release Act, which requires defendants convicted of a violent crime of the first or second degree to serve 85 percent of their sentences before becoming eligible for parole, constitutional? (Certification granted 3/8/00)

### **A-84-99 Pivnick v. Beck, Esq.**

Is plaintiff's complaint barred by collateral estoppel where the complaint alleges legal malpractice in preparing an irrevocable trust inconsistent with the testator's intent, and plaintiff failed in an earlier probate action to have the trust reformed based on the same claim, notwithstanding that a probate action is subject to a higher standard of proof (clear and convincing) than a negligence action (preponderance of the evidence)? (Certification granted 3/14/00)

### **A-85-99 J & M Land Co. v. First Union National Bank**

What is the limitations period that governs a claim of title by adverse possession to part of a tract of open marshland on which billboards had been constructed? (Certification granted 3/14/00)

### **A-86-99 Wilson v. Amerada Hess Corp.**

Did plaintiffs state a claim of breach of the implied covenant of good faith and fair dealing in a franchise agreement? Was the trial court required to grant plaintiff's recusal motion on the facts presented? (Certification granted 3/22/00)

### **A-87-99 Trinity Cemetery Association, Inc. v. Township of Wall**

Was the Township of Wall's ordinance, which amended the zoning of plaintiff's land to residential use, preempted when, prior to adoption of the ordinance, the New Jersey Cemetery Board issued a certificate of authority under N.J.S.A. 8A:6-7 and plaintiff acquired the property for use as a cemetery? (Certification granted 3/22/00)

### **A-88-99 City Check Cashing, Inc. v. Manufacturers Hanover Trust Company**

Did the defendant bank have a common law duty to plaintiff, a non-customer and check cashing service, such that the bank could be liable to plaintiff for negligence? (Certification granted 3/22/00)

### **A-89-99 State v. Charles Rumblin**

Is the No Early Release Act, which requires defendants convicted of a violent crime of the first or second degree to serve 85 percent of their sentences before becoming eligible for parole, constitutional? Is it applicable to a conviction for accomplice liability? (Certification granted 3/22/00)

### **A-90-99 Miller v. Estate of Sperling**

Is plaintiff's wrongful death action barred because the statute of limitations for the underlying medical malpractice action expired during the decedent's lifetime without a tort action having been filed? (Certification granted 3/22/00)

### **A-91-99 Pfizer, Inc. v. Employers Insurance of Wausau**

Where liability for environmental damage is apportioned among the insured and its insurers according to the risk transferred or assumed under *Owens-Illinois, Inc. v. United Insurance Co.*, 138 N.J. 437 (1994), should the amount of the policy deductibles also be apportioned? (Leave to appeal granted 3/22/00)

### **A-92-99 (See A-65/66-99)**

### **A-94-99 Sasco 1997 NI, LLC, etc. v. Zudkew**

Did the recording of a deed transferring real property, which transfer plaintiff alleges was fraudulent, start the running

of the statute of limitations period under the Uniform Fraudulent Transfer Act, N.J.S.A. 25:2-20 to -34? (Certification granted 3/28/00)

### **A-95-99 State in the Interest of T.M.**

Should the juvenile's 1995 adjudication of guilt on charges of sexual contact, fourth degree, be vacated by motion made three years after its entry, where, with the agreement of the juvenile's attorney and mother, the adjudication was based on the Prosecutor's proffer of facts, the juvenile is mildly retarded, and the juvenile indicated at the time of adjudication that he had no memory of the incident? (Certification granted 3/28/00)

### **A-96-99 Progressive Casualty Insurance Co. v. Hurley**

Was defendant entitled to uninsured motorist coverage under this business policy when injured while driving a loaned vehicle? (Certification granted 3/28/00)

### **A-97-99 IMO the Petition of Kati Gray-Sadler**

Were the results of this municipal election invalid because a mechanical model demonstrating the manner of voting for write-in candidates was not provided at the polling place as required by N.J.S.A. 19:48-1(l) and -1(m)? (Certification granted 3/28/00)

### **A-98-99 State v. Angel Maisonet**

Did the failure of the Sheriff's department to provide defendant with basic amenities during the trial, including a clean bed, soap, water, and an opportunity to shower, deprive defendant of a fair trial? (Certification granted 4/6/00)

### **A-99-99 Burns v. Belafsky, M.D.**

Can a plaintiff in a medical malpractice action file the affidavit of merit required by the Affidavit of Merit statute, N.J.S.A. 2A:53A-27, after the initial 60-day period where no motion for an extension of time was filed during that period? (Certification granted 4/6/00)

### **A-100-99 Alderiso v. Medical Center of Ocean**

What is the proper computation of the one-year limitations period for filing a claim under the Conscientious Employee Protection Act? (Certification granted 4/6/00)

### **A-101-99 State v. Lawrence Whaley**

Was it permissible under the circumstances to try defendant in absentia? (Certification granted 4/6/00)

### **A-102-99 (See A-72-99)**