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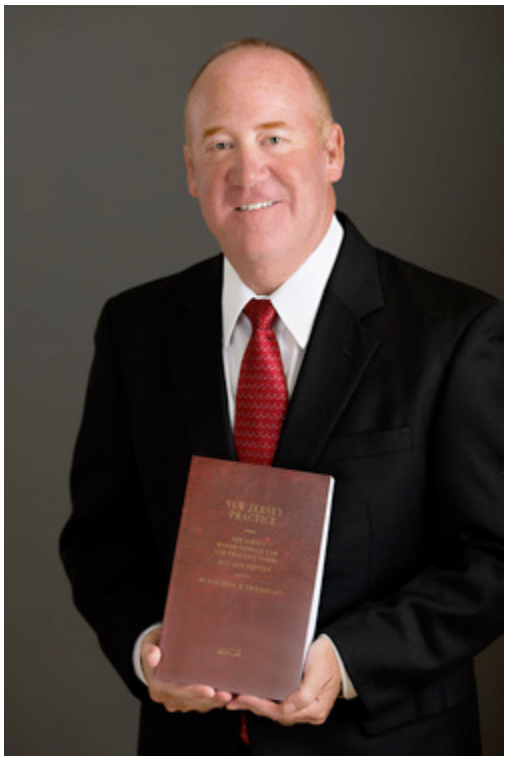
The 2015 Personal Injury Law Review

by Robert Rubinstein, Certified Civil Trial Attorney

Lesson Plan

SENIOR INSTRUCTOR - GARDEN STATE CLE



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Book: Personal Injury Law, 2013-2014 ed. (Vol. 56, New Jersey Practice Series)

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Feliciano v. Faldetta, 434 NJ Super 543 (App. Div. 2014)
Attorney Fees

***Rule* 4:58–2 "accords [the] judge no discretion regarding whether or not to award attorney's fees and costs of suit in an offer of judgment case. The amount of the assessment, however, is discretionary. "We will disturb a trial court's determination on counsel fees only on the 'rarest occasion,' and then only because of clear abuse of discretion.**

In calculating the amount of reasonable attorney's fees, courts determine the "lodestar," defined as the "number of hours reasonably expended" by the attorney, "multiplied by a reasonable hourly rate." The court must not include excessive and unnecessary hours spent on the case in calculating the lodestar.

The trial judge carefully reviewed both the hours requested and the hourly rates sought. He found that the time spent by the attorneys was reasonable, that the hours were not duplicative, and that they had not been increased to inflate the fees. He declined to accept the requested hourly rates for the two attorneys, $500 for trial counsel and $400 for the other attorney. Although he did not apply the hourly rates urged by Faldetta, he described them as more in line with the relevant legal community. He chose hourly rates of $350 and $250, respectively. We see no "clear abuse of discretion" in the judge's determination of the hourly rate or the number of hours eligible for reimbursement, which find adequate support in the record.

Related Issues:

Fee enhancements, see Rendine v. Pantzer, 141 N.J. 292 (1995).

Liability of carrier: Rova Farms Resort, Inc. v. Investors Ins. Co. of Am., 65 N.J. 474 (1974).

Cross-examination - Police Report not in Evidence

We agree that a new trial is required because of evidentiary errors pertaining to the issue of liability. In particular, plaintiff's counsel engaged in improper cross-examination when he confronted defendant with a police report that counsel did not offer in evidence, but whose substance he communicated to the jury. The report did not contain any statements from defendant conveying his version of the accident. Yet, counsel attempted to demonstrate that defendant, in discussions with police, omitted the version of the collision that he later asserted at trial. This improper attempt to impeach by omission was capable of producing an unjust result.

Expansion of *Clawans* adverse inference charge to personal injury cases - Fact vs. Expert Witnesses

State v. Clawans, 38 NJ 162 (1962)
State v. Hill, 199 NJ 545 (2009)

The 4-part *Clawans* Test

"(1) that the uncalled witness is peculiarly within the control or power of only the one party, or that there is a special relationship between the party and the witness or the party has superior knowledge of the identity of the witness or of the testimony the witness might be expected to give;

(2) that the witness is available to that party both practically and physically;

(3) that the testimony of the uncalled witness will elucidate relevant and critical facts in issue[;] and

(4) that such testimony appears to be superior to that already utilized in respect to the fact to be proven."

Pre-trial notice and disclaimers - Rule 4:25-7(b)

Skibinski v. Smith, 206 N.J.Super. 349 (App.Div.1985)

Sallo v. Sabatino, 146 N.J.Super. 416 (App.Div.1976)

(includes disclaimer that the expert reports do not constitute adoptive admissions)

Plaintiff Stephanie Washington claims that she was injured in a motor vehicle accident in New York City as the result of the negligence of defendant Carlos Perez (Perez) and his employer, defendant Olympia Trails Bus Company, Inc. (Olympia Trails). Prior to trial, defendants served the expert reports of two physicians, both of whom opined that plaintiff had sustained injuries in a prior accident, but acknowledged that plaintiff was also injured in the accident from which this case arose. In his opening statement to the jury, defendants' counsel argued that the evidence would show that plaintiff was not injured in the accident at issue in this case. Defendants did not call either of their expert witnesses to the stand.

At the request of plaintiff's counsel, and over defendants' objection, the trial court issued an adverse inference charge. It instructed the jury that if it found that the two experts were witnesses whom defendants would naturally be expected to call at trial, it could infer that the experts' testimony, if presented, would have been adverse to the interests of defendants.

The jury returned a verdict for plaintiff. An Appellate Division panel reversed and remanded the matter for a new trial, holding that the trial court abused its discretion when it gave the adverse inference charge, and that the charge prejudiced defendants.

We affirm the Appellate Division's judgment. We hold that given the significant distinctions between fact and expert witnesses, and the array of reasons why a party may choose not to call a previously designated expert witness to testify, an adverse inference charge should rarely be invoked to address the absence of an expert.

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When the witness whom a party declines to call at trial is an expert rather than a fact witness, the factors that may necessitate an adverse inference charge addressing the absence of a fact witness are unlikely to be germane. Accordingly, a *Clawans* charge will rarely be warranted when the missing witness is not a fact witness, but an expert [witness].

Prioleau v. KFC, 434 NJ Super. 558 (App. Div. 2014)

Mode of operation liability charge

The law recognizes "certain distinctive instances" where the nature of self-service business operations may result in dangerous conditions to invitees.The rule is a *very limited exception* to the traditional rules of business premises liability. When applicable, an injured plaintiff is relieved of proving actual or constructive notice where, "as a matter of probability, a dangerous condition is likely to occur as the result of the nature of the business, the property's condition, or a demonstrable pattern of conduct or incidents." The mode-of-operation doctrine is an extension of the general principle that when a proprietor creates a dangerous condition, "notice, actual or constructive, of [that] dangerous condition is not required.

[W]hen a substantial risk of injury is inherent in a business operator's method of doing business, the plaintiff is relieved of showing actual or constructive notice of the dangerous condition. The plaintiff is entitled to an inference of negligence, shifting the burden of production to the defendant, who may avoid liability if it shows that it did all that a reasonably prudent man would do in the light of the risk of injury the operation entailed. Thus, absent an explanation by defendants, a jury could find from the condition of the premises and the nature of the business that defendants did not exercise due care in operating the establishment, and that said negligent operation was the proximate cause of the injuries. The ultimate burden of persuasion remains, of course, with the plaintiff.

When mode-of-operation liability has been applied, courts have examined whether the defendant's identified business operations encompassed self-service facilities that led to a risk of harm to the plaintiff.

[For example, in one case,] the plaintiff's fall occurred when she slipped on a "sticky," "slimy" substance, on the "littered" and "dirty" floor, that also contained "drippings, paper straw holders, napkins and dirt" at the counter eating area in the "self-service cafeteria type" restaurant located within the defendant's store. Although not invoking the phrase "mode of operation," the Court pointed out that spillage by customers was a hazard inherent in that type of business operation from which the owner is obliged to protect its patrons, and we held that when it is the nature of the business that creates the hazard, the inference of negligence thus raised shifts the burden to the defendant to "negate the inference by submitting evidence of due care."

James v. NJM, 216 NJ 552 (2014)

Retro-activity of the Step-down in UM/UIM Policies

In 2007, a new statute was enacted [in response to the Court's ruling in Pinto v. NJM, 183 NJ 405 (2005)] that prohibits, in motor vehicle liability policies issued to corporate or business entities, the use of step-down provisions to provide less UM/UIM coverage for employees than that which is provided to the "named insureds" on the policy; and further, if the policy lists only the business entity as the "named insured" then employees are "deemed" eligible for maximum available coverage. codified at *N.J.S.A.* 17:28–1.1(f). The new legislation, which was signed into law on September 10, 2007, specified that it was effective immediately.

This appeal involves the application of the new legislation to a policy that was in effect at the time that the legislation became effective. The policy contained a step-down provision that but for the new legislation would govern the limits of UM/UIM coverage for the injured employee involved in this matter. Specifically, we are called on to address whether the step-down provision is enforceable for a UIM claim by the employee concerning an accident that occurred prior to the adoption of *N.J.S.A.* 17:28–1.1(f). Thus, we must consider the retroactivity of the statute.

The law favors prospective application of a new statute. To conclude otherwise requires a finding that one of the recognized exceptions to that rule applies. We conclude that there is no evidence that the Legislature explicitly or implicitly directed **73 retroactive application and no other exception pertains here. The legislation, by its very terms, reformed commercial motor vehicle liability policies as of the date it became effective. While that brought about the amendment of existing policies from that date forward for the life of that policy and for any new or renewal policies that were issued subsequent to the new law's effective date, the new law did not retroactively alter otherwise lawful policy terms applicable to claims that arose before the legislation took effect. A UM/UIM claim under an occurrence-based motor vehicle liability policy is governed by the policy terms in effect on the date of the occurrence, here the accident. The timing of the instant accident preceded the effective date when *N.J.S.A.* 17:28–1.1(f) reformed the employer's motor vehicle liability policy.

Applying established rules of statutory construction and the retroactivity of new legislation, we hold that *N.J.S.A.* 17:28–1.1(f) does not retroactively apply to an accident that preceded the new legislation's effective date.

Giannakopoulos v. Mid-State Mall, ___ NJ Super. ___ (App. Div. 2014)

Tolling statute of limitations

Rule 1:13-7(a) and NJSA 2A:14-21

We conclude that it was a mistaken exercise of discretion to dismiss the complaint against [the Defendant]. There was no explanation for the lapse of just over a year between the attempted service on[the Defendant] and the filing of the second complaint. However, the original complaint was filed within the statute of limitations and could have been reinstated on motion, for good cause shown, even if plaintiff had not served [the Defendant]. Consequently, the former attorney's mistake in having the complaint served on [the Defendant] at the mall's address instead of at [the Defendant's] corporate headquarters, in itself, does not bar reinstatement.

The *Rules* are to be construed so as to do justice, and ordinarily an innocent plaintiff should not be penalized for his attorney's mistakes. In applying the good cause standard for reinstating a complaint under *Rule* 1:13–7(a), "we are satisfied that, absent a finding of fault by the plaintiff and prejudice to the defendant, a motion to restore under the rule should be viewed with great liberality. Where, as here, there was no legally competent proof of prejudice to [the Defendant] from the delay in service, and no evidence that plaintiff was at fault, the interests of justice were not served by punishing this gravely injured, innocent plaintiff for his former attorney's evident inattention to this matter.

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Next, we address the complaint against [the second set of defendants]. Because it was filed out of time, and [they] had no prior notice of plaintiff's cause of action, the [second] complaint cannot relate back to the date of filing of the original complaint against [the initial defendants]. However, we conclude that the trial court mistakenly exercised its discretion by granting summary judgment for Maser, because viewing the facts in the light most favorable to plaintiff, he was mentally incapacitated as a result of the accident and the statute of limitations was tolled. N.J.S.A. 2A:14–21. Hence, we vacate the order granting summary judgment in favor of [the second set of defendants] and we remand for an evidentiary hearing on the tolling issue.

The two-year statute of limitations for commencing a personal injury lawsuit, *N.J.S.A.* 2A:14–2, may be tolled by the plaintiff's mental incapacity:

If a person entitled to commence an action or proceeding specified in *N.J.S.A.* 2A:14–1 to 2A:14–8 ... is ... a person who has a mental disability that prevents the person from understanding his legal rights or commencing a legal action at the time the cause of action or right or title accrues, the person may commence the action ..., within the time as limited by those statutes, after ... having the mental capacity to pursue the person's lawful rights.

The version of this statute in effect at the time of the accident referred to the person being "insane" rather than having "a mental disability." However, the term "insane" had been interpreted in a way that corresponds to the modern term "incapacity."

Tort Claims - School's duty to warn

In this appeal we revisit the New Jersey Tort Claims Act (TCA), *N.J.S.A.* 59:1–1 to 12–3, to determine the temporal and physical limits of the duty of a school principal to protect third parties passing across school property. Here, a woman used the school yard as a short-cut to reach a local diner. As she walked across the grounds, a stray dog attacked her causing injuries requiring medical attention. The attack occurred on a Saturday when school was not in session and no school or school-sanctioned events occurred. Plaintiff contends that a resident of an adjacent property owned the dog that attacked her, that the dog slipped its leash and previously had accosted passersby, and that the principal of the school had notice of the other incident. Therefore, plaintiff argues that the principal and the school district had a duty to prevent future attacks from this known dangerous dog.

The trial court granted the motion for summary judgment filed by the school principal and the school board.

Under the circumstances of this case, we determine that a school principal owes no duty of care to a third party [trespasser] who decides to use school property after hours for personal purposes and is injured by a stray animal that is neither owned nor controlled by school personnel

We hold that the school principal had no duty of care to Plaintiff under the facts of this case. Plaintiff had no relationship to the school. The school principal had no authority to control the behavior of the dog, no authority to remove the dog from a place proximate to the school, and no opportunity after the cessation of classes and after-school activities, on a weekend or during an extended recess to take any action to prevent an encounter between the dog and a passerby or interloper on school property. The imposition of a duty of care to third parties to prevent an attack by a dog owned by a neighbor under these circumstances far exceeds the temporal and physical limits of the authority and ability of the school principal to exercise reasonable care to minimize the risk of harm to those lawfully on the school property. Absent some ability to control the behavior and location of the dog, imposition of a duty of care does not foster the public interest. Rather, it renders the school defendants an insurer of the negligent behavior of others, which is contrary to the purpose of the TCA.

Remittitur - Feel for the Case

He v. Miller, 207 NJ 230 (2011) - The power of *remittitur* is not to be exercised lightly ... because we repose enormous faith in the ability of juries to equate damages with dollars to make the plaintiff whole, so far as money can do. We rely on juries to perform that task while recognizing that assigning a monetary value to pain-and-suffering compensation is difficult because that kind of harm is 'not gauged by any established graduated scale. But a jury's authority is not unbounded and we have explained that "[o]ur role in assessing a jury verdict for excessiveness is to assure that compensatory damages awarded to a plaintiff 'encompass no more than the amount that will make the plaintiff whole.

In light of these important policies, a trial judge should not disturb a jury award unless it is so disproportionate to the injury and resulting disability as to shock the conscience.'

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In describing his "feel of [this] case," the judge described the considerable educational background of the jury, his view that the jurors were not "rustic[s] in the style of Norman Rockwell, and that there were no "slackers" on the jury. He also referred to plaintiff as the personification of the "perfect" or "ideal" plaintiff in that he "dressed respectfully," was "always prompt and quietly courteous," was "in obvious discomfort, but he made efforts not to display that discomfort," and "testified with dignity, humility and modesty." The judge found plaintiff's testimony to be "understated and straightforward"; "[i]n terms of his credibility and general appeal," the judge "categorize[d] him in the 99th percentile." The judge also noted that plaintiff did not appear to be "in any way exaggerating the impact this injury has had on his life," and he "responded to excellent cross-examination forthrightly and honestly," concluding it was "not at all a surprise that the jury accepted the testimony of this extraordinarily credible witness." Accordingly, the judge determined "there was a potential for a very sizable plaintiff's verdict" once the jury determined—as it obviously did—that the so-called "low-impact" collision caused the herniated disc.

These observations certainly fall into the "feel of the case" rubric to which our appellate courts have always deferred. Based on these observations, and others set forth in the judge's thorough opinion, he recognized the verdict was "high" and "perhaps at the far end of the bell[-]shaped curve used in statistical analysis" but "not shock[ing][to] the judicial conscience." If the analysis were to stop here, we would merely state our agreement that the verdict is very high and near the point of being disproportionately high, but we cannot conclude—in light of our requirement to defer to both the jury's view of the evidence and the judge's feel of the case—that it is shocking to the judicial conscience. Indeed, this analysis alone is sufficient to compel our affirmance.

Noting that the trial judge spread on the ftecord that he had had an extraordinary amount of experience in trying civil cases both as a judge and a private attorneys, the panel noted:

We cannot help but observe that the version of "the judicial conscience" applied by the first trial judge in *He v. Miller* would undoubtedly have led to the issuance of a remittitur here, and the version applied by the trial judge here would undoubtedly have led to a rejection of a *remittitur* in *He v. Miller.* The one difference, however, is that we do not view the trial judge here as having allowed his prior experiences to dominate his view of this verdict as we believe occurred in *He v. Miller.* Instead, before even discussing his own past experiences and background, the judge described the injuries, the plaintiff's great jury appeal, and his own "feel of the case" as warranting a denial of defendants' post-verdict motion before providing his experiences as further support for his order. As we have said, those observations are sufficient, and they convincingly demonstrate the verdict should be upheld.

Hellebella v. South Jersey Transportation Authority, 219 NJ 481 (2014)

TCA - Immunity for discretionary or ministerial acts

The TCA creates two standards for immunity based on whether the public entity's action in allocating resources was ministerial or discretionary. If the action was ministerial, liability for the public entity is evaluated based on an ordinary negligence standard. However, a more difficult threshold must be overcome in order for a public entity to be liable for an individual's discretionary acts.

At trial, the jury was not asked to classify the public-entity defendants' resource-allocation actions. Rather, the jury was only asked to determine whether the public-entity defendants were negligent based on an ordinary negligence standard. Accordingly, the Appellate Division remanded the case for retrial, ordering that the second jury be instructed to determine whether the public-entity defendants' resource-allocation actions were ministerial or discretionary

Workers' Compensation - Judicial estoppel

The judicial estoppel doctrine is an extraordinary remedy which should be invoked only when a party's inconsistent behavior will otherwise result in a miscarriage of justice. Under the doctrine, "[w]hen a party successfully asserts a position in a prior legal proceeding, that party cannot assert a contrary position in subsequent litigation arising out of the same events.".

However, "[t]o be estopped a party must have convinced the court to accept its position in the earlier litigation. That did not occur here. It is undisputed that defendants, in their defense to plaintiff's workers' compensation petition, previously asserted that plaintiff's injuries were not work-related. At the time defendants moved for summary judgment in the Law Division, the workers' compensation action had not been resolved. It was subsequently resolved by way of settlement, resulting in the voluntary dismissal of the claim petition without the judge of compensation resolving the jurisdictional question whether plaintiff's injuries were work-related. "Because the doctrine of judicial estoppel only applies when a court has accepted a party's position, a party ordinarily is not barred from taking an inconsistent position in successive litigation if the first action was concluded by a settlement."

Portee Claims - Fire injuries

In Portee v. Jaffee, 84 NJ 88 (1980), the Court recognized a cause of action for damages to a bystander as a result of witnessing an injury-producing event to one with whom the bystander has an intimate or familial relationship. In order to assert a *Portee* claim, a plaintiff must establish four elements:

(1) The death or serious physical injury of another caused by defendant's negligence;

(2) A marital or intimate, familial relationship between plaintiff and the injured person;

(3) Observation of the death or injury at the scene of the accident; and

(4) Resulting severe emotional distress.

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Plaintiff observed the kind of result that is associated with the aftermath of traumatic injury and that it was not necessary for him to have been inside his home observing his son's body burning in order to satisfy the observation prong supporting a *Portee* claim.

Exculpatory agreements

Main case: Stelluti v. Casapenn Enterprises, 203 NJ 286 (2010)

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Injury in this case stemmed from a negligently maintained stair-tread on steps leading to the pool.

Given the expansive scope of the exculpatory clause here, we hold that if applied literally, it would eviscerate the common law duty of care owed by defendant to its invitees, regardless of the nature of the business activity involved. Such a prospect would be inimical to the public interest because it would transfer the redress of civil wrongs from the responsible tortfeasor to either the innocent injured party or to society at large, in the form of taxpayer-supported institutions. This directly addresses and responds to factors one and two under

The "Waiver and Release Form" in *Stelluti, supra,* included a relatively lengthy narrative explanation of the inherent risk of being seriously injured while engaging in strenuous physical exercise. Here, the exculpatory clause, although far more brief in language, is considerably more legally expansive in the scope of activity defendant sought to insulate from civil liability. By signing the membership agreement, plaintiff purportedly agreed to hold defendant harmless "for any personal injuries or losses sustained by me while on any YMCA premises *or* as a result of a YMCA sponsored activities." The key word here is the disjunction "or," which expands the scope of the exculpatory clause to include injuries resulting "while on the premises" *or* as a result of participating in defendant's "sponsored activities."

We reasonably assume the agreement, especially the exculpatory clause, signed by plaintiff is a contract of adhesion, thus meeting the final relevant factor. As the Court did in *Stelluti, supra,* we recognize that "[w]hen a party enters into a signed, written contract, that party is presumed to understand and assent to its terms, unless fraudulent conduct is suspected.". However, all contracts are subject to judicial scrutiny to determine their enforceability. Here, defendant seeks to shield itself from all civil liability, based on a one-sided contractual arrangement that offers no countervailing or redeeming societal value. Such a contract must be declared unenforceable as against public policy.

Youth sports injuries

With his Medford youth lacrosse team in the lead, less than twenty seconds remaining on the game clock, and the ball nestled in the basket of his stick, a Medford player was struck in the forearm by an opposing player on the Marlton team. The blow knocked the Medford player to the ground. Referees whistled play to a halt and ended the game. The Medford player was taken to a hospital, where he was treated for a fracture.

Seeking to recover damages for his personal injuries, the Medford player, a minor, and his father filed suit in the Law Division against the opposing player, who was eleven years old at the time of the incident. Plaintiffs also named the Marlton player's father as a co-defendant. The trial court granted summary judgment to both defendants. The court concluded that the facts relating to the conduct producing this youth sports injury, even when viewed in a light most favorable to plaintiffs, were insufficient to support this cause of action. Plaintiffs now appeal, solely challenging the dismissal of their claims against the other minor.

We affirm the entry of summary judgment in this case of first impression under New Jersey law. We concur with the motion judge that the defendant minor breached no legal duty in causing the plaintiff minor to sustain this unfortunate sports-related injury.

We reach our conclusion by applying a double-layered analysis, one which counsel on appeal mutually accepted as an appropriate distillation of the relevant tort principles separately pertaining to adult sporting activities and to the conduct of minors. The inquiry we have fashioned examines: (1) whether the opposing player's injurious conduct would be actionable if it were committed by an adult, based on sufficient proof of the defendant's intent or recklessness as required by the Supreme Court's case law; and, if so, (2) whether it would be reasonable in the particular youth sports setting to expect a minor of the same age and characteristics as defendant to refrain from the injurious physical contact.

For the reasons we explain in this opinion, the record in this case reflects that, at the very least, the second query must be answered here in the negative. Summary judgment was therefore appropriately granted to the defendant minor.

Key adult sports participation injury cases:

Crawn v. Campo, 136 NJ 494 (1994)

Schick v. Ferolito, 167 NJ 7 (2001)

Foreseeability

This appeal implicates the legal duties that a college fraternity and its officers or members may owe to guests who are injured while attending social gatherings at premises used as a fraternity house.

Plaintiff attended a large party hosted at a private residence rented by several fraternity members. After consuming several drinks, plaintiff interceded in an argument that erupted in the backyard among other persons who were at the party. While trying to assist a friend involved in that argument, plaintiff was shot and wounded by another person who was at the party. The shooter was never apprehended or identified. There was no evidence that the fraternity had any past incidents involving guns on the premises or involving violent criminal behavior.

Plaintiff brought a negligence action against the national fraternity, the local fraternity chapter, and several students who were officers or members of the fraternity. Defendants moved for summary judgment, which the trial court granted.

We affirm the summary judgment order because we agree with the motion judge that there was no evidence showing that it was reasonably foreseeable that plaintiff would have been shot by a third party while attending the fraternity event. Hence, defendants who leased the house breached no legal duty to plaintiff in these circumstances and were therefore entitled to a judgment dismissing his negligence claims.

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Because the shooting of plaintiff was not reasonably foreseeable, it does not matter if we classify the fraternity in this case as a commercial or a noncommercial defendant. Hence, we need not consider, despite plaintiff's urging that we do so, whether the alleged five-dollar cover charge for the party affected the fraternity's legal status. Even if the house were deemed a "commercial" location, defendants would be liable only if the shooting was reasonably foreseeable.

In personam jurisdiction

The question of *in personam* jurisdiction is a mixed question of law and fact.

To establish general jurisdiction, [a] defendant must have contacts with th[e] State that are 'so continuous and substantial as to justify subjecting the defendant to the jurisdiction. [This] standard for establishing general jurisdiction is fairly high, and requires that the defendant's contacts be of the sort that approximate physical presence. "In the context of specific jurisdiction, the minimum contacts inquiry must focus on 'the relationship among the defendant, the forum, and the litigation. [W]hen the defendant is not present in the forum state, it is essential that there be some act by which the defendant purposefully avails [itself] of the privilege of conducting activities within the forum state, thus invoking the benefit and protection of its laws

Here, no one disputes Karnavati's contacts with New Jersey are not sufficiently continuous or substantial to warrant an exercise of general jurisdiction. The motion judge concluded the facts do support application of specific jurisdiction. Thus, the ultimate question is whether Karnavati submitted to the judicial power of New Jersey in connection with its activities directed at the State, justifying specific jurisdiction " 'in a suit arising out of or related to the defendant's contacts with the forum. Defendant argues "there is absolutely no evidence that [Karnavati] ever purposely availed itself of the right to do business in New Jersey[.]" It maintains the holding in *Nicastro* defeats plaintiff's claims of specific jurisdiction. The essence of defendant's position, which is repeated before us, is the single sale of a product to an independent corporation in India, even if accompanied by the knowledge the product will be delivered to a user in New Jersey, is insufficient to allow the application of long-arm jurisdiction.

Here, we are presented only with Globe's purchase order, which noted its sale to Neil Labs. We would be hard-pressed to conclude Karnavati's sale of a machine to Globe in India, for Globe's resale to Neil Labs in New Jersey shows Karnavati's purposeful availment of business opportunities that support the exercise of personal jurisdiction in New Jersey. More is needed. The trial court's determination that the necessary jurisdictional contacts were satisfactorily shown on these limited facts alone was erroneous.

We construe the Patient Safety Act in light of its purpose to encourage health care workers to freely report their observations and concerns related to patient safety in a confidential setting. Today, health care facilities are guided by detailed regulations that supplement the requirements of the Patient Safety Act. Those regulations, however, did not exist when the document at issue was prepared. At the relevant time, the only prerequisite to the privilege was compliance with the terms of the Patient Safety Act itself. We hold that the Hospital's evaluative process in this case conformed to the Patient Safety Act's requirements, and that the memorandum at issue is therefore privileged.

Davis v. Brickman Landscaping, 219 NJ 395 (2014)

Net opinion

The net opinion rule "requir[es] that the expert 'give the why and wherefore' that supports the opinion, 'rather than a mere conclusion. For example, a trial court may not rely on expert testimony that lacks an appropriate factual foundation and fails to establish the existence of any standard about which the expert testified. Therefore, an expert offers an inadmissible net opinion if he or she "cannot offer objective support for his or her opinions, but testifies only to a view about a standard that is 'personal.' " *Ibid.*

Plaintiffs' expert, Mawhinney, asserted in both his report and deposition that a reasonable sprinkler inspector would have informed the owner of the Staybridge Suites Hotel about the need for an additional sprinkler in the storage closet beneath the external staircase. That conclusion, however, represented an impermissible net opinion because it lacked objective support.

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Main case: Pomerantz Paper v. New Community Corp., 207 NJ 344 (2011)