

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

3-27-17    NL Industries, Inc. v. State (A-44-15; 076550)

The Spill Act contains no clear expression of a legislative intent to waive the State's sovereign immunity retroactively to cover periods of State activity prior to the Spill Act's enactment. Therefore, the State's sovereign immunity prevails against Spill Act contribution claims based on State activities that occurred prior to the original effective date of that Act.

3-21-17    J.I. v. New Jersey State Parole Board  
(A-29-15; 076442)

Arbitrarily imposed Internet restrictions that are not tethered to promoting public safety, reducing recidivism, or fostering an offender's reintegration into society are inconsistent with the administrative regime governing CSL offenders. The complete denial of access to the Internet implicates a liberty interest, which triggers due process concerns. After the imposition of the total ban for J.I.'s Internet violations, he should have been granted a hearing. The matter is remanded to the full Parole Board for a hearing in which it must determine whether the total computer and Internet ban serves any public-safety, rehabilitative, or other penological goal.

3-20-17    State v. Carl J. Garrison (A-38-15; 076537)

The evidence of the strip poker game meets the rigorous test set forth in State v. Cofield, 127 N.J. 328 (1992), and therefore was admissible under Rule 404(b). The evidence was properly admitted at trial with an appropriate limiting instruction.

3-9-17     Tahisha Roach v. BM Motoring, LLC (A-69-15; 077125)

Defendants' non-payment of filing and arbitration fees amounted to a material breach of the DRA. Defendants are therefore precluded from enforcing the arbitration provision, and the case will proceed in the courts.

3-8-17     State v. Scott Robertson (A-58-14; 075326)

The Crowe factors are not a good fit to assess license suspensions in driving while intoxicated (DWI) cases. Defendants who seek a new trial before the Law Division should be presumptively eligible for a stay of a driver's license suspension. The State can overcome that presumption by showing that a stay would present a serious threat to the safety of any person or the community. If no conditions would mitigate that risk, the court should not stay the sentence. If a defendant is convicted of DWI by the Law Division, the defendant has the burden to justify a stay of a driver's license pending appeal to the Appellate Division by demonstrating the three elements set forth in Rule 2:9-4. If a stay is granted, the court may impose appropriate conditions similar to those available after a defendant's conviction in municipal court. Municipal court and trial judges should set forth reasons on the record when they rule on a stay motion.

3-7-17 State v. William R. Joe (A-62-15; 077034)

Consistent with the policy purposes of Rule 3:21-8, as explained in State v. Hernandez, 208 N.J. 24 (2011), defendants who are confined out of state on non-New Jersey charges are not entitled to jail credit for time spent in pre-sentence custody.

3-7-17 State v. C.H. (A-56-15; 076535)

Defendant's sentences should be viewed together and jail credit applied to the front end of the aggregate imprisonment term for both indictments. To the extent that State v. Hernandez, 208 N.J. 24 (2011), has been read differently with respect to consecutive sentences, Hernandez is modified as follows: double credit should not be awarded where a defendant is sentenced to consecutive sentences under separate indictments and receives the optimal benefits of jail credit for time spent in pre-sentence custody. Instead, the sentencing court should treat the sentences as a unified proceeding and maximize the benefits to the defendant by applying jail credit to the front end of the imprisonment term.

2-21-17 Bound Brook Board of Education v. Glenn Ciripompa  
(A-57-15; 076905)

The arbitrator impermissibly converted the second charge of unbecoming conduct into one of sexual harassment. The re-characterization of Count II erroneously tasked the Board with substantiating charges it did not file with evidence it did not proffer. The arbitrator's review was not "consonant with the matter submitted," Grover v. Universal Underwriters Ins. Co., 80 N.J. 221, 231 (1979); rather, he "imperfectly executed his powers" as well as exceeded his authority by failing to decide whether Count II stated a successful claim of unbecoming conduct in support of termination. N.J.S.A. 2A:41-8(d). The arbitrator's award is therefore invalid.

2-7-17 IMO Registrant A.D.; IMO Registrant J.B.; IMO Registrant C.M. (A-55-15; 076345)

The judgment of the Appellate Division is **AFFIRMED** substantially for the reasons expressed in Judge Nugent's opinion.

2-1-17 Givaudan Fragrances Corporation v. Aetna Casualty & Surety Company  
(A-16/17/18/19/20/21/22/23/24/25-15; 076523)

The Court adopts the policy that, once an insured loss has occurred, an anti-assignment clause in an occurrence policy may not provide a basis for an insurer's declination of coverage based on the insured's assignment of the right to invoke policy coverage for that loss. The assignment at issue in this case was a post-loss claim assignment and therefore the rule voiding application of anti-assignment clauses to such assignments applies.

1-31-17 State v. Tawian Bacome (A-9-15; 075953)

The heightened-caution standard announced in Smith, supra, 134 N.J. at 618-20, remains the proper test for determining the appropriateness of ordering a passenger from a car. Under the Smith test, defendant's furtive movements inside a recently stopped vehicle provided an objectively reasonable basis for officers' exercising heightened caution, justifying removal of the passenger.

1-30-17 State v. James P. Kucinski (A-58-15; 076798)

Defendant waived his right to remain silent and therefore the State permissibly questioned defendant on cross-examination about the inconsistencies between his post-arrest statement to police and his statement on direct-examination at trial.

1-24-17 Andrew McCarrell v. Hoffmann-La Roche, Inc.  
(A-28-15; 076524)

Section 142 of the Second Restatement is now the operative choice-of-law rule in New Jersey for resolving statute-of-limitations conflicts because it will channel judicial discretion and lead to more predictable and uniform results that are consistent with the just expectations of the parties. Based on a choice-of-law analysis under section 142, New Jersey's limitations period governs, and therefore McCarrell's action was timely filed. The Court therefore reinstates McCarrell's verdict and damages award and remands to the Appellate Division for consideration of the unaddressed issues remaining on appeal.

1-23-17 State v. Rodney Bull (A-46-15; 075919)

Hudson did not create a new rule; it merely illuminated an old one. Hudson's illumination of N.J.S.A. 2C:44-5(b) applies to this pre-Hudson case, and defendant must receive a new, legal sentence.

1-19-17 State v. DeShawn P. Wilson (A-42-15; 076609)

The map commissioned and adopted by the Board pursuant to N.J.S.A. 2C:35-7.1(e) is nontestimonial and its admission therefore did not violate Wilson's confrontation rights. Further, such maps are admissible, if properly authenticated, under N.J.S.A. 2C:35-7.1(e) and as public records pursuant to N.J.R.E. 803(c)(8). Because the map was not properly authenticated, however, the Court is constrained to reverse the Appellate Division's judgment that the map was properly admitted into evidence at trial and to remand the matter for a new trial on the count of defendant's conviction that depended on the map.

1-18-17 In re the Declaratory Judgment Actions Filed by Various Municipalities, County of Ocean, Pursuant to

the Supreme Court's Decision in In re Adoption of  
N.J.A.C. 5:96, 221 N.J. 1 (2015) (A-1-16; 077565)

Towns are constitutionally obligated to provide a realistic opportunity for their fair share of affordable housing for low- and moderate-income households formed during the gap period and presently existing in New Jersey. A form of present-need analysis under the Fair Housing Act—redefined to include a component premised on a calculation of those low- and moderate-income New Jersey households, newly formed since 1999, that presently exist and are entitled to their opportunity of access to affordable housing—provides the appropriate approach to addressing statewide and regional need. The modification of the previous definition of a present-need analysis is essential in order to address the failure of COAH to perform its required mission, in connection with a constitutional obligation, for a period of time affecting almost a generation of New Jersey citizens.

1-17-17 Brian Royster v. New Jersey State Police  
(A-1-15; 075926)

The Court agrees with the Appellate Division that sovereign immunity precludes Royster's ADA claim. The NJSP's litigation conduct did not amount to a waiver of immunity, nor is the NJSP estopped from asserting the defense of sovereign immunity against Royster's ADA claim. However, the interests of justice require reinstatement of Royster's LAD failure-to-accommodate claim. The Court reinstates the LAD claim and remands to the trial court to mold the jury's verdict and enter judgment on Royster's LAD claim in favor of Royster and against the NJSP in the amount of \$500,000.

1-12-17 State v. James Legette (A-12-16; 076124)

Chrisman and Bruzzese do not support warrantless entries into detainees' homes; they apply only to cases in which a suspect has been arrested prior to the officer's entry into the home. Here, because the State failed to meet its burden of demonstrating that the warrantless entry fell within a recognized exception to the warrant requirement, the entry was illegal and the evidence obtained as a result of that

entry should have been suppressed.

1-11-17 State v. Ricky Zuber (A-54-15; 076806); State v. James Comer (A-63-15; 077318)

Sentencing judges should evaluate the Miller factors when a juvenile facing a lengthy term of imprisonment that is the practical equivalent of life without parole is first sentenced, to "take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison." Miller, supra, 567 U.S. \_\_\_\_, 132 S. Ct. at 2469, 183 L. Ed. 2d at 424. Given this holding, both Zuber and Comer are entitled to be resentenced. To stave off possible future constitutional challenges to the current sentencing scheme, the Court asks the Legislature to consider enacting a statute that would provide for later review of juvenile sentences that have lengthy periods of parole ineligibility.

1-9-17 State v. J.R. (A-50-15; 076694)

Although Dr. Taska's testimony was in part proper CSAAS opinion evidence, it exceeded the parameters imposed on CSAAS testimony. In that respect, the admission of her testimony constituted error. However, the trial court's error with respect to Dr. Taska was not clearly capable of producing an unjust result, and does not warrant a new trial. Accordingly, the Court reverses the judgment of the Appellate Division panel, and remands to the Appellate Division for consideration of the issues raised by defendant that the panel did not reach.

12-14-16 State v. Brandon Morrison (A-36-15; 076379)

A municipality's contracting for emergency medical services through a private, non-profit first-aid squad does not convert the EMTs into public servants because they are not exercising authority of a uniquely governmental nature or performing a function exclusive to government in any traditional sense, regardless of whether there are one or more non-profit providers of publically funded emergency medical services for the municipality. Morrison did not commit the offense of official misconduct because he was not performing a governmental function and therefore was not a public servant. The Court affirms the judgment of the

Appellate Division and remands for proceedings on the four remaining counts.

12-12-16 Michael J. Thieme v. Bernice F. Aucoin-Thieme  
(A-51-15; 076683)

N.J.S.A. 2A:34-23(h) authorizes the equitable distribution of Thieme's Closing Bonus only to the extent that the compensation was earned during the parties' marriage because, under that statute, the property to be divided is that which was earned, or otherwise acquired, during a marriage or civil union. The Court holds, however, that the extraordinary circumstances of this case warrant the imposition of a constructive trust as a remedy for Aucoin-Thieme's claim of unjust enrichment and that Aucoin-Thieme is entitled to a percentage of the portion of the Closing Bonus earned during the parties' cohabitation.

11-29-16 In the Matter of Robbinsville Township Board of Education v. Washington Township Education Association  
(A-32-15; 076497)

The Court rejects the Appellate Division's mistaken reading of Keyport to authorize the Board's unilateral alteration of a collectively negotiated agreement. Keyport does not stand for the proposition that anytime a municipal public employer can claim an economic crisis, managerial prerogative allows the public employer to throw a collectively negotiated agreement out the window. To the contrary, Keyport painstakingly emphasized the significance of an agency of State government enacting a temporary emergency regulation to provide local governmental managers with enhanced prerogatives. The regulation's existence made all the difference in Keyport, and there is a lack here of an authorizing temporary emergency regulation that permitted temporary furloughs. Keyport does not support the award of summary judgment to the Board.

11-22-16 Patricia Gilleran v. Township of Bloomfield  
(A-15-15; 076114)

Compelling release on demand of security surveillance video would be contrary to the legislative intent motivating OPRA's exemptions based on security concerns. The Township's explanation for denying the request for

the footage was adequate. Requests for video from surveillance cameras protecting public facilities are better analyzed under the common law right of access. The Court therefore reverses the judgment of the Appellate Division and remands the matter for further proceedings based on the unresolved common law claim.

11-15-16 State v. Xiomara Gonzales (A-5-15; 075911)

The Court now excises the inadvertence requirement from the plain-view doctrine. Because it is setting forth a new rule of law, the Court will apply the reformulated plain-view doctrine prospectively. Nevertheless, the Court holds that the trial court's finding of inadvertence is supported by credible evidence in the record. The Court therefore reverses the judgment of the Appellate Division and reinstates the trial court's denial of the motion to suppress.

11-10-16 State v. Charles Bryant, Jr. (A-2-15; 075958)

The officers here lacked reasonable and articulable suspicion that another party was present, much less that another party posed a danger to officer safety. The protective sweep was thus insufficient to establish an exception to the warrant requirement, and any evidence found as a result of that sweep—even if it was found in plain view—must be excluded and suppressed as fruit of the poisonous tree.

10-26-16 Abigail Ginsberg v. Quest Diagnostics, Incorporated (A-33/34/53-15; 076288)

The judgment of the Appellate Division is **AFFIRMED** substantially for the reasons expressed in Judge Sabatino's opinion.

9-28-16 State v. June Gorthy (A-51-14; 075009)

When a criminal defendant is found competent to stand trial under N.J.S.A. 2C:4-4, he or she has the autonomy to make strategic decisions at trial, with the advice of counsel, including whether to assert the insanity defense. Based on the trial court's finding that defendant was competent to stand trial, and the detailed explanation that it gave defendant of the potential benefits and risks of the insanity defense,

the court should have permitted her to decide whether to assert the defense, rather than invoking it on her behalf. We reverse the trial court's judgment of acquittal by reason of insanity on the stalking charge, and remand for a new competency determination and, if appropriate, a new trial on this charge. We affirm defendant's conviction on the weapons charges.

9-19-16 Ramon Cuevas v. Wentworth Group (A-30-14; 075077)

A judge should not rely on personal knowledge of other verdicts or comparative-verdict methodology when deciding a remittitur motion. In this case, the trial judge did not rely on personal knowledge of other verdicts or comparable verdicts presented by the parties in deciding the remittitur motion, but rather on the record before her. The denial of remittitur here conforms to the deferential standard of review of a jury's award of damages.

9-15-16 E & J Equities v. Board of Adjustment of the Township of Franklin (A-40-14; 075207)

A digital billboard, as a form of communication, is subject to the protections afforded to speech under the First Amendment to the United States Constitution and the New Jersey Constitution. To the extent that a municipality seeks to restrict billboards, the regulation must find support in the governmental interests that the municipality seeks to protect or advance. Although the Township relied upon aesthetic and public safety concerns in banning digital billboards, while permitting static billboards in designated zones, the record fails to demonstrate that the ban furthers the governmental interests that the Township asserts. The ordinance ban on digital billboards is therefore unconstitutional.