

**PUBLISHED CIVIL OPINION SUMMARIES**  
**September, 2021 – September, 2022**

***SUPREME COURT***

**Miriam Rivera vs. The Valley Hospital, Inc. (085992/085993/085994) (Bergen County and Statewide)** Aug. 25, 2022 (A-25/26/27-21)

Summary: As a matter of law, the evidence presented, even affording plaintiffs all favorable inferences, does not establish that defendants' acts or omissions were motivated by actual malice or accompanied by wanton and willful disregard for Ruscitto's health and safety. A reasonable jury could not find by clear and convincing evidence that punitive damages are warranted based on the facts of this case, and partial summary judgment should have been granted.

**Larry Schwartz vs. Nicholas Menas, Esq. (085184) (Monmouth County and Statewide)** Aug. 17, 2022 (A-54/55-20)

Summary: The Court joins the majority of jurisdictions that reject a per se ban on claims by new businesses for lost profits damages, and it declines to follow Weiss to the extent that it bars any claim by a new business for such damages. Claims for lost profits damages are governed by the standard of reasonable certainty and require a fact-sensitive analysis. Because it is substantially more difficult for a new business to establish lost profits damages with reasonable certainty, a trial court should carefully scrutinize a new business's claim that a defendant's tortious conduct or breach of contract prevented it from profiting from an enterprise in which it has no experience and should bar that claim unless it can be proven with reasonable certainty. The Court remands these matters so that the trial court may decide defendants' motions in accordance with the proper standard.

**Norman International, Inc. vs. Admiral Insurance Company (086155) (Morris County and Statewide)** Aug. 10, 2022 (A-24-21)

Summary: The policy's broad and unambiguous language makes clear that a causal relationship is not required in order for the exclusionary clause to apply; rather, any claim "in any way connected with" the insured's operations or activities in a county identified in the exclusionary clause is not covered under the policy. Richfield's operations in an excluded county are alleged to be connected with the injuries for which recovery is sought, so the exclusion applies. Admiral has no duty to defend a claim that it is not contractually obligated to indemnify.

**East Bay Drywall, LLC vs. Department of Labor and Workforce Development (085770) (Statewide)** Aug. 02, 2022 (A-7-21)

Summary: The Commissioner's finding that East Bay did not supply sufficient information to prove the workers' independence under the ABC test's prong C was not arbitrary, capricious, or unreasonable, but rather was supported by the absence of record evidence as to that part of the test.

The Court is satisfied that all sixteen workers in question are properly classified as employees, and it remands to the Department for calculation of the appropriate back-owed contributions.

**Crystal Point Condominium Association, Inc. vs. Kinsale Insurance Company (085606) (Hudson County & Statewide)** July 18, 2022 (A-76-20)

Summary: Crystal Point may assert direct claims against Kinsale pursuant to the Direct Action Statute in the setting of this case. Based on the plain language of N.J.S.A. 17:28-2, however, Crystal Point's claims against Kinsale are derivative claims, and are thus subject to the terms of the insurance policies at issue, including the provision in each policy mandating binding arbitration of disputes between Kinsale and its insureds. Crystal Point's claims against Kinsale are therefore subject to arbitration.

**Linden Democratic Committee vs. City of Linden (086255) (Union County & Statewide)** July 06, 2022 (A-30-21)

Summary: In amending in 1990 Sections 11 and 13 of the Municipal Vacancy Law, N.J.S.A. 40A:16-11 and -13, the Legislature removed the governing body's discretion to keep vacant a seat previously occupied by a nominee of a political party. Instead, the Legislature empowered the municipal committee of the political party whose nominee previously occupied the vacant seat to submit three names to the governing body. N.J.S.A. 40A:16 11. Section 11 mandates that the governing body choose one of the municipal committee's three nominees.

**Thomasenia L. Fowler vs. Akzo Nobel Chemicals, Inc. (085939) (Middlesex County & Statewide)** June 30, 2022 (A-5-21)

Summary: As to the duty to warn, an asbestos manufacturer or supplier that places inadequate warnings on asbestos bags used in the workplace has breached its duty to the worker, regardless of whether it provides the employer with the correct information, which is reasonably intended to reach its employees. As to medical causation, the trial court's modified Model Jury Charge on proximate cause sufficiently guided the jury.

**Robert Sipko vs. Koger, Inc. (085022) (Bergen County & Statewide)** June 23, 2022 (A-74-20)

Summary: In light of all the defendants' conduct regarding KDS and KPS to strip Robert of his rightful interests, equity cannot abide imposing a marketability discount to the benefit of defendants. The trial court's acceptance of Robert's expert's valuation of the company fell within its broad discretion and was fully supported by the record. Defendants were given the opportunity to present an expert valuation of the companies on remand but made the strategic decision not to do so. The Court declines to provide defendants with another bite of this thoroughly chewed apple and reinstates the judgment of the trial court.