

## CIVIL PRACTICE AND PROCEDURE

### Discovery

#### *SUPREME COURT APPELLATE DIVISION*

***Cumberland County Bd. of Chosen Freeholders v. Vitetta Group P.C., 431 N.J. Super. 596 (App. Div. 2013)***

Opinion by Lihotz, J.A.D.

In this matter, we review the interplay between the statute of repose requiring suit to be filed within ten years for damages resulting from any deficiency in the supervision or construction of an improvement to real property, *N.J.S.A. 2A:14-1.1*, and the ten-year statute of limitations governing civil actions commenced by the State or its political subdivisions, *N.J.S.A. 2A:14-1.2*.

Plaintiff argued that its suit against the supervisor of a county building project fell under the exceptions set forth in the statute of repose, as the complaint alleged damages resulting from willful misconduct, gross negligence, or fraudulent concealment in connection with the property improvement, *N.J.S.A. 2A:14-1.1(b)(2)*. Plaintiff reasoned that since the statute of repose was implicated, the statute of limitations did not apply.

We rejected this argument, holding that if an action is barred by the statute of limitations, it cannot be saved by the statute of repose.

***Warren Hosp. v. Doe, 407 N.J. Super. 598 (App. Div. 2013)***

Opinion by Fisher, P.J.A.D.

In this interlocutory appeal, the court reversed a trial court order that quashed a subpoena, which was served by plaintiffs on an Internet Service Provider, and which sought information about the identity of one or more individuals who hacked into plaintiff Warren Hospital's intranet and circulated defamatory messages to the hospital's employees. The court concluded that the trial judge erred in protecting the anonymity of the alleged hackers by strictly applying the procedures outlined in *Dendrite Int'l, Inc. v. Doe No. 3, 342 N.J. Super. 134 (App. Div. 2001)*.

***C.A. v. Bentolila, 428 N.J. Super. 115 (App. Div. 2012)***

Opinion by Sabatino, J.A.D.

In this case of first impression, we construe the confidentiality provisions within the Patient Safety Act (the "PSA"), *N.J.S.A. 26:2H-12.23 to -12.25*, and their interplay with other laws and procedures, including the qualified common-law privilege for self-critical analysis of medical peer review documents set forth in *Christy v. Salem, 366 N.J. Super. 535 (App. Div. 2004)*.

We hold that post-event investigatory and analytic documents exclusively created by a medical facility in compliance with the PSA and its associated regulations, and not created for some other statutory or licensure purpose, are absolutely privileged from disclosure under the PSA. The PSA's confidentiality provisions insulate such documents from outside access. They

do so regardless of a plaintiff's asserted need for disclosure and regardless of whether the documents contain factual information in addition to subjective opinions.

However, if the specified procedures of the PSA and the related regulations have not been observed, or if the documents have been generated for additional non-PSA purposes, then the PSA's absolute privilege does not apply. Instead, other legal principles govern, such as those expressed in *Christy*, depending upon the kind of document involved.

## **Mediation/Arbitration**

### ***SUPREME COURT***

***Willingboro Mall, LTD v. 240-242 Franklin Ave. L.L.C., 215 N.J. 242 (N.J. 2013)***

Opinion by Albin, J.

Plaintiff expressly waived the mediation-communication privilege and disclosed privileged communications. The oral settlement agreement reached by the parties is upheld. Going forward, however, a settlement that is reached at mediation but not reduced to a signed written agreement will not be enforceable.

***Cole v. Jersey City Med. Ctr., 72 A.3d 224 (N.J. 2013)***

Opinion by Cuff, P.J.A.D. (temporarily assigned)

Evaluating the totality of the circumstances and applying a fact-sensitive analysis, Liberty's active participation in the litigation for twenty-one months before invoking the arbitration provision on the eve of trial constituted a waiver of its right to arbitrate.

***Hirsch v. Amber Fin. Servs., 215 N.J. 174 (N.J. 2013)***

Opinion by LaVecchia, J.

Although traditional contract principles may in certain cases warrant compelling arbitration absent an arbitration clause, the intertwining of the parties and claims in a dispute, viewed in isolation, is insufficient to warrant application of equitable estoppel to compel arbitration.

***Borough of E. Rutherford v. E. Rutherford PBA Local 275, 213 N.J. 190 (N.J. 2013)***

Opinion by LaVecchia, J.

The arbitration award is sustained because it was not procured by undue means, the Arbitrator did not exceed her authority, the award was not contrary to existing law or public policy, and the award was a reasonably debatable interpretation of the CBA.

### ***APPELLATE DIVISION***

***Minkowitz v. Israeli, 2013 N.J. Super. LEXIS 144, 2013 WL 5336454 (App. Div. Sept. 25, 2013)***

Opinion by Lihotz, J.A.D.

This matter considers whether the arbitrator, having once mediated issues in dispute, can thereafter resume the role of arbitrator. On appeal, plaintiff challenges five separate orders confirming arbitration awards. She maintains each must be set aside under *N.J.S.A. 2A:23B-23*