

SURVEY OF RECENT DEVELOPMENTS IN NEW JERSEY LAW

In this section, the Seton Hall Law Review presents synopses of recent New Jersey cases of interest to practitioners. In so doing, we hope to assist the legal community in keeping abreast of some of the more interesting changes in significant areas of practice.

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WORKERS' COMPENSATION LAW—PERMANENT PARTIAL DISABILITY—1980 AMENDMENT ELIMINATES COMPENSATION FOR MINOR INJURIES—DEMONSTRABLE OBJECTIVE EVIDENCE OF FUNCTIONAL RESTRICTION REQUIRED—*Perez v. Pantasote, Inc.*, 95 N.J. 105, 469 A.2d 22 (1984).

In 1980, the New Jersey Legislature extensively amended the Workers' Compensation Act. Prior to the amendment, practically no claim was rejected when the only issue was the existence of disability. As a consequence, the cost of workers' compensation insurance became substantial. One of the most important provisions in the amendment was a statutory definition of partial permanent disability. This definition was designed to eliminate compensation for minor partial injuries, to increase compensation for serious injuries, and to control the cost of workers' insurance. 95 N.J. at 111-13, 469 A.2d at 25-26. The first interpretation of this definition by the New Jersey Supreme Court came in *Perez v. Pantasote, Inc.*, 95 N.J. 105, 469 A.2d 22 (1984).

Miguel Perez suffered a twisted ankle while working for his employer, Pantasote, Inc. After a short period out of work and minor medical treatments, he resumed his normal duties. Perez subsequently submitted a claim for permanent partial disability which asserted that he could not work as fast as before and that he sometimes had pain and swelling in his ankle. During a workers' compensation proceeding, Perez's physician testified that he had examined Perez about six months after the accident and determined the permanent disability of the foot to be twenty percent. Pantasote, Inc.'s physician testified that he examined Perez about one year after the accident and found no permanent disability. The Judge of Compensation determined that there was some residual functional disability to the extent of five percent, and a claim was awarded accordingly. Upon respondent's appeal, the appellate division affirmed. The New Jersey Supreme Court granted respondent's petition for certification. *Id.* at 109-10, 469 A.2d at 24-25.

Justice Schreiber, writing for a unanimous court, noted that the current workers' compensation provision defined permanent partial disability as: "a permanent impairment caused by a compensable accident or compensable occupational disease, based upon demonstrable function of the body or of its members or organs; considered shall be whether there has been a lessening to a material degree of an employee's working ability." *Id.* at 110, 469 A.2d at 25 (quoting N.J. STAT. ANN. § 34:15-36 (West Cum. Supp. 1983-1984)). The court viewed the first step in evaluating a claim to be "[a] satisfactory showing [by the employee] of demonstrable objective medical evi-

dence of a functional restriction of the body, its members or organs.” Justice Schreiber noted that such a showing is no longer satisfied by a party’s subjective complaints. After the permanent disability is established by objective evidence, the court stated that the next step is to ascertain whether the injury is sufficiently serious to warrant compensation. *Id.* at 116, 469 A.2d at 28. Justice Schreiber observed that the first factor to be considered is whether an appreciable impairment of the employee’s work ability has occurred. Justice Schreiber noted that if there has been an appreciable impairment, the claim is compensable. If there has not been, other criteria must be examined. A second factor which the court identified is “whether there has been a disability in the broader sense of impairment in carrying on the ‘ordinary pursuits of life.’ ” In construing this factor, the court determined that a condition not impairing working ability will be compensable only if it substantially interferes with another aspect of the employee’s life. *Id.* at 116-17, 469 A.2d at 28-29.

Reviewing the record, the court concluded that the Judge of Compensation had not followed the statutory requirements and had not set down adequate findings. The court found that the judge had not asserted that his determination was based upon demonstrable objective medical evidence. Nor had the Judge of Compensation articulated whether there was a “lessening to a material degree of the employee’s working ability,” or whether, nevertheless, the injury was sufficiently serious to substantially affect other aspects of the employee’s life. The court also questioned the merits of Perez’s physician’s examination since it was performed a year before the hearing and “the validity of a medical finding of a permanent injury may decrease with the passage of time.” Accordingly, the court remanded the cause for further proceedings. *Id.* at 118-20, 469 A.2d at 29-30.

By strictly construing the statutory definition of permanent partial disability, the New Jersey Supreme Court has demonstrated its commitment to the comprehensive reform of workers’ compensation law. The court has articulated a clear test to deal with the difficult problem of evaluating disability claims.

Richard Muccino

CONSTITUTIONAL LAW—TIDELANDS AMENDMENTS—
AMENDMENT PROVIDING TIME BAR ON STATE CLAIMS TO RIPARIAN
LANDS DOES NOT VIOLATE FEDERAL OR STATE CONSTITUTIONS—
Dickinson v. Fund for the Support of Free Pub. Schools, 95 N.J.
65, 469 A.2d 1 (1983).

In November, 1981, New Jersey voters passed an amendment to the state constitution for the purpose of ameliorating the confusion surrounding riparian lands. This tidelands amendment barred state claims to land previously tidally flowed but not so flowed for forty years unless during that period the state had "specifically defined and asserted" such claim. If the forty-year period had expired on or before November 3, 1981, the state was given an additional year in which to assert its claim. 95 N.J. at 70, 469 A.2d at 3.

Prior to passage of the amendment, the Legislature had enacted Title 13, N.J. STAT. ANN. § 13:1B-13.1-13.6 (West 1979 & Cum. Supp. 1983-1984), which required the Tideland's Resource Council to perform studies and surveys of meadowlands so that it could define and certify those lands belonging to the state. Title 13 additionally gave the Council the authority to sell the state's interest, with the net proceeds being paid to the Fund for the Support of Free Public Schools (Fund). 95 N.J. at 74, 469 A.2d at 5-6. The Council investigated and prepared a map of tidal lands which the state potentially owned. The map, which was not inclusive of all riparian areas, consisted of a series of 1.5 mile squares. About forty percent of the squares consisted of nothing more than aerial maps (photomaps) of the land. These squares were uncolored. The remaining sixty percent of the squares were colored and were composed of both photomaps and a detailed delineation (claim overlay) of high water marks, thus specifying the riparian lands the state was claiming. *See id.* at 81, 469 A.2d at 9.

A suit was filed by various education interests and landowners challenging the constitutionality of the tidelands amendment. *Id.* at 70, 469 A.2d at 3-4. The trial court did not address the constitutional issues inasmuch as it determined that the map prepared by the Council in an effort to define state claims did so in a satisfactory manner, thereby making the constitutional challenges moot. Both parties appealed the decision. *See id.* at 71-72, 469 A.2d at 4.

In a divided opinion, the appellate division reversed. Judge Greenberg, writing for the majority, found no merits in the plaintiffs' constitutional challenges. The court, however, concluded that portions of the Council's maps did not satisfy the tideland amendment's requirements to assert and define its tidal claims. Justice Greenberg reasoned that "only those bare photomaps with a scribed overlay depicting a line where it was alleged the water had tidally flowed was sufficient." In addition, the appellate division determined that the state bore the burden of proving that land had been tidally flowed and that the mapping techniques to be used for purposes of the amendment had to meet the requirements of Title 13. *Id.* at 72, 469 A.2d at

4-5. Plaintiffs petitioned for certification to the state supreme court and defendants cross-petitioned. *Id.* at 73, 469 A.2d at 5. Both petitions were granted.

The New Jersey Supreme Court reversed in part and affirmed in part. *Id.* at 90, 469 A.2d at 14. Justice Schreiber, writing for the majority, rejected the appellate division's contention that the mapping requirements of Title 13 must be adhered to by the state in order to "specifically define and assert its claim pursuant to law." The court noted that the methodology employed by Title 13 was adopted to enable the Council "to *determine* and *certify* those lands which it *finds* are State owned lands." Justice Schreiber pointed out, however, that the tidelands amendment was less vigorous in that it only required assertion of a defined claim. Additionally, the court maintained that inasmuch as Title 13 was enacted in regard to determining the status of meadowlands, the different factors involved in classifying oceanfront property militated against the exclusive implementation of Title 13 procedures. Justice Schreiber concluded that, clearly, claims could be "defined and asserted" in a manner different than that enunciated in Title 13. *Id.* at 78-79, 469 A.2d at 8.

The majority agreed with the appellate division that portions of the Council's map did not satisfy the requirement that the state specifically define the land it was claiming. In reaching this conclusion, the court noted that the colored squares on the map indicated that the state had made a thorough enough investigation to prepare a claim to tidal lands. The uncolored squares, however, indicated that the state had not prepared an overlay claim and the area may or may not contain tideland claims. *Id.* at 81, 469 A.2d at 9. Justice Schreiber posited that inasmuch as the photomaps were available to the public since 1979, it was inconsistent to suggest that the tidelands amendment was intended simply to require the state to distribute maps already available. *Id.* at 81-82, 469 A.2d at 9-10. In Justice Schreiber's opinion, that type of interpretation would expropriate the people's right to revise their constitution because in providing the state with an additional year in which to define its claims, it was intended that the state do more than that which was previously done. Accordingly, although the majority concluded that where the state had advanced far enough to designate the mean high water mark on its claim overlay the "specific delineation requirement" had been met, it ruled that the less detailed uncolored sections of the map did not constitute a valid state assertion of a claim. *Id.* at 83-84, 469 A.2d at 10-11.

The court next dispensed with the plaintiffs' claim that the amendment violated the equal protection clause of the Federal Constitution since it would allow some property owners to acquire land

from the state without payment while other property owners would have to pay for land. The court observed that the only inquiry necessary was "whether a conceivable legitimate basis exists for the classification and whether the classification is rationally related to that objective." Justice Schreiber concluded that the goal of the tidelands amendment, eliminating uncertainties, was a legitimate end. Since the court additionally reasoned that the amendment was rationally related to the goal, it held that the equal protection clause was not violated. *Id.* at 86-87, 469 A.2d at 12.

The majority also rejected plaintiffs' claim that the Fund was a trust to which the State had irrevocably transferred its interest in the tidelands and, accordingly, the Fund's deprivation of its tidelands interests without due compensation was violative of the fifth and fourteenth amendments. Justice Schreiber again pointed out that the people of the state have a right to amend their constitution and, since the Fund is simply a creature of the state constitution, the people may properly change its structure or even eliminate it. *Id.* at 87-88, 469 A.2d at 12-13.

The final issue addressed by the court was plaintiffs' assertion that the amendment violated the contract clause of the United States Constitution. Plaintiffs contended that school bonds issued after the enactment of the New Jersey Reserve Act guaranteed the holders the benefit of a reserve in the fund and the inability of the state to sell riparian lands would diminish the security of the bonds. The majority rejected this contention, maintaining that the amendment did not infringe upon any of the financial conditions of the bonds. Justice Schreiber pointed out that the Fund could be increased from other revenues aside from the sale of riparian land, and that the financial impact upon the bonds was speculative at best. *Id.* at 88-90, 469 A.2d at 13-14.

Justice Handler, in a dissenting opinion, agreed with the court's resolution of all the issues except the use of the Council's map in determining state claims. *Id.* at 91, 469 A.2d at 14 (Handler, J., dissenting). The dissent reasoned that the purpose of the tidelands amendment was to notify property owners that the state may have a claim to their lands. Justice Handler concluded that the map fulfilled this notification purpose and could be properly utilized by the state to define and assert a claim. *Id.* at 95-96, 469 A.2d at 17 (Handler, J., dissenting).

In *Dickinson*, the court interpreted the tidelands amendment to require the state to make a thorough investigation of tidal flowed land in order to assert a claim. This interpretation serves the purpose of the amendment, namely, to clear up the lack of certainty surrounding the

ownership status of riparian land. A different interpretation by the court only would have added more confusion to an already confused situation.

Frances Panzini-Romeo

LANDLORD-TENANT—EVICTION—PROTECTION OF ANTI-EVICTION ACT AVAILABLE ONLY TO THOSE WHOSE TENANCY IS PRIMARILY RESIDENTIAL—*Morristown Memorial Hosp. v. Wokem Mortgage & Realty Co.*, 192 N.J. Super. 182, 469 A.2d 515 (App. Div. 1983).

Morristown Memorial Hospital had leased twenty-six units of a 140-unit apartment complex since the mid-1960's and subleased them to students and residents affiliated with the hospital. Under an arrangement with the former owner of the apartment complex, each lease was renewed annually and the hospital was to select the tenants despite a lease provision requiring landlord consent for any sublease. In 1982, Wokem Mortgage & Realty Co. purchased the apartment complex and refused to renew the lease. Wokem asserted that, because of the nature of the tenancy involved, renewal was not required under the state Anti-Eviction Act, N.J. STAT. ANN. § 2A:18-61.1 (West Cum. Supp. 1983-1984).

The hospital brought a declaratory judgment action to determine whether its tenancy was within the scope of state legislation. Following a non-jury trial, the chancery division entered a judgment in the hospital's favor. 192 N.J. Super. at 184, 469 A.2d at 516. The trial court observed that the apartments were being used as residences and that the Anti-Eviction Act affords protection to those premises leased for residential purposes. The defendant appealed. *Id.* at 184-85, 469 A.2d at 517.

In reversing, the appellate court examined the legislative history of the Act and found that it was intended to protect residential tenants from involuntary displacement in a state where residential housing is in short supply. As a result, the court interpreted the Act's phrase, "leased for residential purposes," to mean that the lease's primary and fundamental purpose must be residential. The court concluded that since the plaintiff's lease was designed to serve the substantially non-residential purpose of advancing the interests and needs of a hospital, it was not covered by the Act. *Id.* at 186-87, 469 A.2d at 517-18.

The appellate court's decision limited the availability of tenant protection under the Anti-Eviction Act to residential tenants. Thus, landlords have another possible avenue of escape from undesirable

tenancies, and industrial tenants have only their own negotiating skill to protect them from a landlord's refusal to renew a lease.

Marian L. Cannell

CREDIT—DAMAGES—THIRD-PARTY PROFESSIONAL WHO SUPPLIES INFORMATION UPON WHICH LENDER RELIES IN MAKING LOAN NOT LIABLE TO LENDER UNLESS LENDER RECOVERS LESS THAN VALUE OF THE LOAN—*Shadow Lawn Sav. and Loan Ass'n v. Truhan*, 192 N.J. Super. 96, 469 A.2d 94 (App. Div. 1983).

Shadow Lawn Savings and Loan Association (Shadow Lawn) made a secured loan of \$850,000 to Investors Development Company (Investors). The loan incorporated a development agreement providing for an initial advance of \$232,050 followed by a disbursement schedule specifying sums to be paid upon the completion of numerous on-site and off-site subdivision improvements. Shadow Lawn claimed that the engineers hired to inspect Investors' job site issued certificates verifying the stage of completion of the improvements on which the bank relied in making its disbursements. Investors subsequently filed for bankruptcy, and Shadow Lawn accepted a tract of land in exchange for an extinguishment of the Investor's loan balance. Shadow Lawn sold the land and realized a \$200,000 profit over the cancelled loan obligation. Allegedly, however, the profit should have been greater. Shadow Lawn claimed it was defrauded by the engineers by their issuing of inaccurate certificates which resulted in Investors being advanced \$55,000 more than if accurate information had been supplied. Shadow Lawn brought suit to recover the \$55,000 from the engineers. 192 N.J. Super. at 98-99, 469 A.2d at 95.

The trial court dismissed the complaint. The court reasoned that Shadow Lawn, by voluntarily accepting the property in exchange for extinguishment of the debt, had suffered no damages and therefore had no cause of action. The plaintiff appealed to the appellate division.

In affirming, the appellate division recognized that a lender who is expected to rely on a certificate of completion by a professional may recover damages for economic loss sustained as a consequence of such reliance. The court stated, however, that Shadow Lawn, as a *lender*, was entitled only to the repayment of its loan to the developer. Since the property received by the bank was more than equal to the value of the debt, the court reasoned that plaintiff had suffered no damages in relying on the engineers' inaccuracies. Accordingly, the court held

that the action had been properly dismissed. *See id.* at 100, 469 A.2d at 96.

The appellate division correctly concluded that there must be an economic loss suffered by a third party who relied on a professional's certificate before there may be recovery of damages. The court arrived at the proper conclusion by focusing on plaintiff's role as a lender of money, not as the owner of the land. It was thus necessary for the court to examine only whether plaintiff received repayment of its loan in accordance with the agreement. If a lender receives property of value greater than the indebtedness in satisfaction of its loan, the lender has been made whole and therefore rightly has no cause of action.

Mary-Lynne Ricigliano

PRODUCTS LIABILITY—MANUFACTURERS NOT LIABLE FOR FAILURE TO WARN WHERE THE DANGER IS OBVIOUS, WELL-KNOWN AND AVOIDABLE BY THE EXERCISE OF COMMON SENSE—*Campos v. Firestone Tire & Rubber Co.*, 192 N.J. Super. 251, 469 A.2d 943 (App. Div. 1983).

Plaintiff Campos sustained injuries when a three-piece wheel-rim assembly, manufactured by defendant Firestone and sold to plaintiff's employer, separated under the pressure of tire inflation during a routine tire assembly. Although plaintiff was an experienced tire mechanic and he was well aware of the safety procedures designed to protect a mechanic during inflation, plaintiff had reached into a steel safety cage during inflation, an action which had caused him injury six years before and one which he had been expressly instructed to refrain from in the future. Both plaintiff's and defendant's experts testified that the safety procedures were satisfactory to prevent injury during a wheel-rim separation if they were complied with. In addition, defendant had provided plaintiff's employer with a wall chart outlining these safety procedures, although there was no pictorial warning which allegedly may have provided more protection for the illiterate plaintiff.

Plaintiff brought an action against Firestone seeking damages. He contended that the defect in defendant's product and its failure to warn of the product's danger had caused plaintiff substantial injuries. A jury verdict in the New Jersey Superior Court, Law Division, found no design defect, but did find that defendant had failed to adequately warn and awarded plaintiff \$255,000 in damages. After defendant's post-trial motions for judgment were denied, Firestone brought this appeal. 192 N.J. Super. at 253-55, 469 A.2d at 944-45.

The appellate division defined the key issue to be whether Firestone had violated any legal duty to warn plaintiff of the product's potential danger. The court held that Firestone, as a matter of law, had breached no duty to warn and ruled that a manufacturer would be exempted from strict tort liability for failure to warn where the risk of danger is well-known and the hazard could be avoided by the exercise of common sense drawn from the experience of the skilled worker. *Id.* at 261-62, 469 A.2d at 949. The court reasoned that in the present case, the danger was obvious and avoidable and additional written or symbolic warnings would be of no use in protecting the skilled industrial worker. *Id.* at 257, 469 A.2d at 946.

A lengthy dissent by Judge Dreier traced the New Jersey case law development of strict tort liability for failure to warn. The dissent emphasized that failure-to-warn cases have been treated under strict liability principles rather than as mere negligence cases. *Id.* at 265-66, 469 A.2d at 951-52 (Dreier, J., dissenting). Accordingly, the manufacturer has an unqualified duty to distribute only defect-free products into the marketplace and a duty to warn was not to be imposed as to a particular user, but rather as to a class of users. *Id.* at 266, 469 A.2d at 952 (Dreier J., dissenting). The dissent rejected the majority's use of the obvious danger rule, *id.* at 267, 469 A.2d at 952 (Dreier, J., dissenting), and found the "knowledgeable user" rule inappropriate except as it applied to defining a duty owed to a class since the subjective knowledge of the defendant should only bear upon the proximate cause issue. *Id.* at 269-70, 469 A.2d at 953-54 (Dreier, J., dissenting). Judge Dreier asserted that a factual dispute amounting to a jury question was raised as to the adequacy of the warning by an absence of pictorial warnings on potentially hazardous products. *Id.* at 270-71, 469 A.2d at 954.

The obvious intention of the majority was to avoid the application of rules of law which would result in the manufacturer becoming the insurer for every product it distributes. The rationale of "risk spreading," whereby the price of the item would reflect the total product cost including injuries caused by defective products, was found inapplicable in the instant case. Although the dissent believed that a manufacturer's duty to warn should be measured as to a class of users, it would be quite inequitable to allow recovery by a plaintiff injured as a result of his impulsive act which was in complete disregard of an obvious and well-known danger. Moreover, even though the majority discussed the individual fault of the plaintiff, this plaintiff was surely a member of a class of skilled workers which should not have been owed a duty to warn by Firestone.

Stephen Golia