Civil Practice Update

All the Law That's Fit to Print

by Michael J. Epstein

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HAPPY THANKSGIVING. We all know that it has been a difficult month as many relatives, colleagues, and friends continue to deal with the aftermath of Sandy. This holiday reminds us to be thankful for all that we have. If you know colleagues or others who need help from Sandy, reach out to the BCBA or other organized bars for assistance as programs are in place.

Can A Parochial Day School Be Sued Under the Child Sexual Abuse Act (CSAA)? For those of you who said yes, you would be wrong. See Bryson v. Diocese of Camden, 2012 U.S. Dist. LEXIS 162637 (D.N.J. 2012). The CSAA provides a cause of action against active abusers, but also provides for a cause of action against a passive abuser, which covers parents, guardians, and anyone "standing in loco parentis within the household who knowingly permits . . . sexual abuse by any other person also commits sexual abuse." The question in Bryson was whether a day school is within the household. In Hardwicke v. American Boychoir School, 188 N.J. 69 (2006), the Supremes held that a boarding school is within the household. However, the U.S. District Court in Bryson concluded that a parochial day school is not a household because it does not have a single roof or a familial relationship, which are the factors to consider when evaluating whether something is a household. In reaching this conclusion, the District Court relied on D.M. v. River Dell Regional High School, 373 N.J. Super. 639 (App. Div. 2004), which held that a public day school is not a household. As a result of its ruling, the District Court dismissed the plaintiff's claims of abuse against the school. This is a close issue, but although the Supremes have viewed this statute liberally, a day school just does not have the characteristics of a household.

Does a Commercial Tenant in a Multi-Tenant Shopping Center Owe a Duty of Care to its Shoppers When A Landlord

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Maintains Parking Lot? For those of you who said yes, you would be wrong. See Kandrac v. Marazzo's Market, 2012 N.J. Super. LEXIS 174 App. Div. 2012). In Kandrac, the Appellate Division held that no duty exists where the landlord is contractually obligated to maintain the common areas of the parking lot. The panel concluded that the lease provision provides a remedy for the shopper, and that the tenant could not be held liable when it had no responsibility to repair the common area of the parking lot. Practice Tip: When you are retained to represent a person injured in a parking lot of a multi-unit commercial mall, make sure you sue the landlord, property management companies, the tenant, and John Doe Corps. If you do, you will ensure that you have the party responsible to maintain the common area of the parking lot. Once the lease is produced, you will be able to dismiss any parties that do not have a duty to maintain the common areas of the parking lot.

ETHICS. What is the appropriate penalty for a lawyer who fails to file a medical malpractice action within the statute of limitations, and then lies to the client that the matter settled for $600,000? If you said six month or a year suspension, you would be wrong. According to the Supreme Court, such grave dishonesty warrants only a three-month suspension. See In re Yates. In this matter, after realizing that he blew the statute of limitations, attorney Yates actually prepared a settlement agreement for $600,000. What did he think was going to happen when the client did not receive his money? We think that this punishment is too lenient for a lawyer who concocted an elaborate, false story to deceive his client.

Contributions. If you have an interesting case, rule interpretation, ethics issue, or civil-related story, please contact me at (201) 845-5962, (f) (201) 845-5973, or e-mail mjepstein@theepsteinlawfirm.com.