

# AZRAK & ASSOCIATES<sup>L.L.C.</sup>

A T T O R N E Y S A T L A W

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## **WISHES FOR THE NEW YEAR**

### **Fredric F. Azrak, Esq**

**At the start of another new year, we pause to think about the highlights and all the wonderful things we are grateful for. We are very thankful for the support of our clients, our friends and our employees, who have worked together to make this possible.**

**Azrak & Associate's history has been one of relationships. The success we enjoy was built one person at time. To each of you we wish to say, "Thank you very much".**

**We hope that the coming year brings you prosperity and fulfillment – in your families, relationships and in your jobs.**

**On behalf of each one of you, Azrak & Associates made a donation to The Wanaque Pediatric Center for less fortunate children.**

**May this year bring the things you wish for most and the determination to make them a reality.**

## **PROTECTING YOUR BUSINESS**

*Peter V. McArthur, Esq. & Fredric F. Azrak, Esq.*

If you own a small business, undoubtedly the main reason you have incorporated your business or formed a limited liability company was to shield yourself and your family from claims against your personal assets. Indeed, businesses are being beset more and more by litigation for incidents, actions or non-actions that may have taken place a generation or more ago. But is the mere act of filing your company with the state and obtaining a company corporate book sufficient to maintain that status after you form and begin business operations? The answer is an unqualified no. The purpose of this article is to stress the importance of maintaining the proper records in your company book so that a court

cannot "pierce the corporate veil" and enter a judgment against your personal assets in the future.

The doctrine of piercing the corporate veil is a judicial process whereby the court will disregard the corporate structure of a company and the attendant immunity afforded to corporate officers directors and shareholders. The doctrine applies with equal force to Limited Liability Companies in New Jersey. It has been applied by the courts in those situations where the company is a "sham" (i.e. while it may have an Inc. or an L.L.C on the end of the company name) - it is in name only and not really a company at all because there are no indications that the business is

being operated as such. When a court makes this determination, it will allow the plaintiff in a lawsuit to recover money damages against the individual assets of a shareholder, officer or director of a corporation - thus piercing the corporate veil - as opposed to the assets of the company.

One of the things you can do to protect yourself against this situation is to maintain the proper corporate records. The failure to maintain the proper records need not be intentional. In fact, the Courts will not care whether your company's failure to maintain the proper records was inadvertent or excusable neglect. Courts will look to these records (or lack thereof)

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in making the determination of whether to pierce the corporate veil. The New Jersey statutes set forth a number of requirements on how to avoid this disastrous result for your business.

One very important area is the shareholders meetings. We at Azrak and Associates have routinely assisted small and large businesses alike in this endeavor in the past and look forward to

helping you navigate the maze of New Jersey company record keeping requirements so that this unfortunate situation does not put you or your business at risk.

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## **CELL TOWER LITIGATION**

*Ira E. Weiner, Esq.*

A Neighborhood Association commenced suit against a New Jersey Town and two communication companies to oppose the construction of a cellular tower on the Towns police station property. The tower location is adjacent to the Association's neighborhood. The tower itself would violate numerous zoning ordinances. It was too close to neighboring properties, as well as a variety of other regulations set forth in the local zoning ordinance. The Town took the position that no zoning approvals before the Zoning or Planning Board were required.

This firm represented the Association in the challenge and received a successful ruling from the court in a case of first impression in New Jersey. In sum, Towns cannot totally ignore zoning regulations without conducting fair hearings which permit the objecting neighbors with the opportunity to be heard why they feel it would be detrimental to their neighborhood.

Ordinarily anyone seeking to develop property, including cell tower companies wishing to erect cell towers, must appear before the Planning or Zoning Board in order to gain approval. In this case, the Town did not require the cell tower companies to do so and, instead, engaged

in a bidding process to lease the land to the cell tower companies in exchange for the construction of the cell tower, which would also permit the Town to also utilize an antenna on the tower. The cell tower companies also agreed to pay the Town rent. The Association challenged the ability of the Town to bypass any regulatory oversight and brought suit to overturn the manner in which the cell tower project was proceeding.

The Court found that the Town nonetheless had to afford anyone who is affected by this project, a fair opportunity to be heard. Although there had been a variety of council meetings where members of the Association had spoken, they were limited to three minutes to speak. Moreover, the Association had hired an expert to present testimony demonstrating that there were other locations for the cell tower that would be just as good for the Town and the cell tower companies and would be less onerous to the residents, was also only allowed three minutes to speak.

The Court ultimately was unable to determine from the record that had been presented that the Association had really been afforded a real opportunity to present its case. Therefore, the Court

ruled that construction could not proceed unless the Town Council itself conducted a hearing in which all parties were given a fair opportunity to present testimony, including expert testimony, so that the Council could make a reasonable decision as to whether or not the cell tower plan that they had agreed to was reasonable under the circumstances. The Court noted that it was the Council's obligation to consider alternative sites for the tower as well as the impact on the zoning scheme and the neighboring properties in making its ultimate decision.

This case is significant since it has placed upon municipalities an additional layer of responsibility when the Town acts to develop a piece of its own property without going through a formal approval process. Although the Town itself does not have to submit a formal application as an individual might before the Planning or Zoning Board, it nonetheless must conduct public and open hearings with a fair opportunity for those who feel aggrieved by the action to present a case before the Council to persuade them to take action other than that as originally planned. If persons are still aggrieved by the particular action, Court review is still available.

# CHANGES TO NO-FAULT AUTOMOBILE INSURANCE IN NEW JERSEY

*John A. Snowdon, Jr., Esq.*

In New Jersey, whether a person injured in an automobile accident can sue for pain and suffering as a result of that accident, is determined by the type of insurance that the injured person has contracted for. Two types of no-fault coverage are available: The tort threshold, or the so-called verbal threshold. The tort threshold, which is more expensive, entitles an injured party to sue for pain and suffering (in addition to other damages such as loss of wages) regardless of the seriousness of their injury. The verbal threshold, on the other hand, the policy most people select, requires that in order to sue for pain and suffering an insured's injuries must fall within certain criteria. Recently, the criteria for satisfying the verbal threshold has been modified somewhat by the New Jersey Supreme Court.

The Supreme Court had held in the past that insured persons who have the verbal threshold had to prove that their injury fell within one of nine statutory categories, and that the injury had a serious impact on the plaintiff or his life. In 1998, the New Jersey Legislature enacted the Automobile Insurance Cost Reduction Act (AICRA), which overhauled the verbal threshold criteria. Under AICRA, a person

insured under the verbal threshold could sue for pain and suffering only if his injuries fell within one of six categories:

1. Death;
2. Dismemberment;
3. Significant disfigurement or significant scarring;
4. Displaced fractures;
5. Loss of a fetus; or
6. A permanent injury other than scarring or disfigurement.

It is with the last category that the law has recently changed. An injury is considered permanent when a body part or organ has not healed to normal function and will not heal to function normally with further medical treatment. Prior to the recent change in the law, an insured seeking to recover under his verbal threshold policy by alleging a permanent injury was required to prove, not only that the injury was permanent, but that it also had a serious impact on the plaintiff or his life. The purpose of this rule was an attempt to reduce automobile insurance premiums by weeding out those claims which were not provable by objective clinical evidence. The most obvious example would be the common whiplash injury in which

medical testing, x-rays, CAT Scans and the like disclose no abnormality, but the injured person complains of pain due to what is commonly known as a soft tissue injury.

In the recent case of *DiProspero v. Penn.*, in 2005, the New Jersey Supreme Court modified the requirement pertaining to the criteria necessary to satisfy the verbal threshold by alleging a permanent injury. The court, in that case, indicated that it is no longer necessary to prove that an injury has caused a serious life impact to the plaintiff in order to meet the verbal threshold. It still requires, however, that the claimed injury must be permanent and must be provable by objective, credible medical evidence.

The question then as to whether or not a person may sue for their injuries is determined by an analysis of the type of insurance they own, the type of injury sustained, and whether or not the complained of injury is susceptible of objective medical evidence. To properly pursue such a case, it is necessary to begin, almost immediately after the accident, to follow an appropriate treatment plan and to preserve and obtain the relevant evidence necessary to satisfy the threshold. Anyone involved in an accident in which an injury occurs should consult with our office as soon as possible after the accident, even if they are unsure as to whether or not they wish to pursue a claim. We are experienced in the area of personal injury cases and can best explain the options available to the injured person and take the appropriate steps to protect their interests.

## SPOTLIGHT FROM FREDRIC F. AZRAK, ESQ.

**It is with much pleasure that I announce that our firm attorneys continue to donate their time and services to numerous and varied charitable, service and non-profit organizations both in New Jersey and outside of the State. It is this commitment to the community that enriches our lives as well as the people that are served.**

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**AZRAK & ASSOCIATES, L.L.C.**

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## **FEDERAL ESTATE EXEMPTIONS - DO WE WIN OR LOOSE ?**    *Fredric F. Azrak, Esq.*

We continue to monitor for our clients the changes in the Federal Estate Tax Regulations. For this year of 2006 the Federal Estate Tax Exemption is now equal to Two Million (\$2,000,000.00) Dollars of assets. Simply put, if your estate is below Two Million (\$2,000,000.00) Dollars, the Federal Government does not charge any Estate Tax. Most individuals in the United States fall below this category and therefore it looks as if we have won and that the Federal Government has given us a bonus. That is not quite the case.

In Estate Planning there are multiple issues that have to be analyzed and Federal Estate Tax Regulations are one of them. The problem is that there are many other taxes that impact on an estate, which are critical in drafting the planning documents for a client.

A consideration must be made as to the impact of the New Jersey Inheritance Tax, the New Jersey Estate Tax, the Federal Estate Tax and the Federal Gift Tax ramifications. For the much larger estates there is also a generation skipping tax that is put into the mix. After a careful review of these issues, as well as the client's wishes as to how their estate is to be divided, a final determination is then made as to which planning documents meet the needs of that particular estate plan.

Other things to consider is that the Two Million (\$2,000,000.00) Dollar exemption from the Federal Government seems to be large until you take into consideration the increased values of homes in the State of New Jersey, as well as the fact that included in your gross estate are things

such as insurance. For those of you who have large insurance policies, either at the workplace or privately, together with savings, etc. may place you at risk for even the Federal Estate Tax.

Compounding all of these issues is the fact that the Federal Government has been and continues to be in the process of revamping the Federal Estate Tax Rules and Regulations. As we have seen in New Jersey, Governor McGreevy, before leaving office, re-instituted the New Jersey Estate Tax, which gives an exemption of only Six Hundred and Fifty Thousand (\$650,000.00) Dollars, whereas prior to the law being reinstated in New Jersey, the New Jersey Estate Tax was a tax that did not affect many individuals.

Do we win or lose? The answer may not be simple, but in fact there is an answer that will allow you to maximize the monies to your family. Those planning tools are available to each individual, and we at Azrak & Associates will guide you through the process in order to maximize those benefits.

To those individuals who have not had their estates reviewed in the last five years, it's imperative that appointments be scheduled so that an updated review of the estate planning tools and documents can be made. An assessment of whether amendments will help maximize the monies to the family members and minimize the tax will be determined. Further information on the current changes that are being contemplated can also be made so that proper planning will continue in the future.

If you would like to receive newsletter issues, informative flyers, and other data prepared by Azrak & Associates, L.L.C., please call us at 973-839-9062 or e-mail us at [lawyers@azraklaw.com](mailto:lawyers@azraklaw.com) with your business or personal e-mail address. Feel free to include areas of particular interest to you.