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In This Issue:

LEAGUE OF MUNICIPALITIES ATLANTIC CITY NJ

Azrak & Associates, L.L.C. was an exhibitor at the League of Municipalities held in November in Atlantic City, New Jersey. Our Municipal Land Use Department continues to grow.

Our water golf ball was a big hit and the only question we will not answer is the trick on how to get the ball on the tee and to stay there - we may use the game at the 2004 convention and we do not want to make it too easy.

Azrak & Associates is looking forward to again being represented at the 2004 League of Municipalities.

THE ECONOMIC GROWTH & TAX RELIEF RECONCILIATION ACT

Fredric F. Azrak, Esq.

The Economic Growth and Tax Relief Reconciliation Act passed by Congress in 2001 phases out the federal estate tax credit for state death taxes. The phase out period will be complete in 2010, therefore it is essential to review your present estate planning documents now to avoid unfavorable tax consequences.

Call now to make an appointment to have us review your estate plan. Based upon your individual needs, we can advise you which planning tools and strategies will work best to minimize risk, avoid tax disadvantages and preserve maximum estate benefits for your loved ones.

A NEW YEAR GREETING FROM AZRAK & ASSOCIATES, L.L.C.

We are pleased to inform our clients who customarily receive a holiday card from Azrak & Associates that we have again this year opted to make a donation in excess of that cost to worthwhile charities in yours and our staffs name.

We at Azrak & Associates, L.L.C. wanted to include all of our clients in a very special holiday greeting through donations to the children residing at the Wanaque Center, Pediatric Department. They were in need of a stereo and replacement toys for their children and we have donated these items as well as presenting a check in the amount of $250.00. Additionally, we have donated $100.00 to the Pequannock Food Pantry and to $100.00 St. Mary's Food Pantry. We hope this holiday greeting will bring a sense of the spirit of the season.

This newsletter hopefully provides you with informative and interesting information about the law and our firm and serves as the messenger for a healthy New Year greeting from all of us to all of you.

CAR INSURANCE

PROTECT YOUR LEGAL RIGHTS

Ira E. Weiner, Esq.
Fredric F. Azrak, Esq.

We all know how expensive auto insurance is in New Jersey. Paule Bastien learned the hard way that lying to the insurance company is no way to lower premium costs. Paule's husband, Leonel, decided to save some money by not telling the insurance company that he was married when he applied for auto insurance. Since the company thought there was only one driver in the household, the premiums were lower than they otherwise would have been.

The chickens came home to roost a year later when Paule was involved in an auto accident and filed for Personal Injury Protection (PIP) benefits under the policy. Those benefits normally cover medical expenses of family members residing in the policyholder's household. When the insurance company realized that the application submitted by Leonel had not been truthful, it started suit to declare the policy void. The case went all the way up to The Supreme Court of New Jersey.

If Leonel had been injured, it would have been an easy case - after all, he was the one who lied and the Court would have had no trouble ruling in the company's favor. But the Court assumed that Paule did not know of her husband's misrepresentation, and that she was an innocent spouse. The Court had to decide whether she should suffer, even though she had no knowledge of the false application. At the same time, the insurance company did not get the premiums it would have been entitled to, which would have covered the risk of paying PIP benefits to Paule.

The Supreme Court ultimately ruled in favor of the insurance carrier, holding that it did not have to pay Paule. The Court held that a spouse is in a unique position to be aware of the other spouse's interactions with the insurance carrier, and that responsible adults should inform themselves concerning household insurance-related matters. The Court went on to say that the strong public policy against insurance fraud favored treating Paule in the same manner as her husband. The court felt that allowing Paule to recover in these circumstances would result in a disincentive to a married insurance applicant to tell the truth.

Any attempt to try and circumvent the Court ruling by submitting the bills to any health insurance the Bastien's may have had would also fail. The law provides that when the PIP carrier is selected as the primary carrier (all insureds have a right to designate either their PIP or their health carrier as the primary insurer for accident related medical expenses), the health carrier as a secondary insurer is only responsible for certain defined uncovered "allowable" expenses. Under the circumstances, these expenses would not be considered allowable. Moreover, the Court would be unlikely to put the burden of the insured's fraud on the back of the health insurance company.

The moral of the story is that misrepresentations on an insurance application may result in severe consequences disentitling you to vital insurance coverage, not to mention the potential criminal implications of committing insurance fraud. You and your spouse should carefully review *together* all insurance related matters to be sure that there are no inaccuracies. Your insurance coverage is too important to take lightly.

EXPANDING AND IMPROVING YOUR LIFESTYLE

Third in a series

Peter V. McArthur
Fredric F. Azrak

The next Board to discuss in our series is the Zoning Board of Adjustment. It consists of seven regular and two alternate members. Their terms are for four years and two years respectively and they must be residents of the community.

The jurisdiction of the Zoning Board is as follows. They can hear appeals from a decision from the town zoning code official. They can also hear requests for an interpretation of the zone map or zoning ordinance. Examples can be as follows:

• There may be a question of whether some use is permitted in the town;

• That a commercial use (i.e. an automobile repair business) is now not permitted in a certain neighborhood presently, but the owner wants to expand his business;

PRESS RELEASE

TO: ALL CLIENTS OF AZRAK & ASSOCIATES, L.L.C.

FROM: FREDRIC F. AZRAK, ESQ.

The Municipal Land Use section of our firm (zoning and variances) has won a groundbreaking decision in the Superior Court. Representing a client opposing the development of one of the largest gas station / convenience stores in New Jersey, the New Jersey Superior Court has dismissed the oil companies application for development. Azrak & Associates argued successfully that despite nearly three years of hearings at the Board of Adjustment the oil companies application should be thrown out due to a conflict of interest when an expert for the oil company, negotiated and became employed by the township during the pendency of the application.

The Court agreed with Mr. Azrak's position and, thereafter, noted the proceedings were so infected with *"the appearance of impropriety"* that it could not be salvaged - *"the egg could not be unscrambled"*.

This case is a first of its kind in New Jersey and provides the results of the service we have written in our article series entitled "Expanding and Improving Your Lifestyle".

• A developer may wish to put more condominiums on a particular property then what is presently allowed;

• Someone wants to build a home larger than what is permitted;

The examples are numerous.

A Zoning Board can have duel functions whereas a Planning Board's powers are different.

Most of the time either a Planning Board or a Zoning Board of Adjustment can conduct business when a majority of the authorized membership is present. This is called a quorum. There are different voting criteria for each Board and, if the need arises, Azrak & Associates will guide you through that process as well.

SO, YOU WANT TO HAVE A PARTY?

Part 1 of a 2 Part Series

Charles E. Murray, III
Fredric F. Azrak

You have a party. Someone is intoxicated or drinks too much and injures someone on the way home in their car. You went away. Your son or daughter had a party. Someone got drunk and injured a third-party on the way home. The injured party is now suing you.

The good news: Your insurance may cover the damage.

In this two-part series, you will be given the history of the development of liability for serving alcohol in the State of New Jersey.

You will find that New Jersey always imposed liability on someone who is intoxicated and injures someone in an automobile accident. That is both regulated by the Drunken Driving Statutes in the State of New Jersey, as well as, the case law for negligence. The issue that has developed in the last fifteen to twenty years extends that liability when someone is served alcohol and then injures someone. The issue is: Can the injured person sue the party who served the alcohol, as well as the person who created the injury, i.e. the other driver?

As recently as 1959, the common law in New Jersey, and generally throughout the country, was that a cause of action for negligence could not lie against a social host who served alcohol to an intoxicated individual.

In 1959, however, the New Jersey Supreme Court made a watermark decision finding tavern keepers who serve a minor or obviously intoxicated person, can be liable for negligence for an injury that an intoxicated individual causes to a third-party. This line of cases imposing liability on a tavern keeper, gave rise to legislation known as the "Dram Shop Act."

In 1976, the law began changing from just making commercial tavern owners responsible and stretching the liability to someone who is a social host and serves alcohol at their home. In 1976, the Appellate Division ruled that social hosts would also be held liable for the results of their serving alcohol, but only if a minor was served.

Six years later, the Court decided that the adult/minor distinction did not hold water and extended liability for serving alcohol to intoxicated adults. Figuly v. Knoll, 185 N.J. Super. 477 (Law Div. 1982).

In this way, social host liability became firmly established by the New Jersey laws by 1984. Kelly v. Gwinnell, 96 N.J. 538, 548 (1984). However, back in 1984, a host was only liable if he directly provided liquor to a social guest and continues to do so even beyond the point at which he knows the guest is intoxicated and does so knowing that the guest will, shortly thereafter, operate a motor vehicle. Under these circumstances, the host was liable for any foreseeable consequences to third parties that result from the guest's drunken driving.

In the next series of this article, you will see how the State of New Jersey and its legislators dealt with this issue and we will follow the history and development of this most interesting area of the law from 1984 through 2003. Naturally, until you have read the entire series of this area of the law, be careful in having parties!

The solution: If something happens, contact Azrak & Associates. We can negotiate with your insurance company.

EMPLOYEE ARBITRATION POLICY

Jane L. Caiazzo, Esq.
Fredric F. Azrak, Esq.

In a small victory for employees, the New Jersey Supreme Court, has unanimously ruled that employees who do not sign a form which specifically requires them to arbitrate job related claims, may not be forced to arbitrate.

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The case decided by the Court, Leodori v. CIGNA Corp, held that the inclusion of an arbitration policy in a company handbook is not sufficient to bind the employee. Generally, employers prefer arbitration to juries, which are thought to be more sympathetic to employee claims.

Paul Leodori, an attorney at CIGNA Insurance Company, alleged that he was fired after he filed a CEPA complaint which was dismissed. CIGNA had an arbitration policy and employee handbooks which provided for binding arbitration as the final resolution process for employment related disputes. Mr. Leodori signed an acknowledgement indicating that he had received the handbook, however, he failed to sign an acknowledgement on a form entitled "Employee Handbook Receipt and Agreement."

The Court held that a waiver of rights could only result where there is an explicit, affirmative agreement reflecting the employee's consent. Justice Verniero found that a company could not require a signature and then assert that its omission is irrelevant to the agreement's validity.

The Court's decision represents the third major ruling on employment arbitration clauses in recent years. In 2002, the Court in Martindale v. Sandvik, Inc., held that an arbitration clause contained in an employment application was enforceable. Along these same lines, in 2001, the Court in Garfinkel v. Morristown Obstetrics & Gynecology Associates, held that a policy waiving an employee's right to sue must be clear as to which statutory causes of action apply.

It is clear from these decisions that arbitration agreements in employment contracts are enforceable, however, they must be clear, specific and duly signed by an employee before a court will find them binding.

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 with your business or personal e-mail address. Feel free to include areas or particular interest to you.