



# Brief Times

## Litigation—Arbitration — Mediation: Which Option Is Best For Your Case

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Alternative Dispute Resolution continues to grow in popularity. Unfortunately, failure to analyze individual cases and proceed with a strategic plan results in unnecessary costs and poor results.

Mediation is a valuable litigation process with multiple uses. In its purest form, mediation provides an informal and less expensive way to allow the parties and their principles to obtain impressions from a neutral and engage in resolution discussions. However, mediation may also be of value in narrowing the issues earlier in the litigation process allowing the parties to direct their future discovery towards those issues

which will have a real impact at the end of the day. At GGFF we often recommend that complex and multi party cases receive consideration for early mediation.

Arbitration can also be a valuable litigation process. Non-binding arbitration, imposed by the Court or elected by the parties, allows a forum for issue and case hearing with relaxed and less expensive evidentiary procedures. Arbitration options such as “Binding Arbitration” or high-low arbitrations can also be effective options for resolving disputes without unnecessary litigation expenses.

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**“I recommend mediation as an early method of discovery and potential vehicle towards timely resolution”**

### Special points of interest:

- ADR Strategies
- Insurer Duties
- Continuous Trigger
- Transportation
- GGFF News
- N.J. Equine Liability
- Cases Of Interest

## Continuous Trigger & Deductibles In New Jersey

A recent unreported opinion by the New Jersey Appellate Division in *Benjamin Moore & Co. vs. Aetna Casualty & Surety*, provides a first impression on whether, in a continuous trigger situation involving multiple policies with SIRs or deducti-

bles, each deductible in each triggered year has to be exhausted before the insured can penetrate into the layer immediately above. The insured argued that it was unfair to impose the full deductible in each year since it could result in the

claim being spread so thin that it never emerged from the insured’s deductible limit. Trial Judge Fitzpatrick ruled in favor of the insurer and the Appellate Division affirmed. For more details contact either Tony Favetta or Scott Murphy.

## Court Rulings of Interest



### Recent New Jersey and New York Court Decisions

The Somerset County Superior Court case of Abrams v. Slaby, decided August 10, 2001 (Williams, J.S.C.) on summary judgment, ruled that where a medical malpractice expert report identifies that the defendant physicians were members of the trauma team on the date of the alleged malpractice and that one or more of the defendants *might* have consulted with the treating physician, and where each of the moving defendants stated in interrogatory

answers that the treating physician was not involved, the suit should be dismissed as being based upon speculation.

In G.I. Holdings, Inc., vs. Hartford Accident & Indemnity Co., August 8, 2001, Judge Bassler of the U.S. District Court (New Jersey), considered the relationship between bankruptcy and environmental coverage actions. The U.S.D.C. required that the Bankruptcy Court decide the issue of whether the environ-

mental coverage action is a core proceeding or non core proceeding .

Frued v. Nordstern Art Ins., August 17, 2001, the U.S.D.C. (NJ) . In Title VII (American With Disabilities Act & Age Discrimination Employment Act) matter, where acts occurred in NY, and employment records are housed in NY, and plaintiff would have worked in NY, New Jersey is not the proper venue.

## Real Life Dialogue from Court Hearings & Trials:



### These excerpts are from the California Judge's Association Newsletter

In response to a Juror Questionnaire asking: Would you change your position merely because the other jurors disagree with you? - The answer was "No, because the Judge told us to sit at the same seat each time."

\* \* \*

Voir Dire: **Court:** Tell us about your family. **Juror:** I

live in Long Beach, I'm married, I have 16 children.

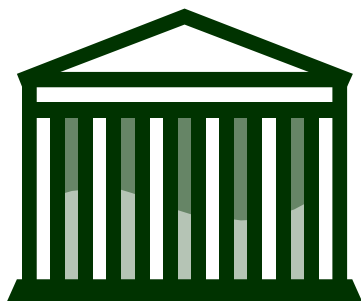
**Court:** I assume that you must have adopted at least half of these kids. **Juror:** No. **Court:** I'm going to want a transcript when we're done. To the extent that you recall all those kid's names ... go ahead .. I interrupted you. I didn't mean to. **Juror:** I'm an engineer.

Electrical Engineer. My wife is — **Court:** A saint.

\* \* \*

**Defense.Counsel** to Witness: Did the District Attorney make any remarks about me?

**Witness:** I believe that he said you were a slime.



### Appellate Division Decision Adopts GGFF Position in Coverage Litigation.

## Garrity Graham and Utica Mutual Convince N.J. Appellate Division To Overturn Lower Court

In dispute between two insurers over whether carrier on risk when teacher was charged with sexual assault or carrier on risk when teacher was acquitted is responsible for coverage of N.J.S.A. 16 and 18A:12-20 reimbursement damages, Ap-

pellate Judge Petrella and the Court were persuaded by GGFF that the Case of Meeker Sharkey inadequately distinguished Patterson v Royal and held that the triggering event for coverage was the charge and arrest—and therefore the

carrier on the risk at the time of the arrest and charge.

Complex issues arise under Board of Education policies and endorsements and Garrity Graham would be pleased to offer a seminar for your company or carrier.

## Litigation — Arbitration — Mediation: Continued

However, much like mediation, arbitration of single issues or damage evaluations can be a very effective means to narrow the dispute in complex multi party and/or multi-issue cases.

If you have a complex case, resolving selected issues through arbitration or mediation can be an effective means to move the parties forward towards full case settlement or at least reduce the amount of expensive discovery.

Unfortunately, as mediation and arbitration have gained in favor, full-time businesses have arisen increasing the costs. Accordingly, GGFF recommends that consideration be given to using private attorneys who specialize in ADR, such as Francis Garrity or Scott Murphy of our office.

While some cases benefit from the credibility of a retired Judge, many cases may be more efficiently handled by a private attorney who practices

or has practiced extensively in the area of law related to your case. This article is too short to provide a detailed analysis of all of the options available to those involved in litigation. Instead, we have attempted to raise issues and options.

Please call any of our partners to discuss mediation, arbitration and ADR, or to request a seminar to be held at your offices on mediation and arbitration options.



**With those issues resolved, perhaps we can settle the remaining issues and lawsuit!**

## Understanding Allocation of Risk of Loss For Motor Carriers Engaged In Interstate Commerce

In order to save money, trucking companies often transport goods by way of tandem tractor/trailers and save expenses on power unit ownership. This reality gives rise to trip leasing and similar arrangements.

Congress enacted the Motor Carrier Act to give the Interstate Commerce Commission authority to fix minimum re-

quirements. While the responsibility for Interstate Commerce now rests with the Surface Transportation Board of the Department of Transportation, the financial responsibility rules remain the same.

Coverage issues arising out of Truckers and Business Auto and Bobtail forms have created

a complex maze for liability claim professionals to deal with. Garrity, Graham, Favetta & Flinn specialize in the handling of transportation cases, both the defense of insureds faced with significant exposures and the complex coverage suits which often arise. Please contact one of our partners to request a seminar presentation.

**Modern commerce requires intricate knowledge of ground, air and marine transportation issues: coverage and liability.**

## No Insurer Duty To Alert Insureds of Right of Reimbursement under Compensation Provision

In *Edwards v. Prudential Property & Casualty*, the NJ Appellate Division asked whether insurers have an affirmative duty to alert insured to right of reimbursement under the Compensation Provision when expenses are incurred, and to provide them with

“claims forms” in order to facilitate the reimbursement-claims. In granting the insurer’s motion to dismiss for failure to state a claim, the Appellate Division affirmed the Trial Court which held that the Insurers owed no such duty.

At Garrity Graham we have an area of practice group dedicated to automobile transportation cases, both coverage and defense.

Please contact partner Frank Reimers to ask any questions or to request an on-site seminar for your professionals.





## GARRITY GRAHAM FAVETTA & FLINN

Home Office:  
One Lackawanna Plaza  
Montclair, New Jersey 07042

Phone: 973-509-7500  
Fax: 973-509-0414  
WebSite: WWW.GarrityGraham.Com

### *Brief Times*

Chief Editor: James Scott Murphy  
JSM@GarrityGraham.Com  
Scott.Murphy@JHU.edu

Contributing Editors

John Badagliacca  
Timothy E. Burke  
Frank R. Cinquina  
Antonio D. Favetta  
Thomas D. Flinn  
Richard T. Garofalo  
Francis X. Garrity  
Michael A. Graham  
Anthony J. Marino  
Rudolph G. Morabito  
Frank H. Reimers

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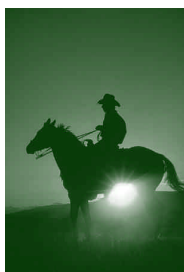
Our unique composition of professionals enables us to provide personalized and proactive representation of clients—whether the needs are transactional, consultation, training, audits, risk management, coverage or litigation.

Our experience in disciplines including insurance and reinsurance, commercial law, domestic relations, real estate, transportation, risk management, professional liability, environmental law, pharmaceutical and medical device, employment, construction, transportation, intellectual property, premises liability and emerging technology have enabled us to form alliances with most major underwriters, corporations, and experts.

We look forward to assisting you with your individual legal needs.

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## Recreational Liability Exposures: Does Anyone Take Responsibility For Their Actions?



**A Horse Is Dangerous At Both Ends And Uncomfortable In The Middle**

Recreational liability and assumption of the risk analysis has been the topic of much debate. However, the N.J. Equine Activity Statute provides some guidance for horse related activities which arise often in rural states such as New Jersey.

The statute is designed to protect those engaging in equine activities and business, but it is not absolute. Notwithstanding the old adage that a “horse is dangerous at both ends and uncomfortable in the middle”, exposures exist.

A claims professional or litigator defending an equine

case must be aware of the interpretation of Equine liability statutes, inherent risks of equine activities, assumption of the risk doctrines, and exceptions to the New Jersey Equine Liability Statute. These include the “faulty track exception,” the “mismatched horse and rider exception,” the “latent defect exception,” and the “omission exception.”

In addition, a variety of claims are filed every year based upon deficiencies in the posting of warning signs.

New Jersey has an established history and respect for the significance of equine ac-

tivities on the economy and the N.J. Equine Activity Statute provides protection for those who know and understand its provisions.

Never forget to apply common sense to equine negligence cases. There is always an inherent risk when riding a horse and distinguishing between acts which could have been prevented and those resulting from animal instinct must be a prime focus.

Please contact Scott Murphy or Lisa Perez with questions regarding Equine claims or litigation.