



A-1 ABNORMAL DANGERS ON LAND

ABNORMALLY-DANGEROUS ACTIVITY

- 1) An owner causing an abnormally dangerous activity or condition on his or her land,
- 2) such as the handling of a substance containing toxic waste,
- 3) as evidenced by either:
 - a. the uncommonness of the activity or condition,
 - b. a large risk of damage to others,
 - c. the better than even chance that damage will be great,
 - d. the degree to which the activity or condition belonged elsewhere,
 - e. the impossibility of using reasonable care to nullify the risk, or
 - f. the benefits of the activity or condition to the surrounding area in comparison to the detriments,
- 4) is strictly liable to others or successors in title in damages for harm to person or property caused by the activity or condition,
- 5) unless the injured party assumed the risk posed by the activity or condition.

T & E Indus, Inc. v. Safety Light Corp., 123 N.J. 371, 390, 587 A.2d 1249, 1258-1259 (1991) [(1),(3a),(3b),(3c),(3d),(3e),(3f),(4),(5)];

Prospect Indus. Corp. v. Singer Co., 238 N.J. Super. 394, 400, 569 A.2d 908, 911 (Law Div. 1989) [(2)].

ACCOUNTANT MALPRACTICE

A-2 ACCOUNTANT MALPRACTICE

- 1) An accountant, including an accountant who is an officer, shareholder, agent, or employee of a professional corporation or for any person under his or her direct supervision and control while rendering professional service on behalf of the corporation to the person for whom such professional service was being rendered,
- 2) failing to exercise reasonable care in preparing reports, verifying underlying data, or examining the methods employed in arriving at financial statements,
- 3) is liable in damages to either:
 - a. the accountant's client,
 - b. a bank where the accountant acknowledged the bank's intended reliance on the professional accounting service and the client's knowledge of that reliance in a written communication, or
 - c. anyone specifically identified to the accountant in connection with a specified transaction by that person if the accountant at the time of engagement by the client knew or agreed with the client thereafter that the professional accounting service rendered would be made available to the other who intended to rely upon the professional accounting service in connection with that specified transaction,
- 4) for economic loss or injury
- 5) proximately caused by justifiable reliance on the negligent representations.

N.J.S.A. 2A:53A-25 [(3a),(3b),(3c)];

N.J.S.A. 14A:17-8 [(1)];

Levine v. Wiss & Co., 97 N.J. 242, 246, 478 A.2d 397, 399 (1984) [(2),(4),(5)].

**ADULT OFFENDER SUPERVISOR'S DEFENSE
AND INDEMNIFICATION**

A-3 ACTION ON A COURT JUDGMENT

- 1) Anyone with a right to enforce a court judgment against another
- 2) may hold the other liable on the judgment,
- 3) but where the court sets aside a court judgment
- 4) whatever has been given or paid under the compulsion of judgment must be returned,
- 5) if justice requires restitution, and
- 6) if a judgment amount is subsequently reduced,
- 7) the judgment creditor or assignee must return to the judgment debtor the fair market value of any payment made in excess of the reduced judgment.

MMU of New York, Inc. v. Grieser, 415 N.J. Super. 37, 45, 50, 999 A.2d 1204, 1209, 1212 (App. Div. 2010) [(6),(7)];

R. Jennings Mfg. Co., Inc. v. N. Elec. Supply Co., Inc., 286 N.J. Super. 413, 417, 669 A.2d 819, 822 (App. Div. 1995) [(1),(2)];

Bruns v. Mattocks, 6 N.J. Super. 174, 177, 70 A.2d 780, 781 (App. Div. 1950) [(3),(4),(5)].

ADMINISTRATIVE NEGLIGENCE

See EMPLOYER LIABILITY FOR EMPLOYEE ACT

A-4 ADULT OFFENDER SUPERVISOR'S DEFENSE AND INDEMNIFICATION

- 1) The Interstate Commission for Adult Offender Supervision shall both:
 - a. defend, except for intentional wrongdoing, and
 - b. indemnify, except for gross negligence or intentional wrongdoing
- 2) the Commissioner of a Compacting State, or his representatives, appointed designee or employees, or the Interstate Commission's representatives or employees
- 3) against any civil action seeking to impose liability

ADVERSE ACTION AGAINST MALPRACTICE EXPERT WITNESS

- 4) arising out of any actual or alleged act, error or omission that occurred within the scope of Interstate Commission employment, duties or responsibility, or that such person had a reasonable basis for believing occurred within the scope of Interstate Commission employment, duties or responsibilities.

N.J.S.A. 2A:168-31 [(1a),(1b),(2),(3),(4)].

A-5 ADVERSE ACTION AGAINST MALPRACTICE EXPERT WITNESS

- 1) Any individual or entity
- 2) who threatens to take or takes adverse action against a person
- 3) for that person either:
 - a. providing or agreeing to provide expert testimony or
 - b. executing an affidavit of merit in any action for damages resulting from an alleged act of malpractice or negligence by a licensed person in his or her profession or occupation,
- 4) which adverse action relates to that person's employment, accreditation, certification, credentialing or licensure,
- 5) shall be liable for a civil penalty up to \$10,000 and other damages incurred by the person and the party for whom the person was testifying as an expert.

N.J.S.A. 2A:53A-41(f) [(1),(2),(3a),(3b),(4),(5)].

A-6 ADVERSE POSSESSION OF PROPERTY

EASEMENT BY PRESCRIPTION

TITLE BY PRESCRIPTION

- 1) Anyone actually
- 2) and exclusively (a) possessing or (b) using another's real or personal (c) non-public property,
- 3) continuously and
- 4) without interruption

AGENT BREACHING FIDUCIARY DUTY TO PRINCIPAL

- 5) in an open manner
- 6) calculated to inform the true owner of the hostile possession and
- 7) creating circumstances of notoriety that the true owner would be aware of the adverse possession and thus alerted to resist the acquisition, acquires title or an easement over the property,
- 8) provided the true owner fails to commence an action for recovery of the property within the specified statutory limitations period.

Devins v. Borough of Bogota, 124 N.J. 570, 574, 579-580, 592 A.2d 199, 201, 204 (1991) [(3),(5),(6),(7),(8)];

Plaza v. Flak, 7 N.J. 215, 220, 81 A.2d 137, 139 (1951) [(4)];

O'Keefe v. Snyder, 170 N.J. Super. 75, 83-89, 405 A.2d 840, 844-845 (App. Div. 1979), *rev'd on other grounds*, 83 N.J. 478, 416 A.2d 862 (1980) [(1),(2a),(2b)];

State v. Maas & Waldstein Co., 83 N.J. Super. 211, 222, 199 A.2d 248, 254 (App. Div. 1964) [(2c)].

A-7 AGENT BREACHING FIDUCIARY DUTY TO PRINCIPAL

- 1) An agent breaching his or her fiduciary duty to the principal,
- 2) including the duties of good faith and loyalty,
- 3) such as in failing to exercise good faith in his or her relationship with the principal by disclosing confidential information given to the agent by the principal,
- 4) or by acting for another if such conduct significantly tends to cause the agent to ignore his or her duty to act for the principal's purposes,
- 5) and anyone causing or assisting the agent to violate his or her duty to the principal,
- 6) is liable to the principal for damages proximately caused by the breach of fiduciary duty,
- 7) including in case of breach of duty of loyalty disgorgement of compensation during the period of disloyalty.

Kaye v. Rosefelde, 223 N.J. 218, 233, 121 A.3d 862, 871 (2015) [(7)];

AGENT NEGLIGENT IN COLLECTING DEBT

Cameco, Inc. v. Gedicke, 299 N.J. Super. 203, 215, 690 A.2d 1051, 1057 (App. Div. 1997), *aff'd as modified*, 157 N.J. 504, 724 A.2d 783 (1999) [(4)];

Hirsch v. Schwartz, 87 N.J. Super. 382, 389-390, 209 A.2d 635, 639-640 (App. Div. 1965) [(1),(3),(5),(6)];

Societa Operaia Di Mutuo Soccorso Villalba v. Di Maria, 40 N.J. Super. 344, 348, 122 A.2d 897, 899 (Ch. Div. 1956) [(2)].

A-8 AGENT NEGLIGENT IN COLLECTING DEBT

- 1) A principal engaging an agent to collect a debt or claim
- 2) who has not prevented the agent from collecting
- 3) may hold the agent liable in damages for any loss
- 4) proximately caused by the agent's failure to exercise ordinary care, skill, and diligence in the performance of all duties incident to the undertaking or
- 5) where the agent guaranteed collection of the debt or claim.

Video Station v. Frey's Motor Exp., Inc., 188 N.J. Super. 494, 498, 457 A.2d 1217, 1219 (App. Div. 1983) [(1),(2),(3),(4),(5)].

A-9 AGENT'S LIABILITY FOR PRINCIPAL'S OBLIGATION

- 1) A known agent
- 2) acting within the scope of his or her authority
- 3) for a disclosed principal is personally liable for the principal's obligation,
- 4) if the agent expressly agrees to perform the obligation.

Stopford v. Boonton Molding Co., 56 N.J. 169, 187, 265 A.2d 657, 666 (1970) [(1),(2),(3),(4)].

A-10 AGENT'S NEGLIGENCE CAUSING HARM TO OTHERS

- 1) An agent is liable in tort for damages to others
- 2) not in the same employ
- 3) for harm proximately caused by either:
 - a. the negligent conduct of the agent generating an unreasonable risk of harm,

AGENT'S PERSONAL LIABILITY ON CONTRACT

- b. the negligent conduct of another allowed or directed by the agent where the agent should have known that the other's negligence would generate an unreasonable risk of harm,
- c. the agent's negligent control over real or personal property,
- d. the agent's negligence in exercising authorized control over another who probably would cause harm, or
- e. the agent's negligence in performing a duty relating to the safety of others upon which the others have relied, provided the principal placed the duty on the agent either expressly or by clear implication and the agent accepted the duty.

Miller v. Muscarelle, 67 N.J. Super. 305, 329, 331, 170 A.2d 437, 450-451 (App. Div. 1961) [(1),(2),(3a),(3b),(3c),(3d),(3e)].

A-11 AGENT'S PERSONAL LIABILITY ON CONTRACT

- 1) An agent who enters into a contract for a principal is personally liable on the contract,
- 2) if the other party has no reason to know of the existence of the agency relationship or the identity of the principal,
- 3) unless either:
 - a. the parties to the contract otherwise agree,
 - b. the other party obtains a judgment against the principal, or
 - c. the agent justifiably and detrimentally relies on the other party's representation that he or she will only hold the principal bound to the contract.

Newark Paraffine Paper Co. v. Dugan, 162 N.J. Super. 575, 578, 394 A.2d 114, 116 (App. Div. 1978) [(3b),(3c)];

African Bio-Botanica, Inc. v. Leiner, 264 N.J. Super. 359, 363-364, 624 A.2d 1003, 1006 (App. Div. 1993) [(1),(2),(3a)].

AIDING THE COMMISSION OF TORT

A-12 AIDING THE COMMISSION OF TORT

CONCERT OF ACTION

- 1) All persons who pursue a common plan or design to commit a tort upon another,
- 2) whether by active participation, aid, encouragement, or
- 3) ratification of the wrong if done for their benefit,
- 4) are jointly and severally liable in damages to the party injured by the tort.

Shackil v. Lederle Labs., 116 N.J. 155, 163, 561 A.2d 511, 515 (1989)
[(1),(2),(3),(4)].

A-13 AIDS PATIENT RECORD UNLAWFULLY DISCLOSED

- 1) Anyone maintaining a record
- 2) which contains identifying information about a person who has or is suspected of having AIDS or the HIV infection
- 3) who discloses that information either:
 - a. without prior written informed consent of the person who is the subject of the record, or his or her guardian, or
 - b. if the person is deceased or legally incompetent, without the consent of an authorized representative, next-of-kin, or where neither, the Commissioner of Health, or
 - c. unlawfully,
- 4) or a recipient of a lawful disclosure who discloses or releases the record,
- 5) or a person making an unauthorized disclosure of any information concerning positive test results for the presence of antibodies to HIV obtained from a pregnant woman or a woman who seeks treatment within four weeks of giving birth,
- 6) is liable to the person who has or is suspected of having AIDS or the HIV infection for appropriate relief, including actual damages, equitable relief, reasonable attorney's fees, court costs, and punitive damages, for wantonly reckless or intentionally malicious conduct.

AIRCRAFT INTERFERING WITH LAND

N.J.S.A. 26:5C-7 [(1),(2),(3c)];

N.J.S.A. 26:5C-8 [(3a)];

N.J.S.A. 26:5C-11 [(4)];

N.J.S.A. 26:5C-12 [(3b)];

N.J.S.A. 26:5C-14 [(6)];

N.J.S.A. 26:5C-18 [(5)].

A-14 AIRCRAFT CAUSING DAMAGE BELOW

- 1) An owner or lessee of an aircraft
- 2) which is operated over the land or waters of New Jersey
- 3) is absolutely liable in damages for injuries to persons or property on the land or water beneath
- 4) caused by ascent, descent, flight, or forced landing of the aircraft, or the dropping or falling of any object from the aircraft, but
- 5) an airperson who is not the owner or lessee shall be liable only for the consequences of his or her own negligence.

N.J.S.A. 6:2-7 [(1),(2),(3),(4),(5)].

A-15 AIRCRAFT INTERFERING WITH LAND

- 1) An owner, lessee, or airperson of an aircraft
- 2) which is operated over the land or waters of New Jersey
- 3) in a manner that unreasonably interferes with the use and enjoyment of land,
- 4) such as either:
 - a. flight at such low altitude as to interfere with the then existing use to which the land or waters, or the space over the land or waters, is put by the owner,
 - b. flight so conducted as to be imminently dangerous to persons or property lawfully on the land or waters beneath, or
 - c. the unforced landing of an aircraft on the land or waters of another without his or her consent,

ALCOHOLIC BEVERAGE SERVERS' LIABILITY

- 5) is liable to the landowner for injunctive relief or
- 6) any damages proximately caused by the interference.

N.J.S.A. 6:2-6 [(1),(2),(4a),(4b),(4c)];

Hanover Twp. v. Town of Morristown, 108 N.J. Super. 461, 484-485, 261 A.2d 692, 704 (Ch. Div. 1969), *aff'd*, 121 N.J. Super. 536, 298 A.2d 89 (App. Div. 1972) [(3),(6)];

Hyde v. Somerset Air Serv., 1 N.J. Super. 346, 350, 61 A.2d 645, 648 (Ch. Div. 1948) [(5)].

A-16 ALCOHOLIC BEVERAGE SERVERS' LIABILITY

DRAM-SHOP ACT

- 1) A person who is licensed to sell alcoholic beverages
- 2) is liable for foreseeable injury or damages
- 3) proximately caused by the service of alcoholic beverages either to a visibly intoxicated person, or to a minor under circumstances where the server knew or reasonably should have known that the person served was a minor, and
- 4) is liable in damages for an assault by an intoxicated patron
- 5) proximately caused either by:
 - a. negligent service of alcoholic beverages,
 - b. failure to exercise reasonable care to protect patrons, or,
 - c. failure to take reasonable measures to safeguard patrons when they leave the premises.

N.J.S.A. 2A:22A-5 [(1),(2),(3)];

Steele v. Kerrigan, 148 N.J. 1, 26, 689 A.2d 685, 697 (1997) [(4),(5a)];

Cassanello v. Luddy, 302 N.J. Super. 267, 273, 695 A.2d 325, 328 (App. Div. 1997) [(5c)];

Mt. Hope Inn v. Travelers Indem. Co., 157 N.J. Super. 431, 440, 384 A.2d 1159, 1163 (Law Div. 1978) [(4),(5b)].

ALTERNATIVE LIABILITY

See GROUP LIABILITY WHEN TORT CAUSATION UNKNOWN

ANTICIPATORY BREACH OF CONTRACT

A-17 ANOTHER'S TORT COMPELLING LITIGATION COSTS

- 1) If the commission of a tort
- 2) proximately causes another's litigation with a third party,
- 3) whether through the filing of a complaint or the defense of an action,
- 4) the other may recover from the tortfeasor that portion of the expense of the litigation with the third party, including attorney's fees, proximately caused by the tort.

State, Dep't of Env'tl. Protection v. Ventron Corp., 94 N.J. 473, 505, 468 A.2d 150, 167 (1983) [(4)];

Jugan v. Friedman, 275 N.J. Super. 556, 573, 646 A.2d 1112, 1120 (App. Div. 1994) [(1),(2)];

Katz v. Schacter, 251 N.J. Super. 467, 474, 598 A.2d 923, 926 (App. Div. 1991) [(3)].

A-18 ANTICIPATORY BREACH OF CONTRACT

- 1) A party to a contract may rescind or bring an action for damages due to breach of contract
- 2) where the conduct of the other party indicates an intention to forego his or her entire performance
- 3) before the time has come when there is a present duty of performance,
- 4) and where such anticipatory breach is material,
- 5) provided the non-breaching party gives the breaching party clear notice of his or her intention to rescind
- 6) and a reasonable opportunity to comply with the contract
- 7) and the breaching party does not withdraw the repudiation of the contract before the non-breaching party brings his or her action for damage or otherwise materially changes his or her position, or manifests his or her election to rescind.

Herbstman v. Eastman Kodak Co., 68 N.J. 1, 9, 342 A.2d 181, 185 (1975) [(4)];

Miller & Sons Bakery Co. v. Selikowitz, 8 N.J. Super. 118, 122-123, 73 A.2d 607, 609-610 (App. Div. 1950) [(1),(7)];

APARTMENT OWNER VIOLATING REGIME RULE

Miller & Sons Bakery Co. v. Selikowitz, 4 N.J. Super. 97, 101-102, 66 A.2d 441, 443 (App. Div. 1949) [(2),(3),(5),(6)].

A-19 APARTMENT OWNER VIOLATING REGIME RULE

- 1) A co-owner of an apartment governed by the Horizontal Property Act, N.J.S.A. 46:8A-1, *et seq.*,
- 2) failing to comply with any by-law or administrative rule or regulation adopted pursuant to the Act
- 3) is liable for injunctive relief and damages to the administrator, board of administration, or other form of administration specified in the by-laws on behalf of the council of co-owners, or in a proper case by an aggrieved co-owner.

N.J.S.A. 46:8A-19 [(1),(2),(3)].

A-20 ARTIST'S COMMON LAW COPYRIGHT VIOLATED

- 1) Anyone using or interfering with
- 2) a literary, dramatic, or musical composition, or design for works of ornament or utility,
- 3) planned by the mind of the artist,
- 4) without the artist's consent,
- 5) which has not been published with an intent by the artist to render such work common property among the public, except for publication limiting use of the subject matter to some definite purpose,
- 6) is liable to the artist for injunctive relief, compensatory damages, and punitive damages,
- 7) unless the artist's work comes within the subject matter of federal copyright law and the rights granted under state law are equivalent to any of the exclusive rights under federal copyright law.

Rowe v. Golden W. Television Prods., 184 N.J. Super. 264, 272-273, 445 A.2d 1165, 1169 (App. Div. 1982) [(7)];

Krahmer v. Luing, 127 N.J. Super. 270, 273-274, 371 A.2d 96, 97-98 (Ch. Div. 1974) [(1),(2),(3),(4),(5),(6)].

ASSOCIATION AND MEMBERSHIP LIABILITY

A-21 ARTIST'S WORK MISREPRESENTED

- 1) Anyone who either:
 - a. publicly displays an artist's work without consent in altered, defaced, mutilated, or modified form, if damage to the artist's reputation is reasonably likely and the work is displayed as the artist's work,
 - b. knowingly publishes or reproduces an artist's work without consent in altered, defaced, mutilated, or modified form, if damage to the artist's reputation is reasonably likely and the work is published or reproduced in conjunction with the artist's name,
 - c. refuses after the artist requests to include the artist's name on or in connection with the work, or
 - d. refuses after the artist requests to stop the artist's name from appearing on or in connection with the work for just and valid reasons, such as that the work has been altered, defaced, mutilated, or modified by another or without the artist's consent, or that damage to the artist's reputation is reasonably likely to result or has resulted,
- 2) is liable to the artist for injunctive relief and damages,
- 3) but alteration, defacement, mutilation or modification must be grossly negligent in cases of maintaining or protecting the work, and negligent where conserving the work.

N.J.S.A. 2A:24A-4 [(1a),(1b)];

N.J.S.A. 2A:24A-5 [(1c),(1d)];

N.J.S.A. 2A:24A-6 [(3)];

N.J.S.A. 2A:24A-8 [(2)].

A-22 ASSOCIATION AND MEMBERSHIP LIABILITY

- 1) Any unincorporated organization or association,
- 2) consisting of seven or more persons
- 3) and having a recognized name,
- 4) is liable for its debts or tortious conduct to any injured party,

ASSOCIATION MEMBERSHIP WRONGFULLY INTERFERED WITH

- 5) payable from its common property,
- 6) and any member of an unincorporated association charged with the duty of an agent as to the membership is liable to any other member
- 7) for loss sustained as a result of that agent's breach of duty.

N.J.S.A. 2A:64-1 [(1),(2),(3),(4),(5)];

Marchitto v. Cent. R.R. Co. of N.J., 9 N.J. 456, 469, 88 A.2d 851, 858 (1952), *overruled on other grounds by Donnelly v. United Fruit Co.*, 40 N.J. 61, 190 A.2d 825 (1963) [(6),(7)].

A-23 ASSOCIATION MEMBERSHIP WRONGFULLY INTERFERED WITH

- 1) Any private association
- 2) expelling a member or unjustly interfering with his or her membership
- 3) is liable in tort to the member,
- 4) provided the membership represented an interest of sufficient substance and
- 5) the expulsion or interference offends either:
 - a. public policy or
 - b. principles of fundamental fairness.

Rutledge v. Gulian, 93 N.J. 113, 123, 459 A.2d 680, 685 (1983) [(5b)];

Higgins v. Am. Soc'y of Clinical Pathologists, 51 N.J. 191, 200-204, 238 A.2d 665, 669-672 (1968) [(1),(2),(3),(4),(5a)].

A-24 ATTORNEY INCREASING INADEQUATE CONTINGENCY FEE

- 1) In any matter where a client's claim for damages is based upon the alleged tortious conduct of another
- 2) and the client is not a subrogee,
- 3) if at the conclusion of the matter the client's attorney considers his or her contingency fee inadequate,

- 4) the attorney may apply to the Assignment Judge or the designee of the Assignment Judge for a reasonable fee in light of all the circumstances.

N.J. Ct. R. 1:21-7(c) [(1),(2)];

N.J. Ct. R. 1:21-7(f) [(3),(4)].

A-25 ATTORNEY MALPRACTICE

- 1) An attorney, including any attorney who is an officer, shareholder, agent, or employee of a professional corporation or a foreign professional legal corporation or for any person under his or her direct supervision and control while rendering professional service on behalf of the corporation in this State to the person for whom such professional service was being rendered,
- 2) is liable to a client or a non-client when the attorney knows, or should know, that the non-client will rely on the attorney's representations and the non-client is not too remote from the attorney to be entitled to protection,
- 3) for consequential damages, including reasonable legal expenses and attorney fees incurred in prosecuting the legal malpractice action, and
- 4) in egregious or extraordinary circumstances, emotional distress damages consisting of substantial bodily injury or severe and demonstrable psychiatric sequelae,
- 5) proximately caused,
- 6) by the breach of an ordinary attorney's standard of care, such as:
 - a. failure to timely file and properly prosecute a claim,
 - b. failure to inform the client promptly of any important information,
 - c. failure to inform the client of the dismissal of his or her complaint, or
 - d. failure to properly supervise the work of the attorney's associate,
- 7) or where the attorney holds himself or herself out to be a specialist in a field of law, for loss proximately caused by

ATTORNEY THEFT COVERED BY TITLE INSURER

failure to exercise the knowledge and skill ordinarily possessed by other specialists in the same area of the law,

- 8) provided that the client establishes either:
 - a. the viability and economic worth of the claim that was irredeemably lost,
 - b. emotional distress from the attorney's egregious misconduct resulting in substantial bodily injury or severe and demonstrable psychiatric after effects, or
 - c. the actual value of the missed opportunity in terms of what result the client would have obtained in the absence of attorney negligence,
- 9) and may be liable for punitive damages where the act or omission was wantonly or recklessly malicious.

N.J.S.A. 14A:17-8 [(1)];

Conklin v. Hannoch Weisman, 145 N.J. 395, 416, 678 A.2d 1060, 1070 (1996) [(5)];

Saffer v. Willoughby, 143 N.J. 256, 272, 670 A.2d 527, 534 (1996) [(3)];

Cortez v. Gindhart, 435 N.J. Super. 589, 604-605, 90 A.3d 653, 662 (App. Div. 2014), *certif. denied*, 220 N.J. 269 (2015) [(8c)];

Cellucci v. Bronstein, 277 N.J. Super. 506, 522, 649 A.2d 1333, 1341 (App. Div. 1994) [(7)];

Petrillo v. Bachenberg, 139 N.J. 472, 483-484, 655 A.2d 1354, 1359-1360 (1995) [(2)];

Gautam v. DeLuca, 215 N.J. Super. 388, 396-400, 521 A.2d 1343, 1347-1348 (App. Div. 1987) [(4),(6a),(6b),(6c),(6d),(8a),(9)];

Kohn v. Schiappa, 281 N.J. Super. 235, 238, 241, 656 A.2d 1322, 1323, 1325 (Law Div. 1995) [(8b)].

A-26 ATTORNEY THEFT COVERED BY TITLE INSURER

- 1) A title insurer is liable to its insured for a closing attorney's theft of the purchasing funds as a breach of the insurer's duty of good faith and fair dealing,
- 2) where the insurer fails to apprise its insured of an insurable risk in attorney embezzlement, and
- 3) fails to offer coverage of that risk as an incident of the title insurance

ATTORNEY'S FEES AFTER REJECTED SETTLEMENT

- 4) that it was committed to issue on the closing of title.

Sears Mortgage Corp. v. Rose, 134 N.J. 326, 352, 634 A.2d 74, 86-87 (1993) [(1),(2),(3),(4)].

A-27 ATTORNEY'S FEES AFTER REJECTED SETTLEMENT

OFFER OF JUDGMENT

- 1) In a civil matter
- 2) any party serving any adverse party
- 3) and filing with the clerk of the court
- 4) more than 20 days before the first scheduled (a) trial or (b) arbitration hearing date or daily or weekly call,
- 5) an offer to take (a) judgment or (b) arbitration award or allow judgment or arbitration award to be taken against him or her,
- 6) which is not accepted on or prior to the 10th day before the first scheduled (a) trial or (b) arbitration award date or daily or weekly call and within 90 days of its service,
- 7) may hold the adverse party liable for a reasonable attorney's fee and litigation expenses for such subsequent services as are compelled by the non-acceptance, if either:
 - a. the party as claimant obtains a verdict or determination at least as favorable as his or her rejected offer, or if a money judgment, in an amount that is 120% of the offer or more, excluding allowable prejudgment interest and counsel fees, or if a monetary award by jury or non-jury verdict adjusted to reflect comparative negligence, if any, in cases against automobile carriers for UM/UIM benefits in an amount that is 120% of the offer or more, excluding allowable prejudgment interest and counsel fees, or
 - b. the party as claimant where there are multiple defendants against whom a joint and several judgment is sought obtains a verdict determination at least as favorable as a *pro rata* share of his or her rejected offer for each particular defendant, or
 - c. the determination is at least as favorable to the non-claimant party as his or her rejected offer, or if a money

ATTORNEY'S FEES FOR AUTO ARBITRATION

judgment, or in the case of a claim for UM/UIM benefits a verdict molded to reflect any comparative negligence, is in the amount, excluding allowable prejudgment interest and counsel fees, that is 80% of the offer or less, excluding if the claimant's claim is dismissed, a no-cause verdict is returned, or only nominal damages are awarded,

- 8) provided the offer of judgment or arbitration award is not nominal or token, and
- 9) if an action is required to be retried, a party who made a rejected offer of judgment in the original trial may make a new offer or may within 10 days after the fixing of the first date for the retrial renew the original offer.

N.J. Ct. R. 4:21A-3 [(4b),(5b),(6b)];

N.J. Ct. R. 4:58-1 [(1),(2),(3),(4a),(5a),(6a)];

N.J. Ct. R. 4:58-2 [(7a)];

N.J. Ct. R. 4:58-3 [(7c)];

N.J. Ct. R. 4:58-4 [(7b)];

N.J. Ct. R. 4:58-5 [(9)];

Frigon v. DBA Holdings, Inc., 346 N.J. Super. 352, 357, 787 A.2d 966 (App. Div. 2002) [(8)].

A-28 ATTORNEY'S FEES FOR AUTO ARBITRATION

- 1) Any party to an arbitrated dispute arising out of an automobile accident regarding tort claims
- 2) for the recovery of pain, suffering, and inconvenience, or the recovery of uncompensated economic loss, other than for damages to property, arising out of the operation, ownership, maintenance, or use of an automobile,
- 3) is entitled to the reasonable costs of the trial, including attorney's fees and other expenses, from an opposing party filing for a trial *de novo*
- 4) and able to pay such costs without substantial economic hardship,
- 5) where such costs will be offset up to any damages the court awards the opposing party,

ATTORNEY'S FEES FOR CHILD CUSTODY ORDER

- 6) but if the court's judgment is more favorable for the opposing party than the arbitration decision, the refund of costs shall be lowered to the extent the judgment is more favorable.

N.J.S.A. 39:6A-24 [(1)];

N.J.S.A. 39:6A-25 [(2)];

N.J.S.A. 39:6A-34 [(3),(4),(5),(6)].

A-29 ATTORNEY'S FEES FOR BANK LOAN DEFAULT

- 1) A bank or savings and loan bringing an action for the collection of an amount in default on a (a) loan or (b) revolving credit plan against the borrower
- 2) may hold the borrower liable for costs and reasonable attorney's fees incurred in bringing the action.

N.J.S.A. 17:3B-14 [(1b)];

N.J.S.A. 17:3B-24 [(1a),(2)].

A-30 ATTORNEY'S FEES FOR CHILD CUSTODY ORDER

- 1) Anyone petitioning a New Jersey court for an order providing for the custody of a child, including visitation rights,
- 2) where either:
 - a. New Jersey is clearly an inappropriate forum,
 - b. the petitioner for an initial custody order has wrongfully taken the child from another state, or engaged in similar reprehensible conduct, or
 - c. the petitioner seeking to modify a custody order of another state has without consent improperly removed or retained the child from the physical custody of the person entitled to custody,
- 3) or anyone violating a custody order of another state necessitating enforcement of the order in a New Jersey court,
- 4) may be liable for necessary travel and other expenses, including attorney's fees, incurred by other parties or their witnesses.

N.J.S.A. 2A:34-30 [(1)];

ATTORNEY'S FEES FOR CHILD'S APPOINTED LAW GUARDIAN

N.J.S.A. 2A:34-35(g) [(2a)];

N.J.S.A. 2A:34-36 [(2b),(2c)];

N.J.S.A. 2A:34-43 [(3),(4)].

A-31 ATTORNEY'S FEES FOR CHILD'S APPOINTED LAW GUARDIAN

- 1) The Court shall award an attorney appointed as law guardian on behalf of a child, where custody or visitation is an issue,
- 2) his or her fees and costs against either or both of the parties,
- 3) upon consideration of the parties' ability to pay and the value of the services.

N.J. Ct. R. 5:8A [(1),(2)];

In re Adoption of a Child by E.T., 302 N.J. Super. 533, 531, 695 A.2d 734, 738 (App. Div. 1997) [(3)].

A-32 ATTORNEY'S FEES FOR CONCEALING POTENTIAL PARTIES OR ACTIONS

- 1) A court may impose litigation expenses
- 2) that could have been avoided
- 3) against any party to the litigation
- 4) who fails to comply with the ongoing obligation to give notice of other actions and other potential parties.

N.J. Ct. R. 4:5-1(b)(2) [(1),(2),(3),(4)].

A-33 ATTORNEY'S FEES FOR CONSTRUCTION CONTRACT PAYMENT DISPUTE

- 1) In any civil action brought by a prime contractor, subcontractor or sub-subcontractor to collect payments due under a contract to improve real property,
- 2) the prevailing party shall be awarded reasonable costs and attorney's fees.

N.J.S.A. 2A:30A-2 [(1),(2)].

ATTORNEY'S FEES FOR CONTESTING ARBITRATION

A-34 ATTORNEY'S FEES FOR CONTESTING ARBITRATION

- 1) Any party demanding a trial *de novo* after mandatory arbitration may be liable for the non-demanding party's costs arising after arbitration,
- 2) including attorney's fees up to \$750 and expert witness costs up to \$500,
- 3) where the demanding party has not either:
 - a. obtained a verdict at least 20 percent more favorable than their arbitration award, or
 - b. obtained a verdict of at least \$250, where the arbitrator awarded nothing, and
- 4) any prevailing party in a contested judicial proceeding
- 5) over the confirmation, modification, vacating, or correction of an arbitration award
- 6) may be awarded reasonable attorney's fees and litigation expenses against the non-prevailing party, and
- 7) where a person either:
 - a. commences a civil action against an arbitrator, arbitration organization, or representative or an arbitration organization arising from their services, or
 - b. seeks to compel an arbitration or representative or an arbitration organization to testify or produce records in violation of N.J.S.A. 2A:23B-15(d),
- 8) the arbitrator, organization or representative shall be awarded reasonable attorney's fees and litigation expenses against that person,
- 9) provided the court decides the arbitrator, organization or representative is immune from civil liability or not competent to testify.

N.J.S.A. 2A:23B-15 [(7a),(7b),(8),(9)];

N.J.S.A. 2A:23B-25 [(4),(5),(6)];

N.J. Ct. R. 4:21A-6 [(1),(2),(3a),(3b)].

ATTORNEY'S FEES FOR CORPORATE DISPUTES

A-35 ATTORNEY'S FEES FOR CORPORATE DISPUTES

- 1) A court in its discretion may award to the injured party and against a party who has not acted in good faith, reasonable expenses, including attorney's fees
- 2) incurred in connection with an action for relief where either:
 - a. shareholders of a corporation are so divided in voting power that directors have not been elected to fill expired directorships for two consecutive annual meetings,
 - b. the board of directors or those with management authority of a corporation have become deadlocked with regard to substantial matters respecting management of corporate affairs, or
 - c. directors or those in control of a corporation with less than 26 shareholders mismanaged the corporation or acted fraudulently, illegally, abusively, oppressively, or unfairly toward minority shareholders in their capacities as shareholders, directors, officers, or employees.

N.J.S.A. 14A:12-7 [(1),(2a),(2b),(2c)].

A-36 ATTORNEY'S FEES FOR DEFENDING ELECTION LAW VIOLATION

- 1) If the Election Law Enforcement Commission brings an action against a defendant on grounds of a violation of the Legislative Activities Disclosure Act, N.J.S.A. 52:13C-18, *et seq.*,
- 2) a prevailing defendant shall be awarded costs of trial and may be awarded a reasonable attorney's fee paid by the State of New Jersey.

N.J.S.A. 52:13C-36 [(1),(2)].

A-37 ATTORNEY'S FEES FOR DEFENDING INSURANCE EXAMINER

- 1) Any person bringing a civil cause of action in tort against the Commissioner of Insurance or the Commissioner's authorized representative or appointed examiner

ATTORNEY'S FEES FOR DELINQUENT DISCOVERY

- 2) for activities arising out of an examination of an insurance carrier
- 3) without a reasonable basis in law or fact at the time the action was initiated
- 4) is liable to a prevailing defendant for attorney's fees and costs.

N.J.S.A. 17:23-26(d) [(1),(2),(3),(4)].

A-38 ATTORNEY'S FEES FOR DELINQUENT DISCOVERY

- 1) Where a party's pleading has been suppressed or dismissed without prejudice
- 2) for failure to comply with a demand for discovery seeking interrogatory answers, document production, or a physical and/or mental examination,
- 3) the Court may award costs and attorney's fees to the non-delinquent party,
- 4) where either:
 - a. the delinquent party has a dismissed or suppressed pleading restored and did not move to restore the pleading within 90 days after entry of the order of dismissal or suppression without prejudice,
 - b. the Court denies a motion for dismissal or suppression with prejudice of the delinquent party's pleading because of extraordinary circumstances, or
 - c. the Court is required to take action to ensure that the attorney for the delinquent party either: (i) timely serves the client with the original order of dismissal or suppression without prejudice, (ii) files and serves the affidavit and the notifications required by New Jersey Court Rule 4:23-5, or (iii) appears on the return date of the motion to dismiss or suppress with prejudice.

N.J. Ct. R. 4:23-5(a)(1) [(1),(2),(3),(4a)];

N.J. Ct. R. 4:23-5(a)(3) [(4b),(4ci),(4cii),(4ciii)].

ATTORNEY'S FEES FOR ENVIRONMENTAL ACTIONS

A-39 ATTORNEY'S FEES FOR ENVIRONMENTAL ACTIONS

- 1) Anyone may sue another who violates any law designed to prevent or minimize pollution, impairment, or destruction of the environment to compel compliance, where there is a likelihood that a violation will recur in the future,
- 2) or sue another for declaratory or equitable relief for the protection of the environment from pollution, impairment, or destruction,
- 3) where there is a feasible and prudent alternative consistent with the reasonable requirements of the public health, safety, and welfare,
- 4) but the court may award the prevailing party reasonable attorney's and expert fees, with a \$50,000 limit for actions against local agencies operating treatment works or the Department of Environmental Protection, provided the prevailing party achieved reasonable success on the merits.

N.J.S.A. 2A:35A-4 [(1),(2)];

N.J.S.A. 2A:35A-7 [(3)];

N.J.S.A. 2A:35A-10 [(4)].

A-40 ATTORNEY'S FEES FOR FAILURE TO ADMIT

- 1) A party failing to admit the genuineness of any document or truth asserted in a written request for admissions,
- 2) is liable to the requesting party for the reasonable expenses and reasonable attorney's fees incurred in proving the genuineness of the document or truth,
- 3) where the request has not been held by a court to be justifiably objectionable, the admission is of substantial importance, or the party had no reasonable grounds for not making the admission.

N.J. Ct. R. 4:23-3 [(1),(2),(3)].

ATTORNEY'S FEES FOR FRIVOLOUS CLAIM OR DEFENSE

A-41 ATTORNEY'S FEES FOR FORUM NON CONVENIENS

- 1) As a condition to the dismissal of an action on grounds of *forum non conveniens*,
- 2) a court may in the interest of justice award attorney's fees against the party moving for dismissal.

Vargas v. A. H. Bull S.S. Co., 25 N.J. 293, 296, 135 A.2d 857, 858 (1957) [(1),(2)].

A-42 ATTORNEY'S FEES FOR FRIVOLOUS CLAIM OR DEFENSE

- 1) A plaintiff or defendant, or public entity required or authorized by law to provide for the defense of a present or past employee, who prevails in a civil action,
- 2) including on appeal,
- 3) against any other party, may be awarded reasonable attorney's fees from that person
- 4) but not his or her counsel,
- 5) if a complaint, counterclaim, cross-claim or defense of the nonprevailing person was frivolous, that is either:
 - a. commenced, used or continued in bad faith, solely for the purpose of harassment, delay, or malicious injury, or
 - b. where the non-prevailing party knew or should have known that the complaint, counterclaim, cross-claim, or defense was without any reasonable basis in law or equity and could not be supported by a good faith argument for an extension, modification or reversal of existing law,
- 6) provided the procedures prescribed by New Jersey Court Rule 1:4-8 are followed to the extent practicable when the assertion of costs and fees is against a party other than a *pro se* party,
- 7) and the court may order payment of reasonable attorney's fees for frivolous litigation or to a prevailing party on a motion for sanctions for frivolous litigation.

N.J.S.A. 2A:15-59.1 [(1),(3),(5a),(5b)];

N.J. Ct. R. 1:4-8 [(6),(7)];

⊕

**ATTORNEY'S FEES FOR FRIVOLOUS OR DELAYING
INTERROGATORY MOTION**

McKeown-Brand v. Trump Castle Hotel & Casino, 132 N.J. 546, 558, 626 A.2d 425, 431 (1993) [(4)];

Khoudary v. Salem County Bd. of Soc. Servs., 281 N.J. Super. 571, 576, 658 A.2d 1317, 1319 (App. Div. 1995) [(2)].

**A-43 ATTORNEY'S FEES FOR FRIVOLOUS OR DELAYING
INTERROGATORY MOTION**

- 1) Anyone making a motion to strike interrogatories, a motion to compel an answer or more specific answer to interrogatories, or a motion directing compliance with a request for copies of papers,
- 2) frivolously or for the purpose of delay, or necessitated by the action of the adverse party that was frivolous or taken for the purpose of delay,
- 3) may be ordered by the court to pay the amount of reasonable expenses, including attorney's fees, incurred by the other party in making or resisting the motion.

N.J. Ct. R. 4:17-5 [(1),(2),(3)].

⊕

**A-44 ATTORNEY'S FEES FOR FRIVOLOUSLY ENJOINING
POLITICAL COMMITTEE**

- 1) Any candidate frivolously applying for injunctive relief
- 2) against a political committee or continuing political committee
- 3) on the grounds that the committee was established, consists of members, or received contributions in violation of the Campaign Contributions and Expenditures Reporting Act, N.J.S.A. 19:44A-1, *et seq.*, and
- 4) made contributions or expenditures in opposition to the candidate,
- 5) is liable in the court's discretion to the political committee or continuing committee for costs, including any attorney's fees.

N.J.S.A. 19:44A-22.1 [(1),(2),(3),(4),(5)].

ATTORNEY'S FEES FOR INSURANCE DISPUTES

A-45 ATTORNEY'S FEES FOR GUARDIANSHIP OF INCOMPETENT

- 1) In a guardianship proceeding for an incompetent,
- 2) the court may set and order the party initiating the proceeding, a spouse, or child to pay appointed attorney's fees set by the court,
- 3) where the incompetent is indigent or it would be unfair to have the incompetent pay the fees,
- 4) but otherwise the court may order the compensation of the attorney for the party seeking guardianship, appointed counsel, and of the guardian ad litem to be paid out of the estate of the alleged mentally incapacitated person or in such other manner as the court shall direct.

N.J. Ct. R. 4:42-9(a)(3) [(4)];

Matter of Clark, 216 N.J. Super. 497, 500-501, 524 A.2d 448, 449-450 (App. Div. 1987) [(1),(2),(3)].

A-46 ATTORNEY'S FEES FOR IMPROPER LABOR INJUNCTION

- 1) Where a New Jersey court issues an injunction
- 2) in any case involving or growing out of a labor dispute,
- 3) the party bringing the action is liable to the party enjoined for attorney's fees, if the injunctive relief sought is subsequently denied by the court or the injunctive relief is reversed by an appellate court,
- 4) such determination being on the merits.

N.J.S.A. 2A:15-53 [(1),(2),(3)];

U.S. Pipe & Foundry Co. v. United Steelworkers of Am. CIO-AFL, Local No. 2026, 37 N.J. 343, 356, 181 A.2d 353, 360 (1962) [(4)].

A-47 ATTORNEY'S FEES FOR INSURANCE DISPUTES

- 1) Attorney's fees are allowable in an action upon a liability or indemnity policy of insurance,
- 2) including on appeal,

ATTORNEY'S FEES FOR NON-APPEARANCE AT ARBITRATION

- 3) in favor of a successful claimant,
- 4) whether the claimant be an insured or an insurer,
- 5) who successfully claims (a) a defense, (b) third-party liability coverage, (c) first-party Personal Injury Protection (PIP) coverage, (d) first-party bus passenger Medical Expense Benefits (MEB) coverage, or (e) first-party extended medical expense benefits (med-pay) required by N.J.A.C. 11:3-7.3(b),
- 6) or a party in a negligence action who is a third-party beneficiary of a liability insurance policy and obtains a favorable adjudication on the merits of a coverage question against a defendant's insurance carrier as a result of the expenditure of counsel fees.

N.J. Ct. R. 2:11-4 [(2)];

N.J. Ct. R. 4:42-9(a)(6) [(1),(3)];

Transamerica Ins. Co. v. Nat'l Roofing, Inc., 108 N.J. 59, 65, 527 A.2d 864, 867 (1987) [(5a)];

W9/PHC Real Estate LP v. Farm Family Cas. Ins. Co., 407 N.J. Super. 177, 203, 970 A.2d 382, 398 (App. Div. 2009) [(4)];

Knight v. AAA Midatlantic Ins. Co., 394 N.J. Super. 333, 336, 926 A.2d 421, 422 (App. Div. 2007) [(5e)];

Schaefer v. Allstate N.J. Ins. Co., 376 N.J. Super. 475, 486, 870 A.2d 745, 752 (App. Div. 2005) [(5d)];

Giri v. Med. Inter-Insurance Exch. of N.J., 251 N.J. Super. 148, 597 A.2d 561 (App. Div. 1991) [(5b)];

Brewster v. Keystone Ins. Co., 238 N.J. Super. 580, 586, 570 A.2d 468, 471 (App. Div. 1990) [(5c)];

Occhifinto v. Olivo Constr. Co., 221 N.J. 443, 451, 114 A.3d 333, 337-38 (2015) [(6)].

A-48 ATTORNEY'S FEES FOR NON-APPEARANCE AT ARBITRATION

- 1) A party against whom an order to dismiss or strike his or her pleading is entered,
- 2) due to that party's failure to appear at an arbitration hearing,

ATTORNEY'S FEES FOR OPPOSING SUMMARY JUDGMENT

- 3) may be liable for litigation expenses and attorney's fees incurred for service directly related to the non-appearance,
- 4) upon the granting of a motion showing good cause for relief from the order to dismiss or strike the pleading.

N.J. Ct. R. 4:21A-4(f) [(1),(2),(3),(4)].

A-49 ATTORNEY'S FEES FOR NON-APPEARANCE AT FORECLOSURE MEDIATION

- 1) A party or attorney for a party who fails to attend a foreclosure mediation session,
- 2) may be liable for reasonable attorney's fees or litigation expenses, or both.

N.J.S.A. 2A:50-78 [(1),(2)].

A-50 ATTORNEY'S FEES FOR OPPOSING SUMMARY JUDGMENT

- 1) An adverse party to a summary judgment motion
- 2) submitting affidavits in bad faith or solely for the purpose of delay is liable to pay the other party the amount of reasonable expenses resulting from the filing of the affidavits, including reasonable attorney's fees, and
- 3) a party who convinces a civil court to deny a summary judgment motion
- 4) by raising a factual contention in bad faith
- 5) with knowledge that it was a palpable sham or predicated on facts known or which should have been known to be false
- 6) is liable in the court's discretion to the opposing party for attorney's fees rendered on the summary judgment motion and for subsequent services compelled by the denial,
- 7) provided the opposing party prevails in the action
- 8) tried to conclusion.

N.J. Ct. R. 4:46-6 [(3),(4),(5),(6),(7),(8)];

N.J. Ct. R. 4:46-5 [(1),(2)].

ATTORNEY'S FEES FOR PIP ARBITRATION

A-51 ATTORNEY'S FEES FOR PIP ARBITRATION

- 1) Anyone prevailing on a claim for Personal Injury Protection benefits in a binding arbitration proceeding
- 2) is entitled from the PIP insurer to the costs of the proceeding, including reasonable attorney's fees as determined by a schedule prescribed by the New Jersey Supreme Court.

N.J.S.A. 39:6A-5 [(1),(2)].

A-52 ATTORNEY'S FEES FOR PUBLIC DISCRIMINATION

- 1) Anyone denying, aiding, or inciting a denial of
- 2) another's right to hold office or employment on account of sex or marital status, or
- 3) any owner, lessee, proprietor, manager, superintendent, agent, or employee of a place of public accommodation either denying, or aiding or inciting a denial of another's right to full and equal enjoyment of a place of public accommodation, or making known by way of written communication that enjoyment of the place of public accommodation will be denied or that the person is unwelcome on account of race, creed, color, national origin, ancestry, marital status, or sex, except a place of public accommodation which is in its nature reasonably restricted exclusively to individuals of one sex,
- 4) is liable for a civil penalty between \$100 and \$500 through suit brought in the name of the State of New Jersey by the aggrieved party,
- 5) who upon judgment in the aggrieved party's favor may recover at the court's discretion an attorney's fee of not less than \$20 nor more than \$100.

N.J.S.A. 10:1-1 [(2)];

N.J.S.A. 10:1-3 [(3)];

N.J.S.A. 10:1-6 [(1)];

N.J.S.A. 10:1-7 [(4),(5)].

ATTORNEY'S FEES FOR SUCCESSFUL RESIDENTIAL TENANT

A-53 ATTORNEY'S FEES FOR SSI APPEAL

- 1) Anyone receiving public assistance under the Work First New Jersey General Public Assistance Act, N.J.S.A. 44:8-107, *et seq.*,
- 2) who prevails on an appeal of a claim for federal Supplemental Security Income benefits pursuant to the federal Social Security Act, 42 U.S.C. 1381, *et seq.*,
- 3) shall recover fees to an attorney or a legal entity providing legal services who represented the public assistance recipient on the appeal according to a fixed Municipalities for Cost of General Assistance Fund.

N.J.S.A. 44:8-110.1 [(1),(2),(3)].

A-54 ATTORNEY'S FEES FOR SUCCESSFUL RESIDENTIAL TENANT

- 1) If a residential lease agreement
- 2) provides that the landlord is or may be entitled to recover either attorney's fees or expenses, or both, incurred as a result of the failure of the tenant to perform any covenant or agreement in the lease,
- 3) or if the lease provides that such costs may be recovered as additional rent,
- 4) the tenant may hold the landlord liable for the reasonable attorney's fees or the reasonable expenses, or both,
- 5) incurred by that tenant as the result of the tenant's successful defense of any action or summary proceeding commenced by the landlord against the tenant,
- 6) arising out of an alleged failure of the tenant to perform any covenant or agreement in the lease,
- 7) except where the tenant pays all rent currently due and owing on or after the filing of the complaint for non-payment of rent and presented no meritorious defense to the complaint other than said payment,
- 8) or as the result of any successful action or summary proceeding commenced by the tenant against the landlord,

ATTORNEY'S FEES FOR TAX CERTIFICATES

- 9) arising out of the failure of the landlord to perform any covenant or agreement in the lease.

N.J.S.A. 2A:18-61.66 [(1),(2),(3),(4),(5),(6),(7),(8),(9)].

A-55 ATTORNEY'S FEES FOR TAX CERTIFICATES

- 1) A trial court may in its discretion award attorney's fees in an action to foreclose a tax certificate
- 2) not exceeding \$350 per tax sale certificate in any *in rem* or *in personam* proceeding except for special cause shown by affidavit,
- 3) but a plaintiff other than a municipality must first provide written notice to all parties entitled to redeem.

N.J. Ct. R. 4:42-9(a)(5) [(1),(2),(3)].

A-56 ATTORNEY'S FEES FOR UNATTENDED DEPOSITION

- 1) Where either:
 - a. a party giving notice of the taking of a deposition fails to attend and proceed therewith and another party attends in person or by attorney pursuant to the notice, or
 - b. if a party giving notice of a deposition fails to serve a subpoena upon a witness who because of such failure does not attend and another party attends in person or by attorney because that party expects the deposition of that witness to be taken,
- 2) the court may order the party giving notice of the deposition to pay the other party reasonable expenses and attorney's fees incurred as a result of attendance.

N.J. Ct. R. 4:14-8 [(1a),(1b),(2)].

A-57 ATTORNEY'S FEES FOR UNDISCLOSED TOXIC SUBSTANCES IN WORKPLACE

- 1) Anyone bringing a civil action against any employer for violating the Worker and Community Right to Know Act, N.J.S.A. 34:5A-1, *et seq.*, which requires disclosure of

ATTORNEY'S FEES FOR VIOLATING COURT ORDER

information about hazardous substances in the workplace and the community,

- 2) or against the Department of Environmental Protection or the Department of Health for failing to enforce the Act,
- 3) may recover his or her costs of litigation, including reasonable attorney's and expert witness fees.

N.J.S.A. 34:5A-23 [(1),(2),(3)].

A-58 ATTORNEY'S FEES FOR UNWARRANTED SUBPOENA OF NEWSPERSON

- 1) Any party seeking the enforcement of a subpoena
- 2) issued by or on behalf of a defendant in a criminal proceeding, not including proceedings before administrative or investigative bodies, grand juries, or legislative committees or commissions,
- 3) requesting the disclosure of information subject to the newsperson's privilege
- 4) without a reasonable basis
- 5) may be ordered by the court to pay costs, including attorney's fees.

N.J.S.A. 2A:84A-21.1 [(2)];

N.J.S.A. 2A:84A-21.8 [(1),(3),(4),(5)].

A-59 ATTORNEY'S FEES FOR VIOLATING APPELLATE RULES

- 1) An appellate court may award attorney's fees in its discretion
- 2) against a party violating the rules for prosecution of appeals.

N.J. Ct. R. 2:11-4 [(1),(2)].

A-60 ATTORNEY'S FEES FOR VIOLATING COURT ORDER

- 1) A court in its discretion may award attorney's fees against a party
- 2) who willfully fails to comply with an order or judgment entitling his or her adversary to litigant's rights, and

ATTORNEY'S FEES FOR VOIDED DOORSTEP SALE

- 3) expenses and attorney's fees shall be awarded for failing to obey a court's discovery order,
- 4) unless the contempt was substantially justified or other circumstances make an award of expenses unjust.

N.J. Ct. R. 1:10-3 [(1)];

N.J. Ct. R. 4:23-2 [(3),(4)];

Haynoski v. Haynoski, 264 N.J. Super. 408, 414, 624 A.2d 1030, 1033 (App. Div. 1993) [(2)].

A-61 ATTORNEY'S FEES FOR VOIDED DOORSTEP SALE

- 1) Any seller entering into a retail installment sale of goods or retail installment contract
- 2) for the sale of goods priced above \$25, excluding motor vehicles or boats and their accessories,
- 3) who sells the goods outside his or her main place of business
- 4) without using a telephone or the mail
- 5) is liable to the purchaser for the amount paid, costs, and reasonable attorney's fees,
- 6) where the purchaser notifies the seller of his or her intent to rescind the sale or contract
- 7) within three business days following the execution of the sale or contract, and
- 8) the seller fails within ten days thereafter to pick up the goods and return the amount paid.

N.J.S.A. 17:16C-61.5 [(1),(2),(3),(4),(7)];

N.J.S.A. 17:16C-61.7 [(5),(6),(8)].

A-62 ATTORNEY'S FEES FOR VOIDED HOME REPAIR

- 1) Any home repair contractor entering into a home repair contract
- 2) for a purchase price in excess of \$25 for goods or services
- 3) who enters into the contract outside his or her main place of business
- 4) without using a telephone or the mail

ATTORNEY'S FEES FROM FUND IN COURT

- 5) is liable to the owner for any amount paid, costs, and reasonable attorney's fees,
- 6) where the owner notifies the contractor of his or her intent to rescind the contract within three business days following execution of the contract, and
- 7) the contractor fails to pick up the goods and return the monies or goods paid by the owner.

N.J.S.A. 17:16C-99 [(1),(2),(3),(4)];

N.J.S.A. 17:16C-101 [(5),(6),(7)].

A-63 ATTORNEY'S FEES FOR VOLUNTARY DISMISSAL

- 1) As a condition to permitting a plaintiff to voluntarily dismiss an action,
- 2) the court may order plaintiff to pay the opposing party's attorney's fees incurred in defending the action.

N.J. Ct. R. 4:37-1(b) [(1)];

Mack Auto Imports, Inc. v. Jaguar Cars, Inc., 244 N.J. Super. 254, 260, 581 A.2d 1372, 1375 (App. Div. 1990) [(2)].

A-64 ATTORNEY'S FEES FOR WORKERS' COMPENSATION

- 1) Where the determination of the New Jersey Supreme Court reverses a denial of workers' compensation in the Appellate Division,
- 2) the Supreme Court in its discretion may allow attorney's fees for services rendered in both appellate courts.

N.J. Ct. R. 2:11-4(b) [(1),(2)].

A-65 ATTORNEY'S FEES FROM FUND IN COURT

- 1) A court in its discretion may award attorney's fees from a fund of money or property in court,
- 2) including on appeal,
- 3) such as the funds of an estate or

ATTORNEY'S FEES FROM LAW OF ANOTHER STATE

- 4) where the litigant's actions have created, preserved, or increased property in the form of a fund for the benefit of a class of which the litigant is a member, e.g., class action,
- 5) but not for issues triable of right by jury.

N.J. Ct. R. 2:11-4(a) [(2)];

N.J. Ct. R. 4:42-9(a)(2) [(1),(5)];

Sarner v. Sarner, 38 N.J. 463, 469, 185 A.2d 851, 854 (1962) [(4)];

Gagliano v. Maggio, 32 N.J. Super. 219, 230, 108 A.2d 185, 192 (App. Div. 1954) [(3)].

A-66 ATTORNEY'S FEES FROM LAW OF ANOTHER STATE

- 1) Attorney's fees shall be awarded as the law of another State provides,
- 2) if the law of that State undergirds the proceeding brought in New Jersey.

Haynoski v. Haynoski, 264 N.J. Super. 408, 415, 624 A.2d 1030, 1034 (App. Div. 1993) [(1),(2)].

A-67 ATTORNEY'S FEES FROM PUBLIC ENTITY OR EMPLOYEE

- 1) Where a party succeeds on a claim against a public entity or public employee under the Tort Claims Act, N.J.S.A. 59:1-1, *et seq.*,
- 2) and damages for pain and suffering have not been awarded,
- 3) a court may in its discretion award costs, reasonable attorney's fees, and \$100 in expert witness fees to the successful party.

N.J.S.A. 59:9-5 [(1),(2),(3)].

A-68 ATTORNEY'S FEES IN CHILD CUSTODY PROCEEDING

- 1) A prevailing party,
- 2) in a child custody proceeding
- 3) shall be awarded reasonable and necessary expenses and attorney's fees,

ATTORNEY'S FEES IN FAMILY ACTIONS

- 4) unless the party from whom fees or expenses are sought establishes that the award would be clearly inappropriate.

N.J.S.A. 2A:34-54 [(2)];

N.J.S.A. 2A:34-86 [(1),(3),(4)].

A-69 ATTORNEY'S FEES IN COMPELLING OR OPPOSING DISCOVERY

- 1) A successful or partially successful movant or opponent to a motion to compel discovery through (a) deposition, (b) interrogatories, or (c) production and inspection of documents and property
- 2) including motion for reconsideration and appeal,
- 3) is entitled to expenses and attorney's fees incurred in obtaining a court order or opposing the motion,
- 4) unless the court finds that the opposition or motion, as the case may be, was substantially justified or that other circumstances make an award of expenses unjust.

N.J. Ct. R. 4:18-1(b)(4) [(1c)];

N.J. Ct. R. 4:23-1 [(1b),(3),(4)];

N.J. Ct. R. 4:23-4 [(1a)];

Segal v. Lynch, 417 N.J. Super. 627, 647, 11 A.3d 407, 420 (App. Div. 2011) [(2)].

A-70 ATTORNEY'S FEES IN FAMILY ACTIONS

- 1) A court in its discretion may grant attorney's fees,
- 2) including on appeal,
- 3) to any party in a family action, on any claims for divorce, nullity, support, alimony, custody, parenting time, equitable distribution, separate maintenance, enforcement of interspousal agreements relating to family type matters and claims relating to family type matters in actions between unmarried persons,
- 4) upon considering (a) the financial circumstances of the parties, (b) the ability of the parties to pay their own fees or to contribute to the fees of the other party, (c) the reasonableness

ATTORNEY'S FEES IN FAMILY SETTLEMENT PROGRAM

and good faith of the positions advanced by the parties both during and prior to trial, (d) the extent of the fees incurred by both parties, (e) any fees previously awarded, (f) the amount of fees previously paid to counsel by each party, (g) the results obtained, (h) the degree to which fees were incurred to enforce existing orders or to compel discovery, and (i) any other factor bearing on the fairness of an award,

- 5) attorney's fees shall be awarded against a defaulting party in any action to enforce and collect child support ordered in a family action upon considering the financial circumstances of the parties and whether each acted in good faith,
- 6) but not where the default was substantially justified or other circumstances make an award of attorney's fees unjust,
- 7) and a court may award attorney's fees to an aggrieved party against the party who violated the terms of a visitation order.

N.J.S.A. 2A:34-23a [(5),(6)];

N.J.S.A. 2A:34-23.3(a) [(7)];

N.J. Ct. R. 2:11-4(a) [(2)];

N.J. Ct. R. 5:3-5(c) [(1),(3),(4a),(4b),(4c),(4d),(4e),(4f),(4g),(4h),(4i)].

A-71 ATTORNEY'S FEES IN FAMILY SETTLEMENT PROGRAM

- 1) In a civil family action,
- 2) any party referred to an Early Settlement Program who fails to participate, or
- 3) any party failing to provide a Case Information Statement or such other required information,
- 4) may have attorney's fees assessed against him or her.

N.J. Ct. R. 5:5-5 [(1),(2),(3),(4)].

A-72 ATTORNEY'S FEES IN FORECLOSURE ACTION

- 1) A court shall award attorney's fees in an action for the foreclosure of a mortgage.

N.J. Ct. R. 4:42-9(a)(4) [(1)].

ATTORNEY'S FEES IN PROBATE ACTION

A-73 ATTORNEY'S FEES IN LIMITED PARTNERSHIP DERIVATIVE ACTION

- 1) If a derivative action brought by a limited partner in the right of a limited partnership is successful, in whole or in part, or if anything is received by the limited partnership as a result of a judgment, compromise, or settlement of an action,
- 2) the court may award the plaintiff reasonable expenses, including reasonable attorney's fees.

N.J.S.A. 42:2A-66 [(1),(2)].

A-74 ATTORNEY'S FEES IN LLC DERIVATIVE ACTION

- 1) A member of a limited liability company
- 2) who is successful in whole or in part
- 3) in a derivative action brought by the member to enforce a right of the limited liability company
- 4) may be awarded reasonable expenses, including reasonable attorney's fees and costs,
- 5) from the recovery of the limited liability company.

N.J.S.A. 42:2C-68 [(1),(3)];

N.J.S.A. 42:2C-72 [(2),(4),(5)].

A-75 ATTORNEY'S FEES IN PROBATE ACTION

- 1) An executor acting in good faith
- 2) to propound a will is entitled, win or lose, to reimbursement out of the estate for attorney's fees, and
- 3) the court may award attorney's fees,
- 4) including on appeal,
- 5) to the contestant if probate is refused, and to both the proponent and the contestant if probate is granted and the contestant has reasonable cause for contesting the validity of the will or codicil.

N.J. Ct. R. 2:11-4(a) [(4)];

N.J. Ct. R. 4:42-9(a)(3) [(3),(5)];

Matter of Reisdorf, 80 N.J. 319, 324, 403 A.2d 873, 875 (1979) [(1),(2)].

ATTORNEY'S FEES IN SPECIAL CIVIL COURT

A-76 ATTORNEY'S FEES IN SPECIAL CIVIL COURT

- 1) The attorney of the prevailing party in an action in the Superior Court, Law Division, Special Civil Part,
- 2) or for civil causes in a municipal court,
- 3) is entitled to a fee against the judgment-debtor of five percent of the first \$500 of the judgment and two percent of any excess,
- 4) except that in actions of replevin the fee shall be not less than \$5 nor more than \$10, and
- 5) in any motion made subsequent to the commencement of an action or proceeding, or upon any order adjudging a person in contempt for violating a court order, the Special Civil court may award an attorney fee of not more than \$10.

N.J.S.A. 22A:2-42 [(1),(3),(4),(5)];

N.J.S.A. 22A:2-43 [(2)].

A-77 ATTORNEY'S FEES IN TAX SUIT

- 1) Any taxpayer in a court proceeding in connection with the determination, collection, or refund of any tax, penalty or interest,
- 2) who establishes that the position of the State was without reasonable basis in fact or law,
- 3) may be awarded a judgment or settlement for reasonable litigation costs up to \$15,000, including reasonable attorney's fees not to exceed \$75 per hour, allocable to the State,
- 4) except with respect to any portion of the proceedings unreasonably protracted by the taxpayer,
- 5) but the State may be awarded a judgment or settlement for its reasonable litigation costs up to \$15,000, where the taxpayer either:
 - a. institutes or maintains the proceedings primarily for delay,
 - b. has no grounds for his or her position, or
 - c. unreasonably failed to pursue administrative remedies, and
- 6) if an assessor does not (a) act reasonably in increasing the assessment or (b) fails to reflect on the tax duplicate a county

ATTORNEY'S FEES PERMITTED BY STATUTE

board of taxation or Tax Court judgment issued prior to the final preparation of the tax duplicate in either of the two years following the year for which the judgment of (i) the Tax Court or (ii) the county board was rendered,

- 7) the (a) Tax Court or (b) county board shall award to the taxpayer reasonable counsel fees, appraisal fees, and costs.

N.J.S.A. 54:3-26 [(6bii),(7b)];

N.J.S.A. 54:51A-8 [(6a),(6bi),(7a)];

N.J.S.A. 54:51A-22 [(1),(2),(3),(4),(5a),(5b),(5c)].

A-78 ATTORNEY'S FEES ON SALE OF COLLATERAL

- 1) A secured party
- 2) undertaking to collect from or enforce an obligation of an account debtor or other person obligated on collateral
- 3) may deduct from the collections reasonable expenses of collection and enforcement, including reasonable attorney's fees and legal expenses incurred by the secured party.

N.J.S.A. 12A:9-607 [(1),(2),(3)].

A-79 ATTORNEY'S FEES ON VACATING DEFAULT JUDGMENT

- 1) A plaintiff in a court action having obtained a default judgment
- 2) may seek from the defendant moving for relief from the default judgment payment of reasonable attorney's fees incurred in obtaining the default judgment and the writ of execution and in opposing the motion for relief from the default judgment.

John Reiner & Co., Inc. v. Dorsey Roofing Co., Inc., 187 N.J. Super. 51, 55, 453 A.2d 570, 572 (Law Div. 1982) [(1),(2)].

A-80 ATTORNEY'S FEES PERMITTED BY STATUTE

- 1) A court may award attorney's fees where permitted
- 2) by federal or state statutes.

N.J. Ct. R. 4:42-9(a)(8) [(1)];

ATTORNEY'S FEES TO COUNSEL ASSIGNED TO MURDER CASE

Carmel v. Borough of Hillsdale, 178 N.J. Super. 185, 188, 428 A.2d 548, 550 (App. Div. 1981) [(2)].

A-81 ATTORNEY'S FEES TO COUNSEL ASSIGNED TO MURDER CASE

- 1) A court assigning counsel to represent a defendant
- 2) in an indicted
- 3) murder case may award counsel compensation
- 4) to be paid by the county treasurer of the county where the indictment was found.

N.J.S.A. 2A:163-1 [(1),(4)];

State v. Rush, 46 N.J. 399, 408, 217 A.2d 441, 446 (1966) [(3)];

State v. Loray, 87 N.J. Super. 119, 122, 208 A.2d 183, 185 (Law Div. 1965), *aff'd*, 46 N.J. 417, 217 A.2d 450 (1966) [(2)].

A-82 ATTORNEY'S FEES TO GET PUBLIC RECORD

- 1) A person who is improperly denied access
- 2) to a government record by the custodian of the record
- 3) and who prevails in any proceeding to allow access
- 4) is entitled to a reasonable attorney's fee.

N.J.S.A. 47:1A-6 [(1),(2),(3),(4)].

A-83 ATTORNEY'S FEES TO RECOVER OUT-OF-NETWORK DENTAL FEE

- 1) A person covered for dental benefits
- 2) through either a:
 - a. dental service corporation,
 - b. dental plan organization, or
 - c. health service corporation,
- 3) who signs a written agreement to sign over the dental benefit payment to an out-of-network dentist,
- 4) and fails to sign over the benefit

AVOIDING THE CORPORATE LIABILITY SHIELD

- 5) is liable to the out-of-network dentist for attorney's fees and costs reasonably incurred by the dentist in enforcing the agreement.

N.J.S.A. 17:48C-8.3 [(1),(2a),(3),(4),(5)];

N.J.S.A. 17:48D-9.6 [(2b)];

N.J.S.A. 17:48E-10.2 [(2c)].

A-84 AUTOMOBILE DAMAGED AT PARKING FACILITY

- 1) The operator of a parking lot or enclosed garage
- 2) who fails to exercise reasonable care to protect the parked cars and those items one would reasonably expect to find within them
- 3) from the foreseeable criminal activity of others
- 4) is liable to the owner for damage to the parked automobile
- 5) caused by the operator's negligence.

McGlynn v. Parking Auth. of City of Newark, 86 N.J. 551, 558-561, 432 A.2d 99, 103-104 (1981) [(1),(2),(3),(4),(5)].

A-85 AVOIDING THE CORPORATE LIABILITY SHIELD

PIERCING THE CORPORATE VEIL

- 1) Any individual or corporate entity, such as an owner, partner, or principal in an agency relationship, closely identified with the affairs of another corporation,
- 2) or parent corporation exercising control over the subsidiary corporation or over the property that gives rise to a tort claim,
- 3) is liable for the corporation's conduct and debts,
- 4) where the closeness of the relationship is evidenced from:
 - a. pervasive control over the corporation,
 - b. confused intermingling of activity with substantial disregard of the separate nature of the corporate entity,
 - c. serious ambiguity about the manner and capacity in which the various parties and their respective representatives are acting,

AVOIDING THE CORPORATE LIABILITY SHIELD

- d. common ownership,
 - e. common management,
 - f. commingling of funds,
 - g. operations in each others' names,
 - h. fraudulent or injurious consequences of the close relationship, and/or
 - i. impermissible personal payments or asset transfers,
- 5) and the corporation is being used either to:
- a. defeat the ends of justice,
 - b. perpetrate a fraud,
 - c. accomplish a crime, or
 - d. otherwise evade the law.
- 6) including a limited partnership, where the limited partner participated in the control of the limited partnership's business by taking or attempting action not within the safe harbor of N.J.S.A. 42:2A-27b or dominated the limited partnership and used the limited partnership to perpetrate a fraud or injustice, or otherwise circumvented the law.

Canter v. Lakewood of Voorhees, 420 N.J. Super. 508, 519, 22 A.3d 68, 75 (App. Div. 2011) [(6)];

McCalley v. Edison Corp. Ctr., 303 N.J. Super. 420, 429, 697 A.2d 149, 154 (App. Div. 1997) [(2)];

Tung v. Briant Park Homes, Inc., 287 N.J. Super. 232, 239, 670 A.2d 1092, 1096 (App. Div. 1996) [(5a),(5b),(5c),(5d)];

Stochastic Decisions v. DiDomenico, 236 N.J. Super. 388, 394, 565 A.2d 1133, 1136 (App. Div. 1989) [(1),(3),(4a),(4b),(4c),(4d),(4e),(4f),(4g),(4h),(4i)].