

Relay For Life -

This was our fifth year of being part of the American Cancer Society's Relay For Life. The American Cancer Society has been an active member of Monmouth County communities for many years offering patient and family services, cancer support groups, tobacco control programs and lifesaving research projects. We continue this mission by participating in the Relay For Life. With your help and our family and friends, we raised over \$40,000 and the Freehold Relay itself raised over \$261,000. Freehold was the number one fundraising Relay in the State!!



FIRM NEWS



■ We are pleased to announce the newest members of our Firm: Jonathan H. Lomurro earned his B.A. from Rutgers College in 2002 and his J.D. from Widener

University School of Law in 2004. He is a member of the Monmouth Bar Association, New Jersey State Bar Association; Young Lawyers Division Family Part, American Bar Association and the Sunshine Optimist Club. Mr. Lomurro will have a general practice.



■ Allison C. Williams earned her B.A. from Florida State University School of Communication in 2000. She earned her J.D. in 2003 from Syracuse University College

of Law where she was a Student Attorney for the Public Interest Law Firm Clinic and for the Children's Rights Clinic. While in school she also was a law intern for Honorable Bryan Hedge (Unified Court System - Fifth Judicial District) and a law clerk at the Law Offices of Anita Roberts, Esq. After graduation Ms. Williams clerked for the Honorable James A. Farber, J.S.C. She is admitted to the New Jersey and New York State Bars, Monmouth Bar

and Ocean County Bar Associations; Young Lawyers Divisions Family Part. Ms. Williams will concentrate her practice in Family Law.

■ Donald M. Lomurro, Partner, was selected to be a faculty member for the South Dakota Trial Academy (Contracted with the National Institute Of Trial Advocacy.) This intensive week long program prepared attorneys to take and prepare for depositions, conduct direct and cross examinations, and handle problem witnesses, exhibits and objections.

■ Robert F. Muñoz, Partner, was a keynote speaker on Estate Planning at the New Jersey Association for Legal Professionals Spring Convention.

■ Gary P. McLean, Counsel, was a Faculty Speaker for the National Business Institute's seminar on The Step-By-Step Guide To Title Examination In New Jersey. Mr. McLean was also reappointed as the Municipal Court Mediator in Spring Lake Heights for another 2 years.

■ Peter H. Lederman, Partner, was a keynote speaker at the Municipal Court Practice Committee Seminar sponsored by the Middlesex Bar Association.

■ LDEM conducted a mock trial for Rotary Group Exchange students visiting from Japan. The Group Study Exchange is a cultural and vocational exchange opportunity for young business and professional men and women

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**Lomurro, Davison, Eastman and Muñoz, P.A. is "A.V." rated by Martindale-Hubbell, which is its highest rating. Martindale-Hubbell is the facilitator of a peer review process that rates lawyers on legal ability and general ethical standards. Ratings reflect the confidential opinions of the Bar and the Judiciary.*

FIRM NEWS

between the ages of 25-40, in the initial years of the professional life.

■ LDEM was a Sponsor of the Freehold Community Alliance 2005 Golf Outing. The Alliance provides substance abuse prevention and counseling through out the Freehold Community.

■ "Take me out to the ball game." LDEM sponsored Bat Day and gave away baseball bats to the first 2,000 fans at the August 13th Blueclaws game at First Energy Park in Lakewood. The fans also set a Record, verified by the Guinness Book of World Records that night for the most "high fives" ever exchanged!



A PERMANENT INJURY IS SERIOUS ENOUGH

On June 14, 2005, the New Jersey Supreme Court ruled in *DiProspero v. Penn*, that a person who suffers a permanent injury as a result of an automobile accident can recover pain and suffering damages against the negligent driver who caused those injuries. This case was about the statutory restrictions on the right to bring a lawsuit for injuries suffered in an auto accident known as the "limitation on lawsuit ("LOL") threshold," also called the "verbal threshold."

Prior to the *DiProspero v. Penn* decision, the lower courts required requiring victim to have suffered a permanent injury having a significant impact on his or her life before pain and suffering damages could be recovered. Thus, an innocent driver who was hit by a drunk driver, missed time from work and suffered a permanent injury could not be made financially whole unless "significant impact on their life test" was met!

The *DiProspero* decision returned the law in New Jersey to where it was in 1998. The Supreme Court, in a unanimous (6-0) decision, ruled that the "serious impact" test was not part of the statutory criteria for bringing a lawsuit and could not be judicially imposed. Had the

Legislature wished to include such a test, it would have been written into the statute. Instead, it was the Legislature's conclusion that a demonstrably permanent injury is serious enough to merit compensation.

You may have read in your local newspapers that this decision will open the courts to a flood of non-serious or frivolous lawsuits. Nothing could be further from the truth. You may also have read that this decision will cause insurance premiums to go up or cause insurance companies to cease writing auto insurance in this state. There is no basis to conclude that either of these will occur.

Non-serious and frivolous suits will not flood the courts because the law also provides that a treating doctor must certify, under oath, that the accident victim has a permanent injury, which is verified by objective medical testing. This means that x-rays, MRI's, EMG's or other tests, not dependent upon patient complaints, must confirm the permanent injury. Moreover, the treating doctor is subject to criminal penalties if the certification is false.

If you have questions relating to an accident, call Thomas Comer, Esq. at 732-462-7170.

NEW JERSEY SUPREME COURT

Addresses Petitions Regarding Changing a Child's Lastname

In 1995, the Supreme Court concluded that gender-based presumptions should play no part in a child's lastname and in resolving disagreements between parents concerning a child's surname, the court should apply the "best-interest-of-the-child standard." This standard applies whether the child is born in or out of wedlock. The court went on to state that the preservation of the paternal bond is not and should not be dependent upon the retention of the paternal surname. In applying the best-interest-of-the-child standard, however, courts consider a number of criteria including: (1) the length of time that the child has used one lastname; (2) the identification of the child as a member or part of a family unit; (3) the potential anxiety, embarrassment, or discomfort the child might experience if the child bears a surname different from the custodial parent; and (4) any preferences the child may express, assuming the child possesses sufficient maturity to express a relevant preference. Admittedly, courts have experienced difficulty in applying these criteria due to the "speculative quality" of the inquiry into the effect that the chosen lastname would have on the future welfare and happiness of the child. To lessen that difficulty and to increase the predictability of such analyses, the courts adopted a strong presumption in favor of the surname chosen by the primary caretaker. Underlying that presumption is a basic principle of family law, that the parent having physical custody of the child is generally accorded broad responsibility in making daily child-rearing decisions. The court found implicit in that broad responsibility the supposition that the primary caretaker acts in the best interest of the child in discharging that obligation and that the naming or changing of the name of a child is, like other decisions left to the primary caretaker. The courts, therefore, concluded that if there is a dispute, the secondary caretaker bears the burden of demonstrating by a preponderance of evidence that, despite the presumption favoring the primary caretaker's choice of name, the chosen lastname is not in the best interest of the child.

The New Jersey Supreme Court recently affirmed this thinking in the case of *Ronan v. Adely*, 182 N.J. 103 (2004). The Supreme Court held that there is a presumption in favor of the primary caretaker that the surname chosen by him or her is in the best interest of the child. The secondary caretaker bears the burden of rebutting that presumption and may do so by establishing that the name change is not in the best interest of the child.

The court did note, however, that in this case the plaintiff/mother and primary caretaker of the child in question, Kathleen F. Ronan, did not seek to remove the lastname Adely (the last name of the defendant/father) from the child's full name. Rather, she sought to add Ronan after the birth-given surname Adely. Ms. Ronan expressed no opposition to the suggestion of a hyphenated lastname. The court went on to state that this approach would be consistent with the public policy expressed in the regulations issued by the New Jersey State Department of Health for resolving disagreements concerning the selection of a lastname at birth. Specifically, N.J.S.A. 8:2-1.3(a)(2) provides that where both parents have custody of the child, are both available, and disagree on the selection of a lastname, the child shall be given a hyphenated lastname based on alphabetical order. So, by way of example, if the court were to apply the hyphenated surname in the Ronan decision, the child's surname would be Adely-Ronan.

If you have a question regarding changing the surname of a child or any other family-related matters, please call our Family Law Department at 732-462-7170.

**Lomurro
Davison
Eastman
and
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P.A.**

ATTORNEYS AT LAW
"AV" Rated*

Did you know???

The Division of Wage and Hour Law establishes a minimum wage rate and overtime rate for all workers in New Jersey. On April 12, 2005, Acting Governor Richard J. Codey signed legislation increasing New Jersey's hourly minimum wage. The first raise will be effective on October 1, 2005, when the hourly minimum wage will increase from the current \$5.15 to \$6.15. The next raise will be effective on October 1, 2006, when it will increase to \$7.15 per hour.



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