



LADDEY CLARK & RYAN

ATTORNEYS AT LAW

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NEWSLETTER

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Profile: Richard Stein



A famous Spanish writer once wrote that the "child is father to the man," meaning that often, who we become as adults is determined when we are young. As a youngster growing up in

New Jersey, Richard Stein, of counsel to Laddey, Clark & Ryan, figured he had three career choices: replace his hero, Mickey Mantle, as Center Fielder for the Yankees, take to outer space as an Astronaut, or become a Lawyer. While he still follows baseball and space exploration closely, being a practical sort, Richard chose the law. Although his choice seems obvious to him now, the primary emphasis of his practice, municipal law, was a topic hardly ever mentioned in law school. Richard says that, "I remember studying a total of two municipal law cases in three years of law school."

When Richard joined the Municipal Law Practice Group at Laddey, Clark & Ryan, he brought with him over 20 years of experience working with local governments. Through his municipal law practice, Richard represents municipalities as the Attorney for the local governing body, the Planning Board, Zoning Board or the Board of Health. He also serves as the Municipal Prosecutor in one community. In towns where he is not a public official, Richard uses his experience and knowledge to represent individuals and developers in many different projects ranging from residential subdivisions, self-storage facilities, senior housing projects, general

commercial and office development and many special projects such as expansion of church buildings and facilities. Richard's unique perspective of understanding both sides - the perspective of local government and private parties, such as developers - is a powerful tool which enables him to reach results that are both feasible for the local government and in line with his client's goals and objectives.

With New Jersey's strong tradition of home rule, Richard says that many of his clients are simply amazed at how directly local government touches everyone's life on a daily basis.

Richard's unique perspective of understanding both sides - the perspective of local government and private parties - is a powerful tool

One of the most common examples of a local government's impact on a person's daily life is the municipal court. In addition to his other government work, Richard has been a Municipal Prosecutor for his entire legal career. As the Court of first resort, Municipal Court is the forum where many of the issues that directly effect citizens' lives are heard. Issues like traffic summonses, zoning violations, Board of Health violations and disorderly conduct charges are all handled in this "people's court."

People who go to Municipal Court may

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Buckling Up For The Seatbelt Defense

by Michael A. Mattessich, Esq.

What is the cost of failing to use your seatbelt while you are traveling as a front seat passenger in an automobile in the State of New Jersey? To answer in one familiar word: "priceless."

Automobile drivers and front seat passengers are required to wear seatbelts under The Passenger Automobile Seat Belt Act of 1984. The New Jersey Supreme Court, in the case of *Waterson v. General Motors Corp.*, has recognized the effectiveness of seatbelts in reducing death and injury from automobile accidents. Seatbelt use increases your chance of surviving a potentially fatal crash by 45 to 73 percent and reduces your risk of suffering moderate to severe injuries by 44 to 78 percent.¹

Although an increased risk of injury may be obvious, your legal risks in failing to wear a seatbelt are not. Deciding not to wear seatbelts can not only effect your health, but also may have legal ramifications. Under the current law, a negligent driver of a vehicle responsible for injuring you or your passengers may have a defense if you or your passengers failed to wear seatbelts. Motorists must buckle-up to

safeguard against the risk of feeling the impact of the "seatbelt defense."

The economic losses that resulted from automobile accidents in 2000 totaled an estimated \$230.6 billion.² The estimated economic costs associated with a critically injured crash survivor are \$1.1 million.³ When a motorist suffers injuries that the use of a seatbelt could have prevented, Courts are becoming increasingly unwilling to make someone else responsible for the cost of those injuries. Consequently, injured motorists may have difficulty recovering damages that the use of a seatbelt could have prevented, which are known as seatbelt damages.

Seatbelt damages result when a motorist's seatbelt nonuse increases the **extent or severity** of injury. Seatbelt damages occur in accidents having two distinct collisions: the first collision being the impact of the automobiles, and the second being a motorist's impact on the vehicle's interior. If there is evidence of injury resulting from the second impact, a jury may decide that the injured motorist was negligent in failing to use a seatbelt.

Fortunately, the percentage of the population using seatbelts has

increased in recent years. Also, the seatbelts themselves have become more effective in preventing injuries. The seatbelt defense provides one more compelling reason to buckle-up.

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1 U.S. Department of Transportation, National Highway Traffic Safety Administration report, *The Economic Impact of Motor Vehicle Crashes*, 2000. Visit www.nhtsa.dot.gov for further information.

2 *Ibid.*

3 *Ibid.*

LCR In The News

Partner Richard I. Clark has been named **Vice Chairman of the Board of Directors of Newton Memorial Hospital**. Richard has been actively involved with the hospital Board for several years. He is a Past President of the Sussex County Chamber of Commerce and the Newton Rotary Club.



Partner Andrew A. Fraser was recently sworn in as **President of the Sussex County Bar Association**. Mr. Fraser handles personal injury litigation and heads the Firm's Workers' Compensation Practice Group. He is one of only seven Certified Civil Trial Attorneys in Sussex County, and is a member of the Board of Trustees for Hilltop Country Day School. Mr. Fraser was recently honored with the 2002 Humanitarian Award by the Department for Persons with Disabilities.



Associate Michael A. Mattessich has received an award from **Somerset Sussex Legal Services** for his involvement in the New Jersey Volunteer Attorney Program. Mr. Mattessich was recognized for volunteering his services to Sussex County's most vulnerable citizens. He is a member of the firm's Personal Injury Practice Group.

Practice Group Offers Employment Law Seminars

Over 90 business managers and human resource professionals recently attended two seminars offered by Laddey Clark & Ryan's Labor and Employment Practice Group. On June 20, 2002 attorneys Tom Ryan and LeeAnn Pounds presented a program on State and Federal law affecting the employer-employee relationship and the hiring process. The seminar on July 18, 2002 included discussions on personnel records, performance evaluations and discipline in the workplace, as well as terminations.



The Erosion of the Employment-At-Will Rule

By Thomas N. Ryan, Esq.

In New Jersey employers and employees start and finish with the same fundamental rule of employment law: in the absence of a statute, individual employment contract or collective bargaining agreement, employment is presumed to be employment-at-will, which means it can be terminated by either the employer or the employee at any time, without notice, for good reason, bad reason or no reason at all.

While it may not reflect good business practices, it is legal to fire an employee simply because you do not like them or there is a personality conflict, as long as the decision is not based on discrimination against a member of a protected class. An employer is not obligated to provide an employee a reason for their being terminated, nor is an employee obligated to provide a reason for quitting a job. Of course, employees are often happy to provide the reasons in vivid detail!

As always, however, there is a catch. Over the past 75 years, we have seen significant erosion of the Employment-At-Will Doctrine. While recognizing that she has the authority to terminate an employee at any time, the employer must remain cognizant of the limitations on employment-at-will.

Erosion of the Doctrine

Initial erosion of the Doctrine began in the 1930s, and continues with the passage of various protective state and federal laws, including:

- ◆ National Labor Relation Act (NLRA)
- ◆ Title VII of the Civil Rights Act of 1964
- ◆ Age Discrimination in Employment Act of 1967 (ADEA)
- ◆ New Jersey Law Against Discrimination (NJLAD)

- ◆ Americans With Disabilities Act of 1990 (ADA)
- ◆ Equal Pay Act (EPA)
- ◆ Family Medical Leave Act (FMLA)
- ◆ Conscientious Employee Protection Act (CEPA)

A Sound Business Reason

Employees may not be terminated when that termination violates one of the protective laws. Every manager and human resource professional must have a working knowledge of state and federal laws which impact upon employment decisions. When an employment action is contemplated that may infringe upon one or more of these laws, the decision-makers should conference with legal counsel before any action is taken.

Should an employment action present any appearance of a violation of state or federal employment laws, the employer must be prepared to articulate and document a sound business reason for the employment action. A decision based upon policies, procedures and documentation can help protect against a misinterpretation of the motive for a termination. In the absence of policies, procedures and documentation, the employee may be in a position to claim that the business justification being offered is a pretext, or smoke screen, for actual discrimination. If poor performance is the stated reason for termination, there should be evaluations and other documentation that reflect poor performance.

Expressed and Implied Contracts

Additional legal arguments that may be used to undermine the Employment-At-Will Doctrine include:

1. **Implied Covenant of Good Faith and Fair Dealing.** This theory pro-

hibits employers from acting in bad faith to prevent employees from receiving benefits of employment.

2. **Contracts.** Written or verbal agreements creating a binding obligation not to discharge an otherwise at-will employee without "just cause." Employers must be sensitive to what they say and write. When in doubt, run it by legal counsel. If you don't intend your personnel policy manual to be viewed as a contract, and it should not, you must include a clear and unambiguous disclaimer in your manual.
3. **Contract Damages.** Such arguments seek to "make employees whole" by putting them in the position they would have been in had they not been discharged. Such damages include back pay, reinstatement and restitution of lost benefits.

Tort Claims

The Doctrine has also come under attack through various tort claims arising from (1) violations of public policy; (2) negligence; (3) intentional infliction of emotional distress; (4) tortious interference with an employment relationship; (5) fraud and (6) defamation.

An informed manager or human resource professional who acts based upon sound policies and procedures, and documents the basis for employment actions, is best positioned to derive the inherent benefits of the Employment-At-Will Doctrine.

Tom Ryan chairs LCR's Labor and Employment Practice Group. He can be contacted at tryan@lcrlaw.com or by phone at 973-729-1880.

This article was developed from materials presented by the Firm's Labor and Employment Practice Group at a seminar on "Hiring and Firing in New Jersey."



Richard Stein

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be accompanied by an Attorney, or they may represent themselves, a process called “pro se” in the law. While it is perfectly fine to represent yourself, Richard counsels that having an Attorney may be beneficial. For example, if you go to Court because of a traffic summons in an effort to negotiate, or plea bargain, points and/or fines, having your lawyer prepared with appropriate facts and evidence may speed the negotiation, prevent a trial, and result in a fair disposition of the charge.

With the retirement of one of his former law partners, Richard came to Laddey, Clark & Ryan four years ago because he felt the firm’s culture of professionalism, diligence and high ethical standards matched his own ideals in practicing law.

Richard’s broad experience (he currently serves as Municipal Attorney for Hopatcong and Stanhope) in municipal law complements those of other attorneys in Laddey, Clark & Ryan’s municipal law department. He enhances a practice group deep in knowledge and expertise. The Firm represents many municipalities in Morris and Sussex Counties. Partner Brian M. Laddey is the Township Attorney for Sparta, while partner Andrew A. Fraser serves as the Municipal Prosecutor for the

town. Andy is also the Prosecutor for the Hampton/Stillwater Municipal Court. Partner Richard I. Clark serves as Municipal Attorney for Franklin Borough and Wantage Township. He is also the Land Use attorney for Frankford and Oxford, and the Zoning Board attorney for Vernon. Partner Thomas N. Ryan serves as labor and employment counsel for Sparta, Franklin and Wantage. The Firm also serves as Special Counsel to numerous other municipalities.

Richard is a graduate of Rutgers University and Catholic University School of Law in Washington, D.C. He is a member of the Sussex County, Morris County and New Jersey State Bar Associations and the Morris County Municipal Prosecutor’s Association. Richard lives with his wife and three daughters in Tranquility, New Jersey. Richard may be reached at rstein@lclaw.com or by calling 973-729-1880.

Cases of Note

SEXUAL HARASSMENT SUIT SETTLES FOR \$500,000

Partner Thomas Ryan and Associate LeeAnn Pounds recently secured a \$500,000 settlement of their client’s claims of *quid pro quo* sexual harassment, hostile work environment, constructive discharge and violations of the N.J. Law Against Discrimination. The Firm’s client was a former corrections officer with the Bergen County Sheriff’s Department. The plaintiff claimed his commanding officer subjected him to *quid pro quo* sexual harassment while plaintiff was seeking a promotion. The case settled just days before trial was to commence in State Superior Court in Bergen County.

VERDICT AFFIRMED

Partner Brian M. Laddey successfully argued on behalf of a municipal client a matter in the Appellate Division of the Superior Court of New Jersey. The Appellate Division affirmed a decision by the Trial Court below, dismissing a claim of conspiracy and malicious prosecution. The claim had been brought against a municipality and its police department for actions stemming from a dispute between neighbors.

Results in any one case cannot be guaranteed. Results will vary from case to case based on particular facts and circumstances.
