

# LEGALLY SPEAKING

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## New Jersey Employment Verdicts Up

It is undoubtably a terrible economy. Every day brings a new story of historic lows hit within some benchmark of our economy. Rather surprisingly then is the very large number of employment verdicts that have been rendered by juries in New Jersey in recent times.

On Friday, February 27, 2009, a jury in Middlesex County awarded a Flemington man \$1 million in compensatory damages consisting of \$500,000 in economic loss and \$500,000 for emotional distress following a month long trial. The whistleblowing allegations were that Michael Battaglia was demoted from his position as a supervisor and assigned to the night shift after lodging complaints that management was fraudulently using credit cards and making derogatory comments about women.

Mr. Battaglia was 51 years old and worked for UPS for 20 years. According to counsel for the plaintiff, he was warned that if he reported the alleged fraud, "we're coming after you." The message and lesson to be learned from this verdict is quite clear, that employers must treat their employees within the parameters of the employment laws, even in a bum economy.

Just two days before the Battaglia decision, on Wednesday, February 25, 2009, an Essex County jury awarded the first female on the New Jersey Transit police force \$1.5 million in damages consisting of \$449,000 in lost wages

and benefits and \$1 million in punitive damages. The jury found that the agency's police chief had retaliated against her after she complained of sexual discrimination.

This case by Lt. Theresa Frizalone was one in a series that had been filed against New Jersey Transit and its head. The plaintiff was a 20-year veteran of the force and claimed that she was passed over for promotions, which costs her salary and benefits, and after she complained of same, she suffered retaliation and emotional distress.

As employers navigate through difficult economic times, they must nonetheless be mindful of the rights of their employees, and furthermore a tough economy does not give an employer a leash to legal anarchy.

These recent verdicts show that juries understand that employers must make difficult decisions in a harsh financial climate, but that notwithstanding, employees working for them for long periods of time trying to do the right thing cannot be trampled upon in the process.

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## Has Your Insurance Carrier Failed to Pay a Legitimate Claim?

Unfortunately, it happens more often than we like. Your insurance carrier has failed to pay a legitimate claim. What do you do now?

Let's begin with what you have – your insurance policy. An insurance policy is a contract in which the insured person or “policyholder” agrees to pay premiums and the insurance company agrees to pay back the policyholder for certain losses. In spite of that agreement, insurance providers frequently fail to process claims in a timely manner or simply fail to pay benefits.

What exactly is bad faith in the insurance world? Bad faith is a legal term that describes a tort claim that an insured person may have against an insurance company for failing to pay the policyholder for a legitimate claim. The bottom line is that a plaintiff in an insurance bad faith case may be able to recover an amount larger than the original face value of the policy, if the insurer's conduct was particularly flagrant or egregious.

In this area, there has been much discussion of the “Fairly Debatable” standard. In *Pickett v. Lloyd's*, the New Jersey Supreme Court held that a cause of action seeking consequential damages for a bad faith failure to pay an insurance claim will be recognized “when the failure to pay . . . results from a denial or a withholding of benefits for reasons that are not even debatably valid” and “the economic losses sustained by the policyholder are clearly with the contemplation of the insurance company.”

Examples of bad faith include undue delay in handling claims, inadequate investigation, refusal to defend a lawsuit, threats against an insured, refusing to make a reasonable settlement offer or making unreasonable interpretations of an insurance policy.

If your insurance carrier failed to pay a legitimate claim, please contact Michael P. O'Grodnick, Esq., an attorney at Mauro, Savo, Camerino & Grant, to set up a free consultation.

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## Changed Circumstances - Am I Entitled to a Reduction in Support?

In light of the current economic situation, many who pay spousal support find themselves wondering whether they may be entitled to seek a reduction in support. There are those who have suffered downsizing or reduction in pay earned at their employment. In order to analyze the viability of making an application to the court for such a reduction in support, the emphasis is on two words: “fair” and “equitable”.

The prevailing legal principle in New Jersey law is that a temporary change of circumstances does not constitute a justification to modify support. This concept was first introduced many years ago in 1950 in the case entitled *Bonnano v. Bonnano*. The court in *Bonnano* would not address a change that was temporary in that matter - meaning, the court found that nothing in the record indicated that the defendant was incapacitated or otherwise incapable of working or that his unemployment was other than temporary.

Ultimately, the court felt that the change was something within the control of the defendant husband. However, this notion of temporary change of circumstances must be balanced against the more recent case of *Lepis v. Lepis* which established the principles for addressing changes in circumstances. Justice Pashman found in the *Lepis* case that if changes in circumstances occurred, the court had to determine whether those changes rendered the spousal support agreement no longer fair or equitable. The court felt that, at its core, the true analysis was whether an agreement was fair. Not only do courts have the power to modify an unfair order, they may have the duty to do so.

Essentially then, the idea of changed circumstances and the fairness standard of enforceability are intertwined. The court has the power to address a temporary change in circumstances when the change determines the fairness of the continuation of the support obligation. Therefore, a change that is minimal or truly temporary will not be entertained by the courts. If an obligation to continue paying support is unfair to the party who is paying it, then it will be addressed. Since each case contains individual facts, circumstances and problems, there is no simple answer. An analysis and review is deemed necessary in order for fairness to prevail.

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