



# THE LANE LAW LETTER

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*We are a litigation firm with a practice emphasizing transportation, insurance and construction law in New York and New Jersey.*

*We hope that you find The Lane Law Letter both enjoyable and useful in keeping you updated on legal developments important to you.*

*Questions or Comments?*

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## We Do Not Forget—Ten Years After 9-11

The country will forever have vivid memories of that horrible day. From Godwin Avenue near our office, the twin towers were always visible, 20 miles away, lifting high into the sky. They were bathed in blue sky by day and lit up the sky by night. We would see them as we drove home. It all changed on September 11, 2001. I reached the office after an early morning meeting to see the staff surrounding a radio, telling me what had just happened in New York. We turned on a television in the conference room and even with the bad reception we watched in horror to see the picture all the country was watching. The towers were coming down. For many weeks, we saw smoke coming from the World Trade Center site, but no building was there anymore.

and their friends, and became a firefighter with the storied FDNY. Dana did his duty that day, entered the burning inferno to help save others. He did not return.

We mourn the loss of nearly 3,000 souls that day, in New York, Shanksville and Washington, D.C., a day that has changed forever the way we go about our lives. The new Freedom Tower is taking shape, though it reaches as yet only half its full towering height. The photograph I took after court on July 12th is testament to the spirit that we will not forget, or be defeated. Note the sky in the picture. That was the 9-11 sky, too.

John Lane

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Many stories of miracles, and of heroes, have been told. Some hit close to us. Our friend, Brian, has told his story of escape from the highest parts of Tower 2, hearing a man trapped behind a wall, and of how together they saved each other, reached the bottom and ran from the building at the firefighters' shouted instructions, toward Trinity Church on Wall Street. There they turned around and saw the tower fall. Another great friend, Gordon, tells of his miracle. He was to be at a meeting in the one of the towers at 9 o'clock that morning. The day before, he changed the time to 10 o'clock, having no idea in advance that the extra hour would save his life. There are thousands of such stories. And there are the stories of those who lost their lives, business people, visitors, tourists, policemen and women, first aiders, and firefighters. One of the firemen came from our town, grew up with our daughters



Photo by John C. Lane

## In The News . . .



We are pleased to welcome Rebecca Lyn Eckert as an associate attorney. Becky earned her undergraduate degree at Ramapo College of New Jersey and received the Juris Doctor degree from Liberty University in Lynchburg, Virginia. A member of the New Jersey Bar and admitted to practice before the U.S. District Court for the District of New Jersey, Becky is practicing in the areas of civil litigation involving transportation, construction and insurance law, and commercial litigation.

In May 2011, John Lane attended the annual conference of the Transportation Lawyers Association, held in Las Vegas, Nevada. The conference presented speakers and programs on timely topics, including the status of new and proposed federal safety regulations and systems, an update on the legal requirements regarding preservation of Electronically Stored Information, as well as meetings of committees focusing on trucking casualty litigation, cargo loss and damage, admiralty law and commercial litigation.

## Forum Non Conveniens Remains an Important and Viable Tool

Four recent cases in New York and New Jersey demonstrate that the doctrine of forum non conveniens, a venerable rule of law tempered with equitable principles, is alive and well. Under the doctrine, one court having jurisdiction over a dispute and the parties, can dismiss a lawsuit before it and allow it to proceed in another court also having jurisdiction. As one commentator, Professor David Siegel of the Albany Law School puts it, the doctrine is designed to spare the local court of the burden of entertaining a case which has no significant

contacts with that first court. New York's doctrine is court-made but codified in statute, while New Jersey – like most states and the federal courts – relies upon judicial case law. The doctrine has an amazing similarity in all jurisdictions. These recent cases show the similarity, and the vigor, of the states' forum non conveniens rules.

Read our full article at <http://www.thelanelawfirm.com> or direct connect.



## NY No-Fault Threshold Defense Supported by Radiologist Report

*Arroyo v. Morris*, decided June 30, 2011, by the New York Appellate Division, demonstrates a useful means to prevent a plaintiff from proving, as he must, that he sustained a "serious injury" as a result of an automobile accident. The decision came upon a motion for summary judgment by the defense. The defense offered sworn statements from their radiologist that his review of plaintiff's MRI films failed to demonstrate an injury from an accident, but rather showed degenerative changes. The doctor reported that the MRI films of the lumbar spine revealed evidence of degenerative disc disease predating the accident and no evidence of recent trauma or causally related injury. He also reported that the MRI films of the left knee demonstrated evidence of a pre-existing chronic condition and no radiographic evidence of recent trauma

or causally related injury.

The plaintiff failed to refute defendant's doctor's position, and thus failed to support an inference that the injury to the spine or left knee was caused by the accident. Plaintiff's physicians, in opposition, made no mention of the degenerative or chronic condition. Without an explanation for ruling out these conditions as causes of plaintiff's injuries, their opinions to the contrary were speculative.

This decision, issued by the prominent First Judicial Department, illustrates the importance of obtaining MRI films and having them independently reviewed by a competent radiologist to support a dismissal for failure of plaintiff to meet the No-Fault Threshold.

## Drunk Driver May Sue the Bar: Voss v. Tranquilino Affirmed

In a ruling described by the New Jersey Law-suit Reform Alliance as “a blow to common sense,” the New Jersey Supreme Court affirmed a lower court decision permitting an intoxicated tavern patron to sue the bar under the dram shop act for injuries he sustained in an accident, and even after he pleaded guilty to driving while intoxicated.

Frederick Voss got himself amply drunk at Tiffany’s Restaurant and then drove himself into a two-car crash. His blood alcohol content was measured at 0.196 percent, more than twice the legal limit in New Jersey. Voss, who was injured in the accident, pleaded guilty to a charge of DWI. He then sued Tiffany’s Restaurant for serving him the alcohol he quite voluntarily consumed. Worse, the Supreme Court of New Jersey has ruled that he is allowed to do so. Why?

The New Jersey dram shop act, passed in 1987, requires proof of visible intoxication when the server provides the patron with alcoholic beverage. Ironically, it even allows the

injured and intoxicated patron to be a claimant. Another statute, the Motor Vehicle Insurance Reform, was passed in 1997. Under this newer statute, anyone “who is convicted of, or pleads guilty to, operating a motor vehicle in violation of [the DWI statute], shall have no cause of action for recovery of economic or noneconomic loss sustained as a result of [an automobile] accident.” The language is perfectly clear.

The Supreme Court held that the 1997 statute cannot be read to repeal the 1987 dram shop act, thus allowing Mr. Voss to sue the bar. Two justices dissented emphatically, that the Court should not “paste in a judicial exception” and “rewrite a clear and unequivocal statute under the dubious assumption that the legislature did not mean what it said.” A bill has now been introduced in the Legislature to bar all lawsuits, including dram shop acts claims, by a driver convicted of DWI.



## Immunity Extended to Basic Life Saving Rescue Squad

This case arises from a fatal shooting of a young man by his own brother, and a suit by the parents against those who tried to save him. In *Murray v. Plainfield Rescue Squad*, decided March 30, 2011, the Court ruled that a statutory immunity is determined by the services performed, not the type of rescue squad B Basic, Intermediate or Advanced B performing the service.

Odis Murray was shot by his brother Akeem in front of their home. Police and emergency responders were called to the scene and he was removed to Muhlenberg Regional Medical Center, where he was pronounced dead from the gunshot wound to his aorta. One of the responders was Plainfield Rescue Squad, a Basic Life Saving Unit. His parents sued the Rescue Squad, among others, for negligence in their treatment of Odis during the half hour before he was taken to the hospital.

The Rescue Squad invoked the immunity provision of a New Jersey statute which is aimed at intermediate-level EMTs but which also applies to officers and members of a first aid, ambulance or rescue squad, “while rendering of intermediate life support services in good faith.” Our sources in the emergency response field advise that despite the statute, New Jersey actually licenses only two classifications, basic and paramedic; there is no intermediate EMT designation in New Jersey.

The Appellate Court found that the members of the Rescue Squad, though not an intermediate-level life-saving unit, were performing intermediate life support services when they administered cardiac defibrillation to Murray in accordance with State regulations. They are entitled to the statutory immunity because defibrillation is considered an intermediate-level life-support service, according to the Court.





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## There's No Free Ride

Delivery truck driver, Victor Simpkins, parked his truck on Adams Street in Cinnaminson, New Jersey, to deliver an order of stationary liquid oxygen to a customer's home. While he was doing so, three boys jumped on the rear platform of Victor's truck. Victor returned to his truck and began to drive off, unaware that the teenagers were sitting on the back of the truck. Plaintiff Anthony Badalamenti fell off, striking his head on the pavement, when the truck rode over a bump. Anthony and his mother brought suit alleging that Mr. Simpkins was negligent in failing to inspect the rear of the truck, where he would have seen the trespassing boys. The New Jersey Appellate Division disagreed, holding that the driver had no duty to inspect for the unexpected riders on the back of the truck. The case, *Badalamenti v. Simpkins*, was decided on July 20, 2011.

The Court emphasized that the federal regulations requiring pre-trip inspections are designed to uncover mechanical defects, such as in tires and brakes, which

might endanger the public, not to locate a stranger. Anthony "does not fall within the class of persons for whose benefit the statute was enacted." Thus, the regulations are not applicable as evidence of a duty or of negligence.

The Court referred to the 75-year old New Jersey case of *Meade v. Purity Bakers*, as governing law under an identical fact situation, and discussed identical decisions of thirteen other states and the Sixth Circuit Court of Appeals, all holding that no duty exists to the grossly negligent trespasser except "not willfully or wantonly to injure him after learning of his presence."

See our full analysis of the Court's decision on our website:

