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GluckWalrath attorneys receive favorable ruling in Nursing Home matter before Appellate Division

On March 25, 2013, the Superior Court of New Jersey, Appellate Division, issued a decision in the respondent/defendant's favor in the matter Liberty House Nursing Home of Jersey City, Inc., d/b/a Liberty House Nursing Home v. GRE Jersey City, Inc., Docket No. A-0206-11T1. GluckWalrath served as attorneys for the respondent/defendant, represented by Andrew Bayer, with William C. Katz on the brief. The decision shall serve as precedent in determining ownership of a Nursing Home's Certificates of Need when operator leases are terminated.

On appeal, the Appellate Division found that the party's intentions to not be bound by the 2005 Memorandum of Lease was supported by credible evidence, binding them to the lower court's decision. The Appellate Division also found that the record fully supports the lower court's determination that the respondent was

"merely leasing its right to apply for an operator's license at the subject property to Liberty House during the term of the lease[.]" the opportunity to apply for the license "would revert back to [the respondent] as owner of the facility that was built solely as a nursing home pursuant to the custom in the industry[.]" and reasoned that respondents opportunity to seek this license, with its attendant bed rights, reverted to respondent.

Andrew Bayer believes this decision will serve to guide future legal issues between Nursing Homes and third-parties in the future. "The issue of bed rights between lessees and lessors is an area that is seeing more attention over the past several years. This decision will help provide some clarity to the contentious issue and ensure certainty when negotiating leases in the Nursing Home realm."

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State of New Jersey announces takeover of Camden School District

On March 24, 2013, Governor Christie made a press appearance in Camden, New Jersey to announce that the State would be taking over management of the city's school district.

"It's unacceptable, in fact it's outrageous, and the system is broken and we need to take responsibility for fixing it," announced Governor Christie in the conference. "I believe a failure to act, in this instance, is a greater sin than any other mistake we can make," explaining the justification for the decision. The Governor believes the problem with the school district is that the students do not achieve the same proficiency as in other districts in the State, despite spending about \$5,000 more per student than the average.

Camden Mayor Dana Redd supports the intervention, ensuring that the process needs to be a joint effort. "So it's going to take the village to help to make this a really successful model, and we will be conducting meeting all around the city to talk about the transformational change that is coming to the district," she said.

There is little successful precedent for a move such as this in New Jersey, and opponents believe the intentions are politically motivated. In 2002, under then Governor McGreevey, the State took over the City of Camden government in an attempt to rectify the poverty and infuse the city with some business partnerships. Ultimately, the State ended the takeover in 2010 without accomplishing many of the intended goals. And not without reason. This year, Camden was ranked the most dangerous city in the United States, based upon 2011 crime rates. It is also ranked as the poorest city based upon the U.S. Census.

Opponents sense that the takeover of the school district has to primarily do with Governor Christie's intended goal of education reform. Governor Christie is on the record as disagreeing with the Abbott rulings and seeks to overturn them, which set off a nomination battle between the Governor and Legislature. Taking control of the district will enable the Administration to make decisions regarding school funding and renegotiation of teacher contracts.

The intervention will first need court approval, which is anticipated to take about eight weeks.

SEQUESTER IMPACT IN NEW JERSEY

- \$52 million cuts to army base operations
- \$11.7 million cuts in school funding
- \$17 million loss for education for children with disabilities
- \$5 million decrease in environmental funding to clean air and water programs
- \$2.3 million loss in grants for substance abuse programs
- \$752,000 decrease in HIV testing programs.
- \$488,000 loss in funding to meals for seniors in need
- \$336,000 decrease to programs that support law enforcement, prosecution, and courts.
- \$268,000 less to disease vaccination programs.
- Head-start and early education funding will be decreased, affecting over 1,000 students.
- Over 600 fewer work-study jobs to assist payment of college.

Governor files appeal in federal sports betting litigation

On Saturday, March 2, Federal District Judge, Michael Shipp issued a ruling in the lawsuit, NCAA v. Christie, addressing the state law passed in January 2012 that permitted wagering on professional and college sports at racetracks and Atlantic City Casinos. The professional and college sports organizations filed suit arguing that this law violated the 1992 federal law requiring states to restrict sports betting except in four states, Nevada, Delaware, Montana, and Oregon. These organizations took the position that the state law would undermine the integrity of professional and college sports, which the 1992 law sought to protect. The State also filed suit arguing that this 1992 law was unconstitutional because it discriminated against certain states unfairly.

Judge Shipp held "[a]fter careful consideration, the Court has determined that Congress acted within its powers and the statute in question does not violate the United States Constitution."

The Christie administration filed a notice of appeal in mid-March indicating its intention to appeal this decision. The law, if permitted, could generate up to \$1 billion in additional revenue for the State.

Online gambling bill becomes law

After conditionally vetoing the original bill, A-2578 (Burzichelli, 3rd)/S-1565 (Lesniak, 20th), the bill authorizing Internet gaming at Atlantic City casinos, Governor Christie signed it into law. The bill was amended by the legislature to incorporate his recommendations.

Governor Christie issued a statement on the signing of the law. "I am pleased to say that today I signed New Jersey's Internet Gaming Bill, opening the way for new opportunity to bolster our efforts to continue the revival of Atlantic City, its casinos, and entertainment offerings." The amended bill added several provisions including extending existing prohibitions on casino-related employment and representation, establishing a sensible requirement that state elected officials promptly disclose their past and present representations of gaming license holders, increased funding for compulsive gambling, and a ten-year sunset provision to ensure this initiative is reviewed after the trial period.

In Governor Christie's budget proposal, he anticipates casino revenues to grow by \$200 million in FY2014, a majority of this growth from newly realized Internet gambling taxes collected. This estimate predicts year one Internet casino revenues at \$1.2 billion.



Democratic Gubernatorial Challenger Barbara Buono speaking at "A Rally for New Jersey's Future in New Brunswick on February 2, 2013."
Photo from: BuonoForNJGov



Governor Christie Unveils \$32.9 billion FY2014 Budget proposal

On February 26, 2013, Governor Christie held his budget address before a joint session of the legislature. The budget proposal submitted to the legislature provided for \$32.9 billion in state spending and anticipates a \$300 million surplus. This compares to a \$32.1 billion proposed budget for FY2013 with a \$570 million anticipated surplus. And the FY2013 budget proposal, represented an 8% increase over the previous year's budget. In his address, the Governor touted his proposal as being able to hold spending below FY2008 levels.

The unveiled budget provides almost \$9 billion for State aid to schools and \$1.676 billion in payments to the State's pension fund an increase of nearly \$100 million and \$600 million respectively. The budget also includes \$213 million in additional business tax benefits, now totaling \$540 million over three years. Notably, the address served as an official announcement that New Jersey would be participating in the Medicaid expansion as offered by the Patient Protection and Affordable Care Act. By expanding Medicaid coverage in New Jersey, the state will receive Federal grants of approximately \$227 million in FY2014

and provide healthcare coverage for an additional 104,000 citizens.

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MINOR'S TANNING BILL SIGNED INTO LAW

On April 1, 2013, Governor Christie signed A-2142 (Caputo, 28th)/S-1172 (Weinberg, 37th), a bill which prohibits minors under 14 years of age from using spray tanning in tanning facilities and prohibits minors under 17 years of age from using tanning beds. This law proved to be a major victory for our client, the American Cancer Society, Cancer Action Network.

Along with his signature, Governor Christie issued a signing statement acknowledging the increased cancer risks associated with indoor tanning and fellow Republican and melanoma survivor, Assemblywoman Schepisi (39th), issued a statement commending the Governor for raising awareness on this issue.

Violators of this newly enacted law will be subject to a fine. Minors older than 18 will be required to obtain parental permission before entering tanning.



Governor Christie announces the takeover of the Camden School District at the Camden High School.

(BUDGET, continued from page 1)

However, many groups, including Wall Street are skeptical of the optimistic view the administration is taking with this year's budget. Standard & Poor's repeated its concerns from the previous year (when it downgraded the State's credit rating).

"These are significant issues for New Jersey given the state's limited financial flexibility and high fixed costs related to debt and post-retirement liabilities," John Sugden, credit analyst for Standard and Poor's, reported. Currently, New Jersey holds a AA- credit rating placing it in the bottom ten rated states, with a downgrading from "stable" to "negative".

While the Governor predicts that FY2014 revenues and gross income tax receipts will return to pre-recession levels, the structural deficit that has accumulated in the past two fiscal years has made balancing the current budget difficult.

From FY2012 and FY2013, the anticipated budgets fell a bit short in revenue, combining for a combined predicted shortfall of \$548.8 million as of January 1, 2013. The Governor's budget downgraded his FY2013 revenue forecast by \$406.3 million, conceding that the anticipated tax revenues were slower than

predicted. Complicating the \$406.3 shortfall, there are additional obligations that total somewhere between \$2.8 and \$3 billion. This number can be calculated from the \$994 million in FY2014 obligations, which includes the \$690 million in legally obligated pension contribution and \$194 million in third year business tax cuts, both mentioned above, and other payments to the Transportation fund. It also includes "one-shot" payments made in FY2013, which are non-recurring, totaling \$1.115 billion, \$250 million in income tax increases that will serve as a "one-shot" due to Federal Tax policy changes, the \$123 million FY2012 revenue shortfall, and several possible budget

issues for FY2013 dealing with Medicaid and Affordable Housing that could cost up to \$400 million.

With the property tax rebate shift, much of the issues with lower than expected revenues for FY2014 should be resolved, with an anticipated increase in income tax revenues by 6.5%, sales tax revenues by 4.7% and a 7.0% increase in corporate tax revenues. These numbers should account for about a \$1.52 increase in revenues for the upcoming year. However, Christie's Treasurer, Andrew Sidamon-Eristoff stated that the FY2014 budget would still rely upon \$1.07 billion in one-shot revenues.

Currently, the only known one-shots include taking \$150 million of Clean Energy funds dedicated to energy efficiency programs, taking \$75 million of the built in \$375 million end-of-year surplus and eliminating the \$376 million pay-as-you-go transportation capital funding. The transportation capital being used are from higher than expected proceeds on the previous two transportation bond sales, according to Sidamon-Eristoff. This essentially means that the \$376 million will be bonded debt.

This month the legislature is dedicating much of its schedule to budget appropriation hearings to further flesh out the budget details before the budget sessions become the primary focus this June.

NJ Hospitals Association predicts hardship associated with sequester cuts

As part of the sequester scheduled to result in budget cuts on April 1st, the New Jersey Hospitals Association has released estimates that the expected 2% cuts to Medicare will cost the state's hospitals about \$70 million in 2013 and nursing homes about \$21 million. The cuts will not affect seniors' co-payments but it will affect the reimbursement amounts of physicians and service providers. Betsy Ryan, CEO of NJ Hospitals Association explained that "a 2 percent reduction in payment may mean the difference between breaking even or having a small margin, or operating in the red." Ultimately, this could put healthcare jobs in jeopardy, leading to even higher rates within the state.