

MINUTES OF COMMISSION MEETING

October 15, 2020

Present at the New Jersey Law Revision Commission meeting, held via video conference, were: Chairman Vito A. Gagliardi, Jr.; Commissioner Andrew O. Bunn; Commissioner Virginia Long; Commissioner Louis N. Rainone; Professor Bernard W. Bell, of Rutgers Law School, attending on behalf of Commissioner David Lopez; and Grace Bertone, of Bertone Piccini, LLP, attending on behalf of Commissioner Kimberly Mutcherson.

In Attendance

Professor Jon Romberg of Seton Hall University School of Law, and David McMillin, Esq., Director of New Jersey Legal Services, and other members of the public who chose not to participate in the meeting, were in attendance.

Minutes

The Minutes from the September 16, 2020, meeting were unanimously approved by the Commission on the motion of Commissioner Bunn, which was seconded by Commissioner Long.

Autonomous Motor Vehicles

Samuel Silver discussed with the Commission a Draft Final Report regarding the current state of the law involving autonomous motor vehicles. He began with a brief history of Staff's work in this area.

On August 20, 2018, the New Jersey Law Revision Commission authorized Staff to begin preliminary work in the area of autonomous vehicles. Staff began to review information collected from the National Highway Traffic Safety Administration, the New Jersey statutes, and the Uniform Law Commission. At the October 18, 2018, meeting of the Commission, Staff was authorized to engage in outreach and monitoring of this area of law.

On March 28, 2019, Governor Murphy signed Joint Resolution No. 2, which created the New Jersey Advanced Autonomous Vehicle Task Force (NJAAVTF). This Task Force is comprised of eleven members – the Commissioner of Transportation; the Chief Administrator of the New Jersey Motor Vehicle Commission; the Director of the Division of Highway Safety; the Commissioner of the Board of Public Utilities; five civilians; one member of the public chosen by the President of the Senate; and one member of the public chosen by the Speaker of the General Assembly. The purpose of this Task Force is to conduct a study of autonomous vehicles and make recommendations on laws, rules, and regulations.

Since 2019, there has been considerable activity in this area of law. On September 12, 2019, the National Highway and Transportation Safety Administration issued new federal

guidelines for autonomous driving systems. By October 09, 2019, twenty-nine states had enacted legislation regarding autonomous vehicles. In January and February of 2020, three bills were introduced in the New Jersey Legislature on this subject. Finally, on October 08, 2020, Staff confirmed that the NJAAVTF met and presented its findings to the Governor and the Legislature. This Report provides a roadmap for the State as it considers how to bring autonomous vehicle technology to the Garden State.

Mr. Silver commented that the drafting of statutes in a field where technology is advancing so rapidly may result in language that could quickly become antiquated. The NJAAVTF has ready access to technical experts and has thoroughly examined this area of law and submitted its recommendation to the New Jersey Legislature. The pending bills in this area indicate that the Legislature is aware of the issues involving autonomous vehicles. Thus, Mr. Silver recommended that the Commission defer to the NJAAVTF and formally conclude work in this area without a recommendation.

On the motion of Commissioner Bunn, which was seconded by Commissioner Long, the Commission unanimously voted to conclude work in this area and release the Report as a Final Report without a recommendation.

Inheritance from a Deceased Child

Jennifer Weitz discussed a Draft Final Report on the subject of parental inheritance from a child. In *In re Estate of Fisher*, 443 N.J. Super. 180 (App. Div. 2015) the Appellate Division considered a case in which a biological father had not taken the steps necessary to allow continued visitation rights while his son was alive, but had not manifested a purpose to permanently forego his parental rights. The Court determined that although the father was not a consistent presence in his son's life, he had not shown any intention to abandon his child. He paid child support throughout his son's life. The Court concluded that his behavior did not constitute abandonment.

Next, Ms. Weitz discussed parental inheritance from a child in the context of a non-biological, or psychological, parent. In *Matter of Estate of Acerra*, 2017 WL 6048117 (App. Div. Dec. 7, 2017) the father figure cared for the putative son for the son's entire life, even after the death of the child's biological mother. The non-biological father never married the child's mother, nor did he adopt him as his son, but he did care for his son throughout his life. After the son died, the "father" filed suit under New Jersey's Parentage Act to be declared the son's legal father to inherit from the son's estate.

The Appellate Division affirmed the trial court's denial of the non-biological father's petition. The Court opined that the concept of psychological parentage has only been applied in situations involving child custody, visitation, and support, and that there is no statutory authority to recognize such a relationship for purposes of intestacy. In the absence of any enforceable agreement to adopt or any steps taken to initiate an adoption proceeding, the Court declined to consider the relationship an equitable adoption.

Since *Acerra* was decided, there has been no change to New Jersey's laws that would establish a right to inherit under such facts. The Uniform Probate Code, which does recognize psychological, or *de facto* parentage for purposes of inheritance from a child, does so only upon an adjudication of parentage. The issues underlying this project will be considered by the Commission as a part of its ongoing work in the area of parentage, and the Uniform Probate Code. As a result, Ms. Weitz recommended that the Commission conclude work on this independent project without offering a recommendation.

On the motion of Commissioner Bunn, which was recommended by Commissioner Bell, the Commission unanimously voted to release the Report as a Final Report without a recommendation.

Standard Form Contract

John Cannel discussed with the Commission a Memorandum containing proposed changes to the draft statutory language made in response to comments submitted by stakeholders. Commissioner Long recused herself from participation in this project citing her position as a Board Member with Legal Services of New Jersey, a stakeholder in this discussion.

§1. Definitions

The definitions contained in the Report have been moved into Section 1, a consolidated definition section. Mr. Cannel shared his concern with the Commission that the definitions of "basic price", "negotiated term", "primary term", and "secondary term" are too substantive to be separated from the material to which they relate. He suggested that those terms be returned to the statutory sections in which they originally appeared. He acknowledged that removing the terms from definitions section assumes that someone accessing the statute will read the entire Act, in order. It further assumes that the defined term is only used in the section in which it is defined, which is not the case in this Report.

Mr. Cannel advised the Commission that no stakeholder objected to the consolidated definitions section. Commissioner Bell said that because terms are used throughout the Report, he favored a consolidated definitions section. Commissioner Bunn agreed. It was the unanimous consensus of the Commission that the definition used in the report be consolidated in Section 1.

Mr. Cannel explained that there has been disagreement regarding the definition of "basic price," "negotiated term," "primary term," and "secondary term."

David McMillin expressed concern about the language in the definition of "basic price" that described it as "immediately payable", noting that contract language concerning payments over time would not, according to this definition, be part of the basic price and thus would not be a primary term of the contract. He questioned why it makes sense to talk about the down payment as a basic price term when most of the money under the contract has not been transferred.

Commissioner Bell said that, as he read the language, if it is not immediately payable and is not therefore a primary term, then it is a secondary term and subject to the protections provided

for those terms by the Act. For instance, a down payment of \$500 would be the primary term. If the total contract price is \$5,000, then the remaining \$4,500 would be secondary and subject to increased scrutiny. Mr. Cannel advised that the revision gives more rights to the consumer than the current law does. In response to Mr. Cannel's explanation, Commissioner Bell asked the commenters why the revision would be objectionable.

Mr. Cannel asked Mr. McMillin whether he would prefer all the terms to be treated as secondary terms. Mr. McMillin replied that if all the terms become secondary then it would be hard to apply the rules.

Professor Jon Romberg expressed concern about the phrase "subject to adjustment" in the definition of "negotiated term", saying that it is far too broad and would likely lead to merchants embedding language in the contract that says its terms are "subject to adjustment" thus making them all "negotiated" terms.

§2. Scope

Section 2 of the standard form contract project defines its scope. The Act would govern all standard form contracts used in the open market with the exception noted in this section.

§3. Effect on Other Laws

Mr. Cannel stated that the language that was received from stakeholders has been incorporated into Section 3, which deals with the effect of the Act on other laws. The Act provides comprehensive provisions for the enforcement of standard form contracts. With four exceptions, the Act supersedes law that conflicts with the Act.

Professor Romberg cautioned that unconscionability should not be left out of this section. Mr. Cannel said that the doctrine of unconscionability is included in the Act.

§4. Time of Effectiveness of Standard Form Contracts

Professor Romberg suggested that the language contained in this section is imprecise. Mr. Cannel responded that greater precision might be problematic for a consumer, and that a factfinder is better suited to determine specific issues. Professor Romberg disagreed, and said this section is still unclear, especially if a contract is not accessible to the consumer at the time of purchase.

Commissioner Bell questioned whether a contract would be effective if the consumer views part of it, for instance the face page only, or when they do not return it. Professor Romberg agreed, asking whether it counts as "accessible" if a consumer receives the face page of a contract with a URL leading to the balance of the contract terms. He also asked whether contract terms would be effective if a merchant sends them to the consumer months after the "sale".

Commissioner Bunn asked what would happen if the consumer wants the contract to be effective, but they have not received it. He suggested wording this section in the negative, so that it states that the terms of a standard form contract do not become binding against the consumer, until the sale occurs and the contract is made accessible to the consumer.

David McMillin questioned that if this section is designed to make a choice regarding how box contracts are treated in the law, and suggested that, if so, the courts should decide this issue. He continued that this section does not make sense outside of the box contract setting, and added that it leaves out a host of situations in which the consumer can cancel a contract, and that replacing centuries of common law is bound to lead to problems.

§5. Cancellation of Standard Form Contracts

Mr. Cannel stated that the comments received from stakeholders were incorporated into this section. Subsection e. has been revised to allow the consumer to cancel the contract within 30 days or a longer time stated in the contract.

Subsection d. allows the consumer to cancel the contract if there has been no substantial performance. Commissioner Bunn opined that the term “and” at the end of subsection d. should be replaced with an “or”, to make it clear that not all of the subsections must apply before a consumer may cancel a contract. Laura Tharney suggested that language could be added to the initial sentence to clarify that the consumer may cancel the contract “if any of the following apply:” and Commissioner Bell agreed.

Professor Romberg expressed a number of objections to this section. He stated that the section adopts the “law and economics” approach to box terms that was espoused by Judge Easterbrook. He noted that although this approach has been adopted by many states, it has not been adopted in New Jersey. He said that this disputed issue should be left for the New Jersey courts to interpret. He also said that this section, as currently drafted, can be argued to be pro merchant but it may also be viewed as pro consumer because it suggests that the contract can be cancelled, which suggests that it has already been formed prior to accessing the boxed terms. Under that interpretation, the boxed terms would represent only proposed modifications to the contract, and this provision would provide consumers with an additional right to cancel the contract. He concluded by noting that the New Jersey Supreme Court should make the determination as to which approach to adopt in these instances.

Mr. McMillin said that the entire section should be eliminated since, in his view, it does not make sense to pick a side that the courts have not selected yet, and that the section does not apply outside of boxed contracts.

§6. Primary and Secondary Terms

Mr. Cannel advised that this substance of this section was moved, with the definitions, to Section 1 and that concerns previously raised by commenters were incorporated into the revised language. Mr. Cannel stated that most of the substance of Section 6 was moved to Section 1, which Commissioner Bunn felt was a better approach.

Ms. Tharney suggested that, in light of the changes to this section, the header should be changed to “Terms”.

§7. Primary Terms

Section 7 addresses the primary terms of a standard form contract. Mr. Cannel observed that by challenging both the primary and secondary terms of a contract the consumer has a way out of any onerous price terms. He added that common law defenses are complicated and often subject to misinterpretation.

Commissioner Rainone pointed out that providing examples of equitable defenses is inherently problematic, and that the Report should use the wording “including but not limited to.”

§8. Secondary Terms

Section 8 addresses the secondary terms of a standard form contract. Ms. Tharney began the discussion by noting that, in this draft, this section was consolidated with the former Section 10, making Section 8 longer but more comprehensive.

The goal of newly added subsection (b) was to rephrase the provision that appeared in earlier drafts to make it clear that a disparity in the bargaining power of the parties is not required for a finding of unconscionability. Pursuant to the new language, all consumers may avail themselves of the defense, not just an unsophisticated consumer. Both Mr. McMillin and Professor Romberg said that current New Jersey law says that a disparity in bargaining power is not irrelevant, but rather is expressly relevant and it is key to procedural unconscionability.

Commissioner Bell stated that currently, no evidence is needed to raise a defense of procedural unconscionability, but that evidence could be provided by the litigant. Mr. Cannel said that this might be read as “prove it if you want to.”

In subsection (d), it was suggested that the phrase “but not limited to” should be added after the word “including” and just before the colon in the first sentence, as was done in Section 7.

Subsection (f), regarding enhanced scrutiny, was added in response to concerns expressed by commenters. It was designed to deter merchants from embedding suspect terms, likely to have a substantial negative impact on consumers if the contractual relationship breaks down, in with otherwise boilerplate language that is generally of limited concern to consumers.

Mr. McMillin was concerned that the phrase, “subject to enhanced scrutiny” has many different meanings. He also said that “enhanced scrutiny” suggests that some of the kinds of provisions subject to such scrutiny would be permitted. Mr. McMillin also noted that choice of law is different than the choice of jurisdiction.

David McMillin observed that *forum non conveniens* is subject to enhanced scrutiny under this section. He continued that the term “enhanced scrutiny” is accorded a deferential meaning. He continued that the concepts of “choice of law” and “forum” are unrelated and not an issue that is specific to standard form contracts. Commissioner Bell inquired whether there was anything in this section that limits the doctrine of *forum non conveniens*. Mr. Cannel replied that he did not think there was, adding that there are also constitutional issues in this area of the law.

Mr. McMillin stated that in both Sections 7 and 8 the Commission should focus on unconscionability and not treat it separately because it intersects with the idea of the basic price terms. He continued that under an analysis guided by these sections, the literal definition of basic price terms would, in practice, mean no contractual price at all. Further, he questioned why, if it is accepted that the secondary terms of a standard form contract are all legally protected, does the Report distinguish between primary and secondary terms. Mr. McMillan felt that this distinction will create new problems in the law for consumers and limit the ways in which a consumer may cancel a contract. Mr. McMillin stated that these problems are inherent in attempting to modify existing contract law, and that the Commission should reconsider the idea of dividing contract terms into primary and secondary.

Professor Romberg stated that the protections concerning unconscionability found in this Report may not be robust enough to achieve their objective. In his opinion, unconscionability is unreasonably limited for primary terms, and not adequate for secondary terms. Professor Romberg noted that this approach selectively hurts consumers as to negotiated terms and product specifications. He also stated that consumer protections already exist in situations involving misrepresentation.

§9. Secondary Terms: Risk of Loss

Mr. Cannel noted that commenters did not submit comments regarding this section.

§10. Secondary Terms: Remedies for Non-Conforming and Defective Products; Choice of Forum; Damage Limitations

This section was stricken in its entirety, and its provisions merged with Section 8 as noted previously.

§11. Attorney Fees

This section was modified in response to commenter recommendations. Mr. Cannel stated that this section would be renumbered as a result of the deletion of section 10.

§12. Interpretation of Contract; Unilateral Change of Contract Terms

The initial subsection of this section had been previously deleted, and the remaining subsection (b) was deleted from the latest draft in response to a recent suggestion by a commenter.

Staff was directed to review the comments of both the Commission and the stakeholders and present a revised Final Report to the Commission at a future meeting.

Posse

In New Jersey, the governing body of a municipality may ask the Governor to use the State Police as a “posse.” Samuel Silver discussed with the Commission a Draft Tentative Report proposing a modification to N.J.S. 53:2-1 that would remove the word from the statute.

The term “posse” is used only once in the body of New Jersey’s statutory law. This term first appeared in New Jersey’s case law in 1795. In *Tull v. State*, 125 N.J. Super. 222, 274 (App. Div. 1973) the Court noted that the Legislature has granted the New Jersey State Police the authority to cooperate with any other state, department, or local agency.

There are several concerns raised by the term “posse” in N.J.S. 53:2-1. First, the term “posse” is not a defined term. Next, the role and authority of a “posse” are not set forth in either the statute or the case law. In addition, there is no indication of what the Governor’s role is after the posse has reported to the municipality. Finally, there is no indication of the length of time that the State Police may serve as a posse.

Mr. Silver suggested that the statute may benefit from the elimination of the term posse. The removal of the term, he continued, would clarify the law while maintaining the intent of the legislature to keep the New Jersey State Police available at the direction of the Governor and to send them into municipalities only at the request of the municipality for a specific purpose.

On the motion of Commissioner Berton, which was seconded by Commissioner Cornwell, the Commission unanimously voted to release the Report as a Tentative Report.

Temporary Disability Benefits to Certain Volunteers

Samuel Silver discussed with the Commission a Draft Tentative Report proposing modification of N.J.S. 34:15-75 to clarify that volunteer firefighters injured in the line of duty qualify for temporary disability coverage even if they are not otherwise employed at the time of the injury, as discussed in *Kocanowski v. Twp. of Bridgewater*, 237 N.J. 3 (2019).

The efforts and risks borne by public interest volunteers have long been recognized by the New Jersey employment law. The compensation for injury or death to a list of enumerated volunteers and other workers is set forth N.J.S. 34:15-75. The compensation is based upon a weekly salary in an amount that is the maximum compensation allowed by the Worker’s Compensation statutes.

In *Kocanowski*, a volunteer firefighter was injured during the course of performing her duties. At the time she sustained her injury, she was not otherwise employed. The Division of Worker’s Compensation denied her request for benefits, finding that compensation was intended to serve as a wage replacement. The Appellate Division affirmed the Division’s decision, finding that pre-injury outside employment is a necessary predicate to awarding temporary disability. The injured firefighter sought certification to the Supreme Court.

The New Jersey Supreme Court determined that the language contained in the statute was ambiguous. An injured volunteer, the Court noted, could be deemed to have been at work, unable to continue to work, and is unable to return to work. In addition, the requirement that an injured volunteer maintain pre-injury outside employment leads to an absurd result. The Court, therefore, reversed the decision of the Appellate Division and remanded the matter.

Mr. Silver advised the Commission that the proposed modifications render the statute gender neutral and removes the reference to the phrase “based on a weekly salary” to comport with the Court’s holding in *Kocanowski*. Finally, new statutory language suggests that the injury or death must occur at time when the volunteer is performing his or her duties.

On the motion of Commissioner Bell, which was seconded by Commissioner Cornwell, the Commission unanimously voted to release the Report as a Tentative Report

Overdose Prevention Act

The Overdose Prevention Act (OPA), N.J.S. 24:6J-1 *et seq.*, confers immunity on certain individuals who seek medical assistance for themselves or others experiencing the effects of a “drug overdose” and on those for whom the medical assistance is sought. Arshiya Fyazi provided the Commission with an update regarding the results of research in this area, including a 50-state survey of this subject matter.

The definition of the term “drug overdose”, and the application of the OPA, was considered in by the Appellate Division in *State v. W.S.B.*, 453 N.J. Super. 206 (App. Div. 2018). The term “drug overdose” is defined in N.J.S. 24:6J-3 as “an acute condition including, but not limited to, physical illness, coma, mania, hysteria, or death resulting from the consumption or use of a controlled dangerous substance or another substance with which a controlled dangerous substance was combined and that a layperson would reasonably believe to require medical assistance.”

In *W.S.B.*, a police officer responded to a report of an individual who was allegedly described by an unidentified third party as “intoxicated” in a train station. The defendant exhibited the classic symptoms of an individual who was experiencing a drug overdose. Emergency personnel transported the defendant from the train station to the hospital where he was diagnosed and treated for an intentional drug overdose. Hospital staff found several bags of powdery substances which were later confirmed to be heroin. Defendant was charged with third degree possession of a controlled dangerous substance. The trial court applied the OPA’s immunity and granted defendant’s motion to dismiss. The Court found that a good faith request for medical assistance had been made involving a person believed to be exhibiting an acute condition, which fell under the definition of drug overdose.

On appeal, that State argued that the Act did not cover “intoxication.” The Appellate Division affirmed the decision of the trial court and held that the definition of “drug overdose” set forth in the OPA was broad, and that its elements had been met. The Court noted that a more detailed explication of the forms of “physical illness” that qualified as an “acute condition” under the OPA would result in a more easily applied statute.

Due to the lack of legislative history for the OPA, Commission Staff was authorized, to conduct additional research to determine whether clarifying the term “acute condition” as used in the OPA might provide a remedy for this statutory deficiency.

Ms. Fyazi stated that research suggests that signs and symptoms of an overdose will vary depending on a multiplicity of factors. Some of these factors include: the substance the person

ingested; the condition of person who has overdosed; the time that elapsed after they consumed the substance; and whether the drug was taken in combination with other substances.

A 50–state survey was conducted to see whether other jurisdictions define or elaborate on the term “acute conditions” as related to drug overdose. The survey indicated that the majority of the States have either an immunity or a “Good Samaritan Law” similar to the OPA. Only two states, Alabama and Indiana, do not. There are ten states that do not define the term “drug overdose.” Further, sixteen states define “drug overdose”, but do not use the term “acute condition” in their overdose prevention laws. New Jersey, along with twenty-three states, employs the term “acute condition” in its overdose prevention laws. Like most states, New Jersey also defines the term “drug overdose” broadly, and in a manner that identified some, but not all, of the physical illnesses attributed to drug overdose. These statutes also consider the perspective of a layperson calling for medical assistance.

In the current legislative session, there are nine pending bills that seek to amend N.J.S. 24:6J-3. None of these bills seeks to clarify the term “drug overdose” or elaborate on the term “acute condition”.

Commissioner Bunn asked whether there was anything that the Commission meaningfully can do to define this term. Ms. Fyazi responded that it is difficult to do so. Commissioner Cornwell opined that this is a very difficult area of law and that he does not believe that the term can be defined coherently. Commissioner Bell concurred that it is difficult to define “acute drug overdose.” He added that there is a fine line between mere intoxication and an acute overdose and that a precise definition is not going to be effective. Commissioner Bertone concurred with Commissioner Bell.

The Commission agreed to discontinue work in this area.

Unemployment Benefits

Chris Mrakovcic discussed with the Commission a Memorandum proposing a project to modify the language of N.J.S. 43:21-5(a) in response to the determination of the New Jersey Supreme Court in *McClain v. Bd. of Rev., Dep’t. of Labor*, 237 N.J. 445 (2019).

The grounds on which an employee is disqualified from receiving unemployment benefits are governed by the Unemployment Compensation Law, N.J.S. 43:21-5. In 2015, subsection a. was amended to specify that disqualification does not extend to an employee who voluntarily leaves employment and begins a new job within seven days. The statute is silent on whether disqualification also extends to an employee who was scheduled to start a new job but could not because the job offer was rescinded.

Although subsection a. has been analyzed in several recent decisions, this question was not answered until the New Jersey Supreme Court examined this situation in *McClain v. Bd. of Rev., Dep’t of Labor*. This case considered the consolidated appeal of two plaintiffs, McClain, a preschool teacher, and Blake, a cook. Both voluntarily left their employment upon receipt of a job

offer for positions that were scheduled to start within seven days, only to have their job offers rescinded before their respective start dates.

Each plaintiff applied for unemployment benefits. The Deputy Director of Unemployment Insurance denied both claims, determining that the plaintiffs were not entitled to unemployment benefits because they did not commence employment within seven days of leaving their prior job. The Administrative Appeals Tribunal and Board of Review affirmed.

On appeal, the courts hearing the cases returned different results. In McClain's case, the Appellate Division reversed the denial of benefits, holding that the plain language of the amendment indicates that the disqualification exception applies when new employment is scheduled to commence within seven days but does not. The Court considered the amendment's omission of an express condition that the new employment actually "begin" within seven days, reading the word "commence" to include acceptance of employment. Because the statute prior to amendment disqualified employees who voluntarily left employment, the Court viewed the remedial purpose of the amendment as supporting this interpretation.

In Blake's case, the Appellate Division affirmed the denial, agreeing with the requirement that an employee begin new employment within seven days. This Court cited the legislative history, noting that a Senate Labor Committee report indicated that the amendment was intended to help employees who voluntarily leave their employment only to be laid off from their new job after starting.

The New Jersey Supreme Court found both the statutory language and legislative history ambiguous. The Court noted that because the unemployment law is social legislation designed to provide relief to employees, it should be liberally construed for that purpose. Therefore, the Court held that each plaintiff was entitled to unemployment benefits because "(1) they qualified for [unemployment insurance] benefits at their former employment at the time of their departure, (2) they were scheduled to commence their new jobs within seven days of leaving their former employment, and (3) their new job offers were rescinded through no fault of their own before the start date."

Commissioner Cornwell asked what the Commission's objective should be where the statutory language is ambiguous, but the New Jersey Supreme Court has offered its guidance on the subject matter. Ms. Tharney responded that in areas of the law that are relied upon by people with no legal background or training, who may not have ready access to case law, a determination by the Court may not be as accessible as the language of the statutes. Commissioner Cornwell stated that if there were two countervailing interpretations issued by the Appellate Division then he would understand the urgency of clarifying the statute. In this instance, the New Jersey Supreme Court has decided the issue. Ms. Tharney suggested that perhaps Staff could engage in outreach at this preliminary stage to ascertain whether stakeholders believe that a clarification of the statute is necessary.

Commissioner Bell opined that the Supreme Court has added a prong to the required statutory analysis. The Court has stated that the loss of subsequent employment cannot be the fault

of the employee. As such, he stated that it would be quite sensible for the statute to reflect this portion of the Court's determination. Commissioner Bunn suggested that lay persons, including claims adjusters and underwriters in the unemployment sector who are examining the statute may not be familiar with the Supreme Court's decision. He added that given the structure of the statute, he would like to see it broken down into its component parts and redrafted to make it easier to read.

The Commission authorized Staff to engage in preliminary outreach to determine whether or not those who work in this area believe that the statute would benefit from modification. Upon receipt of feedback, the Commission will revisit the issue of whether to proceed with this project.

Miscellaneous

Laura Tharney advised the Commission that the Commission is in the current State budget.

She also advised that the Uniform Voidable Transactions Act will be considered by the Assembly Financial Institutions and Insurance Committee. In keeping with Commission practice, a single page document in support of the bill based on the Commission's work in this area will be sent to the Committee in advance of the meeting. In addition, Ms. Tharney will attend the hearing in the event that any member of the Committee has any question regarding the bill.

Adjournment

The meeting was adjourned on the motion of Commissioner Bell, which was seconded by Commissioner Bertone.

The next Commission meeting is tentatively scheduled to be held on November 19, 2020, at 10:00 a.m.