START STRONG END STRONG: POWERFUL OPENINGS/CLOSINGS

2024 Seminar Material

MI1406.24

New Jersey Institute for Continuing Legal Education

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START STRONG END STRONG: POWERFUL OPENINGS/CLOSINGS

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"Start Strong, End Strong: Powerful Openings/Closings"

Prepared by Norberto A. Garcia

THE RULES

1:7-1. Opening and Closing Statement

(a) Opening Statement. Before any evidence is offered at trial, the State in a criminal action or the plaintiff in a civil action, unless otherwise provided in the pretrial order, shall make an opening statement. A defendant who chooses to make an opening statement shall do so immediately thereafter.

(b) Closing Statement. After the close of the evidence and except as may be otherwise ordered by the court, the parties may make closing statements in the reverse order of opening statements. In civil cases any party may suggest to the trier of fact, with respect to any element of damages, that unliquidated damages be calculated on a time-unit basis without reference to a specific sum. In the event such comments are made to a jury, the judge shall instruct the jury that they are argument only and do not constitute evidence.

RPC 3.3 Candor Toward The Tribunal

(a) A lawyer shall not knowingly:

(1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;

(2) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or

(3) offer evidence that the lawyer knows to be false. If a lawyer, the lawyer's client, or a witness called by the lawyer, has offered material evidence and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal. A lawyer may refuse to offer evidence, other than the testimony of a defendant in a criminal matter, that the lawyer reasonably believes is false.

(b) A lawyer who represents a client in an adjudicative proceeding and who knows that a person intends to engage, is engaging or has engaged in criminal or fraudulent conduct related to the proceeding shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal.

(c) The duties stated in paragraphs (a) and (b) continue to the conclusion of the proceeding, and apply even if compliance requires disclosure of information otherwise protected by Rule 1.6.

(d) In an *ex parte* proceeding, a lawyer shall inform the tribunal of all material facts known to the lawyer that will enable the tribunal to make an informed decision, whether or not the facts are adverse.

RPC 3.4 Fairness to Opposing Party and Counsel

A lawyer shall not:
(e) in trial, allude to any matter that the lawyer does not reasonably believe is relevant or that will not be supported by admissible evidence, assert personal knowledge of facts in issue except when testifying as a witness, or **state a personal opinion as to the justness of a cause, the credibility of a witness, the culpability of a civil litigant or the guilt or innocence of an accused**; or

THE CASE LAW

Murin v. Frapaul Const. Co., 240 N.J. Super. 600 (App. Div. 1990)

- If counsel intends to comment on the failure to produce witnesses, counsel should, out of the jury's presence, inform the court of such an intent so that the court can consider all the circumstances before deciding whether the request is proper.
- The general rule is that it is within the discretion of the trial judge to limit the time allowed for summation.

Szczecina v. PV Holding Corp., 414 N.J. Super. 173 (App. Div. 2010)

- The opening statement of plaintiff's counsel attacked the integrity of defendants, defense counsel, and the defense witnesses and asked the jury to "send a message" that they were "not going to accept that the paid agreers, the spin doctors, are trying to get defendants off the hook." His summation continued additional inflammatory attacks on the defense, referring to the medical defense witnesses as a "tag team" and "hired guns," and accusing them of intentionally muddying up the waters. The appellate court noted that attorneys could not use disparaging language to discredit the opposing party or witness, or accuse a party's attorney of wanting the jury to evaluate the evidence unfairly, of trying to deceive the jury, or of deliberately distorting the evidence. The "sending a message" argument was also inappropriate in a civil case where the only issue was compensatory damages. Though defendants had not objected to the comments, the trial court had an affirmative duty to intervene on its own initiative. As counsel's conduct infected the jury's verdict and was clearly capable of producing an unjust result, it was plain error under R. 2:10-2.
- The fundamental purpose of opening statements is to do no more than inform the jury in a general way of the nature of the action and the basic factual hypothesis projected, so that they may be better prepared to understand the evidence. Counsel must be summary and succinct and nothing must be said which the lawyer knows cannot in fact be proved or is legally inadmissible.

Farkas v. Board of Chosen Freeholders, 49 N.J. Super. 363 (App. Div. 1958)

- Counsel's opening statement is ordinarily intended to do no more than inform the jury in a general way of the nature of the action and the basic factual hypothesis projected, so that they may better be prepared to understand the evidence. It is normally expected to be summary and succinct. To grant a motion to dismiss, it is not enough that the statement is lacking in ultimate definiteness;

rather, it must clearly appear, after resolving all doubts in plaintiff's favor, that no cause of action whatsoever exists.

Morales-Hurtado v. Reinoso, 457 N.J. Super. 170 (App. Div. 2018)

- In a vehicular negligence action, defense counsel's reference to one's expectations in a litigious society was improper as it was not a statement of evidence; Defense counsel's cross-examination of plaintiff about his citizenship, his residence in the U.S., and his need for an interpreter was improper as the probative value of such evidence was substantially outweighed by the risk of undue prejudice; Defense counsel's cross-examination of plaintiff's medical expert was improper because his purported questions were not-so-veiled opinions that the expert was not credible; The cumulative impact of multiple errors deprived plaintiff of a fair trial.

Risko v. Thompson Muller Automotive Group, Inc., 206 N.J. 506 (2011)

- Counsel is allowed broad latitude in summation. Counsel's arguments are expected to be passionate, for indeed it is the duty of a trial attorney to advocate. There is no harm in seeking to maximize a recovery, even when incidental benefit is thereby achieved. Moreover, the failure to make a timely objection indicates that defense counsel did not believe the remarks were prejudicial at the time they were made, and it also deprives the court of the opportunity to take curative action. Where defense counsel has not objected, an appellate court generally will not reverse unless plain error is shown.

Rodd v. Raritan Radiologic Associates, P.A., 373 N.J. Super. 154 (App. Div. 2004)

- During summation, plaintiff's counsel suggested that defendant missed the evidence of cancer because he cared more about "making money" and living "the good life," spending only thirty-six seconds looking at each mammogram film. Counsel continued by disparaging defendant's expert, who, he maintained, argued "a little bit more like a lawyer than a doctor" and was "a professional witness" who "adjust[s] his testimony for every case." He went on to inform the jury that the defense failed to produce a journal article supporting its position and stated "do you think that a doctor with his lawyer and their resources wouldn't produce that article to you if it existed?" Although attorneys are given broad latitude in summation, they may not use disparaging language to discredit the opposing party or witness, or accuse a party's attorney of wanting the jury to evaluate the evidence unfairly, of trying to deceive the jury, or of deliberately distorting the evidence. Counsel's comments in summation were unduly harsh and amounted to an attack on defendant's character and his witness's integrity. They occupy no rightful place in proper commentary on the evidence and the credibility of testimony.

Botta v. Brunner, 26 N.J. 82 (1958)

- You cannot state a monetary figure that you think the plaintiff is entitled to for pain and suffering. In cases where the damages are unliquidated and incapable of measurement by a mathematical standard, statements by plaintiffs' counsel as to the amount claimed or expected are not to be sanctioned, because they tend to instill in the minds of the jury impressions not founded upon the evidence.

Henker v. Preybylowski, 216 N.J. Super. 513 (App. Div. 1987)

- The “golden rule” argument--asking the jury to award an amount that they would want for themselves in a similar circumstances is improper.

Dehanes v. Rothman, 158 N.J. 90 (1999)

- Court affirmed the decision below permitting plaintiffs' attorney during summation to suggest to the jury an aggregate sum or "bottom-line" figure to award for a claim of unliquidated economic damages, on the grounds that the amounts had already been established by competent testimony.

Purpose of Opening Statement

Start with a story-- jurors love stories. A story is the best communication device. Do not start by introducing yourself—the jurors know who you are. Do not start by thanking them-- the judge has already done that 10 times. Make sure your opening lays out exactly what your job is, what the jurors' job is and what you want them to do at the end of the trial.

Phrases like "I believe", "I think that" or "we believe that" state personal opinions and are objectionable.

"The picture cannot be painted if the significant and insignificant are given equal prominence. One must know what to select" Benjamin Cardozo.

Do not overwhelm jurors with every fact and possibility.

Many opening arguments do not achieve their most basic goal of conveying to the jury what the evidence at trial will be and what your client is looking for them to do.

An opening statement is like a speech (or a polite one-way conversation)—it must be organized, easy to understand and easy to remember.

Many trial lawyers are in denial about the weaknesses of their case—you must address weaknesses before your adversary does. If your witness has faults, show them.

Your goal in opening is to show the jury you are trustworthy and credible—therefore your position will represent the truth. Always show an abundance of fairness in the courtroom.

Have so much confidence in your case that you bring energy and passion into the courtroom. Steal from other lawyers but do not imitate them—"When we imitate others, we murder ourselves." -Gerry Spence

Use simple words—jurors do not know what "prior" or "subsequent" means. They do not know what a "decedent" is.

10 Steps in Preparing a powerful opening statement:

1. Make a list of the good and bad facts in your case.
2. Determine your theory of the case.
3. Create a theme for your case.
4. Tell a story that begins powerfully, addresses weaknesses and ends memorably (THE STONGEST STRUCTURE FOR ANY ARGUMENT IS STORY).
5. Write out an outline of your first draft.
6. Write the first draft of your opening.

7. Practice memorizing ideas, not words.
8. Use visual aids.
9. Know your ending cold.
10. Create a final one page topic outline to use in case you get distracted by objections during opening.

Anyone can be credible, but we must risk telling the truth-- *about ourselves*. Always include an anecdote about your personal life that showcases an aspect of the case—BUT IT MUST BE TRUE. (EXAMPLE: Catching my young sons breaking a coffee cup and both pointing to the other as the culprit—it is human nature to want to deflect blame)

In trial preparation, attorneys spend too much time on what they are going to say as opposed to how they are going to say it.

We must be ourselves before the jury in openings. Even to the point that our confusion, our fear or intimidation becomes apparent. If we are honest and straight, jurors will take care of us. (EXAMPLE: Being the sole lawyer in a case against multiple corporate defendants so that the other side of the table overwhelms the courtroom.)

In opening, we have something to sell. This is our chance to present our product, explain why it's a fine product, why it's better than our adversary's s product and why the jury/customer will be happy if it buys it.

Address juror prejudices head on: "Some of you may think there are too many lawsuits?" "During jury selection some people complained about the McDonalds hot coffee case" I sometimes think that too. Cases like that make my life more difficult. But let me tell you why this case is different….

Do not say anything in your opening that you cannot prove at trial.

NEVER start out with a joke. Instead, share something that is important to you—or better yet, start with the story. Again, do not start by introducing yourself and the court system—the jury has sat through enough of that during the *voir dire*—it's a poor way of making yourself feel comfortable.

First impressions are hard to overcome. If your opening statement is sound, honest and reveals the injustice you seek to correct, the picture it creates in the minds of jurors will be hard to erase.

AN ASIDE It is not nice to be nice. It is nice to be respected. It is nice to be right. It is nice to be real. It is nice to be loving and caring. It is nice to be committed and courageous. But it is not nice just to be nice.

Where to stand—close but not too close to jury. Eye contact—one idea, one juror, go on down the line. If someone looks away, try to focus on them so they are comfortable in looking back.

Begin with the end in mind: Start dropping language from the jury charge throughout your opening, direct, cross-examination and closing statement. That way, when the judge recites the jury charge and verdict sheet, the jury looks to you as the source of authority. Weave the jury charge into your summation—that way when the judge charges the jury they are reminded of your conclusions.

Power Point During Opening/Closing Statement

Power Point—when useful, when a distraction? (When was the last time you were emotionally moved by a power point demonstration as opposed to a TED Talk? Have you ever seen a comedian use Power Point? A preacher? A good politician?). Lawyers tend to speak to the power point rather than look at the jurors when using power point. A good power point should be manipulated by co-counsel or an assistant with the lawyer barely glancing at same.

Purpose of Closing Statement

You are not reciting the case (which the jurors just sat through). You are not going to convince anyone that you should win (at that point, they have already made up their minds). You are giving the jurors who are "with you" or "on your side" the better arguments to deploy when they go into the jury room to argue their position. You are giving them tools to deflect the arguments of jurors who are against you. Supply YOUR jurors with the arguments THEY need: You may have only convinced 2 of the 6 jurors that your client should get the verdict. That is not the end of the case if you supply the jurors on your side with the better arguments to prevail in the jury room. Your closing should provide your jurors with clear and precise discussion points on all the key issues in the case so that they can win the argument that will take place during deliberations. You can suggest that if any juror brings up issues not in evidence, such as "too many lawsuits", "my friend had a frivolous suit filed against him", etc., then I, my adversary and the judge all want you to ask that juror to stop. If he or she does not stop, knock and the door and ask to speak to the court.

ASKING FOR MONEY: Money is not discussed in polite society. You do not ask people how much they make. People are afraid to tell others what their services are worth. The anxiety that comes with discussing raises and bonuses. Money is difficult to ask for.

ASKING FOR A NO CAUSE: Saying "NO" in polite society is frowned upon. People prefer deflection: "I'll think about it." "I will get back to you." "I can't right now."

Logic, no matter how pretty and neat, and reason, no matter how profound, does not necessarily produce truth, much less justice. Feelings are the ultimate decision maker. When we get fooled, it is usually because our credibility detectors have been taken over by our wants—we do not want to detect the B.S.

AN ASIDE Most people tell the truth—the truth for them. "The wheels of a civil society are lubricated by little white lies ("You look great", "He is a good guy/gal", "I must have missed your e-mail"). Most social intercourse is "pretending".

Editing your inner voice-- When you think you hear the spontaneous product of the mind—sort through it and recite only that which can be expressed without injury (nothing destructive). BUT THINK: Are you hesitant to say something for the right reason? Is the risk well founded (will it hurt the case) or are you afraid to sound silly (will hurt the ego)? DO NOT BE AFRAID TO LOOK OR SOUND SILLY IN FRONT OF THE JURY. BE AFRAID OF DOING SOMETHING THAT WILL HARM THE CASE.

EXAMPLES OF JUROR BIAS: I don't think a parent should get rich because of their kid's death.

EXAMPLE ANSWER: I don't think any parent would trade their child's pinky for a million dollars. We are made rich by our children, not by money. A child is the most precious of riches. That most precious of all wealth has been taken away from the plaintiff. Money is all there is to replace that wealth.

AN ASIDE** Common Non-Lawyer Dinner Party Question: "Did you ever represent someone who you knew was guilty?" ANSWER: "If you say yes, you are a scoundrel. If you say no, you are a liar. So, would you rather see me as a scoundrel or as a liar?"
YOU CONTINUE: When you see your doctor, does your doctor ask you if the illness he is treating you for is possibly the result of having committed a crime? Of course not. A doctor treats you whether you are guilty of a crime or not. A doctor should not judge you before he agrees to help you. You have a right to be treated without first being morally judged.

Know your audience: Jurors over 40 will react to fall down cases far differently than jurors under 40.

Instruct Jurors on what they have to do when they enter jury room: This is likely the first time the jurors have gone through the deliberation process. Explain to them, in some detail, what they are to do once they enter the jury room, receive the evidence and start working on their jury verdict sheet. But be aware of limits of what you can tell jury to do or not do. See Risko v. Thompson Muller Auto, 206 N.J. 506, 520 (2011) ("we cannot tolerate the suggestion to the jurors that they would be violating the law, and will be reported to the judge, if they reject the notion that the plaintiff's case could be worth more than $1,000,000.00")

WRITE OUT on board the KEY issues: Write out for the jury the definition of proximate cause. Proximate cause will be on the jury verdict sheet. Most lawyers cannot define proximate cause off the top of their heads. A definition of proximate cause is among the more common questions jurors ask while deliberating. Most lawyers gloss over this in their closings. It takes up a fraction of the jury charge. Yet it sits there on the jury verdict sheet waiting for uninformed jurors to grapple with it.

Proximate Cause Model Jury Charge 7.11. "…the resulting harm would not have occurred but for the negligent conduct of the defendant [and] the negligent conduct was a substantial factor in bringing about the injury."

"Substantial factor" is where negligence cases are won and lost. The negligence does not have to be the only factor—there can be other acts or injuries that contribute to your client's loss. But the accident before you was the substantial factor in bringing about the client's current condition.

Be careful with giving opinions on defense witnesses and experts: Be careful that you articulate bias, inconsistency and error in defense witness and experts in a manner that does not rely solely on your opinion—let the jurors figure it out on their own. See Rodd v. Raritan Radiological, 373 N.J. Super. 154, 171-172 (App. Div. 2004) (counsel may not unfairly attack the adverse party's character and the integrity of the adverse party's expert witness); Szczecina v. PV Holding Corp., 414 N.J. Super. 173 (App. Div. 2010) (new trial justified when plaintiff's counsel's opening and closing statements urged jurors to "send a message" through its verdict and attacked the integrity of opposing counsel and witnesses). Counsel's personal opinion has no role in the jury's evaluation of a witness's credibility.

"The defendant/plaintiff put us here because of their poor choices". Focus on choice, not negligence—jurors understand choice, have a hard time with concept of negligence.

Do jury charge conference BEFORE summation as you will use verdict sheet during summation and you will use anchor terms in summation that judge will later read to jury.

How to get around the Golden Rule? Use the example of what would a healthy 50-year-old take to live one year, one month, one day with the pain, limitations and loss of enjoyment of life that the plaintiff must endure, now and forever. What would a diligent driver/store owner/contractor have possibly done differently to avoid this mishap?

"It usually takes 3 weeks of preparation to make an impromptu speech." Mark Twain. It actually takes a lifetime. Your lifetime.

You have to be yourself. If you are aggressive or combative by nature, proceed with the summation this way. If you are more low-key use that approach. You have to be comfortable.

Share something personal with the jury during opening. Something that happened to you that week—at work, with your spouse, with your kids. Makes you trustworthy, reliable.

I told the story of my missing stapler. I was upset that someone had taken my stapler from my desk. Who would have done such a thing? I looked around my office for 5 minutes. I went out to my assistant and complained about who would be so inconsiderate. She walked to my desk and picked it up. It had been on my desk the whole time. It was right in front of my eyes. Just like the red light/cracked sidewalk/spilled grapes/etc.

Last words: Leave an effective last thought to the end—you do not want a meandering ending to your case.

"Authority does not always come from high places. It comes from the common places we share with fellow jurors and witnesses. The authority of common knowledge" EX: "If the glove don't fit, you must acquit"; "If she did not look, she's on the hook."

PRACTICE TIP: Do NOT Get perturbed by objections.

Stay grounded: As lawyers, we do not shop where the average juror shops. We do not read the same papers or watch the same social media. We vacation in different hotels. As such, we have little in common with our jury pool. This gets worse as we get older, wealthier and more comfortable. If you are going to be a trial lawyer—stay grounded with the average juror.

About the Panelists…

Honorable Peter F. Bariso, Jr., AJSC (Ret.) is counsel to Chasan, Lamparello, Mallon & Cappuzzo, P.C. in Secaucus, New Jersey, and focuses his practice in complementary dispute resolution and consulting on complex litigation matters. Prior to his retirement from the Bench, he was Assignment Judge, Hudson County, and sat in Jersey City, New Jersey. Appointed to the Superior Court in January 2005, he formerly served as Presiding Judge of the Civil Division from 2006-2012. Prior to his appointment he was Certified as a Civil Trial Attorney by the Supreme Court of New Jersey and was Chair of the Litigation Department at his current firm.

Judge Bariso is Past Chair of the Supreme Court Arbitration Advisory Committee and the Hudson County Advisory Committee on Minority Concerns, and a former member of the Supreme Court Civil Practice Committee and the Supreme Court Special Committee on Peremptory Challenges and Jury *Voir Dire*, where he served as Chair of the Civil Sub-Committee. Past Chair of the Conference of Civil Presiding Judges, he has been a member of the Conference of Assignment Judges, the Judicial Council and the Advisory Committee on Expedited Civil Actions, where he has served as Chair of the Pre-Trial Subcommittee. He is also a member of the New Jersey State, Hudson County and Essex County Bar Associations.

Judge Bariso frequently lectures on civil litigation issues for the judiciary and organizations including ICLE and the New Jersey State and Hudson County Bar Associations. A Master in the Hudson American Inn of Court, he has been an instructor for ICLE's Civil Law segment of the *Skills and Methods* course for newly-admitted attorneys. Judge Bariso was the recipient of the New Jersey Commission of Professionalism in the Law (LIGHTHOUSE) Award in 2023, ICLE's Alfred C. Clapp Award in 2015 as well as the ICLE Distinguished Service Award for Excellence in Continuing Legal Education, and has had six published opinions. He has been a contributing author of Education Law for the *Encyclopedia of New Jersey* and has contributed to a number of ICLE publications over the past 20 years.

Judge Bariso received his B.A., *magna cum laude*, from Rutgers University, where he was elected to *Phi Beta Kappa*. He received his J.D. from Rutgers University School of Law.

Rita F. Barone is a Partner in Flanagan, Barone & O'Brien LLC in Bernardsville, New Jersey, where she concentrates her practice in school law, employment law and insurance coverage and defense. She defends insureds in auto, premises liability, employment and professional malpractice matters; and is frequently retained by public and private entities to conduct Affirmative Action and HIB investigations.

Admitted to practice in New Jersey and before the United States District Court for the District of New Jersey and the United States Supreme Court, Ms. Barone is a member of the New Jersey State Bar Association and formerly served on the Executive Committee of they Association's Young Lawyers Division. She is a member of the National Association of Women Lawyers, the New Jersey Defense Association, the Somerset County Bar Association, the Litigation Counsel of American and the New Jersey School Board's Association. She is the recipient of several honors.

Ms. Barone received her B.A. from Rutgers University and her J.D. from Seton Hall University School of Law.

Norberto A. Garcia, Certified as a Civil Trial Attorney by the Supreme Court of New Jersey, is a trial attorney and Partner in Blume Forte Fried Zerres & Molinari with offices in Chatham, North Bergen and Jersey City, New Jersey.

Admitted to practice in New Jersey, New York and Pennsylvania, Mr. Garcia is Second Vice President of the New Jersey State Bar Association, Past President of the New Jersey State Bar Foundation and the Hudson County Bar Association, where he has been a Trustee of the latter since 2000. He is a member of the Executive Committee of the NJSBA Civil Trial Bar Section, Past Co-Chair of the NJSBA Diversity Committee and has served as Co-Chair of the Hudson County Civil Practice Committee since 2003. A member of the American Board of Trial Advocates, Mr. Garcia is a Trustee of the New Jersey Lawyers' Fund for Client Protection, a member of the State of New Jersey Bar Examination Committee on Character, and a former member and Past Chair of the District VI Fee Arbitration Committee. He is also a former member of the Supreme Court Committee on Minority Concerns and a has been a member of the Hudson County American Inns of Court since 1996.

Mr. Garcia received his B.A., cum laude, from Seton Hall University and is a graduate of the University of Pennsylvania Law School.

Thomas J. Manzo is a Partner in Szaferman, Lakind, Blumstein & Blader, P.C. in the firm's Lawrenceville, New Jersey, office. He concentrates his civil trial practice in complex personal injury matters ranging from automobile and slip and fall accidents to victims of crime, abuse and neglect, and products liability.

Admitted to practice in New Jersey and New York, Mr. Manzo is a member of the Executive Committee of the New Jersey State Bar Association Civil Trial Bar Section and the NJSBA Legislative and Meetings Arrangements and Programs Committees. He is a Trustee of the New Jersey State Bar Foundation and has lectured and has lectured on ethical practice and trial strategy topics.

Mr. Manzo received his B.A., *summa cum laude*, from Rutgers College, Rutgers University, where he was elected to *Phi Beta Kappa*, and his J.D. from Seton Hall Law School, where he was an instructor of first year law students. He was Law Clerk to the Honorable Clarkson S. Fisher, New Jersey Superior Court, Appellate Division.

William H. Mergner, Jr. is Co-Managing Partner of Leary Bride Mergner & Bongiovanni, P.A. in the firm's Cedar Knolls, New Jersey, office. Since joining the firm, he has been involved in daily trial work, having tried in excess of two hundred jury trials to verdict in state and federal courts in New Jersey. He has successfully handled the defense through trial of construction site accidents, multi-party construction defect cases, environmental/toxic tort claims, products liability claims, professional liability claims including medical, engineering, agents/brokers claims, as well as complex general liability claims involving serious injury or death.

A Trustee of the New Jersey State Bar Foundation and former Trustee of the New Jersey State Bar Association (NJSBA), Mr. Mergner is President-Elect of the NJSBA and Past Chair of the NJSBA Special Task Force on the Practice of Law. He is a member and Past Chair of the NJSBA *Amicus* Committee and a past Chair and member of the Executive Committee of the

Civil Trial Practice Section of the NJSBA. A Fellow of the American Bar Foundation, Mr. Mergner has been Co-Chair of the NJSBA Judicial Administration Committee and has served on the Meeting Arrangements and Program Committee as well as the NJSBA Pandemic Task Force, where he has been Chair of the Subcommittee on Restarting Jury Trials. He is a member of the NJSBA's Insurance Defense Committee and formerly served on the Supreme Court Committee on the Rules of Evidence, the Joint Supreme Court/NJSBA E-Courts Committee and the Supreme Court Committee on Expediting Civil Actions.

Mr. Mergner regularly provides seminars to clients of the firm and attorneys in New Jersey on a wide range of issues including contractual risk transfer, products liability law, developments in insurance coverage law, trial techniques and the handling of cases subject to the Complex Business Litigation Program, teaching an average of six seminars per year over the last ten years. In 2019 he was the recipient of the James J. McLaughlin Award from the NJSBA Civil Trial Bar Section, which recognizes civility, professionalism and competence in the practice of law.

Mr. Mergner is a *magna cum laude* graduate of the Catholic University and received his J.D. from the Marshall Wythe School of Law at the College of William and Mary.

Francisco J. Rodriguez, Certified as a Civil Trial Attorney by the Supreme Court of New Jersey, is a Partmer in Javerbaum Wurgaft Hicks Kahn Wikstrom & Sinins, P.C. in the firm's Springfield, Newark and Elmwood Park, New Jersey, and New York City, offices. He represents clients in personal injury matters including medical malpractice, nursing home malpractice, sexual abuse, mass torts, Federal Tort Claims Act cases and automobile accidents.

Mr. Rodriguez is admitted to practice in New Jersey and New York, and before the United States District Court for the District of New Jersey and the Southern and Eastern Districts of New York. Past President of the New Jersey Association for Justice, he has been a National Governor of the American Association for Justice since 2016 and has served on the Civil Trial Law Certification Committee of the New Jersey Supreme Court Board on Attorney Certification since 2012. He is also a member of the New Jersey Supreme Court Committee on Model Civil Jury Charges as well as the Hudson and Bergen County Bar Associations.

Mr. Rodriguez has lectured on civil trial issue for ICLE, the American and New Jersey Associations for Justice, the Southern Trial Lawyers Association and other organizations. He has authored and co-authored articles with have appeared in *The Verdict* and other professional publications.

Mr. Rodriguez received his B.A., *cum laude*, from Rutgers College and his J.D. from New York University School of Law.

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