stare decisis

Primerus

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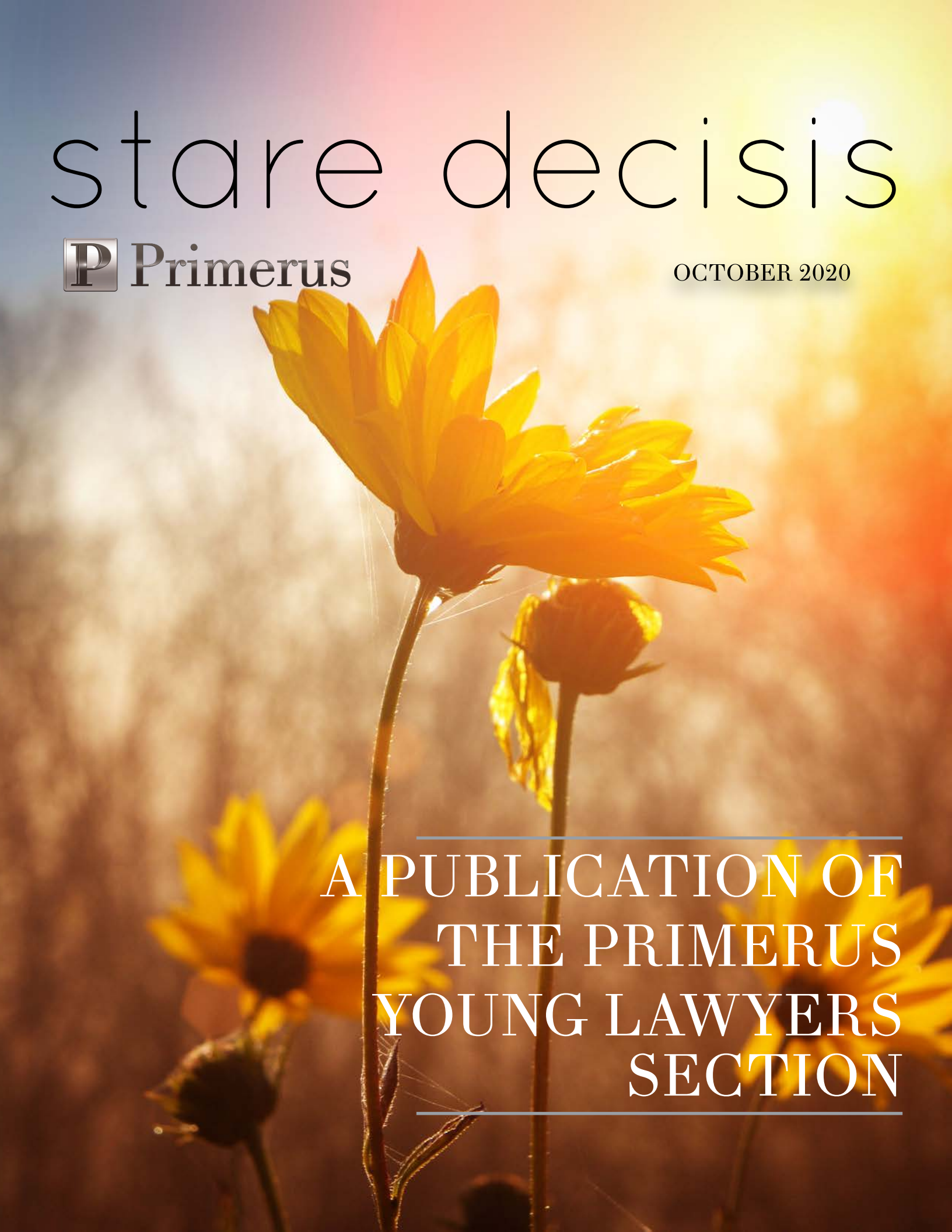

A PUBLICATION OF THE PRIMERUS YOUNG LAWYERS SECTION

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chair column

by nicole quintana

Nicole Quintana is a trial lawyer at Ogborn Mihm, LLP in Denver, Colorado. Her practice focuses on business litigation, plaintiff's legal malpractice, and catastrophic personal injury. Nicole represents clients in state and federal court in and outside of Colorado and has tried cases to juries, to judges, and through arbitration. While she works up every case with an eye toward trial, she also strives to reach early resolution where doing so serves the best interests of her clients.

It is hard to believe it's only been four months. We held our Young Lawyers Section Conference in Coral Gables, Florida on March 4-6, not knowing that about two weeks later, the world would begin to shut down. Life and the practice of law as we knew it would change significantly. But reflecting back, the lessons we learned at that conference became even more poignant. We benefited from presentations on marketing, time management, stress management, and ethics, and we had candid discussions about what young lawyers should know about the business of a law firm, how young lawyers can and should contribute to the firm's bottom line, and how young lawyers fit in to firm decision making. We volunteered our time with the Big Brothers, Big Sisters program, and we enjoyed some laughs and camaraderie. Much of the conference covered the strengths that our Primerus young lawyers possess and came to reflect in the weeks that followed.

Our Primerus young lawyers are essential; they are resilient; they are adept at weaving together home and work life; and they are skilled at adapting to new technologies that now seem vital to practicing law remotely. These are just some of the benefits they bring to their law firms. And when the pandemic replaced our office desks with kitchen tables, conference room meetings with Zoom calls, and in-person depositions with remote videographers and court reporters, our young lawyers were able to apply the marketing, time management, and firm business lessons we discussed at the conference. They were also tasked with and stepped up to the challenge of testing and employing new systems to allow our essential services to continue. And for anyone who truly knows the value of noise-canceling headphones (I swear I love my children dearly), the stress management tips we learned became invaluable to carrying on our work for the benefit of our firms.

Since the YLS conference and the chaos of the pandemic, YLS members have kept in touch, both as legal resources and as friends. The connections and ties that form at our conferences last well beyond those few days, but it is those few days that allow us to see Primerus' motto come to life—"Good people who happen to be good lawyers." We genuinely enjoy each other, and the relationships we have and continue to form are the foundation of Primerus' purpose and the reason our firms are members.

I am thankful we were able to hold our conference this year. It was the most highly attended yet. I only hope that we are able to see each other back in person in 2021. In the meantime, I encourage young lawyers and managing partners alike to allot the time and expense for the next generation of lawyers to participate in YLS activities. Write an article for *Stare Decisis*; attend our monthly membership calls; contribute thoughts and questions to the listserv. Then, come to our annual conference. The time spent now with YLS pays dividends for your firms well into the future.

If there is anything the YLS can do for you or your firm, please do not hesitate to reach out to Chris Dawe or to myself. Our goal is to continue providing opportunities for networking across all our membership countries, for professional growth, and for legal education. We hope you and your families continue to stay safe (and sane)!

words to the wise

by jordan loper

For this edition of Words to the Wise, Jordan Loper of Christian & Small, LLP, in Birmingham, Alabama shares the candid advice of two inspirational attorneys from within the Primerus network. Below, Muliha Khan of Zupkus & Angell, P.C. in Denver, Colorado and Robin Lewis of Mandelbaum Salsburg, P.C. in Roseland, New Jersey give helpful and significant insight on how their own careers have evolved and guidance for attorneys new to practice on how to forge their own unique paths.

WHAT MADE YOU WANT TO PURSUE A LEGAL CAREER AND HOW DID YOU BECOME A LAWYER?

Muliha Khan: Unfortunately, I don't have a story that begins with me wanting to be a lawyer my whole life. I went to a liberal arts school and majored in history, understanding I would have to pursue a post-graduate degree in order to get on a career path. After college, I spent a couple of years working for a corporation and decided that my skill set and interests were compatible with being a lawyer. I enjoyed debate and advocacy and was interested in writing. I didn't know what it meant to be a lawyer until I had practiced for some time, but I can say now, after practicing for twelve years, that this is what I am supposed to be doing.

Robin Lewis: I graduated from college as an English major and wanted to go into publishing. After college, I worked for 2 years at a large New York law firm as a paralegal and that's what made me decide to pursue law school.

After law school, I was a clerk for a federal judge, thinking that I would go into litigation after my clerkship. Prior to my judicial clerkship, I worked for a large firm in New York for about six months and they assigned me to real estate work, which I really enjoyed. The clerkship confirmed that when I went to practice in a law firm, I knew that I wanted to go into real estate and transactional work, rather than litigation.

HAS THE PRACTICE OF LAW MET YOUR EXPECTATIONS? HOW IS IT DIFFERENT THAN WHAT YOU EXPECTED AND HOW HAS IT CHANGED?

Muliha Khan: I didn't realize when I first started my career how steep the learning curve would be. While other professionals have a much clearer path, for example doctors or accountants, there are so many avenues to take to achieve your goals as an attorney. It took a while for me to understand what my day to day should look like and in terms of running cases, there was a lot of trial and error.

Robin Lewis: I knew and expected that the practice of law was male dominated but coming from the first majority female graduating class at NYU, I expected and hoped that it would change. In some ways it has changed, but the field of law is still primarily dominated by men.

For that reason, I strongly believe that women's initiatives and women supporting each other is so important. Generally, I enjoy transactional work because it's collegial; everyone wants to accomplish a common goal, which is getting a deal done. I appreciate that level of comradery I have with my fellow lawyers.

The practice of law has changed in my field over time. When I began practicing real estate law, the deals and the issues were much simpler. My work is driven by the economy and over time, the landscape of the economy has made the structure of deals more sophisticated and the issues more complex.

DESCRIBE YOUR PHILOSOPHY ON CLIENT RELATIONSHIPS AND MANAGEMENT.

Muliha Khan: I have three pieces of advice when it comes to client relationships. First, and I hope this hasn't become a cliché, do your best work. We are not doing the hardest job in the world, but what we do is challenging and it is so important that our clients get our best work. Doing good work is a form of marketing in and of itself and will lead to organic growth of your business. Second, communication with clients is key. This includes getting them the information or updates they need before they ask for it, as well as knowing your clients well enough to understand what communication style works best for them. I work with clients of all backgrounds and ages and it is important that I know who they are and what they need. I am on the cusp of being a millennial/gen-x and I think the "gen x" part of me can't underestimate the value of a phone call. I always encourage people to pick up the phone and engage in conversation because you never know where it will take you. The third piece of advice is to be genuine and be yourself. Don't try to be someone that you're not because people can sense that. If you are genuine, clients will naturally be drawn to you. I like to use the example of golf because I'm not a golfer. I've gone to golf tournaments in the past but it has not necessarily led to business opportunities for me. Instead, I have created more successful client relationships when I am being true to my own interests and playing into my strengths such as writing and public speaking.

Robin Lewis: The key word is relationships. The most important thing to build is a personal relationship with the client that's founded on trust. I have a lot of different types of clients, but I enjoy creating personal relationships, whether it be because the client is smaller, or because I have sought out people within a larger institution. The best thing you can do is get to know your clients as people and learn what matters to them on a personal level.

WHAT ARE SOME THINGS ASSOCIATES CAN DO TO HELP MAXIMIZE THE RELATIONSHIP WITH A CLIENT?

Muliha Khan: Again, it is so important to be yourself and not imitate the personalities and styles of other lawyers around you. It didn't happen overnight for me, but once I became confident in my skills as an attorney and had some professional success, I was able to embrace my personal style as a lawyer. For example, I would much rather take the time to research than rush to answer a legal question at the risk of being wrong. And, I'm not afraid to admit that to a client.

It is important that associates have the support of the partner(s) in the firm in expanding client relationships beyond that partner. Then, associates can be creative in proposing ways to showcase their skills to the client, whether that be sitting first chair at trial with a partner supporting you in second chair or offering to take the lead on a presentation. When you create those opportunities, you give the client a reason to be invested in you. The goal is for the client to invest in the firm, not just one lawyer, and to see that whole team is vital to producing the best work possible.

Robin Lewis: Associates can maximize client relationships by inspiring trust in the clients. It is important that young attorneys find like-minded clients and people you work well with.

Another way to maximize client relationships is to find a mentor within your firm that you really connect with on a personal level, even if you don't work together, and learn from them. Primerus is a good example of a wonderful resource that young lawyers can use to network and connect with more experienced lawyers.

WHAT IS YOUR EXPECTATION OF ASSOCIATES WHEN IT COMES TO BUSINESS DEVELOPMENT?

Muliha Khan: Don't force it. It's important not to make the assumption that every young lawyer wants to become a partner, because that is not the case. I am looking for associates who can take a step back and make a determination about what they want for their own careers and what their professional goals are. Once they do that, I want to do what I can to support those goals. Originally, I did not think I wanted to be a partner because I didn't know what "being a partner" meant. Now, I realize that I love the entrepreneurial aspect of being a partner because I am interested in the business side, but not everyone is and that's ok! In law school, there is no training provided on running a business and you can be a great lawyer and not a great business owner. It is important to make that determination and then reach out to mentors for help in reaching your unique goals.

Robin Lewis:I would encourage young lawyers to develop business, but not to the exclusion of their other responsibilities in the firm. The most important things are serving current clients and learning your craft when you are new to practice. Once you learn to be a good lawyer, then you have skills and experience that you can market to potential clients.

It's also important to know that if you aren't bringing in clients on day one, that's ok. Developing business is a process that happens over time and stems from personal relationships. For example, one of my biggest referral sources is a friend who I met when we were fellow summer associates during law school. The business that followed was not a result of marketing but just of a long-term friendship that we kept up over time. Remember that you never really know where clients will come from and if you have a friend that has a problem and you can help them find someone to solve that problem, even if it isn't you, that is of huge value and may come back to help you later.

WHAT ARE YOU AND FELLOW PARTNERS LOOKING FOR IN ASSOCIATES AS IT RELATES TO COMMUNITY INVOLVEMENT AND "EXTRA-CURRICULAR" COMMITMENTS?

Muliha Khan: I don't have expectations or requirements and I think it's important to acknowledge boundaries between someone's personal time and their time at work. I want to support our associates' lives outside of the law firm because I really believe if a person is happy in their life outside of work, they will do their best work for me. When I'm speaking with a potential associate, I inevitably ask what they like to do outside of work. Involvement in organizations beyond the firm shows a level of commitment and loyalty that I want in an associate.

Robin Lewis: It all ties in. When it comes to activities outside of the firm or work, including pro-bono activities, you have to find the ones you are passionate about, given the limited time available. You aren't going to want to spend time on activities or organizations that are not important to you. Find the people that you connect with best and really commit to involvement and pursuing leadership positions within those groups. Quality over quantity is important. It's better to have a meaningful membership in just one organization rather than showing up at too many different activities. We can only do so many things really well, so make those commitments count.

FROM YOUR PERSPECTIVE, WHAT MAKES AN ASSOCIATE STAND OUT?

Muliha Khan: You can really tell when someone loves what they do. It shows in all facets of their work and their demeanor. I also think that, as a partner, I play a role in facilitating that by making sure associates have choices that will make their lives easier or better in some way, whether that be flexibility in their work arrangement or generous benefits. At the end of the day, dependability and loyalty to the firm are the most important. If an associate believes in my mission for the firm, then dependability and loyalty naturally follow.

Robin Lewis: An associate stands out when they have enthusiasm about the work they're doing and when I know I can trust them. I notice when a young lawyer takes initiative and anticipates needs by moving a case along instead of waiting to be told what to do.

WHAT LESSONS OR MISTAKES DID YOU MAKE (OR WITNESS OTHERS MAKE) AS AN ASSOCIATE? WHAT ADVICE DO YOU HAVE ON HOW ASSOCIATES CAN AVOID SIMILAR MISTAKES?

Muliha Khan: I remember when I first started practicing that I found myself parroting the styles of the lawyers around me, instead of embracing my own style. Don't try to be someone you're not. It doesn't work. But once you are confident in who you are, things will begin to fall into place. I encourage associates to trust themselves, and to surround themselves with lawyers they can trust.

Robin Lewis: When I was starting out, I was very hard on myself and it takes time and experience to trust yourself. I am also a firm believer in trusting my gut and it has served me well. I can remember being a young lawyer and being asked by a superior to do something that I did not feel comfortable with and even though I was worried about standing up to that person, I trusted my instincts and said no. I have never regretted it.

WHAT ADVICE WOULD YOU GIVE YOURSELF WHEN YOU WERE NEW TO THE PRACTICE OF LAW?

Muliha Khan: I would warn myself about the steep learning curve. I would tell myself: Don't be so scared! Don't be afraid to ask questions or look stupid because if you don't know the answer, it's not a big deal!

Robin Lewis: Don't be afraid to ask for help or admit that you do not know or understand something. That is how lawyers learn and grow. As a young lawyer, you're not expected to know everything and have all the answers, but I think we all put pressure on ourselves to do just that. Instead, know when to ask. It's far better to know that you don't know it all, then think you do or pretend. I'd rather an associate come to me with questions, than not, because then I know that he or she is really thinking about what is in front of him/her. We are always learning. Knowing when to ask is more important than knowing. Even as a seasoned lawyer, I still find it helpful to bounce ideas off of colleagues, get a second opinion, second pair of eyes.

DO YOU HAVE ANY PARTICULAR CAREER ADVICE FOR FEMALE ASSOCIATES BASED ON YOUR EXPERIENCE AS A SUCCESSFUL FEMALE IN THE LEGAL FIELD?

Muliha Khan: As a female and a minority, my advice is this: don't ever let anyone make you feel like you don't belong. You deserve to be where you are, both as an associate at a law firm and a lawyer in the courtroom. You deserve to be where you are and you should never let anyone convince you otherwise.

Personally, I needed guidance and support as I progressed in my career. I needed someone beyond myself to believe in me. That is why having mentors is so critical. Your mentor doesn't have to be just like you, and you don't have to be just like them. They just have to be someone you trust, and that makes all the difference.

Robin Lewis: Find a good mentor, male or female. I had male mentors because that's who was there to learn from and I did learn a lot. I think to the extent we can make it work, however, it's important for female lawyers to serve as mentors for each other.

Remember that you are not superwoman and you won't be able to do everything all the time and that is ok. Remember that every woman you come across in the legal field has her own set of circumstances and there is no "one size fits all" rule for women, or anyone, to succeed. Success is personal and we all have to find what works for us, not try to fit into an idealized version of what we think it should look like. There are so many factors outside of work that play into women's lives and it's important to remember that. Seek out your female peers and support each other.

Be open to learning your craft, be open to learning about people, and learn to juggle. Focus on the relationships and do good work. Try to balance everything and keep your sense of humor because you'll need it.

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Muliha Khan's commercial and civil litigation practice encompasses a broad range, including defending both insurance companies and insureds in bad faith, personal and bodily injury claims, and construction defect. Muliha also practices in the area of employment law, providing both pre-litigation and litigation services. Additionally, Muliha has significant appellate experience at all levels and has drafted briefs for the United States Supreme Court, the Colorado Supreme Court, and Colorado Court of Appeals.

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Robin Lewis specializes in the areas of commercial real estate law, secured lending, and workouts. Her practice involves all aspects of commercial real estate and financial transaction, including the representation of major financial institutions, real estate developers, and corporate tenants. She has often acted as New Jersey counsel for parties in large multi-state transactions.

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spotlight interview: michelle reid

by charles montgomery

Michelle Reid is an attorney at Strauss Troy in Cincinnati, Ohio. Michelle is experienced in commercial and residential real estate - having counseled individual and corporate buyers, sellers, and lenders through matters such as acquisitions, leasing of multi-family and commercial centers, financing, and development of of residential and commercial properties. She is licensed in both Ohio and Kentucky.

1. What led you to become an attorney?

I had no intention of becoming an attorney when I went to law school. I planned on working in economic development after interning with a local municipal government. Law school was just a stepping-stone to that position. But, after working in private practice both law school summers and as a 3L, I found the variety, challenge, and direct contact that you experience with the community in private practice to be more alluring. My practice area of commercial real estate is still a natural fit because I help development that positively affects communities come to fruition.

2. What type of law do you practice?

I primarily practice in commercial real estate and pair that with title and escrow services in Kentucky and Ohio. As a quintessential “dirt lawyer”, if it deals with the ground, I provide advice about it. This includes the purchase, sale, financing, development and leasing of office, industrial, or retail space, land use, the creation and management of condominiums, or title issues—spanning from the most complex development to residential evictions.

3. What do you like most about your practice?

I enjoy the variety of work that I get to do, and the close ties with the community that this work fosters. I can walk down the street and see projects that I have had a hand in on any given day. I take the success of my clients' projects personally, and I want those projects to be successful in the long term.

4. What do you do to market yourself and your practice?

First and foremost, I focus on doing good work and treat everyone in a deal with respect because you never know where work will come from in the future. Second, nothing is too small. I have a small collections practice and handle residential evictions because it is a front door to becoming local counsel or a deal attorney. Third, I am active in community organizations, but in a way that isn't disingenuous. People can spot your lack of passion from a mile away and it has repercussions.

5. What do you do when you are not working?

I enjoy spending time with my family, including my newborn daughter and my two-year-old son. My one hobby is CrossFit. The community I have developed at my gym is irreplaceable to me. My husband also has a large family, so we can usually be found watching a Bengals game or celebrating a birthday with them on Sundays. On special occasions, my husband and I head out to a concert or catch our wedding band playing a gig at a local restaurant.

6. What do you like most about the Primerus network membership? What Primerus events have you attended, if any?

I had the pleasure of attending the Primerus Young Lawyers' Section Conference in Denver last year and Miami this year. I also attended the Midwest Regional in Louisville last year. The connections I have made through Primerus have been nothing short of natural. This network brings together like-minded people and, as a result, it is easy to create real relationships that generate value for every party (referrals or otherwise). Also, the ability to refer my clients to an attorney in other jurisdictions where I would otherwise have no connections is invaluable. I have been able to manage my clients based in Ohio or Kentucky by engaging local counsel through Primerus; and, without that local counsel, I would have had to refer the client out.

quick tips

staying focused while working from home

by kathryne baldwin

Kathryne Baldwin is an associate at Wilke Fleury where her practice focuses on corporate and business law with a specific focus on litigation. She obtained her undergraduate degree in Philosophy of Science & Logic from California State University, Sacramento. Kathryne is a graduate of the University of Pacific, McGeorge School of Law.

With the rapid spread of the COVID-19 pandemic, many attorneys are now faced with working remotely for the first time. This can be a challenge in and of itself, but, when coupled with simultaneously home-schooling young children or caring for ill loved ones in the home, it seems that the work from home task is an even taller ask. The pressure on young lawyers is undeniable when faced with the reality that firms need them now, more than ever, to remain focused and keep the business viable during these stressful times. This is particularly true as young lawyers are generally thought of as a "techno-savvy" generation and better-suited to handle some of the challenges that come from the practice of law in the cloud. Below are five ways to help juggle the challenges – and embrace the benefits – of working from home.

1. **Stay on Target.** Make a list of each outstanding task you can think of: finish that tax document, draft the opposition to opposing counsel's latest motion, or reply to the letter you just got from the insurance carrier. As new tasks present themselves, make sure to add them to the list. As tasks are completed, they come off the list. Every so often, take a moment to re-write a clean copy of the list as it currently stands. Having an "at-a-glance" list of what is pressing right now will allow you to prioritize what needs to be done first and what can wait until later.

2. **Streamline Your Workspace.** If each employee's home were the perfect place to get work done, remote work would have been the norm long ago. But, in desperate times, it is important to maximize what is available to you. While the dining room table is a ubiquitous wide and flat space, is it comfortable to work on? Are you hunched over the table or close to your computer screen? Is the chair that you are using the most comfortable you have? Consider the lighting in the area you are working in – could it be better with an additional lamp or opening the blinds?

3. **Keep Communication Open.** While you are in the office, it is an everyday occurrence that your work colleagues stop to say hello or check in on you during the day. Keep those lines of communication open during remote work. Send an e-mail to or give a quick call to a work associate just to ask how things are going for them

or thanking them for their hard work during complicated times. It will mean quite a bit to them, enforce a teamwork mindset, and emphasize the normalcy of your work. Additionally, if you have spoken to someone more recently, it could mean that you or they are more apt to ask for help if necessary.

4. **Keep Social Media Closed.** One of the best things you can do for yourself is reduce the distractions you can control. If you have kids or spouses at home, it is unlikely you can make them completely silent or non-distracting. Keep Facebook and Reddit closed from your internet browser and, to the extent possible, stay off your cell phone for any non-work interests during the day.

5. **Take Regularly Scheduled Breaks.** Another way to make sure you stay focused while you are working is to make sure you give yourself rest periods. If you get up every so often from your working area – it makes it less likely that your mind will wander while you are working. If you can incorporate some physical activity during that time frame, like stretching or walking, it will pay back in dividends. At the very least, try standing up and giving your eyes a break from the computer screen once per hour.

foundations

pathways to a fulfilling career

by duncan manley

Duncan Y. Manley is the Chair Emeritus of the Primerus Defense Institute. He is a partner with Christian & Small LLP in Birmingham, Alabama, where he practices in the areas of business and commercial litigation, insurance, premises liability, product liability, transportation, and mediation and

Have you set any goals for your legal career?

I recently received a ballot to vote for candidates running for office in an organization that I am a member of. Their credentials were impressive to say the least. All of the candidates had written numerous legal articles for publication; held membership in many different organizations, civic and legal, and served as officers from the lowest rank to the top position in most; and briefed and argued reported cases before the federal appellate courts and the Supreme Court of their resident states.

In comparison, I am getting close to retirement and my resume is sparse. I regret that I have practiced law for over forty years and my resume has little to show for it. Professionally, I dedicated myself to the law and my law firm, serving on its Executive Committee and as Managing Partner for many years. While I joined legal organizations, I did not make the effort to get involved in the leadership of most of them. I had little involvement in civic activities.

Some people gravitate toward participation and leadership roles. Others love to write. I bet there are many others who would get more involved if someone simply nudged them along. I wish one of my seniors in my firm had suggested to me what I am suggesting to you: make up your mind to get involved NOW.

The very nature of our profession calls for community and professional involvement beyond our everyday responsibilities to our clients. A small weekly or monthly commitment to one or more organizations over the life of your career will fulfill that obligation, and when you reach my age, you will look back over your long career with a little more satisfaction.

social distance marketing

four things lawyers should be doing to market during the pandemic

by amber vincent

Amber Vincent is a partner at Alyn-Weiss & Associates which researches and writes strategic marketing and succession plans for mid-sized law firms. As a business coach and speaker, she offers lawyers across all generations insight and planning structured to create personal relationships with potential clients. Her goal with every attorney is to generate a book of business that is based on what they want to do rather than what they have to do.

For anyone who knows me well, I'm not okay in isolation. AT ALL. Please call, text, or FaceTime me regularly. I thrive on social interaction and have an entire business built on the same ideals. I help lawyers (many of whom are loving social distancing) to get out of their comfort zones to network, meet people, and connect.

This pandemic has forced all of us to stop and find difficulty in doing simple things like go to the office every day, meet with clients, or even to the grocery store.

In unprecedented times like this, it can be very challenging to remain calm and focus on what you can do to market yourself especially when firm collections may be a concern in coming months.

All of us are in unknown and uncharted territory.

I've always been told, and always said, never stop marketing. Even in good times, lawyers and law firms should continue to market and be seen regularly. The most successful rainmakers find ways to stay relevant even if they are in trial, finalizing a large deal, or in the middle of a pandemic.

So what can you do to help strengthen your marketing with these newly found hours?

Outside of spending time with 10 or less of your loved ones, here are a few things to consider:

1. **Database and contact cleanup**. This is an excellent thing to focus on right now. Lawyers should be reviewing their contact list as if they were getting ready to send out holiday cards or gifts at the end of the year. Use the time you have now to go through the process of digging deep and evaluating your contacts to see who's there, who you haven't spoken to, and who may even need a holiday card at the end of the year. Most importantly, set yourself up to review your contacts so that you can reach out to them during this self-isolation time. Email them, set up "someday soon" meetings, or connect through LinkedIn to remain visible. It is also important to review your contact lists so you are able to send out email alerts from your firm about things that will affect day-to-day decision making for the reader when received.

2. **Content generation.** Lawyers should take this time to develop content, articles, webinars, and other material for the website and social media that they were otherwise too busy to pay attention to while they had more billable work. Getting ahead of content is always a struggle in law firms, and this slower period presents an opportunity for lawyers to generate enough content that could last for months. Think about this, if every lawyer in a firm generated one piece of content in the next 60 to 120 days it would allow firms to update their blogs and social media multiple times a month for many months! Please consider this – your marketing team would really appreciate it too!

3. **Committing to LinkedIn.** In-person networking may not be an option but online networking is absolutely approved. For years, I have trained lawyers on how to use LinkedIn and have described it as an online networking party. It's the networking event that is happening with or without you. Now more than ever, you need to be there. LinkedIn is an easy way to stay in front of people by sharing your content, connecting with others, following up, and saying hello. I'm not telling you to go nuts on sharing things that don't matter, such as your dinner plans, but educational and relevant content sharing is perfect. Take the time to learn how to leverage and use the platform so you can be a resource to your online network and remain active.

4. **Individual planning.** The last piece of advice for lawyers looking to fill time with meaningful activities is to complete an individual business plan. I offer a form that is easy to use, but you can just as easily create your own. Identifying your goals, what it will take to accomplish them, who you need to meet, and when you need to meet them are essential tactics to staying on track and accomplishing your business goals. Taking the time to plan now will not only get you in the habit of doing this in the future, but it lets you take time to look at what things you actually want to do. Do you like to speak? Look for topics and opportunities for trade and industry groups and pitch your ideas to the group for 2021 planning.

Take this time to reflect on what your strengths are as a lawyer and what you want to offer to referral sources and clients. Spending time with family, taking on hobbies and self-reflection can be very powerful tools to identify what you like to do and what you want to do in your career.

So, bill every hour you can, and if you find yourself with extra time, look at cleaning up, trimming down, and implementing a few of the above tactics. Creating a focus and voice will only make it easier for you to come out of your homes stronger and ready to connect again.

yls past leadership

by kathryne baldwin

ANDREW GOWDOWN
ROSEN HAGOOD (CHARLESTON, SOUTH CAROLINA)

Andrew Gowdown was the first chair of the Young Lawyers Section (YLS) in Primerus, but it was not as simple as just being nominated for the role. As a young attorney at Rosen Hagood in Charleston, South Carolina, a long time Primerus member, Andrew became active in Primerus, attending several of its conferences. Then in February 2010, he and his wife landed in Key West, Florida, for the Personal Injury Winter Conference. During a dinner one evening with Jack Buchanan, Primerus' founder and CEO, Andrew mentioned in passing that perhaps it was time for Primerus to introduce a younger arm of the organization. Mr. Buchanan immediately warmed to the idea and placed Andrew at the head of the table to build an executive committee. Thus, the groundwork for the YLS was born.

Starting from the ground up, Andrew and some of his young Primerus colleagues worked together to form an executive committee and draft the YLS Charter that would govern this new section. After getting up and running, the YLS introduced Stare Decisis, a quarterly written publication. The newly-formed section was widely accepted and, after its first year, the executive committee began to wonder if the YLS could support its own conference. Understandably, the fledgling YLS executive committee was concerned about whether firms would bear the cost of sending their young associates and junior partners to the first-time conference.

But, the new YLS committee pressed on, with the understanding that, "Where there is interest, there is always a way." Andrew reflected that the quality content ultimately offered at the first YLS conference in January 2012 was pulled from within the organization. He also remembers that looking internally for speakers and contributors was key in putting together an excellent program. "We didn't have to look far to make sure we had quality programming. We were surrounded by endless talent within each of the Primerus member firms." Ultimately, the conference – held that year in Miami Beach, Florida – was a success and paved the way for the annual YLS conference.

After the kick-off of the organization, Andrew remained on the YLS executive committee for several years before rolling off. He thereafter became more involved with the Personal Injury Institute and its leadership, serving for several years on its executive committee and eventually serving as its chair in 2016-2017. Andrew still serves as an emeritus member on both the YLS and Personal Injury Institute executive committees. When asked why a young lawyer should join the YLS, Andrew stated, "You are among the world's finest lawyers and law firms. The personal and professional relationships that you develop through this organization will last you a lifetime.

behind the curtain: new NJ arbitration organization regulation lifts the veil

by brian block

Brian Block is an associate in the Litigation Department at Mandelbuam Saslburg P.C. in Roseland, New Jersey. Brian earned his Juris Doctor, magna cum laude, from Rutgers School of Law in Camden, where he served on the board of the Rutgers Journal of Law & Public Policy. Prior to joining the firm, Brian served as a law clerk to Justice Anne M. Patterson on the Supreme Court of New Jersey.

Brian is a native of Parsippany, New Jersey, and remained in the Garden State to attend both college and law school. Currently, he is also a volunteer mentor and debate coach with the New Jersey Law Education and Empowerment Project.

On January 21, 2020, New Jersey Governor Phil Murphy signed into law what appears to be first of its kind state legislation regulating arbitration organizations, such as the American Arbitration Association (AAA) and JAMS. On its face, the Act (S1490) is directed at "consumer arbitration," meaning an arbitration involving consumer disputes involving goods and services, wherein arbitration is compelled by what is essentially a contract of adhesion. Indeed, the first three sections of the Act clearly seek to level the playing field for consumers, including a prohibition on financial conflicts of interest and fee-shifting, and fee waivers for indigent consumers. Yet, it is Section 4 of the Act mandating publication of data that may have the most wide-ranging, long-term impact on arbitration not just in New Jersey, but across the country.

The Mandate of Section 4

Section 4 of the Act requires that an arbitration organization that administers fifty or more consumer arbitrations each year publish quarterly and make publicly available certain information "regarding each consumer arbitration within the preceding five years." That information required to be publicly available includes, but is not limited to:

- The name of the business that is a party to the arbitration;
- The type of dispute including, but not limited to "goods, banking, insurance, health care, or employment," and "in the case of an arbitration involving employment," the range of the employee's annual wages (below $100,000, between $100,000 and $250,000, and more than $250,000);
- Whether the consumer was the prevailing party;
- The type of disposition of the dispute, if known; and
- The amount of the claim, award, and any other relief granted.

Section 4 further requires publication of data showing whether the consumer had legal counsel, the name of the arbitrator and fee collected in the arbitration, and how many times the business was previously a party to arbitration or mediation administered by the arbitration organizations. This Section is also notable for what it

does not require: publication of the consumer's identity.

The Implications of Section 4

Section 4 has several implications and, at the same time, gives rise to several questions.

Organizations like AAA and JAMS now must publish the above information for "each consumer arbitration." Based on the Act's definitions, a "consumer arbitration" encompasses disputes between a business and consumer who signed a standard contract written solely by the business to obtain "any goods and services primarily for personal, family, or household purposes," including financial and healthcare services and real property. That definition is expansive, but is largely in line with the definition of consumer arbitration in AAA Consumer Arbitration Rule 1.

Notably, the Act would seem to require publication of the listed information not solely for consumer arbitrations that occurred in New Jersey or involved New Jersey-based parties. Instead, the Act appears to force arbitration organizations operating in New Jersey to publish the information for each "consumer arbitration" no matter where the arbitration was conducted or who was involved. Thus, the Act appears to have the effect of requiring arbitration organizations to collect and publish the required information for consumer arbitrations across the country, potentially numbering in the thousands. It is not hard to imagine a future challenge to the facial scope of the Act.

Perhaps most conspicuous is the Act's de facto prohibition on confidentiality concerning the disposition of consumer arbitrations. The public will now be entitled to see several material aspects of each and every arbitration, most notably the name of the business, and nature and amount of the award or relief granted. While each consumer's name will not be published, the Act clearly lifts the veil of confidentiality often associated with private arbitration. In fact, JAMS Rule 26 requires JAMS and the arbitrator to "maintain the confidential nature

of the Arbitration proceeding and the Award," except as "otherwise required by law." Certainly, the Act now requires non-confidentiality of the award (at least the amount and relief). While AAA Consumer Arbitration Rule 43(c) does allow AAA to publish awards, it requires redaction of the parties' names absent party consent. Under the Act, of course, the name of the business party will be known.

In this same vein, Section 4's publication requirements would seem to nullify any attempt by the parties to agree to the confidentiality of, for example, the arbitration award. Suffice it to say, the Act largely wipes away confidentiality associated with consumer arbitration dispositions—at least as far as businesses are concerned.

Last, but certainly not least, despite purporting only to target defined "consumer arbitration," Section 4 contains curious language invoking employment disputes. Subsection 2 requires publication of the type of dispute involved, including "employment." Indeed, it goes on to specify that in an "arbitration involving employment," the published data must specify employees' annual wage range. It is difficult, if not impossible, to envision a scenario in which a "consumer arbitration" as defined is simultaneously an employment dispute. This begs the question of whether—wittingly or unwittingly—Subsection 2 roped employment arbitration into the publication requirement, thereby similarly eliminating certain confidentiality. However, given the structure of Section 4, wherein qualification as a "consumer arbitration" is a condition precedent to requiring publication of information, arbitration organizations likely will confine publication of information strictly to consumer arbitrations.

Going Forward

The Act takes effect May 1, 2020, and applies only to consumer arbitrations commenced thereafter. Therefore, we likely will not see the full implications of the Act, including Section 4, until much farther into the future. Nonetheless, qualifying businesses that utilize arbitration or are contemplating utilizing arbitration in their form contracts with consumers should now begin considering the impact of, among other things, the publication of arbitration results mandated by Section 4. Relatedly, it remains to be seen which option for dissemination each arbitration organization selects: a searchable online database or hard copy. Based on arbitration organization's larger business interests, it seems likely that non-electronic publications will be preferred.

One final, but no less important consideration for businesses is the elimination of fee-shifting by Section 3(a) of the Act. That section prohibits a consumer from being saddled with attorneys' fees and costs incurred if the business prevails. No such prohibition would be encountered in court, where a contractual fee-shifting provision would most likely be enforced.

punitive damages
well known in the United States but unrecognized in the Netherlands

by kathleen hugo & priscilla de leede

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Two approaches

Two cases against one of the largest chemical companies in the world, DuPont de Nemours, Inc. (commonly referred to as DuPont), show the different approaches regarding damages that can be claimed in the United States and the Netherlands.

In a recent, popularly cited American case, Kenneth Vigneron v. DuPont Company, an Ohio jury ordered DuPont to pay $10.5 million USD in punitive damages to Mr. Vigneron. The jury found that DuPont acted maliciously in dumping C-8, a toxic chemical known to cause cancer, into the local water supply. The jury determined that Mr. Vigneron developed kidney cancer due to exposure to C-8.

In the Netherlands, 500 Dutch individuals have claimed compensation of € 50 million from DuPont for years of exposure to toxic chemicals. The claimed compensation consists of damage to health, immaterial damage and the devaluation of their houses. The Dutch court will only award these claims if the actual damage suffered can be substantiated.

How to explain the different approaches to damages in the U.S. case and the Dutch case?

The United States:

The United States recognizes both compensatory and punitive damages. Punitive damages impose punishment against a defendant in order to deter not only that defendant, but also others from engaging in similar conduct. Compensatory damages are used to compensate a claimant for his or her loss. In determining awards for punitive damages, actual damage suffered is not taken into account. However, it is important to keep in mind that while punitive damages may be recoverable in some tort actions, they are ordinarily not recoverable in actions for breach of contract. Instead, a contract may contain a liquidated damages clause of its own. This is distinguishable from punitive damages: punitive damages are awarded by a court or a jury, while a liquidated damages clause is agreed upon by the parties to a contract and may be unenforceable if it constitutes a penalty.

U.S. courts generally only award punitive damages where the defendant's actions are "fraudulent, malicious, deliberately violent or oppressive, or committed with such gross negligence as to indicate a wanton disregard for the rights of others"

Additionally, an award of punitive damages must pass a three-part test to ensure that it is not unconstitutionally excessive under the United States Constitution:

1. The degree of reprehensibility of the defendant's misconduct;

2. The disparity between the actual or potential harm suffered by the plaintiff and the punitive damages award;

3. The difference between the punitive damages awarded by the jury and the civil penalties authorized or imposed in similar cases.

The Netherlands:

In the Netherlands, it is not possible for the court to award punitive damages. Only damages actually suffered are eligible for compensation. Due to the problem of proving the damage actually suffered, parties prefer to conclude a contract with each other in which they include a penalty clause. In that case only a violation of the contract has to be proven in order to be entitled to collect the fine that parties agreed upon. Of course, it is possible to include in the contract that (instead of the penalty) parties may claim the actual damage suffered if this amount is higher than the agreed penalty.

When parties do not have a contract, they will have to claim damages based in tort law and will have to substantiate in detail the actual damage suffered (i.e. a concrete amount supported by evidence). If the party cannot substantiate the actual damage suffered, he or she will not be able to claim damages.

Conclusion and Advice

If a Dutch individual or company has a contract with an American company applying the laws of the United States, punitive damages will most likely not be an issue. On the other hand, punitive damages may come into play if a cause of action arises under American tort law, such as personal injury.

On the contrary, if an American individual or company suffers damages in the Netherlands, they will have to substantiate the actual harm suffered in order to claim any damages regardless of whether such damages are based in contract or tort law. Thus, when contracting under Dutch law, it is important to include a penalty clause in order for the contracting parties to have more control over the resulting damages in the event of a breach.

If you need any help determining which law applies to your situation or need additional information related to claiming damages in the United States or the Netherlands, please contact Kathleen Hugo at khugo@mateerharbert.com or (407) 425-9044 or Priscilla de Leede at priscilla.deleede@russell.nl.

reviewing the entire controversy doctrine standard of review

by brian block & melody lins

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Most New Jersey litigators are, or ought to be, familiar with the "entire controversy doctrine;" a facet of New Jersey practice unique enough that federal courts consistently refer to it as this State's "specific, and idiosyncratic, application of traditional res judicata principles." E.g., Fields v. Thompson Printing Co., 363 F.3d 259, 265 (3d Cir. 2004). The doctrine is so imbued in our jurisprudence that it was codified at Rule 4:30A. Indeed, it finds its roots in Article VI, Section 3, Paragraph 4 of the New Jersey Constitution. DiTrolio v. Antiles, 142 N.J. 253, 267 (1995). With such a well-established foundation, it may be surprising to learn that there is presently an irreconcilable conflict between the standards of review applied by state and federal appellate courts when reviewing a trial court's application of the doctrine.

The standard applied by New Jersey state courts is well-settled. State appellate courts consistently hold that a trial court's decision to apply (or not apply) the entire controversy doctrine is reviewed under an "abuse of discretion" standard. See, e.g., 700 Highway 33 LLC v. Pollio, 421 N.J. Super. 231, 238 (App. Div. 2011); Unkert by Unkert v. Gen. Motors Corp., 301 N.J. Super. 583, 595 (App. Div.), certif. denied, 152 N.J. 10 (1997); Busch v. Biggs, 264 N.J. Super. 385, 397 (App. Div. 1993). This standard is both intuitive and in harmony with the doctrine's cornerstone purpose. In other words, it flows naturally from the foundational principle that the entire controversy doctrine is an equitable one "whose application is left to judicial discretion based on the factual circumstances of individual cases." Dimitrakopoulos v. Borrus, Goldin, Foley, Vignuolo, Hyman & Stahl, P.C., 237 N.J. 91, 114 (2019). It is a simple proposition that discretionary decisions are reviewed for abuse of the afforded discretion; or so one would think.

The U.S. Court of Appeals for the Third Circuit has long-held that, under the Full Faith and Credit Act, federal courts are bound to apply the doctrine "as an aspect of the substantive law of New Jersey." See, e.g., Rycoline Products, Inc. v. C & W Unlimited, 109 F.3d 883, 887 (3d Cir. 1997). Logically, then, the Third Circuit should be comforted by the fact that state appellate courts have soundly resolved any question

regarding the applicable standard of review. The doctrine's contours are definite, and the standard of review easily understood. The standard governing review of a district court's decision to apply the doctrine should not diverge from the standard of review applied by our state appellate courts.

Certainly, the conclusion to apply an abuse of discretion standard is supported by dicta contained in the Third Circuit's decision in Paramount Aviation Corp. v. Agusta, 178 F.3d 132, 138 (3d Cir. 1999). There, in response to the appellant's contention that the lower court abused its discretion, the panel opined that the district court, "of course, has great discretion" in applying the equitable considerations underlying the doctrine. Yet, it may appear to some (and rightly so) that the Third Circuit has consistently acted counterintuitively, by departing from the standard set forth by New Jersey's appellate courts and reviewing district courts' application of the entire controversy doctrine using a plenary standard of review (i.e., de novo). See, e.g., Ricketti v. Barry, 775 F.3d 611, 613 (3d Cir. 2015).

A critical assessment of the jurisprudence underpinning the plenary standard of review offers no insight into this conflict. Instead of relying on precedential case law from our state courts, the Circuit's practice appears to be founded in an amalgamation of errors and vagaries dating back to Circuit case law from the late 1980s. By way of example, Ricketti relied on the boilerplate statement in Venuto v. Witco Corp., 117 F.3d 754, 758 (3d Cir. 1997), which, in turn, relied on a citation to Lubrizol Corp. v. Exxon Corp., 929 F.2d 960, 962 (3d Cir. 1991), prefaced with a "see" signal. Yet, Lubrizol stated nothing more than the non-controversial proposition that the Circuit's "review of the district court's legal determinations is plenary." However, the Venuto Court failed to appreciate that the legal determination in Lubrizol was whether federal or state law principles governed in successive actions premised on diversity jurisdiction. Lubrizol has nothing to say about the applicable standard for reviewing a district court's decision to apply (or not apply) an equitable and discretionary doctrine, such as the entire controversy doctrine.

In Bennun v. Rutgers State University, 941 F.2d 154, 163 (3d Cir. 1991), the Circuit similarly stated, without more, that plenary review was appropriate. For support, it relied upon "footnote four" in its earlier 1987 decision in Doerinkel v. Hillsborough, 835 F.2d 1052, 1054 n.4 (3d Cir. 1987) (continuing the traditional jurisprudential significance of footnote fours). Reviewing a grant of summary judgment based on the entire controversy doctrine and other res judicata principles, Doerinkel's footnote four states that the court would undertake a plenary review because the panel was "concerned with interpretation and application of legal precepts." No further explanation is provided.

It seems clear that the Third Circuit's use of a plenary standard of review is not the product of tested precedent on this issue and might fairly be characterized as unconsidered copy-and-paste. Cf. Brian Soucek, Copy-Paste Precedent, 13 J. App. Prac. & Process 153 (2012). Indeed, the origin of the Circuit's adherence to the plenary

review standard largely pre-dates the clear pronouncements by our State appellate courts that "abuse of discretion" was the appropriate standard of review of a trial court's decision to apply the doctrine. In fact, it seems no Circuit panel has ever cited state court precedent on this fundamental issue, which is difficult to reconcile with the long-settled principle that federal courts are to apply the entire controversy doctrine as the substantive law of the State. It is similarly difficult to reconcile the plenary review standard with the diametrically opposed notion that application of the doctrine in a particular case is properly entrusted to the sound discretion of a trial court. This point is consistently evidenced by the Circuit's decisions to uphold rulings on issues left to "the sound discretion" of the trial court, which are generally reviewed under the abuse of discretion standard. See, e.g., Trotter v. 7R Holdings LLC, 873 F.3d 435, 439 (3d Cir. 2017) (forum nonconveniens dismissal); In re SGL Carbon Corp., 200 F.3d 154, 159 (3d Cir. 1999) (Chapter 11 petition dismissal).

The majority and dissenting opinions in the Third Circuit's recent decision, United States ex rel. Charte v. Am. Tutor, Inc., 934 F.3d 346 (3d Cir. 2019), best exemplify the peculiarity of applying a plenary standard to appellate review of an entire controversy doctrine dismissal. Charte concerned whether the plaintiff was precluded by the entire controversy doctrine from bringing a qui tam claim that arose from the same operative facts as a prior state court action she had settled several years earlier. The district court held that the doctrine barred plaintiff's claim, believing it was fundamentally fair to apply the doctrine based on the relevant facts and circumstances. On appeal, both the majority and dissent agreed that the doctrine is an equitable one left to judicial discretion based on the facts of the individual case. They nonetheless came to opposite conclusions based, by all indications, on the level of deference given to the district court.

Reversing, the majority cited Ricketti to justify exercising plenary review. Relying on several factors, the majority effectively substituted its determination of "fairness" under the totality of the circumstances, for that of the district court. Judge Thomas Hardiman's dissent does not expressly state that he was utilizing a more deferential standard of review. Yet, his language and reasoning strongly suggest he did so, as he stated that the panel ought to have given the district court's ultimate finding that the plaintiff engaged in gamesmanship "the respect it is due." Indeed, the dissent further recognized that "institutional competence is especially important" given that the doctrine is discretionary and left to case-by-case determinations. This finding was "central" to his conclusion. His view of "fairness" aligned with that of the district court.

The dueling Charte opinions bring to the forefront the need for the Circuit to fully consider the appropriate standard of review of a district court's decision whether to apply the entire controversy doctrine. District courts are left in something of a quandary when, at once, they are assured that they have great discretion to apply the doctrine based on their understanding of the facts and weighing of the equities in the cases before them, but must also make their decisions knowing they will be scrutinized under a de novo standard, effectively no different than summary judgment or a legal conclusion. Unfortunately, there is no hope of the Third Circuit engaging in the required self-scrutiny through Charte, since the full panel has decided to deny the request for en banc review.

The Circuit's current standard of choice is directly at odds with the standard long-utilized by our State courts (and the dicta espoused by the Agusta panel). Certainly, reasonable minds can disagree as to appropriate scrutiny for reviewing decisions that are dispositive of substantive claims. However, the appellate courts of the State of New Jersey must remain the ultimate authority on that issue. Fundamentally, inequity will result where federal courts continue to apply New Jersey law governing the entire controversy doctrine differently than the State's own appellate courts. Simply put, this disconnect calls for the Third Circuit's attention.

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Young Lawyer Section Updates

YLS Membership Call – The membership calls take place the second Tuesday of every other month. Here is the call schedule for 2020:

- Tuesday, October 13th
- Tuesday, December 8th

YLS Committees

- Executive Committee
- CLE Committee
- Membership Committee
- Newsletter Committee
- Community Service Committee

YLS Listserv

- yls@primerus.com

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Join Us for a Webinar

We are navigating new waters together without in-person meetings, and we want to do all we can to ensure you still benefit from the Primerus knowledge base. Please click **here** to view our upcoming webinars and listen to recent webinars. If you would like to present or have a topic suggestion, please contact Chris Dawe at cdawe@primerus.com

Primerus Calendar of Events

March

- YLS Conference - Phoenix, Arizona - March 11-13, 2021 (Tentative)

April

- Primerus Business Law Institute International Summit - Washington, D.C. - April 14-17, 2021

May

- Primerus Defense Institute Convocation - Colorado Springs, Colorado - May 5-8, 2021

2020 Young Lawyers Section Conference Recap

March 4-6 - Coral Gables, Florida

The Young Lawyers Section Conference was hosted in Coral Gables, Florida on March 4-6, 2020. Little did we know that might be the last trip of 2020 (although we hope not). With the largest turnout in YLS Conference history, the group certainly made the best of it! The Conference was a complete success top to bottom. The programming was highlighted by marketing consultant Amber Vincent of Alyn-Weiss Marketing, guest Tedx Speaker Monica Reyes, a panel presentation from local Primerus member firm Agentis Legal Advocates and Advisors, and new this year - contributions by the very talented senior young lawyer leadership. The event continues to place a priority on member to member networking and the agenda was full of opportunity for the attendees to meet and spend time with everyone in attendance. Continuing in the spirit of Primerus and the YLS's commitment to giving back, the group worked with Big Brothers Big Sisters to spend an afternoon with two dozen at-risk elementary school kids who participate in an after school program with BBBS. We want to thank everyone in Primerus that support the Young Lawyers Section…and the future leaders of Primerus!

"Having a referral network is great, but being able to put names to faces and create direct contacts within other Primerus firms is extremely valuable."

Michael Liles - Bivins & Hemenway, P.A. - Valrico, Florida

"In addition to the networking opportunities, the substantive programming regarding marketing, branding, and business development planning was cutting edge and invaluable. Nowhere else have I found these topics being discussed in such detail."

Carrie Coulombe - Szilagyi & Daly - Hartford, Connecticut

"YLS Conference 2020 was an excellent crash course in subjects that you do not learn in law school, nor do most firms teach you as a young associate. Namely, learning how to market yourself and how to form the habits/best practices toward creating your own book of business."

Andrew Creal - Cardelli Lanfear Law - Royal Oak, Michigan

"Even if I had walked away from this conference without any contacts or referrals, I know I received my ROI because I now have a better insight into how to effectively market my legal services."

Michelle Reid - Strauss Troy - Cincinnati, Ohio

Click here for more testimonials from the 2020 YLS Conference