

Alan S. Pralgever & Gary L. Koenigsberg Secure Victory on Appeal in Plaintiff's Dental Malpractice Case after Appellate Panel Considers What Constitutes a Net Opinion in Expert Reports

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Alan S. Pralgever, a partner in the firm's Litigation Department, was supported by litigation Counsel **Gary L. Koenigsberg** in their recent successful appeal in a dental malpractice case which was improperly dismissed at the trial level.

On November 14, 2018, the Superior Court of New Jersey, Appellate Division issued a decision overturning the trial court ruling in *Stilianessis v. Dionne, DMD*. An appellate panel led by the Hon. Clarkson Fischer Jr. determined that the trial court incorrectly concluded that the plaintiff's expert reports constituted "net opinions."

The plaintiff in this case produced two expert reports from treating physicians, a liability expert dentist and a neurologist. Both reports alleged that the defendant dentist had deviated from the dental standard of care by performing an upper mandibular anesthetic block, or PSA nerve block, by the use of three injections in one upper tooth (two of mepivacaine and one of septocaine) causing permanent facial paralysis to the plaintiff. The trial court erroneously found both expert reports to be "net opinions," claiming that the liability expert dentist's opinion was a net opinion because the defendant dentist alleged that the plaintiff's dentist expert did not read his notes properly, and that the neurologist failed to specify whether the injection, the material used, or both caused the paralysis. However, because the defendant dentist admitted performing the anesthetic procedure, the Appellate Division ruled that the notes were not alone dispositive of the issue.

The trial court further erroneously found that the neurological expert report was a net opinion because it specified that the injection and the material used could each be the cause of the injury, separately or together. The Appellate Division adopted the plaintiff-appellant's argument that this was akin to a bullet wounding someone fatally, but "the expert might not be able to definitively conclude whether the victim died from the bullet's perforation of the heart or the liver." The court opined that experts are not required to provide that level of precision. Concluding the expert reports were not net opinions, the Appellate Division remanded the case for a trial on all issues.