

## COURT APPROVES SETTLEMENT OF DEPARTMENT OF LABOR LAWSUIT

by: Richard S. Zackin, Esquire

On February 5, 2007, the United States Court for the District of New Jersey approved the terms of a settlement reached in the lawsuit brought by the Secretary of Labor in November 2004 against the NJLBA and others arising out of the operations of the NJLBA's Medical Plan, which began covering the medical expenses of employees of NJLBA members in 1988 and which ceased operating in 2003. Named as defendants in the lawsuit in addition to NJLBA were various former Trustees of the Plan and other individuals alleged to have participated in managing the Plan. Midlantic Healthcare, Inc., the Plan Administrator, was also named as a defendant by the Secretary.

The thrust of the allegations made by the Secretary is that the defendants had been negligent in their management of the Plan. There were no allegations of self-dealing or other improprieties on the part of the defendants. In entering into the settlement, none of the defendants is admitting to any liability.

The settlement will not become final until the Court enters a Bar Order precluding any pending or future lawsuits against the Plan and the other defendants named in the Secretary's lawsuit. Participants in the plan who have not been reimbursed by the Plan for their medical bills may be entitled to participate in the fund of \$2,100,000 that has been established under the terms of the settlement. The Fund will be administered by an Independent Fiduciary appointed by the Court. The Independent Fiduciary will determine which participants in the Plan are entitled to share in the fund and the extent of their participation.

The court will consider objections to the proposed Bar Order and will set a date for a hearing on those objections on a date yet to be determined. The procedure for submitting objections to the Bar Order will be set forth in a Notice to be published in various newspapers. A copy of this Notice also appears in this edition of the newsletter. Assuming the Court ultimately

overrules any objections to the Bar Order, the fund will be turned over to the Independent Fiduciary. It is expected that the Independent Fiduciary will establish procedures for the determination of claims against the Plan.

Federal Insurance Company, a Chubb company, will be contributing \$1,500,000 to the fund on behalf of the Association and the former Trustees of the Plan. The balance of the fund will be supplied by Midlantic Healthcare, Horizon Healthcare Systems and National Benefits Administrators, which had served as claims administrator for the Plan at various times, and which had been brought into the lawsuit by NJLBA and Midlantic, will contribute to Midlantic's portion of the settlement fund. Federal Insurance is also contributing a sum of \$150,000 to cover the cost of the Independent Fiduciary.

## APRIL 30, 2007 DEADLINE FOR SCHOLARSHIP APPLICATIONS

Founded in 1945, the Wellhofer/Wilinski Scholarship Foundation has, annually awarded scholarships to college bound students assisting them to continue their higher education. The Foundation memorializes William Wellhofer, one of the founders of NJLBA and Robert Wilinski, long time Attorney for the Association.

To be eligible for the Scholarship, the applicant must be the son, daughter or

grandchild of a bona fide dues paying, on-premise retail consumption licensee association member in good standing. Sons, daughters and/or grandchildren of retired NJLBA Association members are also eligible if the retired licensee had paid dues for the last five (5) years they were in business prior to the application.

The recipient must be a matriculated, full time undergraduate student attending any

recognized degree granting college or university in the United States. The scholarship grants are in the sum of \$10,000.00 payable at the rate of \$2,500.00 per year. Two scholarships are awarded annually.

Application for eligible children or grandchildren can be obtained by calling 609-394-6730. All completed applications for this year's scholarship must be in the NJLBA office on or before April 30, 2007.

## Not happy with the cost-to-value of your print ads?

With the increasing popularity of the INTERNET, it is known that subscription rates are down in the newspaper industry. Today, more and more people are utilizing the internet to receive the news, manage their investments, do their research, stay in touch with others, plus much much more!

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addresses from New Jersey residents. Your listing will be linked to non-competing businesses email advertisements sent to their client base monthly. You will be reaching thousands of potential new customers who have signed up and said "Yes, send me promotions, coupons and information from merchants in your area. Your advertisement will be welcome. It is not spam and will not be tossed with the rest of the junk mail, which is why NJYP.com's database is over 550,000 and growing!

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- **Lead Generation Marketing** for your members: Opt-in emails will be collected from our NJYP.com on line directory.
- **A permission-marketing program** will also be created so that you can collect emails from your own customers and have them stored in a secure database. Using our secure email server, members will be able to send them current promotions and special messages.
- **Special promotions and discounts for NJLBA members.**

To learn more about our program, including our web design and hosting services please call Ian Silberstein @ 732-407-7153. You can also visit our web site at *NJYP*.

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### Reporter

An Official Publication of the  
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**Editor: Lewis B. Rothbart**  
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## Digital Jukeboxes Offer More Music to Customers

Digital jukeboxes can not only offer new entertainment choices for patrons of nightclubs and bars, but also simplify compliance with copyright law for owners of the venues.

“For some business owners, digital jukeboxes are a good entertainment alternative,” said Tom Annastas, BMI Vice President, General Licensing. “The digital boxes offer more music choices than traditional boxes for customers, and they can simplify music licensing.

Music licenses are fees required under copyright law to compensate songwriters and music publishers when their songs are played in public. Most recording artists and musicians do not compose the songs they record, and do not own the legal right of public performance. The music licensing fees collected by BMI are distributed to the songwriters and music publishers, not to the record companies and artists. All businesses that play copyrighted music in public, including radio and TV stations, must pay performance fees to songwriters.

“BMI already has licensing agreements in place with all major suppliers of digital boxes — E-cast, Touchtunes, and Rowe AMI,” Annastas said. “Some nightclub and bars, however, will need a separate music license from BMI if they have a cover charge or offer other forms of music such as playing CDs, hosting customer iPod or karaoke nights, or providing live bands.”

BMI’s digital jukebox agreement with E-cast, Touchtunes and Rowe AMI can provide legal access to publicly perform approximately 6.5 million songs from approximately 300,000 copyright owners affiliated with BMI.

“Digital boxes ensure accurate compensation for songwriters when their music is played. The technology brings a higher level of copyright compliance to the jukebox industry and reduces the administrative burden for the manufacturers, operators, venue owners, and BMI,” Annastas said.

Ecast’s Location-Based Broadband Network™ delivers music to consumers at bars, restaurants, hotels, cafes and other out of home venues via pay per use broadband connected boxes. All usage is captured and reported, enabling accurate compensation to publishers and writers.

Jukebox operators and venue owners also are empowered by the usage data, since it enables them to ensure their jukebox features music popular in their venue. They also can delete the less popular music. If the customer cannot find the desired song, he or she can access for play any track from 200,000 choices in the Location-Based Broadband Network.

Customer friendly features on Ecast-powered jukeboxes include the MAKE MINE FIRST™ option, which lets patrons advance their selection to the front of the song queue, and SEARCH ALL MUSIC™, which lets customers narrow their search by artist, album, genre or song.

With over 12,000 digital jukeboxes on location, TouchTunes is the leading provider of digital downloading jukeboxes to coin-

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# Legislative Affairs Report

NEW JERSEY LICENSED BEVERAGE ASSOCIATION

TRENTON, NEW JERSEY

by Barbara McConnell

## Tax Plan Wins Approval with Help from the Other Side

It took some back-room dealing and the votes of three Republicans, but the Senate finally broke a week long delay by passing a portion of the "property tax relief" plan for New Jersey homeowners.

Democrats Nia Gill, Shirley Turner, John Adler, and Wayne Bryant refused to vote for the plan which would establish a "cap" on spending, along with credits of up to 20 percent on most residential tax bills, saying the legislation was "unaffordable" and "ineffective" as a property tax relief measure. Determined to get the votes, Governor Jon Corzine and Senate President Richard Codey went to work persuading some "renegade" Republicans to vote for the measure. They succeeded by obtaining the votes of Senators Martin, Singer, and Bark.

Allegedly, the bill provides more than \$2 billion to offset the \$21 billion New Jersey property owners pay in taxes each year. Relief will range up to \$2,000, depending on homeowners' income and their tax bill.

## Fire Code Regulations Adopted

On February 5, 2007, the Department of Community Affairs adopted the much dreaded Uniform Fire Code Amendments they had been threatening ever since the Rhode Island "Nightclub" fire. The Department claims the amendments address deficiencies such as inadequate exit capacity, inadequate remoteness of exits and lack of adequate fire protection systems.

NJLBA strongly opposed the adoption of these regulations, arguing that we were not aware of any loss of life caused by fire in a licensed premises in New Jersey; and, that since we have the strictest fire safety code in the country, the amendments are unnecessary.

The Department agreed that the definition of "nightclub" was overly broad, but did nothing to clarify that the regulations did not apply to all "eating and drinking" establishments. They did, however, agree to a two year implementation date.

In responding to a comment as to whether zero interest loans would be available to help establishment retrofit their businesses to be in compliance with the new regulations, the De-

partment responded by saying, "pledging money is within the purview of the Legislature, not the Department."

## Family Leave

The Senate Labor Committee recently passed a new Family Leave Act that would apply to all businesses with two or more employees. The bill offers 12 weeks of "paid" leave by allowing employees to be eligible to collect Temporary Disability for the caring of a new child, adopted child, or the caring for parents and spouse. The sponsor says that the cost will not be borne by employers, but rather by a 0.1% increase on the employees for disability insurance. We've heard that story before, only to find out down the road that the TDI fund is "broke" and then an increase is placed on employers and employees alike. The bill now goes to the full Senate for a vote.

## Farm Winery

A-3432 - Fisher - will permit wineries to produce and sell certain distilled alcoholic beverages. The bill will be heard by the Assembly Law and Public Safety Committee on Thursday, February 8, 2007.

A-3433 - Fisher - Expands the number of salesrooms winery may operate from six to seven; permits sampling of wine at salesrooms, and permits wineries to sell wine at certain farm markets.

NJLBA opposes both these bills as far exceeding the original intent of New Jersey Farm Winery Legislation; and, as another attempt to place those with an alcoholic beverage license at a competitive disadvantage.

## Drinking and Driving

AR-228 - Albano - Urges businesses that serve alcoholic beverages to voluntarily join the HERO campaign against drunk driving. This legislation will also be heard on Thursday, February 8, 2007 in the Assembly Law and Public Safety Committee.

## "No-Smoking" Regulations

The Department of Health has still not adopted regulations pertaining to the "No-Smoking" law. We have attempted to contact the Department on several occasions, but have only been able to talk to a recording!



# OFF-TRACK WAGERING FACILITIES

In 2001, the Legislature concluded that the "horse racing industry is economically important to this state, and the general welfare of the people of the State will be promoted by the advancement of horse racing and related projects and facilities in the State."

The Legislature "has determined...that the New Jersey Sports and Exposition Authority, by virtue of its experience in the operation of pari-mutuel wagering facilities and other entertainment related projects in this State, is particularly well-suited to coordinate with other parties to promote the uniformity and success of off-track wagering throughout the State".

"In establishing off-track wagering facilities", the Legislature recognized that "the Authority will not be performing an essential government function but rather an essentially private business function" in competition with local businesses.

The Legislation further provided that "because the establishment of off-track wagering facilities is, in reality, essentially a private business function and not an essential government function, the authority is not permitted to receive a special license. Under this act only a private holder of a Class C plenary retail consumption license is permitted to provide alcoholic beverages at an off-track wagering facility."

The authority is now ready to move forward with the building of the off-track wagering facilities. Despite advertising for retail consumption licensees to partner with the authority, no successful deals have been made. The authority is now attempting to change the law to allow the authority to purchase a class C retail consumption license. The authority has testified that they, unlike

a private entrepreneur, can operate a food and beverage business at an off-track facility at a loss while making the wagering part of the enterprise profitable.

If you are interested in becoming a partner with the Sports and Exposition Authority or if you are interested in selling your retail consumption license, contact Peter DeSimone, Director of off track wagering services at 201-460-4193.

## BMI Jukeboxes

*continued from page 4*

operated machine operators across the U.S. The innovative TouchTunes digital jukebox has been designed to offer customers a user-friendly interface, superior sound quality provided by Bose® and a wide selection of songs. The TouchTunes music service agreement provides operators with access to numerous services including TouchTune's music library, music downloading capabilities, statistical information, remote technical maintenance and management of administrative tasks. The boxes provide coin-operated machine operators with financially attractive returns, easy jukebox maintenance and music administration. TouchTunes jukeboxes also protect venue owners, record companies, songwriters and music publishers from copyright infringement.

The heart of AMI Entertainment's business is a line of the world's most advanced digital jukeboxes, which can operate in stand-alone or Internet-connected formats. Rowe designs its own client/server software system to administer jukebox content. Rowe International is the number one manufacturer of commercial and home CD jukeboxes. The company also manufactures the "Netstar" (floor format) and "Starlink" (wall-mounting) Internet-enabled digital jukebox lines. The company's Internet-enabled devices, which can operate using a variety of Internet connectivity methods or as stand-alone units, are the world's leading pay-for-play broadband entertainment systems.

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# NOTICE OF PROPOSED BAR ORDER

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY  
HON. JOEL A. PISANO, U.S.D.J.

ELAINE L. CHAO, Secretary of Labor,  
United States Department of Labor  
Plaintiff,  
v.  
NEW JERSEY LICENSED BEVERAGE ASSOCIATION,  
INC.; ET ALS.  
Defendants  
Civil Action No. 04-5692 (JAP)

## ATTENTION:

Persons Who May Be Barred From Bringing Claims, Continuing Suit, or Filing Suit by a United States District Court Bar Order That Has Been Proposed In Connection With the Settlement of the Above-Captioned Matter, Including All Participants and Service Providers to Participants of The New Jersey Licensed Beverage Association Employee Welfare Benefit Plan.

## PLEASE TAKE NOTICE:

The United States District Court for the District of New Jersey has approved a settlement of a civil action brought by Elaine L. Chao, Secretary of Labor, United States Department of Labor. Consent Judgments will be entered that will provide for a fund of \$2,250,000.00 to be deposited in court. The Court has appointed an Independent Fiduciary to administer this fund for the purpose of making equitable distributions to participants, or providers of covered services to participants, in the New Jersey Licensed Beverage Association Employee Benefit Welfare Plan (the "Plan") whose outstanding claims have been submitted to the Plan (the "Plan Participants"). The Consent judgments to be entered will become effective only upon the entry by the Court of a Bar Order that would preclude the bringing of claims against any or all of the Defendants and the Third-Party Defendants in the civil action brought by the Secretary of Labor, as well as against any Plan Participants, to the extent such claims relate to the Plan, to benefits under the Plan, or to the termination of the Plan.

The proposed Bar Order, generally, will preclude any such claim by any person or entity, including, but not limited to, any health care, medical or service provider, or collection agency with a claim for benefits under the Plan, whether such person or entity would otherwise assert the claim as a Plan Participant, a beneficiary of the Plan, or has having acquired the claim by way of assignment or other transfer. You have a right to obtain a complete copy of the proposed Bar Order for your review of all of its applicable terms.

ALL OBJECTIONS TO THE PROPOSED BAR ORDER MUST BE MADE IN WRITING AND FILED WITH THE COURT BY MAIL TO

The Honorable Joel A. Pisano, U.S.D.J.  
c/o William T. Walsh, Clerk  
U.S. District Court of New Jersey  
Clarkson Fisher Federal Bldg. & U.S. Courthouse  
402 E. State Street  
Trenton, New Jersey 08608  
Re: Case No. 04-5692 (JAP)

**ALL OBJECTIONS MUST BE RECEIVED BY THE COURT ON OR BEFORE APRIL 5, 2007.**

COPIES OF OBJECTIONS SHOULD ALSO BE MAILED TO:

Richard S. Zackin, Esq.  
Gibbons P.C.  
One Gateway Center  
Newark, New Jersey 07102-5310

Ronald A. Berutti, Esq.  
WEINER, LESNIAK, LLP  
629 Parsippany Road  
P.O. Box 438  
Parsippany, New Jersey 07054

Objections submitted to the Court should expressly state that objection is being made to the entry of a Bar Order in Chao v. New Jersey Licensed Beverage Association, Inc. et al. Case No. 04-5692. Objections should also include the objector's name, address, telephone number, signature, and the reasons for objection to the entry of the Bar Order. Written objections must be received by the court no later than **April 5, 2007**.

The Court will conduct a Hearing on objections to the proposed Bar Order on a date and time to be determined by the Court. Objectors will be notified of the date, time and place of the Hearing and will have the opportunity to appear and be heard. Further information regarding this Notice including copies of the proposed Bar Order, the Consent Judgments and related Orders of the Court, may be obtained by contacting:

Michelle R. Laborda  
Case Manager  
Gibbons PC  
One Gateway Center  
Newark, New Jersey 07102-5310  
Phone: (973) 596-4556  
Fax: (973) 639-8388  
e-mail: [mlaborda@gibbonslaw.com](mailto:mlaborda@gibbonslaw.com)

A Federal Court has authorized this Notice. This is not a solicitation from a lawyer.

# MONDAY MORNING

Jeffrey A. Warsh, Esquire  
Former NJ ABC Staff Attorney  
Villani & DeLuca, P.C.  
732.892.9050

It seemed like just another Monday morning, following another busy weekend. You open the door to your tavern and, with coffee cup and newspaper in hand, settle into your chair. With the Super Bowl up this weekend, it's going to be a hectic week of preparation and a crazy weekend ending *late* Sunday night.

Suddenly, you hear a knock on the door and, as you open up, you are greeted by not one...but two ABC Investigators...their credentials presented clear and visible. Not just another Monday morning. A totally different day is about to unfold. The Investigators state that their purpose is to conduct a random inspection and they verbally walk you through the process. Clearly not just another Monday morning...your heart begins to race, you start to sweat and your mind races with hundreds of thoughts about the whereabouts of this document or that...do I have the most updated E141A?; do I have the required paperwork for that part-time stockboy? Did Bessie file all the invoices? Spinning...everything is spinning. But do we need to escalate to sheer panic?

No need to panic here. Remain calm. Request a few minutes to collect yourself; put aside the coffee and grab a bottle of water and calm down. It is important to know that the ABC's major focus on formal inspections is to assure compliance, not to nail you to the proverbial wall. In light of this and with your heart rate now approaching normal again, be as cooperative and forthcoming as possible and comply with all requests for information.

At the end of the inspection, you will be provided with a receipt document called a "Notice of Inspection." You will receive one of three "grades": A, B or C. An "A" grade means that no violations have been found. A "B" grade means that additional documents, not available for inspection at that time, must be produced within seven (7) days. The legal vehicle for this scenario is the formal issuance of a "Seven Day Notice," giving you seven (7) days to produce the requested documents or face the finding of a violation. A "C" grade results from the finding of violations of the ABC law and/or regulations. The specific violations found will be disclosed to you in the Notice of Inspection.

For those of you who receive the "C" grade, it is critically important to understand that the final decision as to whether to formally charge the violations rests with the ABC Enforcement Bureau. Merely because violations were found does not necessarily mean that you will be charged with the violations. The Enforcement Bureau evaluates the violations based on such factors as the severity of the offense and the licensee's prior ABC record. Here is where your attitude and level of cooperation can benefit you the most. A rapid turnaround from violation to full compliance, while the violation is still being considered by the ABC is your most desired course of action. While violations can be found, they can result in prosecution, fine letters or merely warning letters. You want a warning letter at worst.

For some piece of mind after you read this article, give yourself a self-inspection with the guidance from the *actual* list utilized by ABC investigators. Simply go to [www.nj.gov/oag/abc](http://www.nj.gov/oag/abc). On the left margin, click the tab for "Enforcement" and then click on "self-inspection check list" for the downloadable PDF file. If you do not have computer access, contact the NJLBA directly for a faxable copy. Once you have the list in front of you, conduct your self-inspection. If you answer "yes" to all 26 questions, you are in excellent shape and would sail through an ABC inspection. If you have any "no" responses, make it your priority to fill the deficiency ASAP. If, in the course of your self-inspection, you have any questions, call the toll free Investigation Bureau Hotline at 866-713-8392. An ABC Investigator is available to assist you in ensuring timely compliance.

Now that it is all over...get back to work, Superbowl Sunday is just days away!!!

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# Behind the Bar

by David T. Kratt

## WALK A MILE IN THEIR SHOES



The stories in this article all happened during one night of being out on the town with some friends. Let's retrace a few of my footsteps or, at least, what I can remember:

### First bar on the list – “The” popular martini bar!

It even has a pretty neon sign mounted behind the bar that reads, “Martini Bar.” And their specialty, according to the fancy martini menu, is stuffed olives. But they were out. And the bartender didn't have time to prepare more. Two friends said they didn't mind waiting. The bartender said she didn't know how long it would be. My friends looked at me; like I should say something because I was the bartender in the group.

I was drinking beer!

I meekly said, “There's no way you could stuff a couple olives?”

We moved on after one drink.

### Another bar on the list –

Customers understand having to wait when it's busy; they can even understand being served out of turn. But what we didn't understand was his inattentive attitude and why we had to flag

him down every time we needed something. We were the only customers at the bar!

We all agreed to take a hike.

### Yet another bar on the list –

Being somewhat of a regular at this bar, I wanted to first introduce myself to the new bartender before ordering a couple more drinks. But his cell phone rang. He pulled it out of his pocket, leaned up against the back bar and started talking – without even excusing himself. My buddy and I both said, “What the...?” The bartender never did remember to come back to finish our conversation, or take my drink order.

We didn't stay much longer.

### The last bar on the list –

The rest of the night is pretty much a blur, except, I do remember quite clearly what happened at the end of the night.

Yes, it's all coming back to me now....

We crawled – I mean – walked in just in time for last call. Everybody else in our group, except for one buddy and me, had dropped by the wayside. We ordered our beers at the bar and then moved over to a high-top table. We were sitting there minding our own business. You always say that before something weird happens in a true story. Literally minutes after getting our beers, a bouncer tells us, “It's time to go.” I nodded while taking my fourth sip of my beer. I forgot that this club is notorious for giving last call and then kicking everybody out shortly after. He then proceeded to pull my buddy's barstool out from underneath him and said, “Now!”

Oh yeah, we left. And I won't go back.

*Question: Is your best foot forward with every step of your customers' way? Or are you aware of some attitudes, behaviors or policies that could prod your customers into walking away peeved?*

*Please send correspondence to [dikratt@chartermi.net](mailto:dikratt@chartermi.net) or P.O. Box 638, Grand Haven, Michigan 49417.*

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(973) 627-1490

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BROKERS

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Fax 973.736.1712

Robert C. Williams  
COUNSELLOR AT LAW  
Associate Member NJLBA

Alcoholic Beverage  
Licensing Matters

622 Eagle Rock Ave.  
West Orange, NJ 07052



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## LOOKING AHEAD TO UPCOMING EVENTS

April 11, 2007 – Association Membership Meeting  
Irish Pub, Atlantic City, NJ

May 2007 – Battle of the Bars Golf Outing,  
Shore Gate Golf Club, Ocean View, NJ

June 27, 2007 – Wellhofer/Wilinski  
Scholarship Foundation Picnic/Pool Party  
Oak Tree Lodge, Wall Township, NJ

October 8-10, 2007 – 75th Annual Alcohol Beverage  
Retailers' Diamond Convention, Tropicana Casino and  
Resort, Atlantic City, NJ

### WANTED

The Metropolitan Society is looking for around five (5) electrostatic smoke eaters. Contact Bob Lesnick of the Society at 973-287-3540 or cell 973-809-8314. email address [admin@metrocigar.com](mailto:admin@metrocigar.com).

**Drink**

**Responsibly.**

**Drive**

**Responsibly.**