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Richard B. Vaughn

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2055(e)(2) as a charitable annuity remainder trust.

The court held that Johnson's trust could not be reformed to meet one of the Section 2055(e)(2) exceptions while still complying with the terms of the will. Even though a contract could have been bought to satisfy the family grave maintenance, no upward limit existed on the amount required to support Johnson's remaining sister due to the unpredictable costs of medical care. Therefore, the amount of funds needed to fulfill the noncharitable bequests could not be accurately assessed until after all of Johnson's sisters had passed away. As a result, the funds to the charitable beneficiaries could only be assessed after all the sisters were deceased.

Lastly, the Fifth Circuit held that the statutory language of the Internal Revenue Code was clear, and no express Congressional intent supported an exception in this case.

Gwen M. Geraghty

## New Jersey Supreme Court Finds County Board's Itemized Phone Bills Are Not Public Records

In *North Jersey Newspapers Co. v. Passaic County Board of Chosen Freeholders*, 601 A.2d 693 (N.J. 1992), the Supreme Court of New Jersey held that the state's Right-to-Know statute did not create an unqualified right of access to a public body's itemized telephone billing records that disclosed the identity of the parties called. Furthermore, the telephone bills were not accessible under New Jersey common law because the public's need for the identity of the parties called did not outweigh the governmental policies of confidentiality in telephone communications and executive privilege.

### Background

To uncover possible misuse of public funds, the North Jersey Newspapers Company ("News-

paper"), in July 1990, requested copies of itemized phone bills for the office and car-phone lines of the Passaic County Board of Chosen Freeholders' ("Board"). Some of these bills included date, time, length of call, amount of charge, and phone number called. The Newspaper made its request pursuant to New Jersey's Right-to-Know Law, N.J.Stat. Ann. 47:1A-1 to -4, and a parallel right of access to public records under New Jersey common law.

The Board denied the Newspaper's request on both grounds. First, the Board claimed that the Right-to-Know Law allowed access to the total amounts of a phone bill but not to the entire itemized document. Second, the Board argued that the public's interest in reviewing the itemized phone bills did not outweigh the governmental need for confidentiality; therefore, the Board denied the Newspaper's request for access under the common law as well. Consequently, the Newspaper sued in the Superior Court, Law Division, Passaic County, seeking access to the requested records.

### Proceedings in the Lower Courts

The trial court granted the Newspaper unlimited access to the itemized phone bills. The court concluded that because itemized phone bills are not specifically exempted from the Right-to-Know Law, the Newspaper should have access to the records it sought. The court also found that common-law standards required accessibility because the constitutional and privacy interests of persons telephoned by Board officials did not outweigh the public's interest in reviewing the phone bills. The Board appealed to the Superior Court, Appellate Division.

The appellate court agreed that the phone bills were public records accessible under the Right-to-Know Law. However, the appellate court reversed the trial court, finding that the Board's privacy interests not only were protected by the New Jersey Constitution but also outweighed the public's interest in reviewing the phone bills. Therefore, the appellate court ruled, the Newspaper should not have unlim-

ited access to the requested records. The Newspaper appealed to the Supreme Court of New Jersey.

### Right-to-Know Law Does Not Apply

The supreme court disagreed with the appellate court's statutory analysis and found that the Right-to-Know Law did not apply to itemized phone bills. The appellate court's judgement was modified accordingly.

In finding that the Right-to-Know Law did not apply to itemized phone bills, the supreme court distinguished public records accessible under the Right-to-Know Law from public records accessible under the common law. Under the Right-to-Know Law, the public has an unqualified right to inspect public documents only if the documents are records "required by law to be made, maintained or kept on file." In contrast, records accessible under New Jersey common law are records made by public officers in the exercise of their public functions. The public's right to inspect common-law records depends on whether the public's need for the records outweighs the government's need for confidentiality.

The Newspaper claimed the itemized phone bills were covered by the Right-to-Know Law because the Board was required to record all the details of its telephone bills under the Local Fiscal Affairs Law. The Local Fiscal Affairs Law requires public agencies submitting requests for anticipated expenses to make available a detailed bill of items on demand. Furthermore, the Newspaper claimed, the standard of "detailed" in the Local Fiscal Affairs Law was meant to grow with the times and included information that was routinely available. Modern technology allows telephone companies to routinely provide customers with information such as date, time, length of a call, number called, and charge for a call. Therefore, the Newspaper argued, because such information was routinely available, public agencies such as the Board were required to make itemized phone bills available to the

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## Itemized Phone Bills

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public under the Local Fiscal Affairs Law.

The supreme court rejected the Newspaper's arguments. The court noted that regardless of how the word "detailed" was interpreted, attempting to expand the scope of the Right-to-Know Law by reference to the requirements of a related statute was inappropriate. In addition, the court found that when the Right-to-Know Law was enacted, the legislature did not intend for "records required by law to be made, maintained or kept" to apply to all the detailed information generated by computers.

### No Common-Law Right of Access

The Supreme Court of New Jersey agreed with the appellate court's common-law analysis that the Board's privacy interests outweighed the public's interest in viewing the requested records. The supreme court found several problems with granting unlimited access to the information in the itemized phone bills. First, unlimited access would disclose the identity of persons whom public officials had called. The court found that such a disclosure would violate these individuals' right of privacy, which extends to the people and places called, the conversations, and the telephone bills.

Second, unlimited access would intentionally disclose the identity of persons who had called government officials. This type of disclosure, the court stated, could directly conflict with an express legislative policy or governmental need, such as protecting the identity of those who report child abuse to government social workers.

Third, unlimited access would violate the "official information" privilege provided by the New Jersey Evidence Rules, which prohibits disclosure of official information when such disclosure would be harmful to the interests of the public. For example, the court explained, a mayor might need to call a political activist to gain support on a sensitive issue and disclosure of the call could be disruptive.

The court acknowledged that the

public's interest in disclosure here was gaining access to sufficient information to evaluate potential misuse of public funds by Board officials. The court found, however, that the information already available to the Newspaper - the amount of the charges, the names of the officials who incurred the charges, and a comparison with past expenditures - was sufficient to satisfy the public's interest. Furthermore, the information available could satisfy the public's interest without disclosing the identity of third persons who called or were called by Board officials.

### ACLU Solution Rejected

The court also rejected an argument submitted by the American Civil Liberties Union ("ACLU") on behalf of the Newspaper. The ACLU argued that the court should interpret the Right-to-Know Law to require disclosure of the detailed telephone bills only for official calls made by Board members. For personal calls, the ACLU recommended disclosure only of the cost and quantity of calls. The court disagreed, however, stating that the ACLU recommendation overlooked the official information privilege and failed to alleviate the risk of disclosing the identity of persons who called the officials.

Richard B. Vaughn

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## Illinois Supreme Court Precludes Recovery of Economic Losses Resulting From Negligent Legal Representation

In *Collins v. Reynard, et al*, No. 70325, 1991 Ill. LEXIS 104 (Ill. Oct. 31, 1991), the Illinois Supreme Court held that purely economic losses resulting from legal malpractice may not be recovered under a negligence theory. The exceptions for fraud or extracontractual duties did not apply in this case.

### Background

Dorothy J. Collins ("Collins") hired Charles Reynard and the law

partnership of Reynard and Robb ("Reynard") to negotiate the installment sale of her business to Steven Legner ("Legner"). Legner later pledged the assets of the business to a bank. Upon Legner's subsequent default, the bank repossessed the assets of the business and sold them. Although Collins had a ready, willing, and able buyer, she was unable to complete the sale because the bank had already repossessed the assets.

Collins sued Reynard in the circuit court of Sangamon County, alleging that because Reynard negligently drafted or approved the sales contract, the contract did not reflect Collins' intention to retain a first and prior security interest in the business and the assets sold. As a result of Reynard's negligence, the bank had a security interest superior to that of Collins. Collins claimed her damages amounted to the money due under the installment contract, which included the principal and interest, the cost of collection, and attorney fees.

Reynard filed a motion to dismiss the negligence counts, arguing that Illinois law precluded recovery of economic loss for professional negligence under a tort theory. The circuit court denied Reynard's motion, but allowed Reynard to appeal to the appellate court on the question of the availability of such a cause of action. The appellate court reversed the circuit court and found that Illinois law precluded recovery of economic loss in tort cases, including legal malpractice, brought under a negligence theory. Collins appealed to the Illinois Supreme Court, and the Illinois Trial Lawyers Association supported her position with a supplemental brief.

### Damages are Attributable to Economic Loss

The preliminary question before the Illinois Supreme Court was whether the damages sought by Collins were attributable to economic loss. Previously, the court had found that injuries resulting from legal malpractice were monetary, rather than personal. Further, in order to recover damages in the negligence action, Collins had to show harm beyond disappointment of expectations.