

## **Vacating a Final Judgment in New Jersey**

The New Jersey Appellate Division in the case of Brandeker v. The Scotts Company, 2018 N.J. Super. Uppub. LEXIS 437, addressed the issue of "misapplication of the court's discretion."

By way of background, in an asbestos matter, a trial judge barred plaintiff's experts and granted summary judgment to defendant The Scotts Company on January 10, 2014. After the last remaining defendant settled, the new judge assigned to the case entered judgment that closed /dismissed the case in the entirety on July 10, 2015. In May 2015 plaintiff counsel learned that The Scotts Company had in fact made erroneous statements in discovery responses and The Scotts Company had located in the spring of 2014 samples of its Scotts turf builder product which was the subject of prior discovery requests. On July 19, 2015, plaintiff filed a motion to vacate the order dismissing the case and to restore the case to the active docket based on the newly discovered evidence; namely, the turf builder samples. On August 21, 2015 the trial court found that the samples had been Scotts possession, that Scott had a duty to provide the samples, and that the information/samples had not been provided to plaintiff; however, the trial court denied the motion to vacate on procedural grounds that will Rule: 50-1 only applied to final orders and judgments not to the interlocutory orders of January 10, 2014 orders, pursuant to 4:49-2 does not bar a motion to vacate the final order under Rule 4:50-1. Accordingly, the final judgment of July 2015 was vacated under Rule 40:50-1 (b) based on the new evidence related to the vintage samples, leaving to the trial court's further discretion whether plaintiff should be given additional time to file a motion addressing the effect of the discovery violation on the in limine summary judgment orders.

On August 21, 2015 the trial court found that the samples had been Scotts possession, that Scott had a duty to provide the samples, and that the information/samples had not been provided to plaintiff; however, the trial court denied the motion to vacate on procedural grounds that will Rule: 50-1 only applied to final orders and judgments not to the interlocutory orders of January 10, 2014 orders, pursuant to 4:49-2 does not bar a motion to vacate the final order under Rule 4:50-1.

Accordingly, the final judgment of July 2015 was vacated under Rule 40:50-1 (b) based on the new evidence related to the vintage samples, leaving to the trial court's further discretion whether plaintiff should be given additional time to file a motion addressing the effect of the discovery violation on the in limine summary judgment orders.