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April 26, 2001

M E M O

TO: Commissioners

FROM: Bob Anderson

RE: Supplemental Report on Developments in the Counsel's Office Since  
March 29, 2001

In Allen v. Fauver, \_\_\_\_ N.J. \_\_\_\_, 2001 N.J. Lexis 341 (4/10/01), the New Jersey Supreme Court dismissed a claim by State corrections officers against the State for incidental overtime wages under New Jersey's Wage and Hour Law and the federal Fair Labor Standards Act. The Court held that the Wage and Hour law's definition of "employer" did not include the State and that the FLSA did not provide the basis for a suit since the State had not waived its sovereign immunity and consented to be sued under the FLSA. Justices Long and Stein would have found a waiver of sovereign immunity based on New Jersey's Contractual Liability Act and a collective negotiations agreement providing for overtime compensation for incidental overtime assignments in accordance with the FLSA.

In Mita v. Chubb Computer Services, Inc., 337 N.J. Super. 517 (App. Div. 2001), the Court upheld a summary judgment in favor of an employer sued in a wrongful termination action. The Court found that changes in an employee manual had not altered the employee's at-will status and that the employer could amend the handbook to specify a formal procedure for changing an employee's at-will status.

In Caruso v. Ravenswood Developers, Inc., 337 N.J. Super. 499 (App. Div. 2001), the Court held that statutory consumer fraud and RICO claims were covered by an arbitration agreement. The opinion seeks to explain and harmonize several recent decision addressing arbitration of statutory claims.

In re William Carroll, App. Div. Dkt. No. A-1003-99T3 (4/24/01), an Appellate Division panel affirmed a Merit System Board decision dismissing all charges that led to the discharge of a sheriff's officer. The officer was discharged for refusing to answer questions during an internal affairs investigation after he had been granted immunity from criminal prosecution. The officer was not the target of the investigation. The Court held that the employer had violated Attorney General guidelines by not informing the officer of his right to counsel or to union representation. The Court also held that the Attorney General guidelines were not "rules" requiring formal rulemaking under the Administrative Procedure Act.