MondayMonday

All Hail The Garden State

January 30, 2017

We know how disappointed all of you were to be without us immediately following Inauguration Day. After all, what you needed was pithy comment, searching analysis and the sort of incisive overview that *MondayMonday* has come to be known for over the years. Well, here it is in a nutshell: The Kilgore College Rangerettes ("Beauty Knows No Pain") never disappoint and the Mormon Tabernacle Choir singing "America the Beautiful" rocked our world. The First Lady looked beautiful. We heard Justice Thomas speak. What more could we ask for?

Now on to this week. We used to learn poems in school. Our father-in-law, for example, could recite *Invictus* by heart. We were recently reminded of a line from Robert Frost's *Mending Wall* that we learned in Mrs. Olshan's Fourth Grade class: "Before I build a wall, I'd ask to know/What I was walling in or walling out." This week, there has been much said about walls.

When we wall out Mexico, whether by stone or by punitive import tariffs, we wall out tequila. This is not good. Walling out tequila means walling out Margaritas, the stuff of which romantic conquests are built on beaches throughout America. There is also a direct effect on the sale of those little umbrellas imported from China that go into Margaritas, to say nothing of the salt on the rim, which now might as well be spread on icy roadways next February. If we can get domestic avocados, what are we to do with

all that leftover guacamole? Use it as mortar to build more walls? Perhaps a wall across the Canadian border? We've never really trusted those Canucks. Canadian bacon is not really "bacon" now, is it? They're also too nice, an obvious ploy. Build a wall there too. We'll put American maple syrup on our flapjacks; we'll eschew Molson Ale; and we'll burn our $900 Canadian Goose parkas. Of course, this may wreak havoc with the warranty on our Canadian-made hot water heater, but hey, there will have to be sacrifices.

Walls are about walling in as much as they are about walling out, and that's the problem. "Something there is that doesn't love a wall." We leave this now to continue packing cases of *Herradura* and *Patron* into our garage.

We've never liked New Jersey and, we'd have to admit, that nothing good has ever really happened to us there. In a state where you can't make a left turn, that's not surprising. But last week, the Red Sea parted and the New Jersey Supreme Court (their highest court, go figure) decided *McCarrell v. Hoffman-La Roche Laboratories*, 2017 WL 344449 (N.J. 1/24/17) and we're singing "Let My People Go."

In this Accutane products liability case, the mission of the Court was clear from the first line of the opinion. "Over the years, our choice-of-law jurisprudence has striven to structure rules that will lead to predictable and uniform result that are fair and just and that will meet the reasonable expectations of the parties. In this appeal, we attempt to advance that goal." Now usually, that means that the plaintiff is going to get the short end of the jurisprudential stick, but not in this case. Read on.

In *McCarrell*, the Court allowed an Alabama plaintiff to use N.J.'s more favorable statute of limitations rather than Alabama's, which had expired by the time of the filing of the N.J. action. N.J.'s statute, however, had a tolling provision tied to discovery and this N.J. defendant had been charged with hiding the fact that one of Accutane's side effects, inflammatory bowel disease, was irreversible.

Following Restatement (Second) of Conflicts, the Court now confirms that N.J. has a substantial interest in "deterring manufacturers from placing dangerous products in the stream of commerce" and that inadequate warning labels "can render prescription medications dangerous." It reverses and reinstates the $25 million award.

There is great language in the opinion, far too deep for our cursory discussion here. We wonder why Conflicts was never this interesting at Flatbush Law, or so easy: "When claims are timely filed by a New Jersey or another state's resident, and New Jersey has a substantial interest in the litigation, providing parity between an in-state and out-of-state citizen makes perfect sense in a system sensitive to interstate comity." Put another way by the late Judge Carol Higbee, who presided over the original *McCarrell* case, what interest could Alabama have in barring one of