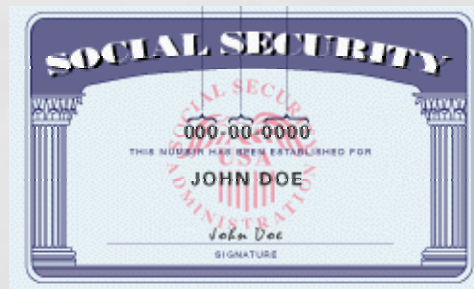


# ADMISSIBILITY OF SOCIAL SECURITY DETERMINATIONS

NJAJ Meadowlands 2013

Shelley L. Stangler Esq.



# Are SSD findings of disability admissible?

**NO**

Villaneuva v. Zimmer

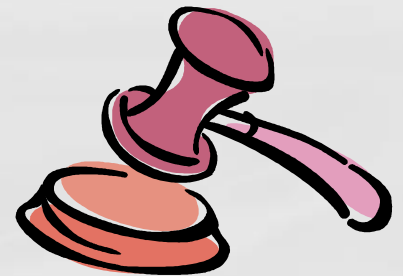
431 N.J. Super. 301 (App. Div.)

June 21, 2013



# Villaneuva Court Ruled:

- SSD determinations are impermissible hearsay
- Not admissible under public-records exception
- Unduly prejudicial and likely to mislead the jury



# Villaneuva Court Found:

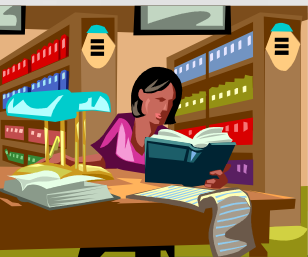
- The fact finding and goals of SSD hearing officer are to assist petitioners
- The conclusions invade province of the jury
- The standards used to determine disability differ from negligence standard



# Older cases permitted SSD to be admitted at trial

- Golian v. Golian, 344 N.J. Super. 337 (App. Div. 2001)
- Ortiz v. Schubert, unpublished, 2004 WL 5301156 (App Div. 2004)

Rebuttable Presumption



# Collateral Estoppel/Res Judicata Inapplicable

- Parties Must Be the Same
- Issues Must Be the Same

Tarus v. Borough of Pine Hill, 189 N.J. 497 (2007)

Olivieri v. Y.M.F. Carpet, Inc., 187 N.J. 511 (2006)



# Law applicable to admissibility of agency determinations

## A. NOT ADMISSIBLE

- Unemployment determinations – Olivieri v. Y.M.F. Carpet, Inc., 187 N.J. 511 (2006)
- N.J. Division Civil Rights- Muench v. Twp. of Haddon, 255 N.J. Super. 288 (App. Div. 1992)
- Public Utilities Commission – Phillips v. Erie Lackawanna, 107 N.J. Super. 590 (App. Div. 1969), *certif. den.*, 55 N.J. 444 (1970)
- EEOC – Starceski v. Westinghouse Electric Corp., 54 F.3d 1089 (3d Cir. 1995)



# Agency Determinations

B. ADMISSIBLE - collateral estoppel applies, same parties, choice of forum

- Hennessey v. Winslow Twp., 183 N.J. 593 (2005)
- Where party chose civil court over OAL as forum, no collateral estoppel
- Winters v. North Hudson Regional Fire, 212 N.J. 67 (2012)
- Agency decision of employee termination precludes CEPA claim
- Sheenan v. Progressive Life Ins. Co., 182 N.J. Super. 237 (App. Div. 1981)



# Possible uses of SSD determination at trial

- Defendant opens the door by impeaching credibility of plaintiff
- Both parties were involved in obtaining SSD finding and both parties obtained a benefit
- Regular Course of Business writing – at, near time of event
- Deference/collateral estoppel agency decision – parties/issue same

# Social Security Benefits remain collateral source

N.J.S.A. 2A:15-97

Perreira v. Rediger, 169 N.J. 399 (2001), *rev'd other gds*,  
Levine v. United Healthcare Corp., 402 F. 3d 156 (3d Cir.),  
*cert. den.*, 546 U.S. 1054 (2005), not applicable

SSD is a collateral benefit subject to deduction from personal injury verdict



# SSD Set Off

- Thomas v. Toys R Us, 282 N.J. Super. 569 (App. Div.), *certif. den.*, 142 NJ 1574 (1995)
- Woodger v. Christ Hospital, 364 N.J. Super. 144 (App. Div. 2003)
- Cockerline v. Menendez, 411 N.J. Super. 596 (App. Div. 2010)



***Questions?***