

NOTE TO MEDIA: Veteran product liability attorney Thomas C. Regan is available as a resource for your articles on class action, product liability and automotive litigation topics.

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FOR IMMEDIATE RELEASE

NJ Same-Sex Couple Court Ruling Could Lead to Claims Surge, Warns LeClairRyan Attorney

--Insurance companies, self-insureds could be hit by precedent-setting case says attorney Thomas C. Regan in Law360 column

NEWARK, N.J. (9/5/18)— Insurance companies and self-insured businesses that do business in New Jersey could be ensnared by the wide net cast by the New Jersey Appellate Division’s recent decision in the [Moreland](#) case, notes veteran product liability litigator Thomas C. Regan. The ruling set a precedent and could reignite previously dismissed suits involving unmarried couples in the state, he explains in an expert analysis column that appeared in legal publication [Law360](#) on August 28.

The case focused on plaintiff Valerie Benning, who was romantically involved with — but neither married nor engaged to — I’Asia Moreland in 2009, he notes in the column, [NJ Ruling On Same-Sex Couple Could Reignite Old Claims](#). Benning had witnessed a traffic collision in Trenton, N.J., which claimed the life of Moreland’s two-year-old biological daughter, writes Regan, a Newark-based member of LeClairRyan, and leader of the national law firm’s Product Liability and Transportation practice area teams.

At that time, same-sex couples were unable to legally formalize their relationship. Yet, in a *Catch-22* situation, “because they were not formally married, a trial court dismissed Benning’s claim for emotional distress arising from witnessing the tragedy, finding that Benning did not present sufficient evidence that she had an ‘intimate, familial relationship’ with the child under *Portee*,” Regan writes, referring to the 1980 New Jersey Supreme Court case, [Portee v. Jaffee](#), which established the standard for psychological injury claims.

In 2017, however, the state Supreme Court granted motions by the plaintiffs and “friends of the court” for leave to appeal, and remanded the *Moreland* matter to the Appellate Division. On August 17, 2018, the judges there concluded that, “A rational jury can find that Benning was a de facto mother to this child, and felt her loss as deeply as any parent facing that horrific event.”

“The appellate decision has been celebrated as a win by the LGBTQ community and its supporters, as well as by the Appellate Division judges, who wrote that the justice system now recognizes and protects ‘the rights of LGBTQ people to equal dignity and treatment,’” Regan notes in the column. “But by essentially eliminating the bright-line requirement of familial relationship that had been established under *Portee v. Jaffee* and later expanded by [Dunphy v. Gregor](#), the doors have been flung open for ‘side litigation’ and ‘mini-trials’ on this issue for all of those whose relationships do not carry legal recognition, but still want to claim distress over the death of a loved one.”

Looking ahead under the *Moreland* decision, “an unwed boyfriend, girlfriend or other person who is not biologically related to the decedent and does not have formal familial status may potentially come forward and demand redress, if they can also reasonably prove they witnessed the tragic event and were emotionally or psychologically affected by it,” Regan added. “Additionally, insurance companies and self-insureds may wish to look back and review their possible liability for previous cases under color of *Moreland*. For example, what if an unmarried boyfriend witnessed an accident involving his partner’s biological child, and the boyfriend never made a claim because he thought he was excluded under *Portee*? This and other examples show that a two-year search for such claims may be insufficient, despite the statute of limitations.”

The *Moreland* opinion is only binding on New Jersey trial courts, which may limit the generalized effect. “But it may still be considered persuasive precedent by the United States Court of Appeals for the Third

Circuit, and could further influence or be cited by state-level and other courts in other jurisdictions,” Regan noted in the column. “Consequently, insurance companies and self-insureds who do not have exposure to New Jersey may still find themselves compelled to launch an extensive review of their own history, while contemplating the potential of their own future liability.”

The full column is available to *Law360* subscribers at:

<https://www.law360.com/articles/1077369/nj-ruling-on-same-sex-couple-could-reignite-old-claims>

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