THE CHARITABLE IMMUNITY ACT*

*By Alicia Bottari***

Introduction

The New Jersey Charitable Immunity Act[1] attempts to protect eleemosynary institutions from tort liability. However, upon closer examination of the act in conjunction with a review of derivative case law, serious doubts regarding the true nature and scope of this statutorily created immunity arise. In effect, definitional ambiguities which lead to inconsistent and unpredictable results in any given situation significantly undermine the protections afforded by the act.

This law was enacted in order to immunize corporations, societies, and associations organized exclusively for religious, charitable, or hospital purposes from tort liability in specific circumstances. For example, a person who is injured as a result of such an organization's negligence is prohibited from bringing suit against it if, at the time the action accrued, the organization was in the process of furthering its stated goals. The injured party is thus categorized as either a "beneficiary" or "non-beneficiary" ("stranger") to the organization's benefactions. However, despite the seemingly broad protections provided by the act, a "stranger" would, in fact, be permitted to recover damages in a tort action.

While the statute immunizes the organization itself from liability in many instances, the individual member whose negligence precipitated the injury maintains full liability exposure. Consequently, an injured party may nonetheless obtain full recovery from the negligent party. By thus separating the organization from its individual members, the charitable funds from which the organization draws its strength remain intact.

Historical Perspective

The basis for charitable immunity first appears during the mid-1800's in *dicta* expressed by Lord Cotenham in the cases of *Duncan v.*

---

* For a discussion of governmental immunity, see *A Review of the New Jersey Tort Claims Act: Notice Provisions, Damages and Third Party Claims*, 2 SETON HALL LEGIS. J. 50 (1976).

** B.A., Douglass College, 1975; M.A., Rutgers University, anticipated 1982; J.D., Seton Hall School of Law, 1981.

[1] N.J. STAT. ANN. § 2A:53A-7 to -11 (West Cum. Supp. 1980-81).

[2] [1839] 7 Eng. Rep. 934.

Findlater[2] and *The Feoffees of Heriot's Hospital v. Ross*.[3] Lord Cotenham approved the principle of charitable immunity, although not in the context of a tort action for personal injuries,[4] by stating in *Heriot:*

> To give damages out of a trust fund would not be to apply it to those objects whom the author of the fund had in view, but would be to divert it to a completely different purpose.[5]

Fifteen years later, this concept was enacted into law.

In *Holliday v. St. Leonard, Shoreditch,*[6] the vestry of a parish was declared to be immune from tort responsibility. Unaware of the subsequent English cases[7] which had overturned the immunity doctrine recently announced in *Holliday,* a Massachusetts court applied the *Holliday* result in a case of first impression in this country, *McDonald v. Massachusetts General Hospital.*[8] There, the court found a hospital to be immune from tort liability. American courts[9] relied on *McDonald* until 1942 when Justice Rutledge's opinion in *President & Directors of Georgetown College v. Hughes*[10] exposed the historical error which had occurred nearly a century before. Over the next decade, the courts vigorously rejected the doctrine of charitable immunity.[11] In *Bing v. Thunig*,[12] for example,

---

[3] [1846] 8 Eng. Rep. 1508.

[4] [1846] 8 Eng. Rep. at 1510.

[5] *Id.* This case involved an action for damages for wrongful exclusion from the benefits of the charity.

[6] [1861] 11 C.B. (N.S.) 192, 142 Eng. Rep. 769.

[7] Mersey Docks Trustees v. Gibbs, L.R., [1866] 11 Eng. Rep. 1500; Foreman v. Mayor of Canterbury, L.R., [1871] 6 Q.B. 214; Hillyer v. The Governors of St. Bartholomew's Hosp., [1909] 2 K.B. 820, 825 (C.A.); Marshall v. Lindsey County Council, [1935] 1 K.B. 516, *aff'd*, [1937] A.C. 97.

[8] 120 Mads. 432 (Sup. Jud. Ct. 1876).

[9] Perry v. House of Refuge, 63 Md. 20 (1885); Tomas v. German General Benevolent Society, 168 Cal. 183, 141 P. 1186 (1914); Basabo v. Salvation Army, 35 R.I. 22, 85 A. 120 (1912); Burdell v. St. Luke's Hosp., 37 Cal. App. 310, 173 P. 1008 (1918); Phoenix Assurance Co. Ltd. v. Salvation Army, 83 Cal. App. 455, 256 P. 1106 (1927).

[10] 130 F.2d 810 (D.C. Cir. 1942).

[11] Bing v. Thunig, 2 N.Y.2d 656, 163 N.Y.S.2d 3, 143 N.E.2d 3 (Ct. App. 1957); Avellone v. St. John's Hosp., 165 Ohio St. 467, 135 N.E.2d 410 (Sup. Ct. 1956); Wheat v. Idaho Falls Latter Day Saints Hosp., 78 Idaho 60, 297 P.2d 1041 (Sup. Ct. 1956); Noel v. Menninger Foundation, 175 Kan. 751, 267 P.2d 934 (Sup. Ct. 1954); Pierce v. Yakima Valley Memorial Hosp. Ass'n., 43 Wash. 2d 162, 260 P.2d 765 (Sup. Ct. 1953); St. Luke's Hosp. Ass'n v. Long, 125 Colo. 25, 240 P.2d 917, 31 A.L.R.2d 1120 (Sup. Ct. 1952); Moats v. Sisters of Charity of Providence, 13 Alaska 546 (Dist. Ct. 1952); Durney v. St. Francis Hosp., 7 Terry 350, 46 Del. 350, 83 A.2d 753 (Sup. Ct. 1951); Ray v. Tuscon Medical Center, 72 Ariz. 22, 230 P.2d 220 (Sup. Ct. 1951); Malloy v. Fong, 37 Cal. 2d 356, 232 P.2d 241 (Sup. Ct. 1951); Haynes v. Presbyterian Hosp. Ass'n, 241 Iowa 1269, 45 N.W.2d 151 (Sup. Ct. 1950); Foster v. Roman Catholic Diocese of Vermont, 116 Vt. 124, 70 A.2d 230 (Sup. Ct. 1950); Tavarez v. San Juan Lodge No. 972, 68 P.R.R. 681 (1948); Rickbeil v. Grafton Deaconess Hosp., 74 N.D. 525, 23 N.W.2d 247 (Sup. Ct. 1946).

[12] 2 N.Y.2d 656, 163 N.Y.S.2d 3, 143 N.E.2d 3 (Ct. App. 1957).

Justice Fuld accused it of contravening "concepts of justice and fair dealing."[13] An ongoing polemic developed in which views such as those espoused by Justice Fuld were pitted against the argument that the availability of liability insurance for eleemosynary institutions prevented the potential disruption of noble endeavors in the face of extensive law suits.[14] Evolving public needs and a misplaced reliance on the proposition that donations would be diminished if it were known that such institutions were liable for their torts were cited in *Foster v. Roman Catholic Diocese of Vermont*[15] as reasons for the abolition of charitable immunity. In his treatise on torts, Professor Harper stated with judicial approval:

> The immunity of charitable corporations in tort is based upon very dubious grounds. It would seem that a sound social policy ought in fact to require such organizations to make just compensation for harm legally caused by their activities under the same circumstances as individuals before they carry on their charitable activities. The policy of the law requiring individuals to be just before generous seems equally applicable to charitable corporations. To require an injured individual to forego compensation for harm when he is otherwise entitled thereto, because the injury was committed by the servants of a charity, against his will, and a rule of law imposing such burdens cannot be regarded as socially desirable nor consistent with sound policy.[16]

Expressing an opposite view, Professor Scott cited three justifications for perpetuating charitable immunity.[17] The first is that trust funds which are devoted to charitable objects should not be diverted from those objects by the payment of tort claims. The second is premised on an alleged waiver by the injured party not to pursue a tort claim. The third reflects the alleged inapplicability of the doctrine of *respondeat superior* to an eleemosynary organization.[18]

The inviolability of the trust funds' *corpus* represents the most viable defense of the charitable immunity doctrine. As noted over a century ago

---

[13] *Id.* at 667, 163 N.Y.S.2d at 11, 143 N.E.2d at 9.

[14] *See* Pierce v. Yakima Valley Memorial Hosp. Ass'n, 43 Wash. 2d 162, 260 P.2d 765 (Sup. Ct. 1953); Avellone v. St. John's Hosp., 165 Ohio St. 467, 135 N.E.2d 410 (Sup. Ct. 1956).

[15] 116 Vt. 124, 70 A.2d 236 (Sup. Ct. 1950).

[16] HARPER, THE LAW OF TORTS 657 (1933).

[17] 4 SCOTT, TRUSTS § 2894 (2d ed. 1956).

[18] *See* D'Amato v. Orange Memorial Hosp., 101 N.J.L. 61, 127 A. 340 (E. & A. 1925).

in *Heriot,* a person who makes a charitable contribution expects his donation to further the goals of the organization, and not to be used to satisfy lawsuits which bear no direct relationship to those goals. Utilizing this analysis, the concept of suing the negligent members, but not the charitable entity may be justified.

D'Amato v. Orange Memorial Hospital[19] was New Jersey's first pronouncement on the wisdom of affording immunity to charitable institutions. After reviewing adherence to the common law doctrine in other jurisdictions, the Supreme Court declared that public policy required that a charitable institution maintaining a hospital not be held liable for injuries resulting to patients through the negligence or even carelessness of its staff. The Court further held that no distinction ought to be drawn between "paying" and "non-paying" patients, as payments by the former would eventually enter the general fund and be used to maintain the charity. Judicial affirmance for this common law doctrine has been frequent.[20]

However, in *Jewell v. St. Peter's Parish*,[21] the court acknowledged for the first time the existence of a qualification on the immunity as it applied in New Jersey. In other jurisdictions, absolute immunity still prevailed. A determination of a plaintiff's "beneficiary" status was the *sine qua non* in deciding whether to grant immunity to a charitable organization. A benefit derived from the charitable organization to the plaintiff, which existed when the claim accrued, would bar recovery by the injured party. In *Jewell,* the plaintiff was injured while he was a paying participant in a social activity sponsored by the church. The court declined to establish a beneficiary status, finding instead a patronage relationship. The activity in question was held to be essentially unconnected to the church's primary function and defendant's motion for summary judgment, based upon the immunity doctrine, was accordingly denied.[22]

This may be contrasted with the facts in *Bianchi v. S. Park Presb. Church*,[23] in which the plaintiff, a Girl Scout, fell and was injured while leaving the church premises after a troop meeting.The court declared that

---

[19] *Id.* at 65, 127 A. at 341-42.

[20] Boeckel v. Orange Memorial Hosp., 108 N.J.L. 453, 158 A. 832 (Sup. Ct. 1932), *aff'd*, 110 N.J.L. 509, 166 A. 146 (E. & A. 1933); Jones v. St. Mary's Roman Catholic Church, 7 N.J. 533, 82 A.2d 886, *cert. denied*, 342 U.S. 886 (1951); Woods v. Overlook Hosp. Ass'n, 6 N.J. Super. 47, 69 A.2d 742 (App. Div. 1949).

[21] 10 N.J. Super. 229, 76 A.2d 917 (Hudson Cty. Ct. 1950).

[22] *Id.* at 230-33, 76 A.2d at 918-19.

[23] 123 N.J.L. 325, 8 A.2d 567 (E. & A. 1935).

the activities and aims of the Girl Scout movement were "plainly classable as a secondary church function in aid of the church's primary purpose."[24] Relying on the *Jewell* opinion, the court found that despite the fact that the plaintiff was not a member of the church in question, "the Girl Scout movement and the church are brought within a single focus of high moral and civil good, to the plaintiff as an individual and to the community in general."[25] Consequently, no weight was given to the fact that scout members paid dues and the troop itself made a donation for the use of the church's facilities.[26]

The last vestiges of a common law charitable immunity in New Jersey were abolished in a trilogy of cases decided in 1958.[27] Borrowing heavily from trend-setting jurisdictions which characterized such immunity as an anachronism, the Court in *Collopy v. Newark Eye & Ear Infirmary*[28] declared with scathing sternness:

> The primary function of the law is justice and when a principle of law no longer serves justice, it should be discarded; here the law was embodied not in any controlling statute, but in a judicial principle of the law of torts; it had no sound English common law antecedents and found its way into American Law through a misconception; it runs counter to widespread principles which fairly impose liability on those who wrongfully and negligently injure others; it operates harshly and disregards modern concepts of justice and fair dealing; it has been roundly and soundly condemned here and elsewhere and the time has come for its elimination by the very branch of government which brought it into our system.[29]

Extending the *Collopy* decision from hospitals to churches and other charitable institutions, the Court in *Dalton v. St. Luke's Catholic Church*,[30] indicated that there was no statutory basis for distinguishing charities catering to the well-being of the body from those charities en-

---

[24] *Id.* at 333, 8 A.2d at 570.

[25] 10 N.J. Super. at 232, 76 A.2d at 919.

[26] *Id.* at 231-32, 76 A.2d at 919.

[27] Dalton v. St. Luke's Catholic Church, 27 N.J. 22, 141 A.2d 273 (1958); Collopy v. Newark Eye & Ear Infirmary, 27 N.J. 29, 141 A.2d 276 (1958); Benton v. Y.M.C.A., 27 N.J. 67, 141 A.2d 298 (1958).

[28] 27 N.J. 29, 141 A.2d 276 (1958).

[29] *Id.* at 47, 141 A.2d at 287.

[30] 27 N.J. 22, 141 A.2d 273 (1958).

trusted with the well-being of the mind or spirit.[31] Judgment was rendered for the plaintiff who had sustained injury when she fell in the vestibule of her church due to the absence of a mat which had been removed to another area during a bingo game.[32] Similarly, the immunity of Y.M.C.A. type organizations was perfunctorily revoked in *Benton v. Y.M.C.A.* [33] by reliance on *Collopy* and *Dalton*.[34]

Justice Heher wrote a well-reasoned dissent in *Collopy* which was soon to receive legislative endorsement. Espousing the necessary consideration of moral principles in this area, he stated:

> Whence comes. . .the power of the court to declare a change in this substantive policy on what it conceives to be moral grounds? Conceding considerations pro and con, is not the preservation of such philanthropic trusts for the common good an understandable choice of policy? And is not its reason, assessed by current needs, the legislative province? We are not here concerned with the correction of fundamental error in prior adjudications. The new measure is frankly avowed to be a change of basic policy to accord with "modern" views, a juristic concept of what is just and moral and socially desirable. Would it not be the more prudent course, for the salvation of our constitutional system, the preserving of "the balance of the Constitution," to adhere to the judicial function and leave this essentially legislative question of policy to the popular assembly, the elected representatives of the people?[35]

On July 22, 1958, sections 16:1-48 to -53 of the Revised Statutes were signed into law, taking immediate effect.[36] They resurrected the common law immunity from suit of all non-profit corporations, societies, or associations organized exclusively for religious, charitable, educational, or hospital purposes, by any person who was a beneficiary, to whatever degree, of the organization's works. The line of cases which had been overruled by the *Collopy* trilogy was thus revived. Persons unconcerned in and unrelated to the benefactions of the organization maintained their

---

[31] *Id.* at 25, 141 A.2d at 274.
[32] *Id.* at 24, 28, 141 A.2d at 274, 276.
[33] 27 N.J. 67, 141 A.2d 298 (1958).
[34] *Id.* at 69, 141 A.2d at 300.
[35] 27 N.J. at 59-60, 141 A.2d at 294.
[36] Ch. 131, 1958 N.J. Laws 630, § 6; REV. STAT. § 16:1-53 (1959).

right to bring an action.[37] The liability of a nonprofit corporation, society, or association organized exclusively for hospital purposes was limited to a maximum of $10,000.00 plus interest and costs of suit.[38] Any building or place actually utilized or maintained for a religious, charitable, educational, or hospital purposes[39] was similarly immunized. The act was deemed to be remedial, and a liberal construction was mandated in order to further the public policy favoring protection of charitable institutions.[40] This statute was scheduled to expire on June 30, 1959,[41] however, Governor Meyner signed a successor statute, sections 2A:53A-7 to -11, into law on June 11, 1959.[42] The new law was identical to its predecessor, differing only in the absence of a fixed expiration date. As policy concerns shifted towards the liberal decade of the 1960's and as passage of the Revised Statutes sections 16:1-48 to -53 failed to invoke public opposition, the Legislature was more comfortable in enacting the present act with its potential for renewal *in perpetuum*. Another explanation for the one year limit on 1958 N.J. Laws, ch. 131, which is negated by the enactment of 1959 N.J. Laws, ch. 90, is that this limited time period would enable charitable institutions to protect themselves from loss by obtaining liability insurance.[43]

At least one case was caught up in the maelstrom of this transitional period. In *LaParre v. Y.M.C.A. of the Oranges*,[44] the plaintiff fell down a flight of stairs at the defendant's premises (of which he was a resident) on May 25, 1956. He filed his complaint on May 23, 1958. The defendant's motion for summary judgment, which was based upon sections 16:1-48 to -53, was barred by the court upon a determination that the statute was not retroactive. The Supreme Court of New Jersey affirmed, stating that the Legislature deliberately declined to make either 1958 N.J. Laws, ch. 131, or its successor, 1959 N.J. Laws, ch. 90, retroactive.

Survey of Case Law Under N.J. Stat. Ann. §§ 2A:53-7 to -11

As of this writing, the New Jersey Charitable Immunity Act has survived for over two decades. The body of case law interpreting its

---

[37] *Id.* § 1; REV. STAT. § 16:1-48 (1959).

[38] *Id.* § 2; REV. STAT. § 16:1-49 (1959).

[39] *Id.* § 3; REV. STAT. § 16:1-50 (1959).

[40] *Id.* § 4; REV. STAT. § 16:1-51 (1959).

[41] *Id.* § 5; REV. STAT. § 16:1-52 (1959).

[42] Ch. 90, 1959 N.J. Laws; N.J. STAT. ANN. § 2A:53A-7 to -11 (West Cum. Supp. 1980-81).

[43] Anasiewicz v. Sacred Heart Church, 74 N.J. Super. 532, 535, 181 A.2d 787, 789 (App. Div. 1962).

[44] 30 N.J. 225, 152 A.2d 340 (1959).

provisions is surprisingly scant and tends to focus on two areas of contention found in N.J. Stat. Ann. § 2A:53A-7. Specifically, these two other areas are the definition of the term "beneficiary" and an assessment of the alleged "religious, charitable, educational or hospital purposes" of the association. When one considers the vast numbers of hospitals, churches, and societies organized for charitable purposes, and the extensive potential for liability which they represent, one would expect that this legislation would be more vigorously challenged in the courts.

It should be noted that the benefit to hospitals has steadily increased since the $10,000.00 threshold envisioned by the Legislature in 1959 may not be equated with the unaltered $10,000.00 limit after two decades of inflation. Consequently, the liability to which hospitals are exposed has significantly decreased over the years, particularly in light of the astronomical rise in the cost of hospital care. Hospitals would undoubtedly counter with the argument that a constant preoccupation with potential lawsuits would seriously undermine their ability to care for those persons in need of medical services.

Another, less salient aspect of this threshold consists of the fact that a Federal District Court does not retain jurisdiction over that portion of any suit involving a hospital's liability, since the matter in controversy would never exceed $10,000.00 exclusive of interest and costs.[45]

"[W]here such person is a beneficiary, to whatever degree. . ."

As stated previously, the term "beneficiary," as contained within N.J. Stat. Ann. § 2A:53A-7, has been subjected to intense judicial scrutiny. Since a "beneficiary, to whatever degree, of the works of such nonprofit corporation, society or association" is barred from bringing an action against the organization, an injured party will generally attempt to be classified as a non-beneficiary, or a "stranger" to the group's benefactions, and thereby be entitled to sue. *Anasiewicz v. Sacred Heart Church*[46] represents an initial attempt to construe judicially this troublesome phrase. There, the plaintiff, not a member of the defendant church, was an invited guest at a wedding held on its premises. While leaving, she slipped and fell on the stairs of the church, sustaining serious injury. A motion for summary judgment in favor of the church was granted. On

---

[45] *See* Oikarinen v. Alexian Bros. C.A., 342 F.2d 155 (3d Cir. 1965); Trail v. Green, 206 F. Supp. 896 (D.N.J. 1962).

[46] 74 N.J. Super. 532, 181 A.2d 787 (App. Div. 1962).

appeal, the plaintiff argued that the term "beneficiary" presupposes that something must affirmatively flow to the plaintiff, and that at a wedding, the ceremony focuses solely upon the man and woman about to be married. The plaintiff further averred that "the spiritual benefit of the sacrament of marriage was best enjoyed only by the bride and groom and perhaps extended to their immediate relatives."[47] The court undertook a review of cases decided under the common law doctrine. Relying on *Bianchi, supra,* and *Boeckel v. Orange Memorial Hospital*,[48] the court incorporated the language of *Bianchi* into its opinion:

> [The church function] is not limited to sectarian teaching and worship. In modern view, exercises designed to aid in the advancement of the spiritual, moral, ethical and cultural life of the community in general are deemed within the purview of the religious society. A social center is now commonly regarded as a proper adjunct of the local church—conducive to the public good as well as advantageous to the congregation.[49]

The court declared that the marriage ceremony is a ritual of deep significance to all people, including those who otherwise profess no ties to any religious order. Therefore, since the defendant church was, at the time in question, engaged in the performance of the charitable objectives it was organized to advance, and since the plaintiff attended the ceremony voluntarily, she was a recipient of its benefactions. The actual spiritual benefit to the plaintiff was of no significance. "The controlling fact is that in providing the *situs* of the ceremony, the church contributed to the preservation of moral or sociological concepts held by the community. The works of the institution were, therefore, a benevolence shared by the plaintiff and all members of the community, present or absent, and without regard to their religious beliefs or persuasions."[50]

The relationship of employers and their employees to the beneficiary status requirement was discussed in *Mayer v. Fairlawn Jewish Center*.[51] There, the plaintiff was injured while soliciting funds at the defendant's premises for the benefit of his employer, the Development Corporation of Israel. The Court ruled that beneficiary status is personal, and may not be

---

[47] *Id.* at 536, 181 A.2d at 789.
[48] 108 N.J.L. 453, 158 A. 832 (Sup. Ct. 1932).
[49] 74 N.J. Super. at 537, 181 A.2d at 790.
[50] *Id.* at 538, 181 A.2d at 790.
[51] 38 N.J. 549, 186 A.2d 274 (1962), *aff'g* 71 N.J. Super. 313, 177 A.2d 40 (App. Div. 1961).

conferred vicariously; therefore, the plaintiff's rights under the act depended upon his own individual relationship to the defendant, despite the fact that his presence was under the aegis of his employer.[52] However,

> [h]e was there in fulfillment of his function and obligation as an employee to engage in the employer's work at the direction of the employer, and not for the purpose of receiving personally the philanthropy of the Center. Under the circumstances. . .he was a stranger to the charity and the statute does not stand in the way of recovery.[53]

Utilizing a similar rationale over a decade later in *Sommers v. Union Beach First Aid Squad*,[54] recovery was similarly permitted to a plaintiff who slipped and fell on ice in defendant First Aid Squad's driveway while personally delivering a donation to the squad in order to express her gratitude for the lifesaving assistance it had rendered to her mother. The ice had accumulated after a squad member washed his own car in the driveway. Acknowledging its mandate to construe the statute liberally,[54] the court found that the mother's benefits could not be vicariously imputed to her daughter. Furthermore, the activity which caused her injury, *i.e.*, washing a privately owned car, was not related to defendant's purposes which was to assist those in need of medical assistance.

In *Wiklund v. Presbyterian Church of Clifton*[56] which was similar to the pre-act case of *Jewell v. St. Peter's Parish*, the concept of "beneficiary" was extended to persons donating their services, without compensation, to an eleemosynary corporation. In *Wiklund*, the plaintiff was both a member of the defendant church, and a volunteer Sunday school teacher. She sustained injuries when she slipped on a wet, slippery floor in the building on the way to her class. The plaintiff asserted that by rendering services as a Sunday school teacher, her member/beneficiary status became that of "one unconcerned in and unrelated to and outside of the benefactions of" the defendant, and that recovery should be allowed. The court averred that the statute does not provide for the altering of one's beneficiary status to that of a stranger merely by the rendering of voluntary,

---

[52] *Id.* at 553, 186 A.2d at 277.
[53] *Id.* at 554, 186 A.2d at 277.
[54] 139 N.J. Super. 425, 354 A.2d 347 (App. Div. 1976).
[55] N.J. STAT. ANN. § 2A:53A-10 (West Cum. Supp. 1980-81).
[56] 90 N.J. Super. 335, 217 A.2d 463 (Passaic Cty. Ct. 1966).

uncompensated services to the charity. Mindful of the legislative presumption of immunity mandated by the provisions of N.J. Stat. Ann. § 2A:53A-10, the court granted the defendant church's motion for summary judgment.[57]

The class of "beneficiaries" was further expanded to include "next-of-kin" in *Jacobson v. Atlantic City Hospital*.[58] Chief Judge Hastie defined "beneficiary" as one who is the recipient of another's bounty or who received a benefit or advantage. He further declared that dependents of a patient in a nonprofit hospital who would be beneficiaries of a damage action from the negligent death of such patient come within the statutory language "beneficiary, to whatever degree,"[59] in relation to the benevolence and charitable goodness of a nonprofit hospital. To limit the recovery of a patient who was injured by the negligence of the staff of a nonprofit charitable hospital, while allowing unlimited recovery to his next-of-kin if he died as a result of such negligence, would yield a result contrary to that intended by the legislature.[60] Quoting from *Boeckel v. Orange Memorial Hospital,* the court held:

> In a very real sense the charitable impulses which served the patient served also the patient's mother, indeed served all those who, by whatever bond of attachment, suffered through the infirmity of the patient or were eased by the lightening of her pain.[61]

This holding should be contrasted with that of *Sommers v. Union Beach First Aid Squad* in which benefits received by the plaintiff's mother were not vicariously imputed to the plaintiff. The distinction arises from the nature of the action involved, *i.e.,* wrongful death as opposed to personal injury.

The judicial trend to increase protection of charitable groups was evidenced by the continual enlarging of the definition of "beneficiary." In *Peacock v. Burlington Cty. Historical Society*,[62] the court overstepped the bounds of reasonableness in according beneficiary status to the plaintiff. She had accompanied her husband to the geneological research li-

---

[57] *Id.* at 339-40, 217 A.2d at 465.
[58] 392 F.2d 149 (3d Cir. 1968).
[59] N.J. STAT. ANN. § 2A:53-7 (West Cum. Supp. 1980-81).
[60] 392 F.2d at 152.
[61] *Id.*
[62] 95 N.J. Super. 205, 230 A.2d 513 (App. Div. 1967).

brary of the defendant society, merely "to keep him company and to enjoy an automobile ride." Although of no special interest to her, the plaintiff browsed through the library inspecting various exhibits for approximately half an hour. When she attempted to sit in a chair near her husband, it collapsed, causing her to fall and sustain injuries. Emphasizing the defendant's works, the exhibits, and the fact that the plaintiff had voluntarily chosen to view them, the court classified the plaintiff as a beneficiary to defendant's works and denied her recovery.[63] The logical extension of this rationale appears to imply that the barest nexus between a charitable organization and a person who suffers injury on its premises will create a beneficiary status. Of course, the true beneficiary would be the organization which has escaped liability.[64]

Recoiling somewhat from this expansive trend, the court in *Book v. Aguth Achin of Freehold, New Jersey*,[65] allowed recovery to the Catholic plaintiff who participated weekly in defendant's bingo games for which she paid a one dollar admission charge. She was injured when the table on which she was playing collapsed. The test framed by the court was "whether the organization pleading the immunity was engaged in the performance of the charitable objectives it was organized to advance."[66] Here, the operation of bingo games for profit was not one of the purposes for which the synagogue was organized. The fact that the proceeds were used entirely for charitable or religious purposes did not convert such games to charitable or benevolent "works" so as to clothe the organization with immunity from liability in a tort suit brought by one who is but a patron of the games.[67] Her attendance at the game was purely for pleasure, as she had no relation to defendant's benefactions. The plaintiff's recovery was allowed.

Full support for the doctrine of charitable immunity is shown in *Pomeroy v. Little League Baseball of Collingswood*.[68] Here, the court declared that the plaintiff, a mere spectator at a little league game who was injured when the bleachers on which she was sitting collapsed, was a "beneficiary" since, at the time the injury occurred, defendant was engaged in the performance of the charitable and educational objectives it

---

[63] *Id.* at 208-209, 230 A.2d at 516.
[64] *Id.* at 209, 230 A.2d at 516.
[65] 101 N.J. Super. 559, 245 A.2d 51 (App. Div. 1976).
[66] *Id.* at 563, 245 A.2d at 53.
[67] *Id.*
[68] 142 N.J. Super. 471, 362 A.2d 39 (App. Div. 1976).

was organized to achieve.[69] Furthermore, her enjoyment of the game as a spectator provided her with a benefit.

Extending this concept of beneficiary status to houses of worship, the court in *Bixenman v. Christ Episcopal Church, etc.*[70] considered the plaintiff to be a "beneficiary" and barred her recovery after she fell down stairs at the defendant church and sustained injuries. She belonged to the Greek Orthodox Church which was using defendant's facilities for purposes of worship until its own facilities were ready. The Greek Orthodox Church paid nominal rent to the defendant. The plaintiff asserted that leasing the church premises was not within the ambit of the performance of the charitable and religious objective for which it was organized. The court concluded that facilitating worship, even by other faiths, was within the intendment of the church—the propagation of religion.[71] The plaintiff countered with the claim that the Greek Orthodox Church, and not herself, received benefits from the defendant. The court responded that a church is not corporeal and receives benefits only as its members are benefited, and consequently denied recovery.[72] This judicial endorsement of "vicarious benefactions" to the church must be contrasted with the holdings in *Sommers* and *Mayer,* in which the court emphasized that a benefit may not be vicariously imputed to anyone other than the person who was a direct recipient of it.

"No nonprofit organization, society or association organized exclusively for charitable [or] educational purposes. . ."

Delving further into the construction of specific terms utilized in N.J. Stat. Ann. § 2A:53A-7, the judiciary attempted to determine which organizations were entitled to tort immunity. This section of the act provides that

> no nonprofit corporation, society or association organized exclusively for. . .charitable [or] educational. . .purposes shall. . .be liable to respond in damages to any person who shall suffer damage from the negligence of any agent or servant of such corporation, society or association.

The courts began with a classification of the purposes of the scouting movement in *Stoolman v. Camden County Council Boy Scouts,*[73] which

---

[69] *Id.* at 475, 362 A.2d at 42.

[70] 166 N.J. Super. 148, 399 A.2d 312 (App. Div. 1979).

[71] *Id.* at 149, 399 A.2d at 315.

[72] *Id.*

[73] 77 N.J. Super. 129, 185 A.2d 436 (Law Div. 1962).

involved a negligence action by the plaintiff, a Cub Scout who sustained injuries during a scouting exposition sponsored by the defendant council. In this case of first impression, the court analogized the Boy Scout movement to the Y.M.C.A., which had been deemed to be a charitable organization during the common law stage of the immunity doctrine.[74] As expressed by Justice Brown,

> the identity of interest between the YMCA and the Boy Scout movement in their effort to better society is similar and, therefore. . .sufficient to hold that the defendant herein is a charitable organization within the spirit of the statute.[75]

The court found that the organization was administered by a "council of members," not a "board of trustees or managers," and that some members of the council were appointed by outside organizations, however, neither factor was deemed to be fatal to the "nonprofit and charitable" status.[76]

The court next examined the term "educational," and relying on Webster's *New Collegiate Dictionary,* defined it as "discipline of mind or character through study or instruction."[77] Reviewing defendant's purposes as set forth in the organization's constitution[78] in light of this definition, the court determined that in providing physical fitness through recreation, the purpose of education is "simultaneously fulfilled through the instruction and learning of the games which develop the character and citizenship of the individual boy scout along with his physical fitness."[79] The result is an overlapping of the terms "educational" and "recreational." Consequently, the existence of recreational activities will not endanger a charitable organization's status. Reiterating the "beneficiary" analysis espoused in *Anasiewicz,* it was held that the benefits of the Boy Scout movement are primarily conferred on the individual scout members.[80]

In *Jacobs v. North Jersey Blood Center*,[81] the court had to determine whether a blood bank could properly be immunized from tort liability.

---

[74] *See* Leeds v. Harrison, 7 N.J. Super. 558, 72 A.2d 371 (App. Div. 1950).

[75] 77 N.J. Super. at 133-34, 185 A.2d at 439.

[76] *Id.* at 134, 185 A.2d at 439.

[77] *Id.* at 135, 185 A.2d at 440.

[78] "The purpose of this organization is to promote, supervise and administer the educational and recreational program of the Boy Scouts of America for character development, citizenship training and physical fitness. . . ."

[79] 77 N.J. Super. at 135, 185 A.2d at 440.

[80] *Id.* at 136, 185 A.2d at 441.

[81] 172 N.J. Super. 159, 411 A.2d 210 (Law Div. 1980).

The *New Collegiate Dictionary* defines a "charity" as "an organization or institution engaged in the free assistance of the suffering or the distressed." In an earlier case, it had been defined as "a gift."[82] Therefore, inherent in the term "charity" is the concept that the donor may not expect or receive anything of value in return for the gift or assistance given.[83] The court emphasized, however, that mere receipt of payment would not automatically negate immunity in the case of religious, educational, and hospital organizations.[84]

> Society recognizes that these organizations, unlike a charity, provide services to the rich and poor alike, and it is only reasonable that those who can afford to pay a fee should be required to do so. On the other hand, a charity gives only to the poor, the suffering or those in distress. And this unfortunate class of people cannot afford to pay and should not be required to pay for what they receive. . .[a]n institution organized partially for charitable purposes is not entitled to the statutory immunity. It must be organized exclusively for charitable purposes.[85]

Referring to N.J. Stat. Ann. §§ 2A:53A-9, the court determined that institutions organized to collect, process, store, and distribute blood were to be included, and the defendant was denied immunity.[86] This decision struck the death knell for many organizations which fell into the "charitable" category rather than that of "educational, religious or hospital." Based on the *Jacobs* rationale, a nonprofit, nonsectarian adoption agency, for example, which required a donation for each adoption, would appear to be outside the protection of this act. Such strict reliance on that portion of the definition of "charity" which stresses the "free" nature of services seems misplaced in today's society and economy where most charities must struggle to survive.

On the other hand, cemeteries were determined to fall within the protected class of charities in the case of *Lawlor v. Cloverleaf Memorial Park, Inc.*[87] They are operated and maintained not only for the reception of bodies for burial, but to afford an opportunity for relatives and friends

---

[82] Ballentine v. Ballentine, 123 N.J. Eq. 577, 578, 199 A. 423 (E. & A. 1938).
[83] 172 N.J. Super. at 162, 411 A.2d at 211.
[84] *Id.*
[85] *Id.* at 162-63, 411 A.2d at 211-12.
[86] *Id.*
[87] 106 N.J. Super. 374, 256 A.2d 46 (App. Div. 1969).

of those buried therein to pay their last respects and to experience spiritual solace while visiting the last resting place of those dear to them. Basing its decision in part on the abundant case law affirming the designation of cemeteries as valid charitable bequests and trusts, the court held the defendant cemetery to be immune from suit by a plaintiff who was injured when she fell in a hole while visiting her mother's grave.[88]

"[A]ny nonprofit group, society, or association organized exclusively for hospital purposes. . ."

N.J. Stat. Ann. § 2A:53A-8 establishes a $10,000.00 liability threshold exclusive of interest and costs for damages suffered by a beneficiary of hospital services as the result of any accident due to the negligence of the hospital or of its agents. However, the nonprofit association must be organized *exclusively* for hospital purposes. As will be discussed below corporations which provide some medical services, but not the full gamut typically offered by hospitals, along with other services, are not afforded statutory immunity.

This distinction was clarified in *Gould v. Theresa Grotta Center.*[89] Although the Center's functions coincided with those of a hospital, *e.g.*, employment of full-time nurses and having a doctor on call, its essential character remained that of a nursing home. The court noted:

> It is highly probable that in many charitable institutions there may exist such an overlapping of functions as exists here, but if this factor alone could bring institutions such as defendant within the ambit of those used 'for hospital purposes,' there would be no reason for distinguishing between the various types of institutuions, as is done throughout the statute and especially in section 9.[90]

---

[88] Plaintiff was found to be a beneficiary by virtue of the fact that defendant was engaged in the performance of its stated purpose when the injuries accrued. *Id.* at 387, 256 A.2d at 54.

[89] 83 N.J. Super. 169, 199 A.2d 74 (Law Div. 1964), *aff'd*, 89 N.J. Super. 253, 214 A.2d 537 (App. Div. 1965). Plaintiff, a patient in the defendant-nursing home, slipped and fell in a pool of urine. She charged the home with negligence in failing to maintain the floors in a safe manner.

[90] *Id.* at 176, 199 A.2d at 78. N.J. STAT. ANN. § 2A:53-9 provides:

> For the purposes of this act, but not in limitation thereof, the buildings and places actually used for colleges, schools, academies, seminaries, historical societies, public libraries, religious worship, charitable or hospital purposes, the moral and mental improvement of men, women and children, nursing homes, rest homes, parish houses, auditoriums, houses of and for prayer and buildings and places, however named or designated, operated and maintained for equivalent uses, when so operated and main-

To be afforded the special immunity provided by N.J. Stat. Ann. § 2A:53A-8, the organization must be found to be organized "exclusively for hospital purposes,"[91] thereby precluding coexistence with other charitable and beneficial functions. The lack of an operating room, emergency room, maternity ward, and nursery, additionally distinguishes nursing homes from *bona fide* hospitals, within the legislative spirit of section 8. A hospital or clinic operated by the United States Veteran's Administration, however, does not fall within the purview of this section because the Tort Claims Act,[92] waives such immunity.[93]

The fact that N.J. Stat. Ann. § 2A:53A-8 immunizes a hospital only from negligence actions was emphasized by the court in *Brody v. Overlook Hospital*.[94] Here, the plaintiff sued defendant hospital when her husband died of serum hepatitis, allegedly resulting from a blood transfusion. In stating that the doctrine of strict tort liability applies to hospitals responsible for transfusions of infected blood,[95] the court affirmed the statutory language of section 8. The court held that immunity is specifically limited to acts of negligence and that strict liability and negligence are diametrically opposed.[96] The court went on to state that while a showing of due care may rebut an allegation of negligence, it has no relevance to strict liability.[97] Overlook Hospital, therefore, was not permitted to avail itself of the normal immunity for hospitals granted by section 8.[98]

The judiciary next examined the applicability of the act to hospitals existing under the aegis of a municipality, finding that where a hospital is created and operated solely by a municipal corporation, and is not a separate and distinct entity "organized exclusively for hospital purposes,"[99] the protections of N.J. Stat. Ann. § 2A:53A-8 will not bar recovery by an injured party. The act does not apply to a claim against a

---

tained by any such non-profit corporation, society, or association, shall be deemed to be operated and maintained for a religious, charitable, educational or hospital purpose.

[91] *Id.* at 713, 199 A.2d at 78.

[92] 28 U.S.C. §§ 2671 to 2680 (West. Supp. 1979).

[93] *See* Taylor v. United States, 233 F. Supp. 1001, 1011 (D.N.J. 1964), where the Government moved to limit its liability, pursuant to N.J. STAT. ANN. § 2A:53A-8, in an action by plaintiff's testator resulting from alleged malpractice at an out-patient clinic of the Veteran's Administration.

[94] 121 N.J. Super. 299, 296 A.2d 668 (Law Div. 1972).

[95] *Id.* at 313, 296 A.2d at 675.

[96] 121 N.J. Super. at 310, 296 A.2d at 674.

[97] *Id.* at 309, 296 A.2d at 673.

[98] *Id.* at 308-309, 296 A.2d at 673.

[99] N.J. STAT. ANN. § 2A:53A-7 (West Cum Supp. 1980-81).

municipal corporation for damage resulting from its improper operation of its hospital.[100]

In a conflict-of-laws situation, New York law was held to have applied where the plaintiff's decedent died as a result of the alleged negligence of a New Jersey hospital. Suit was instituted in federal district court by the plaintiff, a New York resident.[101] The court stated that:

> In determining whether to apply New Jersey's charitable immunity statute here, the New York courts would balance against the New York interest in protecting its domiciliaries against wrongful death limitations the interests of New Jersey in limiting the liability of nonprofit hospitals for injuries caused by their negligence.[102]

New York disfavors limitations on wrongful death recoveries,[103] and, since the $10,000.00 limitation on liability was held not to apply, the suit was found to be within the subject matter jurisdiction of the federal courts.[104] The defendant's contention that this decision would encourage forum shopping was dismissed by the court as a necessary, albeit unpleasant, consequence of differing policies between neighboring states.[105]

Effect of Payment of Fees or Charges on "Beneficiary Status"

Another issue which arises frequently under the statute is what effect the payment of a fee has on a plaintiff's beneficiary status. Judicial consideration of this issue first occurred in *Hauser v. Y.M.C.A.*,[106] where the plaintiff, a paying member and resident of the Y.M.C.A., was injured on the pool's diving board. The court found that the building itself was used to further the morals and mental improvement of the community in accordance with section 9. The mere fact that the defendant owns the building utilized by the beneficiaries of its good works does not destroy the immunity provided by the act.[107] If the new status, *i.e.*, landlord/

---

[100] Tramutolar v. Bortone, 63 N.J. 9, 18, 304 A.2d 197, 202 (1973).

[101] Holzager v. Valley Hospital, 482 F. Supp. 629, 634-45 (S.D.N.Y. 1979) (plaintiff, a New York resident, brought suit against a New Jersey hospital for the wrongful death of her husband).

[102] *Id.* at 634.

[103] *Id.*

[104] *Id.* at 635-36.

[105] *See also* Wuerfel v. Westinghouse Corp., 148 N.J. Super. 327, 372 A.2d 659 (Law Div. 1977); Rosenthal v. Warren, 374 F. Supp. 322 (D.C.N.Y. 1974).

[106] 91 N.J. Super. 172, 219 A.2d 536 (Law Div. 1966).

[107] *Id.* at 177, 219 A.2d at 535.

tenant, transformed a "beneficiary" into a stranger, a nonprofit charitable organization would, in effect, be penalized for operating its own facilities. This is clearly contrary to the legislative intent.

This holding may, however, be contrasted with that expressed by Judge Pindar in *Kirby v. Columbian Institute*.[108] Here, the plaintiff, a patron of the defendant's bowling alley and bar, slipped and fell while bowling due to defendant's alleged negligence in allowing spillage from drinks to accumulate in the bowling area. The Columbian Institute was a nonprofit branch of the Knights of Columbus, and "membership in good standing" of the latter was a prerequisite for admission to the former. The Institute owned and maintained the bar and bowling alley, which was open to the public. All money received through this operation became part of the general funds of the Institute.

To ascertain the Institute's position as a charitable institution, the court once again resorted to the dictionary to define the word "exclusive." Webster's *International Dictionary* defines "exclusive" as "single; sole."[109] Section 7 of the act requires that the "association be organized *exclusively* for religious, charitable, educational or hospital purposes . . ." (emphasis supplied).[110] The purposes of the Institute as enumerated in its charter contemplated activities to promote the "moral, social, intellectual, material and physical welfare and advancement *of its members;* to purchase lands and to construct and erect thereon a *clubhouse* or other buildings. . . (emphasis supplied)."[111] The Institute was clearly not organized exclusively as a public charity, particularly in light of the fact that the "clubhouse" provision was retained even after amendment of the charter. It was organized for two purposes, one of which was charitable, and the other not charitable, but mutually advantageous to club members.[112]

The court declared that "[f]raternal societies or those organizations whose purpose is to promote the welfare of their members are benevolent, but not charitable."[113] Therefore, inserting the definition of "exclusively" into the appropriate section of the statute, it is obvious that the defendant Institute was not a proper subject for the immunity granted by

---

[108] 101 N.J. Super. 205, 243 A.2d 853 (Hudson Cty. Ct. 1968).
[109] *Id.* at 208, 243 A.2d at 855.
[110] N.J. STAT. ANN. § 2A:53A-7 (West Cum. Supp. 1980-81).
[111] 101 N.J. Super. at 208-209, 243 A.2d at 855.
[112] *Id.* at 209, 243 A.2d at 855.
[113] *Id.*

the act.[114] Although not required to consider the "patron" relationship of plaintiff to defendant, since the Institute had been determined to fall outside the protected area created by the statute, the court nonetheless commented on it, with reference to the holding in *Hauser.* The court stated that the Legislature

> never intended to allow charities or educational institutions to open a business with the obvious competitive advantage they would enjoy if they were immune from suits for their torts. The critical question in a legal analysis of the issues is one of characterization, i.e., is the questioned activity out of which the suit arises commercial or charitable in nature.[115]

Comparing a bar and bowling alley facility operated by a charity, with one operated in the normal course of business, the court noted the inequity of compelling the commercial enterprise to be liable for its torts, out of its legitimate profits, while allowing a charitable institution to avoid liability in identical circumstances.[116] In addition, unlike the Y.M.C.A. in *Hauser,* the fees charged not only covered operating expenses, but created a profit. Finally, the court relied on the "depletion of the trust funds" theory in asserting that compensation would, in fact, be derived from the profits of the business, thereby preserving the integrity of the trust fund.[117]

The Appellate Division of the New Jersey Superior Court recently affirmed this proposition in *Kasten v. Y.M.C.A.*[118] The plaintiff, a paying patron at a ski resort operated by the Y.M.C.A., was injured by the Y.M.C.A.'s alleged negligence in renting her defective, improperly fitted ski equipment. The court concluded that:

> N.J. Stat. Ann. § 2A:53A-7 was not intended to immunize eleemosynary organizations from claims by fee-paying non-members arising from commercial activities geared to generate profit for the organization's charitable purposes. . .at best, the ski operation was a mixed commercial and charitable operation; commercial for non-members and charitable for members. . .when an otherwise charitable or educational organi-

---

[114] *Id.* at 209-10, 243 A.2d at 855.
[115] *Id.* at 211, 243 A.2d at 856.
[116] *Id.*
[117] *Id.* at 212-13, 243 A.2d at 857.
[118] 173 N.J. Super. 1, 412 A.2d 1346 (App. Div. 1980).

> zation engages in commercial activities bearing no substantial and direct relationship to its general purpose, the organization loses the immunity it would customarily enjoy even though the derived profits are used for charitable purposes.[119]

Hauser was distinguished on the basis of plaintiff's non-member status. The court advocated the approach advanced by Professor Fletcher in his treatise on private corporations, citing the following with approval:

> [T]he test of immunity is not the use to which the income is put but the nature of the source from which the income is derived including income-producing or rental real estate of a charitable corporation—not used directly in its charitable activities.[120]

"[B]ut nothing herein shall be deemed to exempt the said agent. . .individually from. . .liability for any such negligence."

It must be stressed that an injured party who is judged to be a beneficiary is not left entirely without recourse. While an action against the derelict organization may be summarily denied, a plaintiff is entitled to seek appropriate relief against the particular "agent" or "servant" of the group whose negligence precipitated the injury. Section 2A:53A-7 provides that while a charitable organization shall not be liable to respond in damages for harm incurred by a beneficiary through the "negligence of any agent or servant of such corporation," the statute may not be construed "to exempt the said agent or servant individually from their liability for any such negligence." Of course, such relief may be illusory at best, as it would often be difficult, if not impossible, to pinpoint the negligence on a specific individual.

In *McFadden v. Turner*,[121] the plaintiff slipped and fell on a piece of soap while a patient in a hospital and brought a personal injury action against floor nurses on duty at the time the accident occurred. The court noted that the $10,000.00 limitation provided in N.J. Stat. Ann. § 2A:53A-8 does not extend to the hospital's employees, who are obligated to respond in full for the damages resulting from their acts of negligence.[122] As advanced in *Heriot*, this rationale is based upon the original

---

[119] *Id.* at 7-8, 412 A.2d at 1350.

[120] *Id.* at 9, 412 A.2d at 1350-51, *quoting* 10 FLETCHER, CYCLOPEDIA OF PRIVATE CORPORATIONS § 4937 at 604 (1978).

[121] 159 N.J. Super. 360, 388 A.2d 244 (App. Div. 1978).

[122] *Id.* at 364, 388 A.2d at 245.

common law doctrine of charitable immunity, *i.e.*, that the integrity of the funds of the organization be preserved and dedicated solely to organization's stated purpose. The basis for immunity was never intended as a reward nor encouragement for the continued good works of an eleemosynary institution, although such may have been the unprofessed motivation for a grant of immunity in certain instances. Hence, by compelling the negligent agent to respond in full, the charitable funds are preserved intact. Were volunteers in the countless charitable associations throughout the state aware that they alone bear the brunt of liability for an injury sustained as a result of their negligence, and negligence is a tenuous standard at best, while they assisted in it, it may be assumed that "volunteerism" would plunge to a new low.

Insurance Considerations

As discussed above, there are instances where a plaintiff, although facially barred from recovery by N.J. Stat. Ann. § 2A:53A-7, may nonetheless recover by bringing a direct action against the negligent individual responsible for the injuries. Another route to recovery consists of proceeding directly against the organization's insurance carrier. In *Manukas v. American Insurance Co.*,[123] the plaintiff fell upon church premises. Her suit for injuries sustained in the fall was barred by the act.[124] Plaintiff asserted that the Charitable Immunity Act does not grant absolute immunity, but merely provides that a specified organization shall not be liable to respond in damages out of its own funds.[125] Therefore, recovery from an insurance company's funds should be permitted.[126] She relied on decisions from other jurisdictions in formulating this theory.[127] Unfortunately, the Appellate Division of the New Jersey Superior Court did not pass upon plaintiff's theory, denying her appeal on other grounds.[128] The court did suggest that in order to adjudicate the church's quantum of

---

[123] 98 N.J. Super. 522, 237 A.2d 898 (App. Div. 1968).

[124] N.J. STAT. ANN. § 2A:53A-7 to -11 (West Cum. Supp. 1980-81).

[125] 98 N.J. Super. at 524-25, 237 A.2d at 900.

[126] *Id.*

[127] In McLeod v. St. Thomas Hospital, 107 Tenn. 423, 95 S.W.2d 917 (Sup. Ct. 1936), the court stated that the protection afforded a charitable institution is not immunity from suit or liability from tort, but rather is protection of the trust funds and assets of an organization. The Tennessee statute provides immunity from charitable organizations only to the extent that their trusts would be invaded. It was similarly held in St. Luke's Hospital Ass'n v. Long, 125 Colo. 25, 240 P.2d 917 (Sup. Ct. 1952) that charitable immunity only protects against execution on property which is part of the charitable trust. Both *McLeod* and *St. Luke's*, however, involved hospitals.

[128] 98 N.J. Super. at 525-26, 237 A.2d at 900.

liability, a declaratory action against the insurance carrier should have been instituted.[129]

A similar argument was advanced in *Vitolo v. St. Peter's Church*,[130] in which plaintiff asserted that liability insurance policies should be available to an injured person. The court concluded that since the statute provides that no nonprofit corporation shall be liable to respond in damages to a beneficiary of its good works, "the fact that it may have insurance coverage confers no additional right upon an injured beneficiary."[131] This decision reflected the opinion in *Stoolman* which held that a loss must be suffered by an insured before the obligation is transferred to the carrier.[132]

Although judicial support for the *Manukas* theory does not yet exist in this jurisdiction, it is an issue which merits further examination by the courts and should be raised by beneficiaries confronted with a "no recovery" judgment in a case defended under the act.[133] The effect of such a remedy could serve to increase insurance premiums for charitable groups, but this possibility is speculative at best.

Conclusion

The courts frequently have reached inconsistent results under this outwardly simple piece of legislation. The two primary issues which surface most often are whether the injured party is a "beneficiary" or a "stranger" to the benefits provided by an organization, and whether an organization qualifies as a "charitable, religious, educational or hospital" institution. The former has been analyzed along two lines of reasoning. One is based on a close examination of the injured party's relationship to the organization itself and precludes a vicarious imputing of benefactions. The other disregards such an examination and looks instead to the activity which caused the injury. If it is in accordance with the organization's stated purpose, the plaintiff will be deemed a beneficiary and barred from recovery. In determining the second issue, that of eligibility for the protections afforded by the act, the courts have often resorted to dictionary definitions of the various relevant terminology utilized in the statute, *e.g.*, "charitable," "educational," and "exclusively."

---

[129] *Id.* at 525, 237 A.2d at 900.

[130] 118 N.J. Super. 35, 285 A.2d 570 (App. Div. 1971).

[131] *Id.* at 37, 285 A.2d at 571.

[132] 77 N.J. Super. at 130, 185 A.2d at 437.

[133] N.J. STAT. ANN. § 2A:53A-7 to -11 (West Cum. Supp. 1980-81).

Secondary issues which have emerged include the effect of paying for the service or activity in question, and the effect of liability insurance coverage on plaintiff's eventual recovery.

It is clear, therefore, that the seemingly obvious protections of the statute have occasionally worked to the detriment of that class intended to be benefited, namely, all eleemosynary organizations. The term "exclusively," for example, would serve to negate an organization's immunity if it decided to branch out into other areas in order to raise funds or interest in its espoused cause. Would the child who is run over by a float operated by the local historical society in a Fourth of July parade be entitled to recovery? Should he be?

An area not yet addressed by the courts is the liability of animal protection groups in various situations. May it be assumed that the adopting human is a "beneficiary" when he adopts a stray dog from the local shelter and then slips on ice in the unshoveled parking lot as he leaves with his new pet—or is the animal the only beneficiary of the organization's good works? Should both be—or neither? If an adoption "donation" is required, will that have any bearing on the determination?

Although the act has been upheld since its passage in 1959, the tone prevailing in most opinions construing it is one of a begrudging commitment to follow legislative dictates, regardless of the court's own preferences. Most opinions refer smugly to the judicial rejection of the common law charitable immunity doctrine in *Collopy*, and then go on to excuse the decision they must reach by reference to the Legislature's quick action in overturning *Collopy*. Most states have seen fit to abolish altogether the doctrine, which evolved out of the misplaced reliance of American courts on an invalid English case.

One criticism which has been levied against the act is the incongruity in immunizing the corporation as an entity, while leaving the volunteer totally exposed to the injured party's suit.[134] Such an amendment to the act which would provide corresponding immunity to all members would provide a viable alternative.[135]

Conflicting public policies become evident in a challenge to the act. Is it more justifiable to protect the charity which provides benefactions to

---

[134] NOTE, 3 HASTINGS L.J. 81, 83 (1949).

[135] As recently as 1975, the Legislature enacted companion statutes, N.J. STAT. ANN. §§ 2A:53-12 and 2A:53-13.1, which offer total immunity to both the member of a volunteer first aid squad, rescue squad, or fire department, and to the squad or department itself (provided a motor vehicle is involved). The primary requisite is that the organization be totally voluntary in nature.

vast numbers of people, or to protect the occasional beneficiary of those benefactions who sustains injury? It is submitted that the far-reaching benefits of *bona fide* charitable, educational, and religious organizations outweigh the harm suffered by the occasional plaintiff who has sustained an injury. To find otherwise would reflect a society based on purse-string considerations alone and devoid of heart—certainly not an enviable goal for which to strive.