

## COURT APPROVES SETTLEMENT

By Richard Zackin, Esquire

As we have reported in the past, on November 28, 2007 the United States Court for the District of New Jersey entered an Order granting the Association's motion to certify a class action for settlement purposes with regard to the lawsuit brought by the Secretary of Labor against the Association and others in connection with Association's medical plan, which ceased operations in 2003. As a result, all participants in the plan and medical providers with claims against the Plan were notified of the settlement fund, which has been established in the amount of \$2.25 Million, and were provided with claim forms to be sent to the Independent Fiduciary appointed by the Court to administer the settlement fund. On February 29, 2008 the Court conducted a "fairness hearing" to determine whether the proposed settlement was fair, reasonable and adequate. No party appeared at the fairness hearing to object to the settlement. The Court determined that notice had been properly disseminated to the persons or entities with potential claims against the settlement fund and found that the terms of the settlement were fair, reasonable and adequate. Accordingly, the Court entered an Order approving the settlement. The Court also entered an Order barring any future claims against the Association or the other defendants relating to the medical plan.

The Independent Fiduciary is now in the process of evaluating the claims that have been submitted. When he has completed his analysis he will submit his proposed plan of distribution for Court approval. At this time, it is too early in the process to estimate when the Independent Fiduciary will be ready to ask the Court for approval. We will, of course, keep you advised of future developments.

## IDENTITY THEFT PREVENTION- A NEW ASSOCIATION BENEFIT

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The American Beverage Licensees (our National Association) have teamed up with LifeLock to provide identity theft protection that offers a proactive approach to the identity theft crime at a special discounted price for NJLBA members.

Some of LifeLock's services include:

- Requests fraud alerts on your behalf to the credit bureaus so that no one can use your credit card or social security number.
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- Offers a \$1 million dollar service guarantee should anything go wrong while you are a member including hiring attorneys and experts to fix the situation

To learn more about the services offered by LifeLock, visit their website, [www.lifelock.com](http://www.lifelock.com). To sign up for the LifeLock protective services go to their website or call 1-877-543-5635 and use promotional code NJLBA to receive the special 10% discount.

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# THE BEER WHEEL AND THE ON PREMISE BATTLE

These are challenging times for the on premise accounts in our industry, especially the Casual Dining segment. It seems as if all the factors impacting this group are negative:

- 1) Increasing competition from chain restaurants (they impact four independents with each one they open)
- 2) The weak economy has caused disposable income to shrink drastically
- 3) Increased B.A.C. enforcement
- 4) Increased gas prices
- 5) The smoking ban

In his March 4th edition of Beer Business Daily, Harry Schumacher quotes two industry sources who state that after several years of 5 to 6% growth, the on premise segment has recently dropped to zero.

In order for the independent to compete, fight back and actually win this battle, a number of things must be done.

After determining who you are targeting and what they are after, you must inventory your weapons on hand. These are the tools with which you can accomplish your plan. The basics of this plan are:

- 1) Your menu
- 2) Your hours of operation
- 3) Your beer selection
- 4) Pricing
- 5) Atmosphere
- 6) A well-trained staff

Once you have completed these initial steps, you can move on to creating your actual marketing plan. The key point to remember here is that beer is your best weapon. Use it in every possible way, to improve your R.O.I. It is hard to beat beer's profit and quick turn.

The next step is to promote beer at all times. The tried and true vehicle for this has always been the table tent. While the table tent has its value, the ultimate evolution of this piece is "The Beer Wheel"<sup>®</sup> (PATENT PENDING.)

This newly created idea is presented to the customer along with the food menu. The Beer Wheel suggests types of beers to match the types of foods offered in your establishment. The strong points of this program are:

- 1) The Beer Wheel contains only high profit brands.
- 2) It is like having a member of your wait-staff standing tableside constantly suggesting these high profit beers.
- 3) The wheel has a fun, tactile feel to it.
- 4) By viewing some of the beers listed, a customer might choose one he has never heard of.

Currently a number of New Jersey distributors are working on their version of The Beer Wheel. At this moment, Shore Point Distributing, of Freehold is the only distributor offering the pro-

gram. It is doing very well for them.

At this time the cost of The Beer Wheel is prohibitive. A distributor must be the one who initiates it, as he can spread the cost across his entire casual dining account base.

Additionally, The Beer Wheel is free to the retailer, when initiated by the distributor. The only cost to you is for the beers involved.

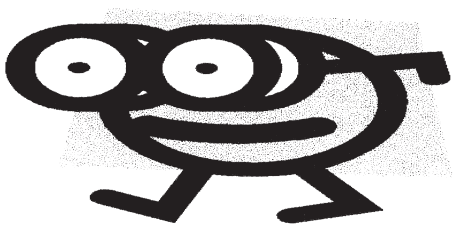
The end-game of The Beer Wheel is to increase the sales of high profit brands in your establishment, by tying them to foods. Both of these points are key in winning the battle we spoke about at the beginning of this article. The Beer Wheel can help you successfully compete in the battle, while at the same time increase your ticket ring and overall R.O.I.

If you are interested in The Beer Wheel, training for your wait-staff or becoming a member of our Pro Beer Newsletter, please feel free to contact us.

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# SCHOLARSHIP APPLICATION DEADLINE APRIL 30, 2008

The Wellhofer/Wilinski Scholarship Foundation of the New Jersey Licensed Beverage Association was founded in 1945. Since that time, on an annual basis, scholarships have been awarded to a deserving student, helping them to continue and complete their higher education.

The deadline for submitting applications for the 2008 scholarship awards is April 30, 2008. All applications must be received in the NJLBA office on or before the April 30, 2008 deadline to be eligible for consideration.

To be considered for the Scholarship, the applicant must be the son, daughter or grandchild of a bona fide dues paying, on-premise retail consumption licensee association member. Sons, daughters or

grandchildren of retired NJLBA members are also eligible if the retired licensee had paid dues for the last five (5) years they were in business prior to the application.

Annually the Scholarship Foundation has awarded two scholarship grants in the sum of \$10,000.00 each payable at the rate of \$2,500.00 per school year. The recipient must be a matriculated, full time undergraduate student attending any recognized degree granting college or university in the United States.

If your child or grandchild is eligible, please call the office 609.394.6730 for an application. Remember the completed application must be in the NJLBA office on or before April 30, 2008.

## Energize Your Brand With Xbrand Fluids

**LAS VEGAS** – Xbrand Fluids is helping brands break through the clutter, and enhance brand promotion, by creating custom label energy drinks for their clients. Using their two formulas, regular and sugar free, Xbrand offers custom energy drinks for the same price as major competitors, such as Red Bull, Monster, and Rockstar.

“Why promote another brand, when you can promote your own?” asks Jason Vigil, managing partner of Xbrand Fluids. “Starting at \$32 a case, a property or venue can have their own custom energy drink.”

The hospitality industry is progressively searching for unique ways to attract their target market, and stand out among competitors. Custom label energy drinks are an innovative and unique tool that are being used for marketing, special events, advertising, special promotions, and experiential projects within the hospitality market.

Xbrand Fluids takes their energy drinks, and using a full-shrink sleeve, customizes the can with their customer’s brand and desired label. In-house label design is available, or customers can choose to have their own graphics team design the label. With wholesale costs starting at \$32 a case, it’s hard to understand why anyone would consider another energy drink but their own. Xbrand guarantees the lowest prices on the market, and unlike the competition, operates a no-minimum order policy. For more information, visit [myowncan.com](http://myowncan.com)

## Pappa donates \$8,411 to LADACIN Networks

Wall resident George Pappa, owner of Belmar’s Tropical Pub, which closed last November after nearly 40 years of serving the public, recently presented a check in the amount of \$8,411 to the



Lifetime Assistance for Developmental and Challenging Individuals (LADACIN) Network, which is based out of Wanamassa.

The money was raised during a memorabilia sale run by Mr. Pappa and his brother, William, which marked the closing of the legendary local restaurant and bar.

*George Pappa (center), owner of Belmar’s Tropical Pub, which closed last November, presented a check in the amount of \$8,411 to Luisa Vroman (right) Director of Development at the LADACIN Network, and Denise Ghizzone (left) of Neptune.*


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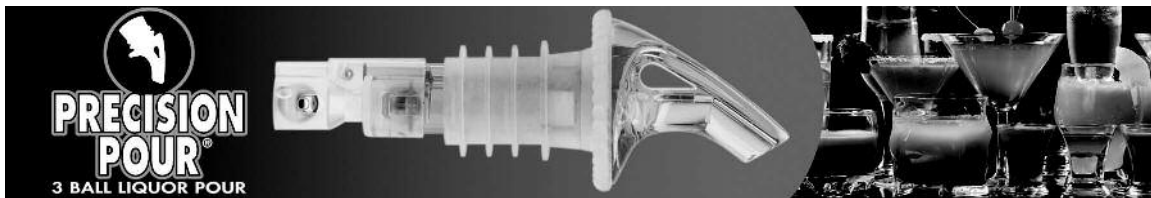
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Precision Pours, Inc., based in Plymouth, Minnesota, serves bars, restaurants and hotels providing bar supplies; specifically the Precision Pour® 3-Ball Liquor Pour. This measured pour spout, the flagship product from Precision Pours, Inc., makes it possible for bartenders to serve an additional two to four drinks per bottle. This adds up to substantially greater profits on liquor sales, particularly considering that the 3-Ball spouts are inexpensive devices and can be used on bottle after bottle for years without replacement.

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Because the styling of the 3-ball spouts is similar to non-measuring spouts, customers are likely to be unaware that their cocktail is being measured. This means that bar owners don't need to worry about offending the customers. In fact, it is very beneficial for the customer to have their cocktail prepared with a measured pour spout. This allows the customer to moderate their consumption and drink responsibly — something that is not so easily done when bartenders are pouring overly stiff drinks.

The standard cork on a Precision Pour® 3 Ball Liquor Pour will fit nearly all liter bottles including Absolut and Crown Royal. For oversized bottle openings, the 3-ball spouts are available with a "heavy cork" which fits 1.75 liter bottles and the large bottle openings on brands like Patrón and Cuervo 1800. In addition to a variety of colors and configurations, 3-ball spouts are available in eleven shot sizes from 1/4 ounce to 3 ounces. This means that there is a Precision Pour® 3 Ball Liquor Pour that has the right look and the right shot size for virtually any bar.



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# BUSINESSES USING COPYRIGHTED MUSIC SOMETIMES GET BEFUDDLED BY MYTH

**Nashville** – Sept. 25, 2002 -- While songwriting may not be the world's oldest profession, it could well be the most misunderstood.

Many business owners who play music in their establishments are introduced to the songwriting profession when they receive their first letter or phone call from one of America's performing rights organizations, such as BMI (Broadcast Music, Inc).

Most people never give a thought to how songwriters earn a living until they operate a business that plays music in public. Sooner or later, these business owners are compelled to search out facts about copyright law. The Better Business Bureau distributes a helpful brochure titled "Music In The Marketplace," which can be found on the internet at [www.bbb.org/library/music.asp](http://www.bbb.org/library/music.asp).

Representing approximately 300,000 songwriters and copyright owners, BMI is the primary source of income for composers who supply half the songs and musical works performed in America.

The following are the top ten myths heard by BMI employees when discussing music licensing with business owners:

**Myth #1** – "I bought my CDs in a retail store, and I can play them anywhere I want."

**Fact** – Buying a CD doesn't convey the legal right to play it in a business or public place. You must get permission from songwriters or their performing rights organization to play music in a business.

**Myth #2** – "Songwriters already are paid by the record companies, so it's not my responsibility."

**Fact** – A songwriter receives only about four cents from a record company for each included song when you purchase a CD. Most professional songwriters receive the majority of their income from royalties earned when businesses play music in public.

**Myth #3** – "Most songwriters are already earning big bucks with concert tours and T-shirt sales. These rich stars don't need my hard-earned money."

**Fact** – Most songwriters are unknown to the public. They don't tour or sell concessions. The average songwriter doesn't earn a living wage from songwriting royalties.

**Myth #4** – "My business is too small to pay music licensing fees. I'm exempt from copyright law."

**Fact** – Regardless of size, businesses that use recorded or live copyrighted music nearly always need a music license to comply with the law. Some small businesses that play only radio or TV may be exempt for that use. An exemption also may apply to record stores and audio/visual equipment stores.

**Myth #5** – "My business occasionally uses local bands or musicians. I don't pay the performers, who work for tips, so I don't have to pay for a music license."

**Fact** – It doesn't matter whether a business pays the performers or not; the venue where the performance takes place is responsible for a music license.

**Myth #6** – "My business uses bands playing only original music. We don't need to license this music."

**Fact** – Most business owners have neither the time nor desire to research ownership of all songs prior to a performance. Federal Courts have ruled that a business owner is responsible for all music

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# Legislative Affairs Report

NEW JERSEY LICENSED BEVERAGE ASSOCIATION  
TRENTON, NEW JERSEY  
by Barbara McConnell

## The Year in Review

As the 212th Legislature came to a close on January 8, 2008, it is interesting to note that over 8,423 bills were introduced over the past two years, and only 479 passed both Houses and were sent to the Governor for his signature.

While NJLBA was engaged in numerous legislative and regulatory struggles where we were victorious, we also, together with other industry groups were able to keep several critical issues off the "table" during the "lame duck" session. The following represents a summary of the issues that were of interest to NJLBA:

- **Paid Family Leave** – One of the greatest challenges facing industry and small businesses, including NJLBA, was a Paid Family Leave initiative, which would extend the State's current Temporary Disability Insurance system to provide workers with Paid Family Leave to take care of a sick family member, a newborn child or an adopted child, in addition to the 26 weeks of regular benefits workers may claim for their own disability.

NJLBA strongly opposed this measure and lobbied aggressively to keep the bill from being considered. However, we anticipate the issue to be re-introduced during the 213th session of the Legislature.

- **Special Liquor Licenses** – There were several bills introduced and considered during the past session that would have allowed a "special liquor license" for certain projects in an economic development area. NJLBA fought these unfair bills on several fronts and were successful. However, it also became apparent that the Legislature needed to have some fair and economical guidelines for the issuance of these special or additional licenses, so we worked together with Assemblyman Cryan and Senator Sarlo to come up with language that would allow for special licenses in certain circumstance, but also be fair to existing license holders. This language was included in legislation that is now on the Governor's desk and would require that the "project" had to be a major project in terms of costs, and that any new license would cost two and a half times the market rate. A percentage of that money would be distributed among existing license holders. The bill also prohibited the transfer of any license issued under the terms of the "project".
- **Ignition Interlock Device** – NJLBA opposed legislation which would require these interlock devices to be put on cars owned by anyone convicted of a DWI - even first offenders. We argued that the California law did not reduce crashes or convictions. In fact, it appears that the overall crash rate was 84% higher. NJLBA was successful in keeping the bill from passing.
- **Revocation of Liquor Licenses** – Assemblyman Reed Gusciora introduced legislation that would require that local decision to revoke a liquor license be accorded "great weight" in an appeal proceeding. NJLBA testified against the bill, and the Attorney General's office also expressed their concern. While the bill was released from the Assembly Law and Public Safety Committee, NJLBA was able to keep the bill from being posted for a vote in the Assembly.
- **Winemaking Schools** – Legislation that would create a new alcoholic beverage license for facilities that teach winemaking, allowing them to manufacture, bottle, sell and have wine tastings and special events for the public. NJLBA strongly opposed this legislation as a further erosion of the value of existing on-premise consumption licensees, as well as those of a package store that sell alcoholic beverages. After the Assembly Committee hearing, where we testified against this legislation, the Speaker's office asked that we sit down with representatives of the winemaking schools and work out some amendments. These amendments, which restricted the manufacturing and sale of these wines, and also would require that an existing licensee be hired for any events held on the premises were included in the bill. The bill passed

both Houses and is now on the Governor's desk.

- **Recycling Enhancement Act** – Legislation that would impose a recycling tax on solid waste generation in order to provide financial support to municipalities and counties for recycling programs passed both Houses and is now on the Governor's desk. The important piece of this legislation, is that we were able to get "bottle bill" preemption language inserted in Section 5 of the bill. This was a great accomplishment in light of the fact that after 15 years, there is now "Bottle Bill" legislation that will be introduced during the next session known as the "Smart Container Act". NJLBA will be opposed.
- **Rest and Meal Breaks** – Legislation that would require employers to provide rest and meal breaks to anyone who works more than six hours continuously and at least a 15-minute break to anyone who works more than four hours continuously. Joining with other business groups, NJLBA strongly opposed this legislation and were able to keep it from being considered by the full Senate.
- **New Jersey Fire Code** – When the Department of Community Affairs adopted new Fire Code Regulations, not only had NJLBA submitted comments in opposition to the Department, but we went into action to see if there was any opportunity to obtain some relief from the costly and onerous regulations for our industry. On November 21, 2007, NJLBA representatives met with Commissioner Doria of Community Affairs to discuss these regulations. It was a very positive meeting where Doria agreed to make some changes to the regulations pertaining to sprinkler and suppression systems, and to clarify that the local fire officials could exempt certain businesses where there would be a great hardship, or the inability to comply with certain portions of the regulations.

While it was a busy and active two year session, the members of NJLBA accomplished a great deal in holding back onerous legislation, and moving forward to positive amendments on other pieces of legislation.

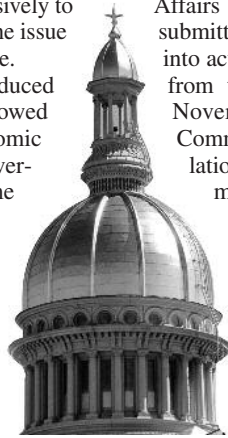
## Looking at 2008

The State of New Jersey is in serious financial trouble. Couple that with the rising cost of fuel oil, electricity, and property taxes, the public is fed up and the confidence of New Jersey's businesses is at an all time low.

To "fix the mess", Governor Corzine yesterday outlined a plan to increase highway tolls and to monetize certain portion of New Jersey's roadway that was staggering. Pointing out that New Jersey had borrowed itself into this "mess" with it credit card mentality and that it had to stop. His plan is to create a new nonprofit "public benefits corporation." The company would pay the state a large sum up front for the right to operate the state's toll roads for 75 years. The administration believes the transaction would net up to \$40 billion. Corzine plans to use the money to pay off about \$15 billion in transportation related debt and up to \$16 billion in general state debt. It also would finance big-ticket road projects, including widening the Turnpike and Parkway.

The Governor's presentation sounded very much like a financial presentation, rather than a typical State of the State Address. However, he received high marks for his presentation and his commitment to go to all 21 counties to make his appeal for this plan.

Solving the State's fiscal woes will certainly be a high priority for the next Legislature, but it is expected that they will also be taking up: Pension Reform; Universal Health Care; Family Leave; and environmental issues pertaining to global warming. It will be an interesting and challenging two years not only for NJLBA, but for all citizens of New Jersey.





# Behind the Bar

by David T. Kratt

## EXTRA, EXTRA: IS CUSTOMER BARRED OR NOT?



Okay, these stories weren't exactly ripped from the headlines, but they were interesting enough to jot down a few notes for an article some day:

### When enough is enough –

Back story: He's overly friendly, in a pestering sort of way, and seriously doesn't know he's doing anything wrong, so doesn't know when to stop. Scenario: Customer came up to the bar and said, "Some guy won't leave my wife and me alone."

Customers shouldn't have to deal with this sort of thing. We do. But, this guy's behavior is pretty much border line and he will stop when told. No harm done really. Customers simply have a little drama to talk about afterwards. But, for us, it involves having to keep an eye on him and interventions on our part. News flash – he was barred.

### The webs we weave –

Back story: Newer server dating a regular who doesn't seem to have a life outside the bar. On-again-off-again relationship; this time it's for good. Scenario: She said. He said. She came back to the service bar in tears and shouted, "I want him barred for life! Or I quit!"

He admitted to the off-colored remark. But she was no angel, either. Stick up for the server and bar him for life? No. Ask him to leave so she doesn't walk out on a busy night? Yes. Wait to talk

with her about it? Yes, absolutely, but not the next time I saw her because that was her night off, and she was with him.

### Okay, this guy is barred for life –

Back story: None. I carded him that night so knew he had recently turned 21. Scenario: Suffice it to say that there was no doubt he took someone's drink and some money. We talked at the service station. He acted like he understood, but thought he could stay and party with his friends. He just had too much to drink. I said, "I'm sorry, but you need to leave." Now it sunk in. He pushed a server's tray off the bar and crash boom bam. I remember thinking: *I got news for you, now you're barred.* But I said, "You need to leave right now if you want to get back into this bar." He was being a jerk. I thought: you are so barred for life.

Even his friends were fed up with him and told him to leave. He was angry, but left.

Later, one of his friends, who just so happens to be the son of a friend of mine, apologized for his behavior and said, "He's a good guy but he's weirding-out over his girlfriend breaking up with him." I thought: *okay, maybe he's not barred for life.* I said, "Tell him to come in and talk with me. I don't want him barred. I just want him to behave."

He hadn't come in by press time.

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## BUSINESSES USING COPYRIGHTED MUSIC

*continued from page 7*

performed in the establishment, regardless of instructions that may be given to performers about what they should play. Experience proves that many so-called "original" music performances include BMI songs.

**Myth #7** – "BMI can't tell me what songs they represent, so why should I believe I'm playing any of their music?"

**Fact** – Every other song that's played in America is represented by BMI, so it's difficult not to play them. Approximately 4.5 million BMI song titles can be viewed at [www.bmi.com](http://www.bmi.com).

**Myth #8** – "Customers come to my business to buy the food (or clothes, books or widgets). Music is incidental to my business, so I shouldn't have to pay for it."

**Fact** – Numerous studies have found that the right music can improve a dining or shopping experience for customers. Songwriters add ambiance to your business, and are entitled by law to compensation.

**Myth #9** – "I already pay one performing rights organization for the music I use. I don't need permission from anybody else."

**Fact** – Songwriters choose one of three performing rights organizations to represent them. That organization can license only the music of its affiliated songwriters.

**Myth #10** – "The companies that collect for music licensing don't pay the songwriters, so why should I pay them?"

**Fact** – Founded in 1940, BMI operates as a non-profit company. After deducting administrative fees, BMI pays out 84% of revenue collected to affiliated songwriters and copyright owners.

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## LOOKING AHEAD TO UPCOMING EVENTS

- May 1, 2008** Board & Membership Meeting  
2:30 PM, Kat-Man-Du, Trenton
- May 1, 2008** May is Tavern Month Cocktail Party  
6 PM-8 PM, Kat-Man-Du, Trenton
- May 14, 2008** Annual Golf Outing  
Rancocas Golf Club, Willingboro
- June 11, 2008** Board & Membership Meeting  
NOON, Irish Pub, Atlantic City
- June 25, 2008** Wellhofer/Wilinski Scholarship Picnic  
Oak Tree Lodge, Wall Township
- October 2008** 76th Alcohol Beverage Retailers'  
Convention, Atlantic City

### GOLFERS

#### MARK YOUR CALENDAR

**WHEN:** WEDNESDAY, MAY 14, 2008

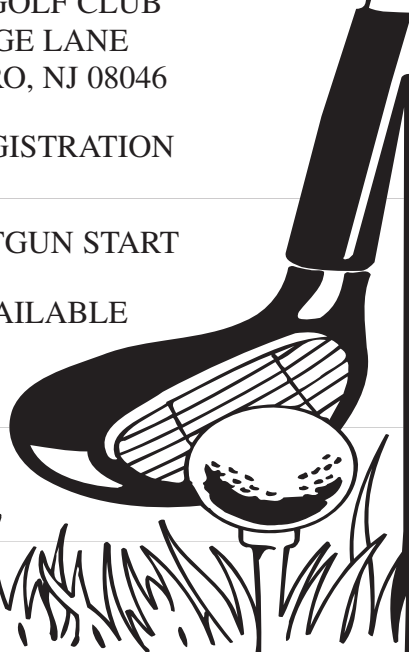
**WHERE:** RANOCAS GOLF CLUB  
12 CLUB RIDGE LANE  
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**TEE TIME:** 11:30 AM REGISTRATION  
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