



# THE SARATOGA COUNTY BAR ASSOCIATION

Serving the Interests of Justice



## LAW NOTES

LAW NOTES VOL. X, ISSUE III

MAY JUNE 2016

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### TORTS AND CIVIL PRACTICE: SELECTED CASES FROM THE APPELLATE DIVISION, 3RD DEPARTMENT TIMOTHY J. HIGGINS, ESQ.

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#### SUMMARY JUDGMENT REVERSED IN AUTO DEATH CASE

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##### Estate of McKenna v. Reale (Lynch, J., 3/31/16)

A car-bike accident in Columbia County claimed the life of plaintiff's decedent after the biker crossed the highway in front of defendant's automobile. Supreme Court (Zwack, J.) granted defendant's motion for summary judgment, in part based on a police report that concluded the "primary causative factor" of the collision was the decedent's failure to yield the right of way. Noting that in a wrongful death action, "admittedly slight and clearly circumstantial evidence" may be enough to raise a triable issue of fact, the Third Department reversed and reinstated the suit (except for the pain and suffering claim). Defendant's deposition testimony that he was uncertain whether he saw the bike moving from east to west across the road might be sufficient evidence for a jury to conclude that the driver "failed to see what there was to be seen through the proper use of his senses".

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#### SCHOOL LIABILITY SUIT DISMISSAL IS REVERSED

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##### Lewis v. Board of Ed. Lansingburg CSD (Clark, J., 3/31/16)

The infant plaintiff (attending second grade), born with a disorder characterized by brittle bones that fracture easily, broke his leg in a fall after getting out of his wheelchair. In granting defendant's summary judgment motion, Supreme Court (Zwack, J.) declined to consider the testimony of the infant plaintiff because of his tender age (8 years old at his § 50-h hearing and almost 11 years old at deposition); the Court having raised the issue *sua sponte*. The Third

Department found that determination erroneous, and in consideration of the merits of the claim reversed the order dismissing the case; noting that "plaintiff's testimony revealed that the version of events relied upon by defendants' experts was contested".

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#### REJECTION OF "ILLOGICAL" EXPERT THEORY IMPROPER

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##### Philwold LLC v. Inergy LP (McCarthy, J., 6/2/16)

Plaintiff owns an insulated, heated building which it maintained as a winter residence for a number of tortoises. Defendants were hired to repair and service the building's heating system; the work including installation of a new thermostat. Post-installation, a temperature spike to approximately 110 degrees, blamed on malfunction of the thermostat, caused the death of 23 tortoises and injuries to more of the animals. Supreme Court (McGuire, J., Sullivan Co.) dismissed plaintiff's negligence suit, rejecting plaintiff's mechanical engineering expert's "illogical" theory that the thermostat malfunctioned because it was installed with three screws (as opposed to two screws, as recommended and designed by the thermostat manufacturer). The Third Department reversed and reinstated plaintiff's complaint; finding defendants failed to eliminate all material issues of fact regarding plaintiff's causation theory, and crediting plaintiff's expert's affidavit that provided "a detailed explanation of how he reached his conclusion...based on facts, inferences and reasoning", as well as why the expert found defendants' causation theory (a cockroach infestation) implausible.

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## TORTS AND CIVIL PRACTICE, CONTINUED...

### PREMISES LIABILITY

#### *Reversals of judgment for defendant*

#### **Johnstone v. First Class Mgmt. of New York, LLC** **(McCarthy, J., 4/7/16)**

Plaintiff's premises liability claim against the owner of the rental property where he fell down the stairs and was injured was considered and rejected by a jury; after which Supreme Court (Schick, J., Sullivan Co.) granted a motion to set aside the verdict (CPLR 4404(a)). In light of the "overwhelming" evidence at trial regarding defendant's negligent maintenance of the stairway; including proof that a week before the accident the defendant was advised by a building inspector of loose steps and a railing that was only partly fastened, the Third Department affirmed the trial court's post-verdict ruling because "no evidence was introduced that could fairly support a contrary conclusion".

#### **Costello v. Pizzeria Uno of Albany, Inc.** **(Garry, J., 5/26/16)**

Supreme Court (Breslin, J., Albany Co.) granted summary judgment to the defendant restaurant where plaintiff was hurt in a fall while being seated for lunch with two co-workers. The defendant did not produce an incident report or a witness who was present at the time of the fall, and on its motion for summary judgment relied on "low quality photographs" obtained by the plaintiff; rather than objective data or measurements or an evaluation of the floor surface (which plaintiff contended was unreasonably dangerous). Plaintiff's co-workers testified that the floor was "uneven" and "looked buckled"; presenting factual questions about the existence of a defect and making the issue "not susceptible to determination as a matter of law". The Third Department reversed and reinstated the case.



*Timothy J. Higgins is a partner at Lemire, Johnson & Higgins, LLC in Malta, New York. His litigation practice includes all types of personal injury and wrongful death litigation, including representation of persons hurt in automobile and workplace (construction site) accidents, and medical malpractice. Mr. Higgins also represents and litigates on behalf of employers and*

*municipalities in matters involving claims of employment discrimination and civil rights violations.*

#### *Defense verdict affirmed*

#### **Williams v. State of New York** **(Devine, J., 6/9/16)**

Claimant, a certified nurse's aide employed at the state prison in Coxsackie, slipped and fell on ice in the parking lot shortly after arriving to work on a December morning. Her premises liability suit was dismissed after the Court of Claims (Hard, J.) found for the defendant following a bifurcated (liability only) trial, and the Third Department affirmed. The prison's overnight watch commander summoned maintenance staff at around 5:30 a.m. to address icing conditions caused by rain and falling temperatures, leading the Court to conclude "it was essentially certain" that the parking lot had been salted and sanded by the time claimant arrived at 6:40 a.m. Claimant contended the lot was "covered in ice", but the trial court "specifically found those uncorroborated assertions to be incredible".

#### **BONUS OPINION: COURT OF APPEALS SPLITS ON "STORM IN PROGRESS" DEFENSE**

#### **Sherman v. NYS Thruway Authority** **(5/5/16)**

While a landowner owes a duty of care to keep his or her property in a reasonably safe condition, liability for negligence will not attach if a plaintiff is hurt "as the result of an icy condition occurring during an ongoing storm or for a reasonable time thereafter". Applying such "storm in progress" rule to this claim, the Court of Appeals, with 3 dissenting justices, affirmed the Appellate Division ruling dismissing the claim. The claimant New York State Trooper, working out of the Newburgh barracks on property owned and maintained by the defendant Thruway Authority, was hurt after a slip-and-fall on a patch of ice. The fall happened at 8:15 a.m. while it was raining; some 90 minutes after conclusion of an "intermittent wintry mix" of snow, sleet and rain that started as an ice storm the night before. The Court of Appeals majority concluded that "the storm was still in progress" at the time of the injury and the defendant's "duty to abate the icy condition had not yet arisen". The dissenters felt summary dismissal was not proper; that the defendant failed to prove whether the storm had ended in Newburgh at the time of the fall and if so, whether it was too soon for the property owner to take protective measures; and further cautioned that the Court had never before "held that above-freezing rain alone constitutes a type of storm-in-progress that would relieve a property owner from taking any action" to make the property safe.

## LAWYER OF THE YEAR

MICHAEL FRIEDMAN, ESQ.

*"I'm 100 years old."*

Evelyn Heller

*"I've evicted people off of their death beds and regretted every second of the trial. But my job is unfortunately to set my feelings aside and do what my clients ask me to do. It would be the same if this lady was a lady who was 30 years old and had five children, or a little old man with cancer."*

Attorney William Windham

No, William, that is not your job. On April Fool's Day Mr. Windham represented a landlord and successfully threw a 100 year old lady out of her apartment near Palm Springs, California. She had no lawyer. She has no money. She represented herself even though she can barely see or hear. She couldn't read the court documents until someone gave her glasses. When she took an oath to tell the truth, she kept her hand raised and did a brief hula dance. After a short

appearance, Judge of the Year Charles Haines threw her out of her apartment and made her pay \$800 in attorneys and court fees to the landlord. Her behavior justifying the eviction? Keeping the apartment in "deplorable conditions" which a reporter found to be cluttered but far from deplorable.

Mr. Windham has been an attorney for over 20 years and he specializes in evictions and bankruptcies. Apparently he feels that his professional calling is to set aside his feelings and "do what my clients ask me to do." Not me. I have been asked many times to do things by clients that were contrary to my feelings and sensibilities. The great thing about being a lawyer in private practice is your ability to turn down such requests. But Mr. Windham felt the need to double down on his "job" when asked by a reporter, bragging that he has evicted people off their death beds and he'd do the same to a woman with five children or a little old man with cancer. The Rules of Professional Conduct of the State Bar of California say, "A member shall not seek, accept, or continue employment if the member knows or should know that the objective of such employment is: (A) To bring an action, conduct a defense, assert a position in litigation, or take an appeal, without probable cause and for the purpose of harassing or maliciously injuring any person." I suppose throwing a 100 year old lady without any money out of her apartment when she can barely see or hear doesn't harass or maliciously injure another person, at least not to Mr. Windham's view. One wonders if a line can ever be crossed for him, as apparently people on their deathbeds, women with five children and "little" old men with cancer are fair game.

As for Judge Charles Haines, the California Code of Judicial Ethics says that, "A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the full right to be heard according to law... A judge shall manage the courtroom in a manner that provides all litigants the opportunity to have their matters fairly adjudicated in accordance with the law." One wonders what motivated Judge Haines to go forward

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## KEY RESOLUTIONS



## KEY RESULTS

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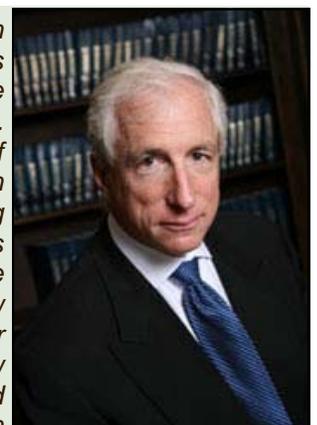
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*Michael Friedman has been practicing law for over 30 years and has maintained a private practice since 1981. Mr. Friedman is the author of numerous articles on matrimonial practice including The Case for Parental Access Guidelines in New York and the Case for Joint Custody in New York for the New York State Bar Association's Family Law Review, Pensions and Retirement Plans: Valuation Strategies for the New York Domestic Relations Reporter and a monthly matrimonial article for the Albany County Bar Association.*



# INSIGHT INTO IMMIGRATION

## IMMIGRATION NEWS FROM MEYERS & MEYERS, LLP

### THE FIELD IS SET

So, the presidential field is set. Hillary Clinton is the presumptive nominee for the Democrats, and Donald Trump for the Republicans. To say that our immigration system is broken is an understatement, and although the Obama Administration has made some efforts at reform (whatever you may think of them), Comprehensive Immigration Reform (“CIR”) remains an elusive goal. And, absent something incredibly positive coming out of the Supreme Court in the case Texas v. United States, 15-674, we’ll likely not see anything significant come out of Washington on the immigration reform front until, at the very earliest, next January (but likely much much later, despite what we hear from one of the candidates).

And yet there are so many important issues to consider (some of which we’ve already been hearing too much about on the campaign trail, although not necessarily in a meaningful way), including, among others, the border wall and enforcement, mass deportation, the overwhelming need for CIR, and the list goes on.

What are the candidates saying on the campaign trail? At a campaign stop recently in Los Angeles recently, Hilary Clinton said, “Immigration is at the center of this presidential campaign. In my first 100 days I will introduce legislation for comprehensive immigration reform ... When he [Trump] talks about deporting 11 million immigrants, he’s talking about ripping apart families.” She’s right about the latter. We’ll see about the former.

And the Donald? At a FOX News GOP debate in Detroit, he said the following: “I’m not playing to anybody’s fantasies. I’m playing to the fact that our country is in trouble. We have a tremendous problem with crime. The border is a disaster. It’s like a piece of Swiss cheese, and we’re going to stop it. We’re going to ... be stopping people from coming into our country illegally. We’re going to stop it.” How? By building a “beautiful” wall, no doubt.

What we really need here are creative and progressive ideas to effectuate CIR, to ensure that the U.S. economy continues to grow from the recent recession, and to also ensure that families



*David W. Meyers, who joined his father at Meyers and Meyers, LLP in 1997 after a decade as an executive assistant to United States Senator Alfonse M. D'Amato, focuses primarily on family- and business-related immigration matters, commercial litigation, residential and commercial real estate transactions, trusts and estates, and general and*

*appellate practice.*

stay united or are reunited. Unfortunately, much of what we’re really hearing (from the Donald, anyway) is ridiculous and divisive rhetoric offering non-practical immigration policies, such as removing 11 to 13 million immigrants unlawfully living in the United States, or securing our Southern border with a bigger and more “beautiful” wall that Mexico will (no doubt not) pay for.

Let’s talk details. On the issue of border security and enforcement, quite frankly our U.S. - Mexican border is more secure today than it ever has been. By all accounts, spending on border patrol agents, infrastructure (i.e., the existing “wall”, among other things), and new and improved surveillance technologies to interdict unlawful crossings have grown exponentially; at the same time, unlawful border crossings are at their lowest level in decades. Consider the increase of staffing at the border: in 2014, U.S. Customs and Border Protection (“CBP”) had approximately 21,000 border patrol agents, a more than 500 percent increase from 1992 when there were only about 4,000 agents.

As well, enforcement under the Obama Administration is extremely high. Federal criminal prosecutions of immigration-related offenses are at their highest point in history. Since 1992, convictions for all immigration crimes (the vast majority of which are illegal entry and reentry crimes) rose from just 5 percent of all federal criminal convictions to 30 percent in 2014. Immigration offenses in the first seven years of the Obama Administration totaled 555,974 convictions compared to 251,952 during all 8 years of the Bush administration. President Obama, a Democrat, deported 2 million illegal aliens after just about five years in office. It took George W. Bush, a Republican, eight years to reach that number.

I can also state from first-hand experience that Immigration and Customs Enforcement (“ICE”) continues to try to remove people from the United States who pose no threat to our communities, breaking apart families (many of which include U.S. citizen children, spouses and parents). While the Obama Administration’s policies on the exercise of prosecutorial discretion have no doubt resulted in more fair outcomes for some, anecdotal evidence from my colleagues in the field suggest that prosecutorial discretion is not being exercised evenly (or some would say even fairly).

Hard as this may be to believe, there actually is widespread agreement across the country that Congress should pass CIR that allows unauthorized immigrants to remain in the country so that they may continue to contribute to our economy and the communities that they already reside in. Indeed, a May 2015 Pew Research Poll found that 72 percent of Americans say that undocumented immigrants should be allowed to stay in this country legally (assuming they meet certain requirements).

What about all the discussion about mass deportations? It’s just not rational to believe that 11 to 13 million undocumented immigrants living in the United States, in our own communities, working and raising their families, are going to

*(Continued on page 9)*

## EMPLOYMENT LITIGATION UPDATE

SCOTT PETERSON, ESQ.

### NON-COMPETE AGREEMENTS FACE SCRUTINY

Recent actions coming out of the New York State Attorney General's office have placed further doubt on the future of the ubiquitous non-compete agreement in New York State.

Attorney General Eric Schneiderman's office recently announced a settlement with the company Law 360, a subsidiary of LexisNexis that provides legal news and paid analysis, following an investigation into the company's broad use of non-compete agreements. The resolution resulted from an investigation by the Attorney General based upon its "broad investigative authority [under Executive Law Section 63] to protect the interests of New York workers, consumers, and the general public, and to ensure public safety and welfare."

According to the Assurance of Discontinuance Agreement (the settlement agreement, in effect) since approximately 2011 Law 360 had required all senior staff and all editorial staff to execute a non-compete agreement as a condition of employment. This group, which consisted of more than 150 employees, included the usual senior executive level employees (Editor in Chief, GM, etc.) as well as what might be called lower level executives and staff (Reporters, Graphics Editors, Administrative Assistants). The non-compete prohibited the employees from working in "direct competition" or for a "direct competitor" for one year following their employment, in any geographical area where Law 360 "conducts business." Given that the services provided were internet-based, the geographical area could conceivably be limitless.

According to the settlement, investigation into the agreements found that the vast majority of the affected employees were not privy to any specialized knowledge, trade secrets or confidential information of Law 360 during the course of their employment, despite Law 360's assertion that the driving force behind its limited attempts at enforcing the agreement was protecting "confidential and strategically sensitive information."

The Attorney General investigation concluded that the non-compete agreement was overly broad, and did not comply with New York requirements. Law 360 agreed as part of the resolution to immediately discontinue its use of the non-compete, "or any other non-compete, with respect to all current and former editorial employees, with the exception of individuals currently holding the Editor-in-Chief, Managing Editor, and Graphics Editor positions."

Law 360 further agreed that for a period of three years following the agreement it would notify the Attorney General's office, in advance, before offering any employees outside of those three positions an agreement with non-compete language. Finally, Law 360 agreed to notify in writing all current and former employees (within the past twelve months) that the non-compete is no longer in effect.

We have written before about non-compete agreements and their declining value as a general proposition. While there is still a place for non-compete agreements for high level

employees with very specific knowledge and skill sets, the Law 360 matter makes clear that broad agreements, applied to a vast portion of the work force, will face heavy scrutiny. The addition of the Attorney General into the fray adds another level concern for those attempting to enforce such agreements. While it is possible that one former employee may not challenge the enforceability of an agreement, the Attorney General clearly has an interest in ensuring that these agreements are not used in such a way as to prohibit general individuals from moving about between companies.

More to come on this...

### REASONABLE ACCOMMODATION

#### **Vangas v. Montefiore Medical Center** (2nd Cir. 5/19/16)

Plaintiff was an analyst employed by Defendant Medical Center, who was terminated when she was unable to work after exhausting her permitted leave under the FMLA. Plaintiff was diagnosed with cancer on March 25, 2010, and went out on immediate leave. Plaintiff engaged in several back and forth discussions with the employer over the course of the next several months regarding the course of her treatment and FMLA paperwork.

In early August 2010, Plaintiff's physician indicated that she would be able to return to work at the end of the month. Plaintiff was allegedly advised that she needed to complete additional FMLA paperwork at that time, and her physician thereafter completed some paperwork which listed the duration of her serious health condition as "unknown."

On August 29, the day before she was scheduled to return, Plaintiff advised her employer that she was not feeling well, would not return as scheduled the following day, and had to follow up with her physicians. The following day when she did not report to work the Plaintiff was terminated. She thereafter brought suit alleging, among other things, claims under the FMLA and New York State Human Rights Law ("NYSHRL").

In considering the NYSHRL claim, the Second Circuit noted that Plaintiff was required to prove that 1) she had a disability;

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*Scott Peterson is the founding partner at D'Orazio Peterson, which was opened to provide representation to individuals in employment and serious injury matters.*

*Mr. Peterson has represented clients in State and Federal courts throughout New York State, has been published in several publications including the New York Law Journal, and has frequently provided commentary for local and national media outlets. He currently serves on the Executive Committee of the New York State Bar Association Trial Lawyers Section.*



## ANIMAL LAW UPDATE

JONATHAN G. SCHOPF, ESQ.

### “BEAGLE BILL” PASSES SENATE AND ASSEMBLY

Although the Senate and Assembly have agreed to pass the so-called “Beagle Bill”. The law, officially named the Research Animal Retirement Act, requires state-funded research facilities to make the dogs and cats used for testing available for adoption. As long as the animals do not need to be euthanized at the end of research to test cell or tissue samples, they can be adopted through private placement or state animal shelters. A veterinarian will determine if the animal is appropriate for adoption.

Current laws impose standards and regulations on the treatment of animals during research, but the Beagle Bill takes effect on the animals after research is completed.

### PENDING ANIMAL LAW BILLS IN NEW YORK

Bill S.2935/A.2484, sponsored in the Assembly by Didi Barrett, D-Hudson, and in the Senate by Boyle, is a bill linked to “Buster’s Law,” which establishes a statewide registry of people convicted of animal abuse, much like a registry enforced on sex-offenders.

Bill S.6974/A.10306 would require an animal shelter to search for a dog’s owner by checking identification, social media and placing a photograph, general description and other identifying information on the internet. If the owner cannot be located, the facility must make a reasonable effort to find adoptive parents for the animal before humanely euthanizing it.

Bill S.6975/A.10316 would require shelters to make dogs available for adoption for a reasonable time period of no less than 90 days before humane euthanization, unless a veterinarian certifies that the animal should be euthanized for health reasons.

In honor of Animal Advocacy Day, the Senate passed several other bills including:

S.7394-a, sponsored by Senator Sue Serino, would extend protections to the pets of victims of domestic abuse by giving the court discretion to forbid contact between the abuser and



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*A frequent lecturer on legal issues related to animals, he maintains a niche practice in the field of animal law. In this unique boutique practice area, Mr. Schopf advises clients who operate animal related businesses such as farms, kennels, veterinary, animal service and not-for-profits animal rescues as to legal issues which are unique to their business.*

any pet that is cared for by the victim.

S.1795, sponsored by Senator Patricia Ritchie, R-Heuvelton, would make it a misdemeanor if anyone allows a minor under the age of 16 years old to witness or attend an animal fighting event. This crime would be punishable by imprisonment of up to one year, a fine of up to \$1,000, or both.

S.3451, sponsored by Senator Terrence Murphy, R-Yorktown, would prevent animal abuse by raising the penalty for subsequent acts of cruelty such as torturing, killing or failing to provide sustenance to an animal, which occur within five years of a prior Class E felony conviction.

S.4877, sponsored by Senator Joseph Robach, R-Rochester, would require municipalities to try and notify owners of a deceased animal if the death occurred on a highway. Under the provisions of this bill, if the animal has a tag with the family’s contact information, a license number, or has a identification chip to scan, the state should make a reasonable attempt to notify the family using the contact information/chip registration as well as the issuer of the license.

S.2102, sponsored by Senator Kenneth LaValle, R-Port Jefferson, would increase the penalties for keeping a companion animal in a vehicle during times of extreme hot or cold temperatures without proper ventilation or other protection. Extreme temperatures can put animals in imminent danger of death or serious physical injury. This measure would be punishable by an increased fine of \$250-\$500 for the first offense — raised from \$50-\$100 — and \$500-\$1,000 for a second and subsequent violations — raised from \$100-\$250).

S.79, sponsored by Senator Patrick Gullivan, R-Elma, would prohibit people who are convicted of animal cruelty from working in positions that place them in direct control of animal care such as animal shelters.

S.6264, sponsored by Senator Rich Funke, R-Fairport, would exempt dog license fees for deployed active military members’ dogs.

S.3321, sponsored by Senator Andrew Lanza, R-Staten Island, would allow domestic companion animals to board any commuter transportation operated by the Metropolitan Transportation Authority (MTA) in the event of a state of emergency and evacuation.

### ATTORNEY FEES AWARDED IN IDAHO “AG-GAG” LITIGATION

A federal judge awarded \$250,000 in attorneys’ fees to animal welfare groups that brought down an Idaho law criminalizing undercover investigations of agricultural facilities.

The Animal Legal Defense Fund, People for the Ethical Treatment of Animals and various other groups initiated the lawsuit in 2014, after the legislature approved the so-called “ag gag” law. Lawmakers conceived the bill as an “emergency measure” in the wake of the 2012 undercover investigation by Los Angeles-based Mercy for Animals of Bettencourt Dairies, in California. Video captured dairy employees using a tractor

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## PRESS RELEASES



**CARTER CONBOY**  
ATTORNEYS AND COUNSELORS AT LAW

**LIBBY CORENO SELECTED AS A WOMAN OF INFLUENCE  
BY SARATOGA TODAY**



Carter Conboy is proud to announce that director Libby Coreno has been named a 2016 Women of Influence award winner by Saratoga TODAY™. The award recognizes women who have committed to shaping the future of Saratoga County through business growth, professional excellence, and community involvement. Libby and her fellow Women of Influence winners will be honored at the Saratoga TODAY™ awards luncheon on May 18, 2016 in Saratoga Springs.

Libby has spent nearly her entire career in Saratoga County and has played a key role in representing some of the area's largest businesses and employers advancing the economic development of businesses such as

health care, construction, tech, and nanotech industries in our region. Libby is the current President of the Saratoga County Bar Association and annual presenter at the Saratoga County Regional Zoning & Planning Conference. She is actively involved in the community and is the current the President of Leadership Saratoga Alumni Association, Board Secretary of The COESA Holistic and Wellness Center, and committee member for the Capital Region Recovery Center. Libby is also the founder of The Silent Partner, a consulting firm for women professionals.

"It is a truly special honor to be included in such a prestigious list of deserving women, all of whom I have the privilege to call friends and colleagues. Saratoga County is a remarkable place to live and work, due in large part to so many who are committed to the betterment of our community through service. We are so well served by the dedication and generous spirit of my fellow honorees whose collective efforts make our community a wonderful place to call "home". I would like to thank Saratoga TODAY™ for this honor and for annually recognizing the contributions of amazing women through the Women of Influence awards.

Libby Coreno is a Director at Carter Conboy. She has been a practicing attorney in Saratoga Springs for over 11 years, providing counsel to a wide-range of clients, from individuals to regional businesses to Fortune 500 companies. Libby's practice centers on real estate development; zoning and

planning; and real property, municipal and commercial litigation. Libby is the President of the Saratoga County Bar Association and President of the Leadership Saratoga Alumni Board. She is the annual speaker on Case Law Updates for the Saratoga County Regional Zoning & Planning Conference and on Dynamics of Leadership for Leadership Saratoga. In addition to her legal practice, Libby is the founder of The Silent Partner, a consulting and mentoring firm for lawyers and professionals seeking to learn ways to practice, and make transitions mindfully, authentically, and creatively. She can be reached at (518) 587-8112 or lcoreno@carterconboy.com.



First Row: Libby Coreno, Esq.; William Decaire, Esq.; Michael Catalfimo, Esq.; Chris Watt, Esq. Second Row: Nancy Hickok; Adam Cooper, Esq.; Robin McFee; Stacy Smith; Christopher Marney; John Canney, Esq.

**SARATOGA  
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**ABOUT CARTER CONBOY**

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## PRESS RELEASES



**CARTER CONBOY**  
ATTORNEYS AND COUNSELORS AT LAW

**MICHAEL J. CATALFIMO AND MACKENZIE C. MONACO  
SPEAK TO NATIONAL ORGANIZATION TO ASSOCIATIONS**



M. Catalfimo

Michael J. Catalfimo and Mackenzie C. Monaco were featured speakers at The Chicago Law: 2016 Association Law Symposium, an educational event presented by ASAE University® in Chicago, Illinois in May, 2016. The Symposium was attended by in-house counsel to associations, attorneys with association clients, and chief executive officers and senior-level association executives. The annual Symposium is the definitive legal education event to associations that addresses the most pressing issues in Association Law and is focused on the latest legal developments and future changes that affect associations.

Mr. Catalfimo and Ms. Monaco presented on Ethics, using an interactive roundtable approach to identifying and analyzing various ethical conflicts and dilemmas facing attorneys who serve as associations' in-house counsel or who have association clients. The presentation highlighted ethical considerations and rules that associations face on a regular basis and the issues to consider in order to arrive at the most appropriate ethical conclusion.

ASAE® is the essential organization for association management, representing both organizations and individual association professionals. The members of ASAE® are trade associations and individual membership societies that represent almost every sector of the economy and countless professionals. With over 21,000 members, ASAE® helps its members lead, manage, and work in or partner with organizations in more than a dozen association management disciplines, from executive management to finance to technology. ASAE University® provides its association members with top quality education in association management through conferences and expos, in-person symposia and workshops, and online courses and programs.

Michael J. Catalfimo is a shareholder and managing director at Carter Conboy, concentrating his practice in the fields of creditors' rights, business and property law and litigation, family law, and general civil litigation. He can be reached at [mcatalfimo@carterconboy.com](mailto:mcatalfimo@carterconboy.com).

Mackenzie C. Monaco is a shareholder and director at Carter



M. Monaco

Conboy, representing healthcare professionals and facilities, individuals, contractors, associations and commercial retailers in claims related to medical malpractice, professional liability, construction, environmental law, product liability, and personal and premises liability, as well as representing clients with trusts and estates matters. She can be reached at [mmonaco@carterconboy.com](mailto:mmonaco@carterconboy.com).

**CARTER CONBOY NAMED A TOP WORKPLACE FOR FIFTH  
CONSECUTIVE YEAR**

Carter Conboy has been awarded a 2016 Top Workplaces honor by the Albany Times Union and given the distinction of being a 5-Year Winner along with only eight other Capital District workplaces. The Times Union began recognizing exceptional Capital Region employers in 2012, and Carter Conboy has been on the list since the beginning.

The Top Workplaces awards are based solely on the results of an employee feedback survey administered by Workplace Dynamics, LLC, a leading research firm that specializes in organizational health and workplace improvement. Workplace Dynamics, LLC invited more than 600 small, medium and large companies, with a total of 17,000 employees, to participate in its Top Workplaces survey. Top Workplace winners were chosen after a careful review process of over 8,600 surveys.

"The Top Workplaces award is not a popularity contest. And oftentimes, people assume it's all about fancy perks and benefits," Doug Claffey, CEO of WorkplaceDynamics, said. "But to be a Top Workplace, organizations must meet our strict standards for organizational health. And who better to ask about work life than the people who live the culture every day—the employees. Time and time again, our research has proven that what's most important to them is a strong belief in where the organization is headed, how it's going to get there, and the feeling that everyone is in it together." Claffey adds, "Without this sense of connection, an organization doesn't have a shot at being named a Top Workplace."

About WorkplaceDynamics, LLC: Headquartered in Exton, PA, WorkplaceDynamics specializes in employee feedback surveys and workplace improvement. This year alone, more than two million employees in over 6,000 organizations will



*(Continued on page 9)*

**ABOUT CARTER CONBOY**

CARTER CONBOY IS A MARTINDALE-HUBBELL AV® PREEMINENT™ PEER RATED FULL-SERVICE LAW FIRM COMMITTED TO PROVIDING THE HIGHEST QUALITY LEGAL REPRESENTATION TO ITS CLIENTS. FOUNDED IN 1920, CARTER CONBOY HAS OFFICES IN ALBANY AND SARATOGA SPRINGS, NEW YORK, SERVING CLIENTS THROUGHOUT NEW YORK, MASSACHUSETTS, CONNECTICUT, THE DISTRICT OF COLUMBIA, NEW JERSEY, NEW HAMPSHIRE, AND FLORIDA. FOR ADDITIONAL INFORMATION ABOUT THE FIRM, VISIT [WWW.CARTERCONBOY.COM](http://WWW.CARTERCONBOY.COM) OR CONTACT THE FIRM'S DIRECTOR OF MARKETING, STACY A. SMITH, AT (518) 810-0516 OR [SSMITH@CARTERCONBOY.COM](mailto:ssmith@carterconboy.com).

**EMPLOYMENT, CONTINUED...***(Continued from page 5)*

2) Defendant had notice of the disability; 3) with a reasonable accommodation she would be able to perform the essential functions of her position; and 4) Defendant refused to make such accommodations.

The Court found that at the time of her final request for leave the Plaintiff was incapable of performing the essential functions of her position, in that she had not been medically cleared to return to work and admitted this to be true. The court noted that while a potential accommodation existed in the form of an extension of leave for a specific period of time, Plaintiff did not make such a request by simply advising her employer that she would not be returning to work. In any event, however, the Court found that Plaintiff's health declined to such a degree that she would not have been able to perform the essential functions of her position even with a brief extension, and as a result her NYSHRL claim was dismissed.

**IMMIGRATION, CONTINUED...***(Continued from page 4)*

leave the United States, or that we frankly have the resources to remove them. According to the American Action Forum, it would take 20 years and between \$100 to \$300 billion to arrest and remove the 11 to 13 million immigrants unlawfully living in the United States. And this is just the cost to remove them back to their home countries. This doesn't even take into consideration the huge negative economic impact of removing these workers from the jobs and employers who depend on them every day. Industries that depend on immigrant labor (e.g., our own dairy farmers in New York States) would falter badly. Frankly, the effect of employers losing these workers would impact every part of our economy.

Is that how we want to spend our resources? What we need is a path for these people to obtain a legal status.

Finally, our family-and employment-based immigration system needs reform. Because our current immigration system is generally built around limited categories of temporary and permanent visas, many who want to come and contribute to our economy, or remain here after their schooling is done, are not able to do so. I recently spent some time with a friend of mine, a co-founder of a local and very successful technology company, and he was echoing what many in his industry say: the United States loses out when talented immigrants (often who are schooled here) are prevented from using their skills here after graduation, prevented from starting and building businesses, and prevented from using their talents to strengthen our economy. These talented and U.S. educated entrepreneurs and workers take their skills elsewhere, benefitting other countries, to the ultimate detriment of our own.

This needs to stop. We need real solutions to this problem from serious candidates. Whether or not you believe border enforcement is a priority (and it is), securing our borders does not need to be a prerequisite for CIR. We can do it concurrently. We just need to do it.

**LAWYER OF THE YEAR, CONTINUED...***(Continued from page 3)*

with a woman who clearly could not understand the proceedings and had no ability to defend herself. According to a reporter, he "issued his judgment in a low, hushed tone that she [Ms. Heller] couldn't hear. Outside the courtroom, a deputy had to explain to her that she had lost." I cannot understand how Judge Haines feels that is "fairly adjudicated in accordance with the law" but he probably sleeps better than I do.

So, Lawyer of the Year, William Windham. Sweet dreams. You should be ashamed.

P.S. Kudos to Desert Sun Reporter Brett Kelman for reporting on this.

**ANIMAL CASE LAW UPDATE, CONTINUED...***(Continued from page 6)*

and chain to drag a cow by its neck and workers beating, kicking and jumping on cows.

U.S. District Judge B. Lynn Winmill found that: "An agricultural facility's operations that affect food and worker safety are not exclusively a private matter," he wrote in an August 2015 order. "Food and worker safety are matters of public concern. Moreover, laws against trespass, fraud, theft and defamation already exist. These types of laws serve the property and privacy interests the state professes to protect through the passage of [the ag-gag law] but without infringing on free speech rights." The judge also found that the law violates the First Amendment and the equal protection clause "because it was motivated in substantial part by animus toward animal welfare groups, and because it impinges on free speech, a fundamental right."

**CARTER CONBOY, CONTINUED...***(Continued from page 8)*

participate in the Top Workplaces campaign—a program it conducts in partnership with more than 40 prestigious media partners across the United States. Workplace Dynamics also provides consulting services to improve employee engagement and organizational health. WorkplaceDynamics is a founding B Corporation member, a coalition of organizations that are leading a global movement to redefine success in business by offering a positive vision of a better way to do business.



## PRESS RELEASES




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**TOWNE, RYAN & PARTNERS, P.C. ASSOCIATE MEGAN COLLELO PRESENTS AT CAASNY ANNUAL MEETING**


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M. Collelo

On Monday, May 16th Attorney Megan Collelo, an Associate at the Albany-based law firm of Towne, Ryan & Partners, P.C., presented at The County Attorneys' Association of the State of New York's (CAASNY) Annual Meeting at The Otesaga Resort Hotel in Cooperstown.

The two-day annual meeting attended by county attorneys, is accredited by the Albany Law School Institute of Legal Studies and offers up to 10 MCLE credits by offering a variety of sessions to update and educate attendees about enacted and proposed legislation and regulations.

Ms. Collelo's presentation - Social Media Policies for the Municipal Employer: What's Not to "Like"? – aimed to provide guidance on drafting an effective social media policy that

avoids legal pitfalls by discussing recent case law and distinctions in dealing with employee use of social media in a unionized vs. non-union workforce. Ms. Collelo's 50-minute presentation offered attendees 1 CLE credit.

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**ATTORNEY JOHN A. MUSACCHIO JOINS TOWNE, RYAN & PARTNERS, P.C.**


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Towne, Ryan & Partners, P.C., Upstate New York's largest certified Women-owned Business Enterprise (WBE) law firm, is pleased to announce that Attorney John A. Musacchio has joined the Firm as an Associate. Mr. Musacchio will work with the Business Law; Labor and Employment Law; Civil Litigation; Professional Discipline; Estate Planning, Administration and Litigation; Personal Injury Law; and Criminal Law teams out of the Albany office.

Mr. Musacchio joins the team from another prominent Capital

*(Continued on page 11)*



J. Musacchio

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**ABOUT TOWNE, RYAN & PARTNERS, P.C.**


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ESTABLISHED IN 2009, TOWNE, RYAN & PARTNERS, P.C. IS A CERTIFIED WBE BY THE STATE OF NEW YORK, THE LARGEST LAW FIRM IN UPSTATE NEW YORK TO HOLD THIS CERTIFICATION. A FULL-SERVICE LAW FIRM WITH OFFICES CONVENIENTLY LOCATED IN ALBANY, SARATOGA SPRINGS, POUGHKEEPSIE, COBLESKILL, BURNT HILLS AND BENNINGTON, VT., THE FIRM'S PRACTICE AREAS COVER BOTH TRANSACTIONAL AND LITIGATION WORK ACROSS A BROAD RANGE OF LEGAL FIELDS INCLUDING MUNICIPAL LAW, REPRESENTATION OF AUTO DEALERS, CORPORATE AND COMMERCIAL LAW, INSURANCE DEFENSE, REAL ESTATE, EMPLOYER DEFENSE, EQUINE, RACING AND GAMING LAW AND MANY RELATED FIELDS. FOR MORE INFORMATION, VISIT [WWW.TOWNELAW.COM](http://WWW.TOWNELAW.COM) OR CALL (518) 452-1800.

# LEMERYGREISLERLLC

A T T O R N E Y S A T L A W

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**LEMERY GREISLER LLC PROMOTES JARED P. YAFFEE TO PRINCIPAL**


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Lemery Greisler LLC, a leading Capital Region business law firm, has announced the promotion of Jared P. Yaffee to Principal.

Jared P. Yaffee concentrates his practice in the area of real estate, corporate and commercial lending, including SBA loan closings and secured transactions designed to cultivate economic development, create and preserve job opportunities, and stimulate business growth. He brings to his practice experience representing clients in real estate transactions and business law, as well as commercial and civil litigation.

"The firm is pleased to acknowledge Jared's contributions and his excellent work on behalf of our clients" said Paul Levine a Managing Partner of the Firm.

Prior to joining the firm, Mr. Yaffee was a Vice President and counsel at the

Jared P. Yaffee, Esq. country's largest title insurance underwriter based in New York City, where he underwrote and closed national commercial transactions. After relocating to upstate New York, he was

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**ABOUT LEMERY GREISLER**


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LEMERY GREISLER LLC IS A BUSINESS LAW FIRM WITH OFFICES IN SARATOGA SPRINGS AND ALBANY. THE FIRM IS DEDICATED TO PROVIDING INSIGHTFUL AND EXPERIENCE BASED LEGAL ADVICE TO HELP BUSINESSES SUCCEED IN THE MARKET PLACE. FOR MORE INFORMATION ON LEMERY GREISLER, PLEASE CALL (518) 581-8800 OR VISIT [WWW.LEMERYGREISLER.COM](http://WWW.LEMERYGREISLER.COM).

## LEMERY GREISLER, CONTINUED

*(Continued from page 10)*

associated with a general practice in Columbia County. Mr. Yaffee is admitted to practice in the State of New York and the Commonwealth of Pennsylvania, as well as before the United States District Court for the Northern District of New York.

Contact Jared P. Yaffee via email at jyaffee@lemerygreisler.com.

### LEMERY GREISLER LLC PROMOTES PETER M. DAMIN TO PRINCIPAL

Peter M. Damin focuses his practice in the areas of commercial litigation, bankruptcy, commercial loan workouts and foreclosure. A significant portion of his practice is devoted to representing banks, financial institutions and private lenders in commercial foreclosures, actions on notes, guarantees and security agreements, actions for the replevin and seizure of collateral, judgment enforcement, loan workouts, and in all aspects of bankruptcy cases. He also represents a broad range of local businesses in general litigation matters, which include breach of contract claims, contract payment disputes, commercial and landlord tenant issues, construction law disputes, mechanic's liens, trust fund claims, and debt collection.

"We are pleased to recognize Peter's contributions to the firm and strong client advocacy on behalf of our valued clients" said Paul Levine, a Managing Partner of the Firm.

Prior to joining Lemery Greisler, Mr. Damin's practice concentrated on defending automobile manufacturers and automobile dealers in breach of contract, breach of warranty and consumer protection actions



Peter M. Damin, Esq.

throughout the eastern United States. Mr. Damin has successfully arbitrated and litigated hundreds of cases in the seven states he's admitted to practice.

Mr. Damin is admitted to practice in the following states: New York, Massachusetts, Connecticut, New Jersey, Georgia, South Carolina and West Virginia. He is also admitted to practice before the United States District Courts and the United States Bankruptcy Courts for the Northern, Southern, Eastern and Western Districts of New York, the United States District Court for the District of Massachusetts and the United States District Court for the Southern District of West Virginia. He is a member of the New York State Bar Association, the Albany County Bar Association, the Capital Region Bankruptcy Bar Association, and the Northern District of New York Federal Court Bar Association.

Contact Peter M. Damin via email at pdamin@lemerygreisler.com.

## TOWNE RYAN, CONTINUED

*(Continued from page 10)*

District law firm where he represented clients in a variety of matters, including medical malpractice, brain injury, wrongful death, products liability, personal injury, criminal defense, employment, and business planning. He also represented nurses in defense of their professional licenses. Mr. Musacchio will continue to practice in these areas with Towne, Ryan & Partners, P.C.

A 2005 graduate of Cornell University's School of Industrial and Labor Relations, Mr. Musacchio went on to receive his J.D. from the Albany Law School of Union University in 2008. While attending law school, Mr. Musacchio clerked with a civil litigation firm where he assisted individuals and corporations in a wide variety of legal areas in both New York State and Federal courts. He was also a two-time intern with the Oswego County District Attorney's office.

Mr. Musacchio is active in the legal community, serving on the New York State Bar Association's Committee on Disability Rights, the Board of Directors for the Capital Region Italian American Bar Association, and as a Co-Chair of the New York State Trial Lawyers Association Young Lawyers Committee, Capital Region division.

Additionally, Mr. Musacchio sings with and is the President of the Mendelssohn Club of Albany, a 60-member male chorus, which is the oldest continuously-running performing arts group in the Capital District.



**DONNELLAN & KNUSSMAN** PLLC  
ATTORNEYS AT LAW



K. Nielson

The Matrimonial and Family Law Firm of Donnellan & Knussman, PLLC. Associate Attorney Kathleen A. Nielson, Esq. Inducted as President of Adirondack Women's Bar Association.

Donnellan & Knussman, PLLC. is pleased to announce that Kathleen A. Nielson, Esq. has been inducted as President of the Adirondack Women's Bar Association. She previously served as AWBA Vice President. Attorney Nielson is an Associate Attorney with Donnellan & Knussman, PLLC. Attorney Nielson graduated from Albany Law School in May 2014 and

*(Continued on page 12)*

**ABOUT DONNELLAN & KNUSSMAN**  
DONNELLAN & KNUSSMAN, PLLC. IS A FULL SERVICE MATRIMONIAL AND FAMILY LAW FIRM LOCATED IN BALLSTON SPA, NEW YORK. THE ATTORNEYS AT DONNELLAN & KNUSSMAN ARE WELL EQUIPPED TO ANSWER ALL OF YOUR MATRIMONIAL AND FAMILY LAW RELATED QUESTIONS. FOR A FREE INITIAL CONSULTATION, PLEASE CONTACT (518) 884-0200 OR VISIT [WWW.DKLAWFIRMNY.COM](http://WWW.DKLAWFIRMNY.COM).

## PRESS RELEASES



**CAPITAL DISTRICT WOMEN'S BAR  
ASSOCIATION HONORS NANCY SCIOCCHETTI  
OF O'CONNELL AND ARONOWITZ**

Attorney Nancy Sciocchetti of Albany law firm O'Connell and Aronowitz was honored as recipient of the 2016 Kimberly A. Troisi-Paton Leadership Award presented by the Capital District Women's Bar Association. The annual award honors and recognizes a member for her enduring commitment to the CDWBA and the community through consistent leadership, perseverance and selfless dedication to the greater good. The award presentation was part of CDWBA Installation Dinner, a gala evening that took place on June 7 at Franklin Plaza in Troy. The CDWBA is a chapter of the Women's Bar Association of the State of New York.

Nancy is a senior partner and supervisor of O'Connell and Aronowitz Health Law practice. She concentrates in the area of health care and general corporate enterprise development and

transactions, representing both for-profit and not-for-profit clients in corporate business transactions, including corporate formation; joint ventures; sales, mergers and acquisitions; buy-sell agreements; real estate transactions, leasing and financing; certificate of need; licensing and the operation of health care facilities.



N. Sciocchetti

Nancy is a Treasurer of the Saratoga County Bar Association where she serves on their Executive Committee and chairs the annual Law Day event as well as serves as Delegate to the New York State Bar Association House of Delegates. She serves on the New York State Bar Association's Women on Law Committee. Nancy is also active involved in a number of local and national charitable organizations.

**ABOUT O'CONNELL AND ARONOWITZ**

O'CONNELL AND ARONOWITZ IS ONE OF THE CAPITAL DISTRICT'S LARGEST AND MOST DIVERSE LAW FIRMS. WITH 38 ATTORNEYS AND OFFICES IN ALBANY, LATHAM, NEW YORK CITY, PLATTSBURGH AND SARATOGA SPRINGS, THE FIRM PROVIDES A BROAD RANGE OF LEGAL SERVICES TO BUSINESSES AND INDIVIDUALS THROUGHOUT THE STATE. FOR MORE INFORMATION, PLEASE CONTACT NANCY (NSCIOCHETTI@OALAW.COM) BY EMAIL OR IN OUR ALBANY OFFICE AT (518) 462-5601. VISIT O'CONNELL AND ARONOWITZ ONLINE AT: WWW.OALAW.COM.

**DONNELLAN, CONTINUED**

was admitted to the New York State Bar in January, 2015. Ms. Nielson has worked for Donnellan & Knussman, PLLC since March 2013 when she began as a Law Clerk. While at Albany Law School, she had the opportunity to intern at the Seneca County Courthouse and the Office of Children and Family Services in the Childcare Bureau. Ms. Nielson received her undergraduate degrees in Psychology and Political Science from Syracuse University in 2011.

Attorney Nielson practices family and matrimonial law and is also a member of the New York State Bar Association.



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