THE SARATOGA COUNTY BAR ASSOCIATION

Serving the Interests of Justice

LAW NOTES

LAW NOTES VOL. IX, ISSUE VI NOVEMBER DECEMBER 2015

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TORTS AND CIVIL PRACTICE: SELECTED CASES FROM THE APPELLATE DIVISION, 3RD DEPARTMENT

TIMOTHY J. HIGGINS, ESQ.

NEW TRIAL GRANTED AFTER ERRONEOUS JURY INSTRUCTIONS

Martuscello v. Jensen (Garry, J., 10/22/15)

Suit was brought on behalf of an 81-year old woman who was injured when she slipped off an examining room table at her doctor's office and hit the floor. Supreme Court (Melkonian, J., Ulster Co.) ruled that the claim sounded in negligence rather than medical malpractice, and prior to deliberations gave the jury a modified charge based on PJI 2:90; combining the concepts of premises liability and adequate supervision. On appeal following a defense verdict, the Third Department reversed an ordered a new trial. Finding that assessment of a patient's risk of falling because of his or her medical condition, and therefore the patient's resulting need for assistance or supervision, are "medical determinations that sound in malpractice", the Court concluded that physician witnesses should not have been precluded from testifying whether the patient's medical conditions put her at a heightened risk for a fall. Furthermore, the Appellate Division found that the modified jury charge was improper since it wrongly "advised the jury that (plaintiff) was required to prove that the premises were unsafe".

DENIAL OF ATTORNEY'S FEE ON WAIVED WORKERS' COMP LIEN

Pickering v. Car Win Construction, Inc. (McCarthy, J., 11/19/15)

Plaintiff was hurt while working, and received workers' compensation benefits. He also brought a third-party negligence action, which was settled with the comp insurer's consent as part of a Section 32 settlement in which the comp carrier waived its recoverable lien of $527,252. Claimant's request for an attorney's fee of $52,725 (10% of the recoverable lien) was denied by a Workers' Compensation Law Judge and the full Comp Board. Affirming, the Appellate Division rejected the claimant's argument that the comp carrier's waived lien was the equivalent of payment of compensation to him and as such, his counsel was entitled to a fee for "services provided in securing the waiver".

SOFTBALL UMPIRE ASSUMED RISK OF BAT INJURY

Morrisey v. Haskell (Lynch, J., 11/5/15)

New York's primary assumption of risk doctrine, in which participants in a sporting event consent to "commonly appreciated risks" that are inherent in the sport, proved fatal to this plaintiff's lawsuit. Supreme Court (Reynolds Fitzgerald, J., Broome Co.) granted summary judgment to the defendant who tossed a softball bat after hitting an infield pop-up; the bat striking the plaintiff umpire (who had removed his mask) in the face. Affirming, the Third Department found the fact that the softball league was "slow pitch" for players age 65 and older did not change the analysis; that "neither the age of the players nor the velocity of the pitch negates the readily apparent risk of a batter releasing the bat after a swing".

"SERIOUS INJURY"

Murray v. Helderberg Ambulance Squad, Inc. (Lahtinen, J., 11/12/15)

Defendant's ambulance struck the rear of plaintiff's vehicle as it entered a traffic circle. Some 11 months later, plaintiff sought medical treatment for left shoulder pain, which concluded with two surgeries upon a diagnosis of thoracic outlet syndrome. Supreme Court (Walsh, J., Albany Co.) granted defendant's motion for sum-

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TORTS AND CIVIL PRACTICE, CONTINUED...

mary judgment, agreeing that plaintiff failed to show evidence of an accident-related "serious injury" (New York Insurance Law § 5102(d)). Plaintiff's vascular surgeon's affirmation failed to address his patient's complaint of left shoulder pain about a year before the accident; nor did it take into account two separate post-accident events which caused the plaintiff to complain of shoulder pain and numbness. The Third Department affirmed dismissal.

LABOR LAW §240

Hill v. Country Club Acres, Inc. (Garry, J., 12/10/15)

Plaintiff was the sole member of a limited liability company (LLC) that he formed to purchase and operate a restaurant in a strip mall owned by the defendant. The strip mall was scheduled to be demolished and redeveloped, prior to which the plaintiff was hurt in a fall from a ladder while he was removing a restaurant ceiling fan. Plaintiff's suit under Labor Law §§ 240, 241(6) was dismissed on defendant's motion by Supreme Court (Nolan, J., Saratoga Co.), which concluded that plaintiff was not within the class of workers protected by the statute. Affirming, the Third Department agreed that plaintiff's "self-serving affidavit"; in which he claimed that at the time of his injury he was employed by his LLC; was inconsistent with his deposition testimony that "he was the company's owner rather than its employee". A plaintiff seeking recovery under the Labor Law must show that he or she "was hired by someone to do so".

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.

Prior to joining the firm, Mr. Higgins was a partner with Powers & Santola, LLP, in Albany, where he had worked since graduating from law school. Before beginning his legal studies and career, Mr. Higgins worked for ten years as a news reporter and sports broadcaster at WGY 810 AM in Schenectady as well as radio stations in Saratoga Springs and Glens Falls.

Mr. Higgins is regularly called upon by various bar associations and groups to lecture to other lawyers, on topics ranging from "The Basics of Civil Practice" to "Discovery for Experienced Litigators" to "The Art of Trial Advocacy: Demonstrative Evidence for Television Generation Jurors."

PREMISES LIABILITY

McLaughlin v. 22 New Scotland Ave., LLC (Clark, J., 10/29/15)

Defendant was the owner of the property, which it leased to Albany Medical Center Hospital, on which plaintiff slipped and fell, injuring her wrist. Supreme Court (Connolly, J., Albany Co.) granted defendant's motion for summary judgment and the Third Department affirmed. Defendant was an out-of-possession landlord, and its responsibility to maintain the property in a safe condition was passed on to AMCH by lease. Furthermore, plaintiff's request to amend her complaint to add AMCH as a defendant after expiration of the applicable statute of limitations was properly denied as the property owner and AMCH were not vicariously liable for the acts of the other and as such "do not share unity of interest".

Zupan v. Price Chopper (Clark, J., 10/29/15)

Plaintiff claimed water on the floor of the defendant's grocery store, in proximity to a freezer in which bags of ice were stored, was the cause of her fall and injury. Supreme Court (McGrath, J., Rensselaer Co.) denied defendant's motion for summary judgment, in which defendant argued the oral and written statements of a cashier (who was also the plaintiff's cousin) constituted inadmissible hearsay and should not have been considered by the Court. The Third Department affirmed, noting that while the oral statement was likely inadmissible at trial, it could be properly considered on summary judgment given the existence of corroborating evidence; namely, testimony from the grocery store manager that she saw water on the floor after plaintiff's fall and that water had previously accumulated in the front of the freezer due to leakage.

Medina v. State of New York (Devine, J., 11/5/15)

Claimant, a student at SUNY Binghamton, broke her ankle after falling on what she claimed was an uneven sidewalk on campus. After trial, the Court of Claims (Schaewe, J.) rendered a defense verdict, finding the offending condition was trivial and that the State had neither actual nor constructive notice of it. Affirming, the Third Department noted that claimant's proof at trial did not include "actual measurements of the depth of the dropoff" in the sidewalk and that it agreed with the testimony of the defendant's grounds manager that photos of the condition appeared to show a height differential of "much less" than the two inches alleged by the claimant.

BONUS OPINION: COURT OF APPEALS REVISITS "TRIVIAL" DEFECTS

Hutchinson v. Sheridan Hill House Corp. (Fahey, J., 10/20/15)

In reversing the judgments of various Appellate Divisions in two of three appeals it considered, the Court of Appeals re-

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Ho Ho Ho

MICHAEL FRIEDMAN, ESQ.

"There can be no doubt as to the Judiciary's commitment to fiscal prudence… But the fact is that the austere budgets of the past years imposed a price."

- Unified Court System 2016-2017 Budget Request.

"There is a point beyond which the Judiciary cannot be pushed if it is still to play its role in our constitutional system. We have reached that point." - Jonathan Lippman 2014-2015

"This budget request is austere."

- Executive Summary, Judicial Budget, 2013-2014

"The proposed budget is austere."

- Executive Summary, Judicial Budget, 2012-2013

"The judiciary submits this austere budget request."

- Executive Summary, Judicial Budget request, 09-10

The 2009-2010 Judiciary budget was 547 pages. Every year since it has declined and this year's tome is 144 pages. Who needs all that detail anyway? After all, the theme of "we're poor, we're frugal, we need more money" has always worked and there is no expectation that the Legislature will deny the Office of Court Administration its money this year. The latest is a work of genius. They now want a mere $2.13 billion to hold body and soul together, an increase of $48.6 million. Not only that, if the Legislature increases judicial salaries as requested, they'll need lots more. In 1997 just after Jonathan Lippman became the Chief Administrative Judge the judicial budget was $952 million. So, let's put this in perspective. The state of Florida now has more people than New York, but just barely. Their Judiciary Budget for 2016 is a tad under $517 million. Texas has 7 million more people than New York and its Judiciary Budget for 2016 is $753 million. So, why is our austere court system so expensive, especially since it handles a lot fewer cases every year for the past five years? Is it more than the chauffeurs and cars for its highest paid judges? It is certainly more than the myriad useless programs such as the Collaborative Family Law Center, Parent Education and Awareness Program, the Judiciary coloring books, the Gender Fairness Committees, the Judicial Committee on Women in the Courts, the myriad Advisory Committees, the ten "problem solving courts" (Veterans Courts?), Lay Guardian Training and the various task forces. It funds a Judicial Institute at Pace University to provide a forum "for identification of new and emerging legal, technological, social, criminal, and administrative trends affecting the courts." Why?

Know what you can get for $2.13 billion? Ever hear of Liberia? It is a country on the west coast of Africa with over 4.5 million people. It's yearly gross domestic production is less than our Judiciary budget. The Princess Tower in Dubai is the largest residential building in the world (101 stories) and cost about the same as our budget. The most expensive cruise ship in the world, the MS Allure of the Seas, has a 1300 seat theater, a skating rink, sixteen decks and can hold over 6,000 people. It cost half a billion dollars less than the OCA budget.

Calling itself a "faithful steward of public's funds" the budget request did make one startling admission: "The objectives of the Judiciary are to: (1) provide a forum for the peaceful, fair and prompt resolution of civil and family disputes, criminal charges, disputes between citizens and the state, and challenges to government action; (2) supervise the administration of decedents' estates; (3) preside over adoptions and proceedings to protect children and the mentally-ill; and (4) regulate the admission of lawyers to the Bar and their conduct and discipline." Really? And just what do chauffeurs, coloring books, parent education and all the other nonsense have to do with any of that? Nothing. Here is where the court system has failed miserably. In losing sight of its prime directive, it has successfully blossomed into an enormous bureaucracy that is now the most expensive judicial system per capita in the world. The entire federal judicial budget services every citizen in the United States and costs only $7 billion.

$15 million of the increase is for more funding of charities and not for profit organizations that provide civil legal services

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Michael Friedman has been practicing law for over 30 years and has maintained a private practice since 1981. He is the recipient of numerous awards such as the Distinguished Service Award from the Legal Aid Society of Northeastern New York, the Albany County Bar Association President's award, the Albany County Bar Association Pro Bono Award, and the New York State Bar Association President's Pro Bono Service Attorney Award. 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.

Mr. Friedman has served as President of the Albany County Bar Association and was a member of the House of Delegates of the New York State Bar Association. He practices before all local Family and Supreme Courts and has argued numerous matrimonial cases in the Appellate Division, Third Department and New York's highest court, The Court of Appeals. He has been a frequent judge for the Dominick L. Gabrielli National Family Law Moot Court Competition. He is also a frequent lecturer and writer for the New York State Bar Association Family Law Section's Continuing Legal Education programs.

INSIGHT INTO IMMIGRATION

IMMIGRATION NEWS FROM MEYERS & MEYERS, LLP

On October 19, 2015, the Department of Homeland Security ("DHS") published a notice of proposed rulemaking in the Federal Register seeking to improve and expand training opportunities for F-1 nonimmigrant students with science, technology, engineering or math degrees (commonly referred to as "STEM" degrees). The rule also proposes to expand what is called "cap-gap" relief for all eligible F-1 nonimmigrant students.

While this is a welcome regulation, and there's a litigation aspect to it that I will not get into here (but probably should given my audience), the fact that we need this regulation at all is just another example that our immigration system is broken.

A brief primer on "practical training." Practical training may generally be defined as experiential learning, including paid employment or an unpaid internship, directly related to a student's major area of study. It may be authorized for F-1 nonimmigrant students who have been enrolled in a DHS-approved college, school, university, conservatory, or seminary for one full academic year. There are two kinds of practical training available: (1) curricular practical training; and (2) optional practical training ("OPT"). OPT is the subject of this article.

Generally, students may be authorized for up to 12 months of OPT at each higher level of postsecondary education. For example, a student may take 12 months of OPT during his or her bachelor's level, an additional 12 months at his or her master's level, and an additional 12 months at his or her doctoral level.

It is typically during OPT that a student identifies an employer that may wish to sponsor him or her for longer term temporary or permanent employment. That requires the employer to sponsor the student, more often than not by filing a petition with U.S. Citizenship and Immigration Services ("USCIS") to change the student's nonimmigrant status, usually to an H-1B nonimmigrant worker status. The problem is, there are more employers wishing to petition for their workers than there are H-1B visas available, and often both employer and student are shut out of the H-1B program as a result.

A related and important issue is that typically a student's post-completion OPT will run out months before he or she will be eligible for H-1B nonimmigrant worker status, assuming they were one of the lucky ones to be selected. This brings in the concept of the "cap-gap."

Spring postsecondary school graduates often face a gap in their period of authorized stay in the United States. Typically it is the period between the end of their OPT and the beginning of their H-1B nonimmigrant worker status (which is generally October 1, the first day of the government's fiscal year). To deal with this, DHS issued an interim final rule in April, 2008 (the same rule that created the STEM extension and which is the subject of the litigation that I am not writing about), commonly referred to as the "cap gap rule." It offers an "automatic" extension of the student's F-1 nonimmigrant status, including any OPT employment authorization that may have been authorized, until October 1 of the fiscal year for which a student is the beneficiary of a timely filed H-1B petition requesting a change of status to H-1B nonimmigrant worker status. This regulation essentially provides continuing work authorization during the "cap gap" for students engaged in post-completion OPT who are also the beneficiaries of such H-1B petitions.

Under the 2008 interim final rule, F-1 nonimmigrant students who earn a degree in a STEM field may be eligible for an extension of their post-completion OPT for up to 17 months, for a total of 29 months of OPT. U.S. Immigration and Customs Enforcement's ("ICE") Student and Exchange Visitor Program ("SEVP") has designated certain Classification of Instruction Programs ("CIP") codes assigned to major fields of study to constitute the eligible "STEM fields." While a student may be eligible for additional periods of OPT at each higher level of study, the STEM extension is a one-time benefit, and may be granted only if a student is currently engaged in OPT based on a STEM degree. (To be eligible for a STEM extension, a student must also have an employer who is enrolled in the E-Verify program.)

The new rule would, among other things, extend the STEM OPT period to 24 months, allow an additional period of OPT for subsequent degrees, and even provide STEM OPT eligibility for a prior degree. Very importantly for practitioners in this area, the rule also clarifies which occupations qualify. The new rules also leaves open the possibility of adding eligible fields in the future. Finally, and importantly, the new rule provides continued "cap gap" relief.

These changes are critical to attracting foreign students to our colleges and universities, and to encourage the pursuit of practical training from leading, innovative businesses in the United States. U.S. businesses that provide STEM OPT training opportunities benefit from this program through employee retention and a strengthened market position both domestically and abroad.

Once again, however, I will stand on my soap box and say our country still needs comprehensive immigration reform. For the time being, however, we'll once again need to satisfy ourselves with these regulatory "baby steps."

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.

EMPLOYMENT LITIGATION UPDATE

SCOTT PETERSON, ESQ.

RETALITORY INTENT

Kazolias v. IBEWLU 363 (2nd Cir. 11/12/15)

Plaintiffs were journeyman electricians who brought an action against their union alleging, among other things, that the union discriminated against them in violation of the Age Discrimination in Employment Act ("ADEA") and the NYS Human Rights Law.

Plaintiffs were "referred" to a job performing electrical services for an employer. After they were terminated from the position they filed several grievances with the union alleging various violations and a failure to comply with the collective bargaining agreement. Plaintiffs, unsatisfied with the results of the grievance, proceeded to bring charges with the National Labor Relations Board ("NLRB"), alleging among other things that the union had retaliated against them. When the NLRB dismissed their claims Plaintiff's proceeded to file complaints of discrimination and retaliation with the EEOC. At the monthly union meeting following the filing of the EEOC complaint the union's business manager made several statements suggesting his hostility towards the complaints and the members making them. Plaintiffs were subsequently issued right to sue letters and commenced an action in Federal court.

The District Court dismissed several of the claims on motion, including claims relating to any retaliatory animus occurring prior to the remarks made by the union's business manager at the monthly meeting. Plaintiffs appealed, contending that the District Court erred in only considering retaliatory animus during the period following the statements. In doing so the Plaintiffs asserted that the animus was not born at the moment that it was stated, but earlier after they filed their initial complaints.

The Second Circuit agreed, and in reversing summary judgment found that the remarks made by the union's business manager "constituted evidence that, at the time he spoke, he (and consequently the union) harbored retaliatory animus against the plaintiffs for their complaints." Therefore, the Court found, a jury could reasonably infer that the animus expressed by the union was not born the instant it was expressed but instead had been brewing ever since the initial allegations of discrimination. Reversed and remanded.

COMMON DEFENSES PREVAIL ON APPEAL

Inguanzo v. Housing & Services, Inc. (2nd Cir., 11/6/15)

In the context of employment litigation – as with most areas of practice – there are several "boilerplate" defenses that are asserted in many cases and, while often inapplicable, are on occasion used successfully. Some of the most common of these defenses were on display in Inguanzo, a race and sex based discrimination case that was dismissed by the District Court and considered by the Second Circuit on appeal.

Among the defenses considered – and in this case found viable – were 1) lack of qualification for the position allegedly withheld; 2) failure to allege an adverse employment action; 3) "stray comments"; 4) the "same actor" defense; and 5) the "poor employee" defense.

Lack of Qualification: here the plaintiff asserted a Title VII failure to promote claim. In response the employer argued that she lacked the requisite license to qualify her for the position in the first instance. Consequently, she could not possibly succeed on her claim.

Failure to allege an adverse employment action: Plaintiff here apparently alleged that she was denied training as a result of discriminatory animus. This is a fairly common claim. Here the court determined that the failure did not constitute an "adverse employment action" - a materially adverse change in the terms and conditions of employment – because plaintiff was not able to establish any negative consequences of the alleged failure to train.

Stray comments: the stray comments defense typically arises in the context of race or sex discrimination cases where a co-worker or supervisor is alleged to have made one or more inappropriate comments to the employee. Here the plaintiff relied upon three remarks to show race and sex based hostility, however the court determined that they constituted the type of stray remarks that, "without more, cannot get a discrimination case to a jury."

Same actor: The "same actor" theory of defense asserts that if the same individual is responsible for both the hiring and the firing of an employee, there is a presumption that the individual doing the hiring/firing did not act with discriminatory animus in the firing. Here this defense was further supported by the fact that the plaintiff was apparently replaced by an employee of the same gender and ethnicity – another common and often successful defense to allegations of discrimination.

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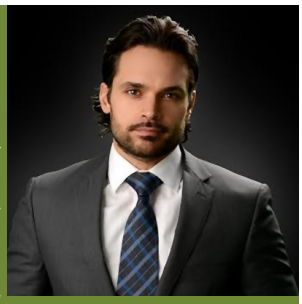

Scott Peterson is the founding partner at D'Orazio Peterson, which was opened to provide representation to individuals in employment and serious injury matters.

Mr. Peterson received his law degree from Albany Law School, where he served as a Managing Editor on the Albany Law Journal of Science and Technology. Prior to opening his firm, he worked for two Albany- based law firms, where he focused his practice on litigation in the areas of construction, malpractice, employment and serious injury.

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.

TORTS AND CIVIL PRACTICE, CONTINUED...

(Continued from page 2)

viewed the "trivial defect" defense in slip/trip-and-fall claims. The Court's holding in Trincere (1997) established that there is no "minimal dimension test" or per se rule that a defect must be of a certain height or depth to be actionable and that courts should not find a defect to be trivial based on size alone. Now in Hutchinson, the Court emphasizes that defendants relying on the trivial defect defense for summary judgment "must make a prima facie showing that the defect is, under the circumstances, physically insignificant and that the characteristics of the defect or the surrounding circumstances do not increase the risks it poses".

HO HO HO, CONTINUED...

(Continued from page 3)

to the poor. Of course, that has nothing to do with the objectives of the judiciary, but who cares! Under Chief Judge Lippman the funding has grown from $0 to $100 million per year. It is no wonder he has received awards and accolades from those who have benefitted from his public largesse. Here is where it gets a little dicey. Remember Judge Judy Harris Kluger? She was one of four judicial executive officers of the court system until she left 2013 to become the executive director of Sanctuary for Families. That year, thanks to the Chief Administrative Judge A. Gail Prudenti, Sanctuary for Families received $308,637 from the court system. Nice. The award this year was $839,897. Now, Judge Prudenti has left the court system to head Hofstra University's Center for Children, Families and the Law. Just before she left, she saw that Hofstra University would receive $133,561 in 2015 from taxpayer funds courtesy of the court system. It was a one third increase from 2014. I wonder where they will be on the OCA funding hit parade in three more years, or which charity or not for profit the next OCA Executive judge will command.

Just to give you some sense of the scale of this project, our Legal Aid Society of Northeastern New York will receive over $4 million from OCA this year. Many of these organizations like Sanctuary for Families, My Sister's Place ($263,251), the Capital District Women's Bar Association ($564,679), MFY Legal Services ($3,485,108) and the Legal Aid Society ($9,512,606) actively advocate to the legislature for their causes. This year the Legal Aid Society joined OCA in support of judicial pay raises, and why wouldn't they for $9.5 million?

It does beg the question, doesn't anyone care? Not really. There is virtually no criticism from the Legislature or the Governor to this kind of massive spending. None of this is popular with our judges who live with bureaucratic hypocrisy every day, trying to move people through the system fairly while dealing with a growing administration that burdens their lives for no reason. I don't think the Legislature even asks anyone in the judicial system why it costs so much to handle fewer cases every year. So, Merry Christmas to all and to all a good night, and I hope your budget for next year is as austere as the court system's.

PRESS RELEASE: LET'S INNOVATE (LASNNY)

My name is Shaniqua M. Jackson and I am the new Pro Bono Innovator/Staff Attorney at the Saratoga Springs Office under the Pro Bono Innovation Fund. I have inherited this role from Cheyenne James and would like to continue her efforts in maximizing pro bono initiatives by strengthening the Attorney Emeritus Program and retaining law students to complete their 50-hour pro bono requirement by assisting financially eligible clients.

The Pro Bono Innovator position, is funded by a subgrant under the Pro Bono Innovations (PBI) Fund from the Legal Services Corporation. The PBI grant enables LASNNY to expand its volunteer recruitment efforts to tap into underused volunteer sources, both law students and attorneys emeritus. The Attorney Emeritus Program (AEP) targets attorneys, retired or active, over the age of 55 with at least 10 years' experience to volunteer their time serving the low-income population. The attorney emeritus can venture into any of our current PAI programs or accept general referrals in a wide variety of law. In addition, the PBI grant focuses on utilizing students who are looking to fulfill their mandatory pro bono hours and instill the importance of pro bono work as they transition from student to attorney.

I am a graduate of Hudson Valley Community College receiving an Associate's Degree. In 2010, I received my Bachelor's Degree from the University at Albany in Africana Studies. Currently, I am a recent graduate of Albany Law School where I received my Juris Doctorate Degree. Prior to law school, I worked at the New York State Office of the Attorney General for five years at the Real Property Bureau. While at Albany Law School, I worked at the Attorney For the Day Program and the Albany Family Court Help Desk as a volunteer. Both experiences allowed me to hear and understand firsthand the struggles that many of our clients face which further ignited my passion to gain a position at Legal Aid so that I can make a difference. I have clinical experience working at the Civil Rights & Disabilities Law Clinic and the Tax & Transactions Clinic at the Albany Law School. Furthermore, I have diversified experience in many different legal environments such as a Supreme Court, Labor Union, Private Law Firms, and Government agencies. Prior to my position as Pro Bono Innovator, I worked at the Legal Aid Society in the Albany Office as a Tax Clerk.

In my capacity now, I have had the pleasure of becoming acquainted with fellow pro bono service providers in the Capital Region: New York State Bar Association, the Capital District Black and Hispanic Bar Association and Albany Law School. In addition, I have been engaged in creating job postings for law students and reaching out to the Career Services Center to determine ways to attract interested students to work for the Legal Aid Society while still balancing my current caseload. My goal as a Pro Bono Innovator is to recruit interested attorneys and students by publishing job descriptions, interviewing and placing law students, conducting written and event outreach, distributing survey results, drafting brochures and articles, raising awareness by speaking at local bar associations, among other related activities. I am extremely excited to step into this new position and I hope to expand and complement LASNNY's already established pro bono program.

EMPLOYMENT UPDATE, CONTINUED

(Continued from page 5)

Poor employee: Perhaps the most common – and often most effective – defense is that the employee was simply not a good worker. This is not to say that the defense is always effective – in fact in many cases it backfires where it is established that the employee was held to a different standard than co-workers outside of her protected class. Here, however, the court determined that the defendant had submitted legitimate, non-discriminatory reasons for the termination when it established that the plaintiff was continually late in submitting work product and was otherwise apparently a poor employee.

Summary judgment affirmed.

PRESS RELEASES

CARTER CONBOY
ATTORNEYS AND COUNSELORS AT LAW

CORENO, CONNELL SPEAK ON BOUNDARY ISSUES AND EASEMENT LAW AT NATIONAL BUSINESS INSTITUTE (NBI) SEMINAR

The National Business Institute (NBI) invited Carter Conboy's Libby Coreno and Edward Connell to speak on issues related to boundary issues and easement law at its one-day conference "Boundary Issues and Easement Law: Solve Boundary Disputes Using Best Practices" held on December 9, 2015.

Ms. Coreno spoke on issues related to "Creating and Enforcing Easements", including the topics choosing an easement in cross or appurtenant easement, drafting property descriptions, ensuring all parties agree to the purpose, and scope of easement and overburdening issues. She also spoke on "Terminating or Releasing Easement Options" including issues related to express release, abandonment, change in use by a dominant tenant, and mergers.

Mr. Connell addressed "Special Boundary Considerations", including issues related to air rights, surface water rights, subsurface rights, mining and drilling, groundwater as a public trust, solar easements, telecommunications, and wind turbines. Additionally, he spoke on "Ethics in Boundary Law", including acting in good faith, following limitations imposed by Statute and Common Law, ethics in quiet title actions, and calculating fair attorneys' fees.

The seminar was accredited by the New York State Continuing Legal Education Board. It was attended by a variety of professionals including attorneys, surveyors, engineers, architects, developers, planners, local government officials, and real estate and title insurance professionals.

Libby Coreno is a Director at Carter Conboy. She has been an attorney in private practice 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.

Edward M. Connell is an attorney at Carter Conboy. He has more than 12 years of experience in representing mortgage lenders and services, businesses, collection agencies, landlords, and other creditors in the collection of debts and recovery of loan collateral. Mr. Connell practice is concentrated in the areas of creditors' rights, business and property law and litigation, bankruptcy, and municipal law. He earned his bachelor's degree from the State University of New York at Albany and his Juris Doctorate degree from Albany Law School. Mr. Connell is a member of the Real Property and Business Law sections of the New York State Bar Association. He can be reached at econnell@carterconboy.com or 518.465.3484.

CARTER CONBOY RECOGNIZED AS A "BEST LAW FIRM" BY BEST LAWYERS AND U.S. NEWS & WORLD REPORT

Albany, N.Y. (November 2, 2015 | www.carterconboy.com): For the sixth consecutive year, Best Lawyers and U.S. News & World Report have selected Carter Conboy as a "Best Law Firm". In the Albany, NY metropolitan area, the firm received Tier 1-3 rankings in nine practice areas.

Firms included in the 2016 "Best Law Firms" list are recognized for professional excellence with continually impressive ratings from clients and peers. Achieving a ranking signals a unique combination of quality law practice and breadth of legal expertise.

Rankings are based on a rigorous evaluation process that includes clients' and peers' evaluation of firms based on the following criteria: responsiveness, understanding of a business and its needs, cost-effectiveness, integrity and civility, as well as whether they would refer a matter to the firm and/or consider the firm a worthy competitor. The "Best Law Firms" rankings will be published later this month in a special legal issue of the U.S. News & World Report.

PRESS RELEASES

TOWNE, RYAN & PARTNERS, P.C. WELCOMES NEW ASSOCIATE MARK T. HOUSTON

Albany, NY (November 2, 2015) – Towne, Ryan & Partners, P.C., Upstate New York's largest certified Women Business Enterprise (WBE) law firm, is pleased to announce that Attorney Mark T. Houston has joined the firm as an Associate, working in the Firm's Corporate, Commercial and Partnership Law; Environmental Law; Estate Planning, Administration and Litigation; Labor and Employment Law; Litigation; Municipal Law; and Real Estate Law practice groups.

Mr. Houston joins the team from Vaneria & Spanos, a boutique general practice law firm in New York City, where he focused his practice on all aspects of civil litigation, both state and federal. While at his former firm, Mr. Houston gained extensive experience representing clients in complex medical malpractice, real property, environmental, guardianship and shareholder derivative actions.

A 2005 graduate from the University at Buffalo with a Bachelor of Arts in Anthropology/Archaeology, Mr. Houston began his career as a Project Director for his alma mater's Archaeological Survey. After seven years in the position, he went on to receive his J.D. from Albany Law School of Union University where he served as Vice President for the Pro Bono Society and the Student Co-Editor-in-Chief for the New York State Bar Association's The New York Environmental Lawyer. Mr. Houston is admitted to practice in New York (2015).

Mr. Houston enjoys staying active in the legal community and is a member of the Albany County Bar Association, where he has regularly volunteers, and the New York State Bar Association's Young Lawyers and General Practice Sections.

ABOUT TOWNE, RYAN & PARTNERS, P.C.

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 OR CALL 518-452-1800.

E. STEWART JONES HACKER MURPHY LAW FIRM REPRESENTS VICTIM OF SYNTHETIC MARIJUANA: TEENAGER DIED AFTER CONSUMPTION OF OVER-THE-COUNTER SYNTHETIC CANNABINOIDS

TROY – The family of Victor Woolson, a 19-year-old from Oswego, New York who died in 2012 after consumption of over-the-counter synthetic marijuana, has succeeded in a wrongful death lawsuit against Brian Colombo, owner of Xtreme Underground, a smoke shop located in Oswego. The family received $350,000 in the settlement. The E. Stewart Jones Hacker Murphy law firm, who represented the family in the wrongful death lawsuit, is also pursuing for damages, Charles Burton Ritchie, who owns ZIW, LLC and manufactured the product.

"We are aggressively pursuing the individuals who manufactured this poison," said John Harwick, attorney for E. Stewart Jones Hacker Murphy. "Selling an improperly labeled product that was not reasonably safe for its intended purpose is inexcusable under the law. The defendants knew, or should have known, the true intended purpose of the product and the dangers associated with such."

Synthetic marijuana, called Spice, has reportedly led to several negative side effects, including psychotic episodes. Although this "designer drug" was sold over-the-counter and marketed as potpourri and incense, experts report it was smoked by consumers and was much more powerful and dangerous than marijuana.

Woolson smoked a product called K2 Avalanche Incense before going swimming in a local lake. After a reaction to the product, during which Woolson lost control of his bodily functions, he drowned. A toxicity report showed that the only chemical in his body was the synthetic marijuana.

Avalanche was manufactured, distributed and marketed by ZIW, LLC. The product contained no labeling information on use, side effect warnings or potential dangers, and no reference regarding who made the product or how it was manufactured. However, the product was labeled falsely as having 100% all natural ingredients, when in fact it included synthetic psychotropic drug, which are considered hallucinogenic substances.

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E. Stewart Jones Hacker Murphy, Continued

(Continued from page 9)

Avalanche was created with the illegal drug, XLR-11, illegally obtained from China and mixed in with plant matter. Ritchie sold ZIW in 2012 and is now a producer for Heritec Films, an indie movie production company. ZIW made millions of dollars a year on synthetic cannabinoids before it was sold. Richie is also the subject of lawsuits being pursued in Virginia and Oregon.

E. Stewart Jones hacker Murphy Law Firm Named to "Best Law Firms" 2016 Firm Awarded Metropolitan Tier 1 for Albany

TROY – Law firm E. Stewart Jones Hacker Murphy has been selected by its peers for inclusion in the 2016 "Best Law Firms" U.S News and World Report publication. Awarded tier one (the highest level of recognition) for Albany, New York, the firm received recognition in six practice areas.

The practice areas in which the firm earned this distinction are: Commercial Litigation; Criminal Defense: Non-White Collar and White-Collar; DUI/DWI Defense; Legal Malpractice Law – Plaintiffs; and Personal Injury Litigation – Plaintiffs. The selection process of "Best Law Firms" is rigorous, including peer review and client and lawyer evaluations. There are no fees to submit information or receive a ranking in the publication. The sixth edition of "Best Law Firms" is available online today, and will be published in print in mid-December.

Four attorneys at E. Stewart Jones Hacker Murphy were named "Best Lawyers" 2016 in August. E. Stewart Jones, Jr., James E. Hacker, John F. Harwick and Meghan R. Keenholts received a cumulative 15 awards in the publication. E. Stewart Jones, Jr. has been an awardee of Best Lawyers since its inception in 1983.

About E. Stewart Jones Hacker Murphy: The January 2015 merger of the E. Stewart Jones and Hacker Murphy law firms created an entity with a combined 134-year track record of success in the Upstate New York legal community. With offices in Albany, Troy, Latham and Saratoga Springs, the firm's 15 attorneys offer unparalleled legal counsel in the areas of commercial litigation, property tax dispute, criminal defense and personal injury law. For more information, visit www.joneshacker.com.

Appealing a Social Security Decision?

Check Out the SSA's Improved Online Appeal Process

Social Security listened to customer feedback and made the online appeals process even better. Now, people who disagree with our disability decision can complete their appeal using our improved online appeals process.

More than 90,000 people use our online appeals application each month. We've certainly come a long way since introducing the online appeal option in September 2007. Throughout the nation, applicants, their representatives, third parties, groups, and organizations use the online appeal process to request review of disability decisions.

Responding to feedback from our employees and the public, the new online appeals process is easier to use and improves the speed and quality of our disability and non-disability decisions. Users told us that the program needed to be streamlined for easier navigation and that it needed to ask for less duplicate information. They also told us that they wanted to be able to complete both the appeal form and the medical report together, and be able to submit supporting documents as part of the electronic appeal request.

Our enhanced online appeals application incorporates those suggestions and more. People can now submit both the appeal form and the medical report in just one online session and electronically submit supporting documents with the appeal request. The screen messages are clear and concise, the navigation has been improved, and we've beefed up our on-screen help. Additionally, users who live outside of the United States are now able to file appeals online.

As a reminder, representatives who request, and are eligible for, direct fee payments must electronically file reconsiderations or request for hearings on medically denied Social Security and Supplemental Security Income (SSI) disability or blindness claims.

The next time you need to file an appeal, be sure to complete it online at www.socialsecurity.gov/disabilityssi/appeal.html.

PRESS RELEASES

Iseman, Cunningham, Riester & Hyde, LLP
ATTORNEYS AND COUNSELORS AT LAW

LAW FIRM AND FOUNDING PARTNER NAMED IN BEST LAWYERS

(ALBANY)— Iseman, Cunningham, Riester & Hyde LLP and its founding partner, Robert H. Iseman, have been selected by peers for inclusion in the 2016 Best Law Firms and Best Lawyers U.S News and World Report directories.

The firm was noted for its health care law and commercial litigation practice. With this being his 25th year of inclusion in the directory, Mr. Iseman was recognized for his practice in health care, commercial, antitrust and regulatory enforcement litigation. Iseman was also selected "Lawyer of the Year-Commercial Litigation," a designation indicating he received the most votes from his regional peers for his work in commercial litigation.

Inclusion in Best Lawyers is peer-review based. The methodology is designed to capture the consensus opinion of leading lawyers about the professional abilities of their colleagues within the same region and legal practice area.

Iseman, Cunningham, Riester & Hyde LLP, a law firm with offices in Albany, Poughkeepsie and Millbrook, New York, has extensive experience in litigated and transactional matters and represents clients in many industries, including health care; insurance; financial; professional liability; construction; retail; municipal; nonprofit and real estate. As experienced counselors, negotiators and litigators, the firm's attorneys advise clients on complex transactions and disputes; bond financings; securities claims; tax planning; creditors' rights including workouts and bankruptcy; professional licensing, and labor and employment, including collective bargaining negotiations. The firm is a member of the International Society of Primerus Law Firms.

ABOUT ISEMAN, CUNNINGHAM, RIESTER & HYDE, LLP: WE ARE A SEASONED TEAM OF TRANSACTIONAL AND TRIAL LAWYERS COMMITTED TO SERVING YOU WITH EFFECTIVE, EFFICIENT LEGAL REPRESENTATION. OUR ATTORNEYS PROVIDE YOU WITH THE SAME SERVICE WE WOULD EXPECT IF WE WERE THE CLIENT. WE COMBINE THE BROAD PERSPECTIVE OF GENERALISTS WITH SKILL IN OUR RESPECTIVE FIELDS. ALTHOUGH WE PREFER COOPERATION, WE ARE READY TO AGGRESSIVELY REPRESENT YOUR INTERESTS IN COURT.

CLASSIFIEDS

SEEKING ADMINISTRATIVE ASSISTANT AND PARALEGAL

Litigation experience preferred, salary commensurate with experience. Resumes can be sent to: sburger@coopererving.com

SEEKING PART-TIME TRUST AND ESTATES ATTORNEY

Five (5) years' experience required in preparing and drafting sophisticated estate plans. Additional experience preferred with estate administration, estate litigation, elder law, Medicaid planning and applications, and guardianships. Please provide cover letter, resume, academic transcript, three (3) writing samples (redacted, as necessary), and three (3) professional references, to drobitaille@meyersandmeyers.com. Meyer's and Meyers

OFFICE FURNITURE FOR SALE

12'by 4' conference table and 8 chairs; 3 bookcases of various sizes; one desk and work station; a credenza; a coffee table and 4 chairs; a microwave; and a Michel Delacroix print are still available. Office is at 20 Prospect Street, Ballston Spa., Suite 212. Email paul@pelagallilaw.com or call 889-5000.

SEEKING ATTORNEY

Established four lawyer firm in Saratoga County seeking a motivated and personable NY admitted attorney with 2-5 years of town, city, village or county law experience. General practice experience helpful and own clientele and local ties a plus. Of-counsel arrangements also considered. Excellent research and writing skills a must. Some court-room opportunities and a lot of client and community contact. Salary plus productivity and client development incentives with health, dental, retirement, vacation benefits available. Our practice provides a family-friendly atmosphere and a professionally-rewarding experience. Email resume and letter of interest to jamest@ctclawfirm.com and visit our website for more information about the firm.

SEEKING ASSOCIATE

General practice in Glens Falls with emphasis in Municipal Law seeks Associate Attorney with two to four years' experience. Familiarity with employment law or real estate a plus. Please reply to mbaker@mmshlaw.com.

Like Us on Facebook!

The Saratoga County Bar Association now has a Facebook page and a LinkedIn group! Please like our Facebook page and request to join the LinkedIn group. The LinkedIn group is for members only to start discussions, post job opportunities, etc.

CLE—Spousal Maintenance Guidelines: What To Expect

Discussion will include New York's Maintenance Guidelines and what to expect with the passage of the bill.
Presenter: Eric A. Tepper, Esq. of Gordon, Tepper & DeCoursey, LLP
Date/time: Friday, January 8, 2015 at 8:00AM - 9:00AM
Where: The Legal Project, 24 Aviation Drive, Suite 101, Albany, NY
Cost: $15.00, payable by cash, check (made out to "Lorraine Silverman") or paypal. Please reply to this email by January 5, 2016 for payment details and to reserve your seat. If choosing the paypal option, you must first RSVP to insure space and, once space is confirmed, you may then send payment to: matlawbreakfastclub@gmail.com.

SUBMISSIONS NEEDED!

We are always looking to improve our newsletter for the benefit of our members. If you are an attorney who practices in the following areas of law, we would love to add you to our list of columnists:

Estate Planning
Criminal
Bankruptcy
Gaming
Entertainment
Healthcare
(all other areas of law that are not currently a part of this publication)

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lcoreno@carterconboy.com
(518) 587-8112