



THE SARATOGA COUNTY BAR ASSOCIATION

Serving the Interests of Justice

LAW NOTES

LAW NOTES VOL. X, ISSUE II

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

INSURANCE AGENT MALPRACTICE CLAIM REINSTATED

Finch v. Steve Cardell Agency (Garry, J., 2/18/16)

Plaintiff is a businessman who, among other things, puts on rodeos. Prior to each show, he obtained a rodeo liability insurance by contacting the defendant agency. Several bystanders at a 2012 event in Pennsylvania were hurt when four bulls escaped while being loaded into a trailer, and when lawsuits ensued, the liability insurer declined coverage in reliance on two policy exclusions: injuries caused by animals and injuries arising out of use of an auto (the loading trailer). Supreme Court (Guy, J., Broome Co.) granted defendant's cross-motion for summary judgment, finding the animal exclusion was not the proximate cause of plaintiff's loss. Reversing, the Third Department ruled there were triable issues of fact as to whether plaintiff and defendant had a "special relationship" and if so, whether the agency was negligent in "failing to advise and guide (plaintiff) in obtaining adequate insurance coverage for all aspects of his rodeo operations, including his trailers".

LAWYER'S LIBEL SUITE DISMISSED

Bouchard v. Daily Gazette Co. (Clark, J., 2/25/16)

New York Civil Rights Law § 74 provides immunity from civil liability to entities that publish a "fair and true report of any judicial proceeding". The plaintiff-attorney was convicted in federal court after which the U.S. Department of Justice ("DOJ") issued a media release entitled "Attorney Convicted in Mortgage Fraud Prosecution"; which resulted in the defendant newspaper's article entitled "Albany lawyer convicted of mortgage fraud". Relying

on the statutory privilege of § 74, Supreme Court (Connolly, J., Albany Co.) granted defendant's motion to dismiss plaintiff's action for libel and the Third Department affirmed, concluding that a liberal reading of the newspaper article shows it to be a "substantially accurate" report of the DOJ press release and that any inaccuracies were not so egregious as to fall outside the statutory immunity.

SLIP AND FALL

Chirumbolo v. 78 Exchange St., LLC (Peters, J., 3/3/16)

Plaintiff's trip-and-fall suit, alleging injuries caused by a dangerous "lip created by a height differential in adjoining concrete slabs" on the defendant's sidewalk, was dismissed on defendant's summary judgment motion by Supreme Court (Reynolds Fitzgerald, J., Broome Co.) which declared the alleged defect was trivial as a matter of law. Plaintiff was familiar with the area where she fell, having walked there some 100 times over 60 years, including once earlier on the day of her accident. Affirming dismissal of the suit, the Third Department noted that while plaintiff's expert witness (a self-employed contractor) opined that the defendant's sidewalk was "maintained in a manner below industry standards", no such applicable code, standard or accepted practice was identified.

Potter v. YMCA of Kingston (McCarthy, J., 2/25/16)

New York's "storm in progress" doctrine affords defendant property owners a reasonable period of time after the storm ends to remedy a dangerous snow/ice condition. Here, the defendant's meteorologist offered proof that light snow and/or freezing rain began about 25 minutes before plaintiff slipped and fell in the

(Continued on page 2)

TORTS AND CIVIL PRACTICE, CONTINUED...

YMCA parking lot. In opposition to defendant's motion to dismiss, plaintiff's weather records showed more than 8 inches of snow had fallen two days before the accident. Plaintiff's contention that his fall was due to ice that had built up over time; combined with defendant's acknowledgment that it had no records showing sanding/salting had been done in the month of February, led Supreme Court to conclude that material issues of fact precluded summary judgment, which the Third Department affirmed.

CLAIM DISMISSED: ABSENCE OF DUTY

Mavorga v. Berkshire Farm Center

(Garry, J., 2/25/16)

Plaintiff was hurt when his car was struck by a stolen vehicle that was being pursued at high speed by police. The driver of the stolen car was a former resident of the defendant's non-secure detention facility; having been ordered there in the custody of the local Department of Social Services by Family Court in the course of juvenile delinquency proceedings. The resident, about a month before the car crash, was attending an educational program "on an open campus without gates or bars" that he chose to leave; after which he was discharged by defendant. Supreme Court (Mott, J., Columbia Co.) granted defendant's motion for summary judgment which the Third Department affirmed, agreeing that defendant proved as a matter of law "that it owed no duty to plaintiff to prevent the resident from leaving its facility" and as such, was not liable for plaintiff's injuries.

MEDICAL PRIVILEGE OUTWEIGHS NEED FOR DISCLOSURE

Bellamy v. State of New York

(Devine, J., 2/25/16)

Claimant, while being treated at one of the state's psychiatric care centers, was assaulted by another patient. Contending that the defendant failed to protect her despite knowing of the assailant's dangerous behavior, claimant sought disclosure of documents, including medical records, specific to the assailant and other patients. The Court of Claims (DeBow, J.) partially granted claimant's motion to compel such discovery but



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

permitted discovery of only one page of a redacted document that established the defendant had been aware of threats made by the assailant. On claimant's appeal, the Third Department affirmed, agreeing that the information and documents protected from disclosure contained "diagnostic information" that should remain confidential because the medical privilege was not outweighed by a compelling interest or the interests of justice.

HOSTILE WORK ENVIRONMENT CLAIM FAILS

Pawson v. Ross

(Rose, J., 3/31/16)

Plaintiff and three other female employees of defendant's accounting firm jointly filed suit against the business' owner, alleging his sexually harassing conduct subjected them to a hostile work environment in violation of New York's Human Rights Law. Supreme Court (Krogmann, J., Warren Co.) partially denied defendant's motion for summary judgment

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HASTA LA VISTA, ANTONIN

MICHAEL FRIEDMAN, ESQ.

"As I have said, the real rationale of today's opinion, whatever disappearing trail of its legalistic argle-bargle one chooses to follow ..." Dissent of Antonin Scalia in United States v. Windsor

"If, even as the price to be paid for a fifth vote, I ever joined an opinion for the Court that began ... I would hide my head in a bag. The Supreme Court of the United States has descended from the disciplined legal reasoning of John Marshall and Joseph Story to the mystical aphorisms of the fortune cookie." Dissent of Antonin Scalia in Obergefell v. Hodges.

"Pure applesauce." Dissent of Antonin Scalia in King v. Burwell, 576 U.S. ____ (June 25, 2015)

Antonin Scalia is gone now, and are we better for it? You tell me. This is the man who joined the majority to deprive the citizens of Florida the opportunity to count the votes for president, essentially crowning George W. Bush our president in spite of the votes cast to the contrary. It was a decision that eventually Sandra Day O'Connor came to regret. Did it matter that Judge Scalia's son was working for the firm retained by George W. Bush to argue his case before the Supreme Court? Not to Justice Scalia even though the head of the firm was subsequently appointed by President Bush as Solicitor-General of the United States. Such a failure to recuse would result in a significant sanction in any state. For example, Florida, the home to Bush v. Gore, has a Judicial Code that states, "A judge shall disqualify himself or herself where the judge or the judge's spouse, a person within the third degree of relationship to either the judge or the spouse is a lawyer in the proceeding." Unfortunately, a United States Supreme Court justice is the only jurist in the United States not governed by a Code of Conduct.

Scalia was the deciding vote in gutting the Voting Rights Act heralding several states to enact voter identification laws to limit access to the democracy in minority districts. Just ask the citizens of Alabama, Arizona, Arkansas, North Carolina, Ohio, Wisconsin or Texas.

Justice Scalia claimed to be an "originalist" when it came to the Constitution, i.e. deciding cases as he believed the Founding Fathers intended. However, when it suited him he conveniently ignored the words of the Constitution to create rights where none ever existed. He authored District of Columbia v. Heller, which ignored the words "a well regulated Militia, being necessary to the security of a free State" in the Second Amendment to overturn decades of precedent and create a right to keep loaded handguns in crime ridden urban areas. Who knows how many deaths were the result of the creation of this "right."

And who can forget Justice Scalia's concurring opinion in Citizens United v. FEC? Here, he altered our political process by legalizing the "Super Political Action Committee" and diminished the voice of the average citizen in the political process. Already this year Super PACs have raised half a billion dollars dwarfing the money raised in 2012. It turned us into an oligarchy when it comes to political information and influence.

So, Antonin Scalia was conservative enough to make even William Rehnquist seem more like William O. Douglas. Was that good for the country? Not to me, but I realize that others disagree. However, at least one aspect of Scalia's tenure should be subject to criticism by all legal scholars, and that is his contempt for the legal reasoning of his fellow jurists. Justice Scalia set a new standard of judicial opinion. It is not just his use of arcane phrases like argle-bargle, Kulturkampf, applesauce and jiggery-pokery. He wrote things that would get lawyers sanctioned in New York and elsewhere. Absent an impeachment by Congress, there is no punishment for him or any other Supreme Court jurist.

Justice Scalia's dissents were the belletristic equivalent of sticking out his tongue and putting his thumbs in his ears while floating his other fingers at the frieze of Majesty of Law in the Supreme Court courtroom. New York's Standards of Civility state, "Judges should not employ hostile, demeaning or humiliating words in opinions." I'm not saying every jurist needs to write like Cardozo's Poetry of Palsgraf, but what happened to the days of acknowledging the other justices as "my brother" as in Griswold or a thousand other cases. Is it any wonder that Chief Judge Roy Moore of Alabama said about the Supreme Court's same-sex marriage decision, "If the decision contradicts the Constitution, then it is not law. And if it is not a law, then you don't have to obey it." After all, the gloves are off.

Imagine what would happen to me or any other lawyer arguing before a court if I said, "If I were to come here and make the argument of opposing counsel, I would hide my head in a bag. My opposing counsel has descended to the mystical aphorisms of the fortune cookie." I'd be sanctioned, and justifiably so. Imagine the impression this parlance makes on the people who come to our courts for the civilized resolution of disputes, which is after all the purpose of the judicial system. In 1991, the Federal Judicial Center published a Judicial Writing Manual. At the time, the Chairman of the Board of the

(Continued on page 9)

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

ARE YOU KIDDING ME?

Do you remember the game “Sorry!”? I play it with my 7 year old sometimes. And every once in a while when I pick a card that sends one of his game pieces back to his Start circle, he slaps his forehead and yells, “Are you kidding me?”

The other day, I had the same reaction (albeit to something a lot different). You may have read about this. Jack H. Weil, an assistant chief immigration judge who is actually responsible for training other judges, stated in sworn testimony in a case in which the American Civil Liberties Union (“ACLU”) and other immigrant rights groups are seeking to require the government to provide appointed counsel for indigent children who cannot afford a lawyer in immigration court proceedings, stated:

I’ve taught immigration law literally to 3-year-olds and 4-year-olds. It takes a lot of time. It takes a lot of patience. They get it. It’s not the most efficient, but it can be done. ... You can do a fair hearing. It’s going to take you a lot of time.

Are you kidding me?

Not surprisingly, afterwards, Judge Weil was quoted as saying that his statements did not “present an accurate assessment of [his] views on this topic,” and the Justice Department then quickly chimed in that “[a]t no time has the Department indicated that 3 and 4 year olds are capable of representing themselves. Jack Weil was speaking in a personal capacity and his statements, therefore, do not necessarily represent the views of [the Executive Office for Immigration Review] or the Department of Justice.”

I have repeatedly said in various forums that our immigration laws are extraordinarily complex. If you’re not an attorney, or if you’re an attorney but don’t practice in the area of immigration, you might be surprised to see the back-and-forth that immigration practitioners themselves engage in on various professional listservs about the meaning of a statute, rule or agency memorandum. If we sometimes cannot understand or come to agreement as to what the Congress has written, or a Court has decided, do we really expect a 3 or 4 year old to?

Our government does not guarantee legal counsel to asylum seekers and other vulnerable populations facing deportation



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.

from the United States. In the past two years, more than 112,000 families and unaccompanied children have appeared before Immigration Judges without lawyers. It’s virtually impossible for non-English speaking asylum seekers, especially young (or frankly any) children, to understand or navigate our complex immigration system, let alone make sense of legal terms of art such as “persecution” or being a member of a “particular social group.”

In an attempt to rectify this sorry state of affairs, in February, 2016, Senator Minority Harry Reid introduced S. 2540, the Fair Day in Court for Kids Act of 2016, which mandates that unaccompanied children and vulnerable immigrants receive legal representation. Two weeks later, Representatives Zoe Lofgren, Luis Gutierrez, and Lucille Roybal-Allard introduced the House companion bill, H.R. 4646.

Among other things, the law would require the appointment of counsel for children, families and other vulnerable individuals, and the government would also be required to ensure access to counsel for anyone in detention, including border detention facilities, as well as for families and individuals subject to fast-track asylum screenings conducted in border regions.

Just recently, Senator Patrick Leahy of Vermont questioned Attorney General Loretta Lynch why the Department of Justice

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*Monday, May 2, 2016
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*Keynote Speaker - Claire P. Gutekunst, Esq.
President-Elect - New York State Bar Association*

“Miranda: More than Words”

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E. Stewart Jones, Jr., Esq.

for his decades of philanthropic work and countless hours volunteering his time to benefit our community.

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EMPLOYMENT LITIGATION UPDATE

SCOTT PETERSON, ESQ.

EEOC FILES SEXUAL ORIENTATION DISCRIMINATION CLAIMS

In a 2015 column we highlighted an EEOC decision that found that discrimination on the basis of sexual orientation was covered by Title VII's prohibition against sex discrimination. Now the EEOC is taking things one step further and, on March 1, 2016, sued its first two cases in federal district courts in Pennsylvania and Maryland asserting sexual orientation discrimination claims.

According to the EEOC press release, in its suit against Scott Medical Health Center it alleged that a gay male employee was subjected to harassment because of his sexual orientation when his manager repeatedly referred to him using various anti-gay slurs and made other offensive comments about his sexuality and sex life. According to the EEOC, "when the employee complained to the clinic director, the director responded that the manager was 'just doing his job,' and refused to take any action to stop the harassment." Eventually the employee quit rather than endure further harassment.

In the other case, against IFCO Systems, the EEOC alleges that a lesbian employee was harassed by her supervisor because of her sexual orientation. According to the EEOC, "Her supervisor made numerous comments to her regarding her sexual orientation and appearance, such as 'I want to turn you back into a woman' and 'You would look good in a dress.'" The suit alleges that the employee complained and called the harassment hotline, after which she was terminated.

Why are these cases significant?

Title VII (the major federal employment discrimination statute) does not explicitly list sexual orientation as a protected class. Because of this, many courts including the Second Circuit Court of Appeals (which includes New York State) have decisions on the books dismissing sexual orientation cases on that basis. We will now see whether any courts adopt the EEOC's interpretation of Title VII's prohibition against sex discrimination (most commonly invoked when women are discriminated against) to include sexual orientation. In New York, sexual orientation (including perceived sexual orientation, i.e., your employer thinks you are gay) is protected by the state Human Rights Law. We will be watching these cases closely.

FMLA—ECONOMIC REALITY TEST

Graziadio v. Culinary Institute of America (2nd Cir. 3/17/16)

In a case that will likely have HR representatives fuming, the Second Circuit reversed a District Court decision which dismissed claims for individual liability under the FMLA.

Plaintiff applied for and took leave to care for a sick family member. During her absence her employer had an issue with some paperwork and advised Plaintiff that she would not be permitted to return until she provided additional documentation.

A disagreement ensued, which ultimately ended with Plaintiff's termination. She filed suit alleging interference and retaliation under the FMLA, and also named a supervisor and Director of Human Resources individually. The District Court dismissed the claims against the individuals, finding that neither constituted an "employer" for the purpose of the FMLA. It then dismissed the remaining claims as well.

On appeal the Second Circuit considered, as a matter of first impression, whether the FMLA's "employer" standard should be analyzed in the same fashion as the term is considered in cases involving the Fair Labor Standards Act ("FLSA"). As the Court observed, under the FMLA an individual may only be held liable if she is an "employer," which includes "any person who acts, directly or indirectly, in the interest of an employer to any of the employees of such employer." In reviewing the decisions of both the lower district courts in New York, as well as the circuit courts of other jurisdictions, the Second Circuit determined that the appropriate standard to be applied in determining whether an individual is an "employer" under the FMLA is the "economic-reality" test used to analyze claims of individual liability under the FLSA.

Under the "economic realities" test courts look to whether the alleged employer "possessed the power to control the worker in question," with particular consideration of the "economic reality" of the particular case. Among the factors that the court should consider are "whether the alleged employer 1) had the power to hire and fire the employee; 2) supervised and controlled employee work schedules or conditions of employment; 3) determined the rate and method of payment; and 4) maintained employment records." The Court was quick, however, to observe that no one factor alone is dispositive, and any relevant evidence may be considered in the analysis.

With respect to the HR director, the Court determined that sufficient factual issues existed to allow a jury to find that she exercised sufficient control over Plaintiff's employment to be subject to individual FMLA liability (including participating in the decision to terminate, exercising control over scheduling and conditions of employment, reviewing FMLA paperwork, etc.). Judgment reversed and FMLA claims were reinstated.

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.

NON-PROFIT FREE SPEECH CHALLENGED IN MO AND OK

Nonprofit advocacy rights and Constitutional challenges will soon likely be litigated in Missouri and Oklahoma as legislators and agricultural interests seek to pass legislation which will arguably infringe on the First Amendment rights to advocacy and speech of animal rights organizations. The Oklahoma House passed legislation that would prohibit animal rights nonprofits from soliciting contributions in the state that support any programs or functional expenses outside of Oklahoma, or from raising funds intended to be used for “political purposes” inside or outside the state. In a series of cases, the U.S. Supreme Court has consistently ruled that fundraising is a form of protected free speech and that the Commerce Clause protects nonprofits and others from state-imposed limits on interstate commerce, making the proposed legislation ripe for challenge as unconstitutional.

THIRD DEPARTMENT ISSUES DECISION IN INSURANCE MALPRACTICE CASE FOR RODEO STAMPEDE

Finch v. Cardell

(3rd Dep’t. 2/18/16)

This case stems from an appeal from an order of the Supreme Court in Broome County, which, among other things, granted a cross motion by defendant Steve Cardell Agency for summary judgment dismissing the complaint against it. Plaintiff was engaged in the business of putting on rodeos. In connection with this business, plaintiff owns bulls and other animals, as well as trucks and trailers. In approximately 2006, plaintiff began obtaining homeowners’ insurance and liability and automobile coverage for his business operations from defendant Steve Cardell Agency. In 2012, plaintiff contacted defendant to obtain coverage for an upcoming rodeo in Pennsylvania. The carrier that had previously provided plaintiff’s rodeo insurance declined to cover the event, apparently due to its location in Pennsylvania, and an office worker found what she believed to be equivalent coverage issued by a different carrier. At the



Jonathan Schopf is a solo practitioner in Clifton Park, New York. His primary practice involves advising municipal, institutional and business clients in tax certiorari litigation. He also advises traditional business and non-profit clients in day-to-day transactional matters including real estate and corporate management.

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.

conclusion of the rodeo, four bulls escaped and bystanders were injured, subsequent lawsuits were filed against plaintiff.

When plaintiff sought coverage under the policy it was discovered that it contained an exclusion for injuries or damage caused by animals. Thereafter, the insurance company declined coverage. Plaintiff then commenced an insurance malpractice action alleging that defendant was negligent in procuring a rodeo insurance policy with an animal exclusion. Additionally, plaintiff’s auto insurance did not cover the loss as he was utilizing a borrowed vehicle at the time to tow his trailer which was not listed on the schedule of vehicles contained in the policy.

Supreme Court denied plaintiff’s motion and granted defendant’s cross motion for summary judgment dismissing the complaint against defendant, on the ground that the animal exclusion was not the proximate cause of plaintiff’s loss.

The Third Department determined on appeal that the evidence in the record raised triable issues of fact as to whether plaintiff and defendant had a “special relationship” which would have resulted in a higher duty of care from the defendant to the plaintiff in advising plaintiff as to specific issues with his insurance coverage and whether defendant proximately caused plaintiff’s loss by negligently failing to advise and guide him in obtaining adequate insurance coverage for all aspects of his rodeo operations, including his trailers.

SYRACUSE ATTORNEY APPOINTED TO REPRESENT DOG’S BEST INTERESTS IN COURT

A court in Syracuse is the first dog in the city (and I believe the state) to have a court appointed attorney represent his best interests when his alleged abuser is tried for animal cruelty. Attorney Nick DeMartino is a local criminal defense attorney in Onondaga County who has organized a volunteer advocate program for abused animals.

The process in Syracuse involves the coordination of local law enforcement, the District Attorney’s Office and the county bar association. When an animal is taken into custody that appears to be abused, the bar association is notified and a volunteer attorney is assigned to the case. The attorneys keep the assigned judge apprised of the animal’s condition and recovery and if appropriate seek to have the ownership rights of the animal terminated.

I am interested in perhaps setting up a similar system here in Saratoga County. If any local attorneys would be interested in such a program, please contact me at jgs@schopfllaw.com and I will compile a list. If enough interest can be generated, I can meet with the Saratoga County Bar Association and District Attorney to see if this is a program that would be feasible for Saratoga County. This would be an excellent opportunity for pro bono advocacy for firms looking to fulfill a commitment or for younger attorneys looking for exposure in this area of the law.

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GAME THEORY & DOMESTIC RELATIONS

KEVIN L. O'BRIEN, ESQ.

Game theory is a model of behavior that individuals can follow to their benefit. Mathematical theories are used to study the strategic interaction between nations, groups or individuals. The optimal position of each party to a bargain is to maximize their payoffs. This concept, the Nash Equilibrium, provides for a simple bargaining solution to problems that may be very complex. Nash's theory assumes that individuals behave rationally, hardly the case in family law, but its application is still tantalizing. His idea, while initially confined to economics, has found broad appeal to a variety of problems, notably, nuclear arms control. The beauty of game theory is the ease with which it can be applied. Yet a certain sophistication is required to understand its concepts and apply them appropriately.¹

The marriage of game theory and domestic relations has potential. Developing a model of behavior which minimizes the emotion associated divorce would be welcome. Unfortunately, there is little research in this area. However, three embryonic strands are emerging: private ordering, adjuster winner, and predetermined equilibrium. Each theoretical framework touches on different aspects of divorce, but none of them is complete enough to encompass the whole of family law. Nonetheless, these theories offer an important first step in bringing gaming to this area of jurisprudence.²

The adjusted winner approach provides an excellent way of dividing personal property in a contested situation. It also factors in subjectivity. For example, assume parties are arguing over a painting, a sports car, an insurance debt, an uncashed state tax refund check, and neither will compromise. Each party would be assigned 10 points to be distributed to the items they want and the allocated points on a particular item would reflect its value to the party. Conversely, points would be assigned to avoid taking responsibility of debt. The problem would look as follows:

<u>Wife</u>		<u>Husband</u>	
Car	4	Car	3
Picture	1	Picture	4
Refund	4	Refund	2
Debt	1	Debt	1



Mr. O'Brien limits his practice to matrimonial matters, including all aspects of family law. His experience has encompassed litigation and meeting client needs from St. Lawrence County to Suffolk County. The Office's client base extends to all parts of New York, other states, as well foreign countries. His proficiency, however, extends beyond the boundaries of the courtroom. The basics matter. Client courtesy, timely returned telephone calls, and realistic case assessments and costs, are fundamental to those in the midst of a family crisis.

As for the rules, the party who bids the highest on any particular item receives that item. The wife gets the tax refund and the higher value of the car for a total of 8 points. The husband gets the picture for a total of 4 points. If items are valued equally, the spouse with the lowest point total receives them. The husband gets the debt. However, the results need to be adjusted so that each party has the same points as the other.

By making the points equal, the goods will be distributed efficiently and equitably taking into account the subjective value each party placed on an item. By transferring assets or liabilities, the points are adjusted. The adjustment also encompasses finding the point ratios between items. This weighting reflects the subjective component placed on the item by the party who has it. An item received or lost by a spouse is by the points they gave to it. Finally, if the transfer produces more points to one side than the other, that item must be apportioned between the two so that each side ends up with the same amount of points. The point ratios would be as follows:

Value of Car	1.33
Picture	4.00
Refund	2.00
Debt	1.00

The wife has total points of 8 while the husband has total points of 5. The value of the car should be transferred to the husband, however, that would put him in the lead for points. Therefore, it must be apportioned so as not to give one party an advantage in the points. Under the apportionment, 30% of the value of the car goes to the husband.³ The car must be sold. The point total then puts the parties in parity. The wife keeps the refund check and she will get the majority of the proceeds when the car sells. The husband gets the picture, a portion of the automobile proceeds and the debts which will probably be offset by the sale of the car.

While this property distribution has been made simple for purposes of explanation, it does point out a systematic and rational way to solve the issue. Essentially, both parties have optimized their results without sacrificing most of their objectives. If followed, it minimizes transaction costs, factors in subjectivity to the benefit of the client, reduces emotion from decision making, enhances personal preference, provides an element of certainty and lessens litigation.

There are limitations. Items to be divided in a divorce may not be easily separable. The car being sold may have an aftermarket stereo which, in and of itself, is of considerable value, but its worth is reduced by its sale with a depreciating item. While the husband put a high value on the car, he gets only gets 30% of its value, thus he is getting something other than the car, money. The same is true for the wife. No equations can account for the human emotion that goes with this type of division. All items are treated the same for purposes of point assignment and distribution. This type of approach is not suitable for most other areas of domestic relations. Nonetheless, it offers a possibility of what could be used to solve problems.⁴

(Continued on page 10)

BOOK REVIEW—COMMERCIAL LITIGATION IN NEW YORK STATE COURTS (FOURTH EDITION)

STEVEN D. GREENBLATT, ESQ.

One of the most comprehensive and helpful reference works for New York State litigators has just undergone a major revision and has been released in a new edition. The Fourth Edition of “Commercial Litigation in New York State Courts,” Robert L. Haig, Editor In Chief (Thomson Reuters, 2015), builds on the widely-praised previous editions with twenty-two new chapters, and significant revisions to and expansions of much of the previously existing material.

For those unfamiliar with previous editions, the now nine-volume (two whole volumes more than the Third Edition) “Commercial Litigation in New York State Courts” consists of 127 individual chapters, each written by a prominent commercial litigator or judge, and each devoted to a particular substantive or procedural aspect of, as the title suggests, commercial litigation in New York State Courts. Topics range from summaries of specific substantive practice areas (such as “Professional Liability Litigation,” by Richard P. Swanson of York Capitol Management LLC, and “Commercial Real Estate Litigation,” by The Hon. Alan D. Scheinkman of the Commercial Division, Westchester County), to procedural tutorials for situations commonly encountered during commercial litigation (“CPLR Article 78 Challenges to Administrative Determinations,” by The Hon. Victoria A. Graffeo of the Court of Appeals (ret.), and “Fees, Costs and Disbursements,” by Jay Kasner of Skadden, Arps, Slate, Meagher & Flom LLP). The basics of commercial litigation are also covered (i.e., “Jurisdiction,” by Mitchell A. Lowenthal and Boaz S. Morag of Cleary Gottlieb Steen & Hamilton LLP, or “Venue,” by the Hon. Robert S. Smith of the Court of Appeals (ret.) and William C. Silverman of Greenberg Traurig LLP), and many articles also concern what might be termed “advice for better lawyering” (e.g., “Case Evaluation,” by Alan I. Raylesberg of Chadbourne & Parke LLP, “Suing or Representing Foreign Companies in New York State Courts,” by Harvey Kurzweil of Winstron & Strawn LLP, “Techniques for Expediting and Streamlining Litigation,” by the Hon. Martin E. Ritholtz, Supreme Court Queens County Commercial Division, and “Litigation Technology,” by Peter Bicks of Orrick Herrington & Sutcliffe LLP). There are also a wide variety of practical guides to commercial litigation pre-trial and trial practice that are particularly notable for their clarity, organization, and comprehensiveness (many of these have been contributed by attorneys currently or previously at Proskauer Rose LLP, such as “Trials,” by Steven Obus, “Presentation of the Case in Chief,” by Edwin M. Baum, and “Cross Examination,” by Emily Stern). New chapters include both procedural and substantive topics not covered in previous editions, such as “Mediation and Other Nonbinding ADR,” by John S. Kiernan and William H. Taft V of Debevoise & Plimpton LLP, “Preliminary and Compliance Conferences and Orders” by the Hon. Linda S. Jamieson, Supreme Court Westchester County Commercial Division, “Land Use Regulation” by Steven R. Schlesinger of Jaspan Schlesinger LLP, “Project Finance and Infrastructure,” by Philip Le B. Douglas et al. of Jones Day, and “Social Media” by Neil Merkl

of Kelley Drye & Warren LLP.

Attorneys at all stages of their careers will find much practical value in the articles presented in this treatise, each of which could serve equally well as either a refresher on the given topic for an experienced attorney or as an introduction of the material to one encountering a new topic for the first time. The sections are also helpfully organized for maximum practical benefit. Roughly the first half of the chapters are published in order of how one might encounter procedural topics during the course of actual litigation (i.e., chapters on jurisdiction, venue selection, and initial case evaluation are succeeded by those on pleadings, discovery, motion practice, trial and appeals). This organization makes it easy to scan the table of contents in actual practice to quickly locate an article concerning the particular aspect of litigation procedure one might be engaged in at the moment. Such a perusal would also confer added benefit as the practitioner would likely come upon other articles pertinent to other aspects of the matters on which he or she was working, or the other useful articles on practice management or commercial litigation practice more generally. As noted above, the substantive chapters cover a wide variety of specific types of cases regularly encountered by commercial litigators, each of which describes the unique ways in which the previously mentioned procedural aspects of commercial litigation practice play out in specific circumstances. Of course, the treatise also includes a robust index and tables of statutes, rules, and cases, allowing one to quickly locate particular substantive material anywhere in the treatise.

The extraordinary composition and content of “Commercial Litigation in New York State Courts” is due in no small part to Mr. Haig, editor in chief of these volumes since the first edition came out in 1995. At present a partner in the New York City office of Kelley Drye & Warren LLP, Mr. Haig has held a variety of positions over the past three decades that have kept him at the center of commercial litigation in New York State. Most prominently, he was selected in 1995 as the co-chair of the Commercial Courts Task Force, the panel established by

(Continued on page 9)

Steven Greenblatt operates his own law practice in Saratoga Springs, NY.

In over fifteen years of practice, Mr. Greenblatt has handled a wide variety of civil and criminal matters, including those concerning products liability and personal injury, debt collection and bankruptcy litigation, securities fraud, criminal sentencing, mergers and acquisitions, breaches of contract, commercial finance, and mortgage and tax lien foreclosures, among others. He has extensive trial and motion practice experience in both the federal and state courts of New York, as well as substantial experience representing clients in arbitrations, mediations, and other forms of alternative dispute resolution.



BOOK REVIEW, CONTINUED...*(Continued from page 8)*

then-Chief Judge Judith S. Kaye and Chief Administrative Judge E. Leo Milonas to create and develop the Commercial Division of the New York State Supreme Court – now universally recognized as one of the finest systems in the nation, federal or state, in which to seek adjudication of commercial disputes. Among other accolades he has received throughout his distinguished career, Mr. Haig has served as President of the New York County Lawyers' Association, and Chair of the New York State Bar Association's Commercial and Federal Litigation Section, Committee on Federal Courts, and Committee on Multi-Disciplinary practice, and is a member of the American Law Institute and a frequent lecturer, author, and editor.

In short, in both pedigree and substance, "Commercial Litigation in New York State Courts" is a compendium of both extraordinary breadth and depth that simply has no equal. The chapters are well written and – at least to a commercial litigator – interesting and enlightening. Its practical usefulness, however, is its best characteristic, and means that "Commercial Litigation in New York State Courts" is an investment that will pay huge dividends to New York litigation practitioners. Several years ago, I reviewed the Third Edition of "Commercial Litigation in New York State Courts," and my conclusion after spending time with the Fourth Edition is the same: if you were to choose only one treatise for your or your firm's bookshelf to provide practical support for the litigation matters that come through your office, this is the one to have. There will be, I expect, very few aspects of commercial litigation in New York State Courts that are not covered by this tome, and no other treatise or practice guide is likely to provide better or more useful coverage of the topics that are presented in the new Fourth Edition.

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

does not prohibit immigration proceedings from moving forward until children have representation. Attorney General Lynch responded: "I think we're looking to find any various ways to support that and we're looking at various ways to get legal counsel appointed in every situation," responded Lynch. This is a rather ironic response given that the Department of Justice, the very agency which Attorney General Lynch leads, continues to fight the ACLU's lawsuit that seeks to require that all such children receive legal representation.

I've been in the courtroom for these types of hearings. Children are facing the same charges as adults, and consequently are also being asked the same questions by the Immigration Judge as adults. I can tell you with absolute certainty that most adults, even with court-provided interpreters, do not understand what they're being asked by the Immigration Judge. The charges range from entering the country illegally to overstaying a visa. The Immigration Judges ask questions that include when and how they arrived in the United States and whether they fear persecution in their home country if they were to return. You would think these are

simple questions, right? Far from it.

The Immigration Judge would also be asking if the child wants to leave the country voluntarily or whether the child would rather be deported. Depending on the child's answer, he or she may be foreclosed from applying for certain forms of immigration relief in the United States, such as political asylum.

And, these hearing typically happen very quickly. Indeed in some courtrooms, the average time for a Master Calendar Hearing has been reported to be about 7 minutes. Imagine trying to make sure a child facing deportation from the United States understands all of his or her rights within 7 minutes (especially if the child is not represented by an attorney).

On the election trail recently, Univision hosts at a CNN debate pressed both Bernie Sanders and Hillary Clinton to make definitive statements that neither would deport children (or immigrants with no criminal record) should they become president. The both did so. That's a start, at least as far as the Democrats are concerned. But we still need to worry about the Republicans, and of course the real issue of the right to an attorney for an indigent child still needs to be resolved.

HASTA LA VISTA, CONTINUED...*(Continued from page 3)*

Center was Scalia's fellow jurist William Rehnquist. In it, they wrote, "A dissenting opinion should not simply slash at the majority opinion or its author. Personal attacks, offensive language, and condescending tone should not be used..." They pointed out that "a dissent that strikes a strident or preachy note may contribute to divisiveness and ill feelings on the court, may undermine the authority of the opinion and of the court as an institution, and may create confusion." They were right. So, Hasta la Vista Justice Scalia. Your impact will not be soon forgotten, but hopefully your standards of judicial literature in your dissents will not be repeated for a long time.

133 S.Ct. 2675 (2013)

June 26, 2015; June 25, 2015

Bush v. Gore, 531 U.S. 98 (2000),

Florida Code of Judicial Conduct, Canon 3E(1)(d)

Shelby County, Alabama v. Holder, 679 F.3d 848 (2013)

554 U.S. 579 (2008)

558 U.S. 310 (2010),

Palsgraf v. Long Island Railroad Co., 248 N.Y. 339 (1928).

Griswold v. Connecticut, 381 U.S. 479 (1965)

See the quote above from Scalia's dissent in United States v. Windsor.

TORTS AND CIVIL PRACTICE, CONTINUED...*(Continued from page 2)*

which the Third Department ruled was error, resulting in the order being modified, dismissing the case in its entirety. Finding that no plaintiff established a prima facie case, the Appellate Division determined that the owner's sexually harassing conduct, while offensive and grossly unprofessional, was "not severe or pervasive enough to render" the work environment "objectively hostile and abusive" as defined in the Human Rights Law.

MATRIMONIAL UPDATE, CONTINUED...

(Continued from page 7)

Empirical findings are nonexistent. This presents serious problems for social scientists and the legal community in developing models that induce optimal results in the bargaining process. Data gathering is critical in this area of the law. Without it, potential models have no way of being tested for accuracy, fairness and consistency. The Legislature should consider exempting researchers from the confidentiality laws so that alternatives can be explored and implemented with assurance, and for the benefit of matrimonial litigants.

¹Alphanumerically, Nash's position can be stated as follows: (F1-BATNA1)@ (F2-BATNA2); D. Baird, R. Gertner & R. Picker, *Game Theory and the Law*, 18-19, 308 (1994). Sally, *Game Theory Behaves*, 87 MARQ. L. REV. at 785, 783 (2003).

²*We're All Winners: Game Theory, The Adjusted Winner Procedure And Property Division At Divorce*, 66 BROOKLYN L. REV. 1360 (2002).

³*Id.*; (8-3)/7=.71%; I am just plugging in my own numbers to understand and explain the model the NOTE used. *Id.* (8-5)/10=.3x100=30%, the result is approximately 6.8 points for the wife and 6.2 for the husband. There is a mistake in the arithmetic which I could not find nor correct with the examples used in the NOTE.

⁴This approach is better than what many judges would do at a trial. A now retired judge of the supreme court, third judicial district, informed the parties that if they could not divide their personal property he would order it to be sold at a garage sale. They quickly divided their property. Note, *We're All Winners: Game Theory, The Adjusted Winner Procedure And Property Division At Divorce*, 66 BROOKLYN L. REV. 1375-1383. Child custody, for example, would be an ill fit with this type of analysis. Okpaku, *Psychology: Impediments Or Aid In Child Custody Cases?* 29 RUTGERS L. R. 1117, 1140 (1976), cited in *Garska v. McCoy*, 167 S.E.2d at 66. N.Y. DOM. REL. LAW '235; Brinig, *Empirical Work In Family Law*, U. ILL. L. REV. 1083, 1085-1086 (2002).

ANIMAL CASE LAW UPDATE, CONTINUED...

(Continued from page 6)

NEW FELONY LEVEL ANIMAL CRUELTY BILL PROPOSED

Longtime animal advocate, Assemblyman Jim Tedisco and State Senators George Amadore and Phil Boyle are proposing the passage of "Quigley's Law" which would create a felony level offense for the harming of a pet during the commission of another felony. The law was proposed after a Town of Florida woman's two dogs were killed by gunshots during a burglary. The bill has cleared the Senate.

BOSTON BANS SALE OF "PUPPY MILL" ANIMALS

The Boston City Council unanimously approved a ban earlier this month on pet stores selling dogs, cats, or rabbits from commercial breeders in an attempt to prevent the sale of animals bred in unsafe conditions.

The ordinance, dubbed the "puppy mill bill," was signed into law by Boston's mayor and will apply to stores in Boston. Over the last few years over 100 similar bans have been enacted across the country.

Under the law, pet shops can work with animal shelters or rescue agencies to help customers adopt pets. People will also have the ability purchase animals directly from breeders.

PRESS RELEASE

NEW YORK STATE BAR ASSOCIATION
Serving the legal profession and the community since 1876

The New York State Bar Association is committed to helping solo and small-firm practitioners find practical solutions to the day-to-day challenges of operating their practices. The Association offers law practice management resources and programs for lawyers, law firm managers and legal professionals on practice management trends, marketing, client development, legal technology and finance.

As the Director of Law Practice Management for the New York State Bar Association, I invite your bar association to be listed as a co-sponsor of select 2016 Continuing Legal Education programs for solo and small-firm practitioners and new attorneys.

The Annual March Marketing Conference for Solo Practitioners will be held on Thursday, March 3, 2016 at the American Management Association's Executive Conference Center in Manhattan located at 1601 Broadway at 48th Street. Chaired by Carol Greenwald and Nancy Schess this program combines a discussion of basic marketing methods with a review of ethical considerations and attorney advertising. This year's program will feature a panel discussion on attorney directory listings including AVVO, Findlaw, LinkedIn and Justia. This program will also provide an overview of technology and Internet resources for client development. www.nysba.org/2016MarketingConference

Starting a Solo Practice in New York chaired by Clifford R. Ennico, Esq. will be held on Friday, May 6, 2016 and will offer practical and useful tips for starting and running a solo practice in New York. This program will include a networking luncheon and will be held at the American Management Association in New York City.

Bridging the Gap 2016 offers newly admitted attorneys a foundation in the practical skills, techniques and procedures that are essential to the practice of law covering a wide array of topics. Focusing on practical aspects of many topics not covered in the traditional law school curriculum, Bridging the Gap offers newly admitted attorneys an easy and convenient way to satisfy the 16.0 transitional CLE credit hour requirement. In 2016, this program will be offered March 23-24, 2016, August 9-10, 2016 and November 30-December 1, 2016. www.nysba.org/BridgingtheGap

Your organization's co-sponsorship of the programs will send a positive message to your members who are solo and small firm practitioners and to fellow co-sponsoring local, women's, ethnic and minority bar associations throughout the state.

As an official co-sponsor, your organization will be listed on the program marketing materials and email announcements. In exchange, we ask that you assist in promoting the program to your organization's membership. There is no fee for co-sponsorship of these programs. Your members will also be able to register at the NYSBA discounted rate.

Please confirm your co-sponsorship of these programs by contacting me at ksuchocki@nysba.org or 518-487-5590 to be listed on the event marketing and registration information.

PRESS RELEASES



CARTER CONBOY
ATTORNEYS AND COUNSELORS AT LAW

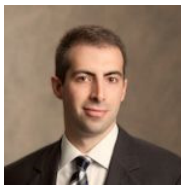
CARTER CONBOY ATTORNEYS SPEAK AT NATIONAL BUSINESS INSTITUTE SEMINARS



M. Catalfimo

Michael J. Catalfimo will be a featured speaker at an upcoming NBI seminar on May 16, 2016. He will speak on issues related to "Advanced Collection Law", specifically how to stay in compliance with and avoid the pitfalls of the Fair Debt Collection Practice Act (FDCPA). Mr. Catalfimo is Chief Operating Officer 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 is a frequent speaker on creditors' rights and real property law topics.

On May 24, 2016, Matthew J. Dillon will speak at the "Advanced Issues In Personal Injury Litigation" seminar for NBI. Specifically, he will present the Legislative and Case Law Update. Mr. Dillon is an attorney at Carter Conboy with a practice encompassing the defense of professional liability, product liability and trucking and transportation claims, and general civil litigation.



M. Dillon



S. Tartaglia

On March 18, 2016, Stanley J. Tartaglia spoke at the NBI seminar "The Rules of Evidence" as the featured speaker on issues related to keeping evidence out during pre- and post-trial and preserving evidence issues for appeal. Mr. Tartaglia is an attorney at Carter Conboy focusing his practice on the defense of civil litigation, insurance law, construction law, professional liability claims, and appellate advocacy in federal and state courts throughout the State of New York.

MACKENZIE C. MONACO PRESENTS ON THE REPTILE THEORY

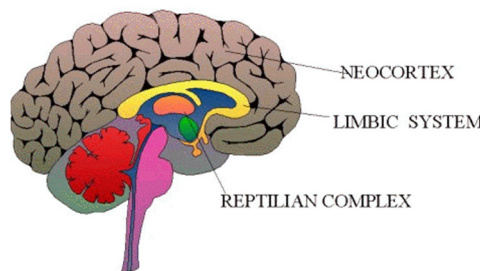
Attorney Mackenzie C. Monaco recently participated in an interactive seminar which was presented by ALFA International, The Global Legal Network. Her session "Charming Snakes and Vanquishing Varmints: a Wild West Duel" was held in Palm Springs, California on March 4, 2016.

Ms. Monaco's seminar was based on an emerging strategy

being used by the plaintiffs' bar known as the Reptile Theory. The Reptile Theory involves the subconscious application of advanced neuroscientific techniques by plaintiff's attorneys which involve speaking to and scaring the primitive part of a juror's brain that focuses on safety and survival (similar to reptiles). By using this strategy, a plaintiff's attorney is able to influence a juror's decision-making process by affecting their instinct to protect family and community from



M. Monaco, Esq.



Source: thejuryexpert.com

danger through their verdict. Ms. Monaco's seminar focused on defense strategies to the Reptile Theory, including strategies to apply during discovery, depositions, and a trial that defuse and/or counter the plaintiff's attorney's subconscious messaging and/or exposes the plaintiff's attorney's psychological manipulation of the facts to the court and jury.

Mackenzie C. Monaco is a Director at Carter Conboy. She is a litigator representing individuals, businesses and professionals in the fields of personal and premises liability, professional liability, product liability, construction law, and environmental law. She has achieved successful results for her clients at the trial and appellate levels and has extensive experience in motion practice. Ms. Monaco is a cum laude graduate of St.



Lawrence University and a summa cum laude graduate of Albany Law School. She is an appointed member of the Committee on Character and Fitness for the New York State Supreme Court for the Third Judicial District, is the Vice-President of the Capital District Trial Lawyers Association, and is a frequent speaker on topics related to the defense of civil litigation matters.

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 OR CONTACT THE FIRM'S DIRECTOR OF MARKETING, STACY A. SMITH, AT 518-810-0516 OR [SSMITH@CARTERCONBOY.COM](mailto:ssmith@carterconboy.com).

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.



L. Coreno, Esq.

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.

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 participate in the Top Workplaces campaign.

ABOUT CARTER CONBOY

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PRESS RELEASES



ATTORNEY CAITLIN GOETZ CO-CHAIRS SPAC'S SOLD-OUT WINTER BALL

On Saturday evening, February 27th, Attorney Caitlin Goetz, an Associate at Towne, Ryan & Partners, P.C., stood at the ballroom doors at the Hall of Springs anxiously awaiting the arrival of guests coming from near and far to attend The Party of the Century: A Black and Gold Masked Ball – the 2016 edition of the Saratoga Performing Arts Center (SPAC) Junior Committee's Annual Winter Ball.

For months, Goetz, along with her SPAC Winter Ball co-chair Samantha Kercull and the SPAC Winter Ball Committee, have been meticulously planning this celebration, which marked the official kickoff to SPAC's 50th season.

As you would imagine, taking on a task to commemorate 50 years of arts, culture and tradition was not an easy feat. As a classically trained dancer, her love for the arts and for SPAC is what ultimately encouraged Goetz to take on the role as a co-chair for the event.

"As a former dancer, I know how lucky the Capital Region is to have an organization like SPAC in its own backyard," said Goetz. "We have access to world class arts through SPAC and as a member of the community, I believe it is my job to ensure that SPAC has the necessary support and funding to continue into the future. SPAC is a vital resource in our community for children and adults alike. The Junior Committee's Winter Ball is in its sixth year and has increased its fundraising annually with the proceeds going to support SPAC's classical season and educational programs. So, when I was asked to co-chair this year's Winter Ball, I jumped at the opportunity."

The Party of the Century: A Black and Gold Masked Ball was an idea devised early on in the planning process by Goetz and Kercull. A theme inspired by Truman Capote's 1966 Black and

White Dance, the concept truly captured Goetz and Kercull's vision for the celebration.

Capote's party is known as the Last Great American Party – an event that if you were not invited to, you simply left town. The co-chairs wanted to create a party that would rival Capote's – one so talked about that you absolutely could not miss it.

"This year's event needed to kick off SPAC's 50th anniversary year in a big way," said Goetz. "Truman Capote's party at The Plaza Hotel fifty years ago seemed like the perfect inspiration as it gave us a wonderfully elegant idea that we could put a golden twist on. Not to mention, some of the guests at Truman Capote's party were at the opening of SPAC earlier that same year."

To touch on SPAC's golden anniversary, the co-chairs added a golden flare to Capote's original theme. Guests were asked to dress in black and gold formal attire and to finish their look with masks.

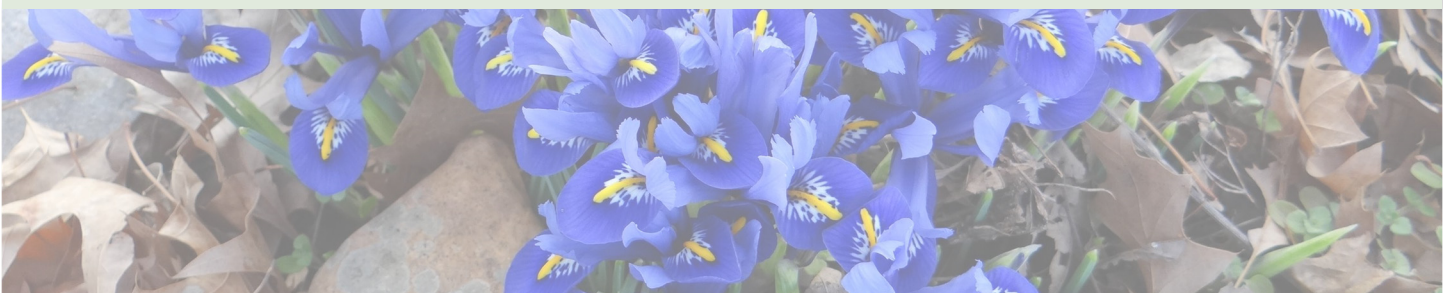
The sold out event featured live music by Funk Evolution, tasty food from Mazzone Hospitality, a variety of attractions including a photo booth, a caricaturist and tarot card reader, and countless raffles including items from local and statewide shops, eateries, bars and attractions. Event sponsors, which included Towne, Ryan & Partners, P.C., helped make the ball a great success.

"This year's Winter Ball was a huge success," said Goetz. It was a sell-out crowd with over five hundred guests. We exceeded our fundraising goals and raised over \$50,000 for SPAC. It was an event that will be remembered and as a co-chair to this event, I could not be more grateful to everyone who attended, sponsored, and volunteered."

The Party of the Century was one for the ages and a perfect introduction to what is sure to be an amazing 50th season at SPAC.

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.



PRESS RELEASES

DeGRAFF·FOYDeGRAFF · FOY & KUNZ · LLP
ATTORNEYS AND COUNSELORS AT LAW**DeGRAFF, FOY & KUNZ, LLP WELCOME
LUKE S. MALAMOOD, ESQ. AS PARTNER**

DeGraff, Foy & Kunz, LLP is pleased to announce that Luke S. Malamood has become a partner in the law firm as of January 1, 2016.

Mr. Malamood is a trial lawyer who focuses his practice on the representation of clients in serious personal injury cases. He is experienced in handling complex motor vehicle, medical malpractice, premises liability, products liability and other personal liability matters, and has successfully resolved numerous cases on behalf of his clients, including multiple significant seven-figure results obtained both in settlement and at trial.

**MILLER, MANNIX,
SCHACHNER & HAFNER**
ATTORNEYS AT LAW**MILLER, MANNIX, SCHACHNER & HAFNER
WELCOME THOMAS PETERSON, ESQ. AS
COUNSEL**

The Glens Falls law firm MILLER, MANNIX, SCHACHNER & HAFNER is pleased to announce that Thomas W. Peterson, Esq. will join the firm as Counsel as of March 1st. Mr. Peterson is the Malta Town Attorney and Round Lake Village Attorney and will be managing the firm's new

Saratoga County Office in Round Lake. Tom obtained his law degree from Albany Law School in 1985 and has substantial experience in a wide variety of legal practice areas including municipal law, litigation, personal injury and divorce/family law.

MILLER, MANNIX, SCHACHNER & HAFNER is a full-service, general practice law firm, providing a wide range of legal services to a diverse clientele. The firm consists of seven attorneys, one paralegal and five administrative staff members.

CLASSIFIEDS

General practice in Glens Falls & Saratoga areas 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.

SCBA CALENDAR OF EVENTS

April 20, 2016 - Wednesday
Board of Directors Meeting -
Third Floor, City Hall, Saratoga
Springs

May 2, 2016 - Monday
Law Day Luncheon @ The Can-
field Casino

June 2, 2016 - Thursday (TBA)
Installation Dinner - TBD

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Matthew R. Coseo

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- Serving the Interests of Justice -

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January 20, 2016

Members:

The Saratoga County Bar Association's Annual Law Day luncheon will be held at the Canfield Casino on Monday May 2, 2016. Each year at the luncheon, we recognize students from local public and private high schools that participate in the Annual Statewide High School Mock Trial Tournament, and present a plaque to the winning team. This year's mock trial teams are from Augustine Classical Academy, Corinth High School, Saratoga Central Catholic, Saratoga Springs, Shenendehowa, Stillwater and Waterford-Halfmoon.

The costs of hosting this event include paying for the meals of the high school teams and guests of the SCBA, rental of the Casino, photographer services, and program printing, among other expenses. This year, the SCBA is seeking sponsors to help defray its costs of approximately \$4,000 in hosting the luncheon. All sponsors will be recognized in the Law Day luncheon program and in the Bar's newsletter, as well as from the podium during the luncheon.

If your firm would like to help sponsor this year's luncheon, please fill out the Sponsorship Pledge Form below, indicate your level of sponsorship between \$50 and \$250, and send the form and a check payable to the Saratoga County Bar Association, to Patty Clute, P.O. Box 994, Saratoga Springs, NY 12866. The deadline to sponsor is April 1, 2016.

Thank you for your support and generosity.

The Saratoga County Bar Association
Law Day Committee

P.O. Box 994
Saratoga Springs, NY 12866
Telephone & Fax:
518-280-1974
e-mail:
pclute@saratogacountybar.org
Executive Coordinator
PATRICIA L. CLUTE

Saratoga County Bar Association- Law Day Luncheon Sponsor Pledge

Name: _____

Firm: _____

Phone: _____

E-Mail: _____

____ Yes, I agree to sponsor the luncheon for \$ _____



Email Reply/Fax

To: New York State Bar Association
Attn: Katherine Suchocki
One Elk Street
Albany, New York 12207
Telephone: (518) 487-5590

Fax: (518) 463-8844
E-mail: ksuchocki@nysba.org

NYSBA Section Sponsorship of LPM Programming

March Marketing Conference for Solo Practitioners

Thursday, March 3, 2016

American Management Association Executive Conference Center
New York City Live Program and Webcast

Starting a Solo Practice in New York

Friday, May 6, 2016

American Management Association Executive Conference Center
New York City Live Program and Webcast

Bridging the Gap 2016

NYC Live Program | Albany Videoconference | Buffalo Videoconference

March 23-24, 2016

August 9-10, 2016

November 30-December 1, 2016

- ☐ YES! Our Organization would like to co-sponsor programs noted above.
(If you would like to sponsor only one or two of the events, please indicate the programs above.)
- ☐ No, our Organization is not interested in sponsoring.

Organization/Association Name: _____

Contact Person: _____

Address: _____

City: _____

State: _____ Zip/Postal Code: _____

Phone: _____ Fax: _____

E-mail: _____