THE SARATOGA COUNTY BAR ASSOCIATION

Serving the Interests of Justice

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

TIMOTHY J. HIGGINS, ESQ.

ERRORS IN JURY CHARGE NECESSITATE NEW DAMAGES TRIAL

Vallone v. Saratoga Hospital
(Garry, J., 7/14/16)

Plaintiff sought treatment in the defendant hospital's emergency room for recurrent seizures, one of which (while in the ER) caused him to be burned when he spilled a cup of hot coffee that had been brought to him by his father. Discharged the next day, plaintiff followed up with a plastic surgeon who recommended referral to a burn center where plaintiff was treated, including skin-grafting surgery. At trial of plaintiff's negligence and medical malpractice action, the jury found the hospital's treatment of the burns was substandard, but also determined the plaintiff was comparatively negligent in causing the coffee spill. Placing 90% of the fault on plaintiff, the jury awarded $25,000 for past pain and suffering and no award for future damages. Supreme Court (Crowell, J., Saratoga Co.) denied plaintiff's motion to set aside the verdict which the Appellate Division reversed with an order for a new trial on damages, concluding that the comparative negligence instruction (plaintiff having coffee in the ER) was erroneous "when a plaintiff's alleged negligence preceded the alleged medical malpractice and is not otherwise alleged to have contributed to the harm resulting from the malpractice".

THRESHOLD FOR PUNITIVE DAMAGES

George v. Albert
(Devine, J., 7/21/16)

Plaintiff brought this negligence and intentional tort action for, among other things, punitive damages, after a gas station confrontation with defendant, an off-duty New York State trooper. Plaintiff's car had passed another vehicle (driven by defendant's girlfriend) on a highway exit ramp, and defendant told the girlfriend to follow plaintiff's vehicle because he believed plaintiff was driving recklessly and posed a risk to others. An ensuing argument and scuffle ended with the plaintiff pinned to the ground, and after the arrival of police, handcuffed and in a patrol car. Defendant's motion to dismiss the punitive damages claim, which requires proof of conduct reflecting "a high degree of moral culpability", was denied by Supreme Court (McGrath, J., Rensselaer Co.). Affirming, the Third Department noted that defendant acknowledged he wrongly told cops that the altercation began when plaintiff attacked him; and that a jury could find such "aggressive and dishonest behavior" a sufficient basis on which to award punitive damages.

STATE HAD SUFFICIENT NOTICE OF NATURE OF CLAIM

Davila v. State of New York
(Garry, J., 6/16/16)

Claimant's decedent resided in a group home operated by the Office of Mental Retardation and Developmental Disabilities ("OMRDD"); and died from severe, fire-related injuries. The Court of Claims (Fitzpatrick, J.) granted claimant's summary judgment motion on liability, in part supported by OMRDD's own investigation of the 2009 incident (in which four residents died) which detailed a failure to follow an established fire drill protocol. Defendant unsuccessfully cross-moved to dismiss the claim for non-compliance with Court of Claims Act § 11-(b); which requires information "sufficiently specific to enable a defendant to reasonably infer the basis for its alleged liability". Finding the claim here met that standard, the Appellate Division

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TORTS AND CIVIL PRACTICE, CONTINUED...

affirmed, noting that when an agency of the state has performed its own internal investigation of an incident "it cannot be readily found that a lack of specificity has interfered with the defendant's ability to investigate a claim".

GML § 50-e NOT APPLICABLE TO CONTRACT CLAIM

Strauss v. City of Glens Falls
(Lynch, J., 6/16/16)

Plaintiff brought a small claims action against the defendant in Glens Falls City Court after the parties were unable to resolve a property damage dispute arising out of an easement plaintiff gave the city for a sewer project. City Court dismissed the claim for non-compliance with the "notice of claim" requirements of General Municipal Law § 50-e, and Warren County Court (Hall Jr., J.) affirmed. Reinstating the claim, the Third Department noted that the GML's notice provision (and a similar requirement in the Glens Falls City Charter) applies only to tort actions and not claims like this one sounding in breach of contract.

SCHOOL LIABILITY SUIT DISMISSED IN FULL

Elbadwi v. Saugerties Cent. School Dist.
(Egan, J., 7/7/16)

The infant plaintiff, 10 years old and attending the defendant's elementary school, broke her arm in a fall after jumping onto a school playground slide. Prior to the December incident, the plaintiff's class gathered for recess and, according to the defendant's lunch monitor, students "were expressly instructed to remain on the blacktop area adjacent" to the playground; which had a rubberized surface and was icy with snow accumulated on the playground equipment. Within a minute after venturing outside, the infant was hurt when she jumped onto the slide while trying to avoid a collision with another student. Supreme Court (Fisher, J., Ulster Co.) dismissed plaintiff's negligent supervision claim but denied summary dismissal of a premises liability cause of action. The Third Department modified and dismissed the case in full, finding the accident was caused by the infant's "inattentiveness" and near collision with a classmate, in response to which the plaintiff elected to jump onto the slide, from which she fell.

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.

BONUS OPINIONS: COURT OF APPEALS

Mazella v. Beals
(6/30/16)

Plaintiff's husband died by suicide, and for the preceding 10 years had been taking anti-depressant medications that the defendant doctor prescribed; but without examining his patient or seeing him in an office visit. At trial of plaintiff's medical malpractice case, the defendant admitted he deviated from accepted medical practice but contended his negligence was not the proximate cause of the patient's suicide. A jury found defendant solely liable and awarded plaintiff $1.4M in damages. After the Appellate Division affirmed, the Court of Appeals reversed and ordered a new trial; finding the trial court erroneously admitted evidence concerning the defendant's negligent treatment of 12 other patients. Prior to trial, the defendant's motion in limine to preclude use of the evidence; a consent agreement between the doctor and the New York Office of Professional Medical Conduct ("OPMC"); was denied, leading to its use during plaintiff's questioning of the doctor. Given the defendant's concession that he deviated from accepted standards of medical care, the Court of Appeals ruled the OPMC consent order was "nothing more than evidence of unrelated bad acts, the type of propensity evidence that lacks probative value concerning any material factual issue", and a potential inducement to the jury to improperly decide the case based on evidence of the defendant's character.

Matter of NYC Asbestos Litigation
(6/28/16)

Revisiting product liability law within the well-litigated link between asbestos-exposure and mesothelioma, the Court of Appeals holds that the manufacturer of a product has a duty to warn of the danger arising from the known and reasonably foreseeable use of its product in combination with a third-party product which "is necessary to enable the manufacturer's product to function as intended". In these consolidated cases, the asbestos exposures occurred on a Navy ship and a General Motors plant. In short, the defendants argued that they had no control over the design, manufacture or sale of the third-party product that attached to their own product and as such, had no duty to warn of related dangers. Adopting the new rule, which it describes as "no radical innovation", the Court notes that there is a relationship of sorts between the defendant and the maker of the third-party product; in that the defendant's product "naturally opens up a profitable market for that essential component, thereby encouraging the other company to make that related product and place it in the stream of commerce".

MR. T AND THE POWERS THAT BE

MICHAEL FRIEDMAN, ESQ.

"Nevertheless, the Commission continues to promote public confidence in the integrity of the judiciary by imposing discipline or accepting resignations in appropriate cases … the Commission's very existence has a salutary effect on the behavior of judges." Commission on Judicial Conduct Administrator Robert Tembeckjian, 2015 Annual Report

Salutary you say? The Commission on Judicial Conduct is a creature of New York's Constitution, and it has the power to remove judges from office, censure or admonish them. It can also issue a Letter of Caution but for no good reason that letter is not for the public's eye. Last year no one was removed from office. In 2014 no one was removed from office. In 2013 two judges were removed. One was a Town Justice who, among other things, dismissed a seat belt violation issued to his friend and former employer. The other was the Albany County Surrogate who was removed for no good reason. She presided over uncontested matters where her former campaign manager appeared for a litigant. Whoop-de-doo.

So, you'd think with such a low bar for removal, Mr. T. would be removing judges left and right. He doesn't and it is because, among other reasons, that he has a different standard for some judges than others. The higher up you are, the less likely you are to face Mr. T.'s wrath. In 2015 he had the audacity to write, "I am proud to say that the New York State Commission on Judicial Conduct is arguably the most effective ethics enforcement entity in state government." Arguably is the operative adverb.

Barry Kamins was once one of the five Executive Administrative Judges in the state. He did things that would have doomed the career of any judge. In 2014, a City of New York Department of Investigation Report was called "Regarding Misconduct by Former Kings County District Attorney Charles J. Hynes, Justice Barry Kamins and Others." It detailed hundreds of e-mails that showed Judge Kamins engaged in *ex parte* communications with the Brooklyn District Attorney about pending cases and Judge Kamins' political activity on behalf of the DA. That was May of 2014. After sitting on it for a while, Mr. T. never brought formal charges and then came to an agreement to allow Judge Kamins to retire, but allowed the judge to stay on the bench for several more months. In April of 2016 the former Judge Kamins gave a seminar for the Brooklyn Bar Association on the Uniform Rules of Attorney Discipline. Why not? After all, Willie Sutton could probably do a good job teaching bank security officers, and he once did an advertisement for the New Britain Bank & Trust Company. Barry Kamins is now the chairman of the Brooklyn Bar Association's "Professional Ethics Committee." Perfect.

Which brings us to Attorney Prudenti. No, not that Attorney Prudenti. A. Gail Prudenti was the Chief Administrative Judge of New York State until she left last year to become the executive Director of Hofstra University's Center for Children, Families and the Law. While Chief Administrative Judge, she oversaw the award of money to Hofstra for 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. 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.

CREDITOR'S RIGHTS AND BANKING LAW

MICHAEL J. CATALFIMO, ESQ.

LEGISLATIVE ALERT: RECENT NY LEGISLATION AFFECTING MORTGAGE FORECLOSURE ACTIONS, CHAPTER 73 OF THE LAWS OF 2016

On June 23, 2016, Governor Andrew Cuomo signed into law Chapter 73 of the Laws of New York 2016. This new legislation amends the Real Property Actions and Proceedings Law (RPAPL) and Civil Practice Law and Rules (CPLR) relating to residential mortgage loan servicing and foreclosure. The changes will go into effect on December 20, 2016. Following is a summary of the major provisions of the new law.

EXPANDED DUTY TO MAINTAIN VACANT AND ABANDONED RESIDENTIAL PROPERTY

A new Section 1308 was added to the RPAPL entitled "Inspecting, securing and maintaining vacant and abandoned residential real property." This section applies to first mortgage lienholders. State or federally chartered banks or credit unions that have a small market share (as defined by the statute) are exempted from the law.

Summary of New Law

- Duty To Inspect During Delinquency. The servicer (or mortgagee if the mortgagee services its own loans) must inspect the mortgaged premises within 90 days of a borrower's delinquency to determine whether the property is occupied. So long as the loan remains delinquent, the servicer must repeat the inspection every 25 to 35 days, at different times of the day.
- Duty To Post Notice. Within 7 days of determining the mortgaged premises is vacant or abandoned, the servicer must post a notice on the property providing contact information and stating that it is maintaining the property.
- Duty To Secure and Maintain. If there is no response to notice within 7 days and the servicer has a reasonable basis to believe the mortgaged premises is vacant or abandoned, the servicer must secure and maintain the property pursuant to the guidelines set forth in the statute.
- Protection of Mortgagor's Personal Property. The servicer may not remove personal property unless it poses a significant risk to health and safety, or if a government entity has ordered removal and such order has not been contested.
- Good Faith Immunity. A servicer who peacefully enters a vacant and abandoned property in order to comply with RPAPL 1308 shall be immune from liability when such servicer makes reasonable efforts to comply with RPAPL 1308.
- Enforcement. The superintendent of the Department of Financial Services (DFS) has the right to enforce violations of RPAPL 1308. Municipalities also have the right to enforce violations of RPAPL 1308, on written notice to DFS. If it appears by a preponderance of the evidence that a mortgagee or its agent has violated RPAPL 1308, the hearing officer or court may issue a civil penalty of up to five hundred dollars ($500.00) per day per property for violations.
- Potential Servicer Guideline Preemption. RPAPL 1308 (10) provides that "The provisions of this section are subject to federal laws, court orders and investor and insurer guidelines.

CHANGES TO MANDATORY FORECLOSURE SETTLEMENT CONFERENCES

Section 3408 of the CPLR was extensively amended to provide certain clarifications and to impose certain additional duties on foreclosing plaintiffs.

Summary of Changes

- Scope of Negotiations. Clarifies that the scope of negotiations should include loan modification, short sale, deed in lieu of foreclosure, or any other loss mitigation option.
- Appearance by Defendant. Clarifies that the defendant must appear at the conference, and if the defendant is represented by counsel, the defendant's representative must also appear.
- Plaintiff's Duty to Submit Documents. It is now mandatory that the plaintiff submit: reinstatement and payoff amounts, payment history, copies of the note and mortgage, loss mitigation application forms and any other documents

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Michael J. Catalfimo is a Shareholder and Managing Director at Carter Conboy. He concentrates his practice in the fields of creditors' rights, business and property law and litigation, family law, and general civil litigation. Mr. Catalfimo is the Chair of the Board of Directors of the American Legal and Financial Network (ALFN), the nation's largest network of residential mortgage foreclosure attorneys, servicing agents and ancillary service providers; and sits on the Steering Committee of the American Law Firm Association's business litigation practice group. Mr. Catalfimo is a past-president of both the Washington County Bar Association and the Federation of Bar Associations of the Fourth Judicial District; and a former adjunct professor of business law at Skidmore College. He is a frequent speaker on creditors' rights and real property law topics.

required by the presiding judge.

- Additional Duties When Loss Mitigation Application Pending. If the plaintiff is evaluating the defendant for loss mitigation at the time of the conference, it must submit a summary of status of the evaluation and a list of outstanding items. If the loss mitigation application is denied, the plaintiff must provide a written document providing an explanation for the denial, the values used in NPV evaluations (if applicable), and documentary evidence of any investor restrictions (if applicable).
- Determination of Good Faith. Compliance with the obligation to negotiate in good faith will be measured by a totality of the circumstances, including several enumerated factors, and sets forth a standard procedure by which this issue is to be adjudicated.
- Tough Sanctions for Plaintiffs. If the court finds that the plaintiff failed to negotiate in good faith, the court can: (1) toll accumulation of interests, costs and fees; (2) compel production of documents; (3) award actual damages, including attorneys' fees and expenses; (4) assess a civil penalty not to exceed twenty-five thousand dollars ($25,000.00); and (5) any other relief the court deems proper.
- Nonexistent Sanctions for Defendants. If the court finds that the defendant failed to negotiate in good faith, the court "shall, at a minimum, remove the case from the conference calendar."
- Defendant's Automatic Extension to Answer. A defendant who do not serve an answer, but appears at the conference, has an automatic 30 day extension to file an answer to the complaint.

CHANGES TO PRE-FORECLOSURE NOTICES

Sections 1303 and 1304 of the RPAPL were amended to add additional disclosures and impose certain additional duties on foreclosing plaintiffs.

Summary of Changes

- Right to Remain in Mortgaged Premises. The disclosures required by 1303 and 1304 were amended to provide language to the effect that the defendant has the right to remain in the mortgaged premises until the property is sold at auction.
- Duty To Mail to All Addresses of Record. It appears that the intention of the amendment to RPAPL 1304 was to require the RPAPL 1304 notice to be sent to the borrowers at any other address on record, in addition to mortgaged premises and last known address. However, it also appears that the applicable language was pasted into the wrong section of the statute.[1]
- Housing Counseling Agencies. The list of housing counseling agencies to be included with the RPAPL 1304 notice is to be taken from DFS, not from DHCR.
- Effect of Bankruptcy Filing. Clarifies that the 90-day waiting period of RPAPL 1304 shall not apply, or shall cease to apply, if the borrower has "filed for bankruptcy protection under federal law." Regardless of whether the 90 -day waiting period applies, the RPAPL 1304 notice must still be served.
- Cure and Re-Default Within 12 Months. If after an RPAPL 1304 notice is served, the debtor cures the default and re-defaults again, the plaintiff must serve a new RPAPL 1304 notice, even if it is within the same twelve month period.
- Non-English Speakers. For any borrower known to have limited English proficiency, the RPAPL 1304 notice must be in the borrower's native language (or a language in which the borrower is proficient), provided that the language is one of the six most common non-English languages spoken by individuals with limited English proficiency in the state of New York, based on United States census data. The DFS shall post the notice(s) on its website in the six most common non-English languages spoken by individuals with limited English proficiency in the state of New York, based on the United States census data.

EXPEDITED APPLICATION FOR JUDGMENT OF FORECLOSURE OF SALE

New RPAPL 1309 allows a mortgagee to move for an immediate judgment of foreclosure and sale on the grounds the property is vacant and abandoned. While the stated intention of the statute is to expedite foreclosures, the costs associated with the additional disclosure, service and evidentiary requirements may limit the efficacy of this statute. Of particular concern is Section 1309(5)(a), which would preclude expedited relief for vacant and abandoned property if any defendant demonstrates "an intention to contest the foreclosure action."

Summary of Procedural and Evidentiary Requirements

- The motion cannot be made until the defendant's time to answer the complaint has expired. Also, the motion must be served on the defendant, regardless of whether the defendant has defaulted in appearance and pleading.
- The motion must be supported by an affidavit and other proof, including but not limited to:
    - proof of ownership of the mortgage and the note.
    - photographs evidencing that the subject property is vacant and abandoned.
    - if available, utility company records or other documentation evidencing the vacant and abandoned status of the premises.
    - the sums alleged to be due and owing upon the subject mortgage and note, including the current principal balance and a detailed and itemized account of each fee, each cost, and a calculation of interest accrued, supported by documentary

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CONSUMER BANKRUPTCY

STEVEN RODRIGUEZ , ESQ.

This is the inaugural column on the workings of consumer Bankruptcy. My hope is to present a pragmatic view of consumer bankruptcy practice, offering guidance on when bankruptcy may be appropriate, explaining what can be accomplished, and discussing the process of filing of a case.

Bankruptcy is codified in title 11 of the United States Code. This column will focus primarily on cases filed under chapter 7 and 13. Chapter 7 is available to all persons and entities except municipalities, while chapter 13 is only available to natural persons. The other chapters of the bankruptcy code include chapter 11 (providing for reorganization for natural persons as well as corporations), chapter 12 (for family farmers and fishermen), and chapter 9 (for municipalities). Although bankruptcy is governed by federal code, many issues are governed by the substantive law of the state within which the case is filed. Some of the most common examples of state law application include: exemptions (which property is protected from creditor claims); title law; real estate law; fraudulent conveyances; and marital law.

What does bankruptcy do? It is inaccurate and too simple to say that bankruptcy "gets rid of your debts." More accurately, bankruptcy requires that debts be paid to the extent the person's assets and income provide for repayment. Certainly, though, in the majority of consumer bankruptcies, many debts are discharged. An individual filing for bankruptcy is generally subject to means testing to measure their ability to repay their unsecured debts. Means testing can be avoided if less than fifty percent of their debts are non-consumer debts, but since home mortgages are considered consumer debts, most clients are subject to means testing. However, if the client has substantial IRS debts or substantial business-related debts, often the means test can be avoided. If someone "passes" the Means Test, they are eligible to file under chapter 7, and eliminate their unsecured debts. If they "fail", then they may only be eligible to file under chapter 13 with a required monthly payment, usually for five years.

A basic eligibility requirement for filing a case is the amount of debts carried by the client. For chapters 7 and 11, there are no limits. For chapter 13, the current limits are a maximum of $383,175.00 for unsecured claims, and a maximum of $1,149,525.00 for secured claims. These dollar amounts are periodically adjusted. If the client's debts exceed either limit, they are not eligible for chapter 13.

In addition to income considerations, there are other factors to consider in analyzing whether bankruptcy is an appropriate option, and if so, whether the case should be filed under chapter 7 or under chapter 13, and when it should be filed. A primary consideration is the equity in a client's assets. Particularly in a chapter 7, if the entire asset is not exempt from the claims of creditors, that asset can be forfeited. So, in any bankruptcy filing, there must be a review of what the client owns, and a determination of whether it can be protected. Chapter 7 is often called a liquidation bankruptcy for good reason. Through significant changes in the New York State exemption laws over the last several years (particularly for a home), most assets are protected in a typical case. By way of example, in Saratoga County, a person can exempt $137,950.00 of equity in their home. If the home is jointly owned by a husband and wife, they can each claim the exemption, for a total of $275,900.00. Note that homestead exemptions vary amongst counties, and also note that there are choice of law provisions which can affect the exemptions, depending on where the client has resided for the past few years.

If a client has equity that would be lost in a chapter 7, the client could choose to file under chapter 13 to avoid liquidation. In such event, the amount to be paid back to the unsecured creditors may be directly related to the value of the equity. Alternatively, if the amount is low enough, the client can file under chapter 7 and then negotiate to pay the chapter 7 trustee the value of the equity.

Another factor to consider in whether to file bankruptcy is whether the client has made a fraudulent conveyance in the prior six years. A fraudulent conveyance is defined under New York State law, and at its core it is a transfer made for less than fair consideration at a time of insolvency. Such conveyances can be undone in bankruptcy, and the asset then liquidated to pay debts. If the conveyance was made to a former (rotten) boyfriend, the client may not care what happens. However, if they gave away their lake-front camp to their children, they certainly would care about losing it.

A similar issue arises when a client has repaid a loan to an "insider" within one year of filing bankruptcy. An insider includes family and business associates. Such payment can be forced to be paid into the bankruptcy estate to pay towards all creditors. A very unhappy day if your client just paid back his dear mother.

In addition to eliminating certain debts, a bankruptcy can have other beneficial results. A chapter 13 plan can restructure some debts, such as car loans and mobile home loans. Some income taxes can be discharged. Second mortgages can sometimes be eliminated in a chapter 13. Judgment liens can be removed in all chapters. Collection efforts can be stopped, including action by the IRS. Secured loans in default (typically mortgages and car loans) can be cured in a chapter 13 plan.

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Stephen T. Rodriguez concentrates his practice on consumer bankruptcy, and on social security disability claims. His bankruptcy work covers cases filed in both the Albany and Utica divisions of the Northern District of New York. He is a member of the Capital Region Bankruptcy Bar Association, and served as its President.

When not practicing law, he tries to be outside, preferably on some trail. His office is located at 100 West Avenue in Saratoga Springs, and he can be reached by phone at 581-8441, or email at str@srodlaw.com

CREDITORS RIGHTS AND BANKING LAW, CONTINUED...

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evidence.

- The court will send a separate notice to the defendant letting them know that the plaintiff has filed an application to expedite the foreclosure and sale on the ground that the property is vacant and abandoned.
- The court may require the plaintiff to appear in court and provide testimony.
- The court must enter written findings of fact setting forth the following:
    - The evidence relied upon by the court in finding that the property is vacant and abandoned.
    - The evidence showing that the plaintiff is the owner and holder of the subject mortgage and note, or has been delegated the authority to institute a mortgage foreclosure action by the owner of same.
    - The sums due and owing upon the subject mortgage and note after a review of the detailed and itemized account of each fee, each cost, and a calculation of interest accrued.

STATEWIDE VACANT AND ABANDONED PROPERTY ELECTRONIC REGISTRY

New RPAPL 1310 requires Department of Financial Services (DFS) to maintain a statewide vacant and abandoned property registry. DFS may adopt regulations regarding the manner and frequency of registration, as well as the information to be provided by the servicer or mortgagee. DFS must also establish a toll-free hotline for community residents to report vacant and abandoned properties.

DEADLINE TO CONDUCT FORECLOSURE SALE FOLLOWING JUDGMENT

RPAPL 1351 was amended to provide that the foreclosure sale must occur "within ninety days of the date of the judgment." It does not specify whether this means the date the judgment is executed or the date the judgment is entered. This will inevitably result in additional motion practice due to court delays and late bankruptcy filings.

DEADLINES FOR MARKETING REO PROPERTIES

RPAPL 1353 was amended to provide that if a plaintiff (or its affiliate) is the purchaser at the foreclosure sale, it must place the property back on the market for sale or occupancy within 180 days of the execution of the deed or within 90 days of the reasonable completion date of renovations or repairs. The sanctions for violations are not specified.

[1]RPAPL 1304(1) was amended to provide that "…… Notwithstanding any other provision of law, with regard to a home loan, at least ninety days before a lender, an assignee or a mortgage loan servicer commences legal action against the borrower, or borrowers at the property address and any other address of record, including mortgage foreclosure, such lender, assignee or mortgage loan servicer shall give notice to the borrower in at least fourteen-point type which shall include the following……"

This Legislative Alert provides general information about the legislation discussed, but is not intended as legal advice and does not create an attorney-client relationship between Carter Conboy and the reader. Should the reader desire additional information about the application of the legislation to a particular factual or legal circumstance, please contact Michael J. Catalfimo at mcatalfimo@carterconboy.com or 518-587-8112.

CONSUMER BANKRUPTCY, CONTINUED...

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Bankruptcy is not always the best option to deal with debt issues, but often it is the most comprehensive option available to the client. A thorough review of the client's situation is required to determine the available options for the client's goals.

In future columns I intend to provide more specifics for some aspects of bankruptcy. If you have a particular issue in which you are interested, certainly let me know. Also, if you have a question regarding a debt issue faced by a client, feel free to ask me about it.

DEBTOR'S PRISON

I am often asked by clients, "Can I go to jail?" The reassuring answer is, "Absolutely not. There are no more debtor's prisons." But, for someone who is dishonest in their petition, jail is an option. In each issue I hope to present a teaching moment showing what not to do when seeking relief under the bankruptcy laws.

This issue's hapless debtor is Mr. Thompson.

Mr. Thompson went through a tortuous chapter 13 case in Illinois, but never quite finished the case. After the case was closed, it came to the attention of the authorities (the United States Attorney) that Mr. Thompson had failed to disclose $28,129.55 that he received from a workers' compensation settlement. Non-disclosure is almost always a problem in bankruptcy, especially when the item omitted has substantial value. He has pled guilty to bankruptcy fraud, and is awaiting his sentence. He has no relief from his creditors, a felony conviction on his record, and the prospect of jail. A very bad day.

Animal Law Update

Jonathan G. Schopf, Esq.

Georgia Court Awards Damages to Pet Owners in Negligence Case

Typically, as a general rule across the county, damages to animals are limited to the fair market value of the animal. Although there are exceptions to this rule, it is unusual and worth noting when one occurs. The Supreme Court of Georgia recently accepted a case[1] to determine whether or not the true measure of damages is the fair market value of the animal or the value of the animal to its owner. The facts of the case can be simplified to the owners of a mix breed dachshund left their dog at a kennel for a ten day stay. During this time a medication was to be administered by kennel staff to the dog. The plaintiffs allege that the kennel gave toxic level doses of medication to the dog which resulted in nine months of extensive veterinary care and ultimately the dog died as a result of the overdose. The plaintiffs sought $67,000 in veterinary and other expenses as well as compensatory damages and punitive damages.

The trial court allowed the plaintiffs to present evidence of value of the animal to the plaintiffs (including non-economic factors) and found in pre-trial motions that a jury issue existed as to punitive damages. The case went up on appeal prior to trial and the appellate court held that "[w]here the absence of market value is shown, the measure of damages…is the actual value to the owner", however the court noted that as recovery is not permitted for sentimental value, no damages for the intrinsic value of a pet could be awarded and the plaintiff's damages were capped.

The Supreme Court (Georgia's highest court) held that the lower appellate court erred and that a cap on damages by applying a fair market value standard was incorrect. Unfortunately for the plaintiff, the court also held that the "value to the owner" standard of damages was also incorrect. The court ultimately held that the proper measure of damages for negligent injury and death of the dog included both the fair market value of the dog plus interest and any reasonable medical costs and expenses incurred in treating the animal for the injuries sustained. The Court found that the "[u]nique human-animal bond, while cherished, is beyond legal measure." The court did find that any evidence of a descriptive nature, both qualitative and quantitative, would be admissible to determining the fair market value.

Although rooted in Georgia law, the case is a worthwhile read for its examination of the evidentiary law concerning damages to personal property in general and animals in particular.

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.

Charities E-Filing

Charities that are filing their CHAR500 annual filing with the NYS Attorney General can now e-file their form through form990.org. More information can be found at charitiesNYS.org.

Mandatory Adoption of Research Animals

Gov. Andrew Cuomo on August 16, 2016 signed S.98A into law requiring that dogs and cats used for research purposes by higher education institutions be put up for adoption. The law requires that those animals deemed suitable for adoption by research facility veterinarians be made available to local shelters, animal rescue centers and humane societies once research is complete.

The legislation will take effect in 60 days and can be found in a new section of the the NYS Education Law at §239-b.

[1] Barking Hound Village et. al. v. Monyak, et. al. S15G1184 (June 6, 2016)

INSIGHT INTO IMMIGRATION

IMMIGRATION NEWS FROM MEYERS & MEYERS, LLP

THE PROVISIONAL WAIVER

Back to the law. Although the Supreme Court ruled against the Obama Administration in the case Texas v. United States, 15-674, one of the immigration "reforms" that the Obama Administration proposed back in November, 2014, which happily was not part of the lawsuit, was recently implemented. Specifically, expanding the use of "provisional unlawful presence waivers" beyond spouses and minor children of U.S. citizens to also include the spouses and minor children of lawful permanent residents (commonly known as LPR's or Green Card holders) as well as the adult children of U.S. citizens, and clarifying the "extreme hardship" standard that must be met to obtain this waiver.

In general, aliens who are lawfully present in the United States who have spouses or parents that are U.S. citizens or Green Card holders may be eligible to apply for an immigrant visa with a U.S. embassy or consulate outside the United States, or apply for "adjustment of status" with U.S. Citizenship and Immigration Services ("USCIS") in the United States. In order to obtain an immigrant visa, the alien is required to depart the United States so that he or she can apply for his or her visa at a U.S. embassy or consulate outside the United States.

However, those aliens who have been unlawfully present in the United States prior to their departure generally trigger a three (3) or ten (10) year bar from returning to the United States if the alien has been unlawfully present in the United States for more than 180 days (the three year bar) or one (1) year or more (the ten year bar).

Under current law, these bars from returning to the United States can be "waived" if the denial of the alien's admission to the United States would result in "extreme hardship" to the alien's U.S. citizen spouse or parents. However, the time involved in an alien obtaining a waiver, and the attendant risk associated with the alien having to leave the United States not knowing whether he or she will actually receive the waiver and be able to return to the United States, has kept many unlawfully present aliens who could legalize their status in the United States from doing so.

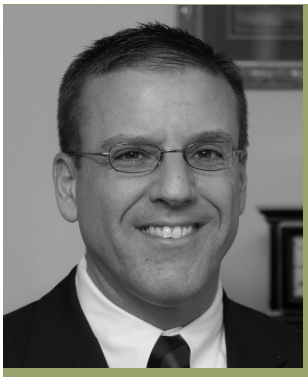
To deal with this issue, in 2013, the Obama Administration began allowing spouses or children of U.S. citizens who are unlawfully present in the United States to request and obtain "provisional waivers" of the three and ten year bars to their admission while they are in the United States. (Once approved, they still need to leave the United States to apply for an obtain their immigrant visa.) This relief, however, was not available to the spouses and children of LPR's. Until now.

On July 29, 2016, the Department of Homeland Security ("DHS") published a final rule expanding eligibility for provisional unlawful presence waivers to all individuals who are statutorily eligible for an unlawful presence waiver and who can establish extreme hardship to a U.S. citizen or LPR spouse or parent.

The provisional waiver process is meant to promote family unity by reducing the time that eligible individuals are separated from their family members while they complete immigration processing abroad. The provisional waiver process is a welcome contrast to the normal waiver application process, which requires aliens to first depart the United States and then apply for a waiver.[1] Under the normal process, the alien may be outside the United States for many months, waiting for a decision on their waiver application. This separation, and the uncertainty of whether the waiver will actually be approved, has caused many individuals to simply forgo the opportunity legalize their status. The provisional waiver process eliminates most (but sometimes not all) of the uncertainty by allowing for pre-approval of the waiver prior to the alien's departure from the United States.

I always counsel my clients that it's much easier to fight their battles with DHS when they're physically in the United States. These new regulations now allow them to do so. This is a very welcome change.

[1]Perhaps not obvious, but the "waiver" these aliens are applying for are from the grounds of inadmissibility; that is, in order to receive an immigrant visa and enter the United States as an LPR, aliens need to first demonstrate that they are not inadmissible to the United States. This provision "waivers" the unlawful presence ground of inadmissibility.



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.

TRUSTS & ESTATES/ELDER LAW UPDATE

DAVID KUBIKIAN, ESQ.

SCPA §2225(A)

Estate of Singleton
(Bronx County, 2012-1636/A)

SCPA 2225(a) is not a routinely invoked statute in Surrogate's Court. It is however extremely helpful in moving estates forward where there are missing or otherwise unable to be located distributees or beneficiaries. In Singleton, the decedent, Barbara Singleton, died testate with a Last Will & Testament dated February 22, 2002 and admitted for probate on September 4, 2012. Her will left her estate to her parents and if they predeceased her, to her intestate distributees. The decedent died without a spouse or children and was predeceased by her mother. Her father was not in the picture for quite some time. The co-executors of her estate, her two sisters, who also stood to inherit the decedent's entire estate, petitioned the Court for either a determination under SCPA 2225(a) that the decedent's father predeceased her or alternatively that he abandoned her and was not entitled to anything from the estate.

The decedent's father, who was named Clarence Jones, had little to no public information available other than his birth record and his age and occupation at the time the decedent was born. The Court appointed a Guardian Ad Litem and based on the relative popularity of his name and the lack of specific information regarding his life or whereabouts, the Guardian recommended that SCPA 2225(a) be applied. SCPA 2225(a) provides that if the Court is satisfied that a particular person has not been heard from for at least three years since the death and cannot be located after a diligent search, the Court may deem that person to have predeceased the decedent. The Court, based on the evidence presented, did apply SCPA 2225(a) and determined that the decedent's father predeceased her.

What is not evident from the facts is why the decedent, in a Will dated only ten years prior to her death, provided for assets to go to both of her parents when her biological father had allegedly abandoned her and was otherwise missing.

David Kubikian, Esq. is a Senior Associate at the Herzog Law Firm where he focuses his practice in the areas of estate planning, Medicaid planning, estate administration, matrimonial law and guardianships. David graduated from New York Law School with a Masters of Law in Taxation in 2010. He obtained his J.D. from Brooklyn Law School in 2005 with a concentration in Trusts & Estates and Tax Law. He graduated from Hofstra University in 2002 with a Bachelor's Degree in Finance.

SAFE DEPOSIT BOX ACCESS

Estate of Massella
(Bronx County, 2014-1542/A)

Often times there is confusion concerning when and how a decedent's safe deposit box can be accessed. In Massella, the Decedent, who was renting a safe deposit box with her daughter at Amalgamated Bank, died testate, naming one of her sons as executor. Decedent was survived by three children, the aforementioned co-tenant daughter, executor-son and one other son. After letters testamentary without restrictions were issued to the nominated executor, he sought to gain access to the decedent's safe deposit box. Specifically, through counsel, the petitioner/executor sent a letter to the bank branch seeking direction on the logistics of accessing the box, whether or not his sister, individually or through counsel, would need to be present. The bank responded by advising petitioner that his letters testamentary did not give him the right to open or take the safe deposit box without a court order and that initially, the surviving joint tenant would need to obtain a court order allowing for an inventory of the box to be taken. Petitioner/ Executor filed an Order to Show Cause seeking access to the safe deposit box as well as counsel fees for 10 hours of work. The petitioner contended that even after requesting access to the bank's legal counsel and providing the bank with a recent relevant case, his only option was the instant motion. The bank countered that the letters testamentary were over two years old and among other things, that the existence of a surviving joint tenant on the box limited access by the executor.

Clients are often advised by trusts and estates practitioners to avoid keeping an original copy of their last will and testament in a safe deposit box. This is for good reason. Your client will need to go through Surrogate's Court to get authority to simply inventory the safe deposit box pursuant to SCPA 2003 in order to see if there is a last will and testament inside and obviously that would occur prior to letters testamentary being issued. At issue in Massella however is post-letters access to a safe deposit box.

In rejecting the bank's assertions, the Surrogate ruled that letters testamentary, in particular where there are no restrictions, allows an executor to have access to a safe deposit box and that there is no requirement for a further order from a Surrogate. The fact that letters testamentary are more than two years old does not impact its effectiveness.

MR T., CONTINUED...

(Continued from page 3)

but who's counting. Her cousin is John Scott Prudenti, a Suffolk County prosecutor for thirty years. He is subject to the Second Department's Uniform Rules of Attorney Discipline of Barry Kamins' seminar. John Scott Prudenti owns a nice 47 foot boat called the Christina Marie. For years John Scott has been collecting thousands of dollars from criminal defense attorneys for the use of the Christina Marie including an annual summer party that includes lobster, beer, wine and scotch. The parties were attended by, among others, criminal court judges and the Suffolk County District Attorney. One attorney estimated the cost of the party to be "$4,000 to $5,000" but he has refused to provide the checks to Newsday. Suffolk County has its own ethics code for public employees that states that they cannot "engage in any business, transaction or private employment, or have any financial or private interest which is in conflict with the proper discharge of his or her official duties."

Here is where Mr. T. comes in. The Code of Judicial Conduct says that, "A judge shall not engage in financial and business dealings that involve the judge with any business, organization or activity that ordinarily will come before the judge or involve the judge in frequent transactions or continuing business relationships with those lawyers or other persons likely to come before the court on which the judge serves." Now maybe wolfing down some lobster and scotch for free every year on a prosecutor's boat doesn't qualify, but the Code also states that, "A judge shall not accept, and shall urge members of the judge's family residing in the judge's household not to accept, a gift, bequest, favor or loan from anyone." There are a few exceptions, including "ordinary social hospitality." Now, maybe lobster and scotch on a 47 foot boat paid for by defense attorneys and owned by a county prosecutor is "ordinary social hospitality" to Long Island's judiciary, but it certainly is not in the Third Department.

Every year Mr. T. decides to devote a portion of his annual report to "Observations and Recommendations." A few years ago he wasted his time writing about the ethics of using judicial license plates. Spoiler alert: They're ethical. In 2008 he decided to write about "The Social Relationships Among Lawyers and Judges." Mr. T. then wrote, "The more active and personal the social relation is, the more sensitive the judge must be to the appearance of impropriety in presiding over the attorney's cases. The Commission cautioned one judge last year for failing to withdraw from a matter involving an attorney with whom the judge had recently vacationed…The Commission reminds all judges to be sensitive to the impropriety and appearance of impropriety arising from such relationships and to seek guidance when in doubt from the Advisory Committee on Judicial Ethics." OK, let's seek some guidance. On June 11, 2015, the Advisory Committee on Judicial Ethics held that it was improper for a judge to receive a food platter from a former judge who now practices in that judge's court.[1]

So, given the very low bar for removal among Town Justices and the Albany County Surrogate, what are the odds of Mr. T. doing anything about the judges who have enjoyed the yearly lobster and scotch soiree on the Christina Marie? You tell me.

[1]Opinion 15-122

IN MEMORIAM

EDWARD JOSEPH MCMAHON, ESQ.

Edward Joseph McMahon of Adams Street died Wednesday, August 10, 2016 at Saratoga Hospital. He was 84 years-old.

Born in Saratoga Springs on February 11, 1932, he was the son of Carl L. and Mary Cogan McMahon. He married Alice Jean Chink on October 12, 1957.

Edward graduated from Saratoga Springs High School in 1950. He then graduated Summa Cum Laude from Hobart College in 1953 and was a member of Phi Beta Kappa. He graduated from Albany Law School in 1956 as Valedictorian. In August of 1956, he entered the United States Army, serving two years and was honorably discharged in 1958. He then joined his father's law firm with his brother John; forming McMahon & McMahon Law on Lake Avenue in Saratoga Springs. He stayed with the firm until he retired in 1996 and remained a member of the N.Y.S. Bar Association until his death.

For decades, he hosted Labor Day parties at his home where he conducted many family sing-alongs and St. Patrick's Day soirees at the Principessa Elena Society with corn beef and cabbage.

Ed began his love of gardening at Schrade's Greenhouses on Nelson Avenue as a young boy and this love continued throughout his life. He created many beautiful woodcraft, cabinetry and furniture. He was an avid sports fan, especially horseracing and the New York Yankees.

Edward was predeceased by his parents; his wife, Alice, his three sisters, Jean Coseo, Mary Reuss and Margaret Markes, as well as, his long term companion Constance Farone.

He is survived by two children, Karen (Robert) Brackett of Gansevoort and James (Elizabeth) McMahon of Gaithersburg, Maryland; two grandchildren Robert (Carly) Brackett and Caroline McKenzie McMahon, and one great-grandchild, Lucy Ann Brackett. He is also survived by brother, John McMahon of Saratoga Springs; two sisters: Elizabeth McCarthy of Saratoga Springs and Kathryn Coons of Schuylerville. Several nieces, nephews and cousins also survive.

Edward (Webster) was a champion of education his entire life. In lieu of flowers, donations may be made to the Skidmore Early Childhood Center, 815 North Broadway, Saratoga Springs, New York 12866, where Ed's great-granddaughter, Lucy, will attend preschool this fall. Please make checks payable to Skidmore College and include in the memo Skidmore Early Childhood Center.

In Memoriam

David L. Ribel, Esq.

David L. Riebel, Esq., 80, formerly of Schuylerville and longtime Clifton Park attorney died on Wednesday, July 20, 2016, at Ellis Hospital in Schenectady after a long illness. He was predeceased by his daughter, Erika Trauring in 2010; and survived by his wife, Joan H. Riebel; sons, Greg and Scott Riebel; grandchildren, Max and Taylor Trauring Nicholas, Joshua and Christopher Riebel, Alexandra Strelow, Natalie, Samuel and Annabel Riebel; also by his brothers, George and Gary Riebel; and his sisters, Virginia Queior and Roslind Deitz.

David was born March 9, 1936, in Saranac Lake. He graduated Saranac Lake High School in 1953 and was enrolled in Cornell University with an Army ROTC scholarship graduating in 1957. He then entered the U.S. Army as a second lieutenant advancing to Captain. During his five years of service, he flew fixed wing aircraft and helicopters in the Korean conflict. Dave married his wife Joan Harris of Wilkes Barre, Pa. in 1957 and had three children. When he returned from combat, he went to Albany Law School. Upon graduation his law career began as assistant district attorney in Saratoga County and he later opened up a law practice in Clifton Park where he practiced for nearly 50 years serving the people of Saratoga County. David was active in the community as a volunteer, providing legal services for the ambulance and volunteer fire department as well as acting as president of the school board for several years.

He was a charter member of Shenendehowa United Methodist Church in Clifton Park. Memorial contributions may be made to American Cancer Society , 1 Penny Ln., Latham, NY 12110.

Press Releases

THE ATTORNEYS AT
Bonnie McGuire Jones PLLC

Clifton Park Attorney-CPA Elected to Board of Estate Planning Council of Eastern NY

R. Kannan, Esq.

Rebecca L. Kannan, a Clifton Park resident and Attorney and CPA with the Attorneys at Bonnie McGuire Jones PLLC, 4 Emma Lane, Clifton Park (www.bmjlawoffice.com), has been elected to the board of the Estate Planning Council of Northeastern NY. Ms. Kannan is the only Attorney-CPA on the 14-person board.

The Estate Planning Council represents and brings together attorneys, accountants, investment managers, bank trust officers, financial planners and insurance agents for professional development programs about Trust & Estate Planning and Trust & Estate Administration.

"Rebecca was selected for the board because of her dual expertise as an Attorney and CPA. She has earned a strong reputation among professional advisors in Saratoga County, Glens Falls and the Capital District for working carefully and caringly with people who face important transitions in their own lives and in their family's lives," says David Wojeski, the founding partner of Wojeski & Co., a 35 person, full-service Albany CPA firm.

In her work at the Attorneys at Bonnie McGuire Jones PLLC, Rebecca draws on 14 years of experience in working with young families, baby boomers, retirees, snowbirds, business owners, people with special needs, multinationals, and people who are serving as executors or trustees during estate administration or as agents under powers of attorney or health care proxies. She also prepares estate tax returns and income tax returns for trusts and estates.

Rebecca will be presenting an educational Financial Literacy series of programs sponsored by the American Library Association at the Clifton Park-Halfmoon Public Library: Financial Literacy for people in their 20's, 30's and 40's; Financial Literacy for people in their 50's and 60's; and Financial Literacy for people in their 70's, 80's and 90's. Registration will be available through the Clifton Park-Halfmoon Public Library website: www.cphlibrary.org.

About Bonnie McGuire Jones PLLC

Since 1982, an intentionally small law firm, Bonnie McGuire Jones PLLC focuses entirely on estate planning, wills & trusts, estate planning for snow birds, estate administration & trust administration, tax returns for estates & trusts, planning for persons with special needs, international estate planning for multinationals, elder law & long term care planning and charitable giving for maximum impact. For further information please visit www.bmjlawoffice.com.

PRESS RELEASES

CARTER CONBOY
ATTORNEYS AND COUNSELORS AT LAW

CARTER CONBOY CONTINUES EXPANSION WITH ADDITION OF FORMER ASSISTANT U.S. ATTORNEY, THOMAS A CAPEZZA

T. Capezza, Esq.

Albany, N.Y. (August 30, 2016): Carter Conboy is pleased to announce that Thomas A. Capezza, former Assistant U.S. Attorney in the Northern District of New York and, most recently, General Counsel to the Division of New York State Police, has joined the firm as a Director.

Mr. Capezza has over 18 years of criminal and civil investigatory and litigation experience, including 8 years as an AUSA with the Criminal Division of the U.S. Attorney's Office, Northern District of New York (Albany), 3 years as an AUSA with the Civil Division of the U.S. Attorney's Office, Eastern District of Michigan (Detroit), 3 years as Enforcement Counsel with the U.S. Securities and Exchange Commission (NYC) and 4 years as an Assistant District Attorney with the Suffolk County District Attorney's Office. He has broad experience with the investigation and litigation of matters involving health care fraud, pharmaceutical and FDA violations, financial fraud (including bank, wire, and mail fraud, and money laundering), securities and investment fraud, cross-border crimes, and violations of numerous other federal and state laws.

Mr. Capezza also has extensive legislative, policy making, litigation and investigatory experience as former General Counsel to the New York State Police. During his tenure with the Division of the New York State Police, Mr. Capezza managed the formulation of proposed legislation, evaluated and implemented policy and legislative initiatives, managed civil litigation involving the State Police or its members, oversaw internal regulatory and compliance matters, and provided legal and ethical guidance to the Superintendent of the State Police and more than 4,500 sworn police officers.

"Tom is a tremendous addition to our complex litigation, municipal, regulatory and law enforcement practices," said Carter Conboy's Chief Operating Officer, Michael Catalfimo. "His experience with the U.S. Attorney's Office and New York State Police will be a great asset to the firm and its clients. We are thrilled to have him join us."

Said Mr. Capezza: "When deciding to enter private practice, Carter Conboy was my first choice given the firm's rich history, standing in the legal community, excellent reputation, and talented team of attorneys and professional staff. I look forward to integrating my public-sector experience into the firm and serving its clients with the same commitment to excellence."

Mr. Capezza earned his J.D. from Fordham Law School, and his B.S., in Computer Science, from Pace University, magna cum laude.

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.

Young / Sommer LLC

YOUNG/SOMMER LLC LAWYERS HIGHLY RANKED IN PUBLICATIONS

Dean Sommer, Esq.

Albany, NY. August 15, 2016. Young/Sommer LLC is proud and pleased to announce it was again recognized by Chambers USA as a leading law firm in the environmental law practice area. The firm is listed as one of the top nine Environmental firms in New York. It is the thirteenth consecutive year that Young/Sommer has placed among the top ten New York State Environmental firms in the legal guide. The Chambers USA listing states that Young/Sommer is an "Albany-based boutique known for its full environmental service capabilities and representation of upstate clients" and that Young/Sommer "boasts a diverse skill set encompassing wastewater, air quality and cleanup knowledge, among other areas."

Kevin Young, Esq.

Partners Dean Sommer and Kevin Young were also individually recognized in the Chambers USA listing. The publication quoted individuals referring to Dean

(Continued on page 14)

PRESS RELEASES

Young / Sommer LLC

(Continued from page 13)

Sommer as "a very smart guy" who is "known for his cleanup, brownfields and toxic tort work." Chambers also notes that Dean's "experience encompasses petroleum spills, solid and hazardous waste and the release of hazardous substances." Kevin Young is noted as being "knowledgeable and very pragmatic" and for his "experience with the full range of environmental standards in the state."

The Chambers USA rankings are based on in-depth confidential interviews with clients and lawyers, asking participants to rate firms on legal ability and client service. Chambers USA is published by Chambers and Partners, an international firm that produces directories of top lawyers in 175 countries, providing independent rankings and editorial commentary. Information on Chambers and Partners, and all the legal directories they publish, can be found at http://www.chambersandpartners.com.

Several Young/Sommer LLC attorneys were also selected to the 2016 Upstate New York Super Lawyers and 2016 Upstate New York Rising Stars lists, including Super Lawyers Kevin M. Young and Dean S. Sommer (for environmental law), Kenneth S. Ritzenberg (for schools and education law) and Stephen C. Prudente (for family law). Super Lawyers Rising Stars include James A. Muscato II (for environmental law), Joseph F. Castiglione (for environmental litigation) and Jessica Ansert Klami (for PI General: Plaintiff).


K. Ritzenberg, Esq.


Stephen Prudente, Esq.


James Muscato, II, Esq.


J. Castiglione, Esq.


Jessica Klami, Esq.

About Young/Sommer LLC

Young/Sommer LLC is a full service New York State law firm concentrating in Environmental, Municipal, Land Use, Energy, Wind and Hydro Development, Commercial Litigation, Education, Labor and Family law. With offices in Albany, the Young/Sommer legal team provides legal services throughout New York State. Information on Young/Sommer can be found at www.youngsommer.com.

D & K

DONNELLAN & KNUSSMAN PLLC
ATTORNEYS AT LAW

NICHOLAS DORANDO NAMED ASSOCIATE

DONNELLAN & KNUSSMAN, PLLC. is pleased to announce that Attorney Nicholas Dorando was admitted to the New York State Bar in June 2016 and subsequently named an Associate Attorney with the firm.

Attorney Dorando received his Bachelor's Degree in Law, Politics, and Society from Drake University in Des Moines, Iowa in 2012 and earned his Juris Doctorate from Albany Law School, graduating in May 2015. Attorney Dorando's law school career was defined by a focus in courtroom practice, having been selected twice for the school's traveling moot court trial team, as well as being the recipient of the Capital District Trial Lawyers' Association Prize and an inductee to the Order of the Barristers for demonstrated excellence in Courtroom advocacy.

While at Albany Law School, Mr. Dorando handled cases at the school's Family Violence Litigation and Immigration Clinic and clerked exclusively at firms focusing on the field of family law. He joined DONNELLAN & KNUSSMAN, PLLC. in early 2014 as a clerk, and upon his admission to the New York Bar, joined the firm's ranks as an attorney. Attorney Dorando is a member of the New York State Bar Association and the Albany County Bar Association, and practices family and matrimonial law.

About Donnellan & Knussman

Donnellan & Knussman, PLLC. is a full service matrimonial and family law firm located in Ballston Spa, New York. The attorneys at Donnellan & Knussman are well equipped to answer all of your matrimonial and family law related questions. For a free initial consultation, please contact (518) 884-0200 or visit www.dklawfirmny.com.

PRESS RELEASES

TOWNE, RYAN & PARTNERS, P.C.
ATTORNEYS AT LAW

ATTORNEY CLAUDIA A. RYAN NAMED 2017 BEST LAWERS® "LAWYER OF THE YEAR," LABOR AND EMPLOYMENT LAW, ALBANY

ALBANY, N.Y. (August 22, 2016) – Towne, Ryan & Partners, P.C. is proud to announce that Principal Claudia A. Ryan has been recognized by Best Lawyers® as the 2017 Labor and Employment Law "Lawyer of the Year" in Albany.

Each year, the "Lawyer of the Year" awards are presented to a single lawyer with the highest overall peer-feedback for each practice area and designated metropolitan area. The attorneys selected for this recognition have received particularly outstanding ratings in the peer surveys for their abilities, professionalism and integrity.

A practicing attorney for nearly 36 years, this marks Ms. Ryan's first recognition by Best Lawyers.


Claudia Ryan, Esq.

Ms. Ryan, President and one of the founding partners of Towne, Ryan & Partners, P.C. – the largest New York State certified Women-owned Business Enterprise (WBE) law firm in Upstate New York – devotes a large part of her practice to labor and employment law. She is recognized across New York State and the region as a leader in the employment practices field and enjoys a long established reputation for success across a broad client base which includes several municipalities, school districts, automobile dealerships and other employers, large and small.

Since it was first published in 1983, Best Lawyers® has become universally regarded as the definitive guide to legal excellence. Best Lawyers lists are compiled based on an exhaustive peer-review evaluation. Over 83,000 leading attorneys globally are eligible to vote, and we have received more than 13 million votes to date on the legal abilities of other lawyers based on their specific practice areas around the world. For the 2017 Edition of The Best Lawyers in America©, 7.3 million votes were analyzed, which resulted in almost 55,000 leading lawyers being included in the new edition. Lawyers are not required or allowed to pay a fee to be listed; therefore inclusion in Best Lawyers is considered a singular honor. Corporate Counsel magazine has called Best Lawyers "the most respected referral list of attorneys in practice."

ATTORNEY CAITLIN A. GOETZ SELECTED AS POST-STAR 20 UNDER 40 HONOREE

ALBANY, N.Y. (July 26, 2016) – Towne, Ryan & Partners, P.C. is proud to announce that Associate Caitlin A. Goetz has been selected as a Post-Star 20 Under 40 Honoree.


Caitlin Goetz, Esq.

The annual awards recognize 20 individuals under the age of 40 who demonstrate success and dedication to their careers, and who are viewed as role models and leaders in their businesses and communities.

Ms. Goetz, who has been with Towne, Ryan & Partners, P.C. for four years, is a 2011 cum laude graduate of the University of Pittsburgh School of Law. She focuses her practice in the areas of litigation and insurance defense and regularly works with various municipalities, school districts and school boards.

Ms. Goetz stays active in the legal community with her involvement in many of the local bar associations, specifically as a Continuing Legal Education (CLE) Chair for the Adirondack Women's Bar Association.

Additionally, Ms. Goetz has been an active member of the Saratoga Performing Arts Center (SPAC) Junior Committee since 2011, currently serving as the Membership Chair. The committee works in tandem with SPAC to plan and execute fundraising activities throughout the year to support SPAC and its mission of cultivating and promoting the arts throughout the Capital District as well as throughout the state. Most recently Ms. Goetz co-chaired the 2016 edition of the Winter Ball, "The Party of the Century," which marked the official kickoff to SPAC's 50th anniversary. The sold-out event raised over $50k to support classical programming throughout SPAC's 2016 summer season.

The honorees will be awarded at an awards luncheon September 21 at the Great Escape Lodge in Queensbury, N.Y.

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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

TOWNE, RYAN & PARTNERS, P.C.
ATTORNEYS AT LAW

(Continued from page 15)

FIVE TOWNE, RYAN & PARTNERS, P.C. ATTORNEYS SELECTED TO 2016 UPSTATE NEW YORK SUPER LAWYERS AND RISING STARS LISTS

ALBANY, N.Y. (August 17, 2016) – Towne, Ryan & Partners, P.C. is proud to announce that Principals Claudia A. Ryan, Susan F. Bartkowski and James T. Towne, Jr. have been selected to the 2016 Upstate New York Super Lawyers list and Associates Megan M. Collelo and John A. Musacchio have been selected to the 2016 Upstate New York Rising Stars list.

Each year, no more than five percent of the lawyers in the state are selected to the Super Lawyers list, while no more than 2.5 percent of the lawyers in the state are selected to the Rising Stars list. Mr. Towne (Business Litigation) has appeared for 10 years annually on the Upstate New York Super Lawyers list since the list was started in 2007; Ms. Ryan (Employment & Labor) and Ms. Bartkowski (Business Litigation) have appeared annually on the list since 2010. Mr. Musacchio (Civil Litigation) appears on the Upstate New York Rising Stars list for the second annual year, while Ms. Collelo (Employment & Labor) made her debut on the Upstate New York Rising Stars list this year.

In addition to appearing on the Business Litigation Super Lawyers list, Mr. Towne also appeared on the "Top 25" Hudson Valley Lawyers list for the third consecutive year.

Super Lawyers, a Thomson Reuters business, is a rating service of outstanding lawyers from more than 70 practice areas who have attained a high degree of peer recognition and professional achievement. The annual selections are made using a patented multiphase process that includes a statewide survey of lawyers, an independent research evaluation of candidates and peer reviews by practice area. The result is a credible, comprehensive and diverse listing of exceptional attorneys.

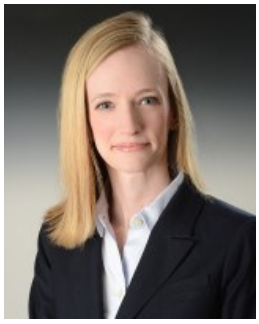
The Super Lawyers lists are published nationwide in Super Lawyers Magazines and in leading city and regional magazines and newspapers across the country. Super Lawyers Magazines also feature editorial profiles of attorneys who embody excellence in the practice of law. For more information about Super Lawyers, visit SuperLawyers.com.

Claudia Ryan, Esq.

S. Bartkowski, Esq.

James Towne, Esq.

John Musacchio, Esq.



Megan Collelo, Esq.

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

EXPERIENCED MILITARY ATTORNEY AND VETERAN JOINS TULLY RINCKEY

Tully Rinckey PLLC welcomes Sean C. Timmons to military law practice group

S. Timmons, Esq.

July 25, 2016 – Albany, N.Y. – Tully Rinckey PLLC is pleased to announce that Sean C. Timmons Esq., an attorney with extensive military litigation experience, has joined the firm as an associate. He will represent officers and enlisted service members in complex legal matters, including courts-martial, adverse command actions against troops such as administrative separations, Article 15 matters, and other forms of non-judicial punishment. Additionally, he will protect service members from discrimination by asserting their rights under the Uniformed Services Employment and Reemployment Rights Act (USERRA).

Prior to joining Tully Rinckey PLLC, Mr. Timmons was in private practice in Houston, Texas where he was an active member of the Texas Trial Lawyers Association, The Houston Trial lawyers Association and the State Bar of Texas Military and Veterans Law Section. Sean also served as military law adviser to a number of Houston-based family law attorneys. Sean served at Fort Hood as an Army Captain where he was the legal adviser to the President (O-6) of the Fort Hood Officer Separation Board after having started his Army career in 1998 as a private (E-1) Field Artilleryman and ascended to the rank of Captain (O-3). As a Judge Advocate, Sean led the effort in 2010 as Acting Chief of Fort Hood Client Services to have the Commanding General of III Corps blacklist a notoriously corrupt landlord-tenant company that was infamous for ripping off active duty soldiers.

In addition to his military attorney experience, Mr. Timmons has an extensive background as a civilian attorney. He traveled the entire state of Texas from Amarillo down to Laredo and everywhere in between representing homeowners, business owners, churches and school district insurance policyholders. He fought relentlessly on these contingency cases and reported directly to the Head of Litigation for the nation's premier first party insurance litigation boutique Mostyn Law as a litigation docket associate.

Mr. Timmons joins Tully Rinckey PLLC's military sector law team, which includes the former Judge Advocate General's (JAG) Corps chief of staff and director for strategic policy and requirements at the Pentagon, as well as the former Department of the Air Force's deputy general counsel for fiscal, ethics and administrative law at the Pentagon, among other distinguished colleagues. With coast-to-coast office locations and robust information technology infrastructure, Tully Rinckey PLLC can represent service members, veterans, federal employees and government contractors anywhere in the world.

Prior to becoming an attorney, Mr. Timmons was deployed as a combat arms Artilleryman to Bosnia in 1999 as a member of Operation Joint Forge. He deployed again to the Middle East after the Sept. 11 attacks as part of Task Force Blackjack in the most forward deployed US Army heavy brigade combat team during Operation Enduring Freedom in the spring of 2002. His task force would serve in both Kuwait and Afghanistan. Mr. Timmons has been awarded the NATO Medal, the National Defense Service Medal, Army Service Ribbon, and the Global War on Terrorism Service Medal, five Army Achievement Medals, the Good Conduct Medal, and an Army Commendation Medal.

Mr. Timmons earned his Master of Laws degree in International Law from the University of Houston Law Center. He graduated Cum Laude from Houston College of Law and graduated Summa Cum Laude from the University of Texas at San Antonio.

To speak with Sean Timmons or for more information, please contact Marcy Velte at (518) 218-7100 or at mvelte@1888law4life.com.

ABOUT TULLY RINCKEY PLLC

TULLY RINCKEY PLLC IS A FULL-SERVICE LAW FIRM BASED IN ALBANY, N.Y. THAT SERVES INDIVIDUALS, FAMILIES AND BUSINESSES THROUGHOUT NEW YORK STATE. SOME OF THE PRACTICE AREAS OFFERED BY THE FIRM STATEWIDE INCLUDE FAMILY AND MATRIMONIAL LAW, INCLUDING DIVORCE, ESTATE PLANNING, EMPLOYMENT LAW, MILITARY LAW, REAL ESTATE LAW, COMMERCIAL LITIGATION, BANKRUPTCY, PERSONAL INJURY, AND CRIMINAL DEFENSE, INCLUDING DWI AND TRAFFIC TICKETS. TULLY RINCKEY PLLC ALSO SERVES, IN A NATIONWIDE CAPACITY, FEDERAL EMPLOYEES, SERVICE MEMBERS AND THOSE REQUIRING SECURITY CLEARANCE REPRESENTATION. THE FIRM MAINTAINS A CORPS OF ACTIVE, COAST-TO-COAST OFFICE LOCATIONS THAT INCLUDE SAN DIEGO, CA AND WASHINGTON, D.C..

PRESS RELEASES

D'ORAZIO PETERSON

D'ORAZIO & PETERSON SELECTED TO SUPER LAWYERS

Scott Peterson, Esq.

Scott M. Peterson, founding partner of D'Orazio Peterson LLP, a Plaintiff's Employment and Serious Injury law firm, has been selected to the 2016 Upstate New York Super Lawyers List in the field of Plaintiff's Litigation, for the fourth year in a row. Each year, no more than five percent of the lawyers in the state are selected by the research team at Super Lawyers to receive this honor.

Giovanna A. D'Orazio, partner with D'Orazio Peterson, has also been selected as a Super Lawyers "Rising Star" in Upstate New York for the third year in a row, an honor that is bestowed upon less than 2.5% of lawyers under the age of 40 in New York State.

Super Lawyers, a Thomson Reuters business, is a rating service of outstanding lawyers from more than 70 practice areas who have attained a high degree of peer recognition and professional achievement. The annual selections are made using a patented multiphase process that includes a statewide survey of lawyers, an independent research evaluation of candidates and peer reviews by practice area. The result is a credible, comprehensive and diverse listing of exceptional attorneys.

G. D'Orazio, Esq.

The Super Lawyers lists are published nationwide in Super Lawyers Magazines and in leading city and regional magazines and newspapers across the country. Super Lawyers Magazines also feature editorial profiles of attorneys who embody excellence in the practice of law.

ABOUT D'ORAZIO PETERSON, LLP

D'ORAZIO PETERSON LLP, AN EMPLOYMENT AND SERIOUS INJURY LAW FIRM, WAS FOUNDED ON THE BASIC PRINCIPLE THAT LAWYERS SHOULD TREAT CLIENTS THE WAY THAT THEY WOULD WANT TO BE TREATED IF THE ROLES WERE REVERSED. WE BELIEVE THAT THE ATTORNEY-CLIENT RELATIONSHIP, WHICH IS BUILT ON TRUST, SHOULD BE OPEN AT ALL TIMES. WE ARE ALWAYS OPEN AND HONEST WITH OUR CLIENTS, PARTICULARLY WHEN THE CIRCUMSTANCES REQUIRE US TO TELL THEM THINGS THAT THEY DO NOT WANT TO HEAR. FOR MORE INFORMATION ABOUT D'ORAZIO PETERSON LLP, VISIT DORAZIOPETERSON.COM.

CLASSIFIEDS

SEEKING PRO BONO ASSISTANCE FOR INCARCERATED INDIVIDUAL

The SCBA has received a letter from an incarcerated individual is seeking pro bono assistance with regards to having been served with a summons of divorce for a matrimonial matter in Saratoga County. If anyone may be of assistance, please contact Patty Clute at pclute@saratogacountybar.org .

LOOKING FOR LAST WILL & TESTAMENT OF WILLIAM C. THOMAS

Looking for ORIGINAL Last Will and Testament for WILLIAM C. THOMAS dated 1990, prepared by attorney's office of Frank Williams. Jr. and Harry L Dubrin, Jr. Office located on Hamilton Street, Albany. Loretta Burkich was a witness. Parties have retired/office closed and son needs to find who may have access to the remaining original records. If original Will is found, please contact ROBERT THOMAS @ 518-596-2023

SEEKING PRO BONO ASSISTANCE FOR CONTESTED MATRIMONIAL

The SCBA is still looking for someone to assist in a pro bono contested matrimonial. If you can be of assistance, please contact Patty Clute at pclute@saratogacountybar.org .