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THE SARATOGA COUNTY BAR ASSOCIATION

SERVING THE INTEREST OF JUSTICE

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THE PRACTICE PAGE
Admissible Business Records – Cough 'Em Up

HON. MARK C. DILLON *

Practitioners are familiar with the business record exception to the rule against hearsay. It is embodied in CPLR 4518(a), and according to Westlaw, has been cited in 1,552 reported decisions so far. One question addressed earlier this year at the appellate level was whether an affiant in support of a motion, upon laying the business record foundation, may admissibly describe for the court the contents of the record without providing the record itself, or alternatively, whether the record must be attached for the court's direct review. The answer was provided in a residential mortgage foreclosure action entitled *Bank of New York Mellon v Gordon*.[1] The analysis provided in *Gordon* applies to all types of civil actions. While the opinion was rendered by the Second Department, its reasoning will likely have statewide application and should be heeded by practitioners throughout the state. Before discussing *Gordon's* conclusion, it is worth discussing each side of the issue.

On the one hand, a colorable argument could be made that once the affiant has satisfactorily qualified a document as an admissible business record, which the affiant has personally reviewed, the affiant may then describe its contents. New York recognizes a distinction between the admissibility of evidence on the one hand and the weight of evidence on the other. Arguably, a mere description of a qualifying business record is admissible, and the opposing party may then question its weight. On the other side of the coin, one may instead argue that the affidavit establishing admissibility is merely a vehicle for admitting the record as evidence so that the record, once admitted, solely speaks for itself without any filter.

[1] 171 AD3d 197.

* Mark C. Dillon is a Justice of the Appellate Division, Second Department, and an Adjunct Professor of New York Practice at Fordham Law School.

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THE PRACTICE PAGE
Admissible Business Records – Cough 'Em Up

HON. MARK C. DILLON

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Gordon involved, *inter alia*, the admissibility of an affiant's description of business records that spoke to a bank's alleged standing to bring the case. Justice Robert Miller, writing for the court, explained in *Gordon* that the purpose of the business record exception is to allow the *record* into evidence; and that a mere description of the record, without proffering the record itself, is of no evidentiary value. "[I]t is the business record itself, not the foundational affidavit, that serves as proof of the matter asserted." [2]

Gordon's analysis is correct. New York law has long recognized that while hearsay is not admissible as evidence, there are certain recognized exceptions to the rule where hearsay is nevertheless deemed sufficiently reliable and therefore admissible. The limited examples are excited utterances, dying declarations, pedigree statements, admissions, declarations against interest, and, as relevant here, business records. The well-established theory behind permitting business records into evidence is that they may be presumed reliable if made in the regular course of business, created at or about the time of the events that they memorialize, and maintained thereafter in the regular course of that business by a person that is under an obligation to do so,[3] so that there is no occasion to fabricate the records' contents for litigation purposes. Since business records typically and definitionally consist of hearsay statements of third person entrants, an affiant's mere *description* of the record doubles the hearsay, and it is not certain whether the affiant's description of it is accurate and complete. Those concerns may only be satisfied if the record is presented directly to the court for the court's inspection, so that the record does the talking about its salient contents. Permitting the double hearsay would undermine the very reliability by which the information contained in business record becomes admissible. The purpose of the affidavit is to lay the foundation for admissibility, and if needed, decipher for the court any coded or technical entries reflected by the record.

The takeaway of *Gordon* is that if you are a proponent of a business record, lay the business record foundation and be sure to attach the corresponding documents. If an opponent, and the records are merely described but not provided, object to the admissibility of the affiant's description and cite *Gordon* as your support.

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[2] (*Gordon*, at *5, citing generally *Great Am. Ins. Co. v. Auto Mkt. of Jamaica, N.Y.*, 133 A.D.3d 631, 632–633; 35 Carmody–Wait 2d § 194:94 [2019]; cf. 9 Weinstein–Korn–Miller, N.Y. Civ. Prac. CPLR ¶ 4518.20).
[3] *Corsi v Town of Bedford,* 58 AD3d 225, 232; CPLR 4518(a).

TORTS AND CIVIL PRACTICE:
Selected Cases from the Appellate Division, 3rd Department

TIM HIGGINS, ESQ. OF LEMIRE & HIGGINS, LLC

SUMMARY JUDGMENT FOR DEFENDANT NOT PROPERLY ID'D IN COMPLAINT.
Fadlalla v. Yankee Trails World Tours, Inc. (Garry, P.J., 6/20/19)

Plaintiff was a passenger in a vehicle that was rear-ended by a bus owned and operated Yankee Trails, Inc. Days before the statute of limitations expired, plaintiff sued the defendant, which is separate and distinct from Yankee Trails, Inc., and which had no part in the accident. After the defendant moved for summary judgment, Supreme Court (Hartman, J., Albany Co.) granted plaintiff's cross-motion (CPLR 306-b) to extend the time to serve the complaint and (CPLR 305(c)) to amend the complaint by substituting Yankee Trails, Inc., as a defendant. The Third Department reversed and dismissed plaintiff's complaint, concluding that the CPLR provisions on which the plaintiff relied cannot be used to extend the time for service of an action against a defendant that was not properly nor timely served.

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Selected Cases from the Appellate Division, 3rd Department

(Continued from Page 2)

DISMISSAL OF COMPLAINT TOO HARSH A PENALTY FOR EVIDENCE SPOLIATION.
LaBuda v. LaBuda (Garry, P.J., 7/3/19)
Plaintiff claimed defendant negligently or intentionally struck him twice with an all-terrain vehicle while riding it on the plaintiff's property. Defendant served a discovery demand for photos or videos of the ATV incident believed to have been stored on plaintiff's cell phone, followed by a specific request that the phone be preserved. Following a preliminary conference, plaintiff sent defendant an email that attached one photo and one video of the incident, and advised that the cell phone that he owned at the time of the event had been traded in for a new phone (after the defendant's request that the phone be preserved). Supreme Court (Burns, J., Delaware Co.) granted defendant's motion to dismiss the complaint, as a sanction for plaintiff's spoliation of evidence. Finding that the record on appeal didn't permit the Court to determine the extent to which defendant was prejudiced, if at all, by the plaintiff's failure to preserve the phone, the Appellate Division found dismissal of the action unwarranted at this stage, and remitted the case to the trial court for examination of all photos/video available to the defendant and "whether dismissal, an adverse inference charge or some other sanction may be appropriate."

JURY QUESTION IN PLAINTIFF'S TORT CLAIM OF NEGLIGENT ENTRUSTMENT.
Hull v. The Pike Co. (Egan, Jr., J., 7/11/19)
Plaintiff, employed by a hospital and in the process of changing light bulbs on poles in the parking lot, was hurt when the scissor lift he was using tipped over and fell to the ground. He had borrowed the lift from the defendant building contractor that was performing unrelated construction work for the hospital. Plaintiff's negligent entrustment claims required him to prove the defendant had "some special knowledge concerning a characteristic or condition peculiar to the plaintiff" that rendered his use of the scissor lift unreasonably dangerous. Supreme Court (Cassidy, J., Tompkins Co.) denied defendant's motion for summary judgment and the Third Department affirmed, noting that proximate cause is an issue best left to the trier of fact. Plaintiff's proof in opposition to the motion included his testimony that he got verbal instructions from one of the defendant's employees after he struggled to safely operate two smaller lifts that he borrowed before the accident, and that Pike's project superintendent admitted he just assumed the hospital's employees were trained on how to operate the lift.

OUT-OF-POSSESSION LANDLORD GETS SUMMARY JUDGMENT.
Rose v. Kozak (Mulvey, J., 9/12/19)
Under New York law, and subject to some exceptions, an out-of-possession landlord is generally not responsible for dangerous conditions on leased premises once the tenant moves into the property. The property here was a house which defendant rented to the plaintiff, who slipped and fell on an icy slate walkway that led to a back entrance to the house. Supreme Court (Lebous, J., Broome Co.) denied defendant's motion for summary judgment but the Appellate Division reversed. A previous tenant installed the slate walkway, defendant came to her rental property less than once a year, and the plaintiff admittedly did his own property maintenance including snow removal and lawn-mowing.

GOVERNMENTAL FUNCTION IMMUNITY BARS COUCH-ON-ROAD ACCIDENT CLAIM.
Scozzafava v. State of New York (Egan, Jr., J., 7/11/19)
Claimant was hurt when his truck, westbound on the Thruway in Montgomery County, struck a couch that had found its way into one of the travel lanes in the Town of Root. His suit against New York State alleged the Thruway Authority unreasonably delayed the dispatch of maintenance personnel and State Police to the scene after being advised, some 10 minutes before the accident, that the couch was in the highway. The Court of Claims (McCarthy, J.) partially granted defendants' motion for summary judgment and the Third Department affirmed, finding the actions challenged by claimant – the conduct of the Thruway Authority's radio dispatchers – was "a quintessential governmental function that entitles defendants to immunity from liability for any negligence" resulting from the dispatchers' actions or failure to act.

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Selected Cases from the Appellate Division, 3rd Department

(Continued from Page 3)

CLAIM DISMISSED FOR FAILURE TO ADEQUATELY DESCRIBE ACCIDENT LOCATION.

Katan v. State of New York (Aarons, J., 7/18/19)

In suits against the State of New York, Court of Claims Act § 11(b) requires a claimant to "state the…place where such claim arose," and the failure to do so can be judged a jurisdictional defect mandating dismissal of the claim. Such was the fate suffered by the claimant here, in a decision (Collins. J.) that followed the defendant's motion for summary judgment. Claimant, a student at SUNY Plattsburgh, alleged that she fell "on the exterior stairs/landing located proximate to Moffit Hall and Clinton Dining Hall," but discovery established there were three such staircases proximate to the Halls. Affirming dismissal of the claim, the Third Department found that an aerial map showing the location of the fall, submitted by claimant in opposition to the motion, did not cure the pleading defect in the claim and that the State "is not required to go beyond the claim to ascertain the situs of the injury."

INJURED WORKER FAILED TO GET WC CARRIER'S CONSENT TO SETTLEMENT.

Hisert v. Ron Allen Trucking, Inc. (Pritzker, J., 7/18/19)

Plaintiff, while in the course of his employment, was hurt in a motor vehicle accident. He received workers' compensation benefits and also brought a third-party claim against the driver of the other car, which was settled for the defendant's policy limits of $50K. The workers' comp insurer then successfully petitioned the Workers' Compensation Board ("WCB") for an order barring plaintiff from getting future comp benefits because he failed to obtain the insurer's consent (as required by WCL § 29(5)) before settling the auto accident claim. Plaintiff relied on the final sentence in two letters from the insurer to his attorney stating the carrier "has no objection to a $50,000 policy limit settlement." The Appellate Division affirmed the WCB decision, noting that both letters from the insurer also advised that the carrier's "consent is required prior to settlement or discontinuance of any third-party action" and concluding that the Board's determination was supported by substantial evidence.

BONUS: COURT OF APPEALS SPLITS ON CONTRADICTORY EVIDENCE IN SJ MOTION.

Salinas v. World Houseware Producing Co. (9/12/19)

Without providing specifics on the claims or defenses of the parties, a divided (4-3) Court of Appeals reversed the Appellate Division and trial court, finding the defendants were not entitled to summary judgment on the issue of causation. Defendants focused on contradictions between the plaintiff's deposition testimony and the factual conclusions asserted by her expert witnesses, but the majority found the expert opinions were "neither speculative nor conclusory" because they were based on other evidence in the record.

THE NEW PUBLIC CHARGE RULE

DAVID W. MEYERS, ESQ. | MEYERS & MEYERS, LLP

There's been no shortage of things to write about over the past two-and-a-half years, either substantively or otherwise. The Trump Administration's (or Stephen Miller's) decision to change the "public charge" rule ranks up there as one of the most important things that I've had an opportunity to address. Assuming no litigation to stop the change, the proposed change to the "public charge" rule will dramatically expand the number of immigrants that the Department of Homeland Security (DHS) could deem ineligible for lawful permanent residence (i.e., for Green Cards) or admission to the United States on account of income level and prior use of certain public benefits.

As often is the case in these articles, a little context is in order.

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THE NEW PUBLIC CHARGE RULE

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Under the Immigration and Nationality Act (INA), an individual may be denied admission into the United States or denied the ability to become a Green Card holder if he or she is "likely at any time to become a public charge."[1] An individual who has previously been admitted to the United States may also be subject to removal / deportation from the United States based on a separate public charge ground of deportability. There are certain exemptions to these provisions (e.g., for refugees and asylees).

DHS and the Department of State (DOS) are the agencies that implement the INA's public charge provisions. DHS addresses whether to make a public charge determination when an individual applies to become a Green Card holder in the United States. DOS, on the other hand, makes its own public charge determination when its consular officers review applications for immigrant visas (the document that allows an individual to enter the United States as an LPR).

Although the INA does not itself define what the term "public charge" means, DHS guidance has defined it to mean a person who is or is likely to become "primarily dependent" on "public cash assistance for income maintenance" or "institutionaliz[ed] for long-term care at government expense."[2] Historically, in determining whether an individual meets the definition for public charge inadmissibility, a number of factors must have been considered, including age, health, family status, assets, resources, financial status, education, and skills. No single factor will determine whether an individual is a public charge.[3] Also important in the consideration is whether the petitioner who, e.g., sponsored his or her qualifying family member, submitted a sufficient "affidavit of support".[4]

On August 14, 2019, DHS published a final rule governing the INA's public charge grounds of inadmissibility. It goes effect on October 15, 2019. If not prevented from going into effect, the rule will have a chilling effect on families throughout the country who choose to forgo essential services to avoid imperiling their immigration status. (Candidly, the very announcement of the new rule has already had this chilling effect.)

The new rule dramatically changes the standard by which DHS determines whether an applicant for a Green Card or admission to the United States is "likely at any time to become a public charge." Under the new rule,[5] DHS removes the consideration of whether an individual is primarily dependent on public benefits, and now redefines public charge as a noncitizen who receives a specified public benefit for more than 12 months in the aggregate within any 36-month period.[6] This rule will severely punish individuals for seeking basic needs and will no doubt put families at risk of separation.

As alluded to earlier, under current law, a petitioner (e.g., family member) for someone applying for a Green Card or admission as an immigrant is typically required to file an "affidavit of support", which wasn't always outcome-determinative as to whether an individual would likely at any time in the future become a public charge, but was very helpful in swaying that determination in favor of the applicant. Not so any longer under the new rule. Under the new rule, DHS adjudicators will apply a complex totality of circumstances test that weighs the individual's age, health, family status, education and skills, and assets, resources, and financial status, all while taking into account a broad range of positive and negative factors. DHS has also indicated in the final rule that it interprets "likely at any time" to mean that it is "more likely than not" that the individual at any time in the future will receive one or more public benefits defined by the rule.

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[1] INA §212(a)(4); 8 U.S.C. §1182(a)(4)(A).
[2] See "Field Guidance on Deportability and Inadmissibility on Public Charge Grounds," 64 FR 28689 (May 26, 1999).
[3] An exception to this would be the lack of an "affidavit of support," if one is required for an individual to become an LPR or to be admitted to the United States.
[4] See e.g., 8 U.S.C. §1183a.
[5] 8 C.F.R. §212.21(a).
[6] The new rule defines a public benefit as (1) Any federal, state, local, or tribal cash assistance for income maintenance, including: (a) Supplemental Security Income (SSI), 42 U.S.C. 1381 et seq.; (b) Temporary Assistance for Needy Families (TANF), 42 U.S.C. 601 et seq.; (c) Federal, state, or local cash benefits programs for income maintenance (often called "General Assistance" in the State context, but which also exist under other names); (2) Supplemental Nutrition Assistance Program (SNAP), 7 U.S.C. 2011 to 2036c; (3) Section 8 Housing Assistance under the Housing Choice Voucher Program as administered by HUD under 42 U.S.C. 1437f; (4) Section 8 Project-Based Rental Assistance (including Moderate Rehabilitation) under Section 8 of the U.S. Housing Act of 1937 (42 U.S.C. 1437f); (5) Medicaid, with certain exceptions, such as benefits received by individuals under the age of 21 and pregnant women (or for a period of 60 days after the last day of pregnancy); and (6) Public housing under section 9 of the U.S. Housing Act of 1937.

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THE NEW PUBLIC CHARGE RULE

(Continued from Page 5)

There are many consequences to this new rule. The new rule is far more restrictive than current policy, and no doubt will result in higher denial rates for those applying for Green Cards that are subject to public charge determinations. Moreover, the new multi-factor test will leave too much discretion to DHS adjudicators and likely will also produce inconsistent and unpredictable decisions.

As bad as all that is, and it's bad, more importantly the announcement of the new rule, and its implementation, has created and will now exacerbate a chilling effect felt throughout immigrant communities. According to the Urban Institute, about 14% of adults in immigrants families indicated that they or a family member opted not to participate in a non-cash public benefit program in 2018 because of their concern over jeopardizing their green card eligibility.[7] Again, this new rule will punish individuals for seeking very basic needs.

This new rule is yet another brick in what has come to be known as Trump's (or dare I again say Stephen Miller's) "invisible wall", which has been nothing more than far-reaching policies and practices restricting legal immigration to and in the United States. Enough is enough.

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[7] www.urban.org/research/publication/adults-immigrant-families-report-avoiding-routine-activities-because-immigration-concerns.

CASSIE

MICHAEL P. FRIEDMAN, ESQ.

"Violence against women cannot be tolerated, in any form, in any context, in any circumstance, by any political leader or by any government." Ban Ki-moon, Former Secretary General of the United Nations

"The care of human life and happiness, and not their destruction, is the first and only object of good government." Thomas Jefferson

By "any government," I hope Secretary General Ban Ki-moon included New York State, but you tell me. This month, America will celebrate the fourth Domestic Violence Awareness Month, one of the only accomplishments of President Barack Obama that President Trump has not tried to undo. At least not yet. This year will also be the sixth anniversary of the Second Department's decision in Cassie v. Cassie[1] resulting in horrible injustice and the sixth year that a bill has sat in the Legislature, still in committee, to undo that horrible result.

Here are the facts. On February 11, 2012, Donna Cassie's husband tried to push her down the stairs of their home. He then twisted her arm causing her pain. He pushed her up against a wall. After a trial in Family Court, she received an Order of Protection. A year later the Appellate Division, Second Department reversed saying that this could not be disorderly conduct since that requires an intent to cause *public* inconvenience, annoyance or alarm, or recklessly creating a risk thereof.[2] Putting aside that they could have found other Penal Law violations like harassment or assault, they said that husbands or other members of the same family or household can engage in fighting or in violent, tumultuous or threatening behavior against their wives so long as there is no *public* intent. They dismissed her petition and the Order of Protection. Welcome home Mr. Cassie.

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[1] Cassie v. Cassie, 109 A.D.3rd 337 (2nd Dept., 2013).
[2] See Penal Law § 240.20

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CASSIE

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Under the Family Court Act, disorderly conduct for a family offense does not have to be in public, but it still requires a public intent because the law is not properly drawn. So, go ahead and push your wife down the stairs or hit her, so long as you don't intend to do it in public, at least according to the Second Department and now all the appellate courts in New York. Cassie has been cited 55 times in appellate decisions, and fourteen times dealing with the need for public intent in family offense petitions. Most recently in 2018, the Second Department dismissed a disorderly conduct family offense case against a man who pulled a woman by the arm, pushed her against a wall and pushed her by the shoulders causing her to fall to the floor. Not good enough for an Order of Protection under disorderly conduct because of no public intent.[3]

So, why hasn't the Legislature corrected this problem in the six years the proposed law has sat in committee? Beats me. Maybe because it is not sponsored by someone in power or maybe the Powers that Be just don't care. As for Domestic Violence, the Legislature and the Governor are really helping the citizens of New York. For example, on August 8, 2019, Andrew Cuomo signed a bill that he and the Legislature believe will address domestic violence issues in New York. It amended the election law to say that if you swear to the election board that you are a victim of domestic violence, that you left your home because of the domestic violence, that because of the threat of physical or emotional harm, you or a family member can vote by "special ballot" which allows you to deliver or mail the ballot the board of elections as opposed to voting at a voting booth. Well, thanks a lot. In general, victims of domestic violence do not get thrown out of their homes by courts, and even if so, they can vote anytime at their regular voting site. But in case (a) you are out of the home because of domestic violence, and (b) you don't want to risk seeing the abuser at the election place, you can deliver or mail a special ballot to the Board of Elections. Now, that solves domestic abuse in New York, doesn't it? Not to me. But thanks Andrew just the same. I wonder how many domestic violence victims will vote that way this year.

Every nine seconds in the United States a woman is assaulted or beaten. On average, nearly 20 people per minute are physically abused by an intimate partner in the United States. Domestic violence is the leading cause of injury to women—more than car accidents, muggings and rapes combined. Every day in the United States, more than three women are murdered by their husbands or boyfriends.[4] In New York State, over 310,000 Orders of Protection were issued in 2016 and last year over 60,000 Family Offense petitions were filed in Family Court.[5]

Given these daunting statistics, explain this to me. Violence against women cannot be tolerated by Governor Cuomo or the State of New York because there are now Special Election ballots for victims of domestic violence out of their homes? But you can beat your wife just as long as you don't have "public" intent. Gracias. Happy Domestic Violence Awareness Month.

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[3] Saquipay v. Puzhi, 160 A.D.3d 879 (2nd Dept., 2018).
[4] National Coalition Against Domestic Violence
[5] New York State Unified Court System Annual Report 2018

BOND ANNOUNCES SARATOGA ATTORNEY MICHAEL D. BILLOK NAMED IN 2019 *NEW YORK SUPER LAWYERS UPSTATE EDITION*

Bond, Schoeneck & King is pleased to announce that Michael D. Billok of the firm's Saratoga Springs Office has been recognized in the 2019 *New York Super Lawyers Upstate Edition* in the category of Employment and Labor.

Mike regularly represents employers in state and federal court, defending against actions alleging violations of employment laws such as the Americans with Disabilities Act (ADA), Age Discrimination in Employment Act (ADEA), Title VII of the Civil Rights Act, including class actions, as well as collective and class actions under the Fair Labor Standards Act (FLSA) and New York Labor Law (NYLL).

Super Lawyers magazine lists New York's top lawyers who have been chosen by their peers and through the independent research of *Law & Politics* magazine. *Law & Politics*, which performs the polling, research and selection of attorneys to be included in *Super Lawyers* magazine, identifies lawyers who have attained a high degree of peer recognition and professional achievement.

Bond, Schoeneck & King PLLC is a law firm with 250 lawyers serving individuals, companies, non-profits and public sector entities in a broad range of practice areas. Bond has eight offices in New York State as well as offices in Naples, Florida and Kansas City.

WILCENSKI, PLEAT, DEZIK & CARPENTER HONORED BY NEW YORK STATE SUPER LAWYERS

Attorneys Edward V. Wilcenski and Tara Anne Pleat have been named to the New York Super Lawyers list as one of the top Elder Law Attorneys in New York State for 2019. Super Lawyers selects no more than 5% of the lawyers in New York State for this designation. This is the ninth year Ed has received this honor and the third year for Tara. Tara was previously recognized as a Rising Star for the years 2013-2016.

Attorneys Michael D. Dezik and Katherine Carpenter have been named to the New York Super Lawyers Rising Star list as two of the top Elder Law attorneys in New York State under the age of 40 for the year 2019. Super Lawyers selects no more than 2.5% of the lawyers in New York State for this designation. This is the sixth year that Mike has received this honor and the first for Katy.

Super Lawyers, a Thompson Reuters business, is a rating service of outstanding attorneys for more than 70 practice areas who have received a high degree of peer recognition and professional achievement. The annual selections are made using a rigorous multi-phased process that includes a statewide survey of lawyers, independent research evaluation of candidates, and peer review by practice area.

Wilcenski & Pleat PLLC is a law firm that practices in the areas of special needs estate planning and trust administration, traditional estate planning and trust administration, and elder law.

WILCENSKI & PLEAT IS PROUD TO ANNOUNCE THAT COURTNEY L. NOYSE PASSED THE BAR

Wilcenski & Pleat is proud to announce that Courtney L. Noyse passed the Bar and has been admitted to practice law in New York. Courtney will continue working with Wilcenski & Pleat as an associate attorney at the firm's main office located at 5 Emma Lane, Clifton Park, New York.

HODGSON RUSS ADDS 5 LAWYERS IN THE CAPITAL DISTRICT

Hodgson Russ is pleased to announce that Glen Doherty, Laurence Fox, Edward Kowalewski, Jr., Christopher Massaroni and Scott Paton have joined the Albany and Saratoga Springs offices. The recent addition of these attorneys significantly expands Hodgson Russ's legal presence in the Capital District.

Glen P. Doherty represents both employers and management in all aspects of labor and employment law. He also represents his clients when dealing with the full spectrum of labor and employment law-related litigation matters, in state and federal courts, and in front of both arbitrators and state and federal administrative agencies. Glen will reside in the Albany office.

Laurence I. Fox handles contract drafting and negotiation, contract administration, bidding issues, surety matters, disputes, claims, administrative reviews, settlements, trials and appeals in state and federal courts, mediations and arbitrations. He is a former Assistant Attorney General in the Contract Litigation Unit of the NYS Department of Law. Larry will reside in the Saratoga Springs office.

Edward Kowalewski, Jr.'s practice involves commercial and contract law, together with construction law and litigation. He represents heavy highway, building and mechanical trade contractors, subcontractors, suppliers, developers, lenders, and public and private owners. Edward will reside in the Saratoga Springs office.

Christopher Massaroni represents individuals, and public and private entities on complex commercial litigation matters, product liability lawsuits, employment matters, corporate disputes, and construction claims and lawsuits. He also represents numerous national corporations on self-insured personal injury disputes. Chris will reside in the Albany office.

Scott Paton represents his clients in all aspects of business litigation, including labor and employment law disputes focusing on the enforcement of non-compete agreements, the pursuit of claims sounding in trade-secret misappropriation, unfair business practices, and shareholder disputes. He will reside in the Albany office.

"We are very excited to welcome this established group to the firm," says Rick Kennedy, Managing Partner. "The addition of these attorneys deepens our capabilities in the construction, labor and employment and litigation areas, and supports our firm's strategic growth plan to increase our ability to support existing clients and provide additional leverage to recruit new clients both within the Capital Region and across the state."

Hodgson Russ attorneys facilitate the U.S. legal aspects of transactions around the world. The firm practices in several significant areas of law and uses multidisciplinary work teams to serve the specific, often complex, needs of clients, which include public and privately held businesses, governmental entities, nonprofit institutions, and individuals. Hodgson Russ has offices in Albany, Buffalo, New York, Palm Beach, Saratoga Springs and Toronto. To learn more about the firm, please visit www.hodgsonruss.com.

52 HODGSON RUSS ATTORNEYS NAMED TO VARIOUS BEST LAWYERS LISTINGS

Hodgson Russ is pleased to announce that 52 attorneys have been selected by their peers for inclusion in the 2020 edition of "*Best Lawyers in America*" listings. Inclusion in *Best Lawyers* may be considered a singular honor because selection is based on an in-depth, peer-review survey in which attorneys cast votes on the legal abilities of lawyers outside of their firm who practice in the same legal and geographic areas. According to *Best Lawyers*, for the 2020 year, 5% of the attorneys in private practice in the United States were accorded this recognition.

Hodgson Russ is further pleased to announce that four of its attorneys have been honored as 2020 "Lawyers of the Year." Attorneys receive this designation "based on their extremely high overall feedback within specific practice areas and metropolitan regions." Benjamin M. Zuffranieri, Jr., Daniel C. Oliverio, James M. Wadsworth and Rick W. Kennedy have been recognized as "Lawyers of the Year" for the 2020 listing. The names of all selected 52 Hodgson Russ attorneys are noted below, along with the practice area or areas in which they are listed in the *Best Lawyers* guide.

John P. Amershadian Banking and Finance Law
Joseph L. Braccio Employment Law - Management, Labor Law - Management, Litigation - Labor and Employment
Peter K. Bradley Employee Benefits (ERISA) Law
Jane Bello Burke Health Care Law
Richard F. Campbell Corporate Law, Tax Law
Katherine E. Cauley Trusts and Estates
Paul R. Comeau Tax Law, Trusts and Estates
Robert B. Conklin Bet-the-Company Litigation, Commercial Litigation
Catherine B. Eberl Trusts and Estates
Amy J. Fitch Real Estate Law
Carol A. Fitzsimmons Tax Law
Robert B. Fleming Jr. Antitrust Law, Corporate Law
Robert J. Fluskey Litigation - Intellectual Property
Kenneth P. Friedman Corporate Law, Mergers and Acquisitions Law
Terrence M. Gilbride Construction Law, Real Estate Law
Kevin K. Gluc Trusts and Estates
Peter C. Godfrey Employment Law - Management, Labor Law - Management
Garry M. Graber Bankruptcy and Creditor Debtor Rights / Insolvency and Reorganization Law, Litigation - Bankruptcy
Pamela Davis Heilman Corporate Law, Mergers and Acquisitions Law, Nonprofit / Charities Law
Timothy W. Hoover Commercial Litigation, Criminal Defense: White-Collar
Thomas R. Hyde Trusts and Estates
Ranjana Kadle Patent Law
Richard W. Kaiser Employee Benefits (ERISA) Law
Kevin M. Kearney Commercial Litigation
Rick W. Kennedy Environmental Law (*Lawyer of the Year*)
Mark S. Klein Litigation and Controversy - TaxTax Law
Robert J. Lane, Jr. Commercial Litigation, Litigation - Intellectual Property, Litigation - Patent, Litigation - Securities
Alan J. Laurita Real Estate Law
Ryan J. Lucinski Product Liability Litigation - Defendants
Lance J. Madden Immigration Law
Michael E. Maxwell Commercial Litigation, Personal Injury Litigation - Defendants, Product Liability Litigation - Defendants
Elizabeth D. McPhail Employment Law - Management
Daniel C. Oliverio Bet-the-Company Litigation (Lawyer of the Year), Commercial Litigation
Robert J. Olivieri Corporate Compliance Law, Corporate Governance Law, Corporate Law, Mergers and Acquisitions Law, Securities / Capital Markets Law
Michael C. O'Neill Insurance Law
Mario J. Papa Corporate Law
Adam W. Perry Commercial Litigation
Hugh M. Russ, III Commercial Litigation, Product Liability Litigation - Defendants

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Gary M. Schober Corporate Law
A. Joseph Scott, III Public Finance Law
John L. Sinatra, Jr. Commercial Litigation
Daniel A. Spitzer Cleantech Law
Jeffrey C. Stravino Commercial Litigation
Melissa N. Subjeck Gaming Law
Jeffrey F. Swiatek Education Law
James C. Thoman Bankruptcy and Creditor Debtor Rights / Insolvency and Reorganization Law
Paul J. Vallone Corporate Law
James M. Wadsworth Trusts and Estates (Lawyer of the Year)
Amy P. Walters Employee Benefits (ERISA) Law
Sujata Yalamanchili Real Estate Law
John J. Zak Corporate Law
Benjamin M. Zuffranieri, Jr. Bet-the-Company Litigation, Commercial Litigation, Litigation - Construction (Lawyer of the Year), Personal Injury Litigation – Defendants

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