

## LEGAL HIGHLIGHTS

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ROBERT G. STEVENS, ASSOCIATE

## ROBERT STEVENS OBTAINS \$571,000 VERDICT IN FRAUD CASE

After a seven day trial, a Monmouth County jury awarded \$536,000 in damages and an additional \$35,000 in punitive damages against a couple charged with defrauding defendant wife's business partner in a school bus company. Bob Stevens successfully represented the defrauded partner as the jury found against the defendants on several claims including fraud, breach of contract, breach of fiduciary duty and conversion.

The client had concerns when told that the company was losing money notwithstanding revenues exceeding projections. During the course of the trial, Bob demonstrated that defendant wife opened separate bank and credit card accounts and diverted funds to start another bus company. It was also shown that defendant husband was the recipient of a large amount of the diverted money to which he was not entitled. Bob further convinced the jury through a paper trail of bank records and credit card receipts that defendants' claim was untrue that the funds at issue were used to support the client's business interests.

The jury deliberated for several hours before finding for Bob's client and awarding damages.

## CRAIG HUBERT APPOINTED TO STATE BAR ASSOCIATION BOARD OF TRUSTEES

Partner Craig Hubert has been appointed as the Mercer County representative to the New Jersey State Bar Association's Board of Trustees. The Association is a voluntary organization of more than 18,000 members that seeks to foster professionalism and pride in the practice of law.



CRAIG J. HUBERT, PARTNER

Craig has long been involved with the State Bar Association having been a member for 20 years and recently concluding six years of service on the NJSBA Judicial and Prosecutorial Appointments Committee as Mercer County's sole representative. The role of that committee is to investigate and make recommendations to the Governor on those individuals nominated to a position of Superior Court Judge or County Prosecutor.

In addition to his commitment to the State Bar Association, Craig has been involved in the Mercer County Bar Association for his entire career, holding several offices in that organization and serving as President in 2005.

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LIONEL J. FRANK, PARTNER

## LIONEL FRANK WINS NEW JERSEY FUNERAL DIRECTOR REGULATIONS TRIAL

Lionel Frank successfully represented a corporate client in a very contentious five (5) day jury trial alleging violation of a New Jersey statute regulating funeral directors. The dispute pertained to the statutory obligations imposed on a funeral director in dealing with an individual who claims to have the right to control a funeral.

The statute in question, N.J.S.A. 45:7-95 provides, "A funeral director may permit the funeral... of human remains on the written authorization of a person who claims to be, and is believed to be, a person who has the right to control the funeral... A funeral director shall not be liable for the funeral... unless it had reasonable notice that the person did not have the right to control the funeral... A person who signs an authorization for the funeral... warrants the truth of the facts stated . . . and the authority to order the funeral... A funeral director shall not be liable for the funeral . . . unless it has reasonable notice that the representations were untrue or that the person lacked the right to control the funeral..."

The case emanated from a dispute between divorced parents about the funeral arrangements and cremation of their adult son. The father's claims against the funeral home were rejected by the jury, which found in favor of the funeral home in reasonably relying upon the representations of the mother that she had the right to make arrangements for the funeral of her son and in rejecting the father's claims that he provided reasonable notice to the funeral director of his objections to the funeral arrangements and cremation. The jury returned a unanimous verdict in favor of our client and rejected Plaintiffs' claims for intentional and negligent infliction of emotional distress.

**FOR ASSISTANCE IN COMPLEX LITIGATION,** *Contact Szaferman Lakind.*

*Hubert continued...*

In his practice, Craig specializes in representing plaintiffs in complex personal injury matters. His peer recognition includes:

- *Attorney of the Year*, Mercer County American Inn of Court
- *New Jersey Super Lawyer*®, 2005 - 2014
- *U.S. News & World Report*, "Best Lawyers™" 2013 and 2014
- Certified Civil Trial Attorney, NJ Supreme Court
- Certified Criminal Trial Attorney, NJ Supreme Court

Of his NJSBA appointment Craig observed, "Having thoroughly enjoyed my previous volunteer roles with the state and local bar, I am excited to serve the lawyers and judiciary of this state with diligence and pride as a member of this 115 year-old organization. I am humbled to be selected to the seat occupied by this firm's Managing Partner, Barry Szaferman, less than a decade ago."



DANIEL S. SWEETSER, PARTNER

## DAN SWEETSER OBTAINS WHISTLEBLOWER VERDICT FOR FIRED CEO

After five years of extremely contentious litigation and a 13-day jury trial in Essex County, Dan Sweetser recently obtained a six-figure jury verdict in favor of his client under the New Jersey Conscientious Employee Protection Act ("CEPA"), also known as the "Whistleblower" law.

Dan's client, the company CEO, was fired in the midst of the 2007-2009 economic downturn for complaining to his employer that it was in violation of the employer's fiduciary duty to inform the company's primary creditor, a bank to which it owed \$17,000,000, of information regarding offers to buy the company which would result in satisfying the loan. The company's Board of Directors ignored Dan's client's verbal complaints. On January 2, 2009, the client sent an email to the Board detailing his complaint and informing it of his strong belief that the company was in violation of the law. The Board voted to fire him 5 days later.

New Jersey's Whistleblower law protects employees who report or complain about actions by their employers that they reasonably believe to be illegal. The jury deliberated for four hours before returning its verdict in favor of the client. In addition, the decision entitles the client to reimbursement of his attorneys' fees and expenses to prosecute the claim.

Dan observed that in his twenty plus year career he never represented a client in a more contentious matter. The defendant employer utilized two law firms in defending the matter and claimed that the client was fired for good cause and not for "whistleblower" activities. During the course of the trial Dan demonstrated that the employer's assertions regarding the basis for the dismissal were merely a pretext, thereby justifying the jury verdict.

**IF YOU KNOW SOMEONE IN A CHALLENGING WORKPLACE SITUATION, CONSULT AN ATTORNEY.** *Contact Szaferman Lakind today.*

## MICHAEL PAGLIONE SECURES \$850,000 WORKERS' COMPENSATION SETTLEMENT



MICHAEL R. PAGLIONE, PARTNER

Firm Partner Michael Paglione represented an employee of a Mercer County based trucking and safe company who was severely injured while delivering a safe to a jeweler in Perth Amboy. The \$850,000 settlement was agreed to by defendants just prior to proceeding to trial.

Michael's client sustained serious and permanent injuries to his shoulder, elbow, wrist, fingers, leg and spine as a result of a safe door falling from a pallet jack during delivery. The firm retained the services of an engineering firm to evaluate the circumstances surrounding the event that caused the injuries. The engineering report revealed that the ramp utilized to accommodate the installation of the safe violated the New Jersey Barrier-Free Sub Code (N.J.A.C. 5:23-7) and the International Building Code of 2006. As a consequence, Michael was able to substantiate that his client's workplace injuries were not caused by employee negligence.

The client's injuries required several surgeries in addition to the x-rays, arthrograms and MRIs necessary to determine the extent of those injuries. Michael used the services of both an orthopedic specialist and a psychologist to determine the physical and emotional impact of the event on his client. In addition, the firm employed an economic expert to prepare a report on the value of lost future income resulting from the client's injuries.

**INJURED ON THE JOB, SPEAK TO AN ATTORNEY WHO HAS EXPERIENCE WITH COMPLEX SITUATIONS.** Contact *Szaferman Lakind's Personal Injury group.*

## SZAFERMAN LAKIND SUPPORTS CASA IN 5K FUNDRAISER

Court Appointed Special Advocates (CASA) is an independent, non-profit organization committed to advocating for the interests of abused and neglected children. CASA works through trained community volunteers to ensure that needed services and assistance are made available while helping to move children towards safe and permanent homes.

Attorneys Scott Borsack, Robert Panzer, Tom Manzo, Kathleen O'Brien and Melissa Ruff-Chimbangu all participated in the 2014 CASA Kids Superhero 5k Run this past April 26 at the Princeton Pike Corporate Center.

## SECURITIES ATTORNEYS PARTICIPATE IN MIDJERSEY CAPITAL FINANCING PROGRAM



GREGG E. JACLIN, PARTNER



ERIC M. STEIN, OF COUNSEL

On May 13, the MIDJersey Chamber of Commerce and the MIDJersey Center for Economic Development presented a program to area business leaders on capital financing, restructuring, mergers and acquisitions and other financial and accounting issues.

This one-time event was open to organizations of all sizes and industries seeking information and access to alternative options for raising capital in today's challenging marketplace.

The event was held at The Westin Princeton at Forrestal Village and included panel discussions on:

- Capital markets and funding alternatives
- Non-traditional funding sources
- Initial Public Offerings, Reverse Mergers
- Legal and accounting aspects of alternative funding
- Is "Going Public" a possibility for your business?



The event was moderated by Reserve Capital Group's Managing Director, Michael Schreck, and joining Szaferman Lakind attorneys Partner Gregg Jaclin and Of Counsel Eric Stein on the panel were James Bartolomei, NJ Principal, and Michael Pucciarelli, NJ Principal, both of the accounting firm Hill, Barth & King, LLC.

**WANT TO LEARN ABOUT BUSINESS GROWTH OPTIONS AND ACCESS TO CAPITAL?** Contact *our Securities Group today.*

# THE THOUGHT POLICE: PROTECTING YOUR INTELLECTUAL PROPERTY

As the importance and value of intellectual property increases as a driving force within our economy, most businesses have come to realize the necessity for taking prudent steps to protect it – namely, to keep others, typically competitors, from using or stealing their intellectual property. After all, intellectual property is property – an intangible asset – and unless protected and enforced, may be lost or severely compromised. This article addresses some of the notable benefits of adopting basic measures to protect your intellectual property.

Consider trademark registration on the Principal Register of the United States Patent and Trademark Office (USPTO). Trademark rights accrue under the law with use of a mark for particular goods or services. Indeed, registration with the USPTO is not necessary to claim rights to the mark. So, why register?

Registration carries many benefits. First, the registration is prima facie evidence of the validity of the registered mark, of the registrant's ownership of the mark, and of the registrant's exclusive right to use the registered mark. In an action to enforce rights under an unregistered mark, the owner would have to prove these elements. In addition, registration is constructive notice of a claim of ownership, eliminating any justification or defense of good faith adoption and use made after the registration date. Another major benefit is that after five (5) years of registration, the registration may be made incontestable, providing even greater rights. The registration may also be filed with U.S. Customs Service to prevent importation of infringing or counterfeit goods and registration also allows a registrant to recover up to treble damages for infringement of its mark. The relatively inexpensive cost for registering a mark is more than offset by the legal benefits received through registration.

Copyright registration is another measure that carries numerous benefits. A copyright interest accrues to the creator of a work as soon as the work is fixed in a medium. For purposes of the copyright statute, a creative work is anything from a graphic design, artwork, photograph, music, video and software code – even the design of a semiconductor chip (mask work). As with trademarks, a copyright work need not be registered in order for ownership rights to accrue to the creator of the work. However, as with trademarks, registration has significant benefits.

The major benefit is the right to sue for infringement of the copyright work. Before an infringement action may be commenced in federal court, registration is necessary. In addition, an appropriately and timely registered copyright entitles the owner to seek statutory damages. Without a timely registration, a copyright owner is limited in an infringement action to actual damages, which are notoriously difficult to prove. However, when registration of the work is made within three months of the work's publication or before the infringement occurs, the



(L TO R), RICHARD A. CATALINA, OF COUNSEL, & LIONEL J. FRANK, PARTNER

copyright owner may elect statutory damages and seek attorneys' fees. As statutory damages are assessed by the court in its discretion based on a number of factors and may be as much as \$150,000 per work, per incident of infringement, time is critical in registering the work with the U.S. Copyright Office. Again, the plaintiff need not prove actual damages – only that its registered work was infringed by the defendant. Lastly, registering a copyright work provides public notice and legal evidence of ownership and validity of your copyright interest in the work. These are all significant legal benefits.

Patent protection has its benefits, too, but exactly what does a patent protect? Most would say that it protects an invention and provides the inventor with the exclusive right to use the invention. That is not entirely accurate. In fact, the notion that a patent provides the inventor or patentee with the exclusive right to use the invention is a misconception. In fact, a patent actually provides the inventor or patentee with the right to exclude others from making, selling, using, importing, etc., the invention. This subtle difference has profound implications.

Suppose a patent is obtained by an inventor on an improvement to existing technology covered by a patent owned by a third party. The patentee cannot actually use what is covered in its patent, because doing so would infringe the patent owned by the third party. However, because the right of a patent is not a right of use, but a right of exclusion, the patentee may enforce its patent to prevent the third party from using the newly patented improvement. This creates enormous strategic opportunities for the patentee. Licensing becomes critical, including cross-licensing and the potential for a strategic partnership between the two parties – opportunities (benefits) that did not exist before. As such, businesses should always view their emerging technologies in terms of not what it only means to them, but what it may mean to other businesses.

Obviously, this is not exhaustive – there are many additional reasons for protecting intellectual property, including the enhanced value it adds to the business, the ability to leverage relationships, greater exit strategies and more. Presented here is just a sample of the many benefits that are derived by implementing basic measures to protect maybe your most valuable asset, your intellectual property.

## FIRM ADDS ATTORNEYS IN PERSONAL INJURY AND SECURITIES PRACTICES



### BRIAN A. HEYESEV

ASSOCIATE

Recognized among National Trial Lawyers as Top 40 Under 40, Brian joins the firm's Personal Injury practice. He has, to date, focused in the areas of criminal and municipal defense. His extensive trial experience will be a great asset in assisting injured parties in civil trials.

Brian earned a B.A. from Lafayette College and a J.D. from the University of New Hampshire School of Law. He has been admitted in the State of New Jersey and U.S. District Court, District of New Jersey.



### YARONA Y. LIANG

ASSOCIATE

Yarona joins our Securities Group with a focus in cross-border PIPEs, reverse mergers and private placement offerings.

Yarona graduated from the Benjamin N. Cardozo School of Law, has been admitted in the State of New York and speaks English, Mandarin Chinese and Cantonese.



### STEVEN A. LIPSTEIN

ASSOCIATE

Steven concentrates his practice in securities and corporate law, representing public and private companies engaging in financing and securities offerings.

He is admitted to the bar in New York and New Jersey and he is a graduate of Johns Hopkins University and received his J.D. from Fordham University School of Law.



(L TO R): BEN BRANCHE, ASSOCIATE,  
TOM MANZO, ASSOCIATE, KATHLEEN O'BRIEN, ASSOCIATE

## SZAFERMAN LAKIND SUPPORTS RESCUE MISSION OF TRENTON EVENT

The Rescue Mission of Trenton "is the agency in the City of Trenton that serves the truly needy men and women who have no place to turn for shelter, food and clothing. The Mission provides a safe, clean, warm refuge for the homeless, the hungry, the transient and the addicted."

As Spring arrived in the Trenton Area, Szaferman Lakind proudly took to the miniature links for a good cause, sponsoring a golf hole and participating in the Rescue Mission of Trenton's 10th Annual Adam Shanks Miniature Golf Tournament.

The event included a silent auction, gift basket raffle, trophies, awards and a barbeque.





## SECURITIES PRACTICE RECEIVES OTCQX APPROVAL, RANKS 5<sup>TH</sup> IN TOTAL EQUITY PRIVATE PLACEMENT TRANSACTIONS FOR 1<sup>ST</sup> QUARTER 2014

Szaferman, Lakind, Blumstein & Blader, P.C. recently became a Designated Advisor for Disclosure (DAD) for OTCQX U.S. and a Principal American Liaison (PAL) for International OTCQX through acceptance by OTC Markets Group, which operates a financial marketplace platform for nearly 10,000 over-the-counter securities. According to OTC Markets Group, these designations are reserved for firms with a high level of expertise and standards.

DADs serve principally as professional advisors on creating investor demand, in providing a professional review (but not affirmation) of a company's disclosure and by assisting companies in discerning information that is material and should be provided to the marketplace. U.S. domiciled issuers traded on OTCQX are required to appoint and retain a DAD.

The role of PALs for non-U.S. companies is similar to that of DADs for domestic ones. PALs are appointed by foreign companies listed on a qualified stock exchange. They serve as a liaison between the issuer and the U.S. market and they review and affirm that a company seeking the opportunity to be traded on the OTCQX tier of over-the-counter markets meets the prerequisites.

In other Securities Practice news as reported by PlacementTracker, a service of Sagient Research, Szaferman Lakind ranked in the top 5 law firms representing issuers based on the number of Equity Private Placement transactions in the United States, January - March 2014.

### INTERESTED IN LEARNING HOW YOUR ORGANIZATION CAN LOCATE MORE CAPITAL FOR GROWTH?

Contact Szaferman Lakind's Securities Law Group today.

## BRIAN PAUL AUTHORS *AMICUS CURIAE* BRIEF ON PERMANENT ALIMONY REQUIREMENT



BRIAN G. PAUL, PARTNER

Partner Brian Paul, at the request of the New Jersey State Bar Association (NJSBA), authored its *amicus curiae* brief to the N.J. Supreme Court in the case of Gnall v. Gnall, an important case dealing with the length of alimony awards in marriages of 15 years or

longer. The issue in Gnall is whether the court should create a bright-line rule requiring courts to award permanent alimony, and precluding an award of alimony limited to a fixed term (i.e. "Limited Duration Alimony"), in marriages exceeding 15 years in duration.

In the brief, Brian argued that since the 1830s New Jersey Courts have repeatedly resisted the use of mathematical formulas or bright-line rules to determine the amount or duration of an alimony award. He noted that the courts have consistently recognized that marriages of comparable length and similar spousal earning capacities often require significantly different alimony awards to ensure the "fit, reasonable and just" result required by New Jersey's alimony statute. The New Jersey Supreme Court stated more than 30 years ago that "the length of the marriage and the proper amount or duration

of alimony do not correlate in any mathematical formula." New Jersey's appellate courts have regularly reaffirmed the well-settled precedent that a trial court must analyze all of the statutory factors, not just length of marriage, in order to determine whether the public policy reasons for an award of permanent alimony are present.

Brian emphasized that both the length *and* extent of a spouse's economic dependency are crucial factors in a permanent alimony analysis, as the public policy goal of permanent alimony is to ensure that the dependent spouse is treated fairly and properly at the dissolution of the marital partnership, and that a payor spouse is not unfairly punished through such an award. In the brief, the NJSBA urged the New Jersey Supreme Court to continue the long tradition of requiring our courts to carefully examine the particular facts of the case through a thorough analysis of all statutory factors, and not to order the use of a mathematical formula or bright-line rule when determining whether permanent alimony is warranted.

Oral argument on this case has not yet been scheduled.

**IF YOU HAVE A FAMILY MATTER REQUIRING AN ATTORNEY EXPERIENCED IN MATRIMONIAL LAW,**  
Contact Szaferman Lakind today.



DAN GRAZIANO, PARTNER



BEN BRANCHE, ASSOCIATE

## ATTORNEYS DAN GRAZIANO AND BEN BRANCHE TO PROVIDE NON-PROFIT LEADERSHIP ROLE PRESENTATION

The United Way of Greater Mercer County (UWGMC) has identified a need for employee and volunteer executives of non-profit organizations to understand the potential for personal liability risks associated with their roles.

To that end, Szaferman Lakind is partnering with UWGMC and Borden Perlman Insurance in providing a breakfast forum to educate non-profit executives, members of non-profit boards and those individuals interested in joining or organizing a non-profit board. The event will be held at Greenacres Country Club in Lawrenceville on July 10th beginning at 8:00 a.m. Attendance is free of charge.

Firm attorneys Dan Graziano and Ben Branche will be sharing their extensive experience on the issues. Co-sponsor Borden Perlman will be making a presentation entitled "Non-Profit Directors & Officers Coverage," designed to provide insight on liabilities, coverage highlights and types of claims.



### United Way of Greater Mercer County

**TO LEARN HOW YOU CAN HELP YOUR COMMUNITY,**  
*Please visit [UWGMC.org](http://UWGMC.org) today.*

## RICHARD CATALINA APPOINTED TO NJ TECHNOLOGY COUNCIL PEER NETWORK



(L TO R): TOM BARTOLUCCI, DIRECTOR OF WEB DEVELOPMENT-BILLTRUST; BRUCE KRATZ, VP RESEARCH & DEVELOPMENT-SPARTA SYSTEMS; RICHARD CATALINA, OF COUNSEL-SZAFERMAN LAKIND; JAMES EICHMANN, CIO-BILLTRUST.

Szaferman Lakind congratulates Richard Catalina on his appointment to the New Jersey Technology Council's Software Engineering Leaders Peer Network. In his practice, Richard focuses principally on intellectual property, internet and technology.

The goal of the peer network is to provide opportunities for Software Engineering Executives (Director, VP or equivalent level) responsible for the development of software product(s) to exchange ideas and develop partnerships where possible. Topics explored may include management (i.e. engineers, vendors and developers, outsourced service providers), processes, methodologies and tools (i.e. infrastructure, lifecycle, budgets and tracking, intellectual property and patents), and emerging technologies (i.e. cloud computing, mobility, social media, big data, business intelligence).



When asked about his recent appointment, Richard advised, "Participating as a member of the NJTC's Software Engineering Leaders Network presents our firm with the unique and exciting opportunity to closely interact with top thought leaders in the software industry and openly discuss the issues and challenges facing this fast-paced technology, particularly as it increasingly translates to mobile and cloud-based platforms."

**TO LEARN MORE OR TO GET INVOLVED WITH EMERGING TECHNOLOGIES,** visit [NJTC.org](http://NJTC.org) or contact Szaferman Lakind today.



JANINE G. BAUER, PARTNER

## JANINE BAUER REPRESENTS AARP IN SETTLEMENT OF PSEG RATE CASE

Representing AARP's 1.3 million members in New Jersey, Partner Janine Bauer recently helped achieve a significant victory for consumers, saving them a potential \$1.6 billion in electric and natural gas charges. Ms. Bauer, together with other interveners and the State's ratepayer advocate, tried the case at the Board of Public Utilities for six days before achieving a settlement that requires PSEG to make \$1 billion worth of investments to prevent and lessen power outages in major storms like Sandy and Irene. PSEG had sought to charge consumers \$2.6 billion for system modifications. Such an increase would have raised electric distribution charges, a component of its customers' overall bill,

by 20%. The settlement saved consumers \$1.6k billion in rate increases over the next several years and ensured that consumers will pay for only those improvements necessary to achieve greater reliability and resiliency.

At trial, Janine countered PSEG's "Energy Strong" public relations campaign with solid evidence showing the weak factual basis for many projects that PSEG wanted consumers to pay for, even though most consumers would not benefit, such as switching gas pipelines to high pressure, which can reduce small leaks but may be catastrophic if cut accidentally.

**JANINE'S PRACTICE INCLUDES SPECIALIZATION IN ENVIRONMENTAL LAW. IF YOU HAVE A LEGAL SITUATION THAT INCLUDES PROTECTION OF OUR PLANET,** *Contact Janine and Szaferman Lakind today.*

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- *Founded 1977*
- *Full-service Law Firm*
- *40+ Attorneys*
- *100 Employees*
- *Strength & Resources of Large Firm*
- *Personal, Caring and Friendly Environment*

AV-Rated by Martindale-Hubbell® and among the Best Law Firms 2014, by U.S. News & World Report, the law firm of Szaferman Lakind is a full-service law firm with a multi-faceted team of attorneys who provide legal representation for families, businesses, investors and individuals.

- *Commercial and Litigation Law*
- *Family and Matrimonial Law*
- *Personal Injury Law*
- *Workers' Compensation*
- *Business Law*
- *Securities Law*

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