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JULY 2015

LEGAL HIGHLIGHTS

Also Inside...

SZAFERMAN LAKIND SUCCESSFUL IN WORKPLACE DISCRIMINATION CASE BEFORE APPELLATE COURT

NATHAN M. EDELSTEIN
Partner

Appearing before the New Jersey Superior Court Appellate Division, Partner Nathan M. Edelstein achieved a reversal and vacation of a decision of the Civil Service Commission in which a hearing was denied in a sexual discrimination and hostile work environment case brought against the Department of Human Services (DHS). The court remanded the matter for a hearing in the Office of Administrative Law.

Our client, a psychologist at a State of New Jersey psychiatric facility, filed an administrative complaint alleging that she had been subjected to violations of the State Policy Prohibiting Discrimination in the Workplace (State Policy), and unlawful retaliation against her for having filed the complaint. The alleged harassment and discrimination by her supervisor included unwanted touching, being "knocked out of the way," having charts "grabbed" away from her, belittling and rude comments, and pervasive discrimination against female staff. After the complaint was filed, DHS allegedly retaliated by threatening a position transfer, giving a bad performance evaluation after twenty-seven years of good performance reviews, denying our client's request for vacation time and charging that she violated time rules.

The Equal Employment Office ("EEO") in DHS investigated the complaint and found it unsubstantiated as not "corroborated." The case was appealed to Civil Service, which affirmed the DHS finding that there were no material issues of disputed fact and that the complaint "could be rejected without a hearing because factual allegations were not corroborated."

The Appellate Division reversed and vacated the Civil Service decision and remanded the case for a hearing. The Appellate Court noted that the State Policy calls for a hearing if factual allegations raise material and controlling disputes of fact; it does not require they also be corroborated. The court concluded that if corroboration were a requirement for a hearing, any state agency could avoid a hearing and liability where only the complainant witnessed the policy violations. Corroboration is relevant to determine credibility, but credibility should be determined at a hearing.

On May 12, 2015, the Appellate Court reversed the order of Civil Service and remanded the matter for a hearing.

IF YOU ARE A VICTIM OR KNOW A VICTIM OF DISCRIMINATION,
CONTACT US TODAY.

BOB LYTLE ASSISTS MENTALLY ILL PATIENTS FACING CRIMINAL CHARGES

ROBERT E. LYTLE
Partner, Executive Committee

Recently, Partner Bob Lytle represented two criminally charged clients who were facing lengthy terms of incarceration, both of whom suffered from serious forms of mental illness and had no history of prior arrests. As a former assistant prosecutor with an understanding of the processes available to defendants who suffer from mental disorders, Bob was able to skillfully navigate each case through a criminal justice system designed to punish, rather than treat or rehabilitate, the offender. In both cases Bob's clients were charged with very serious offenses but in each matter the mitigating circumstance, mental illness, resulted in treatment for the client's condition rather than a period of incarceration.

The New Jersey Criminal Justice System is an elaborately designed piece of machinery intended to protect the public from violations of the criminal code and to arrest, prosecute and, upon conviction, impose penalties, which can include incarcerating the offender where appropriate. In addition to criminal trials for those charged with serious offenses, the system provides for other dispositions under the proper circumstances.

In the first matter, Mr. Lytle represented a defendant facing three criminal charges, the most serious being Aggravated Manslaughter, which carries a maximum period of incarceration of 30 years. Bob's client had a long history of mental illness dating to childhood. The prosecution and defense agreed upon a psychiatric evaluation in which it was determined that, due to mental illness, the client was incapable of forming the intent necessary to commit the criminal acts for which he was charged. Based upon the client's history of mental illness, as well as the psychiatrist's conclusion regarding state of mind, the client was acquitted of the offenses by reason of insanity. Rather than incarceration, a hearing was conducted to determine the manner in which the client's mental condition should be addressed. At the conclusion of that hearing the client was released under carefully crafted conditions ensuring that release to the community posed no threat to public safety.

The second matter involved a parent charged with Endangering the Welfare of a Child as a result of operating a motor vehicle while under the influence of controlled substances. Bob's client faced a maximum penalty of 10 years incarceration. The client, whose medical history included a diagnoses of both Bipolar Disorder and Post Traumatic Stress Syndrome, was being treated by medical professionals with a variety of prescription medications. The amount and number of prescription medications contributed measurably to the client's condition while operating a vehicle at the time of the incident. Given these special circumstances, and by marshaling the assistance of mental health professionals, Bob managed to convince the prosecutor and the court that his client was a suitable candidate for Pretrial Intervention Program (PTI), which is available to first-time offenders charged with non-violent crimes. PTI allows appropriate candidates to avoid a criminal conviction, along with the associated consequences, by diverting them from the normal criminal justice process into a program of court supervision that often includes counseling and other forms of support.

An experienced criminal lawyer, Mr. Lytle recognizes that the criminal justice system, which is not designed to deal with those who suffer from mental illness, sometimes falls short in serving both the offender and the public's interest in ensuring that these individuals receive the treatment they need to prevent them from reoffending. In these two instances, Bob's ability to manage the criminal justice process to develop solutions designed to treat the underlying mental illness, rather than incarcerate, proved beneficial to our clients, their families and the general public.

LEARN MORE ABOUT US

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

AV-Rated by Martindale-Hubbell® and among the *Best Law Firms* 2014 and 2015, by *U.S. News & World Report,* 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.

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

MICHAEL PAGLIONE SECURES $437,500 FOR TEENAGER INJURED AT SKATE PARK

Michael Paglione represented a youth who was injured when a set of bleachers collapsed during a skate board event at Veteran's Park in Hamilton Township, Mercer County. The event was co-sponsored by X-Treme Funktion Skateboard Shop and Hamilton Township.

Thirty teenagers were positioned for a photograph on the top seat of the bleachers and asked to hold banners for X-Treme Funktion and Okoto Apparel, an online skateboard apparel company. The bleachers became top-heavy and toppled over onto the client. The bleachers were not anchored in any way.

The client was the only injured party, sustaining a collapsed lung, a broken rib and a fractured vertebra. The youth underwent spinal surgery, where doctors affixed two titanium rods to stabilize the spinal fracture.

Mr. Paglione, on behalf of the client, brought suit against:

- Hamilton Township
- X-Treme Funktion Skateboard Shop
- Okoto Apparel
- Ben Shaffer Associates – manufacturer of the bleachers

Each of the defendants contributed to the overall settlement of $437,500.

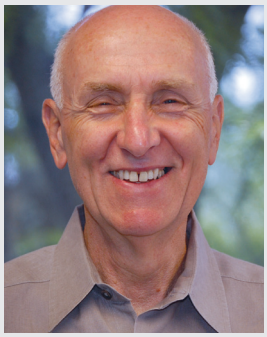
MICHAEL BROTTMAN HELPS TEACHER GAIN PENSION RIGHTS

MICHAEL BROTTMAN
Attorney

Attorney Michael Brottman recently received a decision from the Office of Administrative Law reversing the decision of the Board of Trustees of the Teachers' Pension and Annuity Fund denying his client's application for disability retirement benefits.

The Petitioner was employed as a special education teacher. She suffered from a chronic, progressive neurological condition that disabled her from performing the essential duties of a special education teacher. Her application for disability retirement benefits was denied by the Teacher's Pension and Annuity Fund. An appeal of that decision was taken to the New Jersey Office of Administrative Law where Mr. Brottman was able to have the denial of her application for disability retirement benefits overturned.

STEVEN BLADER REPRESENTS AMERICAN INJURED IN FRANCE



STEVEN BLADER
Partner, Executive Committee

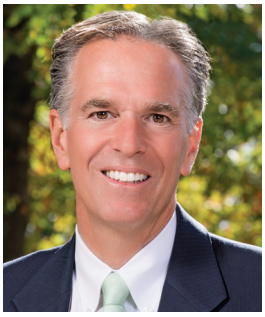
James Collins of Moorestown, New Jersey, did not enjoy his visit to the South of France. When Jim and his wife were vacationing in Cassis, France, in 2013, Jim was hit by a car backing out of a parking spot, breaking Mr. Collins' hip.

Mr. Collins was referred to Steven Blader, Esquire, to handle his personal injury claim. The case was challenging not only because it was venued in France. It was governed by French law, which is very different than New Jersey personal injury law. In France, a trial by jury does not ultimately solve personal injury claims. Instead, France has a chart that lists values for every type of injury.

Each side hires a physician expert to evaluate the injury and identify the value of the injury based on the injury chart. If the parties cannot agree which medical expert's opinion to follow, the Court will appoint a neutral medical expert to render the decision.

After the service of medical expert reports for each side, Mr. Blader hired a French attorney as local counsel to negotiate on behalf of Mr. Collins. The negotiations addressed the issues of the severity of Mr. Collins' injury, his income loss, and out-of-pocket medical expense. In inimitable French fashion, the negotiation session turned into a four hour lunch, with a nice bottle of Bordeaux. At the conclusion of nearly two months of sharing arguments and information, Mr. Collins was "thrilled" to learn that his case settled for 284,000.00 Euros ($314,000.00). The settlement was achieved without Mr. Collins having to return to France for medical examinations or to provide deposition testimony.

CRAIG HUBERT SETTLES CLAIM AGAINST NURSING CARE FACILITY FOR $265K



CRAIG J. HUBERT
Partner, Executive Committee

Personal Injury attorney Craig Hubert recently reached a settlement with a Nursing Care facility based on a claim that the facility failed to implement preventative protocols with a resident identified as having significant risk of falling. The victim was an elderly person transferred from a treatment facility to the nursing home in December of 2009. During the client's stay at the treatment facility, staff documented falls on three separate occasions during the two week period prior to the resident's relocation to the nursing home. According to records, the nursing home was made aware of the client's medical history including unsteady gait and risk of falling.

Within one week of transfer, the client suffered a fall at the nursing home resulting in a fractured hip that required surgery. The client was released from the hospital three days after the surgery and returned to the nursing home. Shortly after the resident's return, the Care Plan for the client was revised to upgrade the level of attention in order to minimize the risk of additional falls.

Two weeks after the resident's return from the hospital, the victim suffered a second fall after being left unattended and unsecured in a wheelchair. Our elderly client was found lying on the floor and complaining of pain in the lower portion of the same leg. At the hospital it was confirmed that the client sustained a new femoral fracture which required a second surgery.

In the complaint against the nursing home, Mr. Hubert asserted, among other deficiencies, that the facility failed to meet its obligations under the "Nursing Home Bill of Rights," which imposes a duty on nursing homes to care for its residents including an obligation to ensure that resident environment remains as free of accident hazards as is possible.

Craig commented that this victory is not only for our clients but for all those elderly residents who will benefit from changes in policy and procedures at the facility

IF YOU OR A FAMILY MEMBER IS A VICTIM OF SUBSTANDARD NURSING HOME CARE, CONTACT CRAIG TODAY.

MICHAEL PAGLIONE ACHIEVES SETTLEMENT REGARDING DEFECTIVE FIRE SUPPRESSION SYSTEM

On behalf of an area farm and garden center, Szaferman Lakind Partner, Michael Paglione, secured a settlement of $220,000 for damages to the building and inventory caused by a faulty fire suppression system.

MICHAEL PAGLIONE
Partner

Mr. Paglione asserted in the claim that the sprinkler system, installed in early 2005, lacked corrosion protection and that residual water from routine system testing caused extensive chemical corrosion over time. In addition, sections of the pipes were not properly pitched to yield efficient draining of the system. Consequently, the farm center suffered losses to inventory as well as a reduction in usable retail space within the complex.

SZAFERMAN LAKIND PROTECTS THE RIGHTS OF BUSINESSES AND OUR COMMUNITY. IF YOU HAVE BEEN TAKEN ADVANTAGE OF, CONTACT US TODAY.

Best Lawyers® BEST LAW FIRMS U.S.News & WORLD REPORT 2014

Best Lawyers® BEST LAW FIRMS U.S.News & WORLD REPORT 2015

TO SUE, OR NOT TO SUE, THAT IS THE QUESTION

AN ARTICLE BY: BETSY SWEETSER, OF COUNSEL

BETSY SWEETSER
Of Counsel

The pitfalls of business litigation are many – it is contentious, stressful, protracted, expensive, outcomes - both along the way and at conclusion - are unpredictable, and sometimes judgments prove uncollectable. Like it or not, if you get sued, you had better defend or risk a default judgment. If, however, you find yourself in the driver's seat, don't jump into the lawsuit fire without first undertaking a comprehensive risk-reward analysis with your lawyer.

Issues to discuss with your attorney include: How good or bad are your claims, and how much are your potential damages, best case scenario? What vulnerabilities, if any, do you have that might be revealed in discovery, and what is the potential for harm from that exposure? What is the likelihood of the defendant countersuing? What are the settlement prospects, and when? How many years will it take for the case to get to trial? What are the estimated legal fees and what is your payment obligation along the way? Are you likely to be able to collect on a judgment? Can you expect positive/negative publicity? What toll will litigation take on the physical and emotional well-being of yourself, your family, and/or the financial health of your business?

To sue or not to sue is a significant business decision.

Anger and emotion should not have a place in the mix.

Candid, pre-suit evaluation of the above subject matters, and others your attorney will address based on your unique circumstances, is crucial to informed decision-making.

If it appears from the risk-reward analysis that filing a lawsuit is not your best course of action, speak with your lawyer about the numerous available alternative dispute resolution mechanisms.

SZAFERMAN LAKIND HAS AN AWARD-WINNING BUSINESS LITIGATION PRACTICE. IF YOU HAVE LEGAL QUESTIONS, CONTACT US TODAY.

JUDGE LINDA FEINBERG (RET.): SPRINGTIME SPEAKING ENGAGEMENTS

JUDGE LINDA FEINBERG (RET.)
Of Counsel

Judge Feinberg (ret.), Of Counsel, leads continuing education seminars and speaks regularly throughout the region.

This May, Judge Feinberg joined a distinguished panel of fellow Judges for an Ethics Committee Seminar hosted by the Mercer County Bar Association at Rat's Restaurant in Hamilton.

Additionally, in June, Judge Feinberg joined two Judges for a panel discussion at The New Jersey Association of Professional Mediators' Annual Advanced Civil and Divorce Mediation Seminars at The Imperia in Somerset, NJ for "The Judges of NJAPM: Perspectives Off the Bench."

PARTNER JANINE BAUER DELIVERS PROFESSIONAL DEVELOPMENT SPEECH DURING ASSOCIATION FOR JUSTICE ANNUAL CONVENTION

Partner Janine Bauer recently spoke to dozens of aspiring New Jersey attorneys during the New Jersey Association for Justice Annual Convention this past April in Atlantic City, NJ.

JANINE G. BAUER
Partner

Janine's speech, "Rainmaking for Women Lawyers" was included in the Women Attorneys track during the three-day annual legal professionals convention.

Ms. Bauer, a litigator with nearly three decades of experience, advised her NJAJ audience that "rainmaking" is a function of reputation, commitment, internal and external relationships and community service.

Janine is licensed to practice in New Jersey, New York, Pennsylvania, Florida and U.S. District Courts in both New Jersey and Pennsylvania.

HOLDERS OF FOREIGN FINANCIAL ACCOUNTS BEWARE

AN ARTICLE BY: SCOTT P. BORSACK, PARTNER

SCOTT P. BORSACK
Partner

With the passage of the Bank Secrecy Act the United States Department of Treasury was empowered to adopt regulations and enforce laws which require United States taxpayers (whether citizens or residents) to report bank accounts held outside of the United States over which they have control. The penalties for failing to disclose these accounts can be as much as 50% of the balance of each account for each year that a taxpayer fails to disclose the account. At that rate, two years of disclosure failure can consume the entire account. There are a host of other related civil penalties that could apply depending on the facts and circumstances of a particular account. Criminal penalties of $250,000 for each failure plus 10 years in jail are possibilities as well. Suffice it to say, the penalties are significant.

The law requires that taxpayers do two things at a bare minimum if they have some control or authority over a bank account in a foreign country. Several questions on Schedule B of the Form 1040 for individual taxpayers which force an individual to disclose that they have such accounts must be answered truthfully. That means that if a taxpayer has control or an interest in such an account, appropriate boxes must be checked on Schedule B. That will lead a taxpayer, or the paid return preparer to determine what additional forms must be included with the Form 1040. But that is not the end of the story. Taxpayers with such an account must also file an FBAR – Foreign Bank Account Report. At one time an FBAR could be filed in hard copy but now generally has to be filed on line with the Financial Crimes Enforcement Network or FinCen through their website which can be found at www.fincen.gov.

As if the penalties for failing to disclose these accounts were not enough, many taxpayers who find themselves on the wrong side of this law also have failed to report the income earned on these accounts. A significant income tax failure together with the reporting failure present real problems for taxpayers caught up in these problems. The Internal Revenue Service is not without some sympathy for these taxpayers, notwithstanding their brazen attempts to defeat multiple obligations to the United States Treasury. There have been several iterations of an amnesty program which has been widely successful at getting taxpayers to comply with their obligations. Foreign governments have instructed banks within their jurisdictions to comply with the information reporting demands of the United States Treasury and most United States taxpayers with accounts in foreign jurisdictions have heard from their foreign bankers that by the end of 2015 they expect to be reporting the existence of foreign accounts and income earned to the Internal Revenue Service. This has caused numerous taxpayers to begin to ask about their next step. Tax advisors over the past several months have noted a significant uptick in the pace of inquiries on this subject.

If you have one or more of these accounts and have not previously reported them to the United States Treasury, you have a limited period of time to get into the current amnesty program. Once the IRS learns of the disclosure failures as the result of information provided by foreign bankers, it is likely that amnesty will not be available. Under the present iteration of the program, taxpayers will pay a single penalty of 27.5% of the highest balance in their foreign accounts over an 8 year period, amend all tax returns to report previously unreported income, pay all income taxes on unreported income and pay interest and a 20% penalty on all income tax deficiencies. There is a well-defined process to apply for the amnesty program and IRS review has taken in some cases more than one year.

IF YOU OR SOMEONE YOU KNOW HAS AN UNREPORTED FOREIGN ACCOUNT, CONTACT SZAFERMAN LAKIND TODAY FOR QUALIFIED COUNSEL.

JUDGE STEPHEN SKILLMAN (RET.) REAPPOINTED TO STATE SUPREME COURT COMMITTEE

JUDGE STEPHEN SKILLMAN (RET.)
Of Counsel

The New Jersey State Supreme Court has reappointed Judge Stephen Skillman (ret)., Of Counsel, to a three-year term as Vice Chair of the Advisory Committee on Judicial Conduct (ACJC).

According to New Jersey Courts, the ACJC "was created in 1974 to assist the Supreme Court by investigating allegations of unethical judicial conduct and by referring to the Court those matters that the Committee considers to require public disciplinary action."

CYBER SECURITY: YOUR PERSONAL DATA

AN ARTICLE BY: RICHARD A. CATALINA, OF COUNSEL

RICHARD A. CATALINA
Of Counsel

Hacking, security breaches, cyber espionage and data integrity intrusions occur every day at an ever-increasing and alarming pace. In early June 2015, the U.S. government issued a series of statements confirming that it was the victim of a massive, coordinated cyber-attack purportedly originating in China. Reports first came from the IRS, then from the Office of Personnel Management. The names, addresses, social security numbers and passwords of every federal employee were accessed. Data reservoirs of taxpayer information were also infiltrated.

And, it's not just the federal government and large corporations that are victimized. Smart devices are now the norm – from cars, to mobile devices, to home appliances – all of which are connected to the global network, and thus, penetrable. Even more, home computer systems and company networks are comprised on a daily basis, often with the victims having no knowledge that their most sensitive information has been stolen. Social media – from email accounts to Twitter – are consistently hacked and identities stolen.

As most accessed information is not immediately used by the attackers or those who benefit from the hacks, the stealth nature of the problem is nothing more than a ticking time bomb. And unless one has been living "off the grid," everyone has been at risk. We have all been hacked, whether we know it or not. Worse yet, this does not take into account the massive dragnet and storage of all online communications and data conducted by the federal government. Every email, every text, every communication has been intercepted.

A mere 10-15 years ago, the average person was typically concerned only with ensuring that the antivirus software on a workstation or laptop computer was up-to-date. Today, however, an individual's online presence and personally identifiable information is ubiquitous to the point that is impossible to know where that information is stored or who is in possession of it. This is the reality of our times. Technology has outpaced our ability to secure it and protect the data it holds.

Since experts agree that the likelihood that portions of our personal identifiable information, including our Social Security numbers and other highly confidential information, have already been accessed without our knowledge, it is only a matter of time when that information will be used. Vigilance, therefore, must necessarily grow keener, and we must be smarter as to how much information we are willing to share online.

BUSINESS SECURITIES GROUP IN THE MARKETPLACE

PARTNER GREGG JACLIN DELIVERS "SEC: REGULATION A+" WEBCAST WITH OTCMARKETS' GENERAL COUNSEL

In March 2015, the Securities & Exchange Commission (SEC) amended "Regulation A" to become "Regulation A+". The initial rules were founded some ten years ago and designed to help small businesses and entrepreneurs gain access to business capital via shareholder investment. Since its inception, however, there have been a mere handful of companies that have capitalized on Regulation A.

Regulation A+, an evolution of its predecessor, eases reporting stipulations and regulations, empowering businesses by creating a less stringent path to gaining the growth capital they seek.

In late March of this year, Partner Gregg Jaclin joined OTCMarkets General Counsel in their New York City headquarters to provide an educational, :45-min webcast about Regulation A+ to an audience of over 170 participants including company executives, public and private investors, business securities attorneys and trade marketplace professionals.

Also, in late May, Gregg joined a panel of industry experts including NASDAQ and ROTH Capital Partners during MARCUM's 3rd Annual MicroCap Conference at the Grand Hyatt New York City. Title of the panel: "Uplisting to An Exchange: What Every Company Needs to Know Before, During and After Listing."

PARTNER GREGG JACLIN (FAR RIGHT) JOINS OTCMARKETS' GENERAL COUNSEL IN MANHATTAN, NYC, AS THEY PROVIDE WEBCAST ON RECENT SEC REGULATIONS

PARTNER GREGG JACLIN (FAR LEFT OF EXPERT PANEL) PARTICIPATES IN OPENING AT MARCUM MICROCAP NYC.

FIRM ANNOUNCES TWO NEW ATTORNEYS

JOHN O'LEARY
ATTORNEY

CHRISTOPHER S. MYLES
ATTORNEY

Szaferman Lakind continues its growth with the addition of two attorneys.

Associate John O'Leary, Esq. has joined the firm's Securities Group. From 2006 until joining the firm, John managed his own practice, representing corporate entities and partnerships in a wide variety of business transactions. John received his undergraduate from Temple University and his Juris Doctor (JD) from Quinnipiac University School of Law.

Christopher S. Myles, Associate, served as a paralegal with the General and Commercial Litigation Group of Szaferman Lakind while attending law school. His practice includes commercial litigation, environmental law and complex class actions. Chris completed his undergraduate degree at The College of New Jersey and received his Juris Doctorate (JD) from Seton Hall University School of Law.

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