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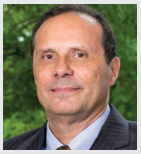
SPRING 2016

LEGAL HIGHLIGHTS

Also Inside...

SZAFERMAN LAKIND ANNOUNCES SEVEN SUPER LAWYERS™, TWO SUPER LAWYERS™ – RISING STARS

Super Lawyers



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FOUNDED IN 1977, SZAFERMAN LAKIND IS A NATIONALLY-RECOGNIZED, FULL-SERVICE, MULTI-FACETED TEAM OF MORE THAN 40 ATTORNEYS WHO PROVIDE LEGAL REPRESENTATION FOR BUSINESSES, INVESTORS, PROFESSIONALS, FAMILIES AND INDIVIDUALS.

For 2016, seven (7) firm attorneys have been accorded the designation of SuperLawyer™ and two (2) others have been identified as Rising Stars. The attorneys receiving this recognition practice in a wide range of areas including Business, Litigation, Family Law, Personal Injury, Class Action and Land Use & Zoning.

Per SuperLawyers.com/about, "Super Lawyers is a rating service of outstanding lawyers from more than 70 practice areas who have attained a high-degree of peer recognition and professional achievement. The selection process includes independent research, peer nominations and peer evaluations."

"The selection process for the Rising Stars list is the same as the Super Lawyers selection process, with one exception: to be eligible for inclusion in Rising Stars, a candidate must be either 40 years old or younger or in practice for 10 years or less. All attorneys first go through the Super Lawyers selection process. Those who are not selected to the Super Lawyers list, but who meet either one of the Rising Stars eligibility requirements, go through the Rising Stars selection process. While up to five percent of the lawyers in the state are named to Super Lawyers, no more than 2.5 percent are named to the Rising Stars list," according to Thomson Reuters.

Managing Partner, Barry Szaferman, Esq. observed: "It is gratifying to have so many of our attorneys listed among Thomson Reuters' 2016 SuperLawyers. It is a confirmation of our efforts to achieve the best possible results for clients and the recognition is most appreciated."

LITIGATION GROUP OBTAINS CLASS CERTIFICATION AGAINST TRANSAMERICA LIFE INSURANCE COMPANY IN ERISA SUIT

On March 14, 2016, United States District Judge Dean D. Pregerson (Central District of California) issued a 41 page written opinion and Order granting class certification in Santomenno v. Transamerica Life Insurance Co.

The firm's team of Class Action attorneys, led by Partners Arnold Lakind and Dan Sweetser, brought suit on behalf of a group of 7,400 retirement plans that use Transamerica Life Insurance Company (TLIC) products and the individuals who are participants in or beneficiaries of those plans. The suit alleges that TLIC and two of its affiliates violated their fiduciary duties under the Employee Retirement Income Security Act (ERISA) by charging excessive fees and engaging in transactions expressly prohibited by ERISA.

Judge Pregerson granted class certification to two classes. The first was Plaintiffs' Prohibited Transaction Class, which Class asserts that TLIC, as a fiduciary, violated ERISA by withdrawing fees directly out of Plan assets. The Court held that "a fiduciary cannot pay itself out of the plan assets over which the fiduciary exercises its fiduciary duty – period. *** The policy behind this rule is that certain fundamental fiduciary duties, including the duty against self-dealing are essentially sacrosanct."

TRANSAMERICA LIFE INSURANCE COMPANY

The second class certified was Plaintiffs' TIM and TAM Class. TIM and TAM, named Defendants, are TLIC affiliates. The allegations of this Class are several: (1) that by repeatedly investing assets of the Plans in its affiliated funds, TIM and TAM, and by paying fees to its affiliates, TLIC engaged in self-dealing because TLIC dealt with assets of the Plans in its own interest; (2) that TLIC committed a prohibited transaction under ERISA when it acted on behalf of and represented its affiliates TIM and TAM, whose interests were directly adverse to the Plans; and (3) that TLIC breached its fiduciary duty to the Class by allowing its affiliates, TIM and TAM, to charge investors in the Plans higher fees than those charged to third parties who had bargained fees at arms-length.

Plaintiffs' Complaint also alleges that the fees charged by TLIC to the Plans were excessive and in violation of TLIC's duty of loyalty and prudence under ERISA. The Complaint asserts with respect to investments in publicly traded mutual funds, that TLIC's fees, which are approximately .75% annually of the Plan assets, are excessive and not necessary because TLIC provides little to no services on such accounts.

Dan Sweetser, commenting on the class certification order, observed: "Class certification is a positive and very satisfying forward step towards ultimate vindication of the rights of all of the employees who have invested their hard-earned pay in these Transamerica products to save for retirement. The activities and fees of companies like Transamerica that provide 401k products are, for the protection and security of employees, highly regulated under ERISA. Employees have a right to expect and demand full compliance. While Plaintiffs want to be reimbursed, this lawsuit is also to move Transamerica's fees and procedures back in line with ERISA, and to deter similar conduct in the future by Transamerica and all other 401k product providers."

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

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Attorney

Christopher S. Myles
Attorney

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Attorney

CRAIG J. HUBERT, ESQ., NAMED "2016 PROFESSIONAL LAWYER OF THE YEAR" BY MERCER COUNTY BAR ASSOCIATION

Craig J. Hubert
Partner
Executive Committee

Personal Injury attorney Craig Hubert was recognized as the Mercer County Bar Association's "2016 Professional Lawyer of the Year" at the MCBA's May General Membership Dinner at Mountainview Golf Club on May 3, 2016.

Mr. Hubert is a Partner and a member of the firm's Executive Management Committee. He is a distinguished trial attorney and represents clients in complex litigation involving serious accidents, nursing home negligence, product liability, and unsafe premises, as well as victims of criminal acts. He has achieved millions of dollars of compensation for his clients.

Craig has been selected by Thomson Reuters® as a New Jersey Super Lawyer™ every year since 2005 and he has been listed as one of the *Best Lawyers in America*® by U.S. News & World Report every year since 2013.

Craig served as President of the Mercer County Bar Association in 2005. In 2004, the Mercer County American Inn of Court named Craig "Attorney of the Year" for his efforts in advancing the fundamental tenets of ethics and civility in the legal profession.

Craig received his Juris Doctor from Seton Hall University School of Law and his B.A. from the University of Wisconsin.

N.J. MANUFACTURING PLANT EXPANSION WILL CREATE MORE JOBS

Janine G. Bauer
Partner

Land Use and Environmental attorney and partner, Janine G. Bauer, Esq., recently shepherded the effort by Symrise, Inc., an international flavor and fragrance manufacturer headquartered in Germany, to expand its operations in an industrial section of Branchburg, in Somerset County, New Jersey. In December 2015, the company obtained final approval from the town's Zoning Board of Adjustment to construct a 127,755-sq.ft. addition to its existing 121,188-sq.ft manufacturing facility on Industrial Parkway, after obtaining a height variance from the Board for planned new spray dryer units in 2014. The new spray dryers will use state of the art technology to reduce emissions, and a new thermal oxidizer will reduce odors by 98%. New jobs will be created as well. Janine also suggested that Symrise apply for assistance from the New Jersey Economic Development Authority (EDA) to make sure these jobs did not go to other states; that application has now received approval from EDA.

Janine also represented Suntuity and obtained approval from Raritan Township for an 11.5 acre solar farm near Route 31 that will produce 12.47 kV of electricity to help lessen peak power loads in the Jersey Central Power & Light Company territory. An application by a different entity for a solar farm on the same lot had been denied by Raritan Township. Janine was able to guide Suntuity's application to a unanimous vote by the town's Zoning Board of Adjustment, granting final site plan approval.

Janine has recently been hired as the City of Plainfield's Planning Board Attorney. She is helping that City with its revitalization efforts, and recently crafted the resolution approving a new development that will build affordable housing and retain local jobs on South Second Street in Plainfield.

ARNOLD LAKIND AND JEFFREY BLUMSTEIN NAMED SENIOR FELLOWS OF THE LITIGATION COUNSEL OF AMERICA

Arnold C. Lakind
Partner
Executive Committee

Jeffrey P. Blumstein
Partner

Arnold Lakind and Jeffrey Blumstein, two of the firm's founding partners, have been accorded the designation of Senior Fellows of the Litigation Counsel of America (LCA).

The LCA is an invitation-only honorary society with membership limited to 3,500 Fellows. To be eligible for designation as a Senior Fellow, an attorney must maintain Fellow status with the LCA for seven (7) consecutive years and be recommended by other LCA Fellows.

MICHAEL PAGLIONE SECURES $800K SETTLEMENT, ADDITIONAL ECONOMIC BENEFITS FOR VICTIM OF WORKPLACE INJURY

Michael R. Paglione
Partner

Partner Michael Paglione, a specialist in serious personal injury matters and workers' compensation, recently secured a settlement from two defendants on behalf of a client who sustained a traumatic brain injury (TBI) resulting from a work-related incident. The victim, an employee of a large multi-national corporation, was injured in a fall that caused the TBI and resulted in a loss of some cognitive abilities, ultimately rendering her unable to continue in her position.

The client fell while ascending a staircase that had been treated with Ice Melt several days earlier. The inclement weather was long past but the stairs had not been cleaned of the material. According to an engineering expert retained by Mr. Paglione, distributing the Ice Melt with a mechanical spreader rather than hand spreading the material resulted in an overabundance of the product accumulating on some steps, thereby creating the dangerous slip hazard.

The victim's employer used a management company to maintain its campus grounds. The management company, in turn, contracted with a national snow and ice removal company to plow campus streets and parking areas and to maintain sidewalks and other pedestrian walkways including exterior stairways in winter weather events. The national snow removal company hired a local contractor to fulfill its obligations under the contract.

Mr. Paglione filed a civil suit against the two snow removal companies, alleging negligence in both the application of the Ice Melt and the failure to clean the material from the stairs in a reasonable time after the snow event. Defendants' counsel initially offered $40,000 in settlement, which was rejected by Mr. Paglione, who then demanded a jury trial. After a court-ordered mediation, both snow removal contractors agreed to a joint settlement of $800,000.

In addition to the civil suit, Mr. Paglione filed a worker's compensation claim on behalf of his client, the result of which was payment of all medical bills as well as a permanency award of $158,000. The victim also applied for Social Security Disability and was initially denied, however, firm attorney Michael Brottman was successful in having the decision overturned on appeal. The final economic benefit that Mr. Paglione achieved for the client pertained to her personal Long Term Disability policy. During her convalescence, the victim received $343,000 in disability payments. Pursuant to the provisions of the client's policy, any financial recovery from all sources up to the full amount of disability payments made to the client was to be reimbursed to the carrier. Mr. Paglione successfully negotiated a compromise of the $343,000 lien down to $100,000.

IF YOU ARE INJURED OR HAVE BEEN DENIED WORKPLACE BENEFITS, CONTACT US TODAY.

Keith L. Hovey
Of Counsel

ATTORNEY KEITH L. HOVEY PROVIDES LEGAL INSIGHT AT ATLANTIC CITY AND PRINCETON EVENTS

Attorney Keith Hovey is Of Counsel with the firm's Personal Injury and Commercial & General Litigation Practice Groups. The breadth of his professional experience provides Keith with the unique ability to practice and present on a variety of legal issues.

This past April, Keith headlined a 90-minute mini-conference for Region 6 of the New Jersey State Nurses Association, held at the AtlantiCare facility in Atlantic City. Keith's presentation, *"Practice & Professionalism ~ Electronic Medical Records"* explained the legal history and framework of the Board of Nursing's disciplinary process and issues in patient documentation. The audience was comprised of over 40 nursing faculty, advanced practice nurses, staff nurses, and licensed caregivers from Atlantic, Burlington, Cape May, and Ocean Counties. Keith was joined by two former members of the New Jersey Board of Nursing, Ms. Cecilia West, MSN, RN, APN, CDE, and Ms. Saundra Austin-Benn, MSN, RN, APN, BC.

On a lighter note, Keith lectured at the Princeton Adult School during the Winter 2016 Session on the legal accuracy of three Oscar nominated films. The course, titled "L.A. Law: Separating Legal Facts from Fiction in Hollywood," was three 90-min classroom sessions in which Keith analyzed and discussed the portrayal of the American legal system in the well-known films: 12 Angry Men (1957), Erin Brockovich (2000), and My Cousin Vinny (1992).

PROTECT YOUR INTERESTS WITH A PREMARITAL AGREEMENT

An Article By: Janine Danks Fox, Of Counsel

Janine Danks Fox
Of Counsel

Statistics have shown that nearly 50% of all first marriages end in divorce. That percentage increases to 60% for subsequent marriages. While no one wants to consider the possibility of divorce when contemplating marriage, the statistics make clear that at least one half of all marriages will fail. Divorce in most circumstances causes both an emotional and financial toll on all parties involved. This toll can be minimized, however, if an agreement is put into place in advance of entering into a marital partnership.

New Jersey adopted the Uniform Premarital Agreement Act (the "Act") on November 3, 1988. The Act permits parties to contractually enter into a premarital or pre-civil union agreement to address a variety of issues, including but not limited to, the disposition of property both acquired prior to and during the marriage, a determination of spousal support, estate entitlements in the event of a termination of the marriage or any other matter, including personal rights and obligations, not in violation of public policy. N.J.S.A. 37:2-34.

Although parties may choose to enter into a premarital agreement with the goal of minimizing litigated issues at the time of the divorce, premarital agreements can be set aside for a variety of reasons. Thus, when entering into a premarital agreement it is vital that certain protocols be followed in order to avoid the agreement being deemed unenforceable. First, the agreement must be entered into voluntarily. Essentially, this means that a party must be entering into the agreement freely without the presence of pressure or coercion. The best way to ensure the voluntariness of the agreement is for the agreement to be executed long prior to the intended marriage date. This will avoid an appearance of any party feeling rushed or pressured into signing an agreement in close proximity to the marriage date. There must also be a full and fair disclosure of the earnings, assets and liabilities obligations of both parties entering into the agreement.

This disclosure of each party's respective financial circumstances must be attached to the premarital agreement so that both parties can knowingly waive or minimize their rights in the other's respective property. Another key requirement is that both parties to the agreement must be advised of their right to have the premarital agreement reviewed by independent counsel of their own choosing, and should they waive the right to independent counsel, that waiver must be in writing. Finally, a premarital agreement can be set aside if deemed to be unconscionable at the time of execution. The Act was amended in 2013 to change the unconscionability standard from being evaluated at the time of enforcement to the time of execution. This new standard, however, only applies to premarital agreements entered into on or after June 27, 2013. The former unconscionability standard applies to those premarital agreements entered into prior to June 27, 2013.

When I first began private practice 16 years ago, the trend for entering into a premarital agreement was predominantly geared toward parties who were considering a second or third marriage. In those instances, the parties had already experienced a divorce and wished to protect assets accumulated in equitable distribution from prior marriages, address the issue of spousal support and preserve their estate for their children from prior marriages. In recent years, however, that trend has now changed and extended more frequently to parties entering into premarital agreements for first marriages. With the increasing trend of parties getting married for the first time later in life, those parties are more likely to have purchased a home, acquired significant investment or retirement savings, or started a business which they wish to protect and address as part of a premarital agreement. Although every person's particular financial circumstances differ, when entering into any marital relationship, it would behoove all parties to explore their options of entering into a premarital agreement with independent legal counsel of their own choosing well in advance of their marriage date.

SZAFERMAN LAKIND HAS SERVED FAMILIES AND OUR COMMUNITIES SINCE 1977. PROTECT YOURSELF. PROTECT YOUR FAMILY. CONTACT US TODAY.

ESTATE TAX AND GIFT TAX ARENA: CHANGES AND EXCLUSIONS

An Article By: Scott P. Borsack, Partner

Scott P. Borsack
Partner

Not long after the start of each new year, the President's budget staff and the Department of Treasury release their "wish list" for the sources of revenue for the Federal Budget for the fiscal year that begins the following October. This "book" contains the roadmap to what the Administration hopes to be able to do in its larger Federal Budget which identifies both revenue and expenses. From year to year there are changes in both revenue and expenses, and in some years the battle between the Administration and both houses of Congress over both sides of the equation can be epic. When things do not proceed well, Congress threatens to shut down the operations of all but essential services in the United States government. It seems that such threats have become more commonplace over the past twenty years. But that is politics, and I digress. My purpose in this space is to highlight a few revenue raisers which President Obama proposed this year which impact upon the estate and gift tax arena.

For the past several years, the Administration has proposed changes to the annual exclusion from the gift tax. As some of you know, current law allows you to gift $14,000 a year to as many individuals as you like, during your lifetime, before a gift is considered taxable and requires further sheltering from the gift tax by the applicable exclusion amount which is now $5.45 million. Many taxpayers use the annual exclusion to shelter the payment of life insurance premiums from the gift tax. The policies of insurance upon which these premiums are paid are usually owned by one or more trusts. What the Administration has proposed again this year (this same proposal has been made for the past several years) is to limit the use of annual exclusions to $50,000 a year. An individual with a life insurance trust and annual premiums of $60,000 would only be able to shelter $50,000 of those premiums from the gift tax by virtue of the annual exclusion. In making this proposal, the Administration suggests that this will bring simplicity to the use of exclusions. Even though this proposal has been made before, and failed to find its way into the budget, this year it seems that things might be different. Knowledgeable people on both sides of the discussion seem to be convinced that the time for this proposal may finally have come. It is unlikely that trusts in place before the change in the law (if there is a change made) will be grandfathered, so other than using annual exclusions now available, there is no real defensive measures one can take right now to anticipate this issue.

One other provision worthy of comment has to do with a technique known as a sale to a grantor trust. With this technique taxpayers are able to sell valuable assets to a certain type of trust, known as a grantor trust and not recognize any income tax on the sale. In exchange for the transfer of assets, the taxpayer can receive a note to receive payments in the future. For income tax purposes the taxpayer is treated as if they still own the property but for estate and gift tax purposes, the asset if no longer in the taxpayer's estate. This means that if the property that was "sold" substantially increases in value during the taxpayer's lifetime, no part of the increase in value will be included in the taxpayer's estate, and it will, therefore escape estate taxation. What the Administration proposes to do here is tax the transfer of the asset to the trust during the grantor's lifetime, creating what they hope will be a tax barrier to the use of the technique. If you get in before the effective date of legislation, if any is enacted, one can beat the change in the law.

The estate and gift tax landscape is constantly changing. Staying abreast of changes in the law is the best defense that we have. Call upon us to assist in this area.

FOR A QUESTION OF ESTATE AND TAX LAW, CONTACT SZAFERMAN LAKIND.

MICHAEL BROTTMAN ACHIEVES REVERSAL OF DENIED ACCIDENTAL DISABILITY RETIREMENT FOR N.J. WORKER

Michael D. Brottman
Attorney

Attorney Michael Brottman, representing a social worker employed by the State of New Jersey, successfully appealed a decision in which accidental disability retirement benefits were denied by the New Jersey Division of Pensions and Benefits following injuries sustained by the employee while working at Trenton Psychiatric Hospital.

In September of 2012, the social worker was violently assaulted in an unprovoked attack by a hospital patient who was wandering the halls without supervision. In the attack, the employee sustained orthopedic injuries requiring surgery and afterward developed post-traumatic stress disorder. As required by the New Jersey Workers' Compensation Act, his employer provided the social worker with medical treatment. However, his application for disability retirement benefits was denied notwithstanding that the doctor, who was authorized by the employer to treat the victim, determined that the injuries were disabling with regard to his job title.

After our firm was retained to represent the social worker in an appeal of the decision, Mr. Brottman obtained a previously undisclosed video recording of the assault from the hospital security camera, which he then provided to the Division of Pensions and Benefits. As a result, the denial of accidental disability retirement benefits was reconsidered and ultimately reversed.

IF YOU WERE INJURED ON THE JOB OR HAVE BEEN DENIED WORKPLACE BENEFITS, CONTACT SZAFERMAN

JUDGE LINDA FEINBERG (RET.) NAMED TO TASK FORCE ON JUDICIAL INDEPENDENCE

Judge Linda R. Feinberg (ret.)
Of Counsel

The Municipal Court Section of the N.J State Bar Association has named Judge Linda L. Feinberg (ret.), Of Counsel, to a Task Force on Judicial Independence.

Per NJSBA.com, "The goal of the Task Force is to produce a report that will contain recommendations with respect to preserving the independence of the judges of this State." In addition, "The purpose of these hearings is to seek purposeful recommendations as to whether our current system of judicial appointment and reappointment may be improved, and if so, how."

The Task Force will be conducting a series of public hearings throughout New Jersey in 2016, the first of which was April 1 at the New Jersey Law Center, New Brunswick. Three (3) additional hearings are planned for 2016 to include NJSBA Annual Meeting, Borgata, Atlantic City; Rutgers Law School, Camden; and Seton Hall Law School, Newark.

PARTNER BRUCE SATTIN GUIDES MERGER OF TWO AREA HEALTHCARE SERVICE PROVIDERS

Bruce M. Sattin, Esq.
Partner

Partner Bruce M. Sattin represented Greater Trenton Behavioral HealthCare in the negotiations and subsequent merger with Twin Oaks Community Services, Inc. of Burlington County. Both organizations are non-profit social service agencies providing a wide range of services to individuals with behavioral health issues, including addiction and psychological ailments. The services provided by the agencies include counseling, medical care, housing, and supportive services, such as budget management, transportation, and nutrition.

Greater Trenton Behavioral HealthCare has been a client since Robert A. Gladstone joined the firm in 2007. The organization was a client of Mr. Gladstone's for many years prior to his arrival at Szaferman Lakind. Twin Oaks operated primarily in Burlington and Camden Counties prior to the merger, which now adds Mercer County to the area served by the combined organization. The newly formed organization operates under the name Oaks Integrated Care.

The merger agreement guaranteed the continuation of all services to the clients of Greater Trenton Behavioral HealthCare in Mercer County and the continued employment of all of its staff.

FOR ADVICE OR ASSISTANCE, CONTACT OUR BUSINESS LAW GROUP.

COMMERCIAL LITIGATION GROUP DELIVERS *"LEGAL ISSUES FOR THE INDEPENDENT BUSINESS OWNER"* PRESENTATION FOR MEMBERS OF PRINCETON CHAMBER OF COMMERCE'S IBA

PRINCETON REGIONAL CHAMBER OF COMMERCE
champions for business

By way of the Princeton Regional Chamber of Commerce's Independent Business Alliance, Szaferman Lakind Litigation Attorneys Robert E. Lytle, Partner; Keith L. Hovey, Of Counsel, and Melissa Chimbangu, Attorney; recently provided a *"Legal Issues for the Independent Business Owner"* breakfast workshop at the Nassau Club of Princeton. The 40+ person audience included fellow attorneys, proprietors and business owners from throughout the greater Princeton region.

Breakfast workshop topics included:

- Types of Courts and Thresholds / Case Values
- Expectations for Beginning a Case
- Documents that Can Protect A Business
- Landlord vs. Tenant: Key Factors in Property Management
- Protecting Trade Secrets

Attorneys Melissa Chimbangu, Keith Hovey and Robert Lytle interact with audience members after a recent breakfast workshop at the Nassau Club of Princeton, N.J.

VISIT SZAFERMAN LAKIND'S YOUTUBE CHANNEL TO WATCH VIDEO OF THE BREAKFAST WORKSHOP AS WELL AS VIDEO OF OTHER EVENTS AND ATTORNEY INTERVIEWS

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