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SPRING 2018

LEGAL HIGHLIGHTS

MICHAEL PAGLIONE/BRIAN HEYESEY OBTAIN \$625,000 SETTLEMENT AGAINST SOUTH AMBOY NIGHTCLUB

ARNOLD LAKIND PREVAILS IN SUPERIOR COURT ON WEST AMWELL LAND USE APPLICATION

MICHAEL PAGLIONE SECURES \$425,000 SETTLEMENT IN WEATHER RELATED FALL

BOB STEVENS/ARNOLD LAKIND BLOCK BANQUET HALL PROPOSAL AT ROBBINSVILLE AIRPORT

KEITH HOVEY INTERVIEWED BY WHY ON LICENSING NURSES

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HON. LINDA R. FEINBERG SERVES AS PANELIST

SZAFERMAN LAKIND AMONG U.S. NEWS & WORLD REPORT®'S 2018 BEST LAW FIRMS®

U.S. News & World Report has listed Szaferman, Lakind, Blumstein & Blader, P.C. among its 2018 *Best Law Firms*®, marking the fifth consecutive year that Szaferman Lakind has received such recognition.

Szaferman Lakind has been publically-recognized as a Princeton Metropolitan Region Tier-1 law firm every year by U.S. News & World Report since 2014. The firm's 2018 *Best Law Firms* recognition includes the following practice areas:

- Commercial Litigation
- Family Law
- Land Use & Zoning Law
- Personal Injury Litigation - Plaintiffs



Per BestLawFirms.USNews.com/Methodology, "The U.S. News - Best Lawyers "Best Law Firms" rankings are based on a rigorous evaluation process that includes the collection of client and lawyer evaluations, peer review from leading attorneys in their field, and review of additional information provided by law firms as part of the formal submission process." Also cited, "All of the quantitative and qualitative data were combined into an overall "Best Law Firms" score for each firm. This data was then compared to other firms within the same metropolitan area and at the national level. Because firms were often separated by small or insignificant differences in overall score, we use a tiering system rather than ranking law firms sequentially."

Szaferman Lakind attorneys listed among the 2018 Best Lawyers in America®*:



Arnold Lakind, Esq.**
Founding Partner
Commercial Litigation,
Land Use & Zoning



Brian G. Paul, Esq.
Partner
Family Law



Craig J. Hubert, Esq.
Partner
Personal Injury
Litigation - Plaintiff



Barry D. Szaferman, Esq.
Founding Partner
Managing Partner
Family Law



Keith L. Hovey, Esq.
Of Counsel
Commercial Litigation

Managing Partner Barry Szaferman observed, " To be listed among U.S. News & World Reports Best Law Firms for a fifth consecutive year is indeed an honor. On behalf of the firm, I would like to thank the peer attorneys who participated in the evaluation and U.S. News & World Reports for recognizing Szaferman Lakind's commitment to quality services for our clients."



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ARNOLD LAKIND PREVAILS ON APPEAL IN LAND USE MATTER



Arnold Lakind
Founding Partner

Partner Arnold Lakind, representing an applicant seeking to use his West Amwell property for a wedding facility, was granted approval in New Jersey Superior Court after appealing a denial by the Township's Board of Adjustment.

The applicant's 13 acre site is located in the Township's Rural Residential Zone, which does not permit banquet facilities as of right, but does designate those facilities as a conditional use. The owner had previously used the property for weddings and corporate events. Following objections from neighbors, the Township ordered the owner to terminate this use. The owner then filed an application with the Township's Board of Adjustment for a conditional use approval and/or a use variance.

The application faced opposition from about 75 neighbors, some of whom were represented by counsel. In addition, the application was opposed by the West Amwell Mayor, the Township and their special litigation counsel. Following several very contentious hearing dates, the application was denied when the Board found that the wedding venue did not meet several elements of the conditional use requirements. On behalf of his client, Mr. Lakind appealed the decision to the Superior Court.



PHOTO: West Amwell Municipal Building

The principal issue on appeal was whether the wedding venue qualified as an "assembly use," as that term was defined in the Township's Land Use Ordinance. The Township contended, among other things, that only permanent structures qualified as assembly uses and, because the weddings were conducted on a tennis court under a removable tent, the structure was not permanent. The trial court disagreed, accepting our argument that the structure need not be permanent and, to the extent that there was a permanency requirement, that condition was satisfied by several structures on the property. The Court reversed the Board of Adjustment and ordered that the application be granted.

MICHAEL PAGLIONE SECURES \$425,000 SETTLEMENT ON BEHALF OF CLIENT INJURED IN WEATHER RELATED ACCIDENT



Michael R. Paglione
Partner

Partner Michael Paglione, representing a client who sustained serious leg injuries, achieved a \$425,000 settlement on behalf of the victim who fell on black ice. The matter was resolved at the conclusion of a full-day Mediation hearing which was conducted by retired Camden County Superior Court Judge, Joel B. Rosen.

Michael's client was injured as a result of untreated icy conditions at an apartment complex in which she lived. Suit was brought against the entity responsible for managing the premises, as well as a snow removal company, both of which were subcontracted to maintain the apartment complex during snow and ice events. In filing the suit, the client contended that the defendants negligently failed to inspect

and treat the hazardous condition caused by freezing rain and sleet resulting in our client suffering serious leg fractures.

The client's injuries required multiple surgeries, including the installation of metal plates and screws and subsequent removal of the hardware, all necessary to assist in rejoining the fractures. After the surgeries, our client underwent an extensive period of physical therapy and is now limited in her ability to participate in various activities previously enjoyed prior to the accident. Michael was able to obtain this settlement by arguing not only "pain and suffering", but also, the considerable loss of "quality of life" as a result of this preventable fall.

Michael Paglione is a Partner in the Szaferman Lakind Personal Injury Group and focuses his practice on Personal Injury and Worker's Compensation matters. He is also a member of the firm's Executive Committee.



Robert G. Stevens
Partner

FIRM HELPS THWART 600 SEAT BANQUET FACILITY LAND USE APPLICATION IN ROBBINSVILLE

Partners Robert Stevens and Arnold Lakind, retained by neighbors of the Robbinsville Airport, successfully opposed a development application to use a portion of the airport for a banquet hall, which use was not in conformance with Robbinsville's Zoning Ordinance.

The application proposed a 600 seat facility with two large ballrooms to be located on the airport site in relatively close proximity to a residential neighborhood. The developer proposed as many as 100 weddings during the course of the year. Concerned about the size of the facility and the proposed frequency of events, several nearby homeowners hired our firm to represent them in opposing to the application. During the course of the public hearing before the Robbinsville Board of Adjustment, a traffic consultant, wedding specialist and civil engineer were called to present testimony in opposition to the application.



Arnold Lakind
Founding Partner

Following our cross-examination of the developer's traffic engineer, the application was withdrawn.



PHOTO: Trenton-Robbinsville Airport

KEITH HOVEY AND NURSE/CLIENT INTERVIEWED ON NJ BOARD OF NURSING ISSUES

In July 2017, Senate Majority Leader Loretta Weinberg and other health care professionals held a press conference to address significant issues with the New Jersey Board of Nursing. Senator Weinberg said, "It is understaffed, underfunded resulting in an unacceptable delay in licensing and certification of thousands of nursing professionals who are trained and ready to begin working." Dr. Avery Hart, a thirteen year member of NJ Board of Nursing said that the Board hears "between 250-400 disciplinary issues that come up every month" but that the staff shortage has created up to an 18 month backlog for nurses awaiting disciplinary action to have their cases heard.

In response, Keith Hovey, attorney and registered nurse, wrote a letter on behalf of The American Association of Nurse Attorneys (TAANA), a non-profit organization comprised of both nursing and law school graduates, to New Jersey's gubernatorial candidates. The letter requested that the candidates commit to addressing the significant issues of understaffing and underfunding of the Board and reminded the candidates of the potential dangers to the public health and safety when health care providers are unregulated.

To discuss the issues with the Board, National Public Radio (NPR)'s Philadelphia affiliate, WHYY-FM reporter Jeanette Beebe, met with Keith and a client, who has a disciplinary matter pending before the Board. "They deserve fairness.



PHOTO: Keith Hovey interviewed by WHYY-NPR radio on licensing nurses

"They deserve their day in court," Keith said of the nurses he represents. "They shouldn't have to work under a cloud as to whether or not they get to do the thing they believe they're called to do simply because the current system allows them to languish into perpetuity."

To listen to the NPR Interview or read the report, visit <https://whyy.org/articles/attorney-delays-n-j-board-nursing-endanger-public-leave-health-care-workers-uncertain/>

CHRISTMAS PRESENT FOR MOST TAXPAYERS SIGNED INTO LAW

An Article By: *Scott P. Borsack, Esq.*



Scott P. Borsack
Partner

In the waning days of 2017, a Republican Congress delivered a tax reform package to President Trump consisting of more than 1,000 pages. Billed as tax simplification, the new law is anything but simple. In trying to secure necessary votes for passage, members of the Conference Committee engaged in some last minute horse trading which resulted in some surprising changes in the legislation which was finally sent to the President for his signature. Ultimately, the

maximum corporate income tax rate was reduced to 21% instead of 20% and the benefit to so-called pass through entities was changed from a favorable income tax rate to a deduction of 20% of the income of the entity. There are some big and small surprises in the law which may not have gotten much attention, a few of which are highlighted below.

Under prior law there were seven tax brackets of 10%, 15%, 25%, 28%, 33%, 35% and 39.6%. Under the new law there are still seven rate brackets of 10%, 12%, 22%, 25%, 32%, 35% and 37%. The income ranges where each bracket begins and ends have been changed. The standard deduction for a married couple was increased to \$24,000; however, personal exemptions were eliminated. For those that itemize their deductions, there may be no benefit from this change. State and local taxes are now subject to a \$10,000 cap on deductibility, falling particularly hard on residents of high tax states like New Jersey. The deduction for mortgage interest is now limited and interest payments on mortgage debt of no more than \$750,000 are deductible.

Interestingly, the charitable contribution limit was increased from 50% of adjusted gross income to 60% of adjusted gross income. This would only benefit those who are still able to itemize after the other limits on itemized deductions and the higher standard deduction of \$24,000 has been met.

The corporate alternative minimum tax, which seeks to tax corporations that have outsized income tax deductions, was repealed. Its individual counterpart, which applies to individual taxpayers remains but with some tinkering. First, the exemption from the tax has been increased somewhat from \$86,200 to \$109,400. Under prior law, the exemption began to phase out for income over \$164,100 and now that phase out is not effective until alternative minimum income exceeds \$1 million. So, for higher earners who paid more in alternative minimum tax because of the loss of the exemption, this is welcome news.



Under prior law, amounts paid to a former spouse as alimony were deductible. And alimony payments were taxable to the individual receiving them. With the tax benefits and burdens attached to alimony, matrimonial attorneys logically spent lots of time negotiating the amounts designated as alimony in order to maximize the tax benefits to their client. Under the new law, for divorces and settlement agreements entered into beginning January 1, 2019, the deduction for alimony paid is eliminated as is the obligation to report as taxable income alimony received by a former spouse. The tax change does not impact divorces or settlements entered into prior to that date.

Taxpayers have for decades enjoyed some deduction for business entertainment expenses, such as for meals provided to clients and potential customers as well as for events attended. Recently, the benefit of that deduction was limited to 50% of the amount expended. As a result of the tax legislation, entertainment expenses for tickets to events or fees to participate in recreational endeavors like golf or tennis, for example, are no longer deductible at all. Business meals remain deductible at the rate of 50% of the amount expended.

Under prior law, taxpayers were able to deduct the uncompensated portion of losses from fires, floods, earthquakes and other casualties. This deduction has softened the blow for many families, particularly those who could not afford insurance to protect them. As a result of the new law, casualty deductions are only allowed to individual taxpayers who suffer a loss in a federally designated disaster area. Those losses suffered in situations which do not rise to the level of a federal disaster will not support a deduction for federal income tax purposes.

Taxpayers have for years taken advantage of education savings accounts under Code Section 529. Previously, the funds accumulated in the account could be used only for college education. Now funds can be used for private elementary and secondary schools as well.

The exemption from the federal estate, gift and generation skipping transfer tax was increased from the present amount of approximately \$5,450,000 to \$11,000,000 per person. For a married couple in 2018 that means that \$22,000,000 in wealth can be passed before creating a gift or estate tax. The exemption is indexed for inflation so that amount is expected to increase each year.

Finally, the new law also introduces a tax on the endowment funds retained by colleges and universities. These funds are used to provide scholarships, financial aid and generally support the educational mission of those

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JANINE DANKS FOX, THOMAS MANZO NAMED PARTNERS

Szaferman Lakind announced that Janine Danks Fox, Family Law, and Thomas Manzo, Personal Injury-Plaintiff, have been named Partners.



Janine Danks Fox
Partner

Ms. Danks Fox joined Szaferman Lakind in September of 2000 after serving as law clerk in the Superior Court of New Jersey, Family Part, for the Honorable Maryanne Bielamowicz, J.S.C. During her clerkship, Janine served as a mediator for Family Part Judges to resolve custody, visitation and support disputes.

With nearly 20 years of experience, Janine handles all aspects of Family Law litigation including, but not limited to, Pre-judgment and Post-judgment Litigation, Negotiation of Divorce Settlement Agreements, Motion Practice for Divorce, Child Support Issues, Custody and Relocation Issues, Alimony Establishment and Modification, Cohabitation, Palimony, Adoption, Pre-Nuptials and Mediation and Arbitration. Ms. Danks Fox also serves as an Early Settlement panelist in Mercer County to assist divorce litigants in resolving disputes.

Janine received her undergraduate degree in History from The Ohio State University and while an undergraduate attended a pre-law study abroad program at Oxford University. She graduated cum laude with a Juris Doctorate from New England School of Law, where she was a member of the New England Law Review. Janine was recognized by her peers in the New Jersey legal community as a New Jersey SuperLawyers™ “Rising Star” from 2006 to 2011 (top 2.5% of lawyers under 40 or practicing less than 10 years). She is admitted to practice in New Jersey and Pennsylvania.

Managing Partner Barry D. Szaferman observed, “Janine is a very experienced, first-quality Family Law practitioner and the firm is delighted to have her as a Partner.”

Ms. Danks Fox resides with her husband and two daughters in Burlington County, New Jersey.



Thomas J. Manzo
Partner

Thomas Manzo is a member of the Szaferman Lakind Personal Injury Group, having joined the firm in 2009 after serving a clerkship with the Honorable Clarkson S. Fisher, J.A.D. Thomas has focused his practice on complex personal injury matters by representing clients injured in automobile and slip-and-fall accidents, as well as victims of crime, abuse and neglect and those injured by defective products. He has successfully

represented clients in state and federal courts in both New Jersey and New York.

Mr. Manzo is active in the State Bar Association and currently serves on the Executive Committee for the Civil Trial Bar Section and several other committees as well as being the Mercer County Representative to the State Bar Young Lawyers’ Division Executive Committee. His involvement with the State Bar Association includes serving as a Trustee to the Board of the New Jersey State Bar Foundation, the charitable arm of the Association.

Thomas received an undergraduate degree, summa cum laude, from Rutgers College and his Juris Doctorate from Seton Hall University. He is admitted to practice in New Jersey, New York, the United States District Court for the District of New Jersey and the United States Supreme Court.

Craig J. Hubert, head of the firm’s Personal Injury Group, commented, “Tom is an excellent trial attorney as recognized by his peers throughout the state. I am pleased to have him as a Partner.”

Thomas resides with his wife and four children in Central New Jersey.

(Continued from page 4)

institutions. Under the new law, certain colleges and universities will be subject to an excise tax of 1.4% of their net investment income. Those with more than 500 students, where 50% of the students are located in the US and an endowment with a value of more than the product of the number of students at such institution multiplied by \$500,000 will be subject to the tax.

There are both winners and losers in the new tax law. State legislators in New York and New Jersey may feel some pressure from their constituents to consider creative tax solutions to undo some of the fiscal pain they feel from the limitation of state and local taxes. The constant we can count on is that nothing will stay the same for very long.

A MAJOR CHANGE IN TRADEMARK LAW

An Article By: *Lionel J. Frank, Esq.*



Lionel J. Frank
 Partner

As we suggested the U.S. Supreme Court would likely do in our article entitled “Is The Law On Registration Of Disparaging Trademarks About To Change?,” which appeared in the Winter 2017 edition of True Counsel®, the Supreme Court ruled in June 2017 that Section 2(a) of the Lanham Trademark Act, which prohibits the registration of trademarks consisting of or comprising “immoral, deceptive, or scandalous matter; or matter which may disparage . . . ;” violates the First Amendment’s protection of free speech.

At issue in the case captioned before the Supreme Court as *Matal v. Tam*, was an application by a member of the Asian-American band “The Slants”, to register THE SLANTS™ as a trademark with the U.S. Patent and Trademark Office (“USPTO”). “Slants” is a derogatory term for persons of Asian descent. The members of the band, however, asserted that by adopting that slur as the name of its band, they could “reclaim the term and drain its denigrating force.” Nevertheless, the application to register THE SLANTS™ as a mark was rejected by the USPTO. On appeal, the Federal Circuit Court of Appeals reversed the decision by the USPTO to reject registration under Section 2(a) based on the determination that the First Amendment prohibited a governmental agency from regulating speech.

In its opinion affirming the decision of the Federal Circuit, the Supreme Court unanimously stated, “We now hold that this provision violates the Free Speech Clause of the First Amendment. It offends a bedrock First Amendment principle: Speech may not be banned on the ground that it expresses ideas that offend.”

The Supreme Court’s decision opens the door to registration of trademarks which had up to then been rejected by the USPTO under Section 2(a). Owners of marks such as the Washington Redskins football team, whose mark had been cancelled by the USPTO as being disparaging to native Americans, may now be able to have that registration reinstated, and those seeking to register marks which may have been previously routinely rejected before the *Tam* decision, including those with four letter words, may now be able to gain registration.

With this very dramatic change in trademark law, we may also see a change in marketing strategies by certain brand owners to register more controversial trademarks. It will certainly be interesting to follow how new trademark registration applications will be considered by USPTO examining attorneys as revised examination procedures are adopted subsequent to the *Tam* decision. What the *Tam* decision makes clear is that trademarks which some may deem to disparage cannot simply be rejected by the USPTO for that reason alone.

HON. LINDA R. FEINBERG SERVES AS PANELIST AT JUDICIAL COLLEGE AND MERCER COUNTY XTREME CLE PROGRAM



Hon. Linda R. Feinberg (Ret.)
 Of Counsel



Bruce M. Sattin
 Partner

Retired Mercer County Assignment Judge Linda R. Feinberg shared her expertise recently by serving as a panelist in two educational venues: the 2017 Judicial College and the Mercer County Xtreme CLE program. As a long-time member and former Chair of the New Jersey Commission on Professionalism in the Law, Judge Feinberg served as a panelist at the 2017 Judicial College course entitled “Professionalism On and Off the Bench: Dealing Effectively With the Untoward, the Unusual, and the Unexpected.”

At the Mercer County Xtreme CLE program in November, Judge Feinberg chaired two courses entitled “The Nuts and Bolts of Arbitration” and “2017 Land Use Update.” She was joined on the Land Use panel by Firm Partner Bruce Sattin.

SENIOR ABUSE: A GUIDE TO LEGAL OPTIONS

An Article By: Keith Hovey, Esq.



Keith L. Hovey, Esq.
Of Counsel

Every family lives in fear that a loved one may suffer abuse at the hands of a health care professional. The fear is not unfounded. At least 1 in 10 seniors are abused each year, including seniors living with family. Elder abuse can take many forms: physical (whether intentional or negligent), emotional, sexual, and financial. Consequently, greater responsibility falls upon family members and guardians to ensure that their loved ones are free from abuse and receiving the care that they need.

If you suspect abuse, or simply want to understand your legal options, here is a helpful guide.

Criminal

If you believe an individual is in immediate danger, call 911 or the local police. If not in immediate danger, you should report the abuse to local law enforcement, the criminal division of the Office of Attorney General for your State, or the Department of Justice (DOJ). Both your State Attorney General and the DOJ have websites with their contact information. Many states have begun initiatives to streamline reports of elder abuse. Similarly, the DOJ started the Elder Justice Initiative to help prosecutors, law enforcement, and private citizens to identify and report elder abuse.

Administrative

States require that health care facilities, such as nursing homes, assisted living facilities, and hospitals be licensed by the State in which they operate. Individual health care providers, like physicians, nurses, physical therapists, etc., must also possess a license issued by the state in which they work. Facility and professional license information is public and accessible on-line. You can confirm the license status of a health care provider, whether a facility or individual, and see if they have been the subject of discipline in the past.

If you suspect elder abuse, not only can and should you report the abuse to law enforcement, but also to the appropriate licensing authority. For facilities, report the abuse to the Health Department for your state. For individual health care providers, contact the licensing board for their profession, i.e. Board of Medical Examiners, Nursing, Physical Therapy Examiners, etc. The purpose of these boards, in part, is to protect the public from unsafe practitioners. In response to a complaint, a licensing board will conduct an investigation and make a determination whether discipline against the licensee is warranted.

Potential discipline includes monetary penalties, reprimands, suspension of privileges, and revocation of a license. A licensing board does not as part of the disciplinary process award money damages to the individual that initiated the complaint or the individual harmed by the alleged abuse.

If the victim is receiving Medicare or Medicaid, you should also report the abuse to those third-party payers, which may also trigger an investigation of the treating facility.

Civil

A guardian or an administrator or executor of an individual's estate can file a lawsuit seeking money damages against the facility and individuals responsible for the abuse. The amount awarded in such cases is for pain and suffering, health care expenses, wrongful death, and potential violations of state and federal law.

Contact a lawyer who handles nursing home and elder abuse cases for a free consultation as soon as you suspect elder abuse. State and federal law can vary on the time an elder abuse related claim must be filed with the court. Waiting too long could mean that a court will dismiss your case as too much time may have passed since the abuse occurred. For a list of potential attorneys, check with your county or state bar associations. You can also search the internet. Always review the attorney's profile on-line, ask for a list of cases and former clients to contact, and what percentage of their practice is focused on elder abuse matters.

Consumer

Lastly, health care is a business. As a consumer or the individual responsible for a consumer you have rights in the market place. If you suspect abuse, you should consider changing the facility, home health care company, or the health care providers responsible for the care. Before doing so, check to confirm with the third-party payer, such as the health insurance provider, Medicare, etc., for alternatives. Not only can you take your business elsewhere, you can report your concerns in any one of the many on-line survey forums. You can report abuse, particularly financial abuse, to the Better Business Bureau.

A word of caution, postings on social media sites are not private and may become public in connection with a criminal, administrative, or civil litigation. Naming and disparaging facilities and individuals on social media may subject you to a civil suit for defamation. Therefore, refrain from social media posts regarding potential abuse before consulting with an attorney. If you decide to post anyway, do not use profanity and keep to the facts.

SZAFERMAN LAKIND FIGHTS FOR VICTIM RIGHTS - CONTACT US TODAY.



Michael R. Paglione
Partner



Brian A. Heyesey
Attorney

NEGLIGENT SECURITY RESULTS IN \$625K PERSONAL INJURY SETTLEMENT

Attorneys Michael Paglione and Brian Heyesey, representing a 28-year old female who was injured in a brawl outside a nightclub, reached a \$625,000 settlement in late January of this year through mediation with the business owner's insurance carrier.

The client, while acting as a security guard at a South Amboy nightclub, was severely injured attempting to break up a fight in the nightclub parking lot in July of 2012. She sustained multiple physical and psychiatric injuries as a result of being struck in the head with a baseball bat. Under ordinary circumstances, the injuries would have been addressed through a workers' compensation claim as the incident occurred during the performance of the client's employment duties. However, the nightclub owner, who was a tenant on the property, failed to carry workers' compensation insurance as

required by New Jersey law, and, as such, Mr. Paglione and Mr. Heyesey were able to bring a third-party personal injury lawsuit against the business asserting negligent security based on the fact that the crowd at the nightclub was estimated at between 500-600. As a result of the melee, South Amboy, Sayreville and Old Bridge Police Departments were called to the scene to restore order. Subsequently, by resolution, the South Amboy government temporarily suspended the alcoholic beverage license of the nightclub for violating local ordinances relating to the brawl.

The firm secured a partial summary judgment against the nightclub owner based on a duty owed to the client and the scope of that duty. Prior to trial the parties mediated to the \$625,000 settlement.

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