

# True Counsel

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## ARNOLD LAKIND SECURES AFFIRMANCE OF \$7.5 MILLION MESOTHELIOMA VERDICT



*Arnold Lakind*

In a reported decision, the Superior Court, Appellate Division, affirmed our client's \$7.5 million verdict against

Exxon Mobil Corporation. Plaintiff, who suffers from peritoneal mesothelioma, was exposed to asbestos from laundering the asbestos-contaminated clothing of her husband who worked at the Exxon Bayway Refinery in Linden, New Jersey. The \$7.5 verdict consisted of \$7.0 million for our client's pain and suffering and \$500,000 for her

husband's loss of consortium. Plaintiff had also been an Exxon employee. On appeal, Defendant argued that any recovery was precluded by the workers compensation bar, which requires that injured employees accept payments in accordance with a statutory schedule and waive their right to a jury trial. The appellate court agreed with our arguments and held that the workers compensation statute does not bar relief for an in home exposure that occurs independent of the employment relationship. In addition, the court held that there would be no deduction from the award for the contribution of the employment related exposure.

## MICHAEL PAGLIONE SETTLES CASE AGAINST MONTGOMERY TOWNSHIP FOR \$3.575 MILLION



*Michael Paglione*

Michael Paglione recently settled a case against Montgomery Township for \$3.575 million on behalf of a

retired university professor who was rendered quadriplegic. The case made statewide news when it was filed in 2008. The client fell backwards from the township's senior bus while assisting a 93-year-old woman to remove her wheel chair. At the time of his fall, our client was a healthy and fit 71-year-old who regularly played badminton with his grandchildren and enjoyed riding his bike on country roads in Somerset County. Today he is a quadriplegic who needs 24-hour care. Michael successfully argued that Montgomery Township was negligent in its transporting of its seniors. The bus was equipped with

## Highlights Inside

### Changes at Szaferman:

Nathan Edelstein Joins The Firm  
Ryan Marrone Named Partner

### Firm Recognition:

Szaferman Lakind Recognized By  
The Defense Department  
Arnold Lakind Receives Prestigious Award

### More Cases:

Brian G. Paul Convinces Appellate Division To Terminate Alimony  
Based Upon Cohabitation Without The Need For A Trial  
Nate Edelstein Successfully Opposes Cell Tower in Residential Zone

*continued on page 4*

“ The Times They Are A-Changin’ ”



You may notice a change in our logo and the addition of the words, “True Counsel.” What does True Counsel mean? It means providing our clients with sound legal advice, strategy and representation, and much more. We are committed to guiding our clients through difficult situations and developing creative and cost effective solutions for the problems they face. Especially during these difficult economic times, we know that clients are seeking a practical, real world approach and we bring that approach to the way we practice law. We also understand that clients often come to us during the most stressful and difficult times in their lives and they need our compassion, respect and concern. That is what we believe our clients deserve. That is True Counsel.

New Changes To The Patent Law Every Entrepreneur Should Know



Richard A. Catalina, Jr.

On September 16, 2011, President Obama signed into law the *America Invents Act* (AIA), the most ambitious patent reform legislation to be enacted in decades. Among other objectives, the AIA seeks to harmonize U.S. patent law with global patent regimes and remedy many flaws of the current U.S. patent system, particularly in light of the enormous technological advancements over the past 20 years. While the new patent law is a complex piece of legislation to be implemented over the next 18 months, there are a number of new issues for patent practitioners, inventors and businesses to immediately consider. The following may be the three most significant changes to the patent law: First to Invent Rule, Assignees May Prosecute Applications and Post-Grant Review.

First to Invent Rule. When two

applications for the same invention are simultaneously pending before the United States Patent and Trademark Office, the USPTO must determine who is legally entitled to pursue the patent on the invention. Under current law, the invention belongs to the applicant who invented it first – which is determined in a complex legal proceeding known as an “Interference.” The AIA changes that: the party legally entitled to pursue the patent on the invention will be the applicant who first filed its patent application. As a result, entrepreneurs and budding inventors must diligently reduce conception to practice and immediately file the application on the invention.

Assignees May Prosecute Applications. Under current law, a patent application is always filed and prosecuted in the name of the inventor(s), who may assign or be legally obligated to assign the application to a third party (such as an employer). However, the patent always issues in the name of the

inventor(s). The AIA now allows assignees to take legal control of the prosecution, with the resultant patent being issued in the name of the assignee.

Post-Grant Review. The AIA creates two new review proceedings to challenge issued patents: an “inter partes” review and a “post grant” review. The inter partes review process considers allegations by third parties that the issued patent should be invalidated based on existing prior art. The post grant review proceeding considers allegations of invalidity on any grounds, but it must be filed within nine months of the patent’s issuance. The USPTO will implement new administrative rules to regulate both procedures. The AIA addresses many more issues and is highly sophisticated. Entrepreneurs, particularly those working with innovation, are well advised to consult a knowledgeable patent practitioner regarding the full impact of the AIA on their business model.

# Firm Recognition



## SZAFERMAN LAKIND RECOGNIZED BY THE DEFENSE DEPARTMENT

Szaferman, Lakind was named a finalist for the 2011 Department of Defense Employer Support Freedom Award. The Freedom Award is the DoD's highest recognition given to employers for exceptional support of their employees serving in the National Guard and the Army Reserve. Szaferman Lakind was one of only 30 finalists selected from 4,049 nominations received earlier this year from Guard and Reserve service members and their families.

Szaferman Lakind was nominated by Bob Stevens, an associate with the firm and a member of the Army National Guard. Szaferman Lakind pledged its full support when Bob was deployed to Iraq just two months after they hired him as an attorney. The firm kept in close contact with his wife and two young children and provided him a computer with a video camera so he could communicate with his family as well as other significant assistance during his deployment.

## ARNOLD LAKIND RECEIVES PRESTIGIOUS AWARD

Arnold Lakind was presented with the Nizolek Award by The Mercer County Bar Association on September 24th 2011. The Nizolek Award is the Mercer County Bar Association's most prestigious award, recognizing exceptional contribution to the field of law as well as the highest level of personal and professional ethics and conduct.

Arnie, a founding shareholder of Szaferman Lakind, represents clients in commercial, environmental and land use litigation. He has over thirty reported

judicial decisions and has argued several landmark cases before the Supreme Court of New Jersey. Arnie was instrumental in obtaining damages in *Ayers v. Jackson Township*, the Supreme Court's seminal case on the types of compensable damages recoverable by individuals exposed to toxic chemicals. He has been selected as one of "The Best Lawyers in America" 2009 and 2011. He was named a "NJ SuperLawyer" in the field of General Litigation every year from 2005 through 2011.

## BARRY SZAFERMAN HONORED BY SERV BEHAVIORAL HEALTH SYSTEM, INC.



*Barry Szaferman*

Managing partner Barry Szaferman was honored by SERV Behavioral Health System, Inc. at the annual Volley for SERV Tennis Tournament, on June 20, 2011 at Cherry Valley Country Club. SERV has provided housing and services for special-needs individuals for the past 37 years. Barry has long supported

Volley For SERV as a participant in its tennis events and as a sponsor.

### Have a suggestion for an upcoming *True Counsel* topic?

We want to provide insights for a broad range of legal topics that interest you. If there is a particular topic you would like to see highlighted, please contact our Director of Marketing: [Nancy Street at NStreet@szaferman.com](mailto:NStreet@szaferman.com). Please put, "newsletter topic" in the subject line. We look forward to your feedback!

# SzafermanLakindCases

## Attorney Janine Bauer Helps Client Preserve History and Open Space



*Janine Bauer*

On October 20, 2011, Janine G. Bauer, Esq. won a significant case before the Jersey City Zoning Board of Adjustment, when the commissioners voted 5-0 to reject an application to demolish a historic structure on the New Jersey Register of Historic places, which had also been landmarked by the City.

The contentious hearing lasted 14 months and involved testimony by planners, architects, engineers and historic preservation experts. The structure, known as the Pennsylvania RR Harsimus Stem Embankment, is a massive sandstone retaining wall that held up a railroad that brought cargo from America's heartland

to the Jersey City waterfront, where it was barged to New York City and beyond. Szaferman Lakind's client is a local preservation coalition, seeking to protect the Embankment, and to convert it to a linear park with a "High Line" type pedestrian trail on it. For more information about the structure, visit [www.embankment.org](http://www.embankment.org). The trail would become part of the East Coast Greenway: [www.greenway.org](http://www.greenway.org). The Zoning Board members first voted that it was not a commercial property. They further voted that the development companies had not proven the criteria under the City demolition ordinance, and that they had not made every reasonable effort to provide a compatible use for the Embankment. As a result of Janine's efforts the historic embankment will not be demolished.

## Bob Lytle Appointed As Statewide Chair of Committee on Character

Bob Lytle was recently appointed by the New Jersey Supreme Court to act as the Statewide Chairperson for the Committee on Character. The purpose and duty of the Committee on Character is to determine the fitness to practice law of each candidate for admission to the New Jersey Bar. Members of the Committee on Character, which consists of forty-nine reviewing attorneys, review the applications of each candidate seeking admission to the Bar. Based upon their review, the Committee on Character either certifies the Bar candidate's fitness to practice, recommends conditional

admission or recommends that admission be withheld. In fulfilling its mission, the Committee promotes the public interest and protects the integrity of the legal profession by ensuring that each Bar candidate demonstrates that he or she possesses the requisite character to practice law in this State.



*Robert Lytle*

## Michael Paglione Settles Case Against Montgomery Township For \$3.575 Million

*continued from page 1*

a handicap lift but the driver believed it was broken because she did not know how to operate it. The favorable resolution of this case comes after Michael successfully concluded three other cases this year totalling more than \$2 million dollars.

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Visit us online to view our new website! We have full attorney profiles, contact information, practice area descriptions and more cases:

Please visit: [www.szaferman.com](http://www.szaferman.com)

## **Brian G. Paul Convinces Appellate Division To Terminate Alimony Based Upon Cohabitation Without The Need For A Trial**

Brian G. Paul, an established Family Law attorney, recently convinced the Appellate Division to terminate alimony without the need for a trial, which may influence how similar cases are handled in the future. Normally, when a paying spouse provides evidence demonstrating that their former spouse may be cohabiting in a marriage-like relationship, the Trial Court schedules a trial in order to determine whether there is in fact cohabitation; and, if so, whether the economic benefit from the cohabitation eliminates or reduces the former spouse's need for alimony. However, Brian convinced the Appellate Division that a Trial Court Judge was correct when she deviated from normal course and terminated our client's alimony obligation on the basis of his former wife's cohabitation, without first requiring the parties to participate in a trial.

In this case, the parties were divorced in 1998. In support of his motion to terminate alimony, our client provided evidence demonstrating that his former spouse had been engaged in a marriage-like relationship since at least 2005. Specifically, he provided copies of public records showing that she and her paramour jointly owned, with rights of survivorship, a condominium in Florida that they purchased without a mortgage. He further provided evidence showing the couple had several joint bank accounts; took expensive vacations together; and lived together in a second residence in New Jersey. On the basis of this evidence, our client argued that given the economic benefit associated with the cohabitation, his former wife no longer had a need for alimony from him in order to

live comparably to the marital lifestyle.

In response to the motion, the former wife admitted that she had been cohabiting since 1999, but claimed she still had a need for alimony in order to live reasonably comparable to the marital lifestyle. Despite that claim, however, the former wife's case information statement showed that she now earned more than twice what she earned at the time of the divorce, and that she was receiving pension income from our client's defined benefit pension that was in pay status. The former wife's case information statement further showed that she now had the use of two residences (one in Florida and one in New Jersey), whereas she only had one residence at the time of the divorce.

Because the former wife admitted to the cohabitation, the sole issue in dispute was whether the cohabitation had eliminated her need for alimony. The Appellate Division agreed with Brian that the former wife had failed to demonstrate, even on a prima facie basis, that she still had a need for alimony, and therefore there was no need to subject the parties to an expensive and time consuming trial. Accordingly, the Trial Court's decision was affirmed in its entirety. In addition to this case, **Brian G. Paul has handled over 35 Family Law Appellate Division cases as well as several precedent setting cases that have helped shape New Jersey divorce law.**



*Brian G. Paul*

## **Arnold Lakind And Janine Bauer Secure Reversal Of Trial Court Insurance Case**

In this case, our client, a contractor on a bridge project, was sued by several employees who claimed to have suffered illnesses as a result of exposure to lead. Following a verdict in favor of our client, the injured employees renewed their lawsuit, arguing that they lost the bodily injury case because the defendant had

concealed evidence. Our client requested its insurer, CIGNA, to defend and the insurance company refused. The client prevailed in the second trial brought by the employees, and retained Szaferman Lakind to sue CIGNA for the cost of defense. On appeal, CIGNA argued that their insurance policy only covered bodily

*continued on page 6*

## Robert Lakind Files Several ERISA Class Actions



Robert Lakind

After obtaining his Masters in Tax law from New York University and working for several years at large New York and Philadelphia firms where he practiced ERISA law, Robert came to Szaferman Lakind. ERISA, an acronym for the Employee Retirement

Income Security Act, protects the retirement benefits of American employees. Notwithstanding its beneficent purpose, ERISA is among the most complex of United States statutes. Employees and occasionally employers are at the mercy of large insurance and brokerage companies who often charge exorbitant fees, in some instances well in excess of the value of the services rendered. As a result, retirement benefits are often eroded. Given the difficult economic times, older employees are often

left with insufficient funds to maintain a comfortable lifestyle in retirement.

In *Goldenberg v Indel*, we filed a lawsuit against FSC Securities Corp. charging that the plan manager made imprudent investments and committed prohibited transactions. Robert prevailed on a motion to dismiss the case brought by the defendants and FSC then remedied the prohibited transaction for the benefit of our clients.

In other cases, Robert has filed class actions against John Hancock Insurance Company, AXA Financial and The Hartford Insurance Company alleging that each charged exorbitant fees. These cases are still pending. As a result of the expertise he has developed reviewing ERISA plans for Fortune 500 and smaller companies, Robert has developed a compliance practice, assisting employers, which supplements his work on behalf of employees.

## Nate Edelstein Successfully Opposes Cell Tower In Residential Zone



Nate Edelstein

Nate Edelstein, successfully opposed the installation of a 150' cell tower in a residential zone in Lower Makefield Township, Pennsylvania.

Liberty Towers, a cell tower builder, proposed construction of a 150' tower in the middle of this residential area. Nate objected at the Zoning Board of Adjustment,

which denied the application. Nate successfully presented evidence demonstrating that T-Mobile users

receive a strong and reliable cell phone signal, and that the applicant had failed to prove that there is any "significant gap" in its service within Lower Makefield Township.

United States District Court for the Eastern District of Pennsylvania, agreed that placing a cell tower in the middle of this residential zone would have significant adverse aesthetic impacts on the residential character of the neighborhood, and would adversely impact the residents' use and enjoyment of their homes and properties.

## Arnold Lakind And Janine Bauer Secure Reversal Of Trial Court Insurance Case

*continued from page 5*

injury claims and a claim that evidence was concealed was therefore outside the scope of the policy. The parties each moved for summary judgment. We prevailed on the first motion in the trial court and the court ordered CIGNA to reimburse our client for the cost of defense. CIGNA then filed a motion for reconsideration and the trial court reversed its decision, ruling for CIGNA. We appealed and in a lengthy opinion, the Appellate Division ruled that our client was entitled to a defense and directed CIGNA to reimburse our client for all of its attorneys fees.

# Firm Overview

The law firm of Szaferman Lakind, AV rated by Martindale-Hubbell™, is a full service law firm with a multi-faceted team of attorneys who provide legal representation for businesses, municipalities, investors, professionals, families, and individuals.

Our attorneys use imaginative, sophisticated and cost effective solutions to provide clients True Counsel in handling a wide range of legal needs, including litigation, business and commercial law,

matrimonial disputes, class actions, environmental law, intellectual property and personal injury matters. Founded in 1977, our firm provides the experience, strength and resources of a large firm in a caring and friendly environment.

Reflecting the excellence of our firm, thirty percent of our attorneys have been selected by their peers in the legal community for inclusion in the prestigious 2011 New Jersey Super Lawyers™ and/or Rising Star™ lists.

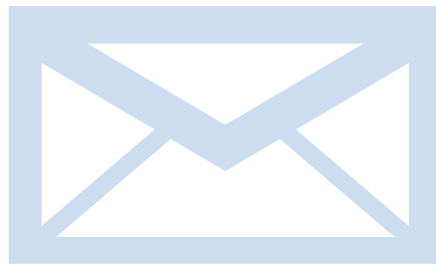
## Szaferman Lakind Practice Areas:

Matrimonial	Commercial Leasing	Finance
Personal Injury	Foreign Trade Zone	Business Organizations
Business	Zoning	And Transactions
Tax Trusts And Estates	Criminal Defense	Labor And
Environmental Law	Municipal Court	Employment Law
Transportation Law	Class Action Lawsuits	Solar Development And
Intellectual Property	Environmental	Renewable Energy
Insurance Coverage	Commercial And General	Workers' Compensation
Real Estate And Land Use	Litigation	State And Federal
Eminent Domain	Corporate And Banking	Appeals

## Contact Us

We welcome your feedback! To reach out to us regarding something you read in *True Counsel* or for general inquires contact us today at:

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# Changes at **Szaferman**

## **RYAN MARRONE NAMED PARTNER**



*Ryan Marrone*

Ryan Marrone has been named a Partner at the firm. Ryan's practice is focused on solar development and renewable energy, corporate law and project financing.

As part of his deep involvement with the solar industry, Ryan developed and implemented a business model for the design, build, operation, and maintenance of solar installations

in industrial buildings. Ryan has represented several Fortune 100 companies and is admitted to the bars of New Jersey, the United States District Court–District of New Jersey, and the District of Columbia. He serves on several community organizations and sits on the Robert Wood Johnson University Hospital–Hamilton Professional Affairs Committee and Compliance Committee. Ryan received his B.A. from Seton Hall University and earned his J.D. from Widener University School of Law.

## **NATHAN EDELSTEIN JOINS THE FIRM**



*Nate Edelstein*

Nathan M. Edelstein has joined the firm as a partner. Nate has had a distinguished career handling complex litigation in both State and Federal courts, with a specific focus on environmental law.

Nate served as Deputy Attorney General in the State of New Jersey and has been in private practice since 1979. He has been Chairman of the Mercer County Bench-Bar Committee on Chancery practice and serves as a Master in the Mercer County American Inns of Court. Nate received his Juris Doctorate from Rutgers Law School and a Master Degree in City and Regional Planning from Rutgers University.

**SZAFERMAN  
LAKIND** | **TRUE  
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