

# True Counsel

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## Brian Paul Succeeds with Appellate Division Case

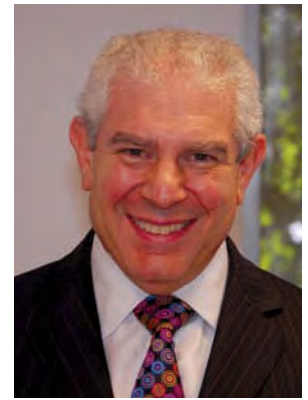


Brian G. Paul, a Partner in our Family Law Group, recently convinced the Appellate Division to reverse a Trial Court Judge's ruling that a father did not have to contribute to his two children's private school education. In *Livingstone v. Daniel*, our client, the children's mother, represented herself on a pro se basis at the Trial Court level. When considering her

motion, the Trial Court Judge ruled that the father did not have to contribute to the children's private school expenses on the basis that the parties' agreement only required him to contribute to future college related expenses, not private school expenses. The mother retained our firm to appeal the Trial Court's ruling. The Appellate Division agreed with Brian that it was improper for the Trial Court to rule that the mother had waived the children's potential right to a private school contribution in circumstances where the parties' Final Judgment of Divorce was silent on the issue. The Appellate Division remanded the case back to the Trial Court so that the issue of a private school contribution could be decided on the merits. On a related issue, the Appellate Division also agreed with Brian that the Trial Court had committed a reversible error by failing to require the Husband to file an updated case information statement setting forth his assets, liabilities and current income. As a result, the Appellate Division also reversed and remanded the Trial Court's child support, work related child care and health insurance contributions so they could be properly calculated once he provided full financial disclosure. This case once again highlights the importance of having an experienced attorney represent you whenever you go to court. *Brian G. Paul has handled over 38 Family Law Appellate Division cases including several precedent setting cases that have helped shape New Jersey divorce law.*

## Banner Year for Small Business Lending

Despite all the doom and gloom reports about the difficulty small businesses are having in obtaining loans for business expansion, acquisitions of property or refinancing existing debt, the regional and community banks that Szaferman Lakind



*Bruce Sattin*

represents are aggressively seeking good deals to finance. Credit-worthy businesses with rational business plans find that the local banks are able and eager to work with them to provide financing on very competitive terms, while the large, national banks have no interest in lending to small businesses. In 2011 alone, Bruce M. Sattin and the other attorneys in our business group including Barry Szaferman, Dan Graziano, Ryan Marrone and Ben Branche, closed over 60 loans from banks, with the total of those loans exceeding \$80 million. Our commercial real estate paralegal, Joanne K. Fiore, assisted in all the transactions. The Business Group also closed a multitude of deals for our business clients who bought or sold assets or refinanced loans for their businesses at a record rate last year, and all signs point to continued activity at a high level in 2012.

### Highlights Inside

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# New Jersey Adopts Uniform Trade Secrets Act



*Richard A. Catalina, Jr.*

On January 9, New Jersey Governor Chris Christie signed into law the New Jersey Trade Secrets Act (the “NJTSA”), a trade secret statute modeled after the Uniform Trade Secrets Act (the “Uniform Act”).

New Jersey’s enactment of a version of the model Uniform Act brings it into conformity with 46 other states and the District of Columbia, all of which have enacted a version of the Uniform Act.

The NJTSA provides New Jersey businesses with a potent weapon that may be used in the event of an actual or threatened misappropriation of trade secrets. Prior to the enactment of the statute, New Jersey did not have statutory protection for trade secrets and businesses in New Jersey seeking to protect their trade secrets could only do so by bringing actions based on common law.

The NJTSA defines a “trade secret” as any information, such as a formula, pattern, business data compilation, device, or

process, that (1) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable through proper means by, other persons who can obtain economic value from its disclosure or use, and (2) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

As with prior common law trade secret enforcement, in order to state a claim under the NJTSA, a business must prove that the defendant obtained trade secrets by “improper means.” The Act specifically defines “improper means” as any unauthorized access to or use of a business’s trade secrets.

In keeping with prior common law and the Uniform Act, discovery of a trade secret by independent invention, reverse engineering, observation of the information in public use, and other “proper means” provides a complete defense to a claim brought under the Act.

The NJTSA authorizes courts to enter injunctive relief to prevent both actual and threatened misappropriation. The NJTSA further provides for damages for both the actual loss

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## *brand*new

### Melissa A. Ruff Joins Firm

Melissa A. Ruff has joined the firm as an associate in the Litigation department. Prior to joining the firm, Melissa served as a law clerk to the Honorable Travis L. Francis, Assignment Judge Superior Court, Middlesex Vicinage. During her clerkship, Melissa served as a mediator in the Special Civil Part of the Middlesex Law Division.

Melissa received her Juris Doctor from the University of Maryland School of Law where she was an executive board member of the Journal of Health Care Law and Policy and the Health Care Moot Court team. After her first year she received the Dean’s Award and upon graduation she received the Law, Litigation and Advocacy Award. Melissa received her B.A. in Government and Spanish from Franklin & Marshall College where she was a member and captain of the school’s Division III soccer team.



*Melissa A. Ruff*

**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 **Nancy Street at [NStreet@szaferman.com](mailto:NStreet@szaferman.com)**. Please put, “newsletter topic” in the subject line. We look forward to your feedback!

## Jeff Blumstein Obtains Summary Judgment for National Beauty Pageant

A national beauty pageant headquartered in California retained Jeff Blumstein after it was joined as a party in litigation in New Jersey arising out of the disqualification of a local state pageant winner by the state pageant director. The disgruntled, disqualified contestant sued both the local pageant organization and our client for alleged monetary and emotional distress damages resulting from her disqualification and her inability to participate in the national pageant held in Arizona. The claim was made that the local organization was acting as the agent of the national pageant either by direct authorization or because the national pageant had held itself out as the principal on whose behalf the local organization was acting. Jeff showed that there was no evidential or legal basis for any claim that the local organization, which was deemed an independent contractor, was acting on behalf of the national



Jeff Blumstein

organization when it disqualified the contestant after she won the local state pageant. The disqualification was based upon the local director's determination that the contestant had misrepresented her background when entering the contest. Jeff also showed that there was nothing that the national organization had done to allow a reasonable person to come to the conclusion that the local director was acting under some type of apparent authority when the disqualification decision was made. The contestant had also signed a document when entering the local state pageant specifically agreeing that she would not look to the national pageant with regard to anything that happened in the local state pageant. In opposition to the motion for summary judgment, she unsuccessfully argued that such a provision was against public policy and unenforceable. The court did not accept these arguments and dismissed the claim against our client with prejudice.

## Firm Recognition

### Dan Graziano Honored by Robert Wood Johnson University Hospital Hamilton Foundation

Robert Wood Johnson University Hospital Hamilton Foundation (RWJ Hamilton Foundation) announced the honorees of the organization's fall signature fundraising event with Daniel Graziano, Esq., named

as the Community Honoree. Dan has served on the Board for over 15 years and as Board Chairman for the past four years.

### Szaferman Lakind is proud to be a sponsor to:

The Princeton Chamber of Commerce  
– Silver Sponsor



The Mercer County  
Chamber of Commerce



# Our Attorneys Can Help You Obtain Medical Care When You Are Injured

The first concern of our clients who are injured in an accident is receiving quality medical care. We share that concern and immediately identify the sources of payment for our clients' medical care. The sources of payment often vary depending upon the location of the accident and the insurance that is primary for that location. For example, in a motor vehicle accident the driver or passenger of a car will usually have to rely on their own motor vehicle insurance to pay their medical bills, while a person injured in the course of their employment must pursue a worker's compensation claim to receive medical care. Once we identify the appropriate insurance for medical care and we establish the claim, the greatest challenge is keeping the insurance coverage effective until your need for medical care is completed. Many people have discovered to their amazement that once they file a claim

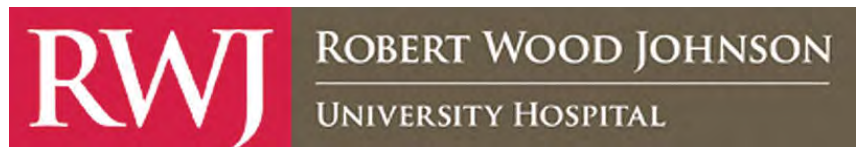
for medical benefits their own insurance company, to whom they have dutifully paid premiums for years, becomes their adversary. Insurance companies will routinely deny benefits for medical tests or treatments even when the treating physicians are adamant that the tests or treatments are necessary. Therefore, we routinely supplement our clients' personal injury law suits with negotiations, supplemental arbitrations and litigation against insurers to fulfill the medical care required by our clients.

The Szaferman Lakind Personal Injury/Worker's Compensation Group recognizes that the successful pursuit of your injury claim includes fulfilling payment for your medical care deemed appropriate by your physician. Please consult us to fulfill comprehensive recovery for your personal injury claim.

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## Szaferman Lakind Makes Five Year Commitment to The Robert Wood Johnson Health System

Szaferman Lakind has made a five year commitment to the Robert Wood Johnson University Hospital Hamilton Foundation toward the RWJ Hamilton Pediatric Emergency Department Capital Campaign.



Szaferman Lakind's five year \$25,000 Technology and Activity Sponsorship will help RWJ Hamilton to keep pace with medical technology needs as well as provide digital entertainment for young patients and their families. According to Barry Szaferman, Managing Partner of the firm, "We are pleased to be able to support this very important project and to help young people experiencing medical problems to be more comfortable and relaxed while undergoing treatment"

With the first phase of the project complete and with \$2 million secured to date, the overall campaign goal is \$5 million.

"We are extremely appreciative of the leadership pledge made by Szaferman Lakind. A project and campaign of this magnitude is reliant upon the confidence, commitment and philanthropic spirit of community businesses and families," said Skip Cimino, president and CEO of RWJ Hamilton.

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

# Termination Information Every Small Business Owner Should Know



*Dan Graziano*

The small business owner probably faces no more daunting challenge than terminating an employee. Whether it's a layoff due to a drop in business or a poorly performing employee, the threat of a wrongful termination suit looms large. The first line of defense for any employer taking any personnel action is documentation. If an employee has been derelict and under-performing, that should be the subject of a

memo to the personnel file, preferably, a memo requiring a counseling session where the performance is evaluated in a negative but constructive way with suggested improvements and an explanation of possible consequences including termination. In a layoff, the diminution of work activity and demand should be documented in sales/revenue records and, again, a memo alerting staff to the threat posed by a business decline, would be most helpful in a later defense of the layoff.

In either case, an employer should consider the value of a severance agreement providing the terminated employee with wage or benefit continuation in exchange for a release of any potential claims. Such an agreement can help avoid costly litigation if properly drafted by an experienced employment lawyer. Finally, employment practices insurance has become affordable and should be considered by everyone who has a payroll. Costs can be reduced by high deductibles, but that then becomes a threshold for consideration of the expense risk of potential litigation and may affect your ability to negotiate a reasonable severance package.

In any case, employers with any size staff can benefit from having an attorney available for consultation and advice. Our firm provides such services for many employers on a retainer basis, where the client pays a monthly or quarterly fixed fee which covers such advice and the drafting such agreements. Daniel S. Sweetser, Ryan A. Marrone or I would be happy to discuss such an arrangement with you for your company.

*Continued from page 3*

## NJ Trade Secrets Act

suffered by the business and for any unjust enrichment of the defendant caused by the misappropriation. Damages may also include the imposition of a reasonable royalty. In instances involving willful and malicious misappropriation of a trade secret, the court may award punitive damages. Attorney's fees and costs may also be awarded.

Almost all businesses, regardless of size, rely upon trade secret protection to maintain a competitive edge. However what belongs to a business does not always stay with the business, as employees come and employees go. The newly enacted NJTSA provides teeth and muscle to businesses seeking to protect and enforce their proprietary, commercially advantageous business secrets.

## Szaferman Lakind Attorneys in Leadership Positions with Mercer County Bar Association

Szaferman Lakind is proud to announce that several attorneys have been selected for leadership roles within the Mercer County Bar Association (MCBA).

Robert Lytle remains very involved with the MCBA, chosen to serve as a Trustee for the 2012 calendar year, the chair of the Civil Bench Bar Committee and co-chair of the Volunteer Lawyer's Project. Michael Brottman is chair of the Workers Compensation Bench Bar. Melissa Ruff is a co-chair of the Young Lawyers Committee.



*Robert Lytle*

# Szaferman Lakind a Leader in Continuing Legal Education



*Bruce Sattin*

In 2011, New Jersey implemented a requirement that all attorneys take not less than 24 credit hours of continuing legal education (CLE) courses over each two year period, joining states such as Pennsylvania and New York that have had mandatory CLE requirements for decades. Szaferman Lakind has always encouraged its attorneys to take CLE courses, even if not mandated by the state Supreme Court, and about half our attorneys are licensed in other states that already have mandatory CLE requirements. Not only do the attorneys at Szaferman Lakind take CLE courses routinely, many teach CLE courses as well. During 2011, the attorneys at Szaferman Lakind participated as moderators or panelists in the following CLE courses:

**Bruce M. Sattin** led a panel that included The Hon. Mary C. Jacobson, Presiding Judge, Chancery Division, Mercer County, and Deborah Osgood, Vice President of Hopewell Valley Community Bank, in a seminar on “Workouts in Real Estate – Alternatives to Foreclosure” at the X-Treme CLE program sponsored by the Mercer County Bar Association.

**Brian G. Paul** was a panelist along with the Hon. Catherine Fitzpatrick, Presiding Judge of Mercer County Family Part and other local attorneys for a seminar on “The Closing from Hell: Sale of the Marital Home, Real Estate Law, Divorce Law and Ethical Issues” sponsored by the Mercer County Bar Association.

**Steven Blader** presented a seminar on Premises Liability that was sponsored by the Mercer County Bar Association.

**Craig J. Hubert and Michael R. Paglione** participated in a seminar entitled, “Communication: The Good, the Bad and the Ugly” along with Thomas Manzo and Tracey R. Hinson for the New Jersey State Bar Association in conjunction with the New Jersey Institute for Continuing Legal Education.

**Richard A. Catalina** taught a seminar on “Understanding Cloud Computing and Its Legal Implications” for the New Jersey Institute for Continuing Legal Education.

**Michael D. Brottman** moderated a panel at a seminar on “Workers Compensation Liens” that was also presented at the Mercer County Bar Association X-Treme CLE program.

**Ryan A. Marrone** taught a course entitled “Renewable Energy Law: A National Perspective on Today’s Hottest Trend” for the National Academy of Continuing Legal Education, which is available nationally as a webinar.

**Richard A. Catalina** taught a seminar entitled “Intellectual Property Primer for the Internet and Social Media” at the X-Treme CLE program sponsored by the Mercer County Bar Association.

**Bruce M. Sattin** participated as a presenter on commercial real estate transactions at a seminar entitled “Real Estate 101” that was sponsored by the Mercer County Bar Association. This seminar was recorded and is available as a webinar in New Jersey.

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## TRUE COUNSEL®

At Szaferman Lakind, we provide our clients with 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 challenges 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.

# 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:

Business  
Business Organizations and Transactions  
Class Action Lawsuits  
Commercial and General Litigation  
Commercial Leasing  
Corporate and Banking  
Finance  
Criminal Defense

Eminent Domain  
Environmental  
Environmental Law  
Foreign Trade Zone  
Insurance Coverage  
Intellectual Property  
Labor and Employment Law  
Matrimonial  
Municipal Court  
Personal Injury

Real Estate and Land Use  
Solar Development and Renewable Energy  
State and Federal Appeals  
Tax Trusts and Estates  
Transportation Law  
Workers' Compensation  
Zoning

## 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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Craig J. Hubert++  
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++Certified Civil and Criminal Trial Attorney  
\*NJ & PA Bars  
\*\*NJ & NY Bars  
\*\*\*NJ, NY & PA Bars  
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## Lionel Frank Obtains Approval for Stony Brook Millstone Watershed Association



*Lionel J. Frank*

On January 11, 2012, Lionel J. Frank represented the Stony Brook Millstone Watershed Association (SBMWA) before the Hopewell Township Zoning Board of Adjustment seeking a “d.(2)” variance allowing the expansion of a non-conforming use, and preliminary and final site plan approval to construct

a new 10,108 square foot state-of-the-art environmental center and the renovation of the existing Buttinger Nature Center.

The SBMWA is a nonprofit corporation which is committed to protecting the water and environment through conservation, advocacy, science and education. The New Environmental Center will employ cutting edge sustainability features such as geothermal heating and cooling, natural sun lighting, a roof that includes natural grasses to reduce stormwater runoff and a wetlands-based wastewater treatment system.

It has been designed to meet the LEED Platinum certification from the U.S. Green Council’s Leadership in Energy and Environmental Design program, by consuming no more energy than it produces.

The Zoning Board of Adjustment unanimously approved the application after hearing testimony from design, engineering and environmental experts, and concluding that there were “special reasons” under the Municipal Land Use Law to grant the use variance which will benefit the public and be an example of good design and construction of future projects in Mercer County, New Jersey and the nation.

The SBMWA manages 930 acres in Hopewell Township. The New Environmental Center will increase the SBMWA’s environmental science studies and educational offerings with the addition of a laboratory, computer learning center, classrooms and exhibit halls open to schoolchildren, researchers and the public.



*Rendering of the Stony Brook Millstone Watershed Environmental Center*

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