

# TRUE COUNSEL

WINTER 2014

## LEGAL HIGHLIGHTS

CRAIG HUBERT BRINGS CIVIL JUSTICE AFTER MOCK ELECTROCUTION OF DISABLED INMATE

FIRM ANNOUNCES PROMOTION OF ROBERT P. PANZER TO PARTNER

FIRM SETTLES CASE FOR \$250K FOR STORMWATER DAMAGE CAUSED BY N.J. STATE POLICE

JUDGE FEINBERG AND PARTNER JEFF EPSTEIN APPOINTED TO N.J. SUPREME COURT COMMITTEES

BRIAN PAUL SUBMITS *AMICUS CURIAE* BRIEF TO STATE SUPREME COURT

BARRY SZAFERMAN NAMED "CHAMPION FOR BUSINESS" BY PRINCETON REGIONAL CHAMBER OF COMMERCE

JANINE BAUER TELLS N.J. STATE SUPREME COURT, "HANDS OFF SPILL ACT"

### Also Inside...

DANIEL GRAZIANO PRESENTS TO AREA SCHOOLS ON SEXUAL HARASSMENT, BULLYING AND DISCRIMINATION

"SEC RULE 506: KEY INSIGHTS" BY GREGG JACLIN

"NEW TAX PROVISIONS FOR 'S CORPORATIONS" BY SCOTT BORSACK

"IDENTITY THEFT PLAGUES CONSUMERS AND BUSINESSES" BY RICHARD CATALINA

## SEVEN ATTORNEYS INCLUDED IN 2014 SUPER LAWYERS®

Super Lawyers® is a rating service of outstanding lawyers who have attained a high degree of peer recognition and professional achievement. The selection process is multi-phased and includes independent research, peer nominations and peer evaluations.

The 2014 New Jersey Super Lawyers list includes Managing Partner Barry D. Szaferman (Business and Corporate Law) and firm Partners Arnold C. Lakind (General Litigation), Craig J. Hubert (Personal Injury: Plaintiff), Jeffrey K. Epstein (Family Law), Brian G. Paul (Family Law), Daniel S. Sweetser (Business Litigation) and Robert E. Lytle (Class Action Law).

All attorneys on the list are repeat selections with the exception of Bob Lytle. Barry Szaferman, Arnold Lakind, Craig Hubert and Jeff Epstein each has been identified by Super Lawyers every year since 2005, the year Super Lawyers began. Brian Paul has been recognized continuously since 2007 and Dan Sweetser was first recognized in 2010 and has been designated each year since.

Bob Lytle, the most recent addition to the Super Lawyers list, has extensive trial experience as a county and state prosecutor. He now specializes in complex civil litigation and criminal defense in both state and federal court.



**BARRY D. SZAFERMAN**  
Co-Founder, Managing Partner  
Business & Corporate Law



**ARNOLD C. LAKIND**  
Co-Founder, Partner  
General Litigation



**CRAIG J. HUBERT**  
Partner, Executive Committee  
Personal Injury: Plaintiff



**JEFFREY K. EPSTEIN**  
Partner  
Family Law



**BRIAN G. PAUL**  
Partner, Executive Committee  
Family Law



**DANIEL S. SWEETSER**  
Partner  
Business Litigation



**ROBERT E. LYTLE**  
Partner  
Class Action Law

"I am excited for Bob Lytle and all of our firm's New Jersey Super Lawyers. They are a testament to our attorneys' professional growth and this firm's commitment to clients. Szaferman Lakind has Super Lawyers in a diverse range of practices areas and it is my privilege to be co-founder of a firm with so many highly-respected attorneys," stated Managing Partner, Barry Szaferman.

## CRAIG HUBERT BRINGS CIVIL JUSTICE AFTER MOCK ELECTROCUTION OF DISABLED INMATE

Firm Partner Craig Hubert recently settled a case, pending court approval, on behalf of his client for \$200,000 against the New Jersey Department of Corrections and individually named corrections' lieutenants, sergeants and senior corrections officers for an alleged mock electrocution of a mentally challenged inmate. Evidence uncovered during litigation supported the claim that in November 2009 corrections officers seeking information about the reporting of a fellow officer targeted the client due to his disabilities in order to gain information. To this end, the client was restrained and escorted to the inmate intake area where he observed another inmate screaming and shaking violently in what he believed to be an electric chair. The client saw a white and green substance leaking from this inmate's mouth. That inmate explained, during a deposition, that officers threatened meddling with his upcoming parole if he did not assist them in the ruse. He stated that he was given pea soup to expel from his mouth when the client, accompanied by corrections officers, approached the room. The client was then placed in the same chair in handcuffs which caused a metal-detecting alarm that was a component of the chair to sound on multiple occasions. As a consequence,

the client was suffering severe emotional distress while the officers interrogated him. Video footage showed a collection of other officers outside the intake area who watched the spectacle but never intervened. As a result of this incident, the client continues to suffer from Post Traumatic Stress Disorder, as diagnosed by a psychiatrist retained by this firm.

In plaintiff's complaint, Craig Hubert advanced claims based on various violations of Federal and State-protected civil rights under 42 U.S.C. 1983 and N.J.S.A. 10:6-1 to 2, the New Jersey Law Against Discrimination, N.J.S.A. 10:5-2, as well as common law claims of assault, battery and negligence. Honorable Lois Goodman, United States Magistrate Judge in the Federal District Court in Trenton, assisted the parties in achieving settlement.

The firm is currently setting up the appropriate trust and investment vehicle to ensure the safety and growth of the client's proceeds.

### ARE YOU OR SOMEONE YOU KNOW A VICTIM OF DISCRIMINATION?

*If so, contact Szaferman Lakind today.*

## IDENTITY THEFT PLAGUES CONSUMERS AND BUSINESSES



**BY RICHARD CATALINA**  
*Of Counsel*

Headlines in recent days concerning retail giant Target's security breach establish that hacking and identity theft are not isolated events involving only a limited number of victims. Indeed, by mid-January, Target had increased its estimates, now advising that the personal information of approximately 110 million customers was compromised.

Security breaches of this magnitude are not the activities of bored computer geeks seeking the thrill of the hack. Breaches such as that suffered by Target are the result of sophisticated criminal enterprises that sell the stolen personal information through a clandestine network, where ultimately it is used in identity theft of the individual consumer. Even worse, such breaches occur every day and often go undetected.

Most states have enacted breach notification laws. New Jersey is no exception, with its robust Identity Theft Prevention Act, which went into effect in 2006. The law requires that if an individual or a commercial entity that conducts business in New Jersey and that owns or licenses computerized data that includes personal information about a New Jersey resident becomes aware of a breach

of the security of its computer system, the individual or entity must conduct a prompt investigation to determine if personal information has been compromised and assess the misuse. The law also requires that the individual or commercial entity provide notice as soon as possible to the affected New Jersey resident. "Personal information" is defined under the statute as the resident's first name (or first initial) and last name linked with any one or more of the following: 1) Social Security number, 2) Driver's license number or state ID card number, or 3) Financial account number, credit or debit card number in combination with any required security or access code that would permit access to an individual's financial account.

Any New Jersey business that maintains such personal information must take all reasonable measures to protect against unauthorized access or use of that data by third parties. For businesses, such measures further include implementing the appropriate policies to ensure the proper destruction of the data when it is no longer being used.

Consumers must remain vigilant concerning their personal information and businesses must undertake diligent measures to ensure the protection and security of the personal information to which they have been entrusted. If you suspect that you are a victim of a security breach - as a business or a consumer - consult a proper legal professional to assist you with your rights, duties and obligations.

## FIRM PARTNER, DANIEL J. GRAZIANO, PRESENTS TO MULTIPLE SCHOOLS' FACULTY AND STAFF ON TOPICS INCLUDING SEXUAL HARASSMENT, DISCRIMINATION AND BULLYING



In a Seinfeld episode George is being fired by his employer because he has engaged a custodial employee in several intimate liaisons while working late at the office. As only he could, George reacts with incredulity saying, "Was that wrong? Was I not supposed to do that?"

What George was raising as his defense was a lack of guidance and training, which would have made it clear that such conduct would not be tolerated at that workplace. And, while it may have seemed disingenuous for him to hide behind such a weak excuse, the exchange highlights a very important duty of employers to not only have in place clear policies against workplace harassment, but also to communicate those policies regularly through effective training.

I regularly visit some of my employer clients—businesses, schools, government agencies—to provide a one hour block of instruction on harassment, discrimination and bullying. These clients have a serious commitment to prevention of all three of those evils, but, they also know that such training can be an effective defense to threatened litigation from an employee who may have been victimized.

A company can no longer publish protective policies and then sit back and hope everyone will follow. Courts throughout the country and especially in New Jersey have imposed a greater duty. The New Jersey Supreme Court, in the case of *Lehman v. Toys 'R Us, Inc.* imposed a clear duty to train employees, especially supervisors, on harassment policies. The same court in *Gaines v. Bellino* went further, saying that the Lehman standards provide protection only where the employer implements effective training throughout the organization, monitors the effectiveness of the training and adjusts policies and training if they become ineffective.

In summary, a comprehensive, regular training session is an essential part of any anti-harassment policy. Whether delivered by an in house presenter, your counsel or even through packaged on-line courses, such training should be implemented and a record made of the presentation and attendees. And, hopefully, you will not have to answer the question: "Was I not supposed to do that?"

### INTERESTED IN A SZAFERMAN LAKIND ATTORNEY SPEAKING ON A TOPIC OR PARTICIPATING AT AN EVENT?

Contact Szaferman Lakind today.



## FIRM ANNOUNCES PROMOTION OF ROBERT P. PANZER TO PARTNER

Szaferman, Lakind, Blumstein & Blader, P.C., has announced the promotion of Robert P. Panzer from Associate to Partner.

A 1995 graduate of the Richard Stockton College of New Jersey and 1999 Rutgers University School of Law Rob joined the firm in 2006 as a member of the Family Law Group. In his individual practice Rob focuses in divorce, family law, domestic violence and post-judgment motions and litigation.

Professionally Mr. Panzer has been recognized by his peers through Super Lawyers™ every year since 2007 as a "Rising Star." Rob is an active member of the Mercer County Bar Association, Monmouth County Bar Association and District VII Ethics Committee.

Managing Partner Barry D. Szaferman observed, "Rob is well-deserving of becoming Partner with our firm. His dedication to his clients as well as the ethics he displays in his practice of law are attributes our organization values. We congratulate Rob on his promotion and thank him for his continued commitment to his clients and the firm."

"Working with such wonderful colleagues and clients at Szaferman Lakind," said Panzer, "over the past seven years has been professionally and personally rewarding. I am gratified about becoming Partner at such a well-respected law firm and look forward to providing excellent legal services to our clients for many years to come."

**IF YOU HAVE A FAMILY ISSUE THAT MAY NEED THE HELP OF AN EXPERIENCED ATTORNEY,** Contact Rob and our Family Law Group today.



## CONGRESS EXTENDS EXPIRING TAX PROVISION FOR “S CORPORATIONS”

BY SCOTT BORSACK, *Partner*

Federal tax law has long recognized a hybrid entity that has characteristics similar to both a partnership and a corporation. Known as a subchapter S corporation or “S Corporation” these entities are corporations for state law purposes but for federal income tax purposes are more like partnerships. Those corporations which make an election to be taxed as an S Corporation no later than March 15 of the year after the corporation is formed are treated as an S Corporation from formation until such time as the election is terminated. Many S Corporations make their elections after they had been treated as regular or “C Corporations” for some period of time. The Internal Revenue Code (the “Code”) contains provisions which make it somewhat burdensome for a corporation that was taxed as a C Corporation and then elects to be taxed as an S Corporation when the corporation sells assets which existed at the time of the election. Senator Harry Reid has proposed extending for another year a benefit provided to such corporations to ease the transition from C Corporation to S Corporation. More on that after a little background.

Like partnerships, S Corporations offer to their shareholders the benefit of a single level of tax. An ordinary C Corporation must determine its gross income, deduct all permitted expenses and then pay income taxes on its net revenue. In order to place some of that net income into the hands of its owners or shareholders, the corporation must declare and pay a dividend. Once remitted to shareholders, that corporate net income, which is paid as a dividend is again subject to income tax in the hands of the shareholder. Some refer to this as “double taxation” in that the income is taxed first at the corporate level and then again when paid to shareholders in the form of a dividend. This should be compared to S Corporations and partnerships which are more like conduits themselves than taxpayers. An S Corporation determines its gross

income, subtracts expenses and then allocates to its shareholders their proportionate share of the net income. In most cases the S Corporation does not pay any income tax on its net income. Rather, when that income is allocated to shareholders (regardless of whether it is paid out) it is the individual shareholders who report and pay income taxes on their share of the income. Since the corporation does not pay tax itself (in most cases) this taxing scheme is often referred to as “single level taxation.”

There are some exceptions to this general rule for S Corporations. One such exception exists for S Corporations which were taxed as C Corporations for some time during their existence, that is to say those corporations which made an election to be taxed as an S Corporation sometime after formation. For those corporations, the sale of an asset after the election to be taxed as an S Corporation which was held at the time the election was made could give rise to a corporate level income tax in addition to a tax at the shareholder level. This tax, on the appreciation in value of the asset from the time of the election to the time of the sale, is referred to as the “built in gains” tax. Without the extension of the law as it existed in 2013, the sale of any property within the period that ends ten years after the election to be taxed as an S corporation is made would be subject to the built in gains tax. As extended, the built in gains tax period ends five years after the election. Thus, corporations with an election made before 2009 would not be subject to the built in gains tax, instead of 2003 without the extension. Those corporations who have made elections between 2003 and 2009 and plan to sell property which it held at the time of the election need not be concerned for the built in gains tax as a result of the extension proposed in Congress.

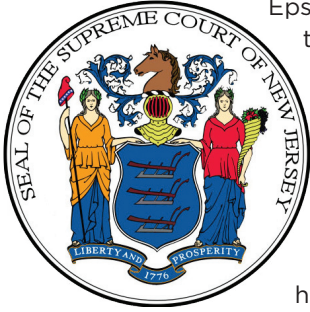
The federal tax law affords benefits to a former C Corporation with an election to be taxed as an S Corporation. There is no substitute for proper planning and advice when that corporation contemplates the sale of property after the election. Our tax advisors are here to help.



**NEED HELP WITH COMPLEX TAX LAWS? SZAFERMAN LAKIND CAN HELP YOU FILE EFFICIENTLY.**

*Contact us today.*

## PARTNER JEFFREY K. EPSTEIN APPOINTED TO N.J. SUPREME COURT COMMITTEE ON MATRIMONIAL LAW CERTIFICATION



Szaferman Lakind Partner Jeff Epstein was recently appointed to the New Jersey State Supreme Court's Committee on Matrimonial Law Certification.

Jeff has been a Certified Matrimonial Attorney for 14 years. His decades of practicing family law will help define prerequisites and professional standards for attorneys seeking New Jersey State Matrimonial Law Certification for years to come.

"I am honored to become part of the committee which selects less than 3% of all attorneys in our state for this important designation. By retaining a certified attorney, the client can be confident that the attorney has risen to the top of his or her field by demonstrating extensive trial experience, attending continuing legal education well beyond the required minimum and establishing impeccable ethical standards." commented Mr. Epstein when advised of his appointment.

**PROTECT YOURSELF. PROTECT YOUR FAMILY AND LOVED ONES.** Szaferman Lakind can help.

## CRAIG HUBERT AND JANINE BAUER SETTLE CASE FOR \$250,000 FOR STORMWATER DAMAGE AND LOSS OF TREES

Have you ever had a dispute with a neighbor? It's stressful and can be expensive. There are laws to protect you, though, and we can help. Here is one example.

While growing up and raising his own family, Szaferman Lakind Partner Craig Hubert belonged to a swim club in a beautiful section of Ewing Twp., N.J. near the Delaware River. The swim club bought its land in 1958 and improved it with a swimming pool, snack bar, clubhouse, picnic pavilion and other amenities. A meandering stream runs through the property. The club's neighbor, the N.J. State Police, built up its property, formerly farmland, by paving over large sections for buildings and parking, including detention basins to capture rain runoff. However, the State Police directed excess runoff from the building next to the club's pool into the stream on the club's property. Over time, the banks eroded, to the point where the club was losing land to the widening stream, nearer and nearer to the pool and outbuildings. Because the land is mostly forested, it was not very noticeable. The State Police never asked the club for permission to direct its runoff onto the club's property, but it did get permits.

Fast forward to Labor Day, 2005. After the club closed for the season, one of its members went back to check on things and was shocked to discover that the State Police had cut at least 26 mature trees and removed all of the understory along the border between the club and the access road into the State Police complex, leaving the hillside denuded and depriving the club of its cherished privacy screen. The club ultimately retained Craig Hubert and sued the State Police for the loss of its trees; upon closer inspection of its property, the club found the storm water discharge problem and sued the State Police to correct the erosion of the club's stream banks as well.

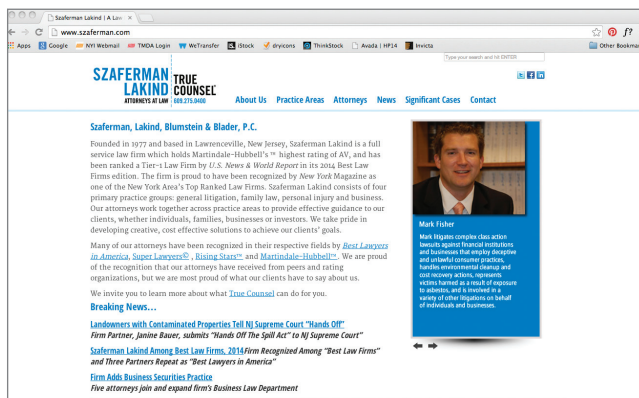
Though justice was delayed by many defense tactics, including blaming the erosion on the club's lawn cutting and claiming the State Police didn't know where the property boundary was when they felled the trees, Craig, together with Janine Bauer, who assembled an expert team of environmental engineers and fended off the State's motions, settled the case for the club for \$250,000 in damages.

### HAVING TROUBLE WITH A NEIGHBOR?

Protect yourself and contact Szaferman Lakind today.

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## BRIAN G. PAUL AUTHORS STATE BAR ASSOCIATION'S *AMICUS CURIAE* IN N.J. SUPREME COURT PALIMONY CASE

At the New Jersey State Bar Association's request, firm Partner Brian G. Paul was the lead author on the NJSBA's *Amicus Curiae* to the New Jersey Supreme Court on the issue of whether an amendment to the statute of frauds requiring palimony agreements to be in writing should be applied retroactively.

If applied retroactively, individuals who had been operating under oral palimony agreements for many years prior to the amendment's passage would be precluded from enforcing their oral agreements in court.

In the NJSBA's brief, Brian noted that the goal of the Statute of Frauds has always been to prevent frauds from being committed through the use of uncertain, unreliable and perjured oral testimony, not to allow someone to use the writing requirement as a sword to perpetrate a fraud by invalidating oral agreements that people have been following for many years.

In addition to arguing that retroactive application of the statute would be unconstitutional, Brian argued on behalf of the NJSBA that New Jersey Courts should retain the power to use equitable defenses like promissory estoppel and partial performance to ensure that an oral palimony agreement may still be enforced when necessary to avoid a manifest injustice.

The case is in the process of being scheduled for oral argument before New Jersey's highest court.

### LEARN MORE ABOUT PALIMONY.

Contact Brian Paul and Szaferman Lakind today.



## HON. LINDA R. FEINBERG NAMED CHAIR OF NEW JERSEY SUPREME COURT COMMITTEE

Retired Mercer Vicinage Assignment Judge Linda Feinberg, Of Counsel at this firm, has been named Chair of a recently-created New Jersey Supreme Court Committee established to implement its "Rules of Professional Conduct" Section 7.5, "Firm Names and Letterheads." The purpose of the committee is to ensure that practicing attorneys and law firms in the Garden State are representing and presenting names and organizations correctly.

RPC 7.5 was adopted in the summer of 1984 and last amended in January 2009. As Chair of the Committee, it will be Judge Feinberg's role to ensure the utmost of ethical representation when it comes to lawyers, law firms and marketing of their services.



(L TO R): JOHN P. THURBER, PRINCETON REGIONAL CHAMBER OF COMMERCE CHAIRMAN OF THE BOARD; BARRY D. SZAFERMAN, CO-FOUNDER, MANAGING PARTNER, SZAFERMAN LAKIND; PETER CROWLEY, PRESIDENT AND CEO, PRINCETON REGIONAL CHAMBER OF COMMERCE

## BARRY D. SZAFERMAN NAMED "CHAMPION FOR BUSINESS" BY PRINCETON REGIONAL CHAMBER OF COMMERCE

To start the New Year, Barry D. Szaferman, Co-Founder and Managing Partner, Szaferman Lakind, was honored by the Princeton Regional Chamber of Commerce as the "*January 2014 Champion for Business*" at the Princeton Marriott Hotel & Conference Center at the Princeton Regional Chamber of Commerce's January 2014 Luncheon.

Szaferman Lakind is proud to be an active member and participant in the success of area businesses and the Princeton Regional Chamber of Commerce.

"As a result of the dedicated support and contributions of Barry Szaferman and the Szaferman Lakind law firm we are helping companies network and expand their businesses from Trenton to Plainsboro and from Princeton to Hamilton. The Princeton Regional Chamber and its affiliated programs lead the region in business excellence," said Peter Crowley, president and CEO of the Princeton Regional Chamber of Commerce.



PRINCETON REGIONAL  
CHAMBER OF COMMERCE  
*champions for business*

## BUSINESS OWNERS TELL NEW JERSEY SUPREME COURT, “HANDS OFF THE SPILL ACT.”



**JANINE G. BAUER, Partner**

Representing landowners who purchased property that is contaminated with hazardous substances, firm Partner Janine G. Bauer filed an *Amicus Curiae* in the New Jersey Supreme Court this January urging the justices to reverse a trial court and appellate court decision that imposed a six-year statute of limitation written into the Spill Act.

Styling themselves the Innocent Landowners Group, the three businesses bought property that they later found was contaminated with hazardous substances under the surface. Two of them sued the firms that allegedly polluted the properties for contribution to the cost of cleanup. The third expects to have to do so in the near future.

One business owner, Richard Catena, a car dealer in Bergen County, prevailed on a motion to dismiss his suit for contribution back in 2008. That suit is still pending against two parties. The motion to dismiss his suit was brought by Raytheon, a successor to one of the companies that allegedly spilled chemicals on the property in the 1940s and 1950s. However, another business in the Innocent Landowners Group, A & S Russo Real Estate, in Union County, had its case against the alleged polluters dismissed based on the appellate court’s opinion that the Spill Act should be subject to the six year statute of limitations for damage to property. A & S Russo Real

Estate is represented by Gregory Pasquale, Esq.

“Inconsistent rulings are bad for business and the environment,” said Janine Bauer, attorney for the Innocent Landowners Group. “Businesses are looking for clarity in law and regulations.”



In the brief, submitted in the case of Morristown Associates v. Grant Oil Co., et als, the Innocent Landowners Group argued that imposing a six year statute limitation on Spill Act cases for contribution to clean up costs will harm the State’s economy and the environment because it will result in fewer cases being brought. The group noted that it often takes much longer than six years to determine the responsible parties, develop a remediation plan and identify the costs. The group obtained a list of all of the environmental cases filed in the New Jersey courts in the last six years, and found that only a handful of the 463 active cases were enforcement cases brought by the State Department of Environmental Protection (DEP).

“DEP doesn’t have the resources to bring all of the cases so that contaminated sites get cleaned up,” said Janine Bauer. “That’s why the Spill Act allows private owners to bring suit against the responsible parties, to obtain funds to do the cleanup. It’s important not to hinder that effort,” she added.

**TO LEARN MORE ABOUT OUR ENVIRONMENTAL LAW SERVICES,** Contact Janine and Szaferman Lakind today.



**BY GREGG E. JACLIN, Partner**

### SEC PROVIDES GUIDANCE ON RULE 506 OFFERING “BAD ACTOR” RULES

On December 4, 2013, the Division of Corporation Finance of the Securities and Exchange Commission (the “SEC”) issued updated Compliance and Disclosure Interpretations (the “Guidance”) regarding Rules 506(b) and (c) of Regulation D under the Securities Act of 1933 (the “Securities Act”), which would disqualify “felons” or “bad actors” from participating in private placements that rely on Rule 506 for an exemption from the registration requirements of the Securities Act.

#### Background

Rule 506 of Regulation D, which is the most widely used exemption under Regulation D, permits sales of an unlimited amount of securities, without registration, to any number of accredited investors and up to 35 non-accredited investors. On July 10, 2013, the SEC adopted “bad actor” disqualification provisions for Rule 506 to implement Section 926 of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

The new rule provides that an offering is disqualified from relying on Rule 506(b) and 506(c) of Regulation D if the issuer or any officer, director, 10% shareholder or person compensated for soliciting investors has a relevant criminal conviction or an SEC, self-regulatory organization or regulatory body related offense that occurred on or after September 23, 2013. For disqualifying events that occurred before September 23, 2013, issuers may still rely on Rule 506, but are required to disclose these events in writing to investors prior to the offering.



## MICHAEL PAGLIONE SECURES \$1.25 MILLION SETTLEMENT IN MEDICAL MALPRACTICE CASE

Firm Partner Michael Paglione represented the estate and spouse of a New Jersey man who died shortly after undergoing a medical procedure in a major northeast teaching hospital.

The deceased was an otherwise healthy 86-year-old man diagnosed with early stage cancer who underwent the procedure in the hospital while in the care of two interventional cardiologists.

When briefed on the circumstances surrounding the death, Michael suspected negligence in patient care. The firm retained the services of an interventional radiologist and a toxicologist to examine the medical evidence to ascertain whether appropriate practices were followed in both informing the deceased of the risks and in the medical care during and following the procedure. Based on the conclusions of the firm's medical professionals, a suit was brought naming the hospital and several medical professionals as defendants.

After jury selection but before proceeding to trial representatives of the hospital and the two interventional cardiologists agreed to the aforementioned settlement of \$1.25 million.

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- *39 attorneys, 85+ employees*
- *Strength & resources of large firm*
- *Caring and friendly environment*

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

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- *Matrimonial Law*
- *Personal Injury Law*
- *Workers' Compensation & Business Law*

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