

TRUE COUNSEL®

SUMMER 2016

LEGAL HIGHLIGHTS

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FIVE SZAFERMAN LAKIND ATTORNEYS LISTED AMONG 2017 BEST LAWYERS IN AMERICA®*

Szaferman Lakind has confirmed that five (5) of its attorneys have been listed among the 2017 *Best Lawyers in America*®, three (3) of whom have been included for five consecutive years.



According to BestLawyers.com, *Best Lawyers* is the oldest and most highly-respected peer review guide to the legal profession worldwide. BestLawyers.com explains that its "methodology is designed to capture, as accurately as possible, the consensus opinion of leading lawyers about the professional abilities of their colleagues within the same geographical area and legal practice area."

FIVE CONSECUTIVE YEARS OF INCLUSION - BEST LAWYERS IN AMERICA®



ARNOLD LAKIND
FOUNDING PARTNER

**Commercial
Litigation,
Land Use
& Zoning**



BRIAN G. PAUL
PARTNER

**Family
Law**



CRAIG J. HUBERT
PARTNER

**Personal
Injury
Litigation -
Plaintiff**

Managing Partner Barry Szaferman commented, "The annual *Best Lawyers in America* listing is a most prestigious recognition for any lawyer. Our firm having many attorneys listed so frequently serves to confirm the caliber of Szaferman Lakind."

MULTI-YEAR INCLUSION - BEST LAWYERS IN AMERICA®



BARRY D. SZAFERMAN
FOUNDING PARTNER
MANAGING PARTNER

**Family
Law**



KEITH L. HOVEY
OF COUNSEL

**Commercial
Litigation**



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PER COMMITTEE ON ATTORNEY ADVERTISING ETHICS OPINION 42, THIS ADVERTISING IS NOT APPROVED BY THE NEW JERSEY SUPREME COURT.

NJ SUPREME COURT ISSUES PRECEDENTIAL DECISION ADOPTING NEW JERSEY STATE BAR ASSOCIATION'S POSITION



BRIAN G. PAUL
PARTNER

At the New Jersey State Bar Association's (NJSBA) request, Brian G. Paul, on a pro bono basis, recently co-authored the NJSBA's amicus brief to the New Jersey Supreme Court in the Matter of the Adoption of a Child by J.E.V. and D.G.V.

In the brief, Brian argued that an indigent parent has a constitutional due process right to free counsel under Article I, Paragraph 1 of New Jersey's State Constitution when the parent wishes to oppose a private adoption in which the petitioners are seeking to terminate the birth parent/child relationship. In July 2016, the New Jersey Supreme Court issued a precedential decision that embraced Brian's legal argument. In a unanimous ruling, the Court ruled that an indigent parent whose child is subject to private adoption proceedings has a constitutional right to court-appointed counsel if he or she wishes to contest the adoption. In reaching its decision, the NJ Supreme Court agreed with the NJSBA that a birth parent has the same constitutional due process right to counsel in a private adoption dispute as a birth parent does in a case in which the state is seeking to terminate parental rights.



PHOTO COMPLIMENTS OF NEW JERSEY LAW JOURNAL. NEW JERSEY SUPREME COURT CHIEF JUSTICE STUART RABNER.

Chief Justice Stuart Rabner, writing for the unanimous court, explained: "The issues are no less challenging or significant in a private adoption matter. In both situations, parents who are poor and typically have no legal training are ill-equipped to defend themselves in court... Given the fundamental nature of the right to parent that may be lost forever in a disputed adoption hearing, there is no room for error here. We therefore hold that indigent parents who face termination of parental rights in contested proceedings under the Adoption Act are entitled to have counsel represent them under Article I, Paragraph 1 of the State Constitution."



SZAFERMAN LAKIND SEEKS TO PROTECT THE RIGHTS OF OUR FAMILIES AND CITIZENS.

CRAIG HUBERT INTERVIEWED BY WCBS-TV REGARDING NJ APPELLATE DIVISION NURSING HOME / ELDERLY CARE OPTION

On June 9, 2016, the Appellate Division of the Superior Court of New Jersey issued an Opinion (Docket No. A-4453-14T3) specific to the legalities of arbitration prompted by complicated nursing home and elderly care patient and family agreements, waivers and provisions.

Within weeks of the N.J. Appellate Opinion, WCBS-TV 6pm News Anchor and Reporter, Ms. Alice Gainer, visited Szaferman Lakind and interviewed Partner Craig J. Hubert, head of the firm's Personal Injury Practice, on the implications of the court's action.

As noted in the CBS-2 exclusive report, Craig Hubert advised Ms. Gainer: "Now there's a map for the trial courts so for people looking to have arbitration clauses thrown out, courts will have to look at factors like, "Was there a meeting of the minds when the contract was entered? Pressures of the moment when it was signed; the sophistication of the parties; does the person signing understand everything?"



BEHIND THE SCENES: PARTNER CRAIG J. HUBERT, ESQ., BEING INTERVIEWED BY CBS-TV, NYC 6PM NEWS ANCHOR AND REPORTER, ALICE GAINER



IF YOU OR SOMEONE YOU KNOW HAS BEEN A VICTIM OF ABUSE, CONTACT SZAFERMAN LAKIND TODAY.

CRAIG HUBERT ACHIEVES \$1.25 MILLION SETTLEMENT FOR ADOPTIVE PARENTS ON BEHALF OF CHILD ABUSED IN NEW JERSEY FOSTER CARE SYSTEM



CRAIG J. HUBERT
PARTNER



JANINE G. BAUER
PARTNER



BRIAN HEYESEY
ATTORNEY

Partner Craig Hubert, assisted by Partner Janine Bauer and Attorney Brian Heyesey, recently settled a lawsuit for \$1.25 million against the State of New Jersey based on allegations of child abuse and other torture to a child while in foster care supervised by the State's child welfare agency, then known as the Division of Youth and Family Services (DYFS). The complaint asserted that DYFS failed to perform meaningful background checks on foster families and failed to both properly train DYFS staff and properly supervise through home visits the foster care of the victim.

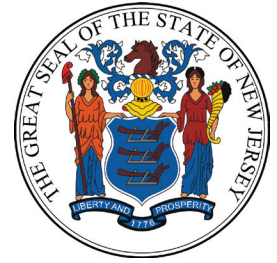
The child, now aged 17, was abandoned by the birth mother and taken into custody by DYFS at the hospital in Elizabeth where the baby was born. To locate perspective foster and adoptive parents, DYFS enlisted a non-profit agency located in Franklin, New Jersey. According to the complaint, neither DYFS nor the non-profit agency performed thorough background checks in order to ensure the stability and safety of the foster homes in which the child was placed. In the first home placement, the mother had a live-in boyfriend with a substantial criminal record and she had previously been denied application by DYFS to serve as a foster parent.

The non-profit agency was removed as a defendant by a Superior Court Judge last

year, citing immunity from litigation as a charitable organization. Craig Hubert disagrees with that decision and has filed an appeal.


The victim was placed in a foster home in 1999 and removed subsequently when it was determined that the child had been abused. He was placed in two other foster homes prior to the middle of 2002 and removed from both due to abuse, all prior to the victim's third birthday.

The terms of the settlement, \$1.25 million, include an annuity purchased for the child's benefit, yielding monthly payments for 40 years to be used for treatment in dealing with the aftermath of horrific abuse and torture. Mr. Hubert further commented, "This is a terrible situation and no amount of money can compensate for the physical and psychological damage done to the victim and to the adoptive parents. Our team of attorneys takes satisfaction in our role in assisting the family to achieve the economic resources necessary to help address the ongoing consequences of these tragic circumstances. Unfortunately, there are no winners in these types of cases."



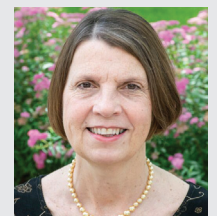
JANINE BAUER PREVENTS SECRECY SURROUNDING CAUSE OF GAS PIPELINE EXPLOSION

Janine G. Bauer recently won a significant victory by defeating a motion by PSE&G to keep secret certain records related to a gas pipeline explosion that occurred in March of 2014 in the South Fork development in Ewing Township. In a group of consolidated cases called Morley v. PSE&G Co. and Henkels & McCoy, Inc., Ms. Bauer represents couples and individuals whose homes in the South Fork development were destroyed in the disaster. One individual was killed, several employees were injured, and dozens of people lost their homes and all of their belongings in the blast and ensuing fire, requiring them to find temporary shelter for almost two years. Many victims are now suffering from post-traumatic stress disorder (PTSD).

 PSE&G sought to keep its training materials and employees' training records secret, as well as the terms of its insurance policies and the contract between PSE&G and its contractor, Henkels & McCoy, Inc., which struck the gas pipe after an incorrect "mark out" by PSE&G personnel. Keeping the records secret would have made it difficult for the public to understand what happened—why the gas pipeline was struck, and why no one called 911 or evacuated the residents. When records are kept secret, mistakes tend to recur.



Ms. Bauer, assisted by Christopher Kwelty, Esq., argued that PSE&G and the contractor did not meet the legal standard for a protective order for the records, and that limiting the disclosure of the records to only the parties in the case violated public policy. She also unearthed records from the State Board of Public Utilities (BPU) which demonstrate how commonly gas pipeline strikes occur in the PSE&G territory. (The BPU fined PSE&G and its contractor \$1 million for the Ewing Township gas explosion, in 2015.)



JANINE G. BAUER
PARTNER



CHRISTOPHER S. KWELTY
ATTORNEY

JANINE BAUER ACHIEVES REVERSAL OF TRIAL COURT DECISION IN CATENA V. WELLS FARGO BANK

Partner Janine G. Bauer, representing plaintiff Richard Catena, successfully appealed a summary judgment dismissal of fraud claims brought against Daniel P. Anderson and Wells Fargo Bank. Plaintiff Catena's fraud claim was based on the fact that property seller Anderson and First Fidelity Bank, mortgagee for the property and predecessor to Wells Fargo, concealed from Catena that the property was contaminated.



Catena purchased the property, located in an industrial area in Teterboro, NJ in 1988. The contract of sale was contingent upon the seller, Anderson, providing an affidavit at closing under the Environmental Clean-Up Responsibility Act (ECRA). ECRA was enacted in 1983 as a method of assuring the N.J. Dept. of Environmental Protection (NJDEP) that operations at an industrial property had not generated, manufactured, refined, transported, treated, stored, handled or disposed of hazardous waste prior to the property being sold. Anderson, as the record title holder, made signed, sworn representations to NJDEP that hazardous waste operations did not take place at the site.



However, Anderson and the Bank, which had assumed property management after Anderson defaulted, had engaged in hazardous waste operations at the property. After discovering PCE contamination, a partial clean-up was conducted including testing and removal of some 80,000-100,000 cu. yds. of contaminated soil. Post-excavation testing showed that the remaining soil was not clean. Neither Anderson nor the Bank disclosed the testing and clean-up operation to Catena or NJDEP.

Catena discovered the contamination in 1998, ten years after the purchase. Environmental consultants, under contract to Catena, focused their investigation on industrial owners of the site prior to Anderson. Air Associates Inc. (Raytheon Co.), an airplane parts manufacturer, and two

other users were considered likely dischargers of the PCE.

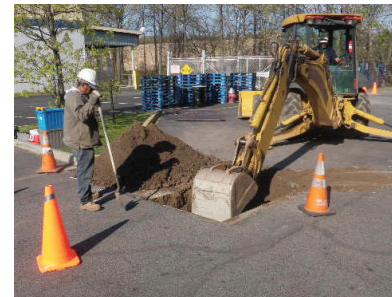


PHOTO: TETERBORO, N.J. PROPERTY

Catena discovered the cover-up by Anderson and the Bank in 2007. Based on this information, an amended complaint was filed against Anderson in February of 2008 asserting common law fraud. In May of 2008, another amended complaint was filed naming the Bank and charging common law fraud and Consumer Fraud Act claims.

Anderson and the Bank moved for summary judgment based on the six year statute of limitations, which the trial court granted. The trial court concluded that Catena's claims were time-barred, as more than six years had elapsed from the time that Catena should have discovered the fraud in 1998, when he discovered the contamination.

The appellate court disagreed with the conclusion of the trial court. It found that the six year limit began when Catena learned of or should have discovered the fraud, not the contamination. Catena's discovery of the contamination did not establish knowledge that Anderson and the Bank concealed information about the site contamination and the clean-up. As the clean-up was not reported to the NJDEP, a search of public records by Catena would have yielded no evidence of the discovery and clean-up by Anderson and the Bank. As a result, the appellate court found that Catena's claims against Anderson and the Bank were filed less than six years after the discovery of the facts that gave rise to the fraud claims, and were not time-barred.

"Richard Catena bought a property at full value from the Bank and Andersen, which was not worth what he paid for it, and they knew it, otherwise they would not have taken pains to conceal it," said Janine Bauer. "That was wrong. My firm and I are gratified to help him and all of our clients achieve justice, no matter how long it takes."

PARTNER BRUCE SATTIN JOINS NJBIA COMMERCIAL REAL ESTATE EXPERT PANEL, "YOUR NEXT BUSINESS MOVE: BUY, BUILD OR LEASE?"

In June 2016, Partner Bruce M. Sattin joined a New Jersey Business & Industry Association (NJBIA) commercial real estate expert panel, "Your Next Business Move: Buy, Build or Lease?" The NJBIA-based breakfast event was held at The National Conference Center in East Windsor, NJ and tackled topics including:

- Commercial Marketplace Trends
- Regulations & Inspections
- Buy, Build & Lease Documentation
- Environmental & Operational



(L TO R): ANTHONY BIRRITTERI, EDITOR-IN-CHIEF, NEW JERSEY BUSINESS MAGAZINE; MONICA GILL, PARTNER, KPMG; ERIK LARSEN, SVP, TEAM LEADER, INVESTORS BANK; MICHAEL G. MCGUINNESS, CEO, NAIOP-NJ; SAB RUSSO, PRESIDENT, MERCER OAK REALTY; BRUCE M. SATTIN, ESQ., PARTNER, SZAFERMAN LAKIND.



ATTORNEY MELISSA CHIMBANGU APPOINTED AS TRUSTEE TO MERCER COUNTY BAR ASSOCIATION



MELISSA A. CHIMBANGU
ATTORNEY

Szaferman Lakind attorney Melissa A. Chimbangu has been appointed to the Mercer County Bar Association’s Board of Trustees.

Founded in 1901, the Mercer County Bar Association (MCBA) is governed by a Board of Trustees who are elected each November by the general membership. As an organization, the MCBA is a legal resource for attorneys and the public, offering education and networking events and seminars; legal referral services in over 50 categories of the law and providing community support and MCBA member volunteer programs.

A member of Szaferman Lakind’s Commercial and General Litigation Group, Melissa’s areas of practice include commercial and consumer litigation as well as labor and employment litigation. She is an active member of the Mercer County Bar Association, a Trustee of the Mercer County Bar Foundation and is the current co-chair of the Women Lawyers Committee. She has also served as the co-chair of the Young Lawyers Division. Melissa received her Juris Doctor from University of Maryland School of Law and is licensed to practice in New Jersey.

ATTORNEY THOMAS MANZO APPOINTED TO NJSBA’S BOARD OF TRUSTEES



THOMAS J. MANZO
ATTORNEY

Personal Injury attorney Thomas J. Manzo was recently appointed to the Board of Trustees of the New Jersey State Bar Foundation.

The Foundation, the charitable and educational arm of the New Jersey State Bar Association (NJSBA), provides some of the highest quality law-related education programs to thousands of New Jerseyans of all ages. The Foundation’s mission is “to foster an increased awareness, appreciation and knowledge of law and the legal system among New Jersey residents; serve as the statewide resource for law-related education for the public; provide opportunities for lawyers to serve the public through the Foundation’s programs; and foster professionalism and pride in the profession of law through public service.”

Tom concentrates his civil trial practice in a variety of complex personal injury matters ranging from automobile and slip-and-fall accidents to victims of crime, abuse and neglect and product liability. He received his Juris Doctor from Seton Hall University School of Law and is licensed to practice in New Jersey and New York.

CYBERSECURITY – PROTECT BUSINESS AND PERSONNEL INFORMATION

AN ARTICLE BY DANIEL J. GRAZIANO, ESQ.



DANIEL J. GRAZIANO
PARTNER

Today it is imperative that business owners focus on cybersecurity in their daily operations. Consider how the information your company stores and processes electronically could be used if accessed by a hacker. Think outside the box.

Health care information is the primary target for malicious attacks. While that may seem to be a problem only for physicians and hospitals to worry about, a company may very well have such information on its servers derived from employee disability or health insurance claims. A business making direct deposits of employee wages holds valuable banking information and, of course, social security numbers.

With that in mind, the attentive owner will be sure to create a culture of cybersecurity and digital awareness in his company. Some things as simple as changing passwords and using passwords that provide real security are first steps. Additionally, it is wise to have a planned response in place in case there is a breach. Be aware of legal requirements in the event of a breach, for example, New Jersey requires notice to the State immediately in the event of a breach.

You can and should insure yourself against liability for a breach, but your liability for same will be tested by asking whether you took reasonable steps to prevent it and reasonable steps to minimize any injury it may cause.

Consultation with your insurance provider and your legal adviser is strongly recommended.

Dan Graziano is a Partner and member of Szaferman Lakind’s Business Law Group.

WILL AIRLINE FARES GO DOWN AND WILL COMPETITION AMONG AIRLINES INCREASE AT NEWARK/LIBERTY AIRPORT? THE REST OF THE STORY FOR NOW.

AN ARTICLE BY LIONEL J. FRANK, ESQ.



LIONEL J. FRANK
PARTNER

In our Winter 2016 edition of True Counsel®, we reported on an antitrust suit brought by the U.S. Department of Justice to prevent United Airlines from acquiring 24 additional takeoff and landing slots at Newark/Liberty Airport from Delta Airlines. The acquisition would have given United 926 of the 1,233 slots available at the airport, or 75% of all slots. Currently, United controls 10 times more slots than its closest competitor.

The Justice Department's Antitrust Division alleged in its suit filed last November in U.S. District Court in Newark, that the acquisition of additional slots by United would unreasonably restrain trade in violation of Section 1 of the Sherman Antitrust Act, and would violate Section 2 of that statute by allowing United to monopolize and/or maintain and enhance its current monopoly over slots, resulting in higher fares and less choice to air travelers from Newark/Liberty.

On April 6th, however, the Justice Department announced that United was abandoning its plans to purchase the 24 slots, making those slots available to other airlines, including lower cost carriers such as Southwest Airlines, Virgin America Airlines and Jet Blue. Those airlines have sought to compete against United by offering service to passengers from Newark/Liberty at lower rates and to additional and competing destinations than currently offered by United due to its stranglehold over slots at the airport.

Newark Liberty International Airport



The Federal Aviation Administration also took a position to increase competition at the airport. On April 1st, the FAA announced that it would lift so called "slot controls" at Newark/Liberty to ease entry and promote competition among airline carriers. The decision by the FAA will permit it to grant more requests by United's competitors to add competing service which should result in lower fares and more consumer choice.

The goal of the Justice Department's antitrust lawsuit against United has now seemingly been achieved, and the suit will likely be dismissed at the request of the government. Travelers will now see whether lower fares and greater choice among airlines at Newark/Liberty will be realized as a result of this litigation and the new policy adopted by the FAA. Stay tuned.

Lionel Frank is a Partner and member of Szaferman Lakind's Commercial and General Litigation Group.

SZAFERMAN LAKIND ICE CREAM SOCIAL HELPS BEAT THE SUMMER HEAT – WITH GUEST MUSICIANS, THE FUNKTASKTICS

Szaferman Lakind attorneys and staff gathered outside during a sunny and humid, 95-degree afternoon. To combat the heat, ice cream was provided to firm employees as well as to neighboring business tenants by NJ's Heavenly Havens Creamery. To top the cool treats, live entertainment was provided by music band, the FunkTASKtics, the Trenton Area Soup Kitchen (TASK) house band, comprised of TASK employees and musician clients of the Soup Kitchen.

Per TrentonSoupKitchen.org, "TASK feeds



those who are hungry in the Trenton area and offers programs to encourage self-sufficiency and improve the quality of life of its patrons."



PHOTO: GUEST MUSICIANS, THE FUNKTASKTICS, AND HEAVENLY HAVENS CREAMERY VISIT SZAFERMAN LAKIND FOR A MUSIC-FILLED, ICE CREAM SOCIAL EVENT.

SZAFERMAN LAKIND SUPPORTS ORGANIZATIONS MAKING A DIFFERENCE IN OUR COMMUNITIES.

EMPLOYERS MAY BE SACRIFICING THEIR EMPLOYEES' RETIREMENT BENEFITS THROUGH EXCESSIVE FEES

Hopefully, both you and your employees are saving for retirement with a 401(k) plan. Unfortunately, investors may not realize that they may be paying excessive fees on their investments or even impermissible fees.



Robert L. Lakind
ATTORNEY



MARK A. FISHER
ATTORNEY



CHRISTOPHER S. MYLES
ATTORNEY

Generally, the more you have invested in an investment choice, the more you will pay in fees. Thus, an employee with a \$100 investment will pay less in fees than someone with a \$100,000 investment in the same investment choice, even though both investors receive the same services. Investment choice fees can be problematic because, as reported by the Government, "even a seemingly small fee, such as a 1 percent annual charge, can significantly reduce retirement savings over the course of a career."¹ For example, the difference between having a \$25,000 investment with a fee of 1.5% versus a lower fee of .5%, could reduce the growth in your retirement account, over time, by \$64,000 during your working life.² Many employers believe their service provider is looking out for their best interest. Unfortunately, that is not always the case and financially, service providers may benefit from higher fees. For example, in some cases, the same investment choice may have two different fee schedules, a higher fee schedule and a lower fee schedule. At times, a service provider may fail to provide investors with the lower fee schedule. However, regardless of the fees charged, both investors receive the same investment.

Szaferman Lakind has worked for several years evaluating retirement plans and the fees for investment choices. In one case, approximately \$50,000 in impermissible fees was returned to a plan and its investors by the service provider. Szaferman Lakind also identified other problems with that plan, which were unrelated to impermissible fees, and the overall recovery we secured for the plan and its investors was over \$1 million.

Szaferman Lakind is a full service law firm that can help you with all of your 401(k) needs. For a flat fee we can review your plan's 401(k) investments to determine if you are paying impermissible or excessive fees. If we find a problem, we can negotiate with your service provider to attempt to remedy the problem. If you have any questions about this service, please contact Robert Lakind at **609.275.0400** or rlakind@szaferman.com.

¹ [HTTP://WWW.GAO.GOV/ASSETS/600/590359.PDF](http://www.gao.gov/assets/600/590359.pdf), P. 5

² [HTTPS://WWW.DOL.GOV/EBSA/PUBLICATIONS/401K_EMPLOYEE.HTML](https://www.dol.gov/ebsa/publications/401k_employee.html)

PARTNER MICHAEL PAGLIONE JOINS SZAFERMAN LAKIND EXECUTIVE COMMITTEE



Michael R. Paglione
PARTNER

Partner Michael R. Paglione, Esq. has joined the firm's Executive Management Committee. By design, the Committee is comprised of leadership from across the firm and balances representation across its respective legal practice groups and disciplines.

A Personal Injury Attorney with over 30 years of experience; Mr. Paglione's legal practice is focused on serious bodily injury, head, brain and spinal injuries, burn victims and defective products, negligence and work-related injuries, both physical and psychological. Among his professional achievements, Michael was elected and served as President of the Mercer County Bar Association in 2010; he was named a New Jersey SuperLawyer™™™ in 2007, 2012 and 2013 and he is past Chair of the Civil Bench-Bar and the Workers' Compensation Section for the Mercer County Bar. He is admitted to practice in New Jersey, Pennsylvania, the United States District Court for the District of New Jersey and the United States District Court for the Eastern District of Pennsylvania. Michael received his Juris Doctor from the Seton Hall University School of Law and his undergraduate degree, a Bachelor of Science in Business Administration, from Seton Hall University.

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 2017



ARNOLD C. LAKIND
 FOUNDING PARTNER

2017 LAWYER OF THE YEAR* – LAND USE AND ZONING, PRINCETON METRO – ARNOLD C. LAKIND, ESQ.

Arnold C. Lakind, Esq. has been named Land Use & Zoning “2017 Lawyer of the Year” for the Princeton-Metro Area by *Best Lawyers in America*®*.

According to BestLawyers.com, “Only a single lawyer in each practice area and designated metropolitan area is honored as the ‘Lawyer of the Year,’ making this accolade particularly significant.” Arnold was one (1) of just three (3) Land Use and Zoning attorneys in the state of New Jersey to be designated “2017 Lawyer of the Year.”

2017 marks the fifth consecutive year that Arnold has been included in *Best Lawyers in America’s* Annual list.

Arnold has been recognized in two practice areas each year, Land Use and Zoning and Commercial Litigation.

Mr. Lakind’s professional recognitions also include:

- Designated New Jersey Super Lawyer 2005-2016*
- Martindale-Hubbell™ Av-Preeminent® since 1986*
- Board of Editors, New Jersey Lawyer, 2005-2007
- Master and Executive Director, American Inn of Court, 2006-2011
- Trustee of Mercer County Bar Association
- Member, Supreme Court Committee to Revise Rules of Judicial Conduct

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PER COMMITTEE ON ATTORNEY ADVERTISING ETHICS OPINION 42, THIS ADVERTISING IS NOT APPROVED BY THE NEW JERSEY SUPREME COURT.

