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SPRING 2017

## LEGAL HIGHLIGHTS

WRONGFUL DEATH ACTION REVERSED, RENEWING HOPE FOR MESOTHELIOMA VICTIM'S WIDOW

BED SORES: \$150,000 FOR NURSING HOME RESIDENT

JASON SOKEL JOINS NJ ASSOCIATION ON JUSTICE BOARD OF DIRECTORS

LIONEL FRANK RECEIVES 3-YEAR EXTENSION TO SERVE AS CERTIFIED ARBITRATOR

NJ STATE BAR: HUBERT, FEINBERG, MANZO PANELISTS; HOVEY INDUCTED

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## NEW JERSEY APPELLATE COURT REVERSES DISMISSAL OF \$90,000,000 TRAVELERS INSURANCE CASE



**ARNOLD LAKIND**  
FOUNDING PARTNER  
EXECUTIVE COMMITTEE

The Szaferman Lakind Litigation Group, headed by Arnold Lakind, successfully represented plaintiffs in *Ferguson et al. v Travelers Indemnity Company and Executive Risk Specialty Insurance Company*, a \$90 million insurance coverage action. The Appellate Division of The Superior Court of The State of New Jersey rendered its decision in favor of plaintiffs on March 10 of this year.

Plaintiffs were former shareholders in Lion Holding, Inc., an insurance holding company. Lion's principal operating companies were Clarendon America Insurance Company and Clarendon National Insurance Company.

In the early 1990's Clarendon hired Raydon Underwriting Management Company, who arranged for Clarendon to write reinsurance policies as part of a program known as LMX. Raydon's assessment of the LMX program was flawed, causing Clarendon to sustain significant damages. Plaintiffs thereafter sold the Clarendon company but agreed to indemnify the new owners for up to \$50 million in losses and reduced the sales price by \$25 million. As part of the sale, plaintiffs retained a claim against Raydon.

Plaintiffs sued Raydon and were awarded \$92 million. This judgment was uncollectible.

Plaintiffs then filed suit in the Superior Court in Mercer County New Jersey against Travelers Indemnity Company as successor to Gulf Insurance Company, Raydon's errors and omissions carrier, and Executive Risk Specialty Insurance Company (ERSIC), who had provided an excess indemnity policy on behalf of Raydon. However, in December 2013, Travelers commenced an action in Bermuda, without joining the Clarendon plaintiffs, and obtained a declaration that the Raydon policy which Travelers had issued was void. In Travelers' view, this eliminated its exposure on plaintiffs' claim against Raydon.

Travelers then moved to dismiss the New Jersey case arguing that the New Jersey plaintiffs should have intervened in the Bermuda case and that the New Jersey court was constrained to honor the finding of the Bermuda court. The New Jersey trial court granted that motion finding that plaintiffs, who had notice of the Bermuda action, should have intervened in that action and the failure to do so required dismissal of the New Jersey case. The lower court went on to find that, even were plaintiffs not required to intervene in the Bermuda action, they were bound by that court's judgment and, even were that not so, New Jersey was not the proper forum for the case against Raydon's insurers.



Richard J. Hughes Justice Complex,  
Trenton, New Jersey

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## DECISION REVERSED IN MESOTHELIOMA WRONGFUL DEATH ACTION



**Robert E. Lytle**  
 Partner  
 Executive Committee

In May 2017, the Appellate Division of the New Jersey Superior Court reversed the decision of a trial judge in favor of Union Carbide Corporation (“Union Carbide”), a subsidiary of the Dow Chemical Company. The lower court dismissed a product liability and wrongful death action that had been brought by a widow on behalf of her husband who died of mesothelioma as a result of his workplace exposure to asbestos. The appeal of the lower court’s decision to dismiss the case was successfully prosecuted on behalf of the deceased’s estate by Partner Robert Lytle and Founding Partner Jeffrey Blumstein. As a result of the reversal, the complaint against Union Carbide has been reinstated and the action will now be remanded back to the lower court for purposes of trial.



**Jeffrey P. Blumstein**  
 Founding Partner

Our client was diagnosed with mesothelioma in October 2010 and succumbed to the disease three months later. Following our client’s death, his widow brought a wrongful death and product liability action against Union Carbide. The evidence showed that our client worked from 1954 to 1994 as a mixer in the mill room of a chemical plant that manufactured adhesive products in Bloomfield, New Jersey. There were a number of companies who supplied asbestos fiber to the facility during that time. Union Carbide alone supplied



approximately forty tons of asbestos to the facility between 1970 and 1982.

Nevertheless, the trial court dismissed the action in December 2015, finding that the plaintiff had not presented sufficient evidence that our client was exposed to Union Carbide’s asbestos - as opposed to asbestos supplied by other companies - while working at the Bloomfield facility. But the Appellate Division disagreed. Based on the amount of asbestos supplied by Union Carbide, as well as the fact that our client handled asbestos while working at the Bloomfield facility during that time, the Appellate Division reversed the trial court, holding that, “Based on the evidence presented, a reasonable jury could infer the decedent suffered from exposure to Union Carbide’s asbestos.”

According to Robert Lytle, “We are pleased with the Appellate Division’s decision which enables Szaferman Lakind to continue its pursuit of justice on behalf of our client’s estate and his surviving widow.”

## BRIAN HEYSEY SECURES \$150,000 FOR VICTIM OF BED SORES



**Brian A. Heysey**  
 Attorney

Personal Injury attorney Brian Heysey recently secured a \$150,000 settlement with a nursing home for an 88-year-old client who suffered bed sores.

Brian successfully convinced the Court to deny multiple motions to dismiss and deposed several witnesses whose testimony supported his theory of liability.

Brian’s client, an Alzheimer’s patient prone to bed sores, while in the care of the nursing home facility, developed a significant sacral decubitus ulcer which required surgical debridement. In addition to raising significant questions as to whether care plans were being followed by the nursing home staff, Brian was able to identify and highlight that there was an inexplicable absence of assessment records in the form of weekly wound progress reports relating to a period of time after bed sores, including decubitus ulcer on the patient’s sacrum.

SZAFERMAN LAKIND FIGHTS FOR VICTIM RIGHTS - CONTACT US TODAY.

## ATTORNEY JASON SOKEL JOINS NJ ASSOCIATION ON CORRECTION BOARD OF DIRECTORS



**Jason M. Sokel**  
Attorney

Attorney Jason Sokel has accepted an invitation to join the New Jersey Association on Correction (NJAC) Board of Directors.

Per NJACOnline.org, NJAC's Mission "is to help people with a past build a future."

NJAC was established in 1961 and is a private not-for-profit organization

"serving survivors of domestic violence and sexual assault; women at risk of separation from their children due to child abuse and/or neglect; women and their children in recovery; people at risk for and living with HIV/AIDS; adult ex-offenders and youth who are at risk of becoming offenders."

Jason Sokel is an attorney with Szaferman Lakind's Business Group. Jason's legal practice includes real estate, estate planning, employment and contracts law. He is admitted to practice law in New Jersey and New York.



**Lionel J. Frank**  
Partner

## PARTNER LIONEL FRANK RECEIVES UNITED STATES DISTRICT COURT NOTIFICATION OF EXTENSION



Partner Lionel Frank's Arbitration Certification with the United States District Court, District of New Jersey, has been extended three (3) years, effective March 15, 2017.

Per NJD.USCourts.gov, "Arbitration is a form of Alternative Dispute Resolution ("ADR")" and "The Arbitrators role is as a non-jury adjudicator of the facts based upon evidence and arguments presented at the arbitration hearing."

## ATTORNEY, REGISTERED NURSE KEITH HOVEY PRESENTS TO NJSNA MEMBERS AT ATLANTICARE MEDICAL CENTER AND AT RUTGERS SCHOOL OF NURSING



Prior to becoming an attorney, Keith Hovey worked as a Registered Nurse (RN) at Tufts New England Medical Center in Boston. Keith maintains his nursing license and, as a practicing attorney, provides a unique perspective on health care issues, allowing him to better serve healthcare professional clientele.

Due to Keith's unique perspective, the New Jersey State Nurses Association (NJSNA) regularly invites Keith to speak at various events, two more recently were AtlanticCare Regional Medical Center in Atlantic City and the Rutgers School of Nursing at Rutgers University, New Brunswick venues.

*Keith Hovey presents to NJSNA Region 6 - May 6, 2017, AtlanticCare Regional Medical Center, Atlantic City, NJ*

In Atlantic City, Keith delivered a presentation, "Nursing Professionalism, Electronic Records and Social Media" to dozens of nurses for Region 6 of the NJSNA and at Rutgers, Keith presented on, "Health Policy Related to Electronic Communications & Implication for NP Practice" to The Society of Psychiatric Advanced Practice Nurses.

**IF YOU KNOW A NURSE OR DOCTOR WHO HAS BEEN ACCUSED OF PROFESSIONAL MISCONDUCT, HAVE THEM CONTACT SZAFERMAN LAKIND TODAY.**



NEW JERSEY STATE BAR ASSOCIATION

# 2017 ANNUAL MEETING AND CONVENTION

MAY 17-19 • BORGATA HOTEL CASINO & SPA • ATLANTIC CITY

NJSBA

CO-PANELIST



**Craig J. Hubert**  
Partner  
Executive Committee

### HOT TIPS FOR HOT LITIGATORS: PART 2

A popular annual program in which some of the best trial attorneys in the state address the most recent case law affecting civil litigation practice.

“A key element of the NJSBA’s Mission is providing educational opportunities for New Jersey attorneys. For me, participating in a forum that raises the professionalism of our state’s lawyers is personally rewarding.”

– Partner Craig Hubert



CO-PANELIST



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

### TRANSITIONING FROM LAW CLERK TO ASSOCIATE – PROFESSIONAL TIPS TO MAKE IT A SUCCESS FOR YOUNG LAWYERS AND THOSE WHO HIRE THEM

This presentation, designed to provide guidance for both young lawyers and those who hire them and featured discussions on issues likely to be encountered when transitioning from law clerk to practicing attorney, including but not limited to mentoring, personal interactions, ethical obligations, confidentiality, networking, common representation problems and questions.

“All Judges enjoy a sense of satisfaction when their law clerks move into the role of practicing attorney.”

– Judge Linda Feinberg (Ret)

INDUCTEE



**Keith L. Hovey**  
Of Counsel

### NOMINATION TO ADMINISTRATIVE LAW SECTION – BOARD OF DIRECTORS

Keith was inducted to a one-year term with NJSBA’s Administrative Law Section.

The Administrative Law Section of the NJSBA “reviews, analyzes and disseminates information about administrative law practice and procedures.”



Keith Hovey (far left) inducted to NJSBA Administrative Law Section during NJSBA 2017 annual meeting and convention.

PANEL MODERATOR



**Thomas J. Manzo**  
Attorney

### CIVIL TRIAL BENCH / BAR

Topics: e-courts, in limine motions, judicial morale and how attorneys approach the bench. Retired Judges and practicing trial attorneys provide different perspectives on an array of court related issues.



Thomas Manzo moderates NJSBA’s Civil Trial Bench / Bar panel. PHOTO (L to R): Hon. Jamie D. Happas, P.J.Cv., Middlesex County, NJ; David M. Fried, Esq., Blume Forte Fried Zerres & Molinari, P.C.; Thomas J. Manzo, Esq., Szaferman Lakind; Diane C. Manning, Esq., Bressler Amery Ross, P.C.; William H. Mergner, Esq., Leary Bride Tinker & Moran, P.C.; Tracey C. Hinson, Esq., Hinson Snipes, LLC.

## ...ARNOLD LAKIND \$90M *(Continued from page 1)*

In a lengthy opinion, the Appellate Division disagreed. The appellate court found that any decision binding plaintiff to the findings of the Bermuda court violated plaintiffs’ right to constitutional due process. In the Appellate Division’s view, it was incumbent upon Travelers to have joined plaintiffs in the Bermuda action. The failure to do so deprived the Bermuda judgment of preclusive effect. Travelers had also argued that the Clarendon plaintiffs stood in the shoes of Raydon and for this reason they were bound by the Bermuda court’s finding. The Appellate Division found that the Clarendon plaintiffs were not in privity with Raydon; their interest was, in fact, hostile to that of Raydon. The Appellate Division also found that New Jersey was an appropriate venue for the litigation of plaintiffs’ coverage claims because Travelers was licensed to do business in New Jersey and ERSIC was domiciled in New Jersey.

Plaintiffs were represented by Szaferman Lakind’s litigation team including Arnold Lakind, who observed, “We are pleased with the court’s reasoning in this matter and await the opportunity to proceed in the appropriate forum.”

## SZAFERMAN LAKIND PARTICIPATES IN PRINCETON REGIONAL CHAMBER OF COMMERCE'S 3RD ANNUAL INDEPENDENT BUSINESS SUMMIT AT THE COLLEGE OF NEW JERSEY



Szaferman Lakind and over 125 members of the Princeton Regional Chamber of Commerce (PRCC) and its Independent Business Alliance (iBa) converged on The College of New Jersey (TCNJ) for a "Perspectives to Success" Business Breakfast Summit this past May 2017.

The 3.5-hour event included a panel of successful entrepreneurs moderated by Michele Siekerka, President and CEO, New Jersey Business & Industry Association (NJBIA) and an inspiring keynote address, "Step Up and Stand Out: Success is a Choice" delivered by Ms. Tamara Jacobs.



*NJBIA President & CEO, Michele Siekerka, welcomes attendees to the 3rd annual IBA Summit at TCNJ on Thursday, May 11, 2017.*

## SZAFERMAN LAKIND OPENS MIDJERSEY CHAMBER OF COMMERCE'S ANNUAL 'STATE OF NEW JERSEY BUSINESS + TRUMP ADMINISTRATION PANEL' LUNCHEON

Every March, the MIDJersey Chamber of Commerce hosts a luncheon titled, "The State of New Jersey Business" and during more recent years, New Jersey Chamber of Commerce President and CEO, Tom Bracken, addresses attendees.



With the January 2017 inauguration of U.S. President Donald Trump, the MIDJersey Chamber of Commerce added to its annual luncheon, "A Perspective on the Trump Administration" with panelists Patrick Murray, Director of Monmouth University Polling Institute and Darryl Isherwood, Senior Vice President of global strategy firm, Mercury.

Szaferman Lakind Partners Lionel Frank and Bruce Sattin opened the March 2017 luncheon with Mr. Frank leading the Pledge of Allegiance followed by Mr. Sattin providing some brief commentary about Szaferman Lakind and its 40th anniversary year (2017).



*Szaferman Lakind Partner Bruce Sattin welcomes MIDJersey Chamber of Commerce "State of New Jersey Business" luncheon guests to the Trenton Country Club on Thursday, April 13, 2017.*

## SCOTT BORSACK TO DELIVER VIRTUAL WEBINAR, "NEW ADMINISTRATION PROPOSES HISTORIC TAX CHANGES," VIA NJBIA



**Scott P. Borsack**  
Partner

Head of Szaferman Lakind's Business Law Group and Partner, Scott Borsack, will deliver a virtual webinar, "New Administration Proposes Historic Tax Changes" via the New Jersey Business & Industry Association (NJBIA) the morning of Tuesday, September 12, 2017.

All NJ business leaders are invited to either join Scott at NJBIA's downtown Trenton, NJ headquarters or view Scott's entire presentation (video and audio) via live stream to any internet-accessible device.

From the event description, "Second only to health insurance reform, the Trump Administration has identified significant changes to the tax laws as a top priority. Treasury Secretary Mnuchin has outlined changes which will affect individuals and businesses, among them repeal of the Estate Tax, reduction of individual tax rates, reduction of the corporate income tax rate and creation of a tax rate for so-called pass through entities. The Administration has said that it will seek to secure these reforms sometime this summer.

In this September 12 program we will explore together the proposed changes and discuss how they affect individuals and businesses alike."

**TO REGISTER, VISIT [NJBIA.ORG/EVENTS-LIST](http://NJBIA.ORG/EVENTS-LIST)**



## LEGISLATURE ENACTS NEW CHILD SUPPORT TERMINATION LAW

An Article By: Jeffrey K. Epstein, Esq.



**Jeffrey K. Epstein**  
Partner

Effective February 1, 2017, a new child support statute was enacted which provides for the termination of child support for children who have reached the age of 19, unless there is another date (not beyond the date the child turns 23) specified in a Court Order. From a practical standpoint, this creates different burdens and obligations for parents paying and receiving child support from those which existed under the prior law. Also as a result of

the new statute, the approach to the termination of child support for cases in which child support is collected by the County Probation Department is now different from the approach in cases in which child support is paid directly from one parent to another.

If child support is being collected by the Probation Department the child support will terminate when a child becomes 19 years of age. In order for the Probation Department to continue to collect child support for that child beyond the age of 19 the party receiving child support must submit to the court either a Court Order or Judgment establishing an alternative child support termination date or a written request seeking the continuation of child support beyond the age of 19. A Judgment of Divorce with accompanying Matrimonial Settlement Agreement will generally be insufficient cause for the Probation Department to collect child support beyond the age of 19 in the absence of a subsequent Court Order or a written request seeking the continuation of child support.

For those cases where child support is paid directly from one party to the other (i.e. not through the Probation Department), child support will continue until the child is emancipated in accordance with the terms of the

Matrimonial Settlement Agreement. The new law, however, does not permit child support for a child beyond the age of 23. If support for a child is sought beyond the age of 23 for extenuating circumstances such as a mental or physical disability, a Court Order must be obtained for another form of financial maintenance for such child. Probation will not collect child support for any child beyond the age of 23, as in a sense, child support no longer exists for any child beyond the age of 23.

The intent of the new law was to reduce the number of applications filed for the termination of child support based on a child's emancipation. The automatic termination of child support at the age of 19 would eliminate the need for such applications. The new law, however, could create additional litigation by compelling a parent to petition the court in order to continue child support beyond the age of 19, or for financial maintenance for a child under extenuating circumstances beyond the age of 23.

As with many new statutes, there are initial difficulties in application. For example, even though the Probation Department will automatically terminate child support for a child who turns 19, if there are younger children also receiving child support from the same Order and the Order does not specifically allocate the child support among the children, the original child support amount will continue until there is a subsequent Court Order changing it. For example, if child support is established at \$75 per week for two children and one of the children reaches the age of 19 and is, therefore, no longer under the purview of the local Probation Department, the Probation Department will continue to collect the \$75 per week for the younger child. In such a case, modification of the existing child support Order requires that a party file an application with the Court requesting that the child support be adjusted to an amount appropriate for one child as opposed to two.

**SZAFTERMAN LAKIND'S FAMILY LAW GROUP CAN ANSWER QUESTIONS, PROVIDE CLARIFICATION OR FILE APPROPRIATE APPLICATIONS CONSISTENT WITH THIS NEW STATUTE.**



Founded in 1977 in Lawrenceville, NJ, Szaferman Lakind is a full-service, Martindale-Hubbell™ AV-Preeminent law firm that was listed among U.S. News & World Report™'s Best Law Firms®\* in 2014, 2015, 2016 and 2017. Szaferman Lakind has 35+ attorneys who provide legal representation

to businesses, investors, professionals, families and individuals in several areas, among them: family law, general and commercial litigation, personal injury, estate and business planning and business law. Visit [Szaferman.com](http://Szaferman.com) and learn more about us.



## BE INVOLVED: TRUST CREATORS AND BENEFICIARIES

An Article By: *Betsy Sweetser, Esq.*



**E. Elizabeth Sweetser**  
Of Counsel

Whether you create a trust or are the beneficiary of one, it is helpful to be aware of and involved in issues regarding investment of the money in the trust.

In many cases, a NJ statute - the Prudent Investor Act [the "Act"] - will govern investing. Every trust is unique in its purpose - e.g. a grandmother wants to benefit her young grandchildren when they reach the age of majority or a wealthy person wants to protect assets from reach in case of divorce. The Act says invest and manage trust assets as a prudent investor would in light of the purposes for which the trust was created. The trustee is required to follow an investment strategy that will enable distributions to the beneficiaries as intended by the trust creator.

Surprisingly, it is not unusual for a trustee, including a bank, to act inconsistent with the dictates of the Act. Trust creators, select your trustee wisely. Don't assume

that a financial institution is your best choice or that one bank

is as good as another. Ask questions to find out what policies and procedures are in place re: investing at an institutional trustee to insure that money will be available to the beneficiaries when and in an amount you expect. Participate in the selection of the person at a bank who will invest the assets in your trust - you want a person with education and experience who understands your wishes, and with whom your beneficiaries will feel comfortable. Beneficiaries -- meet with your trustee periodically to satisfy yourself that her/his investment strategy is consistent with the purpose for which the trust was created. Also, make your trustee aware of any significant life changes so that if necessary, investment strategy can be altered. Do not assume that the trustee is automatically doing what s/he is supposed to do - in reality that does not always happen.

Trust creators and beneficiaries, you will benefit from being informed and involved.



## HAVE A DRONE? FAA REGULATION OVERTURNED

An Article By: *Benjamin Branche, Esq.*



**Benjamin Branche**  
Partner

Section 336(a) of the FAA Modernization and Reform Act of 2012 (the "Act") specifically precludes the FAA from creating any new rules regulating aircraft flown strictly for hobby or recreational use if it is operated in accordance with community based safety guidelines; is not flown within 5 miles of airport (unless prior approval obtained); and the operation does not interfere with a manned aircraft.

The FAA imposed a drone registration program in 2015 that requires all drone operators (including recreational drone operators) to register, paying a \$5 fee and providing their contact information. Simply put, Section 336A of the FAA Modernization Act says that the FAA can't enact new regulations with regards to model aircraft. This appears to be a new regulation.

The FAA's disregard for the limitation set forth in 336 has been the subject of much litigation, and the United State Court of Appeals in the matter of Taylor v. FAA decided on May 19, 2017 that the FAA failed to comply with mandatory commenting periods when implementing the registration



program, and found the FAA overstepped its authority established by Congress.

The FAA argued the registration rule was necessary to "improve aviation safety as directed to the FAA under the Act without providing any evidence to support such a position." Ultimately, the Court found the registration requirement directly violated the clear statutory prohibition on the regulation of hobby and recreational aircraft and did not fall within the mandate on the FAA to improve aviation safety.

Although the FAA may have overstepped its authority with the registration requirement, the FAA does have helpful information and applications that ensure unmanned aircraft are operated safely. If you have a drone or other unmanned aircraft, you should review the FAA's website for guidance and download B4UFLY for your smart phone.

# JANINE BAUER INSTRUCTS MUNICIPAL HISTORIC PRESERVATION COMMISSIONS AND PLANNERS



**Janine G. Bauer, Esq.**  
Partner

On Saturday, March 18, Partner Janine Bauer provided professional instruction on the legal aspects of historic preservation under the State and Federal Constitutions and the Municipal Land Use Law in New Jersey. Historic preservation commissioners and planners throughout New Jersey attended the training to improve their ability to regulate historic resources.

The all-day educational event, underwritten by the Mid-Atlantic

Regional Center for the Humanities, at Rutgers University-Camden, entitled, "Preservation in Practice: A Primer for Historic Preservation Commissions and Planners," was held at the EcoComplex in Bordentown, N.J. Rutgers University graduate students, New Jersey municipal, county and state planners, and historic preservation commissioners were able to earn credit for attendance at the course.

Advised Janine Bauer, "New Jersey has some of the richest historical resources in the United States, ranging from architecture to landscapes to artifacts. Better understanding of those features as they pertain to state and municipal laws and regulations will help protect and preserve New Jersey's contributions to American history and provide developers with more certainty in the process of applying for development approvals."



Built in 1814, the Flemington Union Hotel (Flemington, NJ) is listed among "the 10 most endangered historic landmarks in the U.S."

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