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SUMMER 2019

LEGAL HIGHLIGHTS

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2020 BEST LAWYERS IN AMERICA LIST INCLUDES SIX SZAFERMAN LAKIND ATTORNEYS

Attorneys in five different practice areas were included in the 2020 list.

Six (6) attorneys at Szaferman, Lakind, Blumstein & Blader, P.C., were included in the *Best Lawyers in America™* 2020 list issued by BL Rankings, LLC* for their work in five legal sub-practice areas.

Among the represented practice areas are Land Use and Zoning Law, Real Estate Law, Commercial Litigation, Personal Injury Litigation-Plaintiffs and Family Law.

All of the Szaferman Lakind attorneys included on the list have been recognized multiple times by *Best Lawyers*.

According to *Best Lawyers*, "Recognition by *Best Lawyers* is based entirely on peer review. Our 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."

Managing Partner Barry Szaferman commented, "thank you to *Best Lawyers* and attorneys throughout the Princeton-Metro area for including so many of our attorneys on this list. Our inclusion is a testament to the hard work of the attorneys and staff at Szaferman Lakind. I am proud to work alongside such dedicated professionals who always put our clients first."



BARRY D. SZAFERMAN	ARNOLD C. LAKIND	CRAIG J. HUBERT	BRIAN G. PAUL	JEFFERY M. HALL	KEITH L. HOVEY
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<i>Best Lawyers in America™</i> 2016 - 2020 Lawyer of the Year 2019	<i>Best Lawyers in America™</i> 2009, 2011, 2014 - 2020	<i>Best Lawyers in America™</i> 2013 - 2020 Lawyer of the Year 2019	<i>Best Lawyers in America™</i> 2013 - 2020 Lawyer of the Year 2015, 2018	<i>Best Lawyers in America™</i> 2019 - 2020	<i>Best Lawyers in America™</i> 2016 - 2020



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CRAIG J. HUBERT SUCCESSFUL IN RESOLVING TWO NURSING HOME INJURY CASES



Craig J. Hubert
Partner

Partner Craig J. Hubert successfully negotiated a resolution of claims for two clients who were injured due to abuse and neglect at the nursing homes providing care.

In the first case, an elderly resident at a nursing home and rehabilitation facility in Mercer County, New Jersey, suffered a broken neck, concussion, and severe scalp hematoma after she fell to the floor head-first from a wheelchair. The client sadly passed away from her injuries ten days after the fall. The plaintiff alleged that the nursing home failed to employ adequate fall prevention methods and otherwise supervise the resident, who was known to need assistance.

The parties attempted to mediate the dispute, which initially failed to bring resolution. However, in continued negotiations in the months following mediation, Craig was able to achieve a settlement for his client's estate in the amount of \$425,000.

The second case involved a sexual assault perpetrated against a female rehabilitation patient by a male nursing employee. The sexual assault caused our client to develop post-traumatic stress disorder. The facility, instead of suspending the employee and immediately investigating the assault, permitted the employee to return to work and have further contact with our client in the aftermath of the assault.

Initial mediation attempts failed. Ongoing post-mediation efforts led to a confidential settlement agreement resulting in a substantial recovery for the victim. Craig commented: "It brings my team great satisfaction to arrive at a favorable resolution for our client. Although she was prepared to testify at her trial, she now has a resolution with certainty and no longer will be required to tell her story in open court. We are confident that the achievement of civil justice in a pre-trial resolution will help our client as she moves forward."



Michael R. Paglione
Partner

MICHAEL PAGLIONE REACHES \$250,000 SETTLEMENT FOR TRIP AND FALL ACCIDENT

Partner Michael Paglione recently settled a case involving a 61-year-old woman who sustained multiple injuries in a trip and fall accident at a Hamilton Township, New Jersey supermarket in March of 2017.

As the Plaintiff was exiting the supermarket she tripped over a rug that was placed carelessly in front of the exit door creating a trip hazard. The victim fell headfirst into a metal door frame causing a large laceration to the top of her head. The Plaintiff incurred other injuries as a result of the fall, including a concussion, post-concussion syndrome, and a complete rotator cuff tear on her left shoulder.

Due to this accident, the Plaintiff's quality of life has been significantly compromised. She now experiences constant pain in her left shoulder and sensitivity to the laceration site on her scalp. She also suffers from post-concussion memory loss which at times, interferes with her day-to-day functionality.

The case was set for trial, however all parties agreed to participate in mediation, settling for a total of \$250,000.

**IF YOU OR SOMEONE YOU KNOW HAS BEEN INJURED, LET OUR ATTORNEYS HELP YOU.
CONTACT US TODAY: 609. 275. 0400**



Thomas J. Manzo
Partner

THOMAS MANZO ARGUES IN THE SUPREME COURT OF NEW JERSEY ON BEHALF OF NEW JERSEY STATE BAR ASSOCIATION



On April 24, 2019, Partner Thomas Manzo of Szaferman Lakind's Personal Injury Department argued the New Jersey State Bar Association's position on a critical civil trial issue from a recent case, *Oriental v. Jennings*, before the Supreme Court of New Jersey.

A jury's award of damages is generally not to be altered by a trial judge. However, it may be altered under current New Jersey law if it is so shocking that it represents a miscarriage of justice. Tom added: "The questions of when a verdict becomes shocking, the process by which a judge may alter a verdict and the parties' rights after an increase or decrease have long plagued litigants and the judiciary. The case of *Oriental v. Jennings* provided a platform for the parties and other entities, like the New Jersey State Bar Association, to revisit these issues with the court to seek refinement of the process and to ensure fairness to the parties on either side of the *additur* or *remittitur*. In fact, this is the approach of the NJSBA that I had the privilege to argue. In the event a trial court seeks to alter a verdict, the NJSBA believes that either party should be able to object and seek a new trial on damages. Essentially, the NJSBA seeks to preserve the right to a fair civil jury trial for plaintiffs and defendants, where a court finds a miscarriage of justice in the damages award."

Upon invitation from the Supreme Court, the New Jersey State Bar Association (NJSBA) took an *amicus* position on the doctrines of *additur* and *remittitur*, which address the circumstances under which a trial judge may increase or decrease a jury's civil damages award. NJSBA President John Keefe, sought the assistance of attorneys Craig Hubert, Thomas Manzo and Brandon Simmons of Szaferman Lakind, and Bill Mergner of Leary, Bride, Mergner & Bongiovanni, in developing and briefing the NJSBA's position.

The NJSBA found this civil trial issue of great significance *additur* (increasing a jury's damages award) and *remittitur* (decreasing a jury's damages award), involve a trial judge substituting his or her judgment of damages for that of the jury.

Tom Manzo is a Trustee of the New Jersey State Bar Foundation and an active member of the NJSBA, where he serves as Secretary to the Executive Committee for the Civil Trial Bar Section.



Keith L. Hovey
Of Counsel

KEITH HOVEY PRESENTS TO NURSING STUDENTS AT THE STATE CAPITAL

Nursing students from Thomas Edison State University recently visited the State House in Trenton, New Jersey to learn more about the legislative process, policies and the importance of civic involvement.

Keith Hovey, who is both a registered nurse (RN) and an attorney, addressed the students to educate them on the importance of being involved in the legislative process. He spoke with the students about pending healthcare-related legislation that could affect nurses in the near future and how the legislative and electoral processes work. Keith stressed the importance of the involvement of nurses in shaping healthcare policy in the workplace, government and their communities.

"Nurses have the power to create lasting change on many health related legislative matters" Keith explained. "A nurse's job goes beyond the bedside."

Keith is a member of the firm's Personal Injury and Commercial Litigation departments, focusing his practice on nursing home negligence, medical malpractice and a variety of business related disputes. He also represents health care professionals involved in disciplinary matters before New Jersey professional boards.

NAVIGATING THE MODIFICATION OR TERMINATION OF ALIMONY UPON RETIREMENT

An Article By: Janine Danks Fox



Janine Danks Fox
Partner

In September of 2014, N.J.S.A. § 2A:34-23 was amended to clarify the standard that New Jersey Courts must rely upon to terminate or modify alimony upon a prospective or actual retirement. Subsection (j) of the statute delineates different standards, identified as j(1), j(2) and j(3), each of which apply to different scenarios. The statute has no retroactive effect. Thus, depending upon the specific terms of the Marital Settlement Agreement and/or the date of the Marital Settlement

Agreement, that date controls whether the amended statute applies or the agreement applies. The following is a brief summary of each standard:

j(1) Application upon reaching full retirement age for Agreements Reached After September 10, 2014

Upon reaching full retirement age, there is a rebuttable presumption that alimony shall *terminate*. The supported spouse has the burden of rebutting the presumption to convince the Court that alimony shall continue at some level, albeit possibly at a lesser sum. In this instance, a Court shall evaluate the following factors to determine if the supported spouse has rebutted the presumption and shown good cause for alimony to continue:

- (a) The ages of the parties at the time of the application for retirement;
- (b) The ages of the parties at the time of the marriage or civil union and their ages at the time of entry of the alimony award;
- (c) The degree and duration of the economic dependency of the recipient upon the obligor during the marriage or civil union;
- (d) Whether the recipient has foregone, relinquished or otherwise sacrificed claims, rights or property in exchange for a more substantial or longer alimony award;
- (e) The duration or amount of alimony already paid;
- (f) The health of the parties at the time of the retirement application;
- (g) Assets of the parties at the time of the retirement application;
- (h) Whether the supported spouse has reached full retirement age as defined in this section;
- (i) Sources of income, both earned and unearned, of the parties¹ (see footnote on page 7);
- (j) The ability of the recipient to have saved adequately for retirement; and
- (k) Any other factors that the court may deem relevant.

If the court determines that the presumption has been overcome, the Court is required to conduct a needs based analysis of the supported spouse and the obligor's ability to continue to pay alimony. In order to evaluate the parties' respective financial circumstances, the Court must review both parties' updated Case Information Statements.

The obligor may also file for a determination under this provision based upon a *prospective* retirement. This provision allows the obligor to plan ahead and address the impact of his/her retirement and loss of earned income upon his ability to pay alimony and also serves to prevent an obligor from having to pay an ongoing support obligation beyond the date of retirement.

j(2) Application to Retire Prior to Reaching Full Retirement Age.

In the event the obligor pursues an early retirement prior to reaching full retirement age, there is no longer a rebuttable presumption in the obligor's favor. It is the obligor's burden to prove by a preponderance of the evidence that he/she has met the majority of the statutory factors. First, the obligor must establish that the actual retirement, albeit early, is reasonable and made in good faith. In evaluating an early retirement application, the court shall consider specific factors including but not limited to the age and health of the parties, employment field and accepted age of retirement, motives of retirement, expectations of the parties regarding retirement, the ability of the obligor to maintain support payments following retirement, the obligee's level of financial independence and impact of the obligor's retirement upon the obligee.

j(3) Application upon reaching full retirement age for Agreements Reached Prior to September 10, 2014

When a retirement application is filed in cases in which there is an existing final alimony order or enforceable written agreement established prior to the effective date of the statute (9.10.14), the obligor's reaching full retirement age² (see footnote on page 7) shall be deemed a good faith retirement age. In making its' determination, the court shall consider the ability of the obligee to have saved adequately for retirement, as well as the factors delineated in j(2) in order to determine whether the obligor, by a preponderance of the evidence, has demonstrated that modification or termination of alimony is appropriate.

Following the amendment to the statute, decisional law clarified these standards and the proper application depending upon the circumstances presented to the Court. The case of Landers v. Landers, 444 N.J. Super. 315 (App. Div. 2016) is instructive. The Appellate Court underscored that the burden of proof being placed on the obligor or obligee is dependent upon whether the marital settlement agreement was entered prior to or after the effective date of the statute. Additionally, it is dependent upon whether the retiree has reached full retirement age or is seeking an early retirement.

(Continued on page 7)

LIFE INSURANCE POLICY VOIDED WHEN PURCHASED BY AN INVESTOR

An Article By: Scott P. Borsack



Scott P. Borsack
Partner

It seems that the ingenuity of investors is limited only by their imagination and the occasional opinion issued by a court. We were reminded of this by a recent opinion from the New Jersey Supreme Court in a matter which was essentially referred from the United States Circuit Court of Appeals for the Third Circuit. In this matter, Sun Life Assurance Company of Canada v. Wells Fargo Bank, NA, the insurance carrier refused to pay a death claim to the beneficiary of a life insurance policy claiming that the issuance of

the policy violated public policy and was void from the outset. Initially, the life insurance policy was purchased by a trust that named the grandson of the insured as its beneficiary. The funds necessary to pay premiums came from investors who were also serving as trustees of the trust and who themselves bore no relationship to the insured. Within five weeks of the issuance of the policy to the trust, the grandson ceased any connection to the trust and ultimately, the policy was sold by the trust to a third party. In a case of first impression in New Jersey, the Supreme Court determined that the insurance company had no obligation to pay the death benefit.

Life insurance death benefits are afforded advantages in the law. The payment of death benefits in most instances is free from federal and state income taxes. In order to avoid, among other things, the potential for individuals to gamble upon the lives of others, New Jersey law requires that to contract for life insurance, the owner of the policy must have an “insurable interest” in the person whose life is insured by the policy. The law in New Jersey provides that such an interest exists between the insured and a close relative and a person, corporation or charity with certain financial ties to the insured individual. Absent falling into one of these categories, one cannot own an insurance policy on the life of another. In this case, the investor group formed a trust and named the grandson as a trustee and beneficiary of a trust which applied for a substantial life insurance policy on the life of the grandmother of the beneficiary. Though the insured was of fairly modest means, the application indicated that the grandmother had a net worth of several million dollars. Five weeks after its entry into force the grandson surrendered his position as trustee and was removed as a beneficiary of the trust. More than two years after the period when the policy could no longer be contested, the grandmother died and the then owner of the policy tried to collect the death benefit. There were several intervening transfers of ownership of the policy and an intervening bankruptcy, none of which changed the basic premise.

The New Jersey Supreme Court did not look favorably upon this scheme, known as stranger originated life insurance or “STOLI”. Allowing such policies would be to sanction gambling on human life using the death benefit of a life insurance policy as the currency of the bet. This, the Court found, was clearly contrary to public policy. The trust and the position of the grandson were used as a subterfuge to secure approval of the policy and the grandson’s position was terminated once his presence no longer served any purpose to the investors who advanced the funds to purchase the insurance. The policy application also contained some bad facts, in particular the grandmother’s net worth, which suggested to the carrier that there was a need for a substantial death benefit. The fact that the grandmother died after the incontestability period for the policy was of no concern to the New Jersey Supreme Court, which concluded that the policy was void from the outset because the intention of the parties was to engage in a fraud. The Court was sure to state that its frowning upon STOLI had nothing to do with the sale of life insurance policies to unrelated third parties as is the case with a so-called viatical settlement, where the owner of a policy properly purchased and maintained for an extended period of time is sold to an unrelated third party. In the case of a viatical settlement, the life insurance policy is purchased with the intention of holding it until the death of the insured. It is not until a significant change in medical or financial circumstances that the policy is sold to support a financial need. Since such policies are taken out with good intentions, the later sale to support bona fide needs was distinguished from STOLI.

In this case the New Jersey Supreme Court was not going to sanction STOLI in the state; joining several other states that have taken a negative view of such investor backed gambling plays. In the end, public policy was upheld.



CRAIG HUBERT APPOINTED CO-CHAIR OF NJSBA JUDICIAL ADMINISTRATION COMMITTEE



Craig J. Hubert
Partner

Partner Craig Hubert has been appointed Co-Chair of the New Jersey State Bar Association Judicial Administration Committee for 2019-2020. This is the third consecutive year that Craig will serve in that capacity.

The role of the Judicial Administration Committee is to ensure that the court management system is economical, efficient and fair. The committee also works to promote communication among judges, attorneys and administrators and for the independence of the parties.

Craig is deeply committed to the role of the New Jersey State Bar Association, having served as a Trustee for the past five (5) years. In addition to his role as Committee Co-Chair, Craig will act as the Trustee Liaison for the committee.

Craig will Co-Chair this committee with Hon. Ned M. Rosenberg of Trenk DiPasquale.



Scott P. Borsack
Partner

ASSISTED SUICIDE LAW EFFECTIVE IN NEW JERSEY

An Article By: Scott P. Borsack

On August 1, 2019, New Jersey became the eighth state in the country to pass legislation that allows terminally ill patients to end their own lives. In his signing statement, Governor Phil Murphy acknowledged that the law was the product of more than 10 years of debate and consideration and challenged his own religious beliefs.

In order to seek the benefits of the statute, an adult must be a “qualified terminally ill patient” who closely follows the requirements of the law. An adult is qualified if they are (1) capable; (2) a resident in the State of New Jersey; and (3) satisfy the requirements to obtain a prescription for medication which will end their life. Only an adult, 18 years or older, can be qualified under the law. In order to be found capable, an adult must be able to make health care decisions and share those decisions with a health care provider. Those who cannot communicate verbally but are able to make their choices known through other channels must do so through “person’s familiar with the patient’s manner of communicating.” The patient has to be in the terminal stage of their illness, disease or condition with a life expectancy of six months or less. The diagnosis and prognosis must be established by an attending physician and confirmed by another consulting physician. The attending physician is responsible for verifying New Jersey residency.

The decision of the patient must be “informed” which requires that the attending physician convey to the patient not only the diagnosis and prognosis, but also the risks of taking the medication to be prescribed, the probable results of taking the medication and alternatives to the medication including palliative and hospice care. If there is any question about whether the patient is truly capable of understanding the consequences of the request, it is the responsibility of the attending physician to refer the patient to a mental health care professional.

The patient must make several requests for a prescription for the lethal medication, at least one of which must be made in writing on a specific form required by law and must be witnessed by someone other than a relative, the physician, employee of the health care facility and is someone not entitled to receive any portion of the patient’s estate upon his or her death. The attending physician must recommend that the patient inform their next of kin of their decision to administer lethal medication and there is a 48 hour waiting period after the written request to release the medication.

The drafters of the legislation took great care to make sure that a patient contemplating an end of life decision has the benefit of medical advice, an evaluation of competence, involvement of family members and a cooling off period to deal with potentially hasty decisions. There is a lot of responsibility placed on an attending physician in directing the process. A physician who acts in accordance with the statute cannot be prosecuted for a criminal act.

... NAVIGATING ALIMONY UPON RETIREMENT (Continued from page 4)

Regardless of the above standards, a retirement, whether it is a good faith early retirement or a full retirement, permits an obligor the right to seek a review of alimony based upon the financial impact the retirement has on his or her ability to pay alimony prospectively. Each individual's employment and financial circumstances vary and certain factors delineated above may be more relevant to a Court than other factors. The Court must make

findings of fact and conclusions of law after considering the above applicable standards prior to making any determination to alter an alimony award.

If you are approaching retirement age, it is in your interest to consult with an attorney to address your specific circumstances and the impact such circumstances will have on your future obligations to pay alimony.

¹ In evaluating this factor, the obligor's assets received in equitable distribution can not be considered when determining the obligor's ability to pay alimony following retirement.

² This is defined by an obligor's date of birth pursuant to the social security guidelines. For example, if an obligor is born between 1943 and 1959, the full retirement age will occur at some time frame during their 66th year. Anyone born after January 1, 1960, has a full retirement age of 67.

SZAFERMAN LAKIND SUPPORTS "VOLLEY FOR SERV"



Managing Partner Barry Szaferman along with Partners Benjamin Branche, Lionel Frank and Bruce Sattin participated in the Volley for SERV Tennis Tournament on June 12, 2019 at the Cherry Valley Country Club in Skillman, NJ. The charity tournament, held by SERV Behavioral Health System, raises money to provide programs for youth and adults throughout New Jersey who are recovering from severe mental illness or are coping with intellectual and developmental disabilities.

SERV provides housing and supportive services to those affected by mental illness. The organization

addresses the most basic needs such as shelter, clothing and food, but also works to help individuals adjust to living in the community and build toward a more independent life.

Szaferman Lakind was a co-sponsor of the event again this year. Barry Szaferman observed, "The firm has for many years been a supporter of SERV for the good work it does assisting those in need throughout our area."

Ben Branche serves on the tournament committee.

SZAFERMAN LAKIND SPONSORS THE SOMERSET COUNTY BAR FOUNDATION LEGAL RUNAROUND

Szaferman Lakind was proud to sponsor and participate in the 14th Annual 2019 Legal Runaround presented by the Somerset County Bar Foundation. The race benefitted PROUD Family Health at Robert Wood Johnson which is the first of its kind to offer healthcare to the LGBTQIA community, specifically.

The event took place on May 23, 2019 at the Somerset County Courthouse in Somerville, New Jersey and included a 5K road race, a 3K poker walk and kids' dashes.

Attorney Lindsey Moskowitz Medvin and her son, Shane Medvin represented the firm and participated in the event races.

Lindsey has been a Trustee with the Somerset County Bar Foundation since 2016.



Attorney Lindsey Moskowitz Medvin with her son Shane Medvin at the Somerset County Bar Foundation Legal Runaround.

BOB LYTLE RECEIVES AWARD FROM LEGAL SERVICES OF NEW JERSEY FOR PRO BONO WORK

Partner Bob Lytle was recently honored by Legal Services of New Jersey (“LSNJ”), with the Equal Justice Medal for his significant pro bono contributions. The ceremony was held on June 3rd at the Grounds for Sculpture in Hamilton, New Jersey. Bob was recognized for the legal assistance he has provided to clients of LSNJ. This recognition is awarded to those individuals or firms who have spent at least 40 hours providing full representation on one or more pro bono matters.

LSNJ provides free legal assistance to low-income New Jersey residents, striving to secure substantive and procedural justice for those living in poverty. Each year, LSNJ recognizes the efforts of individuals and organizations who have contributed to obtaining justice for the economically disadvantaged.

LSNJ also awarded Bob with the Equal Justice Medal in 2014.

Bob Lytle focuses his practice on complex civil litigation and criminal defense in both state and federal court. His civil practice includes various types of business and commercial litigation, consumer class actions, representing victims of mesothelioma, the prosecution of civil rights claims, the defense of professionals at administrative hearings and environmental litigation. In his criminal practice, Bob represents individuals, corporate officers and corporations who are subject to both traditional and white collar prosecutions, as well as defending those charged with DWI.



Partner Robert Lytle and his wife, Molly attend the 2019 Equal Justice Awards Reception.



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