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SUMMER 2018

LEGAL HIGHLIGHTS

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SZAFERMAN LAKIND ATTORNEYS LISTED AMONG 2019 BEST LAWYERS IN AMERICA©

Barry Szaferman (Family Law) and Craig Hubert (Personal Injury Litigation-Plaintiffs) Selected 2019 "Lawyer of the Year" for Princeton Metro Region by Practice Area

Six (6) Szaferman Lakind attorneys have been listed for 2019 among *Best Lawyers*® as selected by White/Woodward, Inc.© *Best Lawyers in America*. In addition, Barry Szaferman for Family Law and Craig Hubert in Personal Injury Litigation-Plaintiffs were recognized in their respective practice areas as "Lawyer of the Year" for 2019 in the Princeton-Metro region, one of seven (7) regions throughout New Jersey.

Per Bestlawyers.com, "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."

BARRY D. SZAFERMAN	CRAIG J. HUBERT	ARNOLD C. LAKIND	BRIAN G. PAUL	KEITH L. HOVEY	JEFFERY M. HALL
FAMILY LAW	PERSONAL INJURY LITIGATION – PLAINTIFFS	COMMERCIAL LITIGATION + LAND USE & ZONING	FAMILY LAW	COMMERCIAL LITIGATION	LAND USE & ZONING + REAL ESTATE LAW
					
Best Lawyers in America™ 2016 - 2019 Lawyer of the Year 2019	*Best Lawyers in America*™ 2013 - 2019 Lawyer of the Year 2019	*Best Lawyers in America*™ 2009, 2011, 2014 - 2019	*Best Lawyers in America*™ 2013 - 2019 Lawyer of the Year 2015, 2018	*Best Lawyers in America*™ 2016 - 2019	*Best Lawyers in America*™ 2019

Barry Szaferman, Managing Partner, commented, "On behalf of our entire firm I want to thank *Best Lawyers* and acknowledge those attorneys in our area whose participation in the selection process was essential to so many of our attorneys being recognized this year. It is particularly satisfying to have been selected as the Family Law "Lawyer of the Year" for Princeton-Metro, a recognition twice before received by my partner, Brian Paul. Finally, I want to congratulate Craig Hubert for being selected as Personal Injury Litigation-Plaintiffs "Lawyer of the Year" for Princeton-Metro."

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BOB LYTLE PREVAILS ON APPEAL IN MESOTHELIOMA CASE

Robert E. Lytle
Partner

Partner Bob Lytle recently won an important appeal on behalf of our client, Ronald Rowe, who contracted mesothelioma as a result of his exposure to asbestos-containing furnace cement. Testimony at trial proved that Universal Engineering Company - the predecessor to Hilco, Inc. - supplied the asbestos furnace cement that Mr. Rowe used during his 30 year career as a boiler repairman. On February 24, 2014, the jury returned a verdict in favor of Ronald and his wife Donna in the amount of $1.5 million dollars. Sadly, Mr. Rowe died of mesothelioma approximately 6 weeks later.

During trial, and over our client's objections, the judge allowed Universal to introduce hearsay evidence in the form of deposition transcripts and interrogatory answers from 8 defendants who had previously settled with the plaintiffs and were not present for trial. Based on that hearsay evidence the jury apportioned 80% of its verdict against the non-participating settled defendants and only 20% against Universal, making Universal liable to our clients for only $300,000 of the verdict. On appeal, we argued that the jury's verdict against Universal was improperly diluted by the introduction of inadmissible hearsay evidence. The Appellate Division agreed. In its 50 page opinion, the appellate court ruled that the trial judge erred in admitting the hearsay evidence. According to the Court, since the hearsay evidence was being used against our clients, and because the settled defendants did not participate at trial and therefore could not be cross-examined by us, it improperly "transformed the statements . . . into unrebuttable admissions to be used against" the Rowes. As a result, the Appellate Division reversed the trial judge and ordered a new trial on the issue of apportionment of damages.

FIRM DERAILS TELEMARKETING CLASS ACTION LAWSUIT

Daniel S. Sweetser
Partner

Christopher S. Kwelty
Associate

Partner Daniel Sweetser and Associate Christopher Kwelty, representing a solar energy company, successfully obtained a stay of a class action lawsuit filed in Federal District Court under the Telephone Consumer Protection Act ("TCPA"). The stay prevents the case from continuing and, more importantly, frees the client from spending significant resources defending the matter. The stay was based on a pending ruling by a Federal Court of Appeals in a similar case which, if affirmed on appeal, could result in the dismissal of the case against our client.

The complaint asserts that Plaintiff, an attorney, and other class members received pre-recorded calls from our client in violation of the TCPA. Under the TCPA, it is illegal for certain residential phone numbers to receive calls with a pre-recorded message from telemarketing companies. Early in the discovery period, a lengthy and expensive part of any lawsuit where information about the case is collected and exchanged, Dan and Chris learned that the subject call was made to a phone number that the Plaintiff registered as a residential line, yet he used the phone number for all aspects of his law firm's business. They also determined that the same Plaintiff brought a similar claim using the same phone number in a prior case where the Federal District Court dismissed the Plaintiff's lawsuit in 2015. The Court found in that case that Plaintiff's number was not a "residential telephone line" under the TCPA because he used the number as the main phone number for his business. Business lines are not protected by the TCPA. The Plaintiff appealed the 2015 ruling and the decision on appeal has not yet been rendered by the Court.

Upon discovering the decision by the lower court in Plaintiff's earlier case, Dan and Chris petitioned the Court for a stay pending the resolution of the appeal in the 2015 case. A court-ordered stay stops all activity in a case until a future event, in this matter that event being the decision of the Court of Appeals. On June 24, 2018, the Court entered an Order staying the case. The Court agreed that it made little sense to continue litigating the case given that the appeal could affirm the dismissal in the earlier one. Should that occur, it would likely result in the case against our client also being dismissed.

CRAIG HUBERT RESOLVES TRUCKING ACCIDENT CASE FOR $700,000

Craig J. Hubert
Partner

Szaferman Lakind Partner and Executive Committee Member Craig Hubert, with the assistance of a retired NJ Superior Court Judge as mediator, achieved a personal injury settlement of $700,000.00 for his client due to injuries from a trucking accident on a Mercer County highway. In July 2014, excavating equipment strapped to the top of a flatbed trailer struck an overpass on I-95, broke loose, and crashed into the hood of the plaintiff's vehicle. The impact caused the plaintiff to sustain a traumatic brain injury and vitreous detachments in her eyes. The head injury required a substantial period of cognitive treatment and the severity of the eye injuries required Mr. Hubert's client to undergo double vitrectomy surgeries.

Craig sued both the owner of the excavator and the transport company. While evidence showed the transport company failed to ensure proper security of the excavator on the flatbed and failed to stay within height requirements for safe highway travel, the plaintiff also alleged the owner could not delegate its duty to ensure safe transport and further failed to provide the owner's manual to the transporter, which demonstrated proper loading and placement.

Craig Hubert commented: "In order to maintain safe highway travel, we rely heavily on our commercial transporters and contractors to take proper precautions in all roadway activities. Sadly, mistakes do happen and the consequences can be devastating, as was the case here. Our team worked with reputable doctors, engineers, economists and vocational experts to develop our client's case. It was a privilege to be part of her recovery effort and counsel her through the legal process."

BRUCE SATTIN SECURES DISMISSAL IN FORECLOSURE OF REVERSE MORTGAGE

Bruce M. Sattin
Partner

Christopher S. Kwelty
Associate

Szaferman Lakind Partner Bruce M. Sattin with the assistance of Associate Christopher S. Kwelty recently won a dismissal of a lawsuit seeking foreclosure of a reverse mortgage on the home of Princeton clients. The homeowners had taken out a reverse mortgage from Wells Fargo Bank in 2009 that provided a line of credit with a significant balance. Our clients drew approximately one third of the line available when the loan closed. Subsequently, the homeowners were occasionally unable to pay the real estate taxes and Wells Fargo advanced additional funds from the line of credit to cover the taxes. However, the bank sent default letters to our clients and eventually began a foreclosure action in 2016, which was continued by NationStar Mortgage after acquiring the loan from Wells Fargo. The total amount NationStar claimed to have been advanced, including the interest that had accrued over the seven years the loan had been in place, was less than the total amount of the original line of credit.

NationStar claimed that the failure of the homeowners to pay the ongoing taxes was a breach of the loan agreement, even though there was sufficient available unused credit to pay the taxes. In addition, NationStar claimed that the amount of money available under the line of credit was only about two thirds of the amount shown as available in all of the loan documents. Therefore, it alleged, the homeowners had overdrawn the line of credit.

After thoroughly reviewing the loan documents, Bruce found that the bank was required to advance funds from the line of credit to pay the taxes, so long as there were funds available. In addition, the loan documents required the bank to obtain the approval of the Secretary of the U.S. Department of Housing and Urban Development (HUD) to begin foreclosure. The crux of the defense, however, was that the line of credit had not been overdrawn and the clients were never in default. NationStar argued that there is a HUD formula that applies to reverse mortgages, and that only a portion of the amount stated in the note, mortgage and loan agreement was available at the time the foreclosure complaint was filed. Wells Fargo had advanced more than that formula allowed, NationStar claimed.

That argument was refuted by the plain terms of the note and mortgage. The language that NationStar cited made oblique reference to the HUD formula restricting the amount of the reverse mortgage available to our clients. The language was difficult to find as it appeared in only one of the many loan documents. The judge observed that if the lawyers and the judge himself had great difficulty finding and understanding the restriction on the loan amount, the homeowners could not possibly be held to know that there was such a limit. The foreclosure action was dismissed and the homeowners were permitted to draw down the remainder of the available money in the line of credit up to the amount stated in the loan documents.

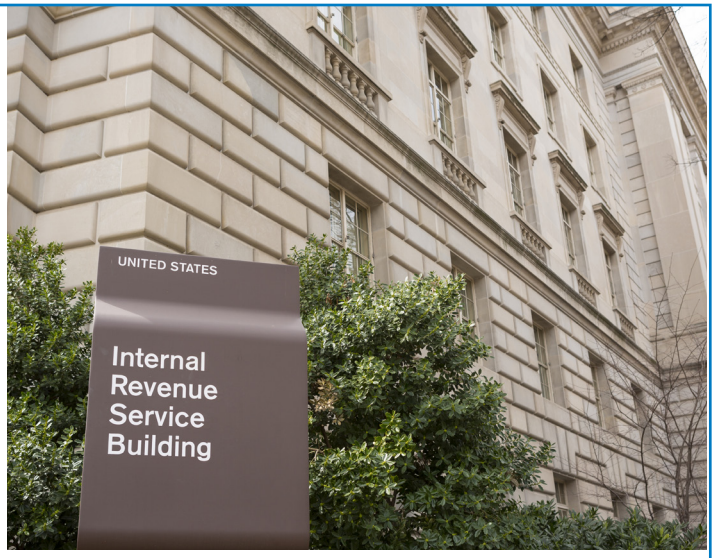
US TAXPAYERS WITH UNDISCLOSED FOREIGN ASSETS BEWARE

An Article By: Scott P. Borsack, Esq.

Scott P. Borsack
Partner

The Internal Revenue Service (the "Service") announced that it will close the program first started in 2009 to grant leniency to United States taxpayers who failed to disclose accounts they had with financial institutions located outside the United States. Under changes made to the law under the Foreign Account Tax Compliance Act (FATCA) , United States taxpayers were required to check boxes on Schedule B of their Federal Income Tax Returns, also known as Form 1040. In some cases taxpayers were asked to include additional disclosures with their tax returns, as well as file a separate disclosure with the Financial Crimes Enforcement Network, a subsidiary of the United States Department of Treasury. The penalties for failing to disclose these accounts could be as high as 50% of the balance on account with the financial institution for each year that a taxpayer failed to comply with these obligations. "Taxpayers have had several years to come into compliance with U.S. tax laws under this program," said Acting IRS Commissioner David Kautter. "All along, we have been clear that we would close the program at the appropriate time, and we have reached that point. Those who still wish to come forward have time to do so."

According to the IRS, tens of thousands of taxpayers have taken advantage of the disclosure program. Many of the taxpayers with foreign accounts subject to the disclosure provisions also failed to report income generated in these accounts. The combination of the failure to disclose penalties, income taxes, penalties for failing to pay as well as the interest accrued often times exceeded the balance on deposit with a foreign financial institution. The IRS has noted that it will continue to use tools besides voluntary disclosure to combat offshore tax avoidance, including taxpayer education, whistleblower leads, civil examination and criminal prosecution. Since 2009, the IRS Criminal Investigation Division has indicted 1,545 taxpayers on criminal violations related to international activities, of which 671 taxpayers were indicted on international criminal tax violations.



"The IRS remains actively engaged in ferreting out the identities of those with undisclosed foreign accounts with the use of information resources and increased data analytics," said Don Fort, Chief, IRS Criminal Investigation. "Stopping offshore tax noncompliance remains a top priority of the IRS."

A separate program, the Streamlined Filing Compliance Procedures, for taxpayers who might not have been aware of their filing obligations, has helped about 65,000 additional taxpayers come into compliance. The Streamlined Filing Compliance Procedures will remain in place and available to eligible taxpayers. As with Offshore Voluntary Disclosure Program (OVDP) which the IRS is closing in September of this year, the IRS has said it may also end the Streamlined Filing Compliance Procedures in the future.

The implementation of FATCA and the ongoing efforts of the IRS and the Department of Justice to ensure compliance by those with U.S. tax obligations have raised awareness of U.S. tax and information reporting obligations with respect to undisclosed foreign financial assets. Since the circumstances of taxpayers with foreign financial assets vary widely, the IRS will continue to offer options for addressing failures to comply with U.S. tax and information return obligations with respect to those assets, none of which offer the finality of the OVDP.

For those taxpayers with offshore financial accounts that have not availed themselves of the OVDP, time is running out and our attorneys are standing by ready to assist you.

KNOW BEFORE YOU OWE. CONTACT US TODAY.

NJSBF TO HONOR JUDGE LINDA R. FEINBERG WITH 2018 MEDAL OF HONOR

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

The Honorable Judge Linda R. Feinberg (Ret.) will be presented with the New Jersey State Bar Foundation's highest award, the Medal of Honor. The award is given to those who have made large contributions to improve not only the justice system but New Jersey's legal legacy. The Medal of Honor Awards Dinner Reception will take place on Monday, September 17, 2018 at the Palace at Somerset Park in Somerset, New Jersey.

Judge Feinberg started her career as a labor attorney for the United States Department of the Army. In 1975, she was appointed as an assistant prosecutor in Mercer County. In 1977, she joined the faculty of The College of New Jersey as a member of the Law and Justice Department. After beginning her teaching career at TCNJ, she was appointed as a municipal court judge in Lawrence, Hopewell and West Windsor Townships and in 1988 was appointed as the presiding judge of the municipal courts in Mercer County.

Judge Feinberg was appointed to the New Jersey Superior Court in 1992 and was the assignment judge for the Mercer County Vicinage until she retired in 2012.

After retirement from the bench she returned to private practice as of counsel at Szaferman, Lakind, Blumstein & Blader, P.C. and she provides mediation services, consultation in land use and redevelopment matters, complex civil litigation and family matters.

"Over the years, as a lawyer and as a judge, I have worked to honor the dignity of the profession of law, to foster professional excellence, to treat clients and litigants with patience and respect, and to provide services to the legal community and to the community at large," Feinberg said. "I am one of so many lawyers and judges in this State who, each day, follow the same principles and apply the highest standards of our profession. I extend my thanks and appreciation to the Foundation for selecting me as one of this year's recipients."

"On behalf of the attorneys and staff at Szaferman Lakind, I would like to congratulate Judge Feinberg on this prestigious honor," commented Managing Partner, Barry Szaferman. "We recognize what a valuable asset she is to our community and to our firm and we are delighted to see her receive this award."

TAX AMNESTY LAW BRINGS RELIEF TO TAXPAYERS

An Article By: Jason Sokel

Jason M. Sokel
Associate

On July 1, 2018, New Jersey Governor Phil Murphy signed a tax amnesty law that allows relief to taxpayers who are delinquent in their tax payments from February 1, 2009 to September 1, 2017. Any taxpayer, so long as they are not subject to a criminal investigation, can participate in the program. The law covers anyone who owes any state taxes (e.g. gross income, sales and use tax, corporate business tax, motor fuels, etc.) during the period of time aforementioned. By participating in the amnesty program, taxpayers will have all penalties and one-half of the balance of any accrued interest that is due as of November 1, 2018, waived, so long as a nonrefundable payment of the tax and remaining one-half accrued interest due is paid. The taxpayer also waives the right to appeal any liability paid under the amnesty program.

Take, for example, a taxpayer who owes an outstanding amount of $10,000 of gross income tax from 2012. Let's assume they have accrued interest to date of $4,000 and there is an additional tax penalty owed of $1,000 for nonpayment. Through the amnesty program the taxpayer could pay $12,000 for the outstanding gross income tax ($10,000 of the original tax plus $2,000 or half of the accrued interest). Through the program the State will waive the additional half of accrued interest plus any penalties, which in our example total $3,000.

To take advantage of the program taxpayers will have a ninety (90) day window, ending on January 15, 2019, in which to make any payments through the amnesty program. If a taxpayer is eligible for the amnesty program but fails to use it, an additional unwaivable five percent (5%) penalty will be automatically assessed to any outstanding tax liability that would have been subject to the amnesty program. The amnesty program can be used to end ongoing tax audits, as the State has advised its auditors to reevaluate audits if amnesty payments are made.

If you believe that you may be eligible for the amnesty program, either due to a current unpaid tax obligation or an ongoing audit, contact an attorney.

PLAN FOR INCOME TAX IMPACT ON FAMILY LIMITED PARTNERSHIPS

An Article By: Scott P. Borsack, Esq.

Scott P. Borsack
Partner

Over the course of the past 40 years or so taxpayers and their advisors have relied upon a number of strategies to efficiently pass wealth from one generation to another. One of the more popular techniques, which not surprisingly drew a lot of scrutiny from the Internal Revenue Service and consumed the time of federal courts, was the so-called family limited partnership. Though not a special legal entity, the family limited partnership (an "LP") was nothing more than a limited partnership which was utilized most often by parents to make gifts of a variety of assets to their children and grandchildren. Practitioners suggested that gifts of interests in the LP could be made to family members at a discount to the value of the underlying assets. When the donor died, the assets in the LP would be excluded from the donor's taxable estate because of the lifetime gift, thereby reducing or eliminating estate taxes entirely. When those assets are sold, however, it is likely that the capital gains taxes due on the sale will be higher because those assets will not qualify for the increase in tax cost or basis which occurs for assets in a descendent's estate. This loss of the so-called step up in basis was not too great because with a federal estate tax rate as high as 55%, and a capital gains tax rate that ranged between 15% and 25%, trading capital gains to save a larger estate tax made sense.

In the intervening decades the federal exemption from the estate and gift taxes has increased from $600,000 to more than $11,000,000 today. Add to that the ability of the surviving spouse to move unused exemptions from a deceased spouse and the effective exemption for a married couple is now more than $22,000,000. The need for sophisticated estate planning for many couples has significantly diminished.

With the estate tax exposure substantially or completely eliminated for most families that used LPs over the past decades, there still may remain some work to be done. There are tens of thousands of LP's that were created over the past 40 years to deal with the federal gift and estate taxes. Some, but not all, were created by skilled practitioners who planned for possible changes in the tax laws. As a result, some of the agreements governing LPs may not be as complete as others.

As noted above, the assets held by an LP are generally not affected by the death of a partner unless the partnership agreement took advantage of a provision in the Internal Revenue Code and the partnership made an affirmative election to utilize that provision. Essentially, Section 754 of the Internal Revenue Code of 1986 (the "Code") allows a partnership to increase the tax cost or basis of a portion of its assets to fair market value which corresponds to the percentage interest of a deceased partner. So if a parent is a partner in an LP at the time of her death, and holds 33% of the partnership interests, if Code Section 754 was utilized, the tax cost or basis of 33% of the assets of the LP are increased to fair market value as of the date of death of the deceased partner. A simple example will bear out the benefit. Assume a partnership has assets worth $3,000,000 for which the partnership has a $1,000,000 tax cost or basis, and a deceased partner holds 33% of the partnership interests. If the partnership sold its assets it would recognize $2,000,000 in capital gains ($3,000,000 less $1,000,000). If Code Section 754 is utilized, on the death of the same partner the gain would be $1,000,000 ($3,000,000 less $2,000,000). The savings are significant.

To utilize Code Section 754 the partnership agreement has to allow the partners to make an election under Code Section 754 and such an election has to be made and filed with the Internal Revenue Service. For all participants in such partnership, now is the time to be sure that the partnership is authorized to make the election, and if an election has not been made, by all means make the election immediately. A quick review of your partnership agreement will disclose whether such an election is authorized. For those families that transferred interests to a trust, no matter how good the partnership agreement is, Code Section 754 does not work unless the deceased parent actually owned the interest in the partnership at the time of his or her death, so you need to get those partnership interests back into the hands of donor parents. You cannot do this after death so the time to revisit those old LPs is now. The income tax savings can be significant.

Scott Borsack directs the Business Practice. He routinely advises clients on matters of federal income and estate taxes, as well as on the acquisition and disposition of businesses of all types.

ESTATE PLANNING QUESTIONS? CONTACT SZAFERMAN LAKIND TODAY.

SZAFERMAN LAKIND PARTNERS WITH BHUCHAR LAW

Szaferman Lakind is proud to announce a partnership with Bhuchar Law Firm, another well-recognized firm in New Jersey and New York. Bhuchar Law moved into the Szaferman's Grovers Mill Road location at the end of June. The partnership adds great value to both firms given their complementary areas of practice.

Bhuchar Law provides corporate immigration services to individuals, corporations and investors around the world. They also provide legal services in corporate law, family law and family mediation. The firm consists of name partner, Poonam Bhuchar, associate attorney, Christine Magee, and of Counsel to the firm are Catherine Baggia Duwan and Rosalind Westlake. Bhuchar Law Firm was presented with the New Jersey Excellence Award for Excellence in Legal Service in 2015 by the United States Trade and Commerce Research Institute.

"We are thrilled to have Ms. Bhuchar and the rest of the Bhuchar Law team join us. They bring great experience in several areas and we are excited to work with them." – observed Barry Szaferman, Managing Partner of Szaferman Lakind.

JANINE DANKS FOX SWORN INTO THE SUPREME COURT

Janine Danks Fox
Partner

Family Law attorney Janine Danks Fox was sworn into the Bar of the Supreme Court of the United States in open court on June 11, 2018.

After being admitted to the Bar of the Supreme Court, Janine is now able to practice law before the nation's highest court.

With nearly 20 years of experiences, Janine handles all aspects of Family Law litigations including, but not limited to, pre and post judgement litigation, divorce, child support issues, custody and relocation issues, alimony, palimony, cohabitation, adoption, pre-nuptial agreements and mediation.

SZAFERMAN LAKIND SUPPORTS GIRLS ON THE RUN NJ

Szaferman Lakind was proud to support Girls on the Run NJ, a non-profit organization that is dedicated to helping young girls be healthy, joyful and confident in experiences that incorporate running.

The 5K run took place on June 3, 2018 at the Educational Testing Services Campus in Princeton, NJ.

Attorney and Registered Nurse, Keith Hovey and his daughter Amelia, participated in the event.

"I am proud that my daughter is involved in such a great organization where she will learn self-confidence and be healthy and active." Keith expressed.

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SEVEN SZAFERMAN LAKIND ATTORNEYS RECOGNIZED AS 2018 SUPERLAWYERS™

Seven (7) attorneys from Szaferman Lakind have been named 2018 SuperLawyers™ by Thomson Reuters®. The attorneys recognized represent five legal sub-practice areas: Environmental Litigation, General Litigation, Family Law, Class Action and Personal Injury- Plaintiff.

According to SuperLawyers, "only 5% of attorneys are selected to SuperLawyers." On the selection process: "Each candidate is evaluated on 12 indicators of peer recognition and professional achievement. Selections are made on an annual, state-by-state basis. The objective is to create a credible, comprehensive and diverse listing of outstanding attorneys that can be used as a resource for attorneys and consumers searching for legal counsel."

Managing Partner, Barry Szaferman, observed, "I am proud of the attorneys who have been recognized as SuperLawyers this year. Szaferman Lakind is dedicated to providing quality service to all of our clients and this listing confirms the hard work and dedication of not only the attorneys recognized, but the firm as a whole."

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PARTNER

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JEFFREY K. EPSTEIN
PARTNER

Personal Injury: Plaintiff

CRAIG J. HUBERT
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EXECUTIVE COMMITTEE

General Litigation

ARNOLD C. LAKIND
FOUNDING PARTNER
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Class Action

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