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SUMMER 2021

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Szaferman, Lakind, Blumstein & Blader has five (5) attorneys included in *The Best Lawyers in America® 2022* list issued by BL Rankings, LLC* for their work in five legal sub-practice areas in the Princeton-Metro area.

The practice areas include Family Law, Commercial Litigation, Land Use & Zoning, Personal Injury Litigation – Plaintiffs and Real Estate Law.

All of the Szaferman Lakind attorneys selected have been included in the *Best Lawyers* list for six years or more.

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."

"Thank you to Best Lawyers for including my colleagues and me in this prestigious list," commented Co-Managing Partner Barry Szaferman. "I would also like to express my gratitude to all of the attorneys and staff at Szaferman Lakind for their hard work, dedication and support throughout such a challenging year."

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DAN SWEETSER SUCCESSFUL IN EMPLOYMENT DISCRIMINATION TRIAL



Dan Sweetser
Partner

On May 13, 2021, Judge Kenneth Chu of the National Labor Relations Board (“NLRB”) Division of Judges entered a verdict in favor of a large medical testing company represented by Partner Dan Sweetser.

The complaint alleged that Dan’s client discharged a former employee in retaliation for soliciting co-workers to join a union. Under The National Labor Relations Act it is unlawful for an employer to retaliate against employees for union activity. Dan’s client vigorously denied any wrongdoing and maintained that the employee was discharged for misconduct.

After a two-day trial before Judge Chu and extensive post-trial briefing, Judge Chu entered a verdict in favor of Dan’s client. In a 16-page opinion, Judge Chu found that Dan successfully proved that the client discharged the employee for misconduct and, as a result, dismissed the complaint. The client was understandably delighted with Judge Chu’s decision. The client’s General Counsel stated: “We are very appreciative of the time Dan devoted to the case preparation in order to present a compelling and effective defense.”

Dan Sweetser is a partner and chairs the firm’s Employment Law Department. Dan has been in practice for 30 years. In addition to Employment Law matters, he handles a variety of Business Litigation cases for his clients in the State and Federal Courts of New Jersey and Pennsylvania. To contact Dan please email him directly at dsweetser@szaferman.com or call (609) 275-0400.



Brian A. Heyesey
Partner

CARRIER THAT “WOULD NEVER PAY MORE THAN \$10K IN AUTO ACCIDENT” SETTLES FOR \$75K AFTER OPENING STATEMENT

Partner Brian A. Heyesey recently “virtually” picked a jury from the Monmouth County Superior Courthouse in Freehold, New Jersey to hear an automobile accident case. The case involved a 22-year old client who was t-boned while operating her vehicle on her way home from her waitressing job. As a result of the collision, the client sustained an intervertebral disc herniation at L5-S1 with radicular symptoms. Despite her injuries, the adverse insurance carrier represented that due to gaps in treatment, it would never offer more than \$10,000 to settle the personal injury claim.

The client justifiably rejected the carrier’s “maximum” offer and the case proceeded to trial. After the jurors, who were appearing from their personal electronic devices, were selected, sworn in and charged, Heyesey gave his opening statement. Following Heyesey’s opening statement, defense counsel phoned his adjuster and received authorization to settle the case for \$75,000. Heyesey accepted that increased offer on behalf of his client.

SZAFERMAN LAKIND SPONSORS ICE-CREAM SEND OFF FOR WORLD SERIES BOUND 9U MARLBORO MUSTANGS

The Marlboro Mustangs 9U Team won the Mid-Atlantic Regional Tournament advancing them to the Cal Ripken World Series in Port St. Lucie, Florida. They are the first 9U team in Marlboro Baseball Softball Association (MYBSA) history to become regional champions.

Before the team headed to the World Series, Lindsey Moskowitz Medvin, Esq., on behalf of Szaferman Lakind, sponsored an ice cream treat for the team and their fans at the sendoff parade.

Congratulations to the Mustangs who placed third in the World Series tournament.





Brian G. Paul
Co-Managing Partner

BRIAN PAUL & NJSBA ADVISE ON EQUITABLE DEFENSES FOR PALIMONY AGREEMENTS



Co-Managing Partner Brian Paul recently served as lead author on an amicus curiae brief the New Jersey State Bar Association (NJSBA) filed with the New Jersey Supreme Court regarding a 2010 amendment to the New Jersey Statute of Frauds, which requires that palimony agreements be in writing and entered with the advice of counsel in order to be enforceable.

In the matter of *Moynihan v. Lynch* the parties were in a long-term dating relationship that began in 1997. In 2014, the parties entered into a handwritten agreement that they both signed before a notary. The Agreement provided that in the event their relationship ended, the defendant would pay off the mortgage on their jointly titled home, sign a Deed transferring the property to plaintiff's name only, and provide the plaintiff with \$100,000. The defendant admitted that he did not intend to be bound by the signed agreement he entered into with his long time significant other, but did not inform the plaintiff of his intentions. The plaintiff did request that an attorney review the palimony agreement, but the defendant refused, telling the plaintiff that he was a "man of his word" and did not want to incur any legal fees. Despite this and the fact the agreement was signed by both parties and notarized, the Appellate Division rejected the plaintiff's assertion that promissory estoppel and partial performance were a valid defense to the statute in question and their palimony agreement was deemed unenforceable for their failure to consult with independent legal counsel before signing the agreement.

In the amicus brief, the NJSBA argues that the goal of the Statute of Frauds has always been to prevent frauds from being committed through the use of uncertain, unreliable and perjured oral testimony. To ensure that a statute designed to prevent a fraud is not used as a sword to perpetrate a fraud, New Jersey courts have historically retained certain equitable powers, including the use of equitable defenses like promissory estoppel and partial performance, to ensure that an oral promise can still be enforced when necessary to avoid an injustice. The NJSBA argued that the amendment to the Statute of Frauds at issue in this matter (2010 Amendment), providing for certain requirements to be met before a palimony agreement can be enforceable, should not alter those powers. The NJSBA further argued that the Amendment's requirement that both parties in a non-marital relationship have independent advice of counsel for promises of support or other consideration violates the Contract Clause and Equal Protection Guarantees of the United States and New Jersey Constitutions, noting: "Two individuals in a non-dating relationship, such as two business partners, or friends, or siblings, signing the same exact agreement as the parties in this case would have a binding and enforceable contract. There is no rational governmental interest in such disparate treatment in the two identical instances, especially when one considers that the stringent, non-waivable requirement for non-married partners to seek independent advice of counsel does not apply to any other family-type of agreement."

The oral arguments for this matter are yet to be scheduled.

Brian Paul is the Co-Managing Partner of Szaferman Lakind and specializes in litigating, mediating and arbitrating financially complex high net worth divorce cases. Brian has been involved in many appellate cases that have helped shape family law in New Jersey and has been awarded the NJSBA's Amicus Curiae Award on five separate occasions for his efforts in representing and advocating for the NJSBA's position on family law cases before the NJ Supreme Court. Due to his vast experience in litigating the most difficult of family law related issues, Brian is frequently asked to serve as an arbitrator/mediator or co-counsel for complex family law cases. To contact Brian, please call (609) 275-0400 or email him directly at bpaul@szaferman.com.

JANINE BAUER HELPS AARP WIN VICTORY FOR UTILITY CONSUMERS



Janine G. Bauer
Partner

Partner Janine G. Bauer recently represented AARP as a friend of the court (*amicus curiae*) in an appeal of a ruling by the New Jersey Board of Public Utilities (NJBPU), which had allowed utilities to reap income tax savings even where taxes were not paid by the utilities to the IRS—and the savings were not shared with utility consumers.

The rule adopted by the NJBPU (N.J.A.C 14:1-5.12) allowed utilities that file consolidated returns with their affiliates to take advantage of losses, in terms of taxes owed, without sharing the benefit with the consumer that pay the utilities' rates including monies collected for tax payments. The Appellate Division overturned the rule following an appeal by NJ's Ratepayer Advocate, AARP, and large energy users.

Janine argued the NJBPU did not identify a sufficient rationale for its reduction of tax savings passed on to utility consumers. Under the prior policy, 50% of the tax saving benefit was passed on to utility customers while the new rule reduced the benefit to 25% without adequate justification.

"Older persons and retirees live on fixed incomes and cannot afford spiraling utility rates," commented Janine, who has represented AARP on more than a dozen rate cases over the years. "The idea that utilities could collect taxes from ratepayers and then not pay the IRS, and also not pass on savings from filing consolidated returns to ratepayers, was just unfair."

Janine Bauer's practice helps individuals, businesses, non-profit organizations, local governments and others achieve their goals in the areas of energy and environmental law, transportation, land use, zoning, redevelopment and historic preservation. To contact Janine, please call (609) 275-0400 or email her directly at jbauer@szaferman.com.

HOW MUCH IS MY CASE WORTH? NEW JERSEY LAW NOW REQUIRES AUTO INSURANCE COMPANIES TO DISCLOSE POLICY LIMITS



Thomas J. Manzo
Partner

Many factors bear on the value of a personal injury case and, as such, the ability to predict a numeric value for a client is impossible. This is especially true when that unknown number is assessed by a group of six-to-eight future jurors who ultimately make the final call. That being said, New Jersey law has recently changed in a way that may be more helpful for attorneys and the public in the context of motor vehicle accident cases.

In May 2021, Governor Murphy signed into law a bill that requires the disclosure of automobile policy limits of an insured involved in a motor vehicle accident within 30 days of the request, when such request is made in writing by an attorney in the State of New Jersey. The new law dramatically alters the practice of withholding insurance policy limit information until a plaintiff files a formal complaint with the court and is then entitled to policy limit disclosure.

The prior practice caused many issues for attorneys and their clients and overlooked the general truth that most parties and their counsel would much prefer to be practical about their claims and litigation. Litigation and preparing for litigation can be quite costly and inherently require additional time. If an accident is serious and insurance is limited, early amicable resolution may be best for all. This is particularly so for our courts, whose backlog has only increased as a result of pandemic restrictions. In instances where policy limits are less limited, injured persons may at least learn early in the process that adequate coverage exists that may help with lost income, medical bills and other accident-related damages.

Of course, early disclosure may also benefit the tortfeasor who caused the accident. If a case can resolve before a complaint is filed, the tortfeasor is never named as a defendant in our public filing system. Moreover, early resolution also permits both parties to close what is likely a difficult legal and personal chapter in their lives.

If you or a loved one has been in an auto-accident, the Personal Injury team at Szaferman Lakind are here to help you recover and seek justice. Contact Tom directly at tmanzo@szaferman.com or call (609) 275-0400 to setup a consultation.



Dan Sweetser
Partner

NEW JERSEY EMPLOYERS MAY REQUIRE EMPLOYEES TO BE COVID-19 VACCINATED WITH CERTAIN EXCEPTIONS

An Article By: Dan Sweetser

As many employers begin calling their employees back to the workplace, there are questions surrounding vaccination requirements. The New Jersey Department of Labor (NJDOLE) declared that New Jersey employers can require employees to get the COVID-19 vaccine in order to work, unless the employee cannot get the vaccine because of (1) a disability, (2) their doctor has advised them not to get the vaccine while pregnant or breastfeeding, or (3) a sincerely held religious belief, practice, or observance. If an employee falls into any of these three categories, the employer must provide a reasonable accommodation from the employer's mandatory vaccine policy, unless doing so would impose an undue burden on the employer's business operations.

The NJDOLE instructs that the safety of the employee, coworkers, clients and customers are factors to be considered by the employer in evaluating whether a potential accommodation would be reasonable. An employer must base its decisions regarding any potential safety hazard on objective, scientific evidence, including evidence reflected in policies and guidance from federal, state, and local authorities (including the CDC), and not on unfounded assumptions or stereotypes.

A reasonable accommodation may include allowing the employee to work remotely, or in some other manner that would reduce or eliminate the risk of harm to other employees or to the public. A reasonable accommodation may also include providing the employee with personal protective equipment that sufficiently mitigates the employee's risk of COVID-19 transmission and exposure. Under the New Jersey Law Against Discrimination (NJLAD), if there is no reasonable accommodation that can be provided to mitigate the risk of COVID-19 transmission to co-employees and customers, then the employer can legally enforce its policy of excluding unvaccinated employees from the physical workplace, even if the employee is unvaccinated because of a disability, pregnancy, or breastfeeding, or a sincerely held religious belief. In other words, the employee may be discharged from employment if no reasonable accommodation is possible.

Practical Tips for Employers:

1. If you deem a vaccination policy necessary for your business, you or your attorney should prepare a clearly worded policy consistent with the law to inform your employees of the new policy and how it will be implemented. At a minimum, the policy should include the dates by which employees should be fully vaccinated, a process for providing proof of vaccination and a process by which requests for a reasonable accommodation will be reviewed -- starting with written documentation in support of the employee's request.
2. For employees who request a reasonable accommodation, you must review such request objectively and judiciously, and grant the employee's request if possible. You must fully explore all reasonable accommodation options with the employee before deciding against an accommodation.
3. Where an accommodation is not possible, be respectful of and empathetic to the employee and provide the employee with a written explanation of the reason that a reasonable accommodation is not possible.

Practical Tips for Employees:

1. Recognize that the law allows employers to require you to be vaccinated as a condition of employment unless you fall within one of the three exceptions referenced above. To this end, recognize that you can lose your job under the law if you refuse to comply with your employer's vaccination policy and do not qualify as an exception.
2. If you require a reasonable accommodation, obtain the necessary documentation from your medical provider or other proper resource in support of your request and present it to your employer.
3. If your employer has difficulty reasonably accommodating your request, talk to your employer and exchange information in a collaborative effort to solve the problem.

Dan Sweetser is a partner and chairs the firm's Employment Law Department. Dan has been practicing for 30 years and handles Employment Law and other Business Litigation Cases in the State and Federal Courts of New Jersey and Pennsylvania. To contact Dan please email him directly at dsweetser@szaferman.com or call (609) 275-0400.





Bruce M. Sattin
Partner

HOW TO APPLY FOR A BUSINESS LOAN

An Article By: Bruce M. Sattin, Esq.

Many small business owners only have experience in applying for a home mortgage or car loan. Business loans are quite different, and the process in applying and obtaining approval requires much preparation. Banks have separate divisions that process and approve business loans,

and the loan officers that handle business loans usually do not get involved in home mortgages. The loan officer at the bank branch that processed your mortgage will likely not be involved in a business loan application other than to refer you to a commercial lender.

Before applying for a loan, however, the business owner should organize the information the bank is going to require. Here are some tips:

- **FINANCIAL INFORMATION:** The first thing a loan officer will want is evidence of the financial strength of the borrower. Assemble 3 years of balance sheets, profit and loss statements, and business tax returns. Almost all small business loans require the personal guaranty of the principals of the business, so include your last 3 federal income tax returns as well. The bank will also want you to complete a personal financial statement, a form that they can provide. Your accountant may be able to assist in assembling this information.
- **BUSINESS PLAN:** The bank will want to know the details of your business – what it does, who its customers are, what goods and/or services it provides in what territories, and what it intends to do with the funds it is borrowing. The more specifics of the nature of the business and its historical operations you can provide, the better.
- **COLLATERAL:** All business loans require collateral. The best collateral is real estate, especially if the business operates from a building or office that it (or its principal) owns. Banks will usually lend about 70% of the appraised value of real estate collateral if they get a first lien on the property. Some businesses operate from leased space, so their collateral would be bank accounts, fixtures, equipment, inventory, works in progress, and current accounts receivable (no more than 60 days old). Banks usually lend 50-60% of the estimated value of these types of collateral. Be prepared to provide the bank with a detailed accounting of business assets that might be pledged as collateral for a business loan.
- **LIABILITIES:** The bank will want to know who else the business owes money to, including loans from the owners of the business. Prepare a list of all loans outstanding, such as trade debt, credit card accounts, mortgages, equipment loans and leases, accounts payable, tax debts, and the owner loans. Indicate if any of this debt is going to be paid off from the loan being requested.



- **PROFESSIONALS:** Banks expect a business enterprise to have professionals involved in its operations. The bank will want to know who your accountant is (preferably a CPA). Most bank loans require an opinion letter from the attorney for the business (stating, among other things, that the business is in good standing and that the proper persons are signing the loan documents). An experienced business attorney will be invaluable in assisting you in providing the due diligence the bank will require once the loan is approved, such as your business organization documents, title searches, lien and judgment searches, surveys, etc.
- **CLOSING:** Depending on the size of the loan, the bank will either prepare loan documents using its own standardized documents or engage an independent attorney to prepare the documents and conduct the closing (at your cost). Smaller banks usually close loans under \$500,000 in-house. Large banks often close loans up to \$1,000,000 in-house. You will be expected to have your attorney at closing and a title company if real estate is part of the collateral.
- **TIMING:** Expect the application process to take about 6 weeks. Loans with Small Business Association guarantees (SBA Loans) take longer, but have advantages for small businesses in that government guarantees take a lot of the risk away from the banks and allow businesses without substantial assets to obtain loans.

The lesson to take away is that preparation and planning will result in a much smoother loan process and greater likelihood of approval. Get your ducks (and your accountant and lawyer) in a row before you initiate the process with a commercial loan officer at the bank of your choice.

Bruce Sattin is Partner in the firm's Business Department assisting his clients with commercial real estate transactions, zoning and land use, general business and corporate law, trusts and estate and bankruptcy law. To contact Bruce, call (609) 275-0400 or email him directly at bsattin@szaferman.com.

SZAFERMAN SPOTLIGHT: MEET OUR JUDGES

Szaferman Lakind has a roster of talented attorneys but none with more knowledge and experience than our retired judges. Judge Stephen Skillman (Ret.), Judge Linda Feinberg (Ret.) and Judge Anthony Parrillo (Ret.) all served on the bench for many years. Since joining the firm our retired judges focus their practices on mediation and arbitration services as well as writing appellate briefs. In addition, they bring a wealth of knowledge to our other attorneys, providing them with a perspective that can only be gained from their years on the bench. Our retired judges are often called upon to provide insight to our attorneys regarding how the court is likely to rule relative to a particular matter. Their knowledge and insight is invaluable to our attorneys, as well as to our clients.



**Judge Stephen Skillman
(Ret.)**
Of Counsel

Judge Stephen Skillman

Judge Stephen Skillman sat on the bench as both a trial and appellate judge for over 30 years, retiring from his role as the Presiding Judge of the Appellate Division of the Superior Court. Judge Skillman is a skilled writer and attorney, having authored over 3,000 opinions - 550 of which are published in the New Jersey Superior Court reports. His experience does not begin and end with pen in hand. As Director of the Division of Law in the New Jersey Office of the Attorney General, he argued six appeals before the Supreme Court of the United States. Judge Skillman currently handles many complex civil litigation matters, as well as provides counsel to other members of the firm. His expertise has guided our attorneys to counsel their clients based on his judicial judgment. Judge Skillman also now utilizes his background and experience to serve as an arbitrator.



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

Judge Linda Feinberg

Before serving as the Assignment Judge for the Mercer County Vicinage, Judge Linda Feinberg served as the Supervising Judge of the New Jersey State of the Grand Jury, the Presiding Judge of the Superior Court of New Jersey, and the Presiding Judge of all municipal courts in Mercer County, retiring from the bench in 2012. Judge Feinberg's involvement in mediation services did not begin upon joining our firm. Rather, since 1985 she was involved in the formulation of the State's mediation practices. She provides mediation services, and in addition gives advice to our other attorneys in issues regarding land use and redevelopment matters, government related applications and issues, complex civil litigation and family matters.

"I have thoroughly enjoyed the transition from serving as a judge to serving as a mediator, arbitrator and consulting on a number of civil and criminal matters," commented Judge Feinberg.



**Judge Anthony Parrillo
(Ret.)**
Of Counsel

Judge Anthony Parrillo

Judge Parrillo served as a former Presiding Judge of the Superior Court of New Jersey before sitting in the Appellate Division for thirteen years. Prior to that, Judge Parrillo sat as a Trial Judge in all divisions, as well as a Presiding Judge of general equity in Mercer County. Judge Parrillo now handles arbitration and mediation matters for complex disputes. He also provides consultation on trial and appellate matters, support and discovery management and serves as a special master.

When reflecting on his time and role with the firm, Judge Parrillo observed, "Since retiring from the bench I have found a wonderful home at Szaferman Lakind. My affiliation with the firm has afforded me the opportunity to use the knowledge, insight and skills acquired as a judge (both trial and appellate) to assist my colleagues in providing our clients with the high quality representation. Whether it be consulting, mentoring or more direct case involvement, the work is both challenging and immensely gratifying."

Judge Parrillo went on to comment, "Equally satisfying is the awareness that as more and more litigants look to extrajudicial resolutions, my role and function as an arbitrator and mediator help contribute to an effective and efficient system of justice while alleviating an over-burdened court system. The support I receive from Szaferman Lakind make this possible. I look forward to a long and fruitful association with the firm."

To contact any of our esteemed Judges please call (609) 275-0400.



Max H. Steinberg
Associate

SZAFERMAN LAKIND WELCOMES NEW ASSOCIATE ATTORNEY MAX H. STEINBERG

Szaferman Lakind is pleased to welcome Max H. Steinberg to the firm. Mr. Steinberg joins the firm as an Associate Attorney following two summers spent as a summer intern. He will primarily focus his practice on family law, business and litigation matters.

Mr. Steinberg earned a Bachelor of Science in Business and Marketing Analytics, and an Associate in Arts and Jewish Studies, from Yeshiva University graduating *summa cum laude*. He earned his law degree from the Benjamin N. Cardozo School of Law in New York, NY, where he graduated *cum laude* and served as both the Senior Notes Editor of the Cardozo Journal of Conflict Resolution and Vice President of the Louis D. Brandeis Center for Human Rights.

"We are delighted to welcome Max back to the firm as an Associate," commented Co-Managing Partner Barry Szaferman. "During his internship his commitment and the quality of his work convinced us of Max's considerable ability as an attorney."

To contact Max please call (609) 275-0400 or email him directly at msteinberg@szaferman.com.



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