Nassau Lawyer

THE JOURNAL OF THE NASSAU COUNTY BAR ASSOCIATION

October 2020 | www.nassaubar.org | Vol. 70, No. 2

Like us on Facebook

SAVE THE DATE

VIRTUAL OPEN HOUSE

Monday, October 26 to 30, 2020

See pg. 6

WHAT'S INSIDE

OCA Issue

OF NOTE

NCBA Member Benefit - I.D. Card Photo

Obtain your photo for Secure Pass Court ID cards

Only For New Applicants

Cost $10

UPCOMING PUBLICATIONS COMMITTEE MEETINGS

Thursday, November 5, 2020 at 12:45 PM

Thursday, December 3, 2020 at 12:45 PM

Self-Care in Time of Uncertainty

Carolyn Reinach Wolf and Elizabeth Eckhardt, LCSW, PhD

By the end of March, our family, professional, and social life as we knew them came to a screeching halt. The pandemic was in full swing. We were, and still are, faced with a whole new world of work and play, family, and profession. It was at once comforting to be safe, but also isolating and bewildering.

After receiving a surge in callers, emails and text messages from colleagues and friends to the Lawyer Assistance Program, LAP Director Elizabeth Eckhardt, Ph.D., LSCW, and Carolyn Reinach Wolf, Esq.—mental health attorney and invited member of Lawyer Assistance Committee—decided to take action. In May 2020, in honor of Mental Health Awareness Month, the LAP Committee and the NCBA Mental Health Law Committee joined forces to address the very serious effects of this pandemic on the legal profession.

On Thursday, May 7, 2020, Eckhardt and Wolf facilitated the virtual CLE program titled, "During the Coronavirus and Beyond: Lawyers Caring for Themselves, Colleagues and Clients." With nearly 100 participants, the CLE was a huge success. Attendees were anxious to share their experiences to date, meet and greet virtually, and air their concerns, emotions, successes, and challenges. It quickly became evident that attorneys and members of the judiciary were very interested in issues related to attorney well-being and that much more was to be discussed.

Virtual Town Halls

Given the positive response and clear notice of wanting more, Eckhardt and Wolf collaborated further and established the monthly LAP Virtual Town Hall Meeting

titled, "Where Are We Now and Where Are We Going?" These virtual meetings provide lawyers, judges, and law students the opportunity to speak freely and openly about their personal and professional concerns regarding the state of their lives, professions, and family life during the pandemic.

To date, three virtual town halls were held on July 30, August 18, and September 15. The turnout has been heartwarming and rewarding, for presenters and participants alike. Topics are focused on the continued challenges of living through COVID-19 and included how to best adapt to new rules and regulations regarding getting back to work, the mental and emotional challenges of practicing law, financial and career challenges, personal challenges, as well as challenges employers may be have in determining the best ways to implement change.

Having town hall participants from various sectors of the legal community allows for a knowledgeable exchange of information and strategies. As one town hall participant said, "With a judge, a litigator, a transaction attorney, trained counselors and others, the conversations flowed well."

Participants are offered the option to sign in anonymously by changing the name on the sign-in screen and deactivating their camera, or choosing to call in by telephone, which would show only a phone number, not a name. This option has allowed for a more personal and open exchange.

LAP has received an extremely positive response to the monthly town halls. One Member wrote, "Listening to comments about uncertainty, difficulties with accomplishing administrative tasks, filing, coordination of transactions and other pre-COVID matters that we used to take for granted helped calm my anxieties with such concerns."

Personal and Professional Self-Care

The COVID-19 crisis is a marathon, not a sprint. With no clear end in sight, it is more important than ever to share the information discussed at the CLE and subsequent town halls. The past six months of uncertainty and change has been challenging. This uncertainty is likely to continue into the fall and winter months, and possibly into 2021.

The first step discussed in LAP's programming has been attorney self-care. While it is normal to experience stress, anxiety, and sadness during times of crisis, it is important to be aware of serious warning signs so that help can be sought out. Prolonged anxiety or stress can lead to depression, substance or alcohol use, or other compulsive behaviors. Particularly in the case of COVID-19, obsessively watching the news has been detrimental to our mental health. Taking note of issues such as having difficulty sleeping, concentrating or making decisions, feeling especially fatigued, over or under eating, having difficulty controlling anxious or

See ASSISTANCE, Page 15

The Value in Membership

Bridget Ryan

During these times of uncertainty, it is more important now than ever for the legal profession to come together. In response to the global pandemic, the Nassau County Bar Association (NCBA) has adapted to this new normal, making membership even more valuable. Over 4,000 NCBA Members and staff have come together during these uncertain times to create a stronger and more unified bar association. As times continue to change, the NCBA will continue to grow and adapt, continuing to provide exceptional and relevant services to Members.

CLE On-Demand and Virtual Committee Meetings

The NCBA is now offering CLE on Demand, a new way to earn continuing legal education credit. Members can earn up to 12 FREE CLE credits by viewing previously recorded programs whenever and wherever is most convenient for them—at home, at the office, or even on the go! Membership also includes unlimited FREE live CLE, FREE committee CLE, FREE Bridge-the-Gap weekend, and more. Members can find these programs online and register for them by visiting the NCBA website at www.nassaubar.org, or by contacting the Nassau Academy of Law at academy@nassaubar.org or (516) 747-4464.

In addition to virtual and on-demand CLE programs, many NCBA Committee meetings are being held virtually on Zoom to ensure that Members are still able to actively participate on their chosen committees in a safe and efficient way. NCBA Members can cultivate close relationships and referrals through participation in over 50 substantive committees that provide Members the opportunity to socialize with leaders in their legal field and other attorneys who practice in your area of law.

Virtual committee meetings are always private and secure. Only committee members and previously approved speakers are given the link and allowed access into the

See VALUE, Page 21

STATEMENT OF OWNERSHIP, MANAGEMENT AND CIRCULATION

Nassau Lawyer; Publication number 7505; Complete Mailing Address of Known Office of Publication: 15th & West Streets, Mineola, NY 11501; the mailing address of Headquarters or General Business Offices of the Publisher (Not printer), 2150 Smithtown Ave, Ronkonkoma, NY 11779; Full Names and Complete Mailing Addresses of Publisher, Editor, and Managing Editor: Publisher, Alicia Jabbour, 2150 Smithtown Ave, Ronkonkoma, NY, 11779; Editor, Ann Burkowsky, 15th & West Streets, Mineola, NY 11501. Nassau Lawyer is owned by The Nassau County Bar Association, 15th & West Streets, Mineola, NY 11501.

Issue Date for Circulation Data Below, July/August, 2020; the average number of copies of each issue during the preceding 12 months Box 15 is: (A) total copies printed 5338; (B1) Paid/ Requested Outside-County Mail Subscriptions 4187. (B2) Paid In-County Subscriptions: 0. (B3) Sales through dealers and carriers, street vendors, counter sales: 0. (15B4) Other classes mailed USPS: 0; (C) Total Paid and /or Requested Circulation: 4187; (D1) Free Distribution by mail, samples complimentary and other free copies: 899; (D2) In-county free distribution: 0; (D3) Other classes mailed Free Distribution: 0; (D4) Free distribution outside the mail: 200; (E) Total Free distribution: 1099; (F) Total Distribution: 5286; (G) Copies not Distributed: 52; (H) Total: 5338; (I) Percent of Paid: 79.21%.

The actual number of copies of a single issue published nearest to the filing date is: (A) Total number of copies printed 4435; (B1) Paid/ Requested Outside-County Mail Subscriptions: 4143; (B2) Paid In-County Subscriptions: 0. (B3) Sales through dealers and carriers, street vendors, counter sales: 0; (B4) Other classes mailed USPS: 0; (C) Total Paid and /or Requested Circulation: 4143; (D1) Free Distribution by mail, samples complimentary and other free copies: 0; (D2) In county free distribution: 0; (D3) Other classes mailed Free Distribution: 0; (D4) Free distribution outside the mail: 200; (E) Total Free distribution: 200; (F) Total Distribution: 4343; (G) Copies not Distributed: 92; (H) Total: 4435; (I) Percent of Paid: 95.39%

Electronic Copy Circulation; The Average number of copies in the last 12 months was: (16A) Paid Electronic Copies, 0; (B) The Average Paid Print and Paid Digital Copies were 4187; (C) The Average Total Print and Paid Digital Distribution was 5266; (D) Percent Paid of Both Print & Paid Digital was 79.21%. Electronic Copy Circulation; The Actual Number of Copies of a Single Issue (16A) Paid Electronic Copies, 4143; (16B) The Average Paid Print and Paid Digital Copies were 4143; (C) The Average Total Print and Paid Digital Distribution was 4343; (D) Percent Paid of Both Print & Paid Digital was 95.39%.

I certify that all information furnished on this form is true and complete:

Ann Burkowsky, Editor

REQUIRED BY TITLE 39 U.S.C. 3685 STATEMENT SHOWING OWNERSHIP, MANAGEMENT AND CIRCULATION OF Nassau Lawyer, publication number 7505, filed October 1, 2020, Published monthly except July/August are combined issue, Annual subscription is a part of membership annually at 15th & West Streets, Mineola, NY 11501. The General Business offices of the Publishers are at 2150 Smithtown Ave, Ronkonkoma, NY 11779.

NYSBA House of Delegates to Vote on Mandatory COVID-19 Vaccination

New York State has been devastated—economically, socially, and psychologically—by the COVID-19 virus. Yet, there will be an end to this difficult time. There are approximately nine companies developing a vaccine for the virus, including Pfizer, Moderna, and Johnson & Johnson, with an estimated release date of early 2021.[1]

On June 13, 2020, the House of Delegates for the New York State Bar Association (NYSBA) received a report and recommendation from its Health Law Section. The Health Law section recommended that NYSBA support a proposal to "enact legislation requiring vaccination of each person unless the person's physician deems vaccination for his or her patient to be clinically inappropriate."[2]

The Health Law Section's recommendation reads as follows:

After testing and as supported by scientific evidence, once a safe and effective COVID-19 vaccine becomes available, the NYSBA Health Law Section recommends:

- That a vaccine subject to scientific evidence of safety and efficacy be made widely available, and widely encouraged, and if the public health authorities conclude necessary, required, unless a person's physician deems vaccination to be clinically inappropriate; and
- The following steps to ensure a planned vaccination program: (a) Rapid mass vaccination achieved through equitable distribution; (b) Prioritizing health care workers and individuals at highest risk for complications and virus transmission to others if inadequate vaccine supply; and (c) Linguistically and culturally competent vaccine educational and acceptance program.[3]

Michael A. Markowitz

Sarah Olsen

During the June 13, 2020, NYSBA meeting, a group of delegates expressed strong dissent concerning mandatory vaccination. Arguments included safety concerns and the legality of a mandatory vaccination law. This article considers those arguments.

Federal and State Law on Mandatory Vaccination

In *Jacobson v. Commonwealth of Massachusetts*, the U.S. Supreme Court held that a state may enact a law to mandate that individuals be vaccinated against a disease in furtherance of the general welfare and public health.[4]

The issue in *Jacobson* concerned a Massachusetts law requiring an individual to be vaccinated against smallpox. Jacobson, who refused to be vaccinated, argued "that his liberty is invaded when the state subjects him to fine or imprisonment for neglecting or refusing to submit to vaccination; that a compulsory vaccination law is unreasonable, arbitrary, and oppressive, and, therefore, hostile to the inherent right of every freeman to care for his own body and health in such way as to him seems best; and that the execution of such a law against one who objects to vaccination, no matter for what reason, is nothing short of an assault upon his person."[5]

In his reasoned decision, Justice John Marshall Harlan understood that mandatory vaccination may be "distressing, inconvenient, or objectionable to some…." He believed that all laws should receive sensible construction and "limited in their application as not to lead to injustice, oppression, or an absurd consequence."[6] However, he concluded that it is a "fundamental principle that persons and property are subjected to all kinds of restraints and burdens in order to secure the general comfort, health, and prosperity of the state; of the perfect right of the legislature to do which no question ever was, or upon acknowledged general principles ever can be, made, so far as natural persons are concerned."[7] Therefore, it was the duty of the government to protect its community against the smallpox epidemic "and not permit the interests of the many to be subordinated to the wishes or convenience of the few."[8]

New York State courts repeatedly upheld laws concerning mandatory vaccination. In *Viemeister v. White*,[9] the New York Court of Appeals upheld a statute barring a child from attending school unless vaccinated. A law requiring a child's vaccination against polio, smallpox, and measles was within the state's police power and constitutional—despite the father's argument that the underlying "medical theory has not been proven infallible."[10] When plaintiff in *Phillips v. City of New York* argued that mandatory vaccinations violated their religious rights, the court held that "mandatory vaccination as a condition for admission to school does not violate the Free Exercise Clause."[11]

Balancing Test to Determine Mandatory Vaccination

New York will utilize the GRADE approach adopted by the Center for Disease Control (CDC) to determine mandatory vaccination.[12] GRADE is an acronym for

See VOTE, Page 21

President's Column

From the President

Dorian R. Glover

"THE EQUAL BECOMES PART OF THE CONSTITUTION IN THE FOURTEENTH AMENDMENT, SO I SEE THE GENIUS OF OUR CONSTITUTION AND OUR SOCIETY IS HOW MUCH MORE EMBRACIVE WE HAVE BECOME, THEN WE WERE AT THE BEGINNING…" — *Justice Ruth Bader Ginsburg*

We mourn the passing of Supreme Court Justice Ruth Bader Ginsburg, the second woman appointed to the United States Supreme Court, as an icon for justice. Her legacy and contributions to the legal profession will live on and inspire generations to come.

In this President's column, we pay tribute to Justice Ruth Bader Ginsburg, beginning with the first woman president of our Association, Grace D. Moran, a pioneer in her own right, as well as those who followed:

"The intellect, Integrity and selfless dedication to the Law exhibited by Justice Ginsburg is abundantly evident and has been cited by hundreds of knowledgeable lawyers in the short time since her death. In addition to her obvious legal ability, I have admired the wholeness of her personality. She was devoted to her family and formed close personal friendships based on shared interests and not limited by politics or conflicting views of the law. To me this speaks volumes as to her ability to live a full life with multiple interests despite rising to the top of a demanding profession. A well lived life." — *Past President Grace D. Moran (1994-1995)*

"Supreme Court Justice Ginsberg was an absolute Giant among us in every way. She was a tireless Champion for Justice and Equality for All. The World is truly a better place because of her." — *Hon Norman St. George, J.S.C. Administrative Judge*

"We have lost a giant. We must work hard to keep her legacy alive." —*Past President Hon. Susan Kluewer (2006-2009)*

"Her passing is a great loss to this Country and to its citizens." — *Past President M. Katheryn Meng (2000-2001)*

"Ruth Bader Ginsburg was a champion for justice and is an American hero. May all attorneys and judges continue her life legacy celebrating her ability to "speak truth to power."".— *Hon. Lance D. Clarke (2007-2008)*

"A life well lived." — *Past President Emily F. Franchina (2009-2010)*

"The Honorable Ruth Bader Ginsburg will forever be remembered as an iconic crusader and dynamic voice for equality and justice for all." — *Past President Hon. Susan Katz-Richman (2011-2012)*

"There are reasons enough to mourn the passing of Ruth Bader Ginsburg but right now is the time to celebrate her life. This trailblazing, fierce yet empathetic woman became an attorney against all odds and proceeded to champion the rights of women everywhere by litigating how the laws that devastated women were adversely affecting a man. Brilliant. With an audience less than sympathetic to equality for both genders, she attacked the inequality by showing how it hurt someone her audience did care about and by doing so made life better for women everywhere. Perfect? No. But her work and legacy will live on. Assuming we all get out and vote." — *Past President Marian C. Rice (2012-2013)*

"In 2016, I joined the NCBA's sister organization, Yashar, in its journey to Washington DC, where a group of male and female attorneys were admitted to practice before the United States Supreme Court. The session was the first convened after the passing of Justice Antonin Scalia, Justice Ginsburg's dear friend and colleague. The chairs were cloaked with black cloth and the opening ceremony was sorrowful. Under these circumstances, we were particularly grateful to Justice Ginsburg for adhering to her scheduled time with those of us newly admitted to this most beautiful institution. My daughter Nina joined me at the swearing in, the two arguments heard that day, and the intimate meeting with Justice Ginsburg that followed. It is an experience that we will always treasure." — *Past President Martha Krisel (2015-2017)*

"Using the law as her lever and the constitution as her fulcrum, Justice Ginsberg moved the world. Her legacy is a reminder that, at its best, our legal system can harness the power of ideas to achieve social justice." — *Past President Steven Leventhal (2017-2018)*

"Justice Ginsberg was a legal giant. But more than that, as a public servant, she offered herself as an example of a woman who overcame the social standards of her time to break through the glass ceiling and serve on the highest court in the land. She is an inspiration to women across the country. She was an American icon who will be sorely missed." — *Past President Elena Karabatos (2018-2019)*

"Ruth Bader Ginsburg was a trailblazer, an ardent advocate and fierce defender of women's rights and gender equality. The impact of her legacy will continue to resonate with many generations." — *Rosalia Baiamonte, NCBA Vice-President and Co-Chair, Access to Justice Committee*

"I will remember Justice Ginsburg for being a pioneer for women's equality and civil rights and an inspiration for women and girls of all generations. As a justice, I have long admired her forthrightness, humor and quiet resistance to injustice." — *Elizabeth Post, NCBA Executive Director*

"It is hard to overstate the impact of Justice Ginsburg on the legal profession and society in general. Her rare combination of brilliance, courage, compassion, humility, and willingness to fight for women's rights, civil rights, voting rights and basic equality for all is an amazing legacy that we may not witness again in our lifetime." — *Kevin P. McDonough, Co-Chair, Access to Justice Committee*

"It is rare that the death of a Supreme Court Justice is experienced as grief and personal sadness by so many. Ruth Bader Ginsberg's passing has produced such feelings as she was both a larger-than-life inspiration to women and other marginalized people and someone who repeatedly effectuated real change for the better. Her actions even prior to her appointment to the high court justify her holding an historic place of honor in this country in the fields of civil rights and gender equality. Additionally, the stirring words of her Supreme Court decisions—and dissents—will continue to galvanize those who seek justice for all. The persistent success of Ruth Bader Ginsberg emboldened me, as a woman and an attorney, to choose to seek justice through becoming an Assistant District Attorney and doing primarily trial work in the 1980s despite considerable discouragement from the culture generally and even from many peers and judges. Justice Ginsberg will be sorely missed." — *Bernadette K. Ford, Chair, Civil Rights Committee*

"A tragic loss for all Americans. I wrote an amicus brief many years ago in a case in which she wrote the opinion for the court in my client's favor. I got to hear the oral argument at the court. Excellent opinion still cited 25 years later and her questions for both parties and her demeanor towards the parties was outstanding." — *Robert L. Shonfeld, Vice-Chair, Civil Rights Committee*

"Justice Ginsburg combined a profound knowledge of the law with a soft-spoken dignity. She was a touchtone for those who believe in equality, civility, and the values inherent in the human condition." — *Rudy Carmenaty, Co-Chair, Diversity and Inclusion Committee*

"As the second woman appointed to the U.S. Supreme Court, I had long admired Justice Ginsburg. My admiration deepened upon learning that, as of one of nine women in a class of 500 at Harvard Law School, she was questioned why she was taking a man's seat. As a member of an underrepresented group in the legal profession, I am astonished by her resolve to demonstrate that she was as good as her male classmates. Not only was she as good, she was better. She went on to graduate first in her class at Columbia Law School in 1959." — *Hon. Maxine Broderick, Chair, Diversity and Inclusion Committee*

"On Friday, our country lost a hero. The Honorable Ruth Bader

See PRESIDENT'S, Page 18

Nassau Lawyer welcomes articles written by members of the Nassau County Bar Association that are of substantive and procedural legal interest to our membership. Views expressed in published articles or letters are those of the authors alone and are not to be attributed to *Nassau Lawyer*, its editors, or NCBA, unless expressly so stated. Article/letter authors are responsible for the correctness of all information, citations, and quotations.

Nassau Lawyer

The Official Publication
of the Nassau County Bar Association
15th & West Streets, Mineola, N.Y. 11501
Phone (516)747-4070 • Fax (516)747-4147
www.nassaubar.org
E-mail: info@nassaubar.org

Published by
Long Island Business News
(631)737-1700; Fax: (631)737-1890
Publisher Joe Dowd
Graphic Artist Wendy Martin

Nassau Lawyer (USPS No. 007-505) is published monthly, except combined issue of July and August, by Long Island Commercial Review, 2150 Smithtown Ave., Suite 7, Ronkonkoma, NY 11779-7348, under the auspices of the Nassau County Bar Association. Periodicals postage paid at Mineola, NY 11501 and at additional entries. Postmaster: Send address changes to the Nassau County Bar Association, 15th and West Streets, Mineola, NY 11501.

Cause of Death in Vehicular Homicides

Throughout New York State, prosecutors and defense attorneys are involved in cases from minor misdemeanors to intentional murder. However, it is rare that cases actually change the law. *People v. James Ryan*, is one Nassau County case which actually did.[1]

The concept of superseding or intervening causation was largely unrecognized in criminal cases, though it has always existed in civil negligence cases, prior to *Ryan*. In fact, the pattern jury instruction for cause of death in criminal cases effectively precluded a jury from considering a superseding or intervening cause of death. The language of the pattern jury instruction at that time essentially said that a defendant who sets in motion or continues in motion a chain of events leading to one's death is responsible regardless of whether the defendant was the actual cause of death; forging a link in the chain of causes is sufficient.

This jury instruction was created to address cases where a defendant intentionally, or with depraved indifference, subjected someone to likely death. For instance, the jury charge addressed a circumstance where a defendant shot the victim but did not kill him; however, when the victim, who was being treated for that gunshot wound died due to the malpractice of the treating physician, the defendant was criminally responsible for the death because his conduct clearly had the foreseeable consequence of death. Unfortunately, this concept was used much more extensively and broadly in vehicular cases, particularly in *People v. Ryan*.

In *Ryan*, the defendant was operating his motor vehicle on the eastbound Long Island Expressway (LIE) at approximately 4:00 am in the area of New Hyde Park Road. He had a fender-bender accident with another car and continued to drive approximately 900 feet eastbound where his car stopped in the middle lane of the LIE. Mr. Ryan's stopped car was then rear-ended at a high rate of speed by a third vehicle causing both cars to spin out. When they came to rest, Ryan's car was perpendicular to the concrete divider blocking the HOV and left lanes of the roadway and the other vehicle was blocking the right-hand lane and part of the center lane.

Marc C. Gann

As traffic backed up on the LIE, a police officer, Joseph Olivieri, responded and parked his vehicle on the eastbound shoulder of the roadway with his emergency lights activated. Many vehicles had now stopped in the roadway behind the accident scene, and a number of people were walking on the various lanes of the LIE. A small number of vehicles were rolling through the center lane of the accident scene. Approximately ten minutes after the accident, with traffic almost at a standstill, and with at least a half dozen individuals in the roadway, including both Mr. Ryan and P.O. Olivieri, a driver with a suspended license (who thus should not have been on the road) pulled out into the HOV lane to avoid the traffic jam and accelerated to approximately 40 mph. He was looking to his right at the accident scene and, at the last second, looked up to see P.O. Olivieri standing in front of him. He hit the officer at 39 mph and killed him almost instantly.

The driver with the suspended license was *not* charged in Officer Olivieri's death, and in fact was granted immunity to testify against Mr. Ryan. Ryan, who was determined to have a BAC of .12, was charged with vehicular manslaughter for killing Officer Olivieri, because he set in motion the chain of events leading to the officer's death, even though his vehicle did not hit the officer and even though there clearly appeared to be intervening and superseding causes of death.

Defendant's motion to dismiss the vehicular manslaughter charges based on a lack of causation was granted by the trial court. However, on appeal, The Appellate Division reversed that decision and re-instated the manslaughter charges.[2]

Upon return to the lower court, the case proceeded to trial. The People requested the then-standard cause-of-death charge be presented in jury instructions. That charge stated that "a person's conduct is an actual contributory cause of the death of another when the conduct forged a link in the chain of causes which actually brought about the death—in other words, when the conduct set in motion or continued in motion the events which ultimately resulted in the death." Defendant requested a modification of that charge to include:

> A person's conduct is not an actual contributory cause of the death of another when there is an unforeseeable intervening cause sufficient to break the chain of causation that brings about the death. Thus, if a person's conduct does not cause the intervening act, but merely furnishes the condition or gives rise to the occasion by which the death occurs, and the intervening act is not foreseeable, then the person's conduct does not constitute an actual contributory cause of the death.

After argument, the court denied Defendant's requested charge, and gave the pattern instruction that existed at that time. Based upon the evidence as interpreted in light of that charge, Defendant was convicted of killing Officer Olivieri.

An appeal of this conviction was taken on a number of grounds, including the failure to instruct the jury on intervening causation as requested by Defendant. The Second Department overturned Mr. Ryan's conviction as against the weight of the evidence and he could not be retried. As a result, the pattern jury instruction was modified as follows:

> The defendant argues that there was an intervening act between his/her conduct and the death of (*specify*); namely (*specify what the argued intervening act was*). In that instance, liability for the death turns upon whether the intervening act is a normal or foreseeable consequence of the defendant's conduct. Thus, where the acts of a third person intervene between the defendant's conduct and a person's injury, the causal connection is not automatically severed. Rather, that other persons share some responsibility for the death does not absolve the defendant from liability because there may be more than one cause of an injury. It is only where the intervening act is extraordinary under the circumstances, not foreseeable in the normal course of events, or independent of or far removed from the defendant's conduct, that it may break the causal connection.[3]

The end result herein is actually a tragedy for two families. The Olivieri family lost a loved one and will never see the driver that actually hit and killed Officer Olivieri prosecuted. The Ryan family suffered through a long battle for exoneration in Officer Olivier's death—a battle which would not have occurred had the current cause of death charge existed at the time. But as a result of *Ryan*, the concept of intervening or superseding causes has now found its way into criminal cases.

Marc C. Gann is a partner with Collins, Gann, McCloskey and Barry, PLLC. He is a Past President of NCBA, and was the defendant's attorney in *People v. Ryan*.

1. 161 A.D.3d 893 (2d Dept. 2018).
2. 125 A.D.3d 695 (2d Dept. 2015).
3. Criminal Jury Instructions 2d—Cause of Death (rev'd June 2019).

Broken Promises Amid COVID-19: Force Majeure and Other Considerations

David Shargel

As COVID-19 wreaks havoc on parties' ability to perform their contractual obligations, the force majeure clause and its common law relatives—the doctrines of impossibility and frustration of purpose—are poised to become a focus of business litigation for years to come.

Force Majeure Provision

In general, once a party to a contract has made a promise to perform, it must fulfill its promise even where unforeseen circumstances, including an act of God, make performance burdensome or difficult. If the party fails to perform, it usually must pay damages to the other party.[1]

However, if the contract contains a "force majeure" provision, unexpected events could provide a defense to a party's failure to perform.[2] While parties may be quick to assume that the global catastrophic effects of COVID-19 would easily be enough to invoke force majeure, the validity of the defense, which courts will narrowly construe, relies upon the specific language of the applicable force majeure provision and the factual circumstances of the parties' contract.

This is best illustrated by an examination of a real-world force majeure provision taken from a 2009 dispute involving a lease to operate a restaurant and catering facility at Jones Beach. It provides:

> If either State Parks or Lessee shall be delayed or prevented from the performance of any act required by this Lease by reason of acts of God, weather, earth movement, lockout or labor trouble, unforeseen restrictive governmental laws, regulation, acts or omissions, or acts of war or terrorism which directly affects the Licensed Premises and/or facilities and services of Jones Beach State Park, riot or other similar causes, without fault and beyond the reasonable control of the party obligated, performance of such act, including payment of all License Fees and R & R deposits due, shall be permanently excused for the period of the delay and the period for the performance of such act shall be extended for a period equivalent to the period of such delay, at which time all payments due shall be resumed.[3]

Like nearly every other force majeure clause, this example includes a list of triggering events that might excuse performance.[4] Assuming a party claims that, during the peak of the coronavirus, it could not perform its obligations due to the effects of government "stay at home" orders, this clause might serve to excuse performance because it includes "unforeseen restrictive governmental laws" as a triggering event.

But had that language not been included, the application of this clause to COVID-19 becomes far less clear. Indeed, while it is tempting to assume the pandemic is an act of God, New York courts have defined that term narrowly as "an unusual, extraordinary and unprecedented event," denoting "those losses and injuries occasioned exclusively by natural causes, such as could not be prevented by human care, skill and foresight."[5] Similarly, Black's Law Dictionary defines an act of God as an "overwhelming, unpreventable event caused exclusively by forces of nature, such as an earthquake, flood, or tornado."[6]

As pandemic-related litigation unfolds it remains to be seen whether an inability to perform based on COVID-19 would be considered an act of God. Even if the illness itself is deemed an act of God,[7] performance-impeding issues like restrictions on business openings may be labeled a human reaction to the virus, not the act of God itself.

Other triggering events that may apply to COVID-related performance include the obvious—pandemics, epidemics and disease outbreaks—as well as events like labor shortages, where employees are not available to work due to stay-at-home orders or illness spread within a factory. The bottom line is that, in order to provide an effective defense, the force majeure provision must generally include a triggering event that applies to the COVID-related basis for nonperformance.

Complicating matters, many force majeure provisions include "catch-all" language such as "or other similar causes," as in the example provided above. Catch-all provision must be interpreted within the context of the provision as a whole, and the legal maxim of ejusdem generis may apply: the catch-all will be interpreted to include only items of the same kind as those listed.[8] Thus, a force majeure provision listing storms, earthquakes, floods "and similar events" may not be interpreted to include events related to COVID-19. On the other hand, some contracts provide more expansive catch-all language, capturing any event outside of the reasonable control of the parties.[9]

Courts analyzing attempts to rely upon catch-all language may also consider the foreseeability of the triggering event, recognizing that the "purpose of force majeure clauses, [is to] to limit damages…where the reasonable expectation of the parties and the performance of the contract have been frustrated by circumstances beyond the control of the parties."[10] Given prior epidemics and pandemics, including the 2009 H1N1 pandemic, it remains to be seen how courts will determine the foreseeability of COVID-19.

The presence of an applicable triggering event is only the first step in the process of determining whether a party has a valid defense to nonperformance. Unless the force majeure provision provides otherwise, courts generally require that performance be rendered impossible, and not merely more difficult or expensive.[11] For example, a party obligated to manufacture a product may not be able to invoke force majeure where sourcing a component has been made more difficult, but not impossible, due to the pandemic.[12] Issues of causation must also be considered, and language appearing in typical force majeure provisions stating that nonperformance must be "by reason of" or "caused by" requires a showing of direct causation.

These issues aside, parties seeking to invoke a force majeure provision must carefully consider what performance is actually excused. For example, force majeure language in commercial leases will typically exclude the payment of rent, meaning that even amidst the occurrence of a triggering event, rent must still be paid.[13] Parties must also consider what happens when the force majeure event ends. By way of illustration, the example provided above makes clear that performance is

See BROKEN PROMISES, Page 19

To Report or Not to Report Professional Misconduct

Quite some time ago, while working as counsel to the New York State Grievance Committee for the Tenth Judicial District, I received an anonymous letter from an attorney reporting disturbing conduct of another attorney. It was the middle of February, and, as reported by the attorney, he was on the railroad returning from a meeting in NYC when an inebriated man entered the train car wearing nothing but boxer shorts, a short-sleeve Hawaiian shirt, a diving mask, snorkel, and flippers. The man flip-flopped through the train, raging against the world but particularly against attorneys, judges, and the legal system. The reporting attorney was shocked to recognize the man as an attorney he frequently saw in court. In an exercise of compassion and concern, and with an inchoate sense of professional obligation, the attorney felt compelled to report what he had witnessed to the Grievance Committee.

Although no disciplinary investigation was initiated against the purportedly inebriated attorney, efforts were made to communicate with him and get him help through the local bar association's confidential lawyer's assistance program. When contacted, the attorney acknowledged he had a problem, was receptive to assistance, and agreed to have someone from the program reach out to him. A connection was made, and the attorney began working his way toward sobriety and good health. Hopefully, that man has prospered in the intervening years without incident or relapse.

I'm always reminded of that story when dealing with attorneys struggling with alcoholism, substance abuse, or other physical or mental impairments. Just as often, however, the story comes to mind when I am asked by an attorney whether he or she is obligated to report alleged misconduct of another attorney. This question arises very frequently, particularly in litigated matters where attorneys often feel their adversaries have crossed an ethical line. Sometimes, the attorney is just venting or seeking an objective viewpoint; on rarer occasions, the attorney will appear to be looking to manufacture leverage in the litigation without a reasonable basis, an ill-conceived, if not unethical, act in its own right.[1] In only a handful of instances have I viewed the related misconduct as one warranting referral to the disciplinary authorities.

Duty to Report is Limited

Generally, the duty of an attorney to report misconduct by another attorney is very limited under the New York Rules of Professional Conduct [22 NYCRR § 1200]. Rule 8.3 requires a lawyer to report knowledge of another lawyer's violation of a Rule of Professional Conduct to a tribunal or other authority empowered to investigate or act upon such information if: (1) the rule violation raises a substantial question as to the offending lawyer's honesty, trustworthiness, or fitness as a lawyer; and (2) the information is not privileged or confidential by virtue of it having come from a client or as a result of involvement with a bona fide lawyer assistance program. Accordingly, in all cases, determining whether you are obligated to report another attorney's misconduct requires an analysis of the elements of Rule 8.3.

Preliminarily, Rule 8.3 provides that you do not necessarily have to report misconduct to a disciplinary authority. If the other elements of the rule are satisfied, bringing the information to the attention of a tribunal with the power to investigate or act upon such information will suffice. In a litigated matter, this means advising the Court in which the matter is pending. For non-litigated matters, the rule contemplates reporting the misconduct to the appropriate disciplinary authorities, which, in New York, usually means the Grievance Committee or Appellate Division in the jurisdiction where the alleged misconduct occurred or in which the offending lawyer practices or is admitted.

Oftentimes, when the alleged misconduct is intertwined with pending litigation, the Court may already be aware. Depending on the nature of the misconduct and the stage of the litigation, the Court may direct the reporting attorney to promptly notify the appropriate Grievance Committee rather than interrupt or sidetrack the pending action. If the Court does examine the conduct and finds misconduct, the Court may contact the Grievance Committee directly, instruct the complaining attorney to do so, or require the offending attorney to self-report. Whichever is the case, the Grievance Committee will do what it does whenever it receives a complaint: make an independent determination as to whether to open an investigation, hold the matter in abeyance pending the resolution of the litigation, or decline to investigate outright.

Mitchell T. Borkowsky

First-Hand Knowledge of Serious Misconduct

As for the other elements of Rule 8.3, first and foremost, you must have first-hand knowledge that the other attorney engaged in misconduct or violated a rule requiring disclosure.[2] Your knowledge and information cannot be based on a feeling, belief, suspicion, or hearsay. If you do not personally know that the attorney did, in fact, violate a rule, then you are not required to report under Rule 8.3.

Furthermore, even if you do have personal, first-hand knowledge of the misconduct, if reporting would require that you disclose confidential information of a client under Rule 1.6, whether it be the offending attorney or another client unwilling to consent to disclosure, or if the information was obtained through your involvement in an accredited lawyer's assistance program, you are not required to report the misconduct.

Assuming, however, that you are not absolved of the obligation to report based on the extent to which you personally know of the misconduct or the manner in which you obtained the information, the most important and difficult element of Rule 8.3 is determining whether the alleged rule violation is one that raises a "substantial question" as to the offending "lawyer's honesty, trustworthiness, or fitness as a lawyer."

Essentially, the rule requires attorneys to report serious acts of misconduct, not minor acts or rule violations that do not implicate an attorney's integrity or fitness. Some obvious examples of serious misconduct that must be reported are escrow defalcations, criminal activity, fraud on the Court, and repeated and consistent neglect of client matters.[3] Although you can always report nonserious misconduct, you would not be in violation of Rule 8.3 if you have a reasonable, good faith belief that the conduct did not meet the threshold and chose not to do so.

Notably, in instances where you are not obligated to report the alleged misconduct of another lawyer, you may use the information in any way you, in your professional judgment, deem appropriate, including reporting the conduct or promptly confronting the offender.[4]

In New York, while threatening to file a *criminal* complaint against someone to gain advantage in civil litigation is expressly prohibited by the rules, threatening to file a grievance complaint is not per se prohibited, so long as the alleged misconduct is not the sort of misconduct that must be reported under Rule 8.3 in the first instance, and provided you do not make a criminally "extortionate" threat.[5] To that end, there is a significant difference between threatening to file a grievance complaint alleging neglect against an attorney who is refusing to return a disputed fee to your client and threatening to notify the Grievance Committee that the attorney is behind in child support obligations if he does not return the fee to your client.

Moreover, attorneys contemplating threatening to file a complaint of misconduct based on a suspicion or a belief should take care that they are not merely using the disciplinary process for a nefarious or underhanded purpose, or out of spite, and without a reasonable basis, as doing so may, itself, violate the Rules of Professional Conduct.[6]

The decision whether to report misconduct of another attorney is as nuanced as the factual scenarios are endless. Whether an alleged violation raises a "substantial question" as to the offending attorney's "honesty, trustworthiness, or fitness as a lawyer" must be determined on a case-by-case basis. Historically, there have been a limited number of reported cases where an attorney has been charged and publicly disciplined for failing to report under Rule 8.3.

Usually, public discipline is imposed where the failure to report is an aggravating factor in a matter where the disciplined attorney was involved in the underlying misconduct himself or herself. In *Matter of Lodes*,[7] an attorney was suspended for three years for, among other things, failing to timely report a financial kickback scheme involving himself and a State Senator who was also an attorney. In *Matter of Graziano*,[8] a suspended New Jersey attorney was reciprocally suspended in New York for one year for, among other things, failing to report that his New Jersey firm was participating in a prohibited fee-sharing arrangement and for giving less-than-candid testimony to the disciplinary authorities.

The number of attorneys who are investigated and *privately* disciplined by Grievance Committees for failing to report misconduct of other attorneys is unknowable given the confidential nature of such proceedings;[9] however, it is likely that such private discipline would also be imposed ancillary to other allegations and findings.

Self-Regulating and Preserving the Integrity of the Profession

Underpinning the strict and limited mandatory reporting requirement under Rule 8.3 is the desire to have attorneys self-regulate the profession in order to preserve its integrity and ensure that the disciplinary authorities are not overrun with minor complaints by attorneys against one another.

The lawyer who reported the inebriated attorney referred to above was correct in doing so. Not because alcoholism implicates

See TO REPORT, Page 10

Nassau County Bar Association and the Diversity Pipeline

Since the 1990s, there has been widespread recognition of the need for greater diversity in the legal profession. This realization has resulted in educational institutions, corporations, non-profit organizations, law firms, court systems, and bar associations creating diversity pipeline programs.

In the legal arena, diversity pipeline programs are aimed at increasing the number of attorneys from underrepresented groups by reducing barriers of entry. Diversity pipeline programs meet a critical need, but are burdened by their substantial costs and reaching their intended audience can prove challenging.

Grounded in a commitment to service and leadership, the Nassau County Bar Association (NCBA) has invested in diversity pipeline programs for over four decades. Benefitting from carefully crafted initiatives, effective partnerships, and the invaluable contributions of volunteer members, the NCBA has been successful in introducing thousands of young people from diverse backgrounds to the legal profession. With continued dedication, the NCBA has demonstrated the capacity to offer increasingly robust diversity pipeline programs.

Need for Diversity in the Legal Profession

An examination of the numbers indicates that 86% of U.S. attorneys are White, and the remaining 14% are divided among minority groups.[1] Specifically, 5% of attorneys are Black, 5% are Hispanic, 2% are Asian, 2% are multiracial and .04% are Native American.[2] These numbers are a cause for concern. By any reasonable measure of equity and fairness, the ranks of the bar, which is dedicated to safeguarding fundamental legal rights, should be more reflective of the wider population.

The absence of diversity can be detrimental in many ways: public trust in the legal system is diminished, the marketplace of ideas can be reduced to an echo chamber, a dearth of cultural perspectives may lead to explicit and/or implicit bias, and a talent pool of capable, would-be attorneys is overlooked. From a practical standpoint, the lack of diversity in the workplace forecloses the opportunity for practitioners to learn about cultural differences from colleagues who come from backgrounds similar to those of potential clients.

Hon. Maxine S. Broderick

Closer Look at Pipeline Programs

Pipeline programs operate to overcome impediments people of color encounter in gaining admission to law school and performing well once there. These obstacles arise because, overwhelmingly, minorities come from communities with underperforming schools which may be economically disadvantaged, and they often lack familial ties to lawyers and judges. Comprehensive pipeline programs provide the supplemental academic, economic, and social support necessary for success as a law student.

Fully funded pipeline programs provide LSAT preparation courses, lecture series featuring attorneys and judges of color, mentoring relationships, law school application assistance, and graduation ceremonies. In addition, these programs offer attendees condensed courses in property, constitutional law, torts, contracts, and legal research and writing, taught by experienced law professors. Pipeline programs address the absence of legal experience and exposure to legal settings by procuring internships and networking opportunities for program attendees.

Numerous noteworthy pipeline programs already exist. The New York Legal Education Opportunity Program (NY LEO), which is funded by the New York State Unified Court System, is a prime example. NY LEO was launched in 2007 and covers the expense of tuition, textbooks, room and board and provides access to law libraries and computer facilities. NY LEO is housed at the Judicial Institute in White Plains, NY. As stated on its website:

> Through an intense six-week summer program, the NY LEO Program assists minority, low income and economically or educationally disadvantaged college graduates in acquiring the fundamental and practical skills necessary to succeed in law school. The program is available to qualified candidates who will attend law school in New York. The NY LEO Program is administered by the Honorable Juanita Bing Newton, Dean of the New York State Judicial Institute. Students live on campus and participate in the program full-time. Experienced law professors provide instruction in first-year law school core courses as well as in legal research, writing, and analysis. As part of the program, students have the opportunity to visit courts in session and meet with members of the judiciary and other legal professionals.[3]

Legacy NCBA Pipeline Programs

The New York State High School Mock Trial Tournament is the NCBA's longest standing pipeline program. Developed by the New York State Bar Association, and regionally administered by the NCBA since 1977, high school students are presented with a civil or criminal case and act as advocates in a series of mock trial competitions. NCBA volunteer members serve as coaches and legal advisors, competition judges and program coordinators. The NCBA program is coordinated by Hon. Marilyn K. Genoa, Hon. Lawrence M.

See DIVERSITY, Page 21

Enforceability of COVID-19 Liability Releases

Many types of businesses, such as salons, golf courses, youth sports leagues, colleges, and vacation spots are requiring their customers to sign a waiver or release of liability that expressly applies to COVID-19. Even the American Cancer Society has a "Covid-19 Safety Acknowledgement—Liability Waiver and Release Of Claims" form, including a section on assumption of risk, for those volunteering or participating in events it holds or sponsors.

Whether businesses in New York can insulate themselves from COVID-19 liability through releases involves three inquiries: (1) does the language of the release conform with the strict requirements of the law; (2) is there a special relationship between the parties that prohibits enforcement; and (3) is the release unconscionable or is there a public policy or interest that forbids its enforcement.

Language of the Release

Exculpatory provisions in a contract generally are enforced although they are disfavored by the law and closely scrutinized by the courts.[1] A waiver will not be enforceable unless it clearly demonstrates an intention to absolve a party of claims arising from its own negligence.

In the seminal Court of Appeals case *Gross v. Sweet*, the plaintiff enrolled in defendant's parachute jumping course.[2] A precondition of enrollment was signing a waiver contained in a "Responsibility Release." After an introductory course of on-land training including jumping off of a 2½-foot high table, he was flown to an altitude of 2,800 feet for his first practice jump. As Judge Fuchsberg put it: "[u]pon coming in contact with the ground on his descent, plaintiff suffered serious personal injuries." The Court held that the plaintiff could sue for personal injuries because the release did not in unequivocal terms alert him that he was not only releasing the defendant from the ordinary and inevitable risks of parachute jumping but that he was also releasing the defendant from the instructor's own carelessness.[3]

An exculpatory clause will not insulate a party from liability for their own negligent acts unless the intention of the parties is expressed in unmistakable, unequivocal language and is absolutely clear and understandable to the releasor.[4] It must appear plainly and precisely that the "limitation of liability extends to negligence or other fault of the party attempting to shed his ordinary responsibility."[5] Releases that merely waive any and all claims arising in the future cannot be enforced, because they fail to advise that the waiver extends to claims that might arise from the defendant's own negligence.[6]

In *Jo Hsu v. Krav Maga NYC, LLC*, enrollment in a self-defense training class was conditioned upon a release in which the plaintiff agreed "to assume and accept all risks arising out of, associated with or related to [her] participating in the class" (including risks that were "caused by the negligence of [defendant]") and "to hold harmless and indemnify [defendant]...from any and all claims, demands, actions and costs which might arise out of [her] participating in the class."[7] The release was held to be enforceable because it expressed in unequivocal terms the intention of the parties to relieve defendant of liability for its negligence.[8] In contrast, in *Oliver v. Cent. Park Sightseeing, LLC*, the bicycle rental agreement did not reflect a clear and unequivocal intent to limit its liability for its own negligence and the release was unenforceable.[9]

Therefore, when drafting a COVID-19 liability release, we must make certain that the release expressly applies to COVID-19 and makes clear to the releasors that they are giving up their right to sue the business for its own negligence. Releasors' counsel must carefully scrutinize the purported release to see whether it does not comply with the stringent language requirements. All practitioners must bear in mind that ambiguities in exclusionary clauses will be construed against the drafter.[10]

Additional considerations are warranted where the release is in an online agreement. A key factor is whether the website provided "reasonably conspicuous notice that [users] are about to bind themselves to contract terms."[11] Enforceability is more likely if the agreement is a "clickwrap" agreement, in which the user is required to take an affirmative action, usually clicking a box, affirming that the user has read and agrees to the terms of service.

Clickwrap agreements have been held to be more readily enforceable than online contracts that do not require the user to take an affirmative action, since they permit courts to infer that the user was on notice of the terms and has outwardly manifested consent by clicking a box.[12] Nevertheless, it has been held that a user's clicking of a box is not, without more, always sufficient to signal their assent to any contract term.[13] An analysis of the user interface can be important to convincing the court that an online contract is or is not enforceable.

Unenforceability Due to the Parties' Relationship

Even where the language of the release is adequate, in some circumstances releases from liability are unenforceable as a matter of law regardless of the language by virtue of the relationship between the parties. The General Obligations Law renders releases from liability for negligence unenforceable in a variety of businesses including landlords [Section 5-321]; caterers [Section 5-322]; owners and contractors [Section 5-322.1]; building service or maintenance contractors [Section 5-323]; and those who maintain garages or parking places [Section 5-325] or pools, gymnasiums, or places of public amusement or recreation [Section 5-326].

These statutory prohibitions on enforcement do not provide blanket immunity, however. For example, because GOL § 5-326 expressly applies only to recreation, a health club can enforce a waiver only if the primary purpose of the health club is recreational and not instructional.

In *Debell v. Wellbridge Club Mgt., Inc.*,[14] the plaintiff was injured while undergoing instruction in strength-training exercises. The court held that GOL § 5-326 did not void the release, because the focus should be on whether the spa's purpose was recreational or instructional and not whether plaintiff's activity at the time of injury was recreational or instructional. Finding that the spa promoted a recreational pursuit and provided instruction as an ancillary service, the release was enforceable. But in *Kim v. Harry Hanson, Inc.,* the court found that the defendant's facility was an instructional and not a recreational one, therefore the release was unenforceable.[15]

Another issue is whether the plaintiff paid a fee to participate in the activity since GOL § 5-326 voids a release only where a fee was paid. Summary judgment was recently denied where an issue of fact existed as to whether or not a fee was paid.[16]

In addition to statutory prohibitions, under common law certain relationships between the parties preclude enforceability. New York courts have long found agreements attempting to exonerate or limit the employer from liability to employees for future negligence, whether of itself or its employees, are void as against public policy. This has also been applied to volunteer workers.[17] It is also a long-standing rule in New York that attempts by public service corporations to absolutely exempt themselves by contract from liability for negligence are opposed to the best interest of the citizens of the State.[18]

Ira S. Slavit

Public Policy Considerations

Liability releases that contravene public policy are ineffectual. For instance, public policy voids a release where it purports to grant exemption from liability or limit damages to a nominal sum for willful or grossly negligent acts.[19]

Although public policy arguments are often ripe opportunities for lawyers to think creatively, constraints exist. Public policy is ascertained by reference to laws and legal precedents and not from general considerations of supposed public interests.[20] It has been held that the court's usual and most important function is to enforce contracts rather than invalidate them unless they clearly contravene public right or the public welfare.[21]

Militating in favor of enforcement is that freedom of contract is itself a strong public policy interest in New York. Parties are allowed to agree to give up statutory or constitutional rights in a contract as long as public policy is not violated.[22] Only a limited group of public policy interests has been identified as sufficiently fundamental to outweigh the public policy favoring freedom of contract.[23]

Also weighing in favor of enforcement of the parties' agreement to limit damages is the public economic interest in keeping a party's commercial services affordable, perhaps more so now as we restart from the economic shutdown.[24]

Where the public policy in favor of freedom of contract is overridden by another weighty and countervailing public policy, a contractual provision is unenforceable.[25] Public policies articulated by New York courts that might support voiding a liability release is the State's interest in the "conservation of the lives and of the healthful vigor of its citizens" and not wanting to encourage "laxity of conduct in, if not an indifference to, the maintenance of proper and reasonable safeguards to human life and limb."[26]

Another factor is whether the contract or clause is unconscionable and a contract of adhesion—in circumstances showing an absence of meaningful choice on the part of one of the parties together with contract terms unreasonably favorable to the other party.[27] It has been suggested that the more essential the service the business provides (such as a supermarket or pharmacy), the less likely a waiver will be enforced because the public has less discretion to patronize the business. One public school district's release has parents purportedly waiving the right to sue if their child contracts COVID-19.[28] It is difficult to imagine parents being compelled to sign such a waiver as a condition of their children exercising the right to an education.

It is only a matter of time before New York courts will be asked to opine regarding the enforceability of a COVID-19 liability release. While at least some of the principles outlined herein will apply, the courts' holdings will be interesting and certainly the topic of much commentary and analysis.

Ira S. Slavit is a member of Levine & Slavit, PLLC, representing plaintiffs in personal injury and medical malpractice litigation with offices in Mineola and Manhattan. He is presently Chair of the NCBA Plaintiff's Personal Injury Committee and is an immediate-past NCBA Director.

1. *Princetel, LLC v. Buckley*, 95 A.D.3d 855 (2d Dept. 2012).
2. 49 N.Y.2d 102 (1979).
3. *Id.* at 107.
4. *Van Dyke Prods. v. Eastman Kodak Co.*, 12 N.Y.2d 301, 304 (1963); *Ciofalo v. Vic Tanney Gyms*, 10 N.Y.2d 294, 297 (1961); *Boll v. Sharp & Dohme*, 281 App.Div. 568, 570–71 (1954).
5. *Howard v. Handler Bros. & Winell*, 279 App.Div. 72, 75-76 (1952).
6. *Rigney v. Ichabod Crane Cent. School Dist.*, 59 A.D.3d 842, 843 (3d Dept. 2009).
7. 138 A.D.3d 463, 463-64 (1st Dept. 2016).
8. *See also Deutsch v. Woodridge Segway, LLC*, 117 A.D.3d 776 (2d Dept. 2014).
9. 171 A.D.3d 508 (1st Dept. 2019).
10. *Uribe v. Merchants Bank of New York*, 91 N.Y.2d 336, 341 (1998).
11. *Specht v. Netscape Commc'ns Corp.*, 306 F.3d 17, 32 (2d Cir. 2002).
12. *Meyer v. Kalanick*, 199 F.Supp.3d 752, 761 (S.D.N.Y. 2016).
13. *Corwin v. NYC Bike Share, LLC*, 238 F.Supp.3d 475, 488 (S.D.N.Y. 2017).
14. 40 A.D.3d 248, 249-50 (1st Dept. 2007).
15. 122 A.D.3d 529, 530 (1st Dept. 2014).
16. *Marc v. Middle Country Cent. School Dist.*, 185 A.D.3d 570 (2d Dept. 2020).
17. *Richardson v. Island Harvest, Ltd.*, 166 A.D.3d 827, 828 (2d Dept. 2018).
18. *Conklin v. Can.-Colonial Airways*, 266 N.Y. 244, 247 (1935).
19. *Sommer v. Fed. Signal Corp.*, 79 N.Y.2d 540, 554 (1992); *Lago v. Krollage*, 78 N.Y.2d 95, 100 (1991).
20. *Lubov v. Horing & Welikson, P.C.*, 72 A.D.3d 752, 753 (2d Dept. 2010).
21. *159 MP Corp. v. Redbridge Bedford, LLC*, 33 N.Y.3d 353, 360-61 (2019), *rearg denied*, 33 N.Y.3d 1136 (2019).
22. *J. D'Addario & Co., Inc. v. Embassy Indus., Inc.*, 20 N.Y.3d 113, 119 (2012).
23. *159 MP Corp.*, 33 N.Y.3d at 361.
24. *In re Part 60 Put-Back Litig.*, 169 A.D.3d 217, 223 (1st Dept. 2019); *Sommer*, 79 N.Y.2d at 554.
25. *Oppenheimer & Co.*, 86 N.Y.2d 685 (1995).
26. *Johnston v. Fargo*, 184 N.Y. 379 (1906); *Richardson v. Is. Harvest, Ltd.*, 166 A.D.3d 827, 829 (2d Dept. 2018).
27. *Corwin*, 238 F.Supp.3d at 488.
28. Notus School District (Caldwell, ID), *Assumption of the Risk and Waiver of Liability Relating to Coronavirus/COVID-19*, available at https://bit.ly/35DTmc5.

Yes, They Can Make You Tear Down a Finished Building

The Saga of 200 Amsterdam Avenue

Earlier this year, there was significant media coverage regarding the construction of 200 Amsterdam Avenue located on the Upper West Side in Manhattan.[1] The developers, SJP Properties and Mitsui Fudosan America, obtained a building permit in 2016 to construct a 55-story, 668 foot high building, making it the tallest building on the West Side north of 61st Street. To be able to construct a building this tall, the developers utilized the Transfer Development Rights (TDR's) to use the undeveloped rights of adjacent properties to benefit another lot to develop.

What was unique in this situation, is that the developers spent 28 years reaching agreements with adjacent properties to subdivide and merge partial land parcels and tax lots, to create a 39-sided zoning lot in order to design the building. Opponents of the project argued this was impermissible, pointing to the New York City Zoning Resolution which defines a "zoning lot" as "a tract of land, either unsubdivided or consisting of two or more lots that are contiguous for a minimum of ten linear feet, and located within a block and declared by all 'parties in interest' to be a 'zoning lot' in a recorded Zoning Lot Declaration of Restrictions."[2]

The developers, and initially the City, had relied upon a 1978 Departmental Memorandum of Acting Department of Buildings Commissioner Irving Minkin, in what became known as the "Minkin Memo," which interpreted the definition of a "single zoning lot" to "consist of one or more tax lots or parts of tax lots." Opponents appealed the issuance of the building permit to the Board of Standards and Appeals, which in New York City decides variances as well as appeals of Department of Buildings (DOB) determinations (this task is performed by a Board of Zoning Appeals (BZA) through the rest of the state). However, the DOB at this time stated that it now disagreed with the memorandum from over 40 years ago, and that partial tax lots should not be utilized. The BSA declined to invalidate the permit, as it was "adhering to an 'historical interpretation' of the term 'zoning lot.'"[3]

Two groups, the Committee for Environmentally Sound Development and the Municipal Art Society, commenced an Article 78 proceeding challenging the BSA's upholding the issuance of the permit. The New York County Supreme Court vacated the BSA's determination and remanded the case back to the BSA to review the permit again.[4]

The BSA once again upheld the issuance of the permit, relying in part on the DOB's position that the permit should still be issued since DOB relied on a 40-year determination from the then Acting Commissioner of the Department, and over 30 years of determinations relying on that interpretation for the zoning lots. However, Justice W. Franc Perry nullified the decision on the grounds that the BSA was not acting in accordance with the plain language of the Zoning Resolution. At the conclusion of his decision, Justice Perry "ADJUDGED that DOB revoke the Permit and **compel Owner to remove all floors that exceed bulk permitted under the Zoning Resolution**."[5] This could require the removal of up to 20 floors of the building.[6]

Parkview and Equitable Estoppel

As drastic and radical a remedy that Justice Perry's decision may seem, this is not the first time that such an action has been ordered. The seminal case on the ability of a court to order the removal of a significant part of a building is *Parkview v. City of New York*.[7] In *Parkview*, the builder applied for and received a valid building permit on November 21, 1985, to construct a 31-story residential building at 108 East 96th Street in Manhattan. After substantial construction, the Superintendent of the New York City DOB issued a Stop Work Order for that portion of the building over 19 stories.[8] The basis for this action was that upon further review, the DOB determined that the building permit should never have been issued in the first place.

Thomas McKevitt

The DOB concluded that the building was located within a Special Park Improvement District (PID) that limited the height to 19 stories. The applicant misread the City's zoning map and made the interpretation that a taller building was allowed. This was based upon the map issued by the DOB which was missing a certain notation that a zoning boundary was in effect that significantly limited the height. The original Board of Estimate resolution containing the metes and bounds description of the zone was definitive that Parkview's building was within the PID limiting the height to 19 stories. The DOB then revoked the building permit on the grounds that the permit was invalid when it was initially issued.[9]

Parkview then followed the administrative route and appealed the revocation of the permit to the BSA. The BSA sustained the DOB's determination finding that the original resolution with the metes and bounds determination controlled over the map depicting the boundaries, even if the map could be misread.

Parkview then commenced an Article 78 proceeding seeking to set aside the revocation of the building permit arguing that the BSA determination was arbitrary and capricious because the original permit was properly issued; that its rights pursuant to that permit had vested; and that its reliance on the permit estopped the city from revoking the permit.

The case wound its way to the Court of Appeals which sustained the BSA's determination. Commenting on whether equitable estoppel should prevent the DOB from revoking a seemingly validly issued permit, the court held:

> [A] municipality, it is settled, is not estopped from enforcing its zoning laws either by the issuance of a building permit or by laches and the prior issue to petitioner of a building permit could not confer rights in contravention of zoning laws. Insofar as estoppel is not available to preclude a municipality from enforcing the provisions of its zoning laws and the mistaken or erroneous issuance of a permit does not estop a municipality from correcting errors, even where there are harsh results.[10]

The court further admonished that even if there was an error in the map and the mistaken issuance of a permit, reasonable diligence by the builder would have revealed that the metes and bounds description in the enabling legislation made clear that the taller building would not be allowed.

Faced with this daunting future, Parkview then chose to apply for a variance to the BSA to allow the maintenance of the completed building. This attempt was unsuccessful, and the 12 stories were indeed torn down.

Challenging Determinations and Mootness

A private party who seeks to challenge the grant of a permit should not simply rest and allow the structure to be completed. In *Dreikausen v. Zoning Board of Appeals*, a developer sought to purchase a bankrupt marina and build a condominium in a zone restricted to homes in the City of Long Beach.[11] The developer sought a use variance, and after numerous attempts, was granted one by the ZBA. Petitioners, nearby residents of single-family homes, brought an Article 78 proceeding challenging the grant of the use variance. The Supreme Court, Nassau County dismissed the proceeding, and petitioners appealed. The developer by that time had torn down the marina, reconfigured the utilities, had foundation permits issued, and began pouring the foundations for the condominiums, but building permits for the actual condominiums had not yet been issued.

Petitioners then first sought injunctive relief before the Appellate Division, which was denied. The Appellate Division affirmed the Supreme Court's decision, and petitioners sought leave to appeal to the Court of Appeals, which was granted. By this point, 12 of the eight units has been completed. The Court of Appeals dismissed the appeal as moot because of substantial competition of the project. The Court of Appeals distinguished *Parkview* as an instance where mootness will not prevent a destruction remedy, for the court now characterized the events there as a situation where "a party proceeded in bad faith and without authority."[12]

Conclusion

The owners of 200 Amsterdam are, not surprisingly, appealing the Supreme Court's decision. They have significantly invested in the project, and the costs of deconstructing nearly half of the building will be substantial. As per the Court of Appeals in *Parkview*, there is precedent in mandating a developer to tear down a building that has essentially been constructed. The distinction here, is that in *Parkview*, it was not disputed that the building permit was erroneously issued. Both the builder and the DOB relied on an incorrect map leading the wrongful issuance of the permit.

In 200 Amsterdam Avenue, the case is not so clear. For 40 years, the New York City DOB allowed partial tax lots to constitute a "zoning lot" for TDR purposes. A court now says that that definition is incorrect and not in accordance with the plain reading of the zoning resolution. This new interpretation may lead to not only the tear down of a building, but also the invalidation of certificates of occupancy for buildings throughout New York City.[13]

This line of cases demonstrates the power of the judicial system. Judge Joseph Bellacosa, the author of the *Parkview* decision, remarked several years later:

> [W]hen I occasionally drive past the site and look at the restored open-air space, I marvel that the decree was actually fulfilled. Indeed, I facetiously muse that courts may leap, as it were, over tall buildings, and when they are found to be too tall, they can be cut down to size.[14]

Thomas McKevitt is Special Counsel to Sahn Ward Coschignano, PLLC in Uniondale, as well as a Nassau County Legislator representing the 13th District.

1. Vincent Barone, *Almost Half of UWS Tower Would Have to be Removed Under New Court Ruling*, N.Y.Post, February 17, 2020; Stefanos Chen, *Developers of West Side Condo Tower May Have to Deconstruct 20 Floors*, N.Y. Times, February 14, 2020.
2. New York City Zoning Resolution § 12-10(d).
3. *Committee for Environmentally Sound Development v. Amsterdam Ave. Redevelopment Assoc. LLC*, Index No. 157273/2019 (Sup. Ct., N.Y. Co. Feb. 27, 2020).
4. *Committee for Environmentally Sound Development v. Amsterdam Ave. Redevelopment Assoc. LLC*, 2019 Slip Op. 30621 (Sup. Ct., N.Y.Co. Mar. 14, 2019).
5. *Committee, supra* n.3 (emphasis added).
6. Chen, *supra* n.1.
7. 71 N.Y.2d 274 (1988).
8. *Id.*
9. *Id.* at 280.
10. *Id.* at 282.
11. 98 N.Y.2d 165 (2002).
12. *Id.* at 173.
13. Barone, *supra* n.1.
14. Joseph W. Bellacosa, *Judging Cases v. Courting Public Opinion*, 65 Fordham L. Rev. 2381, 2388 (1997).

To Report ...

Continued From Page 7

anything about honesty or trustworthiness or violates a particular rule of professional conduct, but because an attorney raging against lawyers, judges, and the legal system while publicly intoxicated in the manner described was someone in need of help. He also was engaged in conduct adversely reflecting on the legal profession and, some might argue, his own fitness as a lawyer. Significantly, attorneys who struggle with alcohol dependence or other substance abuse issues are substantially more likely to commit malpractice or face disciplinary action.[10] That the attorney obtained necessary help within the same system speaks volumes as to the efficacy of the profession's efforts at self-regulation and self-preservation.

Conclusion

In conclusion, although attorneys are mandated by Rule 8.3 to report professional misconduct of other attorneys, the circumstances giving rise to the obligation are purposely circumscribed. Attorneys should ensure that all elements of Rule 8.3 are satisfied and that they are acting in good faith before deciding whether a report is necessary.

Mitchell T. Borkowsky represents lawyers being investigated or prosecuted by the state grievance committees for alleged ethical or professional misconduct. He is the former Chief Counsel to the New York State Grievance Committee for the Tenth Judicial District and a member of the Nassau and Suffolk County Bar Associations' Ethics Committees, and the NYSBA Task Force on Attorney Well-Being: Public Trust and Ethics Working Group. He can be reached at Mitch@myethicslawyer.com

1. NY City 2015-5; NY State 854 (2011); NY State 635 (1992).
2. NY City 2015-5; NY State 480 (1978).
3. N.Y. City Bar Opinion 1995-5 (1995).
4. Nassau County 98-12.
5. NY City 2015-5; American Bar Association Formal Opinion 94-383.
6. NY City 2015-5; NY State 854 (2011); NY State 635 (1992).
7. 118 A.D.3d 54 (2d Dept. 2014).
8. 87 A.D.3d 283 (2d Dept. 2011).
9. Judiciary Law § 90(10).
10. Krill, P. R., *If There is One Bar Lawyers Cannot Seem to Pass: Alcoholism in the Legal Profession*. The Brief (Fall 2014 American Bar Association), Volume 44, Number 1.

COVID-19 Immunity for Health Care Providers

On August 3, 2020, the Legislature amended laws enacted in April to protect health care facilities and providers from liability for injuries related to treatment of COVID-19 during the current state of emergency. The latest amendment limits the broad immunity granted by executive order and the initial legislation. To apply this statutory protection, counsel must understand not just the law as currently written, but also the initial statutory response to the pandemic.

Emergency Response Changes with the Emergency

Before the pandemic, health care providers in New York faced tort liability essentially like any other person, albeit with certain protections. As the Second Department put it in *Stukas v. Streiter*: "a plaintiff must prove that the physician deviated or departed from accepted community standards of practice, and that such departure was a proximate cause of the plaintiff's injuries."[1] CPLR 214-a sets the limitations period six months shorter than the three years for negligence, with exceptions for continuous treatment and belated discovery of "cancer or a malignant tumor." CPLR 3012-a also requires that the plaintiff file with the complaint a certification of merit. The nature of medical malpractice claims also makes expert testimony almost always indispensable.

With the advent of the pandemic and a surge in hospitalizations, however, Albany scrambled to remove any legal impediments to a rapid response. The first change came in Executive Order 202.10, which Governor Cuomo signed on March 21, 2020.[2] Following on the Governor's official disaster declaration two weeks earlier,[3] EO 202.10 suspended Education Law §§ 6527(2), 6545, and 6909(1) to immunize from liability, barring gross negligence, health care providers "for any injury or death alleged to have been sustained directly as a result of an act or omission by such medical professional in the course of providing medical services in support of the State's response to the COVID-19 outbreak." The immunity covered "all physicians, physician assistants, specialist assistants, nurse practitioners, licensed registered professional nurses and licensed practical nurses." EO 202.10 also afforded absolute immunity from liability for any failure to comply with "any recordkeeping requirement."

EO 202.10 would lapse by its terms after only thirty days, but long before then Albany enshrined liability protection in law. The Emergency or Disaster Treatment Protection Act, passed within the omnibus budget bill on April 3, 2020, added Public Health Law Article 30-D.[4] Its purpose, according to the new PHL § 3080, was to "to promote the public health, safety and welfare of all citizens by broadly protecting the health care facilities and health care professionals" from liability for treating COVID-19 during the pandemic.

The new protections arguably went beyond those in EO 202.10. Public Health Law § 3082(1) protected all health care facilities and professionals from liability for any "act or omission in the course of arranging for or providing health care services" to treat COVID-19 throughout the declared disaster, retroactive to March 7. Section 3082(2) made exception for "willful or intentional criminal misconduct, gross negligence, reckless misconduct, or intentional infliction of harm." An exception to that exception, however, immunized "acts, omissions or decisions resulting from a resource or staffing shortage." Section 3082(3) protected facilities and providers from liability for injury resulting from the State's response to the pandemic.

Public reaction to this broad immunity, however, soon necessitated a legislative revision. State legislators were already fielding complaints from constituents about conditions in nursing homes, and claimed to be "blindsided" by the protections that they had just enacted.[5] A bill was introduced to retract the new protections, but in the end, the Legislature merely narrowed them.[6] The Legislature amended PHL Article 30-D on August 3, 2020.[7] "Health care services" is now limited to the treatment of patients with COVID-19, and only for treatment related to the virus. And immunity no longer extends to the "arrangement" of treatment, only its provision.

Christopher J. DelliCarpini

Applying Article 30-D As It Is, and As It Was

Understandably, the courts have yet to apply Article 30-D in any form. It was cited by the defendants in *New York State Nurses Association v. Montefiore Medical Center*, where the plaintiff sued under the federal Labor Relations Management Act to enjoin Montefiore, pending mandatory arbitration, to undertake several measures to protect nurses from COVID-19.[8] Montefiore moved to dismiss, citing PHL § 3080 in arguing that the balance of the equities and public interest militated against injunctive relief.[9] The court granted the motion, but on jurisdictional grounds; the Association did not seek to preserve the status quo, but rather to obtain temporarily through litigation what it sought to obtain permanently through arbitration.[10] The court never considered whether Article 30-D indicated a public interest against those protections.

Nevertheless, Article 30-D gives some guidance to counsel for plaintiffs and defendants. The current statutory language, as well as the administrative and legislative path to this point, can help us determine whether treatment of a particular patient is protected from liability.

Which version of Article 30-D governs? The first question is, which version of Article 30-D applies to a given claim? The original version applied retroactively to March 7, 2020.[11] The amended version, however, took effect on August 3.[12] Conduct from March 7 to August 2, 2020, therefore, is still governed by the original, broader protections. This was a concession to obtain passage of the amendments, though it did not go down well with some supporters.[13]

To be clear, EO 202.10 does not affect the application of Article 30-D. It only suspended certain sections of the Education Law; neither it nor any subsequent executive order mentions Article 30-D. EO 202.10's grant of absolute immunity as to recordkeeping requirements, however, on its face applied "Notwithstanding any law or regulation to the contrary" until the executive order lapsed on April 22, 2020.

Was the treatment "health care services?" Whichever version applies, the next question is whether the conduct alleged related to "health care services." Originally, Section 3081(5) defined this term to include services provided by a "health care facility" or "health care professional"[14] that relate to:

a. the diagnosis, prevention, or treatment of COVID–19;
b. the assessment or care of an individual with a confirmed or suspected case of COVID-19; or
c. the care of any other individual who presents at a health care facility or to a health care professional during the period of the COVID-19 emergency declaration

As amended, "health care services" now consists of:

a. the diagnosis or treatment of COVID–19; or
b. the assessment or care of an individual as it relates to COVID–19, when such individual has a confirmed or suspected case of COVID–19.

It would appear, therefore, that as of August 3, 2020, Article 30-D does not apply to preventative measures, or to treatment for conditions other than COVID-19. That may mean, for example, that patients admitted after the amendment for conditions other than the virus who contract COVID-19 during their admission may not be precluded from bringing suit.

Were the services "in accordance with applicable law?" If the treatment at issue constitutes "health care services," then the next question is whether those services were, under Section 3082(1)(a), "in accordance with applicable law." The original statute conferred immunity where:

> the health care facility or health care professional is arranging for or providing health care services pursuant to a COVID-19 emergency rule or otherwise in accordance with applicable law

Though it received little to no media attention, this provision was subtly amended:

> the health care facility or health care professional is providing health care services in accordance with applicable law, or where appropriate pursuant to a COVID-19 emergency rule

As mentioned above, "arranging" for health care services is no longer immunized. Also, the conduct alleged must have been in accordance with applicable law unless it conformed to a "COVID-19 emergency rule." The former would appear to include statutes and regulations not then suspended by executive order, as well as any additional requirements imposed by executive order. Determining just what law applied at the time of the conduct alleged, however, will require digging through the executive orders in effect at the relevant time.

Were the services "in support of the state's directives?" Another interesting requirement, in Section 3082(1)(b), is that the treatment at issue must also be "in support of the state's directives." Article 30-D does not make clear what are and are not "directives." Section 3081(8)'s definition of "COVID-19 emergency rule," however, suggests that at least the Governor's executive orders are included. This is not to say that running afoul of an executive order is necessarily evidence of negligence, only that Article 30-D will not protect such conduct.

Were services rendered "in good faith?" Section 3082(c) also requires that the treatment have been rendered "in good faith." Article 30-D does not define the term, but Black's Law Dictionary defines "acting in good faith" to mean "Behaving honestly and frankly, without any intent to defraud or to seek an unconscionable advantage."[15] Any attempt to conceal or misrepresent treatment, therefore, may support an argument that the treatment was not provided in good faith.

See COVID-19, Page 23

PROGRAM C

Pre-registration is REQUIRED for all Academy programs. Go to nassaubar.org and click on CALEN CLE material, forms, and zoom link will be sent to pre-registered attendees 24 hours before pr offered via ZOOM unless otherwise noted.

OCTOBER 6
Dean's Hour: Navigating the New Financial World for Clients
Program sponsored by NCBA Corporate Partner Champion Office Suites
12:15—1:15PM via ZOOM
1 credit in professional practice

OCTOBER 6
Collaborative Dispute Resolution for LGBTQ Families
5:30—6:45PM via ZOOM
1 credit in diversity, inclusion and elimination of bias; .5 credits in professional practice

OCTOBER 8
Aging in the Legal Profession
5:30—7:30PM via ZOOM
2 credits in ethics

OCTOBER 15
Dean's Hour: Considerations in Negotiating Contractual Indemnification Clauses
Program sponsored by NCBA Corporate Partner Champion Office Suites
12:30—1:30PM via ZOOM
1 credit in professional practice
Skills credits are also available for newly admitted attorneys

OCTOBER 15
Recent Changes in Election Law
3:30—5:15PM via ZOOM
2 credits in professional practice
Skills credits are also available for newly admitted attorneys
**Program is open to the general public. Must pre-register.

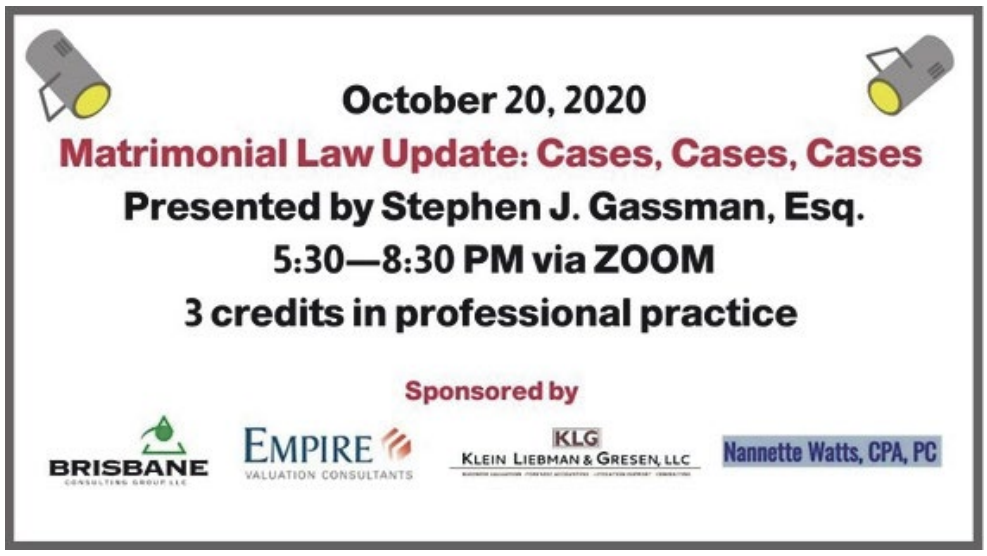
OCTOBER 19
Dean's Hour: Consideration in Financing Community Land Trusts
Program sponsored by NCBA Corporate Partner Champion Office Suites
1:00—2:00PM via ZOOM
1 credit in professional practice
Skills credits are also available for newly admitted attorneys

OCTOBER 21
Dean's Hour: Religious Exemptions from Vaccinations
Program sponsored by NCBA Corporate Partner Champion Office Suites
12:45—1:45PM via ZOOM
1 credit in professional practice
Skills credits are also available for newly admitted attorneys

OCTOBER 23
Criminal Law and Procedure Update 2020
1:00—4:00PM via ZOOM
2.5 credits in professional practice; .5 in ethics
**Program free to Nassau 18B panelists. Must pre-register.

OCTOBER 27
Business of Law Lecture Series Presents: Dean's Hour: Remote Practice Management
Program sponsored by NCBA Corporate Partner Champion Office Suites
12:30—1:30PM via ZOOM
1 credit in professional practice
Skills credits are also available for newly admitted attorneys
Zoom networking precedes program from 12:00—12:30PM

OCTOBER 28
Attorney Discipline Procedure
3:00PM—4:15PM via ZOOM
1.5 credits in ethics



OCTOBER 29
Dean's Hour: Saga of Curt Flood—The Epic Legal Struggle Against the Reserve Clause and the Affirmation of the African-American Athlete
Program sponsored by NCBA Corporate Partner Champion Office Suites
12:30—1:30PM via ZOOM
1 credit in diversity, inclusion and elimination of bias

OCTOBER 30
Dean's Hour: Restitution: Tax Considerations and the TCJA
Program sponsored by NCBA Corporate Partner Champion Office Suites
11:00AM—12:00PM via ZOOM
1 credit in professional practice
Skills credits are also available for newly admitted attorneys

NOVEMBER 6
Dean's Hour: Social Media Ethics Issues
Program sponsored by NCBA Corporate Partner Champion Office Suites
12:30—1:30PM via ZOOM
1 credit in ethics

NOVEMBER 9
United States Supreme Court: Where Pop Art, Culture and Law Meet
5:15—7:00PM via ZOOM
1 credit in diversity, inclusion and elimination of bias; 1 credit in professional practice

NOVEMBER 10
Dean's Hour: Settlement of Discrimination Cases—Tax Considerations
Program sponsored by NCBA Corporate Partner Champion Office Suites
11:00AM—12:00PM via ZOOM
1 credit in professional practice
Skills credits are also available for newly admitted attorneys

NOVEMBER 12
Dean's Hour: Mission Continues—Nassau County Veteran's Treatment Court
Program sponsored by NCBA Corporate Partner Champion Office Suites
12:00—1:00PM via ZOOM
1 credit in professional practice
Skills credits are also available for newly admitted attorneys

NOVEMBER 13
Dean's Hour: What Happens to Your Debt When You Die?
Program sponsored by NCBA Corporate Partner Champion Office Suites
12:15—1:15PM via ZOOM
1 credit in professional practice
Skills credits are also available for newly admitted attorneys

NOVE
Cold Nos
Pets
5:30—8:3
3 credits
**Progra
Skills cre

NOVE
Business
Dean's H
Program
Office Su
12:30—1
1 credit i
Skills cre
**Zoom

DECE
Dean's H
Legacy o
Program
Office Su
12:30—1
1 credit i

DECE
Why Civi
Personal
5:30—7:3
2 credits

CALENDAR

NDAR OF EVENTS to register.
ogram. All programs will be

EMBER 16

es and Warm Hearts: Laws that Protect You and Your

0PM via ZOOM
in professional practice
m is open to the general public. Must pre-register.
dits are also available for newly admitted attorneys

EMBER 17

s of Law Lecture Series Presents:
lour: Marketing Your Practice in the Time of COVID
sponsored by NCBA Corporate Partner Champion
ites
:30PM via ZOOM
in professional practice
edits are also available for newly admitted attorneys
networking precedes program from 12:00—12:30PM**

MBER 2

lour: FDR and the Courts—The Ambiguous Legal
f Franklin Delano Roosevelt
sponsored by NCBA Corporate Partner Champion
ites
:30PM via ZOOM
in professional practice

MBER 2

lity in the Practice of Law Matters: A Focus on
l Injury Law
30PM via ZOOM
in ethics

Please allow 10-14 business days for

receipt of CLE credit from the Academy

due to high volume of programming.

Please submit all CLE forms

to academy@nassaubar.org for credit.

Thank you. We look forward to

"seeing" you soon.

—Jen and Patti

HON. JOSEPH GOLDSTEIN BRIDGE-THE-GAP WEEKEND

OCTOBER 17 & 18, 2020

Offered via Zoom and in-person up to 35 people.

Dreams Deferred Among Racial Covenants

I came to adolescence in a community where the steel veil of oppression which sealed our ghetto encased within it a multitude of Black folk who endured every social ill known to humankind: poverty, ignorance, brutality and stupor. And, almost mystically beside all of it: the most lyrical strengths and joys the soul can encompass. One feels that the memories of that crucible, the Chicago South Side, must live deep within the breast of this artist. —*Lorraine Hansberry*

On March 11, 1959 the Ethel Barrymore Theater experienced the rapturous premiere of *A Raisin in the Sun*.[1] Taking its name from a line of verse from Langston Hughes,[2] Lorraine Hansberry's stirring drama was the first Broadway production written by an African American woman.

The play was staged by an African American director, Lloyd Richards, and its stellar cast included Sidney Poitier, Claudia McNeal, Ruby Dee, Diana Sands, Ivan Dixon and Louis Gossett, Jr.[3] Now a part of the American cannon, it is performed regularly and returned to Broadway as the musical *Raisin* in 1972.[4]

The reason for the play's longevity resides in its realism. *A Raisin in the Sun* movingly depicts the aspirations of the Youngers, a black family on Chicago's South Side. Their story has been treasured by audiences the world over for its poignancy as well as its authenticity.

Not surprisingly, *A Raisin in the Sun* has its basis in fact. In real-life, the playwright's family underwent a similar ordeal which resulted in a United States Supreme Court decision. The story depicted on stage was born of an ambivalent legal triumph achieved by Ms. Hansberry's own father.

I believe that one of the most sound ideas in dramatic writing is that in order to create the universal, you must pay very great attention to the specific. Universality, I think, emerges from truthful identity of what is. —*Lorraine Hansberry*

The Hansberrys, like the Youngers, were a part of the Great Migration wherein millions of African Americans left the rural South in search of a better life in the urban North. Chicago may have been the 'Promise Land' when compared to Mississippi, but it was not the Garden of Eden.

Although Jim Crow is usually associated with the states of the Old Confederacy, de facto discrimination and racial segregation were tangible realities above the Mason-Dixon line. In Chicago, African Americans were rigidly confined to the so-called 'Black Belt' on the city's South Side.[5]

Carl Augustus Hansberry, the author's father, was a successful realtor, an unsuccessful Republican candidate for Congress, and a leader in the NAACP.[6] Although his family lived a comfortable, middle-class life, the family's circumstances were circumscribed by segregation.

A status not freely chosen or entered into by an individual or a group is necessarily one of oppression and the oppressed are by their nature (i.e., oppressed) forever in ferment and agitation against their condition and what they understand to be their oppressors. —*Lorraine Hansberry*

In 1937, Carl Hansberry managed to buy a house through intermediaries. A bold move given the racial dynamics of the time; the property was located at 6140 South Rhodes Avenue in a white enclave near the University of Chicago.[7] In doing so, Mr. Hansberry took on the network of restrictive covenants which determined housing patterns in Chicago.

Rudy Carmenaty

These restrictive covenants were legally binding agreements executed among real property owners specifically designed to keep African Americans from purchasing or renting in white neighborhoods. These restrictions 'ran with land' so they were enforceable against all subsequent homeowners and/or occupants.[8] Segregation was maintained by contract and sanctioned by courts of law.

It was also enforced by racial intimidation. When the Hansberrys moved in, their new neighbors greeted their arrival with harassment and mob violence. Ms. Hansberry recalled her mother walking the floors at night with a loaded gun.[9] At one point, a brick was thrown through a window nearly striking the author when she was seven years old.[10]

All art is ultimately social; that which agitates and that which prepares the mind for slumber. The writer is deceived who thinks that he has some other choice. The question is not whether one will make a social statement in one's work—but only what the statement will say, for if it says anything at all, it will be social. —*Lorraine Hansberry*

The covenant covering the Hansberry's home was blatantly racist. It prohibited property being "sold, leased to or permitted to be occupied by a person of the colored race," denying entry other than to those employed "as janitors, chauffeurs, and house servants.[11] It should be recalled that in the play, the character of Walter Lee Younger works as a chauffeur and his wife and mother are employed as domestics.

Property owner Anna Lee brought an action in the Circuit Court of Cook County to enforce the covenant alleging "a conspiracy… to destroy the agreement by selling or leasing property in the restricted area to Negroes."[12] Mr. Hansberry countered that the covenant was invalid since a condition precedent was not met. The covenant required ninety-five percent of the designated property owners to agree, when in fact only fifty-four percent actually had.[13]

The court ruled against Mr. Hansberry citing a prior action, *Burke v Kleiman*,[14] in which the issue had been dealt with by a decree. Hansberry had played no part in *Burke*. The issue was nevertheless deemed res judicata. Mr. Hansberry then appealed his case, first to the Illinois Supreme Court and, after losing there, to the United States Supreme Court.

This is one of the glories of man, the inventiveness of the human mind and the human spirit: whenever life doesn't seem to give an answer, we create one. —*Lorraine Hansberry*

The Illinois Supreme Court went to great lengths to affirm the lower court. The majority opinion held that actually following the terms of the covenant "would have imposed an unreasonable hardship and burden."[15] The dissent saw the matter far more clearly. It stated unequivocally that the ninety-five percent requirement was not met; accordingly, there was no class and *Burke* was not binding.[16] The family was forced to move from their own home.

In 1940, the US Supreme Court, in an opinion by Harlan Fiske Stone, ruled in Mr. Hansberry's favor reversing the Illinois Supreme Court's decision.[17] *Hansberry v. Lee* is taught to this day as a landmark in the field of civil procedure. The case holds for "the fundamental due process principle that a ruling cannot bind absent class members if the representatives are inadequate."[18]

The court's determination was due to Hansberry's interests not being sufficiently protected in *Burke*. Estopping him on the grounds of res judicata based on the decree was a violation of the due process clause of the Fourteenth Amendment. It was a technical victory which resulted in five hundred homes becoming available to prospective black homeowners in Chicago.[19]

The most disappointing aspect of Justice Stone's decision was that the court did not have the courage to outlaw racial covenants outright. It would take another eight years for the Supreme Court to declare such covenants unconstitutional because they necessitated the public enforcement of a private contract.[20] In 1968, Congress passed the Fair Housing Act prohibiting discrimination in the sale, rental, and financing of housing.[21]

It is in the nature of men to take life for granted; only the absence of life will seem to you the miracle, the greatest miracle—and by the time you understand that it should be the other way around—well, it will be too late,it won't matter then. —*Lorraine Hansberry*

The ambivalent decision rendered in *Hansberry v Lee* prove to be a pyrrhic victory for Carl Hansberry. Ms. Hansberry remembered her father as "typical of a generation of Negroes who believed that the 'American way' could successfully be made to work to democratize the United States."[22]

Although he won his case in the Supreme Court, "he saw that after such sacrificial efforts the Negroes of Chicago were as ghetto-locked as ever."[23] This struggle exacted a considerable psychic toll. It was an experience that left him unreconciled with all his prior aspirations.

Carl Hansberry, believing that American racism offered no real choice and few opportunities, became an exile. By 1946, he left the United States for Mexico City. He was seeking a new life where his family could find a dignity denied them in their native land. He died unexpectedly in Mexico of a cerebral hemorrhage at the age of fifty.[24]

He had once believed that prejudice could be overcome by effort and education. Like Walter Lee, he felt trapped by the grim realities of discrimination and prejudice. Carl Hansberry's struggles and his untimely death had a profound impact on his daughter.

I wish to live because life has within it that which is good, that which is beautiful, and that which is love. Therefore, since I have known all of these things, I have found them to be reason enough - and I wish to live. Moreover, because this is so, I wish others to live for generations and generations and generations and generations. —*Lorraine Hansberry*

A Raisin in the Sun takes place in the 1950's, nearly two decades after *Hansberry v Lee* and five years after *Brown v Board of Education*. Sixty years later, the neighborhood surrounding 6140 South Rhodes Avenue is predominantly black in a city where housing is still essentially segregated by race.[25]

There is little doubt that as long as this marvelous play is performed, audiences will continue to draw strength and resolve from the Youngers. But the question must be asked: does the play retain its resonance due to the timeless quality of the writing or is it because the underlying issue it portrays remains unresolved?

The brilliance of the script aside, the concerns raised by the play continue unabated demanding a resolution beyond the merely dramatic. The audience remains conscious that so long as individuals such as Carl Hansberry face persistent discrimination, the story of the Youngers will touch a raw nerve that runs throughout American society.

As for Lorraine Hansberry, she died in 1965 at the age of 34. A life cut short by pancreatic cancer; it was a staggering loss for the theater. But the prominence of *A Raisin in the Sun* has tended to obscure other aspects of her legacy. Her voice, all these years later, remains perpetually vibrant as she will forever be "young, gifted and black."[26]

Rudy Carmenaty serves as a Bureau Chief in the Office of the Nassau County Attorney, is the Director of Legal Services

See DREAMS, Page 19

First Ever Member Appreciation BBQ at the Bar Drive-By

Wednesday, September 16, 2020

Although this year was not our typical BBQ at the Bar due to the COVID-19 pandemic, we would like to thank all of our Members and Corporate Partners who attended our first-ever BBQ at the Bar Drive-By and donated non-perishable goods to our food drive. We missed you and cannot wait to see you again soon. Here's to the 2020-2021 Bar year!

Special thanks to our Corporate Partners for helping to make this special event happen:
AssuredPartners Northeast, Regina Vetere
Champion Office Suites, Roger Kahn
PrintingHouse Press, John Farrell
RealtimeReporting Inc., Ellen Birch
Tech ACS, Mauricio Vides and Juan Vides
Tradition Title Agency, Karen Keating

Photos by Hector Herrera

Assistance ...

Continued From Page 1

fearful thoughts, being irritable and lacking patience, or engaging in other unhealthy or compulsive behaviors should be assessed regularly.

Members of the LAP Committee also discussed "Ten Tips to Stay Sane," which included: 1) create a space to do work and a space to relax; 2) manage expectations of ourselves and others; 3) create a routine; 4) set boundaries; 5) practice tolerating uncertainty; 6) strengthen self-care; 7) reach out to others; 8) be of service to others; 9) do something that you enjoy; and 10) create a gratitude list. These tips still apply today, even as we venture from home and back into a work setting.

In addition to personal self-care, LAP has also spoken about the importance of professional self-care. It is important to ensure you have the technological tools to succeed at home, and to stay current on the executive orders, court procedures, judge's rules, and availability. It is important to be realistic about what we can and cannot accomplish in our practices given that our "new normal" is changing week by week, without much notice.

As we continue to care for ourselves, we must look to our colleagues and clients to ensure that they are doing well under the circumstances. Continuing to collaborate with colleagues will reduce feelings of isolation. This can be achieved by continuing to hold virtual meetings regularly with colleagues. If your office has reopened, hold a socially distant, in-person meeting to reignite the feelings of teamwork and collegiality.

As for clients, it is crucial to maintain contact with them and continually educate them on their legal options and rights, which frequently change pursuant to different executive orders and court rules. Being flexible is key, as legal plans and strategies change. We must also manage their expectations and anxieties about how the pandemic is affecting their case, prolonged delays, and other complications while assuring them that you are always available to assist them, in good times and in bad times.

Seeing positive changes has been encouraging, such as restaurants, offices, and schools reopening, in part or in whole, and the numbers of infections and deaths decreasing in New York. However, we are all still struggling to adjust to new versions of "normal" each week and each month.

Participants in LAP Town Hall described that once they got into a groove, managing the new demands of working from home and caring for young children, they were told that everything is changing again. Around June 2020, many of us were told that offices are reopening, just as we had finally created and developed a routine. Not only were camps closed for the summer, but many were told that their child's school is reopening in September with new safety protocols and schedule changes to navigate, all while managing existing clients, attending virtual court appearances, bringing in new business, and collecting receivables.

These changes—often sudden and with little notice—can cause stress and anxiety. Learning coping strategies is key to managing the constant changes to our daily lives. Effective coping strategies include knowing when to set boundaries, recognizing triggers, taking time out to walk or exercise, eating a well-balanced diet, and getting enough rest. It is also critical to know when to reach out for help, and so often do attorneys have trouble reaching out for assistance.

If you find that you are having difficulty managing your thoughts or you are concerned about the amount that you are drinking, eating, or you are engaging in other compulsive behaviors, you may have a problem for which there is help. If you find that you are sad or anxious most of the time, are having difficulty sleeping, are struggling with personal and professional relationships, the Lawyer Assistance Program is here for you. LAP—along with members of the Lawyer Assistance Committee—provide free, confidential services to the legal community. These services include peer support, crisis intervention, evaluation, referrals, professional supportive counseling, outreach, education, prevention, and wellness programs. Eckhardt is currently providing confidential counseling services via Doxy.me, a HIPAA compliant secure video platform.

LAP is committed to helping members of the legal community stay healthy and productive during these challenging times. Contact LAP at (516) 512-2618 or eeckhardt@nassaubar.org for help. The Suicide Prevention Hotline is (800) 273-8255 or can be texted at 741741.

Thank you to Jamie Rosen, past co-chair of the NCBA Mental Health Law Committee, for her contributions to this article.

The Glorious RBG

As the *Nassau Lawyer* goes to press, the world has learned that Ruth Bader Ginsburg, Associate Justice of the United States Supreme Court, passed away on the evening of September 18, 2020. Although she was small in stature, she was a giant of the law. Her accent may have been pure Brooklyn, but her words were always measured, profound, and lasting.

The daughter of Jewish immigrants, she died on the eve of Rosh Hashanah, the Jewish New Year, and like a ram's horn, during her eighty-seven years she breathed new life into American jurisprudence, becoming a clarion call for equality before the law. She once asked: *"What is the difference between a seamstress and a Supreme Court Justice?"* Her answer was short and sweet: *"One generation."*

Her rise to the summit of the legal profession was unprecedented. Despite being tied for first in her class when she graduated from Columbia Law School in 1959, no Manhattan law firm would hire her because she was a woman. She was undaunted by the rampant sexism of the day and became a passionate advocate for those discriminated against on the basis of gender.

During more than forty years on the federal bench—first on the U.S. Court of Appeals for the D.C. Circuit and, since 1993, as a Justice on the U.S. Supreme Court—Justice Ginsberg served as a distinguished jurist on the order of Holmes, Cardozo, Brandeis, and Thurgood Marshall.

Her written decisions consume twenty-seven volumes of the United States Reports. Justice Ginsburg's opinions were always thoughtful, well-reasoned, elegant, and lucid. Whether one agreed or disagreed with the outcome, there was no denying her ability to speak directly to the issues confronting the actual people before the court.

Rhoda Andors

Rudy Carmenaty

Above all else, she was a touchstone for those who believe in equal rights, civility, and the values inherent in our common humanity. As a litigator during the 1970's, she was the architect of a legal strategy designed to secure gender equality for a generation of women then coming of age, as well as for generations of Americans yet to come.

Her clients were not the rich nor were they powerful. One was a female Air Force lieutenant seeking a military housing allowance routinely provided to male officers. Another was a widower from New Jersey, wanting to care for his young son who was denied Social Security survivor benefits. She would argue six gender discrimination cases before the Supreme Court, winning all but one.

As a justice on the Supreme Court, perhaps her majority opinion in *United States v. Virginia* can serve as her testament.[1] In this landmark 1996 decision, the Virginia Military Institute, the last all-male state-funded college in the country, was forced to accept women cadets whom it had previously denied admission.

Applying the Fourteenth Amendment's Equal Protection Clause, the Court invalidated all laws, both federal and state, which in Justice Ginsburg's telling prose deny "women, simply because they are women, full citizenship status—equal opportunity to aspire, achieve, participate in and contribute to society based upon their individual talents and capacities." [2]

Her dissent in *Ledbetter v Goodyear Tire & Rubber Co.* stands as another example of her contribution to American law.[3] Justice Ginsberg had intimate knowledge of disparities in pay based on gender. When she was a law professor at Rutgers, she was paid less than her male counterparts because her husband was an attorney at a New York law firm.[4]

The Court was split 5-4, and she saw the majority's decision as a "cramped" interpretation of Title VII of the 1964 Civil Rights Act, "incompatible with the statute's broad remedial purpose."[5] She stated that her colleagues either were not comprehending or being indifferent to "the insidious way in which women can be victims of pay discrimination."[6]

She concluded her forceful dissent noting that "the ball is in Congress' court…. the Legislature may act to correct this Court's parsimonious reading of Tittle VII."[7] Two years later, the Congress amended the 1964 Civil Rights Act with the Lilly Ledbetter Fair Pay Act. The new law automatically resets the 180-day statute of limitations at issue in this case "each time wages, benefits, or other compensation is paid."[8]

With her soft-spoken dignity and fierce intellect, she also became a cultural icon of nearly inconceivable proportions. This is unique for any judge, and it truly set her apart. Her pop icon status was on full display when she was asked how she felt about being linked with the rapper the Notorious B.I.G. She impishly noted that since both were born and bred in Brooklyn, they had a lot in common.

It would be as the "Notorious RBG" that she would become known to the wider world. The most unlikely of media sensations, Justice Ginsburg was as ubiquitous in the public's consciousness as she was brilliant on the court. And with her extensive collec-

See RBG, Page 23

NCBA 2020-2021 Corporate Partners

Nassau County Bar Association Corporate Partners are committed to providing members with the professional products and services they need to succeed. Contact the Corporate Partner representatives directly for personalized service.

APPELLATE SERVICES PROVIDERS

PHP PrintingHouse Press
John Farrell
(212) 624-9985
jfarrell@phpny.com

Since 1970, PHP has worked diligently to be the industry's leading appellate services provider delivering innovative solutions that address the needs of clients as well as the appellate industry at large.

PHP is a proud corporate partner of WE CARE, the nationally recognized fund of the Nassau Bar Foundation, the charitable arm of the Nassau County Bar Association.

COURT REPORTING SERVICES

Realtime Reporting
Ellen Birch
(516) 938-4000
ebirch@realtimereporting.com

Realtime Reporting, Inc. is a national court reporting staff that provides reliable court reporting and litigation support services for depositions, examinations before trial, arbitrations, hearings and meetings, at anytime and anywhere in the United States. Attorneys, administrators and staff trust Realtime to manage all their court reporting, transcription and litigation support needs.

Realtime Reporting prides itself on its exclusive Three-Point Quality Control System. Each transcript is reviewed three different times, meeting specific criteria before it is declared final and ready for shipment. Realtime has brought back old-time, personal service that allows all clients to feel confident that their specific and unique needs will be met. Realtime Reporting has been voted Best Court Reporting Firm on Long Island for two years in a row. Realtime Reporting works with PrintingHouse Press to provide full appellate services.

Scheduling court reporters, videographers, interpreters and conference rooms is made easy by submitting your request through realtimereporting.com or a quick phone call to owner Ellen Birch at (516) 938-4000. Ellen is a recipient of the WE CARE Stephen Gassman Award.

INSURANCE FOR LAWYERS

AssuredPartners Northeast, LLC
Regina Vetere
(631) 844-5195
regina.vetere@assuredpartners.com

AssuredPartners Northeast provides guidance and expertise in lawyers professional liability and other business and personal insurance to NCBA members. AssuredPartners' long-standing proficiencies in health benefits, life insurance, disability insurance, long-term care, cyber liability, employment practices liability, 401(k) and retirement planning are now being offered to the Nassau County Bar Association and all of its members.

AssuredPartners Northeast is a full-service insurance agency offering comprehensive asset protection solutions for businesses and individuals. Headquartered on Long Island in Melville, with offices nationally and internationally, AssuredPartners offers the market clout of a large national agency—with the local level of service that the members of the Nassau County Bar Association expect and deserve.

TITLE SEARCHES, DEEDS AND TRANSFERS

Tradition Title Agency
Karen Keating
(631) 328-4410
kkeating@traditionta.com

Tradition Title Agency, Inc. is a full-service title company committed to providing law firms with the highest quality of title and other services in a manner that exhibits the greatest standards of professionalism and dedication. Tradition takes great pride in providing title insurance for all residential and commercial real estate.

Tradition is a certified women-owned business. Founder Karen Keating has more than 40 years' experience in the title insurance profession.

Tradition is licensed in New York, New Jersey, and Pennsylvania and writes for First American, Old Republic, and WFG. Tradition also offers an array of CLE classes through the Nassau Academy of Law.

VIRTUAL OFFICE SPACE AND BUSINESS SERVICES

Champion Office Suites
Roger Kahn
(516) 873-8880
rogerk@virtualofficeny.com

Champion Office Suites is the Ready-Office Solution providing clients with newly decorated office space and conference rooms by the hour, the day, the week, and the month, including telephone reception services, address and mail services, mail forwarding, videoconferencing, and more.

Clients enjoy all of the image and support of full-time office space without the high-overhead, inflexible/long lease terms, and maintenance headaches. Champion is ideal for remote workers, work-from-home professionals, and attorneys looking for an inexpensive way to still have first-class office space in a Class-A location.

WEB DESIGN AND SEARCH OPTIMIZATION SERVICES

Tech ACS Corp.
Juan Vides
(212) 202-1952
info@techacs.com

TechACS Corp. offers a range of web design, web development, and promotional services including Long Island web design, logo design, web development, Ecommerce design, and online advertising.

The Tech ACS Corp. creative team specializes in designing dynamic, interactive websites that will represent your brand and build your business's presence online. Our one-on-one consultative approach allows us to collaborate with you to develop a customized plan for your website, and we utilize the latest technologies and design concepts to help your business outshine the competition. TechACS offers tailored creative solutions to give your business a professional, eye-catching appearance to drive traffic and increase sales.

NCBA CORPORATE PARTNERS 2020-2021

Nassau County Bar Association Corporate Partners are committed to providing Members with the professional products and services they need to succeed.

AssuredPartners NORTHEAST Insurance for Lawyers

CHAMPION OFFICE SUITES

PHP

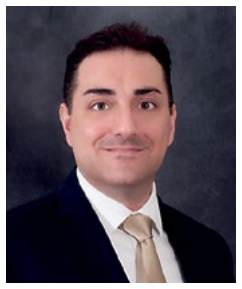
RealtimeReportingInc. *National Court Reporting Services*

TECHACS

Tradition Title Agency

Pro Bono Attorneys of the Month


Andrew Thaler


Adam D'Antonio


Harold Somer


Stuart Gelberg

By Susan Biller

Andrew Thaler, Adam D'Antonio, Harold Somer and Stuart Gelberg

Since its inception in 1981, Nassau Suffolk Law Services Volunteer Lawyers Project (VLP), in cooperation with the Nassau County Bar Association (NCBA), has involved the most dedicated private attorneys as partners in its quest to meet the civil legal needs of our community's most vulnerable citizens. Approximately 30 years ago, the VLP collaborated with the NCBA to launch the Bankruptcy Project. This highly successful free bankruptcy clinic continues to serve hundreds of clients per year, with bi-monthly screenings usually held at the NCBA. These screenings are staffed by experienced volunteer bankruptcy attorneys. They assist clients seeking to relieve oppressive financial burdens and gain a fresh start.

This year, COVID-19 has wrought havoc upon our community and posed unprecedented challenges to the delivery of legal services to these low-income, disabled, and disadvantaged individuals. Our in-person clinics could not be conducted. Nevertheless, four of our dedicated volunteer attorneys came forward immediately. They were able to quickly adapt their screenings to virtual mode, conducting most of their meetings by telephone or Skype, and exchanging documents via email when necessary. During the most stressful and unnerving periods of the pandemic, these attorneys put aside their own personal challenges to ensure that no eligible client would be left adrift or feel abandoned.

Accordingly, we are privileged to recognize **Andrew Thaler, Adam D'Antonio, Harold Somer,** and **Stuart Gelberg** as our most recent Attorneys of the Month.

We would like to share some of these attorneys' thoughts on what their pro bono service means to them.

Andrew Thaler

Andrew Thaler is in private practice in Westbury, focusing on bankruptcy, debtor, and creditor rights, and trustee representation. He is a past Chair of the NCBA Bankruptcy Committee, and one of the founding members of the Bankruptcy Clinic back in 1990. Since that time, he has regularly attended the clinic, and has assisted with filing many pro bono Chapter 7 Bankruptcy matters for these clients. Over the past 10 years, he has volunteered hundreds of hours and handled 94 cases for VLP clients.

He reflects, "Unfortunately, many of us can only truly count our blessings when we see the suffering of others. I have interviewed people whose lives were always challenged due to poverty caused by health and mental issues. Others had some or even a high level of success only to face some life altering event beyond their control which changed their lives. Knowing that I can do just a little bit with my time and have something positive happen for these people is rewarding. It gives pause to reflect on my own blessings, which are many. Getting a heartfelt thank you from someone you helped is a great feeling, but just knowing that I did a good deed is all that matters."

He also enjoys meeting other attorneys at the clinics because it provides an opportunity to share thoughts on legal matters and to connect personally and professionally.

Adam D'Antonio

Adam D'Antonio is in private practice in Garden City, focusing on elder law and guardianship, trusts and estates, and bankruptcy. He first worked with Nassau/Suffolk Law Services as a law student, and since his admission has been involved in the Nassau VLP Bankruptcy Clinic and the Advanced Directives Initiative, as well as the Suffolk Pro Bono Project's Social Security/Disability program. Over the past 10 years, he has assisted on 53 VLP pro bono matters, volunteering over 100 hours to needy clients.

During the past 13 years of association with the NCBA, he served as a Board Member and a Chair of the Membership and Community Relations Committees. He was also among the first group of recipients of the Access to Justice Award for pro bono service. In 2019, he received the Board of Directors Award for Outstanding Service to the NCBA.

He feels that "Serving as a volunteer attorney is extremely rewarding because we assist individuals who would otherwise be intimidated by or prohibited from seeking legal advice due to the inability to afford consultation fees. These people are often overwhelmed and confused. It's a wonderful feeling to see their concerns ease after a consultation."

He believes that we will begin to see more COVID related concerns as forbearance and foreclosure moratoriums come to an end. "The next few months would be a great time for new attorneys to become involved with the program."

Harold Somer

Harold Somer is in private practice in Westbury, focusing in the area of bankruptcy and debtor/ creditor rights. Somer was also one of the founders of the VLP/NCBA Bankruptcy Panel in 1990, and he has continued to serve regularly since that time. Over the past 10 years, he has donated several hundred hours and assisted over 163 VLP clients both screening and filing Chapter 7 petitions. He also volunteers at the NCBA Mortgage Foreclosure Consultation Clinic. He has garnered numerous awards, including the New York State Bar Association President's Pro Bono Service Award in 2015.

Somer feels that every client deserves to be treated with compassion and dignity. During these COVID times, many marginalized individuals are even more isolated, and unfortunately cannot get the same level of comfort from virtual communication. Nevertheless, his keen desire to give back to the community propels him toward making a meaningful connection and giving each client peace of mind.

In his spare time, Somer and his wife started Hurley's Heart Bulldog Rescue, which is dedicated to rescuing and fostering English Bulldogs until they find forever homes.

Stuart Gelberg

Stuart Gelberg is a consumer and business bankruptcy attorney in private practice in Garden City. In addition, he handles commercial litigation and previously served for over twenty years as a trustee in Chapter 13 bankruptcy matters. He has also been a dedicated volunteer with the VLP for more than two decades. He has represented approximately 509 pro bono clients in *both* Nassau and Suffolk counties over the past 10 years, logging in countless volunteer hours. Fittingly, he has been named Pro Bono Attorney of the Month on several past occasions.

Gelberg considers it the responsibility of each attorney to provide pro bono services to the community. He is glad to fulfill this opportunity through the VLP, and gratified when his clients tell him that he has made a difference in their lives. "I am grateful for the opportunity to make a lasting impression. Pro bono clients remember the service and expertise you provide them forever."

In recognition of these four attorneys' extraordinary commitment to Nassau County's neediest citizens especially in these trying times, the Volunteer Lawyers Project, along with the Nassau County Bar Association, are pleased to honor Andrew Thaler, Harold Somer, Stuart Gelberg and Adam D'Antonio as our latest Pro Bono Attorneys of the Month.

The Volunteer Lawyers Project *is a joint effort of* ***Nassau Suffolk Law Services*** *and the* ***Nassau County Bar Association,*** *which, for many years, have joined resources toward the goal of providing free legal assistance to Nassau County residents who are dealing with economic hardship.* ***Nassau Suffolk Law Services*** *is a nonprofit civil legal services agency, receiving federal, state and local funding to provide free legal assistance to Long Islanders, primarily in the areas of benefits advocacy, homelessness prevention (foreclosure and eviction defense), access to health care, and services to special populations such as domestic violence victims, disabled, and adult home resident. The provision of free services is prioritized based on financial need and funding is often inadequate in these areas. Furthermore, there is no funding for the general provision of* ***matrimonial guardianship or bankruptcy representation****, therefore the demand for pro bono assistance is the greatest in these areas. If you would like to volunteer, please contact Susan Biller at (516) 292-8100, ext. 3136, or sbiller@nsls.legal.*

President's ...

Continued From Page 4

Ginsburg, Associate Justice of the United States Supreme Court was a jurist of the highest caliber—wise, knowledgeable, passionate, dedicated, and courageous. Justice Ginsburg sacrificed much to ensure that our country as a whole, and certainly its legal system, lived up to the ideals of justice, fairness, and equality. As a lawyer, she fought tirelessly, with grace and eloquence to win equal justice for all and was the greatest of champions for women's rights. As a Justice of the Supreme Court, her valor, dedication to justice, uprightness, fairness, and goodness ensured equal justice for all.

Though her passing is a painful and tremendous loss for everyone, her legacy of unity, love, justice, hope, and peace will endure. Her greatness can never be matched." — *Hon. Linda K. Mejias, Founder and First Chair of the Diversity and Inclusion Committee*

"Justice Ginsburg was a legal pioneer of historic stature. Her legacy and vision of equality will surely impact lawyers, including members of the Association, for generations to come." — *Daivd Shargel, Federal Courts Committee*

"I was in the NCBA group that went to Washington for the Federal and Supreme Court admissions, Joel Asarch was the President and I was on the Board of Directors. Judge Ginsberg graciously welcomed our group in a private room on the day of the ceremony; although she appeared to be physically fragile, she spoke warmly to us at length with a distinct presence and glow." — *Hon. Elizabeth D. Pessala, Chair, Judicial Section Committee*

"While every judge's record is subject to analysis and criticism, it is undeniable that Justice Ginsburg gave a voice to LGBTQ people, women, and those who depended on the Court to preserve their bodily autonomy." — *Charlie Arrowood, Chair, LGBTQ Committee*

"As a Feminist, RBG's first major case was to help a man who was being treated differently because of his sex. Feminism is about equality, in all aspects. Today, the world lost a feminist champion. I encourage everyone to watch RBG or On the Basis of Sex to learn more about her. *Weinberger v. Wiesenfeld* (1975), Ginsburg represented a young widower who had been denied the Social Security survivor's benefits for which he would have qualified if he were female." —*Sherwin Figueroa Safir, Vice-Chair, Woman in the Law Committee*

"She was a pioneer and champion of women's rights, but also an inspiration to everyone who supports equality for all groups. Her wisdom and fighting spirit will be sorely missed." — *Edie Reinhardt, Chair, Woman in the Law Committee*

May she rest in peace.

Broken Promises ...

Continued From Page 6

excused only during the "period of the delay."

Parties attempting to rely upon a force majeure provision must also follow any applicable notice provisions or risk losing the ability to invoke the defense. This issue is currently the subject of litigation in the ongoing Chuck E. Cheese bankruptcy proceedings, where landlords claimed that the children's' entertainment centers failed to give notice of the force majeure event, as specifically required by lease provisions, and therefore could not rely upon the defense to avoid paying rent.[14]

Alternatives to Force Majeure

Parties to contracts without force majeure provisions are not without a remedy, as the common law doctrines of impossibility and frustration of purpose may provide a defense to nonperformance.[15]

Impossibility is exactly as it sounds, and "excuses a party's performance only when the destruction of the subject matter of the contract or the means of performance makes performance objectively impossible."[16] In addition, the impossibility must be the result of an event that was unforeseen and could not have been addressed by the contract. Similar to force majeure provisions discussed above, mere economic difficulty or burden is not enough to invoke impossibility.[17]

In some circumstances, applying these narrow standards to COVID-related nonperformance will be straightforward, as in the case of a vendor who was unable to provide event services on a specified date due to the government's stay-at-home orders. But the analysis becomes murkier in other hypothetical scenarios, such as a purchasing party to a real estate contract who claims that shut-down orders made a scheduled closing impossible. The seller may assert that the closing could have taken place virtually, or that the purchaser is now trying to escape a contract that has become an economic burden. Such factual issues are likely to be the subject of future litigations.[18]

Short of impossibility, frustration of purpose may also provide an avenue to relief. This doctrine, also narrow construed, provides a defense to nonperformance where a change in circumstances makes one party's performance virtually worthless to the other, frustrating the purpose of making the contract.[19] Further, "the frustrated purpose must be so completely the basis of the contract that, as both parties understood, without it, the transaction would have made little sense."[20] There are myriad scenarios in which parties affected by the pandemic may attempt to rely upon frustration of purpose, as illustrated by recent filings.[21]

In sum, contract parties whose ability to perform has been affected by COVID-19 should carefully examine their contracts to determine if force majeure, or the related doctrines of impossibility and frustration of purpose, provides a defense to nonperformance. Parties must keep in mind, however, the strict boundaries on the parameters of these defenses and the numerous legal and factual issues that bear on their validity.

David Shargel is a litigation partner at Bracewell LLP and Chair of the NCBA Federal Courts Committee.

1. *Kel Kim Corp. v. Cent. Markets, Inc.,* 70 N.Y.2d 900, 902 (1987).
2. Force majeure translates literally from French as "superior force."
3. *Trump on Ocean, LLC v. Ash*, 24 Misc. 3d 1241(A) (Sup. Ct., Nassau Co. 2009).
4. *Reade v. Stoneybrook Realty, LLC*, 63 A.D.3d 433, 434 (1st Dept. 2009).
5. *Prashant Enterprises Inc. v. State*, 206 A.D.2d 729, 730 (3d Dept. 1994).
6. Black's Law Dictionary (11th ed. 2019).
7. *Weber v. Rogers*, 41 Misc. 662, 665 (Sup. Ct., Oneida Co. 1903) (recognizing that "involuntary illness" has been held to be an act of God).
8. *Team Mktg. USA Corp. v. Power Pact, LLC*, 41 A.D.3d 939, 942 (3d Dept. 2007); *Kel Kim Corp. v. Cent. Markets, Inc.*, 70 N.Y.2d 900, 903 (1987).
9. *Phibro Energy, Inc. v. Empresa De Polimeros De Sines Sarl*, 720 F. Supp. 312, 319 (S.D.N.Y. 1989).
10. *Goldstein v. Orensanz Events LLC*, 146 A.D.3d 492, (1st Dept. 2017).
11. *Macalloy Corp. v. Metallurg, Inc.*, 284 A.D.2d 227, 227 (1st Dept. 2001); *Coastal Power Prod. Co. v. New York State Pub. Serv. Comm'n*, 153 A.D.2d 235, 240 (3rd Dept. 1990).
12. *Beardslee v. Inflection Energy, LLC*, 904 F. Supp. 2d 213, 220 (N.D.N.Y. 2012).
13. *LIDC I v. Sunrise Mall, LLC*, 46 Misc. 3d 885, 891 (Sup. Ct., Nassau Co. 2014).
14. Mike LaSusa, *Chuck E. Cheese Landlords Say Virus No Shield From Rent*, Law360 (Aug. 18, 2020), available at https://www.rb.gy/wbbm.76
15. "New York courts do not appear to recognize commercial impracticability as a separate defense to the doctrine of impossibility; rather, impracticability is treated as a type of impossibility and construed in the same restricted manner." *Clarex Ltd. v. Natixis Sec. Americas LLC*, No. 1:12-CV-7908-GHW, 2014 WL 4276481, at *11 (S.D.N.Y. Aug. 29, 2014).
16. *D & S Restoration, Inc. v. Wenger Const. Co.*, 54 Misc. 3d 763, 767 (Sup. Ct., Nassau Co. 2016).
17. *Sassower v. Blumenfeld*, 24 Misc. 3d 843, 846–47 (Sup. Ct., Nassau Co. 2009)
18. *Lantino v. Clay LLC*, No. 1:18-CV-12247 (SDA), 2020 WL 2239957, at *3 (S.D.N.Y. May 8, 2020) (rejecting impossibility defense based on COVID-19 where government orders had only "adversely affected [defendants'] ability to make the payments").
19. *PPF Safeguard, LLC v. BCR Safeguard Holding, LLC*, 85 A.D.3d 506, 508 (1st Dept. 2011).
20. *Crown IT Servs., Inc. v. Koval-Olsen*, 11 A.D.3d 263, 265 (1st Dept. 2004).
21. *See, e.g., Banco Santander (Brasil), S.A. v. American Airlines, Inc.*, No. 20-cv-3098, 2020 WL 4926271 (E.D.N.Y. Aug. 21, 2020); *Venus Over Manhattan Art LLC v. 980 Madison Owner LLC*, No. 20-cv-03838 (S.D.N.Y. May 18, 2020).

Dreams ...

Continued From Page 14

for the Nassau County Department of Social Services, and the Language Access Coordinator for the Nassau County Executive. He is also Vice-Chair of the NCBA Publications Committee.

1. Alvin H. Marill, *The Films of Sidney Poitier* (1st ed. 1978) at 220.
2. In his poem *Harlem*, Hughes asks the question:

What happens to a dream deferred?
Does it dry up
like a raisin in the sun?

3. Marill, *supra* n.1, at 220.
4. *Id*. at 100.
5. *Lorraine Hansberry: Playwright, Activist, Important Civil Rights Figure*, (December 4, 2018) at nevablackdown.com.
6. Danielle Jackson, *The Dynamic Life of Lorraine Hansberry*, (Jan. 19, 2018) at www.shondaland.com.
7. Natalie Y. Moore, *Lorraine Hansberry and Chicago Segregation*, (Mar. 30, 2016) at www.historyreader.com.
8. Allen R. Kamp, *The History Behind Hansberry v Lee*, 20 UC Davis L. Rev. 481, at 485.
9. Lorraine Hansberry, *To Be Young, Gifted and Black*, at mijs.chicousd.org.
10. *Id.*
11. Kamp, *supra* n.8, at 485.
12. *Id*. at 481.
13. Moore, *supra* n.7.
14. 277 Ill. App. 519 (1934).
15. *Lee v Hansberry*, 24 N.E.2d 37 (Ill. 1939).
16. *Id*.
17. *Hansberry v. Lee*, 311 US 32 (1940).
18. Lyonette Louis-Jacques, *Lorraine Hansberry: Her Chicago law story*, (Mar. 6, 2013), at www.lib.uchicago.edu.
19. Moore, *supra* n.7.
20. *Shelly v Kraemer*, 334 U.S. 1 (1948).
21. History.com editors. *Fair Housing Act*, (updated Sept. 12, 2018) at www.history.com.
22. Hansberry, *supra* n.9.
23. *Id*.
24. "Carl Augustus Hansberry," at www.enacademic.com.
25. Sam Lasman, *Fighting for Home: The Roots of Raisin in the Sun*, at www.huntingtontheatre.org.
26. *To Be Young, Gifted and Black: Lorraine Hansberry in her Own Words*, is a dramatic recreation of Hansberry's life taken from the author's own writings by her former husband and literary executor Robert Nemiroff. It was posthumously produced off-Broadway and the source of an assembled autobiography. Nina Simone, a friend of Hansberry, in 1969 wrote the anthem *To Be Young, Gifted and Black* in tribute to her late friend.

In Brief

Marc Hamroff, Managing Partner at Moritt Hock & Hamroff LLP, proudly announced that counsel **Julia Gavrilov**, who practices in the areas of equipment leasing and finance, secured lending and complex commercial litigation, has been chosen as a recipient of the 2020 Secured Finance Network's (SFNet) 40 Under 40 Awards which recognizes the best and the brightest rising stars in the secured finance industry. SFNet was formerly the Commercial Finance Association, the nationwide trade association in the secured lending community.

L'Abbate Balkan Colavita & Contini, LLP proudly announces that nine of its attorneys have been recognized by *Super Lawyers*. Included as 2020 *New York Metro Super Lawyers* are NCBA Past President **Marian C. Rice** (Professional Liability—Defense), **Richard P. Byrne** (Insurance Coverage), **Douglas R. Halstrom** (Construction Litigation), **William T. McCaffery** (Professional Liability—Defense) and **Amy M. Monahan** (Professional Liability—Defense). **James D. Spithogiannis** (Professional Liability—Defense) and **Lauren Davies** (Professional Liability—Defense) have been named 2020 New York Metro Rising Stars. With great sadness, the firm acknowledges that our recently departed partner, **Anthony P. Colavita**, was again designated a *Super Lawyer* in the field of Professional Liability—Defense but, to the firm, Tony held that title even before the peer review company began its operations.

Barket Epstein Kearon Aldea & LoTurco, LLP, a boutique criminal defense, civil rights, and commercial litigation firm with offices in New York City and on Long Island, has announced that **Alexander R. Klein** has been promoted to partner after a unanimous vote of the partners. Mr. Klein will continue to lead the firm's Commercial Litigation Group and Co-Chair the Civil Rights/Personal Injury Group.

Forchelli Deegan Terrana LLP's Managing Partner, **Jeffrey D. Forchelli**, was appointed a Trustee of Wagner College, a private liberal arts college on Staten Island. He will serve a three-year term commencing September 1, 2020. Mr. Forchelli was a Trustee from 2005 to 2014, where he also served as Vice Chairman of the Board of Trustees.

Marian C. Rice

Vishnick McGovern Milizio LLP proudly congratulates three of its attorneys for being named to the *New York Metro Super Lawyers* 2020 list: managing partner **Joseph G. Milizio** (Business & Corporate Law); partner **Joseph Trotti** (Family Law); and partner **Constantina S. Papageorgiou** (Estate Planning & Probate). The firm also applauds Ms. Papageorgiou for her selection to the *Long Island Business News* "Top 50 Women in Business" 2020 list and Mr. Milizio for his appointment to the Human Rights Campaign (HRC) National Board of Governors. Mr. Trotti, head of the firm's Family & Matrimonial Law Practice and a leader of the Surrogacy, Adoption, and Assisted Reproduction; LGBTQ Representation; and COVID-19 Legal Assistance Practices, announced the launch of his new biweekly vlog, "*Family Matters*," discussing issues in these areas. Mr. Milizio, head of the firm's Business and Transactional Law and Real Estate Law Practices, was a "local expert" speaker at the *Long Island Herald Inside LI* webinar discussing the Long Island real estate market's present and future. Partner **Andrew A. Kimler**, head of the firm's Employment Law and Alternative Dispute Resolution Practices, was a featured presenter at the Home Fashion Products Association webinar on October 1, discussing employer and employee perspectives in returning to work during the pandemic. Lastly, the firm warmly congratulates associate **Phillip Hornberger** on the birth of his son.

Genser Cona Elder Law Founder and Managing Partner **Jennifer B. Cona** has announced a newly formed strategic alliance with the New Jersey Elder Law Center (NJELC) at Goldberg Law Group, headquartered in Roseland, NJ. This alliance provides clients with increased access to top-tier New Jersey resources, legal representation, and counsel. Ms. Cona is also designated as of counsel at Mandelbaum Salsburg P.C., with which Genser Cona Elder Law additionally shares a strategic alliance.

Ronald Fatoullah of Ronald Fatoullah & Associates has been recognized by *Best Lawyers*® in Elder Law, Trusts and Estates Litigation, and Trusts and Estates for 2021. Mr. Fatoullah has been recognized 14 years by *Best Lawyers*®. Throughout these unprecedented times, he has been providing educational webinars to the community as well as to professionals regarding the upcoming changes to Community Medicaid in New York and the importance of early planning.

Tenenbaum Law, P.C.'s founder **Karen Tenenbaum** and **Marisa Friedrich** spoke about NYS Residency issues for Strafford Webinars. Ms. Tenenbaum celebrated her seventh year as a *Super Lawyer* in the New York Metropolitan Area. Ms. Tenenbaum wrote an article for Davo Sales Tax regarding COVID-19 sales tax relief.

Lois Schwaeber, lawyer of The Safe Center LI, Inc. (TSCLI) announced that TSCLI has completed its acquisition of Child Abuse Prevention Services (CAPS) and will immediately rebrand the vital programming as CAPS at The Safe Center.

Managing Attorney **Annamarie Bondi-Stoddard** of Pegalis Law Group, LLC has been named the only 2021 "Lawyer of the Year" by The Best Lawyers in America© for Plaintiffs Personal Injury Litigation in Long Island.

The Secured Finance Network (SFNet) named **Theresa Driscoll** and **Julia Gavrilov,** attorneys at Moritt Hock & Hamroff (MH&H), to its Top Women in Commercial Finance list for 2020 in recognition of their outstanding achievements and leadership in the commercial finance industry.

Bond, Schoeneck & King is pleased to announce **Candace J. Gomez** has been named Co-Chair of the firm's school law practice.

The In Brief column is compiled by Marian C. Rice, a partner at the Garden City law firm L'Abbate Balkan Colavita & Contini, LLP, where she chairs the Attorney Professional Liability Practice Group. In addition to representing attorneys for 35 years, Ms. Rice is a Past President of NCBA.

Please email your submissions to nassaulawyer@nassaubar.org with subject line: IN BRIEF

The *Nassau Lawyer* welcomes submissions to the IN BRIEF column announcing news, events, and recent accomplishments of its current members. Due to space limitations, submissions may be edited for length and content.

PLEASE NOTE: All submissions to the IN BRIEF column must be made as WORD DOCUMENTS.

NCBA Sustaining Members 2020-2021

The NCBA is grateful for these individuals who strongly value the NCBA's mission and its contributions to the legal profession.

Erica Lucille Alter
Margaret Alter
Mark E. Alter
Vanessa P. Anagnostou
Michael J. Antongiovanni
Rosalia Baiamonte
Ernest T. Bartol
Howard Benjamin
Jack A. Bennardo
Hon. Maxine S. Broderick
Neil R. Cahn
Jeffrey L. Catterson
Hon. Lance D. Clarke
Alan W. Clark
Hon. Leonard S. Clark
Richard D. Collins
Hon. Catherine Eileen Daly
Hon. Joseph A. DeMaro
Michael DiFalco
Laura M. Dilimetin
John P. DiMascio Jr.
Janet Nina Esagoff
Howard S. Fensterman
Samuel J. Ferrara
Ellen L. Flowers
Thomas J. Foley
Lawrence R. Gaissert
Marc C. Gann
Eugene S. Ginsberg
Frank Giorgio, Jr.
Alan B. Goldman
Stephen F. Gordon
Hon. Frank A. Gulotta
Mary Elizabeth Heiskell
Alan B. Hodish
Carol M. Hoffman
Warren S. Hoffman
James P. Joseph
Hon. Richard S. Kestenbaum
Hon. Susan T. Kluewer
Martha Krisel
Donald F. Leistman
David I. Levine
Marilyn M. Levine
Peter H. Levy
Gregory S. Lisi
Hon. Roy S. Mahon
Mili Makhijani
Peter J. Mancuso
Michael A. Markowitz
Tomasina Cuda Mastroianni
John P. McEntee
Christopher T. McGrath
Anthony J. Montiglio
Teresa Ombres
Hon. Michael L. Orenstein
Lisa M. Petrocelli
Christian Aaron Pickney
Milan Rada
Michael E. Ratner
Marc W. Roberts
Jamie A. Rosen
Leonard M. Rosenberg
Daniel W. Russo
Jerome A. Scharoff
Stephen W. Schlissel
Hon. Denise L. Sher
Hon. Peter B. Skelos
Ira S. Slavit
Wiliam J.A. Sparks
Jill C. Stone
Sanford Strenger
Terrence L. Tarver
Danielle M. Visvader
Hon. Joy M. Watson
David Paul Weiss

To become a Sustaining Member, please contact the Membership Office at (516) 747-4070.

WE CARE

We Acknowledge, with Thanks, Contributions to the WE CARE Fund

DONOR	IN HONOR OF
Michelle and Michael Gelblat	To commemorate the wedding of Bianca Tamburello and Andrew Gelbat. A special thank you to Judge David McAndrews and Judge John Marks.
DiMascio & Associates, LLP	The appointment of Hon. Andrew A. Crecca as Administrative Judge for the Suffolk County Courts.
Samuel J. Ferrara	To commemorate the wedding of Hon. Linda K. Mejias and Dorian R. Glover.
Samuel J. Ferrara	To commemorate the wedding of Mr. & Mrs. Michael Masri.

DONOR	IN MEMORY OF
Michael and Judy Orenstein	Hon. Arthur D. Spatt
Michael and Judy Orenstein	Flory Warshawsky, wife of Hon. Ira B. Warshawsky
Hon. Peter B. Skelos	Richard Mercy
Richard and Kathy Collins	Mary Fitton, mother of Pamela Fitton
Hon. Fred J. Hirsh	Flory Warshawsky, wife of Hon. Ira B. Warshawsky
Mark Green	Martin Hayden
Mark Green	Nino Noto
Hon. Denise Sher	William Haverlin, father and father-in-law of Tim and Beth Zanchelli
Hon. Denise Sher	Maryann Carrigan, mother of F. Scott Carrigan
Joanne and Hon. Frank Gulotta, Jr.	Christy Carr

IN MEMORY OF REVEREND JAMES A. BUCARIA, BROTHER OF HON. STEPHEN A. BUCARIA AND THOMAS A. BUCARIA

Hon. Peter B. Skelos
Judith L. Powell
Kathleen Wright

Checks made payable to Nassau Bar Foundation – WE CARE

Contributions may be made online at www.nassaubar.org or by mail:
NCBA Attn: WE CARE
15th & West Streets Mineola, NY 11501

WALK FOR A WEEK WITH WE CARE

October 22 - 29, 2020

- Walk — run — jog — bike — while raising money for WE CARE!
- $40 registration fee.
- Get friends and family to sponsor you— at any denomination — for every mile you complete.
- At the end of the week, join the WE CARE Advisory Board for a Finish the Line Ceremony with prizes!

Contact Bridget Ryan at (516) 747-4070 ext. 1226 or BRyan@nassaubar.org for more information.

Vote ...

Continued From Page 3

Grading of Recommendations, Assessment, Development, and Evaluation. Information gathered from the GRADE approach will then be entered into an "Evidence to Recommendation" or EtR table. Multiple health panels will review the data. The New York legislature will recommend a mandated vaccine if benefits significantly outweigh undesirable consequences.

The analysis of a mandatory vaccine begins with the determination of whether the current issue is a public health concern. COVID-19 is a public health concern in New York. As of July 29, 2020, over 418,000 cases have been identified, and over 32,000 deaths have been reported in New York.[13]

An overriding concern is whether a COVID-19 vaccination is safe. This may only be determined by the experts. However, there is solid medical and scientific evidence that the benefits of vaccines far outweigh the risks. For example, in the past 20 years, there have been 5 reported health claims concerning a vaccine—all of which were deemed unfounded by the CDC.[14] Despite conjecture, there is no link between vaccines (or its ingredients) and autism or sudden infant death syndrome (SIDS).[15]

The most common side effects from a vaccination are pain, swelling, or redness where the shot was given, mild fever, chills, feeling tired, headaches, muscle aches and joint aches. Serious side effects from vaccines are extremely rare. For example, if 1 million doses of a vaccine are given, 1 to 2 people may have a severe allergic reaction.[16]

Any possible side effects must be balanced against the societal good that will result from a mandatory vaccine. An equitably distributed mandatory vaccine will provide valuable benefits to New York's social, economic, and public health structures. For example, the pandemic crippled New York's education system. Online education has adversely affected learning, particularly along socioeconomic lines. Households led by single-parent families, front-line workers, and those of low socioeconomic status have been disproportionately negatively affected by remote learning.[17]

A mandated vaccine will also foster herd immunity in New York. "Herd immunity occurs when enough people become immune to a disease to make its spread unlikely. As a result, the entire community is protected, even those who are not themselves immune. Herd immunity is usually achieved through vaccination, but it can also occur through natural infection."[18]

Without a vaccine, herd immunity would be achieved if 50%-80% of the population become infected with the virus. With racial and socioeconomic disparities in healthcare access, African-Americans and Latinx people will die at higher percentages compared to Caucasians. As of June 2020, New York reported deaths by race/ethnicity as follows: Black or African Americans constitute 14% of the population, but 25% of the deaths; and Hispanic or Latinos constitute 16% of the population, but 26% of the deaths.[19]

Conclusion

NYSBA's House of Delegates determines policy of the association. Its membership is composed of a large cross section of New York.[20] During its November 7, 2020 meeting, the House of Delegates will be voting to approve the Health Law section's recommendations. If approved, NYSBA will submit its recommendations to the New York legislature for review concerning a mandatory COVID-19 vaccination. Based on scientific facts and established law, it is expected that New York will pass a law mandating a COVID-19 vaccination. With legislation requiring mandatory vaccination, it is anticipated that laws will be coordinated across the states to offset any federal inaction.

Michael A. Markowitz is a member of the New York State Bar Association House of Delegates, representing NCBA.

Sarah Olsen is a second-year law student attending Hofstra University, and a member of the NCBA COVID-19 Law Student Pro Bono Program.

1. Forbes, *9 Pharmaceutical Companies Racing For A COVID-19 Vaccine* (June 16, 2020), available at https://bit.ly/3mywfGa.
2. Report of NYSBA Health Law Section Task Force on COVID-19, Appendix G, P. 82 (May 13, 2020).
3. Report and recommendations of NYSBA Health Law Section Task Force Report with revisions, App. G, 87–88 (July 1, 2020).
4. *Jacobson v. Massachusetts*, 197 U.S. 11 (1905).
5. *Id.* at 26.
6. *Id.* at 39.
7. *Id.* at 26.
8. *Id.* at 29.
9. *Viemeister v. White*, 179 N.Y. 235 (1904).
10. *McCartney v. Austin*, 31 A.D.2d 370 (3d Dept. 1969).
11. *Phillips v. City of New York*, 775 F.3d 538, 543 (2d Cir. 2015).
12. Report of NYSBA Health Law Section Task Force on COVID-19 at 60 – 61.
13. New York Times, *New York Coronavirus Map and Case Count* (July 29, 2020), available at https://nyti.ms/3hxXRr9.
14. Centers for Disease Control and Prevention, *Vaccine Safety* (updated Jan. 29, 2020), available at https://bit.ly/2Fx2UuP.
15. *Id.*
16. US Dept. Health & Human Svcs., *Vaccine Side Effects* (Updated February 2020), available at https://bit.ly/2ZH-fMWd.
17. Report of NYSBA Health Law Section Task Force on COVID-19, Appendix G, at 50.
18. Harvard Health Publishing, *Preventing the Spread of the Coronavirus* (updated July 28, 2020), available at https://bit.ly/3iBsnld.
19. COVID-19 Racial Data Tracker (June 2, 2020), available at https://bit.ly/3iBtkda.
20. NYSBA bylaws Art. V § 3 (Jan. 31, 2020).

Value ...

Continued From Page 1

meeting itself. This way, Members can rest assured that their information is securely held, and they are still able to virtually meet with their committees.

Virtual Social Events

While the pandemic has prevented Members from being able to congregate in large groups, the NCBA has a lineup of exciting virtual events and wellness seminars for all Members to attend throughout the year. We are continuing to monitor this evolving situation daily regarding future in-person events to ensure the safety of Members and staff.

Lend a Helping Hand

The NCBA has not only also adapted to assist Members, but the public too, as COVID-19 has proven to be a difficult hurdle to overcome for those in need. The NCBA has always been committed to giving back to the community, and during COVID-19, has remained dedicated to doing so. Members of the public now have an additional resource from the NCBA—the COVID-19 Helpline. Those in need can email covidhelp@nassaubar.org with any legal issue he or she may be facing due to the COVID-19 pandemic, and have that issue forwarded to a volunteer member attorney who can offer them free legal advice on how to proceed. Since its inception in April of this year, the COVID Help program has helped nearly 200 members of the public. Our community needs YOUR help. Members can volunteer on the COVID Help program. For more information, contact Ann Burkowsky at aburkowsky@nassaubar.org or (516) 747-4071.

Mental Health Services for Judges, Attorneys and Law Students

In addition to helping members of the public, the NCBA also remains committed to assisting the legal community. The Lawyer Assistance Program (LAP) has continued to assist attorneys in need as stressors and anxieties continue to rise during the pandemic. LAP services include, but are not limited to, consultations, supportive counseling, peer support, group support, stress management workshops, treatment referrals, and more. To contact LAP, call the 24-Hour Confidential Helpline for Lawyers in Need at (516) 512-2618 or (888) 408-6222, or email eeckhardt@nassaubar.org.

Join Today

To join the NCBA and take advantage of these benefits and many others, call (516) 747-4070 or visit the NCBA website at www.nassaubar.org. What are you waiting for? Join the NCBA today! We look forward to welcoming you!

Diversity ...

Continued From Page 8

Schaffer and past president Peter H. Levy.

Students learn to apply the rules of evidence, master complex fact patterns, and the importance of civility and professionalism. With fifty high schools and nearly six-hundred students participating, the Nassau contest is the largest single-county competition in the state. The NCBA program is one of few privileged to have the use of a county Supreme Court courthouse to stage the mock trials.

Mock trial is an extracurricular activity which requires hundreds of hours of preparation. The competition affords students the opportunity to sharpen critical thinking, construct legal arguments and develop oral advocacy skills geared to the rigors of the practice of law, which they are encouraged to pursue. This year, as in past years, students from public high schools, including Baldwin, Hempstead, Uniondale and Valley Stream participated in the competition.

The Student Mentoring Program, founded in 1994 by longtime bar association member Alan Hodish, is an additional NCBA pipeline program. The Student Mentoring Program primarily serves elementary and middle school students from communities of color, including Hempstead, Uniondale, and Westbury. In bi-weekly sessions throughout the school year, approximately ninety NCBA-affiliated attorneys and judges meet with students to discuss topics ranging from the practice of law to athletics to books the students are reading.

Each May the Student Mentoring Program culminates in a luncheon at Domus, providing students of color further access to the bar and the bench, making it possible for them to envision becoming attorneys themselves. Over the course of twenty-five years, thousands of students have reaped the benefits of this program and many have gone on to pursue higher education.

In the wake of the pandemic, the Student Mentoring Program was suspended, however program coordinators are working with the Hempstead Schools, and other school districts, to continue the program in a virtual format. Beginning this October, the program is intended to transition to a mock trial model, based on the case of The *People v. Goldilocks*, a lesson plan developed by The Classroom Law Project.[4]

New NCBA Pipeline Programs

As a way of opening the doors to Domus, the NCBA's Diversity and Inclusion committee partnered with Jack and Jill of Nassau County and the Nassau County Office of Youth Services to present trial re-enactments of landmark civil rights cases. These events were held in observance of Martin Luther King Day in both 2019 and 2020. The first trial re-enactment, *Meredith v. Fair*, centered upon the case that desegregated the University of Mississippi. The second re-enactment, *United States v. Schooner Amistad*, documented the seizure and subsequent release of a ship of enslaved Africans.

In both instances youth from Jack and Jill, an organization of mothers dedicated to nurturing future African American leaders, performed the roles of litigants, counsel and U.S. Supreme Court justices. The performance of the Amistad case was attended by an audience comprised of one hundred bar association members, parents and community leaders. The trial re-enactment was so well-received, that a second command performance took place at the African American Museum in Hempstead in February for Black History Month.

This past February, the NCBA's Diversity and Inclusion Committee introduced the Long Island Legal Diversity Fellowship Program (LILDFP). This is a new pipeline program for first year law students attending Hofstra, St. John s and Touro. The objective of the program is to increase the number of minority attorneys practicing at Long Island law firms.

Diversity and Inclusion committee members worked with law school career placement professionals to encourage large Long Island law firms to designate seats for minority law students in their summer associate classes. A key component of the program was to adequately prepare the students for interviews with their prospective employers.

Committee members conducted mock interviews, reviewed resumes, and offered individualized interview feedback. In spite of the pandemic, the LILDFP successfully placed several students in paid summer positions at participating firms during the summer of 2020. The LILDFP intends to continue this effort by recruiting students for summer associate positions in 2021.

The NCBA's Diversity and Inclusion committee remains committed to working with association leadership to build upon, and significantly increase, pipeline program offerings.

Planting Seeds for the Future

In the current climate, an increasing number of corporate clients are holding law firms accountable with respect to the number of diverse partners and associates they employ. Therefore, many law firms have come to appreciate that recruiting and retaining minority attorneys not only strengthens the profession, it also makes good business sense.

As pipeline programs vastly improve the career prospects of minority students, a larger pool of prospective, qualified attorneys suitable for law firm recruitment and retention are being groomed. This is a mutually beneficial situation in which the legal profession nurtures its future by planting seeds in rich, diverse soil that had previously gone untapped.

Hon. Maxine S. Broderick sits in Nassau County District Court. She is a past president of the Amistad Long Island Black Bar Association. Currently, Judge Broderick is the Chair of the NCBA's Diversity and Inclusion committee and a member of the NCBA Board of Directors. She also serves as an NCBA mentor at the Barack Obama School in Hempstead and a coach/judge for the NCBA High School Mock Trial competition.

1. ABA 2020 Profile of the Legal Profession, available at https://bit.ly/3mnMZ2y.
2. *Id.*
3. NYS Unified Court System, New York Legal Education Program, available at https://bit.ly/3kkojX8.
4. The Classroom Law Project, *People v. Goldilocks*, available at https://bit.ly/2RpQTdc.

2020-21 NCBA Committee List and Chairs

Questions? Contact Stephanie Pagano at (516) 747-4070 or spagano@nassaubar.org for more information.

ACCESS TO JUSTICE
Develops innovative programs to provide free or reduced fee access to legal counsel, advice and information.
Co-Chairs: Kevin P. McDonough and Rosalia Baiamonte
Vice Chair: Sheryl A. Channer

ADOPTION LAW
Discusses issues relating to all aspects of the adoption process, including laws and legislation.
Chair: Faith Getz Rousso

ALTERNATIVE DISPUTE RESOLUTION
Reviews innovative trends and strategies regarding alternative dispute resolution, including NCBA's Arbitration and Mediation program.
Co-Chairs: Marilyn K. Genoa and Jess A. Bunshaft

ANIMAL LAW
Focuses on animal law-related issues and their interrelationship with other areas of the law.
Chair: Kristi L. DiPaolo
Vice Chair: Florence M. Fass

APPELLATE PRACTICE
Addresses effective brief writing and oral arguments on appeal as well as developments in the law or court rules that may impact appellate practice.
Chair: Jackie L. Gross
Vice Chair: Amy E. Abbandondelo

ASSOCIATION MEMBERSHIP
Develops strategies to increase and retain membership as well as expand member services and benefits.
Chair: Michael DiFalco

BANKRUPTCY LAW
Reviews recent decisions on bankruptcy law and their implications for attorneys who represent debtors or creditors.
Chair: Neil H. Ackerman
Vice Chair: Jeannine M. Farino

BUSINESS LAW, TAX, AND ACCOUNTING
Educates members on emerging issues in corporate and tax law as well as accounting related matters, and promotes the exchange of information between attorneys and accountants.
Co-Chairs: Jennifer L. Koo and Scott L. Kestenbaum
Vice Chair: Anthony Michael Sabino

BY-LAWS
Periodically reviews and suggests appropriate changes in the current by-laws of NCBA, NCBA Fund, Assigned Counsel Defender Plan and Academy of Law.
Chair: Daniel W. Russo

CIVIL RIGHTS LAW
Explores issues related to the protection of the rights of minorities and the various civil rights legislation.
Chair: Bernadette K. Ford
Vice Chairs: Robert L. Schonfeld

COMMERCIAL LITIGATION
Provides a forum for attorneys practicing commercial litigation, including interaction with justices and support staff of Nassau County's Commercial Part. Works with other related committees and NCBA Officers and Directors on issues of corporate law affecting both litigated and non-litigated matters.
Chair: Matthew F. Didora
Vice Chairs: Jeffrey A. Miller and Christopher J. Clarke

COMMUNITY RELATIONS & PUBLIC EDUCATION
Provides speakers to schools, libraries and community organizations; conducts mock trial competition for high school students; promotes Law Day; and plans public education seminars on current topics.
Chair: Joshua D. Brookstein
Vice Chair: Ingrid J. Villagran

CONCILIATION
Provides an alternative voluntary process through which fee disputes between clients and attorneys are arbitrated.
Chair: M. Kathryn Meng
Vice Chair: Steven L. Keats

CONDEMNATION LAW & TAX CERTIORARI
Focuses on issues related to real property valuation and litigation.
Chair: Richard P. Cronin
Vice Chair: Michael P. Guerriero

CONSTRUCTION LAW
Provides a forum for discussion on topics related to construction law.
Chair: Raymond A. Castronovo

CRIMINAL COURT LAW & PROCEDURE
Reviews legislation related to the field of criminal law and procedure, and discusses problems, questions and issues pertinent to attorneys practicing in this field.
Chair: Dana L. Grossblatt
Vice Chair: Diane T. Clarke

DEFENDANT'S PERSONAL INJURY
Discusses new developments and changes in the law that affect defendants' lawyers and their clients.
Chair: Matthew A. Lampert
Vice Chair: Melissa Manna

DISTRICT COURT
Discusses issues arising from practice in District Court, and promotes dialogue between the bench and the bar with respect to issues of common concern.
Co-Chairs: S. Robert Kroll and Roberta D. Scoll

DIVERSITY AND INCLUSION
Encourages more diverse membership participation at the Bar and promotes discussion of issues related to diversity in the practice of law.
Chair: Hon. Maxine S. Broderick
Vice Chair: Rudy Carmenaty

DOMUS (HOUSE)
Oversees repairs and refurbishing of the NCBA headquarters.
Chair: Maureen Dougherty

EDUCATION LAW
Discusses topics related to the legal aspects of school systems.
Co-Chairs: John P. Sheahan and Rebecca Sassouni
Vice Chair: Abigail Hoglund-Shen

ELDER LAW, SOCIAL SERVICES & HEALTH ADVOCACY
Addresses legal issues related to health, mental hygiene and social services for the public and special population groups, including the poor, the aged and the disabled.
Co-Chairs: Katie A. Barbieri and Patricia A. Craig
Vice Chairs: Marianne Anooshian and Suzanne Levy

ENVIRONMENTAL LAW
Establishes a forum for the exchange of information regarding substantive and procedural law in the burgeoning field of environmental matters.
Chair: Nicholas C. Rigano

ETHICS
Responds to member inquiries relating to ethics and propriety of all facets of practicing law, including advertising, conflict of interest and confidential relationships.
Chair: Matthew K. Flanagan
Vice Chairs: Avigael C. Fyman and Mili Makhijani

FAMILY COURT LAW & PROCEDURE
Addresses issues that relate to the practice of law in Family Court.
Chair: Susan G. Mintz
Vice Chair: Lisa Daniels

FEDERAL COURTS
Monitors developments in federal practice and interfaces with federal judges and court personnel.
Chair: David Shargel
Vice Chair: Matthew C. McCann

GENERAL/SOLO/SMALL FIRM PRACTICE MANAGEMENT
Provides networking opportunities for general, solo and small-firm practitioners, and explores ways to maximize efficient law practice management with limited resources. Encompasses a variety of areas of practice.
Chair: Scott J. Limmer

HOSPITAL & HEALTH LAW
Considers legal issues impacting health care, hospitals, nursing homes, physicians, other providers and consumers.
Chair: Leonard M. Rosenberg
Vice Chair: Colleen C. McMahon

IMMIGRATION LAW
Discusses problem areas in immigration law.
Chair: George A. Terezakis
Vice Chairs: Lorena E. Alfaro and Alex Noel Ortiz Castro

IN-HOUSE COUNSEL
Shares information and support to assist in-house counsel and new subject matter skills.
Chair: Tagiana Souza-Tortorella

INSURANCE LAW
Reviews insurance claim procedures, insurance policies, substantive insurance law and related issues.

INTELLECTUAL PROPERTY LAW
Provides a source of information to practicing attorneys whose interests relate to patents, trademarks, copyright and other intellectual property matters.
Chair: Frederick J. Dorchak
Vice Chair: Sara M. Dorchak

LABOR & EMPLOYMENT LAW
Analyzes proposed federal and state legislation, administrative regulations, and current judicial decisions relating to employer-employee relations, pension, health and other employee benefit plans, Social Security and other matters in the field of labor and employment law.
Chair: Matthew B. Weinick
Vice Chair: Michael H. Masri

***LAWYER ASSISTANCE PROGRAM**
Provides confidential assistance to attorneys struggling with alcohol, drug, gambling and other addictions & mental health issues that affect one's professional conduct.
** Application & Presidential approval required*
Chair: Jacqueline A. Cara

***LAWYER REFERRAL**
Advises the NCBA Lawyer Referral Service; addresses policy questions regarding fees, law categories and membership. **Presidential approval required*

LEGAL ADMINISTRATORS
Provides a forum for legal administrators to share information, learn about updates to HR and labor law, gain knowledge about topics relevant to their position, and network with other administrators, while at the same time increasing visibility and understanding related to the administrator's role within law firms.
Co-Chairs: Dede S. Unger and Virginia Kawochka

LGBTQ
Addresses equality in the law and the legal concerns of the LGBTQ community.
Co-Chairs: Charlie Arrowood and Byron Chou
Vice Chair: Barrie E. Bazarsky

MATRIMONIAL LAW
Promotes the standards and improves the practice of matrimonial law.
Chair: Samuel J. Ferrara
Vice Chairs: Jeffrey L. Catterson and Karen L. Bodner

MEDICAL LEGAL
Reviews issues relating to medical malpractice litigation for plaintiffs and defendants.
Co-Chairs: Mary Anne Walling and Susan W. Darlington
Vice Chair: Christopher J. DelliCarpini

MENTAL HEALTH LAW
Provides programs on legal issues concerning mental illness and developmental disabilities, including but not limited to, capacity, civil rights, access to treatment and dual diagnosis, as well as discusses relevant statutes, case law and legislation.
Co-Chairs: Saundra M. Gumerove and Suanne Linder Chiacchiaro

MUNICIPAL LAW
Reviews trends and developments concerning zoning and planning, elections, employee relations, open meetings law, and preparation and enforcement of ordinances and local laws.
Co-Chairs: John C. Farrell and Chris J. Coschignano

NEW LAWYERS
Structured events and activities of benefit and interest to newer attorneys (within ten years of admission) and law students, including social and professional activities. Establishes support network for new lawyers.
Co-Chairs: Steven V. Dalton and Glenn R. Jersey, III

PARALEGAL
Promotes the exchange of information between paralegals and attorneys and provides and establishes a networking opportunity between paralegals and attorneys.
Co-Chairs: Maureen Dougherty and Cheryl Cardona

PLAINTIFF'S PERSONAL INJURY
Discusses new developments and changes in the law that affect plaintiff's lawyers and their clients.
Chair: Ira S. Slavit
Vice Chair: David J. Barry

PUBLICATIONS
Solicits and develops articles for the monthly Nassau Lawyer publication; advises and supports efforts of the Nassau Lawyer editor.
Co-Chairs: Christopher J. DelliCarpini and Andrea M. DiGregorio
Vice Chair: Rudy Carmenaty

REAL PROPERTY LAW
Considers current developments relating to the practice of real estate law.
Chair: Alan J. Schwartz
Vice Chair: Jon Michael Probstein

SENIOR ATTORNEYS
Members approximately 65 and older meet to discuss pertinent issues in their personal and professional lives.
Chair: Charles E. Lapp, III

SPORTS, ENTERTAINMENT & MEDIA LAW
Considers topics and factors specifically related to practice in the field of sports, entertainment and media law.
Chair: Seth L. Berman

SUPREME COURT
Provides a forum for dialogue among bar members and the judiciary on topics related to Supreme Court practice.
Chair: William Croutier, Jr.
Vice Chair: Steven Cohn

SURROGATE'S COURT ESTATES AND TRUSTS
Deals with estate planning, administration and litigation; reviews pending relevant New York State legislation; and maintains an interchange of ideas with the Nassau County Surrogate and staff on matters of mutual interest.
Chair: Brian P. Corrigan
Vice Chair: Joseph L. Hunsberger

VETERANS & MILITARY LAW
Reviews legislation and regulations associated with military law and veterans' affairs, in particular, the needs of reservists and National Guard called to active duty.
Chair: C. William Gaylor, III

WOMEN IN THE LAW
Examines current trends regarding women in the court system, and seeks to protect their rights to equal treatment.
Chair: Edith Reinhardt
Vice Chair: Sherwin Figueroa Safir

WORKERS' COMPENSATION
Discusses current legislation related to Workers' Compensation regulations and benefits.
Chair: Adam L. Rosen
Vice Chair: Brian P. O'Keefe

NCBA Committee Meeting Calendar
Oct. 1—Nov. 5, 2020

Please Note: Committee Meetings are for NCBA Members. Dates and times are subject to change. Check www.nassaubar.org for updated information.

PUBLICATIONS
Christopher J. DelliCarpini/Andrea M. DiGregorio
Thrusday, October 1
12:45 p.m.

COMMUNITY RELATIONS & PUBLIC EDUCATION
Joshua D. Brookstein
Thursday, October1
12:45 p.m.

DEFENDANT'S PERSONAL INJURY
Matthew A. Lampert
Thursday, October 1
5:00 p.m.

REAL PROPERTY LAW
Alan J. Schwartz
Wednesday, October 7
12:30 p.m.

LGBTQ
Charlie Arrowood/Bryon Chou
Tuesday, October 13
9:00 a.m.

CIVIL RIGHTS
Bernadette K. Ford
Tuesday, October 13
12:30 p.m.

LABOR & EMPLOYMENT LAW
Matthew B. Weinick
Wednesday, October 14
12:30 p.m.

EDUCATION LAW
John P. Sheahan/Rebecca Sassouni
Thursday, October 15
12:30 p.m.

DIVERSITY & INCLUSION
Hon. Maxine Broderick
Thursday, October 15
6:00 p.m.

DISTRICT COURT
Roberta D. Scoll/S. Robert Kroll
Friday, October 16
12:30 p.m

ELDER LAW SOCIAL SERVICES HEALTH ADVOCACY
Katie A. Barbieri/Patricia A. Craig
Tuesday, October 20
12:30 p.m.

PLAINTIFF'S PERSONAL INJURY
Ira S. Slavit
Tuesday, October 20
12:30 p.m.

ALTERNATIVE DISPUTE RESOLUTION
Marilyn K. Genoa/Jess Bunshaft
Tuesday, October 20
12:30 p.m.

BUSINESS LAW, TAX AND ACCOUNTING/ WOMEN IN THE LAW
Jennifer A. Koo/Scott L. Kestenbaum-Business Law/Edith Reinhardt-Women in the Law
Wednesday, October 21
12:30 p.m.

ASSOCIATION MEMBERSHIP
Michael DiFalco
Wednesday, October 21
1:00 p.m.

GENERAL SOLO SMALL PRACTICE MANAGEMENT
Scott J. Limmer
Tuesday, October 27
12:30 p.m.

MEDICAL-LEGAL
Mary Anne Walling/Susan W. Darlington
Wednesday, October 28
12:30 p.m

INTELLECTUAL PROPERTY
Frederick J. Dorchak/Sara M. Dorchak
Thursday, October 29
6:00 p.m.

PUBLICATIONS
Christopher J. DelliCarpini/Andrea M. DiGregorio
Thursday, November 5
12:45 p.m.

COMMUNITY RELATIONS & PUBLIC EDUCATION
Joshua D. Brookstein
Thursday, November 5
12:45 p.m.

We Welcome the following New Members

Attorneys
Tara Scully
Amanda Slutsky

Students
Gillad Aldad
Andrew Ben Bandini
Sabrina E. Rossi
Tiffany Hsin Wakeham

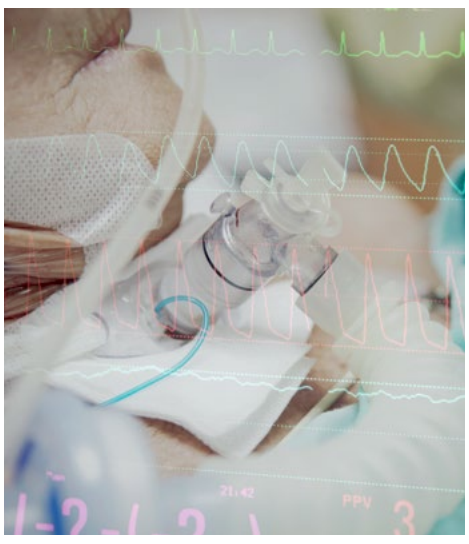
COVID-19 ...

Continued From Page 11

Seeking Balance

Legislatures constrain medical malpractice liability to find a balance between protecting patients from substandard treatment and protecting the health care industry from meritless claims. The supporters of the amendments to Article 30-D sought to strike that balance in real-time:

"The legislation that was advanced during the budget and at the height of the pandemic provided enhanced immunity to COVID-19 effected healthcare facilities and professionals. Our health care system and workers were facing an unprecedented challenge in a crisis situation and protections were needed," Majority Leader Stewart-Cousins said. "The heroic work of our health care workers has allowed us to move forward past the initial crisis stage. Therefore, it makes sense to limit the scope of immunity to ensure all New Yorkers are protected."[16]



The rapidity with which the Legislature passed and then amended Article 30-D shows that the Legislature is attentive to the pandemic. If New York's progress against COVID-19 should slow or reverse, we can expect the Legislature to at least consider further attempts to find that balance. For now, as counsel consider claims from patients and their families, we must pay close attention to the law as it has changed, and continues to change, to respond to this crisis.

Christopher J. DelliCarpini is an attorney with Sullivan Papain Block McGrath Coffinas & Cannavo P.C. in Garden City, representing plaintiffs in personal injury matters. He can be reached at cdellicarpini@triallaw1.com.

1. 83 A.D.3d 18, 23 (2d Dept. 2011).
2. 9 NYCRR § 8.202.10.
3. 9 NYCRR § 8.202.
4. L.2020 ch. 56 pt. GGG.
5. Amy Julia Harris et al., "Nursing Homes Are Hot Spots in the Crisis. But Don't Try Suing Them." The New York Times (May 13, 2020), available at https://nyti.ms/2YYo8t2.
6. Jesse McKinley & Luis Ferré-Sadurni, "Blame Spreads for Nursing Home Deaths Even as N.Y. Contains Virus," The New York Times (Jul. 23, 2020), available at https://nyti.ms/30FrAbi.
7. L.2020 ch.132.
8. Complaint, No. 1:20-cv-03122-JMF, 2020 WL 1915671 (Apr. 20, 2020).
9. Defendant's Mem. of Law, 2020 WL 2771890, 2771896 (Apr. 23, 2020).
10. Memorandum Op. & Order, ECF No. 33, 1:20-cv-03122-JMF (May 1, 2020).
11. L.2020 ch. 56 pt. GGG § 2.
12. L.2020 ch. 132 § 3.
13. McKinley, *supra* n.6.
14. As defined in Section 3081(3) and (4), these terms encompass anyone authorized by statute or executive order to provide health care in New York, including nursing homes and volunteers from out-of-state.
15. UCC § 1-201(b)(20)("'Good faith' means honesty in fact in the transaction or conduct concerned.")
16. "Senate and Assembly Majorities Advance Legislation Limiting Immunity for Health Care Services," New York State Legislature (July 23, 2000), available at https://bit.ly/2QD0EnP.

RBG ...

Continued From Page 16

tion of jabots (the frilly collars that adorn her robes), she even managed to turn a fashion accessory into a political statement by wearing specific jabots when announcing majority or dissenting opinions from the bench.[9]

Collection of the Supreme Court of the United States, Photographer: Steve Petteway

She was profiled in all manner of media from learned treatises to children's books, from TV talk shows to feature films. T-shirts, memes, bobble heads, lapel pins, coffee mugs, even tattoos are all emblazoned with the Justice's likeliness. The moniker "You Can't Spell Truth Without Ruth" is everywhere and on just about everything imaginable.[10]

No summary of Justice Ginsburg would be complete without a word about her beloved husband of more than half-a-century, the renowned tax attorney Martin Ginsberg. Theirs was an enviable union of equals. Marty was known for both his loving support and for his cooking. As a couple, they complimented each other beautifully.

Justice Ginsburg died in Washington surrounded by her family. She became the first woman to lay in state at the US Capitol and was buried at Arlington National Cemetery beside her husband.

Ruth Bader Ginsburg was one of the rare people who through their life's work made a tangible difference in the life of this country. All of America, having benefited from her efforts and example, is in mourning. That is why she was so beloved by so many, and why she will be remembered by all.

Rhoda Y. Andors is an attorney with Bee Ready Fishbein Hatter & Donovan, LLC in Mineola, where she primarily practices employment law and works on class actions. She is past Co-Editor-In-Chief of the *Nassau Lawyer*.

Rudy Carmenaty serves as a Bureau Chief in the Office of the Nassau County Attorney, is the Director of Legal Services for the Nassau County Department of Social Services, and the Language Access Coordinator for the Nassau County Executive. He is also Vice-Chair of the NCBA Publications Committee.

1. *United States v. Virginia* 518 U.S. 515 (1996).
2. *Id.* at 532.
3. *Ledbetter v. Goodyear Tire & Rubber Co.*, 550 U.S. 618 (2007).
4. Irin Carmon and Shana Knizhnik, *Notorious RBG: The Life and Tines of Ruth Bader Ginsburg*, 47 (1st ed. 2015).
5. *Ledbetter v. Goodyear Tire & Rubber Co.*, 550 U.S. at 661 (Ginsberg, J. dissenting).
6. Bench Announcement in *Ledbetter v. Goodyear Tire & Rubber Co.*, Tuesday, 29, 2007 contained in Ruth Bader Ginsberg with Mary Harnett and Wendy W. Williams, *My Own Words*, 287 (1st ed. 2016).
7. *Ledbetter v. Goodyear Tire & Rubber Co.*, 550 U.S. at 661 (Ginsberg, J. dissenting).
8. The language from the statute is quoted in Johanna L. Grossman, T*he Lilly Ledbetter Fair Pay Act of 2009: President Obama's First Signed Bill Restores Essential Protection Against Pay Discrimination*, (February 13, 2009) supreme.findlaw.com.
9. Emily McClure, *All of Ruth Bader Ginsberg's Jabots, From Her Statement-Making Collar to Her Sassy Beaded Accessories*, Bustle (May 6, 2015).
10. Irin Carmon and Shana Knizhnik, *Notorious RBG: The Life and Tines of Ruth Bader Ginsburg*, (1st ed. 2015). There is also a volume of the Justice's quotations under this title compiled by Mary Zaia, which was published in 2018.

LAWYER TO LAWYER

APPELLATE COUNSEL

NEIL R. FINKSTON, ESQ.

Benefit From a Reliable & Experienced Appellate Specialist

Former Member of Prominent Manhattan Firm
Available for Appeals, Trial Briefs & Substantive Motions

Free Initial Consultation • Reasonable Rates

Law Office of Neil R. Finkston
8 Bond Street Suite 202, Great Neck, New York 11021
(516) 441-5230

Neil@FinkstonLaw.com **www.FinkstonLaw.com**

NO-FAULT ARBITRATION

THE NEW YORK NO-FAULT ARBITRATION ATTORNEY
TO THE PERSONAL INJURY MEMBERS OF THE BAR

ANDREW J. COSTELLA, JR., ESQ.

CONCENTRATING IN **NO-FAULT ARBITRATION** FOR YOUR CLIENTS'
OUTSTANDING MEDICAL BILLS AND LOST WAGE CLAIMS

SUCCESSFULLY HANDLING THOUSANDS OF NO-FAULT CLAIMS
Proud to serve and honored that NY's most prominent personal injury law firms have entrusted us with their no-fault arbitration matters

Law Offices of Andrew Costella Jr., Esq. PC
1225 Franklin Avenue, Suite 525, Garden City, NY 11530
(516) 747-0377 | arbmail@costellalaw.com

DIVORCE MEDIATION

Shery-Anne Sastow, Esq.
Accredited Divorce Mediator (NYSCDM)

- 22+ Years Experience - Mediation - Arbitration
- 10 Best Attorneys - American Institute of Family Law Attorneys
- Mediation Panel, Supreme Court, Nassau County
- Mediation Panel, NCBA
- Matrimonial Special Masters Panel, Nassau County

Offices: Great Neck, Plainview, NYC - 516.314.6116
Sastow@NYMediate.com | www.sastowlawandmediation.com

DISABILITY INSURANCE LAW

FRANKEL & NEWFIELD, PC
Disability Insurance Law Attorneys

Martindale-Hubbell PEER RATED Peer Rated for Highest Level of Professional Excellence 2019

- Pre-Disability Filing Strategy
- Disability Claim Management
- Appeals for Denied or Terminated Disability Claims
- Disability and ERISA Litigation
- Lump Sum Settlements

516.222.1600 • www.frankelnewfield.com

ATTORNEY ADVERTISING

ISRAELI LAW

ISRAELI LAW

Legal assistance and representation in all matters pertaining to Israeli law

- Author of "Foreign Judgments in Israel" a legal textbook cited as authority by 24 Israeli court judgments, including 8 by the Supreme Court.
- 31 years of experience representing the DOJ and other U.S government agencies in Israeli Courts.
- Former legal counsel to the U.S Embassy in Israel.
- Former legal counsel to the U.S Consulate General in Jerusalem.
- Extensive legal investigation and asset recovery experience.

New York and Tel Aviv Offices.
CARMON & CARMON
(212) 751 0406 • HAGGAI@CARMONLAW.COM

Follow us on Facebook

IRS AND NYS TAX ATTORNEY

Download Our App
Tax Helpline

Tenenbaum Law, P.C.
Tax Attorneys

Tax Attorneys Representing Taxpayers in IRS & NYS Tax Matters

- IRS & NYS TAX MATTERS
- NYS & NYC RESIDENCY AUDITS
- NYS DRIVER'S LICENSE SUSPENSIONS
- SALES AND USE TAX
- LIENS, LEVIES, & SEIZURES
- NON-FILERS
- INSTALLMENT AGREEMENTS
- OFFERS IN COMPROMISE

631-465-5000
www.litaxattorney.com • info@litaxattorney.com

OFFICE SPACE

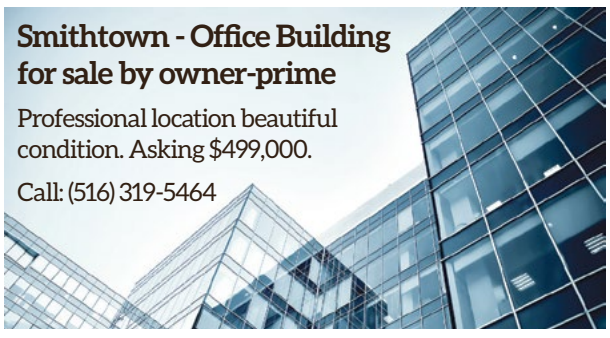
Professional Office Space for Rent

Excellent location in Commack with High Visibility. Use of Conference Rooms and Reception. Heat, A/C, Electric and Taxes included (no extra charge.) Plenty of Parking

Second Floor Office
(without secretarial space) $800.00/per month.

First Floor Office
(furnished and with secretarial space if needed) $950.00/per month.

Call Bob at 631.864.0800 or email at bob.wirth@mac.com



Smithtown - Office Building for sale by owner-prime

Professional location beautiful condition. Asking $499,000.

Call: (516) 319-5464

Sublease 14X14 windowed office in 5 atty suite, 600 Old Country

Contact: (516) 228-4280 ext. 112

GARDEN CITY OFFICE SPACE
BELOW MARKET RENTAL OPPORTUNITIES
S/W/C of Old Country Road & Glen Cove Road
1,300 - 4,000 SF AVAILABLE NOW
Owner Occupied, Convenient Parking,
Heated Sidewalks, Immaculately Maintained!
CALL BOB DELAVALE (516) 741-7400 ext. 230

Florida Law Firms for Sale

South and Central Florida. Owners retiring. Practice areas: estate, trust, tax, probate, business transactions and disputes, real estate, and HOA/condo law. Prime opportunity for Florida admitted attorney looking to relocate. All inquiries confidential.

Ed Alexander, attorney, 407-649-7777
or Ed@AlexanderAbramson.com.

CONSTRUCTION LAW

- Construction Contract preparation, review and negotiation
- Defective / Incomplete construction
- Post-Sandy House Raisings
- Non payment - Lien filings - Bond Claims
- Lien Foreclosures
- Union Hearings
- Construction Arbitrations, Mediation, Litigation

THE LAW OFFICES OF JOHN CARAVELLA, P.C.
A CONSTRUCTION LITIGATION AND ARBITRATION FIRM
Member FL and NY Bars, Assoc. AIA

www.LIConstructionLaw.com
(516) 462-7051
Offices Uniondale, Melville, Ft Lauderdale