

**THE SARATOGA COUNTY
BAR ASSOCIATION**

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**Volume 1, Issue 2
April 2007**



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Saratoga County Bar Association *Law Notes*

Serving the Interests of Justice

Third Department Update

Selected Cases: Torts and Civil Practice

Mihalko v. Regnaiere
(Mugglin, J. 1/4/07 [500568])
Plaintiff suffered a right ankle injury when she fell on an unattached step while exiting defendants' motel. Her orthopedic surgeon testified at trial that he performed a subtalar fusion due to the plaintiff's pain, which he said was caused by the fall and injury at the motel, and not a right heel fracture plaintiff sustained in an auto accident 10 years earlier. Further, the surgeon opined that the fusion would limit plaintiff's ankle movement and cause pain in the future. Defendants did not call an expert witness physician to testify. The jury returned a verdict for the plaintiff and found her free from compara-

tive fault. The award, however, included nothing for past or future pain and suffering. Supreme Court (Aulisi, J., Washington County) granted plaintiff's motion for a retrial on damages unless defendants stipulated to pay \$25,000 and \$50,000 for past and future pain and suffering. The Third Department affirmed, finding "no fair interpretation of the evidence" could support the jury's failure to award money for pain and suffering.

Alig v. Parkway Parking of NY, Inc. (Cardona, P.J. 1/4/07 [500422])
Plaintiff appealed dismissal of her slip and fall (in a hotel parking garage) case by Su-

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preme Court (Lebous, J., Broome County), which found a one-inch height differential at the edge of a broken drain cover "trivial" and that defendant was not on notice of the condition. The Third Department reversed and reinstated the complaint, finding plaintiff had raised questions of fact on both grounds, noting that "whether a particular height difference" constitutes a dangerous/defective condition is case specific and "is generally a question of fact for the jury".

Continued on page 2

A MESSAGE FROM THE DISTRICT ATTORNEY

By Hon. James A. Murphy, III, Saratoga County District Attorney

Recently, the Saratoga County District Attorney's Office reaffirmed its position that it will not plead cases with unrepresented defendants.

The policy is not meant to be punitive, but many defendants are unaware of the consequences of a guilty plea to a reduced charge or a conviction to a vehicle and traffic charge which may have points associated with it. This policy has been reinforced especially in

light of the New York State Police's position that Troopers are no longer permitted to speak to unrepresented defendants as a newly implemented policy by Superintendent, Wayne Bennett, that went into effect September 1, 2006. We have advised local criminal court judges of our position.

The SCBA has reissued a memorandum that we often refer to in order to explain our



Continued on Page 3

Third Department Continued from page 1

McKenna v. Connors (Crew III, J. 1/11/07 [97541])

In July 2003, Supreme Court (Bradley, J., Ulster County) set down plaintiffs' medical malpractice case for trial 14 months hence; September 13, 2004. Eleven days before trial, plaintiffs' counsel requested an adjournment due to trial counsel's engagement. The application was denied, and then renewed on the first day of trial, this time on the basis that both trial counsel and an expert witness were unavailable. The application was denied again, after which defendants moved to dismiss the complaint for failure to prosecute. Supreme Court granted that motion, and later denied plaintiffs' motion to vacate the order. Having swung and missed three times in Supreme Court, plaintiffs went to bat in the Third Department and whiffed again. The blame was laid on plaintiffs' counsel for, among other things, never explaining why another lawyer from the firm could not try the case, waiting more than a year after getting the trial date before contacting their expert, and waiting until the first day of trial to advise the trial court and defense counsel that the expert was not available.

Britt v. Pharmacologic Pet Services, Inc. (Rose, J. 1/11/07 [500726])

Plaintiff was a police officer whose patrol car was struck by a minivan owned by defendant PPS, and driven by its employee. The accident happened at around midnight, not during the defendant's work shift and after he had used the van "extensively for purely personal and, at times, illegal purposes". Supreme Court (McNamara, J., Albany County) granted defendant PPS's motion for partial summary judgment on the issue of permissive use. The Third Department found that plaintiffs' proof opposing the motion did establish inconsistencies and issues of fact and credibility, but only as to collateral matters and not as to the real issue at hand, namely whether the driver's "operation of the minivan exceeded the time, place and purpose of the use permitted by PPS".

Hall v. Barth (Crew III, J. 1/11/07 [500902])

The Third Department found that Supreme Court (Lalor, J., Greene County) properly denied defendants' summary judgment motion contending plaintiff had not suffered a "serious injury" as defined by Insurance Law §5102(d). Part of the proof found sufficient to create an issue of material fact was the report of the defendants' own examining orthopedist, who said plaintiff had "a definite limitation of motion of the cervical spine in all directions" as well as limitations in forward flexion and extension.

New York Central Mutual v. Wood (Spain, J. 1/11/07 [500866])

Defendant Wood was the plaintiff in a related auto liability case, injured when defendant Young drove his vehicle over her tent. Young's insurer, Progressive Northeastern, denied him coverage under an "intentional act" exclusion in the policy. The Third Department found a question of fact existed as to whether Young expected or intended to hurt someone with his vehicle, pointing to his statement to police that he did not know Wood, or anyone else, was in the tent when he ran it over. Since a jury could find Young was merely reckless, Supreme Court's (Lamont, J., Schoharie County) denial of the insurer's motion that it had no duty to defend or indemnify was affirmed.

Apgar v. Waverly Cent. School Dist. (Mugglin, J. 1/18/07 [500907])

Supreme Court (Tait, J., Tioga County) granted plaintiff's application for leave to file a late notice of claim (General Municipal Law §50-e (5)) against the defendant school district. The Third Department affirmed, finding the school district had notice of the playground accident at issue by virtue of "actual knowledge" obtained by, among other persons, the elementary school principal who accompanied the injured child to the hospital and thereafter made out an incident report. Defendant's claims of prejudice were also rejected, with the Court noting that the school district had chosen not to interview other children involved and had failed to show that it was unable to locate the playground monitor or that she would be unable or unwilling to aid in defense of the case.

Adamski v. Schuyler Hospital (Cardona, P.J. 1/25/07 [98349])

Plaintiff was an orthopedic surgeon who alleged a serious shoulder injury resulted from a slip and fall in the hospital parking lot. Defendant served demands for a bill of particulars and other discovery in October 1998. In December 1999, plaintiff filed a note of issue, which was vacated by Supreme Court (O'Shea, J., Schuyler County) on defendant's motion, which sought additional discovery. The discovery stalemate dragged on, with Supreme Court issuing another directive and order to plaintiff in July 2002. When only some of the discovery was thereafter produced, Supreme Court in April 2004 issued a '60-days or else' compliance order, which concluded with defendant's motion to strike plaintiff's complaint, which was (not surprisingly) granted by Supreme Court. The Third Department affirmed, noting that such "ongoing evasiveness" by a plaintiff and failure to comply with court orders and deadlines is contrary to maintaining "the efficiency and integrity of our justice system".

THE LEGAL AID SOCIETY PRIVATE ATTORNEY INVOLVEMENT (PAI)

PRO BONO OPPORTUNITIES

By Kristie M. Cinelli, PAI Paralegal for LASNNY

There is a reason why we at Legal Aid refer to volunteering as an "opportunity" - and it is a simple one at that. Volunteering allows access to justice for all. Lawyers are the only people who can ensure that justice is done.

In 2006, The Legal Aid Society and the gracious volunteer attorneys of Saratoga County assisted 26 people in need of legal services in such matters as divorces; including victims of domestic violence, eviction summary proceedings, bankruptcy, real estate contract issues, income executions, social security issues and estate/probate matters.

I would like to give a special thanks to the Saratoga County private attorney volunteers who accepted new cases in 2006:

Catherine Burkly
Dean Coon
James Cox
Richard Devall
James Doern
Kimberly Hunt
Matthew Jones
Ronald Kim
Alan LeCours

Emily Muller
Marty Pozefsky
Bill Reynolds
Stephen Rodriguez
James Trainor
Allen Yates

However, as I am sure you can imagine, the need for legal services outweighs the number of attorney resources; especially for those who come to The Legal Aid Society for assistance. Usually, we - YOU - are their only chance at ensuring that their legal interests are protected and that they receive a fair and just outcome - *something everyone deserves.*

The private attorney volunteers make this possible by giving their time. In return, The Legal Aid Society offer numerous benefits to our PAI volunteer lawyers, such as :

- Malpractice insurance (secondary)
- Reimbursement for out-of-pocket expenses (up to \$200; no approval required)
- Certification of Indi-

gency to cover cost of filing fees for qualifying clients

- Training Programs at no cost and for CLE credit
- Access to Westlaw via our PAI Paralegal
- "FREE PASS" (law students will provide free legal research)
- CLE credit for the time spent on a pro bono matter

However, we all know the real benefit is in knowing that you made a difference for someone in need. If you would like to offer your time and services to The Legal Aid Society, please complete the PAI registration form included at the end of this edition of *Law Notes* and return it to Kristie Cinelli at The Legal Aid Society, 55 Colvin Avenue, Albany, New York 12206 or by phone at 518-689-2322 or via e-mail at: kcinelli@lasnny.org.

Visit us at
www.lasnny.org

YLC

The Young Lawyer's Committee will be organizing the first annual SCBA community service project for the month of April! The project will involve volunteering with the not for profit organization Rebuilding Together Saratoga to assist low income, disabled or elderly homeowners rehabilitate and revitalize their homes. (web site: www.rebuildingtogether-saratoga.com) Members with all skills are welcome; skilled works will typically be involved in carpentry, electrical or plumbing and unskilled workers will typically be involved in painting and clean up. Please save the Date!

Saturday April 21, 2007

Location: residence located within Saratoga County
Time: TBD

"The need for legal services outweighs the number of attorney resources; especially for those who come to The Legal Aid Society for assistance."

-Kristie Cinelli

Associate Wanted

Small Saratoga law firm looking for litigation associate with at least three years experience in general litigation. Real estate experience a plus. Salary commensurate with experience. Send Resumes with salary requirements to Associate Position, P.O. Box 3392 Saratoga Springs, New York 12866 or manderson@mlalawllc.com.

Murphy Continued from front page

position to those defendants who are unrepresented. At the end of this edition of *Law Notes*, please find a copy of the memorandum given to these people when they wish to speak with the Assistant District Attorneys. As a policy, we refer them to the NYSBA attorney referral

service or the SCBA web site if they ask us for an attorney.

For further information, please contact the Saratoga County District Attorney's Office, 40 McMaster Street, Saratoga Municipal Center, Ballston Spa, New York 12020, (518) 885-2263.



Tax Assessment Challenges under Article 7 of the RPTL

By Matthew J. Dorsey, Esq.

The advent of spring means many things, including phone calls from your clients complaining about their new property tax assessments. Upon receiving such phone calls, seasoned practitioners automatically docket the following dates:

May 22, 2007

July 31, 2007

No assessment challenge may proceed under Article 7 of the Real Property Tax Law (RPTL) without a prior grievance filing with the local Board of Assessment Review (BAR) by May 22, 2007. If your client is unsuccessful at the BAR level, you must file your Article 7 challenge by July 31, 2007.

Board of Assessment Review (BAR) Proceedings

On May 22, 2007, and any adjourn date thereafter, the local BAR will be available to hear assessment grievances. In some cases, municipalities may provide for a different date. Therefore, counsel should check with the local assessor to ensure when Grievance Day will be held. A RP-524 grievance form may be obtained from the local assessor's office or from the State Office of Real Property Services (ORPS) website at www.orps.state.ny.us/ref/forms/pdf/rp524.pdf. Instructions to assist in the completion of the RP-524 form are available at www.orps.state.ny.us/pamphlet/complain/howtofile/assessrev16pg.htm.

Part Four of the BAR grievance form allows your client to designate you as the authorized representative for the grievance process. At the outset of the case, knowledgeable practitioners often have their client sign a more comprehensive authorization, including the ability to represent the client in a potential Article 7 proceeding.

Although appearances are generally not required before the BAR on Grievance Day, it is advisable to appear with your client to plead his/her case. Appearances are required, however, if the BAR demands your presence pursuant to RPTL 525. Refusal or failure to appear in response to a RPTL 525 request may lead to any later proceeding under RPTL Article 7 being dismissed by the court. RPTL 525 requests, however, are infrequent.

If your client is unsuccessful at the

BAR level, you will likely bring a proceeding under RPTL Article 7. Article 7, Title 1 covers the procedures for challenges regarding all types of real property. Article 7, Title 1A covers the procedures for Small Claims Assessment Review (SCAR) proceedings.

Small Claims Assessment Review (SCAR) Proceedings

SCAR petitions may be brought for owner occupied one, two or three family residential properties and for unimproved land which is too small for one, two or three family residential structures. *RPTL 730*. Seasonal homes may qualify if owner occupied. Each parcel must be challenged under a separate petition and each petition costs \$30.00 to file. *RPTL 730*. SCAR petition forms are available from the local assessor's office or from the ORPS website at www.orps.state.ny.us/pamphlet/complain/howtofile/smallclaims16pg.htm.

SCAR petitions may not request an assessment below the reduction requested at the BAR level; in the event the equalized value (assessed value/equalization rate) of the property is \$450,000 or greater, the property owner may not request a reduction in excess of 25%. *RPTL 730*. Three copies of the SCAR petition must be filed with the county clerk by July 31, 2007. Within ten days of filing, time stamped copies of the SCAR petition must be mailed to the clerk of the assessing unit, the assessor, the school district clerk, the county treasurer, and the village clerk (if applicable). *RPTL 730*.

SCAR hearings should occur by September 14, 2007 and upon 10 days' notice from the Hearing Officer. *RPTL 732*. The hearings are informal and the Hearing Officer is required to do "substantial justice" given all facts presented. *RPTL 732*. Hearing Officers must render their decisions within 30 days of the hearing and may not reduce an assessment below the amount requested by the petitioner. *RPTL 733*. The Hearing Officer's determination of value must remain the assessed value for the next assessment year, unless the RPTL 739 exceptions apply (i.e. municipal revaluation, demolition or improvement of property). If the assessor retains the 2007 value for 2008 pursuant to RPTL 739, your client may not bring another SCAR petition in 2008. RPTL 727 is an analogous provision for Article 7 proceedings, which carries a three year time period.

Article 7 Proceeding

Proceedings under RPTL Title 1, commonly referred to as "Article 7 proceedings" are utilized for higher value residential properties and nonresidential properties. In contrast to SCAR proceedings, Article 7 proceedings may concern multiple properties owned by one party or multiple properties owned by multiple parties. RPTL 706 allows "two or more persons" to bring a single petition regarding multiple parcels when they "assert the same grounds for review presenting a common question of law or fact."

RPTL 706 lists the necessary allegations in an Article 7 petition, including statements regarding: a) the grounds of the petition (excessive, unequal, or unlawful assessment or misclassified property), b) the petitioner's injury, and c) the prior complaint to the BAR. Although not all special proceedings require verified petitions, Article 7 petitions must be verified. *RPTL 706*. The verification must be signed by the petitioner, an officer thereof, or a person authorized in writing to make such a verification. Article 7 practitioners append a copy of their authorizations, if they are signing on behalf of their clients. Time stamped copies of the BAR grievance are often appended to demonstrate timely filing.

RPTL 720(1)(b) states that the court may not grant an assessment reduction greater than that requested in the petition or amended petition, however, if the matter is tried, petitioner's counsel may move to conform the pleadings to the proof in an attempt to seek a lower value. To the extent that you are pleading excessive assessment, your petition should contain a statement of the alleged true value of the property and the specific amount of over-assessment. To the extent that you are pleading inequality of assessment, your petition should include an allegation stating your client's assessment is unequal because it has been made at a higher proportionate valuation than the assessment of other real property on the same tax roll. The allegation regarding inequality should include the specific percentage of fair

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Matthew J. Dorsey is a partner in The Dorsey Law Firm in Saratoga Springs. Mr. Dorsey has represented petitioners and respondents in numerous Article 7 proceedings. He is currently representing the Town of Queensbury in its defense of a multi-year Article 7 proceeding challenging over \$70 million dollars in assessed value.

Update from the Law Day Committee from Steve Dorsey, Esq., Chair

The American Bar Association's nationwide theme for Law Day 2007 is "Liberty Under Law: Empowering Youth, Assuring Democracy." In keeping with this year's theme, SCBA's Law Day Committee is pleased to announce that the keynote speaker at our annual luncheon will be Albany Law School Professor Melissa Breger. Professor Breger teaches a course at ALS on Children and the Law as well as a seminar on domestic violence. Professor Breger is also Director of the ALS's Family Violence Litigation Clinic, which provides free legal representation to victims of domestic violence in Albany, Rensselaer and Schenectady counties. She previously practiced family law in a variety of agencies in New York City, including the Brooklyn of-

fice of The Legal Aid's Society's Juvenile Rights Division. Professor Breger is also one of the co-authors of West/Thompson's upcoming second edition of its treatise "New York Laws of Domestic Violence" due for publication later this year.

Other highlights of the luncheon include recognition of the participating high school Mock Trial teams, including the presentation of the award to this year's winning team, and the presentation of SCBA's Liberty Bell Award, which, for the first time in recent memory, will be awarded to co-recipients.

As in past years, the SCBA will be conducting community service project during Law Week. The Law Day Committee is pleased to announce that it will be coordinating a "Lawyer in the Classroom" project with six Saratoga County schools. Members of the Law Day Committee and other interested members of the SCBA will be volunteering their time

to address various law, business, government and social studies classes on topics of interest chosen by each class or school.

High schools participating in the project are Ballston Spa, Burnt Hills, Corinth, Saratoga Springs, Schuylerville and Waterford. Please consider volunteering your time for the length of a 40-60 minute class period on a requested topic within your areas of expertise. For additional information please contact Law Day Committee Chair Steve Dorsey at 884-4770 or by email at sarcaty2@govt.co.saratoga.ny.us.

The SCBA would like to thank the following members of the Law Day Committee for their hard work and dedication in putting together this year's Law Week events: Matt Chavin, Kim Crocetta, Karen D'Andrea, Matt McNamara, Bill Reynolds, Rick Zahnleuter and Chair Steve Dorsey.

The Annual Law Day Luncheon will be on **Tuesday, May 1st at 12:00 noon** at the Canfield Casino in Saratoga Springs and will be catered by Longfellows Inn & Restaurant. Menu information and requests for reservations will be forwarded in April.

GOOD ADVICE

by James A. Fauci, Esq.

Make sure you and your clients have Supplemental Spousal Liability Insurance

Did you know that unless you specifically request spousal coverage on your auto policy, a spouse injured in an auto accident will have no recourse against the vehicle's policy when it was the other spouse who was at fault? For example, Dick and Jane are involved in a one car accident where Jane was seriously injured. Dick was driving and was ultimately convicted of speeding. Unless the car's policy included the optional "supplemental spousal liability" coverage, Jane is left with collecting only no-fault benefits. If the policy did contain this optional provision, Jane would place a claim within the bodily injury limits of the policy.

Insurance Law § 3420(g) generally barred coverage under a liability policy for claims brought by a spouse against the other spouse unless the policy expressly provides coverage for such claims. However, Section 3420(g) was amended, effective in 2003, to provide, in part:

(g) No policy or contract shall be deemed to insure against any liability of an insured because of death of or injuries to his or her spouse or because of injury to, or destruction of property of his or her spouse unless express provision relating specifically thereto is included in the policy as provided in paragraphs one and two of this subsection. This exclusion shall apply only where the injured spouse, to be entitled to recover, must prove the culpable conduct of the insured spouse.

(1) Upon written request of an insured, and upon payment of a reasonable premium established in accordance with article twenty-three of this chapter, an insurer issuing or delivering any policy that satisfies the requirements of article six of the vehicle and traffic law shall provide coverage against liability of an insured because of death of or injuries to his or her spouse up to the liability insurance limits provided under such policy even where the injured spouse, to be entitled to recover, must prove the culpable conduct of the insured spouse. Such insurance coverage shall be known as "supplemental spousal liability insurance".

Section 3420(g) requires an insurer to give notice to and provide such coverage to

an insured under a motor vehicle policy *when the insured requests the coverage*. Thus the key is to make sure that you, your family members, your clients, and everyone you know who is married, requests and pays for this coverage.

Spousal coverage is included within your policy's bodily injury limits and will not increase those limits. The example given on most insured's notice of this coverage is:

- Insured's bodily injury limits are \$100/\$300
- Insured's damage claim paid to spouse is \$75,000
- Insured's bodily injury limits available to any other claimants is \$275,000 (subject to the maximum of \$100,000 per person).

The added premium for this coverage is not an issue: on my most recent policy, the quoted amount was a whopping \$5.00. Considering a cost verses effect analysis, it's virtually negligent itself to not have this coverage if you're married.

NOT-FOR-PROFIT SPOTLIGHT



Shelters of Saratoga's major fundraising event, the *Taste of Saratoga*, will take place on Thursday, April 19th from 5 to 9 pm at the Canfield Casino (cocktails and silent auction preview starting at 5 pm, entrée restaurants begin serving at 6 pm). Proceeds from this event help to defray operating costs for our homeless shelter that provides services to approximately 250 homeless individuals annually. Shelters of Saratoga is the only homeless shelter in Saratoga and Warren counties.

This is a fun event which brings people from all over the Capital District. Over the past 14 years, participating restaurants from the Saratoga

area have provided an exceptional variety of wonderful food and presentations. There will be 25 restaurants participating this year, providing appetizers, entrees and desserts.

Guests purchase tickets for \$50 or \$95 per couple (pre-purchase), or \$65 (at the door), which allow them to visit the tables of participating restaurants and sample a taste of food provided by the restaurants. Local businesses from Saratoga County have donated a wide array of gift certificates, services and items which will be available for purchase at the event through a silent auction. This evening will also offer a cash bar and music.

Sleepathon will be held

on May 5th to raise the level of community awareness surrounding homelessness in the area. We are asking participants to agree to spend at least one or more hours (or even the entire night) in support of the Shelters of Saratoga by accepting pledges from friends, family and co-workers for the time spent outside during the event. Participants will enjoy entertainment, food, music and raffles. The event will take place at the Empire State College parking lot starting at 6 pm and ending at 7 am on Sunday, May 6th.

Call the shelter at 581-1097 or visit our website at www.sheltersofsaratoga.com for more information on either of these events.

**Announcement from John H. Ciulla, Jr., Esq.
Saratoga County Assigned Counsel Administrator**

Counselors:

I have recently met with the Supreme Court Judges regarding implementation of a new assigned counsel list pursuant to the new Subdivision 8 of Section 35 of the Judiciary Law. Under this section, assignment of counsel will be made in matrimonial actions in Supreme Court for legal issues which would require the

assignment of counsel if the action were in Family Court.

My office is currently preparing the new assigned counsel list from which assignments will be made. The assignments will be made on a rotational basis when the Supreme Court Judges request the same and a plaintiff or defendant otherwise financially qualifies.

Reimbursement will be at

the same hourly rate as Family Court - \$75.00 per hour and will be paid by the State of New York in the same manner as other Supreme Court assignments.

If you are currently on the assigned counsel list for Family Court, you need not apply, as you will be solicited directly from my office to be included on the list.

As always, please feel free



If you would like to highlight a local not-for-profit or charity with which you are affiliated, please let a member of the SCBA Editorial Staff know. Please provide a one-page article on the not-for-profit or charity to be published in the newsletter.

Welcome to our new SCBA members!

- Kara Wojdyla**
- Graig Zappia**
- Debbie Verni**
- Mark Montanye**
- Julie Frances**
- Lucia Romeo**
- Rosemary Hoag**
- Cheryl Sovern**
- LeeAnn Modestino**
- Bob May**

to call my office if you have any questions regarding the new list, for further reference to the new law, or if you wish to be considered for assignment on any one or all of the four other lists maintained by my office.

ANNOUNCEMENTS

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*please contact the editorial staff to submit an item of interest for publication.

*Pelagalli, Weiner & Rench,
LLP is now known as
Pelagalli, Weiner, Rench
& Thompson, LLP*

IN THE NEWS . . .

On February 7, 2007, Christopher Lemire, Esq., presented at the Capital Region Human Resource Association Monthly Meeting – “Understanding the NYS Workers’ Compensation System and the employer’s role in handling on-the-job injuries”.

SCBA BAR DINNER

April 19, 2007

*The Factory
20 Prospect Street
Ballston Spa*

*6:00 p.m. - Cocktails
7:00 p.m. - Dinner*

Please make your reservations by Monday, April 16, 2007 by calling the Saratoga County Bar Association at 587-5829 or by e-mail at pclute@saratogacountybar.org

MAKE A NOTE

*The Annual Meeting of the Federation of Bar Associations of the Fourth Judicial District will be held **April 27-29, 2007** at the Marriott Chateau Champlain Hotel in Montreal, Canada.*

*Please see **Lawrence Hamilton** or **Michael Catalfimo** if you did not receive a registration, or wish further information.*

CLE OPPORTUNITY

The Women’s Adirondack Bar Association is hosting the following CLE program in Ethics:

*3.0 Ethics credits
Friday April 20, 2007
9:00 am to 12:00 pm
*Courtyard Marriott, Saratoga Springs**

***Topic:** 2 hour panel (multiple representation/conflicts of interest); 1 hour seminar (attorney escrow accounts)*

*Cost: \$60 WBASNY members
\$80 non-members
Breakfast provided.*

See attached flyer

YOUNG LAWYERS COMMITTEE: SPRING CLE '07

**The Young Lawyers Committees of the Albany County Bar Association
and the
Saratoga County Bar Association Present**

“Real Estate: Transactions from A - Z Transitional Program”

May 11, 2007 at the Marriott Courtyard (226-0538)
11 Excelsior Avenue,
Saratoga Springs, NY 12866
12:15 PM Registration

12:30-4:30 PM Seminar/Bufferet Luncheon

Immediately following the seminar a Cocktail Hour will be sponsored by Sneeringer, Monahan, Provost, Redgrave Title Agency to meet and greet the young lawyers

Speakers include:

Karl Sleight, NYS Ethics Commission
Steve Zayas, Committee on Professional Standards
and
Attorney from SMPR Title Agency

Price: SCBA and ACBA Members \$75 - Non Member \$100 - Student/Paralegal \$25
CLE Credit: 2 Hours of Ethics and 2 Hours of Professional Practice
****Please make checks payable to the Albany County Bar Association and remit to: The Stedman House 1 Lodge Street, 2nd Floor Albany, NY 12207

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*Past President of the Bar

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SARATOGACOUNTYBAR.ORG

Congratulation to the SCBA's Vice-President

Karl J. Sleight , Esq., of Saratoga Springs, Executive Director of the New York State Ethics Commission, will join the law firm of Harris Beach PLLC as a member of the firm. Mr. Sleight will practice from the Albany and New York City offices. Mr. Sleight will co-lead the Harris Beach Government Investigations and Defense Team and be a member of the Business & Commercial Litigation Practice Group. He will advise clients on matters related to corporate compliance and government investigations, and federal and state regulatory actions. His practice will also include representing businesses and institutions in white collar criminal defense. Mr. Sleight will not be a lobbyist.



SCBA Monthly Meeting Schedule

Month	Event	Date	Location	Time	Cost
April	Bar Dinner	Thursday April 19	The Factory	6 pm	TBD
May	Law Day Luncheon	Tuesday May 1	Canfield Casino	11:00 am	TBD
June	Golf Outing	TBD	TBD	TBD	TBD
	Bar Dinner (Installation of new officers)/ YLC Annual Picnic	Thursday June 14	Tentatively: Home of Matt Jones	6 pm	TBD



*Photos courtesy of Stephanie W. Ferradino, Esq.

Third Department Continued from page 2**Ball v. Cascade Tissue Group (Mugglin, J. 1/25/07 [501030])**

Plaintiff's motion for partial summary judgment on liability under Labor Law §240(1) was denied by Supreme Court (Ferradino, J., Saratoga County) but granted on appeal. Plaintiff fell from an unsecured stepladder while working in the defendant's paper mill. The Third Department found plaintiff's proof on the motion established the necessary statutory violation, and that defendant's claim "that the ladder was structurally sound is not relevant on the issue of whether it was properly placed".

Perkow v. Winne, et al. (Rose, J. 1/25/07 [501075])

A bungee cord manufactured by a company in Sri Lanka broke and struck plaintiff in the eye. Ensuing motion practice gave us a rare examination at the Supreme Court (Lebous, J., Broome County) level of issues involving personal jurisdiction and due process. Plaintiff sued the two corporations that imported the bungee cord and sold it to his employer, but did not serve process on the manufacturer. Supreme Court found that permitting the defendants to seek indemnification and contribution from the Sri Lankan manufacturer would offend traditional notions of fair play and substantial justice. The Third Department did not agree and reversed, emphasizing New York's "important stake in according full relief to those who must litigate here".

State Farm Insurance v. De Sarbo (Lahtinen, J. 1/25/07 [501153])

De Sarbo, injured in an auto accident, collected the full (minimum) policy of \$25,000 from the tortfeasor and then filed a claim for underinsurance benefits with his insurer, State Farm. De Sarbo sent a demand for arbitration to State Farm, to which the company responded some 65 days later with an application to stay the arbitration. Supreme Court (Hall, J., Saratoga County) granted the application, but the Third Department reversed because the request for a stay was made after the 20-day deadline set by CPLR 7503(c). The fact that De Sarbo sent his demand to State Farm's home office in Bloomington, Indiana was of little consequence regarding the timeliness of the request for a stay because within the 20-day period for action State Farm had sent the arbitration demand back to its office in Saratoga County, where it apparently stayed for 45 more days before the application for a stay was made.

Cogan v. McCloskey Comm. Service Corp. (Cardona, P.J. 2/8/07 [500859])

Plaintiff alleged a violation of Labor Law §240(1) after he fell from a stepladder while preparing to paint the peak of an entranceway at defendant's property. Supreme Court (Canfield, J., Rensselaer County) denied summary judgment motions from both sides of the caption, and the Third Department affirmed, noting the "sharp factual dispute" presented by plaintiff's denial that he was told by his supervisor to "only paint those areas which could easily be reached without a ladder".

De Cicco v. Longendyke (Cardona, P.J. 2/8/07 [501158])

Supreme Court (Bradley, J., Ulster County) granted the defendant property owner's motion to dismiss the slip-and-fall case, but upon plaintiff's motion to renew reversed itself and found questions of fact requiring a trial. The Third Department affirmed, finding no abuse of discretion in the lower court's consideration of the affidavit of a recently-located witness on the motion to renew and agreeing that the witness' affidavit, and the defendant's acknowledgment regarding the lack of lighting and ongoing renovation projects in his yard offered "something more than speculation" that could establish plaintiff's injuries were caused by defendant's negligence.

Filiberto v. Herk's Tavern, Inc. (Kane, J. 2/22/07 [501151])

The defendant Bracchi was owner/operator of the bar at which plaintiff's decedent, his personal friend, consumed numerous alcoholic beverages. As was their Thursday night custom, the two went out for a meal after closing time. Decedent choked on his roast beef sandwich and died. A negligence action against Bracchi was based on his ordering or permitting decedent to order a meal that required extensive chewing despite allegedly knowing that decedent was highly intoxicated. At a non-jury trial, Supreme Court (Best, J., Montgomery County) found defendant 50% responsible. The Third Department reversed and dismissed the negligence claim, finding the defendant owed no duty to decedent and suggesting that even had such a duty existed that "decedent choking on an unchewed piece of roast beef was not a reasonably foreseeable risk of stopping for a bite to eat".

Martin v. RP Associates (Peters, J. 2/22/07 [501283])

At deposition, plaintiff testified the sidewalk was clear when he used it the first time that evening, but that one hour later his fall was caused by "black ice" which he noticed only after the fall. Supreme Court (McCarthy, J., Albany County) denied defendant's motion

Third Department Continued from page 9

for summary judgment, but the Third Department reversed and dismissed the complaint. Plaintiff's meteorology expert offered an affidavit but there was no climatological data submitted in connection with it, meaning it "lacks an adequate foundation", so it was not considered. Even had it been properly supported, said the Appellate Division, it would have been rejected as speculative on the issue of whether the defendant had notice of the allegedly dangerous ice patch.

LaPage v. Evans, Brushton-Moira Cent. School Dist. (Kane, J. 2/22/07 [501292])

Ball (plaintiff's son) and Evans were high school juniors being bused to a BOCES program. They exchanged words and one shoved the other during the bus ride, but both returned to their seats. After exiting the bus, Evans struck Ball in the face and broke his jaw. Plaintiff sued Evans and the school district. Evans defaulted and the school district moved for summary judgment. Supreme Court (Demarest, J., Franklin County) denied the motion but the Third Department reversed and dismissed the complaint. Neither student had previously fought nor had a serious disciplinary history, so the brief confrontation on the bus was not enough to alert the district that it should have anticipated (and tried to prevent) the sudden attack outside the bus. Further, the attack "happened so suddenly and without warning" the bus driver had no opportunity to intercede.

Blakeslee v. Wadsworth and Herting (Cardona, P.J. 2/22/07 [501335])

Plaintiff was a passenger in Wadsworth's pickup truck and sustained injuries when the vehicle left the road, rolled and crashed. Plaintiff's lawsuit alleged "concerted action liability" against both defendants, claiming they engaged in a high-speed "cat and mouse game" and that their negligence led to Wadsworth running his truck off the highway. Defendant Herting, who was driving a pickup truck in front of Wadsworth's vehicle, moved for summary judgment but was denied by Supreme Court (Catena, J., Montgomery County). The Third Department reversed and dismissed all claims against Herting, finding no evidence of "an explicit or implicit agreement" on the part of both defendants "to cooperate or compete in furtherance of such a dangerous activity".

Pugh v. De Santis (Spain, J. 2/22/07 [501482])

Plaintiff's auto accident injury claim, dismissed by Supreme Court (Krogmann, J., Warren County) on a "serious injury" motion, was reinstated by the Third Department, which also gave plaintiff partial summary judgment on liability. The latter decision was the easiest, since defendant pleaded guilty to driving while impaired after he struck plaintiff's stopped vehicle from behind. On the more contentious injury threshold issues, the Court carefully examined the proof offered by plaintiff in opposition to the motion, seemingly impressed by the strength of the affirmation of plaintiff's treating doctor, supplemented by a comprehensive affidavit from the plaintiff explaining how she was unable or limited in performing certain daily activities (under the '90/180-day' category) including her job, grocery shopping, laundry, cooking, volunteer work, exercise, mowing the lawn, working at the computer, and helping her children with their homework.

Tax Assessment Continued from page 4

market value at which your client's property is assessed.

A notice of petition with return date accompanies the petition and is filed with the county clerk to commence the proceeding, along with an application for index number and request for judicial intervention. *RPTL 704*. Three time stamped copies of the notice of petition and petition must be personally served on the municipality. *RPTL 708*. Within ten days of service upon the municipality, a time stamped copy of the notice of petition and petition must be mailed to the county treasurer, the superintendent of the school district where the property is located, and the clerk of any non-assessing village. *RPTL 708*. Proof of mailing must be filed with the county clerk within ten days after such mailing.

After your notice of petition and petition is properly drafted, filed, and served, a judge is assigned to your case. Judges typically send out an initial correspondence

scheduling a conference or requesting the submission of a scheduling order on consent.

The scheduling order should include proposed dates for: submission of written discovery demands and responses thereto, depositions (if requested), filing of appraisals, filing of notes of issue, a pre-trial conference, and a trial. The courts are usually willing to grant extensions of these dates if fruitful settlement discussions are occurring between the parties or one or both parties has experienced a reasonable delay in obtaining an appraisal.

The filing and exchange of appraisals is governed by New York State Trial Court Rule 202.59. Appraisals should be sent in duplicate to the Supreme Court Clerk. When the Clerk has both parties' appraisals, each party will be mailed the opposing party's appraisal. Experienced practitioners include a stamped, addressed envelope for their opponent's copy, so the Clerk can merely place it in the mail at the appropriate time. The inclusion of a duplicate of your cover letter enclosing your

appraisal will allow the Clerk to stamp the letter as of the date your appraisal was received. This time stamped letter can then be returned to you as proof of timely filing.

Failure to timely file your appraisal may have catastrophic results. Although late filings may be excused by the court "upon good cause shown", the late filing, at a minimum, will put you at a disadvantage in negotiating a fair settlement of the case. *N.Y.Ct. Rules 202.59(h)*. At worst, it can leave you with no direct proof to submit at trial. As a petitioner, that is fatal to your case. As a respondent, you may be left only with the ability to cross examine petitioner's appraiser, but little else.

Article 7 proceedings under Title 1 and 1A of the Real Property Tax Law are unique proceedings which require careful attention to the statute to avoid traps for the unwary. Failure to timely file a BAR grievance, SCAR petition, Article 7 petition, or appraisal can lead to the dismissal of your case. With care, however, the proceeding can be successfully handled for your taxpaying clients.



The Saratoga County Bar Association



YOU MAY NEED AN ATTORNEY
FOR EVEN A SIMPLE
TRAFFIC TICKET BECAUSE:

An attorney can provide advice on :

1. The effect of a conviction upon your driver's license, including the “points” system, possible suspension/revocation of your license, possible increase in insurance premiums, the difference between “points” as assessed by the Department of Motor Vehicles v. the Dept. of Insurance
2. The existence of a defense
3. How to present a defense
4. The statute under which the defendant is charged
5. Defects in police procedure or equipment
6. The pros and cons of ordering a supporting deposition
7. The merits of pleading guilty to a lesser charge
8. The effect of pleading guilty to a lesser charge in the event of an accident and a possible civil lawsuit later on
9. The sentence structure, including fines and surcharges
10. Other rights and liabilities under law

To locate an attorney, you may call the Lawyer Referral Service
@ 463-3200 ext. 2700 or 800-342-3661 or refer to the Yellow Pages

LEGAL AID SOCIETY OF NORTHEASTERN NEW YORK, INC.
PRIVATE ATTORNEY INVOLVEMENT (PAI) REGISTRATION

Welcome to the Legal Aid Society's PAI Program. Please take a few minutes to fill out this registration form to help facilitate the referral of cases to you.

1. Please let us know how many pro bono civil legal matters you will accept from the Legal Aid Society per year (Please check one.)

- 1 case/year 6-10 cases/year
 2-5 cases/year Over 10 cases/year

2. In which areas of law will you agree to accept referrals? (Check all that apply)

- | | |
|---|--|
| ANY AREA | <input type="checkbox"/> Divorce |
| <input type="checkbox"/> Bankruptcy | <input type="checkbox"/> Separation Agreements |
| <input type="checkbox"/> Consumer | <input type="checkbox"/> Health |
| <input type="checkbox"/> Employment | |
| (Other than UIB) | <input type="checkbox"/> Health care proxies |
| <input type="checkbox"/> Family | <input type="checkbox"/> Housing |
| <input type="checkbox"/> Custody | (Other than eviction) |
| <input type="checkbox"/> Support | <input type="checkbox"/> Evictions |
| <input type="checkbox"/> Visitation | <input type="checkbox"/> Foreclosure |
| <input type="checkbox"/> UIB | <input type="checkbox"/> SSI |
| <input type="checkbox"/> Medicaid | <input type="checkbox"/> Wills/Estates |
| <input type="checkbox"/> Education | <input type="checkbox"/> Medicare |
| <input type="checkbox"/> Domestic Violence | <input type="checkbox"/> Incorporation |
| <input type="checkbox"/> Other (Specify): _____ | |

3. Listed below are the counties that we serve. Please check the counties from which you can accept referrals. (Check all that apply.)

- | | | |
|-------------------------------------|---------------------------------------|--------------------------------------|
| <input type="checkbox"/> Albany | <input type="checkbox"/> Clinton | <input type="checkbox"/> Columbia |
| <input type="checkbox"/> Essex | <input type="checkbox"/> Franklin | <input type="checkbox"/> Fulton |
| <input type="checkbox"/> Greene | <input type="checkbox"/> Hamilton | <input type="checkbox"/> Montgomery |
| <input type="checkbox"/> Rensselaer | <input type="checkbox"/> Saratoga | <input type="checkbox"/> Schenectady |
| <input type="checkbox"/> Schoharie | <input type="checkbox"/> St. Lawrence | <input type="checkbox"/> Warren |
| <input type="checkbox"/> Washington | | |

4. Do you speak a language other than English?
 Yes No
If so, what language(s): _____

5. How many years have you practiced?

6. Practice setting:
 Sole practitioner Over 25 attorney firm
 2-5 attorney firm Government
 6-10 attorney firm Corporation/business
 11-25 attorney firm Retired
 Other (specify) _____

7. LAS, in addition to paying for out-of-pocket expenses for referred cases, provides other assistance to its pro bono volunteers, including a Certificate of Indigence and professional liability insurance secondary to any malpractice insurance you may have. Please let us know if you are interested in the following assistance:

- CLE as authorized by OCA rules _____
- Training (Specify area(s)): _____
- _____
- Co-counseling with experienced LAS attorneys
 "How-to" forms and materials (specify areas):
 Use of LAS law library
 Access to LAS pleadings/form files/brief bank
 Consultation with LAS legal staff
 Case law updates (specify areas): _____

8. Legal Aid would welcome your help in other ways besides accepting referral of cases. In which other ways can you help?

- Recruit other pro bono attorneys
 Educate poor people to their legal rights and responsibilities
 Train LAS staff or other private attorneys (Specify area of law or skills)
 Mentor a less experienced attorneys
 Assist with Pro Se Clinics
 Advise LAS staff regarding the handling of cases (Specify areas): _____

- Assist in the creation of community legal education materials or training materials.

Name: _____ **Law Firm:** _____
Address: _____ **City/State/Zip:** _____
Phone: _____ **Fax:** _____ **Email:** _____
Date: _____ **Signature:** _____

PLEASE MAIL THE COMPLETED FORM TO: Kristie M. Cinelli, LASNNY, 55 Colvin Avenue, Albany, NY 12206. Phone: (518) 689-6322; Fax: (518) 427-8352; Email: kcinelli@lasnny.org

Thank You For Your Commitment.

ADIRONDACK WOMEN'S BAR ASSOCIATION
a chapter of the Women's Bar Association of the State of New York

presents

**Conflicts of Interest and
Attorney Escrow Accounts**

presented by

**Peter V. Coffey, Esq., Englert, Coffey & McHugh
Anne Reynolds Copps, Esq., The Law Offices of Anne Reynolds Copps
Patricia E. Watkins, Esq., Bartlett, Pontiff, Stewart & Rhodes, P.C.
Catherine S. Hill, Esq., Whiteman, Osterman & Hanna, LLP
Stacey M. Barrick, Esq., Whiteman, Osterman & Hanna, LLP**

Friday, April 20, 2007

9:00a.m.-12:00p.m.

Courtyard Marriott, Route 50
Saratoga Springs, New York

\$60.00 WBASNY members/\$80.00 non-members
(breakfast provided)

This program has been approved for 3 credit hours, of which all 3 credit hours can be applied towards the Ethics requirement, in accordance with the requirements of the New York State Continuing Legal Education Board. This course qualifies for both established and newly admitted attorneys.

Full and partial scholarships for this program based on financial need are available. For information on the guidelines and to apply, please contact Cindy Lunsford. All requests are confidential.

****RSVP by Thursday, April 12, 2007 to Cindy Lunsford at 832-6439 or crl@bpsrlaw.com****