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Torts and Civil Practice:

Selected Cases from the Appellate Division, 3rd Department



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\$5M LOTTERY TICKET JUDGED WORTHLESS

Consola v. State of New York (Stein, J., 5/12/11)

Claimant bought an instant lottery ticket which after being scratched off appeared to show she'd won \$5-million. But the Division of Lottery refused to honor the ticket, which during motion practice was identified as "one of several thousand that were misprinted". The ticket also did not have a validation number that matched the numbers on the Division's official list of winning tickets. The Court of Claims (Collins, J.)

granted the State's motion for summary judgment and the Third Department affirmed, leaving the claimant only the limited remedy permitted by Lottery regulation; "replacement of the disputed ticket with an unplayed ticket of equal value."

AUTO LIABILITY AND AUTO (SUM) INSURANCE

Ferris v. Grogan (Malone, Jr., J., 5/12/11)

There was no question that the plaintiff, attempting to run across a road in the Town of

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MATRIMONIAL UPDATE



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"I never expected to get rich as a judge, but I never expected to get poor either."

- Robert A. Spolzino, Former Associate Justice Appellate Division Second Department, partner at Wilson Elser.

"A lot of people have asked me how short I am. Since my last divorce, I think I'm about \$100,000 short."

- Mickey Rooney

For many years I have called The Appellate Division, Third Department my Favorite Appellate Division. The Sages of State Street never failed to explain the facts of each case and provide us with their reasoning, unlike the terse First and Second Departments with their myriad affirmances based on the unknown decisions of the court below. The Fourth is somewhat better although often cryptic and sententious. Well,

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Torts and Civil Practice, *cont.*

Moreau, was struck by the defendant's car. But defendant argued he was not liable because he was confronted by an emergency situation; specifically, the presence of plaintiff's car in the defendant's lane of travel because the plaintiff had earlier fallen asleep at the wheel, and crashed into a tree. Supreme Court (Ferradino, J., Saratoga Co.) agreed with the defendant and granted him summary judgment, which the Third Department affirmed.

Waldron v. New York Central Mutual Ins. Co. **(Lahtinen, J., 5/5/11)**

Plaintiff's daughter (age 22) was seriously injured in a car-motorcycle accident in Florida. Some 2 months after the accident, plaintiff told his insurance agent about the accident and injuries but indicated he did not want a claim filed yet with the defendant insurer (NYCM). 3 months thereafter, plaintiff told the agent to file a claim under his supplementary uninsured motorists (SUM) coverage. The defendant disclaimed on several grounds including failure to provide timely notice of the claim. Plaintiff filed a DJ action, after which defendant moved for summary judgment which was granted by Supreme Court (O'Connor, J., Albany Co.). The Third Department reversed and reinstated the claim, finding that NYCM was on notice of the claim when the broker (an agent of NYCM) was informed of the accident and injuries, and that there were questions of fact as to whether the father's failure to give notice within 30 days of the accident (as required by the policy) was justified under the circumstances (one of which

was that he went to Florida to be with his injured daughter).

FALL FROM HORSE; ASSUMPTION OF RISK?

Corica v. Rocking Horse Ranch, Inc. (McCarthy, J., 5/12/11)

Assumption of risk is the primary defense to most injury claims arising out of recreational activities, and was raised here in the defendant's summary judgment motion which was denied by Supreme Court (Zwack, J., Ulster Co.). The plaintiff claimed the defendant riding ranch did not properly instruct her on how to control a horse and that trail guides did not come to her rescue when her horse began bucking. The Third Department affirmed, leaving for jury determination the question of "whether the lack of response by the trail guide positioned directly behind plaintiff increased the inherent risk of injury".

LABOR LAW § 240(1)

Georgia v. Urbanski **(Mercure, J.P., 5/12/11)**

Plaintiff was doing framing work on a house under construction when the ladder on which he was standing "kicked out" from under him as he reached over to place a joist. His motion for summary judgment on a Labor Law § 240(1) cause of action was denied by Supreme Court (Catena, J., Montgomery Co.) and the Third Department affirmed. Although evidence of the ladder failure was enough to make a prima facie case on liability under the statute, the plaintiff's decision to "use the ladder on an icy surface outside of the foundation" (which he acknowl-

edged was his own decision) raised a question of fact whether his own conduct was the sole proximate cause of his injuries.

Maloney v. J.W. Pfeil & Co., Inc. (Kavanagh, J., 5/19/11)

Another plaintiff who fell from a ladder gets an even worse result than the framer above; summary judgment granted to the defendant by Supreme Court (Hummel, J., Rensselaer Co.) and affirmed by the Third Department. This sheetrock installer was standing on the top cap of a 6-foot ladder when he fell and was hurt. But his § 240(1) cause of action fails because of undisputed evidence that plaintiff chose to use the ladder despite the presence on the job site of "numerous safety devices appropriate for the work"; making his use of the too-short ladder the sole proximate cause of the fall and resulting injuries.

MEDICAL MALPRACTICE **DISMISSAL**

Adams v. Anderson (Stein, J., 5/12/11)

Plaintiff, injured in an auto accident, sought medical treatment from the defendant orthopedist for complaints about her wrist and later, significant shoulder pain. Her medical malpractice suit alleged a failure to timely diagnose and treat a complex regional pain syndrome (CRPS) which the orthopedic practice had identified as a possible cause of some of her complaints. Defendants' motion for summary judgment was granted by Supreme Court (Mulvey, J., Tompkins Co.),

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Torts and Civil Practice, *cont.*

and affirmed by the Third Department, which noted that the very course of treatment which plaintiff's expert said should have been undertaken was actually refused by the plaintiff.

REAL ESTATE LITIGATION: "BUYER BEWARE" DEFENSE FAILS

Pettis v. Haag (Garry, J., 5/12/11)

Plaintiffs bought a residence in Madison County from the defendants, but thereafter sued them for fraud claiming sellers knowingly misrepresented the condition of the home relating to flooding, roof and electrical problems.

Relying on the traditional "caveat emptor" doctrine applicable to real property transfers in New York, defendants moved for summary judgment but Supreme Court (Cerio, Jr., J., Madison Co.) found questions of fact regarding sellers' knowledge and active concealment of problems with the property. The Third Department modified; ruling plaintiffs knew or should have known of deficiencies with the roof and circuit breaker box wiring based on findings in the report of their home inspector, but allowed the case to go to trial since other problems may not have been disclosed as required.

The views expressed in the above article are those of the author and do not necessarily represent the views of, and should not be attributed to, the Saratoga County Bar Association.

SCBA SUBMISSIONS NEEDED!

The Saratoga County Bar Association Newsletter is electronically distributed bi-monthly by the Saratoga County Bar Association.

We welcome the submission of articles or other items of interest to the bar and also encourage your comments on the SCBA, recent articles, columns or other letters.

The SCBA may reject or edit for style and length any article or letters submitted (Anonymous letters are not published). The views expressed in the letters and columns reflect the opinions of the authors and may not reflect the views of the Association, its Officers or Directors. Address all communications to:

Libby Coreno
mcoreno@saratogalaw.com

Matrimonial Update, *cont.*

they are my favorites no more, ever since they senselessly declared that lap dances are subject to sales tax on June 9, 2011, ignoring persuasive expert testimony that such endeavors constituted dramatic or musical arts.ⁱ Shame on them. They did extract a little redemption from me by deciding one of the earliest cases involving the Temporary Maintenance Guidelines of the new Domestic Relations Law Section 236B(5-a). You know that one, otherwise known as the High Wage Earner Instant Despondency Act of 2011. Not being content to come up with some simplistic formula for support of a spouse based on needs or judicial discretion, our state based temporary maintenance on a definition of income that takes

one's breath away compared to every other state (Gross income less FICA) and pounds a litigant for usually 30% of that sum less 20% of the income of the poor "spouse with the lower income." The Third Department in Ingersollⁱⁱ held that such temporary maintenance guidelines apply only to cases started after October 12, 2011 and therefore not applicable to Mr. Ingersoll. Much to his relief, they then reduced his temporary support obligation from \$677.44 per month to \$450 per month or about \$277 per month. I am guessing that the filing, printing and legal fees for the appeal were a lot more than the support that was saved, but that is why I love matrimonial practice. Reminds me of the quip from George Saunders, "Irony is just honesty with the volume cranked up."

Remember the guy who was denied the ability to practice in New York because of his failure to pay his student loans? He was denied twice by the Appellate Division, Third Department,ⁱⁱⁱ finding that, "His recalcitrance in dealing with the lenders has been and continues to be incompatible with a lawyer's duties and responsibilities as a member of the bar." Of course they have never disbarred a lawyer who walks out on his or her financial obligations by seeking bankruptcy protection after becoming a lawyer. Just hard times I guess. So what if you beat up your wife so badly that you have to plead guilty to assault and then three years later beat her up so badly that you plead to felony unlawful wounding and get sentenced to three years in jail of which you have to serve 12

months. Well, I guess that is not incompatible with a lawyer's duties as a member of the bar, because this lawyer, one Peter H. Jacoby, was suspended for 36 months by the First Department and then he will be allowed to practice law again.^{iv} Makes no sense to me. They affirmed a Hearing Panel's findings of mitigation in that the wife started the fight and Mr. Jacoby suffering from "intermittent explosive syndrome" for which he is being treated. A lovely view of domestic violence perpetrated by one of our own.

So with the Dog Days of Summer upon us the App Divs have slowed the pace of matrimonial wisdom making us look for such love in all the wrong places. This led me to a commodity trading case in the Court

Con't on page 4

of Appeals decided at the end of June. Although they were answering an inquiry from the United States Court of Appeals for the Second Circuit in a case entitled Commodities Futures Trading Commission v. Walsh,^v this case is chock full of matrimonial gems. I kid you not. You see Mr. Walsh made a boatload of money by allegedly misappropriating \$550 million from various funds that he managed with a partner. In 2006 he divorced his wife and gave her over \$31 million in real estate, cash and a distributive award to be paid over time. So the Commodities Futures Trading Commission wants the money back, claiming it is the proceeds of fraud. The ex-wife of Mr. Walsh of course knew nothing about the fraud and she wants to keep the money. So the Second Circuit asked the Court of Appeals to resolve two questions: (a) Are the proceeds of fraud subject to equitable distribution? (b) Does a spouse pay fair consideration in a divorce settlement agreement when she relinquishes a good faith claim to the marital estate where all or part thereof is the proceeds of fraud? The answers are (a) yes and (b) yes, which allows Mr. Walsh's ex-wife to keep every dime of his allegedly ill begotten gains. As Judge Graffeo wrote, "Ex-spouses have a reasonable expectation that, once their marriage has been dissolved and their property divided, they will be free to move on with their lives." The Court of Appeals even states that custody and visitation concessions could be considered fair consideration. You see, matrimonial law is

everywhere, even in the Second Circuit Court of Appeals.

What else is new? Apparently believing that marital counseling works and dammit we can order it to work, the Third Department affirmed a custodial determination except to direct "that the parents choose a new therapist and that both parents actively participate and fully cooperate in family counseling." Good luck with that one. As thought that wasn't enough, they directed the Family Court to "craft an order that includes provisions for said counseling, and parenting education and short-term monitoring by the court, where necessary, to insure the success of the counseling process."^{vi} Ah yes, 2011, the Year of No Therapist Left Behind. I often tell clients that no court can make the other parent be a good parent. Apparently the Third Department thinks otherwise.

Finally what would a new season be without another dumb form courtesy of the Forms Goddess? Not content to torture us by mandating that we compile statistics on our clients that have nothing to do with anything, we now have Administrative Order 471/11 which requires a new eight page Preliminary Conference Stipulation Order be completed and signed by the litigants, the attorneys and the judge at a preliminary conference. Why? Beats me. Experienced jurists and matrimonial counsel can shepherd our clients through the misery of divorce without this stuff, but I guess we are not be trusted so we now have to charge our clients to prepare a few lengthy form that asks if

a translator is needed, the names of children even in childless marriages or children not of this marriage, and the "nature" of any agreements whatever that is. "Judge, the nature of the agreement is paper with ink on it." The form has three separate questions on custody (custody, parenting time and decision making), as though they were separate issues. The Third Department says you cannot have joint custody without joint decision making,^{vii} but I guess OCA thinks you can. The form requires parental education information even though the New York Parent Education & Awareness Program has been eliminated, and a specific acknowledgment of knowledge of alternative dispute resolution methods, maybe like the Jacoby Intermittent Explosive Syndrome Dispute Resolution Method, supra. It also prevents every litigant from deleting e-mails, EVEN ONES NOT RELATED TO THE DIVORCE, such as spam. There's lots more, but

you get the gist. This thing makes me sick, but the good news is that it has yet to hit the website of the Unified Court System and maybe we can just ignore it for the benefit of our clients and the sanity of our staffs. One can only hope.

Happy International Civility Month.

ⁱ677 New Loudon Corporation, doing business as Nite Moves v. New York State Appeals Tax Tribunal, __ A.D.3rd __ (3rd Dept., June 9, 2011).

ⁱⁱIngersoll v. Ingersoll, __ A.D.3rd __ (3rd Dept., July 7, 2011).

ⁱⁱⁱIn RE Anonymous, 67 A.D.3rd 1248 (3rd dept., 2009) and 61 A.,D.3rd 1214 (2009).

^{iv}In re Jacoby, __ A.D.3rd __ (1st Dept., June 28, 2011)

^vCommodities Futures Trading Commission v. Walsh, __ N.Y.3rd __ (June 23, 2011)

^{vi}Brown v. Erbstoesser et. al., __ A.D.3rd __ (3rd Dept., June 30, 2011) Ms. Brown prosecuted the appeal *pro se*, God Bless her.

^{vii}Williams v. Boger, 33 A.D.3rd 1091 (3rd Dept., 2006)

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EMPLOYMENT LAW UPDATE



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Welcome to the first employment law update. The past two months in employment law saw favorable decisions for employers coming from State Courts, Federal Courts and the Supreme Court in the oft-discussed Wal-Mart decision (to which an entire column could be devoted).

GENDER DISCRIMINATION

Suriel v. Dominican Republic Educ. & Mentoring Project, Inc., 2011 NY Slip Op. 5384 (3rd Dept. June 23, 2011)

After former director's relationship with the corporate president turned cold, she was

terminated, allegedly for insubordination, mismanagement and personal use of organization funds. She sued under the Human Rights Law (Executive Law 290), alleging hostile work environment as a result of sexual harassment and retaliation.

The Third Department affirmed summary judgment in favor of the employer, noting at the outset that plaintiff could not avoid summary judgment simply by alleging that additional discovery was required, particularly where she failed to establish how the sought after discovery would yield material evidence. Turning to the essential elements of a discrimination claim (protected class; otherwise qualified; adverse employment action; and causal connection) the court noted that, while the first three were not disputed, the plaintiff failed to allege that the conduct toward her was sexual in nature. Rather, plaintiff asserted that the actions taken against her were in retaliation for her complaints to the board about the president's actions towards other women which, the court found, failed to plausibly connect any of the actions taken against her to her gender. And even though it may seem that the complaints could form the basis of a retaliation claim, the court found that plaintiff had failed to allege that she made any specific complaints that someone had engaged in sexual harassment or discrimination.

AGE DISCRIMINATION

Ridinger v. Dow Jones & Co., 2011 US App. LEXIS 14146 (2nd Cir. July 11, 2011)

Plaintiff, a 62 year old photo editor at Smart Money magazine, was terminated from his employment, and received a severance package which included 20 weeks' salary and other benefits. In offering the package, as is generally the case, the employer had plaintiff execute a separation agreement which included, among other things, a general release and waiver of all claims arising from the termination of employment (ADEA violations among them). Nevertheless, when plaintiff learned that his position had been filled by a younger individual, after he had previously been advised that he was being terminated because of its elimination, he commenced an action for age discrimination.

In opposition to the motion to dismiss, plaintiff's counsel correctly argued that in order for a waiver of an ADEA claim in a severance agreement to be valid it must be written in a manner calculated to be understood. Nonetheless, the District Court held, and the Second Circuit affirmed, that the language contained in the agreement was very clear, that plaintiff had been provided ample opportunity to review the document, and in fact acknowledged having been advised to consult with an attorney. Dismissal was affirmed.

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EMPLOYMENT LAW UPDATE, CONT.

CLASS ACTIONS

Winans v. Starbucks Corp., 08-Civ-3734 (S.D.N.Y. July 2011)

Who says Starbucks employees are always friendly? Plaintiffs, New York residents and former employees (Assistant Managers) of the ubiquitous purveyor of the venti triple decaf no whip mochachino, asserted that they, as full time salaried employees (the baristas and

shift supervisors were part time) were entitled to a portion of the tips collected in stores. The tips, which were collected and pooled pursuant to a written company policy, were distributed to each barista and shift supervisor pursuant to a formula based upon the number of hours worked in a given week. Plaintiffs asserted, in part, that, since they were on the floor in front of customers, they were presumed to be tip eligible and, therefore, should receive their

portion.

The court reviewed the application of NYS Labor Law 196-d, which, in part, prohibits an employer from demanding or accepting any part of the gratuities received by an employee. The court found that even if the plaintiffs were able to establish that they were statutorily eligible to participate in the tip pools, they nevertheless failed to demonstrate that they had a right to participate in distributions, or that the company had

an actual policy which forced them to contribute to the pool by returning those tips that were handed directly to them. Quite simply, the court found, "that an employee is eligible to participate in a tip pool does not mean that he or she is entitled to do so, nor does the absence of a prohibition effect an entitlement." Class certification denied and summary judgment granted.

NYSBA NEWS RELEASE: SAME-SEX MARRIAGE IN NEW YORK

SAME-SEX MARRIAGE IN NEW YORK BECAME EFFECTIVE SUNDAY, JULY 24:

STATE BAR OFFERS LEGAL GUIDES FOR COUPLES AND ATTORNEYS

How do same-sex couples get married in New York? Can a couple get married if they previously entered into a civil union or domestic partnership in New York or in another state or country? Can same-sex spouses change their names if they marry in New York? Does the Federal Defense of Marriage Act give other states the right not to recognize a New York marriage? Is a spouse liable for the other spouse's debts? How are children affected by same-sex marriages?

Same-sex couples are asking questions like these. As couples, attorneys and others navigate the new legal landscape, the New York State Bar Association is offering a brochure of Frequently Asked Questions (FAQ) by the Bar Association and its Commit-

tee on LGBT People and the Law. This 8-page brochure can be downloaded at www.nysba.org/MarriageEqualityFAQ.

The NYSBA is also offering a four-and-a-half-hour seminar, entitled "Same Sex Marriage in New York: What Every Practitioner Needs to Know". This Continuing Legal Education (CLE) course will be held live in New York City on Friday, September 9, 2011 and available via webcast statewide. For complete program information and to register online go to www.nysba.org/samesexmarriageinNY.

"The Marriage Equality Act provides same-sex couples in New York with important protections and legal rights," said Association President Vincent E. Doyle III of Buffalo (Connors & Vilardo LLP), noting that the Association has long supported the new law. "Significantly, many areas of the law are unclear. We hope our FAQ and CLE will help clarify the issues involved."

"The law granting same-sex couples the right to marry is a triumph for equality," said Michele Kahn, who chairs the Bar Association's Committee on LGBT People and the Law. "We want to provide same-sex couples and attorneys with information about the legal steps necessary to get married and an understanding of the legal rights and obligations arising from a marriage. We also want to make them aware that there are many open issues about how the law will be applied. Among them: how other states and countries will view New York marriages and how federal laws impose roadblocks to full recognition and equal treatment."

The FAQ brochure, developed by a panel of legal experts, addresses a wide range of issues involving the Marriage Equality Act. They include: residency requirements; waiting periods; who is authorized to perform marriages; name changes; validity of New York same-sex marriages in other states; general rights and obligations

that come with marriage; prenuptial agreements; and children, parental rights and non-biological adoptions.

The FAQ recommends that same-sex couples travel with copies of health care proxies, powers of attorney and hospital visitation authorization forms for use in the event of an emergency. It also warns that even these documents may not protect same-sex couples if the laws of a particular jurisdiction do not recognize their validity. (Link: www.nysba.org/MarriageEqualityFAQ)

The State Bar urges any couple considering marriage to consult with a lawyer and a tax expert.

The 77,000-member New York State Bar Association is the largest voluntary state bar association in the nation. It was founded in 1876.

Brandon J. Vogel
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Carter Conboy Press Releases

CARTER CONBOY'S CARR SELECTED TO LEADERSHIP TECH VALLEY



Carter Conboy Senior Associate, Brian D. Carr, was selected to be a member of Leadership Tech Valley's Class of 2012.

Leadership Tech Valley, a shared initiative of the Albany-Colonie Regional Chamber of Commerce and the Chamber of Schenectady County, is a dynamic, interactive program that develops leadership

potential of participants and builds a solid foundation of informed, action-oriented and productive employees and citizens.

Mr. Carr is a litigation attorney concentrating his practice in the fields of civil litigation, primarily involving the defense of products liability, professional malpractice, premises liability, and personal injury liability claims.

CARTER CONBOY'S DESANY ELECTED TO GREENBUSH CHILD CARING, INC. BOARD OF DIRECTORS



Attorney Jessica A. Desany of the law firm of Carter Conboy has been elected to the Greenbush Child Caring, Inc.'s Board of Directors to serve a three year term beginning in September, 2011. Greenbush Child Caring, Inc. is a private, not-for-profit agency located in Rensselaer County, whose mission is to provide school-age children with developmentally appropriate child care, along with recreational and enrichment activities in a positive environment.

Ms. Desany is a Director with the firm and practices in the area of civil litigation, including actions defending claims of professional liability, personal injury, and premises liability, as well as in the areas of commercial real estate and insurance coverage analysis and disputes.

About Carter Conboy:

Founded in 1920, Carter Conboy, with offices located in Albany and Saratoga, New York, serves clients in upstate New York, Connecticut, Massachusetts and New Jersey.

For additional information about the firm, visit www.carterconboy.com or contact the firm's Director of Marketing, Stacy A. Smith, at 518-810-0516 or ssmith@carterconboy.com.

DuCharme, Harp & Clark, LLP Press Release



DuCharme, Harp & Clark, LLP is pleased to announce that attorney Cheryl L. Sovern was installed as the President

of the Adirondack Women's Bar Association at the installation dinner held on June 15th at the Wishing Well in Saratoga Springs.

Cheryl has been a member of the Adirondack Women's Bar Association since 2008. She has held many positions within the organization including Secretary and Vice-President. Cheryl is also a member of the New York State Bar Association, the Saratoga County Bar Association, the Schenectady Bar Association, Treasurer and Past President of the Malta

Ridge Volunteer Fire Company Auxiliary, Secretary of the Burnt Hills Ballston Spa Varsity High School Hockey Booster Club, President of the Ballston Spa Education Foundation and Vice Chair of the Malta Democrats.

Cheryl's areas of practice include labor and employment issues; federal litigation; business and corporate law and family and matrimonial law. She earned her Juris Doctor degree from Albany Law School and her Bachelor of Science degree in Social Theory from the State University

of New York at Empire State College.

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O'CONNELL AND ARONOWITZ PRESS RELEASES

O'CONNELL AND ARONOWITZ EXPANDS ITS LABOR AND EMPLOYMENT LAW PRACTICE WITH ATTORNEY MEREDITH H. SAVITT

Meredith H. Savitt, Esq. has joined O'Connell and Aronowitz as Of Counsel to the Firm. This affiliation will expand the Firm's employment law practice, as Ms. Savitt is a prominent attorney and lecturer in the areas of labor and employment law. In addition to representing private sector clients from small businesses to Fortune 500 companies, she served for several years as Assistant Attorney General. She has litigated before state and federal courts, the National Labor Relations Board, the NYS Public Employment Relations Board, the EEOC, the NYS Department of Labor, and the NYS Division of Human Rights.

Ms. Savitt has been recognized for her dedication and commitment to community service, having been awarded the President's Pro Bono Award by the New York State Bar Association and the 2001 Pro Bono Award of the Women's Bar Association of the State of New York. She was a founding member of the Capital District Women's Bar Association's Legal Project and currently serves on the Board of Family and Children's Service of the Capital Region, Inc.

Ms. Savitt's addition to O'Connell and Aronowitz enables the Firm to provide businesses with a full range of services directed at reducing employer liability. In

addition to defending businesses against employment-related lawsuits, the Firm will help businesses avoid litigation by offering in-house training and by assisting with employment policies and employment contracts. O'Connell and Aronowitz will also advise companies on auditing workplace practices and ensuring legislative and regulatory compliance.

Ms. Savitt will be joining the Firm's employment law practice headed by Jeffrey J. Sherrin, the Firm's President and Kurt E. Bratten, Senior Associate. Mr. Sherrin and Ms. Savitt, having previously worked together on employment discrimination matters, achieved- in their most noteworthy collaboration-a \$15.4 million dollar verdict in a sexual harassment lawsuit, which was, at the time, the largest sexual harassment verdict in the country.

O'CONNELL AND ARONOWITZ ANNOUNCES ANOTHER MAJOR EXPANSION TO ITS HEALTH AND CRIMINAL LAW PRACTICES

O'Connell and Aronowitz continues its rapid growth to its health care and criminal law practices with the addition of Richard S. Harrow, Esq. Mr. Harrow was a prosecutor in the New York State Attorney General's Medicaid Fraud Control Unit for 27 years, where his positions included serving as Regional Director for the NYC Region and as Regional Director in the Albany office. Mr. Harrow has investigated and prosecuted hundreds of Medicaid fraud and patient abuse cases, including "Operation

Home Alone," where he was the lead prosecutor for then Attorney General Andrew Cuomo's top to bottom investigation of the homecare industry. His work resulted in over 100 criminal convictions of home health aides, licensed health care agencies, schools, nurses, and \$40 million in restitution. Mr. Harrow's recoveries for New York State are among the largest in U.S. history.

Recognized as having one of the largest and most respected health and criminal law practices in New York State, O'Connell and Aronowitz has added a new dimension to the Firm with Mr. Harrow. In addition to focusing on Medicare, Medicaid and false claims prosecutions and investigations, and corporate compliance, Mr. Harrow will work with the Firm's well-established white collar criminal defense attorneys where he will represent individuals and entities in every stage of criminal and regulatory investigations and prosecutions.

Regarding Mr. Harrow's addition to O'Connell and Aronowitz' health care practice, Jeffrey J. Sherrin, the Firm's President, stated, "Due to the increasingly aggressive investigatory and prosecutorial activities of Federal and State law enforcement agencies in the health care arena, we felt that we needed someone with Mr. Harrow's experience, talents, and in-depth knowledge of the workings of prosecutorial agencies upstate and in NYC to protect our clients' interests. Mr. Harrow will represent our health care clients before all Federal and State prosecutorial and law

enforcement agencies, including in the New York City area."

Mr. Harrow will also be joining noted criminal defense attorneys Stephen R. Coffey, Andrew R. Safranko and Michael McDermott in the Firm's white collar criminal defense practice. According to Mr. Coffey, head of the Firm's criminal defense practice, "We have assembled a top team of talented and experienced defense attorneys to respond to the increasingly complex nature of criminal law and the zealotry of federal and state law enforcement agencies. Our expanded white collar defense practice now includes criminal defense attorneys, former government regulators, prosecutors and health care litigation attorneys."

ABOUT O'CONNELL AND ARONOWITZ:

O'CONNELL AND ARONOWITZ IS ONE OF THE CAPITAL DISTRICT'S LARGEST, BROAD-SERVICE LAW FIRMS. WITH MORE THAN 35 ATTORNEYS AND OFFICES IN ALBANY, SARATOGA SPRINGS AND PLATTSBURGH, IT HAS BEEN SERVING CLIENTS AND THE COMMUNITY SINCE 1925.

IF YOU HAVE QUESTIONS ABOUT THE FIRM, PLEASE CONTACT JEFFREY J. SHERRIN AT (518) 462-5601, OR VISIT THE FIRM'S WEBSITE AT WWW.OALAW.COM.

ANNOUNCEMENTS/CLASSIFIED

FREELANCE LEGAL ASSISTANT & SECRETARIAL SERVICE

Jane R. French is pleased to offer freelance legal assistant services to local attorneys. Services include, but are not limited to, litigation and real estate support, trial preparation, document preparation, transcription and billing assistance. For further information contact Jane R. French at legalassistbiz@gmail.com or 518.222.8168 or visit www.legalassistbiz.com.

LITIGATION ASSOCIATE

Expanding law firm in Southern Saratoga County seeks a Litigation Associate. 2 to 4 years experience required; strong research, writing and organizational skills; deposition and/or trial experience preferred. Candidate should be self-motivated, detail oriented and a focused individual who desires to grow with practice. Admitted in New York and NDNY required. Salary commensurate with experience. Health plan, vacation /sick time and retirement plans available. Submit Resume, Cover letter and references to CRL@lemirejohnsonlaw.com.

LABOR AND EMPLOYMENT LAW ATTORNEY NEEDED

Tully Rinckey PLLC, one of the largest and fastest-growing law firms in the Capital Region, is looking for experienced and ambitious Labor and Employment Law Attorney to join our firm in our Albany, NY location. We've developed a reputation for providing superior legal representation and are determined to continue the trend of excellence. We're

looking for a knowledgeable attorney who possesses extensive experience in Labor and Employment Law.

Attorneys with at least 7 years experience, 10-12 years preferred and the ability to procure, cultivate and sustain their own clients or attorneys with an already established \$250,000 book of business are encouraged to apply.

Tully Rinckey has made a strong commitment to excellence, teamwork, diversity and personal and professional development. We are growing law firm with offices also located in Washington, D.C. and Arlington, VA. Tully Rinckey has been named one of the Capital Region's "Best Places to Work" on several occasions, a prestigious distinction recognizing the ability to create a positive work environment that attracts and retains employees through a combination of benefits, working conditions and company culture.

Tully Rinckey offers a competitive compensation package including 401k and comprehensive benefit package. Salary is commensurate with experience.

Please submit your cover letter, resume and salary requirements to hiring@tullylegal.com if you are interested in this opening.

SOLE PRACTITIONER OR LAW FIRM NEEDED TO MERGE

Tully Rinckey PLLC is looking for an experienced and ambitious Sole Practitioner or Law Firm to merge with our Albany, NY based firm. We've developed a reputation for providing superior legal representation and are determined to continue the trend of excellence.

Sole Practitioners or Law Firms with an already established book of business and the



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ability to procure, cultivate and sustain their own clients are encouraged to apply.

Tully Rinckey offers a competitive compensation package including 401k and comprehensive benefit package.

Please contact hiring@tullylegal.com or Mathew Tully at 518-218-7100 if you are interested in this opportunity.

SPACE AVAILABLE

Two large furnished law (or other professional) office suites available in a beautifully restored Victorian mansion on Union Avenue with private office, receptionist, shared conference room and kitchen. Copier, fax, scanner, internet and phone included. Both offices and the conference room have fireplaces and can easily accommodate more than one person. The first office is 24 feet by 19 feet and the second is

21 feet by 18 feet. \$1,400 for each office suite. Contact Elizabeth Byrne & Michele Anderson, Anderson Byrne LLC, 48 Union Avenue, Suite 1, Saratoga Springs, NY 12866, (518) 587-4905 ext 205.

BRANDI BURNS, ESQ. HAS MOVED

The Law Offices of Brandi Burns have moved to 20 Church Avenue, Ballston Spa, NY 12020, (p) 518-490-2289, (f) 518-490-2292.

NEW EMAIL ADDRESS FOR PATTY CLUTE

Patty Clute's new email address at the Law Office of David A. Harper is pclute@davidharperlaw.com. As always, Patty is still available at pclute@saratogacountybar.org.



**You are cordially invited
to the 2011**



Campaign Kickoff

**Thursday, September 8th
5:30–7:30 pm**

at the

Fort Orange Club

110 Washington Avenue, Albany NY 12210

This reception is complimentary for all partners, and their designated associates, of firms in the 2010 and 2011 Justice for All Campaign.

Also complimentary for individuals who donate \$225 or over.

Please RSVP by August 25 to rsvp@lasnny.org

For more information or to become a member of the 2011 Campaign contact Deanne Grimaldi at 689-6336 or dgrimaldi@lasnny.org, or donate at www.lasnny.org

2010 Campaign Co-chairs

E. Stewart Jones, Jr. and Thomas J. O'Connor

2010 Campaign Leadership

Albany County Bar Association
Anderson, Moschetti & Taffany
Arroyo Copland & Associates
Balzer & Leary
Bartlett, Pontiff, Stewart & Rhodes

Bond, Schoeneck & King

Breakell Law Firm
Buckley, Mendleson, Criscione & Quinn

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Blackmore, Maloney & Laird

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Couch White

Deily, Mooney & Glastetter

Dreyer Boyajian

E. Stewart Jones Law Firm

Englert, Coffey, McHugh & Fantauzzi

Friedman, Hirschen & Miller

Ganz Wolkenbreit & Siegfeld

Girvin & Ferlazzo

Gordon, Tepper & DeCoursey

Hacker & Murphy

Heslin Rothenberg Farley & Mesiti

Hinman Straub

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Law Office of Geri Pomerantz

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Law Office of Patricia
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Harrison, Amodeo & Davenport

**Martin, Harding & Mazzotti
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Rosenblum, Ronan, Kessler & Sarachan

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Tuczinski, Cavalier, Gilchrist & Collura

**Whiteman Osterman & Hanna
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Bold=\$10,000+

Firms under \$225 per attorney

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Moynihan

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Save the Date!

Saturday Evening
September 17, 2011

~

Saratoga Springs City Center

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CELEBRATING 100 YEARS OF THE
SARATOGA COUNTY BAR ASSOCIATION

Featuring live entertainment by

Soul Session

Mark your calendars now for this historic event!