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LAW NOTES

VOLUME V, ISSUE V

SEPTEMBER OCTOBER 2011

Torts and Civil Practice:

Selected Cases from the Appellate Division, 3rd Department



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COURT WON'T ALLOW INCON- SISTENT THEORIES OF CAUSA- TION

Kilcer v. Niagara Mohawk (McCarthy, J., 7/7/11)

The causation question at issue was whether the plaintiff's toxic brain injury resulted from exposure to smoke or exposure to chemicals. Kilcer was employed by a contractor doing remediation at a hazardous waste site owned by the defendant. In an unrelated event, he was exposed to smoke for several hours while investigating a fire scene and later began suffering from memory loss and

disorientation. He filed for volunteer firefighter's benefits with the Workers' Compensation Board, and while that claim was still pending, plaintiff sued NiMo, claiming his brain injury arose from exposure to chemicals at the remediation site. A comp board law judge determined there had been a compensable injury due to smoke inhalation at the fire scene. In the suit versus NiMo, Supreme Court (Czajka, J., Columbia Co.) denied the summary judgment motions of defendants but the Third Department modified and dismissed the complaint in

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MATRIMONIAL UPDATE

"Divorce is born of perverted morals and leads to vicious habits." -Pope Leo XIII (1878 to 1903)

"She cried, and the judge wiped her tears with my checkbook." - Tommy Manville

"We were happily married for eight months. Unfortunately, we were married for four and a half years." -Nick Faldo, Golfer

Happy Pro Bono week folks. Get out there and help a poor person if you get a chance. The news for us matrimonial wonks is getting stranger and stranger, and I'm not just talking OCA here for a change. Did you see the fuss in Mexico City over temporary marriages? There is a proposal in the city assembly to make marriages a two year contract, renewable of course but if things don't work out, adiós muchacho. It seems that

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Torts and Civil Practice, *cont.*

its entirety upon the doctrine of “judicial estoppel”; that a litigant should not be permitted to lead two courts to come to opposite conclusions on the same question.

CLAIMS AGAINST MUNICIPAL DEFENDANTS

Franco v. Town of Cairo (Lahtinen, J., 8/18/11)

General Municipal Law § 50-e requires a potential plaintiff to put a municipal defendant on notice of a dangerous condition that caused an injury which might result in a lawsuit. The deadline for notice is 90 days after the injury but the statute (§ 50-e (5)) also permits late notice within one year and 90 days with Court permission. This plaintiff’s motion to provide late notice (7 months after breaking her ankle in a fall on ice) was denied by Supreme Court (Teresi, J., Greene Co.) which concluded that she failed to show that permitting the claim would not prejudice the Town. With one dissenter, the Third Department reversed and granted the application to file the late Notice of Claim, noting sufficient evidence that the defendant had notice as both police and emergency personnel came to the accident scene to assist the plaintiff and a resulting written report specifically referenced the ice that the petitioner claimed caused her to fall.

Keating v. Town of Burke (Mercure, J.P., 7/7/11)

Plaintiff went to a town park for an auction sponsored by the local fire department. While selecting a spot to place her chair, she was struck and injured by a dead branch that had broken off

from an overhanging tree. Her suit against both municipal defendants, alleging negligent inspection and maintenance of the tree, was dismissed on summary judgment by Supreme Court (Demarest, J., Franklin Co.). The Third Department affirmed as to the fire department, but reversed and reinstated the claim against the town which “wholly failed to explain its inspection procedures regarding trees” and therefore did not establish as a matter of law that it reasonably maintained the park and had neither actual nor constructive notice of the alleged hazard.

Stride v. City of Schenectady (Spain, J., 6/16/11)

Supreme Court (Kramer, J., Schenectady Co.) granted the City’s motion for summary judgment in this trip-and-fall action; the defendant relying on the absence of prior written notice of the hazard as required by the City Charter. Plaintiff contended she was hurt after tripping over a metal stump that was left when a parking meter was severed near sidewalk level on Erie Boulevard. Affirming, the Third Department noted that plaintiff’s own deposition testimony (that while at work she heard a crash and upon looking out a window saw a car had struck and knocked the parking meter over) contradicted any argument that the City created the hazard and therefore was on constructive notice of its existence.

ASSUMPTION OF RISK DOOMS ANOTHER SPORTING PLAINTIFF

Bukowski v. Clarkson

Univ. (Rose, J., 7/14/11)

Plaintiffs hurt while involved in sporting activities face an uphill battle; usually needing to show their injuries arose out of “unassumed, concealed, or unreasonably increased risks”. Here, Supreme Court (Devine, J., Albany Co.) granted defendant’s motion (after the close of plaintiff’s case at trial) to dismiss the case of a college baseball player who, while throwing batting practice, was struck in the face by a batted ball. The Third Department affirmed, although two dissenters agreed with plaintiff that the jury could have found that the risk of injury was unreasonably increased over the inherent risks of batting practice because of inadequate indoor lighting and the absence of a protective “L-screen” in front of the pitcher’s mound.

DOG BITE CASES

Gannon v. Conti (Spain, J., 7/7/11)

Most dog bite injury cases are defended with evidence that the dog owner was without knowledge that the animal had vicious or dangerous propensities. That argument succeeded here when Supreme Court (Cahill, J., Ulster Co.) granted summary judgment to the defendant whose dog had allegedly run out of a yard with an underground “invisible” electrical fence and bit a girl sitting on her bike. There was no proof of a prior bite by the dog, but the Third Department reversed and reinstated the plaintiff’s case upon evidence of defendant’s admission that he had, on several occasions before

Con’t on page 3

the child's injury, placed a protective "bite sleeve" of the type used to train police K-9 dogs on his arm and encouraged the dog to leap, bite the sleeve and hold on until commanded to let go. This canine behavior, said the Court, could be construed by a jury as sufficient for putting the defendant on notice that his dog might bite someone.

Gordon v. Davidson
(Mercure, J.P., 8/4/11)

This plaintiff alleged his injuries were an indirect result of a dog bite; when the defendant allegedly failed to restrain his two dogs, which attacked plaintiff's dog, causing the plaintiff to fall to the ground. Supreme Court (Giardino, J., Schenectady Co.) granted defendant's motion for summary judgment, finding the defendant had neither actual nor constructive knowledge that either of his dogs had vicious propensities. Rejecting plaintiff's argument that a common-law negligence theory for failing to restrain the dogs (not the strict liability theory of standard dog bite claims) should apply, the Third Department affirmed the dismissal.

Security Mutual Ins. Co. v. Perkins (Spain, J., 7/7/11)

One way to void insurance coverage is to show the insured made a "material misrepresentation" of a fact affecting the policy. The plaintiff here was a liability insurer seeking a declaration voiding the homeowner's coverage of the defendant who was sued after his dog, a German Shepherd/Pit Bull mix, bit a visitor to the defendant's residence. The insurer's application for coverage asked Perkins whether he had "any animals or exotic pets"; to which the defendant, although he owned

the dog at the time, answered "no". Supreme Court (Kramer, J., Schenectady Co.) found the question unclear, construed the ambiguity against the insurer, and denied the motion seeking cancellation of the coverage. The Third Department reversed, concluding there was no confusion "because, while a dog is not an exotic pet, it is clearly an animal", something to which the defendant Perkins agreed (notwithstanding that he claimed he never read the insurance application before he signed it).

—————
PREMISES LIABILITY
—————

Marino v. AG Properties of Kingston, LLC (Kavanagh, J., 6/16/11)

The general rule on liability for leased premises is that an out-of-possession landlord will not be responsible absent notice of the dangerous condition combined with assumption of the right to enter the premises to inspect and make necessary repairs. This defendant was so obligated under the lease for this property, on which the plaintiff (employed by the lessee) claimed to have fallen and hurt his knee while walking down a staircase. Supreme Court (Gilpatrick, J., Ulster Co.) denied defendant's motion for summary judgment and the Third Department affirmed.

Lipe v. Albany Medical Center (Garry, J., 6/16/11)

The plaintiff claimed that after undergoing a colonoscopy, staff at the defendant hospital ignored her requests for help getting to the bathroom, and after she made it there on her own, she fell while coming back to bed and was injured. The hospital's motion for summary judgment was partially granted;

Supreme Court (Kramer, J., Schenectady Co.) finding a question of fact that allowed the common law negligence claim to go forward to trial. The Third Department affirmed, agreeing that expert medical testimony will not be needed for the jury to resolve "a factual issue as to whether she received any assistance or assessment at all, not whether the assessment was properly performed".

Frisbee v. 156 Railroad Ave. Corp. (Lahtinen, J., 6/2/11)

Defendant's building was being renovated, and the plaintiff was on the premises to install a security system. He allegedly slipped and fell because of carpet glue that had recently been put down on a cement floor by a subcontractor (J.M. Rich), and sued under Labor Law § 200 and common law negligence. Supreme Court (O'Connor, J., Albany Co.) granted the subcontractor's motion for summary judgment but the Third Department reversed in part by reinstating the common law negligence claim. The glue, atop which carpet was to be installed, was "like ice" when first applied according to proof submitted by the plaintiff, who further claimed he was not aware of or warned to stay away from the glue which was not easily seen because the room he was in was windowless and dimly lit. A question of fact exists, says the Third Department, whether the subcontractor created a condition that resulted in an unreasonable risk of harm.

Williamson v. Ringuett (Malone Jr., J., 6/16/11)

In lead paint litigation, the plaintiff's burden includes a showing that the defendant landlord had actual or con-

structive notice of a paint-based hazard on the property. The owners here employed a property manager whose affidavit was a part of the defendant's summary judgment motion which Supreme Court (O'Connor, J., Ulster Co.) denied. Affirming, the Third Department agreed that the defendant failed to show, as a matter of law, the lack of constructive notice of the hazard. The property manager's affidavit sufficiently excluded the possibility of actual notice but was "vague with respect to his observations of the premises" during the period of time when plaintiff's family lived at the property, leaving open the possibility of constructive notice.

—————
Labor Law § 240(1)
—————

Davis v. Wyeth Pharmaceuticals, Inc. (Stein, J., 7/28/11)

The general rule regarding amendment of pleadings (CPLR § 3025) is that such relief should be "freely granted" so long as the opposing party is not prejudiced and the proposed amendment has merit. The plaintiff here, hoping to add a Labor Law § 240(1) cause of action, failed the second part of the test, leading to denial of his motion by Supreme Court (McGill, J., Clinton Co.). Plaintiff, a construction laborer, was working on installation of a 1,000 lb. filtration unit in the defendant's property. Plaintiff pulled and a co-worker pushed as they moved the unit (positioned 8-10 inches above the floor) to its destination on two pallet jacks. But the plaintiff slipped, and when he grabbed the unit it tipped over and fell on his leg. Affirming the trial court, the Third Department agreed that a § 240(1) claim lacked merit; the filtration unit was not being hoisted or secured, nor moved from one

Torts and Civil Practice, cont.

elevation to another, and therefore "it was not the elevation of the unit from the ground that presented a risk to plaintiff".

Morris v. C&F Builders, Inc. (Mercure, J.P., 8/4/11)

Plaintiff was working for an electrical contractor on a new home construction and was hurt when he fell through an opening in the floor where a staircase was to be installed. But the moving defendant, C&F, was the framing contractor on the project and did not have the authority to supervise or control the work being done at the time of the injury. As such, Supreme Court (Reynolds Fitzgerald, J., Delaware Co.) granted the

defendant's motion to dismiss the Labor Law claims against it, and the Third Department affirmed.

PLAINTIFF'S VERDICT SUSTAINED BUT DAMAGES REDUCED

Leto v. Amrex Chemical Co. (Malone, Jr., J., 6/30/11)

Defendant admitted it was responsible for a chemical spill on its property where the plaintiff was working, but contested causation and damages at trial. Supreme Court (Lebous, J., Broome Co.) denied a motion to set aside a \$2.5-million verdict for plaintiff and the Third Department affirmed while finding some parts of the verdict excessive

or not supported by the proof. A new trial on those parts of the verdict is ordered, unless plaintiff stipulates to reduce the lost wages and past pain and suffering awards by \$500K, each.

CITY MUST PAY ATTORNEY'S FEES AFTER UNTIMELY FOIL RESPONSE

NY Civil Liberties Union v. City of Saratoga Springs (Stein, J., 7/7/11)

It was April 2009 when the NYCLU made a Freedom of Information Law (FOIL) request to the City of Saratoga Springs for disclosure of records relating to its police department's use of stun guns (aka "tasers"). Some 2 months later, the request was denied; the city claiming the

records were exempt from disclosure (Public Officers Law § 87(2)). The NYCLU filed suit in October 2009, but negotiations aimed at resolving the dispute failed, followed by a court conference, some limited disclosure with redactions, and another court conference. Supreme Court (Nolan, Jr., Saratoga Co.) ultimately decided petitioner was entitled to unredacted records but denied an application for attorneys' fees and costs of \$10,059 (as permitted by statute and designed "to create a clear deterrent to unreasonable delays and denials"). That, found the Third Department, was an abuse of discretion; sending the matter back to the lower court to fix the proper amount that should be awarded to the NYCLU.

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Matrimonial Update, cont.

half of Mexican marriages end in divorce, usually in the first two years, so why not?

And then there is the latest from our census bureau, finding that people in New York divorce at a slower rate than any state in the nation except New Jersey.ⁱ For me, I'm headed to Alaska where the women divorce at the highest rate in the country. If you like representing men, try Arkansas. Woo pig soie.

As our legislature struggles with a lack of money and leadership, our neighbors in Massachusetts have passed alimony standards for divorces,ⁱⁱ something our legislature is supposed to take up after a final report from the Law Revision Commission this year. It seems Bosox Nation divides alimony (maintenance to you DRL

fans) into three categories: transitional, rehabilitative and reimbursement. The length of the alimony is generally no more than a percentage of the length of the marriage, running from 50% (5 years or less) to 80% (20 years or less). Cohabitation for 3 months ends things, whether one holds one out as a spouse. General alimony ends at the general retirement age, even if one does not retire. The amount? It shall not exceed the recipient's actual need or 30% to 35% of the difference in the parties' incomes. Just like our DRL, clear as mud. The early word is that this is a victory for the payor spouses, unlike New York's recent temporary maintenance lawⁱⁱⁱ aka the High Wage Earner Instant Depression Act of 2010.

The Third Department continues its post summer malaise

without so much as a footnote on the matrimonial front, but the First Department gave us a cautionary tale in the form of a multimillion dollar yacht. This case is interesting in that it calls the husband and wife by their first names, Lucy and David, supposedly because their last name (Mimran) couldn't be written without a chuckle. In any event, David and Lucy had a lovely yacht that they sold for a tad more than \$9 million. Being in the throes of divorce litigation, they agreed to put the money in escrow even though their post nuptial provides Lucy with half the funds plus \$2 million upon divorce. That wily David then defaulted on a loan for \$11.8 million to Hallsville Capital, L.P. and they promptly tried to attach all of the yacht money in the escrow account. The Second Department in

Hallsville v. Dobrish^{iv} gave all of the money to the Hallsville partners because Lucy's right to the money vested only on the parties' divorce under the agreement. Avast, matey.

In honor of National Pro Bono Week (October 23 to October 29) I was asked to fashion the top ten reasons to do pro bono work. Here, in ascending order, are mine:

10. If you do not do it, no one else will. Rule 6.1 of the New York Rules of Professional Conduct calls pro bono participation "aspirational." You may aspire to play second base for the Red Sox, but you won't. If we only aspire, then we never accomplish anything.

9. It's easy. The clients have very little at stake, but it means the world to them.

8. Judges appreciate that you perform free legal services for the poor, and they (a) remember and (b) talk among themselves. Hey, you never know when you'll need that adjournment or a few more days to respond to something.

7. They will write about you in the bar association newsletter and your mother will think you are really special.

6. No one is more grateful than the poor. They see very little of the milk of human kindness, and when they receive it you are everything to them. You will never receive such positive feedback among those who pay for your services.

5. Practicing law is a precious gift, and if you do not

use it to give to others then you shouldn't be a lawyer. Try animal husbandry or stock brokerage.

4. You learn something. Where else do they divorce by reason of imprisonment for three consecutive years or skate on the rent because of the warranty of habitability, whatever that is?

3. If you do not know what you are doing, there are lots of nice people to help you. The best of the best in any specialty will help you through it for free. If they do not, they are not the best of the best.

2. It does not take much time. For the most part there is nothing to fight about, and most of the opposing litigants

are just as happy to be (a) divorced, (b) rid of the tenant or (c) free of the debt that will never be collected.

1. It will make you better looking. Look what it did for me.

Finally, I could not let things go without a nod to my friends at the Office of Confused Adults (OCA). Not being content to make up rules and forms we do not need, they have solicited from us and others a Court User Survey Form to let them know how they are doing. Who could resist that? The form is included below with my humble comments. Feel free to weigh in with your own thoughts. Woo pig soocie.

ⁱYou can find the whole thing here:
<http://www.census.gov/compendia/statab/2012/tables/12s0132.pdf>

ⁱⁱOtherwise known as "An Act Reforming Alimony in the Commonwealth" it can be found here:
http://www.massalimonyreform.org/PDFs/AlimonyReformLaw_09262011Chapter124oftheActsof2011.pdf

ⁱⁱⁱDomestic Relations Law 236B (5-a)

^{iv} __ A.D.3rd __ (2nd Dept., September 27, 2011)

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Court User Survey Form

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EMPLOYMENT LITIGATION UPDATE



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August and September saw several decisions from the Second Circuit Court of Appeals in the employment discrimination area.

RETALIATION

Barkley v. Penn Yan Cent. Sch. Dist., 2011 U.S. App. LEXIS 18535 (2nd Cir., 2011)

Plaintiff, a former substitute teacher at defendant school district, brought an action asserting discrimination in violation of the NYS Human Rights Law (Executive Law §296), and for retaliation, alleging that the school district refused to retain her as a

substitute teacher as a result of her having previously filed complaints with the NYS Division of Human Rights. Her claims were dismissed by the Western District.

The 2nd Circuit, in addressing the plaintiff's retaliation claim, noted that the decision not to retain the plaintiff's services as a substitute teacher occurred more than eleven months following her claim to the Division of Human Rights. For mere temporal proximity between an employer's knowledge of protected activity and an adverse employment action to establish a prima facie case, the court noted, the proximity must be very close, and the eleven month gap was not close enough. (See also, *Mavrommatis v. Carey Limousine Westchester, Inc.*, 2011 U.S. App. LEXIS 18560, 2nd Cir. 9/7/11). The plaintiff likewise failed to demonstrate any retaliatory animus, such as disparate treatment of similarly situated employees, and the district's legitimate, non-discriminatory reasons of erratic and aggressive behavior by the plaintiff were not sufficiently refuted. Summary Judgment affirmed.

AGE DISCRIMINATION

Mackinnon v. City of New York Human Res. Admin., 2011 U.S. App. LEXIS 19268 (2nd Cir. 2011)

It appears that all publicity is not good publicity. Plaintiff, an employee of the City of New York Human Resources Administration, sued his employer for age discrimi-

nation after his overtime hours were reduced, claiming that the reduction was explicitly motivated by his age, or that the circumstances under which the reduction occurred gave rise to an inference of discrimination. Plaintiff's employer contended that it had reduced his hours because 1) he had the politically unfortunate distinction of having appeared on a list of New York City's top fifty overtime earners; and 2) he had become eligible for retirement, and his pension benefits would be based upon his compensation over his last twelve months of work.

In affirming dismissal by the Southern District, the Second Circuit initially noted that an employment decision motivated by pension costs, even when strongly correlated with age, is not an ADEA violation. Thus, while plaintiff may have correctly pointed out that he and another employee of the same age were singled out in having been forced to reduce their overtime, plaintiff failed to identify the ages of any other similarly situated employees (similarly situated to include having appeared on the "list"), and therefore did not provide any basis upon which to conclude that his treatment was related to age. Since the employer's decision appeared to have been wholly motivated by factors other than age, dismissal was affirmed.

USERRA

Serricchio v. Wachovia Securities, LLC, 2011 U.S.

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EMPLOYMENT LAW UPDATE, CONT.

App. LEXIS 18868 (2nd Cir. 2011)

Plaintiff was a member of the United States Air Force and former financial advisor for defendant. Plaintiff was called to active duty following September 11, 2001, and upon his honorable discharge sought reemployment with defendant, to which he was entitled under the Uniformed Services Employment and Reemployment Rights Act ("USERRA"). At the time of his departure plaintiff, along with a partner, was servicing over \$9 million in assets, and earning greater than \$74,000 in net commissions annually. During his deployment, plaintiff alleged, defendant took steps to cripple his part-

ner's ability to manage his accounts in his absence, thereby drastically reducing his assets under management. Upon his return and request for reemployment, plaintiff was told by defendant that he would receive a minimum monthly draw while he rebuilt his book of business; defendant did not offer any additional assistance, and suggested that plaintiff cold-call prospective customers. Plaintiff brought suit under USERRA, asserting in part that defendant had failed to reemploy him in a position similar to that which he left, and received a verdict in excess of \$700,000 in District Court (which included lost wages and liquidated dam-

ages). Defendant appealed several rulings of the District Court.

The Second Circuit considered several issues on appeal. One such issue involved reinstatement of the service member to a similar position. The parties did not dispute that USERRA requires employers to offer returning service members either the position of employment in which the person would have been employed if the continuous employment had not been interrupted by service, or a position of like seniority, status and pay. Defendant argued, however, that the inquiry was limited to whether the individual received a demotion in title upon return from active

duty, which plaintiff did not receive. The court, however, noting that defendant's offer of reemployment consisted of servicing a limited number of small accounts and limited opportunities, determined that a reasonable fact finder could conclude that the position offered did not provide the same opportunities for plaintiff that he would have had but for his military leave. Particularly in cases where an employee previously received commissions, the court found, the relevant inquiry relates not only to the rate of those commissions, but rather to the total amount of pay that the service member previously received. Orders of the District Court were affirmed.

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.



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Three attorneys from Carter Conboy were recently selected by their peers for inclusion in The Best Lawyers in America® 2012 (Copyright 2011 by Woodward/White, Inc., of Aiken, S.C.).

Since its inception in 1983, Best Lawyers has become universally regarded as the definitive guide to legal excellence. Because Best Lawyers is based on an exhaustive peer-review survey in which more than 41,000 leading

attorneys cast almost 3.9 million votes on the legal abilities of other lawyers in their practice areas, and because lawyers are not required or allowed to pay a fee to be listed, inclusion in Best Lawyers is considered a singular honor. Corporate Counsel magazine has called Best Lawyers "the most respected referral list of attorneys in practice."

Carter Conboy's honored attorneys, and their selected practice areas, are:

James C. Blackmore: Real Estate Law and Insurance Law.

John T. Maloney: Medical Malpractice Law (Defense), Product Liability Litigation (Defense) and Professional Malpractice Law (Defense).

James A. Resila: Appellate Practice.

FOUR CARTER CONBOY ATTORNEYS NAMED NEW YORK SUPER LAWYERS® FOR 2011

Four directors from Carter Conboy have been selected by New York Super Lawyers® magazine among the top attorneys in New York State for 2011. Less than 5% of attorneys in the country are selected by Super Lawyers® annually.

Super Lawyers®, a legal division of Thomson Reuters, rates outstanding lawyers from more than 70 practice areas who have attained a high degree of peer recognition and professional achievement. The annual selections are made using a rigorous multi-phased process that includes a statewide survey of lawyers, an independent re-

search evaluation of candidates, and peer reviews by practice area.

Carter Conboy attorneys selected to the 2011 Super Lawyers® listing, including their cited practice areas:

John T. Maloney: Personal Injury Defense (Medical Malpractice); Professional Liability Defense; and Civil Litigation Defense. This is Mr. Maloney's 5th consecutive year as a named Super Lawyer®. He concentrates his legal practice on the defense and trial of medical and professional malpractice claims, products liability, and commercial litigation in State and Federal Courts throughout upstate New York, and is a Fellow of the American College of Trial Lawyers.

Edward D. Laird, Jr.: Personal Injury Defense (Products Liability and Medical Malpractice); and Civil Litigation Defense. Mr. Laird has been selected by Super Lawyers® for three consecutive years. He concentrates his legal practice on the defense of products liability, transportation, medical malpractice and other liability claims, representing product manufacturers, transportation companies and commercial carriers.

James A. Resila: Appellate Law; Civil Litigation Defense; and Professional Liability Defense. Mr. Resila focuses his practice on appellate advocacy, defense of municipalities in federal civil rights cases, the defense of medical and dental malpractice, and general negligence claims.

William D. Yoquinto: Personal Injury Defense (Products Liability, Medical Malpractice, and General De-

fense). This is the 5th consecutive year that Mr. Yoquinto has been selected by Super Lawyers®. He focuses his practice on all phases of defense, including trials and appeals, in matters relating to products liability, medical malpractice, pharmacy, professional licensing, and other liability claims.

CARTER CONBOY'S CATALFIMO SPEAKER ON FORECLOSURE ETHICS AT ALFN LEADERSHIP CONFERENCE

Attorney Michael J. Catalfimo, a Managing Director with the law firm of Carter Conboy in Albany, was a featured speaker on the topic of Foreclosure Ethics for the American Legal & Financial Network (ALFN®) at its 9th Annual Leadership Conference in Bonita Springs, Florida. Mr. Catalfimo was joined by a panel of distinguished attorneys from across the country in the fields of mortgage foreclosure and ethics, as well as a member of the judiciary.

Based in St. Louis, Missouri, the ALFN is the largest professional association of consumer finance lenders, servicers, attorneys and trustees in the country, and leads the industry as a provider of strategic and timely education and training. Members of the ALFN receive up-to-the-minute information concerning the changing legal and regulatory landscape in the financial services industry and participate in the development and implementation of "best practices" for mortgage banking professionals.

In addition to being the Chief Operating Officer of Carter Conboy, Mr. Catalfimo

Carter Conboy Press Releases

is actively engaged in the Firm's Creditors Rights, Commercial and Banking Law, Real Estate, and Business and Property Litigation practice groups. He represents banks, credit unions, mortgage loan servicers, and other creditors in transactional and litigation matters throughout New York State, and is a frequent speaker on creditors' rights topics.

Mr. Catalfimo received his law degree in 1985 from Boston College Law School (Magna Cum Laude; Order of the Coif) and his undergraduate degree in 1982 from Skidmore College (All College Honors; Phi Beta

Kappa). He is a member of numerous professional organizations, including the ALFN (Member, Board of Directors), the American Law Firm Association (Member, Business Litigation Practice Group Steering Committee), the Federation of Bar Associations of the Fourth Judicial District (Past-President and current Member of the Board of Directors), and the Washington County Bar Association (Past-President). Mr. Catalfimo is admitted to the Bars of the State, Federal and Bankruptcy Courts of New York and Massachusetts.

CARTER CONBOY'S YO- QUINTO, CLARK PUBLISHED IN ALFA PRODUCTS LIABILITY NEWSLETTER

Director William D. Yoquinto and Associate Cathleen B. Clark, attorneys with the law firm of Carter Conboy, authored an article in the 2011 Summer Edition of ALFA International's Products Liability newsletter. Their article "User's Gross Mishandling of Product Does Not Entitle Defendant Manufacturer to Summary Judgment in New York" analyzes procedural distinctions between Federal and New York State

court with respect to a plaintiff's gross mishandling of a product and the additional burden of proof faced by defendant manufacturers in New York State.

William D. Yoquinto focuses his practice on all phases of defense, including trials and appeals, in matters relating to product liability, medical malpractice, pharmacy, professional licensing, and other liability claims.

Cathleen B. Clark concentrates her practice defending civil litigation, health care, products liability, and medical malpractice claims. She is also a registered nurse.

In order of appearance...



James C. Blackmore, Esq.



John T. Malone, Esq.



James A. Resila, Esq.



William D. Yoquinto, Esq.



Michael J. Catalfimo, Esq.



Cathleen B. Clark, Esq.

TOWNE, RYAN & PARTNERS, P.C. PRESS RELEASES

TOWNE, RYAN & PARTNERS, P.C. HAS A STRONG FOUNDATION OF EXPERIENCE AND KNOWLEDGE IN MANY AREAS OF LEGAL PRACTICE, INCLUDING MATTERS INVOLVING LITIGATION. AREAS OF PRACTICE ARE LABOR AND EMPLOYMENT, LITIGATION, FAMILY AND MATRIMONIAL, PERSONAL INJURY, CORPORATE, COMMERCIAL, MUNICIPAL, ESTATE PLANNING, REAL ESTATE, CONSTRUCTION, INSURANCE DEFENSE AND EQUINE LAW. ADDITIONAL OFFICE LOCATIONS IN NEW YORK INCLUDE: SARATOGA SPRINGS, BURNT HILLS, COBLESKILL AND POUGHKEEPSIE. THERE IS ALSO AN OFFICE IN BENNINGTON, VERMONT.

WILLIAM FIRTH JOINS AS ASSOCIATE

William Firth, Associate Attorney, has joined Towne, Ryan & Partners, P.C. He will work from the firm's Albany office and focuses his practice on Insurance Defense Litigation, with an emphasis on automobile, construction and premises liability. He received his B.A. from Siena College in Loudonville, New York, in May 2002 and his J.D. from Syracuse University College of Law in May 2005. Bill has focused his 6-year career in the insurance defense field.

HURRICANE IRENE DONATIONS

The flooding caused by Hurricane Irene has had devastating affects in Northeastern New York and Vermont among our neighbors and friends. For many, the storm

wiped out not only homes and businesses, but also the farms and gardens these families count on to feed themselves over the coming winter months in our many rural communities where we live and practice. In an attempt to aid relief efforts, employees of the local law firm Towne, Ryan & Partners, P.C. and their families donated over \$13,000 to three local food banks assisting with disaster relief efforts. The firm, with six offices in Eastern New York and Vermont, donated these funds to the Hudson Food Bank, the Food Bank of Northeastern New York and the Vermont Food Bank. These food banks use the donated funds to transport food stores into their warehouses and with a buying ratio of nearly 10-1 represent additions of approximately \$100,000 in additions to their respective depleted food stores.

FOAL PROJECT

Jim Towne and Susan Bartkowski of Towne, Ryan & Partners, P.C. are founding Board Members of The Foal Foundation, LLC. a not-for-profit formed to raise funds and awareness of the benefits realized from adaptive riding programs for the physically and mentally challenged. Funds are raised through the sale of unique photos of mares and their foals taken at the time of birth. The photos are embossed on aluminum creating amazingly lifelike images.

Since its formation in June, The Foal Project has raised over \$50,000 to benefit local Equine Assisted Therapies for

anyone with special needs including children and adults with disabilities, children and adults living with serious medical conditions such as cancer, and veterans who may suffer post traumatic stress or service-related injuries. Purchasing adaptive saddles for wheelchair bound children is one of the ways the Project supports these special programs. The Foal Project is currently showing its unique equine art in Lexington, Kentucky and will move its show to Aiken, South Carolina in October as a part of the National Thoroughbred Hall of Fame annual celebration. Proceeds from these programs will be devoted to equine assisted therapy programs in those locales. Later in the Fall the photos will be shown at fund raisers in Jackson Hole, Wyoming and Denver, Colorado benefitting similar assistive riding programs in those communities.

Information on upcoming

events to support the Foal Project can be found at foalproject.org/

VERO SELECTED FOR LEADERSHIP SARATOGA

Francine Vero, an Associate Attorney at Towne, Ryan & Partners, P.C., was selected for the Leadership Saratoga program, Class of 2011. During this 7 month program, participants receive hands-on training to develop and refine leadership skills and an in-depth orientation into existing issues and opportunities in Saratoga County. Ms. Vero, along with her fellow participants, expect to remain involved in the community in areas of their particular interest upon graduation from this program. Ms. Vero hopes to gain knowledge and a heightened sense of the involvement necessary to ensure a continued strong and diverse quality of life in Saratoga County.

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

ANNOUNCEMENTS/CLASSIFIED

BREEDLOVE SELECTED AS FELLOW TO PRESTIGIOUS LITIGATION COUNSEL OF AMERICA

Carrie McLoughlin Noll of the Clifton Park Law Firm of Breedlove & Noll, LLP recently announced that Brian H. Breedlove, a Member of the Firm, has been named a Fellow of the Litigation Counsel of America (LCA).

According to the LCA, "The Litigation Counsel of America is a trial lawyer honorary society established to reflect the new face of the American bar. Membership is limited, representing less than one-half of one percent of American lawyers and is by invitation only. The composition of the LCA is aggressively diverse, with recognition of excellence among American litigation and trial counsel across all segments of the bar. The purpose of the LCA is to recognize deserving, experienced, and highly qualified lawyers, to provide an additional outlet for scholarly authorship of legal articles on trial and litigation practice, to provide additional sources for professional development, to promote superior advocacy and ethical standards in the practice of law, and to assist in community involvement by its membership."

A maximum of 3,500 Fellows are inducted into membership of LCA, who are selected and invited into Fellowship after being evaluated on effectiveness and accomplishment in litigation and trial work, along with ethical reputation.

Brian graduated from Russell Sage College in 1974 with a B.S. degree in Criminal Science and in 1977 received a

Juris Doctor from Western New England College of Law. He practices in both State and Federal Courts having been admitted to practice before the United States District Courts in the Northern, Southern and Eastern Districts of New York as well as the U.S. Courts of Appeals in both the Second and Ninth Circuits and the United States Supreme Court. Brian has been Trial Counsel in Hundreds of cases involving Serious Personal Injuries and Death, Police Misconduct, Civil Rights, Employment Discrimination, Sexual Harassment, Fraud, Forgery, Arson, Business Torts and Negligence cases. He is a Member of the Executive Board of the Saratoga County Bar Association and has been a lecturer in Continuing Legal Education Programs on various topics including the Seat Belt Defense, Cross-examination of Expert Witnesses, Ethics and Evidence, Evidence and Cross-Examination in Employment Discrimination cases.

Breedlove & Noll, LLP is a full service law firm with experience in all areas of Civil and Criminal Litigation as well as Appellate Practice. They have recently moved their offices to 10 Maxwell Drive in Clifton Park, New York.

CORINTH CSD MOCK TRIAL CONTACT INFORMATION CHANGE

The new contact information for Corinth CSD's mock Trial Advisor is:

Denise J. (Sprague) Fay
Corinth Central Schools
H.S. Business Education
Yearbook & Mock Trial Advisor
105 Oak Street
Corinth, NY 12822



ADIRONDACK TRUST COMPANY COMMUNITY FUND

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(518) 654-2933, ext. 3103
spragued@corinthcsd.com

EMPLOYMENT/CONTRACT WORK WANTED

An attorney with nearly 6 years of elder law, trusts/estates, family law, general practice, and litigation experience is looking for new employment after a recent lay-off. Also willing to do short-term contract work on an independent contractor basis, including legal research, writing and appearances. If interested in seeing a resume, please contact attorney3910@yahoo.com

LOCAL ATTORNEY SEEKS INDEPENDENT CONTRACTOR

Local attorney seeks an independent contractor to perform approximately 10 to 15 hours of independent re-

search in local City and County Courts. Pay is \$12.00 per hour plus mileage. If interested please respond to Locallegaljob@gmail.com

SEEKING ASSOCIATE POSITIONS

Joseph D. Coppola., graduate of SUNY Buffalo Law School seeks an associate position. For further information, please contact Mr. Coppola at (518) 461-0988

Benjamin D. Terry, graduate of SUNY Buffalo Law School seeks and associate position. For further information, please contact Mr. Terry at (518) 424-2838

Adam P. Powers, a graduate of Albany Law School, seeks an associate position. For further information please contact Mr. Powers at (518) 956-1384

SARATOGA COUNTY BAR ASSOCIATION
Calendar of Events
2011-2012

- | | |
|---------------------------|--------------------------------------------------------------------------------------------|
| September 8, 2011 | Executive Board Meeting, 8:00 a.m.
Third Floor, City Hall |
| September 17, 2011 | Centennial Gala, Saratoga Springs City Center |
| October 12, 2011 | Executive Board Meeting, 8:00 a.m.
Third Floor, City Hall |
| October 19, 2011 | Bar Dinner at The Wishing Well
6:00 p.m. Cocktails, 7:00 p.m. Dinner |
| October ____, 2011 | Young Lawyer's Mixer
@ |
| November 16, 2011 | Executive Board Meeting, 8:00 a.m.
Third Floor, City Hall |
| December 15, 2011 | Holiday Gathering @ Longfellow's |
| January 12, 2012 | Executive Board Meeting, 5:30
The Wishing Well |
| January 12, 2012 | Bar Dinner at The Wishing Well
6:00 p.m. Cocktails, 7:00 p.m. Dinner |
| February 2, 2012 | Retirement Dinner for Hon. Harry W.
Seibert, Jr. @ Saratoga Springs City Center |
| March 7, 2012 | Executive Board Meeting, 8:00 a.m.
Third Floor, City Hall |
| March 12, 2012 | Wine Tasting @ The Brookside Museum,
Ballston Spa |
| April 4, 2012 | Executive Board Meeting, 8:00 a.m.
Third Floor, City Hall |

April 19, 2012	Bar Dinner, Location TBD
April 30, 2012	Law Day Luncheon, Canfield Casino 12:00 p.m.
May 15, 2012	Executive Board Meeting, 8:00 a.m. Third Floor, City Hall
May 16, 2012	Bar Dinner at Panza's Restaurant 6:00 p.m. Cocktails, 7:00 p.m. Dinner
June 14, 2012	Executive Board Meeting, 5:30 p.m. The Wishing Well
June 14, 2012	Installation of Officers at The Wishing Well 6:00 p.m. Cocktails, 7:00 p.m. Dinner

NATIONAL PRO BONO CELEBRATION OCTOBER 28-30, 2011

PRISONERS' LEGAL SERVICES

Giving prisoners a voice since 1976

"POWERFUL."
- San Francisco Chronicle

"MAGNIFICENT:
swelling from hushed to
howling [...] Debbie's
story makes it difficult
to leave the theater with
dry eyes and an
untouched heart."
- The New York Times

CRIMCY ROCK



"A TREMENDOUSLY
MOVING STORY,
strong in social
commitment and deftly
woven out of years of
footage"
- The Hollywood

"HARROWING, MOVING
AND INSPIRING..."
- The Washington Post

Spectrum Theater—October 26, 2011, 7PM

Join us on October 26th, for a screening of the award winning film, **Crime After Crime: The Battle to Free Debbie Peagler**. The official selection of the 2011 Sundance Film Festival, this compelling documentary details a woman's struggle against the criminal justice system. Imprisoned for killing her abuser, Ms. Peagler's case was accepted pro bono by two land-use attorneys who spent years working for their client's freedom.

The screening will begin at 7 pm at The Spectrum Theater, 290 Delaware Ave., Albany. Join us at New World Bistro after the film for drinks and light fare.

As seating is limited, please purchase your ticket (\$10) in advance by contacting Samantha Howell, Pro Bono Coordinator, at 518-445-6050 x108 or showell@plny.org.

41 State Street Suite M | 12
Albany New York 12207
518-445-6050
518-445-6053 (fax)

Representing Victims of Domestic Violence in Family Court



Friday, December 9, 2011

NYS Office for the Prevention of Domestic Violence

80 Wolf Road, Albany, New York

Registration 8:30 – 8:50; Program 8:50 – 4:00

Sponsored by: **The Domestic Violence Legal Training Coalition**

Empire Justice Center; The Legal Project (Capital District Women's Bar Association); Legal Aid Society of Northeastern New York; Albany Law School Domestic Violence Clinic

6.5 Hours of Transitional CLE Credit, including 1.5 hrs ethics

Dynamics of Domestic Violence: Gwen Wright, *Office for the Prevention of Domestic Violence*

Safety Planning: Carlotta Palmer, Esq., *The Legal Aid Society*

Family Offense Basics: Ellen Schell, Esq., *The Legal Project*

Client Interviewing: Geri Pomerantz, Esq., *Law Offices of Geri Pomerantz*

Custody and Visitation Overview: Susan Pattenaude, Esq., *The Legal Project*

Registration & CLE Fees Please Register by December 2, 2011; space is limited.

- Free: Attorney willing to accept at least one pro bono case** annually from The Legal Aid Society of Northeastern New York and The Legal Project.
- Free: Active Private Attorney Involvement (PAI) Volunteer** of the Legal Aid Society of Northeastern New York or **Domestic Violence Legal Connection Panel Member** of The Legal Project.
- \$140: Attorney not wishing to provide pro bono representation
- \$70: Law Guardians/18-B Assigned Counsel not wishing to provide pro bono representation
- \$70: Paralegal or Legal Assistant
- \$20: Domestic Violence Advocate

***Lunch provided at no additional cost—Plan on staying with us for the entire day.**

Name: _____ Employer: _____

Address: _____

Telephone _____ Fax: _____ Email: _____

Mail Registration & Fee to: The Legal Aid Society, Attn: PAI, 55 Colvin Avenue, Albany, New York 12206 12206 OR Fax completed registration to (518) 427-8352 OR e-mail to kcinelli@lasnny.org. Of course, if payment is required, please mail check. For more information, call Kristie M. Cinelli at (518) 689-6322 or e-mail kcinelli@lasnny.org.

Financial Hardship Scholarships: Full and partial scholarships based upon financial need are available. For guidelines and procedures for applying, contact Kristie M. Cinelli at 518-689-6322 or kcinelli@lasnny.org. All requests are confidential.



Empire Justice Center has been certified by the New York State Continuing Legal Education Board as an accredited provider of continuing legal education in the State of New York.

This transitional continuing legal education course has been approved in accordance with the requirements of the Continuing Legal Education Board for a maximum of 6.5 credit hours, of which 1.5 credit hours can be applied towards the professional practice requirement, 2.5 credit hours can be applied towards the skills requirement, 1.5 credit hours can be applied towards the ethics requirement, and 1 hour can be applied towards the practice management requirement.