



*Anthony V. D'Elia*

## D'Elia Succeeds in Appellate Division After Five-Year Battle

**Anthony V. D'Elia**, with the assistance of **Cindy Nan Vogel** and **Jordan F. Friedman**, successfully represented the Clifton Board of Education in a legal dispute which lasted almost five years. The Appellate Division of the New Jersey Superior Court, in an exhaustive and

precedent-setting opinion, adopted CL&L's arguments and affirmed two lower court opinions which granted a variance to the Board to build an annex to Clifton High School in an industrial zone.

The Board of Education applied for a variance in June 2005 but was opposed by private corporate interests which prolonged the hearing over the course of 17 evening sessions of the Clifton Zoning Board of Adjustment. The Zoning Board denied the variance twice, but Mr. D'Elia persisted and first persuaded the Superior Court Law Division and most recently, the Superior

Court Appellate Division, that the Zoning Board acted arbitrarily, capriciously and unreasonably.

The resulting decision is a milestone in the law of local governmental regulation and both clarified and limited the circumstances under which boards of education are now required to appear before local planning boards for review of capital improvement projects. The court's decision may be found at Board of Education of the City of Clifton v. Zoning Board of Adjustment of the City of Clifton, 409 N.J. Super. 389 (App. Div. 2009).

## Galis-Menendez named to "40 under 40"

The New Jersey Law Journal named CL&L partner **Mitzy Galis-Menendez** to its prestigious "40 Under 40" list. The list identifies a select group of distinguished young attorneys who are selected by their peers for their outstanding career achievements, and for their contribution to the legal community through their leadership in bar and other activities, lectures and publications. Ms. Galis-Menendez concentrates her practice in employment, civil rights, education and criminal law before the State and Federal courts.

"The [lawyers chosen] are worth watching, not only for what they have achieved so far in their careers but more so for the potential they show to be among the leaders of the New Jersey bar in the not-so-distant future," said Ronald J. Fleury, Editor-in-Chief of the New Jersey Law Journal. Since 2006, Ms. Galis-Menendez has also been designated by *New Jersey Monthly Magazine* as one of the *New Jersey Super Lawyers* – "Rising Stars" in the field of general litigation.

Ms. Galis-Menendez is the appointed Hudson County Representative to the New



*Mitzy Galis-Menendez*

Jersey State Bar Association's Judicial and Prosecutorial Appointments Committee. In addition, Ms. Galis-Menendez also presently serves as Treasurer of the Hudson County Bar Association and is a member of the Hispanic Bar Association.

## "40 under 40" 3 times in last 4 years



For the third time in 4 years, the New Jersey Law Journal has named attorneys from Chasan Leyner & Lamparello to its prestigious "40 under 40" list. In addition to **Mitzy Galis-Menendez**, center, the honor was awarded in 2008 to **John L. Shahdanian II**, at right, chair of the firm's Employment Law Group, and in 2006 to **Thomas R. Kobin**, whose practice embraces civil litigation, governmental, school and labor and employment law.

## CL&L Welcomes Three New Associates

Chasan Leyner & Lamparello takes pleasure in welcoming three new associates, **Joseph A. Garcia**, **Roosevelt Jean** and **Joseph Catenaro, Jr.** to the firm. Mr. Garcia, a Harlan Fiske Stone scholar at Columbia University School of Law who was formerly employed at Gibson Dunn & Crutcher, will concentrate his practice in public entity representation and litigation

and labor law. Mr. Jean, formerly an associate at Harwood Lloyd, and a certified Civil Trial Attorney candidate, will have responsibility for insurance defense, governmental defense and commercial litigation matters. Mr. Catenaro, formerly a judicial law clerk to the Honorable Donald J. Volkert, Jr., A.J.S.C., has joined the commercial litigation practice group.



*New associates, from left, Joseph Garcia, Joseph Catenaro Jr. and Roosevelt Jean.*

## New & Noteworthy

**Ralph J. Lamparello**, the firm's managing partner, was selected by the Hudson County Bar Association as Hudson County's Professional Lawyer of the Year. This award is presented annually by the New Jersey State Bar Association's (NJSBA) Commission on Professionalism in the Law to attorneys who, by virtue of their conduct, competence and demeanor, set a positive example for others in the profession. The award was presented at the Commission's Professionalism Awards Luncheon on October 22, 2009.

**Ralph J. Lamparello** and **John L. Shahdanian II** were named to the 2009-2010 Executive Committee of the NJSBA Labor and Employment Section for their work in employment trial practices. Mr.

Shahdanian was also appointed to the Executive Committee for Public Employment Litigation.

**John V. Mallon**, co-chair of the firm's Insurance Defense Group, was recently appointed as Vice Chair of the New Jersey State Bar Association's Insurance Defense Committee. The Committee acts as a forum for attorneys who practice automobile insurance defense involving no-fault claims, tort thresholds, uninsured/underinsured motorist coverage and automobile arbitration and recommends to the Bar Association's Board of Trustees positions that should be taken on pending legislation, joining litigation as amicus curiae and changes to the court rules.

**Mark S. Hanna** was recently appointed by the Supreme Court of New Jersey to serve for a four-year term on the District VI (Hudson County) Ethics Committee. Attorney discipline in New Jersey is the primary responsibility of attorneys such as Mr. Hanna, who volunteer their time and effort to investigate, prosecute and determine claims of unethical conduct by attorneys.

**Michael A. D'Anton** was appointed to the Board of Trustees of the Immaculate Conception High School in Montclair, a Catholic coeducational, college preparatory school in Essex County. Drawing students from Essex, Union, and Passaic counties, more than 98% of the school's graduates are accepted to college each year and accrue scholarship monies in the \$2-3 million range.

# Case Notes

**Kim R. Onsdorff**, on behalf of client New Jersey Manufacturers Insurance Company (NJM), successfully defended a Personal Injury Protection (PIP) arbitration claim by an orthopedic surgeon who claimed that his surgical bill of \$25,750 for arthroscopic knee surgery was reasonable and necessary to repair the NJM insured's torn medical meniscus, which was injured in an automobile accident. After NJM declined to pay, the claim was submitted to a National Arbitration Forum arbitrator who concluded, based upon a review of the MRI films by both an independent examining orthopedic surgeon and a board certified radiologist, that there was no injury and that the surgery was unnecessary. The decision is available on the NAF website, [www.njadforum.com](http://www.njadforum.com), File No. NJ0807001216895.

**John V. Mallon** defended a Linden homeowner insured by NJM against the claim by a houseguest who sued after falling down the basement stairs. The guest, who claimed the stairs were wet, suffered a complex ankle fracture. Mr. Mallon successfully demonstrated that the fall was not the result of the homeowner's negligence or any dangerous condition of the property but simply of the houseguest's own failure to carefully descend the stairs.

In a second trial in July in Essex County, Mr. Mallon represented Allstate New Jersey Insurance Company in a dispute over liability coverage. At issue was whether the insured's single punch to the plaintiff's face was an intentional act. Although the insured argued that he acted in self-defense, the court agreed with Mr. Mallon that the conduct was intentional and, therefore, not covered under the insurance policy. The Court entered judgment in favor of Allstate.

**John V. Mallon, Cindy Nan Vogelman** and **Richard W. Fogarty** successfully appealed an adverse insurance coverage decision on behalf of client Allstate New Jersey Insurance Company. The lawsuit

arose following a murder committed on the Caribbean Island of St. Kitts on property the victim was renting. The victim's estate and beneficiaries sued for wrongful death against the property owners and others. The property owners demanded a defense to the lawsuit and payment of any damages that might be awarded against them from Allstate, which insured their New Jersey apartment. Allstate asserted that the St. Kitts property was not an "insured premises" under the policy, that the policy exclusion for "business activities" precluded coverage, and that the property owners could not have reasonably expected the St. Kitts property to be insured by their New Jersey insurance policy.

The trial court denied summary judgment, ruling that there might be coverage for the claim. The Appellate Division reversed, and found that Allstate was not required to provide coverage for the St. Kitts property and underlying lawsuit.

In another Personal Injury Protection (PIP) case before the National Arbitration Forum, **Richard W. Fogarty** successfully defended a claim for Allstate New Jersey Insurance Company against two orthopedic surgeons who performed cervical spine surgery, including a spinal fusion, on an Allstate insured following a motor vehicle accident. The surgeons billed \$42,000 for the procedure. Mr. Fogarty challenged the medical necessity of the surgery, the reasonableness of the bills and whether the surgery was the result of the claimed accident or a second and subsequent accident.

On the causal relationship issue, Mr. Fogarty argued that doctors failed to demonstrate, as required by Bowe v. NJM, 367 N.J. Super. 128 (App. Div. 2004), that the surgery was related to the present accident, referring to several medical records which recorded that that doctors believed that the surgery was necessitated by the subsequent accident. The arbitrator agreed with Mr. Fogarty and denied the claim in a

decision available on the NAF website, [www.njadforum.com](http://www.njadforum.com), File No. NJ1153391.

**Thomas A. Morrone** defended the brother of a well-known National Basketball Association player, who was driving his brother's car when it ran into the rear of another automobile. Mr. Morrone accepted the client's responsibility for the accident, but successfully disputed that the resulting injuries were as severe and disabling as the plaintiffs claimed and persuaded the jury to dismiss the case because the injuries were not permanent, as is required under New Jersey Tort Threshold Law.

Recently **Michael A. D'Anton** defeated a complex arbitration claim brought by a police officers' union before the New Jersey State Board of Mediation against a municipal client seeking overtime payments for

Established in 1957, Chasan Leyner & Lamparello provides a wide range of quality legal services for a diverse clientele. Specializing in litigation, our attorneys appear regularly in federal and state courts.

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# Case Notes

time that the officers spent in medical treatment while on workers' compensation leave. Mr. D'Anton filed an Order to Show Cause with the Public Employment Relations Commission (PERC) to enjoin the arbitration. He then filed a Scope Petition with PERC arguing that the issues involved were managerial prerogative, and therefore not subject to arbitration. As the product of his clever and aggressive procedural defense, the union withdrew the majority of its claims and the client saved \$97,702.

**Mark S. Hanna** twice demonstrated that damages are often more significant than fault in automobile accidents. In his first trial, Mr. Hanna defended a motorist who drove through a red light and struck another automobile. A passenger in that other vehicle said that she suffered neck, back and knee pains and a displaced spinal disc herniation as a result of the accident. Using the records of her treating chiropractor, Mr. Hanna demonstrated that the passenger had not suffered a permanent injury and had recovered more successfully than she claimed at trial. The jury, while finding the client partially at fault, dismissed the lawsuit.

In his second case, Mr. Hanna's client was accused of ignoring a stop sign and colliding with another automobile. Although it could not be disputed that the client was mostly responsible for the accident, and despite the plaintiff's use of photographs to demonstrate the significant damage to her vehicle and her reliance on MRI films to prove that she suffered permanent injury to her neck and back, Mr. Hanna relayed to the jury that the plaintiff required only four months of chiropractic treatments, and needed no further or additional medical treatment in the three years between the accident and the trial. The jury concluded that she suffered no permanent injury.

Representing client State Farm Insurance Company, **Nicole R. Cassata** successfully

defended a Personal Injury Protection (PIP) claim before the National Arbitration Forum (NAF). The claim involved a dispute over a procedure known as chiropractic manipulations under anesthesia (MUAs). At the hearing, Ms. Cassata relied upon the medical records of the treating chiropractor as well as three separate expert reports which demonstrated that the MUAs were not supported by the treatment records. The arbitrator agreed and denied the claim in full.

Ms. Cassata also defended a PIP claim before the NAF on behalf of New Jersey Manufacturers Insurance Company. The claimants included the primary physician as well as the assisting physician who performed a series of three chiropractic MUAs on the patient's spine, bilateral shoulders and bilateral hips. The providers sought \$22,200 for the MUAs. In relying on an expert report as well as the treating provider's own records, Ms. Cassata argued that the patient was improving prior to the performance of the MUAs and that her

symptoms were decreasing. The NAF arbitrator agreed and denied the Demand for Arbitration in full.

**Robert A. Cappuzzo** successfully defended State Farm on a Personal Injury Protection (PIP) arbitration involving a dispute over whether a Preferred Provider Organization (PPO) contract can compel a PIP carrier to issue payment in excess of the New Jersey Fee Schedule. Mr. Cappuzzo argued that the claimant's position was contrary to the Automobile Insurance Cost Reduction Act (AICRA) since it would result in higher insurance costs. He also relied on a five-year billing history that showed the medical provider had previously accepted the New Jersey Fee Schedule amounts on the same procedures. The arbitrator agreed that the provider's interpretation of the PPO contract was flawed and dismissed the Demand for Arbitration in its entirety. The decision is available on the NAF Website ([www.nj-no-fault.com](http://www.nj-no-fault.com) - NAF case # 1231589).



*For the second time in three years, CL&L has won the Union County Bar Association's Bocce Ball Tournament. Pictured with their trophies are, from left, (seated) former partner and now Presiding Civil Part Superior Court Judge Peter F. Bariso, Jr., managing partner Ralph J. Lamparello, (standing) Anthony V. D'Elia and Robert A. Cappuzzo.*