

## Jury Supports CL&L Client in Sexual Orientation Discrimination Case

**Ralph J. Lamparello**, with assistance from **Raymond J. Seigler**, successfully defended C.H. Martin, Inc., a private chain of department stores, against a claim of sexual orientation discrimination brought under the New Jersey Law Against Discrimination (NJLAD). The plaintiff customer claimed he was unlawfully discriminated against because of his sexual orientation when a C.H. Martin security guard called him a derogatory name on several occasions and once prevented him from entering the store.

On May 14, 2007, the plaintiff entered the store with a personal handbag, and, despite a long-standing store policy that required bags to be checked with security, he refused to surrender the bag at the door. The plaintiff had shopped at the store numerous times and was familiar with the policy.

After further argument, the security guard demanded that the plaintiff comply with the store policy and admittedly used the words: "F--- you faggot. You have to check your bag." Plaintiff alleged he was being discriminated against because he was a homosexual. The security guard, who claimed he was unaware that the

plaintiff was gay, apologized in writing to the plaintiff, but his employment was subsequently terminated by C.H. Martin.

The plaintiff sued C.H. Martin and the security guard under the New Jersey Law Against Discrimination for public accommodation discrimination. The plaintiff alleged that he was a frequent shopper at the store and that he had previously been similarly harassed and demeaned because of his sexual orientation. The plaintiff sought compensatory and punitive damages under the NJLAD and invoked its fee-shifting provision in seeking attorneys' fees and litigation costs. The defense denied that the plaintiff was entitled to damages.

After a five-day trial before Superior Court Judge Hector R. Velazquez in Hudson County, Mr. Lamparello convinced the jury by a vote of 7-1 to dismiss the claim against C.H. Martin because the company had no actual or apparent design to discourage the plaintiff's patronage. The defense admitted that the security guard had spoken the words complained of in the May 14, 2007 incident, but denied previous incidents. The jury found no cause of action, determining that the plaintiff

### Ralph J. Lamparello Selected "Top 100" Super Lawyers® for 2011



*Ralph J. Lamparello*

Managing Partner **Ralph J. Lamparello** was named in *New Jersey Monthly Magazine* as one of the "Top 100" lawyers in the State for 2011. This is the third consecutive year that Mr. Lamparello has been named to the prestigious "Top 100" list. The rating was compiled by New Jersey Super Lawyers® and is comprised of lawyers who have attained a high degree of peer recognition and professional achievement.

was not subjected to an actual or apparent design to discourage his patronage on account of his sexual orientation.

The case was published in the *New Jersey Law Journal*, Verdict Search, on April 4, 2011.

# CL&L Attorneys Prevail in Numerous Employment Matters

Following a three-week trial before Judge Ned M. Rosenberg, Superior Court of New Jersey, Essex County, **Mitzy Galis-Menendez** convinced a jury to dismiss the claims of a Newark police officer against the City of Newark and a retired Newark police lieutenant. The officer claimed that the lieutenant had retaliated against her by repeatedly transferring her to undesirable assignments because she had filed a complaint that she was discriminated against because of her gender and race. That complaint was dismissed before trial for lack of evidence. Ms. Galis-Menendez persuaded the unanimous jury that the officer was not retaliated against and had suffered no adverse employment action.

**John L. Shahdanian II** and **Raymond J. Seigler**, prevailed on appeal in defending the Passaic Valley Sewerage Commissioners (PVSC) from a claim of wrongful termination by an employee who was discharged from his position as a landscaper after a random drug test revealed the presence of several different controlled dangerous substances. The employee claimed that PVSC's random drug testing policy was unconstitutional and should not apply to him because his position was not "safety sensitive." He claimed, therefore, that the random testing amounted to an unlawful search and seizure, and that PVSC breached its "second chance agreement" which he had entered into after failing a number of previous drug tests. In her opinion for the Third Circuit Court of Appeals, the Honorable Maryanne Trump Barry, affirmed the trial court's dismissal of the lawsuit finding that the plaintiff, who was exposed to inherent dangers present at PVSC's facilities such as the operation of vehicles and was responsible for operating lifesaving equipment in emergencies, did have a "safety sensitive" position. Judge Barry further found that PVSC's narrowly drawn random drug testing policy was not an unreasonable or unlawful intrusion into the plaintiff's privacy.

In another termination case of an employee fired for using drugs, **Anthony V. D'Elia** and **Joseph A. Garcia** successfully represented the City of Bayonne in the Office of Administrative Law in an appeal of a Final Notice of Disciplinary Action, which ended a firefighter's employment because he tested positive for a controlled dangerous substance. Administrative Law Judge Jeffrey A. Gerson agreed with the City that the employee exhibited symptoms of drug use which permitted the reasonable suspicion that he was under the influence and thus warranted a fitness for duty exam. The drug test results were positive, and his termination was deemed warranted.



*Joseph A. Garcia*

**Thomas R. Kobin** and **Joseph A. Garcia** persuaded Judge Faith S. Hochberg of the United States District Court to preemptively dismiss an employment lawsuit brought by a Bergen County Sheriff's Officer against Bergen County. Although it is very unusual for a judge to dismiss a case before discovery is obtained, Mr. Kobin and Mr. Garcia persuaded the court that even if the officer's claims were true, his comments about his job assignments were not protected speech under the First Amendment to the United States Constitution and that the County's failure to promote him and its Internal Affairs investigation of him were not violative of his Fourteenth Amendment right of due process of law. This early dis-

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## Pat Arre to be Sworn in as NJ Superior Court Judge on August 11, 2011

On June 28, 2011, the New Jersey Senate unanimously confirmed the nomination of **Patrick J. Arre** to the position of Judge of the New Jersey Superior Court. The confirmation vote followed the Senate Judiciary Committee's unanimous approval of Arre's nomination by Governor Chris Christie. Mr. Arre will be sworn in as a Judge of the Superior Court of New Jersey on August, 11, 2011.

Mr. Arre has headed the firm's Personal Injury and Medical Malpractice Department. He holds the rare distinction of being certified by the New Jersey Supreme Court in both criminal and civil litigation, areas in which he has regularly represented clients for over 28 years. He is also qualified as a court-sanctioned mediator.

Mr. Arre began his career in the office of former State Senator C. Robert Sarcone, representing clients in criminal matters in State and Federal Court. He also served as an Assistant Prosecutor in the Office of the Essex County Prosecutor in the Special Case Prosecutor section. The Firm congratulates Pat and his family and wishes him continued success in this next phase of his career.



*Patrick J. Arre*

## Lamparello Elected First Vice President of the New Jersey State Bar Association

**Ralph J. Lamparello** was sworn in as First Vice-President of the New Jersey State Bar Association at their Annual Meeting and Convention in Atlantic City on May 19, 2011. He is now on track to assume the office of President in 2013 and will be the first Hudson County attorney in 40 years to become President of the New Jersey State Bar Association. A member since 1989, Mr. Lamparello chaired the Association's Finance and Operations Committee in 2009 – 2010, the Judicial and Prosecutorial Appointments Committee in 2007-2008, and the Meetings Arrangements and Travel Committee in 2006-2007. Mr. Lamparello continues as a trustee of the New Jersey State Bar Foundation and serves as Chair of its Law Center Committee. Under his guidance the New Jersey Law Center in New Brunswick was totally renovated, including the addition of state of the art technology.

## Employment Matters cont'd

missal saved Bergen County untold fees and costs which would have been incurred had discovery been permitted.

**Joseph A. Garcia** defended the Hoboken Housing Authority (HHA) in a New Jersey Public Employment Relations Commission (PERC) arbitration brought by a 17-year employee who claimed that he was terminated without good reason. The arbitrator agreed with Mr. Garcia's arguments that the employee was chronically late for work and had repeatedly failed to perform his job assignments. The arbitrator also rejected the employee's claim that he should have been placed in a performance improvement plan because he was already on notice through progressive discipline that his job performance needed improvement.

## Nicole R. Cassata Becomes Principal of the Firm

Chasan Leyner & Lamparello is proud to announce that **Nicole R. Cassata** has been named a partner of the firm. Since joining CL&L in 2004, Ms. Cassata has concentrated her practice in representing clients on appeals and insurance defense, with an emphasis on National Arbitration Forum (NAF) Personal Injury Protections (PIP) arbitrations. Ms. Cassata has been recognized as a "Rising Star" by the New Jersey Super Lawyers® Magazine for the past two years.

In addition, **Kathleen K. Lang** has joined the firm as an associate. For the past 15 years, she has concentrated her practice on PIP disputes and litigation. Before joining CL&L, Ms. Lang served as Team



*Nicole R. Cassata*

Leader/Managing Attorney for the No-Fault Department of Baumann & Viscomi, staff counsel for Liberty Mutual Insurance Company.

## CL&L Partners Selected as Super Lawyers® in 2011



*L-R: John L. Shabdanian II, Steven L. Menaker and John V. Mallon*

CL&L is equally proud to have three other partners recognized as New Jersey Super Lawyers®: **Steven L. Menaker** in General Litigation; **John V. Mallon** in Insurance

Coverage; and **John L. Shabdanian II** in Employment and Labor Law. In addition, **Joel A. Leyner**, Counsel, was named in Business Litigation.

# New & Noteworthy

Along with Superior Court Judge Peter F. Bariso, Jr., Presiding Judge of the Civil Division, and a former Chasan Leyner & Lamparello partner, **Ralph J. Lamparello** was a panelist at the New Jersey Institute of Continuing Legal Education's 2011 Labor and Employment Law Forum, which presented a review of developments in the law during the preceding year. In addition, Mr. Lamparello moderated and participated in a segment titled "Hot Topics and Tactics in Employment Law Trials," which discussed strategies and techniques for the preparation and trial of employment cases in state and federal courts.

**Jordan S. Friedman** was appointed to serve a two-year term on the New Jersey Supreme Court Committee on the Tax Court. Members of the Committee include Tax Court judges and practitioners, representatives of taxpayer associations, and state, county, and local tax administrators. The Committee is charged with reviewing and reporting to the Supreme Court on state tax laws and Tax Court rules.

**John L. Shahdanian II**, was invited by the Commission on Accreditation for Home Care ("CAHC") to present a seminar entitled "Legal Aspects of Standard IV-Personnel Policies." CAHC is a non-profit organization that sets standards by which home care quality is measured in New Jersey and is the only state-based accreditation program. The program covered topics including how to interview, how to hire, how to draft personnel manuals, and anti-discrimination policies. The seminar was attended by owners and representatives of more than 25 New Jersey home care providers.

For the third consecutive year, **Michael A. D'Anton, Ph.D.**, who holds a Doctorate in Psychology, was invited by Health Ed Network to present at its annual New Jersey Mental Health and the Law seminar, which was held on June 9, 2011. Dr. D'Anton's lecture addressed treatment rights, psychotropic medication, ethical and guardianship issues, and involuntary and emergency civil commitments. The seminar included a segment of questions regarding the shooting of Congresswoman Gabrielle Giffords, and the psychiatric condition of the alleged shooter.

**Jacqui Garcia-Maceri**, CL&L's Finance Manager, was recently appointed to the Board of the Bayonne Economic Opportunity Foundation. The Foundation is committed to help individuals in the community in economic distress. Among other things, the Foundation operates the City's head start program; provides medical transport to seniors; undertakes toy drives and clothing drives as well as lunch programs for seniors. Born and raised in Bayonne, Ms. Garcia-Maceri is looking forward to working with the Foundation to improve the lives of those in her community.



On April 30, 2011, for the third consecutive year, **Team Chasan** participated in the Revlon Run/Walk through Central Park to raise money to combat women's cancers. Inspiration for our participation comes from a beloved colleague who has heroically and gracefully battled her cancer for several years.

## Insurance Defense Department's Success Continues

**John V. Mallon** and **Richard W. Fogarty** prevailed on appeal of the dismissal of a motorist's claim against an Allstate Insurance Company insured. The trial court dismissed the case when the plaintiff's expert witness failed to testify at trial. Although courts are usually reluctant to penalize a party for the conduct of its witnesses, the trial court found, and the Appellate Division agreed, that the plaintiff's attorney was aware of the problem several months in advance of trial and had failed to take action to rectify the problem. Details of the case were published in the January 13, 2011 edition of the New Jersey Law Journal.

Representing State Farm Insurance Company, **Richard W. Fogarty** obtained a favorable conclusion in an appeal to the National Arbitration Forum (NAF). The claimant was a chiropractor who sought payment for two months of chiropractic treatment to an 8-month-old patient following a motor vehicle accident. At the NAF hearing, Mr. Fogarty relied upon the findings of a chiropractic expert that the treatment was medically unnecessary, and not causally related to the accident. The arbitrator agreed because the infant was not evaluated in an emergency room or by a pediatrician before chiropractic treatment was begun,

the medical history failed to document that the treatment was reasonable, and there was no documentation of any change in patient's temperament and behavior, which was significant because of the patient's youth and inability to express complaints. The demand for arbitration was denied and that decision was affirmed on appeal. The decision is available on the NAF website, <http://www.nj-no-fault.com/>, NAF #1279959.



*Richard W. Fogarty*

## CL&L's Rising Stars



*Picture L-R: Thomas A. Morrone, Kirstin Bohn, Roosevelt Jean (standing), Nicole R. Cassata, Peter L. MacIsaac and Mitzy Galis-Menendez (sitting).*

"Rising Stars", another list published by New Jersey Super Lawyers®, names New Jersey's top up-and-coming attorneys. Six CL&L attorneys were selected as "Rising Stars": Partner Mitzy Galis-Menendez for General Litigation, Partner Thomas A. Morrone for Personal Injury Defense: General, Partner Nicole R. Cassata for

Insurance Coverage, Associate Peter L. MacIsaac for Personal Injury Plaintiff: Medical Malpractice, Associate Roosevelt Jean for Civil Litigation Defense, and Associate Kirstin Bohn for General Litigation. "Rising Stars" are nominated by the Magazine's Super Lawyers®, the top five percent of attorneys in the State.

In another State Farm proceeding before the NAF, **Nicole R. Cassata** succeeded in the denial of the Personal Injury Protection (PIP) claims of two chiropractors and an anesthesiologist who performed Manipulations Under Anesthesia (MUA). MUA is a procedure of bodily manipulation under anesthesia which is used when a patient can no longer tolerate conscious manipulation. In support of the defense, Ms. Cassata requested that the NAF appoint an independent physician to review the medical records and issue a report (MRO). Buttressing the report which was favorable to the defense, Ms. Cassata argued that the medical records were devoid of any medical justification for the MUAs. The arbitrator's decision denying the Demand for Arbitration is available on the NAF website <http://www.nj-no-fault.com>, NAF case No. 1270572

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# Insurance Defense cont'd

**Nicole R. Cassata** again successfully defended State Farm against an Order to Show Cause before Passaic County Superior Court Judge Garry S. Rothstadt. The claimant, a physician, argued that the arbitrator erred in relying on a MRO authored by a chiropractor. In the arbitration hearing, the claimant sought payment for MUAs performed with the assistance of a chiropractor. Ms. Cassata defended the claim using an MRO authored by a chiropractor. The physician argued that a chiropractor was unqualified to assess the medical necessity of a physician's patient care. The arbitrator denied the claimant's objection and ruled that an MRO could be accepted from either a physician or a chiropractor as long as the professional was a certified MUA provider by the National Academy of MUA Providers. After the claim was denied, the claimant filed an Order to Show Cause to vacate the DRP's decision and argued that it was a mistake to accept the chiropractor's report. Judge Rothstadt affirmed the dismissal of the claim and agreed that the chiropractor was qualified to author the MRO because, in the context of MUA procedures, chiropractic and medicine overlap.

In a trial before the Honorable Hector R. Velazquez and a jury in the Hudson County Superior Court, **Roosevelt Jean** prevailed against the claims of three persons who claimed to be injured in an automobile accident with a New Jersey Manufacturers Insurance Company insured. One claim was voluntarily dismissed after Mr. Jean barred the testimony of a physician regarding his interpretation of the person's MRI films, which was not disclosed before trial. Mr. Jean demonstrated that the claimed

injuries of the other plaintiffs were not so severe as to prevent them from engaging in their customary activities, including going to the gym, and that one of the plaintiffs had suffered similar lower back injuries in an earlier accident and which she had never disclosed to the doctors who treated her for this accident. The jury unanimously found that there was no objective evidence of injury and dismissed the plaintiffs' claims. The case was reported in the March, 2011 edition of the New Jersey Jury Verdict Review & Analysis.



*Roosevelt Jean*

In a second Hudson County trial, this time before the Honorable Maureen B. Mantineo, **Roosevelt Jean** obtained an involuntary dismissal of a motorist's claim against the Township of North Bergen. The plaintiff, supported by the testimony of four doctors--a chiropractor, a neurologist, an anesthesiologist, and a neurosurgeon--claimed injuries of a traumatically induced herniated disc and radiculitis in his cervical and lumbar spine which required spinal fusion surgery. Mr. Jean's cross examination of the doctors was sufficient to persuade the Court to dismiss the claim based upon plaintiff's failure to demonstrate that he suffered from a permanent injury and substantial, permanent loss of a bodily function, which is required for claims

against governmental entities under the New Jersey Tort Claims Act.

To complete his "hat trick" **Roosevelt Jean** also obtained summary judgment in the dismissal of a motorist's claim for personal injuries to his cervical and lumbar spine against North Hudson Regional Fire and Rescue. Superior Court Judge John C. Kennedy, Essex County, agreed with Mr. Jean's analysis that the medical evidence established that the plaintiff had previously injured the identical parts of his body and that the plaintiff had failed to distinguish his prior injuries from his present ones. The Court dismissed the claim with prejudice.

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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