

Thomas R. Kobin Prevails Before the New Jersey Supreme Court



Thomas R. Kobin

The New Jersey Supreme Court ruled in favor of Chasan Leyner & Lamparello, PC (CL&L) client North Hudson Regional Fire and Rescue (NHRFR), based on an argument presented by **Thomas R. Kobin**, in an important employment law case involving the First Amendment to the United States Constitution and the New Jersey Conscientious Employee Protection Act (CEPA). Mr. Kobin successfully argued that a public employee who complains to the New Jersey Civil Service Commission after being disciplined must raise allegations of employer retaliation at the same time, based on the same facts. *Winters v. North Hudson Regional Fire and Rescue*, 212 N.J. 67 (2012).

Stephen Winters, a NHRFR Captain, complained that he was demoted to the position of firefighter, suspended and ultimately fired in retaliation for making numerous complaints about the NHRFR. Winters appealed his discipline to the New Jersey Civil Service Commission (Commission) and simultaneously filed a lawsuit in the New

Jersey Superior Court claiming that he was retaliated against for his "whistle blowing" activities.

The Commission decided that Winters was properly disciplined for abusing sick leave and disclosing confidential documents and subsequently dismissed his appeal. In the judicial proceedings, the Law Division and the Appellate Division rejected the argument that the Commission's decision required dismissal of the lawsuit. Undeterred, Mr. Kobin first persuaded the Supreme Court to accept his interlocutory appeal and hear the case before trial, something the Court rarely does, and then

argued over the course of two separate days to convince the Court to dismiss the lawsuit. In a decision important for its analysis of the interplay of administrative law and judicial proceedings, the Court held that collateral estoppel – the legal doctrine which prevents a party from relitigating an issue or claim that was previously litigated – barred Winter's lawsuit and held that: "Findings made as part of the discipline process will have preclusive impact in later employment discrimination litigation raising allegations of employer retaliation based on the same transactional set of facts." *Id.* at 74.



CL&L managing partner Ralph J. Lamparello will be installed as the 115th President of the New Jersey State Bar Association at its upcoming Annual Meeting in May. Pictured here with Hudson County Assignment Judge Peter F. Bariso Jr., at right, and Brian Neary, Immediate Past President of the Hudson County Bar Association, Mr. Lamparello will be the first president from Hudson County to lead the organization in 40 years.

Cindy Nan Vogelman named to 50 Best Women in Business and Committee on Women in the Courts

Chasan Leyner & Lamparello is proud to announce that Cindy Nan Vogelman has been selected by NJBIZ for its 2013 list of "New Jersey's Best 50 Women in Business." This list is composed of New Jersey's most accomplished women based on their professional accomplishments, community involvement, and advocacy for women.

Ms. Vogelman was also recently appointed to the New Jersey Supreme Court Committee on Women in the Courts for its 2012-2014 term. The Committee is charged with monitoring the Judiciary's progress in achieving gender fairness in the New Jersey court system and for making recommendations to the Court for the elimination of gender bias. Ms. Vogelman previously served on the Supreme Court Committee on the Unauthorized Practice of Law from 2002 through 2006 and on the Supreme Court District Fee Arbitration Committee, from 1994 through 1998, chairing the Committee from 1996 to 1998, and again from 2004 to 2008.

For more than 20 years, Ms. Vogelman has served on the Board of Trustees of Women Rising, Inc. (formerly known as the YWCA of Hudson County), a leading community social services agency, and with Fairmount Housing Corporation, a non-profit affordable housing developer and manager.

She has served the legal community as Officer and Trustee of the Hudson County Bar from 2000 to 2010 and was selected President of the Hudson County Bar Association during 2008-2009. She currently serves as the Hudson County



Cindy Nan Vogelman

representative to the New Jersey State Bar Association Judicial and Prosecutorial Appointments Committee and as the Secretary of the Hudson County Bar Foundation.

She focuses her practice on commercial, probate and matrimonial litigation, land use and appeals. She heads the firm's appellate practice and has successfully briefed and argued dozens of appeals.

CL&L named to 'Best Law Firms' List For 2013



CL&L was honored to be named to the list of "Best Law Firms" in the 2013 edition *U.S. News and World Report – Best Lawyers*. The Firm received

Tier 1 distinction in the areas of Appellate Practice, Commercial Litigation, Labor Law–Management, Litigation–Eminent Domain and Condemnation, and Litigation–Municipal.

Recognition was determined through an evaluation of the clients, peer review from attorneys in the same practice areas and information provided as part of the formal submission process. According to the publishers, the recognition in the category of "Best Law Firms" is a "special distinction that signals a unique combination of excellence and breadth of expertise."

CL&L Attorneys Succeed on Behalf of Government Clients

Roosevelt Jean persuaded Bergen County Superior Court Judge Charles E. Powers that pursuant to New Jersey's weather immunity statute the City of Garfield could not be held liable for a plaintiff's slip and fall accident on black ice, which resulted in an elbow fracture that required replacement surgery. Mr. Jean successfully argued that the New Jersey Torts Claims Act (Act) absolves municipalities from liability if the injury is caused solely by weather conditions affecting roadways.

In another matter arising out of the Act, **Mr. Jean** obtained summary judgment on behalf of the Township of North Bergen against a claim that a plaintiff suffered a severe comminuted arm fracture, resulting in permanent limitations and disability, after tripping and falling on a sidewalk allegedly owned and negligently maintained by North Bergen. Mr. Jean prevailed before Hudson County Superior Court Judge Barry P. Sarkisian in his argument that the plaintiff had failed to prove North Bergen's liability under the Act because the municipality neither owned nor controlled the property where the plaintiff fell.

John L. Shahdanian II, and **Raymond J. Seigler** obtained the dismissal of a \$50 million civil rights lawsuit filed against the City of Hackensack Construction Official, Joseph Mellone, who was accused by a commercial property owner of improperly refusing to issue construction permits as part of a conspiracy with other Hackensack officials to discriminate against the plaintiff on the basis of his Arabic heritage and his failure to raise political funds. United States District Court Judge Esther Salas accepted the defense arguments that, prior to filing his claims in Federal Court, plaintiff failed to follow the New Jersey procedures for seeking just compensation for the condemnation or taking by government of prop-

erty. Consequently, the Court held that the plaintiff failed to exhaust his administrative remedies with regard to the non-issuance of the construction permit, and that the plaintiff failed to sufficiently plead his claims of discrimination and retaliation.



John L. Shahdanian II



Raymond J. Seigler

Michael A. D'Anton successfully defended the City of Linden and its Police Department against two similar federal lawsuits. In the first case, Mr. D'Anton obtained a summary judgment and the dismissal of the claim against the city, its police chief and twelve police officers

who were accused of the excessive use of force, false arrest, and improper search and seizure by a person who was arrested for domestic violence and then, on the opinions of two psychiatrists, was involuntarily committed to a hospital for psychiatric evaluation.

United States District Court Judge Dickinson R. Debevoise accepted Mr. D'Anton's argument and dismissed the lawsuit. The judge ruled that the city and its police officers acted reasonably and constitutionally in activating the city's SWAT team, arresting the plaintiff, seizing his firearm and ammunition, and detaining and transporting him for psychiatric evaluation.

In the second case, plaintiffs accused Linden police officers of false and discriminatory arrest under the Fourth and Fourteenth Amendments, based on their being members in a group known as "Roma." **Mr. D'Anton** successfully argued before United States District Court Judge Jose L. Linares that the police had probable cause to arrest under the New Jersey Domestic Violence Act, and, therefore, there was no substantive due process, equal protection or false arrest constitutional violation.

Cindy Nan Vogelmann, representing the County of Hudson, persuaded the Hon. Lourdes Santiago, J.S.C. to dismiss, with prejudice, a public bidding challenge filed under the Local Public Contracts Law, N.J.S.A. 40A:11-1, et seq. Judge Santiago agreed that the plaintiff, who was the sole bidder on a multi-million dollar food service contract at the Meadowview Psychiatric Hospital, was disqualified for submitting a materially non-conforming bid. The plaintiff's request of the Appellate Division for an emergent stay was denied because it could not establish the likelihood of success against the County and therefore it failed to demonstrate its right to injunctive relief.

Maclsaac and Bala Prevail in Appeal of Personal Injury Matter

Peter L. Maclsaac and **Reka Bala** represented an employee who slipped on ice in the parking lot where she was employed and suffered serious spinal injuries. The employee filed a negligence action against RAD Data Communications, which claimed that she was jointly employed by it and by Radbit Computers, an independent company that leased space in the building from RAD. RAD argued that because of the joint employment the employee's claim was barred by the immunity provision of the New Jersey Workers' Compensation Act, N.J.S.A. 34:15-8. The trial court found that RAD and Radbit were dual or "joint employers" and dismissed the claim. Mr. Maclsaac and Ms. Bala appealed the matter and argued that the employee was employed solely by Radbit and that the immunity, which

insulates an employer from tort liability to its employee, does not shield other related but separate corporations or their shareholders from the negligence action. The

Appellate Division agreed and reinstated the complaint finding that the plaintiff was exclusively employed by Radbit, and that RAD was not entitled to the tort immunity.



Peter L. Maclsaac



Reka Bala

CL&L Welcomes Three New Associates

The firm takes great pleasure in welcoming three new associates, **Jason M. Hyndman**, **Cheyne R. Scott** and **J. Nicholas Strasser**.

Mr. Hyndman and Ms. Scott joined CL&L after completing judicial clerkships. Mr. Hyndman clerked for the Hon. Peter F. Bariso, Jr., Assignment Judge, Hudson County Superior Court, and is a member of the firm's Insurance Defense Department, handling tort-based liability matters. Ms. Scott clerked for the Hon. Sheila A. Venable, Presiding Judge, Criminal Division, Hudson County Superior Court. Her practice is focused on contracts, governmental entity representation and commercial litigation.

Mr. Strasser joins CL&L in the Insurance Defense Department after working as an assistant prosecutor for the Hudson County Prosecutor's Office. As an assistant prosecutor, Mr. Strasser was assigned to the Special Victims Unit, prosecuting sex crimes and felony-level domestic violence cases.

Prior to his work as a prosecutor, Mr. Strasser was an attorney with the Army Judge Advocate General's Corps, where he served with the First Cavalry Division. During his deployment to Iraq, he was trial counsel and international law attorney for the First Air Cavalry Brigade. Upon his

return from Iraq, Mr. Strasser was assigned to the United States Military Academy at West Point, where he ultimately served as principal legal advisor for the Commandant of Cadets, a brigadier general and 38 subordinate commanders.



Pictured L-R: Jason M. Hyndman, Cheyne R. Scott and J. Nicholas Strasser

CL&L Attorneys Speak Out

Michael D. Witt recently co-presented a webinar for the New Jersey State Bar Association's Institute for Continuing Legal Education (ICLE). The seminar, entitled "Labor Law for Municipal Attorneys," explored recent developments in collective bargaining between government entities and labor unions. The program was part of a series sponsored by the NJSBA's Local Government Law Section, where Mr. Witt serves as Vice Chairman. Mr. Witt has recently lectured and presented on the subjects of federal regulatory inspections, and the New Jersey Open Public Records Act. Mr. Witt focuses his practice on environmental law and regulation and is Special Counsel to the Passaic Valley Sewerage Commission.



Michael D. Witt

At the fall NJSBA Mid-Year Meeting in Las Vegas, Nevada, retired Judge and CL&L Counsel **Thomas P. Olivieri**, moderated a seminar entitled "Secrets to Success in Chancery Court." The program offered practical suggestions for the clear, cogent and persuasive presentation of cases in Chancery Court. Judge Olivieri was joined on the panel by Chancery Judges Margaret Mary McVeigh and Harriet Klein, as well as former NJSBA President Allen Etish, Esq. and Jay Rice, Esq.

In addition, CL&L managing partner **Ralph J. Lamparello** was a featured panelist at the NJSBA Mid-Year Meeting at a program titled "Civil in Civil – Play by the Rules." The program examined the importance of maintaining professionalism and courtesy throughout the litigation process. In addition to Mr. Lamparello, the panel included Hudson County Assignment Judge Peter F. Bariso, Jr., Union County Civil Division Presiding Judge, Kenneth J. Grispin, and Essex County Superior Court Judge Siobhan A. Teare.

Steven L. Menaker, joined Superior Court Judge Mary K. Costello, Presiding Judge of the Hudson County Civil Division, and Jeffrey R. Jablonski, Esq., Chair of the District VI (Hudson County) Ethics Committee, in a presentation entitled "Fees and Pleas" to the Hudson County Bar Association's (HCBA) Young Lawyers Division. The program explored the ethical and rule requirements for setting a reasonable fee, memorializing its terms, limiting the scope of the representation, protecting and collecting the fee, and withdrawal from the representation.

Robert A. Cappuzzo was moderator and speaker at an ICLE Seminar titled "PIP [Personal Injury Protection] Issues for Practitioners – Working the PIP File", which reviewed proposed PIP Regulations, challenges to PIP Awards in Superior Court, and other topical issues. In addition, **Mr. Cappuzzo** spoke at the 35th Annual Meeting and Conference of the Insurance Council of New Jersey. Together with two colleagues, he presented a program titled "Auto Insurance 2012 Legal Review and Outlook," which addressed arbitration reform, litigation, and final PIP Regulations.

Robert E. Finn discussed basic substantive landlord-tenant law, procedures

involved in a summary eviction case, anti-discrimination statutes, permissible lease provisions, rent control, and the implied warranty of habitability at a recent continuing legal education program conducted by the HCBA. Mr. Finn is Immediate Past President of the HCBA Young Lawyers Division and serves, on behalf of the firm, as tenant advocate for the Township of North Bergen.



Robert E. Finn

For the fourth consecutive year, **Michael A. D'Anton, Ph.D.**, who holds a Doctorate in Psychology, was asked by Health Ed Network to conduct a presentation at its annual "New Jersey Mental Health and the Law" seminar. The subject of Dr. D'Anton's presentation was treatment rights, psychotropic medication, ethical and guardianship issues, and involuntary and emergency civil commitments.

At the Meadowlands Seminar presented in November by New Jersey Association for Justice, **Ralph J. Lamparello** presented two programs in the employment law field: "How to Win Damages" and "How to Cross Examine Defense Damages Experts."

At that same Seminar, **John V. Mallon** presented a program entitled "Observations From the Defense: Our Blunders, Their Benefit," which was part of a series called "Lessons I've Learned from Cases I've Lost."

Martha D. Lynes and James F. Dronzek Named Principals of the Firm



Martha D. Lynes

Chasan Leyner & Lamparello is proud to announce that Martha D. Lynes, who joined the firm in 2010 as Of Counsel,

and James F. Dronzek have become Principals of the firm.

During her more than 20 years as an attorney, Ms. Lynes has received recognition for her skilled and successful defense of automobile negligence, products liability and premises liability claims throughout New Jersey and has earned the reputation, among Judges and adversaries alike, of being a consummate and ethical professional.

She has served on the District XII Fee Arbitration Committee and was honored in 2005 by the New Jersey Commission on Professionalism in the Law as the Hudson County "Professional Lawyer of the Year."

Before joining the CL&L, Ms. Lynes was the managing attorney of a law firm that served as House Counsel for Liberty Mutual

Insurance Company. Upon joining the firm she has continued her practice as a member of the Insurance Defense Department.



James F. Dronzek

In more than 30 years of practice, Mr. Dronzek has earned a reputation for his skilled and effective representation of individuals, businesses and governmental entities before the State and Federal courts in litigation involving commercial and business disputes, employment claims, and probate actions.

He has also represented municipal governments and governmental authorities including the Town of West New York as Assistant Town Attorney, the Jersey City Zoning Board of Adjustment, the New Jersey Turnpike Authority and the New Jersey Schools Development Authority. His activities on behalf of these governmental entities included alcoholic beverage license disciplinary actions, housing violations, condemnation actions, and the defense of workers' compensation claims.

He has served as a member of the Supreme Court's District Ethics Committee for Hudson County and presently serves as a member of the Board of Trustees of the Hudson County Bar Association. Before joining CL&L earlier this year, he practiced with law firms in Hoboken and Jersey City.



Michael D. Witt assisted CL&L client Passaic Valley Sewerage Commission (PVSC) in recovering documents damaged in flooding caused by Hurricane Sandy. PVSC sustained historic damage from the storm. Working for four days in environmental protective equipment, Mr. Witt directed a team of PVSC staff and contractors in salvaging valuable archives for restoration.

Defense Department Prevails in Motor Vehicle and Insurance Coverage Matters

John V. Mallon successfully defended State Farm Indemnity Company (State Farm) in a highly unusual coverage case in Morris County. The insured sought coverage for internal injuries he suffered when he drove into a utility pole. Although he claimed to have no recollection of driving his car into the pole, earlier that same day he admitted to attempting suicide by slashing his wrists. Using evidence of the earlier attempt, the testimony of the responding paramedics and other circumstantial evidence, Mr. Mallon persuaded the jury that the accident was part of an ongoing suicide attempt, thus an intentional act, which was excluded from coverage under the policy.



John V. Mallon

Mr. Mallon and **Samar Siyam** successfully represented an Allstate Insurance Company insured in the Appellate Division. The plaintiff had filed an appeal after a defense verdict on the tort threshold. The Appellate Division affirmed the no cause and found that the jury verdict was supported by the evidence. The plaintiff instituted the action alleging neck and

back injuries and a herniated disc arising from a rear-end motor vehicle accident with CL&L's client, Allstate's insured, who admitted 100 percent liability. The case went to trial on damages. Following a three day trial before the Honorable Charles E. Powers, the jury returned a verdict of no cause in favor of Allstate. The plaintiff appealed the verdict as being against the weight of the evidence, however the Appellate Division agreed with Allstate's position that the verdict was reasonably supported by the record and did not indicate any error or mistake by the jury.



Samar Siyam

In a third successful defense of an automobile accident case, **Martha D. Lynes** persuaded a Hudson County jury that an injured motorist suffered no permanent injury and failed to meet her burden under the New Jersey No Fault verbal threshold. The motorist and three of her doctors testified that she suffered a debilitating herniated disc, which would require future surgery, when she was involved in an accident at an intersection. Ms. Lynes refuted

that testimony through her cross-examination of the plaintiff and by presenting witnesses including a board certified neurologist, who testified that the findings in the radiological testing were degenerative and of dubious neurological clinical significance. The jury took less than one hour to dismiss the claim, unanimously concluding that the plaintiff had failed to prove that her injury was permanent. The case was tried before the Honorable Judge Lourdes I. Santiago.

Automobile arbitration can be exceptionally complex as **Jose Vilarino** demonstrated in an appeal on behalf of State Farm. In the case, South Jersey Healthcare Hospital sought reimbursement for medical care related to an automobile accident at rates above those provided in its Preferred Provider Organization (PPO) contract with State Farm. The PIP Arbitrator determined that because the contract was silent on the issue, the parties intended to bypass the cost containment provisions of the PIP fee schedules and the New Jersey Administrative Code. Mr. Vilarino successfully persuaded the PIP Arbitration Appellate Panel that the PPO contract had to be considered in the context of New Jersey statute N.J.S.A. 39:6A-4.6(c), which forbids a medical provider to request payment in excess of the medical fee schedules and which establishes the maximum amount that a health care provider could receive for a particular service. Holding that the PPO contract could not negate the cost containment goals of the statute, the Appellate Panel vacated the initial award and denied the medical provider's Demand for Arbitration. The decision is available under Forthright case number 1230875.

Vilarino and Scott Elected to Leadership Positions with HCBA Young Lawyers



Jose Vilarino

Jose Vilarino was elected to serve as the 2013 President of the Hudson County Bar Association's Young Lawyers Division. **Robert E. Finn** is serving as the Immediate Past President in 2013. In addition, **Cheyne R. Scott** serves as the Treasurer of the Division.

Nicole R. Cassata Selected as a "New Leader of the Bar"



Nicole R. Cassata

Nicole R. Cassata was recently named a "New Leader of the Bar" by the *New Jersey Law Journal*. Formerly known as "40 Under 40",

the list identifies a select group of distinguished young attorneys selected for their outstanding career achievements and for their contribution to the legal community through leadership in bar and other activities, lectures and publications.

Ms. Cassata represents clients in appeals and insurance defense, with an emphasis on Fortright (formerly the National Arbitration Forum) personal injury protection (PIP) arbitrations. Ms. Cassata joins her CL&L colleagues, **Thomas R. Kobin**, **John L. Shadnian II**, **Mitzy Galis-Menendez** and **Thomas A. Morrone**, who were honored with this distinction in recent years.

Thomas B. Hight Joins Firm as Of Counsel



Thomas B. Hight

Thomas B. Hight joined the Insurance Defense Department as Of Counsel on February 1. Mr. Hight has been litigating premises liability, insurance coverage, products liability and automobile liability cases for more than 25 years.

He has served as President and Chairman of the Board of New Jersey Defense Association (NJDA) and currently serves on the NJDA Board of Directors. He is a frequent lecturer for The New Jersey Institute for Continuing Legal Education and the National Institute for Trial Advocacy and was the recipient of the Exceptional Performance Citation by the Defense Research Institute.

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.

Supervised by civil and criminal trial attorneys certified by the Supreme Court of New Jersey, Chasan Leyner offers skilled representation in the following areas of law:

- Appellate ■ Alternative Dispute Resolution
- Aviation ■ Banking ■ Civil Rights Litigation
- Commercial Litigation
- Commercial Real Estate/Leasing
- Corporate and Business
- Criminal ■ Elder and Disability Law
- Environmental ■ Family ■ Governmental
- Insurance Defense ■ Labor and Employment
- Medical Malpractice ■ Probate Litigation
- Public Entity Litigation ■ School Law
- Serious Personal Injury
- Workers' Compensation Defense

To learn how our attorneys can effectively serve your legal needs, contact us at 201-348-6000, or visit us online at www.chasanlaw.com.