

New & Noteworthy

Mitzy Galis-Menendez was recently appointed to the New Jersey State Bar (NJSBA) Association's Judicial and Prosecutorial Appointments Committee. The committee is charged with the important task of screening candidates that are considered for judicial or prosecutorial appointments and reporting to the Governor an assessment of whether the candidates are qualified for the office.

Michael A. D'Anton, Ph.D., of counsel to the firm and a licensed psychologist, was a speaker at a seminar entitled "New Jersey Mental Health and the Law 2009" sponsored by the Health Education Network and attended by mental health professionals and attorneys. Dr. D'Anton also authored an article titled "Avoiding Ineffective Assistance of Counsel Claims by Psychiatric Defendants" for the June 2009 issue of *New Jersey Lawyer Magazine*, a publication of the NJSBA. Finally, he is scheduled to teach a graduate level course in forensic psychology - Evaluation and Treatment of Adult Offenders - at the College of Saint Elizabeth in Morristown.

Thomas Kobin was reappointed on May 28, 2009, as counsel for the East Rutherford Board of Education. Mr. Kobin has served as Board counsel since December 2004, continuing a representation originally begun by former partner and now Superior Court Judge Peter F. Bariso, Jr., who represented the Board for twenty years before appointment to the bench. The firm looks forward to continuing its successful, 25-year relationship with the Board.

Lamparello Named to the "Top 100"

Seven firm members named Super Lawyers

Ralph J. Lamparello was selected to the "Top 100" attorneys in New Jersey as published in the April 2009 edition of *New Jersey Monthly* magazine's Super Lawyers® section. Attorneys in the "Top 100" received the highest point totals in the 2009 New Jersey Super Lawyers® nomination, research and blue ribbon review process.

Seven members of the firm were selected in their respective practice areas to the 2009 New Jersey Super Lawyers® listing. Mr. Lamparello and **John L. Shahdanian II** were named in the area of employment and labor law. **Cindy Nan Vogelman**

was named for her appellate practice, while **John V. Mallon** was recognized for insurance coverage. **Steven L. Menaker** was selected for general litigation, and **Anthony V. D'Elia** was chosen for civil litigation defense. **Joel A. Leyner**, counsel to the firm, was selected in the area of business litigation.

Additionally, Mr. Lamparello, Ms. Vogelman, Mr. D'Elia and Mr. Shahdanian were named to the Corporate Counsel Edition of Super Lawyers®. A total of 25,000 lead corporate counsel and chief executives of public and private companies nationwide receive the magazine.



Members of the firm named New Jersey Super Lawyers for 2009 were, top row from left, John L. Shahdanian II, Steven L. Menaker, Anthony V. D'Elia, John V. Mallon, bottom row from left, Cindy Nan Vogelman, Joel A. Leyner and Ralph J. Lamparello.

Firm Director Elected as NJALA President



Sara M. Diaz

Sara M. Diaz, the firm's Director of Administration, was recently sworn in as President of the New Jersey Association of Legal Administrators (NJALA) for 2009-2010. NJALA, an educational-based organization with over 160 members in Northern New Jersey, is the local chapter of the international Association of Legal Administrators and is dedicated to the enhancement of competence and professionalism of the legal management team. Ms. Diaz joined the NJALA Board of Trustees in 2003, has been a member of numerous committees and special NJALA project groups. She has served as Chair of the Education Committee and Bar Relations Committee and has progressed through the leadership ranks of the organization since becoming an officer in 2005.

In addition to her work with NJALA, she previously served as trustee of Women Rising, a non-profit organization providing services in economic development, social services, and advocacy and presently serves as a Co-Chair of the Law Office Management Committee of the New Jersey State Bar Association. Ms. Diaz joined the firm in 1997, and has assisted the firm in doubling its size since then.

Insurance Defense Team Continues Success



John V. Mallon, co-chair of the firm's Insurance Defense Department, successfully competed three complex trials before the Superior Courts of New Jersey. The first

trial was in Essex County. Mr. Mallon represented the driver of a commercial vehicle which entered an intersection on a flashing yellow light and struck a pedestrian in the crosswalk causing serious injuries including a spinal fracture and traumatic brain injury with cognitive deficits. The plaintiff claimed that the driver was speeding and failed to watch for pedestrians like him; the driver claimed that the pedestrian suddenly walked out in front of his vehicle. In a trial that lasted three weeks and heard the testimony of seven expert witnesses, Mr. Mallon used an accident reconstruction expert and a toxicologist to demonstrate that the plaintiff was highly intoxicated at the time of the accident and was in the better position to avoid the collision. The jury deliberated for three days before returning a verdict finding the plaintiff 51% at fault

for the accident which meant that, because he was legally responsible for causing his injuries, the driver was not responsible.

Mr. Mallon's second trial, also in Essex County, involved an intersection accident. The plaintiff called three witnesses to testify that the firm's client had a red light, was negligent and caused the accident. Through skillful cross-examination, Mr. Mallon discredited the plaintiff's witnesses and persuaded the jury that the firm's client was not negligent.

In the third trial, Mr. Mallon defended a Bergen County homeowner who was sued when a relative fell from a deck that lacked a safety rail. The case was originally tried in 2008; that jury found the homeowner liable for the accident and awarded the plaintiff \$270,000. Asserting that the trial court's instruction to the jury confused the homeowner's duty to install a rail, Mr. Mallon appealed the judgment. The Appellate Division agreed and reversed the judgment, sending the case back to the Superior Court for retrial. This time Mr. Mallon was successful, and the jury found that the homeowner was not responsible for the plaintiff's injuries.

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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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- Civil Rights Litigation ■ Commercial Litigation ■ Commercial Real Estate/Leasing
- Corporate and Business ■ Criminal ■ Environmental ■ Family ■ Governmental
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- Public Entity Litigation ■ School Law ■ Serious Personal Injury
- Workers' Compensation Defense

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Robert A. Cappuzzo, co-chair of the firm's Insurance Defense Department, and **Nicole R. Cassata** successfully defended a PIP claim before the National Arbitration

Forum on behalf of Allstate New Jersey Insurance Company. The claimants were a group of three medical providers who all rendered treatment to an Allstate insured following a motor vehicle accident. The providers sought approximately \$26,000 for chiropractic "Manipulations Under Anesthesia" (MUAs) which consisted of chiropractic, anesthesia and surgery center charges. Mr. Cappuzzo first filed a brief and argued that under the law established by the court decision in *Bowe v. NJM*, 367 N.J. Super., 128 (App. Div. 2004), the claimant had to first prove that her injuries were related to the present (second) accident and not to an earlier (first) accident which injured the identical parts of her body and for which she was still receiving treatment at the time of the second accident.

Therefore, it was argued, the claimant had to prove that the second accident aggravated the injuries suffered in the first accident. At the hearing, Ms. Cassata persuasively argued that the claimant had failed to tell her doctors for the second accident about the injuries suffered in the first accident and had failed to prove that her earlier injuries were aggravated. The NAF arbitrator agreed and denied the demand for arbitration. The decision is available on the NAF website, www.njadforum.com, NAF case # 1213644.

Ann M. Merritt was also successful in two recent trials. In the first, tried for five days before the Superior Court of New Jersey in Hudson County, Ms. Merritt defended a New Jersey Manufacturers Insurance Company insured who, after coming to a stop at a traffic light, backed up to clear the crosswalk and in doing so,

struck the plaintiff's automobile which had stopped behind the insured's car. Plaintiff claimed spinal injuries including bulging and herniated discs. Ms. Merritt's argument that the plaintiff's injuries were not related to the collision and were not permanent were persuasive.

Although the jury found that the insured was responsible for the accident, they found that the plaintiff did not suffer a permanent injury as a result of the accident. Under New Jersey's No Fault automobile law, a person may not recover for non-economic damages – that is, for pain and suffering – unless that person proves a permanent injury.

In her other trial on behalf of an Allstate Insurance Company insured before the Superior Court of New Jersey in Essex County, the plaintiff claimed that the firm's client ran through a stop sign and caused him to suffer spinal injuries including disc herniation. Ms. Merritt disputed liability and argued that her client

did what the law requires – stop, look and proceed cautiously – and that the insured's automobile was already well into the intersection before it was hit in the rear passenger side by the plaintiff's automobile. At the conclusion of a five-day trial, the jury exonerated the firm's client.

While defending a motorist who drives into the rear of another automobile might seem to be impossible, **Mark S. Hanna** did just that for a New Jersey Manufacturers Insurance Company insured. In a recent trial before the Superior Court of New Jersey in Hudson County, the plaintiff claimed to have suffered from permanent and severe lumbar spine injuries from a rear-end impact with the firm's client. Mr. Hanna argued that photographs of the plaintiff's and the defendant's vehicles demonstrated minor damage incapable of causing the claimed injury. The jury agreed and found the client not responsible for the plaintiff's injury.



Ralph J. Lamparello was sworn in as the Treasurer of the New Jersey State Bar Association at its Annual Meeting and Convention in May. A member of the Association since 1989, he is in succession to become its President in 2013. Mr. Lamparello is pictured here at the Meeting with NJSBA Executive Director Angela C. Scheck and the Hon. Peter F. Bariso, Jr., P.J.Cv., a former name partner of the firm with whom he participated as a lecturer at the meeting.

Case Notes



Kirstin Bohn

Ralph J. Lamparello and **Kirstin Bohn**, representing the Town of Secaucus, and David Drumeler, its Administrator, persuaded the Superior Court of New Jersey in Hudson County that Town Councilman and Deputy Chief of the Secaucus Fire Department Michael Gonnelli was legally required to relinquish one of his two offices. Under New Jersey common law, one person cannot hold incompatible governmental positions. Mr. Lamparello and Ms. Bohn successfully argued that Gonnelli's position as Councilman, which permitted him to vote on matters which would effect his position as Deputy Chief, resulted in his holding incompatible positions. The Court agreed and directed Gonnelli to choose between his offices; he resigned his position as Deputy Fire Chief.

Following a legal dispute which consumed most of the decade, the Appellate Division of the Superior Court of New Jersey adopted the arguments of the County of Hudson (County) and ordered the New Jersey Department of Corrections (DOC) to remove all sexually violent predators from the Hudson County Correctional Facility at Kearny, New Jersey. In 1999, following the passage of the Sexually Violent Predator Act – which authorized the involuntary civil commitment of persons found to be sexually violent predators – the DOC designated the Kearny facility as the only available site in the

state to house these persons. The County sued to evict the predators but, one week before they were scheduled to be removed, Governor Christine Todd Whitman signed Executive Order No. 118 which declared that a statewide emergency required that the predators remain in Kearny. The County's attempt to have the executive order invalidated was denied by the Appellate Division in 2002. The County's recent effort was more successful. On May 18, 2009, the Court declared that the "emergency" was over and found that the DOC's efforts to secure other locations to house the predators read like the "Goldilocks" story. The Court ordered the DOC to remove the predators from the Kearny facility within one year. **Steven L. Menaker** and **Kirstin Bohn** represented the County.

In a case of first impression, the Appellate Division ruled that an employer may not use "after-acquired" evidence during the liability phase of a trial. The firm's client sued Automatic Data Processing (ADP) for firing her in violation of the New Jersey Conscientious Employee Protection Act (CEPA), commonly known as the whistleblower law. After the lawsuit was filed, ADP claimed that the employee was dishonest when she applied for the job and said that her previous position with NYNEX was eliminated, when in fact, she left the NYNEX job and then sued for wrongful termination. That case ended with a confidential settlement agreement between NYNEX and the employee.

At the ADP trial, the company asserted that if they knew of the earlier employment, they would never have hired the employee. In an apparent response to that testimony the jury entered a judgment for ADP. On appeal, **John L. Shahdanian II**, chair of the firm's Labor & Employment Department successfully argued that it was improper to permit "after-acquired" evidence to be introduced in the liability or guilt phase of the trial because it only has importance on the

issue of how much in damages should be awarded. The court sent the case back to the trial court for a new trial with instructions that the evidence, if admissible at all, could only be introduced during a second trial on damages. Because of the novelty of the decision, it was widely reported in the press and was the subject of an article in the June 8, 2009 edition of the *New Jersey Law Journal*.



John L. Shahdanian II

Mr. Shahdanian, with the assistance of **Raymond J. Seigler**, successfully defended the County of Bergen and Bergen County Detective Gregory Spruill against claims of false arrest, false imprisonment, assault and battery and malicious prosecution. The claims arose when an arrest warrant was mistakenly issued against the plaintiff which resulted in her imprisonment with the New York City Department of Corrections. She originally filed her lawsuit in the United States District Court for the Eastern District of New York but, after Mr. Shahdanian obtained the dismissal of the federal court case, she refiled in the Supreme Court of New York, Queens County, New York's principal trial court. Mr. Shahdanian and Mr. Seigler persuaded the Court to dismiss the complaint and argued that the lawsuit was untimely, unfounded and contrary to the legal principle that you cannot avoid the consequences of a defective false arrest/false imprisonment claim by renaming it and calling it negligence.