



# 2014 YEAR IN REVIEW



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CAMPOLO, **MIDDLETON**  
& MCCORMICK, LLP

Big Firm Quality. Small Firm Value.

At  
**CAMPOLO,  
MIDDLETON  
& MCCORMICK, LLP**

We promise our clients that:

1. We will take the necessary time to understand their unique needs,
2. Establish mutually agreed upon expectations about fees, service, and results.
3. We will work every day to exceed their expectations.

**Our Guiding Values**

We promise our clients that all of our actions shall reflect:

- 1. Integrity** – We stand by our representations to our clients, courts and adversaries.
- 2. Honesty** – We are fully transparent in all of our dealings and communications.
- 3. Loyalty** – We are only concerned about our clients and their matters.
- 4. Dependability** – We will always be available and responsive.
- 5. Responsibility** – we hold ourselves accountable for our actions.

## A MESSAGE FROM THE MANAGING PARTNER



Dear Clients and Friends:

I would like to thank you all for helping us make 2014 a spectacular year for our firm. Because of your confidence in us, we were able to grow the strength and depth of our legal team by adding eight lawyers and three paralegals, bringing the firm total to 22 lawyers and 38 total professionals. We were also able to add a full-service office in Bridgehampton to help better serve our East End clients.

One of those additions, Christine Malafi joined our firm as a partner in February 2014 and immediately headed up a successful transaction that was one of Long Island's largest M&A deals of the year. She was assisted by Alan Weinberg, who joined us as Counsel last year and who brought to the firm years of successful business, as well as legal, experience. All in all, in 2014 our corporate group, with these two veterans at the helm, closed M&A deals and private equity financing that brought in over one-hundred million dollars (\$100,000,000.00) to our clients.

Our litigation group was equally robust. Both Scott Middleton and Patrick McCormick, my partners who head up the two litigation groups (commercial and negligence), were again named "Super Lawyers" by their peers, a well-deserved recognition for the best litigators I have ever encountered. Of note, Pat was able to successfully resolve a very complex eighty-million dollar (\$80,000,000.00) fraud case, and Scott continued to receive successful outcomes from juries in many different venues.

Our firm continued to support the Long Island community and donated hundreds of thousands of dollars to over 200 not-for-profit organizations. We are proud of all of those organizations, particularly of Stony Brook University (Scott and I are both graduates and both past-presidents of the Alumni Association), and currently I serve on the Board of the Staller Center for the Performing Arts, we are major donors to the Athletics Department, and Scott serves on the advisory board for the Children's Hospital.

I would be remiss if I failed to recognize everyone else here at the firm, as they are the hardest working team with whom I have ever had the privilege of working. They are true professionals, and I am very grateful to be able to work with them. It is because of their dedication every day that we were voted by the Long Island community as the "Best Law Firm on Long Island," a distinction that was well deserved and belongs to each and every one of them.

Thank you again for your continued loyalty and support of our firm. We are here for you, to help you succeed with your goals and dreams, and look forward to continue to work with you in 2015.

Sincerely,

Joe Campolo

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# ABOUT THE FIRM

Located in the heart of Long Island and now on the East End, Campolo, Middleton & McCormick, LLP is a full-service law firm with the expertise and experience to represent clients in a wide variety of legal matters. We have an established record of results for our clients, who range from individuals to global companies, and approach each matter with a unique understanding of the issues and the highest level of integrity. We strive to be trusted counselors and advisors and pride ourselves on the long-term relationships we forge with our clients.

## **PRACTICE AREAS**

Corporate

Criminal

Healthcare

Intellectual Property & Technology

Labor & Employment

Real Estate Development

Liability Insurance & Insurance Coverage

Litigation & Appeals

Matrimonial

Mergers & Acquisitions

Municipal Liability & Government Relations

Private Equity

White Collar Defense

Wills, Trusts & Estates



# NEW ADDITIONS



## CHRISTINE MALAFI JOINS FIRM AS PARTNER

**February 2014:** CMM was pleased to announce that Christine Malafi joined as a member of the firm's executive management team in addition to its mergers and acquisitions, corporate, litigation, and municipal law groups this year.

Immediately prior to joining the firm, Christine was senior corporate counsel at Leviton Manufacturing Co., Inc., where she handled corporate governance, acquisitions, routine and complex transactions, employment issues, and other business matters, both nationally and internationally.

In January 2004, she was appointed Suffolk County Attorney, as the first woman and youngest person ever appointed to the position. In that position for eight years, Christine was the chief legal officer of the County, supervising a legal team of over sixty-five attorneys in the Suffolk County Department of Law. During her eight-year tenure, she focused on obtaining jury verdicts in favor of the County, making fewer settlements, streamlining contract procedures, enforcing anti-discrimination laws, and protecting children from harm.

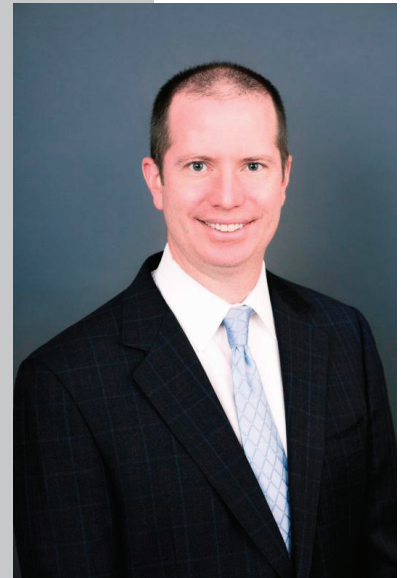
Prior to becoming Suffolk County Attorney, Christine was a partner with Lewis Johs Avallone Aviles & Kaufman, LLP, a large defense firm, where her practice focused on insurance coverage and contract analyses, appeals, insurance fraud issues, general liability litigation, municipal work, and environmental defense work.

Christine has taught both undergraduate and law school classes on litigation, legal research, and writing at Long Island University, C.W. Post and at Touro Law Center. She has also lectured extensively on municipal issues, insurance coverage issues, and claim handling. She has been appointed by Chief Administrative Judge Gail Prudenti to the New York State Pro Bono Scholars Task Force, and additionally, she was a speaker and member of Chief Judge Jonathan Lippman's New York State Task Force to Expand Access to Legal Services in New York, the New York State Judicial Institute on Professionalism in the Law, and was a presenter at the Chief Judge's Convocation on Independence and the Government Lawyer in Albany, NY.

Ms. Malafi received her Juris Doctor from Touro College, Jacob D. Fuchsberg Law Center, magna cum laude. She served as the Managing Editor of the Touro Law Review.

## WILLIAM MCDONALD JOINS FIRM AS COUNSEL

**May 2014:** The law offices of William McDonald, P.C., a general practice firm with a special emphasis on representing individuals and small businesses, merged with CMM in May of 2014. William McDonald came on board as Counsel to the firm and heads our Healthcare and White Collar Defense practice areas. Mr. McDonald represents professionals charged with misconduct before the New York State Office of Professions, as well as at Office of Professional Medical Conduct disciplinary hearings. His experience includes the defense of doctors in hospital privileges hearings, and in audits initiated by Medicare Recovery Audit Contractors ("RACs"), the New York Office of the Medicaid Inspector General ("OMIG"), and private insurance companies, including out of network reimbursement disputes.



## KELLY CANAVAN JOINS FIRM AS COUNSEL

**August 2014:** Kelly Canavan is Counsel to Campolo, Middleton & McCormick and is head of the real estate department. Her focus is on both residential and commercial transactions and leases, primarily on the East End of Long Island. Real estate matters she has handled vary in size, from smaller matters to matters worth well over tens of millions of dollars. In 2013, her transactions totaled well over a hundred million dollars. Kelly represents buyers and sellers, landlords and tenants, brokers and developers, architects, contractors, and business owners, and has experience in handling both forward and reverse 1031 exchanges, as well as in preparing all types of agreements and contracts relating to real estate transactions, such as ante nuptial agreements, co-habitation agreements, and joint venture agreements.







## HON. ANDREA HARUM SCHIAVONI JOINS FIRM AS OF COUNSEL

**November 2014:** Hon. Andrea Harum Schiavoni is Of Counsel to the firm. She is a member of the firm's real estate and corporate practice groups. Her focus is on real estate closings and transactional matters for local East End businesses.

Having clerked in law school for Florida State Attorney Janet Reno, Chief Juvenile Court Judge William Gladstone in Miami, and the Los Angeles County Public Defender's Office, Andrea Harum Schiavoni began her legal career in Florida at the law firm of her father, Albert E. Harum, Jr., established in 1966, handling workers compensation and employment discrimination matters. Upon her father's death in 1997, Schiavoni became President of the firm, renamed Harum & Harum, representing and opposing corporations like DuPont, AT&T, American Airlines and Florida Power and Light. As part of her practice, Schiavoni represented hundreds of clients in mediation, as required in all civil suits in the state of Florida before a trial date can be set. Having developed an appreciation for the usefulness of mediation within the judicial system and the necessary skills to work as an expert neutral, Schiavoni changed the focus of the firm in 2001 exclusively to that of alternative dispute resolution, working as a mediator and arbitrator from offices in Miami, Florida and Sag Harbor, New York.

In 2008, Andrea Schiavoni was elected to serve as Southampton Town Justice, and she was re-elected for a second term in 2012. In 2010, Schiavoni was appointed to establish a Justice Court in the Village of Sag Harbor and serve as its first justice, and, in 2013, Schiavoni was appointed by Chief Administrative Judge Gail Prudenti to start a Veterans Treatment Court on the East End of Suffolk County. Schiavoni continues her work while on these benches, and she teaches Continuing Legal Education and speaks statewide as a specialist in alternative dispute resolution, Summary Proceedings, and Town and Village Court Administration.



## VINCENT COSTA JOINS FIRM AS AN ASSOCIATE

**October 2014:** Joining the firm's Corporate and Private Equity practice groups as an associate, Vincent's practice includes corporate transactions, corporate governance, and other related business matters.

Vincent earned his undergraduate degree from Stony Brook University, graduating summa cum laude, with a Bachelor of Science in Business Management with a Finance specialization and a minor in Technological Systems Management. He accepted a merit scholarship to Touro Law Center, graduating magna cum laude. While pursuing his Juris Doctor Degree, Vincent became the Editor-in-Chief of the Touro Law Review, earned a Public Interest Law Fellowship as an intern for the Brookhaven Town Attorney's Office, worked in Touro's Mortgage Foreclosure and Bankruptcy Clinic, and was a Teaching Assistant for first year students. Vincent spent a semester as an intern with the United States Attorney's Office in the Eastern District of New York focusing on white collar crime and he joins us from his most recent position as an intern at CA Technologies in their worldwide legal department.



## EDWARD J. KARAN III JOINS FIRM AS AN ASSOCIATE

**December 2014:** Edward J. Karan III is a member of the firm's corporate and mergers & acquisitions groups. His practice includes corporate transactions, corporate governance, and other related business matters.

Edward earned his undergraduate degree from Stony Brook University with a Bachelor of Arts in Political Science. He graduated from Touro Law Center and, while pursuing his Juris Doctor Degree, Edward interned for the Honorable Joseph Bianco, United States District Court Judge for the Eastern District of New York, as well as for the Queens District Attorney's Office, Narcotics Investigations Division. In addition, Edward was a Research Assistant and also volunteered for the Volunteer Income Tax Assistance Program, where he prepared tax returns for low income and elderly clients. Edward also spent a semester abroad, in India, studying International Environmental and Human Rights laws. Prior to joining CMM, Edward worked for a small Suffolk County law firm concentrating in corporate matters, commercial and government contracting, intellectual property matters, mergers & acquisitions, and International Traffic Arms Regulations compliance.



# NEW ADDITIONS

## *Staff*

### **Devon Palma – Law Clerk**

Devon Palma started with the firm as a Summer Associate and has now joined as a full time law clerk. She is a third year law student at Maurice A Deane School of Law at Hofstra University and will be graduating in May of 2015. She graduated from the State University of New York at New Paltz with a Bachelor's Degree in Political Science with concentrations in Law and American Politics. Devon has a strong interest in litigation, working in both the personal injury and commercial litigation branches of the firm.

### **Kathleen Johnson – Litigation Paralegal**

Kathleen Johnson is a paralegal specializing in civil litigation, landlord tenant, negligence and personal injury. She has a degree in Criminal Justice. She has worked in the areas of civil litigation, corporate litigation, commercial and residential real estate, landlord tenant, personal injury, negligence, mass tort litigation and insurance litigation defense. She brings over 18 years of legal experience to CMM.

### **Nicholas Palmese – Corporate Paralegal**

Nicholas Palmese is a paralegal in our corporate and intellectual property departments focusing on corporate matters, trademark infringement issues and mergers & acquisitions. He attends Nassau Community College where he is working on an degree in Nassau's Paralegal Studies program. Nicholas joined us in June and works in our Ronkonkoma office.

### **Gabriella Hosten – Calendar Coordinator**

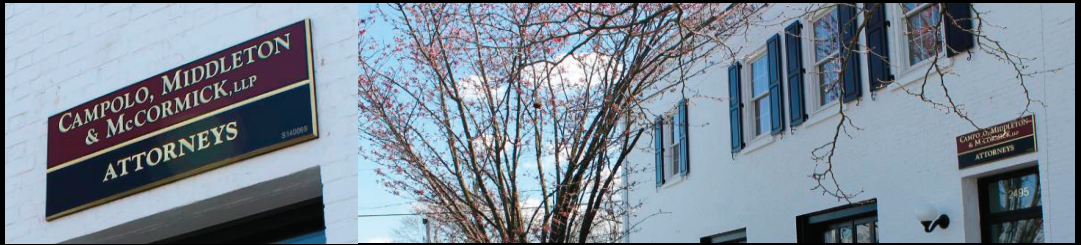
Gabriella Hosten graduated from John Jay College of Criminal Justice with a Bachelor's Degree in International Criminal Justice. After college, Gabriella began her legal career as a legal assistant in New Jersey working on cases dealing with bankruptcy, divorce and entertainment. From there, she worked as a Case Worker specializing in Social Security Administration matters and in the areas of workers' compensation, no fault insurance claims, personal injury, litigation, and corporate law. Gabriella currently works as a coordinator in our Ronkonkoma office.

### **Alyssa Levy – File Clerk**

Alyssa Levy is completing her Associates degree in Criminal Justice at Briarcliffe College and currently works as the firm's file clerk.

# FIRM GROWTH

## CMM OPENS EAST END OFFICE



Campolo, Middleton & McCormick opened of a new office in Bridgehampton, New York. The new location enables the firm to further expand its client base into the East End of Long Island and provide easier access to its already existing clients in the Hamptons, and surrounding areas.

The office opened in October and is headed by Kelly Canavan, who joined the firm as Counsel this year. The full range of Campolo, Middleton & McCormick's services are available to its clients in the Bridgehampton office.

## FIRM EXPANDS HEALTHCARE PRACTICE



The heavily regulated and rapidly changing healthcare industry has created a broad range of issues for healthcare providers, institutional providers, group practices, individual providers, and business entities. Our wealth of experience and knowledge positions us at the forefront of the health law industry, and helps guide our clients through the maze of regulations. Our healthcare clients benefit from the multidimensional resources of the firm's corporate, employment, real estate, litigation, and financial service capabilities, which enhance the scope of the health law services we provide.

## WHITE COLLAR AND CRIMINAL DEFENSE DEPARTMENTS ADDED



In addition to vigorously defending our clients in all criminal matters, our team led by William McDonald, Esq. offers clients insightful and effective defense advice when dealing with investigations, healthcare fraud, healthcare professionals facing prosecution, confidential internal corporate investigations, and False Claims Act suits. Businesses in regulated industries need experienced counsel in order to expertly navigate the minefield found in the current enforcement climate.

# ACHIEVEMENTS

## FIRM AND MANAGING PARTNER WIN 2015 BEST OF LONG ISLAND AWARDS



In 2014, CMM and Joe Campolo were awarded the Long Island Press's Best of Long Island 2015 Awards. Joe as one of 15 attorneys in the Best Lawyer category, and CMM as one of 15 firms nominated in the Law Firm category. We are proud to announce we have won first place in each category.

## FIRM WINS THREE LIBN LEADERSHIP IN LAW AWARDS



CMM takes great pride that three of our attorneys were recipients of the 2014 Long Island Business News' "Leadership in Law" awards. The awards recognize individuals whose dedication to excellence and leadership in both the legal profession and the community and has had a positive and lasting impact on Long Island.



Scott Middleton, firm partner, was selected by a committee of business leaders and was honored along with 12 other recipients in the Partner category. As a founding partner of the firm and senior trial partner, Scott handles all types of litigation focusing on complex negligence cases. For over 25 years, Scott has taken an efficient and cost effective approach to resolving client's litigation matters. In addition to his position at the Firm he has served as Trustee, Mayor and Village Justice, as well as Village Attorney/Prosecutor for the Incorporated Village of Lake Grove.



Ellen Bissett-DeRiggi, Esq. was awarded in the Of Counsel category. She is a member of our corporate, real estate, trusts and estates and labor & employment practice groups. Ellen has extensive experience counseling clients on the practical and legal implications of issues relating to corporate governance, business sales and acquisitions, business strategies and succession planning, commercial real estate transactions, shareholder and operating agreements, employment agreements, asset protection and estate planning.



David Hoepfner, Esq. was honored in the Associate category. He is a member of the firm's corporate and mergers & acquisitions group, where his work involves representing buyers and sellers in mergers and acquisitions, private placements of securities, business formation and structure, corporate governance, executive compensation and software licensing. As counsel to companies in the technology, healthcare and manufacturing sectors, David works continuously with his clients from early stage startup through exit event, and is trusted with the corporate governance, employment/compensation and licensing matters that arise in the process.



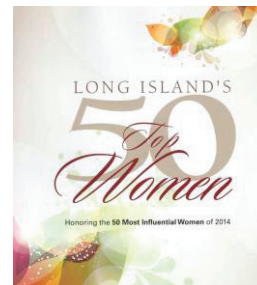
## DAVID HOEPPNER RECOGNIZED AS CMM ASSOCIATE OF THE YEAR

This award is given annually to the attorney who shows exceptional and outstanding achievement and contribution to the practice. He was recognized for his notable client relationship skills, growth and dedication and leadership both within and outside the firm.



## MALAFI NAMED LIBN TOP 50 MOST INFLUENTIAL WOMEN

CMM would like to congratulate Christine Malafi on being named one of the 2015 Long Island Business News' Top 50 Most Influential Women in Business. The program recognizes the Island's top women professionals for business acumen, mentoring, and community involvement.



## MALAFI HONORED IN TOURO LAW “WOMEN IN THE LAW” EXHIBIT

In March 2014, Christine Malafi, Esq. was honored at Touro Law Center for her inclusion in the prestigious group included in the "Woman in the Law: Historic Firsts in New York State and Suffolk County" exhibition at Touro Law Center.



## MIDDLETON & MCCORMICK AMONG NEW YORK'S 2014 SUPER LAWYERS

Two CMM partners were selected for inclusion in the 2014 New York Super Lawyers – Metro Edition for the second year in a row. Scott Middleton, Esq. and Patrick McCormick, Esq. were a part of the top 5 percent of attorneys in the state to earn the title “Super Lawyer.”



Scott Middleton heads up the firm's Negligence and Matrimonial Department and Patrick McCormick manages the firm's Commercial Litigation and Appellate Practice teams.

## CMM VOTED BY US News & World Report “BEST LAW FIRM”



CMM is proud to announce it has been named to the 2015 U.S. News - Best Lawyers® "Best Law Firms" list, which recognizes the top law firms in the country for professional excellence.

The U.S. News - Best Lawyers® "Best Law Firms" rankings are based on a rigorous evaluation process that includes the collection of client and lawyer evaluations, peer review from leading attorneys in their field, and review of additional information provided by law firms as part of the formal submission process.

## CMM ATTORNEYS FEATURED IN LIBN 2014 WHO'S WHO AWARDS



**Eryn Truong, Esq.**

Who's Who in Intellectual Property Law

**Jeffrey Basso, Esq.**

Who's Who in Labor Law

**Christine Malafi, Esq.**

Who's Who in Women in Professional Services

**Kelly Canavan, Esq.**

Who's Who in Real Estate Law

# IN THE COMMUNITY

## CMM VOLUNTEERS ASSISTING SHINNECOCK NATION IN SOUTHAMPTON

*"We joined forces with the United Way of Long Island in organizing an opportunity for us to volunteer our time and give back to Long Island's East End community."*

**September 2014:** The attorneys and staff at Campolo, Middleton and McCormick spent the afternoon on Friday, September 19<sup>th</sup>, doing community service work at the Shinnecock Indian Reservation in Southampton assisting families and properties still recovering from the devastation of Hurricane Sandy.

The firm encourages all attorneys to devote time and service to volunteer efforts and pro bono work. It is a part of what makes our lawyers strong leaders of our practices, and our communities.



## CORPORATE FUNRUN

### CMM TEAM IN THE CORPORATE FUN RUN



**August 2014:** Team CMM participated in the first annual Long Island 5k Bethpage Ballpark Corporate FunRun. The newly created 5k race brought workplace teams from all over Long Island together to engage in a fun 5k run/walk fitness event along with a post-race party filled with music, food and beverages. As the official charity of the event, Corporate FunRun is donated 10% of all registration fees to Stony Brook Children's Hospital.



# PEOPLE ON THE MOVE



January 2014- **Scott Middleton, Esq.** was appointed to the Board of the Brookhaven IDA, joining their mission to improve the quality of life for Brookhaven Town residents by promoting and assisting the growth of manufacturing and industrial businesses that will increase the commercial tax base, provide employment opportunities, and are sensitive to the quality of the environment.



January 2014 – **Lauren Kanter, Esq.** was appointed to the Board of Directors of Pet Peeves, Inc., a nonprofit organization that raises funds and awareness for Long Island's struggling animal shelters and rescue groups. In May, she was then appointed Secretary of the Board.



April 2014 – **Christine Malafi, Esq.** was appointed by Chief Administrative Judge Gail Prudenti, to the New York State Pro Bono Scholars Task Force. The goal of the task force is to assist the State and all of its law schools in identifying pro bono placement programs and securing their availability to law school students.



May 2014 – **Ellen Bissett DeRiggi, Esq.** was appointed to the Board of Directors of the Riverhead Foundation for Marine Research and Preservation, a not-for-profit organization that operates the New York State Marine Mammal and Sea Turtle Rescue Program. The primary mission of the Riverhead Foundation is to preserve and protect our marine environment through education, rehabilitation, and research.



June 2014 – **Patrick McCormick, Esq.** was elected as an Officer of the Suffolk Academy of Law. The Academy is the educational branch of The Suffolk County Bar Association and is chartered by the New York State Board of Regents as an educational institution, providing legal education to attorneys for over 30 years.



June 2014 – **Christine Malafi, Esq.** joined the Board of Natasha's Justice Project. Natasha's Justice Project is a 501(c)(3) non-profit organization that seeks to end the nation's current rape kit backlog crisis and empower survivors of sexual assault.



September 2014 – **Christine Malafi, Esq.** was appointed to the Touro Law School Board of Governors. The Board is a group of distinguished men and women dedicated to supporting the growth of the Law Center. The Board consists of more than 50 lawyers and non-lawyers who are regional and national leaders in the legal profession, the business, philanthropic and academic communities.



November 2014 – **Lauren Kanter-Lawrence, Esq.** was inducted as the first Associate Member of the Women Economic Developers of Long Island. WEDLI is a not for profit organization whose goals are to foster economic development on Long Island. Its members are high-level decision-makers who have demonstrated community involvement and leadership in their respective fields.



2014 – **Joe Campolo, Esq.** was elected to the Executive Board of the HIA-LI as the Second Vice Chair. The HIA-LI has been the recognized voice for business on Long Island and a powerful force and economic engine for regional development for more than 30 years.

# PRESENTATIONS



February 2014: Patrick McCormick presented at the **Suffolk County Bar Association**, "Landlord/Tenant Update"

April 2014: Patrick McCormick presented at **Hofstra Law School** as Judge, "First Year Students Appellate Advocacy Oral Arguments"

April 2014: Christine Malafi spoke at our **CMM Executive Breakfast Series**, Women's Leadership Panel, Strategies for Success for Female Executives

April 2014: Joe Campolo was the featured guest speaker **Long Island Builder's Institute**, Lunch & Learn Series, "Bleed to Succeed."

May 2014: Joe Campolo was a moderator for the **HIA-LI 26th Annual Business Trade Show & Conference**, "Maximize the Value of Your Business for Future Acquisition While Increasing Current Profits and Cash Flow."



July 2014: Patrick McCormick presented at the **Suffolk County Bar Association**, "Practicing in the Outlying District Courts"

August 2014: Joe Campolo was the featured guest speaker at **HIA-LI's CEO Executive Breakfast**, "Bleed to Succeed."

October 2014: Patrick McCormick served as moderator and Joe Campolo presented at the **Suffolk County Bar Association**, "Issues in Commercial & Corporate Law" CLE Conference.

October 2014: Joe Campolo served as a Panelist at the **HIA-LI Workforce Development: Professional Development Day**

October 2014: Joe Campolo served as a Moderator for the **HIA-LI's CEO Executive Breakfast: A CEO's Perspective**

October 2014: Joe Campolo served as a Panelist Long Island Business News, **LIBN East Meets West: Doing Business on the East End**



# IN THE NEWS

## Long Island Business NEWS

### **Making a Case for Paralegals**

January 22, 2014

By Bernadette Starzee

There's a growing demand for paralegals at Long Island law firms – and they're being asked to perform higher-level tasks.

"The role of paralegal has traditionally been the toughest for law firms here to fill," said Joe Campolo, managing partner of the Ronkonkoma firm Campolo, Middleton & McCormick. "There is no shortage of lawyers who would rather work on Long Island than in the city, and there's no shortage of legal secretaries." McCormick added that the latter role, which, unlike paralegal and attorney positions is 9 to 5, has been dominated by working mothers.



### **Legal Assistance: How Outside Attorneys Can Avoid Stepping on the In-house Counsel's Toes**

March 14, 2014

By Jonathan LaMantia

When in-house legal staff is overwhelmed, companies often turn to outside counsel to provide the necessary manpower or expertise. Though outside help is welcomed by in-house lawyers, the relief can bring a host of new problems if the house and outside counsels clash – delaying time-sensitive business transactions or risking damages from new litigation. [...]

Joe Campolo, managing partner at Ronkonkoma-based Campolo, Middleton & McCormick, has also served as both in-house and outside counsel, which he said puts him in a unique position to understand the stresses of in-house counsel. He formally worked as the first general counsel for Hicksville-based Expedite Video Conferencing Services. The primary role of in-house counsel, Campolo said, is to manage the outside attorneys assigned to a project and keep the project within budget. In-house lawyers sign off on the day-to-day business transactions, such as contracts, service-level agreements, warranties and payment plans. Campolo said that holding up business deals is one way outside counsel can fall out of the good graces of clients. "What we've learned over the years is that if we have a 'no' answer, which in-house counsels don't always want to hear, it can't just be a 'no,'" Campolo said. "It has to be a 'No, but this is what you can do, and this is a solution that makes sense to do.' "If all you do is say 'no' you're not going to be in business for very long as a lawyer," he added.

### **The Legal Ramifications of Workplace Bullying**

April 16, 2014

By Bernadette Starzee

Most employers have an anti-discrimination or anti-harassment policy in place, but most don't go far enough to address bullying, said Arthur Yermash, a senior associate at Campolo, Middleton & McCormick in Ronkonkoma. In the wake of the Miami Dolphins scandal, Yermash has received inquiries from clients about whether they should expand their policies.

"Employers should have a policy addressing bullying," he said. "It should set rules for conduct and provide a path for an employee that feels he has been bullied to report the behavior."



## **Easing Pain, Sparking Concerns**

July 11, 2014

By Jacqueline Birzon

Now that New York has authorized five “registered organizations” to operate as many as 20 medical marijuana dispensaries throughout the state, employers are scrambling to establish new best practices concerning card-carrying employees. [...]

The legislation also stipulates that certified patients will be considered “disabled” under the state’s human rights laws, which protect job-holders from employment discrimination. And that, according to attorney Arthur Yermash of Ronkonkoma law firm Campolo, Middleton & McCormick, “creates a whole other area and expands discrimination so that an employee can possibly take advantage of an employer when they don’t have a true claim.”



## **Mitigating Employers’ Risks After the Holiday Celebration**

November 1, 2014

By Jacqueline Birzon

In the good spirited effort to mix business with pleasure, employers sometimes find themselves on a slippery slope.

To avoid any potential legal-liability issues when hosting holiday parties for employees, an employer’s best bet is to get down off-site and during non-business hours, according to former Suffolk County Attorney Christine Malafi, now a partner at Campolo, Middleton & McCormick in Ronkonkoma.



An employer that hosts a company party on office premises opens Pandora’s Box of potential liability claims stemming from state and federal laws....

## **Motions and Pictures: Attorneys Juggle Law Practices with Side Businesses in Film**

August 20, 2014

By Bernadette Starzee

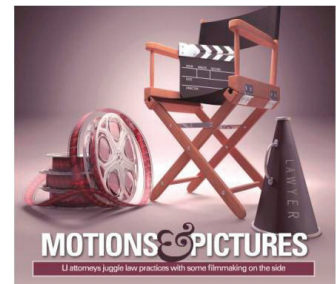
[...] Joe Campolo, managing partner at Campolo, Middleton & McCormick in Ronkonkoma, attended last year’s Stony Brook Film Festival “just to watch movies,” he said, but was especially impressed by a short film “This Is Ellen,” starring Michael Nathanson and directed by John Salcido. Nathanson and Salcido spoke on stage at the screening, and Campolo met them at the after-party.

“I wasn’t going to go to the party, but they were so talented, I figured I would go meet them to see what their story was,” he said.

The pair submitted a script for a short film called “Tribute” to Campolo, who found it “laugh-out-loud funny.” He decided to executive produce it in partnership with a client, Joe Zepf, with whom he formed the production company Campolo Zepf Productions....

"If shorts generate a lot of interest, they might be nominated for an Academy Award or picked up to be made into a feature," said Campolo. Working on the film project in addition to his busy law practice has presented time management challenges for Campolo though.

"I don't sleep," he said. "But it's a lot of fun. It's a business and an investment, but it's a new adventure that's out of the day-to-day grind."



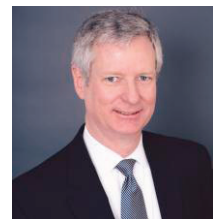
## **Sustained! Long Island Attorneys Discuss the Art of Making Objections**

November 7, 2014

By Bernadette Starzee

"You should know what the potential objections will be before you even walk into the courtroom," said Patrick McCormick, partner and head of the commercial litigation and appellate practice groups at Ronkonkoma-based Campolo, Middleton & McCormick.

As the trial progresses, or from trial to trial, "you get a sense of your adversary and how he asks questions and what he's trying to accomplish," McCormick said. "Most experienced lawyers know whether they're going to object and what the objection will be based on before their adversary is halfway through with a question."



"I think the most important thing to learn is just because you can make an objection doesn't mean you should," McCormick said....

## **Keep it Down**

December 10, 2014

By Bernadette Starzee

When a homeowner hires a contractor to remodel his kitchen, he expects to be quoted a total price for the job. If, after ripping up the cabinets, the contractor discovers additional plumbing work needs to be done, he'll run the cost by the homeowner and get his permission before revamping the pipes.

Attorneys traditionally have operated on a different plane, according to Joseph Campolo, managing partner of Ronkonkoma-based law firm Campolo, Middleton & McCormick.

"Lawyers were always open-ended, billing by the billable hour for as much time as something took, and the customer had to pay," he said.

But since 2008, that has been changing, as cash strapped consumers and businesses seeking law firm services have increasingly resisted open ended billing. They're demanding itemized budgets upfront, and Campolo says it's healthy for the industry....





## Fourth Annual Networking Mixer Connects Students and Alumni

### *Middleton Speaks at Stony Brook Alumni Event*

February 2014

By Glenn Jochum

"I had the chance to speak to several students at the mixer. Some were just curious about general career information and some more interested in the specifics of a career as an attorney," Middleton said. "My law firm is always available to act as a mentor to students who want to pursue a law career; in fact we host a Law Day open house where students come to the office and meet with the partners and associates to learn a little about the inner workings of a law firm."



LONG ISLAND

**TRENDS**

### **The Campolo, Middleton, McCormick Women's Executive Breakfast**

April 2014

By Karin Caro

Last week, I had the great pleasure of attending the Campolo, Middleton, McCormick Women's Executive Breakfast, which brought together 75 high-level women in various occupations to discuss the leadership secrets of some of Long Island's most powerful women. Two guest speakers, Christine Malafi, Partner at Campolo, Middleton, McCormick, LLP and Terri Alessi-Miceli, President of The Hauppauge Industrial Association took the lead to offer their insight and tips for success. With women comprising just 4% of corporate CEOs, 14% of executive officers and 20% of America's government officials, we're facing a persistent leadership gap at the highest echelons. To move forward, we must first take stock of what is working.



### **Local Long Island Lawyer Appointed To NYS Pro Bono Scholars Task Force**

April 2014

Christine Malafi, partner at Campolo, Middleton & McCormick, LLP was appointed by Chief Administrative Judge Gail Prudenti, to the New York State Pro Bono Scholars Task Force. Gail Prudenti will be spearheading the task force, and Senior Associate Judge Victoria A. Graffeo will be heading the Advisory Committee. This program, created by Chief Judge Jonathan Lippman was put in place to confront the crisis in our country in delivering legal services to the poor and disadvantaged. The goal of the task force is to assist the State and all of its law schools in identifying pro bono placement programs and securing their availability to law school students. The Pro Bono Scholars Program was the focus of Chief Judge Lippman's State of the Judiciary Address given on Feb. 11, 2014.

## HIA-LI's CEO Brief: An Interview with Joe Campolo

October 2014

**Tell us about how you started.** My Partners and I have all worked in larger law firms on Long Island, primarily located in Nassau County and New York City. We recognized there was an opportunity to start a full-service business law firm here in Suffolk County and because of the lower overhead, we saw an opportunity to really drive value in terms of legal services here. We got together and seized that opportunity - bringing that big-firm quality out here to Suffolk County, where we could offer to add a better value. That was the idea we had - we didn't know if it was going to work or not back then, but luckily it has all worked out.

HIA-LI'S  
**CEO** [brief]

## A CEO's Perspective: What it takes to thrive in the Long Island Economy

December 2014

By Dan Terry

Over 75 business professionals were in attendance at HIA-LI's CEO Executive Breakfast: A CEO's Perspective, whose featured speakers and event Moderator were all past and present recipients of HIA-LI's Business Achievement Awards. The breakfast was held on November 6, 2014 at the Hamlet Golf & Country Club in Commack, NY.



Joe Campolo, Managing Partner of Campolo, Middleton and McCormick, LLP, HIA-LI Board Member, event Moderator, orchestrated an enlightening and inspiring discussion, as the featured panelists discussed a variety of topics including their success stories, personal philosophies, and defining moments in business. [...]

*The*  
**Sag Harbor Express.**

## CMM Brings Small Town Connections, Big City Resources to Bridgehampton

November 14, 2014

By Emily J. Weitz

Kelly M. Canavan, who is heading up a new law office in Bridgehampton, is deeply connected to the community on the East End. A Sag Harbor resident, she has roots that go back to her great-great-great grandfather, who was a whaling captain and had a house on Madison Street. Perhaps that's part of the reason she wanted to be in charge of a new satellite branch of Campolo, Middleton, and McCormick, a much larger law firm that serves clients across the country from its headquarters in Ronkonkoma. The satellite office is in Bridgehampton, just above Almond restaurant at One Ocean Road, and it focuses on the legal needs of East End clientele.





## ORGANIZATIONS WE SUPPORT

Accountant Attorney Networking Group (AANG)  
 American Bar Association (ABA)  
 American Cancer Society Relay for Life  
 American Heart Association (AHA)  
 American Intellectual Property Law Association (AIPLA)  
 American Red Cross on Long Island  
 Angela's House  
 Brookhaven Business Advisory Council (BBAC)  
 Center for Cost Effective Government  
 Child Abuse Prevention Services (CAPS)  
 Comsewogue for Students Foundation  
 Cornell Alumni Admissions Ambassador Network (CAAAN)  
 Defense Research Institute (DRI)  
 Developmental Disabilities Institute (DDI)  
 Down Syndrome Advocacy Foundation (DSAF)  
 East End Disability Associates (EED-A)  
 East End Women's Network  
 Fordham Law School Alumni Association  
 Habitat for Humanity (Suffolk County)  
 Hauppauge Industrial Association (HIA-LI)  
 Long Island Builders Institute (LIBI)  
 Long Island Capital Alliance  
 Long Island Software & Technology Network (LISTnet)  
 Lymphatic Research Foundation  
 Make-a-Wish Foundation (Suffolk County)  
 Marine Corps Scholarship Foundation  
 Muscular Dystrophy Association (MDA)  
 Nassau County Bar Association (NCBA)  
 Nassau-Suffolk Trial Lawyers Association  
 Natasha's Justice Project  
 New York Intellectual Property Law Association (NYIPLA)

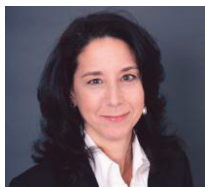
New York State Bar Association (NYSBA)  
 New York Supreme Court Civil Task Force Subcommittee  
 NYS Tax Relief Now!  
 Pet Peeves – The Voice of Long Island Pets  
 Riverhead Foundation for Marine Research & Preservation  
 The Rollstone Foundation  
 Social Enterprise Alliance -- Long Island Chapter  
 Special Olympics New York  
 Stony Brook University  
 Stony Brook University Alumni Association  
 Stony Brook University Athletics  
 Stony Brook University Children's Hospital  
 Stony Brook University Staller Center for the Arts  
 Strength for Life  
 Suffolk Academy of Law  
 Suffolk County Bar Association (SCBA)  
 Suffolk County Community College Foundation  
 Suffolk County Court Officers Association  
 Suffolk County Police Department Cops Who Care  
 Suffolk County Restaurant & Tavern Association  
 Suffolk County Women's Bar Association  
 Sunrise Fund  
 Touro Law  
 Touro Law Alumni Association  
 Transportation Lawyers Association (TLA)  
 Trucking Industry Defense Association (TIDA)  
 United Cerebral Palsy of Suffolk  
 United Way of Long Island  
 Victims Information Bureau of Suffolk (VIBS)



# CLIENT ADVISORIES

## **Suggested Handling of the Ebola Outbreak for Employers**

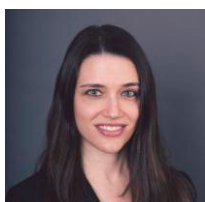
By Christine Malafi, Esq.



With all of the recent news coverage regarding the Ebola outbreak and its entry into the United States, employers need to be prepared to answer related questions and handle related issues. The CDC has stated that the 2014 Ebola epidemic is the largest in history, affecting multiple countries in West Africa, and advises of the specific symptoms and dangers of Ebola.

## **Client Advisory: NYC Earned Sick Time Act Goes into Effect April 1, 2014**

By Lauren Kanter-Lawrence, Esq.



Effective April 1, 2014, private sector New York City employers with five or more employees must provide paid sick time to all employees who work at least 80 hours in a calendar year.

Mayor Bill de Blasio signed the City Council's expanded sick leave bill earlier this year. The New York City Earned Sick Time Act (the "Act") provides that these private sector employees will now earn up to 40 hours of paid sick time per year, accruing at a rate of one hour for every 30 hours worked. The Act covers both full-time and part-time workers.

## **New York Unemployment Law Update: Severance May Disqualify Individuals from Receiving Unemployment**

By Arthur Yermash, Esq.



While employers are not obligated to issue severance payments (unless they have specifically agreed to do so in a written employment or other agreement), many do offer severance to terminated employees to shield themselves from potential litigation or as a courtesy for the employee's years of service. But there have been recent changes to the New York unemployment insurance law that all New York employers should be aware of before offering a severance package to a departing employee.

## **Summer Employment for Minors**

By Arthur Yermash, Esq.

While school's out for summer, employers often hire teenagers to fill seasonal employment needs. Hiring minors comes at a price, since the law imposes numerous restrictions in their employment. As such, it is a good idea to identify and review some child labor laws applicable to employees under the age of 18.

## **Now that workplace bullying was front page news, will a workplace harassment policy sufficiently protect the company?**

By Arthur Yermash, Esq.

Recent media coverage has heightened employer awareness of workplace bullying. This awareness, however, has created some confusion about what, if anything, should be done to address workplace bullying, and whether harassment policies are sufficient to protect the employer. While many times the characteristics of bullying and harassment can overlap, the law relating to each of these areas is different. It is important for employers to understand the differences between the two and have policies in place to identify, assess, minimize, and control the risks associated with such behavior.

To read more about any of the above advisories please visit [cmmlp.com/client-advisories](http://cmmlp.com/client-advisories)

## **NEWSLETTER ARTICLES**

### **EMPLOYMENT LAW**

#### **When is a Public Volunteer an Employee?**

##### **The Fair Labor Standards Act and Municipalities**

By Christine Malafi, Esq.



During the course of any given week, I encounter numerous volunteers at the Town programs in which my two sons participate. Sometimes, work schedule permitting, I am even one of those volunteers. Given current budget constraints, volunteers are needed to keep some municipal programs operating. As with private employers, however, sometimes a “public” volunteer is really an employee. Towns and Villages need to be careful to avoid adverse findings by the Federal and New York State Departments of Labor.

The Federal Fair Labor Standards Act (“FLSA”) requires both public and private entity employees to be paid minimum and overtime wages. The question of who qualifies as an “employee” under the FLSA is not as simple as one would expect.

Read more in our June Newsletter at [cmmlp.com/june-2014-legal-brief-firm-newsletter](http://cmmlp.com/june-2014-legal-brief-firm-newsletter)

#### **New Pregnancy Guidelines Issued by EEOC**

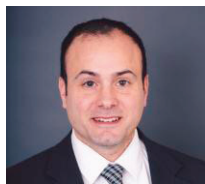
By Christine Malafi, Esq.

Last month, the Equal Employment Opportunity Commission (EEOC) issued its written Enforcement Guidance on Pregnancy Discrimination and related issues. The Guidance, provided in the context of the Pregnancy Discrimination Act (PDA) and the Americans with Disability Act (ADA), supersedes the EEOC’s prior writings from 1983 and 1991, and applies to all employers with more than fifteen employees.

Read more in our September Newsletter at [cmmlp.com/september-2014-legal-brief-firm-newsletter](http://cmmlp.com/september-2014-legal-brief-firm-newsletter)

## **Employer Fights Back Against Baseless Lawsuit: “Hostile Workplace” Case Dismissed**

By Jeffrey Basso, Esq.



Many businesses, at one time or another, have to deal with a disgruntled employee who is unhappy with his or her pay rate, work responsibilities, hours, etc. While many of these employee issues can be and usually are dealt with and resolved internally by a human resources department or management, there are times when an unhappy employee resorts to commencing a baseless lawsuit against the employer in court as a form of “payback” or in an effort to harass the employer. Luckily, as documented in a recent decision in the Supreme Court, Suffolk County, such baseless

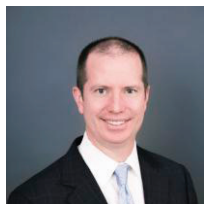
lawsuits can be dealt with swiftly early in the litigation process.

Read more in our July Newsletter at [cmmllp.com/july-2014-legal-brief-firm-newsletter](http://cmmllp.com/july-2014-legal-brief-firm-newsletter)

## **HEALTHCARE**

### **Executive Order 38 Developments Provide Conflicting Guidance to Covered Providers**

By William McDonald, Esq.



Providers affected by Governor Cuomo’s Executive Order 38 (“EO 38”), which limits executive compensation for providers receiving State funds to no more than \$199,000 per year, must choose between accepting a judge’s decision striking down EO 38 and the New York State Department of Health (NYSDOH) Regulations implementing EO 38, found at 10 NYCRR Part 1002, or heeding New York State’s newly updated EO 38 website declaring that providers are still expected to comply.

Presently, Covered Providers are required to limit executive compensation for Covered Executives for the 2014 fiscal year, and they are required to file EO 38 disclosure reports in 2015.

### **Due Process Upheld for Physicians Targeted for Termination from Medicare Advantage Plans**

By William McDonald, Esq.

Physicians who receive termination notices from insurers should learn about their rights from a recent case brought by the Fairfield County Medical Association. On February 7, 2014, the Second Circuit Court of Appeals upheld the District Court’s injunction enjoining United Healthcare (“United”) from: 1) terminating affected physicians in its Medicare Advantage program; 2) notifying customers that the affected physicians would be terminated from the network; and 3) compelling United to reinstate, advertise, and market the affected physicians in its 2014 Medicare Advantage Network directories.

The District Court for the District of Connecticut classified its preliminary injunction as one in “aid of arbitration,” since the United provider contracts clearly required physicians to submit disputes to binding arbitration. Those arbitrations are pending.

### **Safe Harbor Update**

By William McDonald, Esq.

On October 3, 2014, the Office of the Inspector General for Health and Human Services (“OIG”) published a proposed rule that revises the Safe Harbor under the Anti-Kickback Statute concerning discounted or complimentary transportation services that medical providers can provide to patients.

See 79 Fed. Reg. 59717 (October 3, 2014). Medical providers should welcome this much needed update, as the “nominal value” rule has declared many providers’ plans to provide complimentary transportation for their patients illegal.

In the past, the OIG declared that under the legislative intent of the Civil Monetary Penalties Law and the Anti-Kickback Statute, Congress intended that the statutes not preclude the provision of complimentary local transportation of “nominal value.” The OIG has interpreted nominal value to mean no more than \$10 per item or service or \$50 in the aggregate over the course of a year. Based upon persistent feedback, the OIG now believes this interpretation of nominal value may be overly restrictive as applied to complimentary or discounted transportation for patients.

## **Affordable Care Act**

By William McDonald, Esq.

Affordable Care Act (“ACA”) compliance remains a complicated process for most employers. Starting January 1, 2015, Applicable Large Employers (“ALEs”) become subject to the Employer Shared Responsibility Provisions of the ACA, codified in Internal Revenue Code Section 4980H. ALEs must offer their full-time employees the opportunity to enroll in affordable health coverage providing minimum essential benefits under an eligible employer sponsored plan (as defined in 26 U.S.C. § 5000A(f)(2)) for any month.

Three may have been the magic number back on Schoolhouse Rock, but under the ACA, 50 is the magic number.

Read more on each of these articles in McDonald’s Healthcare Blog at [cmmlp.com/mcdonalds-healthcare-blog](http://cmmlp.com/mcdonalds-healthcare-blog)

## **INSURANCE**

### **Insurer’s Potential Liability for Breach of Defense Obligations**

By Christine Malafi, Esq.



Recently, the New York State Court of Appeals issued its second decision in the case of K2 Investment Group, LLC v. American Guarantee & Liability Insurance Co., 2014 WL 590662 (Feb. 18, 2014). In this 2014 decision, the Court reaffirmed the principles under which insurers and their counsels in New York State have been guided for decades, pursuant to its decision in Servidone Construction Corp. v. Security Insurance Company of Hartford, 64 N.Y.2d 419 (1985). The recent decision continues to allow insurers who have been found to have wrongly denied their defense obligations under a liability insurance policy to continue to rely upon policy exclusions to fight the duty to indemnify an insured as to an adverse judgment or settlement. In other words, the failure to properly fulfill defense obligations does not serve to create insurance coverage under a policy of insurance without reference to that policy’s exclusions.

Read more in our May Newsletter at [cmmlp.com/may-2014-legal-brief-firm-newsletter](http://cmmlp.com/may-2014-legal-brief-firm-newsletter)

# INTELLECTUAL PROPERTY

## Non-Disclosure Agreements - A Lesson to Be Learned

By Eryn Truong, Esq.



A non-disclosure agreement (NDA) is typically used between companies to protect confidential information during a potential transaction. Every NDA, however, is different. The specific terms and provisions in the NDA determine whether your trade secrets would be protected upon disclosure. Accordingly, each NDA should be tailored and specific to the transaction. A recent case decided by the Federal Circuit Court of Appeal demonstrates that special attention needs to be given to an NDA.

The *Convolve v. Compaq and Seagate* litigation involved a misappropriation of trade secret dispute between Convolve, the owner of certain intellectual property, and Compaq and Seagate. Although the dispute involved many different issues, of particular importance was the Federal Circuit's holding that Convolve lost its trade secret status by failing to provide written follow-up memoranda as mandated by the NDA.

## "Dumb Starbucks" – Is this Coffee Shop an Art Gallery?

By Eryn Truong, Esq.

A new coffee shop mocking Starbucks opened in Los Angeles in early February and quickly gained nationwide attention. The store looks identical to the typical Starbucks, but with the exception of the word "dumb" prefixed to the title and menu items.

Dumb Starbucks is not affiliated with Starbucks Corporation, and the company claims that their use of Starbucks' trademark and logos is "fair use" because it is "making fun" of Starbucks.

## Preliminary Injunctions in Patent Cases

By Eryn Truong, Esq.

Preliminary injunctions are a powerful form of immediate relief, yet they are rarely obtained in patent cases. Although the standard for obtaining a preliminary injunction in a patent case is no different than other cases, several factors contribute to making a preliminary injunction in a patent case more difficult to obtain.

Generally, in order to obtain a preliminary injunction, a litigant must establish (i) likelihood of success on the merits of the underlying litigation; (ii) the existence of immediate and irreparable harm; (iii) the balance of hardships favors the litigant; and (iv) that the public interest is best served by granting the injunctive relief. This legal standard applies to patent cases and there are no patent-specific rules. However, establishing a likelihood of success on the merits of a patent infringement case requires a mini trial.

## **New Bill May Change Nation's Trade Secret Laws**

By Eryn Truong, Esq.

A new bill has been introduced in Congress seeking to add a federal civil cause of action for trade secret theft.

The "Defense of Trade Secrets Act of 2014" would permit a trade secret owner to bring a civil action for a violation of the Economic Espionage Act, which makes the theft or misappropriation of a trade secret a federal crime.

Unlike patents, copyrights, and trademarks, there is no federal civil cause of action for trade secret misappropriation. Today, trade secrets are protected only under state law, common law or contracts. However, with the increase in companies relying on trade secret protection and the international economy, companies are lobbying Congress to provide access to the federal courts to protect trade secrets and to place trade secret assets on the same playing field as patents, copyrights and trademarks.

## **Redskins' Trademarks Canceled for Disparagement**

By Eryn Truong, Esq.

On June 17, 2014, the Trademark Trial and Appeal Board ("TTAB") of the U.S. Patent & Trademark Office ("USPTO") canceled six trademark registrations of the Redskins football team as disparaging under Section 2(a) of the Lanham Act, 15 U.S.C. § 1052(a). *Blackhorse v. Pro-Football, Inc.*, T.T.A.B., No. 92046185, 06/18/14.

Section 2(a) of the Lanham Act states that no trademark registration shall be refused unless it "[c]onsists of... matter which may disparage or falsely suggest a connection with... beliefs, or national symbols, or bring them into contempt, or disrepute."

The 2-1 TTAB decision found that a substantial composite of Native Americans considered the term "Redskins" to be disparaging at the time the marks were registered.

## **Follow Up on Push for Federal Trade Secret Legislation**

By Eryn Truong, Esq.

Earlier this year, a new bill was introduced in Congress seeking to add a federal civil cause of action for trade secret theft. With the most recent bill introduced by a bi-partisan coalition in the House, there appears to be momentum for the passage of federal trade secrets legislation this fall.

The proposed new legislation would permit a trade secret owner to bring a civil action in federal court for the theft or misappropriation of a trade secret. Currently, the Economic Espionage Act only authorizes federal actions by the Attorney General, not private parties, and plaintiffs are left to bring trade secret claims in state court.

## **Copyright Protection in Selfies Can Help to Prevent Unauthorized Reproduction and Distribution**

By Eryn Truong, Esq.

Selfies have become a global phenomenon, but what type of protection does one have to prevent the spread of photos that have been hacked?



We have all heard the story that broke last month about the hundreds of intimate photographs of numerous celebrities, including Kate Upton and Jennifer Lawrence. Although questions are still being raised about the security of cloud storage, copyright law may provide the strongest mechanism to stop the unauthorized dissemination of photos.

A selfie is a self-portrait photograph typically taken using a camera phone or hand-held digital camera. These selfies are typically shared on social networking services such as Facebook, Instagram, and Twitter. As soon as the selfie is taken, it enjoys copyright protection. Copyright protects works of expression fixed in a tangible medium – which is a photograph. There are no copyright formalities needed (i.e. you do not need to display the © emblem) and you do not need to register the photo with the U.S. Copyright Office.

## **Tips for Protecting Trade Secrets**

By Eryn Truong, Esq.

Any information that is unique to your company but isn't public knowledge can be considered a trade secret and, in many cases, can be protected under both state and federal law.

As your company grows in the competitive marketplace, it becomes even more important to identify the company's most important information, then build trade secret protection into the company's employment policies and technology systems.

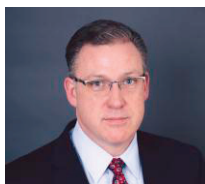
The key question to trade secret law is whether your company has taken reasonable measures to protect the secret. Companies have to be proactive and think ahead. Trade secrets, unlike other forms of intellectual property, can be easily lost and difficult to recover once they've slipped out the door.

Read more on each of these articles in Truong's Intellectual Property Blog at [cmmlp.com/truongs-intellectual-property-blog](http://cmmlp.com/truongs-intellectual-property-blog)

## **LITIGATION**

### **Establishing Policies and Procedures for Emailed Notices of Defects**

By Scott Middleton, Esq.



For decades, municipalities have been afforded the additional protection of requiring prior written notice of defective or dangerous conditions of any street, highway (including parking lots), bridge, sidewalk, culvert or crosswalk.

There are, of course, recognized exceptions to the prior written notice requirement, including establishing that the municipality created the dangerous or defective condition through an affirmative act of negligence (this can include showing that the municipality negligently designed or constructed the area of the defect) or by showing that a special use confers a special benefit upon the municipality.

Read more in our January Newsletter at [cmmlp.com/january-2014-legal-brief-firm-newsletter](http://cmmlp.com/january-2014-legal-brief-firm-newsletter)

## **When is a Sales Commission “Earned”?**

By Jeffrey Basso, Esq.



Businesses involved in the sale of a particular product or service will, of course, employ salespeople to sell those products or services. In nearly all cases, sales representatives are paid some form of monetary commission based on their level of sales using some set of variables (i.e. percentage of each sale; percentage of each new contract; total number of sales, etc.).

While determining how a commission is calculated may be simple, figuring out when the commission is “earned” for purposes of it being a payable wage can sometimes be difficult in the absence of a written agreement or policy. A recent decision in the Commercial Division, New York County dealt with precisely this issue.

## **Testing New York’s Long-Arm Statute to Obtain Personal Jurisdiction Over Out-of-State Defendants**

By Jeffrey Basso, Esq.

One of the fundamental issues that must be analyzed before commencing a lawsuit is whether you can obtain personal jurisdiction over the individual or entity you intend to sue.

When all of the parties reside or do business in the same state, or better yet the same county, personal jurisdiction becomes an afterthought. However, when the defendants reside and/or do business outside of New York, the question of whether you can obtain personal jurisdiction becomes critical. A recent decision in the Commercial Division, Suffolk County analyzed the key factors in determining whether personal jurisdiction exists and presents a cautionary tale for plaintiffs to consider when deciding on litigation against out-of-state defendants.

## **No Rescission of Contract in Dental Practice Sale Gone Bad**

By Jeffrey Basso, Esq.

While the sale of a business is a common occurrence, courts are often looked upon to interpret the terms of the relevant sale documents associated with the transaction when either the buyer or seller is alleged to have breached certain obligations post-closing.

This was the case in a recent decision in the Suffolk County Commercial Division in *Huntington Village Dental, P.C. v. Rathbauer, et al.* (J. Whelan).

Read more on each of Jeffrey’s articles in Basso’s Business Litigation Blog at [cmmlp.com/bassos-business-litigation-blog/](http://cmmlp.com/bassos-business-litigation-blog/)

## Enforceability of Unexecuted Settlement Agreements

By Hayley Gregor, Esq.



Often settlement agreements are enforced only after the execution of the agreement by the parties, which typically results after extensive negotiations over the course of numerous drafts of an agreement. However, there are instances in which a settlement agreement is enforceable even before it is fully executed by the parties.

One example is when the parties agree in open court to a settlement. A second example is when the parties reach a preliminary agreement as to the settlement terms and demonstrate intent to be bound by those terms.

Read more in our January Newsletter at [cmmlp.com/january-2014-legal-brief-firm-newsletter](http://cmmlp.com/january-2014-legal-brief-firm-newsletter)

## Family Business: Buyouts Gone Wrong

By Hayley Gregor, Esq.

In family-owned businesses, the issues of dissolving the company and negotiating the terms of a buyout agreement are the last things on the mind of the parties at the time of formation. However, when disputes arise and the buyout agreement does not adequately address all possible scenarios, the result is often years of costly litigation. A prime example is the long-running litigation in *Abatemarco v. Abatemarco*, a case in the Nassau County Commercial Division, which centers on a dispute between two brothers involving their 50/50 ownership interests in a business and the separate realty company that owns the building where the business is based.

Read more in our October Newsletter at [cmmlp.com/october-2014-legal-brief-firm-newsletter](http://cmmlp.com/october-2014-legal-brief-firm-newsletter)

## MERGERS & ACQUISITIONS

### How to Limit Fiduciary Duties in Delaware LLC Agreements

By David Hoepfner, Esq.



On August 1, 2013, the Delaware Assembly passed an amendment to Section 18-1104 of the Delaware LLC Act, expressly providing that corporate director-type fiduciary duties apply by default to LLC managers (and members active in the LLC operations).

The amended statutory language is shown below, with the change underlined.

“§ 18-1104 Cases not provided for in this chapter.

In any case not provided for in this chapter, the rules of law and equity, including the rules of law and equity relating to fiduciary duties and the law merchant, shall govern.”

The amended statute was a response to the Delaware Supreme Court decision, *Gatz Properties LLC v. Auriga Capital Corp.*, C.A. No. 148 (Del. 2012), in which the court stated that the Delaware LLC statute is ambiguous about whether fiduciary duties apply to LLCs by default and urged the Delaware General Assembly to resolve the ambiguity (See bottom of p. 26 in the Decision).

## Market Terms in M&A Transactions

By David Hoepfner, Esq.

The following checklist is based on a report from the American Bar Association Mergers and Acquisitions Committee, Market Trends Subcommittee, which published a study of 136 private target M&A transactions ranging in size from \$17.5 M to \$4.7 B, each completed in 2012.

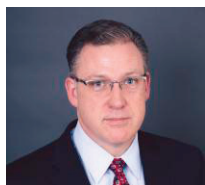
1. Deals with an Earnout: % of deals with an earnout: 25%
2. Length of Earnout: 56% of earnouts last 24 months or less
3. "Material Adverse Effect" defined to include past events that could reasonably be expected to materially adversely affect the target: 93% included.
4. "Material Adverse Effect" excludes "force majeure"-type events (acts of war, general changes in industry, etc): 91% include these types of carveouts
5. "Knowledge" is defined as constructive knowledge as opposed to actual knowledge: 80% constructive knowledge
6. Target's financials are a "Fair Representation" of Target's condition: 99% include a Fair Representation rep. 22% of those are qualified by GAAP (this qualification is usually beneficial to Seller, if Seller uses GAAP in its financials).

Read more on each of David's articles in Hoepfner's Mergers & Acquisitions Blog at [cmmlp.com/hoepfners-ma-blog](http://cmmlp.com/hoepfners-ma-blog)

## MUNICIPAL

### Municipal Privilege

By Scott Middleton, Esq.



This is the first in a series of articles dealing with various types of privileges available in the defense of municipalities. The first topic will be the attorney-client privilege, which will be followed by attorney work product, deliberative process privilege, public interest privilege, and law enforcement privilege.

We know that in New York the CPLR directs that there shall be "full disclosure of all evidence material and necessary and the prosecution or defense of an action" (CPLR § 3101). This is based upon policy determination that liberal discovery encourages fair and effective resolution of disputes on the merits.

In 1991, Judge Kaye pointed out in a Court of Appeals decision that "obvious tension exists between the policy favoring full disclosure and the policy permitting parties to withhold relevant evidence.

Consequently, the burden of establishing a right to protection is on the party asserting; the protection claims must be narrowly construed its application must be consistent with the purposes underlying the immunity."

Read more in our July Newsletter at [cmmlp.com/july-2014-legal-brief-firm-newsletter](http://cmmlp.com/july-2014-legal-brief-firm-newsletter)

### Does the "Deliberative Process Privilege" Exist Outside of FOIL?

By Scott Middleton, Esq.

To promote open government and public accountability, the Freedom of Information Law (FOIL, see Public Officers Law §84) imposes a broad duty on government to make its records available to the public. There is a presumption that all

government records are open for public inspection and copying unless they fall within one of the enumerated exceptions listed in Public Officers Law §87 (2). *Gould v. New York City Police Dept*, 89 N.Y.2d 267 (1996). To ensure that a government body complies with the Legislature's intent, the exemptions are to be narrowly construed.

It is imperative that a public records officer be aware of matters in litigation so that an attorney can become involved where appropriate concerning the turning over of documents or the withholding of documents pursuant to FOIL. Two areas of exemptions that may come into play during civil litigation with a municipality are the law enforcement exemption and the public safety exemption. There is also the potential for the attorney to assert the "deliberative process privilege" in order to block disclosure of certain documents during the course of litigation.

Read more in our October Newsletter at [cmmllp.com/october-2014-legal-brief-firm-newsletter](http://cmmllp.com/october-2014-legal-brief-firm-newsletter)

## NEGOTIATION TRENDS

### Teaching Doctors the Art of Negotiation

By Joe Campolo, Esq.

With recent health care changes, specifically the Affordable Care Act, negotiation skills will be tremendous value to medical professionals, administrators, and other stakeholders in the health care sector.



Recognizing the importance of negotiation, medical schools are starting to invest in communication training for students. A recent article by Dhruv Khullar in the NYTimes Health Blog, *Teaching Doctors the Art of Negotiation* discusses how doctors negotiate on a daily basis, with both patients and colleagues and should be offered classes in negotiation training just as law, business and public policy schools do.

In this context, "negotiation is about exploring underlying interests and positions to bring parties together in a constructive way. It's about creative, innovative thinking to create lasting value and forge strong professional relationships. It's about investigating what is behind positions that may seem irrational at first to understand the problem behind the problem."

### 3 Counter-Intuitive Negotiation Tricks

By Joe Campolo, Esq.

When negotiating, we often follow our instincts and intuition. However, negotiation as a discipline is often counter-intuitive. Best practice suggests that we often go against our instincts and follow behaviors which at first pass do not seem to be appropriate to the desired outcome. A recent article posted on the Forbes Leadership Forum on [forbes.com](http://forbes.com) entitled *Three Tricks That Make Negotiations Work* by Richard Shore discusses three not-so-obvious strategies that seem counter-intuitive, yet make perfect sense.

1. Don't look at the person who is talking; look at the people who are listening.

In group settings, people naturally tend to focus on the speaker. In a negotiation, that person commonly is a lawyer rather than a principal. He or she is trained to deliver a pitch or make an argument effectively. This includes not only speech, but also tone of voice, facial expressions, and body language. The negotiator is trying to control the message—and usually succeeds. Often, that is not a true reflection of their actual state of mind or your opposing party's true settlement position.

## **Mandela – Master Negotiator**

By Joe Campolo, Esq.

Nelson Mandela was the “greatest negotiator of the twentieth century,” wrote Harvard Law School Professor and Program on Negotiation Chair Robert H. Mnookin in his book, *Bargaining with the Devil, When to Negotiate, When to Fight*. In *Lessons from a Master Negotiator: Nelson Mandela*, published in Harvard Law School’s Negotiation Briefings, dealmakers worldwide can learn from the South African anti-apartheid revolutionary, politician, philanthropist and “master negotiator” and his legacy in South African history.

The article suggests that by listening, observing, and caring enough to learn about the grievances and worries of those we interact with, we can best respond to their core, intense and very personal needs. Which can then help to soften the resistance those people have regarding the issues that matter most to us. This skill is often referred to as emotional intelligence, described as the ability to accurately read our counterparts’ emotions, manage our own feelings, and successfully mediate conflict.

## **Women in the Workforce: Lean In & Obama’s Executive Order**

By Joe Campolo, Esq.

Earlier this month Facebook Chief Operating Officer Sheryl Sandberg released a new edition of *Lean In*, her 2013 best-selling book for working women, refocusing it for college graduates entering the workforce. A central theme of the book is negotiation—in particular, negotiating salaries.

“It never even occurred to me to negotiate my first salary,” Sandberg writes in her book. “I waited for someone to tell me how much money I’d be earning so I could figure out where to live. I ended up supplementing my income by teaching aerobics classes on the weekend.”

Studies show that most women simply do not bother negotiating their salary. One study at Carnegie Mellon University found that “57 percent of male students negotiate but only 7 percent of females tried to negotiate for a higher offer,” according to Sandberg’s book.

Sandberg points to Professor Hannah Riley Bowles, who studies gender and negotiations at Harvard’s Kennedy School of Government who believes that, in order to walk away from the negotiation table successfully, women have to “come across as being nice, concerned about others and ‘appropriately’ female.”

## **The Madman Theory of Negotiations**

By Joe Campolo, Esq.

Decades ago, Richard Nixon popularized the “madman theory” of negotiations. It suggested that demonstrating a willingness to consider “madness” in action would provide you with negotiating leverage. If your adversary believed that you really might do something extreme or even self-destructive, then you held more of the negotiating power, even if you were too rational ever to actually carry out the threat.

Consider trying this madman approach when you negotiate your next business deal: start by being nice and cheerful, then flash some anger. Repeat as often as necessary, but always in that order. Never start with anger. It will throw your opponents off balance, making them think you’re unpredictable, if not a bit unbalanced, and they may be more willing to make concessions because of the uncertainty that a deal will get done.

## **Deal Protection: An M&A Negotiation Lesson**

By Joe Campolo, Esq.

Protegrity Advisors recently published a Long Island M&A Report, highlighting the strong M&A activity on Long Island, even as the country navigates what might be best described as a modest economic recovery. The full report can be read [here](#).

As the report dives into the statistics and metrics, it's important to remember the very foundation of these transactions – negotiations. The world of M&A is all about negotiations and there's a lot to be learned from these sometimes complex business transactions.

Published previously in the Harvard Law School Program on Negotiation Daily Blog on September 19, 2011, is an article entitled "Negotiation lessons from the M&A World." The full article can be read [here](#).

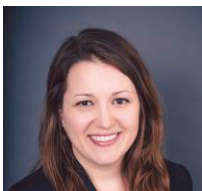
For many years, Harvard Business School professors James Sebenius and Guhan Subramanian have studied real-world mergers-and-acquisitions (M&A) deals, which tend to involve experienced lawyers, bankers, and businesspeople, and many millions, even billions, of dollars. Some of these deals prove successful; others are well-known disasters.

**Read more on each of Joe's articles in Campolo's Negotiation Blog at [cmmlp.com/campolos-negotiating-blog](http://cmmlp.com/campolos-negotiating-blog)**

## **REAL ESTATE**

### **Real Estate and Business Boosters on Long Island: Are You Missing Out?**

By Alyson Repp, Esq.



As we start the New Year, it has been a refreshing and positive sign of the economy revitalizing that many of our clients are looking to expand and grow their business here on Long Island. Right around the corner we are looking forward to the development of the project known as the Ronkonkoma Hub. Clients are buying buildings, expanding their practices and hiring new employees.

Through discussion with our clients and community members we have found out that many organizations are developing their business and buying and developing real estate through their own blood, sweat and tears. While this is very admirable and often what it takes to get the job done, what some business owners and entrepreneurs alike may not know-and should know-is that there are numerous agencies and groups on Long Island looking to give businesses a hand. One such agency that works to boost the local economy through incentives to business owners is the Suffolk County Industrial Development Agency ("Suffolk County IDA").

**Read more in our January Newsletter at [cmmlp.com/january-2014-legal-brief-firm-newsletter](http://cmmlp.com/january-2014-legal-brief-firm-newsletter)**



# REAL ESTATE LITIGATION

## Around the Appellate Bench: Part 2

By Patrick McCormick, Esq.



There have been several interesting Appellate Court decisions in the past couple of months touching on a variety of issues. Cases discussing actual partial eviction, successor landlord liability and a tenant's failure to timely cure an alleged default are discussed below.

In *Croxton Collaborative Architects, P.C. v. T-C 475 Fifth Avenue, LLC*,<sup>1</sup> a commercial tenant sued its successor landlord alleging it was damaged because defendant landlord failed to remediate the "derelict" and "war-torn appearance" of the premises, which was caused by renovation work commenced by the prior landlord, in breach of the lease. Plaintiff commenced the action approximately five months after defendant bought the premises and assumed the lease. The Appellate Division reversed the lower court's denial on landlord's motion to dismiss the complaint.

The Court noted that lease paragraph 22.01 provided that "in the event of a transfer of title, the lease shall be deemed to run with the land and the transferee agrees to 'assume' and 'carry out any and all such covenants, obligations and liabilities of Landlord hereunder.'" Plaintiff apparently relied upon this lease provision to hold the new landlord liable for the conditions caused by the prior landlord. However, the Court relied upon lease paragraph 25.03 which it found "unequivocally provides that 'under no circumstances shall the [lessor] . . . be (a) liable for any act, omission or default of any prior landlord; or (b) subject to any offsets, claims or defenses which [t]enant might have against the prior landlord.'" In finding that lease section 25.03 "trumps" section 22.01, the Court noted that section 25.03 was prefaced by stating "[a]nything herein contained to the contrary notwithstanding."

## Is Prepaid Rent Recoverable if a Lease Terminates Early?

By Patrick McCormick, Esq.

What happens when rent is prepaid under a lease but the lease is purportedly terminated prior to the expiration of the term? The Court of Appeals in *Eujoy Realty Corp. v. Wagner Communications, LLC* addressed this issue.

Landlord Eujoy owned a building in Queens with a steel frame structure on the roof for the placement of billboard advertisements. Tenant Van Wagner considered the billboard desirable because of its visibility to passing traffic on the Long Island Expressway. Van Wagner leased the billboard for a 15-year term commencing December 1, 2000 and ending September 30, 2015.

## Subtenant's Liability for Holding Over After Termination of Its Sublease

By Patrick McCormick, Esq.

Who is responsible for the damages that result when a commercial sub-tenant holds over past the expiration of its term causing the tenant to incur damages under its lease? In what appears to be a case of first impression in the Second Department, in *PHH Mtge. Corp. v. Ferro, Kuba, Mangano, Sklyar, Gacovino Lake, P.C.*<sup>1</sup> the Appellate Division has confirmed that, with appropriate lease clauses, the sub-tenant is liable for the damages incurred by the tenant resulting from the sub-tenant's failure timely to vacate the premises it occupied.

The facts in PHH are simple enough: Owner/Landlord leased certain premises to Tenant. Tenant sublet the entire premises to PHH. PHH then sub-sublet a portion of the premises to Sub-subtenant Ferro Kuba. The rent Ferro Kuba was obligated to pay to PHH was about one-half the amount of rent paid by PHH to the Tenant and about one-quarter the amount of rent paid by the Tenant to the Landlord. The Master Lease between the Landlord and the Tenant provided for holdover damages to be paid to the Landlord in the amount of one and one-half the amount of base rent for each month of the holdover. The Sublease between the Tenant and PHH and the Sub-sublease between PHH and Ferro Kuba each incorporated by reference all the terms of the Master Lease, which included the holdover damages clause.

## **Preservation of Issues for Appellate Review**

By Patrick McCormick, Esq.

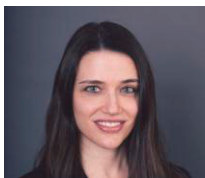
I did not begin to truly appreciate the rules regarding preservation of issues for appellate review until after I argued a criminal appeal before the New York Court of Appeals as a young prosecutor with the Bronx District Attorney's Office. In that case, the defendant had been indicted for first degree robbery and related crimes and, at trial, sought to call his mother as a witness. In an offer of proof, defendant's counsel claimed that the testimony would be used to corroborate defendant's version of the events that occurred about one half hour before the crime was committed. The trial court precluded the testimony. On appeal, defendant argued that the mother's testimony would have demonstrated defendant's state of mind at the time the crime was committed. The legal issues raised on appeal by defendant were complicated and when I was preparing the brief to the Court of Appeals, I thought it was a close case and was not certain about the outcome.

Read more on each of Patrick's articles in McCormick's Real Estate Litigation Blog at [cmmlp.com/mccormicks-real-estate-litigation-blog](http://cmmlp.com/mccormicks-real-estate-litigation-blog)

## **SCOTUS – Supreme Court of the United States Updates**

### **Supreme Court to Hear Case Challenging the Face of Broadcast Television**

By Lauren Kanter-Lawrence, Esq.



Just about the only thing that the broadcast networks and the founders of Aereo—a service that sells live television programming online—can agree on is that the technology will fundamentally change the broadcast network business.

On January 10, 2014, the Supreme Court agreed to hear the dispute between television broadcasters and Aereo, a New York-based technology start-up that distributes broadcast signals through a network of small antennas in a “cloud,” allowing subscribers to record shows on the remote DVR and watch live and recorded programming from their mobile devices. The growing service is currently available in 10 cities for a monthly fee of \$8 to \$12.

At the heart of the case are “retransmission fees” – money paid to networks and their local stations by cable and satellite subscribers for access to their signals and the right to retransmit their programming.

## **Delaware's Bid to Offer Confidential Arbitration Heard by Sitting Judges**

By Lauren Kanter-Lawrence, Esq.

Delaware's unique effort to offer private arbitration presided over by sitting judges to those who could afford it officially ended last month when the United States Supreme Court declined to hear arguments as to whether lower court rulings barring the program should be reversed.

Delaware, which has long enjoyed a business-friendly reputation and whose Court of Chancery is well respected for its business expertise, established its controversial arbitration program in 2009. The program was limited to business disputes of at least one million dollars involving Delaware entities. Sitting judges on the Court of Chancery would preside over the disputes in exchange for a \$12,000 state filing fee and \$6,000 per day in arbitration fees. Documents would not be filed or made available to the public. As with conventional arbitration, the hearings would remain private and the results confidential, with the added bonus of having some of the country's most respected judges handling the disputes.

## **Supreme Court Holds that Competitors May Bring False Advertising Claims Challenging Food and Beverage Labels Regulated by the Food and Drug Administration**

By Lauren Kanter-Lawrence, Esq.

Perhaps Coca-Cola should stick to soda. A unanimous Supreme Court held this month that competitors may bring false advertising claims under the federal Lanham Act – even if the challenge is to food and beverage labels regulated by the Food and Drug Administration under the federal Food, Drug, and Cosmetic Act (“FDCA”) (which prohibits the misbranding of food and drinks).

See *POM Wonderful LLC v. Coca-Cola Co.*, No. 12-761. POM Wonderful LLC makes and sells pomegranate juice products, including a pomegranate-blueberry blend. Coca-Cola's Minute Maid division makes and markets a juice blend bearing the label “POMEGRANATE BLUEBERRY” in all capital letters above smaller lettering that reveals the juice is a blend of five different juices. Minute Maid's product contains 0.3% pomegranate juice and 0.2% blueberry juice (which the Court described as “a minuscule amount”).

POM sued Coca-Cola under the Section 43 of the federal Lanham Act, which allows competitors to sue one another for unfair competition arising from false or misleading product descriptions. POM alleged that Coca-Cola's label tricked consumers into believing the product was made mainly of pomegranate and blueberry juices, while the juice blend actually contained mostly apple and grape juices. POM claimed that this confusion hurt their sales.

## **Broadcast Networks Prevail in Aereo Suit**

By Lauren Kanter-Lawrence, Esq.

I previously reported that the Supreme Court had agreed to hear the case *American Broadcasting Co. v. Aereo*, focusing on the dispute between television broadcasters and Aereo, a start-up that distributed broadcast signals through a network of small antennas in a “cloud.” Subscribers, who paid between \$8 and \$12 per month, could use the service to record shows and watch live and recorded programming from their mobile devices.

When the Supreme Court heard the case in April 2014, the networks argued that Aereo (and the other start-ups that were sure to follow) threatened retransmission fees – a vital source of revenue paid to networks and their local stations by cable and satellite subscribers for access to their signals and the right to retransmit their programming. Since annual retransmission fees reach into the billions for broadcast networks, the networks did not take the threat lightly, claiming

they might be forced to block access to their signals if the Court found in Aereo's favor. Aereo's business model, they argued, is the sale of "public performances" of copyrighted work without permission of the copyright owner.

### **Aereo Update: Case Volleys Back to Trial Court**

By Lauren Kanter-Lawrence, Esq.

In June, finding that Aereo's resemblance to traditional cable companies was "overwhelming," the Supreme Court determined that Aereo's service conflicted with copyright law requiring the copyright owner's permission for a public performance of the protected work. "Performance" includes retransmission to the public, and the Court was not swayed by Aereo's argument that its retransmission was private due to the nature of the technology. Due to the service's "overwhelming likeness" to a cable company, the Court found that any technological differences were inconsequential.

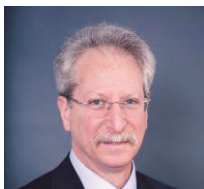
But Aereo refused to see the Supreme Court decision as the end of the line; the seemingly never-ending case then returned to the Southern District of New York. In an order dated October 23, 2014, U.S. District Judge Alison J. Nathan granted a preliminary injunction against Aereo, enjoining the company from "streaming, transmitting, retransmitting, or otherwise publicly performing any Copyrighted Programming<sup>1</sup> over the Internet (through websites such as aereo.com), or by means of any device or process throughout the United States of America, while the Copyrighted Programming is still being broadcast." For the time being, the judge rejected the broadcasters' request for a more expansive order that would have also prohibited the copying and storing of copyrighted matter for later viewing, but this limitation was hardly a victory for Aereo considering the nationwide ban on a significant aspect of its service offerings.

Read more on each of Lauren's articles on her SCOTUS Blog at [cmmlp.com/kanter-scotus-blog/](http://cmmlp.com/kanter-scotus-blog/)

## **WILLS, TRUSTS & ESTATES UPDATES**

### **A Letter To Your Family**

By Martin S. Glass, Esq.



So it's the new year and you've promised yourself that you're going to get your estate plan done. But having your documents in order is only part of a good estate plan.

What you need to do along with that is to prepare a letter that will help your family settle your affairs. You need to let them know what they need to do after you have died. Usually, what's in this letter is more of a personal statement than actual written instructions and therefore not normally included in a legal document. But what you put in this letter should be consistent with the terms of your Will and/or other planning documents. This letter also becomes valuable if you become incapacitated, as it's another method of making sure your wishes are known.

### **Protecting Your Retirement Accounts**

By Martin S. Glass, Esq.

When discussing estate plans with my clients, I always make sure we discuss their retirement accounts (such as IRAs, 401ks, etc.). These are normally owned by only one person and have a beneficiary. Therefore they are not typically in a trust nor do they pass under a Will. What I have been finding is that often times their retirement accounts have the greatest value of any property they own, including their house. Because these accounts defer payment of income tax, their balances can grow very quickly, and can easily become worth millions over the course of generations.

## **Can You Revoke An Irrevocable Trust?**

By Martin S. Glass, Esq.

The simple, knee-jerk answer to that question should be no, as that's the point of an irrevocable trust. But, believe it or not, if you said that, you'd be wrong. There are actually several different ways to revoke an irrevocable trust. It's not a simple procedure, but there are certain times that it makes sense to get rid of it and start over. One such time would be when a trust was set up 10 or 15 years before. Given the changes in the income and estate tax laws, the trust may be more trouble and expense than it's worth. Worse, a trust set up to save taxes might even increase them.

## **Everyone Needs a Will, But No One Wants to Do It**

By Martin S. Glass, Esq.

I think this is something that I've known even before I started practicing as an Estate Planning attorney. Matter of fact, it probably predates my practice by decades, if not centuries. What am I talking about? I'm talking about the tendency to hesitate (if not complete avoid) writing a Will. Both in my practice and my everyday life, I hear from people who recognize and admit that they should put a Will in place, but despite their best intentions, they simply don't do it. Why is that? What keeps us from doing what we know we should do?

## **Protecting Your Assets**

By Martin S. Glass, Esq.

Over the course of my career, I've found that there are really two parts to being an estate planning attorney. The first part is to actually create and execute a plan for my clients. The plan usually consists of a Will or a trust, along with a Power of Attorney, Health Care Proxy and Living Will. This is to ensure that whatever is in your estate gets to pass to who you want, when you want and who gets to control this passing of assets.

The second part is what's commonly referred to as asset protection. This simply means making sure that your estate plan actually has assets to pass. Otherwise it's an exercise in futility.

## **Protecting Your Assets – Part II**

By Martin S. Glass, Esq.

As previously stated, the cost of care in New York can run anywhere from \$6,000 per month for home care to over \$15,000 per month for nursing home care. That's a lot of money to go through! Doing the math, that's over \$180,000 per year. With the average stay in a facility being two and a half years, the cost could climb to a half a million dollars when all is said and done.

## **Supreme Court Rules That Inherited IRAs Are Not Protected in Bankruptcy**

By Martin S. Glass, Esq.

In a unanimous decision on June 12, 2014, the Supreme Court of the United States, in *Clark v. Rameker* (June 12, 2014, No. 13 299) 2014 US Lexis 4166, affirmed a Seventh Circuit decision and ruled that inherited IRAs are not retirement funds within the meaning of the Bankruptcy Code. For those legal geeks out there, the specific part of the Code is 11 USC §§ 522(b)(3)(C) and (d)(12).

This decision resolves a split among the Circuit courts about the status of IRAs that parents leave to their children. The courts have long held that typical IRAs are protected from creditors as they are set up specifically for retirement to the point that you're penalized if you take out funds early. In contrast, money in an account inherited from a parent can be withdrawn at any time.

## **Women Need an Estate Plan**

By Martin S. Glass, Esq.

I hate to break the news to the guys reading this, but we're probably going to die before our wives. First off, older women (65+) have a life expectancy of 20.3 years whereas older men only have an expectancy of 17.7 years, according to the CDC.

Add that to the fact that most women marry guys that are two to five years older than themselves, and you've got the makings of a wife becoming a widow before the husband has a chance to become a widower.

What that really means is that part of the planning should be to make sure female spouses will be able to live out the remainder of their lives in the standard they have grown accustomed.

## **Problems with Joint Bank Accounts**

By Martin S. Glass, Esq.

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What that really means is that part of the planning should be to make sure female spouses will be able to live out the remainder of their lives in the standard they have grown accustomed.

I understand gender equality has come a long way in the past few decades, but still, when most people think of estate planning, they think of wealthy older men such as Michael Bloomberg or John Rockefeller. But, when you take into account what was said above, estate planning is a subject which has a significant impact on women.

**Read more on each of Marty's articles in Glass' Wills, Trusts & Estates Blog at [cmmlp.com/glasss-wills-trusts-estates/](http://cmmlp.com/glasss-wills-trusts-estates/)**



## FIRM PARTNERS



**Joe Campolo**  
**Managing Partner**

Joe Campolo is the Managing Partner of Campolo, Middleton & McCormick. He specializes in representing individuals and businesses involved in complex legal matters. Having broad experience in both commercial litigation and transactions, Joe's practice today focuses on advising business owners, executives, and board members on legal and business strategies.



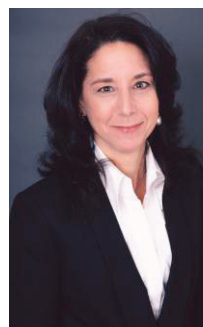
**Scott Middleton**  
**Partner**

As a founding partner of the firm and senior trial partner, Scott handles all types of litigation focusing on complex negligence cases. He created and leads the firm's Catastrophic Loss Team. Scott's experience has included representing individuals and defending large and small businesses as well as municipalities in a wide array of personal injury matters. These cases have included: transportation law (auto, commercial truck, school bus and motor coach), premises liability, labor law (construction accidents, labor and employment matters), civil rights, wrongful death, road design, product liability and representation of architects and engineers.



**Patrick McCormick**  
**Partner**

Patrick McCormick is a partner at Campolo, Middleton & McCormick, LLP and heads up the firm's commercial litigation and appellate practice groups. He litigates all types of complex commercial and real estate matters. He provides legal counsel to clients on issues including: business disputes related to contract claims; disputes over employment agreements and restrictive and non-compete covenants; corporate and partnership dissolutions; mechanics liens; trade secrets; insurance claims; real estate title claims; complex mortgage foreclosure cases and lease disputes.



**Christine Malafi**  
**Partner**

Christine Malafi is a partner at Campolo, Middleton & McCormick, LLP and a member of the firm's executive management team in addition to its corporate, litigation, and municipal law groups. She handles and oversees complex business transactions and litigations, as well as providing counsel to clients on issues including: mergers & acquisitions; labor and employment issues; insurance coverage issues; contract matters; municipal regulations; business governance; and related matters.



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