





Campolo, Middleton & McCormick, LLP is a premier law firm with offices in Ronkonkoma and Bridgehampton, New York. We do not seek to be the largest law firm as measured by number of lawyers or offices. Instead, we strive to be the firm of choice for clients with respect to their most challenging legal issues, most significant business transactions, and most critical disputes.

#### Commitment to Long Island with a Global Reach

Founded in Suffolk County, our Long Island roots are deep. Over the past generation, our attorneys—a roster that includes a former Suffolk County Executive, Suffolk County Attorney, County Legislator, State Assemblyman, Village Mayor, as well as judges, prosecutors, and Town and Village attorneys—have played a central role in the most critical legal issues and transactions affecting Long Island.

Our influence, however, reaches well beyond Long Island and the United States. Our representation of Fortune 100 companies has helped us develop CMM International, a global network of attorneys and other professional service providers to help our clients get the job done.

#### Commitment to Excellence

We serve as our clients' strategic partners, advising them on everything from day-to-day business decisions to their plans for worldwide expansion. Our clients and the news media describe us as "fearless" and "exceptionally talented," possessing "deep knowledge" with a "first rate intellect," and having the unique ability to "effectively partner with clients." Over the past five years, CMM has assisted clients with business transactions valued at more than \$3.5 billion, and our lawyers appear in trial and appellate courts across the country.



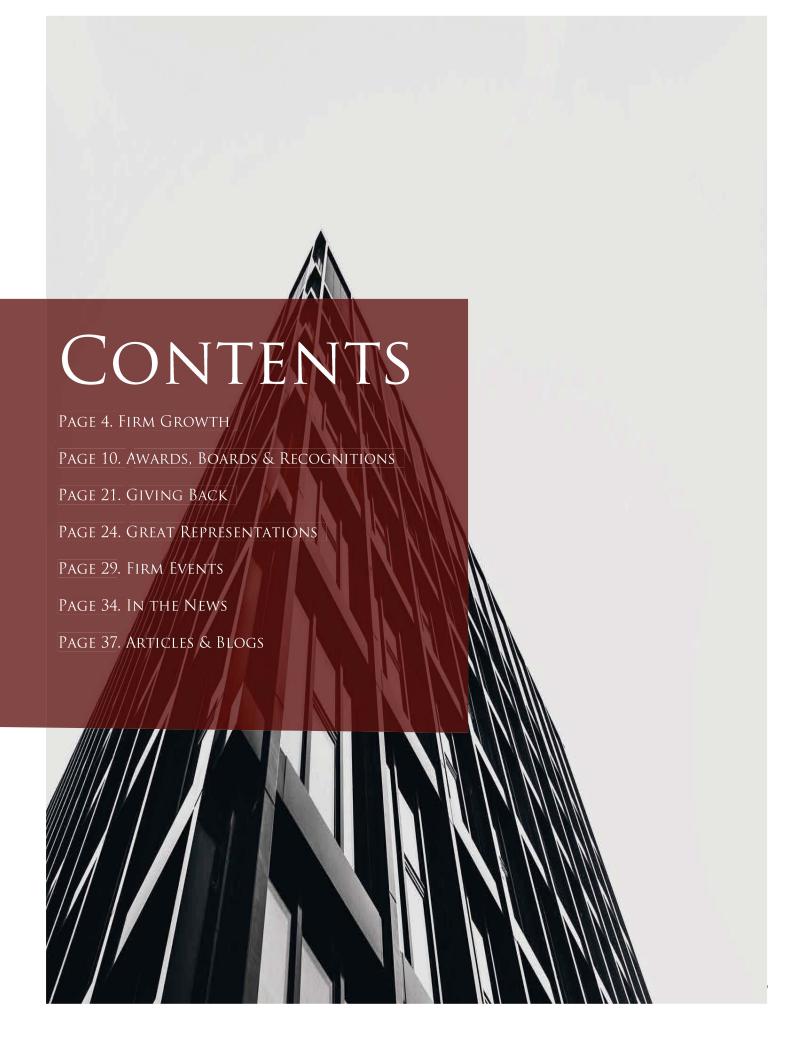


CAMPOLO, MIDDLETON

& MCCORMICK, LLP

A PREMIER LAW FIRM





# A MESSAGE FROM THE MANAGING PARTNER

Dear Clients and Friends:

The 2016 word of the year was "relevance."

In 2016, Campolo, Middleton & McCormick grew our legal team and service offerings to continue to provide our clients with the relevant, critical experience to meet all of their legal needs. We also hosted Executive Breakfasts, community mixers, and a full calendar of events designed to educate our clients and friends on relevant business topics while also providing worthwhile networking opportunities. Everything we do is guided by our goal to be a resource for our clients — not only for legal counsel, but also for meaningful introductions, guidance on topics ranging from management strategies to networking tips, and support for the causes that matter to them.



Twenty-sixteen was another opportunity for CMM to demonstrate to the business community why we were named the Best Law Firm on Long Island. The firm welcomed several attorneys, adding unique expertise in the areas of Construction, Trusts & Estates, Tax & Elder Law, and Real Estate. We also formalized several new practice areas including Startups, Economic Development, Retail, and Construction, welcoming new clients across industry sectors as a result.

Already outgrowing our Ronkonkoma headquarters, we made plans to take additional space in the building in the new year. Our Bridgehampton office continued to grow as we became more deeply involved with our East End community. Our attorneys and professionals won numerous awards and honors—including the AV Preeminent Rating for all of our partners as well as Leadership in Law, Who's Who, and Super Lawyers recognition—and were elected to prestigious board seats and other prominent positions including the Tourette Association of America, the Suffolk County Bar Association, the Judicial Screening Committee, and Girl Scouts of Suffolk County.

We were especially excited to introduce CMM International, a worldwide network of vetted attorneys and other practitioners around the world and across the U.S. with whom we can seamlessly connect our clients when needs arise in other jurisdictions, or when international companies are looking to expand to the U.S. Like today's marketplace, our influence has become global.

The most important and relevant successes of 2016, however, belonged to our clients. This year we helped our clients close deals worth hundreds of millions of dollars, add hundreds of thousands of square feet to their real estate holdings, achieve favorable outcomes at trial and by settlement, expand their businesses abroad, and plan for their continued expansion. Your trust in us is the reason our firm continues to make its mark, and we thank you so much for your support.

We can't wait to see what 2017 has in store.

**Joe Campolo** Managing Partner

Campolo, Middleton & McCormick, LLP

# FIRM GROWTH

#### **CMM International**

Many of our clients have faced less than ideal options for legal and other professional services when it comes to doing business outside the United States, frequently putting their businesses at unknown risk and incurring substantial fees in the process. Our clients based abroad must navigate similar roadblocks when conducting business in the United States. Recognizing the value we can provide to our clients by managing all of their global legal and professional needs, in 2016 the firm established CMM International.

Armed with an existing understanding of our clients' business and culture, we now serve as the single point of contact for our clients' national and international matters. Our services include:

- Researching, identifying, and qualifying local law and other professional service firms in any
  country across the globe with particular areas of expertise and who are experienced in serving
  American companies doing business internationally
- Researching, identifying, and qualifying local law and other professional service firms across
  the U.S. that focus on the needs of international companies seeking to start or expand their
  American subsidiaries, operate their subsidiaries more efficiently, or who recognize the value
  of consulting with local professionals on their U.S.-based initiatives
- Negotiating rates, billing practices, and service levels with firms in the CMM International network
- Monitoring the local firm's handling of assignments for business sense and cost-effectiveness
- Auditing invoices
- Providing a consolidated monthly invoice of all fees so that only one payment needs to be made



Just as the accounting industry has established international associations of accounting professionals, *CMM International* has created its own worldwide network developed throughout the course of our representation of Fortune 100 companies across the globe. Our robust, cost-conscious network of boutique firms throughout the United States and the world focuses on a variety of specialties including corporate, data protection and privacy, labor and employment, intellectual property, and other types of matters impacting companies with a global footprint. Our experience in building this network allows us to efficiently qualify and add new firms as needed.

Utilizing *CMM International* to handle your professional needs in other jurisdictions eliminates the hassles of vetting and building relationships with new practitioners while providing cost-effective and time-saving professional services options.

## **ECONOMIC DEVELOPMENT & STARTUPS**

In 2016, the firm formalized its service offerings to emerging companies and businesses seeking to expand by establishing two additional practice groups, Startups and Economic Development. Led by Marc Alessi, a former New York State Assemblyman and an experienced navigator of the entrepreneurial ecosystem on Long Island, these practices are dedicated to the growth of Long Island business. Our team works with entrepreneurs to help startups evolve from idea to reality. To further our commitment to bringing jobs and investment to our area, we also assist both long-established companies and innovative startups to obtain financing and economic incentives through various municipal agencies.

#### **ECONOMIC DEVELOPMENT**

Long Island is our home. We are committed to the development and retention of businesses on Long Island. Our Economic Development attorneys, led by entrepreneur and former New York State Assemblyman Marc Alessi, believe that working with our clients to bring jobs and investment to our area is a critical responsibility.

We work with clients to obtain financing through a variety of sources at the local, county, state, and federal level. We are experienced in preparing and shepherding applications for economic incentives through various federal, state, and municipal agencies, including the Small Business Administration (SBA) and the local Industrial Development Agencies (IDA) in Suffolk County, Nassau County, and beyond, including the Brookhaven IDA, where one of our partners serves on the board. We also work with a network of lenders, accountants, and IDA loan advisors to help clients learn about available incentives.



#### **STARTUPS**

Our sophisticated Startups practice helps innovative emerging companies evolve from idea to reality. Our attorneys are entrepreneurs themselves and have lived the challenges emerging companies face. This personal experience uniquely qualifies us to advise entrepreneurs and startups in virtually every industry on all matters pertaining to the lifecycle of their business. We also serve in a general counsel role for many of our startup clients, serving as a resource for them for all of their day-to-day legal and business needs.



## CONSTRUCTION

Unlike those at most other Long Island law firms, CMM's construction attorneys possess firsthand knowledge of the construction client's perspective, having worked in the industry themselves. Chaired by Don Rassiger, CMM's Construction practice group is comprised of seasoned professionals who understand the challenges faced by the players on all sides of the construction table and are well equipped to assist clients in achieving successful outcomes in a cost-effective and timely manner.

Our construction clients include owners, real estate developers, general contractors, subcontractors, architects, engineers, construction managers, and program managers who focus on a wide range of commercial, industrial, residential, infrastructure, and energy/utility projects, as well as schools, colleges/universities, libraries, hospitals, courthouses, and a variety of municipal projects. Our attorneys help clients navigate their way through the obstacles and challenges that they face throughout the lifecycle of each construction project, offering guidance on planning and development, financing, bid processes and procedures, contract drafting and negotiation, claims and insurance matters, surety/bonding issues, environmental issues, labor relations, risk management and mitigation, change orders and delay/impact claims, and litigation.



## RETAIL

Technology has caused the ever-changing retail space to become increasingly competitive. Retailers need experienced counsel on their side to drive their success in this challenging landscape. Our multidisciplinary Retail practice serves retailers in a vast array of compliance, intellectual property, real estate, employment, and litigation matters as well as in business strategy and planning. Our retail clients include global public corporations and privately held local companies, online retailers and brick-and-mortar stores. Our team has served as general counsel and as officers of retailers of all sizes and sectors. No matter the size or nature of your retail operations, our attorneys have the extensive experience and up-to-date knowledge required to effectively propel your business forward.



## NEW ATTORNEYS



DONALD J. RASSIGER, ESQ. Counsel

Having served as Chief Legal Officer of four companies and created the General Counsel role at three of them, Donald J. Rassiger understands how management thinks—a perspective he brings to all matters he handles. Don has worked in operations and production and therefore understands the difference between business risk and legal risk. This legal and business background enables him to find creative solutions that achieve his clients' desired results while complying with applicable laws, minimizing risk, and saving his clients both time and money.

Chair of our Construction practice group, Don has represented clients on all sides of the table including owners, developers, general contractors, subcontractors, engineers, architects, construction managers, and program managers. In the past five years alone, Don has negotiated well over \$100 million in construction claims and change orders.

Don is also an experienced corporate attorney with significant experience drafting and negotiating numerous contracts including IT, financing, teaming arrangements, and joint ventures. He has successfully closed dozens of M&A deals, both acquisitions and divestitures. His corporate work also includes financing transactions including sale/leaseback, lines of credit, and debt/equity financing. Through his in-house roles, Don has significant experience in the insurance, bonds, corporate safety and risk management arenas, where he has handled day-to-day management of claims, incident investigation and reporting, policy and procedure, and OSHA compliance. He also handled corporate finance matters and commercial transactions for KeySpan (now National Grid), including the lease financing of a 250 Megawatt electric generating station in New York City.



JOSEPH C. VOZZA, ESQ. Counsel

Joseph C. Vozza is a dedicated and resourceful lawyer who brings significant hands-on experience and meticulous attention to detail to every matter he handles. A major focus of his practice is commercial and residential real estate. His work spans lending, acquisitions, sales, and leasing, representing private clients, national institutional clients, and investors. Joe also has substantial experience working with lenders in connection with loan workouts.

In addition to his real estate work, Joe is an experienced litigator, handling a wide variety of matters including criminal defense, real estate litigation, landlord-tenant proceedings, mortgage foreclosure, and commercial litigation. Joe's background as a Special Prosecutor for the Incorporated Village of Hempstead shapes his approach when defending clients in criminal matters and gives him unique insight when questioning police officers and other witnesses, negotiating plea agreements, and analyzing evidence presented at trial.

Prior to joining the firm, Joe worked as a sole practitioner for ten years, giving him the opportunity to develop significant skills in the real estate, litigation, and corporate arenas. In addition to his work as a Special Prosecutor, he also served as a hearing officer for the MTA's Transit Adjudication Bureau, conducting hearings and related proceedings in civil matters.



LAURA BLASBERG, ESQ. Of Counsel

Laura Blasberg offers experienced representation in general tax, estate planning, and tax controversy matters for individuals and businesses throughout Long Island and New York State. A published author on estate planning and taxation issues, Laura has represented clients in the real estate, finance, fashion, and publishing industries as well as hotel owners, public utilities, plumbers, contractors, and many other fields. She also counsels both sellers and buyers of real estate to minimize their tax liability and achieve their business goals.

Laura handles all aspects of tax controversy cases including matters before the IRS, New York State Department of Taxation, and the New York City Department of Finance. Representative matters include tax audits, appeals, conciliation conferences, Tax Court litigation, residency and responsible person audits, offshore voluntary disclosures, installment agreements, penalty

abatement requests, and offers in compromise.

In the estate planning arena, Laura advises clients, including individuals with extensive commercial real estate holdings, on simple and complex estate planning matters. She also optimizes estate plans to avoid any unnecessary taxes being owed by the heirs. Her practice includes the drafting of wills, health care proxies, and General Durable Powers of Attorney. She also counsels clients on estate freeze techniques, trusts, and public charity and private foundation counseling.

Laura also has significant experience assisting clients in corporate matters including business formation, mergers and acquisitions, contract drafting, and 1031 exchanges.

## **NEW ADDITIONS**



### TONI-JOY INCANDELA Marketing Coordinator

In 2016 our Marketing and Communications team welcomed Toni-Joy Incandela as Marketing Coordinator. Toni-Joy brings significant experience in videography and social media to CMM, where she is responsible for introducing new and relevant content to a wider audience. Her work includes the firm's social media campaigns, preparing our monthly newsletter (which has a subscriber base of over 12,000), event planning and execution, email marketing, and graphic design. Toni-Joy holds a B.S. from Dowling College and an M.A. in Corporate Communications from Baruch College, both magna cum laude.

"This role allows me to expand upon my various skill sets while also exploring unique ways to market through different media outlets," Toni-Joy says.

#### MICHAEL BIGNAMI Law Clerk

After working as a Summer Associate at CMM in 2015, Michael Bignami joined the firm as a Law Clerk in 2016 following his graduation from Touro College, Jacob D. Fuchsberg Law Center. Michael assists the Corporate and Labor & Employment departments at CMM and brings important experience to the firm's many clients in the service industry, having worked in the

restaurant business for several years. Michael represents the 11th Legislative District for Suffolk County's Next Generation Advisory Council. He previously worked at the Brookhaven Town Attorney's Office and pro bono in the Veterans' and Servicemembers' rights clinic at Touro, where he received the CALI award for academic excellence. A graduate of York College of Pennsylvania, Michael has passed the New York State bar exam and is awaiting admission.

Michael explains, "I'm thrilled to be part of the CMM team. The firm has a wonderful family atmosphere and is the best place to hone my skills as a young Associate and grow into the lawyer I have dreamt of becoming."

#### Jennifer Velasquez File Clerk

Jennifer Velasquez joined the firm in August 2016 as a File Clerk, a position integral to the success and organization of the firm. She assists attorneys and paralegals with a variety of projects, handles all incoming mail, oversees all inventory and supplies, and assists at reception. She will receive a Bachelor's degree in Psychology in May 2017.

Jennifer says, "I like working at CMM because it's like working with a big family, and I'm very happy to be a part of it!"

#### RICHARD DEMAIO Law Clerk

Richard DeMaio joined the firm as a Summer Associate in 2016 and has stayed on to assist with researching and document drafting in various commercial and cybersecurity matters. A member of the *Hofstra Law Review*, Richard will graduate from the Maurice A. Dean School of Law at Hofstra University in the spring of 2017. He also received his undergraduate degree with high honors from Hofstra, where he majored in Political Science and minored in Economics and Philosophy of Law.

CMM is a natural fit for Richard. "CMM has afforded me the unique opportunity to develop as an attorney, while working at a dynamic and growing law firm that is sensitive to the needs and ambitions of all of its employees," he says.

# AWARDS, BOARDS & RECOGNITIONS

### CMM Partners all Achieve AV Preeminent® Ratings



Campolo, Middleton & McCormick, LLP is honored to announce that all four partners of the firm—Joe Campolo, Scott Middleton, Patrick McCormick, and Christine Malafi—have earned AV Preeminent ratings from Martindale-Hubbell®, the highest possible rating from the most recognized and trusted legal directory and resource for nearly 150 years. The AV Preeminent rating recognizes attorneys for both ethical standards and legal ability, and is earned only after an extensive peer review and recommendation process that includes members of the bar and judiciary. Frederick Eisenbud, chair of the Environmental & Land Use practice group, also holds an AV Preeminent rating.

peer Campolo "the first named recommendation to my clients for business and commercial law issues," while Middleton was recognized for being "an outstanding trial attorney" and "respected by the judiciary." A fellow lawyer shared that McCormick "would be my number one choice" for personal representation. Malafi was praised for having an "exceptional legal mind" and ethical standards "beyond reproach."

The partners of the firm all continue to shape the region's legal and business landscape by serving on the boards of some of its most prestigious professional organizations. In recognition of their legal skill and community involvement, they have won numerous awards in addition to achieving the AV Preeminent rating. In 2016, Campolo was voted the Best Lawyer on Long Island for the second year in a row and Malafi was named a Top Woman in Law. Both Middleton and McCormick are recent recipients of LIBN Leadership in Law Awards and have been named New York Super Lawyers for several years running.

Martindale-Hubbell\*
EEMINENT\*
ed for Highest Level

# CMM RECOGNIZED WITH CORPORATE CITIZENSHIP AWARD

In recognition of its community engagement, Campolo, Middleton & McCormick, LLP was honored with a 2016 Corporate Citizenship Award from the Long Island Business News in category Corporate of Social Responsibility. The awards program recognizes companies and individuals who believe that practicing good corporate citizenship contributes to the economic and social wellbeing of employees, businesses, and the Long Island community. The awards were presented at a celebratory breakfast on June 14 at Crest Hollow Country Club in Woodbury.

CMM was recognized for having community dedication "woven into its DNA," with attorneys serving in leadership roles for numerous nonprofits and providing probono legal services and financial support to philanthropic organizations. The firm supports numerous leading nonprofits in the community including the American Red Cross on Long Island, Child Abuse Prevention Services (CAPS), Girl Scouts of Suffolk County, UCP Suffolk, and Pet Peeves, among others.

In his keynote address at the awards ceremony, John D. Kemp, President and CEO of the Viscardi Center, applauded the winners for believing that when they see challenges in the community, "it's not someone else's problem — it's our problem." He explained that the days of "having" to perform community service for school credit or as punishment are gone; today's employees have grown up with a culture that calls for service, and they look to employers to help provide those opportunities.







### CAMPOLO WINS BEST LAWYER ON LONG ISLAND AGAIN!



The Long Island business community has spoken, once again naming Joe Campolo the Best Lawyer on Long Island. Under his leadership, the firm has grown from two lawyers to a robust and highly respected team of over 30 lawyers servicing clients in a wide range of practice areas, and continues to grow.

### CMM NAMED A 2016 BEST LAW FIRM



CMM is proud to share that we have been named to the 2016 *U.S. News World Report* – Best Lawyers "Best Law Firms" list, which recognizes the top law firms in the country for professional excellence.

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

# Campolo Honored WITH Kings of Long Island Award



Joe Campolo was named a "King of Long Island" at an awards ceremony hosted by Star Network and Schneps Communications, the publishers of popular community newspapers throughout the region. The awards program and networking expo honors prominent businessmen of Nassau and Suffolk Counties across a variety of industries. The program, along with its sister "Queens" event, brings together elite business leaders for networking and celebration.

### MALAFI NAMED TOP WOMAN IN LAW



CMM Partner and Corporate department chair Christine Malafi was among the recipients of the 2016 Top Women in Law Awards. Hon. A. Gail Prudenti and Hofstra University School of Law celebrated the honorees at an awards luncheon on April 5 at the Hofstra Northwell School of Medicine. Nassau County District Attorney Madeline Singas delivered the keynote address at the event, which benefited Hofstra's Center for Children, Families and the Law.

This first annual event highlighted distinguished female attorneys who have done incredible work on behalf of children and families and are creating a positive impact for future female attorneys.

# SCHIAVONI NAMED TO TOP 50 MOST INFLUENTIAL WOMEN IN BUSINESS



CMM proudly announces that Andrea Harum Schiavoni was named one of the Top 50 Most Influential Women in Business, Class of 2016, by *Long Island Business News*. Launched in 2000, the awards program recognizes Long Island's top women professionals for their business acumen, mentoring, and community involvement. The 2016 honorees were celebrated at a gala dinner on October 20 at Crest Hollow Country Club in Woodbury. Over 600 corporate, government, and nonprofit leaders attended the gala, where New York Lieutenant Governor Kathy Hochul delivered the keynote address.

Of Counsel at CMM, Schiavoni focuses on commercial, family, and matrimonial mediation, real estate,

and transactional matters for local East End businesses. In addition to her work with the firm, Schiavoni serves as Southampton Town Justice. She was elected in 2008 and was most recently reelected in 2016. In 2010, she was appointed to establish a Justice Court in the Village of Sag Harbor and serve as its first justice and, in 2013, was appointed by then-Chief Administrative Judge A. Gail Prudenti to start a Veterans Treatment Court on the East End. She also speaks statewide as an authority in alternative dispute resolution and town and village court administration.



## MALAFI RECEIVES GIRLS INC. OF LONG ISLAND BUTTERFLY **AWARD**



# of Long Island

**Girls Incorporated** CMM was thrilled to celebrate with Christine Malafi as she was honored with a Butterfly Award from Girls Inc. of Long Island at the fifth annual awards gala on November 3. The annual event recognizes the exceptional contributions of individuals who exemplify

Girls Inc.'s mission to help girls be strong, smart, and bold. The fundraising event featured an evening of cocktails, hors d'oeuvres, seated dinner, and dancing to honor industry leaders who inspire girls to spread their wings.

Malafi was selected for a Butterfly Award for her work on behalf of children and families on Long Island, as well as her dedication to helping girls fulfill their potential. She is a longtime Girls Inc. volunteer and serves on the Board of the Girl Scouts of Suffolk County.

Malafi chairs the Corporate department at CMM, focusing on mergers and acquisitions, corporate governance, routine and complex transactions and insurance coverage matters.



Malafi was also the first woman and youngest person ever appointed to the position of Suffolk County Attorney, where for eight years she focused on obtaining jury verdicts in favor of the County, enforcing anti-discrimination laws, and protecting children from harm.

Girls Inc. serves girls ages five to 18 in schools and community-based organizations across Long Island. Annually, the organization provides over 400 girls with life-changing programs, workshops, conferences, and opportunities to learn and grow together.

### LEVY AND YERMASH RECEIVE LEADERSHIP IN LAW AWARDS



In recognition of their incredible contributions to the legal field and their clients, Steve Levy and Arthur Yermash were honored with *Long Island Business News* 2016 Leadership in Law Awards. The awards recognize individuals whose leadership has had a positive impact on the legal profession and the Long Island community.

Steve Levy received an award in the Counsel category. After serving as County Executive of Suffolk County—New York State's largest suburban county, with a population of 1.5 million, a workforce of over 10,000 employees, and a budget of \$2.7 billion—Levy joined CMM in an Of Counsel role to focus on municipal, government relations, and real estate development work. He puts the lessons he learned in his role as Suffolk County's CEO to work for his clients, drawing from his own leadership experience to counsel clients on myriad business-related matters.

Arthur Yermash received an award in the Associate category. A Senior Associate at the firm, Yermash has a unique depth of experience in a variety of complex legal issues. He advises clients on compliance with federal, state, and local laws affecting the workplace and is often involved in drafting and negotiating employment-related documents such as employment agreements as well as non-competition, non-disclosure, severance, and option agreements. His practice also includes the representation of employers in wage and hour disputes, as well as defending against investigations by regulatory and government agencies. In addition to his extensive employment practice, Yermash has drafted and negotiated hundreds of contracts for various corporate matters.





# **BOARDS**

## MCCORMICK ELECTED TO SUFFOLK COUNTY BAR Association Board of Directors



CMM partner Patrick McCormick was installed as a member of the Board of Directors of the Suffolk County Bar Association at the 108<sup>th</sup> Installation Dinner Dance on Friday, June 3. The gala event at the Cold Spring Country Club in Huntington celebrated the incoming officers and directors and honored those SCBA members who have made an indelible mark on the community over the past year.

McCormick chairs the Litigation & Appeals practice group at Campolo

Middleton. He has been named to New York Super Lawyers – Metro Edition for several years running and has also earned an AV Preeminent

rating from Martindale Hubbell.

In addition to his new role at the SCBA, McCormick also serves as an Associate Dean and Officer of the SCBA's Academy of Law and as Secretary of the Board of Directors of Developmental Disabilities Institute (DDI), a nonprofit organization serving over 1,500 children and adults with autism. In recognition of his legal work and community involvement, he received an LIBN Leadership in Law Award in 2015.



# TOURETTE ASSOCIATION OF AMERICA WELCOMES CAMPOLO TO NATIONAL BOARD OF DIRECTORS



In November, Joe Campolo was elected to the national Board of Directors of the Tourette Association of America ("TAA"), the premier national non-profit organization serving the Tourette Syndrome and Tic Disorder community. Founded in 1972, TAA is dedicated to making life better for all individuals affected by Tourette and Tic Disorders. TAA works to raise awareness, advance research and provide ongoing support. To that end, TAA directs a network of 32 chapters and support groups across the country.

"On behalf of the Tourette Association of America, welcome to the team," John Miller, TAA President and CEO, said of Campolo's new role. "We are grateful to have you as one of the top

leaders in the United States!"

"I'm proud and humbled to be part of this important organization," Campolo said. "I look forward to furthering the Tourette Association's mission to increase awareness and put a stop to bullying."



# Malafi Joins Girl Scouts of Suffolk County Board of Directors

Christine Malafi, a partner at CMM, has been sworn in as a member of the Board of Directors of Girl Scouts of Suffolk County ("GSSC"). The preeminent leadership development organization for girls, GSSC serves more than 40,000 girls between the ages of 5 and 17. As a board member, Malafi will work to further the organization's mission to build girls of courage, confidence, and character.

In 2015, Malafi was involved in the implementation of GSSC's new "Justice Patch" program, which was designed to help girls develop a sense of fairness and an understanding of the role of lawyers and judges in the community. The Justice Patch program imparts knowledge to the county's young citizens as to why laws exist and how they can be changed when they do not work.

Malafi, chair of the Corporate department at CMM, focuses on mergers and acquisitions as well as

insurance, municipal, and labor and employment matters. She is a longtime volunteer for organizations dedicated to the personal and professional development of women and girls. She is no stranger to GSSC, having been a Girl Scout herself in her youth.

"We are delighted to have Ms. Malafi join the Board of Directors," said Yvonne Grant, President and CEO for Girl Scouts of Suffolk County. "I am confident that her enthusiasm and dedication to serving girls will align extremely well with the Girl Scout mission of building girls of courage, confidence and character."



# ALESSI NAMED EXECUTIVE DIRECTOR OF BUSINESS INCUBATOR ASSOCIATION OF NEW YORK STATE



Marc Alessi, chair of the Startups and Economic Development practice groups at CMM, was selected to lead the Business Incubator Association of New York State, Inc. (BIA/NYS). A nonprofit trade association, BIA/NYS is the state's largest organization dedicated to strengthening and

expanding the facilities and programs that foster the growth and development of startup and incubator-based enterprises throughout New York. As Executive Director, Alessi is charged with furthering the association's mission to promote networking, knowledge-sharing, and advocacy among organizations operating business incubators throughout the state.

The organization is a natural fit for Alessi, an experienced navigator of the local and regional entrepreneurial ecosystem. Alessi helped establish Accelerate Long Island, a unique collaboration among the region's research institutions and business community to foster startup growth. He currently serves as Chairman and Founding CEO of one of their portfolio companies, SynchroPET, which is advancing its technology and developing its business as a tenant in the Long Island High Technology Incubator (LIHTI) at Stony Brook University. The company's medical imaging products are the smallest, lightest PET scanners in the world, facilitating research via non-invasive PET and simultaneous PET/MRI imaging.

# CAMPOLO JOINS BOARD OF DIRECTORS OF LONG ISLAND HIGH TECHNOLOGY INCUBATOR

Campolo, Middleton & McCormick, LLP is pleased to announce that the Long Island High Technology Incubator (LIHTI) has welcomed managing partner Joe Campolo to its Board of Directors. Affiliated with Stony Brook University, the nonprofit is dedicated to providing support, resources, and services to new technologically innovative companies.

"As an active Stony Brook alum and supporter, I have long admired LIHTI's track record of serving startup companies in the technology sector," Campolo said. "LIHTI's goal is to help businesses grow, which aligns exactly with our mission at CMM. I'm really excited to share what I've learned from working with our tech entrepreneur clients, and I look forward to learning a lot from LIHTI."

Since opening in 1992, LIHTI has worked with more than 70 businesses. The 44 companies that have completed the LIHTI program have contributed over \$2.5 billion to the economy and created over 500 jobs. LIHTI's affiliation with Stony Brook University has bolstered the organization's success, transferring cutting edge research, development, ideas, and technology from the university to the private sector. Learn more at www.lihti.org.

Long Island High-Technology Incubator

# Schiavoni Joins Recreational Arts, Inc. Board of **DIRECTORS**

Fulfilling CMM's commitment to the arts, Andrea Harum Schiavoni has been elected to the Board of Recreational Arts, Inc., a nonprofit organization that provides affordable arts education for students. She has also been named board representative of the Long Island Musical Theatre Festival, a pre-professional program performed at Walt Whitman High School and Adelphi University, and an affiliate of Recreational Arts.

Festival Artistic Director Steven Altinel said, "We are grateful for the generous time and dedication that Andrea has provided to our festival. Her leadership on the board of Recreational Arts will undoubtedly raise our festival to a new level of excellence in the future, changing many young lives for the better."



# RECOGNITIONS

### CAMPOLO NAMED UCP OF LONG ISLAND HONOREE





United Cerebral Palsy (UCP) of Long Island named Joe Campolo the honoree of their annual golf classic, which was held on May 9, 2016 at Glen Head Country Club. Proceeds from the golf classic directly support the almost 3,500 children and adults with disabilities served annually by UCP of Long Island.

For over 65 years, UCP of Long Island has been committed to advancing the independence, productivity, and full citizenship of people with disabilities by creating Life Without Limits. UCP of Long Island provides programs and services to children and adults with disabilities annually. The Children's Center at UCP of Long Island offers early intervention, preschool and school-aged programs. The agency provides Adult Day services which include Day Treatment, Day Habilitation and Respite programs, and job training and placement services. In addition, UCP of Long Island has 31 residences and a 12-unit apartment complex in Suffolk County.





# Canavan Named to "Who's Who in Women in Professional Services"

Published in *Long Island Business News* August 19, 2016 by Lisa Morris Josefak



Kelly Canavan heads the firm's busy Bridgehampton office, handling real estate, corporate transactions, and litigation for businesses and individuals on the East End.

Well known in the competitive world of Hamptons real estate, Kelly represents buyers and sellers, landlords and tenants, brokers and developers, architects, contractors, and business owners on major transactions totaling well over a hundred million dollars per year. Her real estate work includes significant experience handling complex forward and reverse 1031 exchanges. She also focuses on corporate transactions, including joint ventures, shareholder/member buyouts, and stock or asset sales and purchases. Kelly rounds out her practice handling commercial litigation matters for East End clients. She began her legal career in the courtroom and puts this experience to work for her diverse client base.

This year, Canavan is focused on developments of a pilot program launched by the U.S. Treasury Department.

"I am interested to see where the U.S. Treasury Department lands on their pilot program requiring title insurance companies to discover and disclose the identities of cash buyers who buy property though limited liability corporations and shell companies on properties of more than \$3 million in both Manhattan and Miami-Dade County," she said. "If the initiative is expanded, it would apply to a great many transactions on the East End of Long Island."

Kelly has practiced at large firms in New York City and Nassau County. In 1996, she opened her own law firm in Sag Harbor focusing on real estate and litigation matters for her East End clientele. After a decade, Kelly merged her practice into a large Long Island firm. Kelly joined the CMM team with a deep understanding of the Hamptons market and the experience to help clients navigate the complex issues that often arise in the property and business transactions on the East End.

Canavan earned a bachelor's degree from Fordham University and juris doctor from Hofstra University School of Law. She is admitted to practice in New York and before the United States District Court, Eastern District of New York.

# GIVING BACK

## CMM SUPPORTS EAST END ARTS



The Riverhead-based organization has served Long Island's East End since 1972, providing education, support, advocacy, and inspiration through the arts. East End Arts is a powerful catalyst for economic and cultural revitalization in Riverhead and the surrounding community. The organization has long been recognized for its

cultural tourism initiatives and programs that collaborate

with government, civic groups, private businesses, and other nonprofit entities.

Campolo, Middleton & McCormick is a longtime supporter of numerous East End Arts initiatives including the ArtWorks East End Spring Gala, the Teeny Awards, which honor the best of local high school theater, and JumpstART, a series of workshops focusing on the business side of a career in the arts.



Nile Rodgers and Joe Campolo

### TEAM CMM AT THE 2016 SUNRISE WALK



Team CMM Sunrisers was proud to support SunriseWALKS this summer as a co-sponsor to benefit Sunrise Day Camp. SunriseWALKS has been inspiring communities to unite for a cause and give children

with cancer a summer free from the everyday demands of their illness. The money raised here helps pay for children with

cancer and their siblings to attend Sunrise Day Camp free of charge. The only full summer day camp of its kind in the world, Sunrise lets campers forget about their cancer so they can play, run, and explore the magic of summer like a kid, the way you remember it, while returning to the safety and comfort of their own beds each night.



### AMERICAN RED CROSS ON LONG ISLAND GALA



The American Red Cross on Long Island honored members of the local American Ex-Prisoners of War chapter on June 9, 2016 at the Red and White Dinner Dance. In a special recognition ceremony, the Red Cross paid tribute to five servicemen who valiantly served their country in World War II and were held captive in Europe until 1944 and 1945 under unimaginable conditions.

Members of the "greatest generation," many of these former POWs credit the rations they received from the American Red Cross with helping to save their lives. The ceremony was a tribute to the original line of service on which the Red Cross was founded in 1881. For more than 130 years, the Red Cross has been a steadfast supporter of the military and their families. CMM Managing Partner Joe Campolo was selected to present the tribute medals to the ex-POWs in recognition of his work as a board member of the American Red Cross on Long Island. Prior to starting the firm, he served honorably in the U.S. Marine Corps.

"I am humbled to help recognize a group of American heroes. Each of these servicemen valiantly protected the liberties and freedoms we hold dear as Americans," Campolo said. "Their sacrifice, resolve, and bravery continue to serve as an inspiration to us all."

# STALLER CENTER FOR THE ARTS AT STONY BROOK UNIVERSITY



As a longtime supporter of the Staller Center for the Arts, CMM was excited to sponsor the Janeane Garofalo Show. Janeane Garofalo, the hilarious stand-up comedian, is a critically acclaimed actress, outspoken activist, and brilliant spoken word performer. Janeane is known for her film roles in "Dogma," "Reality Bites," and "The Truth about Cats and Dogs," as well as her notable appearances on "24," "Mad About You," and "The West Wing."

CMM's support of the Staller Center is part of its

five-year pledge of over \$200,000 to support the Stony Brook Foundation and Stony Brook Athletics among other initiatives and programs at Stony Brook University.

### ORGANIZATIONS WE SUPPORT

Alzheimer's Disease Resource Center (ADRC) American Cancer Society Relay for Life American Heart Association (AHA) American Red Cross on Long Island Angela's House Arthritis Foundation Boys & Girls Club of Suffolk Breast Cancer Research Foundation Camp SoulGrow Child Abuse Prevention Services (CAPS) CN Guidance & Counseling Connect to Tech Cooley's Anemia Foundation Developmental Disabilities Institute (DDI) East End Arts East End Disability Associates (EED-A) Easter Seals New York **Equity First Foundation** Girl Scouts of Suffolk County (GSSC) Girls Inc. Great South Bay Society Habitat for Humanity (Suffolk County) Hauppauge Industrial Association of Long Island Linda Ross Harrington Foundation Long Island High Technology Incubator (LIHTI) Long Island Musical Theatre Festival Make-a-Wish Foundation (Suffolk County) Marine Corps Scholarship Foundation Natasha's Justice Project New York Asian Women's Center Parrish Art Museum Peconic Bay Medical Center Pet Peeves – The Voice of Long Island Pets Riverhead Foundation for Marine Research & Preservation The Rollstone Foundation Ronald McDonald House of Long Island Special Olympics New York Stony Brook University Stony Brook University Athletics Stony Brook University Children's Hospital Stony Brook University Staller Center for the Arts Suffolk County Community College Foundation

**SunriseWALKS** 

Tourette Association of America

United Way of Long Island

YMCA of Long Island

Women's Fund of Long Island

United Cerebral Palsy of Long Island (UCP)

Victims Information Bureau of Suffolk (VIBS)









## GREAT REPRESENTATIONS

# CMM Represents Bissett Nursery and Bissett Equipment in Sale to SiteOne Landscape Supply





CMM represented Long Island's Bissett Nursery Corp. and Bissett Equipment Corp., leaders in the distribution of nursery and landscape supplies as well as equipment sales, rentals, and repairs to landscape professionals, in their acquisition by SiteOne™ Landscape Supply, LLC, a Georgia-based, publicly traded distributor of wholesale irrigation, landscape lighting, nursery, hardscapes, maintenance products, and supplies. Christine Malafi led the CMM team, which also included Alan Weinberg, Arthur Yermash, and Vincent Costa. Ronkonkoma-based Protegrity Advisors served as the exclusive selling agent for Bissett, with a team led by Bruce Newman, Protegrity's president. The terms of the sale are confidential.

With locations in Holtsville and Dix Hills, Bissett is a 53-year-old family business that has grown into an industry leader over three generations. SiteOne plans to maintain the Long Island locations, which combined cover nearly 50 acres of land. SiteOne changed its name from John Deere Landscapes when the company went public in May 2016.

Since 2010, CMM has been involved in M&A transactions valued at more than \$3.5 billion. The firm has a depth of experience in structuring M&A transactions on both the buy-side and sell-side across a variety of industries including healthcare, technology, real estate, and retail. Its M&A client roster includes companies of all sizes, from worldwide conglomerates to closely-held Long Island businesses.

# CMM REPRESENTS REILLY WINDOWS & DOORS IN ACQUISITION BY PELLA CORPORATION



CMM represented Reilly Windows & Doors of Calverton, New York, a premier producer of high quality windows, doors, screens, shutters, millwork, and cabinetry, in its acquisition by Pella Corporation, a major designer and manufacturer of made-to-order and custom windows and doors. The CMM team included Joe Campolo and Vincent Costa. The terms of the sale will not be disclosed publicly.

In a deal effective August 1, 2016, Reilly Windows & Doors will remain under the leadership of Michael Reilly, who founded the company in 1981 in a rented chicken coop and has since grown it to over 180 employees operating out of a 192,000 square foot manufacturing facility in Calverton. These employees will join the more than 7,500 Pella team members that build windows and doors throughout the United States. Over time, Reilly Windows & Doors will be integrated into the Pella Crafted Luxury collection, a product and services collection serving the luxury home market.



# CMM REPRESENTS SERVICEAIDE, INC. IN ACQUISITION FROM CA TECHNOLOGIES

Campolo, Middleton & McCormick represented industry leader ServiceAide, Inc. in its acquisition of IT Service Management Software Cloud Service Management (CSM) from CA Technologies (Nasdaq: CA). CMM partner Christine Malafi led a corporate team that also included Vicki Gruber, Donald Rassiger, Vincent Costa, and Edward Karan. Terms of the deal were not disclosed publicly.

Backed by a solid technology investment firm, ServiceAide is focused on the benefits to customers from the marriage of a world-class ITSM SaaS operation and proven innovative big data technology. ServiceAide will provide existing clients with a highly successful team committed to ensuring CSM becomes the leading SaaS offering in the cloud ITSM space. According to ServiceAide CEO Wai Wong, "This relationship is a natural, the time is right, and this kind of innovation is clearly a game changer in an industry that is poised for resurgence."

Added CEO Wai Wong, "It was great to partner with Christine and CMM in getting this transaction done. The entire process was well organized with high transparency in what to expect and when. I couldn't have asked for more."



#### LITIGATION TEAM VICTORIOUS IN QUEST FOR TRO

Our Litigation group achieved a major victory in 2016 when Patrick McCormick and Jeffrey Basso successfully obtained a judge's signature on a difficult TRO (temporary restraining order) in Suffolk County Supreme Court. The case involved a dispute surrounding who actually owned and controlled the assets of a business after a sale. The law did not clearly favor either side, and a thorny fact pattern further complicated the case. McCormick and Basso went to court fully prepared with a mastery of those facts and the applicable law, which was critical to the court's ultimate decision to sign the TRO. Their success in court has now elevated our client to a position of strength as negotiations move forward.



# CMM CLOSES MULTIMILLION DOLLAR FINANCING TRANSACTION FOR MAJOR CONSTRUCTION & ARCHITECTURAL HARDWARE DISTRIBUTOR

CMM announced that it has closed a multimillion dollar construction financing transaction and working capital line of credit between its client, a major construction and architectural hardware

distributor, and the client's lender, a large institution in the secondary lending market. The transaction moved swiftly from the execution of a letter of intent in the fall of 2016 through due diligence and to closing just before the new year. In addition to the usual financing documents for such transactions, the deal was complicated by the transfer of mortgages on several separate parcels of real estate that secure the new loan and the removal of security interests held by a prior Other lender. complicating factors included negotiating loan capacity for retainage and materials delivered but not installed. The terms of the transaction were not disclosed publicly.



With a team headed by Joe Campolo, attorney Don Rassiger assisted to close the deal at a breakneck pace. The client shared that "Don was great. He understands the construction supply business and was very available. We could not have gotten it across the finish line without him."

# CMM Successfully Moves for Pre-Judgment Attachment in Personal Injury Case

In what is believed to be a first in New York State, a CMM team led by Scott Middleton prevailed on a motion for pre-judgment attachment in a personal injury and wrongful death case. The order of attachment provides security to our client, who faces the frightening possibility that her damages would exceed the defendant's insurance coverage.

CMM represents the surviving family members of a man who passed away following a tragic car accident. The defendant's vehicle was covered by a \$25,000/\$50,000 policy, well below the anticipated total damages. This grim possibility, coupled with evidence from the concurrent criminal case that the defendant had intended to escape by boat to a country without an extradition treaty with the U.S., prompted the CMM team to seek an order of attachment. Such an order removes property owned by a defendant from his control so that it may be preserved to satisfy a judgment in the event the plaintiff prevails.

Courts characterize attachment as a "harsh" remedy within the court's discretion. Here, the court found that CMM successfully demonstrated that a viable cause of action exists as a result of defendant's negligence and that it was probable that the plaintiff would succeed on the merits of the case. Agreeing that there was also a strong likelihood that damages would exceed the minimal coverage available, the court found "ample" support for granting the order of attachment. While pre-judgment attachment is not unusual in commercial matters, we are unaware of any other personal injury actions in which a party successfully moved for such an order.

#### CMM HEALTHCARE TEAM FULLY VICTORIOUS IN FRAUDULENT BILLING AUDIT

With healthcare providers under increasingly aggressive attack from Medicare, Medicaid, and private insurers seeking repayment for alleged overpayments, CMM is proud of its track record in fighting back.

The firm recently represented a physician targeted by Medicare, through its Recovery Audit Contractor (RAC), to repay \$850,000 in fraudulent billings. Our team was able to show that our client worked for a podiatrist who pled guilty to healthcare fraud in a prosecution by the U.S. Attorney for the Eastern District of New York. We provided evidence of his admission that he used our client's Medicare provider number to submit his own false billings. Based on this evidence, Medicare's Victimized Provider Project agreed to investigate and determined that our client was indeed the victim of identity theft. Medicare ultimately ceased all efforts to collect the \$850,000 from our client, saving her from certain bankruptcy.



"This case highlights the importance of thoroughly investigating and documenting any unauthorized use of Medicare billing credentials," said Bill McDonald, chair of CMM's Healthcare department. "Providers can also benefit from the investigatory experience an attorney brings to protect against liability from unauthorized billings."

#### CMM Prevails Before World Intellectual Property Organization



CMM's Intellectual Property team, led by Eryn Truong, scored a win for our client in a matter before the World Intellectual Property Organization (WIPO), a United Nations agency and the global forum for IP services. CMM opposed a challenge to our client's use of a web address by the website's former owner. The WIPO panel found that we established that there was compelling evidence that the former owner had abandoned its trademark rights and that our client had not acted in bad faith in using the address. This victory was great news for our client, for whom use of the web address was critical.

#### CMM FILES PETITION WITH U.S. SUPREME COURT

Last Spring, the firm filed a petition for a writ of certiorari with the nation's highest court on behalf of our client, Safe Harbor Retreat, a residence in East Hampton, New York for individuals in recovery from drug and alcohol addiction. The question for which we sought the Supreme Court's review is when the denial of an applicant's request for a reasonable accommodation under the Fair Housing Act becomes justiciable. "While the chances of the Court granting certiorari in connection with any petition are notoriously slim, we have put forth very strong reasons for them to do so in this case," said Joe Campolo. It is a rare and special opportunity for a firm to file such a petition. In addition to Campolo, the CMM team included Patrick McCormick, Fred Eisenbud, Jack Harrington, and Lauren Kanter-Lawrence.

#### CMM WINS DISMISSAL OF ALL CHARGES IN NASSAU COUNTY DWAI CASE

Our Criminal Defense team won a major victory for our client in Nassau County, a jurisdiction known for aggressive DWI and DWAI prosecutions. Department chair Bill McDonald, assisted by Meghan Dolan, won the dismissal of all charges against our client, who faced a Driving While Impaired by Drugs charge along with four counts of Criminal Possession of a Controlled Substance in the Seventh Degree. A conviction carried a year in jail. We demanded the scientific evidence necessary for the People to prove their case, but were met with delays. Undeterred, our team answered ready for trial and refused to agree to any adjournments. In response, the prosecution insisted that our client plead guilty to the top counts. While many attorneys would have recommended the plea deal given Nassau's hardline reputation, our team fought back against these tactics, moving to dismiss based upon speedy trial violations. The strategy paid off; our arguments persuaded the judge that the delays warranted dismissal of the case. Our ability to take our defense to the next level will allow our client to continue his graduate studies without the weight of a criminal conviction.

# CMM Advises Hedgehog Development in its Acquisition of Loewy Design

CMM advised Hedgehog Development, LLC, a leading global provider of digital solutions, on its acquisition of Loewy Design, Inc., a full-service strategy and design agency. The deal, completed in February 2016, created a combined team that increases value to clients by offering strategic web solutions, custom applications, systems



integration, and digital marketing campaigns. The CMM team included Joe Campolo and Vincent Costa. Headquartered in Holbrook, New York, Hedgehog also has offices in Oregon, North Carolina, and Bulgaria.

# FIRM EVENTS



#### What Customers Want: It's Not What You Think!

January: Randi Busse, Founder and President of Workforce Development Group, Inc. asked the question, "what do customers want?" Here's a hint: It's not (just) price, quality, timing, taste or color – or any of those attributes of your product or service. It's the experience you deliver.

#### Labor and Employment Update 2016

February: Arthur Yermash, Senior Labor and Employment Associate at CMM, Joseph Mammina, Partner, Markowitz, Fenelon & Bank, LLP, and Irv Miljoner, Director of the Long Island District Office, U.S. Department of Labor's Wage & Hour Division, spoke on an interactive panel about critical employment law issues and practical updates that impact our business community.

#### Women's Leadership Panel

March: A packed lecture hall heard from a distinguished panel of women professionals discussing issues facing women in the workplace. Christine Malafi moderated a panel that included Randi Busse, Founder and President of Workforce Development Group, Inc.; Teresa Ferraro, President of East/West Industries Inc.; Susan Ganz, Financial Professional at the Prudential Insurance Company of America; Abbe Meehan, President and Corporate Trainer at TEC Resource Center; Patricia E. Salkin, Dean of Touro College Jacob D. Fuchsberg Law Center; and Martha Stark, Group Director and Senior Vice President at Signature Bank.

#### Everything is a Negotiation

May: All too often, traditional negotiating tactics result in blown up deals, protracted litigation, and destroyed relationships. During this presentation, Joe Campolo shared the alternative negotiation strategies he relies on as an attorney and business owner to solve problems and get deals done.

#### Legislative Update with Lee Zeldin

August: Together with Markowitz, Fenelon & Bank, we hosted United States Congressman Lee Zeldin as he discussed his New Era of American Strength agenda.

#### Winning: Incorporating Jack Welch's Management Lessons into Your Business

October: Joe Campolo shared lessons from Welch's popular business bible, *Winning*, and how Welch's honest and be-the-best style of management can be put to work at any organization. Business owners, executives, and those who are serious about career success can all find a helpful new perspective in Welch's words.

#### Women Leading Long Island's East End

November: CMM's Kelly Canavan moderated as Andrea Harum Schiavoni, Southampton Town Justice and Of Counsel at CMM; Maria Baum, CEO at Tracy Anderson Mind & Body; Bridget Fleming, Suffolk County Legislator; Neela Mukherjee Lockel, CEO at American Red Cross on Long Island; and Stephanie Bitis, VP/GM, Long Island Radio Broadcasting, discussed their inspiring career paths and the sometimes roundabout ways they found success.

# EAST END SPRING LUNCHEON

Wolffer Estate Vineyard, Sagaponack

















# CLIENT APPRECIATION LUNCHEON

Insignia prime steak & sushi, Smithtown

















# EAST END HOLIDAY PARTY

### Almond Restaurant, Bridgehampton

















### ENTREPRENEURS EDGE INTERVIEW SERIES

Launched in 2014, the Entrepreneurs Edge interview series showcases successful innovators and their sometimes roundabout and always individual career journeys. On Thursday evening, November 3 on the campus of Stony Brook University, Joe Campolo interviewed father and son business leaders Stanley Bergman, CEO of Henry Schein, and Eddie Bergman, serial entrepreneur and President of Innovative Development Services. Campolo engaged the Bergmans about global business, corporate social responsibility and social entrepreneurship, among other topics.

"We are thrilled to have the Bergmans participate in the Entrepreneurs Edge series," said Dr. Manuel London, Dean, College of Business at Stony Brook University. "Their involvement supports our mission of working with outside businesses to make the College of Business a world-class leader in business education."

Bruce Newman, Committee Chair of the series and President of Protegrity Advisors LLC, said: "Once again this year's Entrepreneurs Edge presentation provides a rare behind-the-scenes view of what it takes to build highly successful businesses. The event also serves as a meet-up opportunity for local entrepreneurs, investors and business executives."

This year's Entrepreneurs Edge interview was sponsored by Protegrity Advisors LLC, the Brookhaven Industrial Development Agency, Campolo, Middleton & McCormick, LLP, Cerini & Associates, LLP, High Tower Advisors, LLC, and Suffolk Federal Credit Union.

Campolo has built a reputation as a skilled and thoughtprovoking interviewer of prominent newsmakers and personalities. He strives to bring out the personal experiences of interviewees that have shaped their lives.







# In the News

# NEW LAW HELPS FIRMS PROTECT THEIR "SECRET SAUCE"

Published in *Long Island Business News* October 24, 2016 By Adina Genn



You might not have the equivalent to Coca-Cola's formula, but that doesn't mean your company doesn't have valuable trade secrets that give it a competitive edge.

Since President Barack Obama signed the Defend Trade Secrets Act into law in May 2016, experts say now is a good time to reassess a company's "secret sauce" and direct

competitors to best protect its advantage.

"A lot of companies don't realize they have a trade secret," said Eryn Truong, counsel to Campolo, Middleton & McCormick, a Ronkonkoma-based law firm. "They should be aware of and be active in protecting those secrets in employee agreements, manuals, policies and procedures that keep their trade secrets, secret."

Experts say the new legislation has been a long time coming, and some say it provides a level of protection that's been sorely needed, especially in a digital age where information can be easily transferred. American companies, for example, may lose as much \$300 billion a year because of international intellectual property theft, the Commission on the Theft of American Intellectual Property reported in 2013. And companies may prefer the trade secret route over patenting, because they never have to reveal details behind their proprietary information, or worry about expiration dates.

Now, under the new law, companies gain the ability to bring suit in federal court – rather than state court –

for damages resulting from stolen trade secrets. So for example, if a former employee left for another job with a company's proprietary information, the firm could obtain a seizure order to get that information back, and compensation for damages.

"Prior to the DTSA, there was no ability to obtain double damages for willful violations," Truong said. "Litigants were only able to get damages."

However, if a party is wrongfully accused of trade secret misappropriation, he or she can obtain attorneys' fees from the accuser, she pointed out.

#### MORE PROFESSIONAL SERVICES, PLEASE

Published in *Long Island Business News* May 2, 2016 By Bernadette Starzee

Just as the season on the East End has expanded well beyond the summer months, businesses in Long Island's five easternmost towns have grown in sophistication. As they have evolved into larger companies, they have needed more professional services from their lawyers, accountants and bankers.

When clients have operations in Manhattan and other places, their East End law firm will often coordinate with law firms in other places to service the client, said Kelly Canavan, counsel in the Bridgehampton office of Ronkonkoma-based Campolo, Middleton & McCormick.

As a full-service law firm, Canavan said CMM is able to handle a wide range of needs for growing companies, from employment issues and information technology to copyright and transactional issues.

As Canavan noted, "the East End is a very small, tightly knit community. Just like anywhere else, you have to service your clients."



#### LEGALLY GLOBAL

Published in *Long Island Business News* November 9, 2016 By Bernadette Starzee



As the economy becomes increasingly global, more Long Island companies are doing business in other countries. Manufacturers now routinely order materials from China, for instance, while web developers are turning to India or Russia to contract for talent.

Business transactions like these require legal counsel – from attorneys who are familiar with the laws of those countries.

This summer, Campolo, Middleton & McCormick, with offices in Ronkonkoma and Bridgehampton, rolled out CMM International, a newly branded service that features a network of more than 100 law firms and solo practitioners, as well as accounting firms and other professional service providers, in about a dozen countries and around the U.S.

The law firm, which is continuing to grow the network, vets the attorneys and other professional service providers, which includes checking client references, and can act as the point person for all of a client's international (and domestic) legal services.

"We act as the client's outside general counsel and we can quarterback all their legal needs through our international and national network of service providers," said Joseph Campolo, managing partner of CMM. The firm offers a suite of services that can include handling all the billing from the international firms; negotiating rates and billing practices; and auditing the invoices to make sure the foreign firms are not charging for too many hours to complete a task, said Gregg Schor,

of counsel to CMM and an advisor to CMM International.

Accounting firms like BDO and McGladrey have well-established alliances consisting of accounting firms around the globe, in which a member accounting firm in Long Island can collaborate with a member firm in, say, London to assist a client who is looking to establish operations in the U.K. But there is no equivalent in the legal profession, according to Campolo.

CMM acquired the relationships in its international legal network from Protegrity Advisors in Ronkonkoma, of which Schor is CEO. Formerly known as General Counsel Solutions, the firm previously provided fractional general counsel services for companies that did not require a full-time in-house attorney and did not want to pay the high hourly rates of full-service law firms.

"Back in 2007, 2008 and 2009, when the world was falling apart, the idea of fractional general counsel and managed legal services really took off, and Gregg built up a tremendous network of either solo practitioners or small boutique law firms around the U.S. and a deep international network," Campolo said. However, "as the economy improved and companies recovered, they went back to their old spending habits on legal services," he said. Protegrity Advisors began to focus on mergers-and-acquisitions services, which had begun to heat up, instead of managed legal services.

CMM, which was one of the firms in Protegrity Advisors' network, did not want to see the network fall apart.

"It was still a huge network of international and domestic attorneys," said Campolo, who has been referring clients to attorneys in the network for years in addition to receiving referrals from law firms in the network whose clients were looking to do business in the United States. "I relied on the network," said Campolo, whose firm acquired the relationships in the network earlier this year.

Now that it has formally launched CMM International, CMM can position itself as better equipped to serve clients as they expand beyond the U.S. borders.

"Our clients can continue to use our firm as one-stop shopping for their international legal needs," Campolo said.

Large international law firms with offices in New York City can connect Long Island businesses to their law offices around the globe, but they charge as much as \$1,000 per hour, according to Campolo.

Further, as Schor noted, "The large law firms' core business is serving Fortune 500 companies. Small to midsized businesses are not as important to those law firms, so they'll assign someone junior to the account."

By working with smaller firms, CMM is able to provide the same services at half the price of the large international law firms, Campolo said.

Companies need foreign law firms to assist them with drafting and negotiating contracts in a wide range of matters, from hiring talent to establishing a relationship with a distributor to leasing warehouse space.

"There are a lot of mistakes you can make when doing business internationally if you don't have the right counsel," Schor said, noting the penalties can be severe. "But a lot of times people don't have the right counsel, because it's so cost-prohibitive. They're more afraid of their legal bill than the risk of not engaging with local lawyers in that country."

#### HAVE PLAN. WILL PRACTICE

Published in *Long Island Business News* March 14, 2016 By Kyle Barr

When they come out of law school, attorneys often understand the law better than they understand how to run a business.

At one time, many law firms earned much of their revenue through corporate retainers, which provided good, consistent income, said Joe Campolo, managing partner of Ronkonkoma-based Campolo, Middleton & McCormick.

In recent years, however, law firms have had to adapt to a new type of single-issue clientele as long-term contracts have declined.

"Companies got smarter," Campolo said. "Attorneys were not doing all the work; say if they were making \$5,000 a month on retainer, many law firms were only doing \$2,000 worth of work.

"Now, everything is on an annual basis," Campolo continued. "You have to recreate the business from the previous year."

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# **ATTORNEY ARTICLES**

## HIRING TIPS FROM THE TRENCHES

By Joseph N. Campolo, Esq.



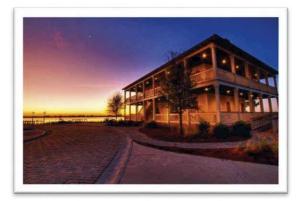
As business owners, executives, and HR managers, we've all been there: a new employee who seemed so promising just doesn't work out. The person may have the relevant work experience but doesn't seem to understand how to prioritize her responsibilities. Or perhaps the person is an all-star at the job, but isn't getting along with other employees. Maybe you can't even tell if the person would be good at the job because he spends the whole day texting in his office.

I've done a lot of hiring over the years — what started as a firm of two lawyers less than 10 years ago has grown to 30 lawyers and over a dozen staff members. During that time, I've tried many approaches to the hiring process. Here, I share hiring tips and the best practices

I follow when we add someone to our team, no matter what the position.

- 1. **Define the job before filling it.** If your idea of a good time is wading through resumes from anyone with an Internet connection, I recommend posting an ad saying "experienced paralegal wanted." If you'd prefer to efficiently find the right person for the job, it's crucial to spend some time beforehand writing out the specifics of the position. Will the paralegal be filing motions electronically? Conducting legal research? Reviewing client documents? Say so in the ad. Not only will the candidate have the information needed to evaluate the position, but you'll be introducing the candidate to your company and your needs from the outset. This doesn't mean that a position can't evolve over time, but the more information a candidate has when applying, the better.
- 2. **Introduce strong candidates to key staff members.** Hiring decisions shouldn't be made in a vacuum. Giving candidates time with employees other than the owner or hiring manager gives them the opportunity to more freely ask questions about the job and assess the company culture for themselves. For me, it's also helpful to have my staff's perspective, especially if they will be working closely with the successful candidate.
- 3. Establish and share a timeline for the hiring process. Since applying for my first job at McDonald's, I've submitted countless resumes and have gone on more interviews than I can count. While rejection always stung, I harbored no negative feelings about those companies that treated me with respect. Telling candidates when to expect a decision (and notifying them if they did not get the job) is courteous and will help build your company's good reputation.
- 4. **Look for the candidate who wants** this job, not any job. It's usually obvious when a candidate is excited about the position you're hiring for (and see #1 above give candidates specifics to get enthusiastic about). More often than not, that enthusiasm translates into a happy, engaged, and productive employee.
- 5. Always be on the lookout. Don't automatically dismiss someone who wows you just because you aren't currently hiring. Some of our best people have come to us at a time when we had no open positions. Perhaps there's a creative way to bring the person on board in a part-time or per-project basis. If not, stay in contact and keep them in mind as you look to add to your team in the future.

# LEGISLATIVE UPDATE: A LONG-AWAITED SOLUTION TO A MORTGAGE FORECLOSURE PROBLEM? By Scott D. Middleton, Esq.



This past June, Governor Cuomo signed legislation that imposes preforeclosure duties on banks and servicing companies. After it goes into effect this December, it is anticipated that a problem that has plagued local municipalities for years with respect to abandoned residential properties will begin to subside.

Now, under the Real Property Actions and Proceedings Law (RPAPL) section 1308, first lien mortgage holders on one- to four-family vacant and/or abandoned residential real property must complete an exterior inspection of the property within 90 days of delinquency to determine if the property is vacant. While the loan is delinquent, the property must be re-inspected every 25 to 35 days.

Once it is determined that property is vacant, the loan servicer must post a notice,

with contact information, stating that it is maintaining the property. If no response is received it now falls upon the mortgage holder to secure and winterize the property, replace broken doors and windows, and fix health and safety issues and any outstanding code violations on the property. The lienholder must continue to maintain the property. As every municipal official knows, the problem has always been that until the bank retakes the property after foreclosure, there was no way to gain compliance with local codes with respect to property maintenance. This problem caused surrounding considerable property owners anxiety and drove down property communities. values in many Residents would often turn to municipalities to do something that was nearly impossible. Hopefully, this new legislation will literally help to change the landscape of many communities plagued by this problem.

Where violations are found, civil penalties of up to \$500 per day may be levied against the property. This will enable municipalities to hold the only true party in interest in these situations accountable and put an end to neighborhood blight originally caused by predatory lending by various financial institutions.

# COMMERCIAL TENANT "HAD A MEANINGFUL CHOICE TO WALK AWAY": COURT REJECTS UNCONSCIONABILITY ARGUMENTS REGARDING LATE CHARGES AND ELECTRICITY CHARGES

By Patrick McCormick, Esq. Published in the *Suffolk Lawyer* 

In 2010, the First Department, in dismissing a claim by commercial tenants that electric charges were unconscionable, held that the plaintiffs had failed to establish "a lack of meaningful choice, and noted that the commercial tenants were free to not rent from the defendant and go elsewhere."[i]

Thus, when I represented a commercial landlord in a non-payment proceeding against a law firm tenant earlier this year, it was

unclear where a court within the Second Department – in this case, the First District Court in Nassau County – would fall on the issues of a five percent late charge and electric charges to which the tenant objected.[ii] The landlord's rent demand sought \$2,531.70 including a five percent late charge plus electric charges of \$993.52, as well as taxes and attorneys' fees for an unrelated proceeding.

Turning first to the late charge, the

the tenant argued that the charge was



"illegal" in that it was usurious and "does not in any way even remotely apply to damages actually sustained and is an unconscionable penalty." In response, we argued on behalf of the landlord that the late fees were not usurious, as the fees existed in connection with a commercial lease, not a loan or forbearance, nor were they unconscionable, as they were negotiated by sophisticated business people specifically for a commercial lease.

Regarding the electric charges, the tenant argued that because it occupied only a small part of the commercial premises, the sum of \$993.52, which was a fixed amount set forth the lease. in "disproportionate" to their actual electricity consumption. The parties disagreed over whether the landlord obligated to furnish accounting of the actual electric usage and bills; the landlord pointed out that the tenant had paid the monthly electric charge - which the landlord did not dispute was not based on actual usage - for over a decade.

The tenant commenced an action in Nassau County Supreme Court seeking reimbursement of the "excess" electricity payments and a return of funds withheld from a security deposit as determined by a prior summary proceeding in District Court. The tenant argued that the

Supreme Court had jurisdiction over the entire dispute (even that piece pending in District Court) as the tenant was seeking a declaratory judgment and equitable relief, for which the District Court lacks Landlord's jurisdiction. Upon motion, the Supreme Court dismissed the Complaint. The Supreme Court found that "[t]o the extent plaintiff claims that the electric charge is exorbitant, it is what he agreed to, and nothing more...The fact that a landlord may make a profit on the payments for electricity, is no defense to a tenant."[iii] The Court reached a similar conclusion regarding the late fee, noting that "[a]side from the fact that it constitutes a negotiated provision of a commercial lease between sophisticated parties, there [is] nothing exorbitant about such a provision calling for a 5% late fee."[iv]

Ultimately, the District Court disagreed with the jurisdictional issue: "[T]his court can determine all issues in an expeditious manner," wrote Judge Fairgrieve. "The purpose of summary proceedings is to quickly resolve cases." The District Court then granted summary judgment to our client.

Citing the First Department's Accurate Copy, the Court noted that a sophisticated party such as the law firm tenant in this case "had a meaningful choice to walk away and rent elsewhere." Accurate Copy had rejected an unconscionability claim on the grounds of the plaintiffs' failure to allege and prove a lack of meaningful choice, as well as claims that electric charges were illegal on the basis that the plaintiffs did not allege failure by the landlord to enforce a lease's electric charge provisions in conformance with their The *Accurate Copy* court declined to upset the commercial leases at issue in that case for the "purpose of alleviating a hard or oppressive bargain." Looking to this First Department case, this District Court within the Second Department agreed.

[i] Accurate Copy Service of America, Inc. v. Fisk Bldg.,72 A.D.3d 456, 899 N.Y.S.2d 157 (1st Dep't 2010) (quotation from Old Country Road Realty, LP v. Zisholtz & Zisholtz, LLP, 53 Misc.3d 1203(A), 2016 WL 5396005).

[ii] Zisholtz, supra.

[iii] Zisholtz & Zisholtz, LLP, v. Old Country Road Realty, L.P., Nassau County Index No. 602616-16 (Murphy, J.), entered September 13, 2016.

[iv] *Id.* 

## Allowing Employees to Telecommute

By Christine Malafi, Esq.

Published in *The Hauppauge Reporter* 



In today's workplace, a great percentage of employees will request the ability to work from home for one reason or another, be it temporary or not. Having employees work from home is both an opportunity and a challenge for both the employer and the employee. Employers avoid having to find space for the employees to work from, and employees may be more satisfied and committed to their employers for the benefit of working from home. However, both parties must pay attention to make sure that the "team" spirit and internal workplace dynamics don't suffer.

It is strongly recommended that employers implement written policies on telecommuting so as to not create policies piecemeal, which can be confusing and risk being deemed discriminatory by employees. Policies should be tailored to the specific needs and abilities of employers. Consistency is the key to avoiding claims of unfairness or discrimination. Policies should address which classification of employees are permitted to telecommute (i.e., full-time or part-time employees) and how long the employee must be employed before a request may be considered (three or six months).

Written policies should also clarify who is responsible for providing the tools and equipment needed for the employee to work from home (if equipment is provided, the policy must mandate its return when employment ends) and who is responsible for maintaining it. It is also important to consider the security of sensitive information that your employee may be taking from the office or accessing from home. If the employee's work includes handling confidential data, the employer should set guidelines about secure Internet access as well as how to store documents and electronics (i.e., in a locked filing cabinet).

Employers permitting or encouraging telecommuting should consider investing in good conferencing technology, as well as paying for travel costs associated with having employees "visit" the physical workplace from time to time.

The importance of accurate recording of all working time is enhanced with telecommuters. To minimize the risk of wage and hour claims, employers must implement strict guidelines for timekeeping and time reporting for hourly employees working from home. Keep in mind also that you, as the employer, may be responsible for injuries that occurred at a home workplace; while it is impossible for an employer to completely control the safety of an off-site location, employers may wish to set parameters, such as having the employee designate a limited area of the home for working or to work according to a set schedule.

Unless you are hiring an employee with the specific intent of having him or her work from home, employees requesting permission to work from home should be required to submit a written request to telecommute. Every employee should understand from your written policies that permission to work from home is not guaranteed, and may be withdrawn at any time in the employer's sole discretion.

Even if you do not have a telecommuting policy or practice in place, and although employers are not legally obligated to allow employees to telecommute, there may be an obligation, if it does not create an undue hardship, to allow an employee to telecommute as a reasonable accommodation for an employee with a disability under the Americans with Disabilities Act (ADA).

If you have any questions about your telecommuting policy (or lack thereof), please contact us.

## Goodwill in Partnership Valuations

By Jeffrey Basso, Esq.

Should "goodwill" be a component in in determining the value of a partnership? The Commercial Division in Albany County recently tackled this issue in the case of *Romanoff v. Center for Rheumatology, LLP, et al.* (J. Platkin). The Center for Rheumatology is a medical practice founded in the 1980s and plaintiff Norman Romanoff, M.D. is one of the founding partners. In late 2013, Dr. Romanoff decided he wanted to retire and sought to dissolve the practice and receive payment for his interest in the practice. Despite Dr. Romanoff's attempts to obtain an accounting from his partners, they allegedly refused to comply, so he brought a lawsuit against the practice and the other partners in 2015 under the New York Partnership Law seeking: (1) a valuation and

distribution; (2) an accounting; (3) distribution of interest; and (4) winding up of the practice. Before any discovery took place, the defendants, believing the only issue to be

determined was whether a value should be placed on the "goodwill" of the partnership, made a



motion for summary judgment for a determination on that issue.

In support of their motion, the defendants submitted affidavits from the other partners stating that they never paid any monies toward the goodwill of the practice at any point during the partnership and that Dr. Romanoff was the first partner to leave the practice. The practice's accountant also submitted an affidavit claiming that, since he became the accountant in 1993, the practice did not increase the value of goodwill despite the practice's increase in revenues, profits, and reputation over the years and that the minimal value that was in the practice's books for goodwill was merely a placeholder. In opposition, Dr. Romanoff attempted to establish the huge growth of the practice over time, including an additional office, annual revenues over \$18 million, increase in employees, increase in services provided, and an extensive professional referral network. He also provided the affidavit of an accountant who opined that goodwill should be included in valuing Dr. Romanoff's interest.

The Court, citing *Dawson v. White & Case*, 88 N.Y.2d 666, 670 (1996), noted in its decision that the term "goodwill," as it pertains to professional firms, refers to the ability to attract clients as a result of the firm's name, location, or the reputation of its professionals.

However, "even if a given partnership might be said to possess goodwill, the courts will honor an agreement among partners — whether express or implied — that goodwill not be considered an asset of the [partnership]." *Id.* at 671. In the *Dawson* case, the Court of Appeals, in finding that the partnership did not assign value to goodwill, specifically relied upon an express agreement among the partners to assign no value to the goodwill of the partnership but also emphasized that the partners' course of dealing demonstrated that incoming and outgoing partners never paid or received payment for the goodwill of the partnership.

Here, the Court decided that things were still too murky to come to a decision on this issue of "goodwill" so early in the litigation without any discovery. The Court denied the motion for summary judgment holding that issues of fact remained as to whether the practice has distributable goodwill and whether the practice has the ability to attract patients as a result of its name, location, and reputation. Importantly, unlike the *Dawson* case, there was no express agreement among the partners in this case to exclude goodwill as a distributable asset. The Court also rejected the defendants' argument that the absence of an express agreement that includes the distribution of goodwill would preclude the plaintiff from obtaining the value of the goodwill because "Goodwill, when it exists as incidental to the business of a partnership, is presumptively an asset to be accounted for." Matter of Brown, 242 N.Y. 1, 7 (1926).

The Court did acknowledge that, based on the proof submitted by the defendants, it appeared that there could be an implied agreement among the partners that goodwill would not be considered a distributable asset given their course of dealing and their accounting records. However, the Court ultimately concluded that, without the benefit of discovery, it was too early to conclusively determine that an implied agreement existed.

Although the Court did not reach a determination one way or the other as to the goodwill of the partnership and whether it is a distributable asset for this practice, this case provides important insight to individuals involved in partnerships as far as what factors courts will consider in reviewing the issue of goodwill as a distributable asset. As always, if you either want goodwill to be a distributable asset or want it to be excluded, the best approach is always to put it in writing so there can be no doubt as to the parties' intentions.

## HOW TO AVOID A "PAPER" ANTI-CORRUPTION COMPLIANCE PROGRAM

By Jonathan "Jack" Harrington, Esq. Published in the Suffolk Lawyer, September 2016

In December 2008, Siemens AG, Europe's largest engineering and electronics conglomerate, settled Foreign Corrupt Practices Act ("FCPA") charges with the DOJ and SEC for a record-setting \$800 million. Aside from the scope of the violations and the size of the penalties, the Siemens case was noteworthy because it so clearly criticized the deficiencies in the company's compliance program. The DOJ charging papers stated that Siemens merely adopted a "paper program" largely limited to distributing



anti-corruption policies without establishing a culture of compliance reinforced by adequate training and controls. The FCPA prohibits U.S. persons, companies, and issuers from, among other things, bribing or attempting to bribe a foreign official to secure an improper business advantage. As the DOJ and SEC increasingly investigate small and medium-sized companies for potential FCPA violations, the lessons learned from the Siemens settlement are as important today as they were in 2008. Drafting a comprehensive anti-corruption policy is of little use if it is not enforced, if the company's compliance personnel are not empowered, or if no one in the organization is trained on how to spot corruption red flags. Companies (and their lawyers), particularly those with significant international operations or overseas sales, must ask themselves whether they too have a "paper" compliance program, assuming they have an anti-corruption program at all.

The following approaches, though not exhaustive, will help ensure that your anti-corruption compliance program is on sure footing and mitigate the damage should your organization face an FCPA investigation. First, draft an anti-corruption policy that is tailored to your company's risk, geographic footprint, and other unique considerations. You should not pull an FCPA policy off of a shelf—one size certainly does not fit all. While most anti-corruption policies will contain similar elements, the DOJ and SEC are more impressed with companies that take a risk-based approach to compliance rather than those who simply throw money at the problem and try to emulate what they consider to be a best-in-class compliance program. At the very least, the policy should emphasize a company's commitment to adhering to both the spirit and letter of the law, as well as explain common FCPA pitfalls, such as travel and entertainment expenses or the role of consultants and agents.

Drafting a sound anti-corruption policy is only the beginning. You need to make sure that employees at all levels are aware of the policy, and that those who represent the greatest FCPA risk are regularly certifying their compliance. Some companies choose to make their anti-corruption policy part of their employee welcome packet. Be careful, however, that the policy is not just another document that everyone has to read and sign. Companies should consider having employees—or at least a subset of high-risk employees—recertify on an annual or semi-annual basis that they have reviewed and understand the policy. Companies should do the same for any overseas consultants or agents.

Next, among the criticisms of Siemen's compliance efforts was that the company lacked a mandatory FCPA training program. Risk-based and continuous training is a key factor that the DOJ and SEC will consider when evaluating a company's efforts to comply with the FCPA, and may potentially lessen the consequences of a violation. Training may be in-person, self-led, web-based, or some combination thereof. Moreover, to the extent feasible, companies should tailor their training to the particular audience. For instance, while it may be appropriate to discuss legal standards and concepts when delivering training to the General Counsel's office, legal jargon is probably not appropriate when delivering the same training to a company's sales team.

Again, one size does not fit all. Companies should be balancing their resources against their compliance risk. And what do we mean by risk-based? For instance, if a company employs 1,000 people, 900 of whom work in a factory in Oklahoma and 100 work overseas selling and marketing the company's products to foreign governments, the company should focus its training efforts on those 100 employees who are more likely to deal directly with a foreign official.

The government also criticized Siemens for not appropriately investigating and responding to corruption red flags. Assuming a company has adequately trained its employees, and the policy provides a mechanism for those employees to report suspected corrupt activity, the company must ensure that it responds quickly and effectively. The company must first assess the allegations to determine the scope of the investigation and who should conduct the investigation. Decisions regarding an FCPA investigation should be taken at the highest level possible to ensure accountability. For instance, the DOJ noted that serious allegations of bribery in the Siemens case were never even referred to the Board of Directors or the Audit Committee. Depending on the circumstances, the Company may not be in a position to investigate the allegations internally and should considering bring in outside counsel to conduct a thorough, impartial investigation.

Finally—although certainly not exhaustively—companies should ensure that their compliance function is adequately resourced and empowered to monitor the anti-corruption program and conduct the due diligence necessary to help prevent FCPA violations in the first place. The DOJ criticized Siemens for failing to establish a "sufficiently empowered and competent" compliance department. The adequacy of compliance resources will vary from organization to

organization. After all, a company with 50 employees cannot be expected to spend the same amount of money on compliance as a company with 500 employees. But to the extent possible compliance staff should be independent and, ideally, not dual-hatted. Companies should, on a risk-based standard, conduct due diligence on third-party agents or consultants who operate overseas and potential acquisitions or joint ventures in countries known to have high levels of official corruption.

Anti-corruption compliance means more than drafting a policy or memorandum and sticking it in a drawer. If they hope to avoid FCPA liability, companies and their counsel should be prepared invest the time and resources commensurate with their risk. As the DOJ has been saying for years now, a paper anti-corruption program just doesn't cut it.

#### DISCLOSURE OF PROTECTED HEALTH INFORMATION: IT'S NOT ALL ABOUT HIPAA

By William McDonald, Esq. Published in the *Suffolk Lawyer* 



Anyone who's had a doctor's appointment in the past 20 years is familiar with the Health Insurance Portability and Accountability Act (known affectionately—or not—as Undoubtedly, if your HIPAA). business collects and shares protected health information, you and HIPAA are old friends. However, many healthcare providers don't realize that HIPAA isn't the only game in town. It's also critical to analyze all of your statements to consumers together and ensure that your disclosures are not deceptive under the Federal Trade Commission (FTC) Act.

As a refresher, the HIPAA Privacy Rule empowers patients and consumers with certain rights with respect to their health information (for example, the right to access, copy, and inspect their information and obtain an accounting of certain disclosures).

The Privacy Rule also requires certain parties, including covered entities (such healthcare providers insurance companies) and their business associates (an organization or individual that helps covered entities carry out their healthcare functions), to take steps to protect the privacy security of an individual's health information.

Before a covered entity or business associate can disclose protected information for health any commercial activity other than treatment, payment, and other uses and disclosures as set forth in the Privacy Rule, a valid authorization, signed by the patient, is required. In today's global and tech-driven environment, consumers are more aware than ever of their rights under HIPAA and importance of keeping their private information private. But that doesn't mean that covered entities and business associates can hide behind heightened public awareness and present patients with authorizations so confusing they may as well be in hieroglyphics. The purpose of a HIPAA authorization is not only to authorize the release of information, but also to give consumers an understanding of and control over

their protected information. The document must indicate, plainly and clearly, who is doing the sending and receiving of information, what information is covered, how long the authorization is valid, and the reason the authorization is needed in the first place. When it comes to HIPAA authorizations, the more specific, the better.

Once you've drafted a HIPAAcompliant authorization based upon these guidelines, it's important to consider the FTC Act before you hit print. The Act empowers the FTC to prevent unfair methods of competition and deceptive acts or practices in or affecting commerce. People often think of the FTC Act in terms of retail advertising or signs in brick-and-mortar stores, but it applies to the protection of health information as well. Just as retailers cannot mislead consumers about prices and products, healthcare providers and related entities must actively ensure that they are not misleading patients about where their personal information is going.

Covered entities and business associates are cautioned to go beyond the HIPAA authorization and consider all of their disclosures to consumers in context. Does the authorization refer to the disclosure of protected health information to an

insurance company, while a page of a new patient packet says the information is going to the referring physician?

Another recommended practice is to put all key information up front. Be mindful that consumers may view your disclosures on devices including cell phones and iPads. A patient shouldn't have to scroll through 25 paragraphs on a small screen or navigate through five windows to find out where you're proposing to send their health information.

Covered entities and business associates should also conduct a review of their marketing materials to be sure that certain disclosures aren't

being confusingly conveyed more prominently than others. Font choices, colors, images, and size all matter.

When it comes to advising consumers about disclosure of their protected health information, being crystal clear should always be the game plan.

# New Treasury Efforts to Fight Money Laundering Through New York Real Estate By William McDonald, Esq.



To combat the scourge of money laundering from transnational criminal syndicates, the United States Treasury has issued new Geographic Targeting Orders ("GTOs") to Manhattan and Miami Dade County requiring title insurance companies to reveal beneficial owners of entities purchasing real estate for cash.

GTOs are directives with limited duration issued by the Secretary of Treasury through the Financial Crimes Enforcement Network ("FINCEN") and are authorized under the Bank Secrecy Act (31 USC 5326). After passage of the Patriot Act, TROs, by definition, last for 180 days.

The January 13, 2016 announcement from FINCEN specifies that this GTO will begin March 1, 2016 and expire on August 27, 2016. The stated goals further FINCEN's risk-based

approach to identifying cash real estate transactions used to launder illicit funds. What concerns the Treasury the is elevated risk when real estate purchased in an all

cash deal. FINCEN Director Jennifer Shasky Calvery said, "Over the years, our rules have evolved to make the standard mortgage market more transparent and less hospitable to fraud and money laundering. But cash purchases present a more complex gap that we seek to address."[1] The purchaser might be a Russian crime syndicate that sets up a Singapore Trust, which in turn owns a Panamanian Shell Company. Experts claim that using shell companies in this fashion makes it relatively easy to launder money. After holding the real estate for a year or so, the original purchaser may sell it and realize clean profits.

By requiring title insurance companies to identify the true beneficial owner of these purchases, the Treasury hopes to identify whether the actual purchaser of expensive real estate for cash is an individual or entity believed to be involved in criminal activity. Critics question whether domestic title insurance companies have the investigatory resources to truly identify the beneficial owners of these international shell companies. However, the American Land Title Association has pledged its cooperation and assistance.

The GTOs will be directed at specific title insurance companies, and FINCEN stresses that the GTOs do not emply any derogatory findings against these companies. Instead, FINCEN sees title insurers as valuable players in the efforts to combat money laundering in expensive real estate transactions.

Companies with questions about compliance with these GTOs should contact us for assistance. We have extensive experience with money laundering investigations, and with providing liaison assistance with applicable law enforcement organizations charged with preventing money laundering.

[1] https://www.fincen.gov/news\_room/nr/pdf/20160113.pdf

# Does the Term "Work-for-Hire" Really Mean Anything in Software Development Contracts?

By Eryn Y. Truong, Esq.



The term "work-for-hire" is found in software development many contracts, but it is one of most Typically, misused phrases. companies needing certain software developed will enter into a written an independent contract with contractor and insert the magical phrase "work-for-hire," thinking it will automatically assign ownership of the intellectual property to the company. However, works created by independent contractors can constitute a "work-for-hire" only in very limited instances.

Works created by an independent contractor can constitute a "work-for-hire" only if: (1) the work is specifically ordered or commissioned; (2) the parties

expressly agree in a signed written agreement that the work shall be considered a "work-for-hire"; and (3) the work is (i) a contribution to a collective work, (ii) a part of a motion picture or other audiovisual work, (iii) a translation, (iv) a supplementary work, (v) a compilation, (vi) an instructional text, (vii) a test, (viii) answer material for a test, or (viiii) an

atlas. 17 U.S.C. §101. Obviously, software does not fit neatly under one of these nine limited categories because it was not contemplated by the Copyright Act.

Although there has not yet been a Circuit Court decision holding that software fits under these categories, a few District Courts have paved the way by holding that software programs satisfy the statutory definition because they are both "contribution to collective works" and "compilations." Indeed, a recent court decision from the Southern District of New York held that work performed by an independent contractor in creating a software program had the potential to meet the statutory definition of a "work-forhire." Stanacard. LLC v. Rubard. LLC.

12cv05176 (S.D.N.Y. February 3, 2016). Specifically, the *Stanacard* court held that the independent contractor created and combined a number of different computer programs to create the new software program which, as a whole, is a "compilation," and alternatively, the source code for each program could also be considered a contribution to the "collective work."

Therefore, until there is a Circuit Court decision holding that computer software fits under one of the enumerated nine categories to qualify as a "work-for-hire," the law remains uncertain. Companies should be aware that use of the phrase "workfor-hire" may not fully guarantee that ownership will be assigned in a software development contract. Used by itself, it could be argued that the "work-for-hire" doctrine does not apply software. Thus, for avoidance of doubt and to ensure that all works prepared by the independent contractor are assigned, the best approach is to use the "work-for-hire" recitation in conjunction with an express assignment provision.

## Entrepreneurs: These Networking Blunders Can Cost You

By Marc Alessi, Esq.



Successful entrepreneurs know that having a strong network behind them is critical. Done well, networking is hard but important work. There's no shortage of mixers, parties, meetings, and lectures to attend, and most professionals, business owners, and job seekers have no problem showing up. But too many people think they've done their job just by walking in. They pass the time by traveling in a pack with the people they came with, lingering by the food table, or checking Facebook on their phone. At the other extreme are those who interrupt conversations and make requests of VIPs without offering anything in return. And perhaps the most common category includes those who actually make meaningful connections at the event, but think their work ends when the event does.

Networking advice abounds in blogs and books, but my role as chair of our Startups practice and my own experience as an entrepreneur have given me a front row seat to some of the most common networking mistakes entrepreneurs make. A sampling of those I think are most critical:

only when 1. **Networking** you need something. The process of building a powerful network can (and should) span a career. If you don't put yourself out there until you need something, you'll just be trying to make up for lost time. At our firm, attorneys at every level even the most junior lawyers who aren't expected to bring in business yet-are encouraged to start developing their networks by attending events and joining organizations, and are armed with the funds to do so. No matter your current situation, start now.

- 2. Attending events that don't work for you. It's never a bad thing to check out a new group, and I'm always on the lookout for different ways to expand my network. But I won't waste time on events or organizations that I'm just not getting anything out of. Too many professionals keep going back to the same groups because they were a good fit for a friend or cater to people in their industry. Sometimes those things just aren't enough. I don't set a firm deadline by which my involvement needs to translate into a new client, but I frequently take stock of my activities to see if I'm building valuable connections. If not, it's time to move on.
- 3. Acting self-important. When you're in a networking situation, are you elbowing your way into conversations and talking about yourself or your business the entire time? If so, you're not alone—most people love to talk about themselves. Spin that around to your advantage by letting others do the talking and being a good listener. Based on what you've learned, consider if you have anything to offer them—for example, a contact you can introduce them to. Let the relationship grow from there. People like to return the favor when you've helped them out.
- 4. Acting like you're not important. On the flip side, there are those who act as though they don't deserve to be there or aren't good enough to rub elbows with the crowd at an event. You don't want to be too pushy or self-focused (see #3), but if you don't believe you have anything to offer, the people you're speaking to won't think so, either.
- 5. Forgetting the follow up. This mistake is perhaps the biggest—and one of the most common. Leaving an event with a stack of business cards isn't going to get you anywhere if you never follow up with those people again. A quick email or call to schedule a follow up coffee or lunch, or perhaps a meeting to introduce them to someone who would be a worthwhile connection for them, should be the next step—promptly. I also recommend connecting with the person and/or their company on social media. It seems obvious, but time and time again, I have seen clients squander valuable relationships by not putting in the effort to keep them up.

# ROADMAP TO A VALUABLE TEAMING AGREEMENT

By Edward J. Karan III, Esq.



Recently, a client inquired about forming a joint venture with another company to bid on government solicitations. While joint ventures are one vehicle, there is another option that

is often less expensive and less risky: a teaming arrangement, which is memorialized in a Teaming Agreement.

Generally, teaming arrangements are organized so that one company is the prime contractor and one or more other companies are subcontractors. The prime contractor generally interfaces with the government. The prime contractor agrees in the Teaming Agreement that if awarded the government contract, it will use the subcontractor's goods or services. Conversely, the subcontractor agrees that it will provide the goods and services at the cost proposed in the bid.

When entering into a teaming arrangement, it is vital that the Teaming Agreement cover important aspects of the parties' relationship. Here, a look at some of the most critical:

**Purpose.** Generally, a teaming arrangement should be limited to a specific government solicitation and the Teaming Agreement should expressly address that the parties are "teaming" for that limited purpose.

**Responsibilities.** The Agreement should address the division of responsibilities between the parties in the preparation of the bid. Generally, the parties are responsible for their own costs, but nonetheless this should be addressed in the Teaming Agreement. The obligations of the parties should not be assignable as the companies are teaming because of the specific goods and services that each company provides.

Defining the relationship. The Teaming Agreement should clarify that the parties are independent contractors and their relationship should not be construed to be a joint venture, partnership, or any other affiliation. Likewise, the teaming relationship should be exclusive for the particular solicitation. Neither party should have the right to participate in another "team" or

independently bid on the solicitation during the term of the Teaming Agreement or after its termination.

**Termination.** The Agreement should define the situations in which the Teaming Agreement will terminate, such as if the contract is awarded to the team, if the contract is awarded to another contractor, the government's cancellation of the solicitation, or if the government determines that one of the parties is ineligible.

Limitation of liability and indemnification. The Teaming Agreement should contain indemnification for personal injury and damage to property as well as infringement of third-party intellectual property rights. Additionally, claims of lost revenues, lost profits, and other indirect damages may be excluded by a limitation of liability clause. However, in the event that a prime contractor does not award the subcontract, the subcontractor should be protected by adding that failure to award the subcontract would be an exception to the limitation of liability for lost profits.

**Subcontract negotiations.** The Teaming Agreement may also address the subcontract negotiations, including the amount of time the parties have to execute the subcontract.

**Dispute resolution.** Dispute resolution procedures should be addressed in detail, including whether the parties will mediate, arbitrate, or be subject to the jurisdiction of a particular court.

Confidentiality. Of particular importance is the protection of confidential and proprietary information. When teaming, the parties may share sensitive information regarding their pricing structure, goods, and services. The Teaming Agreement may contain a mutual confidentiality provision or the parties may enter into a separate Confidentiality and Non-Disclosure Agreement, in which case those confidentiality obligations should be referenced in the Teaming Agreement.

Intellectual property. The Teaming Agreement should address inventions, discoveries, and improvements conceived during the term of the teaming relationship. Typically, if inventions are developed by one party, that party will retain the rights to the invention; if developed jointly, the parties will have joint ownership.

Access to premises. If either party will be performing work at the other party's premises during the teaming arrangement, the Teaming Agreement should set forth the specific rules governing that party's access to the

premises, and also provide for indemnification for personal injury or property loss.

Poorly drafted Teaming Agreements often are scrutinized in court for enforceability. As with all contracts, agreements to agree in the future are generally unenforceable. Therefore, the provisions of the Teaming Agreement cannot be vague or indefinite. The topic of enforceability of Teaming Agreements deserves its own separate treatment and will be discussed in a future article.

If you have any questions regarding a teaming arrangement or Teaming Agreements, please contact us.

## New York Joins Handful of States Guaranteeing Paid Family Leave

By Arthur Yermash, Esq. Published in the *Suffolk Lawyer* 



On April 4, Governor Andrew Cuomo signed into law an unprecedented bill establishing a state-wide paid family leave program, adding New York to the short roster of states—including California, New Jersey, and Rhode Island—that guarantee paid family leave.

The law, part of the 2016-2017 State Budget, allows workers across New York State to take paid leave (1) to bond with a new child (during the first 12 months after the child's birth or adoption or foster placement of the child with the employee); (2) to care for a family member with a serious health condition; or (3) in certain situations arising from a family member's participation in military active duty.

The law will be phased in over the course of several years. In 2018,

workers will be eligible for up to eight weeks of leave; in 2019 and 2020, up to 10 weeks; and starting in 2021, up to 12 weeks. In 2018, employees will receive 50 percent of their average weekly wages, capped at 50 percent of the statewide average weekly wage. Over the following three years, this amount will increase to 67

percent of the employee's average weekly wage, capped at 67 percent of the statewide average weekly wage.

New York's new policy covers regardless workers of their employer's size (federal FMLA for unpaid family leave applies only to employers with 50 or employees) and regardless of the employee's full-time or part-time status (FMLA leave is available only to full-time workers). Additionally, the New York paid leave program covers workers who have worked for their employers for six months or more (less than the twelve months required eligibility). **FMLA** businesses operating with just a few employees will likely be impacted the most by this law because a smaller workforce will have to absorb the work of the employee on extended leave. Businesses, especially small

businesses, are urged to plan ahead and have policies and procedures in place to seamlessly handle extended employee leave.

The actual pay received by employees while on leave will be funded by nominal employee payroll deductions. In other words. employers will not have to pay employees directly. However, employers should prepare for the administrative costs of compliance, including the drafting implementation of new policies as well as the costs stemming from employee extended absences. Despite these costs and challenges, however, advocates of the new law argue that workers who do not have to worry about affording diapers for their newborn or rushing back to work within days of childbirth, for example, will return to work as more engaged, healthy, and productive. The true impact remains to be seen.

Employers are encouraged to begin preparing for the new family leave policy before it takes effect. Please contact us with any questions and for compliance guidance.

## WHEN A CHARITABLE DONATION IS A BRIBE

By Jack Harrington, Esq. Published in the *Suffolk Lawyer* 



On September 20, 2016, Nu Skin Enterprises, Inc., a Utah-based skincare products manufacturer, agreed to pay \$765,688 to settle SEC charges that the company violated the Foreign Corrupt Practices Act ("FCPA"). In short, the

FCPA prohibits U.S. companies from bribing foreign officials to secure an improper business advantage. The DOJ and SEC have been expanding the definition of what constitutes a bribe, or, in the parlance of the statute, "something of value" offered or paid to the foreign official.

What is interesting about the Nu Skin settlement is that it is only the second time in the nearly 40-year history of the FCPA that a company has been charged based on a charitable donation. According to the SEC Order, Nu Skin's subsidiary in China transferred over \$150,000 to a charity affiliated with a high-ranking Chinese Communist Party ("CCP") official to favorably impact an ongoing investigation into the subsidiary.

In 2013, Nu Skin China had held an unauthorized promotional meeting without the requisite direct selling license and as a result the Administration of Industry and Commerce ("AIC") launched an investigation into Nu Skin China's activities. Internal documents show that Nu Skin China's employees hurriedly arranged for the charitable donation and a public ceremony at which the CCP official gave a speech praising Nu Skin China. Shortly thereafter, Nu Skin China received notice that the AIC had decided to close its investigation without charging or fining the company.

As a U.S.-based company, Nu Skin is liable for any FCPA violations committed by its overseas subsidiaries. The SEC did not charge Nu Skin under the anti-corruption provisions, but rather under Section 13(b)(2) of the Exchange Act, which requires that issuers maintain proper internal controls and accounting procedures (the so-called "Books and Records Provision" of the FCPA). The SEC Order does not allege that Nu Skin directed or even knew about the bribe by its Chinese subsidiary. Rather, Nu Skin violated the FCPA when it

included in its books and records the subsidiary's inaccurate expenditure authorization form describing the expense as a charitable donation. (Of course, had the expense authorization form contained a \$150,000 lineitem for "pretextual charitable donation to induce a Chinese official to halt a government investigation," it is safe to say that Nu Skin would have had problems beyond inaccurate bookkeeping.)

Nu Skin also appeared blind to at least one bright red flag. When the Chinese subsidiary notified its parent company that it planned to make the charitable donation, the parent advised Nu Skin China to consult with outside U.S. legal counsel based in China. The lawyers recommended that the subsidiary include anti-corruption language in the donation agreement, but the language was removed from the final version before signing. Whenever a subsidiary or counter-party affirmatively removes anti-corruption language from a contract, a company should recognize that something is wrong.

The key take-away is that not all bribes come in the form of a sack full of cash with a dollar sign on the bag. Companies operating overseas must use a wide-angle lens to determine whether their subsidiaries or third-party intermediaries are providing something of value to foreign officials beyond a prototypical bribe. There is a lot of gray area in the application of the FCPA. At corporate FCPA training sessions I am most often asked about what types of travel and entertainment expenses might constitute "something of value" under the statute, but bribes can come in many different forms.

The facts of Nu Skin are admittedly rare. In 2004, Schering-Plough paid \$500,000 to the SEC to settle similar allegations involving improper payments to a Polish charity called the Chudow Castle Foundation, which at the time was directed by a Polish government health official who influenced the purchase of the company's pharmaceuticals.

One wonders whether the Nu Skin settlement is the second aberrant spike or whether the SEC and DOJ are looking to bring more cases involving donations to charitable organizations affiliated with foreign officials. What's clear, however, is that a company needn't line a foreign official's pockets to be charged under the FCPA.

## I NEED AN ESTATE PLAN

By Martin Glass, Esq.



Well, it's a new year and everyone has made their New Year's resolutions. Hopefully one of those resolutions is to do an estate plan.

Unfortunately, historically the percentage of

resolutions that are actually carried out is fairly low. This is a resolution that I hope everyone keeps.

Just so I'm clear, I'm talking about a full estate plan, not just a Last Will and Testament. A basic estate plan typically consists of four documents. One of those is the Will, but there are others commonly known as Advance Directives. That is because they have power in advance of death, i.e., while you are still alive. They are a Power of Attorney, a Health Care Proxy, and a Living Will.

I'd like to start with the Health Care Proxy. The Health Care Proxy and Living Will are also sometimes referred to as Advance Health Care Directives. They are legal documents in which you state who can make your medical decisions and your preferences with regard to your medical treatment in the event that you are unable to make your own decisions.

Make no mistake, so long as you are competent, you will continue to make your own medical decisions. In New York, that even includes refusing any medical treatment, even if that decision may hasten your death. The problems arise when you are not competent to make your own medical decisions.

That's where the Health Care Proxy comes in. You name someone who will "stand in your shoes" and make those decisions for you. This document will allow the agent to make those decisions for you.

This document will allow the agent to make typical, daily medical decisions, such as changes to your medications or to perform (or not perform) medical procedures. The difficulty on the part of the agent is that he or she should be deciding based on what you would have wanted if you were making the decision, not what they would want. Not always an easy thing for a spouse or child.

Because of this, it is imperative that you discuss your health care preferences with your agent. I am not necessarily talking about end of life decisions but other things that may come up. For instance, do you have any problems with having blood transfusions or are you against any type of radiation treatment? Do you prefer to minimize or maximize any pain medications? Are there any doctors or facilities that you do not want to go to or have treat you? These preferences can also be written directly on the document so all the agents can know about them.

Although you can only name one agent at a time, there can be a pecking order for a number of agents. To go from one to the next the standard is "unable, unwilling or unavailable." Generally speaking, that means if the doctor or hospital is not able to locate and contact the first one on the list, they will move to the next person. That person doesn't have to be incompetent or dead. It often depends on how time critical the decision is as to how fast they move to the next person.

Also, typically on the Health Care Proxy document is a place for you to indicate that you want to be an organ or skin donor. Not checking this off does not preclude your agent from making that decision but, again, it is an indication of your desires.

This document should be kept in a safe place but readily available to the agent if the need arises. A safety deposit box at a bank is therefore not the best place for this. You may even want the agent to have the original or at least a copy. A doctor or hospital will usually accept a copy but may ask to see the original at some point in time, depending on the severity of the decisions that need to be made.

# COURT OF APPEALS RESTRICTS THE ABILITY TO CHALLENGE A SEQRA POSITIVE DECLARATION REQUIRING PREPARATION OF A DRAFT ENVIRONMENTAL IMPACT STATEMENT By Frederick Eisenbud, Esq.

If an agency such as a Town Board, Planning Board, or a Board of Zoning Appeals finds that an application before it may cause a substantial adverse impact on the environment, it is required by the State Environmental Quality Review Act ("SEQRA") to adopt a positive declaration, and require

preparation of a Draft Environmental Impact Statement ("DEIS") before it may determine the merits of the application. The immediate impact of such a determination on an applicant is that a final ruling on an application will be substantially delayed, and a great deal of money will be spent to prepare the DEIS. Prior to 2003, the lower courts fairly uniformly held that the applicant cannot challenge a SEQRA positive declaration in a CPLR Article 78 Petition because the SEQRA determination of significance was but the initial step in the decision-making process, and therefore did not give rise to a justiciable controversy.

In 2003, the Court of Appeals, permitted an Article 78 challenge to a SEQRA positive declaration. In Matter of Gordon v. Rush, 100 N.Y.2d 236 (2003), the Court established a two-part test to determine when a case is far enough along ("ripe") to permit a court to resolve the controversy. The Court held that a SEQRA positive declaration is ripe for judicial review when two requirements are satisfied. First, "the action must 'impose an obligation, deny a right or fix some legal relationship as a consummation of the administrative process'" and second, "there must be a finding that the apparent harm inflicted by the action 'may not be prevented or significantly ameliorated by further administrative action or by steps available to the complaining party." In Gordon v. Rush, a Town Board requested that the Department of Environmental Conservation serve as SEQRA lead agency, and the DEC did so. The DEC adopted a SEQRA negative declaration (meaning that the application would not have any significant adverse impact on the environment) and approved a wetlands permit requested by a property owner. The Town Board then declared itself lead agency, and issued a SEQRA positive declaration, requiring the property owner to prepare a DEIS before it would consider the request for a Town coastal erosion permit. The property owner challenged the positive declaration, and the Court of Appeals upheld its right to do so. The Court concluded that, pursuant to SEQRA's regulations, when a SEQRA lead agency after coordinated review makes a SEQRA determination of significance, it is binding on all other involved agencies that also have approval authority over the project. For that reason, the Town Board was without authority to require preparation of a DEIS.

Subsequent to *Gordon v. Rush*, there was some confusion amongst the lower courts. Some held that the case was limited to its unique facts, and continued to hold that a SEQRA positive declaration could not be challenged in an Article 78. Others found that a SEQRA positive declaration could be challenged. These courts found that the requirement that a DEIS be prepared "imposed an obligation," and that the significant delay and costs which could not be recovered could not be prevented by further administrative action or steps by the applicant.

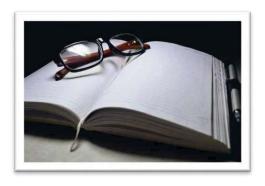
On March 31, 2016, in *Ranco Sand and Stone Corp. v. Vecchio*, the Court of Appeals clarified what was intended by its decision in *Gordon v. Rush*. There, the property owner leased a parcel of land to a private school bus company that used it as a bus yard and trucking station. Although the parcel at all times was zoned residential, the Town had not enforced residential zoning requirements. Nevertheless, in 2002, Ranco applied to rezone this parcel from residential to heavy industrial use so that the use would be made lawful. The Town Board concluded that a SEQRA positive declaration was appropriate, and that a SEQRA DEIS must be prepared.

The lower courts concluded that the case was not ripe because future actions by the Town Board could ameliorate harm to the property owner. The Court of Appeals agreed with the property owner that the obligation to prepare a DEIS imposed by the positive declaration satisfied the first part of the two-part test, but the property owner's complaint about delay and costs that could not be recovered was insufficient to satisfy the second part of the test. Such impacts arise every time there is a requirement that a DEIS be prepared, and to find them sufficient to satisfy the second part of the *Gordon v. Rush* test would render the second part of the test meaningless, the Court of Appeals ruled.

The Court of Appeals made clear that *Gordon v. Rush* did not "disrupt the understanding of appellate courts that a positive declaration imposing a DEIS requirement is usually not a final agency action, and is instead an initial step in the SEQRA process." Rather, *Gordon v. Rush* "stands for the proposition where the positive declaration appears unauthorized, it may be ripe for judicial review," such as where the action is not subject to SEQRA in the first instance (because it is a Type II action), or, as in *Gordon v. Rush*, a prior negative declaration by a lead agency following coordinated review is binding on other involved agencies.

It is established that an agency may not deny an application based solely on community opposition. The Court of Appeals decision in *Ranco Sand and Stone Corp. v. Vecchio* was fully supported by the facts. Unfortunately, one unintended outcome of the decision may be that lead agencies, such as Town Boards consisting of elected officials, may conclude that enormous public opposition to a project is best addressed by issuing a SEQRA positive declaration, hoping that the delay and cost of preparing a DEIS will cause the application to go away before a determination on the merits must be made. Should it be apparent that this is the result of the Court of Appeals decision in *Ranco Sand and Stone Corp. v. Vecchio*, the Court may have to revisit its ruling. Until then, unless a lead agency acts without authority, a mere abuse of discretion that requires an applicant to prepare a DEIS will be beyond review by the courts.

# 5 NEGOTIATION MISTAKES YOU MAY NOT KNOW YOU'RE MAKING By Joseph N. Campolo, Esq.



Don't be your own worst enemy in a negotiation.

There are plenty of things to be mindful of at the negotiating table —

wondering if you're sabotaging your own efforts shouldn't be one of them. If you recognize yourself in any of the following negotiation behaviors, try taking a step back to reassess your approach.

## Mistake #1: Underestimating your own strengths

If you head into a negotiation doubting your position and your ability to convey it, it will become a self-fulfilling prophecy. Instead of focusing on the weak aspects of your position, keep your eye on the strengths. It's important to be confident during negotiations — or at least act like it.

#### Mistake #2: Overestimating your opponent's strengths

On the flip side, try not to get flustered by the great argument or negotiating prowess your adversary supposedly has. Otherwise, you'll end up letting your adversary call all the shots while you're scrambling to keep up. Remember that your opponent is also feeling the heat of the negotiation. Don't shoulder all the pressure yourself while giving your adversary a free pass!

#### Mistake #3: Not really listening

When your adversary is speaking, do you tune out and spend the time formulating a response? Do you keep interjecting because you "know" what your adversary is going to say? If you talk through or zone out while the other side is sharing their thoughts, you've wasted the opportunity to be empathetic to their point of view and come up with workable solutions.

# Mistake #4: Letting your adversary's title get the best of you

Your adversary went to the best schools, has four advanced degrees, is CEO of a Fortune 500 company, and is the most interesting person in the room. That's great for that person – but your opponent's accomplishments, credentials, or prestige shouldn't prevent you from negotiating as you would with anyone else. You have a seat at the table for a reason.

# Mistake #5: Having a negotiation style that's too "hard" or "soft"

Some negotiators would rather walk away than make even the most minimal of concessions, just to "win" and prove a point. They will do everything they can to make their adversary uncomfortable enough to throw up their hands and give up. Other negotiators are just looking to get out of the situation and will concede anything and everything just to move things along, even to their own detriment. I believe everyone's negotiation style falls somewhere along a spectrum. If you're too far to one side, rethink your approach.

See "Seven Critical Elements of Negotiation Success" by Robert Bordone and Matthew Smith of the Harvard Negotiation Institute.

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