



Mandelbaum  
Salsburg  
*Attorneys at Law*

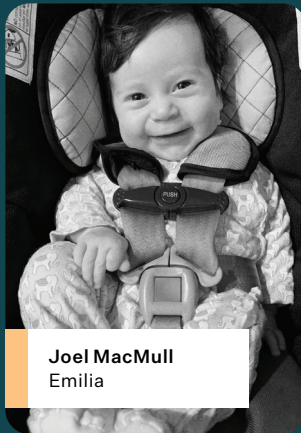
# Momentum

2021

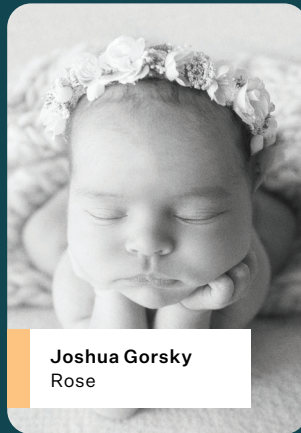
OUR YEAR IN REVIEW

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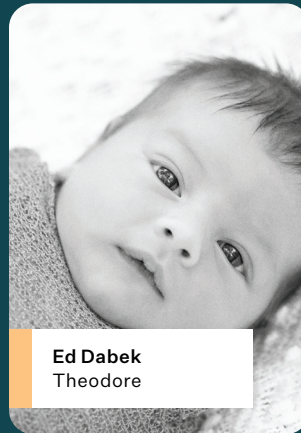
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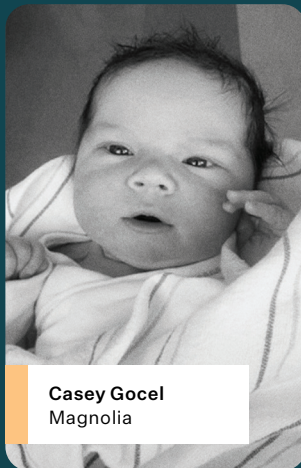
**Joel MacMull**  
Emilia



**Joshua Gorsky**  
Rose



**Ed Dabek**  
Theodore



**Casey Gocel**  
Magnolia



**Ethan Wells**  
Ellis



**Boris Pezner**  
Ariana



**Michael Bevacqua**  
Gianna



3%

Percentage of family businesses that are viable beyond the fourth generation. To see how we're helping our family business clients Lion Brand and Dandrea Produce buck the trend, turn to page 82.

15

Number of attorneys who were named to the latest edition of Thomson Reuters' Super Lawyers, a designation of distinction given to less than 2.5% of the attorneys in each state.

\$150,000

Amount of money given to recipients of the Irving Mandelbaum college scholarship since its inception. To see this year's recipients, turn to page 88.

844,490

Number of meals donated during the pandemic by our client, Metro YMCA of the Oranges. To see how we're helping New Jersey's largest Y association further its mission, turn to page 86.

1

Number of weddings officiated by our partner Peter Tanella last year – and oh, what a wedding it was! When our partner Peter Levy's daughter decided to tie the knot, Peter Tanella jumped in and officiated the ceremony in his capacity as Deputy Mayor of Cedar Grove.

\$103,000

Amount of money donated to nonprofits through our staff denim days and charitable foundation since 2020. During that time we've proudly supported Jersey Battered Women's Services, The Valerie Fund, Homeless Solutions, Boys & Girls Club of Newark, Hamp's Camp, Zufall Health Clinic, Livingston Philanthropies and many others.

8

New members of the Team Mandelbaum family born in 2020, including the beautiful additions to the families of our attorneys (to the left).

22

Number of daily pushups our partner Doug Eilender did over the course of 22 days, to raise awareness for veteran's suicide prevention.



# Building on Our Enduring History

We welcomed 15 new attorneys in the past year and promoted four from within our ranks, further enhancing our full-service capabilities.

New Attorneys

PARTNERS



Jeffrey W. Cappola, Environmental Law



Holly Gladstone, Banking & Financial Services



Alex J. Keoskey, Healthcare



Richard B. Robins, Healthcare



Brent R. Pohlman, Labor & Employment



Vincent J. Roldan, Bankruptcy & Creditors' Rights



Jordan S. Solomon, Healthcare



Robert C. Scrivo, White Collar & Criminal Defense



Jacqueline Greenberg Vogt, Construction Law

COUNSEL



Vito Colasurdo, Jr., Matrimonial & Family Law



Michael J. Lipari, Land Use & Real Estate



Boris Peyzner, Commercial & Corporate Litigation

ASSOCIATES



Ahmed H. Gadalla, Healthcare



Philip Mackson, Corporate



William Meiselas, Healthcare

PROMOTED TO PARTNER



Ryan M. Buehler, Commercial & Corporate Litigation



Lauren C. Carnevale, Real Estate

PROMOTED TO COUNSEL



Brian M. Block, Commercial & Corporate Litigation



Joshua M. Gorsky, Real Estate

# Making Headlines



Our recently announced collaboration with Aboyou & Dobbs, one of the country's premiere automotive law firms, gives our firms the ability to handle a full range of legal issues for auto dealerships across the country.



“

Looking ahead, we're likely to see many of the same challenges and opportunities as we did in this first year of the pandemic.

A NOTE FROM

## William S. Barrett & Barry R. Mandelbaum

**This was a year unlike any in our 91-year history, as the COVID-19 pandemic reshaped many aspects of the legal profession, and brought about a unique mix of adversity, opportunity and success. As we look back, it would be easy to focus on what we have temporarily lost – everything from the joy of a backyard party or a simple handshake – as well as the unfathomable number of lives that have been permanently lost.**

Instead, we choose to dedicate these pages to the memory of our partner Edward J. Albowicz, who tragically passed away this past fall at age 46. Ed was a remarkable man who enthusiastically made time for his family, clients, friends and community, and we will miss him.

The pandemic has reminded us about the value of passionately connecting with the world around us. In the pages ahead, you'll see examples of that in action. For example, beginning on Page 82 are stories that highlight the enduring power of families, including the fourth generation members of our client Dandrea Produce, the enduring power of our family business clients, Lion Brand. You'll also read about our client YMCA of the Oranges, New Jersey's largest Y Association, which is healing our communities in numerous ways.

Moreover, the pandemic has reminded us of our duty to do good, and to put thoughts into action. That's why we recently created a new paid day of service for our attorneys and staff – a move that lets us dedicate more than 1,000 hours a year to community service going forward. Throughout these pages you'll also see the ways we helped our nonprofit partners during the pandemic – including Boys & Girls Club of Newark, Isaiah House, Livingston Philanthropies, NJ LEEP, Fulfill and Employment Horizons.

Looking ahead, we're likely to see many of the same challenges and opportunities as we did in this first year of the pandemic. But experience is a powerful tool, and it's taught us how to seize the moment – both as attorneys, and as human beings. We look forward to helping you seize the moment, whenever it appears.



Barry R.  
Mandelbaum



William S.  
Barrett



## Building Momentum in the Community

The COVID-19 pandemic disproportionately affected disadvantaged communities and individuals, many of which lost access to quality healthcare, childcare, food and other critical resources. We've never been one to stand on the sidelines, so we recently took four specific actions:

### 01 | **Listening to our longtime nonprofit partners**

The members of our community service corps – Team Mandelbaum – directly engaged with nonprofit leaders to understand their specific concerns, and deliver the help they needed.

### 02 | **Creating a new paid day of service**

We created a new paid day of service, so every associate, counsel and staff member can put their passion to work in the community. Much of this service has been virtual, but when in-person opportunities resume, we expect to surpass 1,000 total hours of service each year.

### 03 | **Finding new opportunities to combat inequality**

In the middle of the pandemic, we drafted a new mission statement which emphasizes help for nonprofits which provide access to educational services, nutritional food and the legal resources necessary to navigate our justice system.

### 04 | **Deploying the resources of our charitable foundation**

Our charitable foundation also found ways to support a number of community-based organizations, including Boys & Girls Club of Newark, Metro YMCA of the Oranges, Livingston Philanthropies and Isaiah House.

Scattered throughout this book are stories about our nonprofit partners, and the specific ways we tried to make an impact. We hope they inspire you to do good as well.



### Welcoming Our Newest Partner, Holly Gladstone

Holly joined us this year from an Am Law 200 firm, bringing with her more than 20 years of experience in complex commercial, industrial and real estate finance transactions. Her commercial and industrial lending practice is primarily focused on the representation of administrative agents, banks and borrowers in senior secured credit facilities, including asset-based loans and middle market loans, as well as receivables and recurring monthly revenue financings. Holly also strengthens our ability to execute bilateral and syndicated real estate loans across the U.S., as well as New York construction loans and related New York lien law issues.

## Helping Small Businesses Access Critical Funds During the Pandemic

The Paycheck Protection Program (“PPP”), which was established by the CARES Act and implemented by the Small Business Administration (“SBA”), provided businesses with funds to pay up to eight weeks of payroll costs during the pandemic, as well as interest on mortgages, rent, and utilities. In anticipation of its passage into law, we established a team to help our clients and professional service firms navigate PPP eligibility and application requirements, anticipate the content of Interim Orders and FAQs, and prepare and submit their applications for both the first and second draws of the program. As the program continued to evolve, we regularly communicated clarifications and SBA adjustments, and explained how they impacted our clients’ applications, and their intended use for the funds. Together with our employment group, we also advised our clients on decisions to furlough and return employees, in order to be in the best position to maximize forgiveness of debt.

## Lecturing to Members of the New York Institute for Credit, and the International Factoring Association

Richard Simon was a contributing author of the *USA Legal Compendium for the Factoring Industry*, a resource compiled by the International Factoring Association (IFA), with assistance from the country’s leading commercial finance attorneys. In a series of webinars, Richard also educated New York Institute for Credit and IFA members on the PPP and Economic Injury Disaster Loans, which provided economic relief to businesses during the pandemic, as well as the pandemic’s effect on the availability and cost of credit insurance and supply chain finance.

## Representative Transactions

- We represented a national bank in a \$150 million loan to a major grocery store chain, which used the proceeds to refinance existing debt and purchase five locations from a significant New York City chain that was in bankruptcy.
- We represented a non-bank lender in a \$50 million asset-based credit facility to a digital media and advertising company with a worldwide reach. The transaction, which was collateralized primarily by the borrower’s accounts receivable and a standby letter of credit, required an analysis of the borrower’s cloud-based systems to assure that the lender had access to electronic books and records. The borrower’s various foreign joint venture agreements also had to be analyzed, and other substantial due diligence took place to review the large number of borrowing entities and holding companies in several countries.
- We represented a non-bank lender in a \$5 million asset-based credit facility, with a \$3 million accordion, to a wholesaler of nationally recognized bicycle brands. Although the borrower is based in the U.S., the transaction reached across the globe. The collateral offered by the ownership group’s Asian, African and Caribbean entities, which included broad based equity pledges, had to be reviewed and analyzed, as did the subordination of management and sales fees to affiliates and the borrower’s Asian suppliers.
- We represented a privately held finance company in a cross-border liquidation resulting in an Article 9 sale in the United States, as well as a Canadian Bankruptcy filing that resulted in an orderly liquidation of the Canadian assets and the lender being fully repaid.



Jeffrey Rosenthal



Richard Simon





Our bankruptcy attorneys saw a rise in workouts, restructurings and new cases filed early in the pandemic. In particular, hospitality businesses, automotive suppliers and retail chains all suffered, and banks moved to exit from certain industries regardless of whether their borrowers were in financial distress. As the pandemic continued, financial distress has rolled further downstream – a trend that many economists believe will continue for years to come.

## Looking to the Future

**As the federal government's PPP loans, EIDL loans and unemployment stimulus measures begin to taper off, many businesses are finding themselves in worse financial shape than they were early in the pandemic.**

Over the past year we have helped our banking, real estate, and corporate clients protect their rights and explore opportunities during the pandemic, including:

- A bidder for the assets in the Chapter 11 bankruptcy of Pier One, one of the country's largest retailers.
- A lessor of over 200 railroad cars in the Chapter 11 bankruptcy cases of Covia Holdings, a provider of diversified mineral solutions.
- A leading pet health and wellness company as major contract party in the Chapter 11 bankruptcy case of Vitalpet, a national pet hospital business.
- Several government entities, who are collectively owed over \$35 million in three separate and significant Chapter 11 bankruptcy cases.
- A regional bank with over \$4 million in claims secured by mortgages on two buildings in the chapter 11 bankruptcy cases of two affiliated debtors.
- Landlords in various Chapter 11 bankruptcy cases and wind-downs, including one in which we regained control of a New Jersey liquor license being used by one of the debtor-tenants.
- A global procurement and supply company in an out of court restructuring with its secured lender.
- A senior secured creditor in the Chapter 11 case of cybersecurity provider Log Storm Security.



Welcoming Our Newest Partner,  
**Vincent J. Roldan**

Vincent joins us from a midsize, full-service law firm in New York, where he served as co-chair of the bankruptcy practice. During his more than 21 years in practice he has represented debtors, secured creditors, committees, asset purchasers, trustees, claims purchasers and plan funders in all aspects of bankruptcy cases across the U.S. In addition, he brings deep industry experience to our bankruptcy bench, particularly in real estate, retail, consumer products and energy.

Vincent is a past president of the Filipino American Lawyers Association of New York; a founding member of the National Filipino American Lawyers Association; a founding co-chair of the Asian American Bar Association of New York's bankruptcy and restructuring committee; and a co-chair of the National Asian Pacific American Bar Association's Bankruptcy Committee. Throughout the year he spoke on several virtual panels for these organizations, where he educated attorneys, inside counsel and legal scholars on issues affecting the bankruptcy bar during COVID-19.

## Are Courts More Likely to Disallow Claims Purchased from Recipients of Avoidable Transfers?

One of the greatest advantages of the Chapter 11 process is that pre-petition debt is “frozen,” and the debtor is free from the collection efforts of creditors. During this time, creditors can sell their claims through a robust market of specialized investors, referred to as the bankruptcy claims trade.

For the creditor, the opportunity to obtain an immediate recovery and free itself from the uncertainties of the bankruptcy process can be quite attractive. For the investor, it is an opportunity to earn a profit on an undervalued asset or perhaps an opportunity to accumulate a debt position significant enough to influence the bankruptcy and increase recoveries.

But there is risk for both parties. In a bankruptcy case, the debtor in possession or the trustee has certain “avoiding” powers, which let them cancel a transfer of money or real property made during a certain period of time prior to the submission of the bankruptcy petition. When a creditor sells its claim, and that claim is subsequently disallowed because the seller received an “avoidable transfer,” there have been conflicting decisions on who should bear the risk – the claim purchaser (and likely the original creditor as a result of indemnification or repurchase obligations) or the bankruptcy estate.

In his role as coordinating editor of the *American Bankruptcy Institute Journal*, Vincent Roldan recently analyzed this issue, in light of the Southern District of New York's decision in *In Re Firestar Diamond Inc.*, which held that a claim subject to disallowance in the hands of the original claimant is also disallowable in the hands of a claim purchaser. **For more on this decision, scan this QR code with your mobile device:**





## Protecting a Wholesale Bakery against a Force Majeure Claim

Recently, one of the largest operators of U.S. airport restaurants argued that the COVID-19 pandemic triggered the use of a force majeure clause in its contract with our wholesale bakery client – and the non-payment of more than \$320,000 for already delivered bread. Our partners Steven Adler and Lauren Topelsohn successfully argued that force majeure, which allows parties to absolve contractual duties when forces beyond their control prevent performance, did not apply. Steve and Lauren subsequently secured an AAA arbitration award for the full \$320,000 due to our client, plus more than \$20,000 in pre-judgment interest.



Lauren X. Topelsohn



Steven I. Adler

## Michael A. Saffer Achieves More Than \$8 Million in Settlements, Despite Court Closures and Pandemic Limitations

One noteworthy \$5 million settlement was achieved on behalf of a Connecticut-based anesthesiology practice which sued the surgery center where it provided exclusive services. The dispute arose because a contract between the parties included a provision that gave the surgery center a say in whether the doctors could assign their contract to a third-party purchaser. After the surgery center blocked a sale of the anesthesiology practice, an arbitrator found the surgery center acted unreasonably and awarded our client \$6.7 million. When the surgery center refused to pay the award, the anesthesiology practice filed an action in Superior Court in New Haven, which confirmed the award. The surgery center then appealed, but settled the case before the appellate court ruled.

Michael and our attorneys Steven Adler, Arla Cahill and Brian Block also secured a \$3.2 million settlement in a class action suit involving account executives of a Fortune 100 company who were wrongly classified as exempt from federal overtime laws. The successful settlement followed six years of federal litigation.



Michael A. Saffer

### Focus on Alternative Dispute Resolution

## The Rise of Video Mediations and Arbitrations



Hon. Michael K. Diamond, Ret.



Hon. Paul J. Vichness, Ret.

Once the pandemic began, face to face arbitrations and mediations became unfeasible. Our retired judges quickly shifted to videoconferences, which made continuity possible but raised a host of novel issues. Here, retired New Jersey Superior Court Judges Michael K. Diamond and Paul J. Vichness share their perspectives.

There are stark differences between video-based hearings and in-person ones, and initially we were skeptical that video would get the job done. First and foremost, when parties participate from the comfort of their home, which they often do, the hearing loses an important aura of formality. We've noticed this to be true for relatively simple matters all the way up to the highest stakes situations – it's just not the same as being in a courtroom or a formal setting. In addition, the neutral arbitrator's or mediator's ability to observe the parties' posture and reactions is diminished, which makes it harder to gauge the willingness of the parties to move toward a fair resolution.



As retired judges with a combined 34 years on the bench, we'll always lean toward in-person hearings. But we believe video will be a part of the ADR process long after the pandemic is over.

That being said, there are many positive aspects of video-based alternative dispute resolution hearings, including the fact that travel and waiting time is significantly reduced, which typically results in fewer legal expenses for all parties. It's also easier to conduct video conferences with attorneys, as opposed to speaking over the phone – much more is accomplished when people don't talk over one another, which frequently happens on conference calls.

As retired judges with a combined 34 years on the bench, we'll always lean toward in-person hearings. But the video hearings we have presided over have worked out well for all participants, and we believe they will be a part of the ADR process long after the pandemic is over.



## Court Awards Broker Commission on Restaurant Sale



Our partner Lawrence Weiner successfully represented a broker who sought to obtain a commission from the seller of a New Jersey restaurant.



The seller argued that our client’s exclusive listing agreement was unenforceable as a matter of law because it violated the regulations that govern such agreements. In enforcing the agreement, the court distinguished the regulations governing termination of the agreement from the post-termination rights outlined in its “fee tail” provision. These fee tails are often used by brokers to protect their interests after an exclusive agreement’s termination. Shortly after this victory, we settled the case with our client receiving its full commission, as well as default interest and attorneys’ fees.

## Securing a Trial Win in a Contentious Partnership Dispute

Our partner Raj Gadhok successfully completed one of the first virtual trials to take place in New Jersey during the COVID-19 pandemic – a high-stakes shareholders dispute involving the ownership and operation of a group of adult day care centers in Northern New Jersey. This long-running feud between the partners, which started in 2017 and extended across multiple litigations in different courts, was finally resolved before the Superior Court of New Jersey, Bergen County, after several weeks of trial proceedings and the presentation of witnesses from New Jersey, New York and Florida. Raj obtained a major victory for our client, which included exclusive control of the company, an award of attorneys’ fees, and the dismissal of all claims for monetary relief pursued by our client’s partner.



Raj Gadhok

## Building Momentum in the Community

# Helping Students Make the Leap to College

**Underprivileged students were disproportionately left behind when schools went virtual.**

That’s just one reason we continued our support of NJ LEEP, which helps Newark area-students develop the academic and social skills they need to succeed in college. In addition to serving as mentors to NJ LEEP students, we sponsored the nonprofit’s Spring Gala and Fall Harvest.







The COVID-19 pandemic created a once in a generation set of challenges and opportunities for our business clients. Whether it was helping a new start-up take advantage of a market opportunity in sports hygiene, or helping a fifth generation family-owned business secure its future, we shepherded our clients through the pandemic with sophistication.

## Selling a Medical Equipment Provider

We advised our longtime client, a major provider of medical equipment to East Coast hospitals, in the sale of its business to a competitor with a national footprint. By acquiring our client's business, the competitor was able to establish relationships with hospital groups that had remained loyal to our client for many years. Our client also benefited from several pandemic-induced factors that led to a significantly higher sales price than it would have secured prior to the pandemic.

## Helping Athletes Say Goodbye to the Chalk Bucket

For decades, athletes and fitness enthusiasts had to reach into a communal bucket to get their grip-enabling chalk. That process was recently revolutionized by our client Char Chalk, which developed CHAR, a portable and hygienic chalk product that comes in a tube.

Our partners Casey Gocel, Joel MacMull and Barry Schwartz advised on the company's launch and early investor agreements, in addition to securing patent and trademark rights for the company's proprietary blend of activated charcoal and magnesium carbonate chalk.

## Advising on the Impact of PPP Loans in M&A Transactions

In total, Congress allocated more than \$800 billion to the Paycheck Protection Program (PPP), an SBA-backed loan that helped businesses keep their workforces employed during the COVID-19 crisis. These loans, which were available for full forgiveness, materially impacted many of our clients' M&A transactions over the past year. We worked closely with them to calculate the impact of the loan, analyze loan forgiveness eligibility, and secure the SBA approvals that allowed their transactions to proceed.



The dental industry was initially hit hard by the pandemic, as many states closed dental practices to everything but emergency services. As they reopened, our clients were inundated by a wave of regulatory, employment and safety concerns that required careful consideration. The attorneys in our National Dental Law Center spent the year guiding dentists through these issues, while successfully closing more than 50 practice transactions.

## Advising an Oral Surgery Practice on a \$40 Million Exit

We represented a 14-location oral surgery practice in California, in the sale of its business to an East Coast-based private equity firm. This transaction took advantage of our deep knowledge base across corporate, healthcare regulatory, tax, real estate, employment and ERISA. The transaction required a complex reorganization to obtain a tax efficient structure for all parties, which included the tax deferred treatment of rollover equity and the creation of incentives for the retention of surgeons and future growth. Our deal team, which was led by Bill Barrett and Casey Gocel, and included Thomas Ackermann, Daniel Barkin, Lauren Carnevale, Edward Dabek and Lindsey Priolo, also had to navigate a complex regulatory scheme and overcome substantial due diligence issues, all under intense time pressure.

## Selling a Prominent New York City Dental Practice

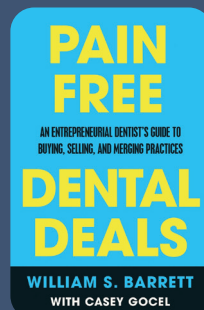
In December of 2020, we closed the sale of a high-end New York City dental practice to one of the largest DSOs in the country. Negotiations for the transaction began before COVID-19 hit, but because the practice showed remarkable resiliency – bouncing back to pre-COVID production and collection levels soon after reopening in June of 2020 – a term sheet was negotiated and signed in July 2020. Our transaction team, which consisted of Bill Barrett, Barry Schwartz, Melody Lins, Lindsey Priolo and Bari Sandler addressed a panoply of issues and documents including an asset purchase agreement, employment agreements for owners, associate dentists and practice managers, operating agreements and amendments, put rights and lease assignments and related matters.



## Our Webinars – Reaching Dentists Across the U.S.

We may have racked up less frequent flier miles last year, but Zoom helped us maintain strong connections with the industry. In total, more than 3,000 dentists attended one of our webinars last year, which covered a range of topics including PPP loan funding and forgiveness, staff furlough and employment issues, new COVID-19 safety measures, and the state of the market for sales, acquisitions, joint ventures and other practice transactions.

- Early in the pandemic, Bill Barrett and Dennis Alessi helped members of the New York County Dental Society understand the newly-issued government regulations and best practices which allowed them to safely reopen. Bill and Dennis followed that up with a similar webinar to more than 350 dentists in New Jersey.
- In June, Bill Barrett and Casey Gocel spoke about group practice formations to clients of Henry Schein.
- Bill Barrett analyzed M&A trends in the Pennsylvania market with Fortune Management's Todd King and Jon Harris, and Justin Baumann from ddsmatch. The group covered practice evaluation methods, associate buy-ins, earnouts, and the advantages of creating a DSO.
- Bill Barrett joined Fortune Management's Jon Harris, Jason Price from Crown Tenant Advisors and Matt Poppert from ddsmatch to discuss practice acquisition trends in the southeastern U.S.
- Bill Barrett helped more than 250 students in New York University's School of Dentistry understand how dental employment agreements and associate buy-ins are structured and negotiated.
- Bill Barrett, Damian Conforti and Robert Scrivo joined Dr. Joan Monaco of Horizon Blue Cross Blue Shield to discuss insurance audits and insurance billing best practices, as well as how fraud, waste and abuse concerns can affect practice valuations and sales.



### Audio & eBook Now Available

Our highly-rated book for entrepreneurial dentists, *Pain Free Dental Deals*, has recently been updated and re-released. The new edition, which is filled with practical intelligence for dentists at every phase of their career, is available as an audio or eBook. To download a complimentary copy of either, scan this QR code with your mobile device.



## Building Momentum in the Community

# Lending a Hand to Nurses on the Front Lines of the Pandemic

Early in the pandemic, thirty-four nurses arrived from Colorado to aid New Jersey medical workers, through a partnership with the Catholic Healthcare Partnership of New Jersey. With the help of our partner David Carton and his family, we supplied the nurses with care packages filled with baked goods, energy drinks, toiletries and other essential items to keep them going.





The COVID-19 pandemic created the largest disruption of education in history, affecting an estimated 1.6 billion students worldwide. Among the most disadvantaged learners were students with disabilities, whose individualized education programs (IEPs) are most effective when they're delivered in person.

On April 1, 2020, the New Jersey State Board of Education (SBOE) adopted temporary rule modifications to allow school districts and educational agencies to deliver special education and related services to students with disabilities through the use of electronic communications, virtual platforms and other means. In doing so, the SBOE emphasized that rule modifications alone would not ensure that school districts and educational agencies will meet their legal obligation to provide a free appropriate public education – they simply provided them with the flexibility to implement services during unprecedented school closures.

## Advocating for Families During the Pandemic

**Notwithstanding the SBOE's position, in the aftermath of the shutdown, students with IEPs were often left without appropriate supports and interventions that had been part of their structured and specialized in-school programs. This particularly affected students whose disability precluded them from benefiting from virtual platforms.**

Our partner Arla Cahill met virtually with many families during this unprecedented time and counseled them on the obstacles that arose in obtaining appropriate services for their children. Arla also successfully advocated for families whose districts failed to implement virtual learning instruction that was individually tailored to their child's unique educational needs, and districts that were resistant to providing students with compensatory educational service.

In one instance, Arla resolved a case that had escalated to litigation by securing financial reimbursement and continued payment for the delivery of in-home Applied Behavior Analysis therapy for a young autistic child. Without that specialized therapy, the student would have had no viable means to receive educational benefit.

## Helping Parents Navigate New Jersey's Special Education Maze

In June, Family Partners of Morris and Sussex Counties invited Arla to speak to parents about New Jersey's special education regulations and statutes, which are designed to protect students, but require families to navigate through an array of complex regulations to obtain services. Arla guided parents through this maze, including their children's rights under the Individuals with Disabilities Education Act and Section 504 of the Rehabilitation Act to enable their children to access their right to a free appropriate public education.



## Lecturing on Mental Health and Learning Loss During the Pandemic

Prolonged periods of remote learning over the past year have led to rising rates of anxiety and depression among students, who yearn to return to their normal routine, friendships and school environment. At the same time, the pandemic has led to varying degrees of learning loss for many students, despite the efforts of their parents to fill the gaps. During this unprecedented time, Arla frequently lectured about the emotional and practical sides of these issues, while guiding parents toward the services and solutions they needed for their children to succeed.



Arla Cahill

In March of 2021, JerseyCAN, a nonprofit focused on advocating for high quality schools for all New Jersey students, released a statewide study to quantify learning loss. The study entitled, “A Time to Act: COVID-19 Academic Slide in New Jersey,” found significant drops in the number of students proficient — at grade level — in English Language Arts (ELA) and Math. Compared to 2019 statewide proficiency numbers for students in grades 3-8, there is projected to be a 24 percentile point drop in ELA proficiency and a 23 percentile point drop in Math proficiency.

## Combating Learning Loss: Bridge Year and Extended School Year Programs

In June of 2020, New Jersey Governor Phil Murphy established the Bridge Year Pilot Program, which lets students in the graduating classes of 2021 and 2022 pursue a bridge year during the year immediately following their senior year of high school, in order to address learning loss and missed extracurricular opportunities as a result of the pandemic. To participate in Bridge Year, eligible students must notify their host high school’s Bridge Year liaison of their intent to participate by February 15 of their senior year.

Separately, students whose IEPs do not provide for Extended School Year (ESY) services, which help children at risk for skill regression over the summer break may now need these services. If a child’s IEP did not provide for an ESY program in prior years, parents should write to their Case Manager to schedule an IEP meeting well before the end of the school year to discuss the inclusion of ESY services.

## Building Momentum in the Community

# Helping Fulfill’s Mission in New Jersey

Throughout the month of September, the firm participated in a statewide drive to collect items for Fulfill, a nonprofit focused on alleviating hunger and building food security in New Jersey’s Monmouth and Ocean Counties. In addition to raising money for the organization, we banded together to collect cases of baby formula, diapers and personal hygiene products that were later distributed by Fulfill.





## Our elderly clients were disproportionately affected by the pandemic, as families struggled to maintain contact and ensure proper care for their loved ones.

Not only did emotional, legal and financial issues come to the forefront, but nearly 8 in 10 deaths were among people 65 and older – a profoundly sad number that included far too many of our clients. **Here are some of the unique issues that affected the elderly, and some of the creative ways we adjusted:**

- 01** Even though remote notarization is permitted in many states, it increases the chance of a challenge to an estate planning document, and witnesses are still required for documents such as Wills and Powers of Attorney. For that reason, we conducted document signings in our clients' driveways, through nursing home windows, and at a drive-up station in our Roseland parking lot.
- 02** Due to courthouse closures and staff working remotely, there have been significant delays in probating Wills, conducting hearings and receiving executed judgments. This was a significant issue because many probate cases are time sensitive and clients often want to settle estates quickly.
- 03** During the pandemic, the New Jersey Supreme Court permitted doctors and court appointed attorneys to conduct remote exams of allegedly incapacitated individuals. This enabled guardianships to proceed efficiently and cost effectively.
- 04** Since court matters are being conducted remotely, travel and waiting time has been reduced, and clients are often paying less in legal fees.
- 05** Isolation and change of routine have deeply affected seniors during the pandemic. Families have struggled to arrange for caregivers to provide in-home services due to various restrictions and fear of exposing their loved ones to danger.
- 06** The pandemic has been weaponized by some litigants in guardianship disputes, because of differing views on wearing masks and social distancing.
- 07** Due to limited visitations from family members, some vulnerable seniors have changed their Wills to benefit the child they see more often due to geography and travel restrictions. After the individual passes away, a Will contest may be initiated by the disinherited child. The pandemic's effect on the senior will become a central issue in these cases.

In Honor of

## William Hoffman



By Richard I. Miller

I became William Hoffman's court-appointed guardian 13 years ago. At the time, William was 55, had no close living family and was hospitalized due to complications associated with Parkinson's. William was a kind, introspective and religious man.

William was unable to live on his own and required the assistance of a full-time aide. He was too young and vibrant to be in a nursing home and wanted to maintain as much independence as possible. William enjoyed being alone, but also wanted to be in a town where he could walk to the organic grocery store and vegan restaurants.

After I was appointed William's guardian, I worked in conjunction with a geriatric care manager to find an apartment for William in Montclair within walking distance of the town center. We hired a live-in aide to ensure William was safe and could live as independently as possible.

William was fortunate to be the beneficiary of a charitable trust that helped fund his housing and medical costs. However, the assets were eventually depleted to the point where distributions were insufficient to cover William's expenses. We made an application to the Court to terminate the trust to access additional funds enabling William to continue living in his apartment. As William's physical condition declined, he eventually required admission to a nursing home. However, the funds accessed from the trust were used to provide William with a private aide that enhanced his quality of life.

When COVID-19 hit, William became one of the earliest victims of the pandemic and I, like so many others, was faced with making end of life decisions and funeral arrangements for a special friend.

William was a warm and loving person who never complained about the hand he was dealt. He was content in his surroundings and appreciated all the assistance he received. It was my honor and privilege to have known William and the life lessons he provided in his understated and unique way.

“

William was a warm and loving person who never complained about the hand he was dealt.

# Spotlight on Probate Litigation

## Successful Resolution of Contested Estate

We obtained a significant recovery involving the estate of a physician who committed suicide after executing a Will that left most of her estate to a maintenance worker in her condominium. The Will was prepared shortly before her death and was inconsistent with prior wills, which left the bulk of her estate to her brother and longtime friends. As we investigated, we learned the decedent had gone through a severe downward spiral which led to bizarre behavior and the loss of her medical license. The doctor developed a superficial relationship with the maintenance worker, who allegedly enabled some of her behaviors. After we commenced efforts to set aside the Will due to lack of capacity and undue influence, a favorable settlement was struck, which resulted in a significant distribution to the decedent's brother and friends, including irreplaceable family heirlooms.

## Live-In Home Health Aides: Two Sides to Every Coin

**Many seniors are fortunate to have caregivers who are committed to protecting them, however there are many caregivers who exploit the vulnerable. This was amplified during the pandemic, when a large number of seniors were quarantined with caregivers and isolated from loved ones. Here are two Will contests we worked on involving live-in health aides. In one, we represented the aide, and in the other we represented a senior's son.**

- We represented a live-in health aide who went above and beyond for the senior she cared for and even helped the senior fulfill her bucket list. The aide tried to facilitate contact between the senior and her family, but was rebuffed. The senior signed a new Will which substantially disinherited her daughter and left her house to the aide, but the daughter alleged undue influence. A favorable settlement was subsequently achieved for our client where she received the senior's house.
- In another matter, we represented a senior's son, who had a good relationship with his parents and was told he would receive their estate. Like many aging parents, they hired a live-in caregiver, to whom the father developed an emotional attachment. The caregiver exploited the father's feelings and convinced him to change the Will, leaving her one-half the estate. We filed an action to set aside the Will as a product of undue influence. The matter was favorably resolved by removing the caregiver from the house and preserving most of the estate for the son.



## Steven I. Adler Secures \$6 Million in Settlements for Sexual Assault Victims

In response to the Me Too movement, New York and New Jersey temporarily expanded their laws to allow victims to bring sexual assault claims against employers that were well beyond the applicable statutes of limitation. Our partner Steven Adler adeptly handled two of these claims, settling one matter without litigation and the other shortly after filing suit, for a combined total of more than \$6 million. “The suits were challenging because so much time had lapsed between the alleged assaults and the assertion of the claims,” Steve said. “Additionally, in one case there was very little documentation providing circumstantial evidence of the sexual assault. I was thrilled to obtain these great results for our clients.”



Steven I. Adler

## Guiding NJRHA Members Through the Early Pandemic

Restaurants, hotels and other hospitality businesses were hit particularly hard by the pandemic, as stay-at-home orders and mandatory business closings contributed to severe revenue drops and the layoffs of thousands of workers in the state. Early in the pandemic, our partner Gary Young, who serves as outside general counsel to the New Jersey Restaurant and Hospitality Association, educated the organization’s members on the Paycheck Protection Program, Economic Injury Disaster Loans and a wide range of unemployment and family leave issues that affected them and their employees.



Gary Young



## Brent R. Pohlman Joins our Labor and Employment Group

**In 2021, we strengthened our capabilities with the addition of new partner Brent Pohlman.**

Brent has extensive experience representing employers in complex civil litigation, including civil rights actions, whistleblower claims, contract disputes, wage and hour cases, and other types of employment disputes in federal and New Jersey state courts, and before the Equal Employment Opportunity Commission, the Office for Civil Rights, the New Jersey Division of Civil Rights, and the New Jersey Department of Labor. In addition, Brent helps employers develop and implement their policies and procedures, comply with labor and employment laws and regulations, and manage day-to-day issues with their workforce. In his labor practice, Brent helps employers cultivate a respectful and mutually beneficial relationship with their employee units, as he advises employers on contract negotiations, arbitration proceedings, unfair practice proceedings, grievance responses and the administration of collective bargaining agreements.



Brent R. Pohlman



### Focus on Business Immigration

## Finding and Retaining Foreign Talent

U.S. immigration laws dramatically changed during the Trump Administration, driven in part by new policies and executive orders that affected the admission of visa workers, redefined asylum eligibility rules, and added hurdles to prove “self-sufficiency” as an immigrant. In addition, the pandemic resulted in embassy closures and travel bans that delayed and prevented many would-be immigrants from obtaining visas, even when they had already been approved by U.S. Citizenship and Immigration Services. The Biden Administration has rolled back some of these policies, but delays in adjudication and pandemic-related travel issues continue to present challenges. Throughout this time, Laurie Woog has been helping our clients successfully address a range of concerns, including:

#### Securing the Correct Work Visa

There are many options businesses can consider when they’re trying to find or retain foreign-born employees, including H-1b visas for professionals, L-1 visas for intracompany transferees, E-3 visas for specialty occupation workers from Australia, TN visas for qualified Canadian and Mexican citizens, and the PERM (labor certification) process for foreign nationals seeking an employment-based green card. Each comes with different eligibility requirements, timelines and costs, which must be closely examined.

#### Securing Talent for Life Science, Healthcare and Start-Up Companies

Foreign workers fill a critical gap in the U.S. labor market –particularly in the Science, Technology, Engineering, and Math (STEM) fields. In the past year Laurie has helped many businesses file successful petitions with U.S. Citizenship and Immigration Services, which have led to physicians, engineers, computer scientists, entrepreneurs and others proving their “extraordinary ability” or their contribution to our “national interest.” In one recent case, a research lab's employee was not selected in the random H-1b lottery two years in a row, and our firm helped the client set up a nonprofit research facility to employ the talented foreign worker.

#### Assisting with I-9 Compliance

Employers must have a completed I-9 form on file to verify individuals' employment authorization. As businesses scale in size, so do these compliance requirements. Laurie frequently helps our clients review their records and compliance practices, implement best practices, conduct self-audits, understand whether a particular employee is eligible to work, and address audits by Immigration and Customs Enforcement.

#### Family Immigration

Laurie also helped employers and employees address related family immigration questions, such as how to bring over a family member from another country or naturalize them to become a U.S. citizen.



Laurie Woog

### Building Momentum in the Community

## Helping Livingston Philanthropies Expand Its Mission

Livingston Philanthropies’ founder Jeff Friedman traditionally delivers warm clothing to Newark and East Orange residents who live below the poverty line. After the pandemic hit, the nonprofit expanded its mission to provide cases of food, diapers and other essential items that were in high demand and tight supply. We pitched in by collecting these items for Jeff to distribute. Our charitable foundation also answered the call with a \$5,000 donation, so the organization could provide these essentials to families in need.





In the early days of the pandemic, there was significant uncertainty about whether environmental investigation and remediation work was considered an essential business in New Jersey.

Once the work began again, we guided clients on the New Jersey Department of Environmental Protection's rule modifications for the timing of remediating contaminated properties, while we worked to overcome the closing of NJDEP's offices, which prevented in-person file reviews and stymied environmental due diligence for transactions.

## How Alice in Wonderland Led to a \$2 Million Mercury Settlement

Our partner Gordon Duus recently negotiated a \$2 million environmental insurance policy claim, without the need for litigation. Although our client's Newark property had a clean Phase I environmental site assessment report, Gordon noticed that it mentioned hats were manufactured at the property in the 1920s. As a fan of Alice's Adventures in Wonderland, Gordon instantly remembered the Mad Hatter, whose madness was caused by the mercury frequently used in hat manufacturing. Knowing that, Gordon counseled the client to buy an environmental insurance policy, which he negotiated with the insurer. When the property buyer's due diligence discovered substantial mercury contamination, Gordon submitted a claim to the insurer, which was initially denied. After further negotiation, Gordon convinced the insurer to pay the cleanup costs. When it was determined that demolishing the existing building was the most effective way to clean up the property, and that the policy covered the cost to reconstruct a new building, the insurer paid our client the entire \$2 million policy limit.



Gordon Duus

## Leading Environmental Attorney Jeffrey Cappola Joins the Firm

In 2020, we enhanced our environmental capabilities with the addition of new partner Jeff Cappola. Widely recognized as a leader in environmental law by *Chambers USA*, *Best Lawyers* and *Super Lawyers*, Jeff has more than 25 years of experience guiding businesses and real estate developers through a full range of environmental issues.



Jeffrey Cappola

## Advising on the Environmental Aspects of Corporate Transactions

Over the past year we frequently collaborated with our corporate, real estate, banking and trusts and estates groups to address the environmental aspects of stock sales, asset purchases and commercial financings, as well as real estate purchases, sales, leases, ground leases and other types of transactions. Often times, these transactions featured complex environmental concerns, where the risks had to be properly analyzed and allocated among the parties.



Douglas Eilender

## Helping a REIT Purchase 21 Industrial Properties

We served as New Jersey environmental counsel to Cohen Asset Management, a California-based REIT, after it agreed to purchase a large industrial portfolio in northern New Jersey. We assisted with the negotiating and drafting of the purchase and sale agreement, environmental due diligence, and negotiated a purchase price reduction with regard to the remediation of certain contaminated properties in the portfolio. We also successfully completed the deal in seven months, despite the limitations caused by the pandemic.

The pandemic disproportionately affected healthcare providers, but the industry quickly demonstrated its resilience, and its ability to innovate in the face of adversity.

Our healthcare department similarly adapted, with the addition of two new partners focused on litigation, government investigations and enforcement actions, and professional licensing board matters. We also guided hundreds of physicians, dentists, medical practices, surgical centers, labs, pharmacies and other institutions through the pandemic, with creative solutions to address their corporate, tax, employment, real estate and regulatory concerns.

## Helping Doctors Take on the World's Largest Health Insurance Company

Our partners Mohamed Nabulsi and Steven Adler achieved a notable win for our client Dr. Alexander Salerno and his inner-city medical practices, in their dispute with UnitedHealthcare (“UHC”), the world’s largest health insurance company. This victory was an important one for Dr. Salerno, and all of the healthcare providers we represent.

Our first step was obtaining a federal injunction, which temporarily restrained UHC from terminating a dozen healthcare providers from a Medicare Advantage (“MA”) plan that insures tens of thousands of Medicaid and Medicare recipients in New Jersey. For some of our physician-clients, as much as 80% of their practice was made up of these at-risk patients, which they stood to lose.

After obtaining the injunction, we engaged in separate arbitrations to keep Dr. Salerno and our other clients in the plan. Despite contracts that gave UHC the right not to renew, we argued that MA regulations, which require a reason for non-renewal, superseded the contract. Moreover, we argued that the regulations require supporting data to be given to healthcare providers, so they have a meaningful right to appeal. An arbitrator agreed with our arguments, and a few days later, UHC confirmed it would not only comply with the arbitration award in favor of Dr. Salerno but also reinstate all eleven of our other clients and include them in UHC’s provider directories.



Mohamed H. Nabulsi



Steven I. Adler

## Successfully Addressing Regulatory Investigations and Actions

With the COVID-19 pandemic now receding, the New Jersey Board of Medical Examiners, along with other state and federal regulatory agencies, have significantly increased investigative activities, resulting in more adverse actions. We are currently assisting physicians and healthcare practices in navigating these actions and bringing them to a successful resolution. In addition, we are counseling medical professionals subject to adverse reporting to The National Practitioner Data Bank, audits and investigations initiated by third party payers, and professional peer review actions brought by hospitals, pursuant to their medical staff bylaws. In these situations, we have achieved successful results, while avoiding the worst consequences against a professional’s licensure and credentials.

## Focus on Restrictive Covenants

We frequently help healthcare employers draft confidentiality, non-solicitation and non-compete agreements, and enforce them against departing employees. We also represent doctors, dentists and other providers who have been unfairly restricted from competing with their ex-employers after they leave their practices.

In the past year, we achieved numerous successes for our clients. One victory involved a plastic surgeon who worked at a central New Jersey hospital, and had signed an overly broad noncompete agreement. We also successfully helped a prominent neurosurgeon in northern New Jersey get out from under a similarly oppressive non-compete agreement.

Our partners Mohamed Nabulsi and Steven Adler also provided a comprehensive overview on restrictive covenants to members of the Medical Society of New Jersey, the oldest professional society in the U.S. Mohamed and Steven covered legislative and legal trends in New Jersey, including the enforceability of restrictive covenants, as well as their impact on medical practice operations, practice sales and valuations, and competition for employees.

## Growing Our Healthcare Litigation Capabilities

To continue to address the industry's evolving concerns, our healthcare litigation practice group, under the leadership of co-chairs Mohamed Nabulsi and Steven Adler, added two new partners in the past year.

In June, Richard Robins joined us from one of New Jersey's largest law firms. Richard has more than 30 years of experience in healthcare litigation and arbitration, professional licensing board matters, government investigations and enforcement actions, and white collar matters. In addition, he frequently advises on medical and dental practice formations, new member buy-ins, and contract and employment issues.

Less than two months later, Alex Keoskey joined our practice. In addition to his two decades of healthcare experience in private practice, Alex is a former New Jersey Deputy Attorney General who defended state agencies against a diverse range of civil actions and was assigned to the Professional Boards' Prosecution Section, where he handled matters assigned by the New Jersey Board of Medical Examiners.



Alex J. Keoskey



Richard B. Robins

## Building Momentum in the Community

### Elizabeth Coalition to House the Homeless

In July, we banded together to support Elizabeth Coalition's hospitality house program, which offers transitional housing to the working poor. Together, we delivered cookware, silverware, flatware, bedding and other household staples for two families in need.





## Trademark Rights Without Use and Terminal Delay

## A Bridge Too Far



By Joel G. MacMull

**It is a well-settled principle of U.S. trademark law that to acquire trademark rights, the entity asserting those rights must first use the mark “in commerce.” This is true regardless of whether a party is relying on a trademark registered with the United States Patent and Trademark Office (“USPTO”) or not.**

The nearly 20-year old case of *Belmora LLC v. Bayer Consumer Care AG et al.*, stands to turn this fundamental legal principle on its head. The case arises out of a lawsuit brought by the pharmaceutical giant Bayer in 2014, alleging that Belmora engaged in unfair competition under the federal trademark statute. Since 2004, Belmora has sold naproxen sodium pain relievers in the U.S. under the name FLANAX, and since the 1970s, Bayer’s Mexican affiliate has sold naproxen pain relievers in Mexico and Latin America under a Mexican trademark registration for “FLANAX.” Critically, however, Bayer does not own a U.S. registration for FLANAX-branded pain relievers in this country nor does it sell this product in the U.S.

In 2005, the USPTO issued a registration to Belmora for the mark FLANAX. Then, in 2007, Bayer petitioned the USPTO to cancel Belmora’s registration, which it did in 2014. The USPTO’s Trademark Trial and Appeal Board found that despite Bayer not using the mark in the U.S., “Belmora knew that the FLANAX mark was in use in Mexico when it adopted the mark in the U.S., copied Bayer’s packaging, and ‘repeatedly invoked’ the reputation of Bayer’s product in its marketing materials.” Nearly two months later, Bayer sued Belmora in federal district court for money damages, alleging, among other things, that Belmora was liable to it for false association and false advertising in violation of the federal trademark statute.

The district court granted Belmora’s motion to dismiss Bayer’s claims based on Bayer’s admitted non-use of the mark in the U.S., but the Court of Appeals for the Fourth Circuit vacated and reversed that dismissal and remanded the case back to the district court.

On remand, Belmora answered Bayer’s complaint and later moved to dismiss Bayer’s claims on summary judgment. Belmora argued that Bayer had failed to assert its claims under the applicable statute of limitations as well as the equitable defense of laches, i.e., there was an unreasonable delay in Bayer bringing its claims. After all, Bayer had waited more than ten years from the date of Belmora’s registration of its FLANAX mark in 2004 to file suit. The district court agreed, dismissing Bayer’s claims.

Bayer again appealed to the Fourth Circuit, where, once more, the court breathed new life into Bayer’s moribund claims. Belmora, in turn, filed a petition for rehearing en banc on March 2, 2021, requesting that the entire Fourth Circuit court review the matter. Belmora argued that the Fourth Circuit failed to follow its own precedent in reversing the district court’s ruling which held Bayer’s claims were time barred, failed to follow the U.S. Supreme Court’s guidance on these issues and, in the process, further solidified an already existing split among the federal courts of appeal. The Fourth Circuit declined to rehear the matter.

A timeframe for a final determination in this case is unknown and depends upon a number of factors over which the parties have little or no control. What remains clear, however, is that the implications for the bounds of U.S. trademark law nationally, and indeed internationally, is intimately tied to a final decision in this case.

## Defending a Famous Italian Restaurant’s Trademark

Joel MacMull and Brian Block successfully defended a well-known Italian restaurant against a competitor’s attempt to modify a permanent injunction, which prohibited the competitor from selling pre-packaged food products that infringed our client’s trademark. After the competitor asserted that the COVID-19 pandemic gave it a sufficient basis to modify the longstanding injunction, a federal judge in New York denied the competitor’s motion.

## Defending a Musician’s Allegedly Disparaging Band Name

Joel is no stranger to matters before the U.S. Supreme Court. In 2017, Joel appeared before the Supreme Court in *Matal v. Tam*, where he defended musician Simon Tam’s right to register the name of his band, The Slants, with the U.S. Patent and Trademark Office (“USPTO”). Although Mr. Tam’s application was initially denied because it was deemed to be disparaging of Asians, Joel’s arguments resonated with the Justices, who unanimously held that the USPTO’s rejection of his application violated the free speech clause of the first amendment.



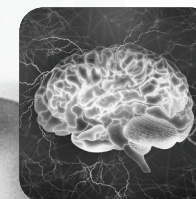
The Slants



From clinical trial to commercialization, here are three of the products we are helping our clients develop:

### Psychedelic Drugs to Combat PTSD

During the last two decades, only two medications have been approved for the treatment of posttraumatic stress disorder (PTSD), both of which have demonstrated limited efficacy. Enter the use of psychedelic drugs, which have long been thought to have therapeutic benefits. Within the past few years, two psychedelics have received breakthrough designations from the FDA, which is a process designed to expedite the development and review of promising drugs that are intended to treat a serious condition. We are currently advising a client in its exploration of the use of one of these psychedelic drugs to combat PTSD, which affects approximately 1 in 11 people in the U.S.



### Personal Ultrasound and Fetal Monitoring

Ultrasound imaging, which uses high-frequency sound waves to view inside the body, is a regular part of prenatal care in the U.S. Traditionally, women receive two ultrasounds – one to gauge the baby's due date, and a later one to confirm normal anatomy and the sex of the baby. But that number has climbed higher in recent years, especially for mothers with high-risk conditions. Our attorneys are helping our obstetrician client develop a device that makes the process easier – a small device that attaches to cell phones, and allows women to conduct personal ultrasounds and fetal monitoring, wherever they might be.



### Smart Clothing with Health Benefits

One recent trend at the intersection of fashion and health is called “well fashion” – clothes that have had their fabric or structure adapted to provide a tangible health benefit to the person wearing them. Examples of this include shirts with collagen peptides to soften and protect skin, and sleepwear with a special wicking fabric that combats night sweats. Our attorneys are helping to bring one such product to market – a brand of workout clothing for people with wounds and other skin conditions that is designed to tightly hold the wound, and keep creams or ointments in place.



## Focusing on Emerging Technologies

The FDA is the oldest, most comprehensive consumer protection agency in the country. Dating back to legislation signed in 1906 by President Teddy Roosevelt, scientists, pharmaceutical companies, healthcare facilities, and consumers have all relied on the FDA to ensure proper oversight.

Today, new products are coming to market at breakneck speed. Throughout this time, we have closely collaborated with Technical Advisory Committees and the FDA, to ensure our clients develop and deploy their advancements in a safe manner, while protecting themselves from liability and risk.

Earlier in his career, our partner Peter Levy served as the president and chief executive officer of a NASDAQ-listed pharmaceutical company. Peter leverages that experience to ensure our clients obtain approvals for pharmaceuticals and medical devices, while complying with FDA rules and other regulations. He also frequently guides clients through the process of drafting and negotiating agreements with universities and contract research organizations to ensure the fair use of clinical trial data.



Peter A. Levy





## Adding Depth to our Practice

This year we enhanced our capabilities with the addition of Vito Colasurdo, Jr., a seasoned attorney who previously worked at two leading matrimonial and family law boutiques in New Jersey, and prior to that, served as law clerk to the lead matrimonial judge in Essex County Superior Court, Hon. Michael R. Casale, Ret. Vito has also been named by *Super Lawyers* as one of New Jersey's rising stars in matrimonial and family law.



Vito Colasurdo

The pandemic caused the divorce rate to spike around the world last year, while raising a number of novel issues for divorcing parties, such as its unprecedented impact on business valuations, executive compensation, and the value of certain investment assets.

Throughout the year, we collaborated with our colleagues in corporate, employment, tax, and trusts and estates to identify and value these marital assets, and negotiate their equitable distribution. Simultaneously, we helped our clients navigate complex emotional, financial and logistical considerations brought on by the pandemic.

## Resolving Parenting Issues During the Early Pandemic

The early pandemic forced many co-parents to reflect on their time-sharing and custody arrangements, whether they were being negotiated at the time or already in place. One theme that came up frequently was differing opinions about the best way parents could protect themselves and their children from harm. These negotiations often raised questions that parents initially framed as “either-or.” For instance, is the child’s potential exposure to COVID-19 higher while in one parent’s care versus the other? Is in-person schooling safe? Can one community’s infection rate justify moving a child from one house to another? And when one parent allows playdates, does it signal a tangible threat to the other? Rather than pursuing cut and dry answers, we looked at each set of facts independently, and leaned on our experience and creativity to help parents resolve their differences.

## The New Jersey Family Division Goes Virtual

Our practice is devoted to negotiating favorable settlements for our clients, and when the adverse party frustrates that goal, using litigation to their advantage. That was more challenging in the past year, as proceedings in most divisions of the New Jersey Courts stopped or slowed significantly. Luckily, we continued with Zoom-based hearings, early settlement panels and trials in the Family Division, and we were able to quickly establish the skills necessary to advance our clients’ interests.

These proceedings raise several challenges, as attorneys are limited in their ability to discreetly talk to clients, and it is far more difficult to gauge the demeanor of a witness or judge. Similarly, a judge might have a harder time assessing someone’s credibility or body language. Notwithstanding these challenges, we adapted to this process and used it to our clients’ advantages. As we look back, two things are clear. The first is our clients benefitted due to a decrease in travel and waiting time, while we became more efficient. The second is all parties have adapted to these changes quite well, and for that reason we fully expect that videoconferencing will be an option for certain proceedings in the Family Division, long after the pandemic is over.



Lynne Strober



David Carton

## The Art and Science of Valuing Businesses During a Pandemic

**The COVID-19 pandemic has had a wide-ranging effect on small and mid-sized businesses, which represent the majority of businesses in the country.**

Some industries, such as hospitality and travel have seen double digit declines in revenue, while businesses in other industries, such as e-commerce, technology and logistics have managed to thrive during the pandemic. These varying effects, as well as the substantial uncertainty for businesses going forward, raised interesting questions for our matrimonial clients – both business owners and their spouses.

Typically, active assets such as a business are valued when a divorce complaint is filed, but this year brought about a number of exceptions to the general rule. Throughout the year we collaborated with our corporate partners and outside experts to creatively analyze items such as cash flow, EBITDA and revenue projections, as well as the impact of federally-subsidized loans and tax credits, capital infusions, and potential sales of the business. No two situations were exactly alike, but every analysis was marked by our ability to make reasonable calculations, determinations and compromises that benefitted our clients.





Left to right, Joseph J. Discenza, Ethan Wells, Joseph J. Peters, Raj Gadhok, Michael Bevacqua, Damian Conforti and Jeffrey Grabelle. Not pictured Andrew Bronsnick and Manuel R. Grova, Jr

Our attorneys have successfully resolved thousands of claims over their careers, resulting in awards of many millions of dollars to the injured parties.

### Our Certified Civil Trial Attorneys

Attorneys may be certified by the Supreme Court of New Jersey if they demonstrate sufficient levels of experience, education, knowledge and skill in a particular area; have passed a rigorous examination; and are recognized by other attorneys and judges as having sufficient skills and reputation. Our personal injury and Workers' Compensation team features two Certified Civil Trial Attorneys – Joseph Discenza and Andrew Bronsnick.

### Recent Accolades for Our Team

In the past year, our partners Joseph Peters, Andrew Bronsnick, and Michael Bevacqua were all included in prestigious lists of the top personal injury attorneys in New Jersey. Joseph Peters was named to *America's Top 100 Attorneys'* list of top trial lawyers for high-value personal injury matters, and Andrew was named to *Super Lawyers'* list of the top 100 attorneys in New Jersey for the eighth time in his career. Michael was named to New Jersey *Super Lawyers* for the second year in a row, and was also included in the list of America's Top 100 High Stakes Litigators.

### 45 Years of Exceptional Advocacy

Our attorneys Joseph Discenza and Joseph Peters both celebrate their 45th anniversary in the practice of law this year. Throughout their career, both have tirelessly advocated for personal injury victims, and have won hundreds of trial victories and settlements, including many in excess of \$1 million dollars.

In the past year, COVID-19 may have closed courts and permitted insurance companies to shift their responsibilities to injured plaintiffs, but our team of attorneys in Roseland, Metropark, Elizabeth and New York rose to the occasion with new strategies, including the successful use of virtual mediation and arbitration to secure high-value settlements.

## Securing Results Through the Pandemic

Traditionally, we relentlessly pursue justice at every turn, however the pandemic had a strong impact on many victims, so we tailored our advice accordingly. In some cases, our clients were prevented from actively participating in their case, while others had to stop treatment, or settle sooner rather than later because of their uncertain financial situation. Despite the challenges, we obtained significant trial victories and settlements.

### \$950,000 Settlement for Skateboarder Struck by Truck in NYC

Our partner, Michael Bevacqua, represented an individual who was hit by a truck while skateboarding in New York City in 2019, sustaining pelvic fractures which required open reduction, internal fixation. The settlement was negotiated and paid less than one year after the client finished treatment, despite Covid-19 related court closures and delays.

### \$525,000 Settlement for Belt Parkway Car Crash Victim

After a husband and wife were rear-ended by a car on New York City's Belt Parkway, Joseph Discenza aggressively advocated on their behalf. In the absence of in-person jury trials during the pandemic, Joe negotiated a \$525,000 settlement for the wife, who had to have cervical fusion as a result of her injuries. Joe continues to advocate for the husband as well, who also sustained injuries and has a separate case pending.

### \$435,000 Jury Verdict for Dentist Injured in Car Crash

In 2015, our client was driving his car on New Jersey's Route 80 West, when a bus swerved into his lane and caused his car to flip over several times. As a result, he sustained spinal injuries and a shoulder tear which resulted in a limited ability to work. After an eight-day trial in Passaic County, a jury awarded our client more than \$435,000, which far exceeded a pre-trial offer of \$20,000.

## Securing a Large Motor Vehicle Trial Verdict

Our partner Andrew Bronsnick secured the 11th largest motor vehicle trial verdict in the Northeast U.S. in 2020, according to American Lawyer Media's Northeast Top Verdicts and Settlements report. Overall, Andrew's victory was also the 49th largest personal injury verdict in the Northeast in 2020.

### \$250,000 Insurance Settlement for Injured Driver

Jeffrey Grabelle secured a \$250,000 policy limit settlement for a severely injured client who was struck in the rear by a motorist who carried a "basic auto policy" on the date of loss, meaning that there was no liability insurance to cover the client's injuries. As a result of the impact, the client sustained severe and permanent injuries, which resulted in a two-level fusion to her lumbar spine. Jeffrey was able to convince an insurance carrier that our client's injuries well exceeded the policy limits, and was able to recover the maximum amount allowable under her policy.

## Improper Training Leads to an Unnecessary Death

When you hire a live-in-aid, it's important that they have comprehensive training. We recently settled a case via mediation, in which a live-in-aid, who had little to no training on how to handle an emergency, let her developmentally disabled patient suffer a seizure. Rather than call for help, she waited several hours to determine if the seizure would subside – a negligent decision that caused the patient's death. While no monetary award is adequate for the loss of a loved one, we were able to provide some measure of justice for the aid's failure to act.

## Achieving Results for an Elderly Burn Victim

We recently settled a case where an elderly woman received severe burns because of negligent work performed on her apartment building. There were several failures leading to our client's injuries: the apartment building failed to hire a qualified plumber, the municipality did not issue its permit to a qualified person, an unqualified handyman negligently performed work, and neither the property manager nor municipality inspected the work effectively. This case was challenging because we had to find a responsible defendant with insurance, who was not protected by municipal immunity. Ultimately, we turned over every stone needed to achieve an excellent result.

## Securing Results on Multi-Million Dollar Wrongful Death and Survivorship Claims Under NY Scaffold Law

In an action filed by the estate of an independent contractor who sustained fatal injuries as a result of a fall from an elevated work platform, our partner Michael Bevacqua secured summary judgment as to liability under New York's Scaffold Law on multi-million dollar wrongful death and survivorship claims against the owners and managers of the property where the accident occurred.



Cybercrime is on pace to inflict \$6 trillion in damages globally in 2021. Measured as an independent economy, that would make it the world's third-largest, after the U.S. and China.

**The pandemic exacerbated this startling trend, as bad actors used phishing attacks, malware, ransomware and other tactics to profit from the country's massive shift to remote working. In addition, the pandemic disrupted supply chains and forced businesses to increasingly share data with outsourced service providers – rendering them vulnerable to a wider range of cyberattacks.**

In the past year we provided a full range of preventative and remedial compliance services to our clients. We also collaborated with cyberforensics experts to deliver risk prevention services, such as security, privacy and policy assessments, aimed at minimizing the likelihood and impact of incidents. In the case of one large healthcare provider, this collaboration uncovered a long-standing, and stealthy cyber intrusion that spanned two continents.

Our cyberforensics services also frequently uncovered situations that led to litigation for clients in the retail and service sector industries. In one matter, our deep bench of litigators successfully obtained a landmark Computer Fraud and Abuse Act decision in Federal Court in connection with an attorney's unauthorized acquisition of hundreds of patient health care records and other proprietary information. We also obtained a favorable result in a Digital Millennium Copyright Act matter, in which the trade secrets and protected health information of our client's patients were being held hostage by a managed service provider.

## New York Poised to Follow California's Consumer Privacy Lead

California's Consumer Privacy Act of 2018 (CCPA), a landmark law, gave California consumers the right to know what personal information a business collects about them, how that information is used and shared; the right to require its deletion; and the right to opt-out of the sale of that information.

The New York State legislature is poised to move forward during the 2021-22 session with similar legislation. Nearly a dozen consumer privacy bills have been proposed, including SB 567, which closely resembles the CCPA. Not only would SB 567 require covered businesses to review and revise their privacy policies, but it would also allow consumers to sue for alleged violations, including instances of technical non-compliance.

To comply with CCPA, and in anticipation of similar requirements in New York, we spent last year helping businesses develop, deploy and maintain a baseline of reasonable cybersecurity. In one example, we helped an online retailer negotiate CCPA compliance requirements with a key service provider. The negotiated terms, which were advantageous to the retailer, helped it expand its presence in the online entertainment space.

## Addressing Data Security in Remote Working Environments

2021 was an unprecedented year for remote working technology. Mobile technology and the ability to remotely access applications was a terrific convenience, but it raised a plethora of security issues for our business clients of all types and sizes. Throughout the year we helped clients implement policies that leveraged these advances consistent with best practices.

## CDPSE and CREST Certifications

Last year, our partners Steven Teppler and Lauren Topelsohn earned their Certified Data Privacy Solutions Engineer (CDPSE) certifications from ISACA, a global organization of 150,000+ professionals who work in security, governance, assurance, risk and privacy. Leveraging this certification, Steven and Lauren are helping clients assess, build and incorporate privacy solutions while enhancing business value.

Our chief information officer Tom Brennan also continued to serve as chairman and executive director of CREST USA, a not-for-profit accreditation and certification body that represents and supports the technical information security market. Working alongside advisory board members from Verizon, BT, Cisco, IBM and other stakeholders, Tom spearheads CREST USA's work with more than 250 critical infrastructure providers focused on incident response, security operations centers and penetration testing.

## Building Momentum in the Community

# Holiday Fundraisers for Isaiah House and JBWS

During the holiday season, we challenged ourselves to raise nearly \$2,500 for Isaiah House, a nonprofit that helps families and individuals who have been affected by unemployment, illness, drug addiction, teenage pregnancy and other crises. We also participated in a holiday toy drive for Jersey Battered Women's Services, a nonprofit that helps people who face the issues of intimate partner abuse.





Our real estate practice group has been advising clients on the purchase, sale, financing, development, leasing and management of real property for more than fifty years.

**The experience, practical perspectives and business acumen we bring to the table helps us efficiently execute complex transactions involving a diverse range of assets, including office, residential, retail, industrial and Brownfield properties and development sites.**

#### ADDING TO OUR REAL ESTATE BENCH

We added significant depth in the past year, with the addition of Jacqueline Greenberg Vogt, Holly Gladstone and Michael J. Lipari.

#### Jacqueline Greenberg Vogt

Jacqueline, who joined us in January 2021 from the Am Law 200 firm Greenberg Traurig, has more than 25 years of experience advising real estate owners, developers, investors, lenders and contractors throughout the entire construction lifecycle, from initial conception and project planning to contract negotiations, public bid projects, bid preparation and project delivery. She also represents clients in a wide range of construction disputes, litigates claims against surety bonds and construction insurance policies, and addresses creditor's rights and bankruptcy issues in the construction arena.

#### Holly Gladstone

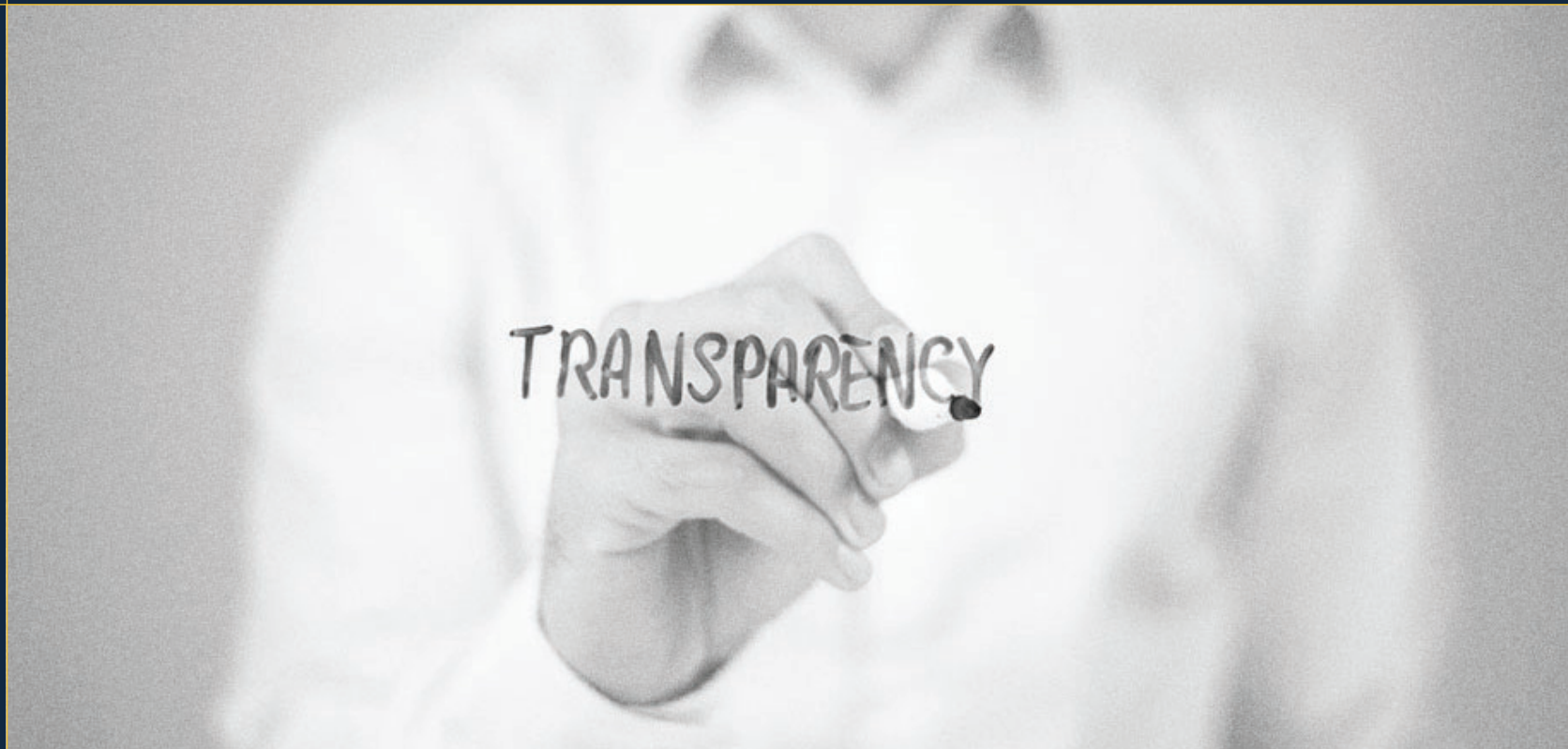
Holly, who joined us in January 2021 from the Am Law 200 firm Buchanan Ingersoll & Rooney, has more than twenty years of experience representing lenders and borrowers in complex finance transactions. In Holly's real estate finance practice, she advises clients in connection with acquisition loans, permanent loans and construction loans across the U.S., as well as construction loans in the New York market and related New York lien law issues. Holly also has extensive experience handling bilateral and syndicated real estate financings on behalf of lenders and borrowers.

#### Michael J. Lipari

Michael, who joined us in February of 2021, focuses on land use applications, entitlements and litigation, eminent domain, community association law and real estate litigation. Michael also brings practical, hands-on real estate experience to the firm. Earlier in his career, he served as project manager for a real estate development firm, as a developer appointed trustee for a large mixed-use development's homeowners association, and as president of a 400+ unit homeowners association. Michael also currently serves as redevelopment counsel for the Borough of Atlantic Highlands in Monmouth County, New Jersey, where he advises the Mayor and Council on all related matters.

#### Recent Transactions

- Our Chairman Barry R. Mandelbaum and Owen Hughes advised our longtime client, a family-owned real estate investment firm in the \$29.3 million sale of a light industrial portfolio in Runnemede, New Jersey. The portfolio, which was sold to an industrial investment fund, included four development parcels with the capacity to house 125,000 square-feet of new industrial space.
- Deborah Greene advised on the sale of the Meridia Transit Plaza, a 214-unit multifamily building in Dover, New Jersey, which was developed by our client Capodagli Property Co.
- Craig Alexander represented a prominent developer in the acquisition of a development site in Union County, New Jersey, as well as the financing and construction of a 240-unit multifamily complex, and the subsequent sale of the complex. In addition, Craig advised a prominent New Jersey real estate investment firm in a \$50 million permanent loan for a 300-unit multifamily project.
- Charles Lorber and Joshua Gorsky completed a yearlong approval process for a 50-unit apartment building in Mine Hill, New Jersey. The process, which included a request for a zoning change and a site plan application, was complicated by the fact that it was the first one filed pursuant to the Township's affordable housing settlement with the State of New Jersey. Despite the appearance of more than 25 objectors over six nights of hearings that stretched over eight months, we obtained the required approvals.
- Robin Lewis and Steven Polakoff represented a major bank in a \$50 million refinancing of two New York hotels.
- Paul Werther represented the seller of a 252-unit affordable housing building in Bayonne, New Jersey, which sold for a record \$45 million. Paul also represented the purchaser of one of the largest Portuguese bread baking companies on the East Coast with production facilities in New Jersey and Pennsylvania. In addition to handling the acquisition of the business assets, Paul advised our client in connection with acquisition, real estate and working capital financing.
- Lauren Carnevale advised our client, a 14-location, California-based oral surgery practice, on all real estate issues stemming from the sale of its business to a private equity firm.



The onset of the pandemic posed unique challenges for public companies, including those we represent on a daily basis.

Many of our clients' businesses were thrown into disarray by government ordered shutdowns, employee absenteeism and supply chain disruptions. Unlike private companies, public companies have to keep their shareholders informed, a delicate balancing act in the best of times and a perilous one in times of disruption. We worked with each of our clients to craft the correct message for their shareholders and minimize the likelihood of shareholder lawsuits.

## Keeping Lines of Communication Open

Apart from the impact on their businesses, many public companies were unable to have their auditors and management teams file reports on a timely basis. To alleviate the problems that would result from late filings, the SEC extended the deadlines for required periodic reporting. This extension was welcome, but many of our public clients still wanted to communicate with their shareholders. We worked closely with those clients to create and issue a series of press releases that provided their shareholders with the assurances they needed to hear.

## Assisting with PPP Loans and Capital Markets Transactions

During 2020 we helped several public clients obtain their PPP loans, and convert the loans into grants by properly reporting the use of proceeds.

We also helped a number of clients access the capital markets to acquire new businesses and expand their existing operations. These included a Florida-based distributor of medical products, which provides doctors with software and diagnostic tools to diagnose and treat patients with allergies, rather than referring them to specialists. In addition, we helped a client to obtain the rights to a cutting-edge hologram display system that "beams" celebrities anywhere for live interactive appearances.

Finally, we crafted flexible billing arrangements for clients that reduced the amount of early capital they needed to get off the ground. This was particularly appreciated by our client, a Rutgers University professor who is launching software to help teachers and counselors implement interventions for students who might otherwise fall behind.

## Defending Our Clients' Interests

We worked closely with our litigators to help a longstanding aerospace client defeat a claim arising out of a working capital dispute involving the sale of a subsidiary. Once the claim was overcome, the plaintiff agreed to settle the action, removing a cloud over the price of our client's publicly traded common stock. In addition, we helped our white collar and criminal defense team bring quick closure to a FINRA investigation of a securities broker, and helped a comptroller fend off an SEC claim that he inflated his company's revenue to manipulate its stock price.





Over the past year, we continued to advocate for families with special needs individuals, and helped maximize the rights and benefits available to their loved ones.

#### Recent Speaking Engagements

- Courts will frequently appoint a guardian ad litem to watch over the interests of an individual with special needs during a specific case. Our attorneys often serve in this role, in addition to lecturing on the relevant statutes, rules and case law. Recently, our attorneys Richard Miller and Shawna Brown joined two Superior Court Judges on the New Jersey State Bar Association webinar “Guardians Ad Litem: How They Work and How to Get Appointed.”
- Family Partners of Morris and Sussex Counties invited Arla Cahill to speak to parents about New Jersey’s special education regulations and statutes, which are designed to protect students, but require parents to navigate through an array of complex regulations to obtain services. Arla guided parents through this maze, including the laws that govern their children’s rights to a free appropriate public education.
- Richard Miller and Shawna Brown guided readers of Exceptional Parent Magazine through the intricacies of estate planning, government benefits, guardianships and other planning issues for their loved ones. Richard and Shawna also collaborated with the Mental Health Association of Essex and Morris, on an educational workshop about using guardianships and special needs trusts to provide lifetime care for loved ones with mental illnesses.

## A Primer on New Jersey’s Court Rules for Guardianships

**A child is emancipated in New Jersey at age 18, irrespective of the severity of disability. After that point, parents no longer have the legal right to make medical, legal, financial or personal decisions, even if the child is unable to do so. To have the legal authority to make these decisions, parents often must be appointed guardian.**

A guardianship is a formal court action initiated by filing a complaint in the Superior Court of New Jersey. While this may seem like a steep hill to climb, New Jersey modified the process in 2016, making it easier to file guardianship applications for persons who are eligible for services, or already receive services from the Division of Developmental Disabilities (DDD). Previously, a guardianship complaint required an affidavit from a physician or psychologist who personally examined the child within 30 days of filing the complaint. The revised rules extended the examination period to 6 months – making it significantly easier to comply with the time requirements.

The revised court rules also expanded the documentation that may be filed with the complaint. Previously, an affidavit from a second doctor or officer from DDD was required. Now, in lieu of additional affidavits, either a copy of an Individualized Education Program (IEP) prepared within two years, or a certification from a licensed care professional with knowledge of the child are acceptable. Since most individuals who receive or are eligible for DDD services have a current IEP, the steps required to pursue a guardianship are simpler, less expensive and more user friendly.

## Visit the Irving Mandelbaum Advocacy Room at LifeTown

For many years, we have partnered with LifeTown, a 53,000 square-foot facility in Livingston, New Jersey, which provides recreational, educational and therapeutic opportunities for individuals with special needs and their families. If you're visiting LifeTown, we encourage you to stop by the Irving Mandelbaum Advocacy Room, where you can relax while your children play, and learn more about the laws that affect them. **For more information about LifeTown's facilities, please visit [lifetown.com](http://lifetown.com).**



## Richard Miller Honored by the New Jersey Judiciary

**Our partner Richard Miller was honored at the New Jersey Judiciary's most recent Pro Bono Attorney Recognition Event, hosted by Chief Justice Stuart Rabner.**

This event recognized outstanding attorneys, including Richard, who improved the lives of state residents and supported the administration of justice. Richard was cited for his representation of several disadvantaged clients in guardianship, special needs and probate matters.



**Richard Miller**

### Related

#### SPECIAL NEEDS TRUSTS

## One Size Does Not Fit All

**Special Needs Trusts enable funds to be set aside for individuals without disqualifying them from government benefits such as SSI and Medicaid, for which an individual's resources cannot exceed \$2,000. There are two types of Special Needs Trusts, and each have different rules and consequences:**

#### Self-Settled Trust

Self-Settled Trusts are established with the funds of the individual with a disability. These funds are usually derived from a personal injury award, custodial account or the individual's own assets which were accumulated prior to disability. Most notably, a self-settled trust requires a payback provision – *i.e.* any funds remaining in the trust upon the death of the beneficiary must first be used to reimburse the State for benefits expended on behalf of the beneficiary. In addition, the Trustee must file an annual accounting with the State detailing how the funds are used. A self-settled trust must only contain assets of the individual with a disability; be for the sole benefit of the individual, and be established prior to the individual with a disability turning age 65.

#### Third-Party Trust (Supplemental Needs Trust)

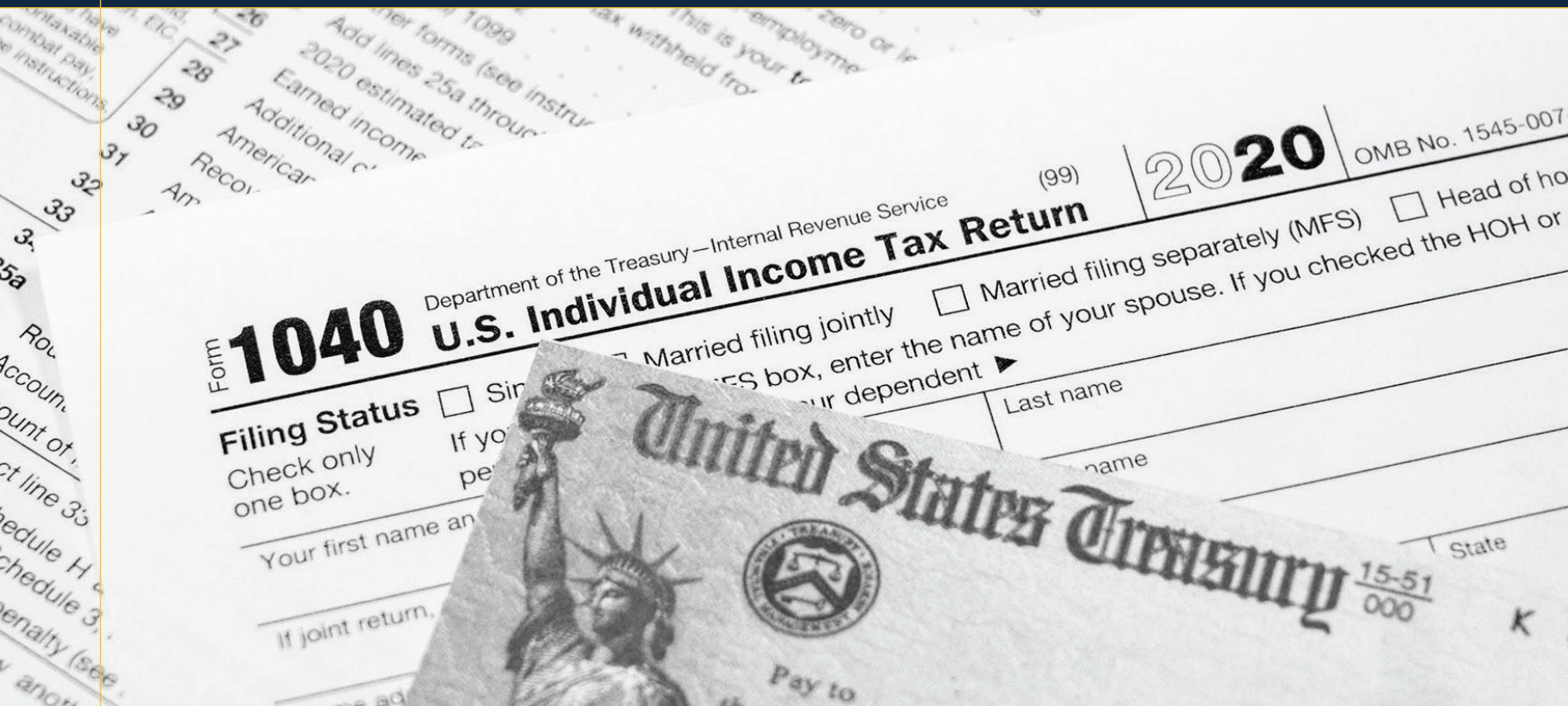
Third-Party Trusts are established with funds originating from someone other than the individual with a disability. In general, these funds are received by way of inheritance or gift from a family member. A third-party trust has none of the restrictions noted above. Any funds remaining in a third-party trust can be distributed as directed by the individual who establishes the trust. Likewise, there is no accountability to the State as to how the funds are disbursed during the lifetime of the beneficiary since no State payback is mandated. The Trust can also be established irrespective of the beneficiary's age.

### OF NOTE

## Creating a Special Needs Trust for a Developmentally Disabled Woman, Following Her Sister's Tragic Death

This particular case involved two developmentally disabled sisters, one of whom passed away following a decision by their live-in-aid to let her suffer a seizure, rather than call for help. The aid, who had little to no training on emergency situations, waited several hours to determine if the seizure would subside – a negligent decision that caused her death. While no monetary award is adequate for the loss of a loved one, we were able to provide some measure of justice for the aid's failure to act. Working closely with our personal injury litigators, we negotiated a significant settlement, the funds from which were put into a special needs trust fund to care for the surviving sister.





## Tax Planning and Transaction Structuring

**Sophisticated business and asset acquisitions and sales proceeded at a fast pace over the past year. We frequently rendered tax planning and deal structuring advice on many of these transactions, which involved unique issues and opportunities to reduce or defer tax liabilities.**

- The retirement for cash of the interest of a shareholder of a U.S. “S” corporation that owns shares of a Canadian corporation as its sole asset. After examining a number of possible structures, we concluded that all of them would be ineffective to prevent the loss of the “S” corporation’s status. Instead, we constructed an approach where the proceeds to complete the redemption transaction were generated from the “S” corporation’s sale of shares of the Canadian corporation, with the shareholders entering into tax sharing agreements and a series of temporary loans to fund disproportionate tax liabilities.
- The sale of a multi-office dental practice with multiple seller entities, where the buyer sought to acquire the operating assets, the seller needed to retain the clinical assets, rollover equity in the acquiring entity was granted to the founding dentist, and certain interests in the seller entities were retired for cash. This sophisticated structure allowed for the rollover equity to be received on a non-tax basis, and a conversion of the operating businesses to LLCs utilizing “F” reorganization structures.
- The sale and restructuring of a communications firm that resulted in tax-free rollover equity for the owners of the seller corporation, the conversion of the operating company to a Texas LLC in a tax-free “F” reorganization, and a substantial cash-out for the founders.

Our clients experienced a number of unprecedented challenges as a result of the COVID-19 pandemic, the most significant of which was the temporary shutdown of the IRS and all state taxing authorities’ offices, and subsequent delays in receiving, processing and acknowledging tax returns and payments.

In addition, the IRS suspended all in-person appellate hearings, making it difficult to move forward with important tax controversy matters, and all New Jersey Tax Court settlement conferences were long delayed or held via conference call.

## Resolving Tax Controversies

Notwithstanding the difficulties of the pandemic, our partner Martin Hauptman successfully resolved many tax controversies, including:

- 01 Settled an income tax case in the US Tax Court, including a waiver of the otherwise mandated 20% negligence penalty.
- 02 Secured an abatement of late filing penalties in a federal estate tax case and secured a \$220,000 refund.
- 03 Settled a New Jersey sales tax case including a 50% penalty reduction.
- 04 Handled a Pension Benefit Guaranty Corporation audit of a terminated defined benefit plan, which resulted in a “no change” letter.
- 05 Represented a couple before the IRS, which agreed to reduce criminal fraud charges to civil fraud claims.



Martin Hauptman

## Educating Individuals and Business Owners on the CARES Act

Given the economic uncertainty of COVID-19, the CARES Act contained a number of provisions related to retirement plans, including a key provision that let eligible individuals take up to \$100,000 in tax-favored distributions from certain accounts. After the law was passed, our partners Martin Hauptman, Gary Young and Peter Levy educated business owners and individuals on eligibility requirements, the process for requesting a distribution, tax consequences and repayment terms.

## Our 8th Annual Tax, Trust and Estate Planning Forum Goes Virtual

Our popular forum went virtual in 2020, and was attended by more than 120 clients, financial planners, accountants and professionals. During the forum, our partners Steven Holt, Martin Hauptman, Lisa Factor Fox and Peter Levy covered a range of issues relevant to businesses and individuals, including an analysis of recent estate planning trends, end of year planning strategies, potential post-election tax legislation and much more.

## Related

### What is a SLAT, and why are these irrevocable trusts increasingly being used by married couples?

At the forum, our partners discussed Spousal Lifetime Access Trusts (SLATs), a popular transfer tax savings strategy employed by married couples. A SLAT is an irrevocable trust created by one spouse, which can provide benefits for the other spouse, or discretionary benefits for the other spouse and the couple’s children and grandchildren. As the trust is irrevocable, a transfer to the trust is a taxable gift, but there is no gift tax incurred unless the value of the transferred assets exceeds the applicable estate and gift tax exemption.

SLATs have many advantages, including:

- They may afford better estate tax savings than a traditional Bypass Trust or Credit Shelter Trust under a will.
- The transferring spouse can still indirectly enjoy the transferred assets since they are available for the use and enjoyment of his or her spouse.
- Creditors of the transferring spouse have no access to the transferred assets.
- They are not highly complex to administer.
- They can be drafted to give the spouse limited or broad access – yet still remain exempt from estate tax at the spouse’s death.



Estate planners often have to be exceptionally creative to meet their clients' goals. We gave new meaning to that idea during the pandemic, as we developed unique ways for clients to execute documents that required witnesses and notaries.

Following New Jersey's new remote notarization statute, and New York's executive orders authorizing remote notarization and remote witnessing, we began holding virtual document signing sessions using Zoom. We also held meetings in backyards, driveways and parking lots; held drive-up meetings where clients merely cracked their car windows, supervised signings through glass doors and windows, and relied on our families as witnesses when our office was closed.

## Potential Changes to Federal Estate, Gift and Income Taxes

Congress, and the administration of President Joseph R. Biden are expected to usher in a number of laws that could impact federal estate, gift and income taxes. In anticipation of these expected changes, we have developed gifting programs and wealth transfer strategies that are helping our clients reduce potential estate tax liabilities, while still allowing them to use and enjoy their assets. As these changes will take time to find their way through the legislative process, we encourage you to reach out to us for timely guidance throughout the year.

## Helping a Foundation Bring Clean Water to the World

Our partner Lisa Factor Fox continued to help family foundations obtain and retain their federal and state tax exemptions. One recent success involved a family foundation that funds clean water initiatives in 33 countries. We successfully obtained a favorable IRS determination that our client's charitable organization, which was originally classified as a private foundation, could be reclassified, retroactively, as a public charity. Normally the process for changing an organization's exemption classification requires a five-year period and is not retroactive. With public charity status, our client has access to a broader range of donors and giving opportunities, as well as far fewer restrictions, excise tax exposure and compliance burdens and traps.

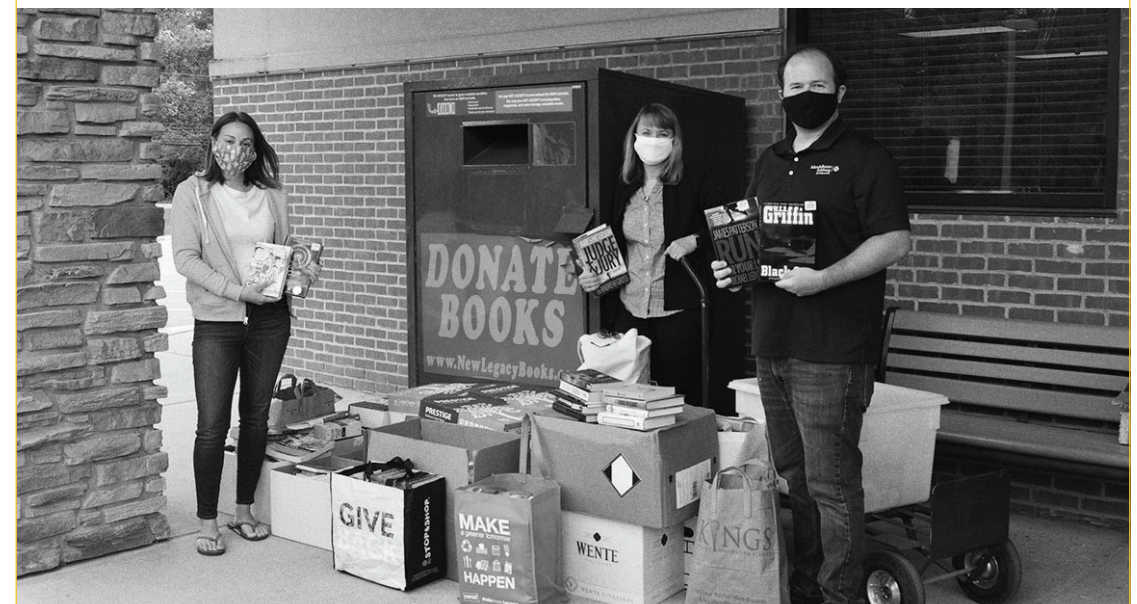


Lisa Factor Fox

## Building Momentum in the Community

# Helping Individuals with Disabilities and Other Barriers to Employment

Arla Cahill continued her work as a volunteer trustee and Vice President of Employment Horizons (EH), a nonprofit that provides vocational training and employment services for individuals with disabilities, special needs and other barriers to employment. During the pandemic, Arla's membership on EH's Executive, Planning and Fundraising Committees called for fast decisions regarding PPP funding, staff employment and business planning. Arla also contributed new ideas to address the fundraising challenges that arose during the pandemic, such as a summer movie night and virtual wine tasting. In addition, Arla spearheaded our collection of hundreds of books to support EH's book drive and the firm was a sponsor of EH's virtual "Taste of Summer" event.







The global pandemic has proven that veterinary medicine is a thriving part of our economy, as the industry has performed very well during this difficult time.

The attorneys in our National Veterinary Law Center spent the year providing veterinarians and their colleagues with the legal resources they needed to succeed. We also helped more than 50 veterinarians across the country successfully purchase and sell their practices, in addition to structuring several management services organization, which let veterinarians “partner” with non-licensed business professionals.

## Multiple California Practice Sales

Our partners Peter Tanella and Daniel Barkin counseled six veterinary practices operating throughout California in a simultaneous asset sale to United Veterinary Care. As a result of the sale, UVC boosted its West Coast presence, and our clients secured a significant equity position in UVC’s holding company. Working together across practice areas, our team handled every aspect of the transaction, including the negotiation of the purchase agreements, employment agreements, real estate leases, and escrow agreements. Negotiating restrictive covenants and right of first offer letters also played a significant role in the transaction, since our clients owned other veterinary practices throughout California that were not sold to UVC.

## Acquisitions, Start-Ups, & MSOs

In addition to advising our clients with their practice sales, our team continued to work closely with clients on numerous practice acquisitions across the country. Some of these clients became first time practice owners, while others were expanding their existing practice by adding a new location. With the industry performing so well, it is no surprise that our team continues to work with clients on structuring management services organization (MSOs). The MSO structure enables our licensed veterinary clients to “partner” with non-licensed business professionals to start-up a new practice or consummate a practice acquisition.

### OF NOTE

A management services organization adds a layer of structural complexity to a veterinary practice but offers non-veterinarians and even family members the opportunity to reap the financial rewards. **In this article, Peter Tanella delves into the key advantages of an MSO.**





## Mandelbaum Salsburg and Monarch Consulting Webinars Help Veterinarians Navigate the Practice Sale Process

Selling a practice is typically the biggest business decision a veterinarian will make. This year, our partner Peter Tanella joined Monarch Business Consulting's Chris Rocchio, DVM, for a series of webinars on the emotional, financial and legal issues that arise during the process.

To watch any of the webinars, scan the QR codes below.



**Top 10 Mistakes  
Veterinarians Make When Selling to Corporate**



**Top 10 Mistakes  
Veterinarians Make When Selling to a Private Party**



**Top 10 Mistakes  
Veterinarians Make When Selling Their Practice**

## Peter Tanella's Column in Today's Veterinary Business

Our partner Peter Tanella continued to author his quarterly Legal Lingo column in Today's Veterinary Business, a national publication focused on business issues affecting the veterinary industry. Here are a few of the issues Peter covered in the past year. **To read any of the articles in full, simply scan the QR codes below.**



### Are they employees or 1099 independent contractors?

On Jan. 6, 2021, the U.S. Department of Labor clarified the guidelines for classifying workers as independent contractors under the Fair Labor Standards Act, which among other things establishes minimum wage and overtime pay for private-sector employees. The final rule, which went into effect March 8, is important because employers now have clearer guidance when classifying workers as independent contractors.



### Why should you pay attention to arbitration provisions in employment contracts?

Many practice owners require associate veterinarians to sign employment agreements that include arbitration provisions. One reason is that arbitration is generally touted as a good way for an employer to avoid the financial risk associated with taking litigation to a jury trial. That said, arbitration is not always cheaper than a court proceeding and not all arbitration clauses are created equal.

Today's Veterinary  
**Business**

As former prosecutors and experienced criminal defense attorneys, we understand the nature of investigations and prosecutions, along with the deep emotional and financial impact they have.

**That is why we always work to avoid prosecution, and many of the investigations of our clients remain private, resulting in no charges being levied. In the event that criminal charges or regulatory enforcement actions are brought, we deliver strategic representation and mount formidable defenses that put our clients in the best position to succeed.**

## Former Assistant US Attorney Robert C. Scrivo Joins the Firm

Early in 2021, we bolstered our capabilities with the addition of Robert C. Scrivo, former Special Counsel and Assistant United States Attorney in the District of New Jersey. In that role, Robert led a task force to reduce violent crime in one of New Jersey's largest cities, prosecuted a wide variety of federal crimes, and served as the office's representative to state law enforcement agencies. Robert is an experienced counselor and advocate, who represents businesses and individuals, including licensed professionals who face regulatory enforcement actions.

## Successes for Businesses During the Pandemic

Over the past year, our collective experience led to the negotiation of several non-prosecution agreements, findings of no liability and when necessary, and favorable plea deals that limited the impact on individuals and allowed for continued corporate success. In particular, we focused on defending our closely-held, mid-cap and large corporate clients from claims of PPP loan fraud, and other allegations related to services rendered and goods sold during the COVID-19 pandemic.

## Advocating for Professionals

In the past year we continued to defend professionals targeted by regulatory, federal law enforcement and state law enforcement agencies from allegations of federal program fraud, healthcare fraud, kickback and bribery schemes and many others. For these clients, we achieved numerous successes. In one such matter, we successfully defended a broker-dealer targeted by FINRA for disciplinary action. Despite the potential loss of their license, our efforts resulted in no action taken by the agency.



Robert Scrivo



Damian Conforti

### Accolades and Recognition

- Robert Scrivo joined New Jersey Governor Phil Murphy, Senator Bob Menendez and others on ROI-NJ's list of the 30 most influential attorneys in the state.
- For the second year in a row, Morris-Essex Health & Life Magazine named Damian Conforti one of Essex County's top white collar and criminal defense attorneys.



**Dandrea Produce****Keeping Family Rooted in a Growing Business**

**Through determination, innovation and a passion for produce, the third and fourth generation members of the Dandrea family are sustaining their momentum in an industry ripe with competitive pressures.**

In 1917, Frank Dandrea founded a company that continues to honor his legacy a century later. Dandrea Produce began as a 120-acre farm in Vineland, New Jersey, providing local families with quality seasonal vegetables at a fair price. And while the company remains rooted in those same fertile acres and timeless values, Frank's descendants have transformed Dandrea Produce into a vast, vertically integrated grower and distributor that has cultivated enduring relationships with customers and suppliers around the world.

Over the years, the members of the Dandrea family have made huge strides in innovation and quality control, even as they balance a relentless work schedule due to the perishable nature of fruits and vegetables. Today, the company is led by the founder Frank Dandrea's grandsons, Steve and Frank Dandrea. They work alongside three members of the family's fourth generation: Steve's son, Peter, who heads sales; his daughter, Lauren, who manages supplier relationships; and Frank's daughter, Jana, who directs operations.

Together with more than 150 other team members, they control thousands of acres of farmland in New Jersey, Florida, North Carolina and Mexico, import produce from 15 countries, and package and transport it to 3,200 retailers in North America. In addition, Dandrea is also a leader in specialized custom packs, private label produce, and other retail solutions.

The Dandrea family believes in continual innovation. When Frank and Steve wanted to update the company's strategic business plan, they connected with our partner Peter Levy. Peter's decades of experience as a public company CEO and COO resonated with the Dandreas, as did his practical insights. Since then, Steve and the Dandrea family have frequently relied on Peter and other members of our firm.

As Dandrea's outside general counsel, Peter has quarterbacked numerous growth-focused transactions, including several major distribution agreements and a strategic investment in the company by Courchesne Larose Ltd. Peter has also handled the company's employment and real estate matters, in addition to bringing in the firm's IP team to help Dandrea Produce patent the JT1 seed, a breakthrough non-GMO tomato seed which yields a ripe, red tomato without relying on ethylene or hormone treatments.

**“** As fourth-generation members of this company, we have a responsibility to build on what's been given to us.

**Peter Dandrea, Director of Sales**  
Dandrea Produce



Whenever the Dandrea family explores new business concepts, they rely on Peter and the firm to provide incisive legal advice. In recent years, Dandrea has been on the leading edge of the "direct-to-store" model, which brings consumers fresher produce by eliminating the traditional step of warehousing inventory with third parties after receiving it from growers. Peter helped bring the idea to fruition by structuring a wholly-owned trucking company with its own distinct brand, to provide direct-to-store deliveries not only for Dandrea Produce, but other produce companies as well.

At the same time, the company is looking to ensure the food supply of the future, while protecting its greatest asset, the land. To accomplish that, Dandrea Produce worked with Peter to strike a hydroponic joint venture agreement, which will transform hundreds of acres of the family's original farm into an area that can grow produce using nutrient-rich water, all with minimal use of soil.



## Lion Brand Yarn Company

# Weaving a Plan to Preserve Family Leadership



Fewer than 3% of family-owned businesses are viable beyond the fourth generation. Here's how we're helping the fifth-generation leaders of America's oldest yarn company thread the statistical needle and sustain its impressive legacy.

Since its founding in New York City in 1878, Lion Brand Yarn Company has outlasted dozens of early competitors to become a market leader in the premium and craft yarn business, and the inspiration behind millions of knitters around the world. Whether knitters were creating mittens and mufflers in the 1930s, groovy vests in the 1960s or stylish swag in the 2000s, they remained loyal to Lion Brand as they evolved the craft.

As 2020 approached, the family-owned and operated business was continuing its significant growth under CEO David Blumenthal, and several passionate members of the family's fifth generation were already making their mark. At the same time, David, who took the mantle from his own father, knew that Lion Brand had evolved far beyond what any earlier generation could have imagined, and a new kind of specialized transition approach was necessary.

David called on Mandelbaum Salsburg partner Steven Holt, who has spent most of his 35-year career helping family businesses with complex management transitions, and tax and estate planning concerns.



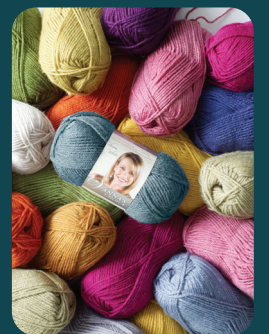
Drawing on his deep understanding of intergenerational dynamics, Steve worked with David and the other members of the fourth generation to create and execute a strategic transition plan that included:

- 01** Recruiting a talented executive with experience in consumer-packaged goods to lead the company into the fifth generation. After an eight-month search, in July 2020, Lion Brand hired Chris Mills, the former president of BIC's North American Consumer Products Division. As the company's first non-family CEO, Chris works closely with several fifth generation family members to drive the business forward.
- 02** Establishing Lion Brand's first formal board of directors that now includes non-family advisory board members, as well as members of the fourth generation who have agreed to forgo their involvement in day-to-day operations and instead advise the new CEO, assist with strategy and mentor members of the fifth generation.
- 03** Creating a new set of bylaws and a shareholder agreement, developing corporate governance procedures, and shifting David into a new role as the company's first chairman. In that role, David continues to share his immense knowledge of the yarn manufacturing industry, while also pursuing numerous philanthropic interests around the world.
- 04** Engaging an experienced corporate and leadership coach to guide the fifth generation as they work to fulfill their responsibilities and emerge successfully in their new roles.

These strategic steps are already demonstrating their value, as Lion Brand looks to build on its success in the decades ahead. Knitting also remains a colorful cultural phenomenon, as hundreds of celebrity knitters like Sarah Jessica Parker, Julia Roberts, Cameron Diaz and Vanna White – the company's spokesperson since the 1990s – help fuel interest in knitting as Lion Brand's fifth generation leaders move confidently toward the company's 150th anniversary.

“ Steve is very concise, and he doesn't speak in legalese. More important, he has no agenda other than to see the company succeed. That's why I've asked him to serve on our advisory board and help shape Lion Brand's future.

David Blumenthal





## Metropolitan YMCA of the Oranges Living Its ‘Commitment to Cause’ In the Face of a Pandemic



**For this innovative YMCA group, the coronavirus pandemic created an opportunity to showcase its deep commitment to the communities it serves.**

The Metro YMCA of the Oranges is New Jersey’s largest Y association, enhancing the lives of thousands of families, children and individuals across four of the state’s northern counties. People visit the Y to take part in a broad array

of programs, including children’s camps, fitness classes, and social and wellness programs; and for many, the Y represents a place of solace in a tumultuous world.

To support its wide-ranging programs, the Metro Y typically raises more than \$2 million a year, primarily from memberships and program fees. Meanwhile, they provide an even greater amount – about \$2.3 million – in direct financial assistance to those in need. Keeping this vital community asset mission-aligned and financially strong is Rick Gorab, who has served as President and CEO since 2005. Rick runs the Metro Y much like a for-profit business, collaborating with a board of directors, which includes our partner Peter Tanella, to develop and execute strategic plans that have yielded amazing growth and a strong balance sheet. When Rick came aboard, the Metro Y had four locations and generated \$13 million in revenue. By 2019, it had expanded to seven locations, with \$45 million in revenue.

What’s more, the Metro Y created an endowment fund – uncommon for non-profits – to build a buffer against a financial crisis, such as the one created by COVID-19 in early 2020. For the Metro Y, the pandemic initially led to widespread facility closures, employee furloughs and the cancellation of programs that normally generate the lion’s share of annual revenue. The organization’s endowment fund provided some flexibility, but Rick and the board knew that extreme creativity would be required to continue their mission.

In the midst of the pandemic, the work of the Metro Y went on. Although facilities were technically closed, a lean group of remaining staff members turned their attention to delivering the cause of the YMCA and meeting their communities’ most urgent needs. For example, teams at two locations began providing free day care services to the children of essential workers, so they could stay focused on their vital work, while other teams collaborated with the American Red Cross to host a series of blood drives, which helped to save an estimated one thousand lives.

Rick and his team also saw food insecurity quickly becoming an urgent issue locally. Again, the Metro Y got creative, partnering with 20 local grocery stores and food banks to establish food distribution centers in multiple communities. In the first six months of

the pandemic alone, the Metro Y distributed 500,000 pounds of food.

The YMCA has been called upon in many crises, conflicts, and emergencies throughout its 170-year-long history, and the Metro Y has continued to expand its services during the pandemic, while ensuring that no one is ever turned away because they can’t afford to participate. As a member of the board of directors, our partner Peter Tanella is helping the Metro Y manage its vast real estate assets, while it searches for a site to build a new location – its ninth in the region. At the same time, Rick and the board continue to find ways to increase efficiency, lower costs and improve profitability, including potential mergers and shared services agreements with other New Jersey YMCAs.

Despite the uncertainty that lies ahead, one thing is clear – the mission of the YMCA will endure, as will the Metro Y’s commitment to the communities it serves.



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Seniors love to come to the Y to connect and socialize. We saw many of them alone at home and unable to visit, so we tried to fill that gap by teaching them how to use Zoom to connect with others. Another staff member went out to a recent widows home to connect her new TV set, which was basically a lifeline for her. That’s not in anyone’s job description here, but we do it because it’s the right thing to do.

**Rick Gorab**  
President and CEO,  
Metropolitan YMCA of  
the Oranges

## Irving Mandelbaum Scholarship Fund

Mandelbaum Salsburg is committed to facilitating educational opportunities for individuals from all walks of life, including our staff members and their children. More than 20 years ago, the firm established the Irving Mandelbaum Scholarship Fund to further that mission. Since then, the fund has disbursed more than \$150,000 to help defray the cost of higher education.

Here we salute our most recent scholarship recipients, all of whom are passionately advancing their careers.

### Luis Mercado

Desktop support manager

### Maeve McGinley

Daughter of our accounting clerk Jen McGinley

### Joshua Rodriguez

Son of our paralegal Christina Rodriguez

### Krystal Soares

Daughter of our paralegal Lucia Krietzberg

### Desire'e Angel Pasqua

Daughter of our paralegal Donna Forbes



Irving & Barry Mandelbaum

