MANDELBAUM SALSBURG

Attorneys at Law

View From The Bar

Spring 2013

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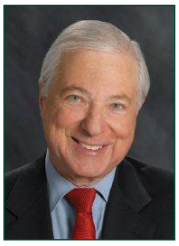
Working TOGETHER
Going the Distance for you

A Message from the Chairman



In 1961, fresh out of law school, I joined my father at his office at the Broad & Market building in Newark. He had opened his practice at the building in 1930. Hence, 2013 marks the 83rd year of the Mandelbaum Salsburg law firm.

On my first day, my father said to me, "Please remember that clients want to know you care before they want to know how much you know." I have carried that philosophy with me since that day. I have imparted it to each and every attorney at Mandelbaum Salsburg, and I believe that we live by it and practice it every day.

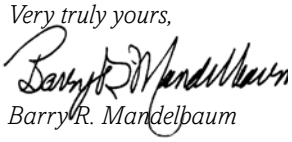
In the last two years, new frontiers have opened at Mandelbaum Salsburg with the arrival of knowledgeable attorneys experienced in areas of the law new to us.

At the beginning of last year, Gordon Duus arrived with a statewide reputation for his knowledge and experience in environmental law. Next came Jon Fallon, who started our intellectual property practice, which has already grown in size and expanded our practice into patent law. Bill Turok, who practices in the area of life sciences, securities and corporate law, joined from one of New Jersey's largest law firms. Ed Heyburn was added to our Metropark office, fresh off of a $1 million verdict in a personal injury case. Last year also saw the arrival of Michael Kalmus, who concentrates in wage and hour and disability matters. At the beginning of 2013, Steve Adler, an experienced employment litigator, joined us from one of the ten largest law firms in New Jersey, where he headed its employment department.

We survived the last three months of 2012, during which our tax and trust and estate attorneys worked literally around the clock to address clients' gift and estate planning needs. Fortunately, they have recovered from their exhausting, but rewarding, work.

We are indeed looking forward to introducing our new colleagues – and our new capabilities – to our clients. I want to thank all of our very loyal clients for making 2012 one of our best years ever.

Very truly yours,



Barry R. Mandelbaum

Want to Reduce Your Company's Health Insurance Premiums? Try a Wellness Program

By Dennis J. Alessi

A major problem with our healthcare system is that it generally provides care only after a patient becomes acutely ill. Acute care, almost always in a hospital, is far more costly than preventive care, in terms of healthcare dollars paid by insurance carriers and premiums paid by employers and employees.

In the later 1990s, with the Healthcare Insurance Portability and Accountability Act (HIPAA), federal law took the first baby steps towards reforming the nation's healthcare system to emphasize preventive care. Preventive care encourages healthy lifestyles, screening and diagnostic testing to alert individuals to the early signs of diseases/illnesses, so that less costly preventive care can be taken before acute care intervention is required, with its ever-skyrocketing costs.

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WISP – What Is It – Why Have One?

By Richard Simon

Have you considered implementing a written information security plan, or WISP? A WISP is intended to establish a set of comprehensive best practices to protect personal information of individuals, including customers and employees from unauthorized access or use, as well as to provide legally compliant notification procedures when a security breach has occurred.

Until recently, timely notification to affected individuals was the principal legal focus. In 2010 Massachusetts adopted Regulation Standards for the Protection of Personal information of Residents of the Commonwealth ("Regulation"), which for the first time established minimum standards for safeguarding personal information regardless of its format (1) to insure security and confidentiality of personal information in a manner consistent with industry standards, and (2) to protect against anticipated threats to the security of such information and unauthorized access or use of the information to the substantial harm or inconvenience to any consumer. The Regulation requires covered persons to develop, implement and maintain a comprehensive WISP that provides administrative, technical and physical safeguards, as well as ongoing employee training.

Regardless of whether or not your business will be subject to present or future data security laws, sound competitive business practices nonetheless necessitate that you take heed and develop a WISP.

The Regulation allows for substantial fines for non-compliance. One Boston restaurant accepted a $110,000 fine to resolve claims by the Attorney General that the restaurant credit card processing procedures "failed to take reasonable steps to protect its patron's personal information..."

By its terms, the Regulation reaches businesses who have no contact with Massachusetts but that nonetheless maintain personal information records of Massachusetts residents. Arguably, Massachusetts could assert jurisdiction over a business in another state that accepts online orders from a Massachusetts resident, or a small restaurant or bed and breakfast in Cape May that accepts a credit card payment from a Massachusetts' resident.

Additional state and federal laws of similar scope will likely be enacted. Three draft bills, including The Data Security and Breach Notification Act of 2012, are presently pending before Congress. Each would require businesses to take data security measures to reasonably secure data containing personal information.

Regardless of whether or not your business will be subject to present or future data security laws, sound competitive business practices nonetheless necessitate that you take heed and develop a WISP. At an accelerated rate, the customers that each of us depends upon for our business are implementing comprehensive written information security programs, both to comply with existing laws and to avoid the negative publicity and financial consequences that would result from a personal information data security breach. Financial institutions, insurance companies and other regulated industries, as well as large retailers and national consumer service providers, have determined that their vendors' lack of data security procedures and protections has been the source of their embarrassing and costly security breaches. The vendor, who fails to implement procedures to protect personal information, ignores updating anti-virus software, or fails to properly dispose of personal information, creates black holes in the customer's comprehensive efforts at data security.

The comprehensive nature of the information security plans prepared and implemented by larger businesses now include confirmation that its vendors exercise best practices in securing personal information and other sensitive data. A vendor who does not develop and implement a WISP may soon fail to qualify to do business with a business prospect, or be removed as an approved vendor.

The development and implementation of a WISP is a collaborative effort amongst the business, its data security consultant and legal counsel. Neither the law nor the forces of business competition require a business to install and implement across-the-board best practices overnight. Rather, the process contemplates assessment of existing administrative, technical and physical security measures, evaluation of what modifications and changes are required to attain best practices and the preparation of a plan of implementation over a reasonable period of time that

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What New Jersey Limited Liability Companies Need to Know About the New Limited Liability Company Law

By William Turok

On March 18, 2013, New Jersey's newly enacted Revised Uniform Limited Liability Company Act (the "Revised LLC Act") took effect for limited liability companies formed after that date. In March 2014, the Revised LLC Act takes effect for all limited liability companies already in existence. The Revised LLC Act is intended to update and modernize the laws governing LLCs in New Jersey, and will repeal and replace New Jersey's existing LLC Act completely by April 2014.

Some of the more significant changes to the existing law that you should be aware of are:

- *Duration.* The Revised LLC Act provides that LLCs will be presumed to have perpetual duration, unless otherwise specified in an operating agreement.
- *Operating Agreement.* Under the Revised LLC Act, operating agreements will no longer be required to be written in order to be effective. Under the new law, operating agreements may be oral, written or implied.
- *Distributions and Allocations.* Under the Revised LLC Act, unless otherwise agreed, allocations and distributions of profits and losses will be on a per capita basis, regardless of the agreed value of a member's contributions to the LLC.
- *Voting.* Unless otherwise provided in the operating agreement, under the Revised LLC Act, day-to-day matters will be decided by a majority vote of the members, with each member having one vote regardless of the value of such member's contribution, and extraordinary matters are decided unanimously by all members.
- *Statement of Authority.* The Revised LLC Act clarifies that a member is not an agent of the LLC solely by reason of membership, and provides for the use of a public filing to provide notice to third parties of the specific authority of an individual.
- *Fiduciary Duties.* Unlike the current law, which is silent on the matter, the Revised LLC Act imposes fiduciary duties of care and loyalty and an obligation of good faith and fair dealing. However, an LLC's operating agreement may restrict or eliminate certain aspects of these duties, so long as the result is not "manifestly unreasonable."
- *Indemnification.* Under the Revised LLC Act, LLCs are required to hold harmless their members, managers, officers, agents and employees under certain specific circumstances. However, under the new law, LLCs are permitted to alter or eliminate many of these indemnification obligations in an operating agreement.
- *Oppression.* The Revised LLC Act contains a "minority oppression" provision that allows a member to apply to a court for an order dissolving the LLC based upon illegal, fraudulent or oppressive action causing direct harm to a member.
- *Resignation, Withdrawal.* Under the Revised LLC Act, a withdrawing member is no longer entitled to receive the fair value of their LLC interest at the time of withdrawal. Instead, a withdrawing member is "dissociated" and only retains the economic rights of an interest holder.

The Revised LLC Act is intended to update and modernize the laws governing LLCs in New Jersey, and will repeal and replace New Jersey's existing LLC Act completely by April 2014.

If you are a member or manager of a New Jersey limited liability company, you should seriously consider conducting an audit of your company's operating agreement. It is likely that revisions will be necessary in light of the enactment of the Revised LLC Act. If you have an existing New Jersey LLC without an operating agreement, you should consider adopting one well in advance of March 2014 (the earlier, the better).

William Turok is the chairman of the Life Sciences Practice Group and is a member of the Firm's Corporate Practice Group. He can be reached at wturok@msgld.com.

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WISP – What It Is – Why Have One?

takes into consideration the risk and the means and costs of mitigation, as well as employee education and training. Clearly, there are costs associated with the development and implementation of a WISP. However, dependent on numerous factors, the costs of full implementation can be staggered over a period of time.

If you have any questions regarding written information security programs or how to start the process of development and implementation, contact Richard Simon at rsimon@msgld.com.

Non-Disclosure Agreement: The Most Valuable Contract Your Company May Ever Sign

By Jon Fallon

There is probably no agreement that is more widely known or more frequently negotiated across all industries than a Non-Disclosure Agreement, or NDA for short. While it may sometimes take on a different title, such as "Confidentiality Agreement," "Secrecy Agreement" or the like, an NDA is a must for nearly every business transaction into which your company may ever enter.

An NDA serves four primary purposes: (1) to protect intellectual property, (2) to express an affirmative commitment to protect company assets, (3) to protect strategic non-public business information or trade secrets, and (4) to provide a company a defensible position from allegations of misappropriation of the non-public information of others. While it is not uncommon for business owners to have doubts as to whether these issues are applicable to a particular relationship, a properly drafted NDA protects a business from unforeseeable and/or unlikely issues that may arise, as well as those that are apparent from the start.

Focusing on the protection of intellectual property, which is the most common use of NDAs, it is appreciated that nearly all companies make some type of investment in personnel and technology. In the fast-moving world of business, each day may bring a new invention, a new product or process, new know-how, a new trade secret or other new proprietary development. For one reason or another, a majority of businesses do not apply for or register their intellectual property with the applicable government authorities, or due to the nature of the intellectual property, secrecy is frequently desirable until the new technology can be improved or perfected.

In many countries, public or non-confidential disclosure of a patentable invention prior to filing a patent application may forever disqualify the applicant from obtaining a patent. Thus, in situations where a third-party vendor (e.g., a supplier, manufacturer, etc.) is necessary to assist in an aspect of the development of the invention, failure to engage such vendor in an NDA prior to discussions regarding the invention may result in spoliation of patentability.

In similar situations involving non-patentable subject matter (e.g., a database of customer information), a business's only means to protect its intellectual property may be the preservation of secrecy surrounding the content thereof. In the case of a customer list, for example, unintentional disclosure or improper misappropriation of such a list to a competitor may expose the business to a significant risk of harm. However, unless the business can show it took affirmative steps to maintain the customer list's secrecy, even improper disclosure of the information may have no recourse. Thus, maintaining NDA's with all employees and non-employees, such as outside IT companies, who may have access to such a list or database is obligatory, if the business wishes to have recourse against misappropriation.

The most common mistake made by businesses that are mindful to utilize NDAs as often as possible is to utilize a generic NDA found on the Internet or from one of their vendors that they adopted for themselves. The failure to have a proper general mutual NDA drafted for their specific business needs may result in the exposure of one or more areas of the business not being covered by the scope of the confidentiality.

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Moreover, most generic NDAs found on the Internet are not drafted for a particular legal jurisdiction, and thus, may be missing requisite terms necessary to ensure the NDA would stand up to a challenge in a courtroom. In fact, the most common basis for invalidating an NDA is the failure of the NDA to include the necessary exclusions to confidentiality, which is the antithesis of the intent of the NDA in the first place.

In sum, a proper NDA may be the difference between watching your business succeed and thrive as a result of its competitive advantages, and watching your competitors capitalize on your efforts due to lack of protectability or exclusivity in the marketplace.

If you have any questions regarding NDAs or how to protect your business's intellectual property, please contact Jon Fallon at jfallon@msgld.com.

Mandelbaum Salsburg Representing the Seriously Injured

Joseph J. Peters

Joseph J. Discenza

Mandelbaum Salsburg's Personal Injury practice, based in the Edison office, is headed by Joseph Discenza, a Certified Civil Trial Attorney, and Joseph Peters, who have a combined total of more than 65 years of experience representing individuals who have been injured in accidents. Discenza and Peters, who have both been recognized as New Jersey Super Lawyers, are advocates for people's rights and work to ensure that the proper outcome of a case is attained, no matter the situation.

The Personal Injury practice represents individuals and their families who have been seriously or fatally injured as a result of the negligence or wrongful conduct of others. Our attorneys understand how insurance companies and defense lawyers think. Insurance companies are interested in minimizing their economic exposure when a serious injury or death has occurred. They hire defense attorneys to aggressively undermine each aspect of the claim. Our firm takes each case on as if it will proceed to trial, and we are not afraid to take a case all the way to a jury verdict – if that is what is necessary to produce the best possible result.

Our firm has resolved numerous claims, resulting in millions of dollars to the injured party/parties. Just recently, we represented a minor who was injured while water tubing on a lake, resulting in paralysis from the waist down. We pursued cases against the private lake, the operator of the boat, the manufacturer of the water tube, a store that the client had been in on the date of the accident and slipped, as well as the store's manager on duty. Judgment totaling $4.5 million was entered against three of the five defendants. The proceeds were divided into various annuities and settlement plans with a total payout in excess of $12 million to ensure that our client benefited.

Another client was the passenger in a car traveling southbound on the New Jersey Turnpike in Elizabeth, NJ. The vehicle, which was traveling at a high speed, collided with a semi-truck. The operator of the car was ejected and pronounced deceased at the scene while the client suffered injuries, resulting in amputation of his left arm at the shoulder. Initial investigations indicated that our client had been operating the vehicle and, as such, necessary measures were taken to pursue a case against him. However, with further investigation by experts and the medical examiner, it was found that he was the passenger of the vehicle and the deceased was indeed the operator. As such, cases were pursued against the estate of the deceased, the operator of the semi-truck and the company to which the semi-truck was registered. The matter was resolved for policy limits.

A female minor was taken to a New Jersey bar by her new, male boss. She was not asked for identification by the bouncers, managers or bartenders, all of whom were aware that the boss was purchasing and serving alcohol to the girl. The minor became significantly intoxicated and was brought to a restricted area inside the bar where the boss raped her. It was found that he had drugged her while at the bar. The matter, pursued against the boss, his company, the bar and its employees that were present and were aware of the happenings, was resolved for a total of $950,000 and a $3 million judgment against the employer.

Joseph Discenza and Joseph Peters can be reached at jdiscenza@msgld.com and jpeters@msgld.com, respectively.

Mandelbaum Salsburg in the Community

Mandelbaum Salsburg, individually and collectively, continues to have a real impact on the communities in which we live and work. Giving is a year-round practice at the firm.

In the fall of 2012, Barry Mandelbaum spearheaded the most successful fundraiser in the history of Cerebral Palsy of North Jersey (CPNJ), raising $540,000. Barry was the honoree for the agency's Steps to Independence Celebration, which attracted more than 350 guests. CPNJ points out that the overhead for the event was less than 10%, meaning that more than 90% of every dollar raised goes directly to support programs, including the Horizon School and Horizon High School in Livingston, a new community residence for adults with developmental disabilities being built in Livingston and adult day programs in Wayne, Irvington and Orange.

During the holidays, the firm engaged in a whirlwind of activities, including collecting clothing for victims of Hurricane Sandy, raising money for Wounded Warriors, collecting a truckload of toys for Cerebral Palsy of North Jersey, and collecting food for a food pantry in West Orange. Our people also volunteered at a local food bank.

Most recently, Mandelbaum Salsburg decided to "Go Red for Women" in support of the American Heart Association. Attorneys and staff wore red clothing and jeans and raised $425. This effort was the first of a series of "Denim Days" at the firm. Suggestions for recipient organizations are considered by the firm's Charity Committee. On the designated day, for a nominal donation, participants can wear denim to show their support of the named charity. Special emphasis is given to local groups and organizations.

Permit Extension Act Further Extended

By Craig W. Alexander

The Permit Extension Act, originally enacted in 2008, extended the expiration date of certain zoning and development approvals and permits. On September 19, 2012, Governor Christie signed an amendment to the Act that extends the expiration date to December 31, 2014.

The Act was enacted in response to the recession and downturn of the real estate market. The Act originally applied to extend approvals and permits that otherwise lapsed on or after January 1, 2007. The Act was amended to further extend the expiration date to December 31, 2012. The recent amendment to the Act extends this date for two years. It also extends certain approvals and permits granted for designated areas of the Highlands and Pinelands. The extension is automatic and does not require any application or filing.

The Act is significant because it has allowed developers to ride out the economic storm without having their development approvals lapse. The time and cost to apply for new approvals would have been prohibitive and would have jeopardized the significant investment already made in obtaining approvals and purchasing land. The Act has enabled developers to keep their approvals intact until the economy stabilizes, construction financing becomes more available and development projects become more economically viable. With many signs pointing to a rebirth of New Jersey's real estate market, it appears the Act may have accomplished this objective.

Craig Alexander, a partner in the Real Estate practice, can be reached at calexander@msgld.com.

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Want to Reduce Your Company's Health Insurance Premiums? Try a Wellness Program

HIPAA included provisions for employers, on a purely voluntary basis, to offer Wellness Programs to their employees. There are two types of Wellness Programs: participation and standards. An example of a participation Wellness Program is when employees agree to diagnostic testing and screening for certain precursors to serious health conditions, such as high blood pressure, blood sugar or cholesterol levels, and the like. Other examples of participation Wellness Program are attendance at smoking cessation and healthy diet/lifestyle seminars. In this type of Wellness Program, employees are not required to actually take any preventive action to improve their health after the testing/screening or seminar.

A standards Wellness Program includes the same elements as a participation program. However, the employees are also required to at least make the effort to achieve certain standards or benchmarks, such as a reduced heart rate, blood pressure, sugar or cholesterol level, through a variety of measures including exercise, change of diet or taking a preventive medication, such as Lipitor, to reduce cholesterol levels.

Under HIPAA, the employer and the employee could obtain up to a 20% percent discount in health insurance premiums as an incentive for the employer to initially implement a Wellness Program, and for employees to actively participate in it. Building on this provision in HIPAA, the Affordable Care Act (ACA) is focusing much greater attention on preventive healthcare. In furtherance of this goal, the ACA has increased the premium discount to 30%. This discount can be as much as 50% for participation in a smoking cessation program by employees who smoke.

HIPAA included provisions for employers, on a purely voluntary basis, to offer Wellness Programs to their employees. There are two types of Wellness Programs: participation and standards.

In addition to reduced premiums, statistical evidence has shown that an active Wellness Program, with significant employee participation, can significantly reduce actual healthcare dollar costs. Most major health insurance carriers offer Wellness Programs, and there are companies, independent from the carriers, that also offer them. Even small employers should seriously consider the benefits of adopting a Wellness Program for their employees.

Dennis Alessi is Chair of the firm's Healthcare practice and Co-Chair of its Labor & Employment Law practice. He can be reached at dalessi@msgld.com.

Understanding the Ins and Outs of Limited Duration Alimony

By Lynne Strober and David S. Carton

Lynne Strober

David S. Carton

In New Jersey, there are four types of alimony: permanent alimony, limited duration alimony (LDA), rehabilitative alimony and reimbursement alimony. Alimony can only be ordered when there has been a marriage. There is no "common law marriage" in New Jersey.

Limited duration alimony is alimony for a fixed period of time, less than forever. A limited duration alimony analysis looks at the length of the marriage, the period of economic dependency on the greater earner by the spouse who earned less or was unemployed during the marriage, and the skills and education required for the non-working spouse or limited worker to return to the workplace at a maximum level.

Rather than an overriding emphasis on the marital lifestyle and the recipient's entitlement to maintain that marital lifestyle forever, which is the case in a permanent alimony analysis, the focus in the LDA analysis is on the recipient receiving sufficient alimony for the necessary period of time and preparing the recipient for self-reliance.

While limited duration alimony is not new, recent case law clearly enunciated the difference between a permanent alimony award and a limited duration alimony award. Accordingly, if contemplating divorce, the high earner needs to consider the length of the marriage. Where the lifestyle is high, it is better to get out of the marriage before the lifestyle is the measure. The longer the marriage, the more likely it will be a permanent alimony case. In a permanent alimony award, the goal is to provide a marital lifestyle consistent with that of the marriage to the alimony recipient. Many high-earning spouses cringe at the thought of the obligation of permanent, high alimony being paid to the person from whom they are seeking a divorce. Limited duration alimony looks to return the recipient to the workforce and end the obligation. Therefore, if the marriage is deteriorating, the payor should consider the length of the marriage in determining whether they qualify for limited duration alimony or if they are required to be governed by a permanent alimony analysis.

In a limited duration alimony case, the length of the marriage, the recipient's age and ability to work are reviewed, and the support is determined to be the economic assistance necessary for a period of time to transition the alimony recipient from receiving support to being independent. The Courts traditionally look at marriages between eight and ten years as mid-term marriages. It is from the short term to the mid-term length that limited duration alimony is most appropriate.

Permanent alimony is the forever right to receive alimony, with the right of review at retirement. Age 65 is deemed to be a reasonable retirement age, and then a balancing test occurs to determine the need for the alimony by the recipient and the ability to pay by the payor at that time. Permanent alimony looks at the lifestyle of the marriage, and the ability of the payor to maintain for the recipient the marital lifestyle and the recipient to rely on the payor to provide that lifestyle. In fact, the lifestyle can be such an important component that thousands of dollars are sometimes spent to analyze the spending to determine the level of the marital lifestyle, particularly where the payor earns cash, which may or may not be fully reported.

There is no requirement for both parties to maintain the marital lifestyle where there is a limited duration alimony award. This is viewed as a fair way to address economic dependency after a short period of marriage.

The economic dependency established during the marriage is a consideration for the length of the limited duration alimony. However, in negotiations, frequently the length of the limited duration alimony is similar to the length of the marriage.

The ultimate result is that in a limited duration alimony award, the payor has the "light at the end of the tunnel," meaning that at some point the obligation to pay alimony terminates. The recipient has a limited period of time to plan for and implement a way of becoming self-sufficient. The length of the marriage is extremely important especially if the parties are not of such age that it would be reasonable to expect the lesser or unemployed spouse to become employed at a substantial income level.

Thus, it is important for the primary income-earning spouse to consider whether the marriage should continue and grow from limited duration to permanent alimony based on the length of the marriage. This is particularly important in cases where a party earns a significant amount of money and the parties live a high-end lifestyle. The payor considering divorce should give consideration to that if they remain married for what could be considered a long-term marriage; it may well tip the scales away from limited duration alimony to a permanent, lifelong obligation.

Despite the fact that an alimony amount and period may be included in a Matrimonial Settlement Agreement which is made part of a Final Judgment of Divorce, unless there is language to the contrary, the alimony may be subject to modification. Either party may seek modification of support based upon a significant change in circumstances, which often is a loss or increase of income.

Lynne Strober is Chair of the Family Law Practice and David Carton is a member of the practice. They can be reached at lstrober@msgld.com and dcarton@msgld.com, respectively.

Mandelbaum Salsburg News

Steven Adler, who joined the firm in January as Co-Chair of the Labor and Employment practice group, obtained a successful verdict in a handicap discrimination and failure to accommodate lawsuit after a one-week jury trial. The trial took place in the Superior Court of New Jersey, Bergen County, and involved a division of ECSI International, Inc., a publicly traded company on the OTC exchange. The issues decided were whether the plaintiff created a materially enhanced risk of serious injury to his health or safety upon his return to work after a medical leave of absence, and whether the employer failed to engage in the interactive process in good faith to arrive at a reasonable accommodation.

Dennis Alessi published two articles, "Social Media: Why Every Employer Needs to be Concerned and Proactive," and "Why All Employers Should Have Arbitration Agreements with their Employees," on *HR.BLR.com*, a website that describes itself as "compliance tools for HR professionals."

Bill Barrett was a featured speaker on the topic of Buying and Selling Physician Practices at the Greater New York Dental Meeting. He was also a guest of the Hudson County Dental Society, speaking with the doctors about the Essential Steps to Buying or Selling a Practice.

Bill Barrett represented the buyer in the purchase of a specialty dental practice and commercial real estate for $900,000 in Lyndhurst, NJ. He also represented the buyer in the purchase of a multi-use commercial real estate property in Boonton, NJ, and the buyers in connection with the $1.6 million purchase of industrial and warehouse property real estate in Flanders, NJ. Bill represented a client in connection with the creation of a business succession plan and tax savings plan involving properties in various states, including New Jersey and Florida, with transfer values of over $20 million.

Arla Cahill has been selected for inclusion in the National Association for Professional Women. Arla made a presentation for the NJICLE on punitive damages for a course entitled "Assessing Damages in Commercial Litigation Cases." She also served as a judge for the New Jersey State Bar Association's Vincent J. Appruzesse High School Mock Trial Competition. Arla participated in the Annual Tubbs Romp to Stomp Out Breast Cancer Snowshoe Event to benefit the Susan G. Komen Foundation at Mountain Creek Resort and she will be participating in the National Multiple Sclerosis Society's charity bike ride, "Bike MS: Ride the Vineyard," in Martha's Vineyard on May 4.

Mandelbaum Salsburg obtained Bankruptcy Court approval for the sale of a construction company as a going concern under Bankruptcy Code Section 363. **Stuart Gold**, a partner in the Commercial Litigation practice group, steered the application through the Bankruptcy Court. **William Turok**, a partner in the Corporate and Transaction practice group, closed the transaction for the seller.

Manny Grova has been re-appointed as the Public Defender for the Roselle Municipal Court and was appointed as Planning Board attorney for the County of Union. He was also sworn in to serve a four-year term as Councilman-at-Large in the City of Elizabeth.

Michael Kalmus played a critical role in the resolution of a potentially landmark sexual abuse case brought in Federal Court (EDNY). In *Zimmerman v. Poly Prep CDS*, 12 plaintiffs, mostly school alumni, sought millions of dollars in damages for alleged sexual abuse at the hands of Poly's former football coach. Although the allegations dated as far back as 1966, Federal Judge Frederic Block suggested that under certain circumstances, the applicable Statute of Limitations might not prove to be an impenetrable barrier to the pursuit of a lawsuit, especially where it could be demonstrated that the defendant institution had knowledge of the employee's abusive conduct. Poly Prep denied the allegations. Employed by the school for the purpose of seeking common ground with the plaintiffs, Kalmus helped bridge huge gaps in the highly contentious litigation which eventually resulted in the negotiation of a settlement acceptable to both sides. Kalmus's efforts were cited by plaintiffs' counsel as crucial in the resolution of the case, which was the subject of local, national and international press coverage.

Constantina Koulosousas was approved to serve as an accredited attorney for the preparation, presentation and prosecution of claims for veterans' benefits before the Department of Veterans Affairs. Constantina currently serves on two boards, the Hellenic Federation of New Jersey, where she is corresponding secretary and chairs the New Generation Committee, and the Association of Greek American Professional Women, for which she serves as secretary and co-chair of the Focus on Youth Committee.

Barry Mandelbaum and **Craig Alexander** were retained to present a rezoning application to rezone an 83-acre parcel for a PUD before the Hanover Planning Board.

Alix Rubin published an article in the New Jersey State Bar Association Business Law Section newsletter entitled, "What Business Owners Should Know about Telecommuters," which was featured in the Bar Report. In addition, she was quoted in an article on the *I-Sight.com* blog on the importance of documenting workplace grievances.

Richard Simon and **Robin Lewis** recently closed a $4.2 million credit facility on behalf of one of the firm's larger banking clients. The facility, which was comprised of two asset-based loans, was made to a medical group for the construction of a pediatric ambulatory care facility affiliated with a North Jersey hospital. Richard and Robin were assisted in this transaction by associate **Constantina Koulosousas**. At year-end, Robin and Richard also closed an $18.36 million credit facility for the same bank client. This loan was used to redeem public bond financing and was secured by a mortgage interest on four senior living facilities and the borrower's corporate headquarters.

Richard Simon spoke at the joint symposium of the New York Institute of Credit and the International Factoring Association on "Hot Topics in Legal Areas Affecting the Financing Industry."

Richard Simon settled a client's construction delay and differing site conditions claims on a public works project for $575,000, together with a dismissal of the public works' counterclaim against the client for defective work. Under the terms of the contract, the client's maximum recovery could not have exceeded $650,000, less potential offsets if the public works' owner prevailed on any of its counterclaims.

MS
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Attorneys at Law

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