





## LETTER FROM OUR FIRM'S LEADERSHIP

As you will read in the pages to come, 2018 was a year of tremendous growth, giving and expansion for our Firm. One that would not have been possible without the trust and continued support of our clients, many of which have been with the Firm for generations.

Our national footprint continues to strengthen with several litigations being handled throughout the United States, healthcare and dental transactions from Massachusetts to Hawaii, as well as the sale of a Commercial real estate portfolio consisting of 29 logistics centers in 12 states. Our affiliation with Primerus, an International Society of law firms, allows us to service clients through our network of affiliated firms in every major city across the nation. The expansion of our New York City office to a state of the art space overlooking Rockefeller Center, home to our Securities Law Practice, helped us to enhance our regional presence as well. The Firm founded Emerging Technologies and Cannabis Law Practice Groups this year in response to our client's changing needs. In addition, the Firm welcomed a number of Members, Associates and Of Counsel from prestigious law firms throughout the area as you will read about on page 28. Our unique culture and approach to doing business sets us apart and has afforded us a number of awards and recognition throughout the profession including having ten attorneys named as Best Lawyers®, seventeen attorneys named to New Jersey and New York Super Lawyers® respectively, and being listed by U.S. News World Report as a "Best Law Firm" for the tenth year in a row. We have also launched an Employment Law Blog from our website and if you have been following us on our social media sites, you have seen our continued commitment to providing our clients with up-to-date information relevant to both their business and personal needs.

Our commitment to give back to the communities in which we live and work rose to a whole new level in 2018 as we not only gave our time and resources, but also, raised over \$20,000 for charities. We sponsored a "Fill a bag to end hunger" event within the Firm that was donated to a local food pantry, we hosted a "diaper drive" women's initiative event that supported the needs of an Essex County women's charity, we raised money for lung cancer and brain injury research, our Partner Raj Gadhok, President of the Essex County Bar Association, launched a gun buy-back program for which every one of our attorneys donated funds, we participated in events to help those with special needs and, on September 29, 2018 we pulled a full size airplane for Special Olympics New Jersey, a charity for which we raised nearly \$11,000. The community service values that we hold as the Firm's leadership are echoed by the Firm's attorneys and staff year after year. So as we look back on our 88th year in the pages to come, we thank you, our clients and friends, for allowing us to continue to do what we love to do. Without you these successes would not be possible.

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*William S. Barrett*  
Chief Executive Officer



*Barry R. Mandelbaum*  
Chairman of the Board

# ADR/Mediation

## A UNIQUE BENEFIT PROVIDED TO OUR CLIENTS

Of further benefit to the Firm's client's is that our attorneys often consult our retired judges who are in-house at the Firm, to provide their insight as former judges concerning what is likely to happen in the court room. This is invaluable in difficult or complex cases where they are able to coach our attorneys on how to handle specific issues in the courtroom. They also often are brought in to meet with clients to answer questions.

## A CENTURY OF HELPING CLIENTS STAY OUT OF THE COURTROOM

With more than 100 years of combined legal experience, the Firm boasts one of the most experienced mediation and arbitration practices in New Jersey. From custody disputes and divorce settlements to cases involving personal injury, construction, medical malpractice, employment and contracts, the ADR team has both mediated and arbitrated a range of issues over the last year. Its the depth which makes it truly unique in the state. Judge Diamond (ret.) brings a wealth of family court experience having served as a Judge for the Passaic County Family Division for 16 years, 8 years as the Presiding Judge and 2 years as the Chairman of the State Conference of Presiding Judges. Judge Vichness' (ret.) experience is on the commercial side, having spent a portion of his 18-year Superior Court tenure as a Business Court Judge presiding over commercial and complex matters. Because of their extensive experience, Diamond and Vichness are often brought in to manage complex litigation and/or complex commercial disputes. Judge Robert Longhi (ret.) is a former Superior Court of New Jersey Assignment Judge for Middlesex County and his experience includes three decades as a probate judge, managing mass torts, complex litigation and insurance coverage matters. He has performed pioneering work in ADR (including thousands of cases brought by women against A. H. Robbins involving intrauterine devices). He was appointed by the New Jersey Supreme Court to case-manage all fire-retardant plywood cases in New Jersey, as well as the underlying insurance coverage issues. He is qualified as a Certified Mediator by the National Judicial College. Steven I. Adler, who also Co-Chairs the Employment and Labor practice has over 35 years of experience mediating labor and employment cases to successful resolution and David Carton mediates matrimonial matters.

## THE USE OF MEDIATION IN FAMILY LAW CASES

Do you want to wait for two years to get a Judgment of Divorce? Do you want to be restricted by what you can say in a court room? Do you want to obligate yourself to substantial legal fees? Do you want a stranger (the Judge) to decide your fate?

If the answer to these questions is "no" then it's time to choose the best alternative: **Mediation.**

Why you ask? First, you can complete your divorce without unnecessary delay, you can speak freely to the mediator, the fees are substantially less and the process is confidential.

If you and your spouse keep an open mind and listen to the advice of your attorney if you have one, when the matter is resolved, you can say to yourself that you may not have gotten everything you wanted but it was the result of your efforts and not that of a "stranger" aka Judge. The Judge would not know anything about you other than what was said in the Courtroom and would decide your future financial and parenting time issues.

The goal of the Mediator is to assist the parties to come to a resolution on their own that is fair to both sides and reach that conclusion on their own. The Mediator cannot order you to do anything, but can make suggestions and offer opinions on the issues. If the Mediator is a retired Judge he or she will be in a better position to advise you as to what is likely to happen in the Courtroom and/or how a Judge may look at a particular issue.

Choosing the right Mediator is extremely important. There are retired Superior Court Judges who are familiar with how the Court system works and may be more skilled in getting parties to resolve their dispute. As the mediator, a retired Judge will look at your matter from the point of view of how it would be handled if he or she were the trial Judge.



# Banking and Financial Services

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This past year brought substantial growth and industry recognition to Mandelbaum Salsburg's Banking and Finance Group. The Group added two staff, including attorney Ed Dabek, who has made substantial contributions to the Group. In addition to his loan documentation experience, Ed's knowledge of IT has been of great value in technology related loan transactions.

As a result of the growth in the number of lenders the Group represents, we are now able to assist the Firm's clients, in all industries, in structuring debt transactions to meet their needs and source them to the appropriate lenders, whether it be traditional cash flow and asset based loans, to factoring and purchase order funding transactions to other forms of alternative financing, including supply chain finance.

## CREATIVE SOLUTIONS

We represented a regional financial institution which was expanding into the National market. The institution financed the Borrower's acquisition of sixteen parcels of real property in Kansas, Illinois and Wisconsin. The properties were all to be leased to nursing home operators. The Borrower's primary issue was that distinct groups of properties were connected with specific nursing home operators and not others and the Borrower did not want a cross collateralization and/or cross default situation to bring down the entire "house of cards" if one operator was to underperform. In order to complete the transaction on credit and meet the underwriting requirements of our client, the Firm came up with a structure that afforded our client with the benefits of a cross-collateralized and a cross default situation but would still accommodate the Borrower's concern. Through the creative use of membership interest pledges and other liens on specific collateral, we were able to create a structure that met both our client's and the Borrower's needs. The transaction was a great success. Our client established a national customer relationship that will continue for years to come.

The Group was involved in several cross-border loan transactions over the last year, including those involving a manufacturer of premium products with locations in Canada and the United States, a manufacturer of beauty care products with production in Asia, and sales and distribution in the US and through affiliates in the UK and the EU and a manufacturer of patio furniture with production throughout Asia, and sales and distribution in numerous countries. Each of these transactions required perfection of security interests in various different types of collateral in numerous countries, as well as securing pledges of equity interests in foreign entities in compliance with the laws of the country of formation.

The Firm's Banking Group represented a regional bank's national asset based lending group on a credit facility to an equipment rental company, that included a \$15 million asset based loan, a \$1 million cap ex line and a \$1.2 million term loan. The borrower and 6 affiliated guarantors with multiple lenders required negotiation and documentation of intercreditor agreements amongst the guarantors' lenders, as well as with 5 of borrower's suppliers floor plan lenders.

The Group represented a debt fund in restructuring its balance sheet. The fund specializes in unsecured consumer loans used to pay dental, medical and veterinarian providers. The transaction involved increasing the fund's working capital line of credit and converting equity to debt. The transaction involved \$270 million of debt, creation of additional special purpose vehicles used to segregate the various lenders' collateral and navigating the existing intercreditor agreement with a pre-existing lender with collateral in another special purpose vehicle.

# Banking Litigation and Consumer Finance Defense

## OFFENSE IS THE BEST DEFENSE

On the offensive, Michael has also successfully recovered for his national bank clients on transfer and presentment warranties under the Code. Where a client bank is responsible for an improperly paid check, the Code allows the bank a remedy against the depository bank who guaranteed its account holder's signature. Thus, recently, Michael was able to recover \$250,000 from another financial institution on a breach of presentment warranty claim, making his client whole.

### NATIONAL BANK CLIENTS PREVAIL ON CHECK PAYMENT CASES

The dynamic duo of defensive bank litigation, attorneys Michael F. Bevacqua, Jr. and Brian M. Block, recently were successful in defending their national bank clients against significant liability on claims related to checks alleged to have been wrongfully paid.

Michael and Brian obtained summary judgment dismissal in favor of a large national bank on appeal to the New York Appellate Division, Second Department, in *Temp Realty Corp. v. Man Tong He, et al.* The bank was sued by a prospective buyer of real estate who sought to hold the bank liable for the amount of a check made payable to the buyer's counsel "As Attorneys" that was deposited into a non-fiduciary account. After the trial court denied the bank's motion, Michael and Brian appealed and the appellate court reversed, agreeing that their client was not liable under the Uniform Commercial Code (the Code) because a bank has no duty to deposit a check payable to an entity, with words of description such as "As Attorneys," into a fiduciary bank account.

The New York Supreme Court granted summary judgment to another large national bank, resulting in dismissal of the plaintiff-general contractor's claim against the bank for nearly \$300,000. The plaintiff sued the bank for allegedly improperly paying two checks from accounts owned by the escrow agent for an \$11 million commercial construction project, without an endorsement by the second payee on the checks. The trial court agreed that the plaintiff was precluded from any recovery because neither it nor the escrow agent notified the bank within six months of receiving the bank statements showing the payment of the subject checks, thereby barring the claims under the agreement governing the accounts.

After their national bank client was sued in New Jersey Superior Court for allegedly paying a \$185,000 forged check in 2011, Michael and Brian took an aggressive approach and sent frivolous litigation letters to the plaintiff, advising her that her common law claims were preempted and time-barred by the Code. Though the plaintiff initially refused to dismiss her claims, Michael and Brian were successful in explaining to the plaintiff that case law and Code provisions illustrated that her claims had no merit and would result in attorneys' fees and costs against her if she persisted. The plaintiff then voluntarily dismissed her claims, with prejudice. Pivoting off of this victory, Brian and Michael successfully sought voluntary dismissal of a co-defendant's cross-claim against their client after they advised the co-defendant financial institution in a frivolous litigation letter that it no longer had any viable claim for common law indemnification and contribution. All told, all claims against their client were dismissed, with prejudice, without the client ever having to file a pleading in court.

As these victories demonstrate, expertise in the very complex provisions of New Jersey's and New York's Uniform Commercial Code and the nuanced contractual relationship between banks and their customers, is paramount to successfully defending cases involving negotiable instruments. The Firm's Banking Litigation and Consumer Finance Defense Group stands ready to defend such claims throughout the United States.

### FIRM OBTAINS DISMISSAL OF FAIR CREDIT REPORTING ACT CLAIMS

Michael F. Bevacqua, Jr. obtained a summary judgment dismissal of a plaintiff's Fair Credit Reporting Act (FCRA) claims brought against his national bank client in federal court in the Eastern District of New York. The plaintiff in the case sued our national bank client alleging that it did not conduct the "reasonable investigation" required by Section 1682-s(b) of the FCRA after it received a notice of a dispute from a credit reporting agency that had been filed by the plaintiff. After earlier obtaining dismissal of the plaintiff's Fair Debt Collection Practices Act claims, Michael moved for dismissal of the FCRA claims based on the evidence demonstrating that there was no dispute that his client performed a proper and reasonable investigation upon receiving the notice of dispute. The district court agreed and dismissed all FCRA claims against the bank, resulting in a complete victory.

In addition, he secured summary judgment dismissals of similar FCRA claims against his national bank clients in lawsuits filed in Massachusetts and Florida. He also obtained judgments of dismissal of numerous FCRA lawsuits against national bank clients following the completion of trials in New Jersey and New York. In recent years, Michael has successfully defended clients in litigations filed in 13 states, coast-to-coast.

### VICTORY ON APPEAL OF CHARGEBACK DISPUTE CLAIMS AGAINST NATIONAL BANK CLIENT

Credit card issuers frequently find themselves in the middle of charge disputes between consumer and merchant. Such was the case in *D'Agostino v. Mason et al.*, in which Michael F. Bevacqua, Jr. and Brian M. Block obtained an affirmance by the New Jersey Appellate Division of summary judgment dismissing a consumer's claims against their client, a large national bank. The bank had been sued by a consumer who claimed that he had not properly processed a dispute over a credit card charge by his former attorney. On appeal, Michael and Brian successfully argued that the bank properly adjudicated the dispute because the consumer failed to follow the chargeback procedures requiring him to submit certain expert evidence supporting an improper charge.

# Bankruptcy and Creditors' Rights

We filed a chapter 11 reorganization case for a Northern New Jersey based \$30+ million service company, and its subsidiaries. We held a 363 sale in October and the company was sold in two parts, which resulted in the preservation of 2,000 jobs.

We successfully resolved a multi-million dollar preference claim in a large retail bankruptcy in the Southern District of New York for nuisance value.

We were retained to represent the Assignee in an assignment for benefit of creditors of a New Jersey based advertising company. We are pursuing preferences and investigating other assets for the creditors.

During 2018, our Bankruptcy and Creditors' Rights Group continued to represent the Firm's clients in bankruptcy and insolvency-related matters. Some of our Group's accomplishments over the past year include the following:

We were retained by an out of state bank to pursue a major figure in the entertainment industry to foreclose on two multi-million dollar mortgages on homes located in New Jersey, which resulted in a successful work-out of the debt.

We are representing a lender in a work out with a health and beauty aids company located in Oregon and Utah. We have a motion to appoint a receiver pending while we negotiate an agreement to give the company time to go to market to refinance.

For one of our bank clients we successfully arranged for the sale of the debtor's real estate through the appointment of a chapter 7 trustee which resulted in our client being paid in full.

We represented a lender in a receivership that was filed in Washington. Our client continued to fund the company so it could operate during the receivership. The receiver ran a sale process and our client was paid in full in late 2018.

We represented a tool and die company in an orderly liquidation of its assets. After the sale of the assets in early 2018, we were able to make a 23% distribution to all unsecured creditors. The company is in litigation with the employees' pension fund regarding the termination payment that is due.

On behalf of a lender, we are actively litigating a multi-party dispute amongst secured creditors concerning the assets of a factoring company based in Maryland.

We successfully resolved a substantial Ponzi scheme claim in the District of Minnesota for a small fraction of the claim.

# Corporate Law

## ACCURATE NEUROMONITORING ACQUIRES SURGICAL INSIGHT AS IT CONTINUES TO EXPAND

In 2018, the Firm's Corporate Practice Group served as counsel to our long time client Accurate NeuroMonitoring in the acquisition of Surgical Insight. Accurate is a leading Intraoperative Neuromonitoring (IONM) provider offering functional guidance to surgeons through the use of its highly trained technicians who utilize technology that helps reduce patient risk during complex surgeries. The acquisition of Surgical Insight allowed the company to expand its coverage to now service nine East Coast States — New York, New Jersey, North Carolina, Pennsylvania, Delaware, South Carolina, Georgia, Alabama and Florida. With this expansion, Accurate NeuroMonitoring's staff of over 100 employees now supports over 12,000 surgeries and nearly 500 surgeons a year, making it one of the most prominent IONM providers in the nation. Accurate Monitoring's team of neurophysiologists provides real-time physician oversight through remote monitoring of data being collected in the operating room helping surgeons mitigate risks. Mandelbaum Salsburg's deal team included Chief Executive Officer William Barrett, Casey Gocel, Thomas Ackermann, Daniel Barkin and Lindsey Priolo. The successful transaction required navigating through corporate and healthcare regulations in multiple states, drafting and negotiating sophisticated corporate agreements as well as a complex loan closing that not only completed this transaction, but provided future acquisition financing to facilitate Accurate's continued growth. The deal was an example of the Firm's full service platform whereby we seamlessly addressed issues as they arose and successfully completed the acquisition and the financing.

## FIRM'S FULL SERVICE PLATFORM HELPS FAMILY OFFICE

In 2018 the Firm represented a family office in a platform acquisition of the largest on-line portal for middle market deal opportunities. In connection with the transaction, the new company licensed its technology from a third party and raised capital to support future growth. The deal had two interesting goals: 1) a tax efficient transaction, and 2) structuring it such that a significant portion of the purchase price was structured as a preferred equity security. In connection with the first goal, the tax and corporate team worked with the client and seller to structure the deal as a contribution of assets so that the equity received was not currently subject to any tax. As to the second goal, the investors and the seller agreed to an equity structure that included multiple preferred securities with different liquidation preferences. The deal was a significant transaction for the Firm's team as it leveraged the bankruptcy group, lending group and the securities and corporate groups. The transaction team included, Jeffrey Wasserman, Casey Gocel, Edward Dabek, Jeffrey Rosenthal and Daniel Barkin.

## Environmental Team Lends a Hand to Close Corporate Transaction with NJDEP Regulated Business

In 2018, a Firm client sold the stock of his closely-held New Jersey corporation to another individual. The corporation, being a contract-operator of client-owned water treatment plants, is very closely monitored by the New Jersey Department of Environmental Protection ("NJDEP"). The corporation holds an A-901 License, issued by the NJDEP, to engage in solid waste services in the State of New Jersey. As a regulated business, the corporation and its A-901 License could not be sold without the prior written consent of the NJDEP.

Obtaining the NJDEP's consent to this type of transaction requires the submission of a detailed and lengthy application packet to fully disclose the details of the transaction, including without limitation: compensation arrangements; the identity, background and operating history of the purchaser and its potential officers and directors; the deal's impact on existing contracts and current employees; updates of annual reports provided to the NJDEP as to the corporation's "Certificate of Public Convenience and Necessity"; and disclosures of pending litigation and claims. The NJDEP's goal is to ensure that environmentally sensitive matters which are handled by competent and honest operators will continue to be operated by those with similarly high standards when the sale of a controlling stake in the corporation takes place.

It took approximately 2 months to obtain the NJDEP's written consent to the transaction which was issued in the form of a "Solid Waste Order", with the transaction closing shortly thereafter. The transaction involved Douglas Eilender of the Firm's Environmental Group, and Peter Tanella and Barry Schwartz of the Firm's Corporate Group, who worked together seamlessly to bring the deal to a smooth and relatively quick conclusion.

## Firm Helps Clients with Investment Fund Formations

The Firm also represented two different clients with the formation of investment funds. The first was a group lead by seasoned venture capital investors that formed an equity fund to invest in early stage investments that had an investment focus that required all investments to have a connection with a certain university. The second fund was a group of investors that came together to launch a new hedge fund that had a primary focus on long-short investments in public market.

## Acquisition of Software and Solutions Provider

Counsel Marc Comer advised software, services and solutions provider thinqonline in its sale to Next15's data collection agency VIGA. New Jersey and Toronto-based thinqonline will now operate under the VIGA name, providing expanded data collection and visualization services for enterprise, research and media sector clients. Mr. Comer was instrumental in negotiating the terms of the sale and represented thinqonline Principal Yaron Brenman, who joined VIGA as a Senior Vice President. thinqonline opened its doors in 2014. Combining more than 30 years of research industry experience with robust software partnerships, thinqonline provides consulting across the project lifecycle to guarantee timely and cost-effective results that elevate and ignite customer, employee and market insight programs.

Mandelbaum Salsburg's Elder Law Practice Group continues to thrive with interesting and challenging cases in areas such as probate and estate litigation and elder and disability law. Our attorneys within the Group pride themselves on helping vulnerable individuals and providing a voice to elderly and disabled adults unable to advocate for themselves. These cases are often difficult, emotional and require a level of creativity and commitment that extend well beyond traditional legal services as illustrated by some of our recent matters.

## DEATH BED WILL

Our probate litigation team of Richard I. Miller and Shawna A. Brown achieved a favorable settlement after contesting a "death bed" Will that disinherited the decedent's step-children in favor of a charitable organization. The Will was executed approximately one week before the decedent's death and the charity selected was suggested by the decedent's physician who happened to be associated with the charitable organization. The charity named in the Will was devoted to studying Jewish teachings. The decedent, however, was a devout evangelical Christian.

The "death bed" Will replaced a prior Will that left decedent's estate to her step-children. Although the step-children did not have a close relationship with their step-mother, questions concerning the validity of the Will existed considering the unusual and suspicious circumstances surrounding its preparation; the proximity to decedent's death; and the dramatic change to decedent's historical testamentary intent.

The matter was settled before trial and the step-children received a substantial distribution from the estate, much of which originated from their father.

## REFORMATION OF BENEFICIARY DESIGNATION

*Another highlight of the year involved a case that illustrates the importance of reviewing and completing beneficiary designation forms.*

The decedent passed away leaving a Will that designated his son and his long-time companion as beneficiaries. The decedent was also survived by a daughter from whom he was estranged. The decedent owned a multi-million dollar 401K. The designated beneficiary of the 401K was a trust established under decedent's prior Will. Since the Will referenced in the beneficiary designation form had been revoked, the 401K administrator concluded there was no valid or enforceable beneficiary designation. The default provisions of the 401K plan directed the proceeds be distributed equally to decedent's children if no valid designated beneficiary was named. This would have resulted in decedent's daughter receiving a multi-million dollar windfall despite decedent's express testamentary instruction that his daughter be disinherited.

Our estate litigation team filed an application with the Court to direct the 401K administrator to distribute the proceeds pursuant to the terms of the decedent's Will admitted to probate so the proceeds would be distributed to decedent's son and companion. The application was successful and decedent's testamentary intent was fulfilled.

# Elder Law

## GUARDIANSHIPS

A particularly rewarding case involved two elderly sisters who lived together in a condominium unit for many years. The unit was nearly uninhabitable and the sisters refused to acknowledge the health and safety concerns they faced. A guardianship application was filed by Adult Protective Services (APS) and Richard Miller, the Chair of the Elder Law Group, was appointed as guardian for the sisters.

Every effort was made to keep the sisters at home by cleaning the unit, providing the support services of a geriatric care manager, arranging in-home medical care and attending to the finances. Sadly, the sisters refused to accept assistance making it unsustainable for them to continue living safely in the unit.

Thanks to our relationships and experience, we were able to quickly secure a room in a highly regarded nursing facility where the sisters could remain living together. The real challenge, however, was how to get the sisters from the condo to the nursing home in the least traumatic way possible, knowing they would physically resist any effort to remove them from their home and the emotional distress it could cause. Through the creative and dedicated efforts of our elder law team, we coordinated with the local police and fire department to arrange for a seamless, peaceful and dignified way to transport the sisters to their new home.

The sisters have assimilated to their new environment, are in excellent health, participate in group activities and are now enjoying a quality of life in a safe and supportive environment. The story of our sisters exemplifies the profound impact we have on the lives of our clients and the dedication we have to providing services as compassionately and professionally as possible.

## THINGS WE'RE WATCHING FOR YOU

### Important Information Regarding VA Benefits

On September 18, the Veterans Administration (VA) published new rules that make it more difficult to qualify for this important benefit.

### Medicaid Communication Decreases Medicaid Penalty Divisor

The New Jersey Division of Medical Assistance issued a Medicaid Communication in August of 2018 that uses a new divisor figure to calculate benefits.

# Emerging Technologies

Many of the products we accept as consumer staples and necessities in our daily lives, were once considered “cutting edge” or “innovative” breakthrough technologies. While the specific technologies continue to change from generation to generation, two things remain constant:

- a new or emerging technology carries with it different risks, safety concerns, privacy factors, liability levels, and economic influences; but
- the generational leadership who shape and make the laws that influence an emerging technology may not be the generation using the emerging technology.

In combination, these two factors highlight the importance of the law on emerging technologies, and the invaluable role that the attorney plays in the launch of technology, balancing commercial development with the need to protect society from new or unconsidered risks.

When the automobile first was developed in the late 1800s, it was considered a “play thing for the very wealthy”, a toy fascinating for its speed, convenience and luxury, but a new technology failing to be embraced initially. Half of the population – women – did not even have the right to vote, let alone drive a “horseless carriage”. And then Ford emerged with the assembly line, and between 1908 and 1927, more Americans bought the Model T than any car in history until surpassed by the Volkswagen Beetle in 1972. The laws that impacted the development of highways, speed restrictions, gasoline taxes, seat belts, driving under the influence, etc., carried an entirely unique set of legal challenges.

But were the legislators making the decisions also the actual generation using and embracing the technology? Likely not; and this inherent conflict influenced the passing of short-sighted safety legislation, caused conflicts within the automobile industry, shaped the influence of car buying, and created (and then ultimately destroyed) Detroit. What will the generational impact of the Baby Boomer vs. the Millennial be on electric cars? On vehicles without human drivers behind the wheel?

Our attorneys have been involved with our clients in the launch of new and emerging technologies for our entire nine decade history. The difference today, however, is that our Emerging Technologies Practice proactively, and with a collaborative team approach, champions the successful development as well as the protection of, our clients’ new technology ventures. From the initial patent application and formation of the proper corporate entity structure, through the assurance of strong regulatory compliance with Good Manufacturing Practices and FDA mandates, to the marketing and distribution strategy – a Mandelbaum attorney with deep and broad expertise is with the client every step of the way. The challenges facing start-ups and new technology are unique, and our approach is unparalleled. A client is assigned to an attorney who is the emerging technology’s advocate

and gate keeper, facilitating the key legal developments tied to the technology and ensuring that whether it is a tax issue, an Intellectual Property matter, an export problem, or a distribution contract, the right lawyer for the right circumstance will step up and ensure the emerging technology is successful.

Our attorneys are also sensitive to the generation gap, as well as the regulatory and political climate an emerging technology faces. While 91% of Americans born before 1945 are retired, this generation (known as “Traditionalists”) often sit today as CEOs, powerful politicians, and business leaders. Traditionalists are “technology challenged” in the workplace and therefore contract negotiations or advocacy issues must be considered from their perspective. Baby Boomers, ranging from 1945 to 1964, remain the largest portion of senior leadership today and still command a tremendous buying influence. New technologies must recognize these Baby Boomers favor businesses in the traditional work model and bricks and mortar, and a telephone call is an acceptable means of communication. Generation Xers, from 1965 to 1984 are the workforce’s “thinkers”, and naturally skeptical. They use technology but mainly out of convenience, and this impacts the business and legal approach a Generation Xer brings to emerging technology issues. As for Millennials, who are categorized through approximately the birth year 2000, their influence is the fastest growing and they will dominate management and key leadership by 2025. Millennials are today’s “doers”, the innovative, creative, flexible minds who see emerging technology as central to their lives and have a strong desire to make a difference via social networking. These factors not only shape the law, but need to shape the lawyer, so that the counsel and advice our clients receive take into consideration not only the strength of the technology, but the perception of the generation embracing it.

It is both the hope and the expectation that the list of what we consider “emerging” or “new” changes rapidly, and that we grow and protect our clients’ industries as these businesses eventually become part of the economic fabric we all rely upon.

## Today, Mandelbaum’s Emerging Technologies practice is involved and engaged in new technologies and industries including:

- Cannabis growing/licensing/distribution;
- Biotech and Pharmaceutical applications involving Cannabis;
- Electric Pulse Fields extending the shelf life, and improving the flavor, of fruits and juices for an additional three weeks;
- Wireless Technology Energy Transfer;
- Artificial Intelligence Software to expedite and enhance the car buying experience;
- Medical devices designed to modify the way burn victims and skin diseases are treated;
- Blockchain Technology;
- Life Science Advances in Alzheimer’s Disease and Diabetes;
- Social Media innovations



## EVALUATING ENVIRONMENTAL REPORTS FOR ASSETS AS FIRM HELPS CLIENT AS ENVIRONMENTAL COUNSEL

Our Environmental Law Practice Group continued to represent Cantor Commercial Real Estate Lending, L.P. (“CCRE”), as environmental counsel in numerous portfolio and single asset loan transactions nationwide. Our role includes evaluating the environmental reports prepared for each asset, and assessing and managing the environmental risks associated with the collateral. The environmental risks are typically managed in several ways, including one or more of the following: (i) affirmative covenants by the borrowers/guarantors to address the known environmental issues; (ii) holding back environmental reserves to secure the environmental obligations; and (iii) obtaining environmental insurance policies that cover claims for bodily injury, property damage, clean-up costs and business interruption for all known conditions and any new conditions that are identified at, on, under or migrating from the asset.

# Environmental Law

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## Environmental & Real Estate Practices Team Up on Sale of 29 Industrial Properties

The Firm’s Environmental Law Practice Group worked with the Firm’s Real Estate Practice Group on a sale of a client’s portfolio of 29 industrial properties including 10 in New Jersey, 13 in Connecticut and others in Pennsylvania, Massachusetts, Indiana, Iowa and Alabama. The Firm negotiated a comprehensive Purchase and Sale Agreement (“Agreement”) that allowed the purchaser to perform an environmental investigation of the properties on a confidential basis as a part of its pre-closing due diligence, so as to avoid creating any obligation on the part of the seller either to report contamination to any governmental entity or to perform the remediation of any contamination that purchaser might find. Purchaser could either accept liability for whatever it might find and close the transaction, terminate the transaction if it was unwilling to accept that liability or try to convince the seller to negotiate some other way to address whatever contamination that the purchaser might find. In that Agreement, the seller agreed to purchase environmental liability insurance policies that would protect both the seller and purchaser after closing for (1) the cost to clean up any pre-existing contamination discovered after closing, (2) the cost to clean up any contamination first discharged after closing, (3) any third party claims for property damage or bodily injury arising from any contamination, (4) any business interruption of the property owner or any of its tenants arising from contamination or its cleanup, and (5) any cleanup costs arising from any governmental entity reopening any case where it had previously confirmed that the cleanup had been completed. The Firm’s Environmental Law Practice Group worked with insurance brokers and companies seeking to obtain the insurance policies required for the transaction to close.



## OUTSIDE ENVIRONMENTAL COUNSEL FOR PROPERTY ASSETS THROUGHOUT THE UNITED STATES

Our Environmental Law Practice Group represented Seritage Growth Properties (“Seritage”), a publicly traded REIT that owns 237 properties across 48 states and Puerto Rico. As outside environmental counsel, our representation includes review of environmental documents associated with existing conditions, coordination with environmental consultants to assess and formulate go-forward strategies to achieve regulatory compliance, if necessary, assistance in transactional matters with new tenants, buyers and lenders and routine environmental compliance matters. We offer practical advice in addressing environmental issues, allocating environmental risk and getting transactions closed successfully.

# Government Enforcement & White Collar Crime

BE LEERY OF INVESTIGATIVE “QUERIES”

## LET MANDELBAUM BE YOUR GUIDE WHEN RESPONDING TO CORPORATE INVESTIGATIVE INQUIRIES

Most people would not welcome a police officer into their home “for a look around”. The same approach should apply to one’s business. Official or unofficial requests to have a “look inside” your company records come in many forms and from various sources. The initial reaction should always be the same: Instruct all company personnel to not respond, preserve and do not alter potentially responsive information, and contact competent counsel.

Mandelbaum Salsburg advises solo practitioners, small businesses, and large corporations alike on the most effective strategies for responding to all types of investigative demands; whether a subpoena from a law enforcement agency; a request from a competitor’s law firm for documents or testimony in connection with a civil lawsuit; a subpoena from a regulatory or licensing body; or an inquiry from an insurance company for such things as customer or client lists, lease agreements, or corporate filings.

Obtaining an early evaluation of the company’s rights, obligations, and potential exposure is crucial. Corporate counsel can review insurance policy language and assess the availability of insurance coverage for the work necessary to respond to the demand, and any potential liability the company may incur as a result of the demand. Often times, the insurer requires prompt notification of the potential claim. In addition, in the case of a formal subpoena, certain rules of the court from which the subpoena was issued may require that any available objections be made, or forever waived, within a certain number of days. For example, if properly made, objections to overly-broad demands for voluminous documents or objections to requests for trade secrets and other proprietary business information may result in the narrowing, or striking down, of the request.

Management should keep in mind that early involvement of counsel does not mean a commitment to potentially unnecessary legal expenses. After an initial response strategy is formulated, the company will be in an optimal position to decide whether the response can be handled internally or will necessitate continued involvement of outside counsel or other outside personnel and if so, to what extent.

All investigative demands should be taken seriously for their potential impact on business operations. Management should operate from the approach that even the most informal request, such as a demand from a competitor, may elicit responsive information that could wind up in the hands of a regulatory agency or, worse yet, law enforcement.

**The takeaways from this article are straightforward and easy to remember for all those faced with investigative demands:**

- Trust your instincts;
- Contact counsel;
- Instruct all corporate personnel to not communicate with the investigative party; and
- Take the necessary steps to preserve all documents and information that may be responsive to the investigative demand.

## ASSISTING PHYSICIANS IN MAINTAINING THEIR INDEPENDENCE

The overwhelming trend in healthcare is for physicians and their group practices to be, in essence, acquired by a hospital or a very large medical practice which is, in effect, “corporate” in its methods of operating. Many physicians would prefer to remain independent; but, given the current economics of healthcare, it is often nearly financially impossible for smaller practices to do so.

Mandelbaum Salsburg has assisted physician practices in maintaining their independence through a number of mechanisms. These include: negotiating the practice joining an Accountable Care Organization (ACO), which permits the practice to retain a fair amount of autonomy, while obtaining many benefits of belonging to a larger healthcare organization or similarly negotiating for a practice to join an Independent Practice Association (IPA), which affords many of the same benefits as joining an ACO.

There are other concerns with these arrangements, and our attorneys have assisted physician clients in addressing them. For example, with the ACO and IPA arrangements a portion of the practice’s compensation, as a whole group, is based on its reaching certain quality of care performance standards. In addition, the group practice compensation is almost always a fixed salary and a bonus based on each physician’s personal productivity of collections for his/her medical services. Consequently, there is a disconnect between how payments are calculated for the practice and compensation is calculated for the practice’s physicians. Our Group has assisted clients in addressing these and other related issues.

# Healthcare

## RECOUPMENTS AGAINST HEALTHCARE PROVIDERS ON THE RISE

In 2018, the Health Law Practice Group saw a large uptick in the recoupment efforts by health insurance carriers (“Carriers”) against health care providers (“Providers”). These recoupments are often performed by third party contractors retained by the Carriers who have every incentive to seek as large a recoupment as possible. In general, these recoupments begin by a contractor requesting a sample of medical records, which Providers are legally obligated to provide.

The results of these medical record reviews are often extrapolated to the entirety of the claims the Provider submitted to the carrier and a recoupment claim, can often be in the millions of dollars.

Providers can find themselves with few options if they do not take prompt and appropriate action. By identifying the deficiencies in their documentation while the recoupment is still in the nascent medical record stage, Providers inevitably are more prepared to respond to any recoupment findings issue-by-issue, or even on a claim-by-claim basis.

Alternatively, Providers can pro-actively set the terms of negotiation with Carriers by offering settlement terms that are favorable to the Provider and instituting “Corrective Action Plans” that will correct the deficient documentation of the practice on a go-forward basis.

Over the past year, the attorneys in our Group worked with many of our clients to either reduce the impact of recoupments or eliminate them altogether.

## MANDELBAUM SALSBURG LAUNCHES ITS HIPAA & PRIVACY INITIATIVE

In the compliance and security realm, the Healthcare and Privacy and Cybersecurity practice groups put forth a new initiative to assist clients achieve compliance and peace of mind with respect to the security of their patients medical records. These practice groups have been actively assisting healthcare providers and their “business associates” by providing them with all the tools a practice needs to get started on HIPAA and privacy compliance, including a risk assessment to determine vulnerabilities in a client’s security; a custom set of policies and procedures that address these vulnerabilities; and training for management on HIPAA, privacy compliance and information.

## PROTECTING HEALTHCARE PROFESSIONAL FROM ON-LINE NEGATIVE REVIEWS

This past year, the Firm was at the forefront of protecting physicians and dentists from untrue, negative reviews on the internet by disgruntled former patients. Our attorneys were successful in obtaining a court order directing that a former disgruntled patient had to remove multiple negative posts she had filed on nearly ten websites and her Facebook Page.

It is extremely difficult to obtain such a court order because of the First Amendment to the U.S. Constitution which, in protecting free speech rights, severely limits the situations in which a court can restrain a former

patient from speaking-out about their negative reviews of a former healthcare provider.

In this litigation, our attorneys were successful in establishing that this former patient’s negative posts fell within several categories of the less-protected free speech and that, for the most part, the posts were factually untrue. This former patient was forced to take-down all her negative reviews and was restricted from posting any future ones.

# Immigration Law

## CHANGES IN THE LAW

*The current administration has made myriad changes in procedure and policy over the past year. Here are just a few of the current challenges:*

- Rescission of Temporary Protected Status (TPS) for nationals of El Salvador, Honduras and other countries
- Changes in the Travel Ban on immigration from certain countries, mostly in the Middle East
- Increased Requests for Evidence on business visa cases

- Increased processing times and delays for green cards, making it difficult for workers to remain legally employed, to renew driver's licenses, or stay legally in the U.S. while cases are pending
- Medical examinations for green cards will be valid for 2 years but must be signed by the physician just prior to filing an application
- Confusion over the future of work authorization for dependents of H-1b visa holders, which hits particularly hard in the professional South Asian community in New York and New Jersey
- Required interviews at USCIS for all employment-based green cards

*In view of these and other measures, advance planning to hire or retain key foreign employees is extremely important.*

## SUCCESS STORIES

At Mandelbaum Salsburg, we know firsthand how complex the immigration system can be. Despite numerous changes in policy and practice during the past year, our attorneys have helped our clients navigate through the complex immigration system. We have had a 100% success rate this year, gaining approvals for clients in the following areas:

- TN visas for a Canadian interior designer changing companies
- Permanent residence for expert in IoT and machine learning algorithms
- Green cards for spouses of American citizens
- E-3 visas for an Australian patent agent and advertising executive
- H-1b visa for physical therapists at a multi-office practice
- Naturalization (US citizenship)

## HOW WE CAN MEET YOUR FAMILY OR BUSINESS IMMIGRATION NEEDS

Our Firm handles many different types of individual issues, such as sponsoring relatives from abroad, applying for green cards based on marriage, and obtaining U.S. citizenship. Corporate clients may have the following immigration needs:

- I-9 Compliance: Medium-sized and large companies must keep rigorous track of whether employees are legally authorized to work. Businesses audited by the Department of Labor may face steep fines for noncompliance. We can review your records, work with HR, and recommend changes so you avoid penalties.
- Work visas: H-1b, TN, E-3, PERM.... It's an alphabet soup out there. If you want to hire a foreign worker, or transfer someone to the U.S. from abroad, you have to know which visa is appropriate, how long it takes, how much it costs. We can help you determine

whether there is a way forward or not, and if there is, how to do it most efficiently.

- Life science, start-up and biotech companies: Foreign-born engineers, computer scientists or entrepreneurs face special challenges in trying to remain in the U.S. For highly skilled applicants, the attorneys at Mandelbaum Salsburg are especially experienced and creative in proving that an applicant has "extraordinary ability" (the "genius" visa category) or is contributing to the "national interest."
- Physician and dental practices: Our attorneys can help you hire foreign doctors, physical therapists, dentists and other personnel who may need an H-1b or other professional visa.

## ENSURING CLIENT'S RIGHT TO BE FASHION FORWARD

The Group was retained as US and worldwide coordinating intellectual property and brand enforcement counsel for a rapidly rising New York-based fashion accessories brand, assisting the company with protecting the creative aspects of the explosion of its worldwide business. The Group is responsible for managing trademark, copyright and design prosecution and enforcement in the US, Central America, Europe and China protecting the client from the sharp elbows of established fashion-world stalwarts as it makes its viral mark as a leading fashion-scene "disrupter."

# Intellectual Property & Brand Management

### Mandelbaum Salsburg's Intellectual Property and Brand Management Group has had a busy and successful year. The highlights of the Group's activities in 2018 included:

Besides adding Group Chair Ron Coleman and Vice Chair Joel MacMull around New Year's of 2018, the Firm brought on veteran patent lawyer Lawrence Goodwin as of counsel, enabling the Firm to continue providing high-level "all arts" representation and advice with respect to every variety of intellectual property.

In a recent case handled by Member Joel G. MacMull, our client, an international apparel company, found that one of its many trademarks was being infringed by an online clothing company. Before firing off a belligerent "nastygram," research revealed that the infringer was a young man who, by all indications, was simply ignorant of the law. With that in mind, a letter was sent with a tone that sought a request for cooperation and a goal of educating the recipient about why his conduct was infringing. Within 36 hours of receiving our letter, he had taken down his website and agreed not to infringe our client's mark again. That, by any measure, was a win!

Joel MacMull addressed an audience of hundreds at the International Trademark Association's Annual Meeting in Seattle, Washington in May where he shared his experiences as co-lead counsel in *Matal v. Tam* (formerly *Lee v. Tam*), a landmark free speech case. In *Matal*, the U.S. Supreme Court struck down, by a unanimous vote the Lanham Act's section 2(a) – the "disparagement clause", of the federal trademark statute – on the ground that as a content-based restriction, it violated the free speech clause of the First Amendment.

After more than 10 years of protracted litigation spanning three different forums, Ron Coleman and Joel MacMull successfully obtained the dismissal, in the U.S. District Court for the Eastern District of Virginia, of trademark and related unfair competition claims brought by a global pharmaceutical company against our client, a young Virginia-based maker of a growing national brand of over-the-counter analgesics.

With the assistance of Litigation Group Member Arla Cahill, Ron Coleman led the defense of a trademark infringement suit in the U.S. District Court for the Eastern District of New York against our client, a worldwide online appliance retailer. The case was filed by a global manufacturer of electronic goods based on our client's lawful sale of "grey market" or trans-shipped, branded goods. After years of litigation and the court's denial of the plaintiff's summary judgment motion, the matter was settled under terms that resulted in the client actually being made an authorized distributor and dealer for the plaintiff manufacturer.

Ron Coleman led a litigation team that obtained a preliminary injunction in the U.S. District Court for the District of New Jersey against former employees of a client engineering Firm in a case involving theft of trade secrets, diversion of business opportunities and other disloyal conduct. The decision quickly captured national attention in part because of the court's refusal to disregard evidence elicited from social media chat conversations among the defendants regarding their substantial efforts in establishing competing firms while still employed for the client that were left open and accessible on one of the defendants' former work computer.

Group attorneys successfully opposed a motion on behalf of a Napa, California-based winery seeking to have certain defenses in a trademark litigation precluded based on an earlier decision of the Trademark Trial and Appeal Board.

In May, Joel and Group Chair Ron Coleman were awarded the Mark T. Banner Award for the American Bar Association Section of Intellectual Property Law, which is presented to an individual or group that has made an impact on intellectual property law or practice.

Ron Coleman was once again named to the World Trademark Review 1000, the World Intellectual Property Review Leaders Directory and Super Lawyers for Intellectual Property Litigation in New York City. He also presented on the topic of the "Standard of Review in IP Cases: Developments in Trademark Law" at the New York Intellectual Property Law Association Annual Meeting in May at the Princeton Club in New York.

# Labor & Employment Law

2018 was an exciting year for the Labor and Employment Group. We continued to be a valuable resource for media outlets looking for commentary on important legal issues of the day, whether it related to the #MeToo Movement, the nomination of Brett Kavanaugh to the Supreme Court or new employment laws in New Jersey since Governor Murphy took office. You may have heard members of our Group on WABC radio, WCTC 1450, the Voice of Central New Jersey, or WBGO, or read our articles in the Newark Star Ledger, the Asbury Park Press, or the New Jersey Law Journal. We also were active on social media, appearing regularly in NJBiz.com, NJ Business & Industry Association's daily e-news service and in our own new employment law blog.

The Labor and Employment Group has also had many interesting speaking engagements but one of the most enjoyable ones was at MetLife Stadium where member Raj Gadhok moderated a seminar concerning employment issues surrounding some NFL players' decisions to kneel during the National Anthem.

Our Group also continued to grow in 2018, adding member Raj Gadhok, the current President of the Essex County Bar Association, and Associates Nicholas Waltman and Benjamin Heller. Ben is the second New Jersey Supreme Court judicial law clerk to join our Group.

## THE LABOR AND EMPLOYMENT GROUP SAVES WIDOW CLOSE TO \$1 MILLION

Union City Mirror & Table Co., Inc. ("UCM") manufactured furniture in West New York, New Jersey. It participated in a multi-employer pension fund (the "Fund"). After the owner of UCM, Generoso Russo ("Generoso"), sold the business to his step sons, he passed away. Over time, the Company's business declined and eventually UCM filed for bankruptcy. The Company also ceased making required pension contributions to the Fund.

The Fund sued UCM for close to \$1 million for withdrawal liability under ERISA. The Fund also sued our client, Generoso's widow, who inherited Russo Realty Company ("RRC"), an entity related to UCM, seeking to hold RRC liable for UCM's withdrawal liability. The Fund argued that these two companies were under common ownership and control. On the eve of trial, and after we filed for summary judgment, the Fund concluded it could not prove that RRC had any liability based upon that theory, but convinced the Court to allow it to assert a totally new claim, that RRC was an alter ego of UCM for purposes of the Fund's withdrawal liability claim.

At trial in Federal Court in the Southern District of New York, we proved that RRC also was not an alter ego of UCM and all claims against it were dismissed. Members Steven Adler was trial counsel and Member Stuart Gold also assisted in the litigation.

## MEMBER RETAINED AS EXPERT IN ERISA CASE

In yet another withdrawal liability case, a multi-employer fund (the "Fund") retained Martin Hauptman, Esq., a CPA and Member of the Firm's Labor and Employment Group, to serve as its expert witness. Marty's role was to determine whether the family-owned business was transferring assets to evade withdrawal liability or in connection with the family's estate planning.

## HELPING CLIENTS AVOID WITHDRAWAL LIABILITY

In another withdrawal liability case in the Federal Court in the Southern District of New York in White Plains, a large multi-employer retirement fund (the "Fund") sued our clients' company, an importer of women's undergarments, for approximately \$750,000. It also sued the real estate LLC that owned the property from which the business operated. When it learned the business went bankrupt and the real estate had been sold for about \$2 million, with the proceeds going to our clients, the Fund also named our clients as Defendants for "evade and avoid" liability under ERISA. We eventually convinced the Fund that our clients had limited exposure and resolved the case on terms extremely favorable to our clients. Group Co-Chair, Steven Adler, with assistance from Lauren Topelsohn, handled the litigation.

## TRADITIONAL LABOR LAW

Even though the percentage of the private sector workforce which is unionized is quite small, unions are still particularly active in the tristate area. Group Co-Chair, Dennis Alessi, has been very active this past year in representing our unionized clients in arbitrations, under Collective Bargaining Agreements, over alleged violations of work rules, layoffs and terminations of workers; and in unfair labor charges before the National Labor Relations Board (the "Board") over these issues and petitions by unions to organize and represent employees. Dennis has also represented employers in audits and arbitrations by union health and welfare funds, and has saved them hundreds of thousands of dollars in excess contributions demands by the funds.

## CLASS ACTION SUCCESS

Since 2013, the Commercial Litigation Group and the Labor and Employment Group have been prosecuting a wage and hour collective and class action on behalf of account executives employed by Defendant AT&T Mobility (the "Company" or "AT&T"). The lawsuit alleges that the Company intentionally misclassified these workers as administrative employees to avoid paying them millions of dollars of overtime.

Michael A. Saffer, Steven I. Adler, Arla D. Cahill and Brian Block obtained conditional certification of a nation-wide class under federal law in August 2014 and on September 20, 2018 the Hon. Analisa Torres, U.S.D.J., granted Plaintiffs final certification of the nationwide class and certified New York and New Jersey Rule 23 classes asserting state law wage and hour claims. Notice to the classes are being prepared and we expect to be representing a significant number of current and former AT&T employees.

# Life Sciences

Peter Levy chairs the Life Sciences Practice at Mandelbaum Salsburg, and his approach to the law is unique thanks to a background most attorneys do not have. Peter was formerly the CEO of a pharmaceutical and nutraceutical company for five years, so the critical issues involving manufacturing, safety, FDA regulation, and consumer awareness and education are a passion he shares with each of his clients.

Currently, the diversity of Life Sciences matters being handled within the Life Sciences team is as amazing as the breakthrough inventions and patents that emerge almost daily. Over the past few months, Mandelbaum Salsburg has worked hand-in-hand with the inventor of a new type of bandage that treats the painful symptoms of Scleroderma, Raynaud Disease, and Third Degree burns. In every facet of the process, from filing a patent to strategizing on the best way to license the technology, Mandelbaum Salsburg has guided the client towards a path of clinical, regulatory, and financial success.

And “hope” has been rejuvenated in more than one way – not only is the client/inventor now involved with the world’s leading bandage manufacturer – the client/inventor is battling and suffering with the latter stages of Scleroderma. The journey and path of this bandage is not only a scientific success, but a major personal triumph!

## PAVING THE WAY FOR HOPE

Life Sciences is defined in general terms as the study of living organisms, including biology, botany, zoology, microbiology, physiology, biochemistry, biomedical technology, pharmacology and their related processes of development and evolution. But to the attorney, Life Sciences is the protection, regulation, and commercialization of those companies and institutions that devote their efforts to the research, technology transfer and financial growth of this complex field of knowledge.

Mandelbaum Salsburg’s Life Sciences attorneys are integrally involved in our clients’ launches of various drugs and clinical trials. Currently, our clients are conducting FDA trials, or researching new pharmaceutical uses, ranging from Cannabinoid based drugs that treat concussions or diabetes, to blood cleansing technologies at the cutting edge of curing Alzheimer’s Disease. The need to provide strong legal support, across array of disciplines, is never as evident as when launching a new biotech or pharmaceutical product. There are the normal issues that every start-up endeavor faces. However, these are then complicated by the importance of Intellectual Property protection; regulatory approvals; safety concerns; liability for human trials; all while educating the consumer as to the proper use and efficacy of the new product.

*“There is nothing more exciting than working as an attorney in the field of Life Sciences; every client is on the cutting edge of a breakthrough that will lead to a cure or treat an illness or improve health. Innovative techniques are embedded in every contract or at the foundation of each financial raise. Life Sciences create hope for others, and it is a wonderful area within which to practice law.”*

The lawyer’s role in a Life Sciences matter is not only limited to the creation of the product, but the intellectual property protection and FDA regulation. For example, Mandelbaum Salsburg has assisted its client, the MYOS-RENS Corporation (Symbol: MYOS), in both going public and in successfully becoming a NASDAQ company. Myos-Rens has the only product clinically proven to build lean muscle, and the Law Firm has ensured that all marketing claims and testimonials are within FDA guidelines and compliance, and created a variety of research agreements with major universities throughout the United States that grant the university research rights while ensuring Myos-Rens controls the commercial enterprise.

Do you remember your grandmother saying “Nothing smaller than your elbow should go into your ear”? Well scientifically it is true – the ear canal is one of the most delicate parts of the human body, and the best way to clean the ears remains a medical point of discussion. Mandelbaum Salsburg now has a client on the verge of launching the best new method of cleaning the ear canal. The great new product, basic and essential for all of us, still required a tremendous amount of regulatory consideration and assurance that the labeling and marketing were in compliance with FDA guidelines. The product—whose name cannot be revealed as of this printing, represents another legal matter wherein the lawyer’s role was impactful and important to the viable launch of a product rooted in biology and physiology. Our work in FDA labeling, Good Manufacturing Practices, and the importation of drugs and foods subject to USDA regulation, all keep Mandelbaum Salsburg attorneys connected to the Life Sciences Practice.

# Litigation

The Firm's Corporate and Commercial Litigation Group had a very successful 2018. Members Steven I. Adler and Lauren X. Topelsohn handled two complex commercial disputes for our client, a publicly traded diversified financial services company (the "Client"). The first involved one of the Client's subsidiaries that owned 80% of a litigation funding company (the "Company"). At a time the Company was to be dissolved at the end of the Operating Agreement's five-year term, the Client became concerned that the 20% minority owner intended to abscond with over \$20 million in recent collections. The Firm obtained a temporary restraining order from an AAA emergency arbitrator and a New York Court Order, protecting the \$+20 million, and pursued the Client's remaining claims. Ultimately, all issues were resolved in the Client's favor, enabling it to buy-out the minority owner for far less than fair market value. The other action was litigated before the Delaware Superior Court, Complex Commercial Division, and involved portfolios of hundreds of millions of dollars of consumer debt that the defendant was servicing for our Client, and resulted in a lucrative \$4.35 million settlement.

## MOTION TO DISMISS COMPLAINT, WITH PREJUDICE, GRANTED: A RARE OCCURRENCE

Attorneys Michael A. Saffer and Brian M. Block achieved a complete dismissal with prejudice of a complaint by a Condominium Association that sought injunctive relief against our client, a condominium owner, from contacting members of the Association's Board of Directors. We not only opposed the request for injunctive relief, but simultaneously moved to dismiss the Association's complaint based on the language of the Condominium's Master Deed and the Chancery Division's lack of jurisdiction over the type of relief sought by the Association. The Chancery Judge agreed with our position and, in a complete victory for our client, both denied injunctive relief to the Association and granted our rare motion to dismiss the Complaint, with prejudice, ending the case against our client less than two months after the Association filed it.

## PROTECTING A COMPANY FROM ITS EMPLOYEES

Attorneys Arthur D. Grossman, Ronald D. Coleman, and Brian M. Block successfully obtained a preliminary injunction in federal court in New Jersey enjoining several of our client's employees from engaging in a scheme to actively solicit clients and misappropriate sensitive company documents in order to start up a new business competing against our client. Though the case presented several e-discovery, forensic, and social media discovery challenges, with the help of our forensics expert, we were able to uncover the scope of the employees' conspiracy and the substantial trove of documents taken from our client. In addition, we successfully moved to dismiss certain privacy-related counterclaims by the disloyal employees.

## Excluding Evidence That Saved a Client More than \$1 Million

You may remember this story from last year's *Year in Review* where attorneys Michael A. Saffer and Arla D. Cahill tried to conclusion in 2016 a case involving our banking client that was accused, as trustee of a 1975 trust, of failing to notify the trust's beneficiaries that the bank

was investing trust assets inconsistent with the directions of the 1975 trust. At trial, our Firm was able to exclude the opinion of an expert who argued that the beneficiaries were entitled to more than \$1 million in certain damages which reduced the bank's exposure at

trial. After hearing oral argument on the bank's and beneficiaries' respective appeals on multiple issues this past spring, the Appellate Division affirmed the trial court's decision excluding the expert's testimony in August.

# Matrimonial and Family Law

THE MOST SIGNIFICANT  
UPDATE IN YEARS

## CHANGES TO THE TAX CODE

At the Federal level, effective January 1, 2019, alimony will no longer be deductible by the payor or taxable to the recipient. There are other changes to the tax code as well. This is a federal change only, as alimony will still be deductible/taxable on the New Jersey return. We will be carefully addressing alimony provisions to make sure the alimony is addressed as favorably as possible for our clients.

## COHABITATION

In regards to cohabitation, what the statute *doesn't* say is significant. The alimony statute addresses cohabitation post-divorce as a basis to terminate or suspend alimony. It also may serve as a basis to modify alimony although not specifically addressed in the statute. In a recent case, we addressed cohabitation where a potential recipient spouse met the statutory criteria for cohabitation even before the divorce as a basis to preclude an initial award of alimony.

## CLIENT LOYALTY

When strong action needed to be taken in the face of non-compliance by an adversary spouse, after repeated enforcement applications, we successfully convinced the court to appoint a fiscal agent to sell assets and compel the enforcement of Orders. We were with our client through multiple Court applications to fight to obtain the relief that had been awarded to her.

## ENFORCING A JUDGMENT OF DIVORCE AFTER A NUMBER OF YEARS

Enforcing a Judgment of Divorce after a number of years, our attorneys were able to make a client's former spouse assume the responsibility set forth in the Judgment of Divorce. In this particular case our client was not required to refinance the marital home he received in the Judgment of Divorce unless it was without cost to him. After an application with the Court the ex-wife was ordered to pay for certain expenses of the refinance. We held the ex-wife accountable to the provisions in the Judgment of Divorce.

## YOU CAN CHOOSE YOUR RELATIONSHIP – WE CAN HELP YOU CONTROL THE RESULT

Over the years, our Family Law Group has dealt with a multitude of different relationships above and beyond the husband/wife marriage and this year that trend continued. We often represent one side in a same sex marriage or in relationships where no marriage has taken place and there are issues regarding child support, distribution of property and palimony. We also handled cases where there was more than one legal relationship and were successful in navigating the waters in those cases as well.

In one recent case, Party A and Party B entered into a Domestic Partnership in 2005. In New Jersey, a Domestic Partnership does not provide for any equitable distribution of assets or liabilities. Assets that are acquired during the marriage belong to the party in whose name the assets were acquired and since the law of equitable distribution is not used in a domestic partnership, parties may have to raise issues of Partition or other Chancery claims. Additionally, a court cannot award alimony when dissolving a domestic partnership.

The parties who entered into the Domestic Partnership in 2005 entered into a civil union in 2010. Under the 2007 New Jersey Civil Union Law, same sex couples were granted the right to enter into a legal relationship that opposite sex couples were able to enter into to. The dissolution of which could include the distribution of assets and debts acquired during the marriage subject to equitable distribution as well as claims for alimony. This law was necessary because under federal law, parties could not marry, file joint federal income tax returns or deduct alimony under their federal income taxes but New Jersey's goal was to treat same sex and opposite sex couples equally. Subsequently, the parties entered into a legal marriage in the State of New Jersey in 2015.

Today, a same sex couple has all the rights and responsibilities as a married couple at the State and Federal levels. An interesting question that arises in these situations is what is the length of the marriage for determining alimony as well as determining equitable distribution?

• Is it the earliest date and time that they had a legal relationship, such as the 2005 Domestic Partnership despite that if it was the only legal relationship that existed, neither alimony nor equitable distribution could be ordered?

- Is it the 2010 civil union despite that under federal law, the civil union was not recognized as a marriage for purposes of filing the joint income tax returns or reporting or deducting alimony?
- Or, is it the latest of the legal sanctification of the marriage which took place in 2015.

At that time, the same sex couple had all of the rights at the Federal and State level that an opposite sex married couple had. While it is easy to use this date, do the equities bear this out? Is it fair for their relationship to be legally acknowledged only as of 2015 ignoring the decade leading up to the marriage?

Most courts recognize "bright line dates" such as the date of the actual legal marriage and the date that a Complaint for Divorce was filed in determining the length of the marriage for purposes of assessing equitable distribution and alimony. Whether a case is straight forward or has nuances such as in the example above, we are able to assist clients, very often without engaging in litigation.

# Municipal & General Criminal Defense

## EXPERIENCE COUNTS

The Criminal Defense Practice Group represents individuals, business professionals, and companies that are faced with disciplinary hearings, investigations or charges in the Municipal, State and Federal Courts of New Jersey.

Our attorneys have over 100 years of criminal law experience. Some have been with this Firm for over 40 years. Others include former Municipal Prosecutors, the former 1st Assistant Public Defender of Essex County, former 1st Assistant Prosecutor of Essex County and the former Acting Prosecutor of Essex County. All are criminal trial attorneys. Our criminal trial attorneys have effectively resolved thousands of criminal matters in municipal, state and federal courts. The Group aggressively defends crimes and motor vehicle offenses in all venues. Our attorneys are routinely defending matters in the municipal courts of the State of New Jersey involving driving while under the influence of drugs or alcohol, revoked list operation and a multitude of other offenses including, but not limited to, crimes ranging from corporate malfeasance, assault, robbery, theft, kidnapping and homicide. Our attorneys are quite active in the Superior Court of New Jersey as well as in the Federal District Court. The Criminal Practice Group's Co-Chairs, Joseph Discenza and Vincent Nuzzi, have tried a multitude of Municipal and State Superior Court cases. Both have had

extensive experience in the Federal Courts. Both Joseph and Vincent have in fact handled matters as far away as California, Colorado, Massachusetts, Virginia, Pennsylvania, New York and Florida.

Members of the Firm's Practice Group are also well versed with defending as well as prosecuting Domestic Violence matters both at the Municipal and Superior Court level.

The Firm also has attorneys on staff with extensive experience litigating criminal appeals and post-conviction matters in both the state and federal court. The Firm now is proud to offer a White Collar Criminal Practice led by Damian P. Conforti and Mr. Nuzzi to go along with the myriad of other services as noted.

The Group relies on experience in all matters and in all courts to aggressively and successfully defend any motor vehicle or criminal case presented to it.

# Personal Injury and Workers' Comp

## HELPING VICTIMS GET THE JUSTICE THEY DESERVE

The Personal Injury and Workers Compensation Practice Group help injury victims get the justice they deserve. They represent regular people and their families, many times these are people whose lives have been broken by terrible injuries or death; events that should not have happened. The Group seeks justice for its clients from wrongdoers of all kinds; corporations, insurance companies, governments, and individuals. The Group's goal is to get victims the best result. The Group represents the injured from automobile accidents, dog bites, slip and falls, burn injuries, brain injuries, amusement park accidents, wrongful death accidents, and all other types of accidents and strives to compensate them to the fullest extent of the law.

The Personal Injury and Workers Compensation Practice Group is a regional practice that has grown this year by introducing two new attorneys; Raj Gadhok and Ethan Wells. As the Group has grown, so has its passion to fight for the little guy.

The Group recovered many millions of dollars this year and has a core backbone of attorneys with over 100 years of combined experience that has seen almost every type of personal injury matter. Not only does the Group get successful results and large recoveries for clients and referring attorneys, but it is immensely proud of the fact that in many cases, these wins also result in changes in policy or product design. "We are Soldiers for Justice" says Joseph Discenza who Co-Chairs the Practice with Joseph Peters and is named to Super Lawyers as well. Discenza is a Certified Civil Trial Attorney as certified by the New Jersey Supreme Court, an honor less than 3% of attorneys have earned in the state.

In ever changing technological times, the Group is on the cutting edge. They utilize visual aids during trial to visually assist the jury in understanding where negligence may have occurred. These aids consist of enlarged photographs of injuries, accident scenes, body parts, etc. Furthermore, the Group uses 2D and 3D graphics and interactive animations for enhanced visuals for the jury. Using a state-of-the-art audio-visual, medico-legal settlement brochure, the Group through a collaborated effort obtained a pre-trial settlement of \$3.25 million for the Estate of a 22 year old motorcyclist, who sustained catastrophic injuries in a high impact accident that caused his death 23 days later.

To beat a "Goliath" you must have excellent attorneys and the best expert witnesses supporting the client's case.

The Group has the resources to hire the best experts in the country to review a case. The attorneys understand how important it is to hire the most experienced and knowledgeable experts in their field. This includes vocational experts, medical experts, accident reconstruction experts and more. The Group using some of the best experts in adolescent psychiatry, transportation of students with disabilities, and anesthesiology in the country obtained a \$2.2 million pre-trial settlement for the Estate of a 14 year old student with disabilities,

who ran from a moving school bus during transportation home from an out-of-district behavioral program, sustaining fatal injuries that caused her death three days later. The Estate's expert in the field of anesthesiology, critical care medicine, and pediatrics opined that the student suffered some level of conscious pain and suffering, as a result of her catastrophic injuries, for approximately 11.5 hours following the fatal incident. There was a shocking abundance of evidence clearly establishing that prior to the fatal incident, both the sending public school district and the receiving special services school district knew, among other things, that the student could not tolerate the bus ride home from school, which regularly caused her to experience a great deal of emotional distress, and when agitated or otherwise in crisis she was a very high flight risk likely to elope and put her safety at risk without understanding the consequences of her actions. The Estate's experts in the field of adolescent psychiatry and transportation of students with disabilities opined that, as a result of the student's disorders and psychological frailty, the "bus situation was untenable" for her.

Much of the Group's personal satisfaction comes from earning the trust and confidence of its clients; the value in treating every person with the dignity and respect they deserve; and the good coming from the financial security it recovers for our clients and their families. Relationships are everything to the Group's attorneys. The Group prides itself on forging meaningful relationships

of mutual trust with its clients, always imparting its principal values and tenets into an individualized approach to each case. The Group, and Firm, believe that its actions speak louder than its words.

Each case is handled by an experienced attorney who is in constant contact with the client. The Group supports clients whenever and however they are injured. They handle all matters on a contingency fee basis only and advance all costs necessary to effectively represent our clients. No fee is paid unless the case is won or settled.

The Personal Injury and Workers Compensation Group is eleven (11) attorneys strong and includes:

Joseph Peters (Co-Chair)  
Joseph Discenza (Co-Chair)  
Charles Lorber  
Michael Bevacqua Jr.  
Manuel Grova  
Raj Gadhok  
Jeffrey Grabelle  
Damian Conforti  
Nicholas Waltman  
Ethan Wells  
Thomas Hildner

"We are lawyers who champion the underdog. Those who stand in the space between what is and what should be, endeavoring to narrow that gap. Those who speak up for those left marginalized and voiceless," says Joseph Peters who has been named to Super Lawyers for the last six years and who has practiced for over 40 years in the field and Co-Chairs the Practice Group.

# Privacy & Cybersecurity

## NEW CHAIRPERSON

Steven Teppler joined Mandelbaum Salsburg in June 2018, as Chair of the Privacy and Cybersecurity (P-Sec) practice. Steve's wealth of experience includes serving as Co-Chair of the American Bar Association's Information Security Committee, Internet of Things (IoT) Committee, and Co-Chair of the ABA's National Institute on Electronic Discovery and Information Governance (2012-2014). He is also a contributing author of the ANSI X9F4 trusted timestamp guideline standards for the financial industry.

## GENERAL DATA PROTECTION REGULATION (GDPR)

In May 2018, the GDPR's enforcement and penalty provisions went into effect. The GDPR establishes, among other things, privacy, accessibility and security obligations for businesses that "envisage" collecting information from residents of the 22 member countries of the European Economic Association (EEA). If a business collects or uses information from EEA residents, they are subject to strict requirements that, if violated, can result in fines up to USD \$23,000,000 or 4 percent of a company's annual gross revenue.

## BLOCKCHAIN AND CRYPTOCURRENCY

The Firm's Cybersecurity and Privacy practice has advised a number of clients in connection with their ongoing or startup efforts in the blockchain and cryptocurrency arenas. The Firm's attorneys understand both the promise (and hype) underlying this technology, and provide meaningful counsel to both new and existing blockchain and cryptocurrency related companies.

The Privacy and Cybersecurity Team at Mandelbaum Salsburg enables clients to navigate the legal and practical challenges of cybersecurity and privacy issues.

## CYBER-INSURANCE

Companies without adequate cybersecurity and data breach insurance are "whistling past the graveyard." Recent court decisions have ruled that ordinary D&O insurance does not cover cybersecurity events such as ransomware or data breaches.

2018 saw a tsunami of cybersecurity and privacy developments on both the legislative and judicial fronts. Recently enacted or effective laws and regulations, domestic and international, have raised the bar for enterprises large and small when it comes to protecting and securing the privacy, security, confidentiality and even the availability of electronically stored information, or ESI. With recent settlements and fees in some cases exceeding \$100 million, the Firm's focus is proactive - we advise and guide clients to structure their policies and processes to achieve defensible compliance necessary to avoid or mitigate financial and reputational damage.

## 23 NYCRR PART 500

Effective March 1, 2017, New York State enacted 23 NYCRR Part 500 in recognition that the financial services industry is a significant target of cybercriminals. The regulation established rigorous cybersecurity requirements for financial services companies (described as "Covered Entities"). Covered Entities are required to develop and maintain a cybersecurity program designed to protect the "confidentiality, integrity, security and availability", of their information technology systems and customer information, conduct "periodic" risk assessments, and meet certain minimum standards.

## CYBERSECURITY INCIDENTS

Cybersecurity incidents continued to rise through 2018 -- ranging from the hacking and sale of customer and proprietary data on the dark web, to ransomware attacks that shut down business operations. The results were clear: increased liability exposure, class action litigation, shareholder lawsuits, and regulatory investigation. One ransomware attack of a health care-records provider prevented practitioners from accessing patient records. Another crippled the operations of a manufacturer for nearly a week, resulting in +\$135 million in lost sales and \$175 million in other costs. The old adage remains true, an ounce of prevention is worth a pound of cure. Our team assists clients to assess their information security, manage data, reduce risk and, in the event of the worst, respond to an incident.

## AMERICANS WITH DISABILITIES (ADA) LAWSUITS

Does your web site comply with the Americans with Disabilities Act (ADA)? Companies are being targeted for class action suits for failure to adhere to pending web site accessibility standards. While the ADA does not expressly refer to web sites, an increasing number of courts have held that compliance is required by the "spirit" of the law.

# Professional Practice Transitions

## FIRM'S 360 DEGREE APPROACH HELPS PROMINENT DENTIST AND ENTREPRENEUR GAIN ENTRY INTO COMPETITIVE DSO MARKETPLACE

The acquisition of a Connecticut dental practice by our client, Resolute Dental Partners, was one of nearly one hundred dental practice transitions that Mandelbaum Salsburg's Professional Practice Transitions Group, led by Chief Executive Officer William Barrett, successfully completed in 2018. This particular deal allowed the Firm to showcase the true breadth of services offered to our dental and dental specialty clients.

It all started when Dr. Gregory Toback, a prominent periodontist, and entrepreneur Nathan, had a shared vision of creating a Dental Service Organization (DSO) enterprise that could not only compete with, but outclass the quality and deliverables of the institutional DSOs within their regional marketplace.

Multiple Groups within our Firm came together including Professional Practice Transitions, Healthcare, Intellectual Property, Real Estate and Banking and Financial Services, in order to turn our clients' vision into a reality.

First, our transactional team designed a corporate structure that would allow for different practices to be acquired and owned by licensed dentists, but ultimately managed by the new management company, known as Resolute Dental Partners, in compliance with the regulations governing the corporate practice of dentistry. This step also included the formation of the new entity, together with its corporate structure and governance agreements among its owners. The structure was

organized and reviewed by our regulatory experts to ensure proper compliance with state and federal healthcare laws.

Next, our Intellectual Property team obtained trademark protection for the Resolute Dental brand. This will substantially increase the value of the brand as Resolute Dental continues to grow and expand its foothold in the Northeast dental market and beyond.

Once Resolute identified Coastal Connecticut Dentistry as its first target acquisition, we quickly got to work preparing the necessary documents, including not only the acquisition documents, but also the post-closing compensation agreements for the seller.

Given our client also had an opportunity to purchase the real estate at the location, our Real Estate Practice Group simultaneously worked to effectuate the acquisition of the separate asset.

The Firm's Banking and Financial Services Practice Group negotiated and closed sophisticated financing to acquire both the practice and real estate and establish a relationship for future growth.

Resolute Dental is a prime example of the Firm's 360 degree approach at work. We are able to utilize multiple specialties and practice area experts who work together to service each specific need of a client in unison.



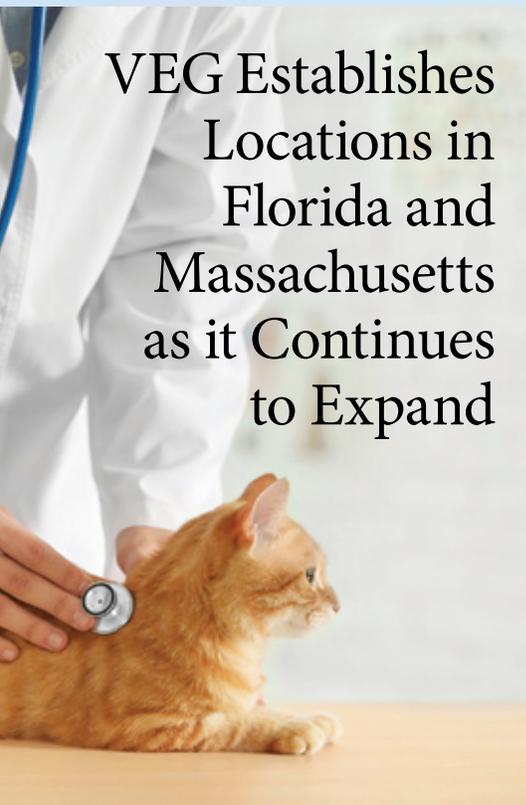
## VEG Establishes Locations in Florida and Massachusetts as it Continues to Expand

**In 2018, the Firm's Professional Practice Transitions Group served as counsel to our client, Veterinary Emergency Group, to help create a Management Service Organization which then acquired emergency veterinary hospitals in New York and New Jersey.**

Mandelbaum Salsburg partner, Peter Tanella, began working with Dr. David Bessler, one of VEG's founding members, back in 2013. Dr. Bessler has always had a dream to build a high quality network of state-of-the-art emergency veterinary hospitals to serve clients and patients in New York, New Jersey and other states. In 2018, with the assistance of Dr. Bessler's friend and colleague, Mr. David Glattstein, Dr. Bessler's vision became a reality as VEG continued to expand by acquiring two emergency hospitals in Florida and starting-up emergency hospitals in Massachusetts, New Jersey and Manhattan. The Firm's deal team included Peter Tanella, Dennis

Alessi, Barry Schwartz, Lauren Carnevale and Lindsey Priolo. With these expansions, VEG's staff of nearly 100 employees provides emergency care to over 15,000 patients a year. The future is certainly looking bright for VEG as it continues to look for new locations to provide emergency care to the veterinary community.

The Firm's Professional Practice Transitions Group has been working with the veterinary community for many years and has extensive experience in representing its veterinary clients in a diverse array of transactional matters including mergers, acquisitions, MSOs and other types of sophisticated transactions. In addition, the Firm's Professional Practice Transitions Group has continued to expand its reach nationally as it has worked with VEG and many other clients in a number of successful deals across the US.



# Real Estate & Land Use

## A SNAPSHOT OF 2018'S SUCCESSFUL TRANSACTIONS

### FRACTURED CONDOMINIUMS

We represented a local lender in an \$11 million refinance of a 43 unit fractured condominium in a townhouse complex in Mercer County, New Jersey.

### TO INFINITY AND BEYOND NEW JERSEY

A large portion of our real estate practice extends beyond New Jersey's borders. We have assisted a company based in the United Kingdom in connection with a long term lease of a facility in Staten Island, New York, worked on a \$25 million permanent loan secured by a hotel in mid-town Manhattan, and completed a \$6.3 million refinance of a hotel in Erie County, New York. We have also represented lenders where the collateral were large garden apartment complexes located in Berks and Bucks Counties, Pennsylvania. Finally, we completed a \$120 million Israeli bond offering for a national company headquartered in Boston, Mass.

The Real Estate Group uses a multi-dimensional approach in representing its clients whose needs and concerns are paramount. We strive to stay abreast of current developments in the law in order to assist and better serve our varied clients in developing strategies that will culminate in the success of their projects. We have always adopted a client-centered approach and have sought to transcend the mere attorney/client relationship by becoming true partners with each client in their endeavors.

### REAL ESTATE FINANCE

The Real Estate Group has a depth of knowledge in the complex institutional lending arena which has benefitted both lenders and borrowers alike. We handled a \$36 million refinance of an individual property in Elizabeth, New Jersey, a \$32.5 million permanent loan secured by a corporate center located in Bridgewater, New Jersey and a \$26 million construction loan to build a mixed use residential and retail project in Jersey City, New Jersey.

### REAL ESTATE SALES

We represented a client in connection with the sale of its entire real estate portfolio consisting of 23 properties in twelve states. We also represented a client in connection with a multi-million dollar sale of a private catering facility in Morris County, New Jersey and the sale of property approved for 240 multi-family units in Somerset County, New Jersey. We were also engaged in the sale of a large industrial property in Jersey City which involved a 1031 exchange for the seller.

### REDEVELOPMENT

We have represented the redeveloper of property in the Bayonne, New Jersey Peninsula commencing with the acquisition of the property and closing on a construction loan facility for a multi-million dollar project including a lease with a national large box retail store, construction of a retail shopping center and multifamily residential units.

### LAND USE

Several members of the group are skilled in obtaining zoning and planning approvals and concomitant permits for a large variety of projects, including but not limited to, a large state of the art dog boarding, grooming and day care facility. We also obtained final approval for the construction of two large apartment complexes of over 50 units each.

### LEASING

Each member of the team is active in the preparation and negotiation of complex commercial and retail leases for both landlords and tenants.

# Securities Law

## GLOBAL REACH

In March 2018 Mandelbaum Salsburg opened a new mid-town New York office when it established its Securities Law Practice Group. The Securities Group initially consisted of Mark Orenstein, Miles Prentice and Vince McGill, all of whom are located in the New York Office. Jeff Wasserman joined the Securities Group in May after a nine year tenure at Sills Cummis, supplemented shortly thereafter by Barry Schwartz after a long tenure at Cole Schotz. The most recent addition to the Group is Russell Bulkeley, who came on board late summer following previous affiliations with national law firms located in NY and CT. The New York Office is located on Sixth Avenue just steps from the entrance to Radio City Music Hall with a view overlooking the skating rink.

## CORPORATE FINANCE AND M&A

More locally, through the efforts of Miles Prentice, the Securities Group represented a private company in its sale of 18 Five Guys restaurants to Hyde Park Ventures, the leading Five Guys franchisee in the Northeast. Shortly after joining the Firm, Russell Bulkeley represented a Mexican air transportation services company and long-term client in a helicopter acquisition financing. Russell is also representing a Fortune 100 telecommunications company in connection with its corporate venturing, including an intended investment in the U.S. subsidiary of a French cloud-based technology company.

## PUBLIC COMPANY REPRESENTATION

The Securities Group currently represents numerous public companies in a variety of industries with clients based in Long Island and in London, Las Vegas and China. Two of the companies became public through reverse mergers completed in late 2017 and early 2018. Of these, one is developing a stem cell treatment facility in Shenzhen, China, while the other is testing a wastewater treatment system in New Zealand. Our representation involves public reporting, capital raising, listing and other activities on behalf of such public entities.

Going forward, the Group is working with Dominic Man-Kit Lam, a biomedical pioneer, looking to take over a NASDAQ listed company to finance the development of a patented vaccine delivery technology and the establishment of eye treatment centers in China in conjunction with the World Eye Organization.

## REAL ESTATE SYNDICATION

Mark Orenstein is currently working on a real estate syndication centered on almond producing properties in California.

## MULTIDISCIPLINARY APPROACH

The Securities Group, with the assistance of the Litigation Group, is looking to achieve a peaceful resolution of an action brought against our public client, Air Industries, in the New York courts which should result in the sale of a subsidiary of Air Industries. An action brought in the Delaware Chancery Court against One Horizon Group, another public client, culminated in a settlement allowing the incumbent Board of Directors to retain control of the enterprise.

## FOREIGN COMPANY REPRESENTATION

Through the efforts of the Securities Group Mandelbaum Salsburg has become a DAD and can now sponsor foreign companies seeking to list on the OTCBB and OTCQX. This will not only enable us to retain the representation of our current companies as they move up the ladder but also allow us to represent larger companies already suitable for the QX.

# Special Needs

## FIRM NOTCHES APPELLATE DIVISION VICTORY FOR MOTHER FIGHTING FOR SON WITH SPECIAL NEEDS

Parents of children with special needs are often confronted with difficult choices when seeking the appropriate care for their children. Such was the case for L.M., who fought to ensure a proper placement for her severely autistic son who had been civilly committed out of concern for both his own safety and the safety of his mother. The lower court overseeing the commitment process unfortunately ignored her pleas to discharge her son only to a group home for his and her well-being and safety, and, instead, the court held L.M. in contempt and fined her a crippling sum of \$10,000.

Representing L.M. on appeal to the Appellate Division, Mandelbaum Salsburg litigation associate Brian M. Block, Esq. successfully obtained a complete reversal and vacation of the contempt citation and fine. On June 21, 2018, the appellate court granted his rare motion for “summary disposition,” issuing an order agreeing with his position that the lower court failed to follow the proper contempt procedures and that the \$10,000 fine violated both the court rules and L.M.’s right to trial by jury.

The attorneys at Mandelbaum Salsburg understand the unique obstacles and challenges facing parents like L.M. everyday and are ready to fiercely advocate on their behalves to achieve positive outcomes.

## HELPING FAMILIES OF STUDENTS WITH DISABILITIES IN PUBLIC SCHOOLS

In 2018, Special Needs Practice Co-Chair Arla D. Cahill continued to expand her efforts to educate and inform parents of school age disabled students through community outreach events, several of which the Firm was a valued sponsor. Arla also continued to counsel parents in all areas of special education services and supports, advocating for appropriate placements, services and accommodations. In addition, Arla continues to advocate for the civil rights of students of all abilities in school bullying and disciplinary action cases. Earlier this year, Arla was retained as an expert witness in a professional malpractice case involving the special education laws. Arla continues to serve as a Trustee for Employment Horizons, a non-profit organization dedicated for over 60 years to vocational training and employment of disabled and disadvantaged individuals.

## Synergizing the Firm’s Diverse Skills & Talents Results in Multi-Dimensional Client Representation in School Bullying Cases

Underscoring the Firm’s ability to synergize its attorneys’ diverse skills and talents to comprehensively address every aspect of the needs of the Firm’s clients, Members Arla D. Cahill, Damian P. Conforti, and Raj Gadhok have teamed up in 2018 to combine their respective expertise in education law and civil and criminal litigation to represent various families impacted by serious harassment, intimidation and bullying (HIB) incidents occurring within the public school setting.

HIB incidents are governed by New Jersey’s Anti-Bullying Bill of Rights Act (the Act), which has been viewed as the strongest anti-bullying law in the nation. The Act prohibits HIB in school, on buses, at school sanctioned events, and even off school grounds in certain circumstances. HIB is broadly defined and can include a gesture, physical act or isolation. Cyber-bullying is the fastest growing means in which HIB occurs. The Act applies to HIB perpetrated by other students, school employees, volunteers and independent contractors. To constitute HIB, the conduct must be reasonably perceived or actually be motivated by some specific characteristic of the student (e.g., race, religion, gender, disability, etc.) or by any other distinguishing characteristic (e.g., obesity).

The Act prescribes a procedure by which the school is required to assign specially trained personnel to conduct a time-sensitive investigation to determine if HIB conduct is substantiated. If the school has not taken adequate action to address the problem, the Act permits a student, parent, guardian, or organization to file a complaint against the school with the New Jersey Division of Civil Rights under the civil rights law known as the Law Against Discrimination.

HIB patterns of conduct not only can include biased-based civil rights violations, but can also include acts of physical or sexual assault. Studies indicate that children with intellectual disabilities are at twice the risk of physical and sexual abuse compared to children without such disabilities. Arla, Damian, and Raj, each having decades of relevant legal experience, rely upon their experience and respective expertise to provide families with comprehensive legal advice under the education, civil and criminal laws, to formulate a sound plan of action through all phases of HIB investigations and civil and criminal liability actions.



## THE USE OF ABA ACCOUNTS

A relatively new savings option for people who become blind or disabled before the age of 26 are ABA accounts and the Group has worked with a number of clients to set up these accounts and ensure they are properly managed. The accounts work similarly to 529 college savings accounts in that money in the account grows tax-free and can be spent on eligible expenses with no tax implications. ABA Account contributions do not qualify for a federal tax credit or deduction, but some states, offer state tax benefits for contributing.

# Taxation Practice Group

## New Client Spotlight

The Firm is pleased to welcome two exciting new business clients who have engaged the Firm as counsel. Steven Holt will serve as partner in charge of these clients and will offer services in the commercial, corporate and taxation areas, as well as provide the services of the Firm's many other practice groups.

Gatto USA is the US subsidiary of Gatto Group, an established Italian company among the top worldwide global companies in the business of designing and manufacturing fashion eyeglass cases, eyeglass display stands, packaging and display stands for luxury goods (jewelry, watches, etc.) and packaging and display stands for cosmetics. Gatto has over 600 employees and has roots dating back to 1937 in the optical business. The Firm assisted in the organization and structure of Gatto USA and will be available to assist on all legal matters as Gatto seeks to build its prestigious brand in the US.

Newly formed textBOX LLC engaged the Firm to help structure the organization of this unique start-up, which included consideration and implementation of an appropriate structure to deal with its cross-border business operations. textBOX is a publishing services company specializing in creating high-quality image descriptions that improve digital content accessibility for all readers. textBOX combines publishing and subject expertise with technological innovation to create tailored, cost-effective accessibility solutions for publishers, higher education institutions, and commercial image archives. We are proud to welcome textBOX as a new client.

## SALES TAX AUDIT

The Firm was retained to assist an accountant in conjunction with a sales tax audit of a client engaged in the concrete surface preparation business. The sales tax auditor assessed sales tax liability on the total contract cost notwithstanding the fact that the taxpayer was acting as a subcontractor. As this area of sales taxation law was not settled, Member Martin Hauptman sought and was able to secure rulings from the State taxing authority that declared that (i) the taxpayer providing the service of floor preparation (billed to a general contractor) is not required to collect sales tax from the ultimate customer and thus is not liable for sales tax, and (ii) a subcontractor who performs taxable services for a general contractor directly related to capital improvements or repairs is not obligated to bill the general contractor for sales tax on the labor portion of the bill. Instead, the general contractor is responsible for collecting any sales tax from the property owner for work done by the subcontractor. As a result of the Ruling secured, the taxpayer's sales tax liability was reduced by approximately 75% of the initial assessment.

## 2018 TIMELY DEVELOPMENTS IN TAX

The Firm's Taxation Group continued its efforts to inform our friends, clients and the public about timely developments in the world of Federal and State taxation through blog posts, newsletter and publications. Here are several of the highlights of 2018 that our attorneys advised clients on.

### IRS COLLECTION INITIATIVES

The Internal Revenue Service announced in 2018 that it planned to hire private collection agencies for certain overdue federal tax debts. Member Martin D. Hauptman advised clients that the four companies listed below have been selected to collect IRS debts: CBE Group, ConServe, Performant and Pioneer. These private collection agencies work on accounts where the taxpayer owes money but the IRS is no longer actively working to collect the accounts.

### NEW POLICY MAY AFFECT TRAVEL PLANS OF DELINQUENT TAXPAYERS

Mr. Hauptman also wrote on the topic of a new relatively unknown policy that could affect the travel plans abroad of many delinquent taxpayers: As part of the "Fixing America's Surface Transportation Act", Congress has added Section 7345 to the Internal Revenue Code which requires the Internal Revenue Service to notify the State Department about any taxpayer "certified as owing a seriously delinquent tax debt. The Act generally prohibits the State Department from issuing to or renewing the passport of a taxpayer with a seriously delinquent tax debt. If the taxpayer currently has a valid passport, the State Department may revoke the taxpayer's passport or limit the taxpayer's ability to travel outside of the United States.

### TAXATION OF E-COMMERCE SALES FOR SALES TAX PURPOSES

Mark Comer, counsel to the Firm, wrote about the seminal *Wayfair* case that addresses the taxation of e-commerce sales for sales tax purposes. In *South Dakota v. Wayfair Inc.*, the court upheld a state law that allows South Dakota officials to collect sales taxes from businesses operating in other states that sell to South Dakota residents. Previously, states could tax a business only if it maintained a physical presence in the state, such as a store or warehouse. The South Dakota law endorsed in *Wayfair* sets the threshold for collection of online sales tax which now applies to all states. Tax must be collected by sellers that deliver more than \$100,000 worth of goods or services into a state annually, or engage in 200 or more separate transactions for deliveries into that state over the course of a calendar year.

### NEW JERSEY'S TAX AMNESTY PROGRAM

New Jersey adopted a tax amnesty program to encourage taxpayers to pay their outstanding tax liability. The tax amnesty will cover tax liabilities arising after February 1, 2009 and before September 1, 2017. To be eligible for a tax amnesty, the taxpayer must pay the tax in full. New Jersey will reduce the interest liability by 50% and will waive certain costs and penalties as part of the amnesty program. Taxpayers who do not take advantage of the tax amnesty will be assessed an additional 5% non-abatable penalty on any eligible debts not resolved during the tax amnesty period. The taxpayer will be responsible for paying any civil or criminal fraud penalties arising from the tax obligations imposed under any state tax law. The tax amnesty program is not available to any taxpayer who at the time of payment is under criminal investigation or charged with any state tax matter.

# Trusts and Estates

OVER 100 YEARS OF COMBINED EXPERIENCE

The Trusts and Estates Practice Group devoted countless hours throughout 2018 in outreach to its clients and allied professionals about the important changes in the federal estate and gift tax laws under the 2017 Tax Cuts and Jobs Act and other significant developments in state estate taxation in New Jersey. These articles and presentations included many practical planning tips. Highlights included the following:

## Changes In New Jersey Estate Tax

Partner Steven Holt and Counsel Lisa Fox wrote about the new world of estate taxation for New Jersey residents. “The 2017 Tax Cuts and Jobs Act effectively doubles the amount each person may gift during a lifetime or upon death before paying a penny of federal gift or estate tax. The Federal estate tax exclusion amount is now \$11.18 million per person. This means that, for a married New Jersey couple, more than \$22 million can be given or left to others without incurring any estate or gift tax. For estate tax savings purposes, many existing wills direct that the largest amount that can pass free of estate tax be distributed to a “credit shelter” or “by-pass” trust, or directly to children instead of to a husband or wife. With the change in the laws, a much greater portion – or all – of one’s estate could be directed away from a surviving spouse, even if this is not the intended result. Conversely, some wills use formulas for funding a credit shelter trust or by-pass trust that would now result in no funding at all. This, too, may not be the intended result. Don’t assume that the laws won’t change again. Under the Federal Tax Act, the estate and gift tax exclusion will only be \$11 million-plus through 2025. If a new law isn’t enacted, beginning in 2026, the exclusion amount will be cut in half.”

“Keep in mind that, although the New Jersey estate tax has been repealed, effective January 1, 2018, the New Jersey inheritance tax laws have not changed. The inheritance tax is a separate tax imposed on the transfer of assets valued at \$500 or more at death, with a tax rate based on the beneficiary’s relationship to the decedent, and not on the size of the estate. Although amounts left to spouses, descendants (including step-children), parents, grandparents and charities are exempt from the inheritance tax, amounts left to many other individuals (including step-grandchildren) are not exempt. If your will leaves substantial assets to brothers, sisters, nieces, nephews and friends, your estate will be subject to the inheritance tax of up to 16%. Without modifying such estate plans, those estates may unnecessarily pay a tax at death. In addition, there’s no guaranty New Jersey won’t bring back the estate tax.”

## Termination of Trusts

Our Elder Law and Probate Litigation Practice Group often had Trust and Estate matters and recently assisted two court-appointed guardians whose wards, “Walter” and “Arthur”, were at risk of losing their housing and care after exhausting their liquid assets. Walter and Arthur each had one remaining source of income – a charitable remainder trust established and funded by a deceased parent. The trust only permitted the distribution of income, which was no longer sufficient to cover the costs of either ward’s care. The trusts were irrevocable and the terms could not be changed, thereby preventing access to the corpus.

To ensure that Walter and Arthur had continued access to appropriate care, Richard Miller and Shawna Brown sought court approval to terminate the charitable remainder trusts and authorize a lump sum payment to each ward to cover their housing expenses. Although the trusts were irrevocable, the court allowed the dissolution because we successfully demonstrated that the probable intent of each trust was to ensure the ward’s continued support during lifetime. The trusts were subsequently terminated and the guardians for Walter and Arthur received significant lump sum distributions. The charitable remainder beneficiaries were paid the present value of their remainder interests in the trust also fulfilling the objective of the grantors.

The termination of the trusts enabled Walter and Arthur to maintain their necessary level of care and provided the guardians with additional funds to enhance Walter and Arthur’s quality of life. We recently received a photograph of Walter celebrating his birthday with a huge smile on his face. The birthday celebration included his private home health aide, which he is able to afford from the funds received from the trust. Witnessing the personal impact our work has on the lives of people like Walter and Arthur is one of the many reasons we are proud to offer elder law services at Mandelbaum Salsburg.

## STEVE HOLT ELECTED TO EPCNNJ BOARD

The Practice Group’s Chair, Steven Holt, has been elected to the Board of Trustees of the Estate Planning Council of Northern New Jersey. EPCNNJ is a multi-specialty association of professionals specializing in estate planning, and includes attorneys, accountants, insurance professionals, financial planners, trust officers, bankers and valuation experts. The Council provides networking, social and educational opportunities for its members.

We continue to grow our Firm with the best and brightest attorneys to meet the ever changing needs of our clients. The following have joined our Firm in the past year:

**Members**



**J. Russell Bulkeley**  
Banking and Financial Services, Corporate Law, Securities Law



**Raj Gadhok**  
Commercial and Corporate Litigation, Labor and Employment, Personal Injury and Workers' Compensation



**Barry M. Schwartz**  
Corporate Law, Healthcare, Intellectual Property and Brand Management, Securities Law, Emerging Technologies, Cannabis



**Jeffrey L. Wasserman**  
Corporate Law, Securities Law, Healthcare, Banking and Financial Services, Life Sciences, Emerging Technologies, Cannabis

**Counsel**



**Mark Orenstein**  
Securities Law, Corporate Law

**Associates**



**Benjamin D. Heller**  
Commercial and Corporate Litigation, Healthcare, Labor and Employment



**Christopher G. Salloum**  
Healthcare



**Ethan C. Wells**  
Commercial and Corporate Litigation, Personal Injury and Workers' Compensation, Trusts and Estates



**Ronen B. Yair**  
Healthcare, Privacy and Cybersecurity

**Of Counsel**



**David Flaxman**  
Banking & Financial Services



**Eric R. Goldberg**  
Elder Law



**Lawrence B. Goodwin**  
Intellectual Property and Brand Management, Emerging Technologies



**Steven W. Teppler**  
Privacy and Cybersecurity (Chair), Emerging Technologies

# New service offerings in 2018

Our clients rely on our full-service platform and we continue to expand strategically with new practice offerings to meet their growing needs. Early in 2018 we launched a **Securities Law Practice** out of our newly expanded New York City location. This practice, provides our issuer, institutional, high net worth investor and investment banking clients with a broad range of securities and capital market transaction expertise. As technology continues to change at breakneck speed, we have embraced the needs of our clients in the **Emerging Technologies** space with the like named practice that works with some of today's most emergent industries such as energy, pharma, blockchain, biotech, medical devices and food technologies to help improve operations and create efficiencies. In addition, the Firm officially entered into the Cannabis space with its **Cannabis Law Practice**. Though we have been helping clients for a number of years with business structuring and finance matters in other states. The Cannabis practice utilizes the Firm's 360 degree approach to provide a panalogy of legal services including tax planning, corporate structuring and real estate.

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## **EXCITING ANNOUNCEMENT TO KICK OFF 2019: Cheryl Burstein Promoted to COO**

We are pleased to announce that Member Cheryl H. Burstein has become the Firm's first Chief Operating Officer. Cheryl will work closely with Chief Executive Officer William S. Barrett in the management of the Firm and its employees. Cheryl, who has been with the Firm for 17 years, having served as a Shareholder for the last 13 years as well as serving 2 terms on the Executive Committee, brings a wealth of knowledge and experience

to this new role. In addition, she has just finished serving as Mayor of the Township of Millburn and her first three-year term as Millburn Township Committeewoman. She sat for 7 years on the Millburn Township Zoning Board of Adjustment and is a Trustee of the Milburn Public Library. We look forward to this and many exciting things to come in the New Year and wish everyone a happy and healthy New Year.

Mandelbaum  
Salsburg  
*Attorneys at Law*



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3 Becker Farm Road  
Suite 105  
Roseland, New Jersey 07068  
Tel: 973-736-4600  
Fax: 973-325-7467

[www.lawfirm.ms](http://www.lawfirm.ms)

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