

Nassau Lawyer

THE JOURNAL OF THE NASSAU COUNTY BAR ASSOCIATION

February 2023

www.nassaubar.org

Vol. 72, No. 6

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SAVE THE DATE



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CHILDREN'S
FESTIVAL**

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**123RD
ANNUAL
DINNER
GALA**

**SATURDAY,
MAY 13**

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Long Island's Breast Cancer Activist Geri Barish to Receive 79th Distinguished Service Medallion

By: Ann Burkowsky

At this year's 123rd Annual Dinner Gala set to be held on Saturday, May 13 at the Long Island Marriott in Uniondale, the NCBA is proud to honor Geri Barish, Executive Director of Hewlett House and a pioneer of the breast cancer activism community on Long Island.

The Distinguished Service Medallion (DSM)—the highest honor one can receive from the Nassau County Bar Association (NCBA)—has been presented annually to an individual of high moral character and integrity who has enhanced the reputation and dignity of the legal profession. As President of 1 in 9, Barish was at the forefront of New York State's Pesticide Registry Law, which created an accessible database to determine whether there is a relationship between pesticide use and breast cancer. Since 1988, Barish has stood at the forefront of the battle against breast cancer on Long Island and has proudly earned the distinction of New York State's preeminent breast cancer activist. Among many honors from distinguished politicians, groups, and organizations, she was awarded the first Annual New York State Innovation in Breast Cancer Early Detection and Research Award in 1996.

The Fight for Cancer Research and Awareness

Five-time cancer survivor and mother to a child who suffered from Hodgkin's Lymphoma, Barish is no stranger to the pain and torment that the disease brings to those affected. Following the passing of her son, Michael, Barish made the decision to dedicate her life to finding causes and cures of this terrible disease.

To make that goal a reality, Barish established 1 in 9: the Long Island Breast Cancer Coalition, whose mission is to educate others about environmental factors that can cause cancer—such

as power plant emissions, pesticides, and the chemicals within them—and spread awareness within the Long Island community about the disease itself.

In addition to her work as President of 1 in 9 at the forefront of New York State's Pesticide Registry Law, Barish also spoke in Albany for the bipartisan "Mastectomy Bill," which was signed into law by Governor Pataki at the Supreme Court in Mineola in March 1997.

To further her mission, in her son's memory, Barish established the ongoing Michael Scott Barish Human Cancer Grant at Cold Spring Harbor Laboratory for research into genetic mutations that could cause breast cancer, lymphoma, and leukemia—resulting in the discovery of the breast cancer gene, P-TEN, by the scientist funded by the grant, Dr. Michael Wigler. Barish simultaneously implemented the Long Island Breast Cancer Study Project, the first scientific symposium held on Long Island to determine whether there was a need for a separate Long Island study of breast cancer, lymphoma, and leukemia.

Hewlett House

In 1995, Barish became the Executive Director of Hewlett House—a community learning resource center for cancer patients and their families. Initially established as a breast cancer resource center, in 1998 Barish expanded the services to assist patients with various cancer diagnoses. Since its inception, the organization has serviced over 37,000 patients—free of charge.

Upon entering Hewlett House, one can expect a professionally staffed home-like setting, a hot cup of coffee, and a listening ear at the ready. "Hewlett House to me is a haven that comforts those enduring cancer in a home environment where you can say



anything, laugh, cry, and be angry if you need to. We have shed thousands of tears and given millions of hugs. We are family, we share the pain," said Barish.

In addition, the organization offers state-of-the-art information and updates on cancer screening, diagnoses, and treatment, as well as mental health resources for both the patient and their families.

Join NCBA in Honoring Geri Barish

The Annual Dinner Gala is the largest social event of the Nassau County Bar Association. It will be held on Saturday, May 13, 2023, at the Long Island Marriott in Uniondale. The event will include and extended cocktail hour, top-shelf open bar, and more!

In addition to the Distinguished Service Medallion recipient, NCBA members celebrating their golden, diamond, and platinum anniversaries of admission to the Bar will also be honored that evening for their years of service to the legal profession.

If you are interested in purchasing journals ads or sponsorships to show your support for the honorees visit www.ncbadinnerdance.com. You may also contact the NCBA Special Events Department at events@nassaubar.org or (516) 747-4071.

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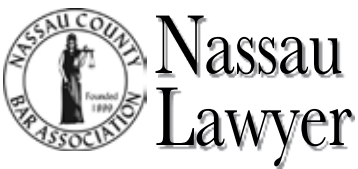


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The Official Publication
of the Nassau County Bar Association
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2023 Nassau County Bar Association

Nassau Lawyer (USPS No. 007-505) is published monthly, except combined issue of July and August, by Richner Printing, LLC 2 Endo Blvd., Garden City, NY 11530, under the auspices of the Nassau County Bar Association. Periodicals postage paid at Mineola, NY 11501 and at additional entries. Contents copyright ©2022. Postmaster: Send address changes to the Nassau County Bar Association, 15th and West Streets, Mineola, NY 11501.

A Ride for Liberty — The Fugitive Slaves: Painting Unveiled at Nassau County Supreme Court Building

On December 16, 2022, in the lobby of the Supreme Court building, I had the privilege of attending the unveiling of a painting by the American artist Eastman Johnson, titled *A Ride for Liberty—The Fugitive Slaves*.

This commissioned reproduction was presented by the Equal Justice in the Courts Committee of Nassau County, which is chaired by Hon. Vito M. DeStefano, Administrative Judge of Nassau County, together with Hon. Andrea Phoenix, Nassau County District Court Judge. The reproduction was dedicated by Hon. Norman St. George, Hon. Vito M. DeStefano, Hon. Andrea Phoenix, Hon. Anthony F. Marano, and Bishop Phillip E. Elliott.

Eastman Johnson, a mid-nineteenth-century painter from Maine, is most well-known for a series of paintings that focus attention on the issue of slavery and the status of race in the United States around the time of the American Civil War. *A Ride for Liberty* would become one of his most renowned works. Johnson's painting depicts a black family consisting of a father, mother, small child, and infant on horseback fleeing enslavement in the early morning light. The horse is captured mid-gallop from



right to left across a barren battlefield. Each family member is looking in a different direction: the father is faced forward with determination and toward a promising future; the child stares down at the horse and the excitement of the present; while the mother cradling her infant looks back at the hardships of the past from which they are trying to escape. In the distance, the faint glow of rifle fire is visible.

During the Civil War, Johnson traveled with the Union Army and, over the course of the war, he would produce numerous paintings and sketches of the people and events he witnessed. While accompanying General George McClellan's Union Army from Washington, D.C. to Manassas, Virginia, in the months leading to the Second Battle of Bull Run, Johnson claimed to have seen a slave family fleeing toward the Union Army lines in the hopes of acquiring "contraband" status. Johnson's inscription on the back of the painting reads, "A veritable incident in the civil war seen by myself at Centerville on the morning of McClellan's advance toward Manassas. March 2, 1862." Johnson painted three versions of this event in 1862; one is owned by the Brooklyn Museum



FROM THE PRESIDENT

Rosalia Baiamonte

and the second by the Virginia Museum of Fine Arts. The location of the third painting remains unknown. According to the Brooklyn Museum, the painting is considered "virtually unique in art of the period" in portraying the former slaves as "agents of their own freedom."

The December 16, 2022, unveiling ceremony was a joyous and uplifting event. Bishop Phillip E. Elliott of Antioch Baptist Church in Hempstead delivered the Invocation. Introductory remarks were then offered by Hon. Norman St. George, Deputy Chief Administrative Judge for the Courts Outside of New York City, followed by Hon. Edwina D. Mendelson, Deputy Chief Administrative Judge for Justice Initiatives.

Justice DeStefano presided over the unveiling of the portrait. In his remarks, Justice DeStefano recalled the importance of art as explained by Dr. Elyse Nelson, curator of "Fictions of Emancipation: Carpeaux Recast," the first exhibition at the Metropolitan Museum to examine Western sculpture in relation to the histories of transatlantic slavery, colonialism, and empire. As recounted by Justice DeStefano, Dr. Nelson explained that some of the art, even when beautiful and highly celebrated, actually demeaned and dehumanized blacks, or showed them in confusing ways with mixed messages. The art simultaneously exploited, exoticized, and dehumanized its subjects, with the net effect often being to deny the dignity of the individual.

Justice DeStefano explained that this is very much in contradiction to the work and goals of the Equal Justice in the Courts Committee, which seeks to exalt the dignity of every individual. Rather than demean any person or persons, Justice DeStefano noted that *A Ride for Liberty* "depicts sacrifice, courage, determination, love, triumph, all in the pursuit of God-given rights of life, liberty, and the pursuit of happiness."

As further explained by Justice DeStefano, the exact placement of *A Ride for Liberty* in the court's lobby has profound significance.

The family depicted in the painting is facing in the direction of the opposite wall where, almost precisely at the family's eye level, hangs the portrait of the Hon. Moxey A. Rigby, Nassau County's first African American Judge (1959-1962).

While Johnson leaves the question of the family's fate uncertain, its prophetic placement in the Supreme Court lobby opposite Judge Rigby's portrait leaves little doubt that the legacy of this family was one of hope, strength, faith, and courage.

I encourage each and every NCBA member to visit the Supreme Court lobby to view this powerful artistic representation for yourselves and to become immersed in the awe that it inspires.



**FOCUS:
INSURANCE LAW**


**Jason B. Gurdus and
Siobhain P. Minarovich**

In 2019, New York's Child Victims Act ("CVA") took effect and, in 2022, New York's Adult Survivors Act ("ASA") took effect.¹ These laws open a limited window in time for individuals who allege they were victims of sexual abuse as minors or as adults to assert claims against their abusers and/or the institutions that employed them in connection with claims that otherwise would have been barred by New York's statute of limitations.

During the two-year window opened by the CVA, nearly 11,000 lawsuits were filed in New York courts against various organizations, such as schools, municipal entities, religious institutions, hospitals, camps, daycare centers, and foster home coordinators, alleging liability under various theories for injury caused by the accused abusers while the victims were minors.

The CVA also allows those who are victims of sexual abuse to bring lawsuits up until their 55th birthday (rather than up until the prior deadline of the age of 23) if the victims were still eligible to file a lawsuit at the time of the passage of the legislation. The ASA's one-year window allowing claims brought by individuals abused while an adult only recently began on November 24, 2022. Claims under both the CVA and the ASA may result in significant financial exposure for the institutions that face such claims. Institutions will likely look to their insurance policies to cover this exposure.

Claims against sexual abusers have long been found inherently intentional and are not covered by general liability insurance policies because the abusive conduct and resulting injury was not caused by an "accident," nor was it "unexpected" or "unintended." Institutions that employed an accused perpetrator, however, often are sued on

Insurance Coverage Issues Presented By New York's Recent Abuse Victims Legislation

theories grounded in negligence, such as negligent hiring, retention and/or supervision. Such institutions may assert that they are entitled to insurance coverage because they were unaware of their employee's abusive conduct and did not expect or intend the abuse or the claimant's injury to occur.

Many CVA and ASA claims are based on abuse that took place decades ago. The insurance policies potentially applicable to such claims often are lost or incomplete because of the passage of time. Under New York law, an insured must provide certain proof to show the existence and applicability of a lost insurance policy.

When an insured demonstrates it has made a "diligent but unsuccessful search and inquiry for the missing policy," the insured may rely on secondary evidence to attempt to prove the existence and terms of the policy.² Secondary evidence includes broker documents, financial statements, invoices, cancelled checks, correspondence, and other business documents, as well as testimony by either the insured and its broker or the insurer.³

Individual victims have often suffered abuse from the same perpetrator at various times and locations over a multi-year period involving policies with "per occurrence" limits of liability. Important coverage issues include how New York interprets "occurrence" as defined under a liability insurance policy, how many "occurrences" are involved and, where applicable, whether one or more self-insured retentions and policy limits might be implicated by a claim. New York's highest court has held that "incidents of sexual abuse constituted multiple occurrences" where a claimant alleged sexual abuse by a single priest in different locations over nearly a six-year period.⁴

When the abuse occurred over several years, trigger of coverage issues and issues of how damages should be allocated among an institution's insurers also arise. Depending on the language of the policies, New York follows either a "pro rata" allocation approach or, in limited circumstances, an "all-sums" allocation. "Pro rata" allocation spreads the loss across all policy periods in which the injury or damage took place. In contrast, under an "all sums" allocation, the insured may select any policy in effect during the periods in which the injury or damage occurred to satisfy its liabilities up to the policy limits.

Additionally, under a "pro rata" allocation, insurers may advocate allocation of loss to the insured during periods of no insurance, whether as a result of the insured's choice because of the unavailability of insurance in the marketplace, or due to the insured's inability to locate its policies or establish their issuance, terms and/or conditions.

Starting in the mid-1980s, many insurers endorsed their policies with sexual misconduct, molestation and/or abuse exclusions which preclude claims for coverage arising out of sexual or physical abuse or molestation. Some of these exclusions specifically exclude claims for sexual abuse acts arising from negligent hiring, retention, or supervision of the perpetrator. New York and other courts routinely apply these exclusions to preclude coverage for negligence and other claims against the employer of a perpetrator or the owner of the premises where the act of abuse occurred.


Fortuity concepts are also implicated in CVA and ASA coverage claims. Liability insurance policies generally cover injury during the policy period caused by an "occurrence," which typically is defined to mean an "accident" and/or continuous or repeated exposure to conditions which unexpectedly and unintentionally results in bodily or personal injury. This language is generally interpreted to mean that injury caused intentionally, or by acts expected or intended to cause harm, is not caused by an "occurrence." In other words, if the insured knew or should have known of an alleged abuser's proclivities to commit sexual abuse but took no action to prevent such conduct, coverage to the insured may be barred.

To establish liability under theories of negligent hiring, supervision and/or retention, claimants may try to show that the insured company or organization knew of an alleged abuser's conduct and proclivities but, rather than taking effective action to prevent such conduct, simply transferred the perpetrator to different locations. In such cases, however, this response may support an insurer's argument that the insured is not entitled to coverage on the basis of no "occurrence."

Liability insurance policies also generally contain conditions precedent to coverage requiring that notice of an occurrence which appears

likely to implicate the policy must be provided "immediately" or "as soon as practicable" by the insured to the insurer. This condition is often implicated where the insured may have received notice of the abuse around the time when the abuse allegedly occurred, but the insured never notified the insurer.⁵ For policies issued before January 17, 2009, New York does not require proof that the insured's untimely notice of occurrence prejudiced its insurer. Policies issued on or after January 17, 2009, require a showing of prejudice by the insurer to deny coverage.

Further, claims against an institution arising from repeated instances of sexual abuse might lead to an award of punitive or exemplary damages. New York specifically disallows the insurability of punitive damages, leaving the insured potentially subject to significant uninsured damages.⁶

Moving forward, potentially liable institutions, as well as their insurers, must be prepared to contend with the significant coverage and financial issues that claims under the CVA and the ASA will no doubt raise. 

1. 2019 N.Y. Laws Chap. 11; 2022 N.Y. Laws Chap. 203.

2. *Cosmopolitan Shipping Company, Inc. v. Continental Insurance Company*, 2020 U.S. Dist. LEXIS 241310 at *1 (S.D.N.Y. Dec. 22, 2020).

3. See *Burt Rigid Box, Inc. v. Travelers Property Casualty Corp.*, 302 F.3d 83, 92-93 (2d Cir. 2002); *Gold Fields American Corp. v. Aetna Casualty and Surety Co.*, 173 Misc. 2d 901, 905 (Sup. Ct., N.Y. Co. 1997).

4. *Roman Catholic Diocese of Brooklyn v. National Union Fire Ins. Co. of Pittsburgh, Pa.*, 21 N.Y.3d 139 (2013).

5. See New York Insurance Law §3420(a)(5).

6. See *Home Ins. Co. v. American Home Prods. Corp.*, 75 N.Y.2d 196, 200 (1990).



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**FOCUS:
PREMISES LIABILITY**


**Laurel R. Kretzing and
Christopher E. Vatter**

“Under the common law, a property owner, or a party in possession or control of real property, has a duty to maintain the property in a reasonably safe condition.”¹ As a general proposition, a landowner will be held liable for injuries which occur on its property where it fails to maintain its “property in a reasonably safe condition in view of all the circumstances, including the likelihood of injury to others, the seriousness of the injury, and the burden of avoiding the risk.”² However, a landowner’s duty to maintain the premises in a reasonably safe condition depends on the extent of his or her control.³

Degree of Control

In personal injury actions concerning injuries that occur on real property, an out-of-possession landowner, typically a landlord, is generally not responsible for such injuries.⁴ Instead, “[a]n out-of-possession landlord can be held liable for injuries that occur on its premises only if the landlord has retained control over the premises and if the landlord is contractually or statutorily obligated to repair or maintain the premises or has assumed a duty to repair or maintain the premises by virtue of a course of conduct.”⁵

Naturally, the provisions of the lease to the premises are important to determining liability of the landlord. A landlord who has no obligation under the lease to perform repairs to the premises but “reserved a right in the lease to enter the premises to make repairs,” a common lease provision, can “only be found liable for failing to do so if the nature of the defect that caused the injuries was a significant structural or design defect that was contrary to a specific statutory provision.”⁶

Thus, an out-of-possession owner who retained a right of re-entry to maintain and repair the premises, but was not involved in the repairs being made by its tenant to the premises, was not be liable for

Premises Liability and the Out-Of-Possession Landowner

claims brought under Labor Law §200, which imposes a duty only on employers at a construction site,⁷ nor was the owner liable under a theory of common-law negligence.⁸ In other words, a theory of constructive notice is not available against an out-of-possession landlord where the alleged dangerous conditions do not constitute significant structural or design defects that violated specific safety statutes.⁹ Conversely, an out-of-possession landowner, with limited statutory exceptions, will be held liable under a claim under Labor Law §240, commonly known as the “Scaffold Law”¹⁰ because that statute specifically imposes the statutory obligation with respect to elevated worksites on the “owner” as well as the “contractor.”¹¹

However, as noted above, because the liability of a property owner or landlord revolves around the level of control exercised over the property, considerations other than the provisions of the lease and/or the nature of the condition of the property are relevant to determining liability as is evident from the cases discussed below.

Cases

A recent Appellate Division, Second Department case, *Taliana v. Hines REIT Three Huntington Quadrangle, LLC*,¹² demonstrates what a landlord must prove to meet its prima facie burden for summary judgment. In that case, the Appellate Division reversed the grant of summary judgment to the landlord in a slip and fall case commenced by an employee of the tenant based upon the landlord’s out-of-possession status. The court found issues of fact with respect to whether the landlord had relinquished control over the property to its tenant because the landlord had, among other things, contracted for and approved the HVAC system, which was the alleged cause of the accident. The landlord also employed an on-premises agent who visited the tenant’s space daily as well as a cleaning service. The Court found that under these circumstances the landlord failed to demonstrate that it did not have constructive notice of the defective condition.¹³

In contrast to the decision in *Taliana*, the Second Department reversed the denial of summary judgment to the defendant property owner in *Richardson v. Yasuda Bank and Trust Company*.¹⁴ In that case the defendant, a bank, had taken title to the property through a foreclosure sale a few months before the gas



explosion. The bank demonstrated that although it had commenced eviction proceedings, it had no contractual obligations with respect to the property, had no access to the property and the former owner of the property remained in possession and control of the property at the time of the accident. Thus, the bank was entitled to summary judgment based on its status as an out-of-possession property owner.¹⁵

“Premises liability, as with liability for negligence generally, begins with duty” and the duty of the property owner depends on the extent of its control.¹⁶ In sum, a property owner which does not control the property, with certain exceptions for obligations imposed by statute, will not be liable for injuries that occur on the property. ⚖️

1. *Mermelstein v. Campbell Fitness NC, LLC*, 201 A.D.3d 923, 923 (2d Dep’t 2022).
2. *Basso v. Miller*, 40 N.Y.2d 233, 241 (1976) (internal citations and quotations omitted); *Galindo v. Town of Clarkstown*, 2 N.Y.3d 633, 636 (2004).
3. *Alnashmi v. Certified Analytical Grp., Inc.*, 89 A.D.3d 10, 16 (2d Dep’t 2011).
4. Property owners who are not typical landlords, such as a bank which has taken ownership of the property through a foreclosure sale are also entitled to the protection based on its out of possession status. See *Richardson v. Yasuda Bank and Trust Company*, 5 A.D.3d 458 (2d Dep’t 2004).
5. *Mendoza v. Manila Bar & Rest. Corp.*, 140 A.D.3d 934, 935 (2d Dep’t 2016) (emphasis added), quoting *Duggan v. Cronos Enters., Inc.*, 133 A.D.3d 564, 564 (2d Dep’t 2015); see also *Chery v. Exotic Realty, Inc.*, 34 A.D.3d 412, 413 (2d Dep’t 2006) (“[A]n out-of-possession owner ... is not liable for injuries that occur on the premises unless the owner ... has retained control over the premises or is contractually obligated to repair or maintain the premises.”) (internal citations and quotations omitted); see also *Johnson v. Urena Serv. Ctr.*, 227 A.D.2d 325, 326 (1st Dep’t 1996) (“A landlord is generally not liable for negligence with respect to the condition of property after the transfer of possession and control to a tenant unless the landlord is either contractually obligated to make repairs and/or maintain the premises or has a contractual right to reenter, inspect and make needed repairs at the tenant’s expense and liability is based on a significant structural or design defect that is contrary to a specific statutory safety provision.”).
6. *Devlin v. Blaggards III Rest. Corp.*, 80 A.D.3d 497, 497 (1st Dep’t 2011); c.f. *Guzman v. Haven Plaza Hous. Dev. Fund Co.*, 69 N.Y.2d 559, 569 (1987) (“Village East is held responsible for failure to perform a duty owed directly by it to plaintiff — a duty to remedy the defect, something it was

permitted to do under the lease and obliged to do under the Administrative Code. Indeed, it is only because of the existence of this direct duty that Village East, as owner out of possession, is responsible.”).

7. NYS Labor Law §200 imposes a duty specifically in favor of employees which requires, among other things, that all construction worksites be, “constructed, equipped, arranged, operated, and conducted as to provide reasonable and adequate protection to the lives, health, and safety of all persons employed therein or lawfully frequenting such places.”

8. *Dirschneider v. Rolex Realty Co. LLC*, 157 A.D.3d 538, 539 (1st Dep’t 2018).

9. *Id.*

10. *Misserritti v. Mark IV Constr. Co.*, 86 N.Y.2d 487 (1995).

11. Labor Law §240; *Moreno v. VS 125, LLC*, 2022 N.Y. Slip. Op. 31950(U), at *49 (Sup. Ct., Kings Cty. 2022).

12. 197 A.D.3d 1349, 1351 (2d Dep’t 2021).

13. *Id.* (“The evidence submitted by the Hines defendants showed that their general manager maintained an office in the premises and was present in Travelers’ office space at least once a day. In addition, the general manager testified at his deposition that the Hines defendants contracted for the installation of the HVAC system at issue, oversaw its installation, and approved the construction work. The general manager also testified that it was his practice, upon learning of a problem with the air conditioning system in the building, to address the problem by contacting the chief engineer.”).

14. *Richardson v. Yasuda Bank and Trust Company*, 5 A.D.3d 458 (2d Dep’t 2004).

15. *Id.* at 459.

16. *Alnashmi*, 89 A.D.3d at 13, 14-18.



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**FOCUS:
APPELLATE LITIGATION**

Christopher J. DelliCarpini

In February 2019 the New York legislature passed The Child Victims Act (“CVA” or the “Act”) “to give survivors of childhood sex abuse an opportunity to seek justice against their abusers and to ensure that people who hurt children are held accountable.”¹ The act extended the limitations period for civil actions to the plaintiff’s fifty-fifth birthday, and provided a look-back window for commencing action, originally one year but later extended to two years and six months from the Act’s passage.²

As we approach the CVA’s three-year anniversary, several of these revived claims have already reached the several departments of the Appellate Division. The resulting decisions inform the application of the CVA, but several also illuminate more broadly applicable rules of procedure and evidence.

**Statute of Limitations
Issues**

In *S.H. v. Diocese of Brooklyn* the Second Department held that the CVA does not apply where the abuse occurred out of state and the plaintiff was not a New York resident.³ In a lengthy analysis, the court found instructive the First Department’s treatment of a similar issue with New York’s Toxic Tort Revival Statute.⁴ The court concluded that the CVA exists “to provide New York survivors of child sexual abuse an avenue to seek justice,” and that had the legislature meant for New York’s borrowing statute, CPLR 202, to not apply here, it would have said so.⁵ Since Florida’s four-year limitations period therefore applied, the plaintiffs’ claims for abuse occurring in 1983–84 were time-barred.

In *BL Doe 3 v. Female Academy of the Sacred Heart* the Fourth Department held that the CVA did not apply to federal civil rights claims.⁶ 42 USC §1983 does not create any substantive rights, but can encompass “[a] catalog of ... constitutional claims,” therefore the United States Supreme Court has held that the choice of the state statute of limitations to be applied ... should

Recent Appellate Decisions in Child Victims Act Cases

not ‘depend upon the particular facts or the precise legal theory of each claim.’”⁷ Thus, barred from considering the facts of the plaintiff’s claims, the Fourth Department held that New York’s catchall three-year limitations period for negligence claims applied alone, thus claims alleging abuse in 1972–73 were time-barred.

In *Shapiro v. Syracuse University* the Fourth Department held that claims arising out of state against nonresidents of New York are governed by the limitations period where the claims arose.⁸ Parsing through claims by multiple plaintiffs arising from alleged abuse at a Massachusetts summer camp in the 1970s (the alleged abuser had been a graduate student at the university), the court held that the CVA overrides whatever limitations period would otherwise govern such claims but does not override New York’s borrowing statute, CPLR 202.⁹ Under that borrowing statute, however, plaintiffs who were New York residents when the alleged abuse occurred could still avail themselves of the CVA.¹⁰

Pleading and Procedure

In *Dutton v. Young Men’s Christian Association of Buffalo Niagara* the Fourth Department held that the plaintiff could hold the defendant liable under a theory of de facto merger.¹¹

The alleged abuse took place in the 1950s, and the plaintiff sued YMCA of Buffalo Niagara as the successor entity to the abuser’s employer.¹² The defendant moved to dismiss under CPLR 3211(a)(1) and (7), arguing that it had not merged with the employer but rather had acquired its assets from an intermediary after dissolution.

The Supreme Court agreed but the Fourth Department reversed, holding that the defendant “intended to absorb and continue operation of” the abuser’s employer, the presence of an intermediary notwithstanding.

The court also held that even if there were no express or implied assumption of liability, de facto merger is an equitable remedy under which liabilities run with the predecessor’s goodwill that have been acquired.

The court further held that the documentary evidence tended to show “a continuity of management, personnel, physical location, assets, and general business operation,” and that the complaint stated a cause of action.¹³



In *Aldridge v. Governing Body of Jehovah’s Witnesses* the Fourth Department held that venue was proper in Kings County even though it was the location of neither the alleged abuse nor the defendant’s principal place of business.¹⁴ The amended complaint alleged that the defendant engaged in “significant events or omissions material to ... plaintiff’s claim,” therefore the burden never even shifted to the plaintiff to prove that venue was proper.¹⁵ The court even overlooked the misstatement on the summons that the defendant’s principal place of business was in Kings.

In *Pisula v. Roman Catholic Archdiocese of New York* the Second Department addressed when to strike scandalous matter in pleadings alleging such inherently scandalous conduct.¹⁶ The court first had to grant leave to appeal, as no right of appeal exists from a decision on a CPLR 3024(b) motion. Then the court went paragraph-by-paragraph through the alleged scandalous matter, and closed with several bright-line rules to guide courts as they confront the rather novel cases brought through the CVA.¹⁷

In *Twersky v. Yeshiva University* the First Department held that the plaintiffs failed to submit sufficient evidence to support their request to proceed anonymously.¹⁸ Even in such sensitive cases, the court held, “permission to use a pseudonym will not be granted automatically.”¹⁹ The plaintiffs had submitted only their attorney’s affirmation, which “made the vague statement that plaintiffs might suffer further mental harm should their identities be revealed.”²⁰

Evidentiary Issues

In *Does 3–6 v. Kenmore-Town of Tonawanda Union Free School District* the Fourth Department dismissed an appeal from an order denying a motion *in limine*.²¹ The plaintiffs alleged abuse by a fifth grade teacher between 1963 and 1992, and the defendant moved to preclude the alleged abuser’s deposition and to preclude the abuser from testifying due to dementia. But the court held that no right to appeal lies from an order that “merely adjudicates the admissibility of evidence” and does not affect a substantial right.²² The trial court’s decision was “at best, an advisory opinion which is neither appealable as of right nor by permission.”²³

In *Cowan v. Nassau County Department of Social Services*, the Second Department held that the trial court should have held a hearing before deciding the defendant’s motion for a protective order.²⁴ The plaintiff alleged that he was abused in foster care from 1991–92 and sought disclosure of his foster care records. The defendant sought a protective order over “confidential” portions of those records. The trial court made a determination after *in camera* review but without a hearing. The Second Department held that the trial court “improvidently exercised its discretion,” and remitted the matter for a hearing.²⁵

In *OF Doe 44 v. Erik P.R.* the Fourth Department held that a finding of abuse from a Family Court child neglect proceeding was not collateral estoppel in a subsequent Supreme Court action alleging the same abuse.²⁶ The Family Court had

admitted hearsay evidence from the Child Protective Services caseworker, among others, which the Second Department held would have been inadmissible in Supreme Court, and that this precluded collateral estoppel.²⁷ In dissent, Associate Justice Tracey A. Bannister noted that the hearsay was corroborated, and that “it is well settled that determinations rendered by quasi-judicial administrative agencies” like the Workers’ Compensation Board “will qualify for collateral estoppel effect,” therefore Family Court determinations should have the same effect.²⁸

In *Harmon v. Diocese of Albany* the Third Department held that the alleged abuser’s personnel file was not privileged.²⁹ The file included a memo and report from a psychologist whom the defendants had retained to determine the alleged abuser’s risk of recidivism and whether he should be returned to the ministry.³⁰ The court found, however, that the defendants failed to establish “that the withheld documents were prepared solely in anticipation of litigation,” and that there was no patient-psychologist privilege since the psychologist addressed the report to the Bishop of the diocese. The court also held that any privilege was destroyed when the file was sent to the Attorney General’s office in connection with its investigation.³¹

Defenses and Damages

In *Anonymous v. Castagnola* the Second Department held that a claim could be revived by the CVA even if the alleged abuse were committed by a minor.³² The CVA applies to “conduct which would constitute a sexual offense” under Penal Law Article 130. The Defendants argued that the alleged abuser, a minor at the time, could not have been liable under Article 130. But the court held that the CVA applies to conduct and does not require proof of a violation, based on the language of CPLR 214-g and “the spirit and purpose of the CVA.”³³

In *Robb v. Robb* the First Department affirmed refusing to let the defendant amend his answer to plead infancy.³⁴ The litigation was at such a late stage that amendment would have unfairly prejudiced the plaintiff. Furthermore, the alleged abuse continued until the defendant was 15 years old, and a defendant at least 13 years old can be responsible for felony sexual abuse under the Penal Law. The court did not explain why criminal liability even mattered, though, if the CVA revives claims based on conduct rather than an actual violation of the Penal Law.

In *LG 46 Doe v. Jackson* the Fourth Department held that the plaintiff was entitled to a determination of

damages after obtaining a default judgment against one defendant while claims were pending against another defendant.³⁵ The trial court had denied the plaintiff’s motion for a determination, but the Fourth Department held that here the interests of judicial economy were outweighed by the prejudice that plaintiff faced, as “additional delay may hinder [plaintiff’s] efforts to prove damages ... particularly considering defendant’s age and the prospect that defendant’s assets may be dissipated in the interim.”³⁶

Conclusion

These decisions are the first to address many issues that the CVA has raised, and as such, control—unless and until other departments rule differently.³⁷ But counsel can take comfort in how well these revived claims are accommodated by established rules and traditional principles. ⚖️

1. *Senator Kaplan Applauds Child Victims Act Extension, Urges Survivors Seek Justice*, N.Y. Senate (Aug. 3, 2020), available at <https://bit.ly/3Qnjd8O>.
2. CPLR 208; CPLR 214-g.
3. 205 A.D.3d 180 (2d Dep’t 2022).
4. *Id.* at 191–93.
5. *Id.* at 194.
6. 201 A.D.3d 88 (4th Dep’t 2021).
7. *Id.* at 478 (quoting *Wilson v. Garcia*, 471 U.S. 261, 270 (1985)).
8. 208 A.D.3d 958 (4th Dep’t 2022).
9. *Id.* at 961–62.
10. *Id.* at 962.

11. 207 A.D.3d 1038 (4th Dep’t 2022).
12. *Id.* at 1039.
13. *Id.* at 1044–45.
14. 204 A.D.3d 1469 (4th Dep’t 2022).
15. *Id.* At 1470 (emphasis in original).
16. 201 A.D.3d 88 (2d Dep’t 2021).
17. *Id.* at 110.
18. 201 A.D.3d 559 (2d Dep’t 2022).
19. *Id.* at 559.
20. *Id.* at 560.
21. 204 A. D.3d 1450 (4th Dep’t 2022).
22. *Id.* at 1450.
23. *Id.*
24. 209 A.D.3d 975 (2d Dep’t 2022).
25. *Id.* at 978.
26. 208 A.D.3d 974 (4th Dep’t 2022).
27. *Id.* at 975.
28. *Id.* at 975–77 (Bannister, J., dissenting).
29. 204 A.D.3d 1270 (3d Dep’t 2022).
30. *Id.* at 1272.
31. *Id.* at 1273.
32. 210 A.D.3d 940 (2d Dep’t 2022).
33. *Id.* at 943.
34. 205 A.D.3d 493 (1st Dep’t 2022).
35. 199 A.D.3d 1464 (4th Dep’t 2021).
36. *Id.* at 493.
37. See *Mountain View Coach Lines, Inc. v. Storms*, 102 A.D.2d 663,664 (2d Dep’t 1984) (“the doctrine of *stare decisis* requires trial courts in this department to follow precedents set by the Appellate Division of another department until the Court of Appeals or this court pronounces a contrary rule”).



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**FOCUS:
LITIGATION**


Ian Bergström

Self-represented litigants and attorneys are charged with framing legal issues and prosecuting legal arguments for the judiciary to adjudicate disputes. The party presentation principle affords courts with restricted flexibility to operate outside the boundaries of the principle. However, the judiciary should be cautious about advocating the legal positions for either party regarding civil and criminal proceedings.

Advocacy

Attorneys are characterized as, inter alia, the “representative of clients.”¹ Attorneys advocate their “client’s position” within the “rules of the adversary system”² Attorneys proffer “evidence” and assert contentions for courts to render judicial decisions harmonious with the legal standards.³ The Appellate Division, Third Department, relevantly declared that lawyers shall pursue favorable results for their clients, regardless of the lawyer’s “personal interests.”⁴ New York State Court of Appeals reinforced the lawyer’s “professional duty and ethical obligation” to advance legally sound causes of action for their “client.”⁵

The “term ‘pro se’” is “Latin ... meaning to act on one’s own behalf without a lawyer”⁶ Although self-represented litigants should be afforded leniency, the litigants do not have “greater right[s] than ... other litigant[s]”⁷ Courts should not sympathize if self-represented litigants undergo missteps because of inexperience or lack of legal training.⁸ Trial courts must “tolera[te] ... minor infractions of courtroom procedure,” whereby the self-represented litigant imitates “television attorneys”⁹

Despite such tolerance, self-represented litigants should be cautious about perpetrating “behavior and antics” that disregard “parameters of forgivable inexperience” because the court can revoke their status.¹⁰ Courts can direct self-represented litigants to retain an attorney or courts can appoint an attorney.¹¹ Self-

Framed—The Party Presentation Principle

represented litigants demonstrating behavior viewed as “headstrong” and combative lacking “advoca[cy]” skills are prime candidates to be provided with the “effective assistance of counsel.”¹² Courts should explain “litigation rules ... for pro se litigants, without ... becoming their advocates.”¹³ The appellate division implied that trial courts “advocat[ing]” for litigants can be perceived as inappropriate “bia[s]”¹⁴

The Party Presentation Principle

Basically, the party presentation principle means that litigants “frame the issues for decision and assign to courts the role of neutral arbiter of matters the parties present” regarding civil and criminal proceedings.¹⁵ Courts advancing the legal position of “one [I] party” can injure the “system of justice.”¹⁶ Courts should not “reach beyond the arguments squarely before [the court]” because such conduct is “inappropriate and unnecessary.”¹⁷ Litigants shall assert “claims and defenses” furthering their legal positions, rather than the courts.¹⁸

Litigants shall also proffer evidence.¹⁹ The underlying logic is that litigants “know what is best for them”²⁰ Supreme Court of the United States acknowledges that attorneys are “almost always” more informed “about their cases” than the courts.²¹ The party presentation principle “governs” whether “court[s] may add to the issues raised on appeal.”²² The trial and appellate courts should not be perceived as “freelance” attorneys.²³ “Courts are essentially passive instruments of government” awaiting litigants to commence lawsuits setting forth their respective legal positions.²⁴

During trials, the presiding judge has the power to question witnesses, compel witness testimony, present evidence, and extract “facts” to clarify the legal “issues.”²⁵ Despite such power(s), courts should ensure their appearance as neutral and “judicious.”²⁶ The court’s demeanor should not influence the jury to convict criminal defendants because of personal belief or assessment of evidence.²⁷

Generally, litigants are tasked with preserving appellate issues.²⁸ If the appellate division determines that it lacks subject matter jurisdiction to adjudicate the



dispute, then the general standard can be potentially disregarded.²⁹ Moreover, courts can disregard the “party presentation principle in criminal cases ... protect[ing] a pro se litigant’s rights.”³⁰ Courts can sua sponte rectify statute of limitations miscalculations.³¹

The party presentation principle is fluid depending upon the status of the litigant and legal doctrines pending before the court.³² The federal appellate court held that the determination of the court below can be “affirm[ed] ... on any ground ... directly responsive to an appellant’s arguments,” regardless of whether the appellee submits their brief.³³

1. See NYSBA NY Rules of Professional Conduct, Preamble: A Lawyer’s Responsibilities [1], p. 1, available at <https://www.nycourts.gov/ad3/AGC/Forms/Rules/Rules%20of%20Professional%20Conduct%2022NYCRR%20Part%201200.pdf>.
2. See Preamble: A Lawyer’s Responsibilities [1]-[2], supra at p. 1.
3. See Rule 3.5, *Maintaining and Preserving the Impartiality of Tribunals and Jurors*, supra at p. 153 (comment number four (4)).
4. See *In re Bowen*, 150 A.D.2d 905, 909 (3d Dept. 1989).
5. See *Bill Birds, Inc. v. Stein Law Firm, P.C.*, 35 N.Y.3d 173, 197-8 (Ct. App. 2020) (J. Rivera) (dissenting opinion) (citing Rules of Professional Conduct, Rule 1.3, comment number one (1)).
6. See *People v. Duarte*, 37 N.Y.3d 1218, 1222 (Ct. App. 2022) (J. Rivera) (dissenting opinion) (citing *Black’s Law Dictionary* (11th ed. 2019)).
7. See generally *Limani Realty, LLC v. Zayfert*, 40 Misc. 3d 32, 35-6 (2d Dept., App. Term. 2012); see generally *Bank of America, N.A. v. Afflick*, 172 A.D.3d 1146, 1147 (2d Dept. 2019); see generally *Roundtree v. Singh*, 143 A.D.2d 995, 996 (2d Dept. 1988).
8. See *Lenigan*, 1999 N.Y.L.J. LEXIS 5353, *1-2 (Sup. Ct., Suffolk County 1999) (J. Austin).
9. See *In re Estate of Rappaport*, 109 Misc. 2d 640, 642 (Sur. Ct., Nassau County 1981) (J. Radigan).
10. See id.
11. See id.
12. See id.
13. See *Strujan v. AOL*, 12 Misc. 3d 1160[A], 2006 N.Y. Slip. Op. 50981[U], *2 (Civ. Ct., NY County

2006) (J. Moulton).
14. See *Jackson v. Euson*, 153 A.D.3d 1655, 1656 (4th Dept. 2017).
15. See generally *Citibank, N.A. v. Kerszko*, 203 A.D.3d 42, 67 (2d Dept. 2022); see generally *Greenlaw v. U.S.*, 554 U.S. 237, 243 (2008); see generally *U.S. v. Sineneng-Smith*, 140 S. Ct. 1575, 1579 (2020).
16. See *Burgess v. U.S.*, 874 F. 3d 1292, 1300 (11th Cir. 2017).
17. See *Paramount Pictures Corp. v. Allianz Risk Transfer AG*, 31 N.Y.3d 64, 82 (2018) (J. Rivera) (concurring opinion).
18. See *Burgess*, 874 F. 3d at 1300.
19. See *U.S. v. Bailey*, 322 F. Supp. 3d 661, 663-4 (D. Md., Southern Div. 2017).
20. See *Greenlaw*, 554 U.S. at 244.
21. See id. (citing *U.S. v. Samuels*, 808 F. 2d 1298, 1301 (8th Cir. 1987)).
22. See *U.S. v. Graham*, 51 F. 4th 67, 80 (2d Cir. 2022).
23. See *Misicki v. Caradonna*, 12 N.Y.3d 511, 519 (2009); see also *Matter of Lewis*, 114 A.D.3d 203, 208 (4th Dept. 2014).
24. See *Sineneng-Smith*, 140 S. Ct. at 1579.
25. See *U.S. v. Brandt*, 196 F. 2d 653, 655 (2d Cir. 1952).
26. See id.
27. See id. at 656.
28. See generally *Matter of Lewis*, 114 A.D.3d at 207; see generally *Citibank, N.A.*, 203 A.D.3d at 67; see generally *Loiselle v. Progressive Casualty Insurance Co.*, 190 A.D.3d 17, 20 (3d Dept. 2020).
29. See *Matter of Lewis*, 114 A.D.3d at 207 (citing *Fry v. Village of Tarrytown*, 89 N.Y.2d 714, 718 (1997)).
30. See *Greenlaw*, 554 U.S. at 243-4.
31. *Day v. McDonough*, 547 U.S. 198, 202 (2006); *Sineneng-Smith*, 140 S. Ct. at 1579 (citing *Day*, 547 U.S. at 202); *Wood v. Milyard*, 566 U.S. 463, 466 (2012) (“Our precedent establishes that a court may consider a statute of limitations or other threshold bar the State failed to raise in answering a habeas petition.”).
32. See *Sineneng-Smith*, 140 S. Ct. at 1579.
33. See *Graham*, 51 F. 4th at 80-1 (citing Federal Rule of Appellate Procedure 31).



Ian Bergström is a civil litigation attorney assigned to the litigation section with the Office of the Nassau County Attorney. Ian Bergström is also a Sustaining Member of the Nassau County Bar Association.

**FOCUS:
MOTION PRACTICE**

Byron C. Chou

On November 15, 2022, the New Lawyers committee hosted a panel of three speakers consisting of the Hon. Sarika Kapoor (Associate Justice of the Supreme Court—Court of Claims), Ian Steinberg, Esq. (Principal Law Clerk to Hon. J. Lorintz), and Michael Gionesi, Esq. (Principal Law Clerk to Hon. E. Dane) who presented on the topic of the Do's and Don'ts of Motion Practice.

This in-person only event, held at lunchtime in the North Side Dining Room of Domus, was well-attended and its intimate setting was conducive to an interactive Q&A discussion wherein the participants could speak freely with the panel and obtain insights into improving their motion practice skills as well as general advocacy skills.

Before Starting a Motion:

1. Familiarize yourself with the rules of each Judge's courtroom; understand the judge's and their staff's preferences, especially if and when new personnel is installed. Do not hesitate to contact the Court with procedural questions.
2. Attempt to resolve an issue in good faith before engaging in motion practice. This is an essential part of advocacy and is the reason an affirmation of good faith is necessitated when submitting a motion.
3. Understand that a motion itself is not a remedy, it is an application for an Order and a way to move the case forward.

When Drafting/Filing a Motion:

1. Be detailed, yet brief; be mindful of word limits and formatting requirements. Many attorneys believe that a lengthy brief filled with legalese equals a winning brief but that is not the case. Brevity and clarity is key and helpful, especially with reply papers.
2. Start with an overview of the facts and issues so the Court can follow the subsequent arguments

The Do's and Don'ts of Motion Practice: A Discussion with Hon. Sarika Kapoor and Principal Law Clerks Ian Steinberg and Michael Gionesi

and relief requested. Summary schedules and exhibits are welcome and make it easy for the Court to follow issues and arguments.

3. In drafting affirmations, when referring to facts within the accompany affidavit, it is helpful to include the paragraph/page number where said facts can be found for the Court's ease of reference.

4. When applying for a Temporary Restraining Order, don't forget to argue why the Temporary Restraining Order is being sought; although this may seem obvious, this necessary argument is often forgotten/overlooked. Importantly, not everything warrants a Temporary Restraining Order so only request one when absolutely necessary.

5. Although it has become common practice for attorneys to include case law in an attorney's affirmation, an attorney actually cannot affirm to case law (unless, of course, they were involved in that particular case—a rare situation). The appropriate place for case law discussion is in a Memorandum of Law. Because the practice of filing a Memorandum of Law is so uncommon, getting in the habit of filing them sets an attorney apart in a positive way.

6. Refrain from *ad hominem* attacks and arguments in motions as well as in one's advocacy. Focus on addressing the issues on hand without taking on the client's personality. Personal attacks are not lost on the Court even if they are frustrating to be subject to.

7. Submission of sur-replies are generally frowned upon but it is dependent on each Judge. While a request to submit a sur-reply may be permitted when the issue at stake is particularly complex, there is a tendency for attorneys to seek the submission of a sur-reply simply to get the last word in which is not a reasonable basis for seeking a sur-reply.

8. When uploading to NYSCEF, it is best to double check all papers and exhibits before submitting them.

All three panelists repeatedly stressed the importance of conducting oneself with civility in motion practice and advocacy. The attendees were

reminded that the legal community is very small and insular, despite what it may seem, and one's past misconducts can and will come back to haunt them; it will not go unnoticed.

Therefore, treat opposing counsel and the Courts with respect and courtesy (e.g., if opposing counsel is seeking a brief adjournment, absent good reason, the attorney should consent as the Court will likely grant reasonable adjournment requests); don't take on the client's personality—clients come and go but your colleagues within the field will remain; and above all else, guard your credibility and reputation as this is your most valuable currency in this profession.

The presentation was informative and instructional; it served as a good primer as well as refresher on how to be an effective advocate in the areas of motion practice and elsewhere. The committee thanks the panelists, Judge Kapoor and Messrs. Gionesi and Steinberg for taking the time to share their invaluable insight and advice.

The next New Lawyers Committee meeting is scheduled for February 15 at 12:30pm at the North Dining Room of Domus and our speaker will be Teresa Azzue, Esq., a member of our very own committee as well as the Matrimonial Law Committee; the topic of presentation is titled "Peer Roundtable: Special Considerations When Representing Domestic Violence Victims." CLE credit will be offered. Ms. Azzue is a former Staff Attorney with The Safe Center and is currently an Associate Attorney with the firm of Schlissel Ostrow Karabatos located in Garden City. All are cordially invited to attend. 🗑️



Byron C. Chou is the Co-Chair of the NCBA New Lawyers Committee and an Associate with the Matrimonial Law firm of Gassman Baiamonte Gruner, P.C.

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**FOCUS:
PLAINTIFF'S PERSONAL
INJURY**



Ira S. Slavit

On April 6, 2015, 22-year-old construction worker Carlos Mancayo was buried alive and crushed to death. The walls of a thirteen-foot deep trench at a construction site in Manhattan's meatpacking district collapsed around him. The trench had collapsed just hours after an inspector visited the site and noticed the then seven-foot-deep trench was not reinforced with earth-retaining equipment.¹

City, state, and federal regulations mandate that a trench be fortified when it reaches five feet in depth.² According to reports, the managers of the construction site had for months received repeated warnings from

Carlos' Law and Other 2022 Public Safety Laws

inspectors that their site was extremely dangerous.

The tragedy sparked outrage. OSHA (the Occupational Safety and Health Administration) fined the general contractor Harco Construction LLC (also known as H&H Builders) \$140,000 and Sky Materials, Mr. Mancayo's employer, \$100,000.

The Manhattan District Attorney's Office successfully prosecuted manslaughter, criminally negligent homicide, and reckless endangerment charges. Harco, Sky Materials, Mr. Mancayo's foreman, and a senior superintendent of Harco who had been responsible for ensuring workers' safety at the construction site were all convicted.

As a result of their criminal convictions, both Harco and Sky were fined the maximum amount permitted under New York State law for the felony convictions. And therein lay a further outrage—the maximum amount of the fine allowed was a mere \$10,000.³ The district attorney at the time, Cyrus R. Vance, Jr., said the fine was merely “Monopoly money” for Harco.⁴



This inadequacy in the law led to builders engaging in a risky and often hazardous cost-benefit analysis. Statistics showed that the average fine for similar transgressions was \$1,000. Thus, in many cases it was less expensive for construction companies to risk paying a fine than to incur the cost of using proper safety protocols.

The New York State legislature was determined to remedy this situation and make the failure to use proper safety measures cost prohibitive. After years of futility, a bill officially known as “Carlos' Law,” named after Carlos Mancayo, was signed by Governor Kathy Hochul on December 23, 2022, and became effective on January 22, 2023.

The legislation dramatically increased the penalties for criminal corporate liability for the death or serious physical injury of an employee by a fine of up to \$500,000.⁵ The Article also gives courts further discretion to order greater restitution or reparation than had previously been allowed.⁶

Endangering the welfare of a worker in the first degree requires a worker's supervisor or person acting on behalf of a supervisor, acting with criminal negligence, to expose the worker to a risk of physical injury that causes the worker's death. It is a Class D felony.⁷

The crime in the second degree requires the worker's supervisor, acting with criminal negligence, to expose the worker to risk of physical injury thereby causing physical injury to the worker. It is a Class E felony.⁸ The crime in the third degree also requires criminal negligence and exposure of the worker to a risk of physical injury but does not require an injury to actually occur. It is a Class A misdemeanor.⁹

Pursuant to Penal Law §80.10, as amended by Carlos' Law, the

maximum fine for convictions for endangering the welfare of a worker in the first or second degrees is \$500,000. The maximum fine for convictions for the crime in the third degree is \$300,000.

Construction work is inherently dangerous. The most recent annual construction fatality report issued by the New York Committee for Occupational Safety and Health (NYCOSH), which analyzed newly available data from 2020, found that the construction industry in both New York State and New York City remained far more dangerous than the rest of the country.¹⁰

Only time will tell how much these dramatically increased fines, money that will presumably come from contractors' pockets, will deter poor safety practices on construction sites in New York State.¹¹ But the law is a significant step forward and may well serve as a deterrent to past practices.

Other New Worker Safety Laws

The Justice for Injured Workers Act amends the Workers' Compensation Law to provide that no finding or decision by the workers' compensation board, judge or other arbiter shall be given collateral estoppel effect in any other action or proceeding arising out of the same occurrence, other than the determination of the existence of an employer-employee relationship. The law became effective on December 30, 2022.

The “Justification” section of the Senate Bill (S9149) states the Justice for Injured Workers Act is designed to protect injured workers from being denied compensation to which they may be entitled to because of an adverse finding in “lightning-fast administrative hearings before a

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At least two other bills intended to protect workers were passed and signed into law during 2022. The Warehouse Worker Protection Act is intended to protect warehouse workers from unreasonably demanding work quotas and requires employers to provide a written description of quotas to which employees are subject to.

The new law further states that employees shall not be required to meet quotas that prevent compliance with meal or rest periods, or use of bathroom facilities. This legislation, codified in Labor Law Article 21-A, also includes protections for workers who fail to meet unlawful quotas.

Proponents of the law cited an increase in injury rates for warehouse workers due to extreme work quotas, such as heart attacks, strokes, repetitive motion injuries and life-long joint and back pain, and the need to remove incentive for e-commerce giants like Amazon and UPS to engage in unsafe workplace practices. The law was signed into law on December 21, 2022, and becomes effective on February 19, 2023.

Labor Law §27-D, the New York Health and Essential Rights Act, also known as the NY HERO Act, was enacted in 2021 in response to the COVID-19 pandemic and mandates extensive new workplace health and safety protections. The law requires employers of ten (10) or more employees to permit their employees to establish a joint labor-management workplace safety committee. An amendment to that statute, effective December 28, 2022, requires employers to recognize the establishment of a workplace safety committee within five business days of receiving a request from employees for one and also gives the Department of Labor additional tools to enforce compliance with such a request.

Roadway Safety

A legislative package to enhance street safety, prevent traffic-related fatalities, and crack down on hit-and-run incidents was signed into law on August 12, 2022. New laws will increase fines for leaving motor vehicle accident scenes without reporting them and allow municipalities to reduce speed limits to 25 miles per hour.

Section 600(2)(c) of the Vehicle and Traffic Law was amended to increase the fine range for leaving the scene of an accident where someone was injured to between \$750 and \$1,000, and to increase the fine range

for a repeat violation to \$1,000-\$3,000. The law became effective on November 1, 2022.

Effective on August 12, 2022, cities, villages, and towns will be permitted, by virtue of amendments to VTL §§1643 and 1662-a, to reduce speed limits to twenty-five (25) miles per hour on roadways within their jurisdictions. The minimum was formerly thirty (30) miles per hour.

Interestingly, the statutes explicitly single out specific roads in the cities of Long Beach, Buffalo and Rochester, and also in Lido Beach and Point Lookout, where the minimum allowable speed limit is fifteen (15) MPH. Readers in those areas might be intrigued to read the statutes to see which roads were designated for the potentially lower speed limit.

New York City established a twenty-five (25) MPH (miles per hour) speed limit in 2014 pursuant to a state law that was addressed exclusively to the City.¹² The City promoted the benefits of the reduced speed limit by pointing out that drivers who drive twenty-five (25) MPH or slower are better able to avoid crashes.

Furthermore, pedestrians who are struck by vehicles traveling at twenty-five (25) MPH are half as likely to die as pedestrians who are struck by vehicles at thirty (30) MPH. It has been noted that the reduced speed limit and New York City's Vision Zero efforts have lowered traffic fatalities by up to thirty-six percent since 2014.¹³ 🚧

1. "Manslaughter Charges for Construction Managers After Queens Worker Dies in Pit Collapse", The New York Times, August 5, 2015. <https://www.nytimes.com/2015/08/06/nyregion/construction-managers-to-face-manslaughter-charges-in-death-of-queens-worker.html>.

2. NYC Building Code, Chapter 33, Section 3304; 12 NYCRR §23-4.2; 29 CFR 1926.650 – 652.

3. Penal Law §80.10.

4. https://www1.nyc.gov/assets/doi/press-releases/2016/dec/12-20-16_Joint_DA_DOL_Harco_Construction_Statement.pdf.

5. Penal Law §§20.20, 60.27, and 80.10.

6. Penal Law §60.27(5)(c).

7. Penal Law §122.15.

8. Penal Law §122.10.

9. Penal Law §122.05.

10. <https://nycosh.org/2022/02/nycosh-report-finds-new-york-state-construction-worker-deaths-remain-alarmingly-high/>.

11. Workers' Compensation Law §§11(b), 118-a.

12. Vehicle and Traffic Law §1642.

13. <https://www.nysenate.gov/newsroom/articles/2022/brad-hoylman/cb6-resolution-sammys-law>.



Ira S. Slavit is chair of the NCBA Community Relations and Public Education Committee and immediate past chair of the plaintiff's Personal Injury Committee.

He is an attorney with Levine & Slavit, PLLC with offices in Manhattan and Mineola, and can be reached at islavit@newyorkinjuries.com or at (516) 294-8282.

SAVE THE DATE

Pro Bono Recognition Cocktail Reception

Wednesday, March 13, 2023

5:30 PM to 7:30 PM

Nassau County Bar Association



The Nassau County Bar Association, Nassau Suffolk Law Services and The Safe Center LI are planning a Volunteer Recognition event to show appreciation to law firms, solo practitioners, and individuals who have performed exemplary pro bono service to the community this past year.

To sponsor or attend this event, please contact ccardona@nassaubar.org at your earliest convenience.

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NAL PROGRAM CALENDAR

February 1 (HYBRID)

Dean's Hour: Meeting the Challenges of Battery Storage for the Renewable Energy Needs of Long Island Communities

With the NCBA Environmental Law Committee and the NCBA Municipal Law and Land Use Committee

Sign-in and networking 12:00PM-12:30PM;
Program 12:30PM-1:30PM

1 credit in professional practice

NOW AVAILABLE ON-DEMAND

February 4-5 (IN PERSON ONLY)

Hon. Joseph Goldstein Bridge-the-Gap Weekend

***Snow date: March 4-5, 2023**

Sign up for the full weekend, a day, or individual classes.

Newly admitted attorneys: 7 credits in professional practice, 6 in skills, 3 in ethics

Experienced attorneys: 13 credits in professional practice, 3 in ethics

FREE for NCBA Members. Breakfast, lunch, and written materials will be provided each day to attendees.

February 7 (HYBRID)

Dean's Hour: Shareholder Agreements and the Connolly Decision

With the NCBA Business Law, Tax and Accounting Committee

12:30PM-1:30PM

1 credit in professional practice.

February 8 (HYBRID)

Dean's Hour: Abuse in the Family Lecture Series Part 2— Child Abuse

With the NCBA Criminal Court Law and Procedure Committee and the NCBA Elder Law, Social Services, and Health Advocacy Committee

12:30PM-1:30PM

1 credit in professional practice.

Skills credits available for newly admitted attorneys.

February 9 (ZOOM ONLY)

Supplemental Needs Trustee: Part 36 Certified Training

With the NCBA Elder Law, Social Services & Health Advocacy Committee

5:00PM-8:30PM

3 credits in professional practice; .5 in ethics

Registration fees: NCBA Member \$150;

Non-Member Attorney \$250

Part 36 training is excluded from the free CLE offer included with NCBA Membership

February 14 (HYBRID)

Dean's Hour: How to Catch a Cheating Heart— Use of Digital Evidence in Litigation—Technical, Legal and Ethical Issues

With the NCBA Criminal Courts Law and Procedure Committee

12:30PM-1:30PM

.5 credits in ethics; .5 credits in professional practice.

March 1 (HYBRID)

Dean's Hour: How to Analyze an Ethics Problem— Recognizing Common Law Conflicts of Interest

12:30PM-1:30PM

1 credit in ethics

March 2 (HYBRID)

Dean's Hour: Crisis or No Crisis—Is It Time to Wind Down Your Practice?

With the NCBA Lawyer Assistance Program

12:30PM-1:30PM

1 credit in ethics

March 8 (HYBRID)

Dean's Hour: Navigation of Electronic Filings Throughout the Appellate Division—2023 Update

Presented by NCBA Corporate Partner

PrintingHouse Press

12:30-1:30PM

1 credit in professional practice

Skills credits available for newly admitted attorneys

March 10 (ZOOM ONLY)

Guardian Ad Litem: Part 36 Certified Training

8:30AM-12:30PM

3.5 credits in professional practice; .5 in ethics

Registration fees: NCBA Member \$150;

Non-Member Attorney \$250

Part 36 training is excluded from the free CLE offer included with NCBA Membership

March 22 (HYBRID)

Dean's Hour: Abuse in the Family Lecture Series Part 3—Guardianships

With the NCBA Criminal Court Law and Procedure Committee and the NCBA Elder Law, Social Services, and Health Advocacy Committee

12:30PM-1:30PM

1 credit in professional practice.

Skills credits available for newly admitted attorneys.

NAL PROGRAM CALENDAR

March 24 (LIVE ONLY)

2023 Annual School Law Conference

With the NCBA Education Law Committee

Sign-in begins 8:00AM; Program 9:00AM-2:30PM

CLE credits TBD

Program will take place at Jacob D. Fuchsberg Touro Law Center, 225 Eastview Drive, Central Islip, NY

Registration Fees: NCBA Member \$75;

Non-Member Attorney \$225;

School Personnel \$225

Purchase orders accepted from school districts.

April 5 (HYBRID)

Dean's Hour: Abuse in the Family Lecture Series

Part 4— Financial Abuse

With the NCBA Criminal Court Law and Procedure Committee and the NCBA Elder Law, Social Services, and Health Advocacy Committee

12:30PM-1:30PM

1 credit in professional practice.

Skills credits available for newly admitted attorneys.

April 26 (HYBRID)

Dean's Hour: Abuse in the Family Lecture Series

Part 5— Spousal Abuse

With the NCBA Criminal Court Law and Procedure Committee and the NCBA Elder Law, Social Services, and Health Advocacy Committee

12:30PM-1:30PM

1 credit in professional practice.

Skills credits available for newly admitted attorneys.

April 26 (IN PERSON ONLY)

Legal History: Chief Justice John Jay and the Earliest Momentous Cases of the U.S. Supreme Court

With the NCBA Appellate Practice Committee

6:00PM-8:00PM

2 credits in professional practice.

This program examines the nature of the practice of law in the latter 1700s, and the personal, professional, political, and diplomatic, endeavors that led John Jay being the First Chief Justice of the Supreme Court, and the influence he had upon the institution. The program also examines three of the earliest crucial cases handled by the Supreme Court that have been enduring influences on the law we know today.

The subject matter comes from Dillon's published book, *The First Chief Justice: John Jay and the Struggle of a New Nation*.

Guest speaker: Hon. Mark C. Dillon, Associate Justice of the Appellate Division, Second Judicial Department.

EVENING CLE SERIES (IN PERSON ONLY)

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Series moderators: Rudy Carmenty, Esq., Cynthia A. Augello, Esq., Michael P. Guerriero, Esq., and Lee Rosenberg, Esq.

March 2 Openings to Close

March 9 Relevancy

March 15 Witnesses

April 3 Hearsay

Sign-ins: 4:45PM

Programs: 5:30PM-7:30PM

Each seminar is 2 credits in professional practice.

Skills credits available for newly admitted attorneys.

Series will be recorded and available on demand at a future date.

Series sponsored by NCBA Corporate Partner



DEAN'S HOUR: WHAT'S ON TAP FOR NEW YORK'S ALCOHOL AND BEVERAGE LAWS

MARCH 16, 2023

12:30—1:30PM

1 CREDIT IN PROFESSIONAL PRACTICE

***ATTEND IN PERSON OR VIA ZOOM**

Program presented by **Omid Zareh, Esq.,** and **Seth B. Weinberg, Esq.** of Weinberg Zareh Malkin Price LLP

A St. Patrick's Buffet Lunch will be available for purchase during the program.

**FOCUS:
LAW AND AMERICAN
CULTURE**

Rudy Carmenaty

A lawyer with his briefcase can steal more than a hundred men with guns.

Vito Corleone in Mario Puzo's *The Godfather*

For more than half-a-century, *The Godfather* has been a source of continued fascination. Beginning in 1969 as a lurid potboiler by Mario Puzo, the book became a cinematic classic when it was adapted for the screen by Francis Ford Coppola. The saga of the Corleones has since become a part of American folklore.

Author Mario Puzo was an inveterate gambler who became deeply in debt. He needed a sure-fire best-seller. Puzo knew next to nothing about the Mafia. But he did his research, engaged his over-active imagination,

An Offer No One Can Refuse

and his bet paid off. Published by G.P. Putnam & Sons, *The Godfather* sold over nine million copies in hard cover.¹

Puzo sold the film rights to Paramount for \$80,000 prior to the book's publication.² It turned out to be a shrewd investment. *The Godfather* raced up the bestseller list with its gaudy mixture of violence, sex, and Machiavellian philosophy. The studio, much to its astonishment, found itself in a conundrum.

At first Paramount was going to make the movie on the cheap, leery that the subject matter would not attract audiences. A prior release, Martin Ritt's *The Brotherhood* (1969), proved to be a box-office dud.³ As interest in the book exploded, the film's budget, as well as expectations for its success, grew accordingly.

Budgeted at \$6.5 million, the film grossed \$270 million earning a million dollars a day during its initial theatrical release.⁴ It revived the flagging career of 1950's movie idol Marlon Brando, and made stars out of Al Pacino, Robert Duvall, James Caan, and Diane Keaton.

Filmmaker Francis Ford Coppola is the visionary most responsible for

the *Godfather* phenomenon. Educated at Hofstra and the UCLA Film School, Coppola was in the vanguard of a new generation of moviemakers. Unlike his subsequent productions, *The Godfather* was completed on schedule and on budget.

Coppola and Puzo's Italian pedigrees are on full display in *The Godfather*. In a twist on one of the book/film's more prevalent themes, it was as much personal as it was about business. The Corleones are more than gangsters who engage in nefarious activities. They are deeply rooted in a particular culture and community.

As both the book and the films chronicle the assimilation of a Sicilian family who emigrated to the United States. Their rise to prominence from humble beginnings. Their exercise of power and influence at the summit of their achievement. And their subsequent fragmentation in the cut-throat world they inhabit.

This is what gives the story its resonance. Vito Corleone comes to Ellis Island from Sicily as a penniless youngster. He labors and prospers on behalf of his family. By the time he reaches maturity, he has achieved his own particular version of the American dream. He even holds dynastic ambitions for his sons.

Not unlike the story of the real-life Kennedys, *The Godfather* is the story of the triumphs and tragedies of the American immigrant experience. P.J. Kennedy, the child of Irish immigrants, was a saloon keeper turned local politician. His son Joe was a shady financier who became an ambassador. In turn, his son John was elected President.

As Vito nears the end of his life, he laments to his favored son Michael that unlike the clan from Boston there wasn't enough time for a 'Senator Corleone' or a 'Governor Corleone.' Michael's heart-felt affirmation speaks to their mutual aspirations for their family—*"We'll get there, Pop, We'll get there."*⁵

The gangster genre can quite literally be divided between films that predate *The Godfather* and those which followed. Since the 1930's, the movie mobster was a social misfit operating outside the bounds of legal mores. Be it James Cagney or Edward G. Robinson, he always paid dearly for defying the law.

The Godfather offers an alternate paradigm. Gangsters are presented as men of respect who are to be admired. Their activities, though violent, are not pathological aberrations but somehow acceptable given the

circumstances. This is not to say the Corleones don't suffer for their sins. But they are never made to account for their crimes.

Tellingly, the mobster is portrayed as part and parcel of American society. The film's opening line confirms this premise—*"I believe in America. America has made my fortune."*⁶ Criminal activity thus serves as an allegory for American capitalism and the gangster is emblematic of the wider culture.

The five families that govern the New York underworld resemble competing corporations. The Corleones are the most successful by virtue of being the most ruthless as well as the most profitable. Textured in ambiguity, the film offers a casebook study on the acquisition and the consequences of power.

Vito, as godfather, is the chief executive. Caporegimes Clemenza, Tessio, and oldest son Sonny, comprise his board of directors. Lawyer and non-Sicilian Tom Hagan, serves as his consigliere or general counsel. Dim-witted son Fredo is given a job, as would be the case with any black sheep in a privately held corporation.

The Corleone Family, for neither the word 'Mafia' nor the term 'La Cosa Nostra' is ever used in the first film, are integral to the social fabric.⁷ Their influence is widespread and extends to the control of judges, politicians, the police, and various legitimate interests.

Michael Corleone, Vito's eventual successor, will take the family even higher. In *The Godfather, Part II* (1974), Michael, along with Hyman Roth—a fictional stand-in for Meyer Lansky—will be in Cuba. Operating on an international stage, the Corleones will take their rightful place as the representatives of 'leisure activities' alongside ATT, United Sugar, and other American conglomerates.

Puzo and Coppola paint a portrait of systemic corruption filtered through the metaphor of organized crime. As Michael tells his WASP girlfriend Kay Adams: *"My father is no different than any other powerful man. Any man who's responsible for other people—like a senator or a president."*⁸

Kay, with all the rectitude of a New England Yankee counters: *"You know how naïve you sound? Senators and presidents don't have men killed."*⁹ Michael, completely deadpan, replies: *"Oh, whose being naïve, Kay?"*¹⁰ Vito Corleone is practically a law unto himself.

Indeed, in some instances the Corleones meet out their own measure of justice far more effectively and equitably than do the courts. The

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opening scene has an undertaker asking Don Vito for revenge against two well-connected youths who received lenient sentences for beating and abusing his only daughter.

The Don will not kill for the funeral director, after all the young lady is still alive. But he will deliver the justice that the judge failed to provide.

Vito orders the two scoundrels to be severely beaten for their actions. In exchange for his services, the Don refuses money. He only asks Bonasera to one day return the favor.

Vito is always open to negotiation—so long as it's backed-up by force. The ubiquitous tag line—"I'm gonna to make him an offer he can't refuse."—conveys as much business savvy as it does menace.¹¹ And though Vito's dealings would not bare close scrutiny, nether would those of another family patriarch—John D. Rockefeller.

When movie mogul Jack Waltz rebuffs an accommodation, he finds the head of his prized racehorse lying in his bed next to him. When Moe Greene, a character who resembles Bugsy Seigel, declines to sell his shares in a Las Vegas casino, he winds up with a bullet in his eye. However, there are some lines Vito will not cross.

The story's underlying tension concerns his unwillingness to become involved in narcotics. Drug dealer Virgil Sollozzo asks the Don for financing. They discuss profits and percentages as one would with any venture capital investment. However, Vito does not consummate the deal on moral grounds. For him, "drugs is a dirty business."¹²

After an all-out war leads to considerable bloodshed, the heads of the five families hold a board meeting at the Waldorf Astoria to broker a peace among themselves. Included are their associates from across the country. Vito will reluctantly give-in to protect the life of his son and heir, so long as the drug trade is controlled.

It's an empty promise of course. His counterparts and even his own successor will prove far less scrupulous. The profit inherent in the sale and distribution of heroin is just too great to be controlled. Vito may

be a latter-day Caesar within his own realm, yet he did not have the power to prevent the drug scourge which will ensue.

The most telling exchange at the Waldorf conclave comes from Don Barzini, a rival, who wryly observes:

*If Don Corleone had all the judges and the politicians in New York, then he must share them or let others use them. He must let us draw the water from the well. Certainly, he can present a bill for such services. After all, we are not Communists.*¹³

In fact, they are the essence of capitalists. They make deals and cut their losses per the dictates of the rather bloody market in which they operate in.

Michael ultimately will eliminate his competition. He will orchestrate the killing of the heads of the other five families while serving as godfather to his nephew. And like any organization in need of downsizing, he will remove the traitors within his own ranks. This includes his brother-in-law, Carlo, whose child he just stood godfather to.

Effectively operatic in tone, the film also reflects the off-stage struggles Coppola endured with Paramount in order to execute his vision on the screen. Indeed, the director had to be as Machiavellian as any Don to ensure that Brando and Pacino were cast as father and son.

In Brando's case, he had a reputation for being difficult. He has been box office poison for years. The studio insisted that Brando undergo the humiliation of a screentest, that he put up a bond, and that he play the part for a paltry sum.¹⁴ Coppola knew intuitively that Brando was ideal for the role.

Coppola came up with a ruse of a make-up test which he videotaped. The ploy worked, as studio executives were mesmerized by Brando's transformation from handsome middle-aged man to the aging and august Don Corleone. Yet this battle was nothing compared to the fight to have Pacino play Michael.

Implausibly, the studio wanted Robert Redford or Warren Beatty

instead. To further complicate matters, until well into the film's shooting schedule Coppola was under threat of being fired from the production. The studio even had another director on call to take over at a moment's notice if they decided to pull the trigger.

Coppola not only persevered but triumphed. He wrote and directed an enduring film, which half-a-century later retains all its vitality and brilliance. More than that, with its sequels and merchandising he fashioned the blockbuster paradigm that has dominated Hollywood ever since.

The Godfather and *The Godfather, Part II* would each win the Oscar as the Best Picture of 1972 and 1974, respectively. The films would receive a combined total of nine Academy Awards.¹⁵ These include the Best Actor award which Brando turned down on account of Hollywood's treatment of Native Americans.¹⁶

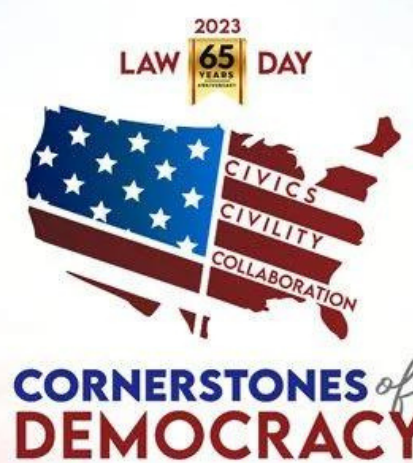
In 1998, *The Godfather* was ranked in the American Film Institute's *100 Year ... 100 Movies* as the second greatest film of all time after *Citizen Kane*.¹⁷ The film and its sequels are epics which have left their imprint on the cultural landscape. Surely, an opportunity to screen *The Godfather* is an offer that can't be refused. ⚖️

1. Martha Peterson, *Mario Puzo net Worth: How Rich Was "Godfather" Author?* at theshahab.com/blog.
2. Harlan Lebo, *The Godfather Legacy*, (1st Ed. 1997) 6.
3. *Id.*, 9.
4. *The Godfather (1972) Financial Information* at <https://www.the-numbers.com>.
5. Francis Ford Coppola and Mario Puzo, *The Annotated Godfather*, (1st Ed. 2011) 209.
6. *Id.*, 24.
7. Purportedly, producer Al Ruddy cut a deal with Joe Colombo's Italian-American Civil Rights League that no such references would be contained in the script in exchange for no production difficulties while the cast and crew were shooting in New York City.
8. Coppola and Puzo, *supra*, 188.
9. *Id.*
10. *Id.*
11. *Id.* 50.
12. *Id.* 68.
13. *Id.* 184.
14. Peter Cowie, *The Godfather Book*, (1st Ed. 1997) 12.
15. *The Godfather*: Best Picture, Best Actor; and Best Screenplay. *The Godfather, Part II*: Best Picture, Best Director; Best Supporting Actor (Robert DeNiro), Best Screenplay, Best Art Direction, and Best Music.
16. Brando sent Sacheen Littlefeather, a Native American, to refuse his Oscar.
17. In 2007, *The Godfather* ranked as #3 switching places with *Casablanca*. *The Godfather, Part II* rated



Rudy Carmenty is the Deputy Commissioner of the Nassau County Department of Social Services. He also serves as Co-Chair of the NCBA Publications Committee and Chair of the Diversity and Inclusion Committee.

SAVE THE DATE!



May 1, 2023 at Domus

Join us as our Bar Association recognizes the importance of Law Day and distributes the Liberty Bell and Peter T. Affatato Awards, along with the Pro Bono Attorney of the Year Award.

Law Day recognizes the role of law in the foundation of our country and its importance in society. The theme of this year's Law Day is "Cornerstones of Democracy: Civics, Civility, and Collaboration."

Additional details to follow.

Wade Clark Mulcahy LLP Expands on Long Island with Addition of Steven F. Goldstein LLP

Wade Clark Mulcahy is pleased to announce the expansion of its Long Island presence with its merger with Steven F. Goldstein LLP. In addition to Steve Goldstein, who will be Of Counsel to WCM, Partner Gina Arnedos and associate Patrick "PJ" Argento will join WCM, and current WCM Partner Brian Gibbons will serve as the managing partner of the Long Island office. They will focus primarily on liability defense, fraud investigation, and professional liability.

Arnedos, Goldstein, and Argento strengthen the firm's robust litigation expertise. With the opening of the Long Island Office at the former site of Steven F. Goldstein LLP at 1 Old Country in Carle Place, NY, the firm will better serve its clients in Nassau and Suffolk Counties.

"We are thrilled to open our Long Island Office and be able to better serve our clients," says Bob Cosgrove, a member of Wade Clark Mulcahy Executive Committee. "Gina, Steve, and PJ are experienced trial lawyers, and we are ecstatic to have them join the firm." "Steve and I picked a jury together a few years back and hit it off immediately – I'm excited to work with Steve, Gina and Patrick going forward," says Brian Gibbons.

Steve Goldstein has spent over three decades representing clients, including department stores, camps, gyms, rock climbing facilities, horse farms, nursery schools, youth sports organizations, construction companies, and all manner of business and individual clients. He has vast trying and appealing cases in all New York State and Federal Courts. "We are pleased to join WCM and to offer more resources to our clients, both in the greater New York City area, and in other jurisdictions where WCM has a strong presence."

Gina Arnedos is a skilled trial attorney with 35 years' experience litigating in New York. She has amassed extensive experience in guiding clients on risk management issues and evaluating cases for settlement, motions for summary judgment, appeals, and trials. Gina has litigated premises liability cases for a multitude of clients over the years, including department stores, camps, gyms, rock climbing facilities, horse farms, nursery schools, and all manner of business and individual clients.

Since graduating from Argento Maurice A. Deane School of Law at Hofstra University in 2017, PJ Argento has gained experience litigating in State District Courts and Supreme Courts all over the State of New York. He began his career with the Suffolk County District Attorney's Office in 2016, while still attending law school. Under a practice Order from the Appellate Division, Second Department, Patrick prosecuted cases as a Law Assistant in Suffolk County District Court. Argento just recently tried his first case in upstate New York.



About Wade Clark Mulcahy

Since its founding in 1994, Wade Clark Mulcahy has achieved superior and cost-effective results achieved for its insurance and corporate clients. With six offices in New York City, Springfield, New Jersey, Philadelphia, Long Island, New York, Miami, and London, Wade Clark Mulcahy effectively serves clients' needs in a variety of jurisdictions.

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- \$3.5 million for a client whose improper coronary artery bypass surgery led to his heart being forcibly ejected from his chest during a coughing fit.
- \$1.45 million for a client whose improper treatment and delay in diagnosis of squamous cell carcinoma on the nose resulted in a complete rhinectomy.
- \$1.3 million for a client who suffered an avoidable stroke in the emergency room of a hospital.
- \$875,000 for a client who suffers from nerve damage and limited mobility as a result of negligent spinal surgery.
- \$750,000 for an infant boy who sustained a left-sided Erb's palsy due to improper delivery maneuvers by the doctors during his birth.

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WE CARE Fund Chosen for New York Islanders Hockey with a Heart Program

On December 29, 2022, the WE CARE Fund was honored as the New York Islanders' charity of the night for their Hockey with a Heart program, helping non-profits raise awareness and funding for their causes at Islanders' games throughout the season.



Photos by: Hector Herrera

NCBA Hosts Legislative Breakfast Program

The January 27 program, "Available Legal Resources to Help Your Constituents," designed for elected officials and their staff was held at the Nassau County Bar Association in conjunction with the NCBA Community Relations and Public Education Committee and Government Relations Committee.



Photos by: Hector Herrera

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IN BRIEF

NBCA Past President **Dorian R. Glover** has been selected to receive the 2023 NYSBA Attorney Professionalism Award.

Carrie Adduci of Certilman Balin Adler & Hyman, LLP was elevated to Partner.

Mark E. Alter, senior partner in the Law Offices of Mark E. Alter, has again been nominated and now named to the 2022 Super Lawyers List in the category of Personal Injury Litigation (Plaintiffs). **Erica L. Alter**, an associate attorney in the Law Offices of Mark E. Alter, has been selected to the 2022 New York Rising Stars list.

Lois Bladykas, **John Chillemi**, and **David F. Durso** of Ruskin Moscou Faltischek, P.C. have been promoted to Partner.

Jeffrey D. Forchelli, Managing Partner at Forchelli Deegan Terrana LLP is pleased to announce the promotions of **Lisa M. Casa** (Employment and Labor), **Alexander Leong** (Employment and Labor), **Lindsay Mesh Lotito** (Banking/Finance and Real Estate), and **Erik W. Snipas** (Land Use & Zoning and IDA Benefits & Government Incentives) to Partner.

Marc L. Hamroff, Partner of Moritt Hock & Hamroff has announced that **Brian Boland**, **Michael Calcagni**, **Jacquelyn Moran**, and **Christine Price** have been elevated to Partner, and that **Lauren Bernstein**, **Caitlyn Ryan**, and **Jodi Zimmerman** have been elevated to Counsel.

John C. Armentano and **Azriel J. Baer** of Farrell Fritz have been promoted to Partner of the firm. Edward D. Baker has been promoted to Counsel.

Desiree Gargano has joined Morrin & Sands, PLLC, Of Counsel in the areas of employment law and workers' compensation.

Ronald Fatoullah of Ronald Fatoullah & Associates was quoted in "The Pros and Cons of Family Limited Partnerships," by journalist Lori Ioannou of the *Wall Street Journal*. He also conducted a CLE for attorneys hosted by the National Business Institute entitled "Medicaid, Asset Limits, Transfers and Conversions 101" and presented "The Role of Tax Planning in Estate Planning" for PSS Circle of Care Life University's Retirement Readiness Base Camp.

Jodi S. Hoffman, Partner at Certilman Balin Adler & Hyman, LLP, has been elevated to Co-Chair of the firm's Real Estate Practice Group. Firm Partner **Donna J. Turetsky** has been elevated to Co-Chair of the firm's Trusts and Estates and Elder Law Groups.

David S. Feather of Feather Law Firm, P.C. has been named a New York Metro Super Lawyer for the fourth consecutive year.



Marian C. Rice

Stuart P. Gelberg has been recognized by Martindale-Hubbell for the 34th time as an A-V rated attorney.

Kristin J. Kircheim has become a Partner at The Altarac Law Firm, PLLC.

Karen Tenenbaum of Tenenbaum Law, P.C. is pleased to announce that the firm was listed by *Long Island Business News* Book of Lists as a Top Tax Law Firm. Karen spoke to Brooklyn Law School students about the business of law as part of the school's Business Boot Camp for 2023. Karen participated as part of a panel of distinguished guests for Bonnie Graham's Technology Revolution: 2023 Crystal Ball Predictions special. Karen also appeared on *Guest on Life Unlimited* with host Larry Heller where she spoke about financial literacy for kids. Karen also had an article published for the NCCPAP, Nassau/Suffolk Newsletter titled "Takeaways from ATS: IRS and New York State Collection Update."

Erik Olson has been named Partner at Capell Barnett Matalon & Schoenfeld LLP. Partner **Yvonne Cort** has been re-appointed Member-at-Large of the NYS Bar Association, Tax Section, Executive Committee. Partners **Robert Barnett** and **Gregory Matalon** will be presenting "Shareholder Agreements and the Connolly

Decision" for the Nassau County Bar Association's Dean Hour. Robert also presented on the topic of Capital Gains in Estate Planning for MyLawCLE/Federal Bar Association.

Richard J. McCord, Partner at Certilman Balin Adler & Hyman, LLP, has been elevated to Co-Chair of the firm's Bankruptcy and Creditor/Debtor Rights Group.

Marc L. Hamroff, Partner at Moritt Hock and Hamroff, LLP is pleased to announce that the firm will sponsor the New York State Bar Association Dispute Resolution Section's Annual Mediation Tournament to be held on March 3 and 4, 2023.

Sara Dorchak has joined Barclay Damon's Trademarks, Copyrights, and IP Transactions Practice Area as Counsel.

The IN BRIEF column is compiled by Marian C. Rice, a partner at the Garden City law firm L'Abbate Balkan Colavita & Contini, LLP, where she chairs the Attorney Professional Liability Practice Group. In addition to representing attorneys for 40 years, Ms. Rice is a Past President of NCBA. Please email your submissions to nassaulawyer@nassaubar.org with subject line: IN BRIEF

The *Nassau Lawyer* welcomes submissions to the IN BRIEF column announcing news, events, and recent accomplishments of its current members. Due to space limitations, submissions may be edited for length and content.

PLEASE NOTE: All submissions to the IN BRIEF column must be made as WORD DOCUMENTS.

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NCBA Committee Meeting Calendar

**February 7, 2023–
March 8, 2023**

Questions? Contact Stephanie Pagano at (516) 747-4070 or spagano@nassaubar.org. Please Note: Committee meetings are for NCBA Members.

Dates and times are subject to change. Check www.nassaubar.org for updated information.

TUESDAY, FEBRUARY 7

Women in the Law
12:30 PM
Melissa P. Corradol/
Ariel E. Ronneburger

WEDNESDAY, FEBRUARY 8

Association Membership
12:30 PM
Jennifer L. Koo

WEDNESDAY, FEBRUARY 8

Medical Legal
12:30 PM
Christopher J. DelliCarpini

WEDNESDAY, FEBRUARY 8

Access to Justice
12:30 PM
Daniel W. Russol/
Hon. Conrad D. Singer

WEDNESDAY, FEBRUARY 8

Matrimonial Law
5:30 PM
Jeffrey L. Catterson

THURSDAY, FEBRUARY 9

Intellectual Property
12:30 PM
Frederick J. Dorchak

TUESDAY, FEBRUARY 14

Appellate Practice
12:30 PM
Amy E. Abbandondelol/
Melissa A. Danowski

TUESDAY, FEBRUARY 14

Labor & Employment Law
12:30 PM
Michael H. Masri

WEDNESDAY, FEBRUARY 15

Construction Law
12:30 PM
Anthony P. DeCapua

WEDNESDAY, FEBRUARY 15

Government Relations
12:30 PM
Nicole M. Epstein

WEDNESDAY, FEBRUARY 15

New Lawyers
12:30 PM
Byron Choul/Michael A. Berger

WEDNESDAY, FEBRUARY 15

Ethics
5:30 PM
Avigael C. Fyman

THURSDAY, FEBRUARY 16

General, Solo & Small Law
Practice Management
12:30 PM
Scott J. Limmer/Oscar Michelen

THURSDAY, FEBRUARY 16

Family Court Law & Procedure
12:30 PM
James J. Graham

TUESDAY, FEBRUARY 21

Plaintiff's Personal Injury
12:30 PM
David J. Barry

TUESDAY, FEBRUARY 21

Diversity & Inclusion
6:00 PM
Rudolph Carmenaty

WEDNESDAY, FEBRUARY 22

Education Law
12:30 PM
Syed Fahad Qamer/
Joseph Lilly

WEDNESDAY, FEBRUARY 22

Business Law Tax & Accounting
12:30 PM
Varun Kathait

TUESDAY, FEBRUARY 28

District Court
12:30 PM
Bradley D. Schnur

WEDNESDAY, MARCH 1

Real Property Law
12:30 PM
Alan J. Schwartz

WEDNESDAY, MARCH 1

Surrogates Court Estates & Trusts
5:30 PM
Stephanie M. Alberts/
Michael Calcagni

THURSDAY, MARCH 2

Hospital & Health Law
8:30 AM
Douglas K. Stern

THURSDAY, MARCH 2

Publications
12:45 PM
Rudolph Carmenaty/
Cynthia A. Augello

THURSDAY, MARCH 2

Community Relations & Public
Education
12:45 PM
Ira S. Slavit

TUESDAY, MARCH 7

Women in the Law
12:30 PM
Melissa P. Corradol/
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WEDNESDAY, MARCH 8

Association Membership
12:30 PM
Jennifer L. Koo

WEDNESDAY, MARCH 8

Medical Legal
12:30 PM
Christopher J. DelliCarpini

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