

COUNSELORS AT LAW

Forchelli, Curto, Deegan, Schwartz, Mineo, Cohn & Terrana, LLP

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P R E S E N T S

The COUNSELOR

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The Long Island General Counsel Network

The Firm has developed a program entitled "The Long Island General Counsel Network" (LIGCN) for General Counsel and other in-house attorneys at Long Island and NYC metro area companies. We have held ten (10) well-attended events so far showcasing our expertise in Land Use & Zoning and IDA Financings, Tax Certiorari, Real Estate Transactions, Corporate Transactions and Litigation. Partners Joseph V. Cuomo and Barbara S. Alesi are co-directors of this networking group. If you are an in-house attorney and interested in the Firm's LIGCN program – please email your contact details to info@forchellilaw.com.

LIFE STORY RIGHTS AGREEMENTS

By Anthony V. Curto and Joseph V. Cuomo

In the movie "The Blind Side," Sandra Bullock played Leigh Anne Tuohy, a real woman who took in a homeless teenager, Michael Oher, who became a high school football star and then played professionally for the Baltimore Ravens. This feel-good, inspirational film depicted Ms. Tuohy, Mr. Oher, and their families. After Sandra Bullock won the Oscar for Best Actress for her portrayal, Tuohy was quoted as saying: "I think she nailed me pretty well. We're awfully proud of Sandy—good for her."

True stories often are better than fiction. When ordinary people do extraordinary things, they may find themselves being approached by producers looking to commercialize their story. If the entertainment industry wants to use a real person's life as the basis for a film or television project, the parties often enter into a "life story rights agreement." These agreements allow the producers to use, and potentially change or dramatize, the subject's life story for entertainment. Both sides want different things out of such an agreement—the producer wants wide latitude to portray the real-life characters in a compelling manner. The subject, however, does not want to be depicted in an unflattering light, or otherwise be misrepresented by a producer who goes too far. These competing interests have to be reconciled in the contract. This article highlights some of the main issues that arise in drafting and negotiating a life story rights agreement.

What Does the Producer Get?

A producer looks for three main "rights" when portraying a person's life on the big or small screen. First, cooperation from the subject and anyone else relevant to adequately tell the story—family, friends, and coworkers, for example. A producer may even require that the subject obtain releases from these third parties. Second, access to personal materials, such as photographs, diaries, or home movies—

information and media that is confidential and not available in the public domain. Finally, protection from lawsuits—a promise from the subject not to bring a lawsuit for libel, defamation, invasion of privacy, or the right to publicity. This is perhaps the most important thing the producer is looking for—everyone wants to make a blockbuster, but no one wants to be sued in the process. The producer probably also will want a representation that the subject has not yet worked with anyone else, or sold any story rights to other companies.

What Does the Subject Want?

A subject almost always wants the exact opposite of what the producer is willing to provide—a high level of creative control over the project. A common desire is to have "final cut" approval over the script. This, however, is unlikely to happen. Producers and backers typically do not want to invest in an expensive and timely script writing process to risk ultimate veto by the subject. There are other, more realistic, things that a subject might seek, however—to have some control over who actually writes the script, to limit the subject matter in some way, to be on the set as a consultant, or to help select the actor cast as the subject. Of course, the subject will also desire to be compensated for the rights granted and to share in the success of the project.

Possible Limits

There are a few ways in which a life story rights agreement can be limited. First, the scope of the agreement can be limited by project or the form of media. Does the agreement cover just one feature film, or does it include the right to produce derivative works, such as sequels, prequels, TV shows, documentaries, and books? The agreement could also be limited by time period. For example, going back to "The Blind Side," football star Michael Oher may have wanted the movie to only

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Anthony V. Curto
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be about the short time period of his final years in high school and the very start of college. The producers could have agreed not to go into his past, or not to depict his career with the Baltimore Ravens. For someone who has gained notoriety for a particular event or experience, this can be a good way for the subject to keep the rest of his life private. Along these lines, some events in the subject's life can be off-limits—a divorce, a lawsuit, or a death in the family. A subject might also limit who can be included in the project. For example, a subject may want to exclude children, a boss or coworkers. A prudent producer will get signed releases from any person used in the project.

Reversion Clauses

A life story rights agreement typically will include a "reversion clause." This simply means that if the producer does not commercialize the subject's story within a certain amount of time, the rights to the story revert back to the subject. A producer may approach a subject without a concrete idea, timeline, or project plan. A "reversion clause" allows the subject to retain the story rights if a producer fails to move forwards. After the time for reversion has run, the subject

can approach another producer with the rights. A producer will want a long production option period, while a subject will want a short one. This can be a bargaining chip for the subject.

Other Life Story Rights Issues

Aside from the issues discussed, which will likely factor into most life story rights agreement negotiations, each agreement will have its own set of unique points. Many other smaller details will need to be worked out dependent on the specific circumstances. For example, if a subject does become a consultant, does this include a fee, inclusion in openings/closing credits/attendance at movie premiers and other promotional events, and an opportunity to meet the actors and actresses working on the film?

A person's life story can be a valuable commodity. For this reason, agreements governing the sale of life story rights can be complex, and negotiations can be intense. This article has highlighted some of the main sticking points for either side in the structuring and negotiation of a life story rights agreement.

FIRM NEWS, APPEARANCES AND ARTICLES

Articles and Publications

The Firm and its attorneys have been recognized in several leading publications recently, including:

Building Long Island

Featured **Peter R. Mineo** and **Kathleen Deegan Dickson's** co-authored article, "Beware of the Pitfalls of Subdivision."

Long Island Business News

Jeffrey D. Forchelli was noted by *Long Island Business News* for his real estate expertise in the article "Public Private Land Deal Helps Nassau Community College Expand." **Brian R. Sahn** was interviewed about the Firm's LEED efforts in the article "Offices Lag Behind Green Curve." **Daniel P. Deegan** was quoted for his representation of client Cousins Paintball. As *LIGRA's* General Counsel, **Andrea Tsoukalas** was interviewed in the article "Gas Franchisees in Downstate New York Fuming over Biz Practices."

Nassau Lawyer

Robert H. Groman and **Barry C. Feldman's** article, "The LLC: Beware of Statutory Defaults," was recently published. In addition, the following attorneys were noted in the publications 'In Brief' section: **James C. Ricca** acknowledged for his 50 Around 50 Business Leader award and **Terence E. Smolev** for his appointment to the Washington College of Law of the American University Dean's Advisory Council.

Newsday

As a result of the Spring LEED Certification Plaque Ceremony with RXR Realty & USGBC-LI; reporter James Bernstein dedicated his weekly column to the Firm's LEED Silver award. **Peter R. Mineo** was quoted in *Newsday* for his representation of client Steel Equities.

Newsday (continued)

Daniel P. Deegan was interviewed for his representation of client Cousins Paintball. **William F. Bonesso** was quoted in *Newsday.com* for his representation of the Brentwood Chipotle Mexican Grill at the Islip Town Planning Board hearing. **Judy L. Simoncic** was interviewed about a Centre Island zoning matter involving client Robert Jonas. The *Newsday* Winners section featured profiles on **Anthony V. Curto** for his Telecare Award of Excellence honor and **Daniel P. Deegan** for his CIBS Associate Member of the Year honor.

New York Law Journal

Terence E. Smolev and **Mary E. Mongioi's** co-authored article, "Who Should You Trust - Your Money and Your Life," was featured in the Trusts & Estates special section.

Aaron Gershonowitz and **Brian Hufnagel's** co-authored article "Environmental Obligations Meet Bankruptcy Discharge: Who Wins?" was featured in the Corporate Restructuring and Bankruptcy special section.

New York Real Estate Journal

The Firm's LEED Certification Plaque Ceremony with RXR Realty was spotlighted in the *New York Real Estate Journal*. **Barbara S. Alesi**, **Kathleen Deegan Dickson**, **Judy L. Simoncic**, and **Andrea Tsoukalas** were featured in the 2011 Women in Real Estate Special Edition. **Thomas D. Glascock** was noted for his appointment to the Molloy College Business Advisory Council. **Andrea Tsoukalas'** article "Collaborative Living Will Make Smart Growth a Success on Long Island," was featured in the Long Island column.

Presentations

The Firm hosted the ninth Long Island General Counsel Network event, a roundtable discussion titled "M&A Deal Twists and Turns - How to Avoid and Overcome Common Transaction Obstacles." **Barbara Alesi** and **Joseph V. Cuomo** were the featured speakers for this program.

Russell G. Tisman was a panelist at the Prevailing Wages Under New York Law - Issues and Developments seminar sponsored by the Theodore Roosevelt American Inn of Court which was held at the Nassau County Bar Association. Tisman spoke on two recent developments including the enactment of the Construction Industry Fair Play Act.

Michael S. Stromberg presented on the Firm, Trust and Estate and Medicaid Planning to the BNI, a global professional networking organization.

Aaron Gershonowitz was a presenter at a CLE seminar titled "Development of Environmental Protection Agency Regulation of Toxic and Priority Pollutants."

Anthony V. Curto was a panelist at the Long Island Chapter of the Association of Legal Administrators' Business Development seminar.

Thomas D. Glascock was a presenter at a CLE seminar, "How to Keep Tax-Exempt Organizations in Compliance," sponsored by NBI - the National Business Institute, Continuing Legal Education for Professionals.

SUCCESSFUL LAWYERS SUCCESSFUL CLIENTS

Banking and Finance

James C. Ricca closed a \$23,670,000.00 mortgage loan for client New York Community Bank pertaining to a residential community consisting of 28 acres and 200 residential units, located in Middle Island, N.Y.

Kathryn Sammon Burns and **Richard Blumberg** obtained a judgment for over \$100,000.00 for an institutional lender against commercial borrower and guarantor in Nassau Supreme Court.

James C. Ricca closed mortgage loans to related borrowing entities for New York Community Bank aggregating \$8.5M covering different commercial properties on Long Island.

Kathryn Sammon Burns successfully litigated an action against a commercial borrower in Nassau Supreme Court, obtaining Summary Judgment, which resulted in a judgment for over \$125,000.00.

Corporate and Commercial

Robert H. Groman and **Barry C. Feldman** were successfully negotiated with the Internal Revenue Service to abate an almost \$100,000.00 late payment penalty which had been asserted against a client.

Litigation

The firm represented 10,000 small businesses across New York State to challenge on constitutional grounds a newly adopted statute that raised the tobacco registration fee from \$100 to as high as \$5000 per location. Our litigators obtained a stay of the implementation of the new statute before it took effect. They then obtained from the Appellate Division a Temporary Restraining Order and a preliminary injunction by demonstrating that the law was in all likelihood unconstitutional. This

injunction was the critical factor in persuading the legislature to revisit the legality of the statute. This Spring, the New York State Senate and Assembly passed a bill rolling back the tobacco registration fee to \$300 per location. The Firm's clients collectively will save more than \$30,000,000 in fees due to a team effort by its litigators – **Andrew E. Curto**, **Andrea Tsoukalas**, **Richard C. Goldberg**, **Barry C. Feldman**, and **Danielle B. Gatto**.

Donald Jay Schwartz and **Danielle B. Gatto** successfully represented client Cablevision against an adjoining property owner who claimed ownership to a portion of Cablevision's property by adverse possession and a prescriptive easement. The Court granted Cablevision's motion for summary judgment and issued a mandatory injunction ordering the permanent removal of numerous structures which had been erected on Cablevision's property. The adjoining property owner's request to the Appellate Division for a stay of the order directing that it remove the structures, pending its appeal was denied.

Anthony V. Curto, **Richard C. Goldberg**, **Danielle B. Gatto** and **Brian J. Hufnagel** won a motion to dismiss a petition seeking dissolution of a corporation on the grounds that the petitioner lacked standing to bring the proceeding. The petitioner claimed that he had entered into an oral agreement with a shareholder to perform legal services for the corporation when it was in bankruptcy in exchange for a 50% ownership interest. When the officers and shareholders refused to transfer 50% of the stock to him he sought dissolution of the corporation to enforce his alleged agreement. The court found the agreement unenforceable and dismissed the petition because petitioner had failed to obtain bankruptcy court appointment as counsel to the corporation,

the corporation's bankruptcy plan barred petitioner's claim, the shareholder who had allegedly made the agreement had less than a controlling interest in the corporation and did not have the capacity to bind it, and the only person that could have made such an agreement was now deceased and any oral agreement with that person was barred by the Dead Man's Statute.

Land Use & Zoning

Jeffrey D. Forchelli developed a creative land use plan over a period of nine years under which Nassau Community College will likely acquire the majority of about 23 acres of former Navy property recently transferred to Nassau County. Under the current plan, about 13 acres will be conveyed to the College for one dollar and the balance will be transferred to the County.

Kathleen Deegan Dickson obtained variances for a six-story, \$30 million office building planned for Melville from the Town of Huntington's Zoning Board of Appeals. The variances clear the way for developers Melville Associates, a partnership between Garden City-based Engel Burman Group and TV55, to seek site plan approvals for the 169,000-square-foot project that will replace the current one-story building.

William F. Bonesso has obtained variances from the Town of Huntington Zoning Board to permit the relocation of Tequipment from its present offices in Farmingdale to Huntington Station, NY. The relocation into a larger building will allow Tequipment, one of the largest resellers of SMART Board interactive whiteboards in North America, to continue its fast-paced growth. To the delight of its members, Mr. Bonesso introduced the Zoning Board Appeals to Tequipment by utilizing one of the company's high-tech "SMART Boards" to present the application.

FIRM AWARDS AND EVENTS



From left to right: **Douglas W. Atkins**, **Senator John J. Flanagan**, **Anthony B. Barton**, **Russell G. Tisman**, **Thomas D. Glascock**.

The Melville Chamber of Commerce honored **Hon. John J. Flanagan** as Business Advocate of the Year.



From left to right: Former Nassau Council of Chamber commerce President **Rich Bivone**, Hempstead Town Supervisor **Kate Murray**, Town Councilwoman **Dorothy Goosby**, Equity One CEO **Jeff Olson**, and **William F. Bonesso**.

William F. Bonesso was present at an official ribbon-cutting ceremony for his representation of client commercial developer Equity One.

FIRM AWARDS AND EVENTS



Jack L. Libert, Esq.

Jack L. Libert was honored by the Oyster Bay East Norwich Civic Association for his service to the community.



The **LEED** Team: *Left to Right :*
Judy Simoncic, Esq., John Terrana, Esq., Managing Partner Jeffrey Forchelli, Esq., Barbara Alesi, Esq., Office Administrator Virginia Kawochka, Brian Sahn, Esq..

The **Firm** hosted a plaque ceremony celebrating its LEED Silver award from the U.S. Green Building Council – Long Island Chapter (USGBC-LI).

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