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THE COUNSELOR

CORPORATE RESTRUCTURING OUTLOOK FOR 2021

– By Gerard R. Luckman

The COVID-19 pandemic presented many challenges for businesses through almost all of 2020. As we look forward to 2021, we expect that the need for the legal system to deal with the financial distress to the business sector caused by the COVID-19 pandemic will continue to rise throughout the year.

Relief provided by the Coronavirus Aid, Relief, and Economic Security (“CARES”) Act, coupled with Federal and State Executive Orders affecting evictions and foreclosures, have delayed but not fully abated businesses’ need to face economic realities.

While many businesses will survive, others will need to reorganize, whether through bankruptcy, liquidation or through a sale of the business as a going concern to preserve jobs and value. Even surviving companies will reimagine how they operate centered around how they learned to manage their businesses during the pandemic.

More and more, business owners are reconsidering their workplace as staff have learned to work remotely. Our restructuring professionals assist these businesses in renegotiating leases and negotiating lease terminations.

We also expect that small business owners wanting to restructure their debt while retaining their businesses, will file for bankruptcy protection under the relatively new Subchapter V of Chapter 11 of the Bankruptcy Code. Subchapter V was enacted as part of the Small Business Reorganization Act of 2019 (“SBRA”). The SBRA was enacted to create a more stream-lined and cost-effective way for small business debtors -- or individuals with primarily business-related debt -- to address their debt while retaining their businesses and livelihood. The low debt limit initially set to be qualified as a small business debtor, however, rendered this provision of little utility in our region. The CARES Act addressed this issue by temporarily increasing the debt limit to qualify as a small business debtor under Subchapter V from \$2.75 million to \$7.5 million.

The Consolidated Appropriation Act signed into law on December 27, 2020 provides further bankruptcy related relief to Subchapter V debtors. Among these additional protections afforded to owners of small businesses are ones related to the debtor’s performance under leases of non-residential real property. Business owners, looking to avail themselves of these bankruptcy protections and the faster track to reorganization, need to be mindful that, unless extended, the temporary debt limit increase under the CARES Act will expire in March of 2021. As always, the attorneys in our Bankruptcy and Corporate Restructuring department are available to assist you with any questions or issues you may have.



Gerard R. Luckman,
Partner

EVENTS AND SPEAKING ENGAGEMENTS



Gerard R. Luckman was a panelist on a three-part Turnaround Management Association (TMA) Long Island COVID-19 Survival Skills virtual webinar series.

Peter B. Skelos was a panelist on the National Arbitration and Mediation (NAM) CLE webcast, "Arbitration and Mediation in the Workplace – Important Considerations for an ADR Program".

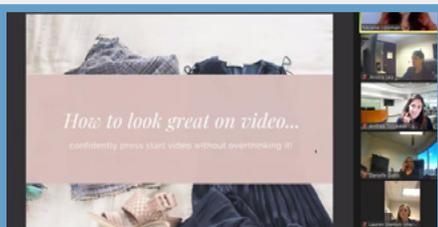
Lisa M. Casa was a panelist on the Melville Chamber of Commerce's W.O.M.E.N.'s Group's virtual event, "It's Back to Business", discussing the legal and business considerations of working in the office and remotely.



Robert L. Renda was a panelist on the virtual CLE, "New York City and Long Island Real Estate Taxes: The Basic Roadmap".



Jane Chen participated in an Asian American Bar Association of New York (AABANY) roadshow at Hofstra Law School discussing the importance of diversity in the workplace.



FDT's Women's Initiative hosted a professional development webinar with Melanie Lippman, a style consultant for female professionals.

FDT was a Major Sponsor of *Long Island Business News'* Real Estate, Architecture and Engineering Awards. The firm was

honored as the Top Property Tax Assessment Firm and recognized in the Top Industrial Renovation category for a project where **John P. Bues** represented a Firm client.



FDT hosted a professional development lunch and learn webinar - "Improv in any Career" - presented by Daniel Killian, a Strategy and Creative Consultant.

Judy L. Simoncic, Andrea Tsoukalas Curto, Kristina E. Sornchai, Lauren L. Stanton and Firm clients participated in the virtual Collaborate with Edge Leadership Conference.

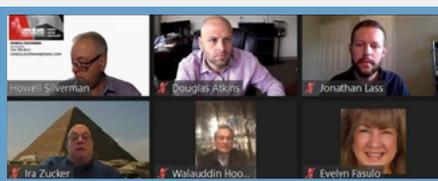
Danielle B. Gatto and **Michael A. Ciaffa** presented a CLE, "Litigating in a Post-COVID-19 World and Contract Obligations in a Post-COVID-19 World", for the Theodore Roosevelt Inn of Court.



Led by **Andrea Tsoukalas Curto**, **FDT** donated to Bethpage Federal Credit Union's 12th Annual Bethpage Turkey Drive benefiting Island Harvest.

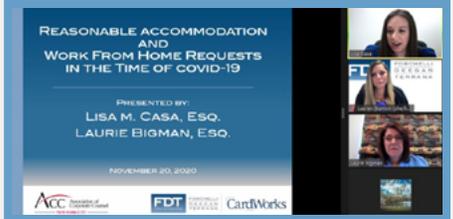
For the second consecutive year, **Jessica A. Leis** led the firm's participation in Long Island Cares – The Harry Chapin Food Bank's Adopt-a-Family for Thanksgiving project.

Lindsay Mesh Lotito participated in Valley National Bank's "Women in 2020 and Beyond," a Valley Women in Business virtual event.



Douglas W. Atkins participated in the Commercial Network of LIBOR's virtual meeting, "Technology to Make the Post Pandemic Workplace Smarter, Safer and More Efficient".

FDT sponsored, and **John V. Terrana** participated in, the Institute for Professionals in Taxation's webinar, "Hot Topics in Real Estate (The Un-COVID Edition)".



Lisa M. Casa presented a virtual CLE for the Association of Corporate Counsel (ACC) – New York City with Laurie Bigman, in-house counsel at Cardworks titled, "Reasonable Accommodation and Work from Home Requests in the Time of COVID-19".

Russell G. Tisman chaired a virtual CLE, "The Impact of COVID-19 on the Courts: Judicial Perspectives and Employment and Vaccination Law Issues," for the Theodore Roosevelt American Inn of Court.



Stephanie M. Alberts was honored at Schneps Media and the Long Island Press' virtual Power Women of Long Island event.



Led by **Judy L. Simoncic**, **FDT** donated toys to support Options for Community Living, Inc.'s Annual Toy Drive.

Led by **John V. Terrana**, **FDT** co-sponsored, and participated in, the Nassau County Assessment Review Commission's Toys for Tots Campaign.

FIRM MENTIONS

NEWSDAY QUOTED:

- **Judy L. Simoncic** in the article, "Bethpage studio seeks permit to allow live audience on set of new Kevin James comedy"
- **Daniel P. Deegan** in the articles, "IDA grants tax breaks for new film studio at former Publishers Clearing House site", "London Jewelers to keep HQ on LI, add eight jobs with IDA tax breaks", "Tax-break plan moves ahead" and "42 years of tax breaks sought to fix affordable apartments"
- **Linda Tierney** in the article, "Thanksgiving together, or apart? How Long Island families will celebrate in the pandemic"

LONG ISLAND BUSINESS NEWS FEATURED:

- **James P. Rosenzweig** in the "Changing Menu" article, an outgrowth of 10/1/20 LIBN now episode titled, "The Business of Food"
- Profiles of **Steven G. Gaebler, Alexander Leong, Douglas W. Atkins, James P. Rosenzweig** and **Nicole S. Forchelli** in the WHO's WHO 2020 publication
- **Joseph P. Asselta** in the 12/18/20 WHO's WHO in Commercial & Residential Real Estate Law section

NEW YORK REAL ESTATE JOURNAL PUBLISHED:

- **Judy L. Simoncic's** article, "COVID-19 kicks public assembly uses to the curb"
- **Douglas W. Atkins** and **Robert L. Renda's** article, "Long Island commercial real estate tax forecast,"
- **Brian R. Sahn** and **Jane Chen's** article, "Commercial Real Estate in the Midst of the COVID-19 Pandemic"
- **Robert L. Renda's** Page 2 column, "The Nassau County Reassessment: What We Know So Far"
- **James C. Ricca's** 2020 Year in Review Spotlight

LINKEDIN ARTICLES:

- **James P. Rosenzweig** published "The Window is Now for Troubled Debt Restructurings"
- **Brian R. Sahn** published "Home Buyers Get a Break"
- **Aaron Gershonowitz** published "New Caselaw Highlights the Boundary Between Environmental Law and Corporate Law"

- **Aaron Gershonowitz** and **Brian W. Kennedy** published "Two Recent Appellate Division Decisions Reject Segmentation Arguments: It Cannot be Segmentation Unless There is a Plan"

NASSAU LAWYER PUBLISHED:

- **Lorraine S. Boss'** article, "Now is the Time for Estate Planning: How to Leverage Low Interest Rates and a Temporarily Favorable Tax Landscape"
- **David A. Loglisci** and **Brenna R. Strype's** article, "Overview of Experts in New York State Court Practice"

LONG ISLAND HERALD QUOTED:

- **Kathleen Deegan Dickson** in the article, "Mixed reviews for Villa at Glen Cove during hearing" (Glen Cove Edition)
- **William F. Bonesso** in the articles, "Lynbrook restaurateur fighting for his business amid condo proposal" and "Lynbrook board OKs condo project" (Lynbrook Edition)

BEST LAWYERS' BUSINESS EDITION - THE LITIGATION ISSUE:

- **Andrew E. Curto** and **Danielle E. Tricolla's** article, "The Virtual Courtroom," was published

NEW YORK STATE BAR ASSOCIATION'S NY BUSINESS LAW JOURNAL:

- **Joseph V. Cuomo** and **Keith Belfield's** article, "Practical Tips for Drafting Agreements from 'Whole Cloth,'" was published

ENVIRONMENTAL CLAIMS JOURNAL:

- **Aaron Gershonowitz** and **Brian W. Kennedy's** article, "Chesapeake Action Network v EPA: Court Tells EPA to Reconsider Rule Because Petitioners Did Not Have a Fair Opportunity to Comment," was published

THE REAL ESTATE FINANCE JOURNAL:

- **Aaron Gershonowitz** and **Brian W. Kennedy's** article, "Don't Try to Hide an Elephant in a Mousehole: Atlantic Richfield v. Christian," was published

ACCOLADES



Jeffrey D. Forchelli, Gregory S. Lisi, Lindsay Mesh Lotito and Robert L. Renda were listed in the 2021 Edition of the *New York Area's Best Lawyers* publication.

Mr. Forchelli, was selected by his peers for inclusion in the 27th Edition of *The Best Lawyers in America*® for Land Use & Zoning Law.

Mr. Lisi was recognized for the first time in Litigation – Labor & Employment Law.

Ms. Lotito and Mr. Renda were included in the inaugural edition of the *Best Lawyers: Ones to Watch* for Banking & Finance Law and Tax Law, respectively.

IN MEMORIAM



It is with deep sadness that we report that **Peter L. Agovino**, a former partner at Forchelli Deegan Terrana LLP and former Co-Managing Partner of Agovino and Asselta, LLP, passed away on November 16, 2020 at the age of 74. Peter personified the power of education, determination and hard work. Perhaps Peter's most notable professional victory was his successful argument on appeal to New York State's highest court in *Abiele Contracting, Inc. v. New York City School Construction Authority* (1997), where, after losing in the two lower courts, he obtained a favorable decision for contractors that has since been oft-cited by courts and practitioners. Peter is survived by his loving wife, Marlene, his two children – Nicole Asselta (Joe) and Eric Agovino (Moriah) – and his five grandchildren, who were the light of his life. Peter will forever remain in our hearts.



IDA

Daniel P. Deegan, Louis H. Fiore and Jessica A. Leis represented:

- London Jewelers in a Straight Lease Transaction with the Nassau County Industrial Development Agency with respect to its new headquarters and administrative facility located in Glen Head, New York. The total project cost was \$2,668,000. London Jewelers received real estate tax, sales tax and mortgage recording tax exemptions.
- an owner of a 104-unit affordable housing apartment complex in Roslyn Heights, New York and assisted in obtaining a 35-year extension of its real estate tax exemption with the Nassau County Industrial Development Agency which also provided additional sales tax and mortgage recording tax savings.
- Grumman Studios on its proposed development of a brand new \$25,000,000 movie production “sister” studio facility in Port Washington at the site of the former Publishers Clearinghouse headquarters facility. The firm assisted in obtaining real estate tax and sales tax exemptions through a Straight Lease Transaction with the Nassau County Industrial Development Agency.

Grumman Studios Rendering



FDT also assisted Grumman Studios on its existing Bethpage production studios by modifying its existing transaction with the Nassau County Industrial Development Agency to provide additional real estate tax and mortgage recording tax savings.

Daniel P. Deegan and Louis H. Fiore represented Cliffco, Inc., a mortgage lender, in connection with the relocation of its corporate headquarters to 70 Charles Lindbergh Boulevard, Uniondale,

New York. The firm negotiated a Straight Lease Transaction with the Nassau County Industrial Development Agency which resulted in real estate tax, sales tax and mortgage recording tax savings.



BANKING & FINANCE

James C. Ricca negotiated and closed a \$15,000,000 mortgage loan on behalf of an Institutional Lender. The borrower simultaneously obtained subordinate preferred equity financing from a private equity firm. The loan was secured by commercial/industrial property located in Suffolk County.

Lindsay Mesh Lotito and James C. Ricca negotiated and closed a \$76,000,000 mortgage loan and \$1,000,000 unsecured revolving line of credit, on behalf of New York Community Bank, secured by a co-op complex consisting of approximately 37 acres of land with 110 buildings, containing 675 residential units, in Flushing, Queens.

James C. Ricca and Lindsay Mesh Lotito negotiated and closed a \$22,000,000 mortgage loan on behalf of New York Community Bank to finance the purchase of a commercial property in Brooklyn to be developed into a movie and television sound stage studio. The loan was further secured by a second commercial/industrial property, located in the borough of Brooklyn, which served as additional collateral.

Lindsay Mesh Lotito negotiated and closed a series of eight mortgage loans totaling approximately \$50,000,000 on behalf of an Institutional Lender, secured by eight multi-family apartment buildings located in Nassau County.

John P. Bues successfully negotiated and represented firm clients in:

- facilitating a \$44,000,000 line of credit with a national Institutional Lender.
- facilitating a \$5,250,000 building loan closing for the construction of a luxury hotel and restaurant in Northport Village.
- closing on the purchase of a \$3,680,000 property in Nassau County.



CONSTRUCTION

In an arbitration commenced on behalf of a general contractor against a hotel owner for delay damages, **Joseph P. Asselta** successfully obtained an award for the contractor, after five days of hearings, for the full amount claimed for extended general conditions costs, totaling approximately \$1,000,000.

Anthony P. DeCapua settled a general contractor’s client’s claim for 100% of the amount owed (approximately \$700,000) against a marina owner in Brooklyn, New York. The marina refused to pay the client even though the marina maintained no substantive defenses to the claim. By resorting to an alternative litigation strategy, the marina substantially increased its settlement offers until finally conceding to pay the entire amount owed.



EMPLOYMENT & LABOR

A District Court Judge in the Eastern District of New York granted **Elbert F. Nasis** and **Michael A. Berger**’s motion to vacate a default judgment rendered against a client in a lawsuit alleging violations of the Fair Labor Standards Act and New York Labor Laws. The default judgment, in excess of \$200,000, was vacated less than a week after the motion was filed, resulting in an approximate savings of \$150,000 for our client.



ENVIRONMENTAL

By reviewing environmental documents and conferring with representatives of the New York State Department of Environmental Conservation **Aaron Gershonowitz** and **Brian W. Kennedy** helped a client obtain a loan approval by persuading the lender to reverse its

decision that environmental conditions at the property precluded the loan.



LAND USE & ZONING

Managing Partner **Jeffrey D. Forchelli** successfully secured approval for a change of zone and related relief at the former New York Institute of Technology's Central Islip campus to permit redevelopment of the site. Mr. Forchelli, on behalf of Steel Equities and The Marcus Organization, successfully persuaded both the Town of Islip's Planning Board and the Town Board that this unused 83-acre site should be rezoned to permit the conversion of the existing buildings to multifamily housing. With their approvals, Steel Equities and The Marcus Organization will begin the revitalization of 14 existing buildings to create what will be known as "The Belmont at Eastview". All existing buildings will be preserved and converted into 354 state-of-the-art rental apartments. This adaptive reuse will repurpose a site which sat unused and in disrepair for nearly 13 years. This is the culmination of years of investigation, community outreach, and public hearings, all of which were complicated by the COVID-19 pandemic. Despite these hurdles, Mr. Forchelli, with the assistance of Land Use & Zoning attorney **Brian W. Kennedy**, helped pave the way for this groundbreaking project.

Kathleen Deegan Dickson was successful in securing an amended site plan approval from the City of Glen Cove for a 176-unit luxury rental project which had been stalled for several years due to litigation and market conditions.

Jessica A. Leis secured approval from the Village of Freeport Zoning Board of Appeals for a religious institution to convert a previous office building to a sanctuary and accompanying community room and classrooms. Although the approved parking variance appeared substantial on its face, Ms. Leis was successfully able to demonstrate that the actual parking demand of the church would be considerably less than what the Village's Code required.

Jessica A. Leis secured approval from the Town of North Hempstead Board of Zoning Appeals for a residential property to maintain a raised terrace that

encroached into the required side yard. Though the Board determined that the terrace was part of the main dwelling rather than an accessory structure, they ultimately granted a variance of the minimum side yard setback.

Judy L. Simoncic and **Nathan R. Jones** put their zoning and tax exemption experience together for Firm client, NYU Langone Hospitals, and successfully secured subdivision approval and created a commercial leasehold condominium for the former Sears Building located at 1111 Franklin Avenue in Garden City, New York. NYU Langone, as tenant/owner of the condominium units, was then able to file a tax exemption application for its units, resulting in significant real estate tax savings on the leased premises.



REAL ESTATE

Brian R. Sahn and **Jane Chen** represented 108-48 70th Road Owners Inc., and 108-37 71st Avenue Owners Inc. in the closing of a mortgage loan refinancing of multiple cooperative apartment buildings collectively, in the loan amount of \$19,600,000. Together, they were able to negotiate favorable terms with the Lender, National Cooperative Bank, and resolve several facility issues.

Robert H. Groman and **James P. Rosenzweig** represented sellers in a complex closing involving the transfer of a New York City-based nursing home, together with the fee ownership of the real estate where the nursing home is located. The transaction had been under contract for two years while the purchaser navigated New York State regulatory approvals to operate the facility, the approval of which constituted a condition to the client's obligation to sell.

James P. Rosenzweig represented a private investor that injected capital into the famous "Bagel Boss" business in New York. The deal was structured as the capitalization of a new LLC ("Newco"), in partnership with the brand's original owner, and then a purchase of the brand and related rights by Newco from the original owner. Mr. Rosenzweig thereafter helped the new

partners negotiate leases for two new store locations in New York City, and assisted with the documentation of financing and related licensing documents for those new stores.

Daniel S. Dornfeld represented BCV Realty LLC in connection with the lease with Seviroli Foods Inc. for a 98,000 square foot manufacturing/warehousing facility in the Hauppauge Industrial Park.

Daniel S. Dornfeld represented The Cornerstone Hauppauge, LLC in connection to a sale of a 98-unit apartment complex located in Hauppauge, New York to GPI-GGSP AA I Hauppauge Owner, LLC, an affiliate of Greystar.



TAX CERTIORARI

John V. Terrana and **Robert L. Renda** represented a national pharmaceutical company in tax certiorari negotiations with the Nassau County Assessment Review Commission. The valuation methodology proffered by Mr. Terrana and Mr. Renda was a valuation of the fee-simple interest as opposed to the leased-fee interest. After extensive negotiations, Mr. Terrana and Mr. Renda were able to secure a real estate tax benefit in excess of \$150,000 for the client.

Nicole S. Forchelli resolved a property tax matter for a national department store chain relating to one of their properties in Upstate New York. Ms. Forchelli proffered methodology from both the leased fee and fee simple schools of thought, supported by the actual financial experience of the subject property, and boosted by comparable rents of similar stores in the area. After extensive negotiations, Ms. Forchelli obtained a real estate tax benefit of more than \$200,000 for the client.

Douglas W. Atkins represented an auto dealership in the Town of Huntington to obtain a reduction of their excessive property taxes. Mr. Atkins analyzed the real estate and its uses, including showroom, auto repair and open land for vehicle storage. He was able to prove that the Town had over-valued the land and showroom, and thus had over-taxed the property. The result was a settlement worth tens of thousands of dollars, and a 12% tax reduction moving forward.



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APPOINTMENTS AND NOTABLE UPDATES



Daniel P. Deegan was inducted into Long Island Business News' Long Island Business Hall of Fame, the highest honor for distinguished leaders in our business community.



Peter B. Skelos was voted a Top 10 Individual Mediator in the 2020 New York Law Journal Best of Survey.



Jacqueline A. Rappel was recognized as a Public Interest Attorney of the Year during Touro College Jacob D. Fuchsberg Law Center's virtual Goods and Services Auction.



Michael A. Berger was sworn in as Treasurer of the Theodore Roosevelt American Inn of Court.



Litigation attorneys Russell G. Tisman and Michael A. Ciaffa will continue to serve as Directors on the Executive Committee of The Theodore Roosevelt American Inn of Court.