

SPRING 2021 // VOL. LXVI

THE COUNSELOR

SEEING GREEN: OPPORTUNITIES FOR YOUR BUSINESS IN THE CANNABIS MARKET

— Danielle E. Tricolla, Esq. & Landon C. Dais, Esq.

New York's Marijuana Regulation and Taxation Act ("MRTA") was signed into law on March 31, 2021. The MRTA ends marijuana prohibition in New York and creates a system to tax and regulate adult-use cannabis sales. It also establishes the Office of Cannabis Management and the Cannabis Control Board to regulate the cannabis industry and seeks to address the important objectives of repairing and reinvesting in the communities that have been most harmed by the prohibition of marijuana.

New York's cannabis industry is expected to create 30,000 to 60,000 jobs statewide and is projected to bring in \$350 million in tax revenue annually for the State.

While the MRTA opens the door for cannabis businesses such as retail dispensaries, on-site consumption and delivery services, the opportunities created by New York's legal cannabis market extend to countless other industries that will service cannabis businesses, such as real estate (including retail, industrial and agricultural properties); construction; packaging and labeling; technology, science, and research and development; advertising and marketing; and professional services, such as insurance, accounting and financial services.

In the coming months, the Office of Cannabis Management will issue and implement specific regulations establishing the application process and will begin accepting applications for adult-use cannabis business licenses. Businesses can use this time to begin developing their business plans, scouting potential locations and consulting with their legal and advisors.

The MRTA sets a goal of allocating 50% of adult-use cannabis licenses to "social and economic equity" applicants (i.e., those disproportionately impacted by the war on drugs, as well as minority- or woman-owned business, distressed farmers and disabled veterans). To provide equity applicants and small businesses a better chance to succeed in the new cannabis marketplace, the MRTA generally prohibits vertical integration and restricts the number and type(s) of licenses that one business or operator may hold, in an effort to prevent large operators from monopolizing the industry. The regulations will fine-tune these restrictions, but it is important for prospective cannabis businesses to understand those restrictions during the planning stages.

Cannabis businesses face unique challenges. FDT's Cannabis practice group is equipped to navigate our clients through the red tape that comes with building, owning and operating a cannabis business. We also advise property owners, construction firms, lenders and providers of B2B services on everything they need to know when providing services to cannabis businesses. Our Municipal law practice, we can assist municipalities with decision making under the MRTA and in the formulation of effective and legal regulations. ■



Danielle E. Tricolla,
Co-Chair, Cannabis practice group

Landon C. Dais,
Of Counsel

EVENTS AND SPEAKING ENGAGEMENTS



Jane Chen participated in Hofstra Alumni in Real Estate's panel. She discussed her real estate career and the types of resources available to students to help develop their skills as they navigate the impact of COVID-19.



Anthony P. DeCapua participated in the NCBA's COVID-19 Law Student Mentor Program.

Joseph V. Cuomo participated in a video tribute, which was part of a virtual memorial service, held on February 24, 2021, celebrating the life of The Honorable Lawrence W. Pierce.

Honorable **Peter B. Skelos**, together with the New York City Bar Association, presented a Bridge-the-Gap webcast series, "Corporate & Litigation."

Lisa M. Casa and **Kathleen Deegan Dickson** participated in the Women Economic Developers of LI's (WEDLI) "COVID Pivot" program.



Russell G. Tisman was interviewed by Roxanne Watson, host of the Michaels Gifts Show on WRCR 1700AM NY, regarding the effect of his heart transplant on his career.

Andrea Tsoukalas Curto attended the Long Island Real Estate Group's (LIREG) event and program, "The Future of Brick & Mortar: Transitions in Commercial Real Estate."

Douglas W. Atkins participated in the Commercial Network of the Long Island Board of Realtors' (CN LIBOR) membership meeting.

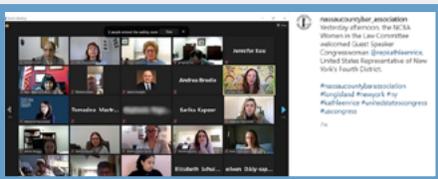


Mary E. Mongioi chaired, and FDT exhibited at, VetPartners' 2021 Virtual Annual Meeting. **David J. Borkon**, **Jeremy M. Musella** and **Kristina E. Sornchai** networked with visitors in the Exhibitor Hall, where the firm had a booth.



Aaron Gershonowitz, **Brian W. Kennedy** and **Howard Tollin** from SterlingRisk, presented a virtual CLE, "Environmental Law and its Impact on Various Practice Areas," for the Association of Corporate Counsel - NYC and FDT's Long Island General Counsel Network (LIGCN), which is co-chaired by **Joseph V. Cuomo** and **Lisa M. Casa**.

Kristina E. Sornchai participated in the Institute of Management Accountants' (IMA) virtual event, "Professional Effective Communications."



Gregory S. Lisi participated in the Nassau County Bar Association's (NCBA) Women in the Law Committee's Zoom meeting featuring Congresswoman Kathleen Rice, United States Representative of New York's Fourth District.

Kathleen Deegan Dickson and **Daniel P. Deegan** were speakers on the Asian American Bar Association of New York's (AABANY) Real Estate Committee's virtual CLE, "Growing Nassau County Real Estate: Zoning Municipal Incentives and Industrial Development Agency."



Russell G. Tisman, **Danielle B. Gatto** and **Denise Cariello, Esq.**, Managing Attorney of Chubb's Long Island office, presented a virtual CLE, "COVID-19 and its Impact on Litigation in New York Courts," for the Association of Corporate Counsel (ACC) - NYC and FDT's Long Island General Counsel Network (LIGCN), which is co-chaired by **Joseph V. Cuomo** and **Lisa M. Casa**.

Landon C. Dais spoke on a virtual panel titled, "The Marijuana Regulation and Taxation Act (MRTA)," which included a discussion on "what's next?" regarding the legalization of marijuana in New York State.



Aaron Gershonowitz, **Raymond A. Castronovo** and **Brian W. Kennedy** gave a presentation, "Environmental Issues in Construction Law," to the Nassau County Bar Association's (NCBA) Construction Law Committee.



Robert L. Renda presented a virtual lecture and Q & A segment with Daniel Gale Sotheby's International Realty on the recent trends and developments in Nassau County real estate taxes. ■



BANKING & FINANCE

On behalf of client BCB Community Bank, **James C. Ricca** negotiated and closed a \$7,580,000 mortgage loan secured by a multi-tenant retail commercial condominium unit and a mixed-use residential and retail commercial building in Piermont, New York.

Steven G. Gaebler and **Kayla R. Dimatos** (Associate, pending admission) successfully represented an institutional lender on an SBA 504 loan totaling over \$21,000,000 to assist in the acquisition of an industrial distribution property located in Las Vegas, Nevada. The loan amount is one of the largest ever funded under the SBA 504 program.

Lindsay Mesh Lotito represented a well-known Manhattan Financial Services firm, as borrower, by negotiating and closing a \$12,000,000 term loan, secured by our client's business assets, trademarks, patents and licenses.

On behalf of client New York Community Bank, **James C. Ricca** negotiated and closed a \$15,000,000 mortgage loan, secured by property in Long Island City that is being developed into a retail condominium storage facility.

On behalf of client New York Community Bank, **James C. Ricca** and **Lindsay Mesh Lotito** negotiated and closed:

- a \$10,500,000 mortgage loan, secured by a 30,144 square foot shopping center in Lakewood, New Jersey.
- a multi-million-dollar mortgage loan, on behalf of an institutional lender, secured by a shopping center in Oviedo, Florida, consisting of four single story retail buildings, with 66,675 square feet of retail space.



CONSTRUCTION

Anthony P. DeCapua obtained a \$500,000 settlement for a general contractor client in a mechanic's lien foreclosure action against a Manhattan hotel owner. Knowing the economic effect of COVID-19 on the hotel industry and the high potential for default in payment as a result, Mr. DeCapua was able to secure funding of the entire settlement the same day the settlement documents were executed.



EMPLOYMENT & LABOR

Gregory S. Lisi, Frank W. Brennan and **Lisa M. Casa** won an enormous victory for our client in the case of Francis v. Kings Park Manor, Inc., et al., Index # 1823 CV 15, at the United States Court of Appeals for the Second Circuit (En Banc) in which our client was accused of discriminating against its tenants because one tenant used racial epithets towards another. In overturning its own earlier decision, the Second Circuit found that a landlord cannot be liable for the discriminatory actions of its tenants. At issue was whether to recognize a new cause of action against landlords under the Civil Rights Act of 1866 and the Fair Housing Act of 1968 (FHA) of a "racially hostile housing environment" based on egregious tenant-on-tenant racial harassment. The Court held, "[L]andlords cannot be presumed to have the degree of control over tenants that would be necessary to impose liability under the FHA for tenant-on-tenant misconduct."



IDA

Daniel P. Deegan, Louis H. Fiore and **Jessica A. Leis** successfully represented firm client Regent Baby Products before the Suffolk County IDA in connection with the relocation of its corporate headquarters and operations to a 104,000 square foot building in Hauppauge, New York. With the firm's assistance, Regent Baby - a national wholesale distributor of baby and pet projects - garnered various tax benefits, including a beneficial PILOT agreement, while making a long term commitment to Suffolk County.



REAL ESTATE

Richard A. Blumberg and **James P. Rosenzweig** successfully represented a client against the City of New York in an adverse possession lawsuit. The City of New York owned – but never occupied or used – an approximately one-quarter of an acre parcel of vacant land worth approximately \$2,000,000, adjacent to our client's property in Brooklyn, New York. For decades, our client exclusively utilized this vacant lot in conjunction with its automobile business. Our client instituted a lawsuit against the City claiming ownership of the lot through adverse possession. Shortly after the lawsuit was commenced, the City agreed to transfer the vacant lot to our client for a nominal fee.

James P. Rosenzweig represented The Riese Organization on the sale of a commercial property located at 604 Fifth Avenue in New York City. The all-cash deal transferred ownership in the high-traffic Rockefeller Center

commercial zone in Manhattan, and represented the first time the property had changed hands since Riese acquired it for restaurant use in the 1980's.

Daniel S. Dornfeld:

- closed on a purchase of an industrial property in Bellport, New York and a corresponding transaction with the Town of Brookhaven (Industrial Development Agencies) by RESEARCH PROPERTY HOLDINGS LLC, who is leasing the space to Biocogent LLC.
- represented NY 139 LLC in connection with the purchase of an apartment complex located in Clinton Hill in Brooklyn, New York, which the client intends to redevelop. Despite the complexity of the transaction (due to a need of extensive due diligence because there were several permit issues and the property was subject to a non performing loan), the deal was closed within two weeks of signing a contract.
- closed on the sale of a portion of 180 Glen Head Road in Glen Head, New York to JSF Glen Head Road, LLC, an affiliate of Johnson Development Associates, LLC, part of the Johnson Group, who intend to develop it as a self-storage facility.



LAND USE & ZONING

Jeffrey D. Forchelli and **Erik W. Snipas** successfully represented a school in securing zoning approvals for enhancement of their athletic fields. The Planning Board granted site plan approval for the improvements, but several nearby property owners commenced an Article 78 proceeding challenging the determination of the Planning Board. With the combined efforts of litigators **Richard A. Blumberg** and **Danielle E. Tricolla** and Messrs. Forchelli and Snipas, the Court dismissed the Article 78 proceeding and upheld the Planning Board decision.

Jeffrey D. Forchelli and **Erik W. Snipas** successfully secured site plan approval from the Town of Oyster Bay Planning Advisory Board (PAB) for a 204,000 square foot warehouse and delivery station at the former Cerro Wire Plant in Syosset. At the public hearing, Mr. Forchelli successfully argued that the warehouse and delivery station was the best proposed use of the land since Cerro Wire was closed over 35 years ago. After many previous proposals were denied or abandoned, Mr. Forchelli prevailed in this application and the project was approved.

Andrea Tsoukalas Curto obtained zoning approvals for two new restaurants in the Town of North Hempstead - a For Five Coffee Roasters cafe on Main Street in Port Washington, New York and an upscale Greek restaurant on Old Country Road in Westbury, New York. Ms. Curto garnered community support for both projects and worked closely with Town officials for a successful result.

Kathleen Deegan Dickson obtained site plan approval from the Village of Port Jefferson Planning Board for a mixed-use project. The plans include forty-five workforce rental units as well as ground-floor retail space. A portion of the property has been dedicated to the Village to create a new Station Street adjacent to the LIRR station.



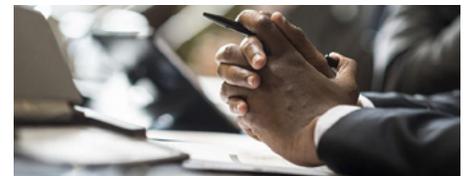
William F. Bonesso secured:

- a variance and special use permit relief from the Town of Hempstead Board of Appeals to permit a drive-thru Starbucks to construct a new coffee shop at 201 Sunrise Highway in Bellmore, New York. Mr. Bonesso rallied support from the local civic organization for the project, but also thwarted efforts by

several neighboring residents and a commercial neighbor to stop the project.

- approvals from the Town of Hempstead Board of Appeals for a new Chipotle restaurant at 474 Old Country Road in Westbury, New York. Mr. Bonesso worked with community civic leaders to address specific traffic and site layout concerns for Chipotle's first site with a mobile order pick-up window on Long Island.
- a favorable interpretation from the Huntington Planning Department to allow interior renovations to a warehouse for a client at 99 Marcus Drive in Melville, New York. Needing to move quickly to make the renovations, Mr. Bonesso was able to avoid both zoning relief and site plan approval for the proposed renovations.
- approval from the Board of Trustees of the Village of Hewlett Bay Park to permit the Hebrew Academy of Long Beach to construct a new gymnasium addition to the Stella K. Abrahams High School for girls at the Hebrew Academy's campus in Hewlett Bay Park, New York. Mr. Bonesso worked with the residential neighbors and the Board to address neighbor concerns regarding the +/- 13,000 square foot addition that will now provide the students with a state-of-the-art athletic facility.

Jessica A. Leis secured variances and site plan approval from the City of Glen Cove zoning board approval and Planning Board for the expansion of an existing luxury car dealership, to construct a new showroom and service reception area and convert the existing dealership building to a new full-service center.



LITIGATION

Russell G. Tisman was granted summary judgment entitling our client – a trade show services contractor – to recoup the attorney's fees it incurred defending the underlying action

arising from a construction accident based on a contractual indemnification claim in an auto manufacturer's booth.



TAX CERTIORARI

John V. Terrana and **Robert L. Renda** represented a national retailer in negotiations with the Nassau County Assessment Review Commission and the Nassau County Attorney's office. Messrs. Terrana and Renda replaced another firm with respect to representing the client on this matter. At the time of the substitution, the matter had been unresolved for several years. After a few short months of handling the case, Messrs. Terrana and Renda were able to successfully resolve seven years of pending proceedings in a settlement which will produce a real estate tax benefit in excess of \$1,600,000.

Nicole S. Forchelli represented a commercial office building in the Village of Garden City to obtain a reduction of their excessive property taxes. Ms. Forchelli analyzed the real estate and its uses, and after extensive negotiations, was able to prove that the Village had over-valued the office space, and thus had over-taxed the property. The result was a settlement worth tens of thousands of dollars and a sizable tax reduction moving forward.

Douglas W. Atkins represented three different media companies for telecommunications towers on eastern Long Island. Mr. Atkins was able to demonstrate that changing technologies and real estate market dynamics affected the properties' values negatively. The result was that the tax assessments on all of the properties were reduced producing refunds in excess of \$250,000. ■

NEWSDAY

- **William F. Bonesso** was quoted in the article, "Room to Spare: Jewish center seeks approval to build assisted living facility on its property" (Our Towns – Oceanside)
- **Daniel P. Deegan** was mentioned in the editorial, "Amazon doesn't need tax breaks"

LONG ISLAND BUSINESS NEWS

- **Kathleen Deegan Dickson's** Conifer Realty project was the focus of the article, "Port Jefferson affordable housing project advances"
- **Michael A. Berger's** profile was featured in the WHO's WHO in Labor Law special publication

NEW YORK REAL ESTATE JOURNAL

- published **Brian W. Kennedy's** lead article "Town of Brookhaven gets innovative during trying times in commercial real estate"
- featured **James C. Ricca** in the Year in Review spotlight
- featured **Judy L. Simoncic** within the Ones to Watch Spotlight
- **Mary E. Mongioi, Nicole S. Forchelli, Lindsay Mesh Lotito** and **Brenna R. Strype** were highlighted in the Women in Professional Services (WIPS) Spotlight
- Published **John P. Bues'** article, "COVID-19 Moratorium on Commercial Evictions and Foreclosures Continue", as well as
- **Brian R. Sahn** and **Jane Chen's** article, "Commercial Real Estate in the Midst of the COVID-19 Pandemic",
- **Richard A. Blumberg** and **Brenna R. Strype's** Page 2 column, "Sometimes a Guaranty is No Guarantee at All" and
- **John M. Comiskey's** article, "Ensuring That a Construction Contractor is Properly Insured"

NASSAU LAWYER

- mentioned **Gregory S. Lisi** in Dorian R. Glover's Message from the President article, "Changing Times—Spring is Here"

BAR ASSOCIATION PUBLICATIONS

- **Peter B. Skelos** contributed to the publication of the New York State Bar Association's (NYSBA) book, Construction Site Personal Injury Litigation, Third Ed
- **Danielle B. Gatto** was featured in the Nassau County Bar Association (NCBA) Women in the Law Committee's E-Spotlight on a Member

LONG ISLAND PRESS

- featured **Stephanie M. Alberts** in the 'Power Women' announcement

REUTERS

- quoted **Gregory S. Lisi** in the article, "Landlords not liable for tenant-on-tenant racial harassment - U.S. appeals court"

LONG ISLAND NOW

- featured **Kathleen Deegan Dickson** in the article, "Environmental concerns on 145 West Shore Road proposal"

HOFSTRA.EDU

- featured **Jeffrey D. Forchelli** and FDT within the newly-launched Vision 2020 Campaign website

LEXBLOG'S ENVIRONMENTAL LAW NEWS

- published **Aaron Gershonowitz's** article, "Standing to Sue: Can Environmental Organizations Create Standing to Sue: PETA v State Zoological Park" ■



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APPOINTMENTS AND NOTABLE UPDATES



FDT's Cannabis practice group, co-chaired by **Kathleen Deegan Dickson** and **Danielle E. Tricolla**, further expanded to include **Lisa M. Casa**, **Landon C. Dais**, **Daniel S. Dornfeld**, **Anthony P. DeCapua**, and **Alexander Kerzhner**.



Jeffrey D. Forchelli was named in *Long Island Business News'* "Power 25 in Law", which recognized the region's top lawyers based on outstanding achievements and standing in the legal community.



Forchelli Deegan Terrana LLP was presented with the NCBA's 2018-2019 Honoree for Volunteer Service Award in the large firm category.



Gerard R. Luckman was appointed to the Board of Directors of the Institute of Management Accountants – Long Island Chapter, the most professionally diverse organization in the corporate restructuring, renewal and corporate health space.



Jane Chen was appointed Co-Chair of the Asian American Bar Association of New York's (AABANY) Real Estate Committee for the 2021-2022 fiscal year.