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# THE COUNSELOR

## LAST CHANCE FOR BUSINESSES TO CLAIM THE EMPLOYEE TAX RETENTION CREDIT

— Rachel L. Partain, Esq.

In March 2020, Congress created the Employee Retention Tax Credit (ERTC) to help prevent job losses and wage reductions as a result of the pandemic. Under the CARES Act, employers that were forced to suspend operations in full or in part as a result of COVID-19 governmental orders or that experienced significant declines in gross receipts were eligible for the ERTC. The ERTC is a credit that is claimed on employment tax returns for qualified wages paid to employees.

Congress, the Treasury Department, and the IRS created a complex set of rules to determine whether an employer is eligible for the ERTC and the amount of the ERTC available to an employer. Also, the contours of the ERTC changed several times throughout the program. For example, when the ERTC was first created, employers could not claim the ERTC if they received a PPP loan. Since most businesses applied for PPP loans, many employers disregarded the ETRC.

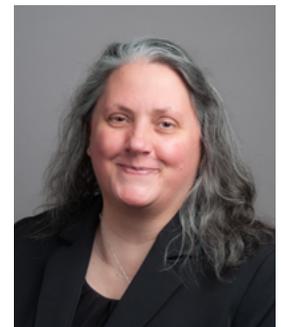
Subsequently, Congress expanded the ERTC to allow employers to claim the ERTC even if they had received a PPP loan. However, employers cannot use the same wages for both PPP loan forgiveness and the ERTC. Congress made this change retroactive to March 2020.

The ERTC ended on September 30, 2021 for most employers, although certain small businesses that were formed after February 15, 2020 could claim the ERTC through December 31, 2021.

We are seeing that many employers have yet to take advantage of the ERTC for 2020 and 2021. Employers may file amended returns if they were eligible for the ERTC but did not claim the credit on their originally-filed employment tax returns. Generally, employers have three years from the date they filed their original employment tax returns or two years from when they paid employment tax to file refund claims.

Employers will need to review the ERTC rules to determine whether they are eligible for the credit, focusing on how government orders impacted their business operations and revenue. Employers who are in a position to file refund claims should also try to maximize the amount of credit claimed on their amended returns. In particular, employers with multiple businesses should determine whether the businesses are affiliated and treated as one employer under the ERTC.

FDT's Tax practice group provides guidance to businesses looking to take advantage of tax savings opportunities. Please contact us if you have any questions. ■



Rachel L. Partain,  
Partner

**Gerard R. Luckman** participated in St. John's University School of Law's Student-Alumni Career Conference. He was a member of the Corporate, Securities, Bankruptcy and Tax panel.



**Daniel P. Deegan** hosted a breakfast meeting for the Long Island Association's Young Professionals Committee. He is a member of the LIA's Board of Directors. **Robert L. Renda** is a member of the Committee.



**Raymond A. Castronovo** was a panelist at the New England Real Estate Journal's virtual event, "Cannabis Facilities & Construction."

**James C. Ricca** was the honoree at the Cleary School for the Deaf's 30th Annual Golf Classic. **John V. Terrana, Lindsay Mesh Lotito, Kristina E. Sornchai, Zachary J. Manasia, John P. Bues, Jennifer Menz** and **Lisa Coppola** attended the dinner.

FDT's Long Island General Counsel Network (LIGCN) sponsored a virtual coffee tasting networking event. FDT's LIGCN is co-chaired by **Joseph V. Cuomo** and **Lisa M. Casa**. In addition to Joe and Lisa, **Kristina E. Sornchai** and **Lucy A. Miller** joined the tasting.

**Andrea Tsoukalas Curto** & **William F. Bonesso** attended the Nassau County Police

Department's NCPD Foundation's Inaugural Gala.



**Gregory S. Lisi, Mary E. Mongioi** and **Virginia A. Kawochka** attended the WE CARE Fund of the Nassau County Bar Association's 25th Annual Golf & Tennis Classic.

**Judy L. Simonic, Andrea Tsoukalas Curto, Gabriella E. Botticelli, Jessica A. Leis** & **Danielle B. Gatto** attended the Collaborate with Edge Leadership Conference Welcome Back cocktail reception.

**Jeffrey D. Forchelli, James C. Ricca, William F. Bonesso, Gerard R. Luckman** & **Virginia A. Kawochka** and their spouses, attended the Columbus Citizens Foundation's 77th Annual Columbus Day Celebration in New York City.



**Gregory W. Carman** attended the Nassau County Village Officials Association's Dinner & Debate.

**Andrea Tsoukalas Curto, Jessica A. Leis, Brian W. Kennedy** & **Erik W. Snipas**, and professionals from various disciplines, presented a CLE, "Mock Board of Appeals Hearing — A Zoning Perspective on Opening a Marijuana Retail Store." **Judy L. Simonic** and **Lindsay Mesh Lotito** participated in the Zoom. **Russell G. Tisman** and his wife

attended the Harboring Hearts Golf Outing cocktail reception.

**Jeffrey D. Forchelli, Russell G. Tisman, Michael A. Berger, Richard A. Blumberg, Frank W. Brennan, Lisa M. Casa, Michael A. Ciaffa, Raymond A. Castronovo, Andrew E. Curto, Danielle B. Gatto, Nathan R. Jones, Alexander Leong, Jacqueline A. Rappel, Jonah H. Blumenthal** and **Danielle E. Tricolla** attended the Nassau County Bar Association's Judiciary Night 2021.

**Jeffrey D. Forchelli** attended the North Shore Historical Museum's Gala.

**Mary E. Mongioi, David J. Borkon, Jeremy M. Musella, Kelan C. Sullivan** and **Michael A. Berger** attended NY Vet Expo in NYC.

**Jonah H. Blumenthal** participated on a St. John's University School of Law alumni panel guiding current students on the transition from law school to law practice.

**Andrea Tsoukalas Curto** & **Jessica A. Leis** hosted a Nassau County Women's Bar Foundation fundraiser, "Fashion for a Cause," with image consultant and branding expert Melanie Lippman. **Judy L. Simonic, Nicole S. Forchelli, Virginia A. Kawochka, Kristina E. Sornchai, Lucy A. Miller** and **Lindsay Mesh Lotito** participated.

**Andrea Tsoukalas Curto** attended Bethpage Federal Credit Union's 13th Annual Turkey Drive benefiting Island Harvest.



**Mary E. Mongioi, Michael A. Berger, Danielle E. Tricolla** &

**Lindsay Mesh Lotito** attended London Jewelers' event supporting Rescue Paw Foundation.



**Gerard R. Luckman** was a guest speaker at the Nassau County Bar Association's Bankruptcy Law Committee meeting CLE, "Review of Small Business Reorganization Under Subchapter V."

**Gregory W. Carman** attended the Nassau County Village Officials Association's 95th Annual Testimonial Dinner.

**Gregory S. Lisi** attended the Nassau County Women's Bar Association's Annual Holiday Cocktail Party & Mitten Fundraiser benefitting The Safe Center LI.

**Kathleen Deegan Dickson** and **Daniel S. Dornfeld** presented, "Zoning and Leasing Considerations for the Cannabis Industry," at the Commercial Industrial Brokers Society's (CIBS) Lunch & Learn.



**Elbert F. Nasis, Daniel S. Dornfeld** and **Brian W. Kennedy** attended the HIA-LI's 44th Annual Meeting and Legislative Program. ■

# AWARDS AND RECOGNITION



FDT received its first "Best Law Firms" ranking. The firm is included in the 2022 Edition of U.S. News – Best Lawyers' "Best Law Firms" list as a Tier 2 firm on Long Island for Litigation – Labor & Employment.



**Gregory S. Lisi** was honored by Schneps Media as an A Lister, which recognizes extraordinary men from Manhattan to Montauk who make a difference in their professions and communities.



**Jeremy M. Musella** was inducted into *Long Island Business News'* 30 Under Thirty Class of 2021.



**Mary E. Mongioi** was named a 2022 *Crain's New York Business'* Notable Women in Law honoree.



**BANKING & FINANCE**

**James C. Ricca** negotiated and closed a \$25,000,000 mortgage loan for an Institutional Lender secured by an apartment complex in Stockbridge, Georgia.

**Lindsay Mesh Lotito**, on behalf of New York Community Bank, negotiated and closed a \$26,000,000 mortgage loan secured by a mixed-use luxury apartment building in Jersey City, New Jersey.

**James C. Ricca** closed on behalf of Republic Bank a mortgage loan secured by a commercial condominium unit located at United Nations Plaza.

**Lindsay Mesh Lotito** and **James C. Ricca** negotiated and closed a \$6,000,000 term loan secured by the assets of Borrower in conjunction with a \$6,000,000 unsecured revolving line of credit on behalf of an Institutional Lender.

**John P. Bues** represented an Institutional Lender in closing an \$8,200,000 construction loan to finance the construction of a new medical marijuana processing plant in New Jersey.

**John P. Bues** represented Hanover Community Bank in successfully closing a \$6,500,000 loan secured by five (5) apartment buildings located in Brooklyn and the Bronx.

**Steven G. Gaebler** negotiated and closed on behalf of Hanmi Bank a \$18,375,000 acquisition loan, a \$2,400,000 building loan

and \$225,000 project loan secured by commercial condominium units located in New York City and the assets of Borrower and Guarantors.

**Steven G. Gaebler** negotiated and closed a \$11,625,000 mortgage loan secured by property in Brooklyn on behalf of an Institutional Lender.

**Steven G. Gaebler** and **Lindsay Mesh Lotito** negotiated and closed a \$15,500,000 mortgage loan secured by property in Deer Park, New York on behalf of Citibank, N.A.



**LITIGATION**

**Danielle B. Gatto** and **Peter B. Skelos** were successful in having the appellate division dismiss one appeal and otherwise affirm orders from the Queens County Supreme Court, which, through the course of three separate decisions, granted our clients' motion to dismiss the entire case. In the action, the plaintiff asserted causes of action against our clients for breach of contract, conversion and intentional infliction of emotional distress, all of which were dismissed with prejudice.

**Richard A. Blumberg** and **Danielle B. Gatto** were successful, after an in-person hearing, in vacating a temporary restraining order arising from a plaintiff's claim of adverse possession over our client's property.



**LAND USE & ZONING**

Clients Peter Florey and Len D'Amico, of D&F Development Group, along with Islip Town Supervisor, Angie Carpenter, cut the ribbon at the opening of the Bay Shore Senior Residence and LGBT Center.



Rendering of Bay Shore Senior Residence & LGBT Center

This affordable housing community is the first of its kind, offering a safe environment and housing for LGBT seniors. **Jessica A. Leis** attended the event. **Kathleen Deegan Dickson** and Ms. Leis worked to secure the project's Suffolk County Dept of Health approvals, and **Daniel P. Deegan** secured financial assistance and a PILOT on the project through the Town of Islip IDA.

**Andrea Tsoukalas Curto** obtained zoning approvals for a two-lot subdivision of a 2-acre estate in the Village of Sands Point which was once owned by crooner Perry Como. She also obtained approvals for a two-lot subdivision in the hamlet of Glenwood Landing, Town of Oyster Bay. In addition, Ms. Curto obtained variances and site plan approval for a new multi-million-dollar residence in the Village of Sands Point which

abuts a preserve. The lot was challenging to develop because it had been abandoned for several years and did not have proper access or utility connections. Mrs. Curto garnered community support for these projects and addressed neighbor concerns for a successful result in each case.



**REAL ESTATE**

**James P. Rosenzweig** represented the Riese Organization, as landlord, in connection with a Times Square Manhattan commercial lease workout. The final transaction involved the collection of substantial rent arrears and the creation of an improved lease security package to guaranty continuing cash flow to the client.

**James P. Rosenzweig** negotiated and completed for Seller an eight-figure contract of sale of a commercial building located on lower Broadway in New York City.

The attorneys from the Tax Certiorari Department, members of the Institute for Professionals in Taxation (IPT), attended IPT's annual Property Tax Symposium in Westminster, Colorado in November, 2021. IPT's membership includes tax industry leaders across all classes of real estate: shopping malls, big box retail, senior living, multi-family dwellings, etc. The Symposium is a

unique opportunity for the firm's attorneys to attend educational property tax lectures and stay on the cutting edge of emergent real estate tax topics. The Firm also supports the IPT's mission by sponsoring the Symposium annually.



**TAX CERTIORARI**

**John V. Terrana** and **Robert L. Renda** represented a regional surgery center and medical practice with offices in Suffolk County. The client approached the firm concerned that the town may have been over-charging them. What Messrs. Terrana and Renda discovered was excessive taxation by almost 50%. In a pre-trial settlement, the firm recovered \$330,000 for the client.

**Douglas W. Atkins** prosecuted a property tax case against the Town of Islip on behalf of an automotive site owner. Mr. Atkins argued that the town was misclassifying the use of the property as service storage. Additionally, Mr. Atkins successfully argued that the assessed value was well above market. The result for the client was a refund of \$107,000.

**Nicole S. Forchelli** resolved a property tax matter for a national department store chain relating to two of their properties in Upstate New York. Ms. Forchelli proffered

methodologies 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 sales of similar stores in the area. After extensive negotiations, Ms. Forchelli obtained a real estate tax benefit of more than \$160,000 for the client.



**TAX, TRUSTS & ESTATES**

The firm represented the Sellers in negotiating a series of integrated contracts, and thereafter closing on the sale of a group of licensed nursing home facilities, both with respect to the business operations and conveyance of the underlying real estate. The aggregate selling price was approximately \$83,000,000. This transaction was handled almost completely by **James P. Rosenzweig** and **Jonah H. Blumenthal** in coordination with **Robert H. Groman**. The sale included multiple 1031 tax compliant real estate exchanges that had to be coordinated with the closing of the sales. Mr. Rosenzweig work with the 1031 qualified intermediary to design and implement a complex deal structure to ensure that the clients' tax benefits were preserved and their business expectations met. ■

**NEWSDAY**

- **Daniel P. Deegan** was quoted in the article, "Virus-fueled expansion."
- **Daniel P. Deegan** was quoted in the article, "Developer wins tax breaks for 72-unit apartment building in Westbury."



- **Andrea Tsoukalas Curto's** participation in the Bethpage Federal Credit Union's 13th Annual Turkey Drive benefitting Island Harvest was featured in the "On Our Island: Non-Profit highlights of the week" section.
- **Daniel P. Deegan** was quoted in the article, "New plan for tool sites."

**LONG ISLAND BUSINESS NEWS**

- **Jeremy M. Musella's** 30 Under Thirty profile was published.
- **Daniel P. Deegan** was mentioned in the article, "LI developer gets IDA assist for \$26.9M Mineola project."
- **Daniel S. Dornfeld** was quoted in the article, "Häagen-Dazs and Tombstone pizza distributor plans new Hauppauge home."

- **Judy L. Simoncic** was featured in WHO's WHO in Commercial & Residential Real Estate Law Special Section.

**NEW YORK LAW JOURNAL PUBLISHED:**

- **John P. Gordon's** welcome announcement.
- **Danielle E. Tricolla, Robert L. Renda's** promotions announcement.
- **Stephanie M. Alberts'** appointment to FDT Tax, Trusts & Estates Co-Chair.

**NEW YORK REAL ESTATE JOURNAL**

- **Andrew E. Curto** was featured in the "Ones to Watch Spotlight."
- **Judy L. Simoncic, Kathleen Deegan Dickson, Andrea Tsoukalas Curto** and **Jessica A. Leis** were featured in the Women in Real Estate (WIRE) Spotlight.
- **Daniel S. Dornfeld** was featured in the Year in Review Spotlight.

**NEW YORK REAL ESTATE JOURNAL PUBLISHED:**

- **Aaron Gershonowitz & Brian Kennedy's** article, "Land Use and the Takings Clause of the United States Constitution."
- **Rachel L. Partain's** welcome announcement.
- **John P. Gordon's** article, "Law: Prevailing wage law for IDA projects goes into effect on Jan. 1, 2022."
- **Judy L. Simoncic's** appointment to Chair of the NCBA's Municipal Law and Land Use Committee.
- **Zachary J. Manasia's** article, "Blockchain Use Cases for Real Estate Transactions."
- **Daniel S. Dornfeld & Gregory W. Carman's** Page 2 column, "Lease Considerations for Cannabis Dispensaries – a Brief Overview."

**BEST LAWYERS®**

- **Gregory S. Lisi** and **Danielle E. Tricolla** were listed in the 2021 Business Edition: The Litigation Issue

**LI HERALD**

- **Daniel P. Deegan** was mentioned and quoted in the article, "IDA mulls tax breaks for Baldwin Commons; Affordable development takes step forward."



- **Gerard R. Luckman's** Turnaround Management

Association Long Island appointment was published.

- **Gregory S. Lisi** was featured in LIBN's WHO's WHO in Labor Law Special Section

**CITY & STATE NEW YORK**

- **Gregory S. Lisi** was included in Long Island Power 100.

**LAW360**

- **Danielle E. Tricolla's** article, "Practical Considerations for NY Cannabis Licensing," was included in Law360's Cannabis: The Top Law360 Guest Articles of 2021.

**NASSAU LAWYER**

- **Peter B. Skelos, Jeffrey D. Forchelli, Gregory S. Lisi, Lindsay Mesh Lotito, Robert L. Renda** and **Danielle E. Tricolla** were featured in the In Brief column.
- **Stephanie M. Alberts'** appointment to Co-Chair of the NCBA's Surrogate's Court Estates and Trusts Committee was published.
- **John P. Gordon's** welcome announcement was published.
- **Judy L. Simoncic's** appointment to Chair of the NCBA's Municipal Law and Land Use Committee was published.
- **Mary E. Mongioi** was named a Crain's New York Business' 2022 Notable Women in Law honoree.
- **Danielle E. Tricolla & Robert L. Renda's** promotions announcement was published.

**WAGNER MAGAZINE**

- **Jeffrey D. Forchelli** was interviewed by his alma mater, Wagner College, for the story, "Back to Business: Seahawk business leaders tell us about their COVID 'new normal!'" ■

**GREGORY S. LISI'S NASSAU COUNTY BAR ASSOCIATION PRESIDENTIAL RECAP**

At the half way point of my term as President of the Nassau County Bar Association (NCBA), I am proud of the growth we have had and impressed by the resilience of our members. Despite the challenges presented by COVID, we have increased membership for the first time in over a decade as well as put on programs that help the general public understand the Rule of Law, embrace diversity and inclusion, assist people being foreclosed upon and support people who still have legal issues after Hurricane Sandy and other disasters. We have been able to assist attorneys who have returned to the profession after a long absence due to child rearing or disability and helped private companies deal with the ever-changing COVID rules and regulations. We provide a lawyer referral service to help people who are in need of any attorney but do not know what type of attorney they need, and provide a charitable arm for attorneys and others to give back to the community. In 2022 we are setting up a victims rights panel and providing more opportunities for companies and individuals to get information on new Covid laws and regulations. We will also increase access to attorneys for questions by businesses and the general public. Plus, we are reopening the restaurant for lunch and dinner/weekend catering at our beautiful building in Mineola. It has been a great honor to lead the nearly 5,000 attorneys of the Nassau County Bar Association through a difficult and incredibly memorable year.



**NOTABLE APPOINTMENTS**



**Gregory W. Carman** joined the firm's Land Use & Zoning, Litigation and Cannabis practice groups as an Associate.



**Danielle E. Tricolla** was promoted to Partner on January 1, 2022. She is Co-chair of the Cannabis practice group and a member of the Litigation practice group.



**Robert L. Renda** was promoted to Partner on January 1, 2022. He is a member of the Tax Certiorari practice group.



**Stephanie M. Alberts, Partner,** was appointed to co-chair of the firm's Tax, Trusts & Estates practice group.



**Gerard R. Luckman** was elected President of the Turnaround Management Association's (TMA) Long Island Chapter.