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THE COUNSELOR

ENVIRONMENTAL DUE DILIGENCE -- WHEN THE THRESHOLD FOR CLEAN MOVES TO PARTS PER TRILLION

— Jesse Hiney

The scientific world's ability to identify and correlate risks associated with specific substances and detect contamination at levels that previously did not register under lab analysis has expanded the universe of environmentally-compromised sites well beyond what historically may have prompted environmental concern. What was once clean, may now be hazardous.

Gas stations and dry-cleaners still trigger environmental inquiry when identified as a former use, but sites that may be sources of emerging contaminants (think PFAS and PFOS compounds, recently designated as a hazardous substance by EPA) can carry the same potential environmental liability, without the traditional characteristics of an environmentally-problematic site.

Emerging contaminants have highlighted the importance of pre-acquisition environmental due-diligence. The regulatory limits for PFAS, measured in parts per trillion, trigger violations at levels that, until recently, could not be detected - creating potential environmental liability where none previously existed. As science and technology continue to advance, the threshold for determining what site-related issues trigger additional investigation becomes less tenable. Regulation at such low levels within an enforcement scheme that imposes strict, joint and several, and retroactive liability for a highly mobile contaminant, found in commonly used, everyday products, implies that all parties located within the footprint of a contaminant plume could be caught in the liability chain. Failure to conduct pre-acquisition environmental diligence that satisfies the all-appropriate inquiry standard established in CERCLA leaves property owners susceptible to such claims without an affirmative defense to liability.

There are a number of tools in the environmental risk allocation tool box; however, environmental risk allocation is a process that begins prior to ownership. Environmental diligence is critical to understanding environmental risk associated with a prospective transaction and formulating a strategy to address it. In addition, performing a Phase I, in accordance with the current "all appropriate inquiry" standard, satisfies the initial threshold to establish affirmative defenses to certain environmental laws – alleviating potential environmental liability that would normally attach to a property owner by virtue of owning a contaminated site.

Environmental liability is a common negotiating point and an area with widely varying risk-tolerance among parties to a transaction. Unless you can identify and characterize the specific environmental conditions, the level of risk is difficult to quantify. Understanding the environmental risks, potential remediation scenarios, regulatory programs and incentives associated with a target transaction allows a buyer/seller maximum leverage in negotiating a resolution. ■



Jesse Hiney, Partner



BANKING & FINANCE

Steven G. Gaebler and **Lindsay Mesh Lotito**, on behalf of a private lender, negotiated and closed a \$8,500,000 line of credit loan secured by the assets of the Borrower and corporate guarantors.



LAND USE & ZONING

Judy L. Simoncic secured Site Plan Approval from the Town of Oyster Bay Planning Advisory Board to permit the construction of a 240,249 square foot state-of-the-art spec warehouse at the 600 Grumman Road West in Bethpage for firm client, Prologis, Inc., one of the world’s leading industrial real estate investment trusts.

Andrea Tsoukalas Curto obtained approvals for the Town of North Hempstead Board of Zoning and Appeals for the redevelopment of a vacant commercial building on Bayview Avenue from a bank use to a dance studio. Mrs. Curto successfully worked with local civic leaders to address concerns of neighboring property owners to include site access and noise.

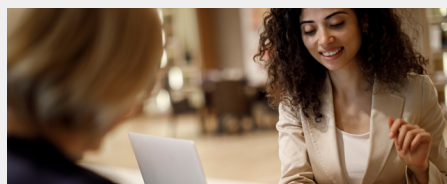
Gianni V. Sbarro secured Board of Zoning Appeals approvals from the Town of North Hempstead on behalf of a medical spa client. The approvals allowed for the conversion of retail space to medical offices in Carle Place, NY.

Andrea Tsoukalas Curto obtained approvals from the Village of Sands Point BZA to maintain a new residence that did not comply with the Village’s sky plane regulations.

Mrs. Curto established that the developer built in accordance with the approved plan, that the variance was minor in nature, that the residence was in character with other homes in the area, that the plan was reviewed and approved by the building department and the BZA and that the need for a variance was triggered by a new interpretation of the zoning code and an error by the building department. These findings were important because they were the basis for the BZA to conclude that it was not appropriate to fine the developer \$100,000 for building a residence that did not fully comply with the Village’s zoning regulations.

Gianni V. Sbarro secured a special permit from the Town of North Hempstead Town Board to permit alterations to a drive-through facility used as a car wash in Manhasset, NY.

Gianni V. Sbarro secured variances from the Board of Zoning Appeals in the Town of North Hempstead, which legalized additions to a commercial building and authorized reduced number of parking stalls for a client expanding its fireplace and outdoor kitchen business in Greenvale, NY.



TAX CERTIORARI

Nicole S. Forchelli resolved a property tax matter for a Fortune-500 company relating to a bundle of properties in Upstate New York. She employed 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 properties in the area. After negotiations, Ms. Forchelli obtained a real estate tax benefit of more than \$300,000 for our client.

Douglas W. Atkins represented an owner of a wholly unique property in

the Town of Huntington. The property had 4 acres of water-view land improved with a mix of residential and storage uses. Mr. Atkins was able to establish that an income-approach to valuation must be used for tax purposes and not comparable sales method. The result was an approximate \$60,000 refund and substantial tax decrease going forward.

Robert L. Renda represented the owner of a property under development in western Suffolk County. From 2017 – 2022, the property was in various stages of disrepair, demolition and ultimately, new development. Mr. Renda was able to tie the proper stage of progress to the statute-dictated Tax Status dates for each year. He uncovered errors by the Town, resulting in a six-figure refund for the client.



IDA

Daniel P. Deegan and **John P. Gordon** closed a 12-year PILOT extension for Canon U.S.A., Inc., with the Suffolk County IDA, for Canon’s 700,000 square foot office complex in Melville, which serves as Canon’s Americas Headquarters. In connection with the extension, Canon committed to maintain its operations at the facility for the duration of the PILOT, where it currently employs over 1,000 people. Canon also received sales tax exemption for infrastructure upgrades, IT upgrades and other enhancements at the facility.

Daniel P. Deegan and **John P. Gordon** closed a financial assistance package on behalf of Centennial Holdings LLC and The Friedman Group with the Town of Hempstead Industrial Development Agency for the construction of a 24-unit, 30,500 square

foot, multi-family residential transit-oriented development project in the Village of Floral Park at the site of the former Centennial Hall.



LITIGATION

Richard A. Blumberg and **Danielle E. Tricolla** prevailed in a Motion to Dismiss an article 78 proceeding commenced by the Lawrence School District against our client Pearsall Rock, LLC and the Village of Cedarhurst which sought to overturn the Village's implementation of an Incentive Zoning Overlay District and approval of our client's mixed-use, multi-family development project. The school district alleged that the Village incorrectly applied SEQRA in implementing the new overlay district. Mr. Blumberg and Ms. Tricolla skillfully argued that the school district failed to establish sufficient standing to bring the proceeding and, as such, the challenge could not proceed. The court agreed and dismissed the proceeding. With the statute of limitation for an article 78 proceeding having expired, no other challenge could be made against our client's approvals.



TAX, TRUSTS & ESTATES

Stephanie M. Alberts, Robert H. Groman, Johanna C. David and **Jonathan P. Weiss** successfully implemented estate plans for clients, including approximately two (2) dozen Wills and various revocable and irrevocable Trusts, in the last three (3) months.

Stephanie M. Alberts, Cheryl L. Katz and **Jonathan P. Weiss** secured Decrees Granting Probate and Decrees Granting Letters of Administration for over two (2) dozen estates in the past three (3) months.

Stephanie M. Alberts, Robert H. Groman and **Caroline G. Frisoni** successfully crafted an estate plan for clients with business interests which plan included the creation of Wills and Trusts, review and cleanup of corporate documents, as well as the implementation of transfer on death designations to ensure the continuity of the business in the event of the death of the clients.

Stephanie M. Alberts and **Jacqueline A. Rappel** successfully obtained a dismissal of a proceeding commenced in Supreme Court against FDT's client brought by the client's sibling seeking an accounting and other relief related to the assets of their mother. The Court held that the sibling of FDT's client had no standing to commence such action due to the fact that his mother was still alive and had successfully revoked the Power of Attorney granted to him.

Rachel L. Partain successfully negotiated "currently-not-collectible" status from the IRS on behalf of individuals with a tax liability in excess of \$1 million.

Cheryl L. Katz successfully settled a contentious two-and-a-half-year long litigation resolving a multi-million-dollar Trust dispute involving proceedings to remove co-trustees, appoint a successor trustee, compel an accounting of the co-trustees' actions, and ultimately litigate a judicial accounting proceeding.

Rachel L. Partain obtained a discontinuance of an IRS promoter investigation.

Cheryl L. Katz successfully prosecuted four separate judicial

proceedings to obtain authority from the Court to sell a parcel of valuable real property owned by four estates as tenants-in-common. The estates were complex; one included a decedent who died almost twenty-five years ago leaving many post-deceased heirs which required significant research and voluminous court filings.

After years of attempting to obtain a refund from a service provider, a client retained **Rachel L. Partain**, who prepared pre-litigation demands quickly secured a six-figure payment for the client.

Cheryl L. Katz successfully probated the last will and testament of a decedent in Queens County Surrogate's Court despite the Notary Public having failed to properly notarize the self-proving affidavit annexed to the instrument. The matter required due diligence which led to a successful judicial decision prior to the Decree Granting Probate being issued by the Surrogate.



CORPORATE

In March, the Firm assisted a long-time client in the sale of his business and real estate interests for millions of dollars in the context of business divorce matter that played out over a 4+ year period. This complex matter involved multiple redemptions, bank and seller financings, various mortgage and security features, and the settlement of a pending litigation. The FDT team on the matter was led by partners **Andrew E. Curto** and **Joseph V. Cuomo**, and included **Steve G. Gaebler, Robert H. Groman, Lindsay Mesh Lotito, Rachel L. Partain, Danielle E. Tricolla, Gabriella E. Botticelli**, and **Caroline G. Frisoni**. ■

EVENTS & SPEAKING ENGAGEMENTS

Lisa M. Casa presented a CLE to the NCBA's Labor & Employment Law Committee. She discussed Restrictive Covenants and Associated Rules of Professional Conduct.

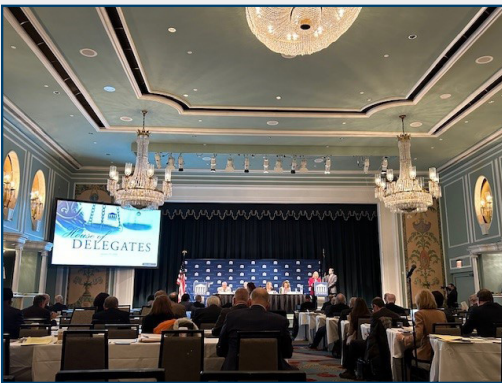
Andrea Tsoukalas Curto and **Julia J. Lee** attended WEDLI's breakfast where they learned about the economic impact of the proposed Sands New York project.



Julia pictured with Tracey A. Edwards, the Corporate Social Responsibility Officer for Las Vegas Sands Corporation.

Stephanie M. Alberts co-presented a program on, "Charitable Giving: Corporate Citizenship," to the Institute of Management Accountants (IMA) – Long Island Chapter. **Gerard R. Luckman** is a member of the Board of Directors and the Communications & Membership Committees.

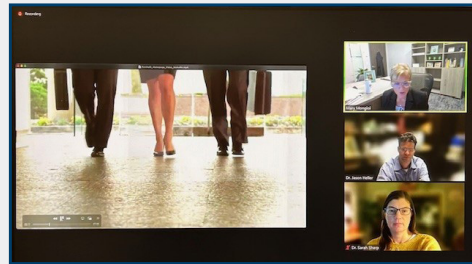
Cheryl L. Katz presented the legislative proposal Equity for Surviving Spouses Act or "ESSA", co-sponsored by the NYSBA Trusts and Estates Section, to the House of Delegates.



FDT's Long Island General Counsel Network hosted its first social event of the year as part of its sponsorship with ACC-NYC. The event was hosted at the newly opened restaurant in Eisenhower Park, The Union, where members discussed the best ways to build partnerships with outside counsel. **Joseph V. Cuomo** and **Lisa M. Casa** led the discussion.

FDT sponsored the Long Island Veterinary Medical Association's Continuing Education webinar. **Mary E. Mongioi** participated in the webinar and presented opening remarks. *There were 100+ industry contacts registered!*

Cheryl L. Katz and **Stephanie M. Alberts** were panelists on the NCBA's Bridge-the-Gap Estates & Trusts CLE Program. They discussed Wills vs. Trusts: 101.



FDT hosted the Women Economic Developers of Long Island's members-only meeting, which featured a cooking demonstration by an award-winning chef. Attendees enjoyed an assortment of New Orleans cuisine and drinks. **Kathleen Deegan Dickson** (Membership Co-Chair) and **Julia J. Lee** (Hospitality Co-Chair) are members of WEDLI's Board of Directors.



Gerard R. Luckman attended and spoke at IMA-LI's "Discussing Real-Life Fraud" networking event and presentation dinner.

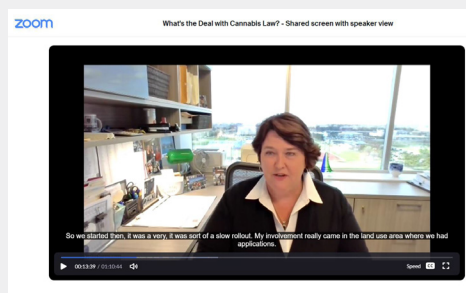
Nicole S. Forchelli and **Jason M. Penighetti** attended the ABA/IPT Advanced Tax Seminar in New Orleans. This seminar is designed for attorneys, accountants, tax directors, state and local tax managers, government tax officials, appraisers, property tax managers, commercial and industrial property managers, and others interested in sales, use, ad valorem taxation of property, and state income tax.

Elbert F. Nasis, **Andrew E. Curto**, **Anthony C. Varbero**, **David C. Casagrande**, **Michael A. Berger**, **Jackie A. Rappel**, **Russell G. Tisman** and **Bret L. McCabe** attended the NYSBA's Commercial & Federal Litigation Section meeting on, "The Future of the Commercial Division on LI and Beyond."

EVENTS & SPEAKING ENGAGEMENTS: CONTINUED

Johanna C. David attended Hofstra University's event, "Qué Pasa, Long Island: The Story of the Secatogue Nine." She was part of the Law School's clinic that worked on the case to a successful verdict. On the anniversary of the settlement, the Law School – in connection with the University's National Center for Suburban Studies and The Lawrence Herbert School for Communication – hosted the event and launched a five-part podcast exploring an immigrant community's ten-year struggle against discrimination in suburban Long Island.

Kathleen Deegan Dickson presented a cannabis attorney's perspective in the Suffolk County Bar Association's "What's the Deal with the Cannabis Law" CLE program.



Joseph V. Cuomo was invited back to St. John's University School of Law to give a presentation on "Being a Corporate Lawyer" to Professor Miriam Cherry's Business Organizations Class. Firm intern and future associate, Camila Morcos, is a student in the class. ■

FIRM MENTIONS

NEWSDAY FEATURED:

- **Daniel P. Deegan** in the article, "Breaks offered to AAR." He represented AAR Aircraft's before the Suffolk County IDA.
- **Daniel P. Deegan** in the article "AC by Marriott hotel to be built on a parking lot at Roosevelt Field mall."
- **William F. Bonesso** in the article, "East Farmingdale warehouse proposal draws fight from residents." He was representing Prologis, the global leader in logistics real estate.
- **Brian R. Sahn** in the article, "New York home sellers must make disclosures under updated law in shift away from 'buyer beware'."

LONG ISLAND BUSINESS NEWS FEATURED:

- **John V. Terrana** in Long Island Business News' Influencers:

Law. LIBN's editorial team chose those whose leadership and inspiration have greatly impacted the Long Island community in a profound way with regards to law.

- **Gregory S. Lisi** in LI Focus: Law section, "In the Know: New Labor and Employment Rules, Regulations, Laws."

NEW YORK REAL ESTATE JOURNAL PUBLISHED:

- **Lisa M. Casa's** Long Island Section Byline, "Mortgage Loan Officers May be Entitled to Overtime Pay".

NASSAU LAWYER

- **Peter B. Skelos** was featured in the NCBA Sustaining Members section.
- **Jonathan P. Weiss** was mentioned in the New Members section.

- **Gerard R. Luckman** was named the Committee Chair for Bankruptcy Law.
- **Gregory S. Lisi** was named the Nominating and Lawyer Referral Committee Chair.
- **Michael A. Berger** was named the New Lawyers Committee Chair.

NEW YORK BUSINESS LAW JOURNAL PUBLISHED:

- **Joseph V. Cuomo** and **Caroline G. Frisoni's** article, "The Soft Sands of Rehoboth Beach vs. the Bright Lights of Broadway – Where Do I Form My New Entity, Delaware or New York?"

LIVMA NEWS PUBLISHED:

- **Mary E. Mongioi** and **Michael A. Berger's** article, "An Introduction to Restrictive Covenants". ■



Long Island Business News featured **John V. Terrana** as a Long Island Business Influencer in Law. These individuals are recognized for their dedication, both in the legal profession and the community, who have had a positive impact on Long Island.

2024
— LONG ISLAND BUSINESS —
INFLUENCERS
— LONG ISLAND BUSINESS NEWS —
LAW

**SUBCONTRACTORS TRADE ASSOCIATION -
EMERGING LEADERS AWARD 2024**



Bret L. McCabe was selected to receive the Subcontractors Trade Association (STA) 2024 STA Emerging Leaders Award. Honorees are recognized for their commitment to improving and enhancing the role of subcontractors in New York's complex construction industry.



NOTABLE APPOINTMENTS



Johanna C. David joined as a Partner in the firms Tax Trusts & Estates practice group.



Thomas Huszar joined as a Partner in the firms Corporate and Mergers & Acquisitions practice group.



Jesse Hiney joined as a Partner and Chairperson of the firm's Environmental practice group.



Philip A. Butler joined as a Partner in the firms Land Use & Zoning practice group.

FORCHELLI DEEGAN TERRANA LLP PARTNER PASSES THE TORCH ON NYLCV BOARD



Brian W. Kennedy was appointed to the Regional (Long Island) Board of the New York League of Conservation Voters. The NYLCV is a non-partisan organization comprised of industry leaders working to address emerging environmental issues at the federal, state and local levels. **Daniel P. Deegan** previously held this position.



Daniel P. Deegan was appointed to the Board of Directors of the Long Island Builders Institute, Inc. The Long Island Builders Institute (LIBI), established in 1941, represents over 730 member companies on Long Island and is the largest trade association for homebuilders and remodelers in New York State. "Dan Deegan is one of the most well-respected real estate development attorneys on Long Island and his experience and insight into development will be an asset to the LIBI Board," said Mike Florio, CEO of the LI Builders Institute.