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THE COUNSELOR

NON-DEBTOR THIRD-PARTY RELEASES POST *PURDUE PHARMA*

— Michael S. Amato

Non-debtor third-party releases have been integral to resolving restructuring proceedings and related litigations. Non-debtor third parties, seeking finality and a safe harbor, provide substantial contributions to the debtor's estate, in exchange for a release of claims.

Last year, the U.S. Supreme Court held in *Harrington v. Purdue Pharma L.P.*, 603 U.S.204 (2024) ("*Purdue*") that the Bankruptcy Code does not authorize non-consensual third-party releases under a Chapter 11 plan of reorganization. This decision, while not unexpected, altered the landscape. Creative advocacy and a pragmatic judiciary, however, have resulted in decisions in New York and elsewhere allowing non-debtor third-party releases in Chapter 11 plans.

In *Purdue*, the debtor sought confirmation of its Chapter 11 plan, including non-consensual third-party releases for members of the Sackler family. The Bankruptcy Court confirmed the plan, finding that the releases were an important part of the plan, and that the debtor's estate received "substantial consideration", funds contributed by the Sacklers to satisfy pending and potential opioid claims. The District Court reversed, holding that the Bankruptcy Code does not permit non-consensual third-party releases. The Second Circuit promptly reversed the District Court, teeing up the issue for the Supreme Court.

The Supreme Court reversed, holding that confirmation under the Bankruptcy Code permitted only relief related to the debtor in bankruptcy. However, the Supreme Court limited the scope of its ruling, and did not address whether *consensual* third-party releases may be included in a Chapter 11 plan and what qualifies as *consensual*.

Bankruptcy lawyers recognized this door and kicked it open. In *In re GOL Linhas Aéreas Inteligentes S.A.*, 2025 WL 1466055 (Bankr. S.D.N.Y. 2025), Chief Bankruptcy Judge Glenn held that consensual releases (where the parties are *deemed* to have consented) of non-debtor third parties are permissible. Creditors could opt out of the releases by checking a box on the face of the ballot.

Judge Glenn held that "consent must be 'knowing and voluntary,'" but may be inferred from inaction, where there has been adequate service of process, and the notice of opt-out rights were permissible because: (i) creditors had opted; (ii) the releases were prominently displayed; (iii) the releases were included in the original plan; and (iv) non-voting creditors that did not receive any distributions were not subject to the releases.

Other courts have permitted non-debtor third-party releases utilizing varying forms of opt-out provisions in the aftermath of *Purdue*, including, Texas, Delaware, Georgia, Iowa and New Jersey. Each court emphasized that the release and opt out provisions must be analyzed on a case-by-case basis. Factors considered include: (i) notice to the creditors; (ii) the process to opt out; (iii) that the third-party release was negotiated; (iv) participation of a creditors' committee; (v) benefit to the estate and creditors; (vi) creditor support; and (vii) evidence that parties opted out.

It is imperative to carefully scrutinize bankruptcy notices and information. Actions, or inactions, with respect to claims, voting and opt out procedures may adversely impact your rights. You should review this information with experienced bankruptcy counsel to understand your rights.



Michael S. Amato, Partner



BANKING & FINANCE

On behalf of an Institutional Lender, **Lindsay Mesh Lotito** and **James C. Ricca** negotiated and closed a mortgage loan refinance in the amount of \$13,000,000 secured by a self-storage property in Roslyn, New York.

Lindsay Mesh Lotito and **Gerard R. Luckman** negotiated and closed a \$30,000,000 revolving line of credit secured by business assets and \$15,500,000 mortgage loan secured by commercial property in Pasadena, Texas on behalf of a corporate client with M&T Bank as the lender.

James C. Ricca and **Lindsay Mesh Lotito** negotiated and closed a commercial mortgage loan for \$8,875,000 on behalf of an Institutional Lender secured by a shopping center in Wesley Hills, New York.



LAND USE & ZONING

Jeffrey D. Forchelli and **Gregory Kalnitsky** obtained approvals from a Village for the expansion of a not-for-profit cemetery. In presenting the matter to the Village Zoning Board of Appeals, **Mr. Forchelli** introduced the testimony of a real estate expert establishing that the cemetery expansion would not depreciate property values in the immediate area. **Mr. Forchelli** also presented an economic forecast

that projected the growth of the cemetery's permanent maintenance fund if the application were to be approved.

Andrea Tsoukalas Curto obtained variances from the Town of North Hempstead Board of Zoning & Appeals as well as site plan approval from the North Hempstead Town Board to redevelop the premises with a 174,000 square foot Toyota car dealership in Westbury.

Andrea Tsoukalas Curto obtained approvals from the Town of North Hempstead Board of Zoning & Appeals for a new café at the Max Mara retail store at the Americana Manhasset shopping center.



TRUSTS & ESTATES

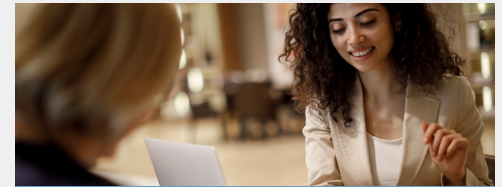
Robert H. Groman, Lorraine S. Boss, and **Stephanie M. Alberts** successfully implemented an estate plan for a client which provided for the disposition of shares in an S Corporation into an electing small business trust (ESBT). This strategy not only preserved the entity's S corporation status but also provided flexibility and tax benefits to the beneficiaries.

Robert H. Groman, Lorraine S. Boss, and **Stephanie M. Alberts** crafted an estate plan for a client utilizing transfer on death (TOD) designations to streamline the transfer of corporate interests upon the death of the client.

Court-appointed attorney, **Cheryl L. Katz**, with the support of **Nicholas F. Bekker**, successfully settled a contested trustee removal

proceeding which not only resulted in the issuance of a general release favoring her ward, but also vacated all money judgments rendered against him from his prior divorce proceeding.

Cheryl L. Katz and **Jonathan P. Weiss** successfully settled an almost five-year long contested probate proceeding, which resulted in our client receiving nearly three times more funds than what was allotted to her under the purported will which she was contesting, in addition to our client securing significant non-probate funds which would have been clawed-back through an elective share proceeding but for the settlement achieved.



TAX CERTIORARI

Nicole S. Forchelli resolved a property tax matter for a Fortune-500 company relating to four properties in the same municipality in Upstate New York, obtaining a real estate tax benefit of approximately \$400,000 for our client.

Douglas W. Atkins represented a large multi-tenant office property on the Route 110 corridor and was able to secure the client a \$105,000 refund and a 20% future tax reduction.



CORPORATE AND M&A

Joseph V. Cuomo represented the seller of a tax services business.

Joseph V. Cuomo represented an investment fund in connection with several venture loans.

EVENTS & SPEAKING ENGAGEMENTS

FDT's Women's Initiative representatives **Myrna Cadet Osse**, **Carol Rizzo**, **Camila Morcos**, and **Judy L. Simoncic** attended The ReImagine Conference.

FDT was a Platinum Sponsor of the Association for a Better Long Island (ABLI)/Commercial Industrial Brokers Society (CIBS)'s 28th Annual Long Island Real Estate Dinner. **Laureen Harris**, **Donald F. Leistman**, **Daniel P. Deegan**, **John V. Terrana**, **Judy L. Simoncic**, **William F. Bonesso**, **Andrea Tsoukalas Curto**, **Kathleen Deegan Dickson**, **Brian R. Sahn**, **Douglas W. Atkins**, **Nicole S. Forchelli**, and **Brian W. Kennedy** attended.



FDT was a Bronze Sponsor of Vision Long Island's Smart Growth Awards. **Judy L. Simoncic**, **Kathy Deegan Dickson**, **Andrea Tsoukalas Curto**, and **Daniel S. Dornfeld** attended. **Ms. Simoncic** is a member of Vision Long Island's Board of Directors.

FDT was the Awards Sponsor of LIBN's Real Estate, Architecture & Engineering Awards. **Judy L. Simoncic**, **John P. Gordon**, **Daniel P. Deegan**, **Robert L. Renda**, **Keith J. Frank**, **Jason M. Penighetti**, **Adam L. Browser**, **Douglas W. Atkins**, **John V. Terrana**, **Mary E. Mongioi**, **Bret L. McCabe**, and **Julia J. Lee** attended.



Michael A. Berger attended the Nassau Lawyers' Association of Long Island, Inc.'s Summer Barbeque. **Mr. Berger** is the First Vice President of the Association.

Cheryl L. Katz lectured at the Hofstra Law School "Edge Ahead" Pre-Law program.

FDT hosted the USA 500 Club, LLC's breakfast meeting. **Rachel L. Partain** and **Keith J. Frank** are members.

Joseph V. Cuomo and **Cheryl L. Katz** presented to FDT summer law clerks on Negotiation.



Brian R. Sahn attended the U.S. Green Building Council's 17th Annual Building Green Gala. **Mr. Sahn** is a Board member of the U.S. Green Building Council.

Cheryl L. Katz, **Gregory S. Lisi**, **Robert L. Renda**, and **Adam L. Browser** attended a luncheon at Nassau County Bar Association for Committee Chairs and Co-Chairs.

Mary E. Mongioi attended and presented at VetPartners' Mid-Year Conference in Washington, DC.

Kathleen Deegan Dickson attended the grand opening of the Alzheimer's Foundation of America's new Long Island Education and Resource Center.



FDT was a sponsor of The Feast of St. Rocco - "The Best Feast in the East."

Stephanie M. Alberts hosted a networking event with Citrin Cooperman. **Alexander Kerzhner**, **Cheryl L. Katz**, **Daniel P. Deegan**, **Elbert F. Nasis**, **Julia J. Lee**, **Rachel L. Partain**, **Jonathan P. Weiss**, **Mary E. Mongioi**, and **Robert H. Groman** attended.

Gerard R. Luckman, **Gabriella E. Botticelli**, and **Michael S. Amato** attended the Turnaround Management Association (TMA) Summer Social on the Sound Event. **Mr. Luckman** is a member on the TMA Board.

Judy L. Simoncic was interviewed by Chambers & Partners, a legal research company that ranks and profiles leading lawyers and law firms worldwide, in connection with their Chambers Spotlight 2026 Guide.

FDT participated in the CBIZ Workplace Challenge.



FDT's Long Island General Counsel Network (LIGCN) hosted an End of Summer Networking Dinner. **Joseph V. Cuomo** and **Lisa M. Casa** co-chair this initiative.

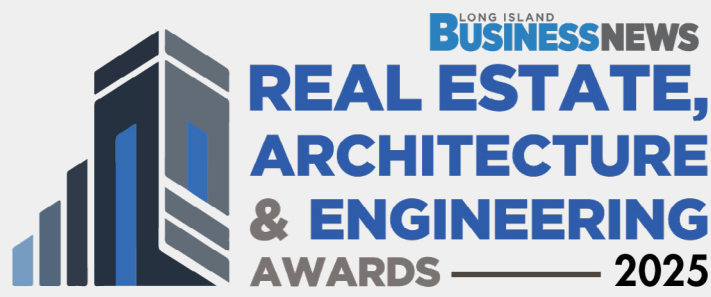
Stephanie M. Alberts presented at the Alzheimer's Foundation of America's conference on estate planning basics.

FDT's Women's Initiative hosted an End of Summer Social at Cena081.

Gregory S. Lisi, **Daniel P. Deegan**, **Judy L. Simoncic**, **Andrew E. Curto**, **James C. Ricca**, **Daniel S. Dornfeld**, **Joseph V. Cuomo**, **Joseph P. Asselta**, **Elbert F. Nasis**, **Gerard R. Luckman**, **Lisa M. Casa**, **Frank W. Brennan**, **Alexander Leong**, **Michael A. Berger**, **Keith J. Frank**, **Bret L. McCabe**, **Adam L. Browser**, and **Donald F. Leistman** attended the NCBA We Care Golf & Tennis Classic. **Mr. Lisi** was an honoree.



FDT is proud to be recognized at Long Island Business News' 2025 Real Estate, Architecture & Engineering Awards



Top Renovation/Reuse/Redevelopment Project
Nassau Logistics Center, Hicksville



DANIEL P. DEEGAN



JUDY L. SIMONCIC



JOHN P. GORDON

Rising Star
Construction



BRET L. MCCABE

Top Renovation/Reuse/Redevelopment Project
Tweezerman International, Port Washington



DANIEL P. DEEGAN



JOHN P. GORDON

Top Property Tax Assessment Firm
Forchelli Deegan Terrana LLP



Gregory S. Lisi was honored at the Nassau County Bar Association We Care Golf & Tennis Classic.

Mr. Lisi is the past President of the NCBA, where he is currently a member of the Board of Directors, is a past Chair of the Labor & Employment Law Committee, and is a member of the Commercial Litigation and Federal Courts Committees.

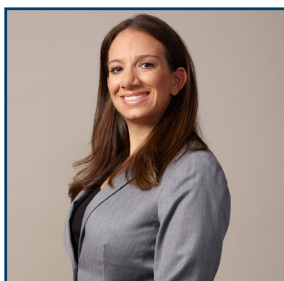


Gregory S. Lisi, Daniel P. Deegan, Judy L. Simonick, Andrew E. Curto, James C. Ricca, Daniel S. Dornfeld, Joseph V. Cuomo, Joseph P. Asselta, Elbert F. Nasis, Gerard R. Luckman, Lisa M. Casa, Frank W. Brennan, Alexander Leong, Michael A. Berger, Keith J. Frank, Bret L. McCabe, Adam L. Browser, and Donald F. Leistman attended.

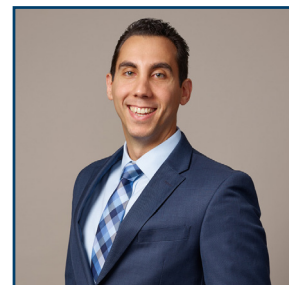
FDT CONGRATULATES THE FOLLOWING ATTORNEYS ON THEIR NASSAU COUNTY BAR ASSOCIATION COMMITTEE APPOINTMENTS



Cheryl L. Katz was appointed Co-Chair of the Surrogate's Court Estates and Trusts Committee. She will serve a two-year term.



Lisa M. Casa was appointed Chair of the Labor and Employment Law Committee. She will serve a two-year term.



Robert L. Renda is serving the second year of his two-year term as Chair of the Condemnation Law and Tax Certiorari Committee.

APPOINTMENTS CONTINUED

Michael A. Berger was appointed First Vice President of Nassau Lawyers' Association of Long Island, Inc. He is also a member of the Association's Board of Directors.

MICHAEL A. BERGER



LONG ISLAND BUSINESS NEWS "INFLUENCERS"

MARY E. MONGIOI

Influencers – Most Dynamic Women Leaders



Mary E. Mongioi was honored in Long Island Business News in the "Influencers – Most Dynamic Women Leaders" section.

JAMES C. RICCA

Influencers – Influencers in Law



James C. Ricca was honored in Long Island Business News in the "Influencers – Influencers in Law" section.

HONORING A LEGACY OF SERVICE: PORTRAIT UNVEILING FOR JUSTICE JACK LIBERT



Forchelli Deegan Terrana LLP was proud to be represented by **Jeffrey D. Forchelli, Daniel P. Deegan, and Gregory S. Lisi** at the portrait unveiling ceremony and reception for the Honorable Jack Libert, retired Nassau Supreme Court Justice (2016 – 2021).

Justice Libert was honored with the unveiling of his portrait in the ceremonial courtroom of the Supreme Court building in Mineola, NY. The event was attended by colleagues, family, and friends, to celebrate Justice Libert's decades of distinguished service to the bench, the Bar, and the community.

Justice Libert's professional journey has strong ties to private practice. He became a member of FDT in 1984 – then known as D'Amato Forchelli Libert Schwartz & Mineo – in Garden City, NY. He left private practice in 1992 to pursue government service, returning to the Firm in 2010. During this time, he focused on zoning and land use, municipal law, and complex real estate transactions, offering clients the benefit of his vast knowledge of both law and local government until 2015, when he was elected to the Supreme Court.

PRACTICE GROUP HIGHLIGHT: LAND USE & ZONING

Since FDT's formation over 40 years ago, the Firm has participated in some of the largest and most complex land use and zoning projects on Long Island and in the greater metropolitan area. Our attorneys have successfully represented homeowners, small businesses, major developers, national corporations, organizations, associations, and municipalities in every aspect of land use and zoning—including applications for zone changes, subdivisions, site plans, special permits, variances, architectural review, environmental impact statements, and all types of zoning litigation.

The Firm has secured approvals for a number of major corporations and developers, including: Northrop Grumman Corporation, Altice USA, Lowe's Home Centers, Roosevelt Raceway Properties, the Westbury Drive-In, Friends Academy, Adelphi University, St. Francis Hospital, NXTech, Diocese of Rockville Centre, Long Island Home, Brookfield Properties, Conifer Housing Development, Georgica Green Ventures, Prologis, NYU Langone, Mattone Investors, Bessemer Trust, Equinor, Regency Centers, Urban Edge, and the United Way of Long Island.

Practice Group Co-Chairs

JEFFREY D. FORCHELLI

Chairman of the Firm and Co-Managing Partner



KATHLEEN DEEGAN DICKSON

