

NOTEWORTHY

The lawyers of WJ&L remain busy in both professional and civic pursuits. Here are some highlights:

Far from the office, Partner, **Jim Delia**, returned to Haiti this summer...this time for two weeks...bringing along Associate, **Andrew Kohut**, for a week as part of the Ridgewood YMCA's partnership with the YMCA D'Haiti. **Jim** and **Andrew** served as coaches, **Jim** running the whole program. Their willingness to give up their time, and talents, for a bunch of really deserving young men, and a few women, made us all proud. Take a few minutes to read **Jim Delia's** article in this issue of Legal Update about his experience. **Jim** also signed for another semester as an Adjunct Professor at Ramapo College, teaching Business Law. **Andrew** has recently gotten involved in the Children's Therapy Center in Fair Lawn.

Partner, **Tom Wells**, who heads up the Ridgewood YMCA World Service Committee and godfathered the Haiti partnership many years ago, returned to Haiti twice this year; once to open a new YMCA and libraries underwritten by the Wells Mountain Foundation, and the second time to celebrate with **Jim**, the final tournament and award ceremony of the soccer program. **Tom** also reports that the Wells Mountain Foundation, with support from many of those reading this newsletter, and others, achieved a milestone that in this school year they will have 31 WMF Scholars receiving scholarships from Haiti, Ghana, Senegal, Zimbabwe, Uganda, Kenya, Columbia, Macedonia and Peru.

Also on the civic front, but much closer to home, Partner, **Stuart Liebman**, was our first office volunteer in the Meals on Wheels program run by his Paramus Rotary Club. When the Paramus Sunrise Rotary Club joined the effort, Partner, **Tom Wells**, who is a member of this new Rotary Club, solicited more help and our regular Meals on Wheels volunteers now include, not just **Tom** and **Stuart**, but Partner, **AnnMarie Palermo-Smits**; "Of Counsel," **Lisa Aljian**; Associate, **Nicole Cleenput**; Bookkeeper, **Rhonda**; and TT&E Secretary, **Doreen**. A few other staff people have recently signed up to be substitutes. An hour and a half of delivering meals a few times a month, produces some wonderful smiles and "thank yous." **Stuart** also volunteers at Eva's Village in Paterson

and continues as President of Arts Power. Partner, **Jim Jaworski**, remains active in Bergen Highlands Rotary and serves as a Director of West Bergen Mental Healthcare.

On the professional front "Of Counsel," **Lisa Aljian** and Associate, **Jill Rosenfeld**, continue to be active in the Hudson-Bergen Inns of Court for Transactional Counsel. **Lisa** is the Program Coordinator for the Inns of Court and **Jill** reports that she recently made presentations on minority Shareholder Oppression and Joint Ventures. **Jill** is also the Co-Chair of the Ad Journal Committee for the Paramus Education Foundation for its annual "Dream Awards" Gala.

Partner, **Darrell Felsenstein**, continues as a Trustee for the Bergen County Bar Association, and is now entering his second year as the Vice President of the Glen Rock Baseball Association, where he also serves as the head of the Travel Baseball Program.

Partner, **AnnMarie Palermo-Smits**, has been busy making presentations on Estate Planning; at the National Business Institute in June, TD Bank in Ramsey in July, and First Bank in Morgansville in August. **Lisa Aljian** was a presenter at the Institute of the "New Jersey Organization and Sale of Small Businesses" for the New Jersey Institute of Continuing Education. **Stuart Liebman** remains Chair of the annual Bar Association training for local board members.

On the Municipal front, Partner, **Stuart Liebman**, continues to be attorney for the Glen Rock Planning Board, "Of Counsel,"

Lisa Aljian, as attorney for the River Edge Board of Adjustment, and Partner, **Ken Porro**, for the Lyndhurst Board of Education where he has recently addressed some interesting shared services issues with local, County, and State agencies as well as addressing Teacher/Administrators negotiations in an extremely difficult economic climate. **Tom Wells** serves on the other side of the table in Bristol, Vermont, where he continues as Chair for the local Planning Commission. **Tom** reports it is a tough job, since he has to report to Bristol's Mayor, who this year (up there they call it Chairperson of the Selectboard) is his wife, Carol. Sounds a little like Mayberry! **Tom** also recently joined the Advisory Board of the Bergen Community College Non-Profit Institute for Philanthropy and Leadership and was a speaker at it's recent symposium.

Perhaps our biggest out of the office recent accomplishment is by our newest attorney, **Sylvia Hall**, who joined the firm in January. **Sylvia** left at the beginning of September for maternity leave, and she and her husband, Paul, welcomed new daughter Adelle September 4th. Mother and daughter are doing well. Many of you know our office has two "Jims". We also have a "Sylvia" and a "Sylvianne." **Sylvianne**, known to many of you as Stuart Liebman's secretary, also was out on maternity leave this year, now back in the office and doing double-duty, taking care of now 4 month old, Jackson, as well as Stuart.

Here is your copy of Legal Update from:



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Legal Update



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New Jersey Stimulus For Development

By: James E. Jaworski, Esq. &
Andrew S. Kohut, Esq.

Just last summer, the statewide Nonresidential Development Fee Act was enacted on July 17, 2008. The Act pre-empted any municipal affordable housing or "COAH" fee ordinance and mandated that any nonresidential development be assessed a fee equaling 2.5% of the equalized assessed value of the improvements and land of the new development (the "2.5% Fee"). The timing could not have been worse, considering the direction of the overall economy and development in particular.

Recognizing the chilling effect this 2.5% Fee had on development, on July 27, 2009, Governor Corzine signed the "New Jersey Stimulus Act of 2009" (the "Stimulus Act"). The Stimulus Act seeks to fuel nonresidential development by exempting certain development from the 2.5% Fee, specifically nonresidential property in which a site plan has received preliminary approval or final approval prior to July 10, 2010, as long as a permit for the construction is issued from the local enforcing agency prior to January 1, 2013.

While there are other esoteric provisions that create exceptions, certainly, this provision

will have the greatest impact on our development clients. Hopefully, it will also renew interest in nonresidential development in the State and, ultimately be a key to the success of the Stimulus Act. By expanding the exemption to development approved prior to July 10, 2010, the State is hoping that an influx of development will occur immediately and developers will seek to begin construction instead of delaying already approved projects due to the economic climate.

But, the Stimulus Act states exemptions do not apply to a COAH contribution that a developer "made or committed itself to make prior to the July 17, 2008". Thus, municipal COAH ordinances in effect prior to the imposition of the 2.5% Fee remained in tact.

Reimbursement of Past Fees

Another key component of the Stimulus Act is the provision for reimbursement of the 2.5% Fee, or a portion thereof, for any developer who has previously paid a financial contribution to a municipality. The key date in the manner of which the Stimulus Act calculates the reimbursement is July 17, 2008. The reimbursement of the

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Estate Planning Should Be On Your Radar, Even During A Recession

By: AnnMarie Palermo-Smits, Esq.

As many of you know from past Legal Update articles, it is important to plan for your financial future. The recession which has followed us into 2009 continues to put fear into the stock market, real estate market and, most of all, each of us individually. What does the future hold for us, our children and grandchildren? No one can say at this point. However, you can begin to take control of your financial future by planning appropriately.

Each individual should review his or her assets and family situation and put a Will, Power of Attorney and Health Care Directive (Living Will) in place. Basic estate planning documents should take advantage of the maximum tax credits afforded to individuals for estate (unified credit) and generation-skipping transfer tax planning (GST exemption). Using these credits minimizes the amount of tax that must be paid to the Internal Revenue

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Property Tax Assessments: Time To Take A Look!

By: Kenneth A. Porro, Esq.

The focus of this Article is to assist the reader in determining whether or not to file a municipal real estate tax appeal. Unquestionably, municipal real estate tax obligations have been steadily increasing to a point where these property assets are more aptly described as a liability.

Starting Point

The starting point is a simple question: What is the value of your real property that a willing buyer and seller would have paid as of "October 1" of the pre-tax year in question? For example, if a particular property had a "fair market value" of One Million (\$1,000,000) Dollars, as of October 1, 2009, and your 2010 municipal tax assessment value is Two Million (\$2,000,000) Dollars, then, on its face, you have grounds to challenge your assessment.

Fair Market Value

New Jersey Courts have defined "fair market value" as the price that the property would command if exposed for sale in an open market, where both the buyer and seller are knowledgeable, and neither are unduly forced to act.

Fair market value is determined by one of three methods: the cost approach, the market/comparable sales approach, and/or the income approach. In general, income producing properties such as shopping center/malls and apartment complexes, are valued by way of the income approach. Residential properties are generally assessed by way of the market comparable sales approach (the price of similar type homes sold in the area). The cost approach is less frequently used and, candidly, is only applicable if the property in question commands some type of unique construction characteristics.

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COAH Fees will be calculated as follows:

1. Any nonresidential property in which a site plan has received preliminary or final approval prior to July 17, 2008 and was subject to a COAH fee will be entitled to a reimbursement of the difference between monies committed prior to July 17, 2008 and the 2.5% Fee.
2. A developer of a nonresidential project that paid the 2.5% Fee subsequent to July 17, 2008 will be entitled to a full refund of those monies, with very limited exceptions.

To be clear, understand that this new law does not include a full reimbursement of the 2.5% Fee unless the entire 2.5% Fee was paid after July 17, 2008. If, for example, the developer paid, or committed to pay (either

through a Resolution of Approval or more likely an executed Developer's Agreement), a 2.0% Fee prior to July 17, 2008 and subsequently paid an additional 0.5% in accordance with the 2.5% Fee law, only a reimbursement of that subsequent 0.5% would be in order. Furthermore, the language of the Stimulus Act seems to imply that a developer is still responsible to make a payment committed to prior to July 17, 2008, even if that payment has not been made yet. A client who committed to pay the 2.5% Fee after July 17, 2008, but has not made a payment, will not be responsible for that payment if the proposed development is completed in accordance with the Stimulus Act.

In order to receive a reimbursement of this fee, a written claim must be filed with the entity that received the fee with a copy to the New Jersey Division of Revenue within

120 days of the effective date of this Act. We understand the last date to file such a claim will be November 30, 2009. The municipality must repay the fee within 30 days of receipt of the request under the Stimulus Act. Municipalities may be reimbursed through the New Jersey Affordable Housing Trust Fund.

We will keep you apprised of any further developments in this regard. Feel free to call with specific inquiries.

James E. Jaworski is a Senior Partner at WJ&L. He also heads up our Real Estate Department and actively practices in Land Use and Development areas.

Andrew S. Kohut is an Associate at WJ&L who is active in the Land Use and Real Estate areas of our practice.

At Will Employment

By: Darrell M. Felsenstein, Esq.

With unemployment rates at their highest levels in a quarter of a century, one hot button topic in today's economic climate is job security. Most employees do not have written employment contracts, which provide for a defined term of employment. Instead, most employees are considered to be "at will." An "at will" employee can be discharged for any reason, whether there be cause or not. The law does, however, afford "at will" employees some specific areas of protection, such as the New Jersey Law Against Discrimination (LAD), the Conscientious Employee Protection Act (CEPA) and the Age Discrimination Employment Act (ADEA) and that the termination not violate the public policy, such as, but not limited to, compliance or adherence with a recognized code of ethics.

An area that has led to much litigation is where an employment manual or handbook contains, what can be interpreted to be, an implied promise that termination be only for cause. In order for an employer to avoid creating a contract, where it does not intend one in this scenario, is that there be a "clear and prominent disclaimer within the handbook." The key consideration is whether the expectation of the employee after reviewing the manual, is considered reasonable. As typical, with the word

"reasonable," there is no hard or fast rule as to its meaning. Courts have found that there are various factors which will assist in determining whether a manual provision creates such a contract. Thus, for the employer, contract language should not appear within the manual and there should be clear "at will" language used, so the employer can assure that the manual does not alter the intent of that employee to be at will. Thus, a disclaimer must appear within the manual clearly and prominently. Of course, courts have had to decide the issue of the clarity and prominence of these disclaimers. Again, there is no one way to satisfy these requirements, however, the use of bold letters, capital letters, color, etc. can be very important.

It is also very important that in an "at will" setting, employers have the manual and handbook reviewed by counsel to assure that they are not creating a contract where they do not intend to have one. A review of the handbook, by counsel, should take place on a regular basis to ensure that, as a whole, it continues to stay up to date in this increasingly challenging economy.

Darrell M. Felsenstein is a Partner at WJ&L and serves as the Chairman of our Litigation Department.

NJ Towns Off The Hook For Environmental Contamination

In a case coming out of Montville Township, New Jersey, a U.S. District Court Judge has ruled that Montville has no liability to fourteen families who bought homes over 10 years ago, and discovered elevated levels of dangerous farming chemicals on their properties several years after the purchases.

The land where their homes were built was used as peach and apple orchards previously. The chemicals were used in connection with the farming operation. The judge found that a Municipality does not have a duty of care to such property owners.

The case does not mean that those that actually caused the pollution are not responsible. It does mean the Municipalities are not.

- Stuart D. Liebman

Estate Planning Should Be On Your Radar, Even During A Recession

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Service, or state taxing authorities, at death. Thus, the maximum amount of assets will pass to your heirs. This type of planning can also be completed during an individual's lifetime. Through carefully drafted estate planning documents, assets can be transitioned during life or at death to your heirs with the minimum imposition of estate, gift and generation-skipping transfer taxes.

The unified credit shields property from tax, regardless of to whom such property passes. The amount shielded by the unified credit is known as the "applicable exclusion amount." For 2009, the applicable exclusion amount is \$3,500,000. The estate tax is repealed in 2010. Unfortunately, the applicable exclusion amount sunsets back to \$1,000,000 in 2011. It is advantageous for property to pass tax free as part of the applicable exclusion because the applicable exclusion escapes tax at death. The GST exemption is currently \$3,500,000 and permits property to pass generation to generation tax free. However, due to the impending elimination of the estate tax, we believe that the estate tax laws will be changed in short order. However, there is no certain change proposed at this time.

Notwithstanding the possible changes, we believe that the estate tax will remain both for Federal and for State estate tax purposes. Therefore, there is still a need to address the estate tax in your lifetime planning and in the documents which take effect at death. Due to the depressed state of our economy and the low interest rates set by the government, currently there are very effective lifetime planning tools that we recommend and use for our clients:

Gifting: Annual exclusion gifting is the easiest way to transfer assets to your children, grandchildren and great-grandchildren tax free. There is no reporting requirement on these gifts. These gifts will reduce your estate for estate tax purposes and all growth on the assets will be out of your estate. The following outlines what qualifies for annual exclusion gifts: The amount you can give to each donee each year is \$13,000 per donee

(\$26,000 for each donee from a married couple). This amount is indexed for inflation. You can also make payments directly to educational institutions and medical providers for educational expenses and medical expenses for your family. All these gifts are tax free and do not need to be reported on a gift tax return. You can also gift up to \$1,000,000.00 during your lifetime, in excess of annual exclusion gifts. These gifts must be reported on a gift tax return, but no gift tax is payable if the total of the taxable gifts does not exceed \$1,000,000. We have always been believers of using the gift tax applicable exclusion amount (\$1,000,000) during your lifetime in circumstances where appropriate. The advantage is you give away the appreciation on the gifted amount free of transfer tax. Leveraging a gift is the best way to make the most of annual exclusion gifting.

Irrevocable Life Insurance Trust: The proceeds of an insurance policy can be completely protected from estate taxes by putting the policy into an Irrevocable Life Insurance Trust. The grantor of such a trust must survive for three (3) years from the transfer of an existing life insurance policy into the Trust, for the proceeds to become shielded from estate tax. Any policy purchased by the Trust is immediately protected from estate tax. There are certain requirements in the administration of such a trust; however, the planning technique is very effective in saving estate taxes.

Qualified Personal Residence Trusts (QPRT): A QPRT is a trust which reserves to the grantor the right to occupy a personal residence transferred to the trust for a term of years. The gift tax value of the transfer is only a fraction of the property's true value because of the retention by the grantor of the right to occupy the property for a set term and the risk that the grantor will die during the term of the trust term. At the end of the trust term the property passes to designated beneficiaries, either outright or in trust for the remainder beneficiaries. The grantor may rent the property from the beneficiaries or the trust (thus removing the value of the

rental income from estate tax). This technique works well when there is a piece of property that will remain in the family for some time.

Grantor Reported Annuity Trust (GRAT): The placing of assets in trust for a limited term with a guaranteed annual annuity payable to the grantor provides valuation discounts. It is well-suited for appreciating assets. The GRAT works exceptionally well with assets that are valued at a discount. This is a good time to consider a GRAT because interest rates are low. (The 7520 rate for September 2009 is 3.4%; this is the rate used to value the remainder gift in the trust.) It is not necessary for the remainder interest in the GRAT to pass outright to the remainder beneficiaries at the end of the term. The remainder interest may instead pass to a trust for the benefit of the remainder beneficiaries. A GRAT will work well where the anticipated appreciation of the GRAT assets during the GRAT term is likely to be greater than the 7520 rate and where the income generated by the GRAT assets is sufficient to pay the annuity amount to the grantor of the trust. Also, all of the GRAT income is taxable to the grantor of the trust. This provides a "tax free" growth of the assets for the remainder beneficiaries.

No matter what you decide to consider in connection with your estate planning, some planning is better than no planning at all. Even if you decide to put "just" the basic documents in place, you are ahead of those who did not consider planning at all. In the end, you save your hard-earned money for your children, grandchildren and more remote generations!

AnnMarie Palermo-Smiths is a Partner at WJ&L. AnnMarie serves as the Chairperson of the Tax, Trusts and Estates Department. Her estate practice is concentrated in the fields of tax and estate planning, trust and estate administration, elder law and fiduciary litigation.

E-mail Your Attorney

You can E-mail directly to your attorney's desktop computer. Address E-mail by using the first letter of the first name with the last name, followed by "wellslaw.com." Documents can be attached to your E-mail.

As an example: E-mail to Nicole Cleenput should be sent to "ncleenput@wellslaw.com."

Getting A Will Through Probate And Instituting The Administration Process

By: Nicole E. Cleenput, Esq.

When a loved one passes, the process of Estate Administration begins.

At the outset, it is necessary

to determine whether the

individual who passed,

known as the decedent,

executed a Last Will and

Testament prior to his or

her death. If the decedent

had a Will, he or she

should have named an

Executor in the Will to

manage the affairs of the Estate.

After ten days of the decedent's

death, the Executor can "probate" the Will.

The original Will, together with a certified

copy of the decedent's death certificate and

the prerequisite filing fee must be filed in the

Surrogate's Court of the county in which the

decedent resided at death. Note, however,

that if the Will is not "self-proving" (a Will

is "self-proving" if the testator and two

witnesses sign the Will in front of a Notary

Public or New Jersey attorney and the Will

contains special language as provided by

New Jersey Statute), one of the witnesses to

the execution of the Will would be required

to sign an affidavit verifying the authenticity

of the Will. Also, if a bond is not waived in

the Will, the Estate may be required to post

a bond in an amount set by the Surrogate

depending on the asset value of the Estate.

When the nominated Executor brings

the above-mentioned documents to the

Surrogate's Court, the nominated Executor

will be required to fill out a variety of forms

attesting to his or her qualifications to serve

as the Executor. After the submission of the

forms, the Surrogate will issue Letters

Testamentary acknowledging that the Will

was admitted to probate and that the

Executor has been appointed to act on

behalf of the Estate. The Executor should

obtain a number of copies of the Letters

Testamentary which will be presented to the

various financial institutions where the

decedent maintains assets.

No Will

If the decedent died without having

executed a Last Will and Testament, the

decedent's next of kin would apply to

the court to become appointed as the

Administrator of the decedent's estate. The

qualification process is similar to that of an

Executor, except that the next of kin

would only need to file the

decedent's death certificate

at the Surrogate's Court of

the county in which

the decedent resided at

death. However, unlike

most Executors appointed

under a Will, in most

cases, an Administrator

is required to obtain a

surety bond. Thereafter, the

Surrogate will issue Letters

of Administration (or a Short

Certificate) to the Administrator.

Once the Judgment for probate is signed

and Letters Testamentary or Letters of

Administration have been issued, the Will is

deemed "probated". Thereafter, within sixty

days from the date the Will was probated,

the fiduciary must notify all beneficiaries

and next of kin via certified mail with proof

of delivery, that the Will has been probated

and that a copy of the Will is available upon

request (or if no Will, that Administration

has been granted). This should generally be

done by certified mail, return receipt

requested. Any interested party to an Estate

can initiate an action contesting the validity

of the Will in one of two ways:

- (1) by filing a "caveat" (formal notice or warning given by a party to the court through the Surrogate's office, of a party's objection to court probating a Will) within ten days after the decedent's death or prior to the presentation of the Will to probate; or
- (2) initiating a court action by the filing of a Verified Complaint within four months after the Will has been probated (for a New Jersey resident, or within six months for an individual residing outside New Jersey at the time of probate).

As the New Jersey courts have seen an

increase in the Will contests, it is imperative

for the draftsperson of the Will to carefully

consider a client's personal and financial

information, evaluate a client's mental

capacity and carefully document the

client's wishes.

Managing the Estate

Following probate, the Executor/

Administrator may begin managing the

affairs of the Estate. The Executor/

Administrator will be responsible for the

following:

- (1) obtaining a Tax Identification Number from the IRS for the Estate and opening an Estate checking account;
- (2) collecting any and all assets in the decedent's name including life insurance proceeds;
- (3) managing the Estate assets;
- (4) keeping records of bills, checks, statements, etc.;
- (5) paying any and all Estate debts and expenses;
- (6) preparing and filing the applicable tax returns including a final personal income tax return (Form 1040), a New Jersey Transfer Inheritance Tax Return (Form IT-R), New Jersey and Federal Estate Tax Returns (Forms IT-Estate and 706, respectively) and income tax returns for the Estate and any trust(s) established under the Will (Form 1041) (if applicable);
- (7) preparing either an informal or formal accounting (informal is more common, as opposed to formal which requires a filing cost and is only necessary if required by the fiduciary or a beneficiary);
- (8) drafting and asking the beneficiaries to execute refunding bonds and releases and waivers of Executor's/Administrator's Formal accounting;
- (9) distributing the assets to the beneficiaries and filing the executed refunding bonds and releases with the Surrogate's Court.

Once all the refunding bonds and

releases and waivers have been filed, the

Estate can technically be closed.

Nicole E. Cleenput is an Associate at WJ&L and practices in the Tax, Trusts & Estates and Transactional areas

By: James J. Delia, Esq.

A visit to Haiti, the western hemisphere's

poorest country, will cause sensory overload:

the blistering heat; the sight of colorfully

decorated buses called "tap-taps"; the peddlers

walking along the sides of the streets carrying

wares on their heads, or stationed along the

road with candles glowing in the dark (there

were no streetlights); the smell of smoke

made by burning charcoal and burning

garbage; the incredible mountains; the

incessant sound of horns honking, and

colorful hand painted billboards seemingly

everywhere. All of that in just the first hour.

Some History

The Republic of Haiti is located in

the western one-third of the Island of

Hispaniola. It is about the size of the State of

Maryland and has a population of about nine

million. Only a short plane ride from the

States, the hunger, mortality and unemployment

rates are staggering. By way of comparison,

the U.S. unemployment rate in this historically

bad economy is under 10% while in Haiti, it

exceeds 65%.

This is a country, first sighted by

Columbus in December, 1492, exploited for

its gold and other natural resources. Within

50 years, the indigenous Amero-Indian

population, the Arawaks and Tainos, were

killed off by the cruelty of the Spaniards and

disease. With no work force to harvest the

land, African slaves were imported. (The

National Museum has depictions and relics

of the slave trade, which appear remarkably

similar to those of the U.S.). The Spaniards

ultimately ceded control to the French who

continued the exploitation until January,

1801 when the slave population won its war

of independence over Napoleon's France.

Since then, Haiti has suffered a series of

failed and oftentimes brutal leaderships.

This has left the country in a state of

disrepair in which its population fends for

itself to survive. There is a level of stability

at present, under the leadership of its

President Renee Preval and with the

involvement of United Nations peacekeeping

forces throughout the Country. Former

President Bill Clinton has been appointed as

Special Envoy by the U.N. to Haiti. It is

hoped that his high profile will bring

awareness to Haiti and its plight.

The YMCA d'Haiti

It is within this background and history

Open Your Eyes To Haiti

that the YMCA d'Haiti exists, with its

mission to bring education, moral awareness,

unity, responsibility and leadership to the

Haitian youth. The task was to conduct a two

week soccer camp, bringing select players

together from the three separate communi-

ties of Port-au-Prince, Kenscoff and Camp

Perrin and to create the first ever YMCA

d'Haiti national team. We arrived on July 11,

2009 in Port-au-Prince and reunited with our

host and CEO of the Haiti "Y", Gwenael

Apollon, a Canadian born Haitian immigrant

who returned to Haiti in spite of its dire

situation. It was his dream to have a national

team and his planning which brought it

all together.

After a night of leisure at his beautiful

home, we met up with the Kenscoff and

Port-au-Prince players and boarded two

buses, stuffed with people, soccer equipment,

food and mattresses and commenced our

120 mile southwest journey to Camp Perrin.

We were fortunate that our trip only took 7

hours and our bus only broke down once.

Along the way, we encountered the

breathtaking beauty of the place: soaring

mountains, lush tropic greenery and the

clear blue Caribbean Sea. We also

encountered its ugliness: trash lined roads,

shelled out buildings, abandoned vehicles,

denuded forests, and a true sense of poverty.

Camp Begins

We finally reached our destination and

settled in at a house belonging to Gwenael's

wife's family. Within a few hours, the house

was transformed into a sort of base camp for

the next week. A canopy stretched out over

the veranda and all of the mattresses laid

down to create a rather large outdoor

bedroom. Soccer balls were pumped full of

air. Breakfast, lunch and dinner were

cooked on an open charcoal pit. There was

no running water at the house. Instead, everyone

got their bathing and toilet water from a

large outdoor water tank until it ran empty

after a few days. Fortunately, there was a

nearby irrigation canal with cold flowing

water where the group bathed every day.

Camp ran from Monday through

Thursday with a long, four hour morning

session, a two hour lunch break followed by

two more hours of practice in the afternoon.

Water never tasted so good and only came

from a bottle. The local guys from Camp

Perrin walked to the field each day. The rest

took a daily, bumpy bus ride. This was an

intense week of conditioning and practice.

By Thursday, the first effort at choosing an

"A" team was made. The final day in Camp

Perrin was tournament day. A local club

team was invited and three YMCA teams

played. It was a great success with no team

losing to the invited team and the "A" team

losing a close one to Camp Perrin YMCA.

Week Two

Week one was over and it was time to

return back through Port-au-Prince and then

back "up the hill" to the Town of Kenscoff.

This 140 mile trip, door to door, took twelve

hours. The bus broke down a few times and

had to be repaired by a mechanic. The bus

was repaired in an open market place with

thousands of people selling everything from

live chickens to coffins.

Unlike the first, blistering hot week in

Camp Perrin, it is cool and sometimes cold

in the Kenscoff mountains. The players

trained on a field which belonged to former

dictator, Baby Doc Duvalier. The field is at

an elevation of 8,000 feet and has spectacular

views of the surrounding mountains and

valleys. Next to the fields are the graffiti

ridden ruins of his home. After Duvalier's

forced departure, his property was vandalized,

gutted and looted. The Haitians call it

"Dechoukage" - meaning to destroy something

by taking its roots out.

Camp continued as it did the first week.

More meals to feed the "army", more bus

trips to practice and more time for everyone

to understand and accept each other. The

kids from the three towns were as foreign to

each other as the Americans were to all of

them. Along the way, they were lectured by

local leaders on environmental and moral

responsibility and on the law. They came out

of it all with a sense of pride, hope and

accomplishment.

The Tournament

Camp ended with another successful

tournament. The national team suited up in

their red and blue uniforms (donated by the

Ridgewood YMCA), representing the colors

of the Haitian National Flag and swept to

victory. That night, the players, coaches and

staff attended an awards ceremony and all

received medals. My partner, Tom Wells,

and Rick Claydon flew down for the

tournament and the ceremony representing

the Ridgewood YMCA World Service

Continued on page 9

It's Still The Economy, Stupid!

By: Thomas M. Wells, Esq.

Experts are telling us the recession is over, and it very likely is, at least by the numbers. Eight months ago, I predicted unemployment would reach ten-percent. Now, with just a couple tenths of a point to go, I am less sure, but still think it will go to about that number, and only then start to decrease....but very slowly. Customers are nervously coming back to retail stores, ...cash for clunkers sold some cars....interest rates remain low.....the real estate market is starting to find its bottom. Are happy days here again? For sure, not yet. However, a second great depression has been avoided (unless you are one of those who believe we could have a double-dip).

Disaster Avoided

If imminent disaster has been avoided, then the news now is the march back to prosperity is going to be a slow one indeed. Several reasons account for the likely slow recovery.

• First, re-employment is going to take a great deal of time. Part of this is for a good reason. American workers continue to be more and more productive, and thus are able to produce more goods and services with less people. This is good in the big picture, but certainly does not help the job numbers. Further, employers will be very slow to add the additional cost of more employees until they are sure the need for goods and services is immediately around the corner.

• The second big reason for the slow recovery is, most all of us “got scared.....good” this time. Actually, not a bad thing, either. It is hard to find any segment of the American economy, whether it be business or individuals, that was not “over-leveraged.” Businesses, of all shapes and sizes, including those big and small banks, with less capital and more risk than they should have had, and individuals buying

and enjoying all kinds of goods based on the increased value of their homes, tapped through endless cheap home equity loans, just plain borrowed too much money.

The resulting pull back is painful, but necessary. The good news is that most everyone is deleveraging some, putting more into our piggy banks and lowering our tolerance for debt. However, this is also the bad news, as less money lowers purchasing power for new goods and services. On the balance, I believe the lower tolerance for debt is good. We will just need to wait longer for the savings to increase and the spending to return.

Banks Not Lending

A cautionary note, is that most banks, whether it be those big “too big to fail” institutions that got all the help from the government, or the myriad of smaller community banks that so many of our clients and individuals deal with, are still not lending like they should be. Many financial institutions, not just those that got involved with sub-prime lending, and other esoteric financial products, but many community banks in high-growth markets, are still struggling with real estate and sometimes business loans that became “toxic” as a result in the precipitous drop in the economy.

The result was that these institutions had to worry about their own “balance sheets,” and thus, inevitably to begin hunting for deposits and new capital. Despite what advertising might say, these folks are not lending, at least not yet. An unhappy result of this is that, I have more than once in recent months, gone with a client looking for what would have been a very reasonable business loan, only to be sent home empty-handed by a financial institution that would have been a willing partner up until recently. We are capitalists here in the United States and in the end the economy needs capital to run, so this must be corrected, even if it

requires more government stimulus money to happen. This will not be particularly popular if it is needed.

The smaller community banks (what I call “the too many to fail”) still very likely will need some assistance. The alternative is Friday night bank closings every week for many months to come, an empty FDIC insurance fund, and banks that will not lend, thereby postponing the recovery. However, what goes with this help, must be that all financial institutions (not just banks, but also brokers and hedge funds, certainly investments banks) need long-promised regulation that will prevent greed overwhelming common sense again in the future. The government has more work to do here as well.

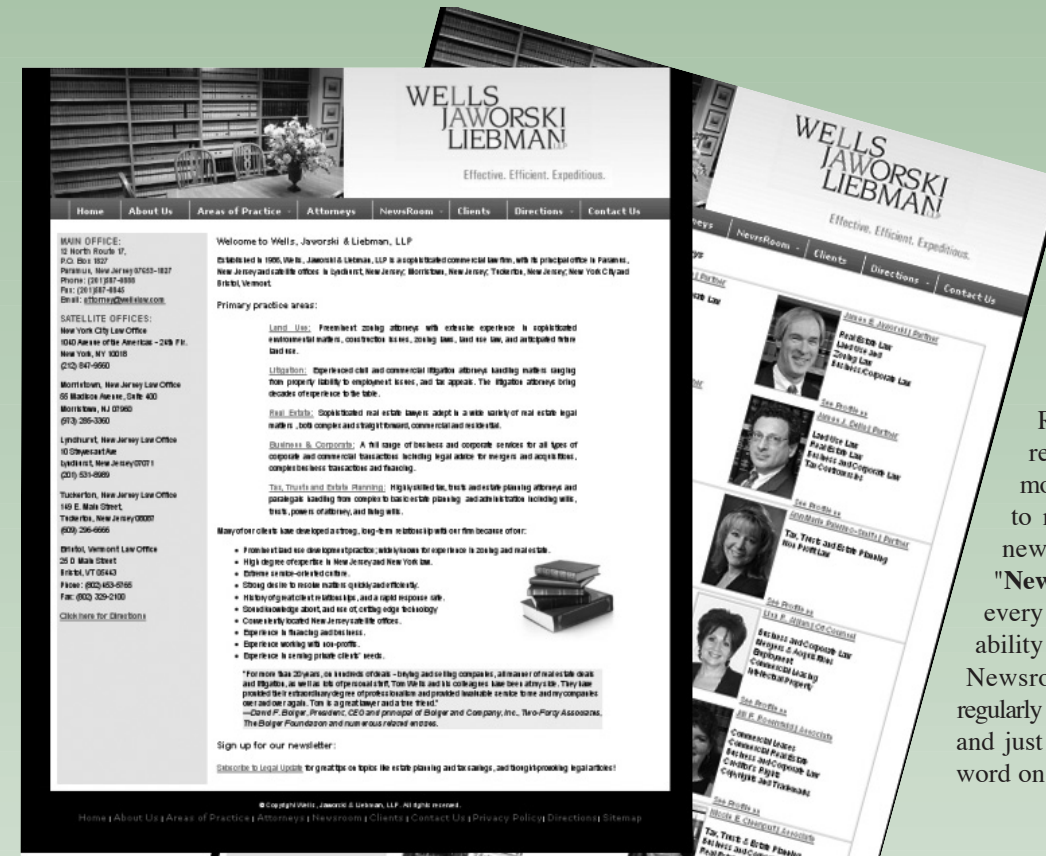
Patience is Key

The biggest thing we all need while this happens is patience. Something the American people are not famous for. Jobs will come back slowly, spending likewise. The government may even have to help some more-----as disturbing as that is. Our banks will not really start lending until they are no longer afraid of going out of business. Businesses need loans and capital to grow. Regular folks will not really start spending until jobs become more certain and futures more certain. Round and round it goes. We just need to make sure we circle up the mountain, not down.

Yes...the recession is over.....but all of the small businesses and individuals we represent will do well to remain cautious as the economy gets to a point where we can all just start putting one foot ahead of the other marching back up the hill.

Thomas M. Wells is the Senior Partner at WJ&L who works in both our New Jersey and Vermont offices. Among his areas of expertise are business, corporate, non-profit and banking law.

Visit Our website!



It is hard to believe that it has been almost 20 years since WJ&L was the first law firm in the state with a website. In those days, there were no pictures, graphics or logos---just black and white typed copy. Recently we launched our third reincarnation of the site, now modernized to make the website easier to navigate and more informative. A new feature is something we call “Newsroom” which includes this and every issue of Legal Update and the ability to access past articles. Also in Newsroom is a **blog** which will be regularly updated with important information and just things that we want to spread the word on.



It is not all doom and gloom and hard work. Administrative partners Stu Liebman, Tom Wells and Jim Jaworski apparently enjoying a lighter moment. “What’s the joke guys?”

When Social, Political And Legal Worlds Collide

By: Stuart D. Liebman, Esq.

Most of our readers know that our firm has a very strong commitment to civic matters. We represent numerous social service institutions and agencies, and various not-for-profit organizations. Many of our attorneys also volunteer our time to serve as officers and on boards of these agencies and institutions. Very often, the needs of these agencies and institutions cross over into one of our other areas of expertise, zoning and land use law.

Group homes, and other residential types of facilities for the developmentally disabled or others in need, have been the subject of local news and legal study lately.

Many of us can remember Greystone "psychiatric hospital" and other institutions for the developmentally disabled. Dark and dreary asylums as seen in movies, in television and, in real life. While these very large facilities served a social purpose, residential neighbors did not want these buildings or inhabitants near their homes. The phrase "not in my backyard" (NIMBY) is well known for such institutional uses.

Group Homes

Through advanced study for the treatment and care of the developmentally disabled, the concept of group homes arose. Better and more effective care and treatment for those who may be able to become part of the mainstream. However, to those who say NIMBY, this causes the spread of this undesirable use in residential neighborhoods. Instead of one large building and its occupants hidden away, the building is now broken down into many smaller units disbursed throughout residential communities.

Residential neighbors are not the only opponents. Local municipalities also worry because many of these facilities qualify for tax exemption, and thus do not pay local real estate taxes. The outcry of the voting

public and the loss of tax revenues, made group home facilities homeless step children in the land use process.

The New Jersey Legislature, and the New Jersey Courts, have acted swiftly and frequently to provide protection for these uses. In January of this year, a Bill was introduced in the New Jersey Assembly (A3625) which would close five of the State's seven developmental centers and send most of the residents into the community to group homes or independent living with support services. Proponents of the Bill claim positive cost benefits for the State, with statistics which show that community living costs less than half of the price of the developmental centers per resident. This is an enticing statistic when State budgets are in turmoil.

Inherently Beneficial

With State laws having been changed to recognize these facilities as "inherently beneficial uses", the stage would seem to be set for implementation of A3625. Inherently beneficial use is a term of art in land use and zoning law. It is a category of use that must be provided for and accommodated by local governments in zoning ordinances and through the grant of use variances. And specifically, inherently beneficial uses may not be excluded from within the municipal borders.

However, there is a new hurdle. In a recent New Jersey Tax Court decision, a State Tax Judge has ruled that a private not-for-profit company does not deserve tax exemptions on homes it owns and leases to mentally ill clients in several towns in Bergen County, New Jersey. Thus, we can see some of the economic impact of this social policy. How many dwellings are for

sale in your neighborhood? Perhaps some of them will become owned, converted and used for community shelters. If they no longer produce real property taxes, there is an added burden upon the remaining property owners who do pay real property taxes. In this particular case, more than one million dollars in property taxes were at stake for a period of several years for 35 homes owned by this private not-for-profit company. Under the facts and circumstances of this case, the Court did not find that the services provided in the residential units rose to the level to qualify for tax exemption.

In Saddle River, New Jersey, a local hospital intends to open a 20 bed residential hospice in a large residential building that was for sale. In 1998, the New Jersey Legislature changed the laws of the State to provide that community residences for the terminally ill are included in the category of land use that is inherently beneficial and protected by the State laws that promote and protect such uses.

The complexity of the laws which govern such basic and vital community services are perplexing to our clients, government officials, residential neighbors, and the families of those in need. We find this area of law to be as frustrating, and rewarding, as most other areas. We hope to continue our work in this area and to achieve the balance needed for affected families, agencies and towns.

Stuart D. Liebman is the Managing Partner at WJ&L and practices principally in the Real Estate & Land Use areas of our practice.

In a recent New Jersey Tax Court decision, a State Tax Judge has ruled that a private not-for-profit company does not deserve tax exemptions on homes it owns and leases to mentally ill clients in several towns in Bergen County, New Jersey.

Small Business Primer

By: Lisa Aljian, Esq.

Question:

What do "business lawyers" do?

Answer:

Here's the right question:

What do good business lawyers do?

And before we answer that:

What is a small business?

Small business is a relative term. A small business is the coffee shop around the corner, and it's also a company with fifty million dollars or more in annual revenues. Most small businesses are privately owned. That means they are not publicly traded (like on the NASDAQ or AMEX).

Good business lawyers are considered to be good for a reason. We do a lot more than just draft documents. We work to get the deal done, but still protect our clients' interest while giving them good service, for value. We document a deal, of course. We're there to get to the goal of closing or signing. Importantly, though, our job is also to help our clients see things clearly if their judgment may be clouded by excitement or anxiety.

Often, our relationships with our clients evolve, and we become their "general counsel". We are asked to give legal advice and "counsel". Lawyers have differing opinions on whether to render "business advice" and

how much we take a hands-off approach on a deal, but the way we see it, there is a reason we are called "counselors at law".

After practicing for awhile, we lawyers begin to get a "feel" for a deal. Yes, it's a "feeling" we get - a sense that something isn't right, or someone isn't being forthright, or, is just down right dishonest. If something doesn't feel right, it doesn't smell right, it doesn't look right, or if the other side is not acting honorably, we don't just sit there and say nothing. At least we at WJ&L don't. I'm not suggesting that lawyers want to "kill" a deal, though they are often accused of doing that, but the fact of the matter is, we see a lot of deals, good and bad. We know when something isn't right. And for sure, we know that the climate of the pre-"closing" negotiations most definitely pervades the relationship after the closing (or the signing). Many business transactions require the parties to work closely together once they sign a contract. Take this to the bank: If the other side is difficult, lazy, dishonest, unethical, or just rubs you the wrong way, don't expect that to change. This seems obvious, but it needs to be said. Too many people take on "partners" that they don't get along with. It's really the same as a marriage. If you are not compatible, what's the point?

And, for us, often times representing smaller clients can be even more challenging

than representing larger clients. Why? Because every client deserves a Cadillac, whether they can afford it or not. And the basic concepts and issues that arise are really essentially the same, regardless of the size of the deal. So, for us lawyers, the issues we face are substantially similar, whether our client is buying a small restaurant, or a multi-million dollar restaurant chain.

One final thought, at least for now. A good business lawyer doesn't fight the other side for every single item or issue. Sometimes, less experienced (or more arrogant) practitioners are insecure and afraid to "concede". Experienced, effective attorneys know when to "give", and when to negotiate and fight for something. Our job is to protect you, but we also have to get the deal done, right? If we spent time and money arguing about something that, at the end of the day, doesn't affect our client in any meaningful way, we have wasted time, money, and goodwill.

A good business lawyer does a lot more than paper a deal. A lot more.

Lisa R. Aljian is "Of Counsel" at WJ&L. She works actively in our Business & Corporate department and on Transactional matters.

Open Your Eyes To Haiti

Continued from page 5

Committee and the Wells Mountain Foundation that had underwritten the camp and the final night's ceremony. For practically everyone there, it was the first time they had been honored in such a way or in any way at all. I was able to deliver a speech in Creole. It was a very special night.

For two weeks, the players of the YMCA had an opportunity to remove themselves from their daily drudgery and despair. Instead, they got to share their own cultures and take in the camaraderie and

unity that seems to be in short supply. They came out of it with hope and good memories and importantly, an understanding of the YMCA's value in their lives. Gwenael continues to have ambitions to expand the YMCA's reach in Haiti and to continue the soccer program. Rumor is a lawyer from Paramus, and hopefully others will be there next July.

James J. Delia is a Partner at WJ&L and practices in our Land Use and Real Estate areas.

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Property Tax Assessments: Time To Take A Look!

Continued from page 1

Tax Appeal Process

A property owner who is dissatisfied with his/her property assessment can appeal that assessed value to the County Board of Taxation or directly to the State Tax Court, if the assessment is over \$750,000.

Burden Of Proof

The burden of proof is upon you, as the property owner, to prove that the municipal assessment is improper. What this means is that a property owner needs real factual evidence that his/her tax assessment is over assessed, not just one's gut feeling that you used to pay less real estate taxes in the past and now you are paying substantially more. The best way to determine if your municipal tax assessment is too high is to have a licensed real estate appraisal report prepared. The appraisal report is the proverbial sword from which you can use to cut down your over assessment. To challenge your municipal tax assessment without an appraisal report is risky, because a municipal tax assessment

has a presumption of correctness.

Grounds For Reductions

The New Jersey Courts have recognized certain property constraints as a basis for the reduction of municipal real estate tax assessment. Some of these are as follows: governmental restrictions; wetlands; environmental contamination; access difficulties; zoning; undersized lot; non-conforming lot; noise; loss of view; functional obsolescence; flooding; asbestos; the economic reality of decreasing property rents; and the list goes on.

Closing

In today's economic market, it is sound asset management to evaluate and make an informed decision as to whether your property portfolio is properly assessed. The reader should be aware, however, that a municipal tax appeal should only be filed after a proper review of one's current assessment. A municipality can file a counter-claim against your challenge which, in rare circumstances, could result in

an increase in your current assessment. The October 1 valuation date is already here. Therefore, it is time to look at those 2010 municipal real estate taxes! April 1, 2010 is your deadline for challenging your 2010 municipal tax assessment which is based upon your property values as of October 1st of the pre-tax year, i.e., October 1, 2009.

Our firm will conduct a no cost municipal tax assessment valuation for your property. In addition, once retained, our firm generally will handle the matter on a contingency fee basis, if the client so elects.

Kenneth A. Porro is a Partner at WJ&L and the Senior Litigator of our Litigation Department. He has been active in land use disputes involving tax appeals, environmental regulations, ocean front property rights, and general litigation disputes.

Joint Ventures

By: Jill F. Rosenfeld, Esq.

A joint venture is best described as an entity formed by two or more parties to undertake a particular project or series of related projects. Each party contributes something to the joint venture and most frequently both share in revenues, expenses and control of the business. Several well-known joint ventures include: MSNBC (Microsoft & NBC), Verizon Wireless (Verizon and Vodafone), Sony Ericsson and TriStar Pictures (Columbia Pictures, HBO and CBS). Some countries (China, India and Mexico) require foreign companies to form joint ventures with their local companies in order to conduct business in that country.

There are a number of reasons to enter into joint ventures, such as, building on a company's strengths, spreading costs and risks, obtaining a greater market share in a certain industry, creating new technologies and products and sharing a competitor's resources and skills. Joint ventures are popular in the high-tech pharmaceutical, oil

and gas industries.

The mutuality of a joint venture raises some unique issues. Unlike a merger or acquisition, joint ventures involve parties who will continue to be separate entities. Joint ventures frequently involve a two-way exchange of information, some of which may be confidential. Prior to any exchange of information, the parties often enter into detailed confidentiality agreements which cover issues related to who will be the gatekeeper of information at each company, what information will be exchanged, limitations on use of the information, permitted disclosures of the information, return of materials, and other protections should the joint venture not occur.

Some preliminary considerations to be made when considering entering into a joint venture include, antitrust issues, i.e., are there any required filings or notices to be made in the particular industry of the parties or the joint venture, choice of entity, i.e., will the joint venture entity be a partnership, corporation, limited liability

company, each of which have varying tax implications, deciding what each party will contribute to the joint venture and who will be responsible for day-to-day management.

Once the parties agree to enter into a joint venture, it is beneficial to have a written agreement which covers topics such as the scope and purpose of the joint venture, contributions from each party, how will the joint venture be managed, how will profits and losses be distributed, restrictions on transfers of interest to third parties, dissolution or buy-sell rights, defaults by either party, reporting and accounting procedures, how to resolve disputes, confidentiality and competition. Another important aspect of the joint venture is the business plan, which should be revised as the joint venture continues to address changes in the industry, development of new goals or any unforeseen issues which arise post-closing.

Jill F. Rosenfeld is an Associate at WJ&L and practices in our Business, Corporate and Transactional areas.

Communication Is Key!

By: Sylvia Hall, Esq.

During my short term at Wells, Jaworski & Liebman, LLP, I have learned that a good lawyer needs to be keenly attuned to our client's needs. We often spend hours with clients to determine their various goals and discuss the development of their cases.

With respect to litigation, during the course of the development of a case, it is often necessary to speak with a client about a new development or the necessity of discovery production. Thus, frequent client contact and meetings become imperative. New Jersey Rule of Professional Conduct (RPC) 1.4(b) requires that a lawyer keep a client "reasonably informed about the status of a matter and promptly comply with reasonable requests for information." In the Litigation Department, this means contacting a client regarding court dates and sudden

developments of a case.

In addition, section 1.4(c) states, "A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation", and RPC 1.2 states, "A lawyer shall abide by a client's decision concerning the scope and objectives of representation . . . and . . . shall consult with the client about the means to pursue them. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation."

When reading both sections 1.4 and 1.2 of the RPC, one may make an analogy to "informed consent" as it pertains to doctors and surgeons. Here, at WJ&L, we strive to inform clients of the benefits and pitfalls of a specific course of action and of possible outcomes according to strategies. It is as if the case is the patient, we are the surgeons

and the informed consent is given by a client. Through communication - phone calls, e-mails and meetings - we are confident that a client's consent is voluntary, informed and intelligent.

At WJ&L, we pride ourselves on teamwork, and that includes client participation. We also like it when clients are well informed because they provide useful dialogue and feedback. In litigation, they see what one may call "layman's nuisances", which allow us to see cases in multi-dimensional ways. Clients seem to appreciate that at WJ&L, we do not work in an isolated void but rather share ideas. Communication is key!

Sylvia Hall is an Associate at WJ&L and actively practices in our Litigation Department.



Sylvia Hall

Our Newest Associate

Sylvia Hall joins WJ&L's Litigation Department.

As we began the new year, WJ&L welcomed Sylvia Hall as an associate attorney in our Litigation Department. With five years of experience at another prominent Bergen County firm, Sylvia brought with her substantial experience in commercial litigation. One of her areas of interest

is in the area of Civil Rights and First Amendment law for businesses. Sylvia received certification from the New Jersey Supreme Court based upon her written submission regarding the violation of First Amendment rights of a business entity in Essex County. Sylvia also had the opportunity to serve as Board Attorney at various area Boards of Adjustment and Planning Boards. Litigation Department Chairperson Darrell Felsenstein said: "Sylvia is a welcome addition to our growing department bringing a strong work ethic, results oriented philosophy and enthusiasm." Sylvia is licensed to practice law in New Jersey as well as New York. She received her Juris Doctorate from the University of Pittsburgh. Prior to attending law school, Sylvia received her B.A. from Vassar College and M.A. from New York University. She is a member of the Bergen County Bar Association and is an active member of the Bergen County Y.M.C.A.

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