The Hot Seat is No Place to Be Alone: Top New Jersey Law Firms Can Help

COMPILED BY MILES Z. EPSTEIN
EDITOR, COMMERCE

WHETHER VIA MEDIATION, SETTLEMENT OR in court, many businesses find their reputations challenged, their bottom lines damaged and their futures uncertain. That's what makes good legal advice so important. In this special section, *COMMERCE* asks the managing partners of leading New Jersey law firms to discuss how they either helped a client avoid costly litigation or win a case though settlement or in court. The following firms/managing partners participated in our Fourth Annual Law Firm Managing Partners Roundtable:

Q. ***Can you please describe a success story where your firm helped a business client either avoid costly litigation or win in a case that was being brought by a competitor, an employee or a government agency?***


John R. Blasi, Esq., *Managing Partner, Lindabury, McCormick, Estabrook & Cooper*


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John Eagan, Esq., *Managing Partner, Norris McLaughlin & Marcus, P.A.*


Andrew J. Entwistle, Esq,, *Managing Partner, Entwistle & Cappucci LLP*


Jerry D. Goldstein, Esq., *Managing Partner, Goldstein, Vespi & Vazquez*


Martin W. Kafafian, Esq., *Managing Partner, Beattie Padovano LLC*


Richard Lambert, Esq., *Managing Partner, Dunn Lambert, L.L.C.*


David H. Nachman, Esq., *Managing Partner, Nachman & Associates*


Steve Pudell, Esq., *Managing Partner, Anderson Kill & Olick, P.C.*


David M. Repetto, Esq., *Co-Managing Partner, Harwood Lloyd, LLC*


David Schlossberg, Esq., *Managing Partner, Wolff & Samson*

BLASI: A North Jersey manufacturing company client of the firm was notified by the Environmental Protection Agency through a Compliance Order that its coating lines were being operated in violation of the requirements of the Clean Air Act and the applicable Title V operating permit. A penalty of approximately $400,000 was proposed for four counts each containing allegations of multiple violations. With the assistance of environmental associate Monica Perez, our environmental partner Gary F. Danis investigated the details of the alleged violations, reviewed the work of the client's air consultant in preparing the permit applications and advised the client as to compliance requirements. After a detailed technical review of the allegations and a settlement meeting with EPA technical personnel and counsel, they reached a settlement for a greatly reduced number of violations and a total penalty of $70,000. The client was further advised that its consultant and its carrier should be put on notice of a potential malpractice action. Lindabury was able to settle that claim (for the consultant) through negotiations with the insurance carrier. Potential penalties of $50,000 resulted in a net payment of only $20,000. The firm was able to achieve this outcome by combining the technical and engineering backgrounds of its environmental attorneys, its insurance law expertise and many years of general environmental law experience.

John R. Blasi

John R. Blasi, Esq., Managing Partner, Lindabury, McCormick, Estabrook & Cooper

CINO: Employers are increasingly contending with class-action litigation in the area of wage and hour law. In this type of litigation, an employer's minor error or lack of documentation can lead to disastrous results. The litigation is intense, time consuming and costly. The cost of discovery alone can be prohibitive. Employers often find themselves in a no-win situation. In one case, we obtained summary judgment without the need for protracted discovery by aggressively using timesheets employees had

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Richard J. Cino

Richard J. Cino, Esq., Managing Partner, Jackson Lewis LLP

previously completed to prove that their claims for back wages were meritless. While this case was limited to a few plaintiffs, approximately 70 other similar claims were pending with the New Jersey Department of Labor. In light of our successful result in the initial case, the remaining claims were subsequently dismissed. Employers are essentially obligated to prove themselves innocent when faced with employee claims. The case vividly illustrates that an employer must establish and follow its procedures and policies. The exposure here approached seven figures. However, with good management training, effective procedures and a willingness by our firm and client to abandon the normal routine in litigation and immediately move to a dispositive motion, our client saved hundreds of thousands of dollars.

Glenn A. Clark

Glenn A. Clark, Esq., Managing Partner, Riker Danzig

CLARK: *Johnson & Johnson and Cordis Corporation v. Invatec, Inc. et al.,* Docket No. MID-C-171-08: Riker Danzig represented Johnson & Johnson and Cordis Corporation in this case that involved six former sales representatives. After an intense investigation, which included a search of electronic data, the plaintiffs learned that Invatec, a direct competitor of Cordis, was using one of Cordis' sales representatives, who already secretly accepted a position with Invatec, to solicit other Cordis sales representatives to work for Invatec while he was still working for Cordis. In a matter of days, Riker Danzig coordinated and received eight certifications from Cordis' employees, including some of the solicited sales representatives who rejected Invatec's offers, and filed an application for a TRO to prevent the six former sales representatives from working at Invatec. The court granted the plaintiffs' application, finding that sufficient evidence existed to establish raiding, that the anticipated employments would violate the non-compete agreements that the six former sales representatives had executed, and that confidential information would be inevitably disclosed if the employment were permitted. Besides precluding employment, the court, among other things, restrained Invatec and the six former sales representatives from soliciting the plaintiffs' employees. The case then settled on terms very favorable to the plaintiffs.

Patrick C. Dunican, Jr.

Patrick C. Dunican, Jr., Esq., Chairman and Managing Director, Gibbons P.C.

DUNICAN: An economy like the current one brings a spike in employment litigation. With increased workforce restructurings, reductions in force, plant closings, and broader terminations, some employees attempt to tie their job losses to reasons unrelated to economic realities or poor performance. In times like these, employers should not be afraid to take cases to trial. A trial, when handled adeptly, can ultimately prove more cost effective than a settlement. At Gibbons, we encourage a trial strategy when we believe it makes the most short- and long-term business sense. We recently represented a company and two of its supervisors in a lawsuit brought under the New Jersey Law Against Discrimination. The plaintiff alleged discrimination and retaliation, claiming she was treated unfairly and ultimately discharged because of her race. The case proceeded to trial before a jury. At the close of the plaintiff's case, the court dismissed the retaliation claims outright; after a seven-day trial, the jury returned a verdict in favor of our clients on the remaining discrimination claims. The court also denied the plaintiff's motion for a new trial. The path to this very favorable outcome for our clients proved less expensive and disruptive than a settlement would have been.

John Eagan

John Eagan, Esq., Managing Partner, Norris McLaughlin & Marcus, P.A.

EAGAN: We have had measurable success with our Response to Electronic Discovery & Information (REDI) Group. Our REDI Group attorneys help clients on two levels: corporate compliance and litigation readiness. On the corporate compliance level, we help clients develop and implement a written, defensible electronic document management protocol. On the litigation readiness level, we actively address electronic discovery early in a lawsuit and in cooperation with our adversaries so as to avoid significant costs that will likely result from inaction. Contrary to popular belief, electronic discovery is not just about what to do after you've been sued. One example of our success in applying sound electronic discovery principles to both levels dealt with a client who found itself being brought into a lawsuit by way of a non-party subpoena seemingly every time someone sued a pharmaceutical company. Although the client was not the subject of these lawsuits, it cost the client

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tens of thousands of dollars to produce electronic documents responsive to these subpoenas. We worked with the client to incorporate a "fee shifting" provision in its service agreements whereby the client's customer agreed to reimburse the client in the event the client were compelled to respond to a subpoena.

Andrew J. Entwistle

Andrew J. Entwistle, Esq., Managing Partner, Entwistle & Cappucci LLP

ENTWISTLE: At Entwistle & Cappucci LLP (E&C), we place a premium on obtaining quick, business-oriented results for our clients. We are always mindful that in litigation it is easy to lose for winning, so we attempt to extract our clients from sticky situations as efficiently as possible. In one such case, E&C extricated banking clients from a consumer fraud class action before the case gained any traction. Given the nature of the case, our clients would have faced extraordinary litigation costs and business disruption. A customer at a car dealership sought to hold the banks responsible for the dealership's wrongdoing—specifically for charging excessive and unwarranted "documentary fees" in connection with the purchase of her car. Although she did not allege any independent wrongdoing against the banks, she claimed that they, as assignees of the sales contract, were answerable for the dealer's misrepresentations. Our investigation revealed that the plaintiff had overreached. Under the federal Truth in Lending Act (TILA), assignees of such contracts are liable only for mistakes evident on the face of those instruments. Moreover, TILA preempts state statutes that seek to expand that liability. In a pre-answer motion to dismiss, E&C demonstrated that TILA trumped the plaintiff's state law claims. The court agreed with our argument and dismissed the complaint.

Jerry D. Goldstein

Jerry D. Goldstein, Esq., Managing Partner, Goldstein, Vespi & Vazquez

GOLDSTEIN: I am a Cornell University certified arbitrator and mediator, and this was just the right expertise when a client ended up in a mediation to resolve a legal conflict. In this case, the damages to this successful nutritional supplement manufacturer and distributor put a stranglehold on the business. Quickly, the team at Goldstein, Vespi & Vazquez opened a dialogue with the two international vendors whose employees' malfeasance had created the multi-million dollar dispute. After an analysis of what lie ahead, the goal became to: (1) give the defendants an opportunity to mitigate; and (2) to keep the client in the business of its business and not wrapped up in costly litigation. Because the attorneys for all parties were professional and cooperative, Goldstein spearheaded a limited discovery process wherein the parties agreed to share information in secrecy and without subpoenas. Within five months from the date of incident, mediation was held and attended by parties from New Jersey, San Francisco, Connecticut, and New York. After 11 hours of value-added negotiations and information sharing, a resolution was achieved with absolutely no out-of-pocket costs to the client. Foregoing substantial press coverage, fees for the firm, and a traditional adversarial approach to claims and demands resulted in a big win for the client, whose needs were evaluated correctly and were always the priority.

Martin W. Kafafian

Martin W. Kafafian, Esq., Managing Partner, Beattie Padovano LLC

KAFAFIAN: We recently developed a methodology for increasing the protection afforded a national computer company's intellectual property from disclosure when confronted with subpoenas issued by courts in various jurisdictions. Generally, intellectual property, or other proprietary information, is privileged against disclosure in connection with litigation. Recently, however, courts throughout the country have required the disclosure of the privileged material but have imposed Protective Orders against disclosure outside the confines of the specific litigation. Unfortunately, when the Protective Order is violated, and the material is disclosed outside of the litigation, another procedure is required to impose sanctions due to violation of that Protective Order. This costs time and money for the client. In addition, even when successful, the court will impose only minimum sanctions. We have developed a methodology of including predetermined sanctions in the Protective Order, which are triggered if it is violated. In this way, our client's propriety information will receive increased protection against disclosure, the certainty of fines for violations of the Protective Order will not be subject to the whims of a trial Judge and additional costs can be avoided. The amount of the predetermined sanctions can be adjusted based on the circumstances of each case. When this method is employed, the "Sword of Damocles" hangs over the head of the adverse party who will now be more vigilant to assure that the proprietary information is not disclosed in violation of the Protective Order.

LAMBERT: Dunn Lambert, L.L.C. represents business owners who are involved in contentious disputes with their partners. We call this practice area "Corporate Divorce," and the separation of business owners trapped in a bad business partnership can be every bit as challenging as the most acrimonious marital split. In one case, two

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Richard Lambert

Richard Lambert, Esq., Managing Partner, Dunn Lambert, L.L.C.

partners who owned a business 50-50 got into fisticuffs in the office. To all of the advisors and family members who knew the partners, it looked like the case would end up in court. We sat the clients down, and explained that they had a choice to make. They could either litigate or make a business deal to resolve the dispute. If they chose to litigate, they would be certain of spending six figures each in legal fees, and exhausting themselves both financially and emotionally. We explained that most of these cases were resolved when, after one or two years of litigation, one partner called the other, the two combatants met at a diner, and made a settlement on the back of a napkin. We said: "Why don't you save yourself the money and the emotional aggravation, and make a deal now (before commencing suit) on the back of a napkin?" With our assistance in structuring, negotiating, documenting and closing the split-up, they successfully resolved their dispute and went on to lead separate, happy lives. That case, which played out 14 years ago, gave birth to our Corporate Divorce practice area, which is a cornerstone of our law practice today.

David H. Nachman

David H. Nachman, Esq., Managing Partner, Nachman & Associates

NACHMAN: I was recently approached by a high-level business executive from a *Fortune* 100 company. Previous immigration counsel who analyzed his case directed him into the PERM Labor Certification Process to obtain the Green Card. After a thorough review of his academic and experiential background (and with the assistance of the head of our firm's new Sustainability Division, Victoria Donoghue, Esq.), we decided to do the case for his Green Card in a pre-certified classification (avoiding the need to recruit U.S. Workers) called the "National Interest Waiver." The case was approved in four weeks and we anticipate that he, and his family, will have their Green Cards in about six months. Ludka Zimovcak, Esq., recently received a call from a Canadian Citizen and Green Card Holder (for 15 years) in the United States who had been placed into Removal Proceedings (Deportation Proceedings) by the U.S. Immigration Authorities in New York following his return from a trip to Canada to visit his sister who was ailing from cancer. He was placed into the Proceeding because, many years ago, he took a plea for a stolen goods

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offense. Following some research, our legal team determined that the Removal Proceeding would have to be terminated by the government because this Green Card holder was actually a U.S citizen.

Steve Pudell

Steve Pudell, Esq., Managing Partner, Anderson Kill & Olick, P.C.

PUDELL: All too often, a company's liability insurance providers become a roadblock when a lawsuit is near settling. Insurance companies often claim that a pending settlement is not reasonable, and balk at paying to full policy limits. In such cases, defense counsel often turns to outside "insurance counsel" to bring the insurance companies on board and maximize their contributions. Anderson Kill often takes on this role. Such was the case recently when a leading publicly-owned pharmaceutical services company approached the endgame in negotiations to settle a securities class action suit. Two insurers indicated that they would object to settlement terms and would only contribute a fraction of their millions of dollars limit. The final negotiations were completed in a single day of concurrent meetings between the plaintiff and defendant and between Anderson Kill and the insurance companies. The insurers' initial offers were about a third of their limits. Anderson Kill pointed out to the mediator that he had himself blessed the underlying settlement. The two holdout insurers settled for 80 percent and 90 percent of their limits, respectively. Such three-cornered negotiations are increasingly prevalent as plaintiffs, uneasy about defendants' solvency, insist on insurance companies' signoffs in advance of settlement.

David M. Repetto

David M. Repetto, Esq., Co-Managing Partner, Harwood Lloyd, LLC

REPETTO: On Friday, May 29, 2009, U.S. District Judge Dennis M. Cavanaugh issued a preliminary injunction in favor of Saturn of Denville NJ, L.P., against General Motors Corporation and Saturn Corporation. The injunction prevents GM and Saturn from enforcing an exclusivity clause in the parties' franchise agreement which has prevented Saturn of Denville from adding a KIA dealership. After 18 years

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in operation, Saturn of Denville faces the termination of its franchise at the end of 2009, as GM's "restructuring" calls for the elimination of the Saturn brand. Judge Cavanaugh found that GM and Saturn had used the current economic conditions "as justification to dramatically change the nature of its relationship" with Saturn of Denville, and ruled that Saturn of Denville had demonstrated an ultimate likelihood of success on the merits of its claims against GM and Saturn under the New Jersey Franchise Practices Act. Judge Cavanaugh also found that Saturn of Denville had established that it would suffer irreparable harm if it were not permitted to add the KIA dealership. The Court stated, "Given the current state of GM and Plaintiffs' business, equity demands that Plaintiffs be allowed to look out for their future viability and the interest of their employees." Harwood Lloyd, LLC attorneys Michael B. Oropollo, Gregg A. Ilardi, and Marcy A. Gilroy represented Saturn of Denville NJ, L.P. in the lawsuit.

SCHLOSSBERG: In 2008, Wolff & Samson won a significant victory for financial services firm Labworks, LLC, d/b/a RIA Database, and its founder, Julie Cooling. Labworks and Ms. Cooling were sued in U.S. District Court in New Jersey by their chief competitor, The Financial Information Group, Inc. (TFIG), for claims of theft of trade secrets and unfair competition. The allegations were based on the false claim that Ms. Cooling posed as a customer to demo TFIG's online database and that she used that information to start a competing business. Ms. Cooling, however, never performed the demo—the allegations were false and believed to be designed to drive her out of business. Wolff & Samson filed a counterclaim for defamation and tortious interference and aggressively pursued discovery, ultimately discerning that TFIG was relying upon fabricated evidence for its case. As a result, Wolff & Samson added counterclaims for conspiracy, fraud and abuse of process and filed a motion to strike TFIG's complaint on the grounds of fabrication of evidence. In response, TFIG changed counsel and pleaded with Ms. Cooling to participate in a mediation. Ultimately, Ms. Cooling and Labworks agreed to settle the case for $2.5 million—a tremendous result that helped provide them with a platform to grow their business. ■

David Schlossberg

David Schlossberg, Esq., Managing Partner, Wolff & Samson