

COUNSELORS AT LAW

# Forchelli, Curto, Deegan, Schwartz, Mineo & Terrana, LLP

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P R E S E N T S

## The COUNSELOR

### CONSIDERATIONS IN INTERNATIONAL BUSINESS TRANSACTIONS



Stella Lellos, Esq.

In recent years, there has been a significant increase in the globalization of business transactions. Foreign companies have established and continued to establish US subsidiaries and affiliates, and US companies are continuously exploring opportunities to conduct business overseas. Entry into a foreign market can be significant to a company's expansion and competitive edge, and ultimate success. In conducting international transactions, it is invaluable to understand, and be able to overcome, potential obstacles that could ultimately preclude a company from establishing a global presence. Among the obstacles that need to be considered are the business culture and etiquette of the other nation, the structure of the transaction, tax matters, employment law issues and foreign laws and custom.

#### Business Culture and Etiquette

There is no question that each country has its own culture and etiquette. This cannot be more apparent than when conducting business negotiations. Negotiating style varies from one nation to another. For instance,

the negotiating style of New Yorkers is often associated with speed, directness and frankness, whereas the negotiating style of Mediterraneans is often influenced more by emotion and passion. And yet other Europeans are known for being reserved and reticent to conveying disagreement or disapproval of difficult issues. Some countries are known for formality during negotiations, addressing the parties using surnames, and maintaining a distance. When considering a foreign transaction, it is prudent to research the culture and etiquette of the nation and its nationals. Will the principals and their counsel expect to be addressed by their surnames (i.e., Mr. Jones, Mrs. Smith) or would first names be acceptable? How would the principals and their counsel react to a heated negotiation or a direct approach to issues? Would decisions between principals be best made around the negotiating table, dinner or karaoke?

#### Structure of the Transaction

One of the most important aspects of engaging in an international transaction is setting up the right structure. Will the home country entity conduct business in the foreign country directly, or will a new entity be set up for the local business? If a new entity will be set up, will that entity be a subsidiary of the existing entity, or will the new entity be a stand-alone entity with the same ownership structure as the existing entity? Will the new entity be a limited liability company, or a corporation? The structure of the transaction is also instrumental in the tax aspects of the transaction and should be considered concurrently with and in light of any tax implications.

#### Tax Matters

The tax implications of a transaction play a critical role in, and often drive, how a deal or agreement is structured. For instance, if investors are entering the US, they may not wish to be subject to US taxation requiring the formation of a "blocker" corporation. Another consideration is that a foreign company entering the US marketplace may prefer not to set up a limited liability company or other pass through entity, so as to avoid complicated tax withholding. In either case, taxation could dictate the form of entity that would be used to achieve the desired result. Conversely, if a US entity is conducting business overseas, it is important to understand the applicable foreign tax laws and foreign tax filing requirements. What is the tax rate of a foreign country and how does that impact the company's US returns? For instance, a number of US companies have set up foreign companies to hold their intellectual property (an "IP Holding Company"), which is then licensed back to a US company for a licensing fee. If the IP Holding Company is organized in a tax free jurisdiction, it may be that the licensing fee paid by the US entity to the foreign entity is not subject to taxation in such jurisdiction. But, it is important to remember that if those funds are then repatriated, they would likely be subject to taxation in the US. Having a plan to repatriate foreign revenues and the tax implications associated with such repatriation is fundamental to conducting business overseas.

#### Employment Law Issues

Employment laws differ from one country to another, sometimes quite dramatically. Many European countries, for instance, have employee-friendly laws, which provide for, among other things, statutory vacation periods and severance in the event of termination of an employee. Employment in the US, however, is usually "at-will" and absent an agreement to the contrary, there is no requirement for notice of termination to employees or the payment of severance. Employment issues also arise when determining whether to send employees to work in a

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foreign country or hire local employees. In making a determination, it is important to research applicable immigration requirements and the ease of obtaining a visa. When foreign companies seek to relocate their foreign employees to a US location, the requirements for obtaining a visa for such employees often determines which employees can work in the US. The type of services an employee would be providing, the length of the proposed stay, and position with the company are factors that would determine the type of visa available, if any, to such employee. On the other hand, if US employees are to be sent to work overseas, their taxes will become more complicated in that they would be required to file tax returns in the foreign country, but also in the US.

While they may be able to use foreign tax credits and foreign income exclusions on their US tax returns, such US employees working abroad would still be required to file US tax returns.

### Foreign Laws and Custom

Foreign laws and custom in transactions can affect the ease and efficiency of a transaction. For instance, when closing a deal in the US, the purchaser will typically wire the funds directly to the seller at the time of the closing. In England, however, a purchaser would usually transfer funds to their solicitor before the closing and the buyer's solicitor would be in a position to confirm to the seller's solicitor they are in funds and give an

undertaking to transfer funds at the closing of the transaction. Whereas it would be very unusual in England for the buyer to transfer funds directly to the seller or the seller's solicitor, in the US it would be unusual to have the purchase price delivered by the purchaser to purchaser's lawyer at or before the closing. Knowledge of such practices helps to expedite the path towards and ultimately closing of the transaction.

Whether engaging in an inbound or outbound international transaction, understanding the nation in which business is to be conducted should be part of a company's initial due diligence. Indeed, a true "global marketplace" is only as successful as the parties who understand it.

### The Firm and its attorneys have been recognized in several leading publications recently, including:

*Long Island Business News:*

**Daniel P. Deegan** was interviewed for the article "Understanding IDA's – A Law Firm Specialization That Has Become More Complex." **Brian R. Sahn** was interviewed for the article, "Real Need for Knowledge – Commercial Real Estate Lawyers' Jobs Have Become Increasingly Complex." **Gregory S.**

**Lisi** was interviewed for the article "Successful Suit Highlights Risks of Employee Data Theft." **Joseph Cuomo** and **Robert B. Moy** were interviewed for the article "Around the World in 80 Depositions."

**John V. Terrana** was profiled in the Who's Who in Real Property Certiorari special section and **Stella Lellos** was profiled in the Who's Who in Professional Women section.

*New York Real Estate Journal* published **Kathleen Deegan Dickson's** article "The Law of Merger," and **Aaron Gershonowitz's** article

"Law: EPA Proposes to Amend AAI Rule for Real Estate Due Diligence." The publication selected **Joseph P. Asselta** as their Executive of the Month. **Judy Simoncic** was featured in the Professional Profile special section and **Nicole S. Forchelli** was spotlighted in the Women in Real Estate section.

*The Suffolk Lawyer* published **Joseph V. Cuomo's** article, "Heaven Sent – Raising Capital From an Angel Investor."

## APPOINTMENTS

The Bar Association of Nassau County:

**Gregory S. Lisi** was installed as member of the Board of Directors. **John V. Terrana** was appointed Chair of the Tax Certiorari Committee.

## Awards, Seminars, & Events

**Forchelli, Curto, Deegan, Schwartz, Mineo & Terrana LLP** has much to be proud of... Members of our team of attorneys, have been honored as:

**2014 Metro New York Super Lawyers:**

Jeffrey D. Forchelli, Robert H. Groman, Daniel P. Deegan, Kathleen Deegan Dickson, James C. Ricca, Jeffrey G. Stark, Russell G. Tisman, Gregory S. Lisi, Brian R. Sahn, Peter R. Mineo, Joseph V. Cuomo, Steven G. Gaebler and Joseph P. Asselta

**2014 Metro New York Super Lawyers**

**Rising Stars:** Frank W. Brennan, Andrea Tsoukalas, Eli Elbaum, Douglas W. Atkins, Stephanie M. Alberts, John M. Comiskey and Nathan R. Jones

The Long Island General Counsel Network (directed by **Joe Cuomo**) hosted a CLE seminar titled, "Employment Law and the Importance of Employment Practices Liability Insurance in Today's Environment." **Gregory S. Lisi, Keith J. Frank** and **Diane McNally**, Vice President at Chubb Insurance presented.

**Gregory S. Lisi** presented at The Suffolk Academy of Law of the Suffolk County Bar Association's 24<sup>th</sup> Annual Labor & Employment Law Conference.

**Kathleen Deegan Dickson** presented at the Annual Land Use Conference held at Hofstra University to the Nassau County Planning

Commission, at Vision Long Island's Smart Growth Summit and was the moderator of the Commercial Industrial Brokers Society (CIBS) seminar on Transit Oriented Development.

**Brian R. Sahn** presented at the LEEDership Forum hosted by CIBS, Long Island Commercial Network (LICN) and the LI Chapter of the NYS Commercial Association of Realtors.

**Stella Lellos** presented to the Town of North Hempstead Business & Tourism Development Corporation; the seminar was titled, "From Idea to Exit: How to Get a Business Up and Running, Funded and Sold."



Left to Right: Honorees Frank W. Brennan and James C Ricca  
2014 Long Island Business News Leadership In The Law



L to R: Honoree Stella Lellos, second from bottom left  
Long Island Business News Top Influential Women



L to R: Scott Shoen, Publisher, LIBN and Honoree Steven G. Gaebler  
Long Island Business News Around 50 Award



# SUCCESSFUL LAWYERS SUCCESSFUL CLIENTS

## BANKING AND FINANCE

**Steven G. Gaebler and Jared Newman** were involved in the following closings:

### Citibank

Construction financing for an industrial building in Ronkonkoma, - **\$19,200,000 building loan mortgage.**

### HSBC

Bridge and Permanent Financing for a catering facility in Jericho, - **\$7,500,000 mortgage.**

### People's United Bank

Acquisition financing for a property in Massachusetts containing a BJ's Wholesale - **\$10,300,000 mortgage.**

**James C. Ricca** negotiated and closed a **\$26,380,000 mortgage loan** on behalf of **New York Community Bank** on property located in Suffolk County consisting of 28 buildings, containing 201 residential apartments and recreational facilities.

In a contested commercial collection action, **James C. Ricca** and **John P. Bues** were awarded Summary Judgment on behalf of our client **Valley National Bank**. The Court held that their arguments overcame the defendants' affirmative defenses that the Bank failed to give proper notice of default or verbally modified the loan repayment terms.

**James C. Ricca** and **Jared Newman** negotiated and closed a **\$20,500,000 mortgage loan** on behalf of **New York Community Bank** on property located in Nassau County consisting of a luxury three story elevator apartment building, containing 50 residential apartments and high-end amenities.

Representing a New York bank in a commercial mortgage foreclosure action, **James C. Ricca** and **David A. Loglisci** successfully opposed several motions by an institutional borrower seeking to vacate and stay a judgment of foreclosure and sale. The Debtor attempted to force our client to accept a reduced pay-off of the loan balance by arguing failure to negotiate in good faith and that the foreclosure action was defective. After a lengthy and contested case, our firm obtained the full unpaid principal balance, plus interest, costs and legal fees.

## CORPORATE AND COMMERCIAL

**Anthony B. Barton** and **Allison Tenenbaum** represented Carson Optical, Inc. in the acquisition of its new world headquarters in Ronkonkoma, NY in conjunction with benefits from the Town of Islip Industrial Development Authority. Carson Optical is a leading manufacturer of magnifiers and supplier of binoculars in the United States.

**Anthony B. Barton** represented Rosemont Press Incorporated in connection with the refinancing for its headquarters in Long Island, by First National Bank of Long Island. Rosemont is a leader in the visual communications field, providing commercial printing and fulfillment, digital imaging, specialty advertising premiums, and website development.

## CONSTRUCTION LITIGATION

**Joseph P. Asselta** and **David A. Loglisci** successfully appealed a decision of the Supreme Court, Nassau County, and obtained summary judgment for a client on a \$1.1 million promissory note and personal guaranty, plus legal fees. The Appellate Division, Second Department, unanimously reversed the Supreme Court's decision and awarded summary judgment in favor of the Firm's client

on the note and guaranty, which had been given in connection with the purchase of the client's assets. The Appellate Division held that the defendants' allegations of fraud and breach of a related construction management agreement were insufficient to defeat summary judgment, as that other agreement was not so closely related to the note and guaranty as to excuse nonpayment under the note.

## REAL ESTATE/LAND USE & ZONING/IDA

**Peter R. Mineo, Andrea Tsoukalas** and **Jack L. Libert** obtained a special use permit and site plan approval from the Village of Mineola Board of Trustees and variances from the Village of Mineola Board of Zoning Appeals for a new Walgreen's pharmacy with a 24-hour drive-thru window. The new pharmacy is a welcome addition for this site which was previously improved with an Entenmann's bakery.

**Dan Deegan** successfully argued before the Appellate Decision Second Department, in Brooklyn, which resulted in a unanimous 5-0 decision, dated November 5, 2014, that upheld a Master Development Agreement between Firm client Renaissance Downtown and the Village of Hempstead. That redevelopment agreement contemplates 3500 units of housing and over 1 million square feet of new commercial space. The case was covered by multiple media outlets and firm **Eli Elbaum** assisted on the matter.

**Peter R. Mineo, Andrea Tsoukalas** and **Richard M. Blumberg** resolved a complicated litigation involving easement rights and the client's ability to subdivide his property in Great Neck. The zoning approval process before several village boards and the ensuing litigation which involved two successful Appellate Division decisions, enabled our client to confirm certain easement rights over a private road which, in turn, enabled him to divide his property into three valuable building lots.

A team led by **Judy Lynn Simoncic** and **Richard Blumberg**, assisted by **Danielle Tricolla**, successfully obtained a temporary restraining order against the Village of Muttontown which prevented the Village from halting constructing of an indoor riding arena for our client's 60 acre horse farm and boarding facility. The Village appealed the issuance of the Supreme Court's temporary restraining order. Ms. Simoncic and Mr. Blumberg

successfully argued before the Appellate Division and the temporary restraining order was upheld by the Court. As a result, the firm's client has been able to continue with its multi-million dollar construction project.

**Judy Lynn Simoncic** successfully represented Oakcliff Sailing Center, an organization dedicated to training young sailors and future U.S. Sailing Team members, in an application to the Town of Oyster Bay. The approval, which permits the housing of Oakcliff's students, will allow Oakcliff to continue to run its Olympic training programs.

**William Bonesso** has secured approvals to build two new Dairy Queen restaurants on Long Island. Over substantial civic opposition, Mr. Bonesso obtained Town of Hempstead Board of Appeals variances and special exceptions to permit the introduction of Dairy Queen to Levittown. That site opened last month. Mr. Bonesso has also obtained variances from the Huntington Zoning Board of Appeals for a new Dairy Queen in Huntington Station on Jericho Turnpike. Mr. Bonesso is presently assisting the client in obtaining necessary site plan approval for the Huntington restaurant so that it can open later this year.

**William Bonesso** was successful in expediting and securing approvals for the Kidville child activity center in Wantagh. The client was under an extremely difficult deadline for opening and Mr. Bonesso was able to move the zoning board application through the municipal process at a speedy pace sufficient to meet their timing demands.

## TAX, TRUSTS AND ESTATES

**Barry C. Feldman** successfully negotiated with the Internal Revenue Service ("IRS") to abate penalties totaling \$1.3 million asserted against our client's 2011 and 2012 corporate income tax liabilities. In addition, the NYC Department of Finance agreed to abate approximately \$368,000 in penalties previously assessed against the client for these years, based upon a similar analysis presented by Mr. Feldman. The final step will be to abate approximately \$340,000 in penalties previously assessed by the NYS Department of Taxation and Finance for these years, and interest asserted against the client for tax years 2010 through 2012, by each of these taxing agencies.

In addition, Mr. Feldman, assisted by **Allison Tenenbaum**, successfully challenged an assessment made by the NYS Department of Taxation and Finance against another client for personal income taxes, penalties and interest totaling approximately \$1 million. Through their efforts, the total liability was reduced to \$9,200.00.

## TAX CERTIORARI

The Tax Certiorari Department showed its expertise in specialized property tax matters:

**John V. Terrana** represented the owner of a 65,000 square-foot warehouse in Nassau County for purposes of securing property tax refunds and minimizing the tax bill going forward. By proving that the County used an inaccurate building description in their records and establishing current real estate trends affecting the warehouse, Mr. Terrana secured approximately \$200,000 in refunds and savings.

**Douglas W. Atkins** represented a national retailer and pharmacy with respect to two of its locations in Suffolk County. After analyzing the properties' leases and income statements, Mr. Atkins established that the municipality had over taxed the properties substantially. The result was approximately \$300,000 in refunds and savings.



The Firm hosted a successful networking seminar event, "Current Trends in Real Estate Development," on November 19<sup>th</sup>, 2014. With over 75 attendees, Jeffrey D. Forchelli moderated while **Joseph P. Asselta, Daniel P. Deegan, Jack L. Libert** and **Peter R. Mineo** were the featured panelists discussing, among other trends, Transit Oriented Development on Long Island.

COUNSELORS AT LAW

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## EVENTS CONTINUED



Sharing in the holiday spirit, this year, the Forchelli, Curto, Deegan, Schwartz, Mineo & Terrana LLP law firm selected The INN - Interfaith Nutrition Network to be this year's charitable recipient. From Left to Right: Kathleen Deegan Dickson, Jean Kelly, Executive Director of The INN, Jeffrey D. Forchelli, Virginia Kawochka, and Daniel P. Deegan.



Jared Newman participated in the Bike 4 Chai fundraiser. He biked 175 miles through three states for Camp Simcha, an extraordinary overnight camp for children with cancer.



**Brooklyn Law School**  
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Forchelli, Curto, Deegan, Schwartz, Mineo & Terrana LLP donated \$50,000 to Brooklyn Law School for the "Jeffery D. Forchelli Scholarship."