

THEODORE ROOSEVELT AMERICAN INN OF COURT

Nassau County Bar Association

November 20, 2024 – 5:30 p.m. to 7:30 p.m.

Panel: Hon. Jerome C. Murphy, Hon. Sharon M.J. Gianelli,
Paul F. Millus, Esq., Greg Zucker, Esq., Michael Kwon, Esq.,
and Robert O’Brien, Esq.

Panelists: Arianne C. Philemy and Abigail Drummond of St. John’s Law School,
and Colin C. Marinovich, Esq.



AGENDA

- | | | |
|------|-------------------------------------|------------|
| I. | Introduction | 10 minutes |
| II. | Breach or No Breach | |
| A. | Partnerships, LLCs and Corporations | 25 minutes |
| B. | Attorney/Partnership | 20 minutes |
| C. | Administrators/Executors | 10 minutes |
| D. | Employer/Employee | 10 minutes |
| E. | Marriage | 10 minutes |
| III. | Questions and Comments | 15 Minutes |



Paul F. Millus

Shareholder

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Garden City, New York 11530
(516) 592-5933
pmillus@msek.com



Practice Areas

Litigation and Dispute Resolution
Employment Law

Education

Creighton University School of Law, J.D.
Creighton University, B.A.
Fordham University

Memberships

Nassau County Bar Association (NCBA) Federal
Courts Committee, Former Chair
NCBA Labor & Employment Law Committee
Eastern District Association of former Assistant
and Special Assistant U.S. Attorneys
NCBA Labor & Employment Law Committee,
Former Chair
NCBA Commercial & Federal Litigation
Committee
Touro Law Center Board of Governors

Admissions

New York State
New Jersey
United States Supreme Court
U.S. District Court, Southern and Eastern
Districts of New York
U.S. District Court of New Jersey
U.S. District Court of Minnesota
U.S. Court of Appeals,
Second, Third, and Eighth Circuits

Paul Millus is a Shareholder of Meyer, Suozzi, English & Klein, P.C. and practices in the Litigation and Employment Law Departments in the firm's Garden City, Long Island and New York City office locations.

Mr. Millus handles a variety of litigated matters, from inception through motion practice, trial and appeals and has tried both jury and non-jury matters dealing with a wide range of issues from commercial, constitutional, real estate, employment, and Surrogate's Court matters.

In addition to providing advice and counsel to employers, Mr. Millus has successfully tried numerous cases to verdict in the federal court in the Eastern District of New York involving claims of discrimination in the workplace based on race, national origin, sex, gender, and age and has obtained dismissal in federal court by summary judgement, many such cases avoiding the cost of trial.

Mr. Millus also concentrates his practice in the area of commercial litigation involving disputes between shareholders and members and all members of complex commercial litigation.

Notable experience includes:

- Successfully represented multiple Long Island municipalities in upholding the constitutionality of a variety of Town Ordinances
- Obtained favorable resolutions for several corporate clients who were subjected to claims by plaintiffs who claimed that the clients' building violated the ADA
- Obtained dismissal in federal court by summary judgment of claims brought by teachers against the school district where they worked that their First Amendment rights of free speech had been violated by the district
- Successfully tried numerous cases to verdict in the federal court in the Eastern District of New York involving claims of discrimination in the workplace based on race, national origin, sex, gender, and age
- After trial in Kings County, successfully obtained dismissal of claims by the Public Administrator, valued in excess of 2 million dollars, that his clients had received monies from the estate based on undue influence

Paul F. Millus

- Served as the Receiver for Atlas Park shopping mall located in Glendale, New York a 377,924 sq. ft. mixed use neighborhood center
- Obtained favorable resolution of Trademark infringement suits in Federal Court brought against national internet retailer

In 2010, 2014-2024, Mr. Millus was named to the New York Super Lawyers list. No more than 2.5 percent of the lawyers in the state are recognized by Super Lawyers with this distinction. In 2024, Mr. Millus received the LI Herald's Top Lawyer Award for his work in Litigation & Dispute Resolution.

Mr. Millus has nearly 40 years of extensive litigation and trial experience in the federal and state courts. He has represented clients focusing on commercial matters including shareholder disputes, business divorces, LLC member rights, employment law for management and other complex litigation. He also regularly provides advice to employers concerning their rights and obligations in the workplace. As a commentator on various news and current event programming for Fox News, Fox Business, CNN, CNBC and Fox News Radio, he has opined on the legal issues of the day. Mr. Millus has published and lectured on cutting edge issues focusing on commercial litigation, employment law, federal practice and trial practice for the NYS Bar Assoc., Nassau County Bar Assoc., the N.Y.C. Bar Association and the Inn of Court.

Mr. Millus began his litigation career as a Special Assistant United States Attorney for the E.D.N.Y. from 1987 – 1989. He joined Snitow & Pauley in 1989, working with the Hon. William H. Pauley (deceased) who became a U.S. District Judge in the S.D.N.Y. in 1998, and in that year, became a partner in Snitow Kanfer Holtzer & Millus, LLP until joining Meyer Suozzi in 2012. Mr. Millus has also represented many municipalities on Long Island in the areas of municipal defense.

Mr. Millus is rated "AV" by Martindale-Hubbell – the highest level of professional excellence and ethics confirming that Mr. Millus is recognized for the highest levels of skill and integrity in the practice of law. Mr. Millus is active with various Bar organizations in and around New York City and Long Island. He served as Chair of the Federal Courts Committee and the Labor & Employment Committee of the Nassau County Bar Association, Past President of the Theodore Roosevelt American Inn of Court, is a member of the Eastern District Association of Former Assistant and Special Assistant U.S. Attorneys, and of the Touro College Jacob D. Fuchsberg Law Center Board of Governors.

Mr. Millus has written extensively on many aspects of the law publishing articles in the *New York Law Journal*, *Nassau Lawyer*, *Suffolk Lawyer* and *New York State Bar Journal*. Recent publications include:

- Author, "Bridging The Gap When There Are No More Non-Competes," *Suffolk Lawyer*, April 2024
- Author, "Fighting Back: Sometimes It's a Bad Idea," *Nassau Lawyer*, April 2024
- Author, "Employment Law Landscape in 2024," *Nassau Lawyer*, January 2024
- Author, "The Devil Is In the Details: Contractual Modification of Fiduciary Duties," *New York Law Journal*, January 10, 2024
- Author, "Arbitration Considerations in Employment Matters," *Nassau Lawyer*, October 2023.
- Author, "Where Does the Judgment Rule End and a Breach of Fiduciary Duty Begin?," *The Legal Brief*, Spring 2023.
- Author, "The Case for Non-Competes," *Nassau Lawyer*, April 2023.
- Author, "The Ins and Outs of a BCL § 1118 Hearing," *Nassau Lawyer*, April 10, 2019.
- Author, "The Future of the NLRB Under Trump," *Nassau Lawyer*, January 17, 2019.
- Author, "The Dissatisfied Minority Shareholder or LLC Member: What Can She Do After the Bloom Is Off the Rose," *New York Law Journal*, November 26, 2018.

- Author, "Uber Drivers- Employees or Independent Contractors?" *Nassau Lawyer*, January 12, 2018.
- Author, "Employment Disputes: Fox News and the Effort to Upend Mandatory Arbitration," *New York Law Journal*, June 20, 2017.
- Author, "The Government's Answer to Bridging the Gender Wage Gap," *New York Law Journal*, May 4, 2017.
- Author, "Overtime-Times Two," *Nassau Lawyer*, January 13, 2017.
- Author, "NLRB and the Joint Employer: Is Franchising on the Ropes?" *New York Law Journal*, April 8, 2016.
- Author, "Equal Pay for Equal Work: The Government's Next Gambit," *New York Law Journal*, February 16, 2016.
- Author, "In Title VII Claims, Timing Is Everything," *Nassau Lawyer*, January 20, 2016.
- Author, "Browning-Ferris: A Potential Game Changer for the Union Movement," *Nassau Lawyer*, January 15, 2015.
- Co-Author, "'Misclassification and the 'Fluctuating Work Week': A Potential Schism in Wage and Hour Litigation," *New York State Bar Association*, December 30, 2014.
- Author, "Executive Orders: Constitutional Underpinnings and Legality," *New York Law Journal*, November 18, 2014.
- Co-Author, "Cannabis Conundrum: Medical Marijuana Law and Employers," *New York Law Journal*, August 6, 2014.
- Author, "New Avenue for Payment of Medical Care: the Prompt Pay Law," *New York Law Journal*, May 8, 2014.
- Co-Author, "Social Media: Changing the Face of Employment Law," *New York Law Journal*, March 10, 2014.
- Author, "Faragher and Ellerth: Revisited 12 Years Later," *New York Law Journal*, May 9, 2013.
- Co-Author, "Court's Discretion in Changing Venue, Counsel's Obligation to Act Promptly", *New York Law Journal*, Vol. 245-No.: 33, February 18, 2011.
- Co-Author, "Caution on Whistleblowing: Not All Reporting Is Protected," *New York Law Journal*, August 23, 2010.
- Co-Author, "Getting Paid: the Interplay Between the Judiciary Law and Part 137," *New York Law Journal*, June 17, 2010.
- Author, "An Employer's Guide to the FMLA," *Nassau Lawyer*, October 1, 2007.

ABIGAIL DRUMMOND

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abigail.drummond22@my.stjohns.edu

EDUCATION

ST. JOHN'S UNIVERSITY SCHOOL OF LAW, Queens, New York

J.D. Candidate, May 2025

Academics: G.P.A.: 3.90; Rank: 11/230 (Top 5%)

Honors: *Recipient*, Dean's Award for Excellence, Civil Rights & Civil Liberties
Recipient, Dean's Award for Excellence, Legal Research
Recipient, Ron Brown Scholarship Program
Recipient, Theodore T. Jones, Jr. Fellowship

Activities: *Editor-in-Chief*, St. John's Law Review
Teaching Assistant, Contracts; Lawyering; Criminal Law
Member, Black Law Students Association
Member, Women's Law Society

PRINCETON UNIVERSITY, Princeton, New Jersey

A.B., in Ecology and Evolutionary Biology, May 2022

Academics: G.P.A.: 3.54

Certificates: Global Health and Health Policy; Statistics and Machine Learning

Activities: *Member*, Global Health Scholars Program
Lead Supervisor, Office of Annual Giving TigerCall

EXPERIENCE

ALSTON & BIRD, New York, New York

Incoming Associate, Investment Funds, Fall 2025

Summer Associate, Summer 2024

Assisted attorneys in legal research, brief writing, and due diligence across a number of practice areas including Litigation & Trial Practice, Intellectual Property Litigation, and Investment Funds.

HUGO BOSS, New York, New York

Law Clerk, Spring 2024

Assists corporate counsel in legal research, due diligence, and contract drafting for commercial real estate, cybersecurity and privacy, and intellectual property matters.

T-MOBILE, Parsippany-Troy Hills, New Jersey

Law Clerk, Summer 2023

Assisted corporate counsel in legal research, memo writing, and contract drafting for Business clients across a number of practice areas including tech and cybersecurity, commercial real estate, labor and employment, and transactional law.

NEW YORK YANKEES, Bronx, New York

Part-Time Tour Guide, 2022–Present

Gives tours of Yankee Stadium and acts as an ambassador for the New York Yankees.

TUFTS INSTITUTE FOR GLOBAL OBESITY RESEARCH, Boston, Massachusetts

Research Assistant, Summer 2021

Developed a machine learning-based framework to visualize the socioenvironmental predictors of childhood obesity.
Developed an ensemble learning model to predict the prevalence of childhood obesity at the county level.

VOLUNTEER EXPERIENCE

PREP FOR PREP, New York, New York

Facilitator, 2021–Present

Leads Prep for Prep high school students through Aspects of Leadership, a required leadership development curriculum, which focuses on ethical and effective leadership.

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Colin C. Marinovich

Colin C. Marinovich is an Associate in the Firm's Litigation Department. Colin represents and advises business owners and employers across many industries in a wide range of matters. These matters include both commercial disputes and labor and employment issues.

Colin has experience litigating cases in both federal and state court and regularly represents and counsel clients in matters involving discrimination, retaliation, harassment, whistleblower claims, wage and hour violations, actions concerning breach of contract, breach of fiduciary duty, fraud, partnership and shareholder disputes, and business divorces.

Additionally, Colin has experience representing businesses being investigated by the New York State and United States Departments of Labor and has appeared before various state and federal agencies such as the New York State Division of Human Rights and the Equal Employment Opportunity Commission.

Colin received his Bachelor of Science in Business Management with a concentration in finance from Farmingdale State College where he graduated Magna Cum Laude and was a member of three separate honor societies. After completing his undergraduate studies, Colin accepted the Alumni Scholarship from St. John's University School of Law. Here, Colin focused on, and excelled in, all things litigation. Earning a nod on the Dean's list for his exemplary work inside of the classroom, finishing top of his class and earning Dean's Award of Excellence in trial advocacy, as well as deposition practice.

While dedicated to the profession, Colin also takes great pride in being an active member in his community. He is an active contributor to charitable organizations such as: New York Cares, Citymeals on Wheels, and Big Brothers and Big Sisters of Long Island. His passion for work in the community stems from his time in law school where he graduated as a Pro Bono Scholar, working full time with the Queens Legal Aid Society as a Student Public Defender, representing indigent Defendants charged with misdemeanor crimes. Additionally, Colin was a two-time Public Interest Fellow and received the St. John's Public Service Award for his outstanding work in the community, eclipsing over 1200 volunteer hours over his three years in law school.

Colin is admitted to practice in the State of New York, as well as in the United States District Courts for the Southern and Eastern Districts of New York. He is also an active member of the New York State Bar Association.

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Greg S. Zucker

Greg is the Co-Managing Partner of the Firm and Co-Chair of the Firm's Commercial Litigation Group. He is an experienced litigator in all types of commercial and business issues. He regularly practices in state and federal courts throughout the country, as well as in alternative dispute proceedings. Greg has a wide range of experience that includes bench and jury trials and appellate work in the areas of corporate and partnership disputes, shareholder derivative actions, dissolutions, real estate disputes, business torts, aviation matters, construction disputes, healthcare, RICO, anti-trust, insurance law disputes, intellectual property disputes (including trademark and patent litigation), internet law disputes, labor and employment law, and other complex commercial and business disputes.

Greg serves as outside general counsel to several domestic and international companies. In that capacity, he has been exposed to the inner workings of those companies, including how they operate and their long-term goals. As outside general counsel, Greg works hand-in-hand with the principals and management to spearhead

long-term projects and achieve strategic goals in several different settings. He has taken the lead on significant corporate transactions, including mergers and acquisitions, corporate restructurings, the sale of businesses, joint ventures, and licensing relationships.

He also has significant experience with respect to real estate matters, including specific performance issues, purchase and sale issues, leasing issues, brokerage disputes, and commercial landlord/tenant disputes. Greg has led the restructuring of major real estate holdings throughout the country, including negotiating with lenders and special servicers. He has “quarter-backed” the development of significant private and public projects.

Greg is an approved Receiver in the State of New York and has been appointed by the Court as a Receiver in connection with real estate and business disputes. He also has been appointed as a special master for discovery purposes. In addition, he has been appointed by the Court to serve as a mediator and has successfully resolved numerous cases in that capacity.

Greg previously served as a Director of the Nassau County Bar Association. He is the past Chairman of the Federal Courts Committee of the Nassau County Bar Association and the former Chairman of the Commercial Litigation Committee of the Nassau County Bar Association. Greg is an Executive Committee Member of the prestigious Theodore Roosevelt American Inn of Court and was awarded a Leadership in Law Award issued by the Long Island Business News. He also received the 2017 President’s Award from the Nassau County Bar Association.

He regularly gives seminars and hosts other programs relating to commercial and business issues. Among other things, Greg has lectured on provisional remedies, discovery, trial practice, business divorces, dissolutions of businesses, business, and property valuation issues, disputes between shareholders, real estate issues, brokerage issues, e-discovery, and expert disclosure. Together with Jeff Miller, Greg previously wrote a monthly column for the New York Law Journal analyzing court decisions influencing the business community.

Greg earned his law degree from the University of Pennsylvania Law School in 1997, where he served as a committee chairperson on the Moot Court Board. Greg received his Bachelor of Arts degree from Dartmouth College in 1994, where he graduated *cum laude* and played for the varsity baseball team. Greg is an officer of the Dartmouth Alumni Club of Long Island.

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Attorneys > Michael Kwon

Michael Kwon

Michael Kwon is a Partner in the Firm's Litigation Department. Michael's practice focuses on complex commercial disputes in federal, state and bankruptcy courts around the country. Michael's extensive experience includes trademark, contract, bankruptcy, real estate, employment and securities litigation. Michael also has significant experience in all forms of alternative dispute resolution, including arbitrations and mediations. Michael has represented publicly-traded companies, private equity firms, hedge funds, closely-held companies and high net worth individuals.

Prior to joining the Firm, Michael was associated with an Am Law 100 law firm and a boutique litigation firm in New York City. Michael also served as a law clerk for the Hon. Frank Maas, United States Magistrate Judge (Ret.), in the Southern District of New York. Michael received his J.D. *cum laude* from Brooklyn Law School, where he was the Editor-in-Chief of the Brooklyn Journal of International Law, a member of the Moot Court Honor Society, and was the recipient of the Stanley W. Nathanson Prize, which is awarded to a graduate on the basis of special proficiency in the study of law, personality, and traits of character which warrant the belief that he or she will bring honor and credit to the legal profession. Michael received his Bachelor of Arts in history *cum laude* from Binghamton University (SUNY).

Michael is admitted to practice in New York State and in numerous federal courts around the country.

Professional Associations

Nassau County Bar Association (Vice-Chair of the inaugural Asian-American Attorney Section)

Theodore Roosevelt American Inn of Court

Asian-American Bar Association of New York

Korean-American Bar Association of New York

ROBERT P. O'BRIEN has been a member of Mahon, Mahon, Kerins & O'Brien, LLC since 2004. Prior to joining the firm, he was a litigation associate at Simpson Thacher & Bartlett and a partner at O'Brien, McLaughlin & Kenny. Equally at home in State and Federal Court, he has litigated civil cases on Long Island, as well as all the boroughs of New York City, concentrating in the areas of Trust and Estates, Commercial, Employment and Personal Injury matters.

Mr. O'Brien is a graduate of Chaminade High School on Long Island, and graduated with honors in 1983 from St. John's University, where he majored in Criminal Justice. He earned his Law Degree in 1987 from St. John's as well. Mr. O'Brien is admitted to practice law in New York, the United States District Court for the Eastern and Southern Districts of New York, and the United States Supreme Court.

You can email Mr. O'Brien at: robrien@mmkolaw.com

ARIANNE PHILEMY, a Baldwin native, graduated high school from Lawrence Woodmere Academy before continuing her studies at Wesleyan University, where she earned a double major in Government (with an American Politics concentration) and African American Studies in 2021. During her time at Wesleyan, she was recognized with the Rich Prize from the Government Department for her outstanding oratory skills and the W.E.B. DuBois Prize for academic excellence in African American Studies. Arianne was also an active leader on campus, serving as a board member for the Student of Color Pre-Law Society, the Women of Color Collective, and co-president of the Haitian Student Collective. After graduating, she worked as a litigation paralegal at Akerman LLP, further honing her legal expertise. In 2023, Arianne embarked on the next chapter of her academic career, enrolling at St. John's University School of Law. As a second-year law student, she remains deeply involved in the law school community, serving as a member of the Polestino Trial Advocacy Institute's (mock trial team), the Journal of Civil Rights & Economic Development, and the Director of Alumni Relations for the Black Law Student Association.

You can email Ms. Philemy at arianne.philemy23@my.stjohns.edu

Commercial Division – Nassau County

Biography of Justice Jerome Murphy

Justice Jerome C. Murphy graduated, with cum laude honors, from the University of Pennsylvania's Wharton School of Business in 1975. Following graduation, he worked for three years in public accounting, gaining diverse business experience in various industries and in tax matters. He has passed the CPA exam and was previously actively licensed to practice as a CPA in New York.

In 1981, he received a J.D. from Brooklyn Law School. Thereafter, he spent approximately 30 years as a trial attorney and became a founder and a managing partner of Chesney & Murphy, LLP, which grew to be a 60 person law firm. He also served as a Village Justice and as a Deputy Village Counsel in Island Park, New York.

Mr. Murphy has received Martindale-Hubbell's highest attorney rating, and he was also found to be "well-qualified" by the Nassau County Bar Association prior to being elected to the New York State Supreme Court in November of 2011. He has previously served as a member of Not-For-Profit Boards of Directors, and has been involved with various charitable activities over the years, including serving on their financial investment advisory boards. Jerome Murphy has been married to his wife, Lisa since 1984, and they are the parents of 7 children and grandparents to 5 children.

In 2014, Justice Murphy began being assigned Commercial Division cases, while also receiving various other types of civil cases. Since October 2018, almost all of Justice Murphy's newly assigned cases have been matters within the Commercial Division



Judicial Directory

JUDGES OF THE TRIAL COURTS

Hon. Sharon Gianelli



Supreme Court, Nassau County
100 Supreme Court Drive, 4th Floor
Mineola, NY 11501
(516) 493-3286

[Judge's Part Rules](#)

Judicial Offices

Justice, Supreme Court, Nassau County, Elected, 2015 to 2028

Judge, District Court, Nassau County, Elected, 2006 to 2011; Re-elected, 2012 to 2014

Judge, District Court, Nassau County, Appointed by Nassau County Executive, 2005 to 2005

Other Professional Experience

Nassau County Legislature, Majority Counsel

New York State Grievance Committee, Counsel

New York County District Attorney's Office, Assistant District Attorney

Admission to the Bar

NYS Appellate Division, Second Department, 1989

Education

JD, Brooklyn Law School

MA, Social Work, Syracuse University

Professional & Civic Activities

New York State Judiciary Advisory Council

New York State Bar Association- Judicial Section

Nassau County Criminal Courts Bar Association

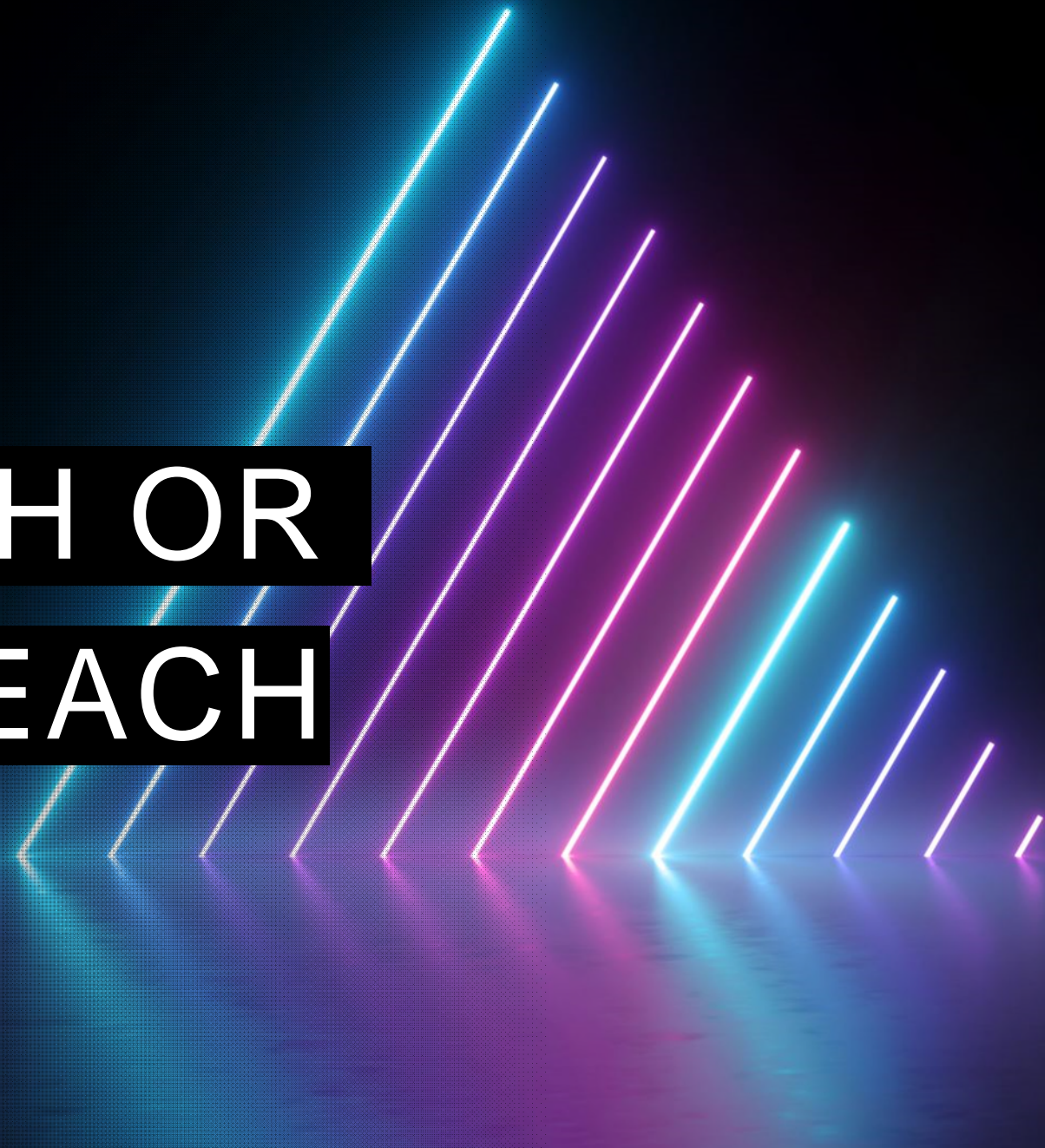
Nassau County Women's Bar Association

Nassau County Bar Association

Nassau County Youth Mentoring Program

New York Association of Drug Treatment Court Professionals

BREACH OR
NO BREACH



A PRIMER: WHAT IS A FIDUCIARY DUTY?

- A fiduciary relationship exists when one is under a duty to act for or to give advice for the benefit of another person upon matters within the scope of the relationship.

ELEMENTS OF A FIDUCIARY RELATIONSHIP

- (1) the vulnerability of one party to the other which;
- (2) results in the empowerment of the stronger party by the weaker which;
- (3) empowerment has been solicited or accepted by the stronger party; and
- (4) The empowerment prevents the weaker party from effectively protecting itself.

A cause of action for breach of fiduciary duty must be plead with particularity pursuant to CPLR 3016(b).

ELEMENTS OF A FIDUCIARY RELATIONSHIP

In sum:

- A fiduciary relationship exists between two (or more) parties, signifying a relationship of trust and confidence whereby the parties are bound to exercise the utmost good faith and undivided loyalty towards each other throughout the relationship.
- Fiduciary duties can arise from relationships that are explicitly defined by law or contract or inferred by the circumstances of the relationship.

THE ELEMENTS OF A BREACH OF FIDUCIARY DUTY CLAIM

- (1) A fiduciary duty existed between the parties;
- (2) The defendant breached that duty; and
- (3) The plaintiff was damaged as a result of the breach.



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AREAS OF THE LAW WHERE A FIDUCIARY DUTY MAY BE IMPLICATED

- **Estate planning**: Trustees and executors have a fiduciary duty to the beneficiaries of a trust or estate. A breach of fiduciary duty in this context could include mismanaging assets, failing to account for transactions, or self-dealing.
- **Corporate governance**: The board of directors and other corporate governance parties such as officers have a fiduciary duty to the company and its stakeholders and to each other. This includes duties of care, loyalty, confidentiality, prudence, disclosure, and good faith.
- **Financial planning**: Financial planners have a fiduciary duty to their clients' personal financial planning.
- **Attorney-client**: Attorneys have a fiduciary duty to their clients.
- **Law Firm Partners**: Partners have fiduciary duties to one another.
- **Principal-agent**: A principal has a fiduciary duty to an agent.
- **Guardian-ward**: A guardian has a fiduciary duty to their ward.

AREAS OF THE LAW WHERE A FIDUCIARY DUTY MAY BE IMPLICATED

- **Employees**: Have a fiduciary duty to their employer
- **Partnership or Joint Venture Members**: Have a fiduciary duty to each other
- **Shareholders**: Have a fiduciary duty to each other, and majority shareholders have a fiduciary duty to minority shareholders
- **Matrimonial**: Agreements Between Spouses

YES INDEED

ITS ALL AROUND US



RULES OF THE GAME

- We will be calling up contestants to sit in their contestant chairs and they will be read a brief fact pattern. Based on that fact pattern you will be asked:

Breach or No Breach?

Then press the button on your gamepad which corresponds to your answer

- You will not be required to participate in any discussion, of course unless you wish to, and you do not have to justify your answers.
- I will then let you know, in no uncertain terms, whether you were correct or not. Then we will turn it over to our brain team who will explain briefly what the court determined and why.

SO, LET'S PLAY

**BREACH OR
NO BREACH!!!!**

FIRST AN EASY ONE:

Plaintiff sued Bank of America. Plaintiff was a depositor and was denied a letter of credit to purchase rice in China.

Plaintiff claimed Bank of America breached its fiduciary duties to it by denying the letter of credit.

BREACH OR NO BREACH

Curtis-Shanley v. Bank of America, 109 A.D.3d 634, 970 N.Y.S.2d 830 (2d Dep't 2013)

Plaintiffs claim they were fraudulently induced to sell their ownership interests in a company they co-owned with one of the defendants, and to release defendants from claims arising out of that ownership.

After a dispute between the parties, defendants offered to purchase plaintiffs' interest and plaintiffs.

The parties executed various releases that were extensive.

Plaintiffs sued claiming defendants supplied them with fraudulent information and sought \$900,000,000 in damages which is the amount they claim they would have made if a good faith share exchange had been accomplished under the terms of their Agreement—plus interest.

They also claim that, notwithstanding the release language, the parties had a fiduciary relationship and were therefore required to disclose any information that could reasonably bear on plaintiffs' consideration of [its purchase] offer

BREACH OR NO BREACH!!!

Plaintiff was President and majority shareholder of a company known as Westwood that sold his shares to a company called Sinclair.

The individual defendants are the officers, directors and shareholders of Sinclair.

The terms of the sale are contained in three agreements: (i) a *purchase agreement*, fixing a price of \$200,000—\$40,000 down and \$160,000 payable in monthly installments (ii) a *promissory note*, permitting acceleration in the event of nonpayment; and (iii) a *pledge agreement*, pledging the Westwood stock as security for payment.

In approximately a year, Westwood was in bankruptcy. Payments on the note had ceased, plaintiff accelerated the debt, and he commenced the litigation. With respect to the individual defendants the trial court found that, as fiduciaries, they had breached the pledge agreement by receiving distributions of corporate assets, and by failing and refusing to allow plaintiff access to books and records or notify him of corporate action. Defendants claim they were acting on behalf of the corporation requiring the piercing of the corporate veil for individual liability and the business judgement rule provided them protection from these claims.

BREACH OR NO BREACH

Giblin v. Murphy, 73 N.Y.2d 769, 536, N.Y.S.2d 54 (1988)

Co-op penthouse owners sued the co-op and certain directors for refusing permission in bad faith to demolish their one-story rooftop structure and replace it with a two-story unit. It appears other construction projects in the building have been approved in the past. Plaintiffs alleged breach of fiduciary duty against the co-op corporation and the director defendants. Plaintiffs contend that the Corporation owes the shareholders a fiduciary duty.

BREACH OR NO BREACH

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Peacock v. Harold Square Loft Corp., 67 A.D.3d 442, 889 N.Y.S.2d 22 (1st Dep't 2009)

Minority shareholders in a start-up company brought an action in their individual capacities against majority shareholder, asserting claims for damages based on lost profits. The alleged injury was the diminution in the value of shares of a start-up company in which plaintiffs were minority shareholders. The alleged actions by the majority shareholder purportedly caused the loss.

BREACH OR NO BREACH

O'Neill v. Warburg, Pincus & Co., 39 A.D.3d 281, 833 N.Y.S.2d 461 (1st Dep't 2007)

Defendants, former partners at a law firm, after commonplace disagreements arose concerning succession and continuation of client business, were locked out of the firm and plaintiffs sued them for fraud, breach of fiduciary duty, breach of contract and unjust enrichment, seeking damages exceeding \$10 million based upon lost revenues of the one client and \$30 million in punitive damages. Defendants did solicit clients.

An issue was eventually certified to the Court of Appeals to answer several questions which included, as a matter of public policy, is there a breach of fiduciary duty when a withdrawing partner, prior to announcing his resignation, "solicits" firm clients. Underlying the answer to this question was: Does the fundamental right of a client to be entitled to an attorney his choice trump what would be otherwise be evaluated through the lens of one partner's duties to another?

BREACH OR NO BREACH

Graubard Mollen v. Moskowitz, 86 N.Y.2d 112, 629 N.Y.S.2d 1009 (1995)

Plaintiffs are former partners at a law firm. They withdrew from their firm to join another and brought this action for monies due to them under their previous partnership agreement. Defendants asserted various counterclaims alleging that plaintiffs breached their fiduciary. One of the plaintiff's had become dissatisfied in his present position and approached his partner to move with him. On June 19, 1991, both plaintiffs informed their soon to be old partners that they had accepted another offer to join. On June 24, 1991, the plaintiffs sent their new firm a memo listing the names of the personnel in the old firm's department where they worked and their respective salaries, their annual billable hours, and the rate at which the old firm billed out these employees to clients.

The memo included other information about the attorneys, including the colleges and law schools they attended, and their bar admissions. This list had been prepared months before in anticipation of discussions with prospective firms' Also before they left, they wrote letters to clients served by them, advising that they were leaving and that other attorneys at the old firm could serve them. These letters did not mention the fact that the two partners were moving to another location. Both took various documents, including their respective "chronology" or desk files. With the assistance of his chronology file, one partner began to contact his former clients.

BREACH OR NO BREACH

Gibbs v. Breed, Abbott Morgan, 271 A.D.2d 180, 710 N.Y.S.2d 578 (1st Dep't 2000)

An executrix was involved of the probate of the decedent's will which provided a bequest of certain real property to one of her children and the remainder of decedent's]property and estate, was bequeathed to all of the siblings in equal shares, per stirpes. The decedent's property subject to this bequest included a 2004 Ford Taurus and an 8.6-acre vacant lot.

The executrix sold the vehicle to one other sibling for \$2,000 and then sold the vacant land for \$41,000. A relative suing her primarily contended that his request to subdivide the property at the expense of the estate was not properly considered and that petitioner sold the property for an amount that did not represent its actual value. Respondent contended that the vehicle was unlawfully transferred to one of the siblings, and that Akey had failed to obtain an accurate valuation of the vehicle prior to the transfer. Th relative claimed the executrix breached fiduciary duties owed to the Estate.

BREACH OR NO BREACH

In the Matter of Blaine, 209 A.D.3d 1124, 177 N.Y.S.3d 351 (3d Dep't 2022)

In this case, the coadministrators were authorized “[t]o sell the [property] at public or private sale, and on such terms as in the opinion of the fiduciary will be most advantageous to those interested therein.”

Despite the wide range of discretion thus conferred upon administrators as to the price, conditions and terms of sale of estate property their actions as fiduciaries must still comport with the best interest of the estate. In this case, the subject parcel was neither advertised for sale nor listed with a realtor and was sold, without negotiation, but was in excess of accredited appraised value, to the first prospective purchaser. Also, the property was sold to the wife of a local attorney who was a close personal friend of the estate's attorney and the estate attorney failed to disclose both his friendship with the purchaser and the higher appraisal to the objectant's lawyer, who had questioned whether the transaction was at arm's length.

BREACH OR NO BREACH

Matter of Estate of Kane, 398 A.D.2d 851, 470 N.Y.S.2d 823 (3d Dep’t 1983)

Plaintiff is a residential mortgage lender and broker. Plaintiff hired an employee responsible for day-to-day operations. Plaintiff alleges that the employee and his wife diverted Plaintiff's business to a competitor which was a company which the employee opened to receive the diverted business. Based on this alleged activity, plaintiff asserted various claims including breach of fiduciary duty claims. Plaintiff further claims that during his employment the employee opened a title company referring title work to that company. Plaintiff claims the employee reached his fiduciary duty to Plaintiff by failing to disclose his interest in that company.

BREACH OR NO BREACH

Fairfield Finance Mort. Grp. Inc. v. Luca, 2014 WL 4638950 (E.D.N.Y. 2014)

Plaintiff purchased stock in the defendant close corporation with which he was employed. The purchase of his 8.5% interest was subject to a mandatory buy-back provision: if the employment ended for any reason before January 31, 1985, the stock would return to the corporation for book value. The corporation fired plaintiff prior to that date, after which the buy-back price would have been higher. Plaintiff sued contending that, as a shareholder, he was owed fiduciary duties and his termination, solely for the purpose of getting his stock at a lower price, was a breach of a fiduciary duty owed to him by his employer as a shareholder.

BREACH OR NO BREACH

Gallagher v. Lambert, 74 N.Y.2d 562, 49 N.Y.S.2d 94558 (1989)

Former employees are sued by their former employer claiming they breached their fiduciary duties resulting in an interference with the performance of a contract. The employees admit that they formed the competing company while they were employed by their former employer and noted that that this company was not in competition with their former employer. The plaintiff could not demonstrate that the individual defendants used fraudulent methods, trade secrets or confidential information but maintained that the individual defendants' formation of the new firm while they were still in the plaintiff's employ was enough to establish a breach.

BREACH OR NO BREACH

Mayo, Lynch & Associates, Inc. v. Fine, 148 A.D.2d 425, 538 N.Y.S.2d 579 (2d Dep't 1989)

Plaintiff worked for Defendants for seven years as a full-time sales representative and was paid a salary, commission, and reimbursed for his expenses and sued for back pay. Defendants' counterclaimed alleging that Plaintiff breached his duty of loyalty and good faith to Plaintiff by "performing significant 'information technology' services for hire on behalf of an entity named Champion Lumber Corporation" which was not a competitor. Specifically, it was alleged that during the relevant period, defendants allowed plaintiff to work from his home, provided plaintiff with home office equipment as well as a monthly allowance for his home office expense, and hired plaintiff's son. However, Defendant discovered that since 2007, plaintiff performed information technology services for hire on behalf of another entity. Defendants further alleged that plaintiff provided work for the other clients from his home office at his employer's expense, using the home office supplies paid for by his employer. In addition, defendants allege that J.J. Vanacore performed work for other clients while being paid by his employer.

Upon discovery of plaintiff's work for the other clients, defendants requested that plaintiff appear at his employer's offices so that the matter could be investigated and resolved. Plaintiff refused and was placed on unpaid leave.

BREACH OR NO BREACH

Vanacore v. Expedite Video Conferencing Ser. Inc., 2016 WL 171585 (E.D.N.Y. 2020)

Plaintiff brought an action against its former employee and, two corporate entities alleging , the employee, while still employed allegedly wrongfully diverted a lucrative business opportunity from Plaintiff to another company and subsequently benefitted from that diversion by accepting an offer of employment with the other company. Plaintiff further alleged that other Defendants colluded with the employee to divert the business opportunity away from it and ultimately to hire the employee. The Court found that that the two companies were not direct competitors.

The employee admitted to attempting to solicit the business opportunity and commenced trying to promote his future employer for the contract while still employed by plaintiff.

BREACH OR NO BREACH

Design Strategies, Inc. v. Davis, 384 F.Supp2d. 649 (S.D.N.Y. 2005)

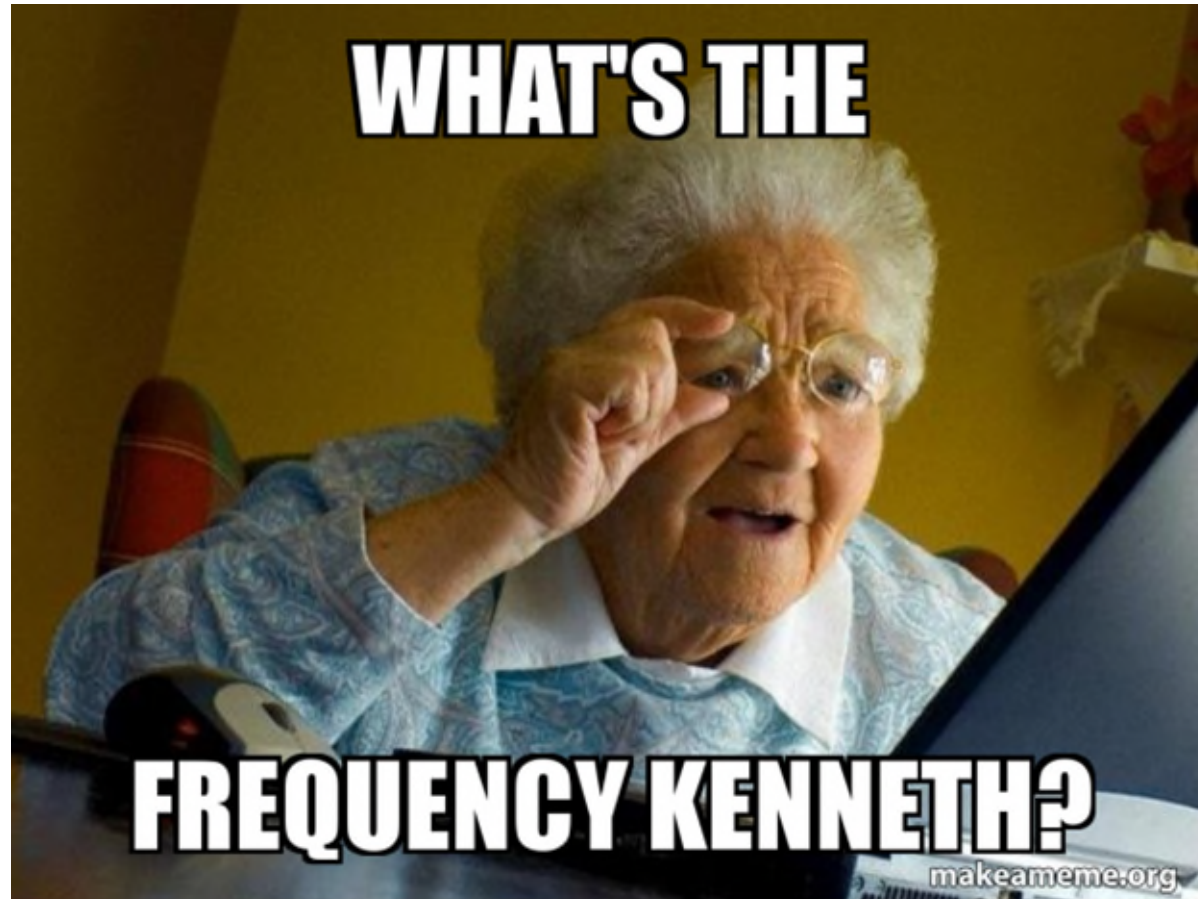
BONUS ROUND

SLIDE !!!!!

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EVENING
NEWS
with
DAN
RATHER



We Keep America On Top Of The World



BREACH OR NO BREACH

Rather commenced this action against CBS Corporation, Viacom Inc., and individual defendants Leslie Moonves, Sumner Redstone and Andrew Heyward in September 2007. He asserted, inter alia, claims of breach of contract and breach of fiduciary duty against CBS, claims of fraud against CBS and the individual defendants and a claim of tortious inducement of breach of contract against Viacom and the individual defendants. Rather claims that his "four-decade history" with CBS constituted a "special relationship that imposed fiduciary duties upon CBS.

Rather v. CBS Corp., 68 AD3d 49, 710 N.Y.S.2d 578 (1st Dep't 2009)

In anticipation of their planned marriage, plaintiff (the husband) and defendant (the wife) entered into a prenuptial agreement. The agreement was the product of months of negotiations among the parties and their attorneys, and provided for, in the event of a divorce, the distribution of assets, spousal maintenance and health insurance, inheritance rights, and the purchase by the husband of a luxury apartment in which the wife and children would reside. Prior to the agreement's execution, the wife's counsel, an experienced matrimonial practitioner, advised her not to sign it, but the wife ignored that advice.

After the parties' marriage broke down, the husband filed this divorce action and the wife moved to set aside the agreement, claiming it was the product of overreaching resulting in manifestly unfair terms. The motion court dismissed the wife's claim that the entire agreement is unenforceable. The Husband asserted that the standards by which separations agreements are viewed are not the same for pre-nuptial agreement.

BREACH OR NO BREACH

Gottlieb v. Gottlieb, 25 N.Y.S.3d 90, 138 A.D.3 30 (1st Dep't 2016)

THE END-

THANKS FOR PLAYING

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BREACH OR
NO BREACH

