

# Construction & Real Estate Clients Often Require Vigorous Advocacy



COMPILED BY MILES Z. EPSTEIN  
EDITOR, COMMERCE

**T**HE LEGAL ISSUES THAT ACCOMPANY construction and real estate transactions require vigorous advocacy, from protecting clients from unnecessary liability to guiding decisions that minimize risk and that offer an upside. These case studies illustrate that fighting can be avoided with the right counsel and, if it becomes necessary, having a top attorney in your corner is always a good strategy for the complicated issues that are common for these key industries.



**Cole Schotz P.C.**  
By Brian Gardner, Esq.,  
Chair, Construction  
Services Dept.

Cole Schotz P.C. successfully represented a New Jersey authority in a matter that resulted in a clarification as to when payment bonds are required on certain work. Here, suit was brought by a foreign manufacturer of amusement ride components that were to be incorporated into a large regional development project on property leased by our client to a private developer. The principal claim by this subcontractor against our client was negligence in failing to require that a payment bond be posted for the project under the New Jersey Bond Act. We filed a motion to dismiss this claim based on numerous grounds, including the inapplicability of the Bond Act to

Top-notch attorneys can minimize risks and, if necessary, fight for clients with the law on their side.

the particular project (as, among other things, all improvements were to be at the expense of the private developer and for its benefit), a lack of jurisdiction by the trial court relating to state agency determinations, and immunity under the Tort Claims Act for acts or omissions of a public entity. The court, after hearing oral argument, issued a detailed written decision in favor of our client based on the multiple grounds argued in our motion to dismiss and ordered the claim be dismissed.



**Connell Foley LLP**  
By Michael X. McBride, Esq.,  
Chair, Construction  
Group

Connell Foley advised an international organization dedicated to providing food, shelter and crisis care to homeless and runaway youth in resolving a major construction defect issue related to significant water/leaking/mold conditions at the organization's rights-of-passage building. The facility houses at-risk street youths, who for the first time in their lives are working, paying rent and supporting their families. Due to the mold conditions, the building's residents had to be temporarily sheltered in facilities located in other towns, making transportation to and from work very challenging. Connell Foley developed a strategy to work with the construction manager, architect and certain trade contractors to devise a

repair program to be implemented on an expedited basis. Collectively, the parties reached an amicable solution, contributing funds and repairing the water damages and mold conditions, thereby avoiding time-consuming litigation, while at the same time allowing all of the parties to reserve their rights under various contract documents. Within three months, the work was complete, and the formerly homeless and runaway youth were back in the building. Thanks in part to the efforts of Connell Foley, these youths are embarking on a brighter future.



**Day Pitney LLP**  
By Craig Gianetti, Esq.,  
Real Estate Partner

We were contacted by a client that was considering relocating its headquarters and warehouse/distribution facility, currently in New Jersey, out of state in order to take advantage of logistics benefits. The client heard about New Jersey incentives available to keep businesses and jobs in New Jersey. After contacting us and identifying a possible alternative location in New Jersey, we performed an analysis of the incentives that could be available to the client under the GrowNJ program if they relocated to this alternative site. After performing the analysis, we prepared a memorandum outlining the incentives available through tax credits, as well as bonus opportunities.

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After discussing the results of the research with the client, we worked with the client to prepare a GrowNJ application and worked with the NJEDA representatives in processing the application. The client was eventually awarded tax credits to remain in New Jersey and did not relocate out of state. The client has now moved into the new, larger location and has added additional jobs to its workforce.



**Gibbons P.C.**

*By Russell B. Bershad, Esq., Co-Chair,  
Real Property & Environmental Dept.*

Your client is a major conglomerate that owns dozens of domestic facilities and leases hundreds more in the United States and overseas. What do you do when the client announces it plans to divide into three new companies, divide its facilities among them and asks you to spearhead the real estate work involved in transferring the facilities? First step, you put on your management hat, organize a team of lawyers to handle the work, set up a database to assemble and report critical information and enlist the assistance of other lawyers in the firm who are fluent in a dozen or so languages needed to review the overseas leases in-house, while engaging outside lawyers for the balance of the agreements. While many overseas agreements are written in English and the local language, others are not and you need to understand the terms related to transfers and assignments. With lead lawyers negotiating new headquarters leases and a great team of lawyers, well organized and led, completing the reviews, populating the database, managing outside counsel, and carrying out the transfers, Gibbons got the job done on time and within budget—and the “spin” transaction was successfully completed.



**Greenbaum, Rowe, Smith & Davis, LLP**

*By Dennis A. Estis, Esq.,  
Chair, Construction Practice Group*

Our firm represented a northern New Jersey condominium association in a construction defect lawsuit against a developer. Almost all of the unit owners in the building, a newly completed 18 story high-rise with Hudson River and New York City skyline views, had entered into mortgages that were “taken back” by the developer, which had offered the loans as the mortgagee when the units were purchased. The mortgages were then sold by the developer to a bank at a discount, with the developer’s principal executing estoppel certificates as required by the bank. Developers have historically been reluctant to take back mortgages and be faced with waiting decades for their money, but this permitted the developer to sell the loans at a discount, and receive the bulk of the payments. The court ruled in favor of our client, the association, on its defective construction claim, and judgment was entered in an amount slightly under \$3 million. The developer, however, believing it was judgment-proof as it had discontinued operations and

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## Banks and Credit Unions Fuel Vital Construction & Real Estate Projects



New Jersey’s economic well-being is supported by the capital investments of the state’s banks and credit unions.

COMPILED BY MILES Z. EPSTEIN  
EDITOR, COMMERCE

**E**CONOMIC DEVELOPMENT, CONSTRUCTION AND real estate projects are fueled by capital investments from area banks and credit unions, who often use innovative strategies to help clients get financing. The following examples show how this process is vital to New Jersey’s citizens, businesses, communities, as well as the state’s economy.



**North Jersey Federal Credit Union**

*By Richard Garcia, Chief Lending Officer*

Recently, we were able to successfully fund two mortgages and a home equity loan that larger banks wouldn’t have touched. Two of the loans for mortgages were for longtime members, so we were even more delighted to be able to successfully work with them. In both cases, we refinanced mortgages. Both needed to consolidate some debt. There were some minor credit flags in both cases, but through our due diligence, not enough to make either member a true credit risk. We were successful in making our members happy. We were also able to fund a home equity loan for a city employee. Again, we recognized that larger financial institutions would not have worked with the member to successfully fund the loan. We helped members realize their financial goals. This is what service to our members is all about.

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distributed all of the dividends to stakeholders long before the judgment was rendered, refused to pay. With our strategy now refocused on getting our client paid, the bank was then joined in the action. The developer sought to dismiss our claims against the bank, but the trial court denied that motion and determined that the association had the legal right to go after the money owed on the mortgages issued by the developer. In turn, the bank applied some pressure of its own, demanding that the principal of the developer, who had guaranteed the loans when they were sold to the bank, make payment to our client in full. With no realistic course of action left to pursue, the developer paid the judgment in full, thereby avoiding being subject to available sanctions by the bank.



**McCarter & English, LLP**

By Jeffrey A. Petit, Esq., Practice Leader,  
Real Estate Group

The benefits to locating a solar project on a closed landfill are many and great. The state's Energy Master Plan specifically encourages the use of closed landfills for energy generation. It is a commercially and environmentally smart reuse of land that is otherwise unusable. The remote location of landfills avoids issues with neighbors. There is usually nothing to obstruct the sun, and it's far

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**Regal Bank**

By Brian McGuinness, Chief Lending Officer,  
Senior Vice President

An established multi-family unit operator recently came to us in a panic. In the 11th hour before his closing, his lender had "re-traded" the loan. This means the lender presented the loan in one way, but when it came time for a commitment, the borrower was suddenly looking at a different set of terms that were unacceptable to him. Regal Bank stepped right in, picked up where the other lender had dropped the ball, and saved the day by delivering on what we promised. This type of success story is a byproduct of Regal Bank's breadth of knowledge in the North Jersey marketplace. The proactive culture at Regal Bank begins at the highest levels and is woven through the very fabric of the bank. Our board of directors, loan committee and management team are all extremely well-versed in the metrics of multi-family lending. This is a real advantage when a loan requires full board approval and a fast turnaround. Regal Bank is large enough to extend loans up to \$5 million and nimble enough to understand the nuances of each loan. We excel at getting buyers to the closing table on time, and most times ahead of schedule.



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## A Bank You Can Believe In

At Regal Bank, we are dedicated to improving the quality of the communities we serve by building valuable customer relationships and delivering personalized financial solutions. Whether you're taking your business to the next level, planning for another stage in your life or just looking for new ways to invest, you can count on us to do what's right for you.

Your Lending Team:

**Sean Howland**

Vice President and Loan Officer

**Monte Ehrenkranz**

Vice President of Business Development

**Brian McGuinness**

Senior Vice President and Chief Lending Officer



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preferable to clearing woodlands or using otherwise fertile farmland. That's why our client PSE&G has incorporated such projects as a major part of its Solar 4 All™ Program. With opportunity, however, come issues: addressing the presence of hazardous materials, avoiding damaging the landfill cap, ensuring the structure remains effective if the landfill shifts or settles, and sometimes, relocating a gas-collection system. PSE&G recently consummated a lease of the closed Kinsley landfill in Deptford, with the assistance of our commercial leasing expert Thomas DaCosta Lobo and our environmental expert Keith Lynott. The project, which was named the "Renewable Energy Project of the Year" by the New Jersey Association of Energy Engineers, comprises 36,841 solar panels on 35 acres and generates enough electricity to power 2,000 average-sized homes.



**Norris McLaughlin & Marcus, P.A.**  
By Tim McKeown, Esq., Partner,  
Real Estate Practice Group

I recently reviewed a lease for a tenant containing provisions that not only favored the landlord, but exposed the tenant to potentially devastating financial consequences. All too often, small businesses pay little attention to their lease documents or even understand their significance until it's too late. For example, the lease had

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**Valley National Bank**  
By Russell C. Murawski,  
First Senior Vice President, Manager,  
Commercial Real Estate Dept.

We recently partnered with state and city organizations to provide funding for a new economic development project that brings a major supermarket to Elizabeth, New Jersey. A shopping center, anchored by the supermarket, will provide area residents with access to a wide range of fresh and affordably priced food. Healthy food choices have not been widely available to the local residents of this area of Elizabeth, which has been characterized as a "food desert." The City of Elizabeth, the New Jersey Economic Development Authority (NJEDA) and the Elizabeth Economic Development Company are providing significant funding for the project. We were able to work with these organizations to complete the financing needed to allow the project to move forward. Bringing this project to fruition was not easy, but by partnering with the City of Elizabeth, the Elizabeth Economic Development Company, the NJEDA and Jacob Enterprises (the lead developer), Valley was able to do its part in addressing a community need for a full-service supermarket and provide new economic opportunities for area residents. ■

## 2016 FORECAST

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clients work on Wall Street, so the stock market will influence their spending decisions.

### LAW



**Ferro Labella & Zucker LLC**  
By Rocco J. Labella, Esq.,  
Managing Partner

In looking to 2016, optimism generated by the strong results experienced in 2015 will likely be tempered by uncertainty relating to the presidential election, rising



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

In 2016, Harwood Lloyd, as well as other firms, will face the challenge of continuing to provide quality legal representation that meets the needs of clients to control



**Jackson Lewis P.C.**  
By Richard J. Cino, Esq.,  
Office Managing  
Shareholder (Morristown)

legal costs and expenses. 2016 will provide more opportunities for growth both in existing practice areas, as well as in expanding the scope of legal services that Harwood Lloyd currently provides.

As clients face increasing pressure to keep costs down without sacrificing quality, law firms will continue to be expected to adapt and improve in order to add value. Processes will become more digitalized, and we must capitalize on the advantages of legal technology, yet ensure our highly skilled personnel stay relevant. Cognizant of these expectations and possibilities, Jackson Lewis remains committed to partnering with our clients by listening to their needs.

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no requirement that the landlord have insurance. The tenant could face termination if something happened to the premises and the landlord did not have sufficient funds to make the repairs. The lease also contained a unilateral waiver of subrogation, which exposed the tenant to a damage claim by the landlord's carrier in the event it paid a claim by the landlord. Also absent was a mutual release of liability which protects the tenant from exposure as a result of a shortfall in insurance coverage. Also, instead of a mutual indemnifi-

cation provision, the lease contained a unilateral indemnification provision which served to expose the tenant to liability costs arising out of landlord's negligence. Fortunately, we were able to employ an exit strategy that got the tenant out of the lease and into a new and more reasonable lease, thereby significantly reducing its financial exposure.



**NPZ Law Group, P.C.**

*By David H. Nachman, Esq.,  
Managing Attorney*

Low interest rates continue to drive the growth of the real estate and construction sectors. Our firm continues to assist international businesses with visa and immigration law compliance to relocate their executives and managers in the United States. NPZ Law Group was recently involved in the restructuring of a high-profile Canadian-based real estate and construction company. Executives were

sought to head up U.S. operations after solidifying business operations throughout Canada. Transfers of this nature (L-1) are relatively swift and encounter little resistance from the U.S. Department of Homeland Security (DHS). However, in this case, the organization was structured (from a tax perspective) to maximize limited liability and this structure was seemingly adverse to the equity ownership interest required for the use of the L-1 visa. Working closely with the Canadian financial partners and U.S. accountants of our clients, our team of U.S. and Canadian immigration attorneys convinced the DHS that the organization maintained a "qualifying relationship" allowing for the proper use of the L-1 intracompany visa classification. Now, the door is open to allow for the transfer of other organizational employees in the H-1B Professional, the E-1 Treaty Trader/Treaty Investor, and other nonimmigrant visa classifications. ■



## LEGISLATIVE UPDATE

# "Revenue" Pie is on the Menu, and Everyone Wants a Piece



BY ANTHONY RUSSO  
EVP, GOVERNMENT AFFAIRS & COMMUNICATIONS

**A**S THE 217TH NEW JERSEY LEGISLATURE convenes later this month, legislators will be given a menu of issues and initiatives which will need to be addressed. Let's begin with the starters.

There is "out-of-network" care which aims to cap rising medical costs by restricting how healthcare providers bill for services not covered by insurance.

Then there is the issue of gaming in northern New Jersey. Will there be a ballot question in November asking voters to approve casinos north of Atlantic City? No one knows for sure. On the environmental front, there is the issue of renewable energy standards. How much should we rely on wind and solar as sources of energy? How expensive will it be?

Moving on to the main courses, we have the Transportation Trust Fund issue. Do New Jerseyans have an



Stakeholders want their piece of the pie, but where will the money come from?

appetite for an increase in the state's gasoline tax? Or can private employers stomach mandates imposed on them by Trenton lawmakers on the number of sick days provided to employees?

And then—just when you think you have had your fill—there is the state budget. Will there be enough money to pay for all the services New Jerseyans have grown accustomed to? Will there be a phase-out of the death taxes? Will taxes increase for millionaires and corporations? Will there be additional pension and health reforms? Will our hamburger budget be able to handle the demands of legislators with Porterhouse on their minds?

Stakeholders want their piece of the pie, but where will the money come from? ■