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**"In our society a man is known  
by the company he owns."**

**-- Gerald F. Lieberman**

## Translating Documents Into Dreams

The scene at the kitchen table described the situation perfectly: a battle between dishes and documents. It was Thanksgiving weekend, and Celine Champagne was in the middle of a deal to acquire a new company. Her husband and business partner, Ronald, walked in early one morning and found her at the table. When he asked what time she had come downstairs, she replied, "I never went upstairs." She had spent the night reviewing legal documents, trying to understand all the complexities involved.

She had a lot of help from Nicolai Law Group. Attorneys Brian Ladouceur and Caroline Nicolai worked quickly to review documents passing between both parties, translating all aspects of the deal to protect the Champagnes, making sure they understood the risks involved.

Ronald and Celine, owners of Champagne Drywall, Inc. in Agawam, Mass., were purchasing the assets of a distressed Connecticut construction manufacturer that produced quality structural steel for large commercial construction projects in four states. Under great financial pressure and ballooning debt, the company faced foreclosure by its lenders. Other entities had a stake in the transaction, which made the deal more complicated.

The deal officially closed in late February with the lenders, creating Topper & Griggs Group, LLC in Plainville, Conn. Posted on the wall in Celine's new office is a list of transition team members and their contact information. Included are the Champagnes' daughter Amy, Vice President of Administration for the new company, son Eric, board chair and Vice President of Operations, consultants and accountants, plus the home and cell phone numbers for Brian Ladouceur and Caroline Nicolai.

While the weeks surrounding the acquisition now seem "all a blur" for Celine (who continued working at Champagne Drywall throughout the process), the two Nicolai attorneys "were saviors," she recalls. "They were available anytime I called."

And the relationship continues with the new company, she quickly adds. "Brian stopped in the other day and got a tour," she notes. "I'd recommend the firm to anybody. They are very professional, very courteous."

More information on any of these subjects is available by calling. This material is for information and education purposes only.

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## Giving Back Ain't Always Pretty

Many have asked why a business law firm would get involved in a ballot question to reduce Springfield property taxes, especially when Springfield is in a "fiscal crisis."

The answer is justice. Justice for Springfield taxpayers. Like the millions who get ripped off by shoddy merchandise and Internet scams, Springfield taxpayers are getting ripped off and need representation. We are, frankly, grateful that that we have the ability and resources to bring this issue forward.

Our position is based on the facts. Springfield's taxpayers are the second poorest people in Massachusetts. They pay the second or third highest (depending on how you count) property taxes in the state. The per person value of the property they own is the second lowest in the state.

At the same time, Springfield government last year spent 25 percent MORE than the state municipal per person average. If Springfield had spent at the state average, it would have spent \$103 million less and had an \$83 million surplus. If Springfield had spent at Worcester's level, it would have spent \$78 million less and had a \$58 million surplus. Even with all that extra spending, Springfield has the state's worst schools and streets.

Sure, the argument to cut \$15 million from Springfield's taxes is controversial. Unlike many of our firm's other community activities, this one bothers people because it is not like helping hungry children. Sometimes, giving back ain't pretty. If all we did was what was popular, many important things – like justice for Springfield's taxpayers – would never happen.

- Paul Nicolai

the Ninth Circuit Court of Appeals, joining three other circuit courts. The plaintiff, a diabetic, was substantially limited by her impairment, the court ruled, because despite treatment, she was significantly restricted in eating, a major life activity.

### Why This Is Important...

This is the fourth circuit court to rule that eating is a major life activity. The MCAD has also ruled this way under Massachusetts state law.

### REMOTE PICKUP NO SALES TAX DODGE

When a customer reserves a product in a Massachusetts store but collects it in a New Hampshire store, they cannot avoid Massachusetts sales tax. The product's designation as "reserved" completed the seller's process of possession so title passed to the buyer.

### Why This Is Important . . .

Title to goods may pass by merely reserving an item, even when the specific item (i.e. serial number) is not actually set aside or delivered, so long as conforming goods are held in an inventory system and not available for sale.

### LOSE HERE, THEN THERE & EVERYWHERE

An employee's estate filed a worker compensation case and a discrimination case. The worker compensation case was decided against the estate. The court later dismissed the discrimination case. The Supreme Court upheld the dismissal of the discrimination case, saying that the worker compensation hearing findings meant it was not possible for the estate to prove otherwise in the second case.

### Why This Is Important . . .

Essential issues decided before one agency can halt another agency's review of that same issue when raised by the same party.

### ZONING RULES NOT FOREVER

A town's zoning regulation limited the annual number of single-family home building

*(Continued on page 3)*

### CHANGE YOUR MIND, LOSE YOUR CASE

A party adopted one position regarding its claim in a case and got a favorable decision. Further into the legal process it advanced a contradictory position to seek legal advantage. The trial court refused to allow the party to advance this contradictory position and dismissed the original case. The appeals court upheld the dismissal, saying it was not an abuse of the court's discretion.

### Why This Is Important . . .

A clear case strategy from the start is critical. Unless discovery uncovers a new theory for a case, a contradictory position can create a dismissal that will be extraordinarily hard to reverse on appeal.

### NOMINEE TRUST SHIELD NOT BULLETPROOF

In a nominee trust, a trustee may be personally liable where he is acting as the agent of the trust as a landlord and is found liable in his position as a trustee. In refusing summary judgment, a court held there were factual disputes as

to whether the trustee was an agent or not.

### Why This Is Important...

The shield from liability usually available to trustees is not impenetrable in a nominee trust. Without other measures, it is not a foolproof way to hold rental property.

### PEOPLE MAKE RULES, NOT COMMISSIONS

Conservation commissions cannot reject applications because of commission policy, the Massachusetts Appeals Court found. All substantive requirements must be exercised through regulations created through a public hearing process and subject to uniform enforcement.

### Why This Is Important...

This ruling clarifies that most local agencies cannot enforce policies unless they have been implemented through a regulatory process.

### DIABETICS ARE DISABLED FOR ADA

Diabetes is a "physical impairment" under the Americans with Disabilities Act (ADA), ruled

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permits to 10% of what could be built in a subdivision. The regulation was passed to allow for a new master plan to be written, but the rules had no time limit. After more than 10 years, the town had not yet moved on a new master plan, effectively making permanent the rate of development rules. The state Supreme Court struck down the rule because it was indefinite in duration.

### Why This Is Important . . .

Towns that curb population growth through permanent rate of development zoning rules are now subject to landowners' challenge if there are no time limits and no efforts to create a new master plan.

### IT TAKES TWO TO ARBITRATE

A contract with an arbitration clause that allowed the company to sue but required the customer to arbitrate any claims was declared unenforceable. The company argued that the state law was preempted by the Federal Arbitration Act which calls for enforcement of arbitration agreements. The court concluded that generally applicable contract defenses may be applied to invalidate agreements to arbitrate without contravening the Federal Arbitration Act.

### Why This Is Important . . .

Unless agreements to arbitrate require both parties to arbitrate, they may not be enforced, losing the benefit of arbitration.

### PAY ME, PAY MY DOCTOR

When an insurer ignores an assignment of proceeds to a personal injury case and pays the victim, it may have to make a separate, direct payment to the victim's health service provider. While assignment of a case is prohibited, an assignment of the proceeds is allowed.

### Why This Is Important . . .

When victims do not pay health service providers who have secured direct assignments of injury settlements, the provider may instead seek payment directly from the victim's liability insurer. Two states have now allowed this.

### FINANCES MAKE FAIR HOUSING FAIRER

A disabled prospective tenant was denied an apartment because the landlord would not accept a cosigner on the lease who had the credit to qualify the disabled person for the apartment. The landlord's policy against cosigners violated their duty to make accommodations for the disabled. The court decided that the Fair Housing Amendments Act (FHAA) imposes an affirmative duty to make reasonable accommodations for the disabled in terms of both housing and administration.

### Why This Is Important...

The FHAA imposes an affirmative duty for landlords to make reasonable accommodation in financing and credit terms as well as access for disabled tenants. Failure to make such accommodations will result in liability.

### BEDRIDDEN? PREGNANT? AND DISABLED, SAYS ADA

When a worker's adult daughter was confined to bed for the last few weeks of her pregnancy, the worker applied for a leave of absence under the Family and Medical Leave Act (FMLA). The employer argued that the daughter didn't have a "disability" because her impairment was temporary.

The worker was entitled to the leave, ruled the US Court of Appeals for the First Circuit. Under FMLA, a worker can take up to 12 weeks of unpaid leave to care for an adult child with a "serious health condition" if the child is "incapable of self-care because of a mental or physical disability."

### Why This Is Important . . .

This decision again broadens the types of medical conditions suffered by family members for which a worker may take FMLA leave.

### HASSLING COMPLAINER JUST MAKES IT WORSE

A hostile work environment can be considered retaliation under both Massachusetts and federal law, the US Court of Appeals for the First Circuit ruled. The same standard should be used for deciding whether retaliatory harassment has occurred as is used to decide whether a hostile work environment exists.

### Why This Is Important...

Under this standard, once an employee complains of discrimination to management or an agency, the fact that they are then subjected to a hostile work environment will be enough to support an additional claim for retaliation.



## NEWSWORTHY

### *Marwan Zubi Named Rising Star*

The May issue of *Boston Magazine* included attorney Marwan Zubi as a "Massachusetts Rising Star" in its Super Lawyer special section. Rising Stars are up-and-coming lawyers nominated by the previous year's winners, and are under 40 or have been in practice ten years or less.

### *Islamic Law Article Published*

*The Syracuse Journal of International Law and Commerce* has published attorney Caroline Nicolai's case study on the impact of international treaties on women's rights in countries governed by Islamic law.

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