

2017-2018

A YEAR
IN REVIEW

Schenck Price
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Dear Clients and Friends:

I am pleased to report that it has been another very good year for Schenck Price Smith & King, LLP. The firm continues to thrive and grow – and it has been expanding in ways both planned and fortuitous.

One of our goals is to use this Year in Review to show both the breadth and depth of our practice. We have learned that those in our world – our clients, peers and other business contacts – frequently have no real sense of what we have achieved on behalf of our clients and what we are capable of achieving. SPSK has been handling increasingly complex and sophisticated matters for 106 years. At the same time, our law firm continues to evolve, to address the ever-changing needs of our clients.

Forgive us. We do not mean to boast. But we are very proud of the work we do, whether it is addressing the scourge of bullying in our schools, protecting the rights of religious freedom, watching out for the needs of the elderly or representing a client against a malpractice action.

So, take a look at some of the matters our clients have entrusted us to do for them over the past year. We think you will be impressed.

Gary F. Werner, Esq.

Managing Partner

On behalf of the attorneys and staff





Helping Youth Hockey Team Confront Governing Body

The New Jersey Rockets, playing out of the Bridgewater Sports Arena, is a youth hockey organization dating back to 1970. The team has won national championships and its players go on to excel in college and at the professional level. SPSK assisted the current ownership with purchasing the Bridgewater complex and establishing the corporate structure of the Rockets Sports Group. When some Rockets teams were classified improperly by the Atlantic Amateur Hockey Association (AAHA), the organization governing youth hockey in this area, the Rockets turned to SPSK's **John Ursin** to examine the bylaws to find options. The AAHA is very powerful and most clubs would have simply accepted the unjust result. SPSK guided the Rockets to invoke a rarely used arbitration process with USA Hockey. An arbitration was conducted with a panel of hockey-specific arbitrators from around the country. The result was a complete victory for the Rockets. The AAHA was forced to reverse its decision and the Rockets teams were permitted to play at the highest level.

PLANNING FOR A BUSINESS'S SMOOTH TRANSITION

Gary Mazart, Edward Ahart, Jordan Wassel.

Edward Ahart, Gary Mazart and **Jordan Wassel** continued SPSK's long-standing practice of counselling closely held companies on succession and exit strategies, both in the context of the companies' business plans and with respect to the owners' and managers' estate planning. For one substantial family-owned manufacturing company, for example, we integrated the succession planning with a strategic business plan, and then we tailored the estate plans for all key family members around that business plan. The close collaboration by our attorneys with expertise in business law with those who focus on tax and estate planning is not common in law firms today and provides true value to our business owner/manager clients.



Protecting Client from Baseless Smears



Frequently, plaintiffs will use the cloak of a business litigation to launch personal attacks. These can include baseless allegations of sexual harassment, demands for mobile phone records and efforts to expose confidential e-mails. These brutal tactics need to be met with responsive measures that are just as aggressive.

Thomas Cotton (left) and **Douglas Eisenberg** (right) successfully protected a business owner from that very type of smear campaign. A former employee claimed that the owner had sexually harassed her and relayed intimate photographs to her husband. The husband attempted to bring claims of his own, alleging that the business owner had conspired with his wife to conceal her assets during their subsequent divorce. The husband also lobbed an assortment of discovery demands and subpoenas. Cotton and Eisenberg obtained a dismissal of all claims. They also secured multiple protective orders that barred the husband's discovery tactics. Ultimately, their client did not need to respond to a single discovery demand, or provide any testimony.

Protecting Trade Secrets by Going on the Attack

Entrepreneurial clients exploiting profitable markets are often targets for their competitors, and in the summer of 2017, one of Schenck Price's high-tech corporate clients came to partners **Michael Marotte** and **Eric Inglis**, Co-Chair of the Schenck Price Litigation Department, when they suspected they were the victims of corporate espionage and theft of trade secrets. Within a few days, Inglis, Marotte and associate **Thomas Cotton** prepared and filed a 150+ page Order to Show Cause and Verified Complaint, which resulted in restraints being granted that devastated the client's competitor and put an end to the illicit commercial conduct. Within days of Schenck Price's filing, the Court ordered the client's competitor to cease its tortious conduct, the competitor terminated four of its key employees, and the Court prohibited the competitor from re-hiring one of the employees engaged in the illicit conduct.

During the course of this fast-paced, high-stakes case that unfolded over the course of the July Fourth weekend, Schenck Price's aggressive pursuit of its client's rights played a vital role in protecting its client's commercial advantages and preserved the profits being earned by its client.



Eric Inglis, Michael Marotte, Thomas Cotton.

A Full Plate of Varied Land Use Matters

We have a long history representing property owners and developers in a wide variety of land use matters. Our group has significant experience in large and small subdivisions, residential, commercial and industrial site plans, variances, and related permitting and interpretation, as well as decades of experience in all types of environmental issues.

In the past year alone, we have handled a tremendous array of projects throughout New Jersey. They have ranged from a 17-story luxury apartment tower in East Orange to a restaurant expansion in Dumont to self-storage facilities located around the state. We handled Cider Mill Estates, a 56-townhouse development that combines market-rate and affordable housing to satisfy Livingston's affordable housing obligations. We worked on projects involving a synagogue in Livingston and 12 units of affordable housing, a shopping center expansion in South Brunswick and a swim school in Livingston, as well as the new retail complex right across the street featuring popular retailers like

Shake Shack, Container Store, Starbucks and Sprint. On behalf of New Jersey Energy Corporation, we received approvals for expanded gasoline stations with convenience stores in Wayne and other pending locations.

We obtained site plan approval for improvements to a 71,000 square-foot industrial building in Fairfield and a use variance and site plan approval for a new tenant at a shopping center in Piscataway.

We continued our pro bono support of Morris Habitat for Humanity by obtaining a use variance and site plan approval for their ReStore retail facility in Randolph and a 12-unit multifamily residential project on the former Department of Public Works facility in Roxbury.



Richard Toniolo, Jason Waldstein, Stephen Geffner and Sean Monaghan.

Taking a Leading Role in the World of Estate and Trust Litigation



Our Estate and Trust litigators represent both individual and corporate fiduciaries and beneficiaries in disputes regarding estates, trusts, powers of attorney and guardianships. In addition to the work we do on behalf of our clients, our team has been recognized for its experience and expertise by the courts. Attorneys including practice **Co-Chairs Meredith Grocott** and **Shirley Whitenack**, and **Basil O'Connor**, **Regina Spielberg** and **Crystal West Edwards**, have been appointed by probate judges to act, variously, as court-appointed attorney, guardian ad litem or temporary administrator. Also, Whitenack is on the New Jersey Superior Court roster of approved mediators, and she and O'Connor serve as mediators and neutrals in probate and chancery division disputes.

Basil O'Connor, Shirley Whitenack, Meredith Grocott, Regina Spielberg, Crystal West Edwards.

LIENS FOR A \$35 MILLION LOAN

On behalf of our client, ConnectOne Bank, **Jeremy Garlock** (right) and **Michael Gallo** (left) worked on a \$35 million loan for a regional bank's purchase of another company. As security, we took liens on four commercial properties, in Avenel and Swedesboro, NJ, as well as in Massachusetts and Connecticut, in addition to liens on all the purchaser's assets.



Doing the Work to Allow Health Care Institutions to Engage in Research

SPSK's Health Care Law practice group negotiates clinical research-related agreements on behalf of New Jersey's largest hospitals and health care systems to enable them to participate in all phases of clinical research and provide their patients with access to new treatments before they are approved or available to the general public. Participation in such research ensures that



these hospitals and their physicians remain on the cutting edge of medicine, with access to innovative treatments and the latest medications, devices and technology. We negotiate agreements related to the research of various medical conditions and diseases, including cancer, genetic and congenital diseases, Parkinson's Disease and other movement disorders, and valve disease, as well as pediatrics and women's health.

The firm's Health Care Law practice group has negotiated many complex software agreements in order to facilitate the implementation of the Epic electronic medical record system at one of New Jersey's largest hospital systems.

In addition, they conduct HIPAA compliance reviews and work with an array of covered entities and business associates to develop and implement policies and procedures and training programs.

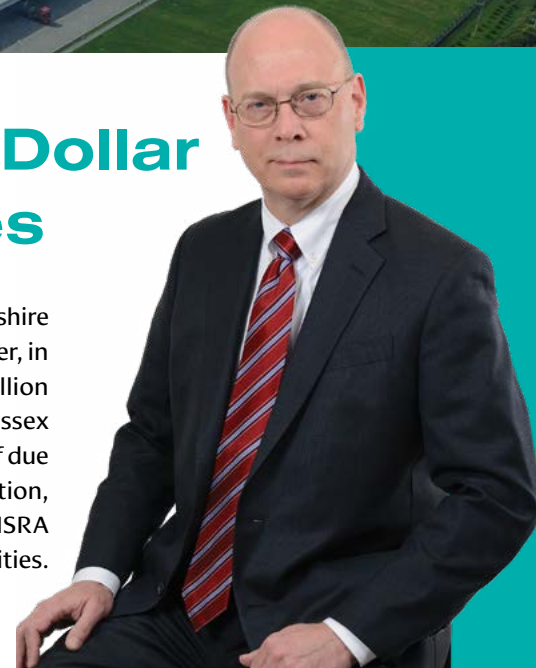
Front row, left to right:
Meredith Hoppe, Deborah Cmielewski, Divya Srivastav-Seth.
Back row: Brian Foley, Daniel Carroll, Sharmila Jaipersaud.





Counseling in Multi-Million-Dollar Sale of Industrial Properties

Sean Monaghan served as environmental counsel for several affiliates of The Hampshire Companies, a broad-based national real estate operator, investor and fund manager, in a sale of a portfolio of industrial properties in Northern New Jersey. The \$147 million sale included six industrial buildings comprising 1.2 million square feet in Bergen, Essex and Middlesex counties. The engagement included risk assessment, coordination of due diligence, negotiations with prior owners and other responsible parties, risk allocation, risk transfer, negotiation of environmental provisions for agreements of sale, ISRA compliance, environmental insurance evaluation and post-closing compliance activities.



An Expanding Scope of Banking Assignments

The Banking and Finance practice group, headed by **Thomas Hofstetter** (right) and **Heidi Hoffman-Shaloo** (left), represented lenders in a variety of projects over the course of the past year, from a U.S. Small Business Administration (SBA) 504 debt refinancing of a rooftop tennis bubble on Long Island to an SBA financing under the Export Working Capital Line of Credit program. They facilitated an expansion loan for a company that imports flooring from China, which has expanded from one employee to 300 through SBA loans. In addition, they handled a commercial refinance of over approximately \$40 million in debt by affiliated real estate companies secured by three industrial sites in New Jersey with a participation. By consolidating 180 loans into a single loan, with long-term financing guaranteed by the SBA, they were able to save a construction company, with more than 400 pieces of collateral, debt payments of \$80,000 per month.

To Whom Do Lawyers Turn When They Need a Lawyer?

Representing a mid-sized New Jersey law firm against a New York legal malpractice action, **John Campbell** (left) found himself arguing in New York's First Department Appellate Division on numerous occasions this past year, as well as making multiple submissions to New York's highest court. The case began many years ago when SPSK obtained a dismissal of the plaintiff's case. The parties then engaged in appellate practice as well as simultaneous trial motion practice seeking to add parties and claims, not to mention a separately filed lawsuit which met the same fate as the first action. All told, the SPSK team of Campbell and **Gilbert Leeds** (right) went undefeated and obtained numerous successful decisions from the Trial Court, the First Department and New York's Court of Appeals in 2014, 2015 and 2017. An attorney who represents himself has a fool for a client. They should retain SPSK instead.



Dealing with a Difficult Neighbor

Who are you going to call when confronted with a particularly difficult business?

Peace, tranquility and pretty views are what homeowners expect when they live in a lakeside home in Sussex County. Yet many Lake Windsor homeowners were forced to endure the noise, dirt and annoyance that occurs when a commercial business and dump is run on a hillside above their home. The homeowners exercised their rights as citizens and complained to various governmental bodies and agencies regarding the commercial activities of their neighbor, only to find themselves named as defendants in a defamation lawsuit. The SPSK team of **John Campbell** and **Gil Leeds** was successful in obtaining an early dismissal for one of the homeowners, arguing that the client's speech was protected. Campbell and Leeds later successfully defeated the plaintiff's attempt to drag their client back into the case with a motion for reconsideration.

Making New Law on Behalf of a Non-Profit

A class action case against Atlantic Ambulance Corporation alleged that our client overcharged thousands of patients for paramedic services. Atlantic Ambulance is a non-profit corporation providing air and ground medical transportation services. Following five years of litigation, the trial court denied the motion for class certification. On appeal, the Appellate Division affirmed in part the trial court's decision to deny the plaintiff's application for class certification. Working with co-counsel, our team – **Peter Marra, Ryder Ulon** and **Thomas Gamarello** – made new law. The Appellate Division agreed with our position that ambulance companies are learned professionals and, therefore, not subject to the New Jersey Consumer Fraud Act.



Ryder Ulon and Peter Marra. Not pictured: Thomas Gamarello.

Tax Planning After Death

Finding solutions when estate planning doesn't go quite as planned

In estate and trust administration, what seems simple often is not. Particularly when handling significant or complex assets, it is vital to involve a sophisticated and experienced attorney.

Fundamental estate tax law provides that when a spouse dies, assets passing to the surviving spouse qualify for the marital deduction and are not subject to immediate estate taxation. An exception applies when the surviving spouse is a non-U.S. citizen, which is the situation in which a client found himself when his wife predeceased him.

The firm had prepared the spouses' Last Wills years earlier, and advised the clients and their financial advisor that the ownership of certain marital assets had to be changed. This way, if the non-citizen husband survived his citizen wife, the marital assets would pass for his benefit through a QDOT (Qualified Domestic Trust) created under his wife's Last Will and remain exempt from estate tax. However, the spouses and their financial advisor failed to re-register the asset ownership from joint ownership, so they presumptively passed directly to the non-citizen husband (not through the QDOT), potentially generating nearly \$1 million in estate taxes.

Through a "disclaimer process" implemented by Trusts and Estates Partner **Gary Mazart**, ownership of the marital assets was changed after the death of the citizen wife so that the assets passed through the QDOT for the benefit of the surviving non-citizen husband, qualifying for the marital deduction and avoiding the immediate payment of substantial estate taxes.



Basil O'Connor,
Crystal West Edwards,
Jordan Wassel, Regina
Spielberg, Gary Mazart,
Len Entrabartolo.

Continuing to Build the Construction Practice

SPSK's Construction Law Practice Group represents developers, contractors and design professionals in disputes involving projects throughout the New York Metropolitan area. We also assist clients from project inception in order to avoid and/or minimize disputes.

In 2017, the Construction Law Group represented an international construction entity that had been brought into lawsuits involving large condominium projects in both Manhattan and Hoboken. We also successfully secured a partial summary judgment dismissing many of the claims against a construction manager on a major building project for a university.

As the group continues to grow, we now represent many of the largest construction managers in Northern New Jersey. Our focus includes:

- Contract negotiation and drafting;
- All aspects of the public bidding laws;
- Scheduling issues involving claims for acceleration and delay, time extensions and liquidated damages;
- Municipal Mechanics Lien and Construction Lien Law issues;
- Prevailing wage claims;
- Surety and bonding issues; and
- Extra work claims, scope of work disputes and change order disputes.

Joseph Haftek, Ryder Ulon, Gary Werner, Dana Ferrera, Thomas Cotton.



Helping School Districts Squarely Face the Issue of Bullying

Bullying and, in particular, cyber-bullying, has become a focus of the national conversation. As thought leaders in this area, the attorneys in our School Law practice have been out in front on this issue – as litigators, educators and authors.

New Jersey's anti-bullying law, known as the Anti-Bullying Bill of Rights, imposes stringent requirements on how schools deal with bullying, both of the electronic and the conventional varieties. For the many school districts that we represent, we have provided training for all personnel involved in combatting bullying, from board members to school administrators. In particular, we train those tasked with investigating alleged bullying incidents, so that they can conduct a proper and meaningful investigation that will address the underlying problem and also withstand legal scrutiny.

As part of our broader initiative to provide education on this growing issue, we have also provided training for other attorneys and for attendees at New Jersey School Boards Association conferences and workshops.

When necessary, we have successfully represented our school board clients in court when they are faced with litigation arising under the anti-bullying law and, in fact, we successfully litigated one of the first cases in New Jersey concerning the application of the law.



Front row: Joanne Butler, Robin Ballard. Back row: Matthew Donohue, Paul Green, Marc Zitomer, Katherine Gilfillan, Alison Kenny, Joseph Roselle.

Negotiating a Collective Bargaining Agreement

Keeping the “Labor” in the Labor & Employment Law Practice

Unlike the “Labor & Employment” practices at most law firms, at SPSK, Labor & Employment practice Co-Chair **Joseph Maddaloni** actually practices traditional labor law, including negotiating and administering collective bargaining agreements and handling matters before the National Labor Relations Board.

On behalf of SPSK’s client, Lincoln Education Services Corporation, a leading national provider of technical skills training, Maddaloni recently negotiated a successor collective bargaining agreement covering instructors employed at one of Lincoln’s largest campuses in Melrose Park, IL, who are represented by the Automobile Mechanics Local No. 701, International Association of Machinists & Aerospace Workers, AFL-CIO, one of the nation’s largest automotive unions. The union’s five-year contract expired on October 31, 2017. The parties utilized the services of the Federal Mediation & Conciliation Service to assist them in striking a deal.



Saving Jobs By Securing a Tax Credit

Michael Marotte and SPSK secured a \$7.2 million EDA (New Jersey Economic Development Authority) tax credit for a client, preserving hundreds of high-paying jobs in New Jersey. The Firm initiated the idea to apply for this credit and performed the varied legal and administrative work necessary to secure the tax credit.

Stacey Gallagher and Michael Marotte.



Addressing Special Needs with Trusts

Our Elder Law and Disability practice group routinely drafts many special needs trusts for people with disabilities. In 2017, because of our extensive experience in drafting such trusts, many new clients have asked us to review special needs trusts drafted by other attorneys. As a result, we fixed many defective trusts done by other attorneys so that the trust beneficiaries with disabilities could qualify for – and obtain – means-tested benefits like Supplemental Security Income and Medicaid.

Shirley Whitenack, Crystal West Edwards, Jordan Wassel, Meredith Grocott, Regina Spielberg, Lauren Mechaly and Gary Mazart.

Guiding Businesses Through All Seasons of Their Life Cycle

Edward Ahart, Stacey Gallagher, Jason Waldstein.

Having been in practice as long as SPSK has, we frequently go through the entire business life cycle with our clients. These companies start from nothing and, with a combination of good business sense, a little luck and excellent advice from their legal advisors, can grow into multi-million-dollar enterprises. As an example, last year the team of **Edward Ahart**, **Jason Waldstein** and **Stacey Gallagher** from our Corporate and Business Law Practice Group sold an entrepreneurial company in the service industry to a large private equity firm. Such transactions are often quite complex and require input and expertise from other practices in the firm, including tax, real estate and environmental law.

The companies vary, as do the business and personal objectives of the owners, but our goal remains the same: to help the business owners reap the benefits from all they invested in their company and enjoy its value.



Addressing a Question of Religious Freedom

The New Jersey Supreme Court in *Freedom From Religion v. Morris County Preservation Trust Fund, et al.* is considering whether the Morris County Preservation Trust Fund is in violation of the New Jersey Constitution by including religious institutions as recipients of grants.

Representing Morris County, **John Bowens** secured summary judgment at the trial level. The plaintiff filed an appeal with the New Jersey Appellate Division. John filed a motion in the Supreme Court seeking to bypass the Appellate Division and have the appeal heard directly by the Supreme Court. The motion was granted. The Supreme Court reversed the lower court's decision holding that an arcane provision of the New Jersey Constitution required the exclusion of churches from a public grant for which they were otherwise eligible simply because they are churches. The County of Morris is appealing to the United States Supreme Court because the New Jersey decision appears to be in direct conflict with the recent decision of that court in *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 582 U.S. _ (2017).



Supporting the Community in Which We Live and Work

During the course of its 106-year existence, SPSK has dedicated much time and resources to various charitable endeavors. 2017 was no exception. Of note, SPSK raised money for the Susan G. Komen Foundation to assist in its efforts to combat breast cancer. During the month of October, SPSK sponsored a “Wear Jeans to Work Day” and asked anyone who wanted to wear jeans to work that day to donate at least \$5 to the Susan G. Komen Foundation. The day turned out to be an overwhelming success, with SPSK attorneys and staff donating more than \$1,200 to the Foundation.

Coming Down to the Wire in Contesting a Ballot

Eric Inglis was drawn into the frenzied political atmosphere of 2017, when an intra-party dispute gave rise to a battle for ballot position in a Passaic County primary for state legislative offices.

With only hours to go before the ballots were due to be printed, Inglis had to gather the facts and compile the pleadings required to tell a compelling story that would convince the Assignment Judge of Passaic County to literally “stop the presses” to

prevent the circulation of what Inglis’s client maintained was an illegal ballot. In a twist that could have potentially lengthened the odds, Inglis’s application would be opposed by the Passaic County Clerk, who both prepared the ballot and was a State Senate candidate on the proposed ballot. Over the course of less than a week, Inglis appeared for two hours-long court appearances in front of a score of adversary attorneys, local politicians and representatives of the press to argue his client’s position. Only days after Inglis was retained by his client, the Court ruled that the ballot proposed by the Passaic County Clerk was illegal and the judge ordered the re-drawing of ballot positions and re-printing of the ballots.





Showing Leadership in Building Diversity in the Legal Profession

SPSK continues to be a leader in diversity within the legal community. Following last year, when Partner **Crystal West Edwards** (left) served as President of the Garden State Bar Association, the state's largest professional organization for African-American attorneys, **Sharmila Jaipersaud** (right), a newly-named partner, has become president of the South Asian Bar Association of New Jersey (SABA-NJ). Sharmila also serves as Co-Chair of the Diversity Committee for the New Jersey Women Lawyers Association.

SPSK presented a scholarship to a law student of diverse background through the Garden State Bar Association. We also celebrated, as a firm, Black History Month, Hispanic Heritage Month and Holi, the Festival of Colors, to commemorate the arrival of spring as celebrated in Hindu cultures.



Helping a Company Fulfill Its Vision for a New Facility

Not long ago, repackaging services provider Econo-Pak had an outdated facility in Sussex, NJ. The company had a vision of a much larger modern facility and a corporate restructuring plan. With the counsel of **John Ursin** and **Amy Buck Faundez** and the SPSK team, the company engaged in over a years' worth of real estate acquisitions and sales, new financing and two significant assets sales. Today, the business is flourishing in its new beautiful 200,000-square-foot facility in Milford, PA. As a result of the dynamic, strategic leadership of the company and the counsel of the SPSK team, the Sussex Borough building was demolished to make way for a new ShopRite under a land lease arrangement. The Franklin property was repositioned and leased, profitably, to a new tenant.

Women Taking the Lead

The SPSK Women's Initiative mission includes both the promotion of the professional development of women through mentoring, education and advocacy, and the provision of opportunities for networking.

The Initiative's spring networking reception was in service of this mission. More than 100 women attended this event with guest speaker Kate S. Tomlinson, Publisher and Editor-in-Chief of *New Jersey Monthly*. Also in support of this mission, we hosted an internal firm event during Women's History Month in March.

The Women's Initiative also supports charitable endeavors. This included participating in National Wear Red Day to raise awareness for heart health in women. During the holidays, we also collected donations for the Jersey Battered Women Service, a nonprofit agency that provides housing and emotional and financial support to women and children in the Morris County area.

In 2018, the Women's Initiative is hosting additional networking events, including one with the National Organization of Women Business Owners that served as an opportunity to collect donations for Dress for Success of Northern New Jersey.

Front row: Farah Ansari, Meghan Hoppe, Amy Buck Faundez, Meredith Grocott, Sharmila Jaipersaud, Shirley Whitenack. Second row: Joanne Butler, Robin Ballard, Regina Spielberg, Julie Gendel, Lauren Mechaly, Deborah Cmielewski, Crystal West Edwards, Valerie Vladyka, Sandra Calvert Nathans, Katherine Gilfillan and Divya Srivastav-Seth. Not pictured: Dana Ferrera, Cynthia Flanagan, Heidi Hoffman-Shaloo, Alison Kenny and Wynne Whitman.



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