

New Attorneys Enhance Lacy Katzen's Ability to Serve a Variety of Client Needs

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The addition of attorneys Timothy Muck, Jacob Osher and John Refermat offers expanded services to clients of Lacy Katzen LLP.

Associate Timothy Muck concentrates his practice in the areas of estate planning and business law, with a particular emphasis on taxation issues.

He earned his accounting degree at Canisius College and law degree at the State University of New York at Buffalo School of Law in 2002. He has been admitted to the New York State Bar and the United States Tax Court.

Previously, he worked in an accounting firm in Albany doing pro-active tax planning for individuals and businesses. For the past two years he has worked for an Albany-based law firm in the areas of estate planning and business law. His wife, who is from the Rochester area, is an assistant

professor of psychology at SUNY Brockport. Eclectic personal interests include soccer, rugby and the design, form and function of skyscrapers.

His experience in taxation allows Lacy Katzen to expand the scope of services offered to clients. He recognizes that "Lacy Katzen has the tools and resources...to craft solutions for personal and business concerns."

Tim is passionate about tax issues and the complex challenges presented by this niche area of law. "Researching and interpreting tax law requires more than a cursory understanding; one must embrace the complexity and endeavor to stay current on developments in the law." He welcomes the challenge to find solutions for large and small businesses alike. For advice and personal attention to your business matters, please contact him on his direct line at 324-5727.



Associate Jacob Osher is a new addition to the litigation team at Lacy Katzen LLP, and joins Peter Rodgers, Leon Katzen, Lawrence Schwind, Jacqueline Thomas and John Refermat.

"I am very excited to join a firm with such an outstanding reputation as Lacy Katzen. I was immediately impressed with the quality of work and the staff."

Jake completed his undergraduate work at Niagara University and earned his law degree from Rutgers University Law School. He has been admitted to the New Jersey and New York bars and the United States District Court for the District of New Jersey. Previously, he practiced in New Jersey in the areas of defense and insurance coverage litigation, municipal and immigration law.

He has especially enjoyed his immigration work because of the opportunities it gives to improve the lives of clients. His background also extends to the practice of criminal and family law.

His work on complex environmental cases has resulted in multimillion dollar settlements. Jake's confidence in litigation is based on his broad knowledge and experience.

New Attorneys

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His leisure hours offer him an opportunity to participate in pastimes he enjoys. During his college years, he played rugby and traveled extensively with the team. Now that he has settled in Rochester, he is considering a “return to the pitch”.

It was a study abroad experience in London that sparked his love of travel. Since then, he has traveled throughout the United States, Europe, Mexico and Canada. He believes that learning about the cultures of other countries is one of life’s most important opportunities.

Still, Jake’s love of the law, the courtroom and negotiating settlements are his primary interests. To meet with him personally about your litigation issues and questions, call Jake Osher on his direct line at 324-5720.



Lacy Katzen is pleased to welcome John Refermat, Of Counsel to the firm. He is an experienced litigator who concentrates his practice in complex civil and commercial litigation, real property tax, zoning and municipal/land use litigation, and environmental matters.

His experience extends to securities arbitration and construction litigation. An experienced appellate advocate, he has successfully prepared and argued appeals before New York’s Appellate Division and the United States Court of Appeals.

After graduating from McQuaid Jesuit High School, John received his BA from Hamilton College and his law degree from Notre Dame Law School. He has served as general counsel to the Binghamton Housing Authority, counsel to the Broome County Republican Committee and special counsel to New York State Senator Thomas W. Libous. Before joining Lacy Katzen, he was associated with Harris Beach PLLC.

His admissions to practice include the New York State Bar, United States District Courts for the Western and Northern Districts of New York, United States Court of Appeals, United States Bankruptcy Court, the United States Court of Federal Claims and the United States Supreme Court.

John also represents property owners, school districts and municipalities in real property tax proceedings. He advises both public and private clients on the New York State Environmental Quality Review Act (SEQRA) and the National Environmental Policy Act (NEPA). On behalf of municipalities and other entities, he has successfully defended a variety of proceedings, including those involving SEQRA, landmark designation, and zoning/land use issues. John has volunteered his time on behalf of various professional and community activities. Currently he serves on the Board of Directors of the Rochester Polish Heritage Society, and as a member of the George Eastman Legacy Committee and the Eastman House Council.

He is also a member of the Town of Penfield Republican Committee, and formerly served on the Rochester Children’s Nursery Board of Directors, and the Rochester-Monroe County Youth Board.

In their spare time, John and his wife Stacy enjoy hiking and mountain climbing, especially in the Adirondacks and Finger Lakes, and chasing their three children under the age of six, Stan, Reilly and Joe.

John’s depth of experience and knowledge of litigation enhances Lacy Katzen’s ability to serve a variety of client needs. His personal statement reflects his respect and regard for the stature of the firm.

“For more than a half century, Lacy Katzen has provided superior legal services to clients. I am also impressed by the firm’s state of the art technology. Lacy Katzen has demonstrated its commitment to personal client service, including responsiveness and accessibility.” For personal consultation, John can be contacted directly at 324-5762.

NEWS WITH THE FIRM

Craig Welch, Resident Partner of Lacy Katzen's Canandaigua office, has been named the Town of Mendon's Planning Board attorney. He has served as Mendon's Planning Board attorney for the last 13 years. For several years prior to that, he was a member of the Planning Board and had also served on the environmental conservation board. This year marks his twenty-first year of service to the town in one capacity or another.

Craig also participated as a panel member for Mass Mutual at luncheon sponsored by the Canandaigua Chamber of Commerce for business valuations and succession planning.

Michael Schnittman, Chairperson of the Commercial Practice Group, Peter Rodgers, Managing Partner, and David MacKnight have been selected for the New York Super Lawyer's magazine featuring the top 5% of attorneys in the country.

Peter Rodgers and David MacKnight were selected to be included in the Best Lawyers in America.

Karen Schaefer recently made presentations to lawyers and financial planners on the following estate planning topics:

- "Non-spousal rollovers from qualified retirement plans authorized by the Pension Protection Act

of 2006 and selected beneficiary designation issues" for the Financial Planning Association of Upstate NY.

- "Trusts for Spouses" addressing marital and credit shelter planning to minimize estate taxes for the New York State Bar Association (Trusts and Estates Section).

Jacqueline Thomas has been included in the 30th anniversary Edition of Who's Who in American Law. This features the biography of the country's most accomplished legal professionals. She is also included in the Cambridge Who's Who Among Executive and Professional Women, Honors Edition which is limited to those who have demonstrated leadership and achievement in their profession.

Peter Rodgers spoke at the University of Rochester's School of Nursing on Medical Malpractice in the Legal Nurse Consulting program.

Mr. Rodgers will chair the fall New York State Bar Association seminar entitled "The Prosecution and Defense of Medical Malpractice Claims".

NEW CASELAW CONCERNING NON-COMPETE AGREEMENTS FAVORS EMPLOYERS

Non-compete agreements seek to prevent an employee from competing with his or her former employer. These agreements theoretically protect the employer, who has trained the employee and shared specialized knowledge about the business or its clients, from an employee who leaves to work for a competitor or even sets up the same type of business nearby. However, these agreements have been extremely difficult to enforce. Courts have been reluctant to restrict an employee's ability to find employment in his or her chosen field.

The courts have ruled that in order to have an enforceable agreement, it must protect legitimate business interests of the employer, be reasonable both in time and geographic location, and not present an undue hardship to the employee in seeking new employment. Non-compete agreements have been historically difficult to enforce because each of these elements is open for interpretation, with the most difficult legal battles usually being fought over whether the restrictions in the agreement are "reasonable." The caselaw interpreting what is reasonable has been extremely inconsistent. For just about every case in which a non-compete agreement was held reasonable, one can find a case with similar facts in which the non-compete agreement was rejected as unreasonable.

An employer seeking to enforce a non-compete agreement has no real assurances that the agreement will be deemed enforceable by a court. Employees seeking to breach the agreement can do so knowing the employer will have to begin costly litigation with an

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COLLECTIONS AND EVICTIONS:

Did you know if you wait more than 90 days to collect an overdue account, you are less likely to collect on it? Did you know a tenant has 72 hours to vacate his or her leased space after a warrant is issued? Did you know there are strict time limits to file a mechanic's lien? Knowing the answers to these important questions is critical when conducting business.

The Collection and Creditors' Rights Department of Lacy Katzen LLP prides itself on the use of technology and personnel in order to achieve maximum results for clients at minimum cost. These departments are well known throughout New York State for an aggressive and proactive approach to the collection of both consumer and commercial debt. Once it is determined a debt owed to you will not be paid, the next step should be to contact Lacy Katzen.

Consumer Debt

With a consumer debt, there must be strict adherence to the Fair Debt Collection Practices Act in every aspect of the collection process. Initially, a demand letter will be sent, and the debtor's address and asset information such as employment or ownership in real estate will be verified. A determination will be made as to whether a suit should be commenced.

Commercial Debt

With commercial debt, the credit agreement or contract signed by the debtor needs review. In addition, using proprietary skip-tracing sites and reviewing the County Clerk and Department of State online records for corporate information, valuable information is provided about the debtor and determines if a suit should be commenced.

If a suit is started, information is provided to our clients during all aspects of the proceeding. This is comprised of acknowledgement of a claim, date the summons and complaint was served, entry of judgment and enforcement actions including the issuance of wage garnishments, attachment of bank accounts and placing liens against real estate owned by the debtor.

If a debtor files bankruptcy, a proof of claim will be filed on the client's behalf and the proceeding will be followed to ensure those rights are protected. If there is basis to object to the debtor's discharge, we will ensure it is accomplished in a timely manner. Additionally, if the case warrants a motion to lift the automatic stay imposed by the Bankruptcy Code, such a motion will be brought.

In some commercial cases, it may be necessary to litigate specific commercial issues for clients including breach of contract, liability of personal guarantors and fraud. The commercial litigators are here to help our clients in all aspects of business which may result in suits on their behalf. At times, these suits may involve extensive legal work of a complicated nature. Your attorney will be able to clarify what is involved as the case progresses. Lacy Katzen LLP prides itself on keeping clients informed during every aspect of the matter.

Evictions

Lacy Katzen LLP also has a large eviction practice. We handle hundreds of evictions every year representing both residential and commercial landlords. If you are a landlord, it is frustrating when a tenant does not pay rent. Therefore, it is important to have the kind of representation which resolves the matter quickly.

Lacy Katzen has the reputation of having quick turnaround time for handling evictions. After providing information about the tenant by way of an intake form, the necessary paperwork is prepared and served on the tenant quickly. The case is calendared for a court date and an experienced attorney appears in court to secure the warrant of eviction.

Foreclosure

The Collection and Creditors' Rights Department also represents both individuals and financial institutions in the enforcement of foreclosure of mortgages and security agreements. Because of the significant amount of work involved and time limitations provided by the law, foreclosures may take many months to bring to conclusion. Lacy Katzen handles foreclosures in an efficient and swift fashion from the initial ordering of an abstract of title, through preparation of pleadings and up to the date of auction at the County Clerk's office. At all times, clients are informed of the progress of the case.

In addition, if you are a contractor or supplier of building materials and a customer fails to pay in a timely manner, you may have the right to file a mechanic's lien. Lacy Katzen can assist your needs in preparing and filing the necessary paperwork to

Collections and Evictions:

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make sure you are protected. Strict time limits apply, so you should contact one of our attorneys as soon as you believe you will not be paid.

If you run a storage or garage business, you should be aware of certain rights. A garageman's or warehouseman's lien is an effective tool to help collect a debt. Likewise, if you have a security interest in personal property, we can assist in repossessing your property. We are available at all times to answer questions and to assist in the enforcement of your claims. For more complete information, please refer to our website at www.lacykatzen.com and click on Collections and Creditors' Rights.

To provide expert legal services in the area of collections and creditors' rights, contact any of the following attorneys at Lacy Katzen LLP: Michael S. Schnittman, Mark H. Stein, David L. Rasmussen, Glenn M. Fjermedal, David MacKnight or Louis Ryen.

WIND POWER: WHAT YOU NEED TO KNOW

As the cost of energy continues to rise, wind power has emerged as an alternative resource and lessens our reliance on conventional power sources. Technological advances, federal and local programs, and credits and tax incentives have dramatically reduced the cost of producing wind power and have provided an impetus for commercial wind projects.

Although not without controversy, wind power projects can also provide substantial economic benefits to a community. A number of these facilities are presently operating in New York and many more are on the horizon.

Wind power projects can be large or small. For example, a single household-size turbine can provide energy to a single home or farm. While much larger "Wind Farms" can consist of multiple turbines ranging in heights of upwards of two hundred feet and are designed to produce energy for sale in power markets. Because Wind Farms generally require larger amounts of land, they are more prevalent in rural areas. Project developers will commonly look to secure an option to lease from the owner(s) of the real property before proceeding with the proposed project.

A **landowner** approached by a developer with a proposal to lease part of the landowner's rural property needs to be cognizant of a number of issues before entering into such an agreement. Questions should include, but are not limited to the following:

- Does entering into a lease or option to lease trigger a default in the landowner's mortgage?
- How much land is being leased? Will the landowner still have use of the unleased land for agricultural purposes? Can the amount of leased acreage be reduced?
- Does executing a lease or option to lease affect the ability to transfer the subject property in the future? How many times and for how long may the lease be renewed?
- Upon the termination or discontinuance of a lease, is there a satisfactory decommission plan to provide for the removal of any equipment and restoration of land?

The **Municipality** has the responsibility for regulating the existence and operation of wind power facilities..

- It must be determined whether the Zoning Code permits wind power projects. Many Municipalities have no Zoning Code or have a Code which does not address such projects. In either case, Municipalities should be pro-active and adopt local laws to address the issue before it arises.
- Adopting a local law with appropriate land use controls will assist the municipality in addressing environmental and safety concerns that are commonly raised with wind farm projects. These include location, compatibility with other permitted uses, aesthetics, noise, height and setback requirements.
- Upon receipt of an application to develop a wind power project, the local Municipality must complete an in-depth evaluation of the environmental impact of the proposal as part of its review process under the State Environmental Quality Review Act (SEQRA). The review process typically takes several months and requires input from numerous local and federal agencies. SEQRA mandates that every potential environmental issue of a proposed project be considered, evaluated and its effect mitigated as necessary, before a project proceeds any further.

By being pro-active, Municipalities can ensure that the development of wind energy power is done in a manner which balances all of the competing interests that will ultimately benefit the community. We can help you work through these issues, if you would like to discuss this further, please contact Dan Bryson, Chair of Lacy Katzen's Municipal Law Group at 585-324-5714.

Plan for your heirs

Perhaps you may remember hearing that the estate tax was “repealed,” or you think that only multi-millionaires living in expensive mansions need planning to minimize estate taxes. Unfortunately, on both counts, your assumptions are wrong. If you have concerns about estate taxes, you must, if you are concerned about your heirs, plan in advance.

It is true that in 2001 the federal estate tax laws were reformed to lower the tax rate on estates and to exempt more estates from estate tax. However, although the estate tax is temporarily scheduled to disappear in 2010, in 2011 it makes a triumphant return, going “back to the future” to the estate tax rates and exemptions levels in 2001. If this is not enough uncertainty, Congress is likely to revise the estate tax further before 2010. As you can imagine, the uncertain environment makes planning for the estate tax difficult.

Adding to the complexities of estate tax planning is New York State’s own estate tax, which, unfortunately for New York residents, has a lower threshold for estate tax than the federal estate tax. This disconnect between the federal and New York State estate tax regime creates preventable situations where a lack of planning results in New York State estate tax liability at a person’s death.

Whether you are a commercial client who owns a business or an individual who plans to leave your estate to family, meeting with advisors will help you make the right decisions for your personal circumstances. Clients often ask, “What can I do to avoid estate tax?” Unfortunately, there is no simple answer to that question since the estate plan depends upon a variety of factors such as your family, the assets you own and how you want your assets distributed after your death.

If you own a small business with a partner or partners, you may have restrictions on what you can do with your piece of the business when you die; therefore, personal advice and assistance is necessary to execute a competent and effective estate plan.

Consider the following:

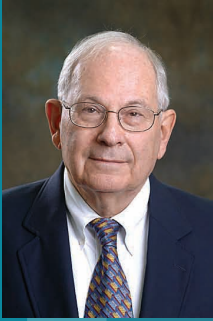
- Understanding Federal and New York State estate tax laws is critical to estate planning
- Depending on the assets you own and your family circumstances, you may face other issues related to your estate planning
- If your estate planning is not structured correctly, unnecessary estate taxes may reduce what your heirs will receive.
- Poor or outdated planning ignores opportunities to minimize estate taxes, so it is important to review your estate plan regularly.

Meeting with advisors regularly helps to understand the law and the best possible solutions for your estate plan. Both Karen Schaefer at 324-5718, and Tim Muck at 324-5727, in the Trusts and Estates Department are available to discuss and devise a plan suitable for your personal and business needs.

Jazz Fest

Lacy Katzen was proud to sponsor the club pass for the sixth annual Rochester International Jazz Festival held in June. Not only is this an international event that brings well known performers to Rochester, it gives a forum for young musicians of Rochester to perform on the stage. The diverse lineup included more than 600 artists representing 13 countries who performed during the nine-day event. More than 90,000 people visited downtown Rochester. We hope that many of our clients were able to see our “name in lights” and were able to hear our name in the announcements. Visit the website at www.Rochesterjazz.com.

LOUIS A. RYEN



Louis A. Ryen, of Counsel to Lacy Katzen LLP has recently expanded his focus of work to matters of commercial, real estate and wills & estates law. For the past 46 years, Mr. Ryen has been an important participant in the firm's growth from 6 attorneys to now 26, plus support staff totaling 85 spread among its 8 offices handling clients' needs in

as many counties.

Throughout his more than 3 decades of practice, Mr. Ryen has been recognized for his legal achievements

including being listed in "Best Lawyers in America" publication. He has been a private panel trustee with the U.S. Bankruptcy court for over 30 years and he has lectured at law seminars and business conferences as well as guest lecturer at local colleges. In addition to devotion to his legal world, Lou is an avid photographer and when away from his desk he most likely can be seen, camera in hand, looking for another unforgettable image. Many of these are hung in our offices. Louis A. Ryen can be reached at (585) 324-5716 or lryen@lacykatzen.com.

*For every step in your
life we're here for you.*

New Caselaw

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uncertain outcome in order to try to enforce the agreement. New employers seeking to recruit employees bound by these agreements sometimes take on the cost of defending the litigation for the employee.

A recent decision by New York's highest court in *Morris v. Schroder Capital Management*, offers an alternative to traditional non-compete agreements for employers who wish to have some certainty that the agreement will be enforced. "Forfeiture For Compensation Agreements" condition post-employment payments on non-competition. These agreements generally surround a severance package given to the employee at the end of his or her employment. The employee receives compensation and/or benefits for a certain period of time, to which he or she would not otherwise be entitled, in exchange for an agreement to abide by the non-compete agreement.

In the *Morris* case, the Court of Appeals determined that a "Forfeiture For Compensation Agreement" will be enforced without regard to the reasonableness of the underlying non-compete agreement. With the "reasonable" requirement removed, most of the uncertainty about enforcement is removed as well. The rationale of the court is that in giving the employee a free choice to either elect to receive the benefits under the agreement or risk forfeiture of those benefits by exercising his or her right to compete, there is no unreasonable restraint on the employee's ability to earn a living.

For employers, this decision alleviates concerns that a disciplined employee who leaves in a huff, or the employee dissatisfied with his or her position after a restructuring, can leave and challenge his or her employer provided a well-drafted "Forfeiture For Compensation Agreement" is in place. However, employers must be certain that their "Forfeiture For Compensation Agreement" and the underlying non-compete agreement are well-drafted and adequate to protect their concerns.

Of course, to any rule there is always an exception. The employee will not be deemed to have free choice unless he or she truly left the job voluntarily and the employer was otherwise willing to continue the employment. If the employee is able to show that he or she has been forced to leave, the "Forfeiture For Compensation Agreement" will not be enforced. This is known as "constructive discharge" and occurs when the employer, rather than terminating the employee, makes the work conditions so intolerable that a reasonable employee is forced to resign.

For employees, the court ruling extending the circumstances in which "Forfeiture For Compensation Agreements" will be enforced makes it critical that they be aware of the implications of the agreement before signing. Employees need to be fully aware that if they breach the agreement, the penalty will be repayment of the benefits to the employer. Further, they may wish to obtain legal advice concerning the timing of their departure from employment, as well as negotiating with the new employer to recover benefits they may forfeit. Finally, they should seek advice if they believe they have been forced to resign.

If you have questions concerning the topics raised in this article, you should contact our Corporate Department, and ask to speak with Matt Ryen at (585) 324-5701 or Jackie Thomas (585) 324-5717 from our litigation department.

Legal Notes

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Legal Notes

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