

# BRIEF CASE

Winter 2009

From the Law Offices of Bendit Weinstock, P.A.

## We Remember Hilton Goldman with Affection



We mourn the loss of our beloved partner and friend, **Hilton Goldman**. Hilton was born in Newark and lived in

Elizabeth all his life. He graduated from the University of North Carolina and Rutgers Law School. Hilton was associated with Bendit Weinstock for 35 years, retiring three years ago.

Hilton was also an arbitrator for the Essex County Courts. In the 1980s, he co-hosted a radio talk show in the metropolitan New York area called ROK KAK. The program discussed Jewish causes and Israeli politics.

Hilton was a member of the Jewish Education Center (JEC) of Elizabeth and a

former member of the JEC Board of Trustees. He was a member and served on the board of trustees of the Elmora Hills Minyan, and was honored as "Man of the Year" by the organization. Hilton also was a member and Vice President of the Jewish Family Service Agency in Elizabeth, and served on the board of directors of the Solomon Schechter Day School of Essex and Union. He was a former member of the board of the Rabbinical Council of America.

Hilton was honored for his outstanding commitment to Jewish causes by the Rabbinical College of America in Morristown. He was included in a list of New Jersey Super Lawyers by *New Jersey Monthly* magazine and was a member of the American Bar Association and the New Jersey Bar Association.

Hilton is survived by his wife, Harriet, and son, Dovid. He will be missed greatly. **BW**

## More Than \$7 Million Awarded in Estate Matter

Persons who engage in deceptive means to gain control of the assets of elderly family members often believe they can disguise their maneuverings. However, inconsistencies inherent in a concocted story rarely can withstand examination in Court.

Such was the case in a six-year matter recently tried to a conclusion by Jim Keegan and Sherri Fowler, in which the Court decided simply what a father and mother, in their advancing years, intended and undertook to do to distribute their accumulated wealth to two of their children and their families. The Court found that our client's brother and his wife breached fiduciary duties and engaged in self-dealing, as well as "a pattern of conduct that reflect[ed] evasion, avoidance, evading preparing documents, avoiding answering questions, and acts of omission." The goal of this deception

had been to exclude our client from sharing in the parents' intended disposition of their assets, and to conceal the conversion of a portion of those assets. When our client discovered that something was amiss, she had, as the Court noted, "the common sense" to take action, and she filed suit to protect the assets, and to ascertain the entitlements of the beneficiaries of her parents' largesse.

On March 11, 2008, a judgment was entered in the case by the Superior Court of New Jersey, Chancery Division, Hudson County, awarding a total of \$7,035,423.06, including principal, pre-judgment interest and attorneys' fees to our client, the plaintiff, and members of her family, and against our client's brother and his wife. (*Continued on page 2*)

## **Estate Matter continued from page 1**

The Court adjudged the defendants to have breached their fiduciary duties as General Partners of a family partnership and found that the brother exercised undue influence over his and plaintiff's mother, inducing her to change estate planning documents, including a will and a trust.

During the litigation, the Court appointed three separate experts/agents to examine the transactions of a family limited partnership, the estate planning documents, and to conduct an examination of the mother prior to her death in April 2001. The trial of the matter took place over 20 days, between October 19, 2005 and August 6, 2006. After extensive written post-trial submissions, the Court rendered an oral opinion in May 2007. Final judgment was entered 10 months later following applications relating to settlement of the judgment and issues ancillary to the conclusion of the matter.

In its opinion, the Court found that after the 1993 death of the father, the brother and his wife took over the mother's finances and the operation of the family partnership. The Court additionally found that the brother and his wife failed to maintain records of the family partnership, and withdrew over two million dollars from the partnership for their sole use.

The Court also found that the brother had taken actions that were intended to result in his family's obtaining a greater share of the family partnership, to the detriment of plaintiff and her family. The Court fashioned its judgment to compensate the wronged partners for their losses, and to compensate plaintiff, as a beneficiary of her parents' estates and trusts.

Jim and Sherri currently are defending the appeal of the judgment by our client's brother and sister-in-law.

# From the Docket of Abbott Brown

**Abbott Brown, one of our partners, had a busy 2008 docket. During the second quarter of 2008, Abbott resolved the following medical malpractice cases.**

**Wrongful Death/Medical Malpractice case settled for \$1,300,000**

Abbott, along with co-counsel Ray Gill, Esq., settled a case involving the wrongful death of a woman, as the result of a delay in diagnosing colon cancer. The client presented with repeated evidence of iron deficiency. The plaintiffs alleged that the defendant should have recognized that the iron deficiency was due to gastrointestinal bleeding, but failed to do so. The plaintiffs alleged that had a timely diagnosis been made, the plaintiff would have had a reasonably good chance of survival. The decedent left a husband and four children.

**Failure to prevent premature birth case settled for \$1,000,000**

Abbott represented a family whose child was born after 26 weeks of gestation. The family alleged that the defendants were negligent in failing to diagnose a condition called incompetent cervix, and in failing to treat the resulting recurrent leakage of amniotic fluid. The case settled for

\$1,000,000, which will be used to purchase a structured settlement annuity that will provide care for the child for the remainder of her life.

**Failure to diagnose vitamin B12 deficiency case settled for \$1,000,000**

Abbott represented a man who presented to two doctors complaining of neurological deficiencies. The neurological deficiencies were due to the absence of vitamin B-12, which was revealed by certain blood tests, however, neither doctor made the correct diagnosis. As a result, the client suffered permanent nerve damage, primarily to his legs and feet. This case settled for \$1,000,000, with each defendant doctor contributing equally.



**Failure to remove lap pad case settled for \$290,000**

Abbott represented a man who had a cardiac pacemaker implanted at a hospital. During the procedure, a sponge was left within the body cavity. This was discovered approximately one month later, at which time the patient was suffering from a significant infection. The sponge and pacemaker were removed and the pacemaker was subsequently replaced. This matter was resolved for \$290,000.

**Failure to diagnose incompetent cervix case settled for \$250,000**

Abbott represented a woman who had a history of an incompetent cervix. During the pregnancy in question, the defendant refused to place a cerclage suture, a treatment that had been used in the patient's previous pregnancies. Tragically, the patient delivered her child at 18 weeks, and the child did not survive. This case settled during trial for \$250,000.

**Failure to diagnose macular degeneration case settled for \$150,000**

Abbott represented a patient who presented at an optometrist for an eye examination. The exam revealed poor vision in the left eye, however, the optometrist did not investigate further as to the cause of the poor vision, or refer the patient to an ophthalmologist. The patient was diagnosed with dry macular degeneration and lost substantial vision in his eye. The case settled for \$150,000. **BW**





## Roth, Brown, Keegan, and Gold Named Super Lawyers

**P**artners **Alan Roth, Abbott Brown, James F. Keegan, and William Gold** were named New Jersey Super Lawyers for 2008. Only five percent of all New Jersey attorneys are named to the New Jersey Super Lawyers list, which was published in the April 2008 issue of *New Jersey Monthly* and in *New Jersey Super Lawyers* magazine.

New Jersey's top lawyers are chosen by peer nominations,

a blue ribbon panel review and thorough independent research. The list of 2008 New Jersey Super Lawyers is based on a general survey, in which ballots are mailed to every attorney in the state who has been licensed to practice for five years or more.

Attorneys are asked to nominate the best lawyers they have personally observed in action — whether as opposing counsel

or co-counsel, or through other first-hand observation in the courtroom. The intent is to discourage lawyers from voting for others based purely on reputation.

Each lawyer is given a score based on the number of votes he or she receives and the source of those votes. Votes received from lawyers in other firms count for significantly more points than votes received from lawyers in the same firm.

Our attorneys were named Super Lawyers in the following practice areas: Alan Roth in Personal Injury Plaintiff - General; Bill Gold and Abbott Brown in Personal Injury Plaintiff - Medical Malpractice; and James Keegan in Business Litigation, Trust & Estate Litigation. **BW**

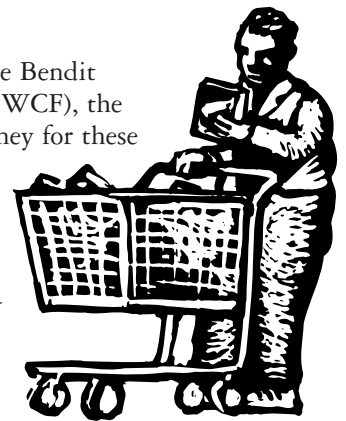
## Bendit Weinstock Raises Money for Food Banks

**I**n recent years, Bendit Weinstock has participated in several fundraising endeavors for local charities and now is going one step further by forming the Bendit Weinstock Charitable Fund. In 2006 and 2007, Bendit Weinstock participated in the ATLA-NJ Annual Thanksgiving Turkey Drive and helped raise approximately \$25,000 both years. These funds supported a variety of food banks including The Interfaith Food Pantry, The Center For Food Action, and The Beth El/St. Marks Food Bank.

This past May, Bendit Weinstock partner Abbott Brown participated in the Five Boro Bike Tour of New York, a 45-mile ride through all five boroughs of New York. One week before the event, Abbott decided to turn this recreational cycling event into a fundraiser. He sent e-mails to a number of friends in the medical malpractice litigation community. These colleagues pledged a total of \$5,800, and, upon completion of the ride, he collected and sent the \$5,800 to the Interfaith Food Pantry in Morristown and the Beth El/St. Marks Food Bank in South Orange. We sincerely thank all of those persons who contributed to this fundraiser.

Now, with the formation of the Bendit Weinstock Charitable Fund (BWCF), the firm will continue to raise money for these food banks. Details regarding this fund will be posted in our next newsletter. Anyone who wishes to contribute to BWCF, can do so by sending a check payable to the Bendit Weinstock Charitable Fund. One hundred percent of all donations, without any deductions for administrative or any other costs, will be donated to the two food banks mentioned above.

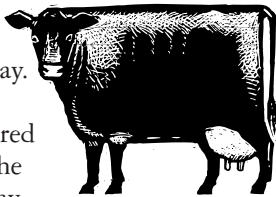
Please note that personal injury clients of the firm are not permitted to contribute to this fund while their cases are pending. **BW**



# Cases from the Trial Docket of Alan Roth

## A Tragic Accident

We recently concluded a case involving both New Jersey and Massachusetts jurisdictions, which ultimately led to multiple settlements in excess of \$1,850,000. We represented the estate of a New Jersey truck driver who was killed while driving on a Massachusetts highway. The causes of this accident were bizarre. A cow was allowed to escape from a family estate near the highway. It wandered onto the roadway where it was struck and killed. Another truck, attempting to avoid the dead cow on the roadway, went out of control and struck our client's vehicle.



Our office conducted the initial investigation in Massachusetts. We discovered that this particular cow had escaped on several previous occasions. Because it appeared that a number of parties were negligent in allowing this animal to roam freely near the highway without proper precautions, we referred the case to Massachusetts counsel. We worked together with them through the conclusion of the case, which included Alan's appearance in the Massachusetts' Court on the concluding hearing date.

We were able to recover over \$500,000 in the New Jersey Workers Compensation Court for the benefit of the decedent's children. Thereafter, Massachusetts counsel vigorously prosecuted the case against the owner of the cow as well as surrounding property owners who had contributed to the circumstances that allowed the cow to escape onto the highway. This resulted in an additional settlement of \$1,350,000.

## Medical Malpractice Settlement

On the eve of trial, Alan settled a medical malpractice case involving the death of a young boy, for \$1,500,000. The circumstances that led to the young boy's death were, in fact, avoidable.

The child had been previously diagnosed with cancer. Fortunately, as a result of surgery and aggressive chemotherapy, the cancer condition was cured. His case was followed by doctors for the next several years, and all indications were that the cancer had not returned. At this point, the child resumed a completely normal life.

During a routine visit to the doctor who was monitoring the child, the young boy expressed some complaints of leg pain and a bone scan was performed. Although the bone scan did not reveal any reoccurrence of the prior type of cancer, the treating

doctor ignored an abnormal finding on the child's leg, which was visible on the scan. As a result of the doctor's failure to further investigate that abnormal finding, a small and treatable lesion grew for a year and became a large, high-grade osteosarcoma of the femur. After several years of agonizing treatments and surgery, the child ultimately died. Because the treating doctor had deviated from standards of medical care, the diagnosis of the different cancerous tumor was delayed, causing the child to lose a chance for curative treatment and survival.

A pediatric oncologist who worked with us as an expert in this case provided clear opinions as to how and why this error took place and the consequences of the defendant doctor's errors. We were able to show that the defendant doctor concentrated the investigation on the original type of cancer, completely missing the different form of cancer that the young boy contracted. This cancer would probably have been curable if discovered early. Ironically, the original form of cancer never returned. **BW**

## Alan Roth Recognized in *The Best Lawyers in America*

Alan Roth was recently selected to be included in the 2009 edition of *The Best Lawyers in America* in the specialty of Personal Injury Litigation. The publication is a guide to the nation's top attorneys chosen by their peers for legal excellence in their specialties.

Mr. Roth joined Bendit Weinstock in 1974 and became a partner in 1980. He practices primarily in the area of personal injury, including medical malpractice, product liability and workers' compensation.

Selection to *Best Lawyers* is based on a rigorous peer-review survey comprising more than 2.5 million confidential evaluations by the top attorneys in the country. The list of *Best Lawyers* in the New Jersey, New York and Connecticut areas was excerpted in the December 2008 issue of *New York* magazine.

# Supreme Court Orders New Trial While Ruling on Trial Judge's Appearance of Impropriety

On September 24, 2008, the Supreme Court of New Jersey announced a decision in a case which had been handled by our firm for five years. The case involved a dispute between two principals of a limited liability company, their disassociation, and ultimately, what was owed to our client due to his ownership interest in the company. The Supreme Court's opinion, in the matter of DeNike v. Cupo, did not directly address the substance of the parties' dispute, however; instead, the Court's opinion spoke to a situation that arose after the case was tried, but before final judgment was entered. What occurred was that the attorney for the other party in the case approached the trial judge before the final judgment was entered, and offered the judge a position with his law firm upon the judge's retirement, which was imminent. Negotiations ensued and the judge accepted the attorney's offer of employment shortly thereafter.

The Supreme Court's opinion addressed the appearance of impropriety caused by the judge's entertaining an offer for post-judicial employment from an attorney involved in a matter before the judge, and reaffirmed the principle that judges of this state must always promote public confidence in the judiciary by avoiding not only actual conflicts but also the appearance of impropriety in all they do.

On behalf of our client, we sought a new trial of the matter, and during the appeals which followed, first to the Appellate Division of the Superior Court, and then to the Supreme Court, we consistently urged that the conduct at issue in this

case fell short of the long standing requirement in New Jersey that "justice must satisfy the appearance of justice." We argued that judges are required to avoid situations which could even create an impression that there existed favoritism, bias, or that there was any other reason that would cause one to wonder whether a litigant received a fair hearing.

The Supreme Court agreed, and reversed the judgment, ordering a new trial. In its opinion, delivered by Chief Justice Rabner, the Court noted, "unfortunately, the negotiations between trial judge and lawyer in this case created an appearance of impropriety."

The Supreme Court's opinion is an important one because it gives guidance to judges seeking post-judicial employment. The standards enunciated by the Court are consistent with promotion of public confidence in the judiciary. The Court also sought further recommendations as to this issue from the Professional Responsibility Rules Committee and the Advisory Committee on Extrajudicial Activities.

James Keegan, Sherri Davis Fowler and Barrett Kalb represented our client in this case, including the multiple appeals. The Supreme Court opinion may be found at: <http://lawlibrary.rutgers.edu/courts/supreme/a-61-07.opn.html>, and a video of Mr. Keegan's oral argument of the case may be accessed and viewed at: <http://njlegallib.rutgers.edu/supct/bytitle.php>. **BW**

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## Bergé Involved with Healthcare Issues



In May 2008, **Peter Bergé** lectured to the senior class of the Physician Assistant Education Program of Pace University in New York City. He was asked to speak about

medical malpractice, and legal issues in the physician assistant employment setting. Peter, an associate at Bendit Weinstock since 2004, has been a licensed physician assistant in New York State since 1987. He gives lectures on medicolegal topics to local and national audiences.

On June 21, 2008, Peter attended an all-day training session by the City of New York Department of Health

and Mental Hygiene (DOHMH), Bureau of Emergency Management, Medical Reserve Corps (MRC), on how to set up and run a Point of Dispensing (POD) center. PODs would be used to distribute antibiotics or vaccines during an emergency requiring mass prophylaxis of a large number of New Yorkers. For instance, staff and volunteers in PODs would give out millions of doses of antibiotics in case of an anthrax

attack, or would administer vaccines for smallpox or avian (bird) flu in the event of an emergency. This training was designed to prepare volunteer healthcare professionals for leadership positions in the public health emergency response system. Peter has been a member of the MRC for several years. **BW**

# Bhattacharya Joins Firm

**B**endit Weinstock is proud to announce that Kingsuk "Raj" Bhattacharya joined the firm as an associate in November 2007. He had been a law clerk with the firm since May 2006. Raj practices in the areas of commercial litigation, general litigation, landlord/tenant law, franchise law, and personal injury law.



Raj received his J.D. from Seton Hall University Law School in Newark, in May of 2007 with a concentration in the Law School's prestigious Health Law program. He earned a B.A. degree in economics and government from the University of Texas in Austin. Born in Houston, Texas, he was brought up in New Orleans, Louisiana,

and currently resides in Harrison, New Jersey.

Raj is a member of the Asian Pacific American Lawyers Association of New Jersey (APALA), the Hudson County Bar Association, and the South Asian Bar Association of New Jersey. He is fluent in speaking and writing Bengali. **BW**

## About this Newsletter

Editor: Anthony Mazza

An electronic version of this newsletter may be found at [www.benditweinstock.com](http://www.benditweinstock.com).

This newsletter is published for the information of our friends and clients. Please contact Ruth Smith at (973) 736-9800 or [rsmith@benditweinstock.com](mailto:rsmith@benditweinstock.com) if:

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**Thomas E. Weinstock** (1955-2000)  
**Hilton P. Goldman** (1965-2008)

**Alan Roth** (NJ & FL Bars)  
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Workers' Compensation, General Litigation

**James F. Keegan\***  
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Bankruptcy, Administrative Law

**Abbott S. Brown\***  
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**Roger J. Desiderio\***  
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**Anthony Mazza\***  
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**Max Spinrad** (NJ & NY Bars)

\* Certified by the Supreme Court  
of New Jersey as a Civil Trial Attorney

# Nursing Home Bill of Rights

**T**he State of New Jersey provides its nursing home residents with specific legal rights and privileges to ensure that they are accorded the same benefits and protections all New Jersey citizens enjoy.



New Jersey created a nursing home residents' "bill of rights," outlining a standard of care for all nursing homes, to ensure that residents do not receive inferior treatment. These rights relate to medical care, the physical and personal environment of the nursing home and the privacy and confidentiality of patients. Some of the more important rights are:

- The right to participate in planning one's medical treatment and care
- Freedom from mental and physical abuse
- The right to live in safe, decent and clean conditions
- The right to be treated with courtesy, consideration and respect

A nursing home may be liable if you or one of your family members has been injured or have had their rights violated due to a neglect of duty or a failure on the part of nursing home staff to exercise reasonable care. Some common examples of such a failure of care include malnutrition, bedsores and injuries resulting from falls.

Bendit Weinstock would be happy to assist you in these matters. Please contact our office if you have experienced such problems with nursing home care. **BW**