KANE KESSLER, P.C.

Our Business Is You® | **December 2015**

About Kane Kessler...

Kane Kessler is a midsize law firm located in Midtown Manhattan, serving clients throughout the United States and globally. Kane Kessler has been in the business of providing exceptional legal services to its clients for over 80 years, with experienced and specialized lawyers practicing in many areas of the law. At Kane Kessler, we take pride in delivering personal attention to each and every client and in our ability to offer a wide range of experience and knowledge in many legal specialties to help your business grow and prosper.

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For more information about the Firm, please visit our website at www.KaneKessler.com or call us at (212) 541-6222.

The Editors,

Judith A. Stoll
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UNDER NEW GUIDANCE BY THE DOL, MOST WORKERS ARE EMPLOYEES AND NOT INDEPENDENT CONTRACTORS

On July 15, 2015, the Wage and Hour Division of the United States Department of Labor ("DOL") issued Administrator's Interpretation 2015-1 (the "Interpretation"). In the wake of several high-profile lawsuits concerning the alleged misclassification of workers as independent contractors by companies such as Uber, Lyft and FedEx, the Interpretation sets forth the Division's position that "most workers are employees under the [Fair Labor Standards Act] broad definitions."

The legal ramifications of the Interpretation are significant if courts follow the DOL's lead. Unlike employees, independent contractors are not subject to the protections provided by the Fair Labor Standards Act ("FLSA"), including minimum wage and overtime pay requirements, nor are employers required to pay unemployment benefits, workers' compensation premiums or Medicare and Social Security taxes for the independent contractors they utilize. Also, under federal labor laws, workers who qualify as employees are subject to being organized by labor unions, whereas independent contractors do not have a right under these laws to be represented by a labor organization.

The Interpretation does not change current law. Rather, the Interpretation seeks to clarify the FLSA's broad definition of the scope of the employment relationship. Specifically, the Interpretation provides guidance on the FLSA's "suffer or permit" standard in an effort to curtail the misclassification of employees as independent contractors. With the issuance of the Interpretation, the DOL is taking the stance that the FLSA's definition of employee is much broader than the definition generally applied by employers.

Under current law, the FLSA defines "employ" as including "to suffer or permit to work." Courts apply (and the FLSA has adopted) a six-factor "economic realities" test when applying this standard, which focuses on whether the worker is

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"economically dependent on the employer or in business for him or herself." These factors vary by court but generally include:

(i) The extent to which the work performed is an integral part of the employer's business,

(ii) The worker's opportunity for profit or loss depending on his or her managerial skills,

(iii) The extent of the worker's investment relative to the employer's investment,

(iv) Whether the work performed requires special skills or initiatives,

(v) The permanency of the relationship, and

(vi) The degree of control exercised or retained by the employer.

The Interpretation provides illustrations of each factor to demonstrate that the test is only properly applied when consistent with the FLSA's directive that the employment relationship be broadly construed. No one factor is determinative, and the ultimate inquiry is whether the worker is truly in business for him or herself. Indeed, according to the Interpretation, the existence of an agreement labeling a worker as an independent contractor, or an employer's issuance of a 1099-MISC to a worker, has no bearing on the analysis.

While the Interpretation does not alter the "economic realities" test, it does offer some key points that enhance the DOL's prior guidance on the issue:

(i) Work can be integral to an employer's business even if it is performed away from the employer's premises, at the worker's home or on the home premises of the employer's customers.

(ii) A worker's ability to earn more by making the decision to work additional hours or to take on additional jobs does not relate, by itself, to his or her managerial skills. Likewise, a reduction in earnings does not equate to a risk of loss such that the worker is an independent contractor.

(iii) The worker's investment must be significant in relation to an employer's entire business (and not just to an employer's investment in one job) in order to be considered an independent contractor.

(iv) The key is whether the worker makes independent judgments with respect to his or her work, e.g., determines the sequence of work, orders additional materials for the job and thinks about bidding for the next job.

(v) Marketing to and working intermittently for several employers, negotiating rates, and turning down one job for another are indications that the worker is an independent contractor.

(vi) In prior guidance, analysis of the "degree of control" factor depended on who sets work hours and determines how the work is performed, among other things. The Interpretation somewhat rejects this analysis and illustrates that at-home employees very often set their own hours and are subject to very little supervision by employers but may still be employees, not independent contractors, if the other factors weigh toward employee status.

"Misclassification by employers carries significant risks, including liability for unpaid taxes, interest and penalties on those taxes, unpaid wages and overtime, and penalties and fines for the violation of state and federal wage laws, among other potential liabilities."

Here, the DOL is sending a clear message that more likely than not, a worker should be classified as an employee rather than an independent contractor based on the FLSA's broad definition of "employee." Whether New York follows the DOL's lead remains to be seen. The Interpretation is not controlling, but courts and state agencies will often utilize guidance issued by the DOL in their decisions interpreting the FLSA. In September 2015, two New York drivers filed a putative class action against Uber alleging that the company violated several state labor laws by failing to reimburse expenses, withholding tips and failing to pay minimum wage. That case is pending in the New York State Supreme Court. Recently, the California Labor Commission issued a ruling holding that a former Uber driver was an employee and not an independent contractor and ordered the company to reimburse her for costs she incurred while driving for Uber.

Misclassification by employers carries significant risks, including liability for unpaid taxes, interest and penalties on those taxes, unpaid wages and overtime, and penalties and fines for the violation of state and federal wage laws, among other potential liabilities. Therefore, employers should anticipate scrutiny by the DOL and plaintiffs' attorneys. Accordingly, employers should consult with labor counsel and should assess and document the six factors listed in the Interpretation against the classification of its workers. In particular, individual contractor agreements should be reviewed. Because the nature of a worker's job may change over time, employers should revisit this assessment periodically to ensure compliance with the law. Kane Kessler's Labor and Employment practice group has extensive experience advising clients on classification of employees and independent contractors.

David R. Rothfeld is a Partner and **Jaclyn K. Ruocco** is an Associate in the Firm's Labor and Employment practice group. David can be reached at (212) 519-5154 or drothfeld@kanekessler.com, and Jaclyn can be reached at (212) 519-5177 or jruocco@kanekessler.com.

WEBSITE ACCESSIBILITY UNDER THE AMERICANS WITH DISABILITIES ACT: DOES YOUR BUSINESS COMPLY?

On July 26, 1990, the Americans with Disabilities Act ("ADA") became law. The ADA identified persons with disabilities as a protected class and announced the fundamental right of disabled persons to be free from discrimination. This past summer, the ADA celebrated its 25th anniversary with events and symposiums across the country. The anniversary was marked by promises of increased focus on workplace integration and a recommitment to the ADA's principles. While the original goals of the ADA have remained constant over the past 25 years, the world itself has changed dramatically, most notably in the technology arena. Now virtually every consumer-facing business conducts its operations to some extent using the Internet. The question then becomes: does the ADA apply to websites and, if so, does your website comply with the ADA?

Most courts addressing the issue have found that the ADA does apply to consumer-facing business websites so long as there is a nexus between the website and brick-and-mortar operations. For instance, in *National Federation of the Blind v. Target, 452 F. Supp. 2d 946 (N.D. Cal. 2006)*, the District Court for the Northern District of California found that the purpose of the ADA is broader than merely ensuring access to physical locations and held that the statute's protections apply to a disabled person's full enjoyment of services or goods of a website so long as a sufficient nexus exists between the website and brick-and-mortar stores.

The issue is murkier when it comes to the applicability of the ADA to web-only businesses. Most courts looking at this issue have held that a business website without a brick-and-mortar nexus (i.e., a purely online business) does not come within the purview of the ADA. In *Cullen v. Netflix, Inc., 880 F. Supp. 2d 1017 (N.D. Cal. 2012)*, the Northern District of California decided that websites themselves are not places of public accommodation because they are not physical places. Just a year earlier, in *Young v. Facebook, Inc., 790 F. Supp. 2d 1110 (N.D. Cal. 2011)*, the same court dismissed a complaint, holding that the plaintiff had not alleged a sufficient nexus between a website and a physical place of public accommodation. Taken together, these cases stand for the proposition that a physical location must exist in order for a defendant to be liable under the ADA for failure to maintain a sufficiently accessible website. However, this view is not uniform. In *Nat'l Ass'n of the Deaf v. Netflix, Inc., 869 F. Supp. 2d 196 (D. Mass. 2012)*, the District Court of Massachusetts found that the ADA applied to an exclusively web-based business that provided web-based services to the public. Quoting Target, the court stated that "[w]hile the home is not itself a place of public accommodation, entities that provide services in the home may qualify as places of public accommodation." More recently, in *Nat'l Fedn. of the Blind v. Scribd Inc., 2015 U.S. Dist. LEXIS 34213, (D. Vt. Mar. 19, 2015)*, the ADA was held to apply to a web-based library that provided electronic reading materials to users who paid a monthly fee. Citing Second Circuit precedent, the court thought it illogical to conclude that a business could be liable for refusing to sell merchandise to a disabled person in its physical office, while at the same time being insulated from liability if such a refusal were to be conveyed over the Internet. So, if you operate a web-only business, you and your counsel should investigate this issue closely.

Assuming the ADA applies to your business website, the question is, how do you comply? There have been almost no judicial decisions giving clear guidance on this question. And although since 2010 the United States Department of Justice ("DOJ") has openly discussed its intention to publish regulations on this issue and finally provide guidance to the large number of proprietors that conduct business over the web, to date the DOJ has continually delayed publication of such regulations and may not release the final version of its regulations until April of 2016.

"Compliance with level AA of the WCAGs generally requires, among other things, that websites be compatible with 'assistive technologies' (such as screen reader technology and voice recognition software) used by people with disabilities while also providing users with manual control over each website function."

That being said, there are some references to look to for guidance. Recent DOJ settlements with website operators suggest that the Website Content Accessibility Guidelines ("WCAGs") promulgated by the Worldwide Web Consortium, an industry trade group, provides an important road map for ADA compliance. These settlements offer insight as to how influential the WCAGs will be on the impending DOJ regulations. One such settlement executed this past February between the DOJ and the city of Dekalb, Illinois, required the city to modify its employment opportunities website and job applications contained therein to comply with WCAG level AA. Even more recently, in April 2015, a settlement between the DOJ and the company edX mandated that edX make significant modifications to its website platform and mobile applications to conform to WCAG level AA. The DOJ entered into similar settlements in 2014 with Peapod and H&R Block. So, while compliance with the WCAGs is not currently a legal requirement, all of these settlements and other DOJ actions suggest that conformance with WCAG level AA may provide a safe harbor.

Compliance with level AA of the WCAGs generally requires, among other things, that websites be compatible with "assistive technologies" (such as screen reader technology and voice recognition software) used by people with disabilities while also providing users with manual control over each website function. Examples of website features you will want to evaluate for WCAG compliance are text-based alternatives for audio and video functionality, disabling time-out features, text-based explanations for color options (for clothing, for example), and text explanations for hyperlinks.

As the foregoing illustrates, website accessibility under the ADA is a developing area of law. Not surprisingly, the plaintiffs' bar is focused on this issue as a source of future attention. Kane Kessler's attorneys have already seen claims brought against retail clients. We strongly urge any businesses with consumer-facing websites and a brick-and-mortar nexus (and even those without such a nexus) to evaluate their websites' ADA accessibility. It would be prudent to consult with legal and technical experts who can advise on website ADA compliance and take steps to minimize the risk of potential legal exposure.

Kane Kessler's attorneys regularly represent retail and other consumer-facing businesses in compliance issues.

Adam Cohen is a Partner and Chair of the Firm's Intellectual Property practice group, and **Michael Lydakis** is an Associate in the Firm's Labor and Employment practice group. Adam can be reached at (212) 519-5146 or acohen@kanekessler.com, and Michael can be reached at (212) 519-5163 or mlydakis@kanekessler.com.

SHAREHOLDERS PAY? NO WAY!

Delaware Amends the Delaware General Corporation Law to Prohibit Fee-Shifting Bylaws

A 2014 Delaware Supreme Court ruling concerning fee-shifting bylaws sparked considerable controversy during the past year, as proponents and opponents of the ruling maintained polarizing viewpoints on the subject.

In *ATP Tour, Inc. v. Deutscher Tennis Bund, 91 A.3d 554 (Del. 2014),* the Delaware Supreme Court upheld as a matter of law fee-shifting provisions in a non-stock corporation's bylaws, putting the full cost of "intracorporate" litigation on the plaintiffs if they do not obtain a judgment on the merits that substantially achieves (in substance and amount) the full remedy sought. The Delaware Supreme Court ruled that nothing in the Delaware General Corporation Law (the "DGCL") prohibits the adoption of fee-shifting bylaws and that by allocating "intracorporate" litigation risk, such provisions also satisfy DGCL Section 109(b), which requires that bylaws relate to the "business of the corporation, the conduct of its affairs, and its rights or powers or the rights or powers of its stockholders, directors, officers or employees." The court also took the view in its ruling that fee-shifting bylaws are not prohibited under Delaware common law.

"The DGCL was amended to effectively prohibit fee-shifting bylaw provisions in the context of most stockholder litigation related to M&A transactions and corporate governance."

Corporations in general favor fee-shifting bylaws, as they can be used as a device to curtail meritless lawsuits and prevent potentially costly and lengthy litigation. Large corporate transactions, such as mergers and acquisitions of public companies, typically face challenges from corporate shareholders on a variety of issues relating to the transaction, often resulting in delays of the corporation's strategic plan or abandonment of the transaction altogether.

Although *ATP Tour* did not involve a stock corporation, the reasoning in the court's decision made it probable, in the view of many commentators, that the ruling would also apply to stock corporations. As such, immediately after the Court's ruling, many Delaware corporations amended their bylaws to include fee-shifting provisions. However, shortly after the holding in *ATP Tour*, opponents to the ruling sought to restrict the case's holding to apply to Delaware non-stock companies only and prohibit publicly traded corporations from shifting fees to shareholders in corporate lawsuits that were unsuccessful on the merits.

Partially as a result of their efforts, on March 6, 2015, the Delaware State Bar Association (the "DSBA") released proposed legislation amending the DGCL to invalidate fee-shifting provisions in the charter documents and bylaws of stock corporations. Specifically, those amendments proposed to add (i) new Section 102(f) and (ii) a new clause to Section 109(b), which each stated that a Delaware corporation's charter documents and bylaws, respectively, "may not contain any provision that would impose liability on a stockholder or the attorneys' fees or expenses of the corporation or any other party in connection with" an internal corporate claim. The proposed amendments did not, however, prohibit corporations and stockholders from negotiating contractual fee-shifting arrangements. The proposed DSBA amendments also added provisions confirming that Delaware corporations could include in their bylaws and charter documents provisions requiring that internal corporate claims must be brought in the state of Delaware only – so called "forum selection" bylaws.

Effective August 1, 2015, the DGCL was amended to effectively prohibit fee-shifting bylaw provisions in the context of most stockholder litigation related to M&A transactions and corporate governance, while allowing Delaware corporations to adopt forum selection bylaw provisions, largely adopting the language proposed by the DSBA. At this time, it is too soon to judge the effect of these amendments on shareholder litigation involving Delaware corporations.

Kane Kessler advises boards of directors of public and private companies in all aspects of corporate governance and compliance.

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ATTORNEYS’ FEES ARE NOT AUT AWARDED IN COPYRIGHT CASE

A common misconception among business people, as well as attorneys, is that legal fees are automatically awarded to the victor in an action for copyright infringement. In fact, a judge or arbitrator has discretion as to whether to award any attorneys’ fees to the prevailing party in the first instance and discretion as to the amount of any such fees. The Copyright Act of 1976 provides that in any copyright infringement action, the court “may…award a reasonable attorneys’ fee to the prevailing party as part of the costs.” 17 U.S. C. Sec. 505. Contrary to popular understanding, attorneys’ fees are not awarded to the prevailing party as a matter of course but upon a showing by the prevailing party that facts and circumstances merit an award. The relevant question for many clients is, therefore, what factors does a court consider in deciding whether to award attorneys’ fees in a copyright lawsuit? That question was answered in *Fogerty v. Fantasy, Inc., 510 U.S. 517, 533-34 (1994)*, in which the United States Supreme Court highlighted a list of non-exclusive factors to guide a district court’s exercise of discretion in awarding fees, including “frivolousness, motivation, objective unreasonableness (both in the factual and legal components of the case) and the need in the particular circumstances to advance considerations of compensation and deterrence.” However, the Supreme Court cautioned that “such factors may be used so long as [they] are faithful to the purposes of the Copyright Act.” Id. at 534.

> ***“Of the factors enumerated by the Supreme Court, ‘objective unreasonableness’ is accorded substantial weight and the imposition of a fee award against a ...[party]with an objectively reasonable litigation position will generally not promote the purpose of the Copyright Act.”***

Of the factors enumerated by the Supreme Court, “objective unreasonableness” is accorded substantial weight and “the imposition of a fee award against a…[party] with an objectively reasonable litigation position will generally not promote the purpose of the Copyright Act.” *Matthew Bender & Co., Inc. v. West Publ’g Co., 240 F.2d 116, 12-21 (2d Cir. 2001).* Furthermore, “an unsuccessful claim does not necessarily equate with an objectively unreasonable claim.” *Psihoyos v. John Wiley & Sons, Inc., 2013 Westlaw 1285153 at *3 (S.D.N.Y. 2013)*. Even a jury’s finding that a copyright defendant acted willfully is not sufficient to establish an objectively unreasonable defense to a copyright claim. Id. Therefore, the “presence of a complex or novel issue of law that the defendants litigate vigorously and in good faith” may justify the denial of a fee award to the prevailing party. *Bourne Vo. v. MPL Communications, Inc., 678 F.Supp. 70, 72 (S.D.N.Y. 1988)*. For example, in *NBC v. Sonneborn, 630 F.Supp. 524 (D.C. Ct. 1985)*, the defendant copied and sold reprints of NBC’s television broadcast of “Peter Pan.” Despite the clear copyright violation, the court denied NBC’s application for attorneys’ fees, holding that “while defendant was not an innocent infringer, it litigated in good faith.” Similarly, in *Warner Bros. v. Dae Rim Trading, Inc., 877 F.2d 1120*, the Second Circuit Court of Appeals also denied the plaintiff’s application for attorneys’ fees, even though it won its copyright infringement case, because “the defendants litigated in good faith against plaintiff’s unreasonable demands for damages.” More recently, in *Bryant v. Media Right Prods., 603 F.3d 135 (2d Cir. 2010)*, the Second Circuit Court of Appeals denied a prevailing copyright plaintiff attorneys’ fees, noting that the defendant’s defenses were not objectively unreasonable and that it had attempted to resolve the case before trial.

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The other factor that is accorded weight in determining whether to award attorneys' fees in a copyright case is whether there is a need to further compensate the plaintiff and deter further misconduct by a defendant. Not surprisingly, when a court believes that a plaintiff has been adequately compensated by a damage award (which is typically either an amount dictated by the Copyright Act or a reasonable licensing fee), no further compensation in the form of attorneys' fees is necessary. See *Clark v. Hudson Bay Music, Inc., 104 F.3d 351 (2d Cir. 1996)* (affirming the district court's decision not to award attorneys' fees because the plaintiff had been adequately compensated in royalties for his song); *Psihoyos v. John Wiley & Sons*, supra (the plaintiff's motion for attorneys' fees was denied because the compensation and deterrence purposes underlying the Copyright Act were adequately served by the jury's award of statutory damages).

Indeed, even where the court determines that a successful litigant in a copyright case is entitled to an award of attorneys' fees, the amount of such fees must be reasonable. In determining the amount of a prevailing party's fee award under the Copyright Act, "the presumptively reasonable fee boils down to what a reasonable paying client would be willing to pay, given that such a party wishes to spend the minimum necessary to litigate the case effectively." *Arbor Hill Concerned Citizens N'hood Ass'n v. Cnty of Albany, 493 F. 3d 110, 112, 118 (2d Cir. 2007),* amended on other grounds, 522 F.3d 182 (2d Cir. 2008). Courts routinely cut down or eliminate entirely fees for work that is duplicative, unnecessary or excessive, and a prevailing plaintiff may ultimately lose money even after winning a jury award on liability. Indeed, in a recent case, Kane Kessler successfully reduced a plaintiff's application for attorneys' fees from $2.4 million to $680,000, despite the fact that the defendant conceded liability for copyright infringement.

While there are many cases in which a successful copyright litigant is awarded attorneys' fees, such an award is certainly not automatic, and both plaintiffs and defendants alike should not assume that attorneys' fees will be awarded when forging a litigation or settlement strategy in copyright cases.

S. Reid Kahn is the Co-Chair and **Dana M. Susman** is a Partner in the Firm's Litigation practice group. Reid can be reached at (212) 519-5129 or rkahn@kanekessler.com, and Dana can be reached at (212) 519-5136 or dsusman@kanekessler.com.

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Firm News...

ACHIEVEMENTS

The Firm's **Corporate and Securities practice group** represented a public company listed on NASDAQ that is a provider of innovative active outdoor performance equipment and apparel in the sale of certain of its subsidiary companies that are in the business of providing safety and protection products for gravity sport athletes for $65 million, subject to customary purchase price adjustments, to a portfolio company of a private equity firm with over $10 billion of total assets under management.

The Firm's **Corporate and Securities practice group** represented a global public company in a successful incremental amendment to its secured senior credit facility, providing for a $200 million increase in term loans.

The Firm's **Corporate and Securities practice group** represented a provider of diverse consumer products in the successful completion of a $300 million private offering of senior notes.

The Firm's **Corporate and Securities practice group** represented a NYSE-listed global public company in the successful completion of a $500 million public offering of common stock.

The Firm's **Corporate and Securities practice group** represented a NYSE-listed company in the successful acquisition of a consumer products company for an enterprise value of approximately $1.5 billion.

Representing one of the Firm's publicly held clients, the Firm's **Litigation practice group** prevailed in the culmination of a four-year arbitration in which the claimant sought over $10.2 million in damages based on his claim that he was not fully paid earn-out compensation for the sale of his company to the firm's client. Not only did our Litigation practice group defeat the claim in its entirety, but the arbitrator awarded our client $80,000 on its counterclaim for tax reimbursement as well as the right to seek attorneys' fees and expenses. In response to our fee application, the claimant agreed to pay $1.5 million to the firm's client for attorneys' fees and expenses, which has since been paid in full. Trial counsel for the Firm's client were **Jeffrey H. Daichman** and **Dana M. Susman**.

In *First Manhattan Consulting Group, LLC. v. Novantas, Inc., et al., 2015 NY Slip Op. 31089(U)(Sup. Ct. N.Y. Co., June 23, 2015),* in a 20-page opinion, the New York County Commercial Division denied the defendants' motion to dismiss a lawsuit brought on behalf of the Firm's client for breach of contract, tortious interference with contract, unfair competition and misappropriation of confidential information and trade secrets. The Firm's client provides a range of risk management services to the financial industry and claimed that a competitor raided key executives in order to gain a business advantage. The court ruled that the complaint sufficiently stated claims against the competitor and raised inferences that the competitor employed unfair and dishonest means to solicit employees of the Firm's clients. Attorneys from the Firm's **Litigation practice group** representing the client were **Jeffrey H. Daichman** and **Jonathan M. Sabin**.

In *Serby v. First Alert, Inc.*, et al., following a week-long bench trial in the United States District Court for the District of New York, the federal court issued an 18-page decision dismissing all of the claims brought against the Firm's clients. The holder of a patent for smoke alarms had sued the Firm's clients for over $1 million in royalties based upon a prior settlement agreement resolving patent infringement claims. The plaintiff's lawsuit for breach of contract and an accounting were dismissed. **Jeffrey H. Daichman** of the Firm's **Litigation practice group** and **Barry E. Negrin** of the Firm's **Intellectual Property practice group** represented the defendants as trial counsel.

CONGRATULATIONS

Congratulations to **Robert L. Lawrence** (Corporate and Securities practice group), **Jeffrey H. Daichman** (Litigation practice group), **David R. Rothfeld** (Labor and Employment practice group), **S. Reid Kahn** (Litigation practice group), **Adam M. Cohen** (Intellectual Property practice group) and **Barry E. Negrin** (Intellectual Property practice group) for being named 2015 Super Lawyers. Congratulations to **S. Reid Kahn** (Litigation practice group) for being named one of the 2015 New Jersey's Top AV-Rated Lawyers.

Congratulations to **Michael A. Zimmerman** (Trusts, Estates and Taxation practice group), **Robert Kolodney** (Bankruptcy, Reorganization and Creditors' Rights practice group), **S. Reid Kahn** and **Jeffrey H. Daichman** (Litigation practice group), **Aris Haigian** (Corporate and Securities practice group), and **Darren S. Berger** (Real Estate and General Business practice group), for being named New York's Top Rated Lawyers of 2015.

Congratulations to **Adam Cohen** (Intellectual Property practice group), who was invited to be a member of the New York City Bar Association Fashion Law Committee.

David R. Rothfeld, head of the Firm's **Labor and Employment Law practice group**, was a speaker at a program sponsored by the Labor and Employment Relations Association titled "State of the Unions: Approaches to Successful Labor-Management Relations in the Modern Workplace."

David R. Rothfeld, head of the Firm's **Labor and Employment Law practice group,** was a speaker at the 14th Annual Cornell Institute for Hospitality Labor and Employment Relations Labor & Employment Law Roundtable concerning the topic "New NLRB organizing rules – Are they a game changer?"

JOINED THE FIRM

Jaclyn K. Ruocco has joined the Firm as an associate in its **Labor and Employment practice group**. Jaclyn has experience representing management in traditional labor relations, employment counseling and employment litigation defense, including representing clients in connection with discrimination claims, wage and hour disputes, and disputes arising under the Family Medical Leave Act. Jaclyn has represented clients in both state and federal courts and in mediation and arbitration proceedings. Prior to joining the Firm, Ms. Ruocco was an associate at an AmLaw 100 law firm, where she defended clients in complex commercial matters and employment litigations.

Jaclyn received her J.D. from Seton Hall School of Law. Ms. Ruocco is licensed to practice in New York and New Jersey.

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