

U.S. SUPREME COURT TO REVIEW EMINENT DOMAIN DECISION

By Edward S. Nagorsky, Esq.

The Supreme Court of the United States recently agreed to review a case that could have a broad national impact on property owners. The Court will seek to clarify when localities may take private properties for use in economic development.

The case rises from an eminent-domain suit by the City of New London, Connecticut. In 1998, Pfizer announced plans to build a research facility in the New London neighborhood of Fort Trumbell and the City decided to use the opportunity to develop a 90-acre site including a waterfront hotel, conference center and new residences. The improvements, the City said, would revitalize the area which in turn, would yield new tax revenues and fund more services for the community. The City acquired, by eminent domain, property from the owners who would not sell voluntarily.

This is a common practice in cities throughout the country whereby municipalities acquire vast areas of land for a "public purpose." As our clients are aware, there is a great debate in New Jersey over the proposed Newark Arena and the actions by the City of Newark and State in acquiring the land necessary for construction of the facility. Similar discussions are being held in New York City concerning the potential building of a new football stadium for the Jets. Such "takings" under the Fifth Amendment of the Constitution often pit business developers

against property-rights activists who fight what they see as an unwarranted governmental encroachment on the personal property rights of its citizens.

The dispute, known as *Susette Kelo v. City of New London*, centers around a single principal – whether the government can condemn property to transfer it to another private party under a claim of "public purpose" for economic development. During recent years, governmental agencies have been condemning urban proper-

ties using the excuse that the properties are "blighted", but with the New London neighborhood, the City is exerting its eminent domain power solely on the basis of economic development. Therefore, the question that is before the Supreme Court is narrowly defined to that of whether, or to what degree, economic development is a Constitutional reason for eminent domain.

It is hoped that the Court will reach a decision sometime early next year. ♦

THE FIRM MOURNS THE LOSS OF JEFFREY A. GUTH, ESQ.

On September 2, 2004, Jeffrey A. Guth, a Senior Associate in the firm's corporate and transactional department, was tragically killed in a motorcycle accident. Jeff was viewed by everyone who knew him as a great friend, exceptional lawyer and a great human being. Jeff was a community activist in both New Jersey and Pennsylvania where he practiced, and he was a member of many service organizations. We will all miss him very much.

Jeff left three daughters surviving him. The Guth Childrens' Trust Fund has been established for them. For more information concerning this Trust or to make a contribution, please contact Karen Dixon, Administrator of the Firm.

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STATE BEGINS TO IMPLEMENT HIGHLANDS ACT

By Murray E. Bevan, Esq.

In the waning weeks of his Administration, Governor McGreevey has made implementation of the Highlands Water Protection and Planning Act ("Act") a key Administration priority. The Act rejected the use of the State's current system of local land use and planning in favor of a regional approach to controlling future development. The new law effects land use activities in a 1,250 square mile area, which covers a portion of seven (7) counties and eighty-eight (88) municipalities in north-west New Jersey.

On September 27, 2004, Governor McGreevey nominated fifteen (15) elected and public members to serve on the Highlands Water Protection and Planning Council. The Governor's nominees include elected officials from Hunterdon, Morris, Sussex and Warren Counties, environmentalists and a farmer from Morris County. The Highlands Council will be responsible for preparing a Regional Master Plan for the Highlands area, imple-

menting the terms of the Master Plan, establishing a Transfer of Development Program ("TDP") and reviewing local plans to insure conformity with the Regional Master Plan.

The New Jersey Department of Environmental Protection ("DEP") has also begun Highland related regulatory activities. The DEP has released new forms and applications for applicants seeking Highlands Area Approvals. The DEP's forms include the following:

1. A General Highlands Application;
2. Highlands Majority Development Determination Forms;
3. Highlands Preservation Area Regulatory Requirement Applications; and
4. A Form to Determine Consistency with the DEP Water Quality Management Plan.

Within the Highlands preservation area, certain development restrictions became effective on August 10, 2004, when Governor McGreevey signed the Highlands Act. Among those new restrictions include the following:

1. A 300 foot buffer from open water;
2. A no degradation policy for surface water/groundwater;
3. A zero net fill policy;
4. Prohibition of developments on slopes over 20%;
5. Limit on impervious cover to 3% of the lot; and
6. A prohibition of disturbance of upland forest areas.

These new DEP requirements will influence the Highlands Master Plan and the Master Plan will implement and be based on these enhanced environmental standards. Courter, Kobert & Cohen's attorneys can assist you in filing the various new DEP permit applications and address questions you might have on the State's implementation of the Highlands Act. For more information on this important legislation, visit our website at www.ckclaw.com or call Murray Bevan. ❖

SELVAGGI NAMED TO TOP 40 (AGAIN)

Michael S. Selvaggi, Esq., a partner with the law firm of Courter, Kobert & Cohen, P.C. in Hackettstown, has recently been selected by the *New Jersey Law Journal* as one of the top 40 attorneys in New Jersey under the age of 40. This is the second time that Mr. Selvaggi has been so recognized. He was very surprised to make the list twice. "The first time I was very humbled. Making the list a second time is somewhat overwhelming, particularly when you consider the number of outstanding lawyers practicing in this State under the age of 40."

Mr. Selvaggi has been associated with Courter, Kobert & Cohen since 1990 and has been a partner since 1997. He specializes in land use and real estate law and represents a number of public entities.

Mr. Selvaggi's selection was not based solely on his legal skills, but his extensive involvement in professional and community organizations. He is currently the Warren County Trustee to the New Jersey State Bar Association and the Co-Chair of the Association's Judicial Administration Committee. He also serves as a member of Hackettstown Community Hospital's Foundation Board of Trustees, is a member of the Board of Directors for the Warren County ARC, Inc., and is a member of the Board for Abilities of Northwest New Jersey, Inc. This year Mr. Selvaggi was elected President of the Warren County Regional Chamber of Commerce. He also coaches youth baseball and basketball in his community.

Mr. Selvaggi credits most of his success to his wife, Donna. "Without her support and patience, I could never maintain a successful law practice and serve the community as I do." He also added "This will be my last time to be chosen. In November, I turn 40."

Mr. Selvaggi lives in Long Valley with his wife, Donna, and their three children. ❖

EMPLOYMENT LAW UPDATE

FALL 2004

By Howard A. Vex, Esq.

THE NEW OVERTIME REGULATIONS ARE NOW ENFORCEABLE

On August 23, 2004, new regulations implementing the Federal Fair Labor Standards Act ("FLSA") took effect. Under the new regulations, your company may now be required to pay overtime to white collar employees who were previously exempt. The tests for determining the executive, administrative and professional exemptions have been substantially modified. In addition, virtually all blue collar workers are now eligible for overtime, irrespective of income or supervisory duties, including police officers, mechanics and cooks. Health care employees, computer operators and other technical employees are also protected. Furthermore, virtually all full time employees earning less than \$455 per week (\$23,660 per year) now *automatically qualify* for overtime pay, irrespective of their job duties.

Clearly, if your company has not already done so, it is critical that all payroll practices be promptly reviewed for compliance with the new FLSA overtime regulations. Any mistake, whether it be not paying overtime where it is now required, or paying overtime where it is no longer required, can be very costly if not promptly corrected.

THE DOMESTIC PARTNERSHIP ACT IMPACTS ALL EMPLOYERS

When the Domestic Partnership Act ("DPA") took effect on July 12, 2004, New Jersey became the fifth state to recognize qualifying same-sex couples as domestic partnerships. While the DPA does not confer

the status of "marriage" on domestic partners, it does afford them many of the same benefits and protections enjoyed by married couples. This new "protected classification" has, however, given rise to several unresolved issues for New Jersey employers. For example, under New Jersey's Family Leave Act, employees may take up to twelve weeks of unpaid leave to care for a family member, such as their spouse, who suffers from a qualifying serious health condition. The Family Leave Act does not address whether a domestic partner is considered a "spouse" for purposes of protected leave. Similar unresolved issues exist with respect to the Federal Family and Medical Leave Act. Employers are likewise left without guidance on whether funeral leave, personal leave and other benefits should now also include a domestic partner for purposes of defining the immediate family. These issues will, no doubt, be resolved in the future, but for now, employers should handle these issues with care.

E-MAILS CONTINUE TO HAUNT EMPLOYERS

More and more frequently, employee e-mails are coming back to haunt employers. Unlike a quiet conversation around the water cooler, e-mail statements and attachments forwarded by employees can be printed and can also remain stored indefinitely on the company's system. Unless a company has a plan in place to delete old backups, e-mail archives will remain a gold mine for lawyers searching for any incriminating evidence, such as off-color jokes and sexist comments.

Such e-mails can be extremely damaging at trial, as they can bolster otherwise unsupported claims that a discriminatory or sexually charged environment existed in the workplace.

If your company has not already done so, a strict policy regarding e-mail usage should be implemented and enforced. Furthermore, employees should be reminded frequently that their e-mails are not private and that they are fully responsible for the content of any and all e-mails and attachments they forward. Failure to address this issue can, and often does, result in costly and unnecessary litigation.

SICK LEAVE CLEARLY HAS ITS LIMITS

The Family and Medical Leave Act ("FMLA") prohibits the retaliatory termination of an eligible employee who takes time off for medical reasons. Nevertheless, the Federal and State Courts have recently confirmed (again) that an employee who exceeds the maximum protected sick leave permitted under the FMLA may, under most circumstances, be terminated for excessive sick leave. Federal and State laws do not preclude termination of employees on sick leave who have exhausted their leave time under the FMLA and company policy. Of course, these decisions must still be made on a case by case basis to avoid claims of inconsistent enforcement and retaliation. However, sick leave clearly has its limits and an employer need not be held hostage by this issue. ♦

For the seventh consecutive year Courter Kobert and Cohen, PC was ranked in the top ten by the New Jersey Law Journal among the "Top Lawyer-Lobbyists" in the State. Murray Bevan and Rich Giuditta of our Government Affairs practice group act as government affairs agents for a variety of our clients and spend a great deal of their time advocating before the State Legislature, Regulatory Agencies and Authorities.

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Sidebar is designed to provide our friends and clients with helpful legal information. It is not intended, and should not be used, as a substitute for consultation with legal counsel.

PEOPLE IN THE NEWS

KIMARIE RAHILL McDONALD has become of counsel to the firm as of November 1, 2004. Ms. McDonald devotes her practice to the areas of Family Law, Land Use and Real Estate. Ms. McDonald also has experience in Estate Planning and Family Mediation. She was admitted to the New Jersey Bar in 1990 and had her own practice in Warren County for the past six years. Ms. McDonald is a graduate of Seton Hall School of Law. In 1987, she received a Bachelor of Arts degree from Fordham University.

Ms. McDonald is an active member of the Legal Community where she is a member of the New Jersey State Bar and the Warren County Bar Association. Ms. McDonald is also a member of the Supreme Court of New Jersey, District XIII Ethics Committee. She also serves as Attorney for Liberty Township Board of Adjustment and the New Jersey Civic Youth Ballet, a non-profit corporation.

As an active member of the local community, Ms. McDonald has served on various Boards, including Liberty Township Planning Board, Great Meadows Board of Education and The Make A Wish Foundation. Ms. McDonald has chaired various community events, including the "Making Strides" Walkathon on behalf of The American Cancer Society.

JOEL A. KOBERT has recently been appointed to the Board of Trustees of Norwich University, Northfield, Vermont. Norwich University is the oldest private military college in the United States, founded in 1819.

MICHAEL S. SELVAGGI successfully completed the 2004 New York City Marathon with a time of 3 hours 52 minutes. The firm congratulates Michael for a job well done.

KEVIN M. HAHN was recently reappointed as the Local Alliance Representative for the New Jersey School Alliance of Catholic School Families on behalf of the Reverend George Brown School, located in Sparta, New Jersey. The Alliance is dedicated to securing and/or retaining state and federal funding for goods and services to be distributed to Catholic Schools in New Jersey.

THE FIRM has been watching the recent success of the Rutgers University Football program with much interest since it represents a number of the Coaches, including the Head Football Coach, Greg Schiano.

Actual resolution of legal issues depends upon many factors, including variations of facts and state laws. This newsletter is not intended to provide legal advice on specific subjects, but rather to provide insight into legal developments and issues. The reader should always consult with legal counsel before taking action on matters covered by this newsletter.

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