



LADDEY CLARK & RYAN

ATTORNEYS AT LAW

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NEWSLETTER

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Partner Profile: Andrew A. Fraser, Esq.

After the World Trade Center attack, partner Andrew A. Fraser volunteered time at Liberty State Park Family Assistance Center helping victims' families file death certificates. It was a moving experience for this one time immigrant. "We had to walk past the murals and mementos created by the family members that stood at the entrance of the Family Assistance Center, and it was very difficult to walk past them without getting choked up," says Fraser.

Andrew's success as a litigator may stem in part from his heritage... "The American and Scottish struggle for freedom run parallel in many ways," says Fraser.

At a time in our country's life when the American dream has been bruised, and one might question our immigration laws and free borders, Andrew Fraser has this to say, "You're looking at an example of what the American dream means to immigrants." Andrew was born in Edinburgh, Scotland, and immigrated with his family at age three and a half to Connecticut. They became citizens in 1976. "We came here for that American dream and a chance to have a better life. If I had grown up in Scotland, I would have followed in my father's work, which was shipbuilding and engineering although my heart belonged to the law."

Andrew's success as a litigator may stem in part from his heritage. The Frasers are known for enjoying a good fight and fought side-by-side with William Wallace,



a role depicted in the movie **Braveheart** by Mel Gibson. Due to England's oppression of the Scottish culture, which made wearing a kilt and speaking Scottish Gaelic illegal, the Scots have become a fiercely independent people. "The American and Scottish struggle for freedom run parallel in many ways," says Fraser. "Both countries faced an oppressor, staged a revolution, and fought hard for independence. It's probably why the Scots love everything American."

"When I entered law school, my father told me I'd make an excellent attorney because Frasers never shy away from a battle." Indeed, Andrew started early in his legal career doing intellectual battle against tough opponents. In 1985, as a law student at New York Law School, Andrew was ranked first in his class for oral advocacy. In 1987 he was ranked third in the United States in the American Bar Association's National Appellate Advocacy Competition Finals in San Francisco. "It was a truly memorable experience for me because of the quality of the competition. I loved every minute." In 1990 Andrew won the Morris County Trial Competition for young lawyers.

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Lessee Beware

By Angelo J. Bolcato, Esq.

The old adage, “buyer beware” certainly rings true in the case of office equipment leases. Many companies often choose leasing over purchase, taking advantage of payment schedules, lower capital outlay and upgrade advantages. While leasing provides a cost-effective way to obtain the latest high tech office gadgets, it can be a bane to the unwary. Problems often arise when equipment and associated leasing contracts do not conform to customer expectations.

The Role of the Sales Person

The sales person who visits your office is typically a representative of the equipment manufacturer and not the leasing company. The larger manufacturers often have a separate division that provides sales and lease financing for its equipment. The sales representative may explain the equipment to you and make certain claims as to performance and cost savings, but when it comes time to close the deal the contract or lease agreement almost always contains a separate leasing company whose representatives you have never met. The leasing company provides the funding for the lease, and conflicts often arise when equipment malfunctions.

Equipment Malfunctions and the Contract

The first course of action when the leased equipment malfunctions is to call the sales or service representative. If the manufacturer does not adequately address the problem, a typical response is to stop paying the lease. If payment is stopped, the leasing company will send a form letter stating they are not bound by any of the representations

made by the sales rep and that you are bound under the contract to continue to pay.

In order to minimize the possibility of this all too common scenario, you should thoroughly read the lease prior to signing it. If specific representations concerning performance are made during the sales period, request that they be included in the contract with an acknowledgement that you are relying on the representations and reserve the right to cancel the lease if the proposed performance is not met. An alternative would be to incorporate your written understanding into the overall lease, by way of addendum, and if the leasing company refuses to sign then you likewise refuse to proceed with the lease. An authorized representative from the leasing company and the manufacturer should acknowledge in writing their agreement to the terms.

If the leasing company and the manufacturer are not willing to stand behind their representations, you should decide whether to move on to a competitor, or ask for a test period that allows you to cancel without further obligation if the equipment does not meet your needs.

Another area of concern is frequent malfunctions and down time. You should review any service contract to determine if it provides for substitute equipment in the event your equipment is being repaired or is irreparable. Again you should look to tie in the leasing company with the service contract provider in order to allow a safety valve for contract termination if the equipment turns out to be defective.

You should be aware if a problem arises and you stop making payments under the lease that you will get sued by the leasing company and have virtually

no defenses to the suit. In all likelihood you will end up having to pay the balance owed on the lease and you will have to sue the seller of the product who may no longer be in business.

Additional Considerations

Key phrases in a lease or sales contract often spell disaster to the consumer. Most documents indicate that the lessee waives all defenses against the leasing company. This provision means any claim you may have as to equipment breakdowns, or failure to realize the represented cost savings, cannot be asserted against the leasing company. Another common provision is that the employees of the manufacturer or supplier of the equipment are not agents for the leasing company and any claims they make are not binding on the leasing company. The lease will also state (usually in bold print) that it cannot be cancelled and is not subject to any defenses. These provisions are generally allowable under the Uniform Commercial Code, which governs purchase and lease transactions, with limited exceptions in the case of fraud or mistake.

In summary, in order to minimize your leasing risk, the first thing to do is thoroughly read the lease. If you do not understand something, ask for a written explanation. Request that any representations made to you be incorporated into the lease documents. Ask for a trial period; if the equipment is as good as claimed there shouldn't be a problem, and if they refuse you may be better off looking elsewhere. Determine if you need an extended service plan, which should cover you for the entire duration of the lease, and provide for replacement or loaner equipment while your equipment is out of commission.

If you have any questions regarding equipment leasing or any other commercial transaction, Angelo Bolcato may be reached at abolcato@lclaw.com or by phone at 973-729-1880.

Cases of Note

PUBLIC EMPLOYEE REINSTATED

Partner Thomas Ryan, who heads our Labor and Employment Practice Group, successfully petitioned the Merit System Board of the New Jersey Department of Personnel on behalf of a suspended public employee. The Board ordered the municipality where the public employee was employed as a Technical Assistant, Construction Official, to reinstate the employee. Adopting the argument of Mr. Ryan, the Board found that the employee had been improperly suspended and ordered her reinstatement with full back pay, benefits and reimbursement of her legal fees. The Board concluded that the charges brought against the employee alleging insubordination did not meet the standard for an immediate suspension. The Board found the employee may be suspended immediately, and prior to a hearing, only when that employee is unfit for duty; is a hazard if allowed to remain on the job; or the suspension is necessary to maintain the safety, health, order or effective direction of public services. Ryan established that the employer failed to meet the necessary criteria warranting immediate suspension.

LABORER RECEIVES \$60,480 FOR ON THE JOB INJURY

A laborer working for a Morris County Township injured his back and neck while lifting bags of rock salt for his employer. Partner Andrew A. Fraser, who leads the Firm's Workers' Compensation Practice Group, filed a workers' compensation claim petition on behalf of the laborer which resulted in a permanent partial disability award of \$60,480. In addition to the permanent partial disability award, the workers' compensation insurance company was responsible for paying temporary disability benefits and all medical bills.

NURSE AWARDED OVER \$115,000 FOR BACK INJURY

A registered nurse slipped and fell on a patient's drive way, injuring her back. She was recently awarded \$115,000 under a workers' compensation claim petition filed by Partner Andrew A. Fraser. The award was approved by Mt. Arlington Compensation Court Judge Seymour Stadtmaur. Additionally, all medical bills including the cost of surgery were paid by the compensation carrier.

LCR In The News

Partner Brian M. Laddey was recently awarded a **Certificate of Recognition** by Trial Lawyers Care, a non-profit group set up by volunteer trial lawyers in the wake of September 11. Mr. Laddey provided free legal advice to victims' families following the tragedy.



Associate Lee Ann Pounds, of the firm's Labor and Employment Practice Group, recently presented a workshop at the Annual Conference for the New Jersey Association of Women Business Owners (NJAWBO) held in Long Branch, New Jersey. Ms. Pounds' workshop was entitled "**Alliances — Utilizing Independent Contractors or Hiring Employees — Factors to Consider.**" The presentation included a discussion of the legal definitions of an independent contractor relationship, the reasons for engaging an independent contractor, challenges related to utilizing an independent contractor, as well as contract provisions and procedures that a company should consider adopting when establishing an arrangement with an independent contractor.



Partner Thomas N. Ryan recently spoke to over 100 members of the Professional Services Group at the New Jersey Department of Labor. His topic was **The Legal Pitfalls of Hiring and Firing in New Jersey.** Mr. Ryan spoke to the group regarding state and federal employment laws that impact the job application process, interviewing, hiring, evaluating, and firing.



Partner Andrew A. Fraser will be awarded the **2002 Humanitarian Award** by the Department for Persons with Disabilities in May. Mr. Fraser has been a volunteer and board member for the DPD for the past five years. He will be recognized for his spirit of commitment and stewardship.



Brian Laddey Earns Qualified Mediator Status

Partner Brian M. Laddey was recently placed on the court-approved mediators list by the New Jersey Supreme Court, for Civil, General Equity, and Probate matters. Mediation is a dispute resolution process by which a third party (the mediator) facilitates negotiations

between two parties to reach a settlement. The parties work with their own attorneys toward a solution, using the mediator to help in the negotiation process. In many cases, the use of a mediator saves both time and money. In order to become an approved mediator, Mr. Laddey met stringent training, education, and experience requirements. He recently successfully mediated liability and damage issues in a case involving a pedestrian struck by a car while crossing a road. Mr. Laddey heads the firm's Personal Injury Practice. *Brian can be contacted at bladdey@lcrlaw.com or by calling 973-729-1880.*

Andrew A. Fraser

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In the 13 years that Andrew has been litigating he has achieved significant victories for clients. In two recent personal injury trials, Andrew won a total of 1.5 million dollars for his clients. The first case involved a product liability claim and the second case was a wrongful death litigation. In addition to handling personal injury litigation, Andrew heads Laddey, Clark & Ryan's Workers' Compensation Practice Group.

On his way to becoming an attorney, a childhood mentor played a significant role. While growing up in Connecticut, a friend of his parents, a local attorney who was a litigator, allowed Andrew to tag along and carry his briefcase to court during Andrew's summer vacation. Andrew was introduced to judges, went into chambers with his mentor, and he was fascinated by the prospect of solving people's problems. At age 13, Andrew knew what he wanted to do in his life. "I came home from that summer's experience and told my parents that I wanted to be an attorney, and much later, as a partner at Laddey, Clark and Ryan, I realized I had become the attorney whose briefcase I had carried."

Andrew lives with his wife, Lisa, and

his ten-year-old son, Alexander, in Sparta. Asked if he is keeping up the Scottish traditions with his son, he answers "yes" and recounts that when his parents came to the United States, they formed the Scottish Society in Connecticut. After his father's death Andrew was asked to take his place reading a Gaelic poem by Scotland's national poet Robert Burns to kick off the annual Dinner Dance. His wife and son accompany him to this annual event. And, of course, he wears a kilt to this occasion. The tribute to Robert Burns features the Mystic Highland Pipe Band, Scottish Country dancing and a main course of haggis, a sort of Scottish meat loaf that Robert Burns proclaimed to be the true Scottish meal in defiance of the English.

Outside of lawyering, Andrew has a brown belt in kickboxing; devotes time as a member of the Board of Trustees of the Hilltop Country Day School; serves as a Trustee for the Department for Persons with Disabilities, where he was recently honored with the 2002 Humanitarian Award; and recently served as the President of the Sparta Rotary Club.

On February 11th, Andrew's 40th birthday, he became certified by the New Jersey Supreme Court as a Civil Trial Attorney. This June, he will be sworn in as the President of the Sussex County Bar Association.

Andrew can be contacted at afraser@lclaw.com or by calling 973-729-1880.

Andrew Fraser Attains Trial Certification

Partner Andrew Fraser recently became certified as a Civil Trial Attorney, one of only seven in Sussex County. Certification requires passing a written examination, as well as demonstrating substantial litigation experience. In addition, the applicant must substantiate their reputation by submitting a list of judges and other attorneys, including adversaries, willing to attest to their character and ability. The New Jersey Supreme Court established the civil certification program in order to aid consumers in finding qualified trial attorneys.