Westchester County Round-Up:
Recent Significant Decisions from the
Westchester Federal and State Courts
July 2015

This article continues Yankwitt LLP's quarterly review of decisions from the Federal District Court and State Supreme Court (Commercial Division) in White Plains and reviews decisions from the second quarter of 2015.

Judge Román Denies Motion to Dismiss Putative Class Action Alleging Deceptive Labeling on Organic Products

In *Segedie v. Hain Celestial Grp., Inc.* 2015 U. S. Dist. LEXIS 60739 (S.D.N.Y. 2015), **Judge Nelson S. Román** denied Defendant's motion to dismiss a putative class action complaint on preemption grounds. In their complaint, Plaintiffs alleged Defendant misleadingly labeled its products as "organic," when in fact they contained ingredients prohibited in organic products. Defendant moved to dismiss the class action on the ground that, *inter alia*, Plaintiffs' state law claims were preempted by the federal Organic Foods Production Act of 1990, 7 U.S.C. §§ 6501-6523 ("OFPA"). Specifically, Defendant argued that because the Food and Drug Administration had already certified the product as organic, state law could not deem the product's labeling misleading. Defendant relied heavily on the Eighth Circuit's decision in *In re Aurora Dairy Corp. Organic Milk Mktg. & Sales Practices Litig.*, 621 F.3d 781 (8th Cir. 2010), in which that court held OFPA preempted state consumer protection laws on the grounds of "obstacle preemption." In a case of first impression in the Second Circuit, however, Judge Román disagreed. Relying on the Supreme Court's decision in *Wyeth v. Levine*, 555 U.S. 555 (2009), which held state laws claims against a drug manufacturer were not preempted even though the FDA approved the company's label for that drug, the Court found Plaintiffs' claims "do not present a sharp obstacle to the accomplishment of [federal law] objectives." Judge Román further held that allowing Plaintiffs' claims to proceed would advance OFPA's goal of promoting national organic standards. Finally, the Court concluded that the primary jurisdiction doctrine did not bar its consideration of the case, notwithstanding Defendant's assertion that the FDA will "imminently" regulate the term "natural," because, among other things, the FDA had repeatedly refused to adopt formal rulemaking on that issue.

Justice Scheinkman Denies Motion to Disqualify Putnam County District Attorney

In *People v. Castaldo*, 2015 NY Slip Op 25178 (Sup Ct May 25, 2015), **Justice Alan Scheinkman** denied Defendant's motion to disqualify Putnam County District Attorney Adam Levy and appoint a special district attorney pursuant to County Law § 701, in connection with the criminal prosecution of Defendant on charges that he attempted to assault a prisoner, neglected official duties and falsified paperwork regarding the assault incident. According to Defendant, Levy had a conflict of interest arising out of his ongoing feud with Putnam County Sheriff Donald B. Smith, which included ongoing, civil litigation between Levy and Smith. Defendant argued that although he was not a party to the civil litigation, he was an essential witness in Smith's case against Levy. Defendant further claimed Levy indicted him for the purpose of obtaining leverage over Defendant in order to obtain favorable testimony in the civil suit. Justice Scheinkman rejected Defendant's arguments, concluding County Law § 701 was not satisfied as there was no actual conflict of interest and no actual prejudice: Defendant was not a named defendant in the civil action and there was no contention that the feud between Levy and Smith threatened the viability of the case against Defendant.

Judge Seibel Vacates Bankruptcy Court Order Stripping Junior Mortgage

On appeal from the Bankruptcy Court, in *Green Tree Servicing, LLC v. Wilson*, No. 14-CV-9543 CS, 2015 WL 3561476 (S.D.N.Y. June 5, 2015), **Judge Cathy Seibel** vacated the Bankruptcy Court's order denying a junior mortgage holder's motion to expunge a proof of claim as insufficient pursuant to Federal Rule of Bankruptcy Procedure 3001 and remanded to that court for further proceedings. In the underlying Chapter 13 bankruptcy case, the debtors stated their property was secured by junior and senior mortgages. The junior mortgage holder filed a proof of claim and the debtors subsequently moved to reclassify that mortgage as unsecured, *i.e.*, strip the lien. After the motion was filed, the senior mortgage holder filed its own proof of claim but failed to submit the documentation required by Rule 3001. The Bankruptcy Court nonetheless granted the motion to expunge and the junior mortgage holder appealed. After the appeal was fully briefed, the senior mortgage holder filed an amended proof of claim to submit the requisite documentation. On appeal, Judge Seibel agreed with the junior mortgage holder that the Bankruptcy Court had abused its discretion in allowing an insufficient proof of claim. At the same time, Judge Seibel recognized that the senior mortgage holder had amended its proof of claim to comply with Rule 3001. Accordingly, rather than reverse the Bankruptcy Court and expunge the proof of claim, Judge Seibel vacated the order and remanded it to the Bankruptcy Court for consideration of the amended proof of claim with supplemental documentation.

Judge Karas Allows Service of Process By Email to Third Party Defendant in Russia

In *Amto, LLC v. Bedford Asset Mgmt., LLC*, No. 14-CV-9913, 2015 WL 3457452 (S.D.N.Y. June 1, 2015), **Judge Kenneth M. Karas** granted the third party plaintiff's motion to serve the third party defendant, a United States citizen residing in St. Petersburg, Russia, through substituted service pursuant to Federal Rule of Civil Procedure 4(f). The third party complaint alleged fraudulent conveyance in violation of New York Debtor and Creditor Law § 276 and tortious interference with the third-party plaintiff's contractual rights to collect on an assigned debt. In its motion to allow

substituted service, the third-party plaintiff offered several options: service on the third-party defendant's counsel in a pending United Kingdom matter; service by mail to the third-party plaintiff's home and business address in Russia; service by courier; and service by email. Judge Karas rejected all of those proposals except service by email. As to that method, Judge Karas held that because Russia did not explicitly object to service by electronic means, service by email would be appropriate under Rule 4(f)(3) where the movant sufficiently shows the person to be served would likely receive the summons and complaint at the given email address. The Court found that because there was evidence the third-party plaintiff used his email address for business purposes and had recently accessed his email account, service of process by email was proper under the circumstances.

Judge Briccetti Affirms Bankruptcy Court Confirmation of Controversial Reorganization Plan

In *In re MPM Silicones, LLC, et al.*, No. 14 CIVIL 7492 (VB), **Judge Vincent Briccetti** affirmed the Bankruptcy Court's orders confirming the Chapter 11 reorganization plan of Momentive Performance Materials, Inc. and related entities. On appeal from the Bankruptcy Court, the appellants argued the plan should not have been confirmed because, *inter alia*, chose the wrong "cramdown" interest rate and failed to provide for $200 million in "make-whole" payments to certain secured lenders, thereby violating the U.S. Bankruptcy Code's requirement of "fair and equitable" treatment. Judge Briccetti rejected these arguments and affirmed the Bankruptcy Court. The Court first held that the Bankruptcy Court correctly applied the formula approach proposed by the debtor for determining the cramdown interest rate, as opposed to the efficient-market approach proposed by the lenders. Judge Briccetti noted that although the caselaw relied upon by the debtor arose in the Chapter 13 context, the secured lenders had offered no persuasive reason why secured creditors should be treated differently in Chapter 11 and Chapter 13 cases. Second, Judge Briccetti agreed with the Bankruptcy Court that the absence of make-whole payments did not doom the plan because the applicable indenture was at best ambiguous as to whether make-whole payments were required under that document's automatic acceleration clause.