

Jan 2023 | [Articles Blog: The Westchester Litigator](#)

## **Fourth Quarter 2022 Westchester County Roundup**

### **Judge Halpern Denies Town of Carmel Residents' Motion to Intervene**

Judge Halpern examined the twin doctrines of permissive intervention and intervention as of right in a suit brought by a telecom company against a municipality. The Court denied a motion to intervene by town residents. It found that the proposed intervenors and the town share a common interest in ensuring that the necessary reviews and approvals are performed as required under the town code and applicable New York state and federal laws. [Read the decision.](#)

### **Judge Briccetti Denies Psychiatrist's Motion to Dismiss Breach of Confidentiality Claim**

In litigation arising from a psychiatrist-patient relationship gone sour, Judge Briccetti denied the defendant's motion to dismiss the complaint's breach of confidentiality claim. The Court found that the plaintiff adequately alleged a breach based on the defendant's alleged disclosure of confidential information to the plaintiff's parents and that the plaintiff had not waived his right to confidentiality. [Read the decision.](#)

### **Judge Seibel Determines Reasonable Expert Physician Fees**

In a case that required the deposition of three expert physicians, the amount payable to the experts for their time sparked a contentious discovery dispute among the parties and the experts. The experts demanded a flat fee, which the parties rejected, and they could not agree on a reasonable hourly fee for the medical experts. Upon a review of the experts' qualifications and relevant case law, Judge Seibel determined that a reasonable fee for a physician board certified in both physical medicine and rehabilitation and electrodiagnostic medicine was \$400 per hour, while a reasonable fee for a board-certified orthopedic surgeon and a board-certified radiologist was \$450 per hour, resulting in total compensation to each expert of \$1,125 to \$1,900. [Read the decision.](#)

### **Judge Román Declines to Dismiss or Stay a Resource Conservation and Recovery Act ("RCRA") Action Based on the Pendency of a State Agency Administrative Proceeding**

In a decision examining the interplay between RCRA private citizen suits and the primary jurisdiction doctrine, Judge Román denied the defendant's motion to dismiss or stay the action based on the entry of a subsequent consent order and remediation plan between the defendant and the New York State Department of Environmental Conservation. Acknowledging that the Second Circuit has not ruled on whether primary jurisdiction can be invoked to bar RCRA citizen suits in favor of agency actions, Judge Román held in line with the First, Third and Seventh Circuits that allowing defendants to dismiss or stay a citizen's suit under RCRA because such actions would result in an end run around RCRA and improperly expand the narrow scope of the primary jurisdiction doctrine. [Read the decision.](#)

## **Judge Karas Dismisses Wrongful Death Action Against Putnam County**

Judge Karas granted the government's motion for summary judgment and dismissed the plaintiff's wrongful death claim arising from the decedent's attempted suicide while she was in pre-trial detention. Judge Karas held that the plaintiff failed to establish a Monell claim for municipal liability because she could not prove that the individual defendants' combined acts or omissions resulted in her daughter's death. [Read the decision.](#)

## **Justice Walsh Grants in Part and Denies in Part Defendant's Motion to Compel Privileged Documents**

Justice Walsh granted in part and denied in part the defendant's motion to compel allegedly privileged documents in the most recent decision spawned by a long-running discovery dispute in a Westchester Supreme commercial matter. The Court required the production of some documents previously disclosed to third parties finding the "common interest" and "functional equivalent" doctrines did not apply to uphold the privilege but denied the defendant's motion related to other emails, finding that the plaintiffs had not waived privilege by placing those documents "at issue." [Read the decision.](#)