

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ALBANY

ASSEMBLYMAN WILLIAM BARCLAY,
ASSEMBLYMAN GARY FINCH,
ASSEMBLYMAN ANDREW GARBARINO,
ASSEMBLYMAN ANDREW GOODELL,
ASSEMBLYMAN STEPHEN HAWLEY,
ASSEMBLYMAN BRIAN KOLB,
ASSEMBLYMAN BRIAN MANKTELOW,
ASSEMBLYMAN ANGELO MORINELLO,
ASSEMBLYMAN ANTHONY PALUMBO,
SENATOR THOMAS O'MARA, and
SENATOR ROBERT ORTT, IN THEIR
INDIVIDUAL AND OFFICIAL CAPACITIES

VERIFIED PETITION AND COMPLAINT

Index No. 2019 -

Petitioners.

v.

NEW YORK STATE COMMITTEE
ON LEGISLATIVE AND EXECUTIVE
COMPENSATION; THOMAS P. DINAPOLI,
H. CARL MCCALL, SCOTT STRINGER
AND WILLIAM C. THOMPSON, JR. IN THEIR
CAPACITIES AS MEMBERS OF THE NEW
YORK STATE COMMITTEE ON LEGISLATIVE
AND EXECUTIVE COMPENSATION

Defendants.

Petitioners Assemblyman William Barclay, Assemblyman Gary Finch, Assemblyman Andrew Garbarino, Assemblyman Andrew Goodell, Assemblyman Stephen Hawley, Assemblyman Brian Kolb, Assemblyman Brian Manktelow, Assemblyman Angelo Morinello, Assemblyman Anthony Palumbo, Senator Thomas O'Mara, and Senator Robert Ortt (hereinafter "Petitioners"), by and through their attorneys, Lippes Mathias Wexler Friedman, LLP, as and for their Verified Petition and Complaint herein, come forth and allege as follows:

INTRODUCTION

1. On March 12, 2018, the New York Legislature passed a provision in a budget bill that “established a Compensation Committee (hereinafter “Committee”) to examine, evaluate and make recommendations with respect to adequate levels of compensation, non-salary benefits, and allowances pursuant to section 5-a of the legislative law ... for members of the legislature” Part HHH of Chapter 59 of the Laws of 2018.

Attachment A.

2. The Committee’s enabling legislation set forth its mandate: “The committee shall determine whether, on January 1, 2019, the annual salary and allowances of members of the legislature, statewide elected officials, and salaries of state officers ... *warrant an increase.*” Attachment A, §2(2) (emphasis added).

3. Significantly, the Committee’s enabling legislation did *not* include any authority to alter, limit or otherwise restrict outside employment or income earned by legislators.

4. Pursuant to the language of this budget bill, the Committee’s recommendations “shall have the force of law and shall supersede, where appropriate, inconsistent provisions of sections 5 and 5-a of the legislative law, unless modified or abridged by statute prior to January first of the year as which such determination applies.” Attachment A, §4(2). The Committee’s recommendations became final on January 1, 2019.

5. On December 10, 2018, the Committee released a report (hereinafter “the Report”) containing its recommendations. **Attachment B.**

6. Among other recommendations, the Committee placed restrictions on Legislators’ outside employment and income, which take effect on January 1, 2020. Attachment B, page 14-15.

7. Specifically, the Committee prohibits members of the Legislature from maintaining any outside employment that requires a fiduciary duty to the employer or a client, “except for the practice of medicine.” Attachment B, page 15.

8. The Committee also caps all other outside income, not otherwise prohibited as a result of a fiduciary duty to an employer or a client, to fifteen (15) percent of legislator base salary. *See* Attachment B, page 15.

9. In enacting these restrictions, (hereinafter referred to “Outside Employment Restrictions”), the Committee exceeded its statutory authority and acted in violation of law.

10. In enacting the Outside Employment Restrictions, the Committee infringed upon Petitioners’ rights guaranteed by the free speech and assembly provisions of the United States Constitution and the Equal Protection and Due Process provisions of the United States and New York State Constitutions.

11. The Committee’s Recommendations far exceed its specific statutory authorization to “determine whether, on January 1, 2019, the annual salary and allowances of members of the legislature...warrant an increase.” HHH(§2).

12. The Legislature did not, and could not, confer upon the Committee the authorization to alter, limit or otherwise restrict outside employment or income earned by legislators.

13. This instant hybrid Article 78/Declaratory judgment proceeding, brought pursuant to CPLR sections 7803, 7804, and 3001, seeks to annul the provisions of the Committee’s Report that prohibit a Legislator’s ability to maintain outside employment that requires a fiduciary duty to the employer or a client and/or to earn any other outside income greater than fifteen (15) percent of the legislator salary, as well as a declaration that those provisions are invalid, unconstitutional, and unenforceable.

PARTIES

14. Petitioner William Barclay is a member of the New York State Assembly. Petitioner Barclay is a partner of the law firm Barclay Damon LLP and represents individuals and businesses in business law matters. Petitioner Barclay is also the director of both Pathfinder Bank and Countryway Insurance Company. Petitioner Barclay owes a fiduciary duty to his legal clients and to the two companies where he serves on the Board of Directors. Petitioner Barclay was first elected to the New York State Assembly in 2002, and was most recently elected to the Assembly in November 2018. Inasmuch as the Committee’s Report directly affects him, he has standing to bring this action.

15. Petitioner Gary D. Finch is a member of the New York State Assembly. Petitioner Finch is the self-employed owner and operator of Brew-Finch Funeral Homes, Inc. Petitioner Finch yields income greater than fifteen (15) percent of his legislative salary from his business. Petitioner Finch was first elected to the

New York State Assembly in 1999, and was most recently elected to the Assembly in November 2018. Inasmuch as the Committee's Report directly affects him, he has standing to bring this action.

16. Petitioner Andrew Garbarino is a member of the New York State Assembly. Petitioner Garbarino is an attorney with the Law Offices of William R. Garbarino and represents individuals and businesses in a wide range of real estate, corporate, and litigation matters. Petitioner Garbarino owes a fiduciary duty to his clients. Petitioner Garbarino was first elected to the New York State Assembly in 2012, and was most recently elected to the Assembly in November 2018. Inasmuch as the Committee's Report directly affects him, he has standing to bring this action.

17. Petitioner Andrew W. Goodell is a member of the New York State Assembly. Petitioner Goodell is a self-employed attorney and owner of the law firm Goodell & Rankin. Petitioner Goodell owes a fiduciary duty to his clients. Petitioner Goodell was first elected to the New York State Assembly in 2010, and was most recently elected to the Assembly in November 2018. Inasmuch as the Committee's Report directly affects him, he has standing to bring this action.

18. Petitioner Stephen M. Hawley is a member of the New York State Assembly. Petitioner Hawley owns and operates the Insurance Agency Stephen M. Hawley & Associates, LLC. Petitioner Hawley yields income greater than fifteen (15) percent of his legislative salary. Petitioner Hawley was first elected to the New York State Assembly in 2006, and was most recently elected to the Assembly in November 2018. Inasmuch as the Committee's Report directly affects him, he has standing to bring this action.

19. Petitioner Brian Kolb is a member of the New York State Assembly and serves as Minority Leader. Petitioner Kolb has a distinct, legally cognizable stake in this action because as a result of the Outside Employment Restrictions, he will be prohibited from obtaining private sector employment if he so chooses unless he resigns his Assembly seat. Petitioner Kolb was first elected to the New York State Assembly in 2000, and was most recently elected to the Assembly in November 2018. Inasmuch as the Committee's Report directly affects him, he has standing to bring this action.

20. Petitioner Brian Manktelow is a member of the New York State Assembly. Petitioner Manktelow is the self-employed owner and operator of Manktelow Farms DBA. Petitioner Manktelow yields income

greater than fifteen (15) percent of his legislative salary. Petitioner Manktelow was elected to the Assembly in November 2018. Inasmuch as the Committee's Report directly affects him, he has standing to bring this action.

21. Petitioner Angelo Morinello is a member of the New York State Assembly. Petitioner Morinello is an attorney and sole practitioner for Angelo J. Morinello Attorney at Law. Petitioner Morinello owes a fiduciary duty to his clients. Petitioner Morinello was first elected to the New York State Assembly in 2016, and was most recently elected to the Assembly in November 2018. Inasmuch as the Committee's Report directly affects him, he has standing to bring this action.

22. Petitioner Anthony Palumbo is a member of the New York State Assembly. Petitioner Palumbo is an attorney and partner at the Law Firm of Palumbo and Associates, P.C., where he represents individuals and businesses in civil and criminal litigation focusing on personal injury matters. Petitioner Palumbo owes a fiduciary duty to his clients. Petitioner Palumbo was first elected to the New York State Assembly in 2013, and was most recently elected to the Assembly in November 2018. Inasmuch as the Committee's Report directly affects him, he has standing to bring this action.

23. Petitioner Thomas O'Mara is a member of the New York State Senate. Petitioner O'Mara is a partner of the law firm Barclay Damon LLP and represents individuals and businesses in commercial transactions, and any other matters involving corporate, finance, or real estate law. Petitioner O'Mara owes a fiduciary duty to his clients. Petitioner O'Mara was first elected to the New York State Senate in 2010, and was most recently elected to the Senate in November 2018. Inasmuch as the Committee's Report directly affects him, he has standing to bring this action.

24. Petitioner Robert Ortt is a member of the New York State Senate. Petitioner Ortt has a distinct, legally cognizable stake in this action because as a result of the Outside Employment Restrictions he will be prohibited from obtaining private sector employment if he so chooses unless he resigns his Senate seat. Petitioner Ortt was first elected to the New York State Senate in 2014, and was most recently elected to the Senate in November 2018. Inasmuch as the Committee's Report directly affects him, he has standing to bring this action.

25. The aforementioned Petitioners have distinct, legally cognizable claims because due to the Outside Employment Restrictions, each Petitioner will be forced to choose between resigning from the New York State Legislature and terminating representation of clients or other outside employment which yields income greater than fifteen (15) percent of their legislative salaries.

26. Defendant New York State Committee on Legislative and Executive Compensation is the body that issued the Report complained of herein, and is subject to a proceeding under Article 78 of the CPLR.

27. Defendants DiNapoli, McCall, Stringer, and Thompson are the four members of the New York State Committee on Legislative and Executive Compensation, and exceeded their authority and acted in violation of law in their official capacities.

JURISDICTION AND VENUE

28. Under CPLR §§7803, 7804, and 3001, this Court has jurisdiction to grant Petitioners' request for relief in the nature of mandamus and prohibition, as well as the declaratory relief sought, and any further relief that this Court deems just and proper.

29. Venue is proper under CPLR §506(b).

BACKGROUND

30. Before January 1, 2019, Section 5 of the Legislative Law provided legislators with a base salary of \$79,500 for their part-time work in a legislative session that runs from January to June each year. Additionally, Section 5-a of the Legislative Law provided specific stipends for work performed and responsibilities assumed by legislators in leadership roles.

31. Between January and June, the Legislature calendar only contains 60 to 65 session days.

32. The Legislature convenes on the first Wednesday after the first Monday of January, and each year, the Legislature conducts most of its budget work on or before March 31, the date by which the Legislature enacts an annual budget. Nearly one-half of all other legislative bills are passed in the three weeks of the legislative session prior to the last scheduled session in June.

33. The requirements of a New York State Legislator are set forth in the New York State Constitution, Article III, §7. The New York Constitution does not require a legislator to serve full-time legislative

positions. Indeed, Article III, §7 does not prohibit outside employment. Rather, legislators have historically served part-time.

34. Legislators are currently permitted to maintain outside employment, including employment that requires a legislator to serve in a fiduciary role subject to several statutory restrictions and administrative oversight designed to prevent any conflict of interest.

35. The Legislature addressed potential conflict issues when it enacted the Public Officers Law, which imposes strict limitations on allowable outside employment and prohibits a legislator from receiving or entering into any agreement, expressed or implied, for compensation to be rendered in a relation to any case, proceeding, application or other matter before any state agency. N.Y. Pub. Off. Law § 73. Pursuant to the Public Officers Law a legislator is also prohibited from selling any goods or services in excess of \$25.00 to any state agency.

36. State legislators who earn more than \$5,000.00 in outside income are required to obtain a formal advisory opinion from the Legislative Ethics Commission confirming that the outside income earned by a legislator does not present a conflict of interest. N.Y. Pub. Off. Law § 73(6)(a)(1).

37. All state legislators must file a detailed annual financial disclosure statement, which includes personal financial information as well as information about spouses, dependent children, all outside income and membership in business and community organizations. N.Y. Pub. Off. Law § 73(6)(a).

38. There is currently no cap on a legislator's outside income.

39. As a result of the Committee's Report, beginning January 1, 2020, members of the Legislature will be prohibited from maintaining outside employment that requires a fiduciary duty to an employer or a client, except for the practice of medicine, and their outside income from any source will be capped at fifteen (15) percent of legislator base salary.

The Committee Report Exceeds its Statutory Mandate

40. On December 10, 2018, the Committee released a Report which prohibited any outside income for legislators who were employed in a fashion wherein a fiduciary duty is owed by the legislator, "except for

the practice of medicine.” Attachment B, page 15. The Committee’s report further imposed a cap on all other outside income which exceeds the legislator’s salary by fifteen (15) percent. These Outside Employment Restrictions will be effective beginning January 1, 2020.

41. In its Findings, the Committee acknowledged on page 12 that “many individuals and organizations have called on this committee to ban outside income for Legislators.” In addition, the Findings, again on page 12, reveal that the Committee considered the Congressional model to limit outside income to avoid potential conflicts of interests.

42. The Committee Findings at page 13 further reveal that the Committee considered a complete ban on all outside income but instead determined that mere limitations on outside income for legislators would effectively prevent conflicts of interests.

43. Despite the Committee’s findings that limits on outside income were sufficient to address concerns regarding conflicts of interests, the Committee nonetheless banned any outside income for any legislator in a fiduciary relationship, except for the practice of medicine. This outright ban targets accountants, stock brokers, financial advisors, real estate brokers, pharmacists, attorneys, insurance agents, trustees, directors, and all others who have a fiduciary obligation to clients, customers, institutions or employers.

44. The statutory language creating the Committee did not authorize the Committee to amend or otherwise change provisions of existing statutes such as the Public Officers Law, which through legislative authority, already restrict the outside income of legislators. In addition, the authority granted to the Committee did not include the direction to amend or otherwise change provisions of existing ethics or other statutes.

45. Rather, Part HHH of Chapter 59 of the Laws of 2018 specifically limited the Committee’s scope to “whether, on January 1, 2019, the annual salary and allowances of members of the legislature ... warrant an increase.” Simply put, the Legislature limited the Committee’s authority to Sections 5 and 5-a of the Legislative Law that define the base salary of legislators and the allowable stipends for additional leadership responsibilities and duties.

46. On page 8 of their Report, the Committee acknowledges this limited statutory mandate: “We must determine whether on January 1, 2019 an increase in compensation is warranted ...”

47. Indeed, limiting outside employment and income is *not* within the scope of “examining and evaluating adequate levels of compensation” to be paid to legislators. Instead, the Outside Employment Restrictions relate not at all to “adequate levels of compensation” but indeed relate solely to compensation paid by third parties to legislators for services or other work unrelated to state government, which is otherwise regulated by Public Officers Law § 73.

48. On page 10 of their Report, under the heading “FINDINGS AND DETERMINATIONS,” Section 3, the Committee writes, “The ‘performance’ of the legislature in its statutory and Constitutional activities ... is to be interpreted and determined by this Committee.” This represents a bold and self-serving expansion of the Committee’s statutory authority. It is an illogical concept that a committee formed by the Legislature should have authority over the Legislature.

49. In a further violation of its statutory authority, the Committee indicates that the Committee fulfilled its obligation to consider the legislators’ performance “by the implementation of the Committee’s limitations on stipends and outside earned income, which will advance the full-time nature of today’s legislative duties to ... satisfy fulfillment of their statutory and Constitutional responsibilities.”

50. In exceeding its statutory mandate, the Committee redefined the job description of legislators in New York, making it a full-time position, while arbitrarily prohibiting some unrelated outside employment involving fiduciary relationships and arbitrarily capping some unrelated outside income.

51. No provision or even reasonable interpretation of Part HHH of Chapter 59 of the Laws of 2018 gave the Committee authority to redefine the job description of a legislator as a full-time position, nor to prohibit or limit unrelated outside employment or income that presents no conflict of interest.

**The Committee Report Serves to Punish Professionally Employed Legislators
and to Deprive Voters of their Chosen Representative**

52. The Committee, through its Report, without a rational basis treats legislators who have outside employment that requires a fiduciary duty to the employer or a client, except for medical doctors, in an adverse disparate fashion.

53. The Committee Report compels these legislators to choose between fulfilling their obligations to the voters who elected them to office and abandoning their fiduciary duties to outside clients, customers or employers.

54. The voters chose Petitioners as their representatives, in the most recent election, when legislators were permitted to maintain outside employment.

55. The voters elected the Petitioners knowing that they were part-time citizen legislators. The Committee's unilateral and illegal prohibition and limitations on outside income will disenfranchise the very voters who elected the Petitioners.

56. When Petitioners campaigned for election in their respective Districts to serve the constituents in those Districts, they did so with the knowledge and understanding that they would be allowed to continue and maintain their outside employment during their current terms, subject only to the restrictions articulated in § 73 of the Public Officers Law. Furthermore, they were elected in their Districts with public disclosure of their outside employment.

57. Petitioners, many of whom are licensed professionals in New York, have a vested and protected property right in their businesses, outside income, professional licenses, and partnership interests.

58. Notwithstanding the numerous statutory and regulatory provisions designed to prevent conflicts of interest, the Committee articulated an intention to minimize the "possibility and perception of conflicts" where "the public *could* question" whether they are being properly served. Attachment B, pages 12-15 (emphasis added). The Legislature has already evinced its intention to regulate and minimize conflicts by enacting § 73 of the Public Officers Law.

59. The Legislature never authorized the Committee to amend existing conflict of interest statutes and/or regulations or other ethical requirements imposed upon a legislator.

60. Absent an annulment of the contested provisions and a declaratory judgment, Petitioners will be forced into one of two options: breach their fiduciary duties to clients, customers, or employers or to resign in the middle of their present term thereby disenfranchising their constituents.

61. Defendants violate Petitioners' right to Equal Protection under the Federal and State Constitutions by discriminating against them on the basis of their outside profession requiring a fiduciary duty.

62. Defendants also violate Petitioners' right to Due Process under the Federal and State Constitutions by depriving them of their property interests in their businesses, outside income, professional licenses, and partnership interests.

63. The Defendants also violate the Petitioners' First Amendment rights of freedom of association by prohibiting them from continuing fiduciary relationships with clients, customers and employers.

CAUSE OF ACTION 1

(Committee Proceeded in Excess of Power in violation of CPLR § 7803(2))

64. Petitioners repeat and re-allege the preceding paragraphs.

65. In prohibiting Members of the Legislature from engaging in outside employment that requires a fiduciary duty to a client, customer or employer and by capping outside income to fifteen (15) percent of legislator base salary, the Committee exceeded its limited statutory mandate of determining the annual salary and allowances to be paid by the State government to Members of the Legislature.

66. The Committee's determinations were made in excess of its statutory authority and powers in violation of CPLR § 7803(2).

CAUSE OF ACTION 2

(Declaratory Judgment pursuant to CPLR 3001 that the Committee Exceeded its Statutory Mandate to Determine if a Legislative pay increase was appropriate)

67. Petitioners repeat and re-allege the preceding paragraphs.

68. In prohibiting Members of the Legislature from maintaining outside employment which requires a fiduciary duty to a client, customer or employer and by capping outside all other outside income to fifteen (15) percent of legislator base salary, the Committee exceeded its limited statutory mandate of determining whether, on January 1, 2019, the annual salary and allowances of members of the legislature, statewide elected officials, and salaries of state officers warrant an increase.

69. Pursuant to CPLR § 3001, Petitioners seek a Declaratory Judgment from this Court that the Committee exceeded its statutory mandate and that the provisions within the Committee's Report that refer to outside income of legislators are unlawful, invalid, and unenforceable.

CAUSE OF ACTION 3

(Equal Protection)

70. Petitioners repeat and re-allege the preceding paragraphs.

71. The provision of the Report that prohibits legislators from outside employment that requires a fiduciary duty to clients, customers, or an employer, except for the practice of medicine, is not supported by any rational basis but rather is based solely and arbitrarily on the outside profession of a Member of the Legislature.

72. This discriminatory provision affects fundamental rights of the Petitioners and their constituents, has an illegitimate purpose, is not supported by a compelling or important state interest, and has no rational basis in relation to any legitimate purpose. It therefore violates the Equal Protection provisions of the Federal and State Constitutions.

CAUSE OF ACTION 4

(Due Process)

75. Petitioners repeat and re-allege the preceding paragraphs.

76. The provisions of the Report that prohibit legislators from outside employment that requires a fiduciary duty to clients, customers or an employer, and that cap outside income at fifteen (15) percent of legislator base salary, deprive Petitioners of their property interests by imposing restrictions on their businesses, outside income, professional licenses, and partnership interests.

77. These provisions cause deprivation of Petitioners' property interests without due process of law, without the availability of any post-deprivation remedy. They therefore violate the due process provisions of the Federal and State Constitutions.

CAUSE OF ACTION 5

(Freedom of Association)

78. Petitioners repeat and re-allege the preceding paragraphs.

79. By depriving Petitioners of the right to maintain otherwise lawful associations which require a fiduciary duty to clients, customers or employers, the Committee violated the Petitioners' First Amendment Rights under the United States Constitution.

CAUSE OF ACTION 6

(Unconstitutional delegation of law-making authority)

80. Petitioners repeat and re-allege the preceding paragraphs.

81. The legislation that created the Committee on Legislative and Executive Compensation violated several fundamental Constitutional provisions because it purported to grant this Committee the ability to make determinations that "have *the force of law*, and shall *supersede*, where appropriate, inconsistent provisions of section 169 of the executive law and sections 5 and 5-a of the legislative law, unless modified or abrogated by statute prior to January first..."

82. Only the State Legislature, subject to the approval or veto by the Governor, can enact laws. This power cannot be delegated to a hand-picked committee, thus circumventing the right of every State Legislator to vote on the "law" and eliminating the right of the governor to veto or approve of such "law."

83. The salaries for State Legislators must be set by law pursuant to Article III, Section 6 of the New York State Constitution, which states that "[e]ach member of the legislature shall receive for his services a like annual salary, *to be fixed by law*." It further states that members shall continue to receive such salary "until *changed by law* pursuant to this section."

84. Only the Senate and the Assembly have the power to enact laws, subject to approval or veto by the Governor, pursuant to Article III, Section 1 of the New York State Constitution, which states that “[t]he legislative power of this State shall be vested in the Senate and Assembly.”

85. The procedure for adopting a law is carefully set forth in Article III, Section 13 of the State Constitution, which states that “*no law shall be enacted except by bill.*” Article III, Section 14 of the State Constitution states that no bill shall “be passed or *become law*, except by the assent of a majority of the members elected to each branch of the legislature.... and the ayes and nays entered on the journal.”

86. Every bill passed by the Assembly and the Senate must then be presented to the Governor pursuant to Article IV, Section 7 of the State Constitution, to be signed or vetoed. If vetoed, the Legislature has an opportunity to override the veto.

87. The Commission does not have the Constitutional authority to supersede a duly adoption law, or change the salary or compensation of a state legislature by circumventing the statutory duty and responsibility of the state legislator to consider and vote on such a law, or to completely eliminate the ability of the governor to sign or veto such a law, subject to a possible veto override.

CAUSE OF ACTION 7

(Declaratory Judgment pursuant to CPLR 3001 that the Committee Disenfranchised Voters)

88. Petitioners repeat and re-allege the preceding paragraphs.

89. Because the Committee exceeded its statutory mandate, many legislators will be forced to leave office in order to fulfill their outside employment obligations and fiduciary responsibilities.

90. Pursuant to CPLR § 3001, Petitioners seek a Declaratory Judgment from this Court that by exceeding its statutory mandate, the Committee, in effect, disenfranchised voters who previously cast their ballot for part-time legislators who will be forced to vacate office no later than January 1, 2020.

WHEREFORE, Petitioners respectfully request that the Court issue an Order and Judgement:

- A. annulling the provisions of the Report that restrict a legislator's ability to maintain outside employment that requires a fiduciary duty to the employer or a client and to earn outside income greater than fifteen (15) percent of the legislator salary;
- B. declaring that the provisions of the Report that restrict a legislator's ability to maintain outside employment that requires a fiduciary duty to clients, customers or an employer and to earn outside income greater than fifteen (15) percent of the legislator salary are invalid, unconstitutional, and unenforceable;

/s/ Dennis C. Vacco

Dennis C. Vacco, Esq.

Scott S. Allen, Jr., Esq.

Lippes Mathias Wexler Friedman LLP

Attorneys for Petitioners

50 Fountain Plaza, Suite 1700

Buffalo, New York 14202

(716) 853-5100

dvacco@lippes.com

sallen@lippes.com