

## News

### **Bob Bower Named Best Lawyers' 2022 Lawyer of the Year in Workers' Compensation**

Norman, Hanson & DeTroy is proud to announce that *Best Lawyers* recognized Bob Bower as its 2022 *Lawyer of the Year* in the practice area of workers' compensation law. Bob has also been highlighted in the 28<sup>th</sup> Edition of *The Best Lawyers in America* for his high caliber work in the practice area of labor law.

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### **Wuesthoff Elected as Member of the Firm**

Norman, Hanson & DeTroy, LLC is pleased to announce the election of Noah Wuesthoff as a Member of the firm.

Noah is a 1991 graduate of McGill University and graduated from the University of Maine School of Law in 1994. Noah worked at a local law firm before joining Norman, Hanson & DeTroy.

Noah is a vital part of the firm's Healthcare and Professional Practice Defense Group where his practice focuses on identifying, vetting, and recruiting highly qualified medical expert witnesses and drafting science-backed trial briefs and motions for medical malpractice trial preparation.

Noah's longstanding relationships with nationally prominent medical experts and researchers enhances the firm's practice and provides clients with a competitive advantage in medical malpractice litigation. Noah is admitted to practice law in the Maine state and federal courts.

In his time away from work, Noah enjoys the Maine woods and spending time with his two children, who both attend the University of Virginia.

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### **Grant Henderson Elected as a Member of the Firm**

Norman, Hanson & DeTroy, LLC is pleased to announce the election of Grant Henderson as a Member of the firm.

Grant is a 2007 graduate of Boston University and graduated *cum laude* from Temple University Beasley School of Law in 2013. While at Temple Law, Grant was a Staff Editor of the Temple Law Review.

Following graduation, Grant joined a boutique Philadelphia law firm specializing in insurance defense and affirmative civil RICO actions. He later transitioned to a large law firm in New Jersey, where he practiced workers' compensation defense and commercial litigation for three years. After years of visiting his wife's family in Maine, Grant could no longer resist the urge and moved to Portland in the spring of 2017.

Since joining Norman, Hanson & DeTroy, Grant has concentrated his practice on defending clients in workers' compensation matters, and government relations issues. He has been recognized by *Super Lawyers* as a "Rising Star" since 2018 and was named a *Best Lawyers' "Ones to Watch"* in 2021.

Grant lives in Falmouth with his wife and their young son, and enjoys outdoor activities with his family.

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## **John Bonneau Awarded Maine State Bar Association Life Member Award**

Norman, Hanson & DeTroy is pleased to announce that John V. Bonneau was recognized last month by the Maine State Bar Association and presented with the Life Member Award. The Maine State Bar Association's Life Member Award expresses its appreciation to Attorney Bonneau whose 50 years of faithful and meritorious service to the Bar have contributed substantially to the honor and dignity of the legal profession.

John is a Lewiston native who attended Bowdoin College and Villanova Law School. Immediately after law school John developed his corporate and business law and estate planning skills with a large and well regarded law firm in Philadelphia. John returned to practice in his hometown in Lewiston in 1976 and practiced there until his retirement in 2019. John's intelligence, keen personal instincts and curiosity were emblems of the professional service he provided to his clients. Norman, Hanson & DeTroy is proud of John and pleased by this recognition from the Maine State Bar Association.

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## **David Goldman Wins Major Land Use Case**

The Law Court upended practitioners' expectations regarding how local municipal land use officials are expected to act in the face of a property rights dispute between neighbors in its decision in [Tomasino v. Town of Casco](#) that a recent Maine Bar Journal article referred to as "arguably the most significant land use decision of 2020."

This decision arose out of the Tomasinos' application for a permit to cut down trees whose trunks straddled both sides of the boundary line separating an area encumbered by the Tomasinos' easement rights that burdened our client's land while the remainder of land was unencumbered by any easement rights. Although the Tomasinos' deed gave them easement rights, it failed in any way to specify the scope of those rights.

Prior to the *Tomasino* decision, most lawyers' understanding was that local code enforcement officers should not weigh their assessment of applicants' property rights into their decision on whether to grant a permit. However, the Law Court adopted David Goldman's argument that the Tomasinos were required to seek clarity from a Superior Court judge as to whether they held a property right to cut our client's trees before seeking a land use permit to do so.

Although the full impact of the new land use application regime established by the *Tomasino* decision will not be known for some time, it has already forced many practitioners to rethink what they believed they knew about the standards applicable to land use permit applications. Going forward, parties involved in land use permit disputes that implicate questions regarding a party's property rights would be wise to closely study the Law Court's reasoning in *Tomasino* as that decision represents a potential sea change in how disputes of this kind are to be resolved.

For more information regarding the decision in [Tomasino v. Town of Casco](#) and other land use issues, please contact [David Goldman](#) at (207) 553-4609 or [DGoldman@nhdlaw.com](mailto:DGoldman@nhdlaw.com).

*David Goldman has a wide ranging litigation practice, representing clients involved in a broad variety of complex civil litigation, including real estate and business disputes, as well as administrative appeals of municipal and state agency decisions. David also has a particular focus on appellate practice, with significant experience representing clients before the Maine Supreme Judicial Court and before Federal Courts of Appeal.*

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## Stay Up-To-Date with Emerging Legal Issues

The coronavirus pandemic may have changed how we do business, but it has not reduced the need for up-to-date information on legal trends and decisions issued by the state and federal courts. To provide clients with fast and concise information on a variety of legal topics, Norman, Hanson & DeTroy is rolling out *Maine Law Reports* for our clients.

To subscribe to [Maine Law Report](#), [please click here](#). You will be directed to the subscription page, and you can select Law Reports on the following subjects:

- Medical and Professional Liability Law
- General Liability and Insurance Law
- Commercial Law
- Workers Compensation Law
- Legislative Developments.

You will also receive analyses of a variety of legal issues in each of these subjects. Thank you.

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## John McGough Joins NHD as a Non-Attorney Labor & Employment Consultant

Norman Hanson & DeTroy LLC is pleased to announce that John G. McGough has joined the firm as the newest member of the Labor & Employment Law Practice Group as a non-attorney Labor & Employment Consultant. McGough served approximately 25 years in a variety of senior federal, state, and local public sector positions with responsibility for all aspects of management/human resources & labor relations. McGough's consulting practice is focused on all aspects of human resource policy-making and audits, employment investigations and workplace conflict resolution. McGough represents management in public sector collective bargaining, provides comprehensive recruitment & hiring services and is available to employers seeking an interim manager or human resource leader for their organization.

Prior to joining the firm, McGough served as New England Regional Director for the U.S. Department of Health & Human Services with responsibility for the six New England states of Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont, as well as the Region's 10 federally recognized Tribes. As the primary New England representative for former DHHS Secretary Alex M. Azar II, McGough led the Secretary's whole-of-government response to COVID-19 through collaboration with Governors, State Health Officers, and locally elected officials. Secretary Azar additionally tasked McGough for a year to concurrently serve as Regional Director for the Southeast (AL, FL, GA, KY, MS, NC, SC, & TN), a total of 14 states.

Prior to his appointment with DHHS, McGough served for 7 years as Chief of Staff to former Maine Governor Paul R. LePage. Before serving the Governor, McGough held local government leadership positions including Director of Human Resources for the City of South Portland and Assistant City Administrator/Human Resources Officer for the City of Waterville. McGough is also a former Chief of Staff for the House Minority Leader in the Maine House of Representatives. He earned a Bachelor's and Master's Degree in Public Administration from the University of Maine system and resides in Brunswick.

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## Bystander Liability Clarified by Maine Supreme Court

BY: Jonathan W. Brogan, Esq.

Recently the Maine Supreme Court made a significant decision regarding bystander claims of negligent infliction of emotional distress. *Coward v. Gagne and Sons Concrete Blocks, Inc.*, 2020 ME 112 (9/17/2020).

The longstanding test in Maine was decided in a case called *Culbert v. Sampson Supermarket* which stated that there would be bystander liability if the bystander was (1) present at the scene of the accident, (2) suffered serious mental distress as a result of seeing the accident and the ensuing danger of the victim, and (3) was closely related to the victim. That has been the test in the Maine courts since 1982. Since that time, there has been a gradual change in the law, in other states, regarding these three factors.

In [Coward v. Gagne and Sons Concrete](#), our Supreme Court was presented with a horrific case. Thomas Coward and his wife, Lisa Coward, brought a claim against Gagne and Sons Concrete after their son was killed in a crush injury by steel re-bar being delivered to their place of business. Thomas Coward did not see the accident but heard the

accident occur, arrived “seconds later” and witnessed his son die. Though the Superior Court granted Gagne and Sons’ motion for summary judgment, the Supreme Court overturned that summary judgment and remanded Mr. Coward’s claim for negligent infliction of emotional distress and Mrs. Coward’s claim for loss of consortium to the Superior Court for further action. The underlying wrongful death was tried and a more than \$2,000,000 verdict was entered for the Estate of Phil Gagne, the decedent.

Throughout the years, we have always used the *Culbert* test in determining whether a bystander had a claim. The issue in the Gagne and Sons case was contemporaneous perception. It was decided that being within a 100 feet of the accident, hearing the crashing re-bar and the victim’s screams and arriving within seconds to witness the aftermath met the plaintiffs’ burden.

The issue of what contemporaneous perception means, in Maine, has been somewhat nebulous. The Court has now said that it does not mean that the bystander is required to directly witness and immediately be aware that an injury causing event is taking place.

The Court concluded that perception of an accident can arise from any of a person’s senses, not just sight. The bystander’s observation of the victim’s injuries must occur in the immediate aftermath of the injury producing event, but they cannot be called to the scene or otherwise not be present at the scene, and the bystander must have perceived the injuries or death of the victim as an immediate result of their perception of the injury producing event. No specific time was established by the Court for this perception of injury however the Court did state that a “brief amount of time” is enough. In other words, learning through indirect means of an accident and then going to the scene would not be enough, but hearing or seeing the event and then immediately perceiving the damage is enough.

The Court’s lengthy decision (26 pages) does not extensively change the law as it has been interpreted in the Superior Court for many years. However, this Supreme Court case finally ends the belief that bystander liability is limited to actually seeing the event and perceiving it contemporaneously as opposed to perceiving the event and, within a reasonable amount of time, understanding what has happened.

If you have any questions about this decision or its ramifications, please do not hesitate to contact any of us here at Norman Hanson & DeTroy to discuss it.

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## **New Attorney Announcement - Nicole Sawyer and Christine Johnson**

This past year Norman Hanson & DeTroy welcomed two new attorneys to the firm.

### **Nicole Sawyer**

Nicole is a Maine native who has historically served the people of Maine before joining Norman, Hanson & DeTroy. She attended the University of Maine at Farmington before ultimately graduating from the University of Maine at Augusta. She was inspired to go to law school while working at the Department of Health & Human Services. During her time at the University of Maine School of Law, she was a judicial intern for the Lewiston District Court and with Judge Kermit V. Lipez of the United States First Circuit Court of Appeals. While at Maine Law, she was also selected for the Charles A. Harvey, Jr. Trial Practice Immersion Fellowship, in which she shadowed and assisted many of Portland’s top litigation attorneys over the course of an eleven-week rotation.

Nicole was chosen to serve as the student research assistant for the Maine Advisory Committee on Rules of Evidence from 2017-2018, and honed her legal research skills to provide the Committee with guidance for evaluating and proposing changes to the Maine Rules of Evidence. During that same term, Nicole was selected to be Research Editor for the *Maine Law Review*. In her final year of law school, she counseled and represented clients in the Cumberland Legal Aid Clinic. After graduating *magna cum laude* in 2018, she served as a law clerk for four justices of the Maine Superior Court. Nicole lives in Freeport with her husband and their two dogs. In her free time she enjoys walks in the woods, a good game of cribbage, and finding treasures at estate sales.

### **Christine Johnson**

Christine Johnson is a lifelong resident of York County. She attended the University of Vermont, the University of Southern Maine, and Maine School of Law. Before attending law school, she was a case manager at Sweetser and worked with at-risk youth in an immersive adventure therapy program. While in law school, Christine was a student attorney at the Cumberland Legal Aid Clinic, volunteered for the Abused Women's Advocacy Project, and completed an externship at Pine Tree Legal Assistance.

Christine's legal career began at a small bankruptcy firm in Kennebunk, and developed into consumer advocacy work. For several years, she was an active member of MASH (Maine Attorneys Saving Homes), a volunteer advocate for Maine's Volunteer Lawyer's Project, and a mediator for the Maine Judicial Branch. From there, she represented local and national lending institutions in a variety of matters. She has a solid background in real estate, with an emphasis on foreclosure litigation and creditor rights. She also has experience in probate and debt collection. She has presented and participated in numerous panels related to Maine's Foreclosure Diversion Program and Consumer Financial Protection Bureau rules. Christine lives in Buxton with her husband and two daughters. She enjoys spending time with her family and many outdoor activities, including running, hiking, and gardening.

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## **Kudos**

**Mark Lavoie** represented the Maine Chapter of the American College of Trial Lawyers at its annual meeting, held in La Qunita, California and scored third place with his group in the organization's golf tournament.

**Robert Cummins** was recently nominated by Governor Mills and approved by the State Legislature to serve as a commissioner on the Maine Commission on Indigent Legal Services.

**Katlyn Davidson, Lindsey Sands** and **Elizabeth Brogan** presented at the 26th annual Maine Workers' Comp Summit held at the Samoset Resort in Rockport. Katlyn and Lindsey presented at the Summit's opening plenary session, "Keys to Compliance and Successful Outcomes," which provided an overview of Maine's workers' compensation system and provided instruction on key elements of claims handling and litigation practices. Elizabeth presented at two plenary sessions regarding legislative updates to the Maine Workers' Compensation Act and the legal year in review, discussing Law Court and Appellate Division decisions of note over the past year.

**Elizabeth Brogan** served on a working group convened by the Workers' Compensation Board pursuant to the workers' compensation omnibus bill, LD 756, enacted in 2019. The results of the group's work, on issues related to work search, vocational rehabilitation and protections for injured workers whose employers have wrongfully not secured workers' compensation coverage, were reported to the Joint Standing Committee on Labor and Housing at

the end of January.

**Kathryn Longley-Leahy** has been appointed to a second three-year term as an Advisor to 10th, 11th and 12th grade girls at Edward Little High participating in the Olympia Snowe Women's Leadership Institute program as "Olympia's Leaders. The Institute is designed to elevate the confidence and aspirations of high school girls by helping them build the leadership, collaboration and problem-solving skills needed to become successful in their lives, families, careers and communities. The Institute has state-wide support by leading organizations and over 360 professional women volunteer as mentors and classroom advisors to more than 500 high school girls across the State of Maine.

**David Very** was awarded the Defense Research Institute's State Leadership Award at the DRI Annual Meeting. DRI is the largest international membership of defenses attorneys with over 22,000 members.

**Elizabeth Brogan** was a featured presenter regarding new developments in workers' compensation law and the legislative process at the annual meeting of the Maine Health Care Association Workers' Compensation Fund.

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