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# News

## NHD Attorneys Recognized by Super Lawyers

Norman, Hanson & DeTroy is proud to announce that the 2023 edition of New England Super Lawyers and the 2023 New England Rising Stars has recognized several of our attorneys for inclusion in the publications. We congratulate each of these attorneys for this accomplishment.

***Maine Super Lawyers Top 5***

- Mark G. Lavoie

***Super Lawyers***

- Jonathan W. Brogan:  Personal Injury – General: Defense
- Mark G. Lavoie:  Personal Injury – Med Mal: Defense
- Thomas S. Marjerison:  Personal Injury – General: Defense
- Russell B. Pierce:  Civil Litigation: Defense
- James D. Poliquin:  Insurance Coverage
- John R. Veilleux:  Personal Injury – General: Defense

***Super Lawyers Rising Stars***

- Grant J. Henderson:  Workers' Compensation
- Samuel G. Johnson:  Civil Litigation: Defense

## Marjerison Wins Acquittal

Following a closely watched trial and after ten hours of jury deliberations, Tom Marjerison secured an acquittal for his client, Faysal Kalayaf Manahe, on federal criminal charges alleging a Sherman Act violation for wage-fixing and no-poach hiring agreements.  This prosecution arose out of the Department of Justice's initiative focusing on criminal prosecutions of alleged wage-fixing and no-poach agreements.  This jury verdict has national implications as additional anti-trust cases alleging similar conduct are set for trial across the country.

In addition to its national legal significance, the trial was closely watched by Maine's immigrant community, which packed the courtroom for each day of trial.  In an interview with Reuters, Tom Marjerison noted that "It is difficult to understand why the DOJ felt the need to bring the weight of a federal government down on Iraqi immigrants who were doing the best they could in running a health care business in Portland during a global pandemic."

Jon Goodman, Bruce Merrill and Neale Duffett represented the three other defendants who were also found not guilty in a clean win for the defense.  Additional media coverage of this case can be found at:

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Reuters

Law360

Portland Press Herald

Bangor Daily News

Tom Marjerison represents clients in civil and criminal matters in state and federal courts. In 2020, Tom was inducted as a Fellow of the American College of Trial Lawyers. Mark Lavoie, Jonathan Brogan, and the late Peter DeTroy were previous inductees from the firm.

Tom's cases have ranged from the acquittal of a physician charged in federal court with multiple counts of unlawful distribution of controlled substances in *United States v. Hoffman* to the Maine Law Court's adoption of the implied co-insured doctrine in *North River Insurance Co. v. Snyder*. He has also successfully obtained defense verdicts in a number of high-value and high-profile trials.

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## Law Court Declines to Expand Liability for Negligence, Negligent Infliction of Emotional Distress

In a recent decision with potentially far-reaching implications, the Maine Supreme Judicial Court accepted the argument made by Attorneys Matthew T. Mehalic and Trevor D. Savage and held that: (1) a plaintiff's allegation of post-traumatic stress disorder ("PTSD") did not constitute a "physical injury" for purposes of establishing a claim for general negligence; and (2) in the absence of special circumstances, a defendant does not owe a plaintiff any duty of care to avoid causing her emotional harm

The case, *Boivin v. Somatex, Inc.*, arose from in incident that occurred in Rumford, Maine, in August 2014. Defendant Somatex, Inc., was hired by NewPage Paper Company—Ms. Boivin's employer—to repair one of NewPage's overhead cranes, and Ms. Boivin's supervisor requested that she work with Somatex employees while they repaired the crane. To determine why the crane was not operating correctly, one of the Somatex employees climbed onto the crane to ride it while it was running. The Somatex employees instructed Ms. Boivin to operate the crane while the Somatex employee was on it, and after initially refusing to do so, Ms. Boivin agreed.

While Ms. Boivin moved the crane, the Somatex employee unexpectedly stood up and was crushed between an overhead truss beam and the moving crane. The Somatex employee was knocked out of the crane and fell approximately thirty feet to the floor, where he landed in front of Ms. Boivin. The Somatex employee died as a result of his injuries, and Ms. Boivin alleged that she suffered PTSD and related mental, emotional, and behavioral disorders as a result of the incident.

Ms. Boivin sued Somatex, arguing that Somatex—as NewPage's subcontractor—owed her a duty of care not to endanger NewPage employees and to ensure that its employees safely performed the crane repair. The Superior Court entered summary judgment in Somatex's favor, holding that: (1) although Ms. Boivin's expert opined that her PTSD was a "physical disorder," she failed to establish any *physical injury* as a result of witnessing the Somatex employee's fall; and (2) the working relationship between Ms. Boivin and Somatex did not create a duty on behalf of

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Somatex to protect Ms. Boivin from emotional injury.

The Maine Supreme Judicial Court affirmed the judgment on appeal, concluding that the duty of care applicable to claims for general negligence is the duty to "avoid causing *physical harm* to others," and that Ms. Boivin failed to submit any evidence that "physical manifestations of an emotional injury meet the legal definition of a 'physical injury.'" With respect to Ms. Boivin's claim for NIED, the Court observed that the duty to act reasonably to avoid harm to others applied only in "very limited circumstances": specifically, in so-called "bystander" cases where the plaintiff had a "close relationship" with the victim; and where a "special relationship" existed between the allegedly negligent actor and the person emotionally harmed. As the Court concluded, Ms. Boivin did not have a "close relationship" with the deceased Somatex employee, and nor did Somatex—a company contracted by her employer—have a "special relationship" with her. Accordingly, Somatex did not owe any duty of care to avoid causing her emotional harm, and Somatex was entitled judgment as a matter of law.

For more information regarding the decision in *Boivin v. Somatex, Inc.* or its ramifications, please contact Matthew T. Mehalic or Trevor D. Savage at mmehalic@nhdlaw.com or tsavage@nhdlaw.com, respectively.



Matt Mehalic

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Trevor Savage

## Chambers and Partners Recognition for NHD

**Chambers and Partners recently ranked Norman, Hanson & DeTroy in Band 1 of law firms in the State of Maine. Chambers and Partners is an independent research company operating across 200 jurisdictions delivering detailed rankings and insight into the world's leading lawyers.**

**Mark Lavoie was featured in Band 1 of all Litigation attorneys in the State of Maine, and Emily Bloch, Jonathan Brogan, and Chris Taintor were listed in Band 2. J.D. Hadiaris was noted as an "Up-and-Coming" Litigation lawyer. Jim Poliquin and Russell Pierce were ranked for General Commercial Litigation.**

**Reviewers commented that NHD had a "well-established team highly regarded for its work in complex personal injury and medical malpractice cases. Also known for its experience in shareholder disputes and commercial real estate litigation."**

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## Another Land Use Victory for David Goldman

David Goldman chalked up another appellate win in *Zappia v. Town of Old Orchard Beach*. The Law Court's decision in *Zappia* promises to significantly shape the way in which local municipal land use officials are required to interpret zoning ordinances that restrict the way in which property owners make use of their own private property

This decision arose out of the Ms. Zappia's application for a building permit to construct a greenhouse in her front yard to grow food year round for her family's consumption. The applicable Town zoning ordinance restricted the placement of such a building in a lot's "required front yard." Ms. Zappia took the position that, since she planned to construct the greenhouse outside the Town required fifty foot setback area (i.e. the only portion of her front yard "required" by the Town's zoning ordinance) there should be no issue of her compliance with the ordinance. The Town's code enforcement officer and zoning board of appeals, as well as the Superior Court on appeal of the local zoning officials' decisions, disagreed, interpreting the phrase "required front yard" as being synonymous with "front yard." Ms. Zappia, therefore, was denied permission to build a greenhouse anywhere within her property's front yard.

On appeal, the Law Court ruled that the Zappias' interpretation of the zoning ordinance was consistent with a number of important canons of construction that municipal zoning officials are tasked with applying in interpreting zoning ordinances.

These include the requirement to give meaning, wherever possible, to each word used in the ordinance, which the Town's interpretation failed to do when it ignored the presence of the word "required" in the phrase "required front yard."

Additionally, and most importantly, these canons of construction also include the requirement that, if the meaning of a term is ambiguous such that it could reasonably be interpreted in two different ways, it must be construed strictly against an interpretation that would stop landowners from making use of their private property as they see fit. Given that many local zoning provisions are worded in ways that create ambiguities regarding their meaning, the impact of the Law Court's choice to emphasize this canon of construction should reverberate widely for many years.

For more information regarding the decision in *Zappia v. Town of Old Orchard Beach* and other land use issues, please contact David Goldman at (207) 553-4609 or DGoldman@nhdlaw.com.

## John Veilleux Recognized as 2022 Lawyer of the Year in Personal Injury Law

Norman, Hanson & DeTroy is proud to announce that *Best Lawyers* recognized John Veilleux as its 2022 *Lawyer of the Year* in the practice area of personal injury law – defense. John was also highlighted in the 28th Edition of *The Best Lawyers in America* for his high caliber work in the practice area of insurance law.

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## Kelly Hoffman Settles Landmark Case for Colby Coaches

Norman, Hanson & DeTroy is proud to announce Kelly Hoffman's settlement of a landmark Title VII and Title IX Discrimination case brought by 5 of the 7 female head coaches at Colby College. Federal and Maine equal pay laws mandate that employers may not discriminate between employees on the basis of their gender by paying wages to any employee at a lesser rate for jobs that have comparable skill, effort, and responsibility. We were honored to represent collectively the majority of Colby's female head coaches. The Coaches and the Colby College community have settled their disputes and are pleased that the matter has been resolved constructively and amicably.

Please click below for up-to-date media coverage of this historic settlement.

- NewsCenter Maine
- CentralMaine.com
- Bangor Daily News
- Portland Press-Herald

Kelly Hoffman has a national sports practice, assisting coaches, professional athletes, college athletes, and other members of athletic departments with a range of matters from seeking equal pay for equal work to defending individuals in Title IX or other investigations. Whether it is a high-profile news event or navigating complaints made parents or student-athletes, Kelly ensures that her clients are well-advised in handling these challenging and emotional processes.

Kelly served as a goalkeeper for both the Johns Hopkins field hockey and lacrosse teams, and was honored as an All-American in field hockey. After university, Kelly served as a member of the USA Field Hockey National Outdoor Team. In 2018, she was named by the U.S. Women's Masters Olympic Field Hockey Committee to its traveling team, and represented Team USA during the International Hockey Federation (FIH) Masters World Cup in Terrassa, Spain.

Kelly may be contacted at KHoffman@nhdlaw.com or 207.553.4683.

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## David Very Wins Award of Attorney Fees to Insurer before Law Court

In a decision issued today in *Fortney & Weygandt, Inc. v. Lewiston DMEP, et al.*, 2022 ME 5, the Maine Law Court upheld the award of over $300,000 in attorney fees to Travelers Insurance Company for successfully defending counter-claims against its insured in an action initiated by its insured under Maine's prompt payment statute.

David Very was retained by Travelers to defend a contractor from several counter-claims alleging defective work in response to the contractor filing an action seeking payment from the owner pursuant to Maine's prompt payment statute. The statute provides that the prevailing party in any proceeding to recover payment within the scope of the Prompt Payment Act must be awarded attorney fees.

After several years of litigation, the contractor won the prompt payment action and all of the counter-claims were defeated at trial before Maine's Business Court. Attorney Very filed an application for all of its fees arguing that the defense of the counterclaims was "intertwined" with the prompt pay action, and thus awardable. Attorney Very further argued that the fact that an insurer, rather than the contractor, paid the fees should not exclude the award

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because to do so would give the owner a windfall and defeat the purpose of the prompt payment statute, which is to deter owners from failing to timely pay contractors. The Business Court agreed and awarded over $300,000 in fees to the Travelers and the owner appealed.

On appeal, the Law Court agreed that the contractual payment claims and counterclaims were based on a common core of facts so interwoven that separation of fee and non-fee work was not possible. Thus, the Law Court disagreed with the owners' argument that fees paid by Travelers should not have been awarded because counsel was specifically retained to defend the counterclaims, not prosecute the payment claims, as those claims were intertwined. The Court also rejected the owners' argument that Travelers, as an insurer, would not be entitled to fees under the statute, as excluding those fees would violate the purpose of the prompt payment statute. Thus, the Law Court upheld the award of over $300,000 to the Travelers, plus fees associated with the appeal.

Please click here for the Law Court's full decision in *Fortney & Weygandt, Inc. v. Lewiston DMEP, et al*., 2022 ME 5.

For more information about this case, or for questions on construction related matters, please contact David P. Very at dvery@nhdlaw.com.

## Lindsey Sands Confirmed as Adminstrative Law Judge

We are pleased and proud to announce that our colleague and friend, Attorney Lindsey Sands, was unanimously appointed to serve as an Administrative Law Judge by the Workers' Compensation Board for the State of Maine.

Lindsey spent her entire private practice career here at Norman, Hanson & DeTroy, and leaves a lasting legacy of hard work, great client relationships, and outstanding results. Although we are very sad to see her go, we know she will be a great addition to the Bench.

Judge Sands will be presiding in formal hearings from the Workers' Compensation Board's Lewiston Regional Office once her transition from our offices has been completed. The State of Maine is fortunate to have the skills and talents Judge Sands will bring to the Bench. She will be greatly missed.

## Isobel Golden Returns to NHD

Norman, Hanson & DeTroy is pleased to announce that Isobel Golden, a former Summer Associate, has returned to the firm as an Attorney. Isobel will be practicing with the firm's professional services practice group, focusing on medical malpractice and professional liability defense.

During her tenure at the University of Maine School of Law, Isobel served as an Articles Editor for the *Maine Law Review*, interned with the Lewiston District Court, and was a summer associate at our firm. After graduating from the Maine Law in 2020, she worked as a judicial law clerk with the Maine Superior Court.

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Isobel grew up in Waldoboro, Maine and graduated from Bates College in 2011. Prior to law school, she worked for a number of years as a legislative aide for the Maine State Legislature and served for a term on the Lewiston City Council. She now lives in Lewiston with her husband, Jared, and their daughter.

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