INBRIEF

Current Developments in Maine Law

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Index

1 AFFIRMATIVE COVERAGE IN A TITLE INSURANCE POLICY: ADVANTAGES AND LIMITATIONS

3 JONATHAN W. BROGAN ADMITTED TO THE AMERICAN COLLEGE OF TRIAL LAWYERS

4 RECENT DECISIONS FROM THE LAW COURT

5 KELLY M. HOFFMAN SELECTED AS MEMBER OF TEAM USA

6 WORKERS' COMPENSATION: LAW COURT AND APPELLATE DIVISION DECISIONS

7 NEW ASSOCIATE: PATRICK C. LEVER, ESQ.

8 KUDOS

Affirmative Coverage in a Title Insurance Policy: Advantages and Limitations

By: Shane T. Wright, Esq.

SHANE T. WRIGHT

Although title insurance has become a commonplace and necessary aspect of real estate transactions, particularly for those transactions with a financing component, I still regularly hear questions during closings such as, "What is title insurance and why do I need it?, or "Why do I need a title insurance policy if my lender already has a policy covering my property?" I do not mean to imply such questions are unreasonable or out of line, but rather that, despite the pervasiveness of title insurance in the real estate and lending industries, it does not fall seamlessly into our concepts of insurance and as such, the subject is not intuitive.

I believe it is worthwhile, therefore, to address some of these foundational inquiries and points before moving on to discuss affirmative coverage in a title insurance policy. The benefits, limitations and effects of affirmative coverage should become easier to appreciate with a good understanding of what is title insurance, what coverage is provided by a title insurance policy, the difference between a Loan Policy and an Owner's Policy, and what coverage is provided by each of them.

Title insurance is an agreement to indemnify the insured for loss or damage sustained as a result of defects in the title to the real property identified in the insurance policy. That indemnification, at the insurer's election, may take the form of payment or a cure of the title defect. A title defect can manifest in many different forms. It may be a mortgage or other form of lien, an incomplete or inaccurate legal description, the existence of an easement across the property, a forged deed or deed signed by a minor or person who was mentally incompetent at the time of signature, or the physical encroachment of a building or driveway onto the property or outside the boundaries of the property, just to name a few. In addition to being an agreement to indemnify the insured rather than an agreement

to pay the insured, title insurance is different than other types of insurances in that it is retrospective in nature.In other words, a title insurance policy covers the insured against losses arising from title defects that existed as of the date of the policy, rather than against matters that arise on or after the date of the policy.

Because title insurance is retrospective, and because potential title claims arise from historical circumstances, a thorough search of the background title is imperative. Before the use and requirement of title insurance became commonplace, assurance of clear title would often be in the form of a written opinion of title issued by an attorney following an abstract of the title from a search of the Registry of Deeds and other public records applicable to the title for a particular parcel of property. A title insurance policy does not preclude the necessity of a complete and thorough search of the title, but rather supplements the protections afforded by such a search. No matter how careful and thorough a title abstractor may be, there are many forms of title defects that cannot be revealed by a title search. An opinion of title is, therefore, necessarily limited and could not truly protect the insured against latent title defects. Moreover, there would be no basis to recover against the attorney providing the opinion because the attorney's failure to identify the defect would not have been the result of negligence. The title insurance policy thus supplements the search by indemnifying the insured against loss arising from one of those latent title defects as well as against loss arising from a title defect that may have been overlooked or missed during the search of the title.

Although many title defects may not be identifiable by a title search, the majority of title defects can be, and are, revealed by a careful search of the title. Accordingly, a search of the title can, and should, provide the insured with an opportunity to eliminate certain risks. A title search might reveal, for example, that there is an undischarged mortgage or other lien encumbering the property. The risk of a title claim arising from such a lien can be eliminated by confirming payment and/or discharge before or at the closing. A search of the title might also reveal that there is an error in the legal description to the property. Again, the risk of claim arising from that defect might be resolved by a corrective deed or other clarifying instrument.

It may also be the case that an identified title defect is an acceptable "defect." For example, a utility easement in favor of Central Maine Power or some other utility provider is an encumbrance on the title, but it is not necessarily an objectionable defect. A right of way across a property, or a restrictive covenant limiting the uses of a property or type of improvements that may be constructed on a property are other examples of commonly accepted or known title encumbrances or defects. Unlike such acceptable forms of title "defects", a defect unexpectedly revealed by a title search, which cannot be efficiently rectified, becomes problematic.

When there is an identified title defect, whether previously known or newly discovered, that defect will be noted within the title insurance policy as an exception from the coverage provided by that policy; meaning that a claim for loss or damage arising from or related to that matter will not be covered. Even though the risk of loss arising from a certain title defect, or class of title defects, may be low, it is nonetheless an identified risk that cannot simply be ignored by the title insurance company. In such a case, and when the title defect is neither acceptable nor able to be eliminated, the title insurance company may agree to narrow the scope of the exception relating to the identified title defect or issue. The way the title insurance company does so is by providing affirmative coverage.

Affirmative coverage is a way for the title insurance company to retain the exception to the policy for an identified risk, but to still offer specific coverage. For example, a title examination might reveal that one corner or side of the garage associated with a single-family residential structure encroaches within the required municipal setback. If the title insurance company issued a policy without taking any exception for that encroachment – a title defect – then it could be liable for the diminished value of the property following enforcement of the municipal regulation. Maybe more importantly, the title insurance company could be liable for the lack of marketability of the title to the property following discovery of the encroachment even if the municipality does not take any enforcement action. In this context, marketability is the concept that title to the property can be transferred to a new owner without the likelihood of claims to or against the title by a third party or parties. When a prospective buyer knows, or has reason to know, that such a claim is a distinct possibility, that prospective buyer is not going to purchase the property without a downward adjustment to the purchase price to protect against that risk. Hence, the property is less marketable and a title claim may be born.

Accordingly, in an effort to keep the transaction alive, the title insurance company may strike a balance between the broad exception, and no exception at all, by agreeing to provide affirmative coverage in a manner that will ameliorate the effects of the exception, but still retain protection for itself. In the first example above, the title insurance company might take exception to the encroachment, but follow the exception with language such as the following: "Note, however, this policy affirmatively insures against loss or damage resulting from the forced or attempted forced removal of said garage from the municipal setback." Other types of title exceptions could be similarly narrowed.

As noted above in passing above, there are title insurance policies that cover two classes of insureds: (1) lenders; and (2) owners. A Loan Policy insures the lender's interest as a mortgagee, to the extent of its mortgage. An Owner Policy insures the owner's interest in and title to the property up to the amount of coverage stated in the policy – which is generally the purchase price or fair market value. It is necessary for the owner of the property to have an Owner's Policy to be protected, because the Loan Policy covers only the lender's interest. Payment by the title insurance company to the lender of the full outstanding value of its mortgage does nothing to address the claim against the owner's title. Furthermore, there is no temporal limit on an Owner's Policy, which lasts at least as long as the insured owns the property and could last beyond if the insured owner conveys the property by Warranty Deed, thus conveying with warranties of title.

Because of the difference between the scope and coverage of a Loan Policy versus an Owner's Policy, affirmative coverage is often a more practical solution for a lender and the Loan Policy than for an Owner's Policy. From the perspective of the title

insurance company, there is less exposure with a Loan Policy. For one thing, the amount of coverage is constantly declining along with the balance secured by the insured mortgage. Furthermore, mortgages have a date of maturity and once the mortgage is paid in full, whether at or before maturity, the title insurance company's exposure under the Loan Policy ends.

The fact that a lender may understandably have a lower risk threshold than a prospective owner also makes affirmative coverage an appealing option for Loan Policies. If the lender knows the exception, and therefore the risk, is limited, that makes recovering the full value of the mortgage more likely in the event of a title claim arising from the identified risk. For that reason, affirmative coverage can be a very useful tool to help "get the deal done" in the face of an identified title defect that cannot be removed, or at least cannot be removed in a timely fashion. Moreover, there is no standard language or formula for affirmative coverage. Rather, the parties and the title insurance company can work together to negotiate the language and scope of coverage that satisfies their respective needs and effectively addresses the specific title defect in question.

Even though affirmative coverage is more likely to be granted in Loan Policies, and may be generally better suited to Loan Policies, that does not mean it cannot also benefit owners in much the same way. An insured under an Owner's Policy should, however, keep in mind that having affirmative coverage over a title defect is different than having a "clean" policy. As note in the example of the encroaching garage, above, with a clean policy – no exception being noted – the insured owner can recover for loss or damages arising from diminution in value and lack of marketability. In the case of affirmative coverage, however, the insured owner could only recover if the municipality actually required, or attempted to require, removal of the encroaching garage. Loss due to lack of marketability or diminution of value would not be covered.

Although some title defects simply need to be resolved before a transaction can move forward, affirmative coverage can be a very useful tool in the process of insuring over defects and promoting the interests of buyers, sellers, lenders and the title insurance companies alike.

Jonathan W. Brogan Admitted to the American College of Trial Lawyers

JONATHAN W. BROGAN

Jonathan W. Brogan, a member of the law firm of Norman, Hanson & DeTroy, LLC, has become a Fellow of the American College of Trial Lawyers, one of the premier legal associations in America.

Brogan, who concentrates his practice in litigation, was recently inducted into the College during the association's 2018 annual meeting. Fellowship in the College is extended by invitation only – and only after careful investigation – to those experienced trial lawyers who have mastered the art of advocacy and whose professional careers have been marked by the highest standards of ethical conduct, professionalism, civility and collegiality.

The College was founded in 1950 and is composed of the best of the trial bar from the United States and Canada. Lawyers must have a minimum of 15 years of trial experience before they can be considered for Fellowship. Membership is limited to no more than 1 percent of the practitioners in any state or province.

Brogan has more than 30 years of experience representing businesses and individuals in complex civil litigation matters. He has received numerous honors for his legal work, including recognition by Martindale-Hubbell, New England Super Lawyers, Best Lawyers in America and Chambers USA. Best Lawyers named Mr. Brogan "Lawyer of the Year" for medical malpractice – defense (2017) and personal injury – defense (2015, 2018).

Active professionally, he is a member of the Maine State Bar Association, Cumberland County Bar Association and is a fellow of International Society of Barristers and Litigation Counsel of America and a member of International Association of Defense Counsel.

Jonathan is the third member of Norman, Hanson & DeTroy to be inducted into ACTL. He joins his friends and colleagues, Mark G. Lavoie and the late Peter J. DeTroy, as a fellow in this most prestigious group of trial lawyers in America.

Recent Decisions From The Law Court

MATTHEW T. MEHALIC

By: Matthew T. Mehalic, Esq., CPCU

Remaindermen Have No Right to Recover Under Life Estate Holder's Property Policy

In *Estate of Carroll G. Frye et al. v. MMG Insurance Company*, 2018 ME 44 (March 22, 2018), the Law Court found that the remaindermen of a life estate had no right to recover for fire damage to a dwelling under a property policy of insurance issued to the deceased possessor of the life estate.

In 1994 Carroll Frye and his wife executed a deed conveying their residence to their sons, Curtis and Daryl Frye, but reserved a life estate in the property for themselves. By this conveyance, Curtis and Daryl were made remaindermen of the property, taking title upon the death of both Carroll and his wife. Carroll maintained homeowner's insurance on the property for the period of August 12, 2013 to August 12, 2014. Carroll was the only named insured on the policy and the only resident of the property. Curtis and Daryl did not live at the property and had not for decades. Neither one of them were named as insureds on the policy.

Carroll died on January 8, 2014. On February 25, 2014, there was a fire at the property. Curtis and Daryl were appointed personal representatives of the Estate of Carroll on April 23, 2014. Curtis and Daryl made a claim for both personal property and dwelling damage. MMG paid the personal property claim, but denied the dwelling claim.

The action was commenced by Curtis Frye, Daryl Frye and the Estate of Carroll Frye. The allegations included breach of contract and declaratory judgment that the MMG policy covered the dwelling fire damage. The Superior Court granted summary judgment to the Fryes on both allegations. The Superior Court determined that Curtis and Daryl were entitled to recover under the policy's death provision, which provided:

> G. Death
>
> If any person named in the Declarations or the spouse, if a resident of the same household, dies, the following apply:
>
> 1. We insure the legal representative of the deceased but only with respect to the premises and property of the deceased covered under the policy at the time of death; and
> 2. "Insured" includes:
>   a. An "insured" who is a member of your household at the time of your death, but only while a resident of the "residence premises"; and
>   b. With respect to your property, the person having proper temporary custody of the property until appointment and qualification of a legal representative.

MMG appealed the judgment and the Law Court reversed the Superior Court's judgment, entering judgment in favor of MMG holding that there was no obligation to issue payment for the dwelling fire damage. In reaching its holding, the Law Court looked at whether an insurable interest existed for the claimants and whether the claim fell within the scope of coverage.

With regard to insurable interest, the Court held that Curtis and Daryl had an insurable interest in the property since the creation of the life estate and remainder interest back in 1994. The Court drew on 24-A M.R.S. § 2406 and case law, pertaining to insurable interest in identifying that Carroll maintained an insurable interest up to the time of his death when his life estate ceased to exist and that Curtis and Daryl had an insurable interest beginning in 1994 when their remainder interest was created. The Court cited to several cases from the 1800s and 1900s for the proposition that insurable interest exists where the insured sustains a pecuniary loss. The Court also explained that "a person need not own property in fee simple to enjoy an insurable interest in that property." *Estate of Carroll G. Frye*, at ¶ 13. Despite lacking ownership in fee simple, Carroll had the right to possession of the property during his life which created the insurable interest. While Carroll was alive, Curtis and Daryl by nature of their remainder interest had an insurable interest in the property despite their lack of possession. It was the future right of possession that vested in 1994 that created the insurable interest. Following the death of Carroll, Curtis and Daryl had an insurable interest in the property as record owners.

Despite these conclusions about insurable interest, the Court held, "Although Curtis and Daryl had an insurable interest while Carroll was alive by virtue of their ownership of a remainder interest, they were not insured by Carroll's policy during this period because they were neither the 'named insured' nor otherwise qualified for coverage pursuant to the language of the MMG policy." *Id.* at 15. The claim did not

fall within the scope of coverage.

Resolution of what coverage remained upon Carroll's death was the next issue addressed by the Court. The Law Court stated that "[i]t is settled law that when a life tenant dies, the property that is the subject of the life estate does not become part of the deceased's estate because the life tenant's interest in the property does not survive his death. Instead, the remaindermen immediately and automatically acquire all rights to the property." *Id.* at ¶ 16. Because of this, Carroll's Estate lacked an insurable interest in the property at the time of the fire.

Curtis and Daryl argued that the death provision of the MMG policy entitled them to recover for the fire damage to the dwelling. However, because the dwelling never passed to Carroll's Estate, and consequently, Carroll's Estate never had an insurable interest in the dwelling, the Court concluded that the death provision was inapplicable. "By its plain terms, the death clause sets out who can stand in Carroll's shoes to act on behalf of the *Estate* – as the insured decedent – in the enforcement of the policy as to the *Estate's* property. The death clause does not apply to property that is not part of the Estate, and because Carroll had only a life estate in the dwelling, the dwelling was never part of the Estate." *Id.* at ¶ 18. The Court noted that because the personal property was not part of the life estate, it became part of Carroll's Estate upon his passing and MMG's payment for the personal property was correct.

In the Court's final comments, it identified that despite the insurable interest Curtis and Daryl had in the dwelling, they were never insured by MMG's policy. The Court cited to *Huard v. Pion,* 149 Me. 67, 71, 98 A.2d 261 (1953) for the proposition that there is "no privity between a life tenant and his remainderman." It was necessary for there to be both an insurable interest in the property and for there to be coverage within the scope of the executed policy. Curtis and Daryl as individuals and as personal representatives or beneficiaries of the Carroll Estate did not have coverage because they were never insured by MMG's policy. Therefore, MMG's determination that it was not obligated to issue payment for the dwelling fire damage was held to be correct.

Kelly M. Hoffman Selected as Member of Team USA

KELLY M. HOFFMAN

It is important to recognize our accomplishments of our attorneys both in and out of the courtroom. When we learned Kelly Hoffman was named to the U.S. Women's Masters Field Hockey training squad, we recognized this achievement in the "Kudos" section of our Summer 2017 newsletter. We are elated to announce that after five months of practicing with the country's elite field hockey players, Kelly was selected to travel to Terrassa, Spain in July as a representative of Team USA playing in the 2018 FIH Masters World Cup. The biennial tournament will host more than 140 national teams expected to compete in five age brackets. Kelly's position on the 0–40 team is as a goalkeeper. The 0–40 team will compete against other teams from Argentina, Australia, Belarus, England, France, Germany, Ireland, Italy, Netherlands, New Zealand, Scotland, Spain, South Africa, Wales, and Zimbabwe.

Since discovering field hockey during her junior year of high school, the game has become a passion of Kelly's. She was the goalkeeper for both the Johns Hopkins University field hockey and lacrosse teams. As a senior captain of the university's field hockey team, she was named All-American in part for record making career saves (452). Kelly has continued to play on various leagues since college and even coached girls' field hockey for a few seasons at Waynflete in Portland. She continues working with young athletes as a referee for middle and high school games in southern Maine and a coach for the indoor club MAINE STYX.

This honor to represent the United States on an international playing field is also a huge comeback for Kelly who was diagnosed with Stage 3C breast cancer in 2012. Now in full remission, Kelly told News Center Maine during an interview last fall, "Training again and getting out there and playing has been so good for my mind and my soul. It's brought me back full force into a sport that I do truly believe has gotten me to where I am today."

She is looking forward to the World Cup where her wife, their twin daughters, and family will cheer her on.

Workers' Compensation: Law Court and Appellate Division Decisions

By: Stephen W. Moriarty, Esq.

STEPHEN W. MORIARTY

Law Court Recognizes Retroactive Offset for Social Security Retirement Benefits

It is well recognized that, generally speaking, there is no right to recover an inadvertent overpayment of workers' compensation benefits either by taking an offset against future benefits or by seeking reimbursement from the recipient. However, in a significant new decision the Law Court has held that an employee is entitled to a credit for the value of Social Security benefits paid in the past during the same period of time in which an injured worker also received workers' compensation incapacity benefits.

In *Urrutia v Interstate Brands International,* 2018 ME 24, 179 A.3d 312, the employer voluntarily initiated payment of benefits for total incapacity at a point when, unknown to the employer, the employee was already receiving Social Security retirement benefits. He continued to receive workers' compensation benefits unreduced by the mandatory Section 221 offset until the employer eventually learned of the Social Security entitlement. At that point the employer reduced its ongoing payments pursuant to Section 221, but by that time the employee had received over $24,000.00 in workers' compensation benefits to which he would not have been entitled if the Section 221 offset had been applied.

The employer filed a Petition to Determine Entitlement to Offset seeking a credit against ongoing indemnity entitlement for which no offset had been taken in the past. The presiding ALJ determined the amount of the overpayment and granted the petition, allowing the employer to offset its overpayment against future benefits owed. The matter was appealed to the Appellate Division, which reversed the ALJ and held that the employer was not entitled to a retroactive credit for benefits overpaid, notwithstanding the language of Section 221. The express language of that section provides that benefits "must be reduced" in an amount equivalent to 50% of the amount of old age retirement benefits "received or being received" by an injured worker. The employer then appealed to the Law Court.

In a sharply divided 5-2 decision, the Court analyzed the language of Section 221 in detail and found that it "unambiguously entitles an employer to a credit based on an employee's past receipt of Social Security retirement benefits". The Court cited the mandatory language of the statute and found that the credit is triggered whenever an employee receiving workers' compensation incapacity benefits is also receiving "or has received" Social Security retirement payments. The majority ruled that a refusal to recognize a credit would allow the employee to retain a double recovery of benefits in violation of the express intent of the legislature in enacting Section 221 and its predecessor. Accordingly, the Court affirmed the amount of the credit as found by the ALJ and vacated the decision of the Appellate Division. The Court remanded the matter to the ALJ to determine "the specific terms of the credit and resulting payment holiday" to which the employer was entitled.

Steve Moriarty represented the employer on appeal.

Res Judicata and Multiple Injury Claim

Two years ago the Appellate Division held in *Eck v. Verso Paper,* Me. W.C.B. No. 16-20 (App. Div. 2016) that the Board may determine that an employee has sustained more than one gradual injury to the same portion of the body. This decision understandably provoked concern among employers that multiple injury claims could be made in a case in which a single medical condition evolved and progressively worsened over time. However, in a recent decision the Appellate Division relied upon the established doctrine of res judicata to preclude redundant litigation in search of a compensable event.

In *Bridgeman v. S.D. Warren,* Me. W.C.B. No. 18-08 (App. Div. 2018) the employee filed a Petition for Award in 2001 alleging a gradual mental stress injury occurring on August 6, 1999. During the proceedings evidence was presented of severe harassment in December 1994 which resulted in an emotional breakdown, and a Section 312 examiner also referred to the December 1994 events. In a 2002 decree the Board determined that the claimed injury had occurred, but that timely notice of the injury was not given. Accordingly, the Petition for Award was denied.

Several years later in 2011 the employee filed another petition for award asserting that December 1, 1994 was the actual date of injury. The same essential evidence which had been presented in the initial litigation was offered once again. The presiding ALJ found that the employee had sustained an injury on December 1, 1994 and awarded ongoing benefits for total incapacity. The

employer appealed to the Appellate Division arguing that the claim was barred by res judicata. The Division agreed and vacated the decision of the ALJ.

Whenever there has been a final decision in a contested claim, res judicata prevents the parties from re-litigating the same essential claim in a subsequent proceeding. The Division held that, notwithstanding the assertion of a new date of injury, "the matters presented for decision in the second action were actually litigated in the first". The Division found that the employee "has essentially repackaged a claim that the board rejected in 2002", and that the claim in the second case was based upon the same operative facts that had been raised in the prior litigation. Therefore, because the claim resulting in the 2002 decree was based upon the identical facts and circumstances alleged in the second proceeding, the allegation that the employee had sustained a different injury on an alternative date was barred by res judicata. According to the Division, any other result would both compromise judicial economy and undermine the stability of final judgments, and would require the employer "to mount multiple defenses over time against a single claim".

Multiple Gradual Injuries

In *White v. S.D. Warren Company,* Me. W.C.B. No. 18-02 (App. Div. 2018) it had been determined by the Board at an earlier stage that the employee sustained a gradual occupational injury to his right elbow on October 29, 2000. Several years later the employee filed another Petition for Award alleging a second gradual injury to the same portion of the body occurring on May 8, 2009. There was conflicting medical evidence as to whether or not a second injury had been sustained, and the ALJ found that the employee did not satisfy his burden of proof.

In rejecting the employee's appeal the Appellate Division found that the ALJ committed no error in weighing the contrasting medical opinions in finding that the employee had not established a new gradual injury to the same portion of the body. The existence of contrary medical opinion did not compel the ALJ to find in the employee's favor, and the ALJ's decision fell within the range of her "sound discretion" and was not arbitrary or capricious. Therefore, although it has been held that there may be more than one gradual injury to the same portion of the body, the burden is upon the employee as the moving party to establish the compensability of a second injury and an ALJ has broad discretion to determine whether a second injury has occurred based upon the evidence presented by the parties.

Record of Mediation

It is well established that when parties reach agreement at mediation and the issues agreed upon are reflected in the record, the record is fully binding upon the parties and has the effect of a final Board determination. However, when no agreements are reached and the mediation is therefore unresolved, the record itself has no res judicata effect.

In *Karimova v. Nordyx,* Me. W.C.B. No. 18-01 (App. Div. 2018) the Board granted a Petition for Award alleging a September 11, 2006 personal injury which had not been identified or included within a prior Record of Mediation. The employer claimed that the injured worker was prevented by res judicata from raising the claim on the grounds that it could have been asserted at mediation. The ALJ rejected the argument, and the Appellate Division affirmed.

The Division ruled that the doctrine of res judicata applies only when a final judgment is rendered, but that unsuccessful or unresolved mediations which merely produce records that list the issues in dispute cannot be given res judicata effect. Accordingly, the Division ruled that the employee was not prevented from pursuing her claim for the September 11, 2006 injury simply because that date of injury had not been raised at a previous mediation.

New Associate: Patrick C. Lever, Esq.

Pat Lever has been practicing law in Portland since 2012 and joined Norman Hanson & DeTroy in April 2018 as a member of the Real Estate and Corporate and Commercial Law Groups. His practice focuses primarily on helping clients with real estate and transactional matters, with an emphasis on commercial lending, and he is also a licensed title insurance underwriter.

A Maine native, Pat was born in Rumford and is a graduate of Colby College, where he was a 4-year member of the football team. After Colby, Pat taught at a private school in Brookline, Massachusetts before returning to Maine and enrolling at the University of Maine School of Law.

While attending Maine Law, Pat was the founding member of the Maine Association for Construction and Real Estate Law, a legal intern with Justice G. Arthur Brennan at the York County Superior Court, and a research assistant to Maine Law Dean Peter Pitegoff.

Pat and his wife, Paige, live in South Portland with their twins, Hank and Daisy, and their Newfoundland, George. In his spare time he enjoys skiing, golf, woodworking, and is a volunteer football coach at Falmouth High School.

PATRICK C. LEVER

Kudos

On April 9, Governor Lepage appointed **BOB BOWER** as Chair of the Maine Civil Service Appeals Board. The Board resolves complaints and disputes between the State and State employees. Bob has served on the Board since 2012 and now takes over its leadership, conducting the hearings, interacting with the Attorney General's office, and drafting decisions.

In November 2017 **JESSICA SMITH** and her fiancée, Gregory, welcomed their first child, Avery. Congratulations to the new family!

STEVE MORIARTY was elected Chairman of the Cumberland Planning Board for a third consecutive year.

MATT MEHALIC organized a Tri-State Defense Lawyers Association seminar at the Mariner's Church in Portland on March 29 titled "Keeping Relevant in an Ever-Changing World", where Bar Counsel J. Scott Davis, Esq. and Deputy Bar Counsel Aria Eee, Esq. presented on developments in legal practice and attorney's obligation to adapt. Matt is the Maine President of the Tri-State Defense Lawyers Association.

MARK LAVOIE has been elected Maine State Chair of the American College of Trial Lawyers, and will be hosting the northeast regional meeting of the college in Portland in June for the New England States, the Canadian Maritime Provinces, and Puerto Rico. The conference will be summarized in our next edition. In his capacity as Maine State Chair, Mark has spoken at meetings of the American College of Trial Lawyers in Manchester, New Hampshire and Boston, Massachusetts.

STEVE HESSERT and **ELIZABETH BROGAN** spoke at the annual meeting of the Maine Merchants Association.

Correction

In our last edition we reported that New England Super Lawyers had recognized **MARK LAVOIE** as among the top 100 attorneys in New England specializing in medical malpractice defense. This was an error, and in fact Mark received a significantly more prestigious recognition as being one of the top 100 lawyers in all of New England without regard to a practice focus or an area of concentration. This is an honor of particular distinction for Mark, and only the late Peter DeTroy of NH&D was similarly recognized within the firm. We apologize for the oversight, and congratulate Mark on achieving this high level of professional attainment.

Winter 2018 issue

Return Service Requested

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