



Mandelbaum Salsburg A Year in Review

2013-2014



As we look back on the past year, and what it means to Mandelbaum Salsburg and the clients it serves, we are struck by two things: how much has changed and how much has stayed the same.

In so many important ways, we are exactly who we always were. Caring for our clients remains fundamental to our culture. While we have grown, our dedication to service and being trusted advisers to our clients is unchanged.

Yet, we have evolved in so many ways over the past few years – as the stories in this publication highlight. We have added practice areas and experience far beyond what we offered just a few years ago. And, through internal growth and bringing on board dynamic practitioners, we offer our clients tremendous talent and expertise.



Barry R. Mandelbaum
Chief Executive Officer



William S. Barrett
Chief Operating Officer

Overcoming a \$4 Million Lawsuit



Cheryl Burstein

A long-time client of the firm was the steel prime contractor for a multi-million dollar renovation and addition to Bloomfield High School. The completion of the project was delayed eight months and the prime general contractor sued the Bloomfield Board of Education and the steel prime contractor for delaying the project, seeking \$4 million against the steel contractor, and even more against the Board of Education. The steel contractor was represented by Mandelbaum Salsburg’s Cheryl Burstein, who successfully proved that the damages were not attributable at all to the steel contractor, but rather to contaminated soils that delayed the start of a major part of the project and wrong specifications on the part of the architect. The dispute began as a litigation, but the parties agreed to arbitrate. After a process that lasted more than two years and involved more than 20 days of arbitration, the arbitrator found no liability (and thus no damages against) on the part of the steel contractor.

Partnering with Clients to Provide Daily Business Advice

Asta Funding, a publicly traded leading consumer receivable asset management company, is a good example of Mandelbaum Salsburg’s full-service ability to work closely with our clients on a daily basis. During the past year, we assembled a team to represent Asta in complex, multi-district federal court litigation and related state court, administrative and arbitration proceedings, protected Asta’s \$35 million investment (which will grow to \$100 million over five years) in Pegasus, a company that purchases interests in personal injury lawsuits, and advised Asta on matters involving a business partner that has serviced over \$230 million in consumer debt owned by Asta.

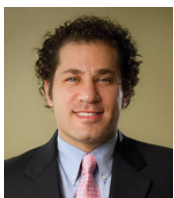


Standing, left to right: Mara Codey, Steven Adler, Stuart Gold. Seated: Richard Simon and Lauren Topelsohn. Missing from photo: Michael Kalmus

Land Use: Things Are Looking Up

In a clear sign that the economy is improving, Mandelbaum Salsburg’s Land Use practice saw a notable increase in matters during 2013. While we represent large companies

like CVS in real estate matters, we also represent many smaller, closely-held businesses and, noted Partner Charles Lorber, “The smaller guys are definitely getting back into the game.”



Craig Alexander

One client purchased a building in Montclair and renovated it, and it is now operating as an ob/gyn office. Another leased space in Fairfield and is opening a pizzeria.

Yet another is developing a 40-unit townhouse development. Adds Partner Craig Alexander, “Banks are loosening the flow of money. We are seeing more companies getting into development – which is good for everyone.”



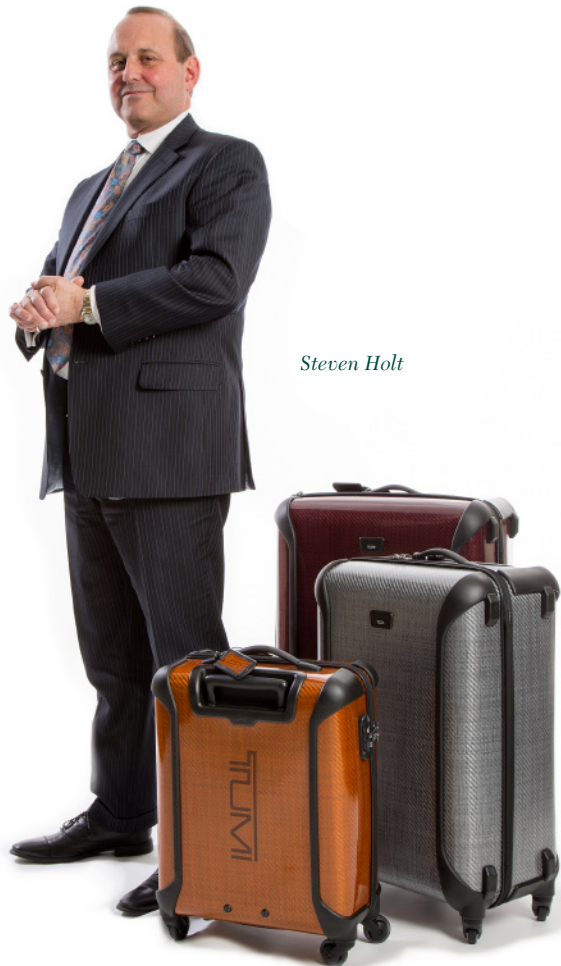
Charles Lorber



For more than 20 years, Mandelbaum Salsburg's Steven Holt has functioned in the role of general counsel to Tumi, the international brand of luxury travel, business and lifestyle accessories, which is based in South Plainfield, NJ.

Yet the company, whose design and branding are such valuable assets, historically turned to some of the nation's largest law firms to handle its intellectual property needs. With the addition of a growing intellectual property practice, Mandelbaum Salsburg was able to prove that it was up to the challenge of safeguarding Tumi's intellectual property assets and is now responsible for the company's considerable portfolio. At the same time, with the growth of the firm's Labor & Employment Law practice, it has been taking on increased responsibility for Tumi's labor needs. During 2013, the Mandelbaum Salsburg team provided vital counsel in a variety of other ways, including managing due diligence relating to several securities offerings.

Tumi continues to grow, as does its business and legal needs, and we are confident that its relationship with Mandelbaum Salsburg will continue to evolve.



Steven Holt

Addressing Real Estate Needs In New Jersey and, Increasingly, Around the Nation

Mandelbaum Salsburg has long been known for its New Jersey real estate practice. As our clients' interests expand both regionally and nationally, our practice continues to grow to meet their needs and our attorneys help them wherever their businesses take them. In 2013, long-time client Rubenstein Properties, an owner and operator of over 8 million square feet of industrial property, acquired a 294,756-square-foot warehouse distribution facility in Mobile, AL. The facility is occupied by UOP, a subsidiary of Honeywell Corporation, under a long-term triple net lease. The

\$9 million transaction was financed by Union Center National Bank. Partner Owen Hughes negotiated and closed the purchase of the Alabama facility as well as the acquisition financing with Union Center National Bank. Over the course of the year, Owen also assisted Rubenstein Properties in successfully negotiating several major leases at its industrial condominium campus in Randolph, NJ as well as negotiating and completing the sale of several warehouse facilities in New Jersey and Pennsylvania.



Two years ago, Mandelbaum Salsburg helped long-time client Steve Adler structure an exit strategy from one of his businesses, Adler Tank Rentals (ATR), a national provider of tank and container rentals for the storage of hazardous and non-hazardous liquids and solids. In 2013, we helped Adler execute the second phase of that divestiture when Steve decided the time was right to sell a related business, Indiana-based Sabre Manufacturing, to Manitex International, a publicly traded seller of heavy machinery.

Sabre designs and manufactures stationary and mobile tanks and related industrial containment solutions, and ATR is its largest customer. Because Adler owned both ATR and Sabre originally, as well as the real estate they both occupied, the relationships among Adler and the two companies were complex. A team from Mandelbaum Salsburg, headed by Barry Mandelbaum, needed to untangle those relationships to efficiently structure the transaction and limit Adler's ongoing liability exposure as he exited the business. This included structuring new lease terms, carving out certain assets used by Adler in other businesses from the transaction, addressing intellectual property licensing issues, coordinating the non-compete provisions from the two divestitures and structuring their terms to allow Adler to continue with

his related businesses without restriction, and negotiating a settlement with a key supplier whose consent was contractually required in order to close the transaction.

Additionally, when Manitex raised environmental concerns late in the negotiations, Environmental Practice Chair Gordon Duus worked with the team to quickly devise a solution and expedite approval of an environmental liability insurance policy that provided all parties the necessary comfort level to close the transaction.



Gordon Duus

Barry Mandelbaum



Jon Fallon



Growth-stage biotherapeutics and bionutrition company, Myos Corporation, places a lot of its value in the strength of its intellectual property portfolio. When Myos uncovered that a potentially valuable patent application had inadvertently been abandoned several years earlier, under different management and ownership, Myos turned to Mandelbaum Salsburg's Jon Fallon, head of the Intellectual Property practice, for help reviving the patent application. Although the application had been abandoned for nearly 42 months, almost twice as long as is usually permitted in an ordinary patent application revival, barring exceptional circumstances, Fallon succeeded in the revival, and Myos anticipates the patent application to issue as a valuable U.S. patent in the near future.

You may not yet have heard of TNS and their Total Nutrition Superstores, but thanks to Mandelbaum Salsburg, it won't be long...



Bill Barrett

Bill Barrett began working with CEO and founder David McLoughlin when David first began his career in 2001. Bill has long served as general corporate and business counsel to TNS and its affiliates, a business that formulates, manufactures and markets dietary supplements. It was only natural, then, that as the company began fielding inquiries about opening sports nutrition, fitness and vitamin supplements stores in other parts of the country, Bill and his team advised them to consider franchising and devised and carried out a franchise offering. The Mandelbaum team helped TNS create a multi-stage business plan, develop a fee model, structure the Franchise Agreement and create a franchise offering disclosure document. The team also helped structure fee-generating relationships with vendors and suppliers, develop a franchise training program and create an operations manual. We registered the TNS logo and other trademarks and are addressing all of the company's intellectual property issues, including trademark protection and defense against infringement claims. We advised TNS on new franchisee negotiation strategies, conversion of existing licensees and distributors, location and lease approval guidelines, and design and implementation of a multi-state compliance program. TNS will soon have stores in 13 states, and anticipates having over 80 franchised stores by the end of 2014.

Crafting a Creative Bankruptcy Solution

In one of the more unconventional Chapter 11 filings handled by Mandelbaum Salsburg in the last decade, the firm used the bankruptcy reorganization process to sell a client's business for maximum value. The client, a specialty foundation contractor, found itself in financial difficulty as a result of the decline in the construction industry after 2008. The client had a viable business, but had too much debt to service with its now reduced volume of work. The client found a buyer that was willing to purchase the business as a going concern. The client's secured lender was willing to accept the purchase price, even though the sale would not have paid the bank in full. Both the buyer and the bank wanted to make sure that the sale could not be challenged by the unsecured creditors. The solution provided by Mandelbaum Salsburg was to take the business into Chapter 11 and then sell the business as a going concern free and clear of all claims of creditors. Within three months of the bankruptcy filing, the business was sold at auction conducted as part of the bankruptcy to a new buyer who was identified during the bankruptcy. The bank got more than it would have received if the company had been liquidated and the management and employees are continuing the business.



Stuart Gold

Protecting Our Client's Workforce and Its Valuable Proprietary Information

Business was booming and revenues were up at Promedia Technology, a computer network solutions provider to school districts throughout New Jersey. It also had a lot of new business in the pipeline. Yet employees without access to its financial information were considering leaving because they were hearing false rumors of



financial problems from two former employees who had left to join a competitor. To

protect one of its most important assets – its workforce – and short-circuit any brain drain, Promedia turned to Mandelbaum Salsburg's Labor and Employment Group for quick action. Labor and Employment Practice Group Co-Chair Steven Adler and Partner Arla Cahill obtained emergent relief from the Chancery Court, enjoining and restraining the former employees from continuing to defame Promedia and enforcing non-compete agreements they had entered into with the company.

In a related matter, Promedia also discovered that a former salesperson, prior to her departure from the company, had failed to submit a seven-figure bid that Promedia had worked on for many months. She submitted an almost identical bid through her new employer. Despite her new employer retaining a cadre of attorneys from a large New York City law firm, our Labor and Employment Group established that she stole our client's proprietary and confidential business information; and obtained immediate injunctive relief and a large financial settlement.



Arla Cahill

Steven Adler

Bringing Clients the Resources of a Global Team

Robin Lewis



As Mandelbaum Salsburg has continued to grow its practice to serve the New Jersey and regional business community, it has complemented that practice through its membership in the International Society of Primerus Law Firms, a worldwide society of independent boutique law firms and a leading resource for local counsel.

Primerus was established in 1992 and now comprises more



than 3,000 lawyers in 200 member law firms in 40 countries, making it truly a global legal team. Mandelbaum Salsburg has a number of clients in the international marketplace and believes it is important for those clients to know that the Primerus global connection is there for them. Within the United States, we have had the opportunity to partner with other Primerus law firms on many occasions. And although our attorneys are located in New Jersey, New York and Florida, we have found that, through Primerus, we can meet the legal needs of our clients who have business in any state. Our clients appreciate the fact that we have the ability to go virtually anywhere in the world to find them quality representation at a reasonable rate.

Mandelbaum Salsburg has played a leadership role in Primerus. Our own Robin Lewis served as Chair of the Primerus Business Law Institute of North America in 2013.

Taking an Entrepreneurial Approach to Serving Entrepreneurs

We at Mandelbaum Salsburg represent many entrepreneurial founders of small and mid-sized businesses and can address their business and real estate needs.

One such entrepreneur is Malcolm Stogo, an industry-leading developer of new ice cream concepts, including dairy-free products under the brand name DF Mavens. In 2013, we represented Stogo's company, FAL Foods USA, in significant expansion activities. Partner Owen Hughes and leasing attorney Andrea Alexander helped FAL successfully acquire a leasehold premises for the manufacture and packaging of its dairy-free products. In addition to negotiating a leasehold acquisition on

Broadway in New York City for its expanding Brazilia Café, a global chain featuring Brazilian coffee, Owen negotiated the construction contract for the significant tenant renovations required for the café.

He and Andrea also assisted FAL Food's acquisition of a leasehold on Second Avenue in New York City for a vegan café serving, among other things, proprietary non-dairy frozen and non-frozen packaged goods.




Everyone Hates a Bully, But It Is the Rare Company That Stands Up to a Bully – and Wins



With assistance from Mandelbaum Salsburg, Tumi, a leading brand of luxury travel, business and lifestyle accessories, played David to the Goliath known as patent trolls.

Tumi was sued by ArrivalStar, which alleged six instances of patent infringement. The firm sought a settlement of \$15,000, and most companies would have paid the relatively modest amount just to make the matter go away. But Tumi and its attorneys Steven Holt and Jon Fallon recognized ArrivalStar for what it was – a patent troll, which owns meaningless patents and threatens hundreds of companies with nuisance infringement lawsuits – and decided to strike back.

The company filed a counterclaim against the company and its attorney, under the  Federal RICO Act, alleging that the lawsuit was a “frivolous” effort to extort money. ArrivalStar's lawyer promised to drop the case if Tumi promised confidentiality. But Tumi refused, the judge dismissed the case and Tumi paid nothing. More importantly, the patent holder pledged not to file any more suits against Tumi, and Tumi was able to bring the troll's methods to light in articles in *The Washington Post* and *The Star-Ledger*.

The fact is that when patent troll cases go to trial, they almost always lose, but the trolls count on most companies agreeing to settle without going to trial because it is less expensive to do so.

In the six months since, reports Jon Fallon, Tumi has not been harassed by a single troll.

Addressing the Changing Healthcare Scene On Many Fronts

The Affordable Care Act (“ACA”) mandates the offering of dental insurance on both the federal and state-operated Healthcare Marketplaces. We anticipate that this mandate will result in the corporatization of dental care and increased economic challenges for the sole dentist practicing in his or her office. The future is with large integrated practices providing, in one high-tech office, general and all specialized fields of dentistry.

Dennis Alessi, Chair of the Health Care Law practice, developed a corporate business model to address this expected change in the practice of dentistry. This model addresses issues of business ownership, formation and development; facilities; staffing; operations/management and financing. This model complies with both federal healthcare laws and regulations, and the antiquated Board of Dentistry regulations that still reflect the solo practitioner business model. With Partner Richard Simon, Dennis secured over \$12 million of bank financing for our client, a dental practice management company, to implement this new business model in multiple states.

ACA is also accelerating the corporatization of medical care. During this past year, Dennis has been involved in the creation of new business models for large multidiscipline and multispecialty medical practices, and the alignment of medical practices with hospitals.



Dennis Alessi

Richard Simon



*Hon. Michael
Diamond*



Hon. Robert Longhi



Hon. Paul Vichness

Alternative Paths to Conflict Resolution

Increasingly, adverse parties seek ways other than litigation to resolve their differences. With the addition of three respected retired judges to our Alternative Dispute Resolution practice in recent years – more than at any other law firm in New Jersey – parties are turning to Mandelbaum Salsburg. The Hon. Robert Longhi, the Hon. Michael Diamond and, most recently, the Hon. Paul Vichness, arbitrate and mediate a full array of matters. Judge Diamond handles only family law matters, which often extend well beyond divorces; Judges Longhi and Vichness handle all matters other than family law, including insurance coverage disputes, acting as discovery master, managing complex litigation, serving as hearing officers and serving as counsel to ad hoc Fair Hearing Committees that conduct hospital disciplinary peer reviews. The goal of arbitration and mediation is to resolve disputes without bringing a matter to court. Mediation is informal, typically non-binding, and the mediator is a facilitator rather than a decision-maker; arbitration, however, requires the arbitrator to render a binding decision that resolves the case.

Contrary to an image of retired jurists leading a cushy retirement, Mandelbaum Salsburg’s team of judges does some heavy lifting. With multiple parties, mediations and arbitrations often require many rooms, and the judges frequently shuttle from one room to the next. Says Judge Vichness: “We do whatever needs to be done. Among us, we have a lot of experience. When someone has the need, we can provide the service.” He attributes the judges’ strong track record of resolving matters to doing sufficient preparation and giving each case the time it needs.



High 5 Games is the premier game creator of the casino industry, having designed hundreds of games played around the world, and one of the top social casino operators in the world. Nothing is more important to a company like High 5 Games than its intellectual property, which is why they turn to Mandelbaum Salsburg's Jon Fallon, who serves as the company's acting general counsel. Fallon is responsible for every facet of intellectual property protection, clearance and licensing worldwide, and manages all other legal matters for the company. On behalf of High 5 Games, Jon routinely negotiates and manages third-party licensing deals with the likes of casino industry giants IGT and Bally Technologies, various music labels, Broadway shows and even talent and pageant organizations, such as the Miss Universe Organization.

Jon Fallon

Helping an Employer Battle Wage & Hour Claims

A Newark-based employer was fighting a wage and hour case in Federal District Court over its failure to pay overtime to employees who were allegedly misclassified as supervisors, exempt from the overtime pay requirement. There was very little evidence that these employees met all four parts of the definition for an exempt supervisor. There was, however, a great deal of evidence that they did not.

Fortunately, our client had documented evidence that, before hiring these employees, it had consulted both State of New Jersey and Federal websites for government statistics on the prevailing wages in the Newark area for employees in these positions. The employer did pay these employees a fixed weekly salary that was unrelated to the total number of hours they work each week (which were significantly above 40). However, these salaries were above – and some were significantly above – the prevailing wages reported on the various government websites our client had consulted.

Mandelbaum Salsburg's Dennis Alessi, Co-Chair of the Labor and Employment Practice Group, presented evidence that the employer had researched the prevailing wages for these positions, and had paid salaries above them to compensate these employees for the extra hours they worked.

The Federal District Court ordered mediation. The matter was settled without further litigation costs for the client, and for a fraction of the amount the plaintiffs had claimed in their initial statements of damages.



Dennis Alessi



children's
institute



Mental Health Association
of Essex County, Inc.



THE
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PANCREATIC CANCER
ACTION NETWORK®



Sewing Our Support for the Troops® Since 2004

Doing Well by Doing Good

At Mandelbaum Salsburg, we believe that our efforts, individually and collectively, can have a real impact on the communities in which we live and work. The firm's Charity Committee, comprised of attorneys and staff members, focuses on local causes or those connected to employee interests.

Monthly "Denim Days" allow attorneys and staff to wear jeans to the office in exchange for \$5 to support causes ranging from Lauren's Hope (for brain-injured children) to the Melanoma Research Foundation to a veteran's organization. We "Go Red for Women" in support of the American Heart Association. We have collections on a regular basis for different organizations. Even the firm's new Women's Initiative made a wine tasting event an occasion to support Dress for Success Morris County, collecting business attire to provide work-appropriate attire to women who are seeking employment but cannot afford the essential apparel.

Mandelbaum Salsburg takes care of its own, too. Since 2001, the firm has sponsored the "Irving Mandelbaum Scholarship Fund," named in honor of the firm's founding member. Each year, the firm's partners contribute to the fund, which provides scholarships to the children of employees for college and other post-high school education.

We are proud that Mandelbaum Salsburg was a finalist for the 2013 Primerus Community Service Award.

Among the many
organizations
Mandelbaum Salsburg
supported during
the year

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