



## Brief Insights

A PERSONAL INJURY NEWSLETTER—MARCH 2022 • BASCHKEEGAN.COM

### John A. DeGasperis Finds Justice for Injured Construction Worker



Partner John A. DeGasperis settled another Labor Law case for a Basch & Keegan client. This time he recovered \$690,000 for a Dutchess County construction worker who fell at a construction site.

Roofing is a dangerous job. In fact, roofing is one of the most dangerous jobs in America with close to one hundred fatalities occurring every year. The most common cause of roofing injuries falls—slips and trips. This increased exposure to harm is why roofers deserve the extraordinary protections of New York State’s Labor Law. According to Partner John DeGasperis, “New York’s legislature had roofers specifically in mind when it passed the ‘Scaffold Law.’”

In this recent case, John used the Scaffold Law to recover damages for a man who fell while working on a roof. John’s client was employed as the foreman on a large-scale roofing project at the Margaretville Nursing Home. Naturally, as a roofer, John’s client was required to work at elevated heights. The accident happened while John’s client and a small crew of men were unloading sheets of plywood from a mechanized lift on to the sloped roof. The men were working directly above a sidewalk on the ground below. They were piling the wood with the new plywood sheets.

At some point in time, one of the crew members placed a Skil-Saw on top of the plywood pile. When it came time to lay out the new sheets of plywood, one of the other roofers removed a sheet of plywood from the top of the pile without first removing the Skil-Saw. The Skil-Saw fell from the pile and slid down toward the roof’s edge. Upon observing the saw, John’s client jumped into action and chased after the saw. In doing so, he tripped over a rope that was connected to another roofer’s safety harnesses. Our client sustained serious injuries from his fall.

John prosecuted a case on behalf of the roofer against the nursing home pursuant to New York’s “Scaffold Law,” which is codified in New York’s Labor Law. The Labor Law imposes an absolute and nondelegable duty on property owners to provide appropriate scaffolding and other safety devices to workers engaged in the erection, demolition, repairing, altering, painting, cleaning, or pointing of building or structure. The facts of this particular case were challenging because John’s client did not fall off the roof,

nor was he struck from a falling object. Instead, he fell on the roof where he was working, which means he was not necessarily injured due to the gravity-related risks enumerated in the Scaffold Law.

John argued that his client did qualify for the protections set forth in the Labor Law. John argued to the Court that “every aspect of the roofing foreman’s injury flowed from the application of the force of gravity to both the Skil-Saw and himself. In fact, he was exposed to not one, but three gravity-related hazards.” The first gravity-related hazard involved our client’s work position on a steeply pitched roof. The second gravity related risk involved a falling object, i.e., the Skil-Saw, which fell from an elevation above the roof level. The third gravity-related hazard involved the continuation of the Skil-Saw’s momentum down the roof, toward the roof’s edge, and to the sidewalk below.

In order to prevail on a Labor Law claim, the injured plaintiff is obligated to identify what safety devices should have been—but were not—provided by the property owner. Here, the nursing home failed to provide John’s client with a ground-supported scaffold, as well as “suitable overhead protection” to persons, such as nursing home staff and guests, who were likely to pass by the construction site. Suitable overhead protection would have consisted of safety devices such as “railings, fences, barricades, sheeting and shoring, sidewalk sheds, temporary walkways, and temporary roadways.” None of these measures were taken by the nursing home.

John DeGasperis has long claimed that Labor Law cases are his favorite personal injury cases to handle. “I love representing construction workers. They are hard-working people who lose a lot when they get hurt on the job. They often suffer massive loss of wage claims. To an injured worker, being out of work is scary. These cases give me a real purpose, as the goal is always to help ensure my client’s financial security. I am restoring a wage that my client would have earned if it were not for a violation of the Labor Law.”

The nursing home denied responsibility for the injuries sustained by John’s client, but John never gave up. John battled the nursing home’s lawyers from New York City until a settlement was finally offered. The settlement will ensure that John’s client was compensated for his loss of wage.

# Nursing Home Neglect Cases Increase as a Result of Pandemic



In the wake of the COVID-19 pandemic, Basch & Keegan has sadly seen an increase in calls involving nursing home neglect. In the world of nursing homes, family members are the residents' eyes and ears. They schedule medical appointments for their loved ones, look out for worsening symptoms, unusual behaviors, and other telltale signs of poor health. Family members can also file complaints with the state government or the long-term care facility in cases of neglect.

Family members acting as the watchdog over these long-term care facilities became very difficult with the COVID-19 lockdowns. This fact, coupled with the staff shortage of properly trained medical professionals, created a perfect storm for appalling conditions in many nursing homes.

The primary complaint Basch & Keegan clients are continuing to report is general neglect resulting in medical issues. The nursing homes, their agents and employees have failed to use good and reasonable judgement in the delivery of specialized and medical care.

In April 2020, during the early of the days of the pandemic, the former NY Governor Andrew Cuomo signed the Emergency or Disaster Protection Act. This law granted immunity to nursing homes, assisted living facilities, hospitals, and healthcare workers for their handling of patients and patient care as the novel coronavirus ravaged New York. As a results, only claims for gross negligence were permitted.

Then, nearly a year later in April 2021, the former Governor was under fire for his mishandling of Nursing Home death data, and he repealed the law. Facilities can now be held accountable to liability, exposing providers to potential criminal and civil claims.

According to National Center on Elder Abuse (NCEA), neglect is the "failure to provide goods and services to a resident that are necessary to avoid physical harm, pain, mental anguish or emotional distress." A person living in a nursing home has the right to be free of abuse and neglect. Federal law requires nursing home to provide each resident the services and activities to "attain or maintain [their] highest practicable physical, mental, and psychosocial well-being."

Neglect is often the result of inadequate staffing in a nursing home. If there are not enough staff to care for the residents, then care and services are not provided, and mistakes are often made, or accidents occur. Lack of proper training is another factor that can lead to neglect due to care not being properly provided, as well as increased staff errors and accidents.

Discovering your loved one has been the victim of nursing home neglect is a devastating realization. The lawyers at Basch & Keegan LLP can help you through this difficult time, working to ensure all responsible parties are held liable for their actions.

Basch & Keegan is here to help you and your loved ones at 845-338-8884.

## Red Flags of Neglect

- The resident is dirty, unkempt
- The resident's room or the facility is dirty
- Changes in condition or demeanor
- Loss of abilities, such as walking, using the bathroom, or interacting with others
- Unexplained injuries, bruises, falls Long wait times for the call bell to be answered High staff turnover These are red flags that could be cause for concern. Ask questions or get help.

## Signs of Neglect Include:

- Pressure ulcers or pressure sores
- Malnutrition or unexplained weight loss
- Dehydration
- Poor personal hygiene – bathing, nails dirty and unclipped, hair dirty and matted or uncombed, teeth or dentures not brushed or cared for
- Isolation – not offered or given the opportunity to interact or engage with others in the nursing home or in the community
- Failure to provide assistive devices – such as canes, wheelchairs, eyeglasses, dentures
- Frequent or untreated changes in condition, including illness and infection
- Over- or under-medicating
- Changes in demeanor – becoming withdrawn, depressed, angry
- Loss of abilities – such as walking, incontinence
- Unexplained injuries – bruises, broken bones, falls
- Unclean living conditions

# LET'S SHAMROCK THIS RUN!



## Basch & Keegan Giving Away 34th Annual Shamrock Run Bandannas at Start Line on Sunday, March 13th 2022!

In April of last year the Kingston community lost a friend when Tommy Keegan, founder, owner and brewmaster of Keegan Ales passed away unexpectedly at the age of 50 while doing what he loved best, riding his Ducati Scrambler (his cappuccino machine!) on mountain trails with his friend. Tommy was a pioneer of the craft brewing industry in the Hudson Valley, and nephew to Partner and Co-Founder Maureen Keegan.

This year, the 34th Annual Shamrock Run will honor Tommy and his community spirit as a generous donor, fundraiser, and volunteer who was giving of his time and resources to so many within our community.

Basch & Keegan has been a sponsor of this beloved, hometown race for over 20 years. This year, Basch & Keegan is the "Giveaway Sponsor" for the event, and will be handing out memorial bandannas in honor of Tommy and the Shamrock Run! We will have a table at the Start Line of the race, at Academy Green in Kingston on Sunday March 13th. Race Day check in & registration is 10am – 12:30pm, and you will find us there with the Shamrock Run Volunteers handing out these one-of-a-kind bandannas while supplies last!

Hola!

## Basch & Keegan Hires Bilingual Spanish Interpreter

Basch & Keegan, LLP is excited to announce a new member to our team! Carolina Landa is a Hudson Valley native who grew up in Poughkeepsie and now resides in Saugerties with her husband and two children. She studied Criminal Justice at Dutchess Community College and is a bilingual Medical Spanish Interpreter.

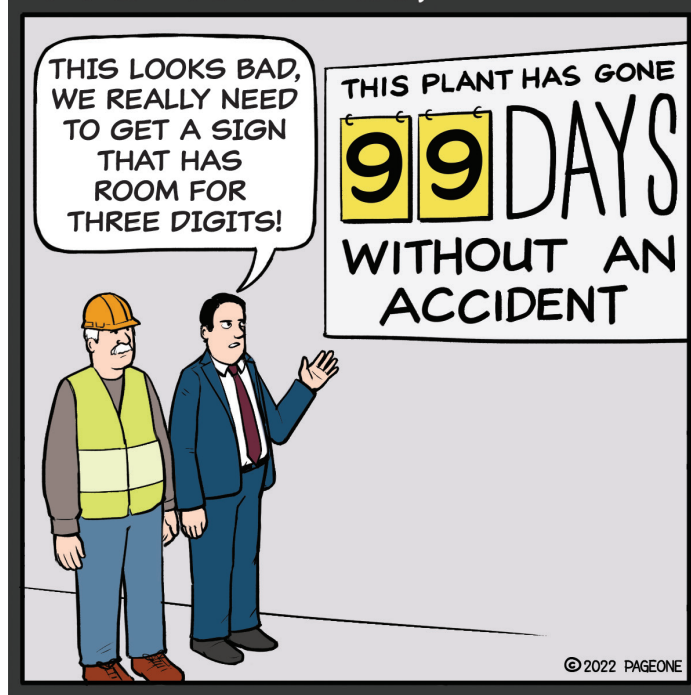
Basch & Keegan is officially paperless. Since March 2020, all the firm's files are on a cloud-based system, which allows attorneys to review files more efficiently. Carolina will be handling the backbone of our firm as File/Scanner/Medical Records Clerk. This position is extremely important to the integrity of the firm. We are confident that Carolina will be a great asset in this role.

Carolina has experience working in law firms and she most recently was Community Outreach Coordinator for a local health care center. Carolina is a movie buff that enjoys hiking and exploring the Hudson Valley while taking photographs on her travels. Her favorite food is the classic Spanish chicken dish, pozole.

"I am very excited to work at Basch & Keegan. The attorneys and staff have been so welcoming. Not only will I learn more about personal injury, but also I hope to help my community access and utilize the services of the attorneys at Basch & Keegan. Unfortunately, the Hispanic community is sometimes unaware of their rights or fails to act when they are injured in fear of retaliation. I want to tell them that the attorneys at Basch & Keegan are here to guide you through the process. I am here welcoming you and will help if language is a barrier," explains Carolina.

We are very happy to have Carolina on board!

## A Brief Relief



## BASCH & KEEGAN

PERSONAL INJURY ATTORNEYS

www.BaschKeegan.com • (845) 338-8884 • 307 Clinton Avenue Kingston, NY 12401

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