

2021

**LITIGATION
YEAR
IN REVIEW**

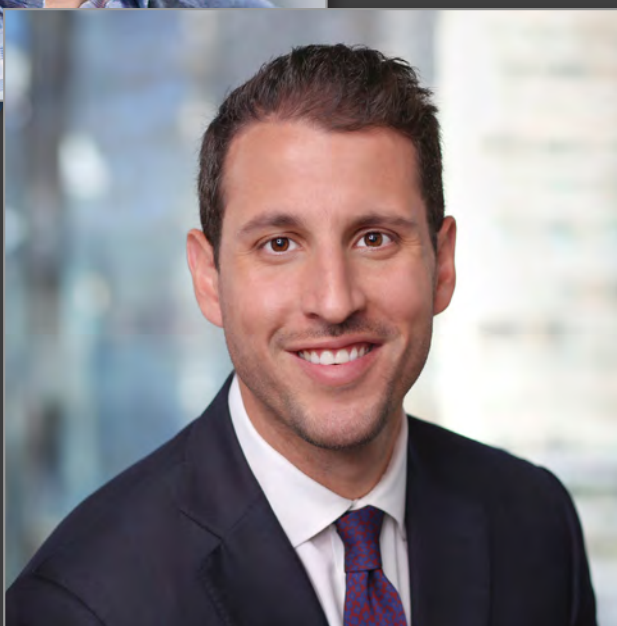


**RC
CB**

With Thanks



Barry Cohen



Matthew Faranda-Diedrich

Dear Colleagues and Friends,

The RCCB litigation team is pleased to share our annual Litigation Year in Review with you, highlighting some of our most noteworthy achievements in 2021 on behalf of our clients during another year of immense challenges.

As we worked with our clients, our goal was to make each relationship as rewarding as the outcomes we achieved. The positive results we accomplished during this past year clearly demonstrate our ability to deliver on our core principles, including client service as our top priority,

seamless delivery of our knowledge and experience, and creating fresh ideas to solve familiar and evolving problems.

We hope you enjoy this brief overview, which features some of the complex and noteworthy cases we have worked on and also highlights our thought leadership and major happenings of 2021. It remains our privilege and pleasure to serve each of our clients, and we wish you all a healthy and prosperous 2022.

Two handwritten signatures in black ink, one on the left and one on the right, positioned below the main text.

About Our Team

RCCB litigators are assertive, thoughtful, and use litigation as a means to achieve a client's business objectives. We carefully tailor our approach and strategy to translate litigation tactics into successful outcomes for firm clients. Our litigators have been ranked and recognized by Chambers USA, Best Lawyers in America, Super Lawyers and World Trademark Review, among others. We are the go-to choice for many businesses and individuals in the region. Our litigators have been extensively trained at premier litigation firms, and they routinely argue opposite the largest firms in America.

Our clients are varied and include public companies, private entities, start-ups and investors in a wide array of industries including food & beverage, alternative energy, healthcare and life sciences, insurance, financial services, private equity, asset management, funds, retail, manufacturing, internet, e-commerce, software, technology, telecommunication, media, entertainment, real estate, construction, and transportation, just to name a few.

Our firm has accomplished much in its ten-year existence, growing from a handful of attorneys to more than 50 today. With lawyers hailing from Big Law and senior in-house roles, we are agile and able to offer clients sophisticated, commercially-minded advice comparable to national firms, yet with a client-focused and business sensibility. RCCB also boasts strong corporate, tax, employment/benefits, real estate, and banking and restructuring practices, allowing us to offer full-service support to clients on legal issues they encounter.



Litigation Cases

Favorable Terms Secured Timely in Commercial Dispute

RCCB's Litigation team represented the respondent, a company that provides origination services to more than 300 banks, credit unions, FinTech firms, startups, and schools. The matter was a complex commercial dispute before the

American Arbitration Association, which arose from the Claimant/Counterclaim Respondent's long-running pattern of fraudulent misrepresentations and omissions, which caused it to accumulate \$1,000,000-plus debt

to our client. We were successful in our strategy to create an opportunity for the parties to settle upon favorable terms, at a relatively early juncture in the litigation.

RCCB Plays Offense for Defense Involving Class Action Against Municipality

RCCB's Litigation team was retained post-judgment, after liability and damages had already been established against our client, an investment firm, related to alleged violations of ordinance and zoning laws. Our client faced over \$2,000,000 in charges. Staring down judgment execution and garnishment actions from an

aggressive (and angry) plaintiff, we devised a strategy of "offense for defense." Specifically, we initiated a class action against a large municipality and its Department of Licenses and Inspections, challenging the legality of a city ordinance as charging an excessive fine. If our class action claims had been proven at trial, the ordinance would

have been declared null and void, and the municipality would have had to disgorge several millions of dollars of ill-gotten revenue. With the other side facing the prospect of such a disastrous outcome, we were able to successfully negotiate a very favorable settlement for our client and avoid execution and garnishment proceedings.



Minimizing Risk and Solving Problems

In the past year RCCB Litigators have fielded hundreds of referrals from other lawyers at the firm for our advice and counsel. These situations most often arise when existing RCCB corporate and business clients need strategic pre-litigation counseling. Working as a one-firm team, our litigators bring

a pragmatic approach to bear with a focus on minimizing risk and solving problems at the earliest possible stage. Many times these quick interventions avoid costly litigation and place our clients in superior bargaining positions with their adversaries.



I am proud of our Litigation team for many reasons, but two things truly set us apart: our creativity and our work ethic. I have seen our clients benefit from these differentiators time and again."

**MATTHEW FARANDA-DIEDRICH,
PARTNER**

Client Protected from Present and Future Losses in Counterfeiting Lawsuit

RCCB's Litigation and Intellectual Property teams represented the plaintiff, a financial consulting firm, where our team was successful in obtaining an injunction, an award, and

an admission of liability. This matter was important in the protection of the client's marks as part of a nationwide campaign to stem counterfeiting, which was costing the client millions

of dollars on a continuing basis. For this reason, obtaining the injunction and admission of liability were critical components of protecting our client from present and future losses.

RCCB Pursues Aggressive Strategy In Software Row

RCCB's Litigation team represented a retail distributor of high quality perishable foods in bringing claims for breach of contract and breach of the covenant for good faith and fair dealing against a software implementation

provider. Our client hired the provider to install ERP software for its fast-paced seafood distribution business. However, more than two years after entering into a Master Services Agreement, the software provider completely

failed to deploy the software in a proper working format. Our client then engaged RCCB's litigation team to pursue a demand for arbitration against the software provider, with successful results for our client.

Successful Navigation of a Family Dispute Involving Claims of Copyright Infringement and Breach of Fiduciary Duties

RCCB's Intellectual Property and Litigation groups teamed up to defend its client in a dispute involving a minority owner who lodged claims of copyright infringement and breach of fiduciary duties against RCCB's company client. At its heart, the case is not so much an intellectual property row but instead

is a matter stemming from bad blood between family members. RCCB's litigation team has deep experience navigating family disputes and has used its best practices in this case in order to pave a path towards a successful resolution for its client.

**The Best Law Firms
in America[®]** recognized
RCCB's **Trademarks and
Brands** and **Business
Bankruptcy** practices
for their outstanding work
in New York.

Victory for Startup Investor in a Misappropriation Dispute

RCCB's Litigation team represented an aggrieved investor in the Chancery Court of Delaware in a dispute stemming from allegations that the manager of a health and wellness

startup fund misappropriated a significant amount of the client's investment. In a recent victory, the Chancery Court granted a Status Quo Order (a quasi preliminary injunction)

restricting the fund manager from taking certain actions that could further undermine the client's investment.

Bankruptcy Litigation

Ongoing Representation of Pharmaceutical Network in Appeals Process

RCCB represents a network (the "Network") of over 146 independent pharmaceutical companies with operations in 56 jurisdictions across North America, Europe, Africa, Asia, which are directly or indirectly owned by the Sackler family in the Purdue Pharma chapter 11 cases pending in the United States Bankruptcy Court for the Southern District of New York. As part of its representation of the Network, RCCB engaged in a massive discovery exercise in connection with the Official

Committee of Unsecured Creditors (the "UCC"), reviewing almost one million documents and producing nearly 800,000 documents to the UCC. In addition, RCCB continues to represent and advise the Network in the Purdue Pharma chapter 11 cases generally, including with respect to the Debtors' formulation and confirmation of a plan of reorganization (the "Plan") based, in significant part, on capturing the value of the Network for Purdue Pharma's creditors. In December, 2021, the United

States District Court for the Southern District of New York struck down the Plan on appeal. Accordingly, RCCB continues to advise the Network on developments in the chapter 11 cases and with respect to further appeals. As part of this ongoing representation, RCCB attorneys regularly interact with other constituencies in the chapter 11 cases in connection with the Debtors' reorganization efforts, including participation in various hearings before the Bankruptcy Court.



Lead Litigation Representation of Apparel Manufacturers

RCCB currently represent our clients in an adversary proceeding brought by George L. Miller, in his capacity as Chapter 7 Trustee for the jointly administered bankruptcy estates of J & M Sales Inc., *et al.*, pending in the United States Bankruptcy Court for

the District of Delaware (Ad. Pro. No. 20-50775). The lawsuit alleges that the clients received avoidable transfers as trade creditors of a company acquired by the Debtors in a leveraged buyout. We are lead litigation counsel for our clients, and the case involves the

Trustee's unusual attempt to collapse a series of related transactions so as to impose liability on our clients, among others, and raises novel theories regarding the meaning of "value" and "transferee" under applicable Bankruptcy and Delaware law.

Voluntary Dismissal and Re-Initiation of Foreclosure Proceedings Results in Favorable Settlement

RCCB represented the largest secured creditor in the chapter 11 case styled *In re Clifton Hospitality et al.* (19-11094) filed in the Bankruptcy Court for the Northern District of New York. The matter involved a hotel and restaurant finance by the client. The hotel and restaurant defaulted on various loans made by the client. As bankruptcy counsel, among other things, we

negotiated a series of cash collateral orders, prepared and served deposition notices on the debtors and their principals, negotiated with the debtors and several prospective purchasers and attended court hearings in connection with the foregoing. When it became apparent that the debtors would not be able to find a purchaser, we negotiated with debtors' counsel for a voluntary

dismissal of the case in April 2020 and the re-initiation of foreclosure proceedings in New York State Court, which recently concluded in January, 2022, with a settlement whereby the client required that the hotel and restaurant property be sold to a third party and the net proceeds distributed to the client.

Negotiation with Debtors' Counsel Leads to Favorable Resolution for Creditor-Landlord

RCCB represented a creditor-landlord in the chapter 11 case of *In re California Pizza Kitchen, Inc. et al.* (20-33752) pending in the Bankruptcy Court for the

Southern District of Texas. The Debtors abandoned and subsequently rejected their lease with the client causing claims for clean-up costs and unpaid rent. For

the matter, we negotiated with Debtors' counsel for a resolution of the clean-up claim and filed a proof of claim for rejection damages.

Advisory Representation for German Insolvency Administrator on U.S. Law

RCCB represents a German insolvency-administrator for the estate of Air Berlin PLC, which is subject to a Lander-level (equivalent of a U.S. State) insolvency case. We have been retained by the Administrator's German counsel to advise on matters of U.S. law with

respect to Air Berlin's U.S. creditors, including the negotiation of an insurance settlement and investigating possible preferential transfer and fraudulent transfer actions against various U.S. creditors. In our role, we have: sent a demand letter to a U.S.

insurer and are negotiating a resolution of certain claims, researched how to enforce foreign (i.e., U.S.) judgments in Germany, advised on the possibility of instituting original actions in the U.S. against U.S. creditors and generally advised on U.S. law insolvency matters.

Debtor Engagement May Result in Favorable Plan of Reorganization for Secured Creditor Representation

RCCB represents the secured creditor in a small business Subchapter V Chapter 11 case pending in the United States Bankruptcy Court for the Southern District of New York. The Debtor, which is in the hospitality industry,

had its business interrupted by COVID. Because it was unable to operate for many months in 2020, the Debtor fell behind on payments to its landlord and other entities. RCCB engaged with the Debtor on the use of cash collateral and

other issues in the bankruptcy case. The Debtor filed a plan of reorganization which, if approved by the Court, will pay our client in full and with interest. A hearing to confirm the plan is scheduled for March.

Successful Representation of Secured Party and DIP Lender in Forthcoming Chapter 11 Case

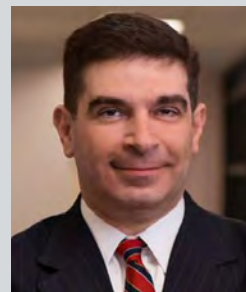
For the past two plus years, RCCB has represented a secured lender to a company undergoing a restructuring. All of the major parties in interest have recently agreed on the terms of the

reorganization and to consummate it as part of a pre-arranged Chapter 11 filing which we expect to be filed in the near future. Our client will provide debtor-in-possession financing as part of the

bankruptcy case, be repaid in full on its pre-petition debt and provide exit financing to the reorganized company following the bankruptcy.

THE BEST LAWYERS IN AMERICA®

Barry L. Cohen and **Marc E. Hirschfield** were identified by their peers for inclusion in the 2021 edition of The Best Lawyers in America®. Barry Cohen marks his second year being recognized, and Marc Hirschfield returns to the list for the fifth consecutive year. Best Lawyers employs a peer review process that has been used consistently for more than thirty years.



Trademarks and Brands

Complaint Dismissed and Favorable Settlement Obtained in Software Company Trademark Infringement

RCCB's Trademark and Brands team represented a software company and its related Canadian affiliate in connection with alleged trademark infringement of the company's mark.

Initially, this case was brought in the District of Arizona. RCCB was successful in having the complaint dismissed for lack of jurisdiction over both clients. This case was refiled in

the district of Massachusetts. RCCB ultimately achieved a favorable settlement for the client, which solved all the infringement issues.

Complaint Filed On Behalf of a Prominent Designer's Estate Against a Global Design Company

RCCB's Trademarks and Brands team filed a complaint in the Southern District of New York on behalf of an estate of a prominent designer of midcentury modern furniture and

lighting, against a global design company and the estate's foundation, alleging, among other things, fraudulent misappropriation of the designer's iconic 1952 design

of lamps. The case is ongoing, and RCCB continues to prosecute the matter.



Lawsuit Avoided for Cannabis Producer Infringement of Registered Trademarks

RCCB's Cannabis Industry team and our Trademarks and Brands group represented a cannabis producer in matters relating to the infringement

of their California state registered trademarks. RCCB provided strategies for protecting trademarks that cannot be federally registered, including

copyright protection. We assisted in negotiating a favorable monetary settlement for the client without the necessity of filing a lawsuit.

Entity Represented in Alleged Trademark Infringement Filed by One of the Entity's Partners

RCCB's Trademarks and Brands team represents an entity that operates a Greek restaurant in a case alleging trademark infringement filed by a partner of the defendant entity.

The ongoing case involves a deep understanding of both trademark law and applicable state business law to help the client navigate this challenge.

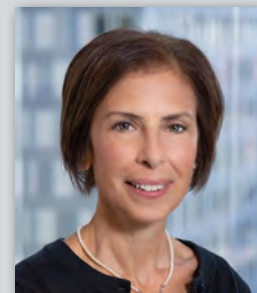
“

I have practiced IP law for over 35 years in many different technologies and industries. IP touches every business in some way and is always changing. I truly enjoy my work, my clients, and my partners, as well as mentoring new associates.”

DONNA A. TOBIN, PARTNER

NEW YORK SUPER LAWYERS®

Business Restructuring & Bankruptcy Partners **Marc Hirschfield** and **Marc Skapof**, and Trademarks & Brands Partner **Donna Tobin**, have been selected for inclusion in the 2021 New York Metro Edition of Super Lawyers. Being named a Super Lawyer is a distinction limited to just 5 percent of the area's lawyers.



Employment Litigation

Favorable Result Achieved for Nationwide Company Involving Former Executive's Violation of Restrictive Covenants

RCCB's Employment Law team represented our client, a nationwide company, who learned that a former national executive was violating his non-compete and non-solicit agreements by going to work for a new company that was attempting to leverage this

executive to build out its service offerings to directly compete with our client. Forensic electronic discovery leading up to and throughout the ensuing lawsuit also revealed that the executive had departed with a massive amount of company data. RCCB

secured a favorable result ensuring compliance with our client's restrictive covenants and the executive's obligations with regard to company confidential information and trade secrets, and also achieved a favorable settlement for our clients.

Discrimination Settlement for Family Owned-Business

RCCB settled a complaint of race and religious discrimination and retaliation on behalf of family owned business

for less than 10 percent of the initial demand, helping the client to avoid litigation that would have resulted in a

significant financial burden to our small business client in the middle of the global pandemic.



Age Discrimination Settlement for Regional Employer

RCCB settled a charge of age discrimination and retaliation on behalf of a regional employer for less than 30 percent of the initial demand. RCCB

resolved the matter while at the same time helping our client to preserve an essential business relationship with a customer involved in the dispute.



With a detailed understanding of our client's business, we excel at developing a litigation strategy that maximizes client goals."

BARRY L. COHEN, PARTNER

National Business Dispute Resolved Involving a Placement Agency's Hiring of an Independent Contractor

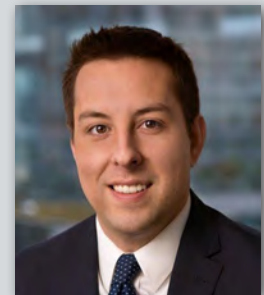
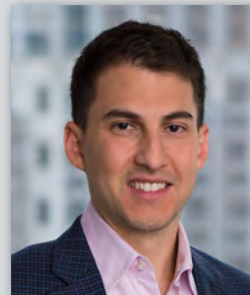
RCCB resolved a complaint on behalf of a national business involved in a dispute with a placement agency over

its hire of an independent contractor, after our client was brought into litigation notwithstanding that it hired

the contractor without knowledge of the contractor's obligations to the placement agency.

PENNSYLVANIA SUPER LAWYERS®

Pennsylvania Super Lawyers has recognized **Barry L. Cohen** for his high level of professional achievement for 2021. Partners **Matthew Faranda-Diedrich**, **Sean S. Litz**, and **Alexander J. Nassar** were named Pennsylvania Super Lawyer "Rising Stars." Super Lawyers is a rating service of outstanding lawyers from more than 70 practice areas who have attained a high-degree of peer recognition and professional achievement.



Thought Leadership From Our Litigation Team

Donna A. Tobin participated in the webinar **“Acting on the Trademark Modernization Act: How the Implementation of the TMA Will Affect Your Practice.”** Donna addressed what you’ll need to know about the TMA’s new rules and procedures.

Marc E. Hirschfield and **Marc Skapof** participated in the webinar **“Fraudulent Transfers and the Subsequent Transferee Defense Under the Bankruptcy Code and UFTA / UVTA.”** This CLE course discussed the defense to a fraudulent transfer claim for subsequent transferees from the debtor, the requirements to meet the defense, the issue of value received in consideration for the transferred payment, and what can be recovered.

Julie M. Latsko, Sonia S. Shariff and **Donna A. Tobin** authored **“U.S. Supreme Court—Willfulness Is Not a Prerequisite for a Profit Award for Trademark Infringement.”** In its unanimous April 23, 2020 opinion, in *Romag Fasteners v. Fossil, Inc.*, the Supreme Court made clear once and for all that a successful trademark plaintiff is not required to establish that the defendant’s infringement was willful to be entitled to an award of the infringer’s profits. In other words, profits may be disgorged for less than willful infringement of a trademark.

Barry L. Cohen, Julie M. Latsko and **Matthew Faranda-Diedrich** authored **“Risky Business: Identifying and Solving for Risk with the Assistance of Outside Litigation Counsel.”**

This alert highlights various ways in which experienced outside litigation counsel—which many business leaders think of only when a lawsuit is imminent—can actually help quantify, qualify, and mitigate risks well before disputes ever arise.

Alexander J. Nassar authored **“The Future of Non-compete Agreements.”** On July 9, 2021, President Biden issued an “Executive Order on Promoting Competition in the American Economy.” Notably, the order encourages the FTC to promulgate rules to “curtail the unfair use of non-compete clauses and other clauses or agreements that may unfairly limit worker mobility.”

Marc E. Hirschfield and **Marc Skapof** authored **“Maintaining Control Over Your Bankruptcy.”** A recent ruling by Judge Glenn in the Bankruptcy Court for the Southern District of New York shows that, notwithstanding the U.S. Supreme Court’s *In re Jevic* decision, structured dismissals of chapter 11 cases are still permissible and in some instances more beneficial to creditors than confirmation of a plan or conversion to a chapter 7 liquidation.

Barry L. Cohen participated in INTA’s webcast **“Managing Through and Out of Covid-19: Was Our Crystal Ball Right?”** Attorneys in management positions discussed the impact of the pandemic on our businesses and offered predictions for 2021.

Jessica L. Itzkowitz and **Barry L. Cohen** authored **“Recent Decision Adds Additional Risk for PA-based Businesses; PA’s Consumer Protection Law Widens.”** In a recent decision, the Delaware Supreme Court ruled that insuring against fraud does not per se violate Delaware public policy and held that the insured’s D&O policy covered claims alleging securities fraud.

Marc E. Hirschfield participated in a panel discussion titled **“Liquidating Outside of Chapter 11: Considerations for Cannabis and Other Companies Not Eligible for Chapter 11.”**

The discussion compared and contrasted liquidations and wind-downs under chapter 11, federal and state receiverships, ABCs, and judicial dissolutions.

Marc Skapof and **Virginia D. Gorostiaga** authored **“Delaware Supreme Court Finds Fraud Insurable.”** In a recent decision, the Delaware Supreme Court ruled that insuring against fraud does not per se violate Delaware public policy.

Donna A. Tobin authored “**The Shaky Ground of Unauthorized Embedding.**”

A series of recent cases and settlements involving the unauthorized embedding of images into third-party online content have called into question long-held assumptions.

Jessica L. Itzkowitz authored “**Spilling the “High Tea” Regarding Employee Mental Health: Royal Tell-all Highlights Potential Employer Risks With Regard to Worker Well-being.**”

A recent royal tell-all highlights the potential employer risks surrounding the important issue of mental health.

Barry L. Cohen spoke at the **15th PA Bar Intellectual Property Law Institute**, which included recent updates on all areas of IP, including patents, trademarks, copyrights, trade secrets, domain issues and privacy.

Neil M. Willner authored “**Update to the NY Empire State of Cannabis.**”

Published in the *National Law Review*, this article discussed how New York is making changes to its proposed legislation and regulations at a fast and furious pace.

Neil M. Willner spoke at the NYSBA Annual Meeting on a panel titled “**(dis)Harmonization of Marijuana and Hemp: Implication of the USDA and DEA Hemp Rules.**”

Litigation Department Happenings for 2021

RCCB was pleased to announce **Alexander J. Nassar** was promoted to Partner.

Barry L. Cohen was appointed Co-vice Chair of the Trademark Litigation Committee of the Intellectual Property Law Section of the American Bar Association.

Marc Skapof was appointed to serve as the 2021 Turnaround Management Association (TMA) NYC Chapter President. His term began on January 1, 2021, after serving as President-elect in 2020.

Royer Cooper Cohen Braunfeld was again voted a Philadelphia Top Workplace in 2021. The firm has now been recognized as a top employer in Philadelphia for the past three years.

Mark Skapof spoke with **Citybizlist** about the Turnaround Management Association (TMA) NY Chapter, his career, the pandemic, and what's in store for 2021.

Neil M. Willner spoke to **Citybizlist** about regulatory and compliance

issues regarding hemp and marijuana companies.

Donna A. Tobin spoke to **Citybizlist** regarding cannabis-related trademark issues, including state registrations and pending legalization issues and their impact on trademarking.

Our Team



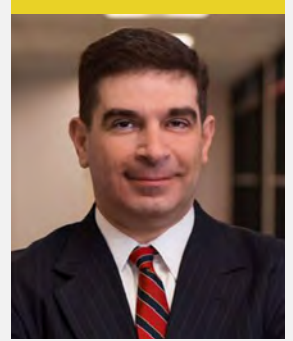
Barry L. Cohen
PARTNER
CONSHOHOCKEN



**Matthew
Faranda-Diedrich**
PARTNER
PHILADELPHIA



**Virginia D.
Gorostiaga**
ASSOCIATE
PHILADELPHIA



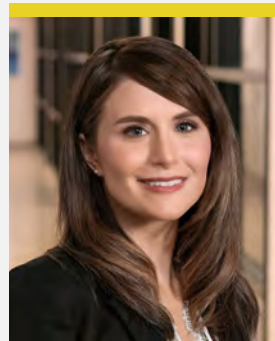
**Marc E.
Hirschfield**
PARTNER
NEW YORK



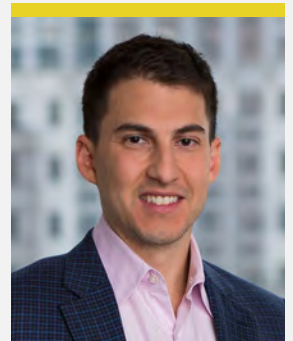
**Jessica L.
Itzkowitz**
ASSOCIATE
PHILADELPHIA



**Sarah A.
Kleinman**
ASSOCIATE
PHILADELPHIA



Julie M. Latsko
ASSOCIATE
PHILADELPHIA

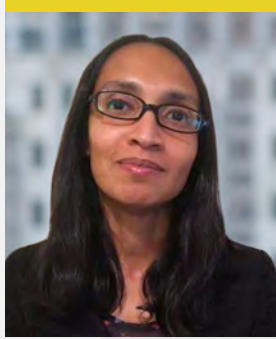


Sean S. Litz
PARTNER
PHILADELPHIA



**Alexander J.
Nassar**

PARTNER
PHILADELPHIA



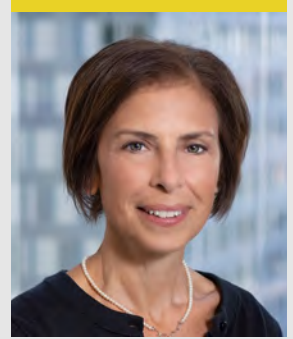
**Sonia S.
Shariff**

ASSOCIATE
PHILADELPHIA



Marc Skapof

PARTNER
NEW YORK



Donna A. Tobin

PARTNER
NEW YORK



Joshua Upin

COUNSEL
PHILADELPHIA



Neil M. Willner

ASSOCIATE
NEW YORK



Margaret Forristall

SENIOR PARALEGAL
PHILADELPHIA

Danielle M. Emmel

PARALEGAL
PHILADELPHIA

Ann Marie Romani

PARALEGAL
PHILADELPHIA



PHILADELPHIA | CONSHOHOCKEN | NEW YORK

WWW.RCCBLAW.COM

DISCLAIMER

Royer Cooper Cohen Braunfeld LLC, RCCB, and the RCCB logo are trademarks of our service marks of Royer Cooper Cohen Braunfeld LLC. Other marks herein are in the properties of their respective owners.

© 2022 ROYER COOPER COHEN BRAUNFELD LLC. ALL RIGHTS RESERVED.