



# TULLY RINCKEY PLLC

## ATTORNEYS & COUNSELORS AT LAW

Attorney Advertising

Spring 2009 Newsletter

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## Clients are Still Top Priority for Growing Firm

The firm, its lawyers, and our clients have received a ton of positive publicity in the past few months. Unfortunately for me, I was not around to witness it!

Until recently, I have been on an extended leave of absence from the firm to serve in the military. During my absence, I successfully completed intensive military training in Colorado Springs to be one of less than 300 soldiers in the 233 year history of the United States Army to be qualified as a Space Operations Officer.

My military experiences have helped me to be a better person, a better lawyer, and a better manager of the multimillion dollar business that the firm has become. My repeated absences to serve in the New York Army National Guard have also helped the firm grow by assuring it's no longer only my individual success in the spotlight.

As much as I love working at Tully Rinckey, when I am away it allows a unique opportunity for others within the firm to step up and do great things without being in my shadow. This was clearly shown in the past few months when the firm celebrated great victories for our clients that were extensively covered in the media. Not only have some of our own cases



received national attention, but our attorneys are being frequently recognized as the go-to commentators for legal analysis. If you missed any of this coverage, I recommend taking a look at some of the newsworthy cases handled by our attorneys on our website at [www.TullyLegal.com](http://www.TullyLegal.com).

I am proud to announce that 2008 was a great year of growth for the firm due to the loyalty of our clients. We have been named by the leading Albany business newspaper as one of the top law firms in the Capital Region. Our growth in 2008 is evidence that this firm is positioned to not only survive these tough economic times, but to thrive in them because of our sound business plan and practices.

As we move into 2009, I want to assure you that your association with my firm is important to us. We mail out

these newsletters every few months so that you are kept abreast of the happenings at Tully Rinckey and, more importantly, these newsletters tell you about legal issues that could have an impact on you.

We hope that you find them interesting and if you have suggestions on how we can improve any facet of our operation, please email me at [mtully@tullylegal.com](mailto:mtully@tullylegal.com).

If you like the services we are providing, tell your friends, family members, or co-workers about us. If you don't, tell me by calling my private home office number, (518) 640-1280.

Best regards,

Mathew B. Tully  
Founding Partner

### New Attorneys



**Maria C. Tebano, Esq.**  
PARTNER  
Civil Litigation  
Employment Law  
Family & Matrimonial Law



**Peter E. Mina, Esq.**  
ASSOCIATE  
Federal Employment Law

## New Additions



**Michael Clemente**  
DIRECTOR OF CLIENT RELATIONS



**Michelle Richards**  
CLIENT RELATIONS COORDINATOR



**Alexis Avellino**  
PARALEGAL



**Ciara McCann**  
MEDIA COORDINATOR

# Asbestos Exposure Causes Lifetime Problems for Soldiers

BY GREG T. RINCKEY, MANAGING PARTNER



Veterans who worked aboard ships, like the one above, are at a higher risk of asbestos exposure due to the materials used in the construction of these vessels.

As you may be aware, both Mat and I are Army veterans, myself serving in the Judge Advocate General's Corps and Mat currently a member of the New York Army National Guard. This shared history makes our firm one that is committed to serving the veteran community in any way we can – mostly through the hours we have spent furthering the employment rights of military personnel throughout the country.

Recently, a disturbing trend affecting the health and medical needs of our nation's serving men and women has been brought to our attention and I feel compelled to share the information with you. Mesothelioma, a disease with no known cure, has hit many U.S. veterans who were repeatedly exposed to asbestos dust and asbestos based products during their time in service.

You may be wondering how mesothelioma can be linked to a patient's time in service. It's commonly known that every branch of the U.S. military and many civilian employers have used asbestos in some way. Asbestos exposure was especially severe for servicemembers since it was used throughout ships and machinery from the 1930s through the 1970s. Pipes, adhesives, pumps, gaskets, instruments and many other ship parts and machinery all contained asbestos.

Anyone who served on a ship was likely exposed. Shipyard workers, in particular, run a very high risk of mesothelioma because they worked directly with asbestos when building new ships and salvaging parts from older ones.

We believe that the veterans diagnosed with this disease should have a full understanding of their legal options. A diagnosis of mesothelioma presents a nearly 100 percent certainty that someone or a company is at fault. The companies who used asbestos materials despite knowledge of the harm it would cause should be held responsible for their actions.

As a veteran owned and operated law firm, we want to help veterans diagnosed with mesothelioma secure the financial assistance and compensation available to them by law. We are in close contact with experienced mesothelioma attorneys who share the same morals and values that we do to assist our fellow veterans in this process.

**If you have any questions about this devastating disease and your legal options when confronting it, contact our office at (518) 218-7100 or via email at [info@tullylegal.com](mailto:info@tullylegal.com).**

# A Guide to Business Contracts

Over the years a lot has changed in the process of forming a business. That being said, there are also certain things that remain constant and will always be vital to the livelihood of a business. One of the most important elements is a thorough contract. It's simply not practical to rely solely on a handshake or unspoken agreement anymore, as contracts have become one of the most essential pieces of a successful business, small or large.

Knowing which types of contracts you will need and how to draft them can be confusing and a bit overwhelming. Below are several different forms of business contracts, many of which will be helpful to you when starting your business:

## Partnership Agreement

This is an agreement made by business partners which specifies the terms of the division, shares of profits each partner will take, responsibilities each will have, what will happen if one partner should leave, and other important guidelines.

## Employment Agreement

This document details the rights and obligations of both the employer and the employee. This may include salary and benefit information, job description and job responsibilities.

## Property Management Agreement

You will need this form of contract if your business rents or leases an office building, apartment or storage space. General things outlined in the agreement consist of who will be handling the property, how fees will be collected, and the responsibilities of the property manager.

## Confidentiality Agreement

One of the most important contracts, a confidentiality agreement will ensure your business strategies, ideas and other work products that you have developed will remain as company property and confidential, even after an employee leaves or is terminated. There are a number of factors to consider when drafting one of these contracts. For instance, a contract should specify how

its terms will be enforced and what actions will be taken if one party fails to meet their obligations. It should also give all parties involved a sense of security in regards to the business relationship, alleviating potential problems before they actually manifest.

Most business contracts are filled with mind-bending legal language though for most contracts, legalese is not essential or even helpful. In order to increase your chances of success, it is necessary that the language be clear and concise so that all parties have a good understanding of the deal.

In addition, seeking the help of an experienced business law attorney when putting together all the paperwork is highly recommended. At Tully Rinckey we know the ins and outs of drafting a complete contract and will have your best interests in mind. Starting a business can be risky, and having the proper contracts can make the process safer and easier down the road.

# Employee Rights During Layoffs

BY ARIEL E. SOLOMON, SENIOR ASSOCIATE

A downward spiral of the economy can generally mean one thing: an increase in layoffs at companies both large and small. Downsizing may seem simple, but executing a layoff is far more complicated than just shedding jobs.

Companies risk taking unlawful measures that may come back to haunt them if they don't take the time to assess the goals of a layoff and determine the criteria for making cuts. It is highly recommended that managers consult with their legal counsel during the process to decrease the risk of facing lawsuits after. Employees should also take the time to ensure they've read up on their rights and that all of them are being met.

Some of these rights include:

## 1) Health Insurance

If employees are covered by a group health insurance plan provided by the employer, then layoff rights may entitle them to COBRA extended health insurance benefits. COBRA is a Federal act that requires employers with 20 plus employees, who already provide health insurance benefits, to offer extended, temporary health insurance to employees in certain situations – including layoffs.

## 2) Severance Pay

Severance pay is money that the employee receives in addition to salary and other monies owed by the employer after a layoff. Severance packages or pay are normally based on length of service. When a severance package is extended, it is typically on the condition that the employee must sign an agreement in order to receive the pay. The agreement typically details the terms of the layoff and a release clause that prevents the employee from taking legal action against the employer.

## 3) Advance Notice of Layoffs

In certain situations, the Worker Readjustment and Retraining Notification (WARN) Act requires employers with 100 plus employees to give advance notice of up to 60 calendar days for mass layoffs or plant closures. Employees entitled to advance notice under WARN range from managers and supervisors to hourly and salaried workers alike. The purpose of the Act is to provide time for adjustment and to search for alternative employment.

It's no question that layoffs can be a legal minefield for employers and employees to navigate. Employers will save both money and face by consulting with legal

counsel experienced in employment law before carrying out a reduction in force. And employees who feel they have been discriminated against during the layoff process have a number of legal options in front of them.

**For more information regarding company layoffs and employment discrimination, contact our office at (518) 218-7100 or via email at [info@tullylegal.com](mailto:info@tullylegal.com).**



Look for Mathew Tully's  
"Ask the Lawyer"  
Columns in the  
**MilitaryTimes**  
and  
**The SARATOGIAN**



Look for Greg T.  
Rinckey's "Ask the  
Lawyer" Column in the  
**FEDERALTIMES**

## In the Giving Spirit of the Season

For the second year in a row, our firm has joined Albany County Family Court in ensuring a merry Christmas for local families through participation in the Court's eighth annual Adopt-a-Family program.

Both attorneys and support staff members worked together to ensure that a local family received the holiday that they deserved. In addition to shopping and wrapping presents, our team of dedicated individuals personally delivered these gifts to the family, keeping the holiday personal and putting faces to both sides of the program.

At Tully Rinckey we pride ourselves on being not only a professional firm, but on giving personal attention to our clients, a touch we have extended to the Adopt-a-Family program this holiday season.

The firm's family and matrimonial law department, which ranks as one of the largest in the Capital Region, regularly handles cases in Albany County Family Court.



(Top) Human Resources Manager, Hollie Collett handles the wrapping of the gifts for our adopted family.

(Left) Just some of the presents that the firm provided for our family this holiday season.



(CONTINUED FROM PAGE 2)

now constitutes a class A misdemeanor for a first offense and increases to a class E felony for subsequent offenses.

Sex offenders were high on the agenda as a number of new laws were passed in this area. A new class B felony offense "Facilitating a Sexual Performance by a Child with a Controlled Substance or Alcohol" was created. Also, "Luring a Child", a new class E felony was created prohibiting the luring of a child into a motor vehicle, aircraft, watercraft, isolated area, building, or any part thereof for the purposes of committing a sexual offense or other felony offenses against the child.

The legislature passed two new bills relating to animals. In an effort to curb animal fighting, it is now a crime to be a spectator at any place where an exhibition of animal fighting is conducted. There is a \$500 fine for a first offense, increasing to \$1,000 fine

and / or one year in jail for a second or subsequent offenses within five years. A new law prohibits the confinement of companion animals in extreme temperatures without proper ventilation or protection. Failure to comply results in a fine of \$50 to \$100 for a first offense, increasing to fines of \$100 to \$250 for subsequent offenses.

With these new laws being passed and a constantly changing legal landscape it is important to know your rights and options should you find yourself facing any criminal charges.

**Our attorneys are available 24/7 via an emergency phone at (518) 727-3593.**

**For more information or to retain our services visit:**

[www.518CRIMELAW.com](http://www.518CRIMELAW.com)

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# How to Keep Seniors Safe From Dangerous Falls

BY SEAN J. DOOLAN, OF COUNSEL TO MARTIN HARDING & MAZZOTTI

According to the Center for Disease Control and Prevention, each year 1.8 million Americans over the age of 65 are injured in falls. Falls can cause devastating injuries, especially in seniors with osteoporosis, that force them out of their own homes and into assisted living facilities.

While the causes of falls vary, they can generally be divided into two categories: personal factors and environmental factors. Personal factors include muscle weakness, balance problems, limited vision, and medications such as tranquilizers. Environmental factors include loose rugs, other tripping hazards, poor lighting, no grab bars, furniture, wheelchairs and physical restraints.

Among a number of different interventions that can substantially reduce the risk of falling in the elderly, the environmental factors are easiest to identify and remedy. Tack down carpet edges or use non-skid wax for areas of flooring without carpet. Keep cords and small objects clear of walking paths and install handhold bars to aid with walking or activities such as showering.

Lighting is also an important part of any fall prevention plan. The elderly have far more difficulty with visual acuity, adaption to the dark, peripheral vision and adjusting to contrasts in lighting. You should aim to provide lighting that reduces glares and shadows on the floors, provide accessible



light switches upon entry to a room, and adequate lighting in areas frequented at night, such as the bathroom.

Common medical conditions such as diabetes and arthritis can increase someone's risk of falling as well. When a diabetic has low blood sugar they become nervous, weak, and tremble, all of which impact walking. Diabetes can also lead to visual impairment that can limit one's ability to walk. Arthritis causes decreased joint mobility and pain upon moving, thus creating a greater risk of falling.

You should consult with your loved one's primary care physician to determine their

personal risk factors. Ask if there are any medications they are taking that may affect balance and mobility or if there are any common medical conditions that exist that may increase the risk of falling.

If your loved one is at risk for falling it is important that you implement the necessary preventative measures to keep them safe, whether they are living at home or in an assisted living facility. By taking the above precautions, you will not only get peace of mind, you will greatly decrease their chances of suffering painful injuries.

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## A New Year, New Laws, and New Reasons to Know Your Rights

BY THOMAS J. CARR, OF COUNSEL

**“No man’s life,  
liberty, or property  
are safe while the  
Legislature is in  
session”  
– Judge Gideon J.  
Tucker, 1866**

A new year, a new session of the legislature. Let's look back at the laws that passed the legislature last year and are now in effect.

In response to anti-war demonstrations at the funerals of servicemembers killed in action, a new law, “Disturbance of a Funeral or Memorial Service” was passed. Such conduct constitutes a class A misdemeanor which allows for a maximum penalty of one year in jail.

In the domestic violence area: “Disabling or Removing Telephone Equipment with the Intent to Interfere with the Placing of a Call for Emergency Assistance” is now a class A misdemeanor. The definition of

what constitutes a domestic relationship for Family Court orders of protection has been expanded to “persons who are not related to each other by consanguinity or affinity and who are or have been in an intimate relationship regardless of whether such persons have lived together at any time.”

Identity theft figured prominently during the 2007-2008 session. New laws were enacted relating to “skimmer devices”. A skimmer device is a device used to capture personal identifying information from a credit card, debit card, public benefit card etc. Possession of such a device with the intent to use it unlawfully

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## The Benefits of a Prenuptial Agreement in a Second Marriage

BY JENNIFER R. SUNDERLIN, ASSOCIATE

You've already gone through a messy divorce and made a promise never to get into that situation again, yet you find yourself with a new love and looking to remarry. Knowing what can go wrong, there are steps you can take this time around to ensure that you don't find yourself repeating past mistakes.

First and foremost, get a prenuptial agreement! Every lawyer will agree that this is the number one way to protect your assets should something happen in your marriage. I'll admit it's not the most romantic way to start off a new chapter of your life and the subject may be hard to bring up. However, you shouldn't let a possible awkward discussion deter you from doing what's in your best interest.

A prenuptial agreement is a legal contract made between prospective spouses in which they define how they want to distribute their assets and property rights in the event of divorce or death. Financial issues, such as the control and possession of property, assets taken into the marriage

and obtained during the relationship, as well as the couple's future earnings can all be addressed in the prenup.

These agreements have become increasingly popular among couples entering into a second marriage. Often these individuals have children from previous marriages and more significant assets that they need to take care of. Not to mention the knowledge of how difficult a divorce is without this important document.

If you've already remarried and didn't take the time to get a prenup, don't worry, you can still get what is called a postnuptial agreement. Much like a prenup, a postnup specifies how assets and property will be distributed in case of death or failure of the relationship, except for the fact that it is drafted and signed after marriage. These agreements can actually strengthen a marriage, allowing couples to work through any monetary disputes and focus on the marriage itself.

I've seen the misery divorce can bring firsthand with my clients. I can't emphasize enough how important a prenup, or a postnup can be and the difference it can make for couples. It is always better to prepare in advance than to end up in a legal battle that could cost thousands of dollars, unnecessary emotional distress and financial disarray.

**For more information about prenuptial and postnuptial agreements, call our office at (518) 218-7100 or visit:**

[WWW.TULLYLEGAL.COM](http://WWW.TULLYLEGAL.COM)

