New York Law

SERVING THE BENCH AND BAR SINCE 1888

OLUME 215—NO. 122

NEW YORK, TUESDAY, JUNE 25, 1996

TODAY'S NEWS

Update

Albany Supreme Court Justice Lawrence E. Kahn will appear before the Senate Judiciary Committee this morning for a hearing on his nomination to the U.S. District Court for Northern New York. Clarence Sundram, the chairman of a state commission on the mentally disabled, also a nominee for the Northern District, is not among the six candidates who will have hearings today. A spokesperson for the committee said that at least one more hearing will be held. Justice Kahn was recommended by Senator Alphonse D'Amato, while Mr. Sundram was recommended by Senator Daniel Patrick Moynihan. Nationally, 17 judicial candidates, in addition to Mr. Sundram, are still awaiting hearing dates.

The State Bar Association reported it is seeking members to serve for approximately four weeks beginning in late August as volunteer supervisors for the election in Bosnia-Herzogovina. It said election law expertise and a knowledge of foreign languages are helpful but not essential. Citing the need for "physical fitness," the association pointed out that supervisors may be assigned to remote polling sites and may live and work under hardship conditions. Additional information and applications may be obtained from Audrey Ryan at the State Bar in Albany, (518) 463-3200, ext. 5700.

The City Bar will receive the 1996 Award of Merit Saturday from the State Bar Association for its Community Legal Immigration Clinic

The Supreme Court agreed yesterday to decide whether a sexual-harassment suit against President Clinton should be delayed while he remains in office. The action puts on hold the suit by Paula Jones, a former Arkansas state employee, until after the November election, *Clinton v. Jones*, 95-1853. The Eighth Circuit Court of Appeals ruled the case should go to trial during Mr. Clinton's presidency. The White House maintains that Presidents should not face trial in private civil cases while in office. The Justices are expected to hear arguments this fall or winter and decide the matter next year.

A Manhattan judge, despite personal reservations, has refused to set aside a verdict clearing the City Health and Hospital Corp. of liability in the death of a doctor strangled at Bellevue Hospital in 1989 by a homeless man. Supreme Court Justice Ira Gammerman, in denying the motion, said that had he been the trier of fact, he would have ruled for the family of the murdered Dr. Kathryn Hinnant. The plaintiff's evidence that security had been lax at Bellevue Hospital was "very strong," Justice Gammerman noted, but the "genius of the jury system" is that a group of people with varying backgrounds is more likely to produce an "impartial verdict" than one person.

Seven persons have been indicted in a scheme to dominate waste hauling north of New York City, Southern District U.S. Attorney

Defaulting Insurer Can Be Barred From Surety Work

BY CERISSE ANDERSON

NASSAU COUNTY has the power to bar an insurer from acting as a surety on future public contracts in the county as long as the insurer is in default on a surety bond, a divided appellate court has ruled in a victory for local governments.

The decision will be published tomorrow.

The Appellate Division, Second Department, last week split 3-1 in *Matter of Aetna Casualty and Surety Co. v. County of Nassau* in ruling that the state's Insurance Law does not bar the county from enforcing a charter provision which prohibits it from contracting with any party in default on a bond.

However, Justice William D. Friedmann, writing in dissent, objected that the county was "blacklisting" the insurer "to coerce Aetna into paying the county a sum in excess of $3 million, alleged to be owed to it because of a purported 'default' by Aetna on a building project at the Nassau County Community College in January 1995."

In 1992 Aetna became the surety for Manshul Construction Corp. for the construction of two buildings at the college. The county twice declared that Manshul was in default on the contract, and finally a court ordered Aetna, as surety, to complete the project. Nassau was dissatisfied with Aetna's efforts and declared it in default in January 1995.

The county claimed damages from the default exceeded $3 million and then informed potential bidders that it would no longer accept Aetna as a surety on any publicly bid contract.

The insurer brought an Article 78 to challenge the county's ban and argued that Nassau County was exercising powers that exclusively belonged to the State Superintendent of Insurance. Acting Justice Joseph A. DeMaro had denied the peti-

Ex "C-1"

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REPORT

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New York Law

SERVING THE BENCH AND BAR SINCE 1888

VOLUME 215—NO. 125

NEW YORK, FRIDAY, JUNE 28, 1996

TODAY'S NEWS

Update

e City Bar yesterday urged Gov- ıor Pataki to honor the decision the State Commission on Judi- l Conduct, whatever the out- ne, and not seek to remove ıooklyn Criminal Court Judge in Duckman through impeach- ıt by the State Senate. The asso- ion issued a task force report ng the process of legislative re- al an "anachronism that has worked." In addition, the re- said, impeachment should be rved for judicial corruption, h is not the case with Judge man, who was the target of ism for his handling of do- c violence cases. The Com- on on Judicial Conduct is tigating allegations that Judge nan has an anti-prosecutorial and has made demeaning ents about minority women.

partners have left Donovan Walsh & Repetto, a 16-attor- m specializing in maritime l insurance defense, to form wn firm. John A.V. Nicoletti, ith David R. Hornig and F. Sweeney have formed Ni- Hornig & Sweeney, said d the majority of the firm's They brought with them six ıtes. A Donovan Parry ıan declined to comment.

Albany Supreme Court Justice Lawrence E. Kahn was approved yesterday by the Senate Judiciary Committee for a judgeship in the Northern District of New York. Justice Kahn was among six judicial nominees who cleared the Senate Judiciary Committee, bringing to 23 the number of candidates awaiting confirmation by the Senate. Eighteen others are still pending before the committee. Meanwhile, Attorney General Janet Reno criticized the Senate for its "extremely discouraging record" in failing to confirm any federal judges during the current session, in contrast to recent presidential election years when large numbers were confirmed. Ms. Reno pointed out there are 68 unfilled judgeships, 26 of which have been vacant for more than 18 months.

A Manhattan judge signed a temporary restraining order yesterday that bars three newly formed organizations from going forward with plans to take over nearly 7 percent of the Legal Aid Society's criminal caseload. Supreme Court Justice David B. Saxe scheduled a July 3 hearing on Legal Aid's motion to enjoin the Giuliani Administration from implementing two-year contracts signed with the three groups. Legal Aid contends the City violated contract ...

Excerpt from the Decision

"To deny plaintiffs the right to seek recovery of the very substantial sums that they have been caused to expend, in remediating and inhibiting the potential for injury and damages due to defendants' unsafe product, would be to permit the alleged defendant-wrongdoers to be 'unjustly enriched' by insulating them, at plaintiffs' expense, from potential tort and indemnity liability that would otherwise have arisen. This is precisely the kind of inequitable result, and unjust enrichment, that an indemnity action is designed to prevent."

Per curiam opinion

Peeling lead paint in a Bronx apartment.

City's Lead Paint Sui

Indemnity, Restitution Claims Against Mar

BY CERISSE ANDERSON

NEW YORK City's suit against manufacturers of lead-based paint was revived yesterday with an appellate court's restoration of its claims for restitution and indemnity. The City is seeking reimbursement for abating and cleaning up hazardous conditions in City-owned properties and for the treatment and monitoring of children exposed to lead paint.

The decision will be published Monday. EX "C-2"

The Appellate Division, First Department, in *City of N...*

the two theories of recovery whi had been dismissed in 1994 by the Justice Kristin Booth Glen on the b sis of the First Department's ruling an asbestos contamination case, *8 7th Ave. Associates Ltd. Partnership AAER Sprayed Insulations*, 199 AD2 50.

The City's suit originally included claims for negligence and product lia bility which were dismissed on statute of limitations grounds in 1991. Anoth- er claim alleging fraud based upon the manufacturers' alleged intentional misrepresentations to the public as to the safety ...