

## MORRIS DUFFY ALONSO & FALEY MUNICIPAL LAW UPDATE

### **Late Notice of Claim Allowed Against School District That Had Actual Notice**

*Brevard v. Westbury Union  
Free School District, 7175/08*

The parents of a 14-year-old-girl alleged to have been repeatedly raped by a school aide brought a claim against the Westbury Union Free School District for negligent hiring and lack of supervision, which was subsequently dismissed by a Nassau County Judge due to the plaintiff's filing the notice of claim 37 days late.

Reversing the dismissal, Supreme Court Justice William R. LaMarca found that the District had actual notice of the event within 30 days of its occurrence. In his decision, Judge Lamarca noted that "preoccupation with the medical and psychological care required by his daughter due to the trauma caused was a reasonable excuse for filing the notice of claim 37 days late."

### **Limits on the Size and Height of Commercial Signs do not Violate Constitutional Rights**

*Lamar Advertising of Penn,*

*LLC, v. Pitman, 2008 WL  
4053441  
(N.D.N.Y. 2008)*

Lamar Advertising challenged the Village of Marathon's zoning ordinance regulating the maximum size of commercial signs, claiming a violation of its right to freedom of speech under the First Amendment. The laws were enacted by the upstate village to preserve its rural character. Lamar Advertising also challenged the Village's decision to deny the plaintiff a variance on equal protection grounds.

As to State law, the District Court found that: "[i]t is well established under New York laws that local zoning boards have broad discretion in considering applications for variances...This Court holds that the [board] had discretion to deny plaintiff's application for a variance".

In dismissing the company's equal protection claim, the Court found that it was not a member of a protected class and had no evidence that it was treated differently than any similarly situated firm. The Court also found that the

plaintiff did not have standing to challenge the constitutionality of the statute on First Amendment grounds since other ordinances that were not being challenged would likely

bar construction of the sign, leading to the conclusion that invalidating the law would not redress the company's alleged injury.