



This Week in New York

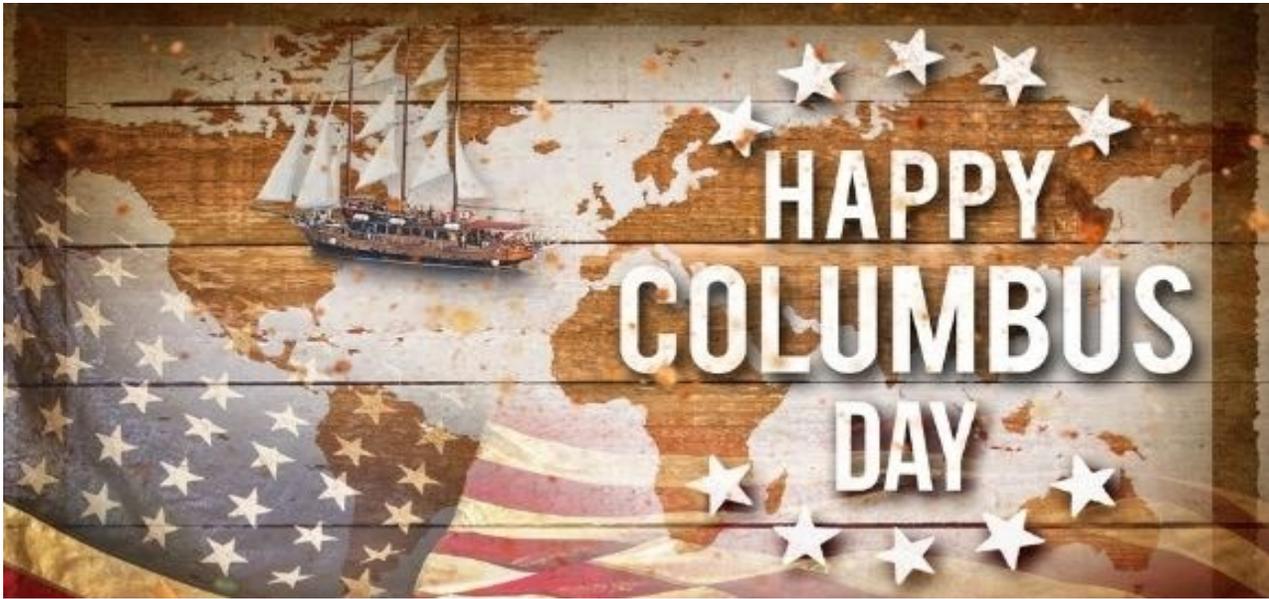
Covering New York State and City Government

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“Every record has been destroyed or falsified, every book rewritten, every picture has been repainted, every statue and street building has been renamed, every date has been altered. And the process is continuing day by day and minute by minute. History has stopped. Nothing exists except an endless present in which the Party is always right.”
-George Orwell, 1984-



In the News – New York State



Micron Announces Historic Investment of Up to \$100 Billion to Build Megafab in Central New York

Micron Technology, Inc., one of the world’s largest semiconductor companies and the only U.S.-based manufacturer of memory, this week announced plans to build the largest semiconductor fabrication facility in the United States, pledging to invest up to \$100 billion over the next 20-plus years to construct a new megafab in Clay, New York, Onondaga County.

Over the course of the investment, the new megafab will increase domestic supply of memory and create nearly 50,000 New York jobs, including approximately 9,000 “high paying” Micron jobs. The first phase investment of \$20 billion is planned by the end of this decade. The site could eventually include four 600,000 square foot cleanrooms, for a total of 2.4 million square feet of cleanroom space – the size of approximately 40 U.S. football fields.

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New York State is contributing \$5.5 billion in incentives to Micron over the life of the project and federal grants and tax credits will come from the CHIPS and Science Act. In addition, the Town of Clay and Onondaga County are providing infrastructure support for Micron's semiconductor facility.



Governor Hochul, US Senator Schumer and Micron President Sanjay Mehrotra celebrate.

“I am grateful to President Biden and his Administration for making the CHIPS and Science Act a priority, to Senator Schumer and a bipartisan coalition in Congress for passing the legislation, and to Governor Hochul and County Executive McMahon for the local and state partnerships that made this investment possible. Micron will leverage the diverse, highly educated, and skilled talent in New York as we look to build our workforce in the Empire State,” said Micron President and CEO Sanjay Mehrotra.

Also this week, IBM Chairman and CEO Arvind Krishna announced a \$20 billion investment across sites in Poughkeepsie, Yorktown, and Albany, in the areas of research and development, semiconductor manufacturing, mainframe technology, artificial intelligence and quantum computing. President Joe Biden toured the Poughkeepsie facility on Thursday.



Comptroller DiNapoli: MTA Outlook Shows Growing Need for New Funding as Budget Gaps Widen

The Metropolitan Transportation Authority (MTA) has two years to bring back riders and rebuild fare revenue before federal relief aid runs out, but in that time, it must develop plans to cover budget gaps that start at \$2.5 billion in 2025 and grow in the outyears, according to [a report on MTA's financial outlook](#) released this week by New York State Comptroller Thomas DiNapoli.

“The serious structural budgetary imbalance that the MTA has to fix is clearer now that it has scrapped its ill-advised plan to cover operating costs by borrowing,” Comptroller DiNapoli said. “The MTA needs to come up with billions of dollars to pay for operations in the coming years... The MTA has begun to lay out options for its funding partners, leaving them with some tough decisions. The authority must do its part to ensure any funds provided are maximized to enhance operations and achieve structural budgetary balance.”

The Comptroller indicated that the Authority's budget gaps are forecast at \$2.5 billion in 2025 and 2026. However, as spending outpaces inflation projections they could be as high as \$4.6 billion in 2026 if the MTA's “unspecified” gap-closing program falls short and economic trends increase the authority's recurring costs and weaken tax revenues.

Comptroller DiNapoli asserted that the budget gaps and risks are likely to be too large for the MTA to manage without additional funding or significant fare and toll increases that could hurt regional economic growth. He noted that the MTA has suggested that if “funding partners” provide additional dollars by 2023, the Authority would use federal money to pre-pay \$3.6 billion of its debt and reduce budget deficits by about one-third in the years ahead.

The Comptroller cautioned the MTA’s funding partners, emphasizing that the Authority must specify and increase planned savings, identify means for increasing non-operating revenue and ridership beyond current projections, and enhance service efficiency. The report on the MTA’s financial outlook also noted that:

- Every 1% increase in inflation over the 2% assumption could raise MTA’s costs by \$150 million annually.
- DiNapoli projects additional risks to the MTA’s July Plan could increase its budget gaps by \$220 million in 2022, \$250 million in 2023, \$341 million in 2024, \$401 million in 2025 and \$461 million in 2026. Among the risks are higher than projected pension and overtime costs, and \$100 million in anticipated savings that the MTA has not yet identified.
- Congestion pricing, estimated to bring \$15 billion for the MTA’s \$55.4 billion, 2020-2024 capital program. The MTA expects to start receiving \$1 billion in annual revenue in late 2023. Using congestion pricing funds to help close operating gaps would ultimately put the authority’s capital program at risk and substantially increase its debt burden.



Chapters of the Laws of 2022

Chapter 564 – Sponsored by AM Burdick/Senator Mannion -- Creates a new threshold for what percentage of a preferred source contract must be performed by New Yorkers with disabilities.

Chapter 565 – Sponsored by Senator Mannion/AM Burdick -- Enables the Office for People With Developmental Disabilities to establish voluntary training and certification program for employers that hire people with disabilities.

Chapter 566 -- Sponsored by Senator Gaughan/AM Thiele -- Allows public water suppliers to revive any action, civil claim, or cause of action involving an emerging contaminant that may have been barred because the statute of limitations had expired. This allows local water authorities to pursue actions against polluters to recover the costs of treatment and filtration as a result of contamination.

Chapter 567 -- Sponsored by Senator Bailey/AM Peoples-Stokes -- Creates a framework for the State’s Minority-and Women-Owned Business Enterprise (MWBE) program to investigate and audit fraud.

Chapter 568 --- Sponsored by Senator Sanders/AM Bichotte Hermelyn -- Allows businesses to use the MWBE Development and Lending Program funds to refinance existing debts.

Chapter 569 -- Sponsored by Senator Sanders/AM Bichotte Hermelyn -- Allows New York City to award contracts up to \$1 Million to MWBEs without a formal competitive process.

In the News – New York City



As City Anticipates Surpassing Highest Recorded Shelter Census, Mayor Adams Declares Asylum Seeker State of Emergency

New York City Mayor Eric Adams today issued [Emergency Executive Order 224](#), formally directing all relevant city agencies to coordinate their efforts to respond to the asylum seeker humanitarian crisis and construct the city's Humanitarian Emergency Response and Relief Centers.

In an address today, Mayor Adams also called for emergency federal and state aid to handle the continued influx of asylum seekers. The city projects costs of more than \$1 billion related to asylum seekers in this fiscal year, as well as expedited work permits, a national decompression strategy, and a resettlement strategy.

According to the Mayor, New York City now has more than 61,000 people in its shelter system, including New Yorkers experiencing homelessness and asylum seekers. One in five individuals (20%) in the shelter system is an asylum seeker. Almost 20,000 are children.

"April through October, month after month, we have handled the arrival of hundreds of buses, providing triage, water, and urgent medical assistance, Mayor Adams explained. "We've set up 42 hotels as emergency shelters. We have opened a Navigation Center led by Catholic Charities that provides case management, a range of settlement options, health services including medical checkups, vaccinations, medication refills, and mental health services. We have also already enrolled over 5,500 children in school through Project Open Arms... We are providing legal information, Fair Fares transit support, and IDNYC enrollment to those who need it... Our shelter system is now operating near 100-percent capacity."



Administration Announces 'College Choice' Program to Help Cover Cost of College Expenses for Hundreds of Students in Foster Care

New York City Mayor Eric Adams and New York City Administration for Children's Services (ACS) Commissioner Jess Dannhauser this week announced "College Choice," a program that will provide college students in foster care with greater support systems, including financial support.

As part of the program, ACS will help pay remaining costs of college tuition— up to \$15,000 each year — in addition to any room and board not covered by a student’s financial aid package. In addition, College students in foster care will also receive a \$60 daily stipend per year, which can be used towards food, clothing, transportation, and more.

Specifically, College Choice will offer all full-time college students in foster care the following benefits covered by ACS:

- Tuition and mandatory fees (up to \$15,000 per year), that are not covered by a student’s financial aid award.
- The cost of room and board.
- A stipend of \$60 per day to cover food and other expenses while attending school. This benefit is also available for up to six months after graduation from college.
- Students attending a college or university in New York City can choose to live in housing sponsored by that college or university, or in one of the following six housing options:
 - The Towers at City College of New York
 - The Summit at Queens College
 - Hunter College Residence Hall (Only for students attending Hunter College)
 - International House of New York
 - 92Y Residence
 - Outpost-Club Student Housing in New York City
- Students enrolled only in online classes at a college or university can live in housing sponsored by that college or university, or in any of the six housing options.

All youth in foster care will additionally be able to keep the coaching they already receive through “Fair Futures,” which has provided thousands of youth in foster care, ages 11 to 21, with dedicated coaches and tutors since 2019. The Adams administration recently expanded Fair Futures for youth ages 21-26.

Briefs

Governor Hochul Confirms Marijuana Dispensaries Set to Open This Year

Governor Kathy Hochul said the State’s plan to have 20 conditional adult-use retail dispensaries open by the end of this year is “still on track” and the State expects “another 20” to open every month or so thereafter, according to an interview with the *Advance Media New York* editorial board this week.

“We expect the first 20 dispensaries to be open by the end of this year,” Governor Hochul said. “And then every month or so, another 20. So, we’re not going to just jam it out there. It’s going to work and be successful.”

The State Office of Cannabis Management received over 900 applications for up to 150 Conditional Adult Use Recreational Dispensary (CAURD) licenses. These licenses will have access to support from the Dormitory Authority of the State of New York in terms of locations and funding. In addition, up to 25 licenses will be granted to nonprofit organizations which will not be eligible for DASNY support.

Six Real Estate Partners Chosen in Empire Building Challenge to Advance Climate-Friendly Building in NYS

Six new real estate partnerships will join the State's \$50 million Empire Building Challenge (EBC) to help advance a climate-friendly building stock in New York State. The partnerships will develop approaches to reduce carbon emissions in the heating and hot water systems for 5.6 million square feet of existing high-rise buildings, including 316 affordable housing units.

The new partners are:

Amalgamated Housing Corporation -- Team includes: EN-POWER GROUP, Egg Geo. Buildings: Tower I & Tower II, 3965 - 3975 Sedgwick Avenue, Bronx NY 10463, two multi-family affordable housing properties, 316 affordable housing units, 20 stories, 425,070 square feet

Boston Properties -- Team includes: Jaros, Baum, & Bolles Consulting Engineers, LLP, Norges Bank Investment Management. Building: 601 Lexington Ave, New York, NY 10022, one high-rise commercial office building, 59 stories, 1.79 million square feet.

Brookfield Properties -- Team includes: Cosentini Associates. Building: 660 5th Avenue, New York, NY 10022, one high-rise commercial office building, 41 stories, totaling 1.5 million square feet

Equity Residential -- Team includes: Goldman Copeland Consulting Engineers, Jones Lang LaSalle, RUHL. Buildings: 180 Montague, Brooklyn, NY 11201, and 777 Sixth Ave, New York, NY 10001, two multi-family buildings, 31 and 32 stories, totaling 467,762 square feet.

LeFrak Organization -- Team includes: Steven Winter Associates, Inc., Ryan Soames Engineering. Building: 59-17 Junction Boulevard, Queens NY 11373: One Class B commercial building, 20 stories, totaling 395,745 square feet.

Tishman Speyer, Team includes: Jaros, Baum & Bolles Consulting Engineers, LLP, Brightcore, Watt Time. Building: 520 Madison Avenue, New York, NY 10022: one high-rise commercial office building, 43 stories, totaling 1.1 million square feet.

The EBC now has partnerships with 16 real estate leaders, including those [announced](#) last year, who control over 228 million square feet of commercial and multifamily New York real estate, including more than 75,000 housing units. These leaders have made public commitments to decarbonize over 125 million square feet, including close to 1,500 units of affordable housing.

NY Launches Office of Language Access

Governor Kathy Hochul this week launched the Office of Language Access to oversee and provide guidance on the State's expanded Statewide Language Access Policy.

The new language access law codifies and expands New York's statewide language access policy by requiring all executive State agencies that provide direct services or benefits to provide interpretation services in any language. In addition, applicable agencies must translate vital agency documents into the top 12 most commonly spoken non-English languages based on data published by the Census Bureau. These languages currently include Spanish, Chinese, Russian, Yiddish, Bengali, Korean, Haitian Creole, Italian, Arabic, Polish, French, and Urdu. In addition, agencies will have the option of providing information in four additional languages based upon need.

The State Budget set aside \$2 million in funding for the establishment of the Office of Language Access, which will operate out of the Office of General Services.

Attorney General James & Comptroller Lander Recover Prevailing Wage Payments from Real Estate Developer

New York Attorney General Letitia James and New York City Comptroller Brad Lander this week announced they have recovered \$3 million from luxury residential property developer Heatherwood Communities LLC (Heatherwood) for denying workers prevailing wages and benefits. The [stipulation and settlement agreement](#) was released this week.

Heatherwood received tax exemptions on two of its New York City rental properties located in Queens and Brooklyn under the city's 421-a program, but failed to pay prevailing wages and benefits to building service employees, as required under the tax credit program. Heatherwood will return \$723,324, the full amount owed plus interest, to 24 workers and pay a penalty to New York City and New York state for violating the conditions of the tax credit program.

Deliveristas Hubs to Serve NYC's Food Delivery Workers

New York City Mayor Eric Adams and U.S. Senate Majority Leader Charles Schumer this week announced a new hub program for New York City's 65,000 delivery workers that uses existing infrastructure, like vacant city newsstands, to provide a place to rest and recharge.

Street Deliveristas Hubs will create a place for delivery workers to seek shelter from the elements, charge both their electric bicycles and cell phones. The program will be funded through a \$1 million federal grant secured by Senate Majority Leader Schumer in the upcoming appropriations bill for Workers Justice Project/Los Deliveristas Unidos. This pilot program will renovate and transform underutilized structures on city properties. A portion of the federal grant will also be used to help renovate a worker center in Williamsburg for deliveristas.



New York's Revised 9/11 Laws Will Simplify Victims' Claims

By Vito Pitta and Yan Lian Kuang-Maoga
As published in *Law360* (October 6, 2022)

On Sept. 9, just days before the 21st anniversary of the Sept. 11, 2001, terrorist attacks, New York Gov. Kathy Hochul signed a package of legislation that supports 9/11 victims, first responders and their loved ones.

Included in the package were two laws that should have the effect of streamlining the process by which the New York State Surrogate's Court exercises oversight of claims filed with the federal September 11th Victim Compensation Fund, or VCF, on behalf of deceased individuals.

Background

The VCF provides compensation for personal injury and wrongful death claims to eligible victims. In addition to this compensation, the World Trade Center Health Program, administered by the National Institute for Occupational Safety and Health, provides free medical monitoring, treatment and medication to eligible individuals.

Generally, anyone who was present south of Houston Street for any reason between Sept. 11, 2001, and July 31, 2002, may be eligible for health benefits from the World Trade Center Health Program and from the VCF. Eligible individuals can file claims for personal injuries caused by the 9/11 terrorist attacks and the ensuing toxic dust cloud, and beneficiaries of eligible deceased individuals can file personal injury and/or wrongful death claims on their behalf.

While the compensation provided by the VCF is determined by federal law, upon award to an estate of a deceased victim, the distribution of that compensation is governed by state law. In New York, the Estates, Powers and Trusts Law is the applicable law.

New Legislation

Chapter 558 of the Laws of 2022 amends EPTL Section 11-4.7e(3), expanding the application of the provision that enables the VCF to continue processing claims of victims who died of a 9/11-related illness, as well as the claims of those who suffered from a 9/11-related illness but died of an unrelated cause, without requiring the invention of the Surrogate's Court.

Chapter 557 of the Laws of 2022 amends EPTL Section 5-4.6 to obviate the need for a compromise proceeding for VCF awards that consist of solely noneconomic losses. Both bills were drafted to help expedite the payment of VCF awards to beneficiaries of VCF death claims filed on behalf of individuals who suffered from 9/11-related illnesses.

Chapter 558 — Changes to EPTL Section 11-4.7e(3)

Under the EPTL, in order to bring a wrongful death action on behalf of a decedent, a personal representative of the estate must first obtain authorization from the Surrogate's Court. This authorization is granted through the issuance of letters testamentary — where the authorization is issued to the person named as executor in the decedent's will — or letters of administration — where the decedent dies intestate and the authorization is issued to administrator of the decedent's estate.

When letters testamentary or letters of administration are issued, they generally contain limitations on the powers granted: namely, the power to compromise, collect and distribute a settlement from a wrongful death action.

Pursuant to standard procedure, once any wrongful death award is obtained, the Surrogate's Court is required to review the proposed settlement of the claim to ensure that it is adequate; that the allocation of the settlement is just; and that the distribution of the award is made to the proper parties. This process is known as a compromise proceeding.

Wrongful death awards from the VCF have been treated by the EPTL as equivalent to any other award of damages resulting from a wrongful death action. Because the EPTL did not previously distinguish VCF awards from other wrongful death awards, it was not uncommon that letters used to file a claim with the VCF had been restricted to bringing that action.

Pursuant to EPTL Section 11-4.7e(3), the restrictions contained in letters could be disregarded when a decedent died as a result of his or her 9/11-related injury. This same exception, however, did not extend to situations where a decedent suffered from a 9/11-related injury, but had died from another cause.

Since the filing of a claim with the VCF requires the claimant to waive any future lawsuits relating to the claimant's injury, where letters restricted a personal representative's ability to waive such claims, the VCF would not continue processing a claim.

In such situations, the VCF had required that letters be unrestricted, or that the personal representative obtain clarification from the Surrogate's Court as to the personal representative's power to do so. Procedurally, obtaining such clarification required that a claimant to apply for amended letters.

The new change to EPTL Section 11-4.7e(3) expands the application of the exception in this section to any victim of a 9/11-injury, regardless of whether the decedent died as a result of the 9/11-injury. Therefore, the VCF may now rely on this section to continue processing all claims, without the claimant's application to the Surrogate's Court for unrestricted letters, or an order to clarify the fiduciary's authority to file the 9/11 claim.

The change made by Chapter 558 of the Laws of 2022 is shown below:

EPTL 11-4.7e(3) Notwithstanding any other provision of law to the contrary, or any restrictions set forth in letters relating to any decedent who dies as a result of wounds or injury incurred as a result of is a victim of the terrorist attacks on September eleventh, two thousand one, a duly appointed personal representative is authorized to file and prosecute a claim with the fund, and the filing of such a claim for an award from the fund, and the resulting compromise of any cause of action pursuant to the act, shall not violate any restriction on the powers granted to the personal representative relating to the prosecution or compromise of any action, the collection of any settlement, or the enforcement of any judgment.

Chapter 557 — Changes to EPTL Section 5-4.6

Prior to the amendments contained in Chapter 557 of the Laws of 2022, all VCF awards of a deceased victim would be subject to a compromise proceeding in the Surrogate's Court before the proceeds of the award could be distributed to the beneficiaries of a decedent's estate.

In the compromise proceeding, the Surrogate's Court would review the award to ensure that a settlement in a cause of action on behalf of the decedent is adequate, the allocation of the settlement is just, and the distribution is made to the proper parties. When satisfied of all of the foregoing, the Surrogate's Court would issue an order approving the settlement, collection and distribution of the award.

While there is a strong rationale for this in most standard wrongful death actions, it is unnecessary with respect to VCF awards consisting solely of noneconomic losses. In such cases, the VCF issues a very detailed award breakdown, allocating the award between economic and noneconomic losses.

Noneconomic losses are due to the estate of the decedent, and are distributed pursuant to the decedent's will or the laws of intestacy. The amount of the award is determined by a compensation schedule that depends on the type of illness and the severity of the condition.

In recognition of this unique claim process and award determination, the changes to EPTL Section 5-4.6 permit a personal representative to elect a simplified process to request from the Surrogate's Court the authority to collect the award — akin to collecting a death benefit — and distribute it without a lengthy compromise proceeding. To effectuate this alternative to a compromise proceeding, a personal representative may file a consent to the adequacy of the award by all interested parties with the Surrogate's Court.

In practice, the fiduciary will ideally petition the court for amended letters citing the new section, informing the court of the award, and submitting waivers and consents from all interested parties as to the adequacy of the award. The change made by Chapter 557 is shown below:

EPTL 5-4.6 (g): In the case of a recovery of award from the September eleventh victim compensation fund of two thousand one established pursuant to title IV of the federal air transportation safety and system stabilization act, public law 107-42, as amended, where the award consists solely of non-economic losses (funeral expense reimbursement being included as non-economic losses herein) a personal representative may file a consent to the adequacy of the award by all interested parties in lieu of a compromise proceeding.

Takeaways

These new laws have implications for attorneys who handle probate matters, and for attorneys who handle VCF claims.

Probate attorneys will no longer be required to request a compromise proceeding for both wrongful death claims which include only noneconomic, and claims on behalf of deceased individuals who suffered from a 9/11-related illness during their lifetimes, but who died from an unrelated illness.

Probate practitioners who may have clients with claims to the VCF must inquire as to the type of claim, to determine whether these new laws will streamline the probate process.

VCF practitioners will benefit from faster processing of claims and payments. Both noneconomic only wrongful death claims and personal injury claims filed on behalf of deceased individuals will move much faster, by avoiding both compromise proceedings — which can take up to one year to process — and the need for amended letters testamentary or administration.

Vito R. Pitta is a partner and Yan Lian Kuang-Maoga is a senior associate at Pitta & Baione LLP.

Disclosure: Yan Lian Kuang-Maoga was involved in drafting the legislation discussed in this article.

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Pitta LLP & Pitta Bishop & Del Giorno LLC Open Washington, D.C. Office

Pitta LLP and Pitta Bishop & Del Giorno LLC are pleased to announce the opening of the firms' Washington, D.C. office located at 1220 19th Street NW, Suite 600, Washington, D.C. 20036.

More details to follow in the near future.

Coming Up

New York State

Friday, October 14th

JFK Airport Redevelopment Plans, JFK Project Contracting and Subcontracting, and Minority – and Women – Owned Business Enterprise (MWBE) Involvement in these Projects

Senate Committees on Corporations, Authorities & Commissions & Transportation
Senate Hearing Room, 250 Broadway, 19th Floor, New York, 10 a.m.

New York City

Wednesday, October 12th

Committee on Women and Gender Equity, Council Chambers – City Hall, 10 a.m.

City Council, Council Chambers – City Hall, 1:30 p.m.

Thursday, October 13th

Committee on General Welfare, Committee Room – City Hall, 10 a.m.

Oversight – Examining the Screening Process and Eligibility Requirements for Foster Parents.

Committee on Transportation and Infrastructure, Council Chambers – City Hall – Vote, 10 a.m.

Committee on Transportation and Infrastructure, Council Chambers – City Hall, 10:15 a.m.

Oversight – The State of TLC's Regulated Industries.

Joint - Committee on Small Business & Veterans, Committee Room – City Hall, 1 p.m.

Oversight – Veteran Entrepreneurship and Public Contract Opportunities.

Committee on Environmental Protection, Council Chambers – City Hall, 1 p.m.

Oversight – Renewable Energy and New York City's Climate Adaptation.

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To Our Clients: If you have any questions regarding any of the matters addressed in this newsletter, or regarding any legislative, government relations or political or consulting or related issues in general, please contact the Pitta Bishop & Del Giorno LLC professional with whom you usually work.

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