

## The First Steps Towards a Merger or Strategic Alliance

FACED WITH RISING OPERATIONAL COSTS and increased competition for funding resources, many organizations are considering whether a merger or strategic alliance offers an opportunity to streamline operations and reduce overhead expenses so that the maximum dollars are available for programs.

The term merger is often used to describe many different business relationships and transactions. The impact on a not-for-profit corporation will be dramatically different depending on the precise nature of the transaction.

A merger is when one corporation is absorbed by another. The assets, staff and programs of the two corporations are joined together, as are the liabilities and obligations of both corporations.

A strategic alliance, in effect, often creates a parent-subsidiary relationship between two nonprofits. In New York, this can be achieved either through a sole membership or an interlocking board structure.

It is critical that organizations considering a nonprofit merger or strategic alliance undertake a thorough analysis and planning process to help ensure a strong, stable partnership. Here are three key steps for organizations to take to position themselves for either transaction:

- 1. Establish a clear objective of what the merger or strategic alliance needs to achieve.** The ultimate goal of the merger or strategic alliance will shape whom the organization considers as potential partners as well as the structure. A merger or strategic alliance can be sought to enhance opportunities for: (i) programmatic expansion, (ii) cost cutting; and/or (iii) long-term viability.
- 2. Get fiscal records and systems in order.** This cannot be overemphasized. It will be necessary to prepare accurate and current financial statements including assets and liabilities. The organization's current financial condition will heavily influence both the willingness of potential partners to

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# Weatherization Brings Energy Efficiency to New York City's Low-Income Communities

Lawyers Alliance regularly advises nonprofit organizations that receive state funding and have state contracts for economic development projects. Increasingly, we provide legal assistance for projects that bring energy efficiency to low-income communities.

One example is weatherization services. In 2009 New York State (NYS) received \$108 million in federal funding for the State's Weatherization Assistance Program (WAP), making it the largest residential energy conservation program in the country. Statewide, more than half of these funds were allocated to dozens of community-based organizations that provide weatherization services, including 16 in New York City. Such funding can help create jobs, increase demand for training services and expand the number of parties involved and interested in the WAP, including subcontractors and other community-based organizations.

The WAP assists income-eligible families and individuals (households with incomes at or below 60% of the state median income of \$75,513 for a family of four) by providing them with contractors who perform an energy audit of a residence and then develop a list of ways to lower energy costs. At no cost to the resident, the contractors may install improvements to increase energy efficiency and lower the resident's fuel bills. The state pays the contractors directly. Average energy cost savings are expected to exceed 20%. Program services are available to both homeowners and renters, with

priority given to senior citizens, families with children, and persons with disabilities.

Lawyers Alliance offers guidance with legal issues that organizations may face, directly or indirectly, as more money and attention is focused on weatherization and the opportunity to create "green" jobs and energy efficiency.

- Review current and prospective contracts with State agencies (such as NYS Division of Housing and Community Renewal (DHCR)) and/or with subcontractors and property owners
- Advise with respect to nonprofit organizations' management of those relationships
- Help organizations enter into new agreements and arrangements, for example through a Request for Proposal process to identify appropriate collaborators
- Advise on collaboration efforts with other social service providers and other subgrantees
- Help address employment issues as organizations plan training sessions or hire new employees

For legal help with economic development projects, please contact Senior Staff Attorney **Neil Stevenson** at [nstevenson@lawyersalliance.org](mailto:nstevenson@lawyersalliance.org).

Note: Statistical information gathered from the DHCR 1/27/09 press release and 11/30/09 Weatherization Program Information posted at [www.dhcr.state.ny.us/pressroom](http://www.dhcr.state.ny.us/pressroom).

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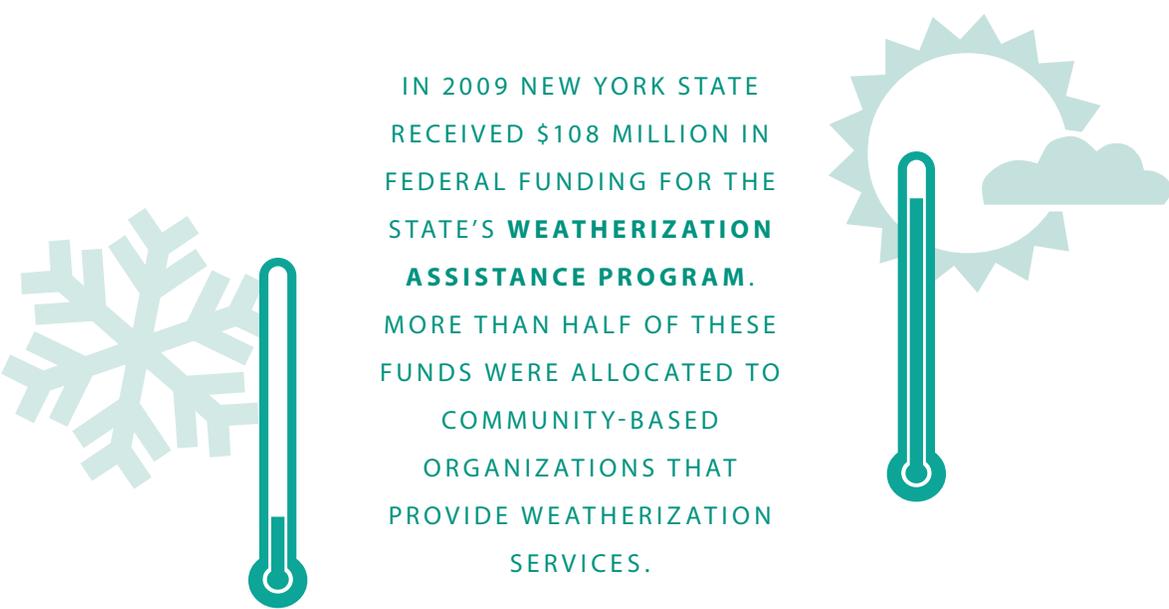
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IN 2009 NEW YORK STATE RECEIVED \$108 MILLION IN FEDERAL FUNDING FOR THE STATE'S WEATHERIZATION ASSISTANCE PROGRAM. MORE THAN HALF OF THESE FUNDS WERE ALLOCATED TO COMMUNITY-BASED ORGANIZATIONS THAT PROVIDE WEATHERIZATION SERVICES.

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consider a merger or strategic alliance and the legal structures available to implement either transaction.

**3. Locate key organizational documents.** Locate copies of your organization's: (i) Certificate of Incorporation; (ii) By-Laws; (iii) Internal Revenue Tax-Exemption Determination Letter; (iv) Audited Financial Statements; and (v) Personnel Manual. You should be prepared to share these organizational documents with potential merger or strategic alliance partners. As negotiations on a merger or strategic alliance move forward and the process of due diligence begins, your attorneys and other parties to the transactions will need additional documents.

**Case Example:** Established in 1971, the **Carter Burden Center for the Aging** is dedicated to supporting the efforts of older people to remain in their homes living independently, safely and with dignity. In the summer of 2008, the Carter Burden Center was approached by Elder Craftsmen, a nonprofit organization that helps men and women 55 and older to be creative, productive and independent by providing art and craft classes to senior centers throughout NYC. Elder Craftsmen sought to enter into a strategic alliance with the Carter Burden Center when it lost its primary government contract to budget cuts. The Carter Burden Center responded positively because its mission requires that it develop new programs and explore new avenues for service delivery. Lawyers Alliance and

volunteer attorneys from **Akin Gump Strauss Hauer & Feld LLP** represented the Carter Burden Center in connection with the strategic alliance.

The strategic alliance resulted in the launch of a new program, making ART work, which includes a professional gallery and studio space, located in Manhattan's Chelsea community that will focus on exhibiting the work of older artists, "Outsider" artists – those who are self-taught and "Insider" artists – those who are primarily confined to their homes. Making ART work will build on the tradition of Elder Craftsmen by supporting older adults in learning new skills.

**Case Example:** With assistance from Lawyers Alliance and volunteer attorneys from **Skadden, Arps, Slate, Meagher & Flom LLP**, **Stages of Learning** is now allied with Queens Theatre in the Park (QTP), a premier performing arts venue in Queens. Throughout its 15-year history, Stages of Learning has had a mission to improve the educational success of children by using theater instruction during the school day as a method of bringing school curriculum to life. Now, thanks to the strategic alliance, QTP's 18-member board and professional staff will provide Stages of Learning with a fertile infrastructure in which to stabilize operations. The new partnership will provide shared resources and cut costs, as well as enable each organization to build on its strengths. Now in a more stable position, Stages of Learning can continue to challenge its educational mission for students in grades 3-6.

To read the May 2009 legal alert with more information on mergers and strategic alliances, visit [www.lawyersalliance.org/economic\\_downturn.php](http://www.lawyersalliance.org/economic_downturn.php).

## Lawyers Alliance Board of Directors

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< Train the Trainer class, part of making ART work



^ Stages of Learning in action: students from PS 155 perform Roald Dahl's *The Magic Finger*

# Cornerstone Awards Honor Outstanding Pro Bono Achievements

## CORNERSTONE AWARDS 2009



**Henry Blackiston, Seyfarth Shaw LLP and Joan Bartolomeo, Brooklyn Economic Development Corporation**



**Kenneth J. Friedman, Paul, Hastings, Janofsky & Walker LLP and Lawyers Alliance Deputy Executive Director Elizabeth Guggenheimer**

On October 27, 2009, two hundred volunteers, clients, and supporters celebrated the achievements of two law firms and eight individual attorneys at the 2009 Cornerstone Awards held at the Pfizer Conference Center. Presented each year by Lawyers Alliance for New York, the Cornerstone Awards recognize pro bono legal services that have transformed business and transactional law into action that benefits the quality of life of low-income New Yorkers.

**Edward F. Greene**, a founder and Chair of Lawyers Alliance’s Board of Directors, lauded the collective excellence of the awardees, “This year’s honorees donated countless hours and gave extraordinary dedication and legal expertise to nonprofit organizations that are having a positive and profound impact throughout New York City. Their pro bono commitment strengthened the ability of these nonprofits to pursue their missions during a time of increasing demand for their services.”

### Institutional Honorees

**Paul, Hastings, Janofsky & Walker LLP** received a 2009 Cornerstone Award for its substantial pro bono growth with far-reaching and impressive results. The law firm’s corporate, real estate, employment and intellectual property lawyers have handled 19 pro bono legal projects with Lawyers Alliance in the past year alone. Such first-rate, sophisticated legal work is making a difference to economic development organizations, charter schools, youth organizations, community and senior centers, and other neighborhood organizations.

**Seyfarth Shaw LLP** received the award for the breadth and depth of its pro bono commitment and its exemplary pro bono contributions. Over the years, Seyfarth Shaw has been a vital resource for Lawyers Alliance clients in need of quality – and often urgent – guidance regarding employment law matters, in addition to complex corporate and real estate legal assistance. With 30 pro bono legal projects handled during the past year, Seyfarth Shaw has made a sizable increase in the number of matters it has undertaken. This extensive pro bono work helps to create opportunities and improve the lives of low-income residents in all five boroughs of New York City.

### Individual Honorees

**Peter L. Curry**, Farrell Fritz, P.C.: His experienced real estate counsel provided Services Now for Adult Persons with a workable agreement to acquire a new space that will help the organization achieve more cost-effective and efficient operations.

**Keith E. Danish**, Hiscock & Barclay: His intellectual property expertise has helped Jazzmobile secure trademarks for its name nationally and internationally, as well as for the organization’s “Jazzy award.” Together, these trademarks will enhance Jazzmobile’s licensing and educational efforts.



**L to R: Keith Danish, Elizabeth Guggenheimer, Henry Blackiston on behalf of Seyfarth Shaw LLP, Joe Guay, Jessica Gary, Kenneth Friedman on behalf of Paul, Hastings, Janofsky & Walker LLP, Andrew Latack, Doreen Lilienfeld, Rona Shamoon, Jason Polevoy, Allegra Rich on behalf of Seyfarth Shaw LLP, Peter Curry, Sean Delany**

**Jessica A. Gary**, Goodwin Procter LLP: Her intricate corporate legal work, including preparing tax exemption and advising on and negotiating leases and management agreements, helped support the development of the Believe High School Network, which includes Williamsburg Charter High School.

**Joseph A. Guay**, Holland & Knight LLP: His exceptional real estate guidance provided to Bridge Street Development Corporation allowed the organization, whose mission is to help residents of the Bedford-Stuyvesant section of Brooklyn acquire appreciating assets, to offer a variety of affordable housing opportunities through programs such as the U.S. Department of Housing and Urban Development’s “Dollar Homes”.

**Andrew B. Latack**, Creative Artists Agency (formerly of Proskauer Rose LLP): His in-depth governance counsel, which included reviewing and amending by-laws and conducting an on-site training session on board governance, helped Forestdale, the largest family services agency in Queens, further develop its capacities. *(See related story on page six.)*

**Doreen E. Lilienfeld**, Shearman & Sterling LLP: Her availability as a trusted source of employment law advice to more than a dozen nonprofit organizations and her lead pro bono and mentoring role at her law firm has improved nonprofit human resources management throughout New York City.

**Jason T. Polevoy**, McDermott Will & Emery LLP: His high-impact pro bono work on an extensive and complex real estate matter on behalf of Williamsburg Valley Industrial Development Corporation helps to preserve industrial real estate and secure a diversified economic base in and around East Williamsburg Park.

**Rona G. Shamoon**, Skadden, Arps, Slate, Meagher & Flom LLP: Her pro bono commitment of more than 10 years as volunteer general counsel to Greater Al-Anon Family Intergroup, including lease reviews and negotiations, employment matters, accounting and credit matters, and bylaws revisions, among others, have cumulatively helped the organization provide vital services to New Yorkers affected by alcoholism.

Congratulations and thank you to the 2009 Cornerstone Honorees!



**Matthew Ainley, Eddie Calderon-Melendez, and Ralph Perez of Believe High School Network with Cornerstone Honoree Jessica Gary.**



**Jazzmobile Executive Director Robin Bell-Stevens with Cornerstone Honoree Keith Danish and Lawyers Alliance Board Chair Edward F. Greene**

## One Cornerstone Story



**Daphne Loukides of Forestdale with Cornerstone Honoree Andrew Latack and Jessica Latack.**



**Forestdale families celebrate the holiday season at the Queens Museum.**



Established in 1854, **Forestdale, Inc.** is a leading child welfare agency based in Queens County. In addition to ensuring the well-being of abused and neglected children through foster care and adoption services, Forestdale partners with schools, religious organizations, businesses and other community leaders to address the underlying causes of families in crisis.

When Forestdale came to Lawyers Alliance, its Board of Directors wished to increase the Board's size and expand the programs offered by Forestdale. **Andrew Latack**, formerly an associate at Proskauer Rose and now an attorney at Creative Artists Agency, Sports Division, assisted with reviewing and amending the by-laws to make them clear and consistent with existing law as well as Forestdale's operations. He also offered an on-site training session on board governance. This helped to ensure synergy within the new Board, which consisted of members with many years of institutional knowledge and newcomers with fresh perspectives, to form a strong framework for the organization and to help expand the capacity of the organization's programs and services. During his two-year tenure as Forestdale's pro bono counsel, Mr. Latack provided invaluable advice and direction to the Board. Today, Forestdale has a Board of Directors that consists of 15 civic and community leaders, and its much-needed programs are more varied and stronger than ever.

**Daphne Loukides**, Forestdale's then-Board Chair, describes the importance of Mr. Latack's pro bono contribution, "We have been in existence for over 150 years, and you can imagine that our by-laws needed extensive work to allow us to achieve our recently restated mission. Andy quickly understood the workings of our Board. His real concern for our corporate health has translated into many more years of our exemplary programs benefitting the children and families we serve. It was a match made in heaven."



## Open House at Lawyers Alliance

On November 19 Lawyers Alliance hosted over 100 clients, volunteers, and supporters who toured the new headquarters and enjoyed conversation, cocktails, and hors d'oeuvres. Attendees also helped us commemorate the new space by signing a special poster, which will be framed and placed in the new training facility.

**Eleanor S. Yung, >**  
**Asian American Arts Centre**

**< Bob Craft, Holland & Knight LLP;**  
**Neal Johnston, Johnston & Johnston, LLP;**  
**Edward F. Greene, Lawyers Alliance Board Chair**

# Law Firm Appeal Aims to Keep Lawyers Alliance's Programs Strong in Uncertain Times

Co-chairs **Philip T. Ruegger III** and **John D. Lobrano** of Simpson Thacher & Bartlett LLP are at the helm of our 2009-2010 Law Firm Appeal. The funds raised help Lawyers Alliance provide legal services and educational resources that benefit neighborhoods throughout New York City.

Mr. Ruegger is Chairman of Simpson Thacher's Executive Committee and advises clients on mergers and acquisitions, leveraged buyouts, corporate governance, investigations, corporate finance and general corporate and securities law matters. He is a member of the Board of Trustees of the Natural Resources Defense Council, Vice Chairman of the Board of Henry Street Settlement House, and a member of the Board for the Partnership for New York City.

Mr. Lobrano, a partner in the Firm's Corporate Department and a member of the Capital Markets and Mergers and Acquisitions Practice Groups, regularly advises on domestic and international securities offerings, with particular experience in offerings of convertible notes and other equity-linked securities, as well as tender offers and exchange offers. Mr. Lobrano is a member of the TriBar Opinion Committee and sits on the Lawyers Alliance Board of Directors.

Mr. Ruegger remarks on what distinguishes Lawyers Alliance, "As the only New York legal services organization focused exclusively on nonprofit organizations serving low-income neighborhoods, Lawyers Alliance is unique. It helps

nonprofit leaders, and the pro bono attorneys who serve them, to navigate the legal challenges they face in fulfilling their missions with increasingly constrained resources."

Adds Mr. Lobrano, "A contribution to Lawyers Alliance benefits the work of clients that address a wide variety of critical community needs ranging from the alleviation of poverty, hunger and homelessness, to job creation, educational opportunities, and neighborhood revitalization."

Last year, pro bono attorneys from our 100 law firms and corporate legal departments delivered quality services to 564 nonprofit groups on 972 legal matters.

To donate to the 2009-10 Law Firm Appeal, please contact Senior Development Coordinator **Lemont Leige** at (212) 219-1800 ext. 225 or [lleige@lawyersalliance.org](mailto:lleige@lawyersalliance.org).



**Philip T. Ruegger III**



**John D. Lobrano**



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## Visit [www.lawyersalliance.org](http://www.lawyersalliance.org) for Information About Lawyers Alliance's Past, Present and Future

Lawyers Alliance enjoys a rich and productive 40+ years of history, thanks to its Board, staff, clients, volunteers, and funders. Check out the **About Us** section of our website for a historical timeline, archival elements such as the Preamble and By-laws of The Council of New York Law Associates, and facts and figures about what distinguishes Lawyers Alliance.

The **Lawyers** section, aimed at those interested in doing pro bono work, provides information about Lawyers Alliance's pro bono program, resources and links for volunteers, and the Affirmation of Participation form for those seeking CLE credit for pro bono CLE credit for pro bono form.

The **Nonprofits** section makes it easy for organizations to submit a Request for Legal Assistance application to become a client and gain information about workshops, news and legal alerts on nonprofit legal issues.

The **Communities** section details our program priorities (affordable housing and homeless services, economic development, children and youth services, immigrant communities, and elder services) and special initiatives (nonprofit accountability, disaster relief, and program preservation). The newest page, "Program Preservation Initiative: Coping with the Economic Downturn" features monthly legal alerts that address issues pertaining to the impact of the economic downturn and help to foster the stability and momentum of the nonprofit sector during this challenging financial period.

The **Workshops** area advises website visitors about upcoming workshops for nonprofits and provides easy access to online and mail or fax registration methods.

### *Did you know that...*

- 🕒 **Tuesday** is the **most popular day** to visit the Lawyers Alliance website.
- 🕒 The **average visit** to the website lasts **4 minutes and 41 seconds**.
- 📄 The **top file download** of 2009 was the **Chapter 7 insert to Getting Organized**.
- 🕒 **11 a.m. and 3 p.m.** are tied for the **most popular times** to visit the website.
- 👤 In 2009 there were **62,224** total visits to **www.lawyersalliance.org**.

