

Gianfranco A. Pietrafesa



Partner

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Hackensack, NJ

New York, NY

Practice Areas

Business Counseling

Mergers & Acquisitions

Admitted

New Jersey

New York

United States Court of Appeals for the Third Circuit

United States District Court for District of New Jersey

United States District Court for Southern District of New York

United States Supreme Court

United States Tax Court

Education

Seton Hall University School of Law, Juris

Doctor, 1989

Fairleigh Dickinson University, B.S., *summa cum laude*, Accounting, 1986

Gianfranco (Franco) A. Pietrafesa advises clients on corporate, business, contract, real estate, and employment matters. He represents a wide range of clients, from start-ups to established companies, and focuses on entrepreneurs and small to middle market companies that are closely-held or family-owned. His clients are in a broad range of industries, including manufacturing, distribution, technology, food and beverage, professional services, jewelry and diamonds, and construction, among others. He has significant experience representing every type of stakeholder associated with business, including companies, owners, executives, buyers, sellers, lenders, borrowers, landlords, and tenants.

Franco advises clients on choice of entity and formation of corporations, LLCs and partnerships, including the preparation and negotiation of governing documents and agreements such as shareholder, buy-sell, partnership, and LLC operating agreements. He has significant experience with, and is considered an authority on, LLC laws. He handles equity and debt financing, including private placements of securities, and investments by family, friends, angel investors, and private equity firms. Franco handles mergers and acquisitions, including asset purchases and stock purchases, joint ventures and other strategic alliances, and other corporate reorganizations, and has a working knowledge of the tax consequences associated with such transactions. He prepares, reviews and negotiates a wide variety of contracts, such as licensing, manufacturing, supply, and distribution agreements. He also advises clients on how to protect trade secrets and other confidential business information through confidentiality, non-solicitation, and non-competition agreements.

Franco advises employers on various employment matters that arise on a daily basis. Additionally, he prepares employment agreements, consulting and independent contractor agreements, employee handbooks, severance and separation agreements, and general releases. He also represents banks, private lenders, and borrowers in loan transactions, and buyers and sellers of real estate sales and purchases, and landlords and tenants in lease transactions.

For many years, Franco was a litigator and represented clients in complex and ordinary litigation in state and federal courts. He has significant experience appearing in court on orders to show cause, motions, hearings, and trials. As a business lawyer, he strategizes with the firm's litigators on corporate, business, and commercial litigation such as breach of contract, business torts, minority shareholder oppression, deadlock, business divorces, and other disputes among business owners.

Franco is a frequent speaker for professional, business, industry and trade organizations on topics such as mergers and acquisitions, buy-sell agreements, choice of entity, LLCs, contract drafting, litigation, and legal ethics. He has also taught the M&A transactional skills course at Seton Hall University School of Law and the law of business organizations at Fairleigh Dickinson University. A prolific writer, Franco has written book chapters and numerous articles on business law, litigation, and legal ethics topics that have appeared in such legal periodicals as the *New Jersey Law Journal*, *New Jersey Lawyer Magazine*, *ABA's Trial Practice Journal*, and *DRI's Trials and Tribulations*. Franco also previously served as pro bono general counsel to the St. Anthony Education Foundation, the Hawthorne Education Foundation, and the Hawthorne Soccer Association, all in Hawthorne, New Jersey.

Representative Experience

- Represented manufacturer in \$27M sale of business to a buyer funded by private equity with the transaction structured as an asset purchase, with earnout payments based on EBITDA and rollover equity.
- Represented manufacturer in \$8.5M sale of business structured as an equity purchase after the restructuring of the corporation to an LLC.
- Represented distributor in \$24M sale of business to a buyer funded by private equity with the transaction structured as a stock purchase, with rollover equity.
- Represents private equity firm acquiring and investing in small businesses in the food and beverage sector.
- Represented one of two snack food companies being consolidated into one parent holding company with two operating subsidiaries, including restructuring of promissory notes and subsequent equity financing of parent holding company.
- Represented founder in formation of business, with preparation of shareholders agreement, employment agreements, and confidentiality, invention assignment and restrictive covenants agreements.
- Represented surviving member of LLC in dispute with estate of deceased member under circumstances where company's operating agreement did not adequately include buy-sell provisions triggered by death.

Professional and Community Involvement

- Business Law Section, New Jersey State Bar Association
 - Director (2002-present)
 - Chairman (2010-2012)
 - Secretary (2008-2010)
 - Member, Business Entities Committee (2006-present)
- Hudson-Bergen Inn of Transactional Counsel
 - Vice President (2016-present)
 - Trustee (2009-present)
- Commerce and Industry Association of New Jersey
 - Member, Manufacturing Forum (2014-present)

- Member, Family-Owned Business Forum (2017-present)
- Member, American Bar Association, Business Law Section (1990-present)
- Member, Editorial Board, *New Jersey Lawyer Magazine* (1996-2010)
- District XII Fee Arbitration Committee (Union County)
 - Chair (2003-2005)
 - Vice Chair (2002-2003)
 - Member (2001-2002)
- Member, District XII Ethics Committee (Union County) (1996-2000)
- Former Member, Hawthorne Board of Education
- Former Member, Board of Trustees, Louis Bay 2nd Library, Hawthorne

Articles and Presentations

- “Dealing with LLC Disputes,” New Jersey State Bar Association Annual Meeting (May 2020, cancelled due to coronavirus pandemic)
- “Drafting Effective NJ LLC Operating Agreements,” New Jersey State Bar Association Annual Meeting (May 2020, cancelled due to coronavirus pandemic)
- “Overview of NJ-RULLCA,” New Jersey Judiciary General Equity and Civil Division Joint Education Conference (April 2020, cancelled due to coronavirus pandemic)
- Organizer, New Jersey M&A Conference, New Jersey Institute of Continuing Legal Education (2018-2020)
- "LLC Issues," New Jersey State Bar Association Annual Meeting (May 2019)
- Coordinator, NJ Business Law Symposium, New Jersey Institute of Continuing Legal Education (2006-2010, 2014-2019)
- Coordinator, Ethics for Transactional Attorneys, New Jersey Institute of Continuing Legal Education (2006-2018)
- "M&A for IT Companies," ITServe Synergy 2018 Conference (October 2018)
- "[Trusts as Members of NJ LLCs](#)," *Business Law Section Newsletter*, New Jersey State Bar Association (May 2018)
- "Essentials of NJ LLC Formation," New Jersey Institute of Continuing Legal Education (April 2018)
- "[Death and the NJ LLC](#)," *Business Law Section Newsletter*, New Jersey State Bar Association (November 2017)
- "[What to Consider When Buying, Selling a Business](#)," Industry Insights, *NJBIZ* (October 2017)
- “What Every CFO Needs to Know About Restrictive Covenants in New Jersey,” SAX LLP, CFO Focus Group (October 2017)
- “Non-Waivable Provisions under NJ-RULLCA,” *Business Law Section Newsletter*, New Jersey State Bar Association (July 2017)
- “NJ-RULLCA Provisions Requiring Unanimous Consent,” *Business Law Section Newsletter*, New Jersey State Bar Association (April 2017)
- “NJ LLC Disputes,” New Jersey Judiciary General Equity and Civil Division Joint Education Conference (April 2017)

- “Commercial Lending—A Lender’s Perspective,” Annual Business Law Symposium, Business Law Section, New Jersey State Bar Association and New Jersey Institute of Continuing Legal Education (April 2017)
- “NJ LLC Act,” National Business Institute (national webinar) (October 2016 and July 2015)
- “Avoiding Legal Malpractice in LLC Formations,” *New Jersey Lawyer Magazine* (June 2016)
- “Arbitrating Business Disputes,” New Jersey State Bar Association Annual Meeting and Convention (May 2016)
- “Oppression under NJ-RULLCA,” New Jersey State Bar Association Annual Meeting (May 2016)
- “Buy-Sell Agreements,” WithumSmith & Brown Tax Services Group (January 2015)
- “Business Succession Planning and Buy-Sell Agreements,” Greater New Jersey Estate Planning Council (September 2014)
- “For Sale: A New Jersey Business Owners Symposium — A Seller’s Guide to Preparing Your Business for Sale,” Hunter Group CPAs (September 2014)