

Representative Cases and Matters for Joel M. Aurnou

Appellate Litigation – Nazi Looted Art

In Re Estate of Oscar Stettiner, 148 A.D.3d 184 (1st Dep’t 2017), (sub. nom. Matter of Estate of Stettiner, 30 NY3d 907 (2017)) lv. App. Den. 30 N.Y.3d 907 (2017).

In a case involving a claim for restitution of a multi-million-dollar Modigliani painting confiscated by the Nazis in Paris toward the end of World War II, Joel represented the Limited Ancillary Administrator appointed by the Surrogate of New York County to represent the Estate making the claim for restitution. After the Surrogate found that the claim of fraud was completely baseless, respondent appealed. In a unanimous opinion, the First Department affirmed the Surrogate’s ruling and the New York Court of Appeals denied defendants’ leave to appeal.

Appellate Litigation – Nazi Looted Art

Maestracci v. Helly Nahmad Gallery, Inc., 155 A.D.3d 401 (1st Dep’t 2017)

In this case there were cross appeals from a Supreme Court ruling which struck the sole heir of Oscar Stettiner, a grandson, for lack of standing, replacing him with the Limited Administrator appointed by the Surrogate. Defendants appealed the appointment of the Administrator as a plaintiff. Joel appealed the striking of the sole heir as a plaintiff for lack of standing. The Appellate Division ruled in favor of plaintiff on both issues, restored the standing of the grandson and rejected all of defendants’ claims. Defendants’ attempt to appeal to the Court of Appeals was also unsuccessful.

Matrimonial and Family Law – Child Custody

Tsui v. Tsui, 99 A.D.2d 793 (2nd Dep’t 2012)

In this case, **Joel M. Aurnou** represented a mother who wanted permission to move with the parties’ children from Westchester County, New York to Texas. Winning permission in Supreme Court, the father appealed to the Appellate Division and lost again. The Court held that Joel had demonstrated his client could not meet New York living expenses and if permitted to relocate to her parents, she would receive financial and child care assistance and live rent free. The case subsequently settled in the millions of dollars.

Appellate Practice – Business Litigation – Cancellation of Unauthorized Mortgages.

ER Holdings LCC v. 122 W.P.R., 65 A.D.3d 1275 (2d Dep't 2009).

Joel M. Aurnou convinced the Appellate Division, Second Department, to affirm a Supreme Court decision granting summary judgment in favor of Joel's clients, cancelling two unauthorized mortgages on its flagship real estate holding. The Court also resolved in Joel's client's favor issues of apparent authority and due diligence.

Appellate Practice – Business Litigation – Ownership of Shopping Centers

Tedesco v. Tedesco, 64 A.D.3d 583 (2d Dep't 2009)

In Tedesco, **Joel M. Aurnou** prevailed on litigation on the ownership of shopping centers. The Appellate Division, Second Department, unanimously affirmed a lower court ruling granting summary judgment to Joel's client covering ownership of a multi-million shopping center and several other commercial and residential properties. The Second Department also rejected the Appellant's contention that summary judgment was premature because the Appellant had not yet had any examinations before trial.

Appellate Practice – Matrimonial and Family Law – Annuity Dispute

O'Shell v. O'Shell, 54 A.D.3d 914 (2d Dep't 2008).

The Appellate Division, Second Department affirmed a lower court order which prevented Joel's adversary from obtaining any part of a \$1.4 million annuity from a matrimonial settlement dictated on the record in open court.

Surrogate's Court Litigation – Appellate Practice – Post Nuptial Agreement Contest – Replacing Condo Unit Triggers Ademption

Davis v. Willinger, 31 A.D.3d 429 (2d Dep't 2006)

In a declaratory judgment action involving an esoteric point of law, **Joel M. Aurnou** achieved an abatement of a surviving spouse's contract with her husband to bequeath the proceeds of sale of the couple's Miami Beach oceanfront condominium residence to her late husband's daughter. Applying the ademption concept, the trial court – affirmed by the appellate court, ruled that the promise to bequeath pertained only to the condominium owned by the couple at the time the surviving spouse made the promise, notwithstanding the fact that they replaced their original condominium with another in the very same Collins Avenue building.

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J.F. v. L.F., 181 Misc. 2d 722, 694, N.Y.S. 2d 592 (1999), aff'd sub.nom., Faneca, 270 A.D.2d 489, 705 NYS2 281 (2d Dep't 2000), lv den. 95 N.Y.2d 756 (2000)

Joel M. Aurnou prevailed at trial and on appeal to change custody to the father, where the mother had violated a visitation agreement. This is a leading case on parental alienation as a basis for a change of custody.

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Wolstoncroft v. Sassower, 124 A.D.2d 582, 507 N.Y.S.2d 728 (2d Dep't 1986); 212 A.D.2d 598, 623 N.Y.S.2d 7 (2d Dep't 1995); 234 A.D.2d 540, 651 N.Y.S.2d 609 (2d Dep't 1996)

In Wolstoncroft, **Joel M. Aurnou** settled a legal malpractice claim favorably to his claimant client during trial. Later, a successful proceeding enforced the settlement.

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In Kelly, Joel succeeded in getting a punitive damage claim against his corporate client dismissed.

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In Generas, **Joel M. Aurnou** represented a famous hotel client in a contract dispute. Joel won summary judgment in the trial court, and the Appellate Division, Second Department, affirmed the lower court decision.

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In DeConto, **Joel M. Aurnou** successfully reversed, on appeal, a Class A felony conviction, based on improper jury selection procedure.

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In a highly publicized promoting prostitution case, the Court of Appeals agreed with all three of **Joel Martin Aurnou's** contentions for the defense: improper wiretap evidence, prosecution misconduct, and the need to sever indictments. After indictments for 69 felony counts, trial and successful appeal, prosecutors settled for a single misdemeanor.

Appellate Practice – Matrimonial and Family Law – Equitable Distribution

Conceicao v. Conceicao, 203 A.D.2d 877, 611 N.Y.S.2d 318 (3d Dep't 1974)

In this case, **Joel M. Aurnou** representing a client in an equitable distribution issue, obtained a 70% equitable distribution award in his client's favor, unanimously affirmed on appeal.

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Schwartz v. Northern Westchester Hospital, 43 A.D.2d 952, 351 N.Y.S.2d 955 (2d Dep't 1974).

In Schwartz, Joel successfully represented a doctor to compel his admission to the hospital staff.

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Almar Realty Corp. v. Sockolof Bros., 35 A.D.2d 986 (2d Dep't 1970), aff'd 29 N.Y.2d 735 (1971).

Joel M. Aurnou prevailed in a reformation action by distinguishing mutual ignorance from mutual mistake of fact. The result was the client's warehouse tenant paying real estate tax escalation rent over a base of taxes assessed against a vacant land assessment and not against a completed warehouse building.

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Harris v. U.S., NY, 401 U.S. 222, 91 S. Ct. 643, 28 L.Ed.1 (1971).

Harris v. US, argued by **Joel M. Aurnou**, was the first major criminal case of the Burger court. See also 80 Yale L.J. 1198, 1211-17 (1971).

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Gasperino v. Larsen Ford, Inc., 300 F. Supp. 1182 (SDNY 1969), aff'd 426 F.2d 1151 (2d Cir. 1970), cert. den., 400 U.S. 941 (1970)

In Gasperino, at the trial court and on appeal, **Joel M. Aurnou** obtained a death recovery in excess of policy limits. This case represents the first plaintiff's recovery under §299 of the New York Labor Law.

Business Litigation – Discrimination Suit – Injunctive Relief

Male v. Crossroads Assoc., et al., 320 F. Supp. 141 (S.D.N.Y., 1970)

In Male, **Joel M. Aurnou** represented the City of Peekskill, its Mayor and the Urban Renewal Agency, in a discrimination suit. The action against all of Mr. Aurnou's defendants was dismissed.

Appellate Practice – Business Litigation – Criminal Law

People v. Mirenda, 23 N.Y. 2d 439, 297 N.Y.S. 2d 532 (1969)

In Mirenda, **Joel M. Aurnou** obtained a reversal of a murder conviction in a case originally tried by William Kunstler, Esq. On retrial, despite prosecution testimony of two eye witnesses and three accomplices, defendant represented by Mr. Aurnou was acquitted.

Surrogate's Court Litigation – Will and Trust Contests – Settlement After Effective Cross Examination

Estate of Emily Vogel, (Westchester County Surrogate's Court) (Unreported)

This Will Contest was settled favorably for the contestant (nephew), after the cross-examination of proponent by **Joel M. Aurnou** tended to establish revocation of the "Last Will" by the destruction of a duplicate original in the Textatrix Possession.

Business Litigation – Corporate and General Business

Apex Pools v. Paul, (Superior Court, Cambridge, Mass)

Joel M. Aurnou represented a client, pro hac vice, in Superior Court in Cambridge, Massachusetts, in which Joel's client sought an injunction, contempt and damages for violating a restrictive covenant in a franchise agreement. Defendant, caught in perjury during cross-examination, threw up while on the witness stand. Defendant subsequently settled for more than the recorded judgment to avoid jail.

Legal Malpractice – Action against Former President of the American Trial Lawyers.

Olesker v. Dempsey, (Supreme Court, Westchester County, N.Y.)

Joel M. Aurnou successfully sued a Former President of the American Trial Lawyers on a legal malpractice claim.

Business Litigation – Zoning Variance Annulled

Briscoe v. Bruen, (Sup. Ct., Westchester Co.; unreported opinion of Coyle, J.S.C.)

In this case, Joel succeeded in annulling a variance granted to the famous Tappan Hill Restaurant by reason of defective notice to the affected neighbors.

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In this case, Joel's client was accused of being a Croatian terrorist. After trial for some 14 weeks in the Southern District, before Motley, U.S.D.J., six co-defendants were convicted and sentenced to 40 years each for offenses ranging from murder to interstate transportation of bombs and mailing of letter bombs. Mr. Aurnou's client was acquitted and went home.

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In People v. Hervey, Joel went to Adams County, Colorado where he participated in the successful appeal of a first-degree murder conviction. Before retrial, Mr. Aurnou showed the Court and the District Attorney that the testimony of a fingerprint expert, a trial, was not merely false, but impossible. Defendant was released shortly thereafter.

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Unconstitutionality of New York General Business Law, Section 245(13)

Joel M. Aurnou won a reversal and acquittal, and a declaration that New York General Business Law, Section 245, subdivision 13, was unconstitutional.

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[Appellate Practice](#) - [Legal Malpractice](#) - [Paternity](#) - Motion for Dismissal

[Savattere v. Subin Associates, PC](#), 261 A.D.2d 236, 690 N.Y.S.2d 229 (1st Dep't 1999)

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In this case, [Joel M. Aurnou](#) succeeded in annulling a variance granted to the famous Tappan Hill Restaurant by reason of defective notice to the affected neighbors.

[Matrimonial and Family Law](#) - Private Detective Caught Lying

B v. B

In this case, [Joel M. Aurnou](#) represented the treasurer of a major national corporation in a matrimonial. The private detective was shown to be lying, during cross-examination by Mr. Aurnou and the cause of action for adultery was dismissed.

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[Commercial Litigation](#) –

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Matter of Estate of Stettiner, 30 NY3d 907 (2017)

The defendants' attempt to appeal to the Court of Appeals was also unsuccessful.

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Unconstitutionality of New York General Business Law, Section 245(13)

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Joel Aurnou's Current Representative Cases under old model

Reported Civil Cases

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- [Kelly v. Defoe Corp.](#), [223 A.D.2d 529](#), 636 N.Y.S.2d 123 (2d Dep't 1995). Punitive damage claim against Mr. Aurnou's corporate client dismissed.
- [Conceicao v. Conceicao](#), [203 A.D.2d 877](#), 611 N.Y.S.2d 318 (3d Dep't 1974). 70% vs. 30% equitable distribution division in favor of Mr. Aurnou's client affirmed.
- [Male v. Crossroads Assoc. et al](#), [320 F. Supp. 141](#) (SDNY 1970). Discrimination suit against defendants City of Peekskill, Mayor and Urban Renewal Agency, all represented by Mr. Aurnou, subsequently dismissed.
- [Schwartz v. Northern Westchester Hospital](#), [43 A.D.2d 952](#), 351 N.Y.S.2d 955 (2d Dep't 1974). Only New York case where doctor successfully compelled his admission to hospital staff.

- Wolstoncroft v. Sassower, [124 A.D.2d 582](#), 507 N.Y.S.2d 728 (2d Dep't 1986); [212 A.D.2d 598](#), 623 N.Y.S.2d 7 (2d Dep't 1995); [234 A.D.2d 540](#), 651 N.Y.S.2d 609 (2d Dep't 1996). Legal malpractice claim settled during trial. Later, there was a successful proceeding to enforce the settlement
- [Savattere v. Subin Associates, PC](#), [261 A.D.2d 236](#), 690 N.Y.S.2d 229 (1st Dep't 1999). Legal malpractice claim settled favorably to plaintiffs after defendant's motion to dismiss denied.

Unreported Civil Cases

- Estate of Emily Vogel (Westchester County Surrogate Court). Will contest settled favorably for the contestant (nephew) after cross-examination of proponent tended to establish revocation of the "Last Will" by the destruction of a duplicate original.
- Apex Pools v. Paul (Superior Court, Cambridge, Mass.) Injunction, contempt and damages case for violation of restrictive covenant in franchise agreement. Defendant, caught in perjury during cross-examination, threw up while on witness stand. Defendant subsequently settled for more than the recorded judgment to avoid jail.
- Briscoe v. Bruen, (Zoning) Mr. Aurnou succeeded in annulling a variance granted to the famous Tappan Hill Restaurant by reason of defective notice to the affected neighbors. (Westchester County Supreme Court unreported opinion of Coyle, J.S.C.)
- In Olesker v. Dempsey, Mr. Aurnou successfully sued a former President of the American Trial Lawyers on a legal malpractice claim.
- In B v. B, Mr. Aurnou represented the treasurer of a major national corporation in a matrimonial. The private detective was shown to be lying, and the cause of action for adultery was dismissed during trial.

Criminal

- People v. Mirenda, [23 N.Y.2d 439](#), 297 N.Y.S.2d 532 (1969). Successful reversal of murder conviction in case originally tried by William Kunstler, Esq. On retrial, despite prosecution testimony of two eyewitnesses and three accomplices, defendant represented by Mr. Aurnou was acquitted.
- People v. Shapiro, [50 N.Y.2d 747](#), 431 N.Y.S.2d 422 (1980). In highly publicized promoting prostitution case, Court of Appeals agreed with all three defense contentions; improper wiretap evidence, prosecution misconduct, and requiring severance of indictments. After indictments for 69 felony counts, trial and successful appeal, prosecutors settled for a single misdemeanor.
- People v. DeConto, [80 N.Y.2d 433](#), 591 N.Y.S.2d 131 (1992), aff'g [172 A.D.2d 684](#) (2d Dep't). Class A felony drug conviction reversed for improper jury selection procedure.
- Harris v. NY, [401 U.S. 222](#), 91 S. Ct. 643, 28 L.Ed.1 (1971). First major criminal case of the Burger court. See 80 Yale L.J. 1198, 1211-17 (1971).

Unreported Criminal Cases

- In U.S. v. Jakic, (S.D.N.Y.) Mr. Aurnou's client was accused of being a Croatian terrorist. After trial for some 14 weeks in the Southern District, before Motley, U.S.D.J., six co-defendants were convicted and sentenced to 40 years each for offenses ranging from murder to interstate transportation of bombs and mailing of letter bombs. Mr. Aurnou's client was acquitted and went home.
- Mr. Aurnou represented Jean S. Harris in the murder of the Scarsdale Diet author, Dr. Tarnower.
- Mr. Aurnou represented Robert Comfort, a defendant in the Hotel Pierre eight million dollar holdup.
- In San Antonio, Texas, Mr. Aurnou represented Major Arnold Levine, charged with 2 counts of murder (his wife and son). After Mr. Aurnou discovered that a witness' alibi statement indicated he knew of the murder before the body was found, the Bexar County District Attorney dismissed all charges against the Major.
- In People v. Hervey, Mr. Aurnou went to Adams County, Colorado where he participated in the successful appeal of a first degree murder conviction. Before retrial, Mr. Aurnou showed that the testimony at trial of a fingerprint expert, was not merely false, but impossible. The defendant was released shortly thereafter.
- In People v. Robert & Judy Zamber, Mr. Aurnou defended a Pennsylvania murder case where the parents of a 7 month old girl were charged with child abuse leading to her death. After forensic investigation proved that the child died from a rare disease known as osteogenesis imperfecta, the charges were dismissed.
- In People v. Delmar and People v. Jones, Mr. Aurnou defended two different Westchester County, New York, defendants in successive trials for the same murder. Both defendants were acquitted.
- In People v. Robert Gaulin, Mr. Aurnou successfully defended a retarded young man accused of setting fire to an animal shelter.
- Mr. Aurnou won a reversal and acquittal, and a declaration that New York General Business Law, Section 245, subdivision 13, was unconstitutional.