

December 5, 2014

## **Court Finds Village of Greenport Improperly Sought to Restrict Oyster Farmer's Agricultural Activities**

*Decision is Victory for Long Island Shellfish Industry and Local Environment*

UNIONDALE, NY — [Sahn Ward Coschignano & Baker, PLLC](#) has announced that Michele A. Pincus and John C. Farrell, Partners with the Firm, successfully represented a North Fork oyster farmer in an Article 78 proceeding in Suffolk County Supreme Court against the Village of Greenport. The Court struck a condition in the village's grant of a required wetlands permit which sought to limit the farmer's activities at the site. The Court held that the vague and imprecise nature of the language creating the condition emphasized the capriciousness of the decision of the Village Board of Trustees.

The Firm's attorneys represented Michael Osinski, the owner of Widow's Hole Oysters located in the Village of Greenport bounded by Greenport Harbor and a cove known as Widow's Hole. Mr. Osinski lives in a single-family residence with his family at the property and farms oysters in Widow's Hole on the acres of underwater land that he owns. Mr. Osinski had operated his farm for 10 years pursuant to approvals from the U.S. Army Corps of Engineers, the New York State Department of Environmental Conservation and the Village of Greenport. The property was accepted into Suffolk County's Agricultural District, which was created to conserve, protect and encourage the development of agricultural land.

Mr. Osinski's business is part of Long Island and the North Fork's revitalized shellfishing industry. In fact, over one hundred years ago, Greenport had been considered by many to be the "Oyster Capital of New York." However, by 1980, all of the canneries and oyster farms had disappeared from the area. Likewise, much of the shellfishing industry on Long Island had disappeared. This happened, despite the fact that oysters — and shellfish at large — have a positive environmental impact on surrounding waters. In recent years, shellfishing has been making a comeback on Long Island with the support of federal, state and local authorities. The industry is helping to create jobs, while helping to improve the coastal environments, which have been undergoing increasing stresses.

Mr. Osinski recently sought to shift the bulk of his oyster farm operation from Widow's Hole to Greenport Harbor. His applications to the DEC and Army Corps of Engineers to build a dock with a platform were granted. However, after a public hearing on his wetlands permit from the Village of Greenport, the Village Board of Trustees granted the permit with language stating that "the commercial activities would be limited to that already permitted by the Village of Greenport and that any alteration by the Army Corps of Engineers would result in the Village Board being allowed a further review of the application."

The Court determined that the board improperly succumbed to pressure from Mr. Osinski's neighbors, who had argued that his oyster farming activities were incompatible with the residential nature of the area. The Court went on to hold that, absent evidence that the proposed project may have adverse environmental consequences, the board's determination to issue the

wetlands permit with a condition limiting his “commercial activities” and making it subject to further review upon any alteration by the Army Corps of Engineers is arbitrary and capricious.

“This decision underscores a property owner’s right to use property in a permitted manner, largely regulated by the federal and state governments, without undue interference from a local municipality. It highlights the importance of property rights and the need to support local agricultural industries, despite vocal opposition from local residents. It is part of a growing trend on Long Island and the North Fork, where traditional ways of life often come into conflict with growing populations,” said Ms. Pincus.