

## **Saiber Obtains Dismissal of a Disability Discrimination Case**

October 3, 2012

On October 4, 2012, the Honorable Colleen McMahon, United States District Judge for the Southern District of New York, granted our Client's motion on the pleadings and dismissed the complaint filed by Kimberly Zick against the Waterfront Commission of New York Harbor and Walter Arsenault, the Executive Director of the Waterfront Commission. Zick v. Waterfront Commission of New York Harbor and Walter Arsenault, Civil Case No. 11-cv-5093 (S.D.N.Y.).

Plaintiff was employed as an attorney by the Waterfront Commission. In her Complaint, Plaintiff alleged that after suffering a broken leg, she was unlawfully fired from her position at the Commission in violation of the Americans with Disabilities Act ("ADA"). Plaintiff also alleged that she was subjected to unfair treatment throughout her employment, which ultimately constituted constructive discharge. Finally, Plaintiff alleged that she suffered extreme emotional distress as a result of Defendants' conduct.

The Court concluded that Plaintiff failed to demonstrate that her injury (a broken leg), constituted a "disability" as defined by the ADA. In addition, the Court concluded that Plaintiff failed to allege the requisite elements of a claim for constructive discharge, namely, that she was a member of a protected class as defined by Title VII of the Civil Rights Act of 1964 and that Defendants subjected her to an utterly intolerable working environment. Finally, the Court concluded that Plaintiff's claim for intentional infliction of emotional distress failed as a matter of law because she did not allege conduct "outrageous" or "atrocious" enough to support it.

William F. Maderer and Melissa A. Provost wrote the successful briefs and were responsible for this matter.