

**DEBT COLLECTION
AND THE ENFORCEMENT
OF MONEY JUDGMENTS**

SECOND EDITION

**Editor-in-Chief
Paul A. Peters, Esq.**

New York State Bar Association Continuing Legal Education publications are intended to provide current and accurate information to help attorneys maintain their professional competence. Publications are distributed with the understanding that NYSBA does not render any legal, accounting or other professional service. Attorneys using publications or orally conveyed information in dealing with a specific client's or their own legal matters should also research original sources of authority.

We consider the publication of any NYSBA practice book as the beginning of a dialogue with our readers. Periodic updates to this book will give us the opportunity to incorporate your suggestions regarding additions or corrections. Please send your comments to: CLE Publications Director, New York State Bar Association, One Elk Street, Albany, NY 12207.

Copyright: 2008
by
New York State Bar Association
All rights reserved
ISBN: 1-57969-245-1
Product Number: 40308

CONTENTS

Chapter 1	Determining Proper Party Defendant.....	1
	<i>Paul A. Peters, Esq.</i>	
Chapter 2	Evaluating the Claim.....	11
	<i>Sara Bulson, Esq.</i>	
Chapter 3	Preliminary Investigation and Aids.....	19
	<i>John K. Rottaris, Esq.</i>	
Chapter 4	Demand Upon the Debtor	55
	<i>Paul A. Peters, Esq.</i>	
Chapter 5	Debt Collection Restrictions	69
	<i>Robert B. Liddell, Esq.</i>	
Chapter 6	Alternatives to Litigation	85
	<i>Mitchell J. Banas, Jr., Esq.</i> <i>Marjorie A. Bialy, Esq.</i>	
Chapter 7	Instituting Suit.....	105
	<i>Robert B. Liddell, Esq.</i>	
Chapter 8	Commencing Lawsuit	141
	<i>Paul A. Peters, Esq.</i>	
Chapter 9	Procedures During Litigation	177
	<i>Joseph Capobianco, Esq.</i>	
Chapter 10	The Constitutional Challenge to CPLR Article 52.....	203
	<i>Richard H. Friedman, Esq.</i>	
Chapter 11	Evaluating Collection Prospects.....	227
	<i>Stephen J. Schop, Esq.</i>	
Chapter 12	Post-Judgment Procedures	265
	<i>William Ilecki, Esq.</i>	
Chapter 13	Effect of Bankruptcy Act	349
	<i>William F. Savino, Esq.</i> <i>Daniel F. Brown, Esq.</i> <i>Beth Ann Bivona, Esq.</i>	
Chapter 14	Miscellaneous Provisions.....	451
	<i>Michael Paskowitz, Esq.</i>	

DETAILED TABLE OF CONTENTS

Preface	xv
<i>In Memoriam</i>	xvii
CHAPTER 1 DETERMINING PROPER PARTY DEFENDANT	
<i>Paul A. Peters, Esq.</i>	
[1.0] I. Preliminary Considerations	3
[1.1] II. Guarantors	4
[1.2] III. Parties Not Named on Documents of Indebtedness	5
[1.3] IV. Extrinsic Factors Affecting Identification of Party	6
[1.4] V. Cure for Nonjoinder or Misjoinder of Party.....	7
Appendix	9
CHAPTER 2 EVALUATING THE CLAIM	
<i>Sara Bulson, Esq.</i>	
[2.0] I. Reviewing Documentation	13
[2.1] II. Identifying Potential Causes of Action	15
[2.2] III. Establishing Liability—Identifying All Proper Defendants.....	16
[2.3] IV. Statutes of Limitations	16
[2.4] V. Jurisdiction	17
[2.5] VI. Pleading Considerations	18
CHAPTER 3 PRELIMINARY INVESTIGATION AND AIDS	
<i>John K. Rottaris, Esq.</i>	
[3.0] I. Introduction	21
[3.1] II. Aids in Investigating a Debtor’s Collectibility	21
[3.2] A. Client’s File	21
[3.3] B. Directories	22
[3.4] C. Court and Government Records.....	22
[3.5] D. Telephone Call	24
[3.6] E. Personal Inspection	24
[3.7] F. Certified Trace or Letter.....	24
[3.8] G. Confirmation of Employment	25
[3.9] H. Bank Accounts	25
[3.10] I. Law Journals	25
[3.11] J. Previous Experience.....	25
[3.12] K. Private Detectives.....	25
[3.13] L. Other.....	26

[3.14]	M. Professional Tracers	26
[3.15]	N. Internet Searches	26
	Appendix A Samples of Directory Pages	29
	Appendix B UCC-11, Request for Information.....	43
	Appendix C MV-905, Lien Record/Vehicle Info.	45
	Appendix D Certified Mail Return Receipt	49
	Appendix E Request for Change of Address.....	51
	Appendix F Employment Confirmation Letter	53

CHAPTER 4 DEMAND UPON THE DEBTOR

Paul A. Peters, Esq.

[4.0]	I. A Caution About Consumer Claims.....	57
[4.1]	II. Purpose	57
[4.2]	III. Form	57
[4.3]	IV. Telephone Demand.....	58
[4.4]	V. Follow-up	59
[4.5]	VI. Payment Agreement	59
	Appendix A Demand Letter (Commercial Claim).....	61
	Appendix B Demand Letter (Consumer Claim).....	63
	Appendix C Affidavit of Confession of Judgment	65
	Appendix D Payment Letter Agreement.....	67

CHAPTER 5 DEBT COLLECTION RESTRICTIONS

Robert B. Liddell, Esq.

[5.0]	I. Introduction	71
[5.1]	II. Restrictions in New York	71
[5.2]	III. Comparison of State and Federal Law	72
[5.3]	IV. The Federal Fair Debt Collection Act	76
[5.4]	A. Communications in Connection with Debt Collection, 15 U.S.C. §§ 1692c, 1692e(11), 1692g	76
[5.5]	B. False or Misleading Representations, 15 U.S.C. § 1692e	79
[5.6]	C. Unfair Practices, 15 U.S.C. § 1692f.....	79
[5.7]	V. Conclusion.....	83

CHAPTER 6 ALTERNATIVES TO LITIGATION

Mitchell J. Banas, Jr., Esq.

Marjorie A. Bialy, Esq.

[6.0]	I. Introduction	87
[6.1]	II. Confessions of Judgment.....	87
[6.2]	III. Stipulations of Settlement	92

[6.3]	IV. Alternative Dispute Resolution	94
	Appendix A Affidavit and Judgment of Confession.....	97
	Appendix B Stipulation Discontinuing Action.....	103

CHAPTER 7 INSTITUTING SUIT

Robert B. Liddell, Esq.

[7.0]	I. Choice of Court	107
[7.1]	A. What Relief Is Sought?	107
[7.2]	B. What Is the Amount in Controversy?.....	108
[7.3]	1. Jurisdictional Limits.....	108
[7.4]	2. Aggregating Claims	109
[7.5]	C. Where Can the Defendant Be Served? Where Did the Cause of Action Arise?.....	111
[7.6]	D. Other Considerations.....	114
[7.7]	1. Early Trial	116
[7.8]	2. The Judge’s Legal Skill and Character	116
[7.9]	3. The Need for Motion Practice	116
[7.10]	4. Simplified Pleadings and Procedure	117
[7.11]	5. Availability of Enforcement Devices.....	117
[7.12]	6. Judgment as a Lien on Real Property.....	118
[7.13]	7. Limitation on Counterclaims in Justice Courts	118
[7.14]	II. Venue	118
[7.15]	A. Courts with Territorial Subdivisions.....	119
[7.16]	B. General Rule as to Place of Trial	119
[7.17]	C. Consumer Credit Transactions	119
[7.18]	III. Preparation of Process and Pleadings.....	120
[7.19]	A. Content and Form of Summons	122
[7.20]	B. Summons with Notice	123
[7.21]	C. Summons with Indorsed Complaint.....	124
[7.22]	1. When Is Indorsement Permitted?.....	124
[7.23]	2. What Constitutes a Sufficient Indorsement?.....	125
[7.24]	D. Complaint.....	126
[7.25]	1. Style.....	126
[7.26]	2. Verification	127
[7.27]	IV. Motion for Summary Judgment in Lieu of Complaint	128
[7.28]	A. Procedure.....	128
[7.29]	B. “Instrument for the Payment of Money Only”.....	130
[7.30]	V. Service of Process	131
[7.31]	A. Service of a Summons Upon a Natural Person	132

[7.32]	1. Personal Delivery	132
[7.33]	2. Delivery and Mailing	133
[7.34]	3. Agent for Service	134
[7.35]	4. “Nailing” and Mailing	134
[7.36]	5. Court-Directed Service.....	135
[7.37]	6. Personal Service by Mail.....	135
[7.38]	B. “Additional Notice” Required in Some Cases	135
[7.39]	C. Personal Service Upon a Corporation	136
[7.40]	D. Personal Service Upon a Partnership	137
[7.41]	1. Personal Service on a Limited Partnership	137
[7.42]	2. Personal Service on Limited Liability Companies	138
[7.43]	E. Personal Service Outside New York	138
[7.44]	F. Commencement of the Action and Proof of Service/Filing	138
[7.45]	G. The Attorney’s Responsibility	139

CHAPTER 8 COMMENCING LAWSUIT

Paul A. Peters, Esq.

[8.0]	I. Preliminary Considerations	143
[8.1]	A. Retainer Agreements	143
[8.2]	B. Suit Costs.....	143
[8.3]	II. Types of Claims and Customary Fees	143
[8.4]	A. Consumer or Retail Claims	143
[8.5]	B. Commercial Claims.....	144
[8.6]	C. Counterclaims.....	145
[8.7]	III. Determining Proper Party Defendant	145
[8.8]	IV. Venue.....	148
[8.9]	V. The Initial Pleadings.....	151
[8.10]	A. Summons with Notice	151
[8.11]	B. Summons with Endorsed Complaint.....	151
[8.12]	C. Summons and Complaint	151
[8.13]	D. Motion for Summary Judgment in Lieu of Complaint	151
[8.14]	VI. Commencement of Action.....	155
[8.15]	VII. Service of Process	156
	Appendix A.....	161
	Appendix B	163
	Appendix C.....	165

CHAPTER 9 PROCEDURES DURING LITIGATION

Joseph Capobianco, Esq.

[9.1]	I.	Entry of Default Judgments.....	181
[9.2]	A.	Entry by Clerk.....	181
[9.3]	B.	Entry by Court.....	182
[9.4]	II.	Opening Default Judgments.....	183
[9.5]	III.	Attorney's Fees.....	185
[9.6]	IV.	Interest Rates.....	186
[9.7]	V.	Transcribing Judgments.....	187
[9.8]	VI.	Foreign Judgments.....	189
[9.9]	VII.	Answers.....	190
[9.10]	VIII.	Discovery Devices.....	192
[9.11]	IX.	Motion Practice.....	195
[9.12]	X.	Debt Collection Restrictions.....	200
	Appendix	Affirmation in Support of Claim.....	201

CHAPTER 10 THE CONSTITUTIONAL CHALLENGE TO CPLR ARTICLE 52

Richard H. Friedman, Esq.

[10.0]	I.	Prejudgment Rights and Remedies.....	205
[10.1]	A.	Types of Creditor Remedies.....	205
[10.2]	B.	Development of Debtor Protection Due Process Rights.....	205
[10.3]	1.	Prior Notice and Hearing Requirements.....	205
[10.4]	2.	When Prior Notice and Hearing Are Not Required—Replevin.....	206
[10.5]	3.	Garnishment.....	206
[10.6]	4.	<i>Connecticut v. Doehr</i>	207
[10.7]	C.	Prejudgment Amendments Under New York Law.....	208
[10.8]	II.	Post-judgment Rights and Remedies Under CPLR Article 52.....	209
[10.9]	A.	Exempt Property.....	209
[10.10]	B.	Adequacy of Notice.....	210
[10.11]	C.	Legislative Reaction.....	212
[10.12]	D.	Constitutionality of 1982 Amendments.....	214
[10.13]	E.	Remaining Questions.....	215
[10.14]	1.	Time of Notice.....	215
[10.15]	2.	Type of Notice and Allocation of Burden.....	216
[10.16]	3.	Procedure for Determining Exemption Claims.....	216
[10.17]	F.	Levy of Judgment.....	217

[10.18]	G. Distribution of Proceeds.....	218
[10.19]	1. Commencement of Waiting Period.....	218
[10.20]	2. Notice to Debtor.....	218
[10.21]	H. Income Executions.....	219
	Appendix Amendment to CPLR 5231.....	223

CHAPTER 11 EVALUATING COLLECTION PROSPECTS

Stephen J. Schop, Esq.

[11.0]	I. Introduction.....	229
[11.1]	II. The Client’s File.....	232
[11.2]	III. Personal Contact.....	233
[11.3]	IV. The Cole Directories and Other Sources.....	233
[11.4]	V. Credit Bureaus.....	235
[11.5]	VI. Landlords.....	236
[11.6]	VII. County Clerk.....	237
[11.7]	VIII. Department of Motor Vehicles.....	238
[11.8]	IX. The Process Server.....	239
[11.9]	X. The New York City UNCCP.....	239
[11.10]	XI. The Post Office.....	239
[11.11]	XII. Unions.....	240
[11.12]	XIII. Subpoenas.....	240
[11.13]	XIV. Online Resources.....	252
	Appendix A Information Request Letter.....	255
	Appendix B Information Subpoena.....	257
	Appendix C Questions and Answers.....	263

CHAPTER 12 POST-JUDGMENT PROCEDURES

William Ilecki, Esq.

[12.0]	I. Compliance with Consumer Protection Statutes.....	267
[12.1]	II. Obtaining Information to Enforce the Judgment.....	268
[12.2]	A. Important Factors When Conducting Post-Judgment Discovery.....	268
[12.3]	B. Information Subpoena—CPLR 5224.....	269
[12.4]	C. Subpoena Duces Tecum—CPLR 5224.....	270
[12.5]	D. Contempt.....	271
[12.6]	1. Conduct Subject to Contempt.....	271
[12.7]	2. Venue.....	272
[12.8]	3. Procedures.....	273
[12.9]	4. Damages.....	274
[12.10]	5. Warrant.....	275

[12.11]	III.	Actions Against Property	275
[12.12]	A.	Judicial Liens on Real Property	275
[12.13]	1.	Obtaining the Lien.....	275
[12.14]	2.	Duration.....	276
[12.15]	3.	Tenancy by Entirety	276
[12.16]	B.	Restraining Notice.....	277
[12.17]	1.	Issuance	277
[12.18]	2.	Notice to Judgment Debtor	278
[12.19]	3.	Effect of the Restraining Notice.....	279
[12.20]	4.	Joint Bank Accounts with Non-Judgment Debtor Turnover Proceeding.....	281
[12.21]	C.	Personal Property Execution	282
[12.22]	1.	Priorities	282
[12.23]	2.	Extensions	283
[12.24]	3.	Sheriff's Poundage	283
[12.25]	D.	Real Property Execution	283
[12.26]	E.	Income Execution.....	284
[12.27]	1.	Amount Subject to Income Execution	284
[12.28]	2.	Federal Employees	284
[12.29]	3.	Support Executions and Orders.....	285
[12.30]	4.	Priorities	285
[12.31]	5.	Installment Payment Orders	286
[12.32]	F.	Exemptions.....	287
Exhibit 1		Post-Judgment Letter to Judgment-Debtor...	291
Exhibit 2		Information Subpoena	293
Exhibit 3		Subpoena <i>Duces Tecum</i>	301
Exhibit 4(A)		Order to Show Cause.....	305
Exhibit 4(B)		Order of Contempt.....	309
Exhibit 4(C)		Warrant of Commitment.....	313
Exhibit 4(D)		Noncompliance Motion and Order.....	315
Exhibit 5		Information Subpoena to Third Party	321
Exhibit 6		Turnover Proceeding	325
Exhibit 7		Property Execution	331
Exhibit 8		Sale of Homestead Proceeding.....	333
Exhibit 9		Income Execution.....	339

CHAPTER 13 EFFECT OF BANKRUPTCY ACT

William F. Savino, Esq.

Daniel F. Brown, Esq.

Beth Ann Bivona, Esq.

[13.0]	I.	Introduction	351
[13.1]	II.	The Bankruptcy Stay: Its Effect and Duration	355

[13.2]	III.	Assessing the Changes of Recovery in the Case.....	363
[13.3]	A.	Judgment Liens Versus Non-Lien Claims	363
[13.4]	B.	Dischargeability	364
[13.5]	C.	Vulnerability of Judgment Liens and Underlying Judgments.....	370
[13.6]	D.	Liquidation Cases Versus Rehabilitation Cases....	374
[13.7]	E.	Debtor’s Assets and Exemptions: “Priority of Claims”	375
[13.8]	F.	Pre-Bankruptcy Collections as “Preferential Transfers”	379
[13.9]	G.	Is There a Co-Debtor?	386
[13.10]	H.	Miscellaneous Considerations.....	387
[13.11]	IV.	Selected Remedies.....	390
[13.12]	A.	Relief from Stay: Adequate Protection of Judicial Lien	390
[13.13]	B.	Dischargeability Litigation.....	394
[13.14]	C.	Reaffirmation	398
[13.15]	D.	Participation in Chapter 11 and 13 Rehabilitation Plans	401
[13.16]	E.	Calculation of Interest and Valuation of Collateral	406
[13.17]	1.	Interest Calculation	406
[13.18]	2.	Valuation of Collateral	408
[13.19]	F.	Assumption or Rejection of Executory Contracts or Unexpired Leases.....	409
[13.20]	V.	Some Post-bankruptcy Remedies, When Available	411
[13.21]	A.	In General.....	411
[13.22]	B.	Where Lien Is Still Good, but Judgment Itself Was Discharged.....	412
[13.23]	C.	Non-Dischargeable Debts	413
[13.24]	D.	Other Post-Bankruptcy Remedies	413
[13.25]	VI.	Procedural Guide and Sample Forms.....	413
[13.26]	A.	Filing Proofs of Claims	414
[13.27]	B.	Motions to Lift the § 362 Automatic Stay.....	414
[13.28]	C.	Defending Action Against Creditor to Recover Preferential Transfer.....	415
[13.29]	D.	Motions to Dismiss.....	416
[13.30]	E.	Reaffirmation Agreements	420
[13.31]	F.	Redemptions.....	421
[13.32]	G.	Motions to Abandon.....	421

ABOUT THE EDITOR

PAUL A. PETERS, ESQ.

Paul Peters is of Counsel to Bulan, Chiari, Horwitz & Ilecki, LLP, in its Amherst, New York offices. He attended the University of Buffalo Law School, completing his legal studies through an apprenticeship program and is a graduate of Canisius College. Previously, Mr. Peters had been with the law firms of Brizdle & Hankin, P.C.; Gross Shuman Brizdle & Gilfillan, P.C.; a partner with Saperston & Day, P.C.; and of Counsel to Hiscock & Barclay, LLP. He also served as an Officer in the United States Army. His area of concentration is creditor's rights, and he has lectured for the National Business Institute on creditor's rights and for the New York State Bar Association on mortgage foreclosures and workouts. In addition, Mr. Peters has served as chair and moderator for the New York State Bar Association's Continuing Legal Education program, Collections and the Enforcement of Money Judgments. He is a member of the Commercial Law League of America, the Bar Association of Erie County and the Blackhorse Association.

ABOUT THE AUTHORS

MITCHELL J. BANAS, JR., ESQ.

Mitchell Banas, Jr., is a partner in the Buffalo law firm of Jaeckle Fleischmann & Mugel, LLP, where he works in the litigation practice group. He has extensive experience in complex tort and commercial litigation of all varieties (including civil rights, breach of contract, construction, antitrust, insurance, and intellectual property litigation), representing both plaintiffs and defendants (including municipal entities).

Mr. Banas received his B.A., *cum laude*, from the State University of New York at Fredonia and his J.D., *cum laude*, from the State University of New York at Buffalo School of Law, where he served as the Executive Editor of the *Buffalo Law Review*.

He is admitted to practice in New York State, U.S. District Court, Western, Northern and Southern Districts of New York; U.S. Bankruptcy Court, Western District of New York; U.S. Court of Appeals for the Second Circuit and the U.S. Court of Appeals, Federal Circuit. He is a member of the Bar Association of Erie County and the New York State Bar Association. Mr.

Banas is former treasurer of the Western New York Trial Lawyers Association and he also served as President for the Advocates Club of Western New York.

MARJORIE A. BIALY, ESQ.

Marjorie A. Bialy is an associate in the litigation practice group of Jaeckle Fleischmann & Mugel, LLP. She concentrates her practice in business and commercial litigation and insolvency issues. She has over 15 years of experience dealing with all aspects of Chapters 7, 11 and 13 bankruptcy proceedings, including preference actions, plan confirmations, stay relief motions and confirmation hearings.

Ms. Bialy received her B.A., *cum laude*, from the State University of New York at Buffalo and her J.D. from the State University of New York at Buffalo School of Law. She is admitted to practice in New York State, the U.S. District Court for the Western District of New York and the U.S. Bankruptcy Court for the Western District of New York.

She is a member of the Bar Association of Erie County and serves on its Commercial and Bankruptcy Law Committee.

BETH ANN BIVONA, ESQ.

A partner at Damon & Morey LLP, practicing in the firm's Business Litigation and Insolvency Department, Ms. Bivona works primarily with corporations, other businesses and professional clients on a variety of commercial disputes and insolvency matters.

Ms. Bivona is admitted to practice in the states of New York, Connecticut and Michigan; the United States Bankruptcy and District Courts for the Eastern, Western, Northern and Southern Districts of New York, and the Eastern and Western Districts of Michigan; the United States Court of Appeals for the Second and Sixth Circuits; and the United States Supreme Court. She is a frequent speaker and teaches courses on Business Law and Bankruptcy Law.

She received her B.S. degree, *cum laude*, in Business Administration from the State University of New York at Buffalo, and her J.D. degree, *cum laude*, from Michigan State University College of Law, where she was a member of the editorial board of the *Journal of International Law and Practice* and Moot Court.

DANIEL F. BROWN, ESQ.

Mr. Brown is a partner at Damon & Morey LLP, practicing in the firm's Business Litigation and Insolvency Department. His practice includes litigation in insolvency, commercial and tax matters, including substantial experience representing both businesses and individuals in commercial and tax disputes, as well as representing debtors, creditors and trustees in Chapter 11 bankruptcy reorganization proceedings and Chapter 7 liquidations.

From 1995 through 1998, Mr. Brown served as chairman of the Commercial and Bankruptcy Law Committee of the Bar Association of Erie County in Buffalo, New York. He is a frequent speaker on bankruptcy, federal tax and litigation issues and was a regular guest commentator on television and radio in conjunction with the Buffalo Sabres Chapter 11 bankruptcy case. He has lectured extensively on bankruptcy matters; potential personal liabilities of corporate officers, directors and shareholders; federal tax issues; and numerous other bankruptcy matters.

Prior to joining Damon & Morey in 1989, Mr. Brown was a trial attorney with the U.S. Department of Justice, Tax Division, in Washington, D.C. In that capacity, he litigated fraudulent conveyance actions, bankruptcy matters, responsible officer suits, tax refund suits, tort claims and other civil litigation in the U.S. District Courts, U.S. Bankruptcy Courts and state courts throughout the northeastern United States. In 1985, Mr. Brown was named Outstanding Trial Attorney by the U.S. Department of Justice, Tax Division.

Mr. Brown received his B.A., *magna cum laude*, from Syracuse University, and his J.D. from the Albany Law School of Union University.

SARA BULSON, ESQ.

Sara Bulson is an associate in the firm of Bulan, Chiari, Horwitz & Ilecki LLP, practicing in the area of retail and commercial litigation. She received her J.D., *cum laude*, from the State University of New York at Buffalo School of Law, where she received the Edith and David Goldstein Award for proficiency in debtor/creditor and bankruptcy subjects. She graduated *summa cum laude* from Niagara University.

Ms. Bulson is a member of the Bar Association of Erie County, the New York State Bar Association and the American Bar Association.

JOSEPH CAPOBIANCO, ESQ.

Joseph Capobianco is a partner at Reisman, Peirez & Reisman, LLP, in Garden City, New York. He concentrates his practice in commercial, bankruptcy and real estate law. He is a *cum laude* graduate of Long Island University and received his J.D. from American University, Washington School of Law. Before joining Reisman, Peirez & Reisman, he worked at Bell Kalnick Klee & Green.

In addition to his practice, Mr. Capobianco is Director of the Nassau Health Care Corporation, which operates the Nassau County Medical Center. He is also a member of the Nassau County Bar Association, the New York City Bar Association and the Eastern Association of Equipment Lessors.

WILLIAM ILECKI, ESQ.

William Ilecki is a partner in the firm of Bulan, Chiari, Horwitz & Ilecki, practicing in the areas of commercial litigation, creditors' rights, bankruptcy and general practice. A 1989 graduate of the State University of New York at Buffalo School of Law, he received his undergraduate education at Canisius College, graduating in 1986 (*magna cum laude*, All-College Honors Program). Mr. Ilecki is admitted to practice law in all courts of the states of New York and Pennsylvania, as well as the United States District Court and Bankruptcy Court for the Western District of New York. He is a member of the American and the New York State Bar Associations, the Bar Association of Erie County (Banking and Commercial Law Committee), and the Board of Directors of the Erie County Bar Foundation. He has frequently lectured to various groups regarding collections and bankruptcy law.

ROBERT B. LIDDELL, ESQ.

A partner at Hiscock & Barclay, LLP, in Syracuse, New York, Mr. Liddell concentrates his practice on creditors' rights and commercial litigation. He is a graduate of the Syracuse University College of Law and holds memberships in the New York State and Onondaga County Bar Associations, the Onondaga County Bar Foundation and the Lease Enforcement Attorney Network.

MICHAEL PASKOWITZ, ESQ.

Michael Paskowitz is a partner in the Buffalo firm Borins Halpern & Paskowitz, where he practices in the areas of commercial litigation, retail and commercial collections, real estate, estates and trusts, and family law. He

is a graduate of the State University of New York at Buffalo School of Law. Mr. Paskowitz is a member of the New York State and Erie County Bar Associations, and the Commercial Law League of America. Mr. Paskowitz has lectured on collections at National Business Institute seminars and for the New York State Bar Association's Practical Skills Series.

JOHN K. ROTTARIS, ESQ.

John Rottaris is an attorney with the firm Gross Shuman Brizdle & Gilfilan, P.C., in Buffalo, New York. His areas of practice include commercial litigation, creditors' rights, commercial collections and bankruptcy law. He received his B.A., *magna cum laude*, from Niagara University and his J.D., *cum laude*, from the State University of New York at Buffalo School of Law.

Mr. Rottaris is admitted to practice in New York State, the U.S. District Court for the Western District of New York and the U.S. Bankruptcy Court for the Western District of New York. He is a member of the New York State Bar Association; the Erie County Bar Association, serving on its Commercial and Bankruptcy Committee; the Niagara Falls Bar Association; and the Commercial Law League of America.

WILLIAM F. SAVINO, ESQ.

William Savino is a Senior Partner at Damon & Morey LLP and Chairman of the firm's 11-lawyer Business Litigation and Insolvency Department. His responsibilities include matters involving business litigation (including construction, corporate and partnership dissolution, Uniform Commercial Code and intellectual property matters) and insolvency (both debtor and creditor), with an emphasis on reorganizations. He is an honors graduate of the University of Rochester and the State University of New York at Buffalo School of Law. Mr. Savino is admitted to practice in New York and Ohio.

Mr. Savino writes frequently on the subject of business law. Among other articles, he is co-author of the Commercial Law Section of the *Syracuse Law Review*; "The Supreme Importance of the UCC's Principle of 'Uniform Construction,'" for West's *UCC Bulletin*; and *Valuation and Standards: The Professional Appraiser's Solution* for the American Bankruptcy Institute (ABI).

Since 1979, Mr. Savino has been Lecturer III at the State University of New York at Buffalo School of Management for its two-semester program on business law. Since 2002, he has been an instructor at the State University

at Buffalo School of Law teaching commercial litigation. He served three years as chair of the Commercial Law and Bankruptcy Committee of the Bar Association of Erie County.

STEPHEN J. SCHOP, ESQ.

Stephen Schop is a partner at Schop & Pleskow, LLP, in Buffalo, where he practices in the areas of business planning and corporate law, residential and commercial lending, estate planning, real property development, and title examination and analysis. Mr. Schop received a B.A. from the University of Toronto, a B.B.A., *summa cum laude*, from Niagara University, and his J.D. degree from the State University of New York at Buffalo School of Law. He is a Certified Public Accountant and received an award from the American Institute of Certified Public Accountants, as well as the Goldstein Bankruptcy Law Award and the Order of Barristers Award. A member of the Real Property and Corporate Law Sections of the New York State and Erie County Bar Associations, Mr. Schop serves on the Chicago Title/Ticor Title Advisory Board and the Five Star Bank Advisory Board.

[13.33]	H. Complaints Objecting to Discharge or to Dischargeability of Particular Debts	422
[13.34]	I. Objections to Confirmation of Plans	422
[13.35]	J. Determining Value of Lien, and Therefore of Allowable Secured Claim, Under § 506	423
[13.36]	K. Settling a Claim or Counterclaim by the Estate Against a Creditor	423
[13.37]	L. Provisional Relief for Lienors Whose Collateral Is in Danger	423
[13.38]	M. Representing the Creditor’s Committee in Chapter 11	424
	Exhibit 1 Proof of Claim	425
	Exhibit 2 Chapter 7 Statement of Monthly Income	427
	Exhibit 3 Chapter 11 Statement of Monthly Income ...	435
	Exhibit 4 Chapter 13 Statement of Monthly Income ...	437
	Exhibit 5 Debtor’s Certification	445
	Exhibit 6 Certification to Court of Appeals	447
	Exhibit 7 General Power of Attorney.....	449

CHAPTER 14 MISCELLANEOUS PROVISIONS

Michael Paskowitz, Esq.

[14.0]	I. Judgment By Confession.....	453
[14.1]	II. Contempt Proceedings.....	454
[14.2]	III. Receiverships	455
[14.3]	IV. Priorities Among Judgment Creditors and Others	456
[14.4]	V. Satisfactions	458
[14.5]	VI. Debt Collection Practices	459
[14.6]	VII. Remitting to the Client	460
[14.7]	VIII. Mechanic’s Liens	461
[14.8]	IX. Trust Funds for Laborers and Materialmen.....	468
[14.9]	X. Frivolous General Denials.....	468
	Appendix A Statement and Confession of Judgment	471
	Appendix B Sheriff’s Letter of Contempt to Debtor	473
	Appendix C Memorandum of Senator Kemp Hannon	475
	Appendix D NYSBA Ethics Opinion #469	477
	Contributors	479
	Table of Authorities	485
	Index	513