

# Trial Lawyers Section Digest

A publication of the Trial Lawyers Section of the New York State Bar Association

## Message from the Chair

### Greetings to all the trial lawyers:

I want to urge all of you to attend our Summer Meeting at the Woodstock Inn in Vermont, Sunday, July 29 through Wednesday morning, August 1, 2012. We plan to have excellent speakers. I am hopeful Professor Patrick Connors of Albany Law School will again join us to present CPLR updates and ethic discussions. Professor Paul Finkelman, also at Albany Law School, will provide a fun and insightful lecture. We will provide more specific information regarding our speakers and activities in the months ahead. There is an excellent golf course near the Woodstock Inn. I have stayed at the Woodstock Inn several times in the past. I understand that the Inn has significantly renovated its facility since my last visit several years ago. It should be an outstanding meeting for our Section. Please attend.



In terms of issues that concern me on the trial bar level, one is problems facing both the plaintiff and defense bar with E-Discovery. Preservation by your client of e-mails and electronic data is absolutely imperative.<sup>1</sup> There are duties imposed on trial attorneys to notify their clients at the outset of litigation or even at the first hint of a lawsuit. Please abide by the admonition to clearly instruct your clients to preserve their electronic data. This can have dire consequences for your client and for yourself.

In the 1980s, the interest rate of 9% on judgments<sup>2</sup> was enacted when the actual interest rate was 12%. Circumstances have changed and the legal interest rate of 9%, in my opinion, is way too high and punitive. I hope

the legislature will take a look at this and enact a more fair interest rate.

The recent *Toledo* case,<sup>3</sup> decided by the New York Court of Appeals, imposes the extraordinary burden of awarding interest to the plaintiff on future damages that will not be earned, in some cases, for decades. This particular decision seems unfair and hopefully the legislature will reconsider this issue as well.

I look forward to working with my fellow officers, Vice-Chair Elizabeth Hecht, Secretary, the Honorable Robert Julian, and Treasurer A. Michael Furman, as well as with members of our Executive Committee and our past chairs to provide an outstanding 2012 for our membership.

**Peter C. Kopff**  
**Trial Lawyers Section Chair**

### Endnotes

1. Electronic discovery – *Zubulake v. UBS Warburg LLC*, 229 F.R.D. 422 (S.D.N.Y. 2004).
2. CPLR 5004.
3. *Toledo v. Christo*, 18 N.Y.3d 363. The *Toledo* decision is dated January 10, 2012.

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