

Commercial and Federal Litigation Section Newsletter

A publication of the Commercial and Federal Litigation Section of the New York State Bar Association

Message from the Chair

It is hard to believe that as I write this column, my term as Section Chair is more than halfway complete. Looking back over the past several months, I must say that thanks to the tremendous talent and contributions of our membership, the Section continues its tradition of vitality, innovation, and service to the overall legal community. I cannot help but be proud of the Section's many accomplishments during the last half of 2012, outlined in more detail below, and of our Section's once again, highly successful Annual Meeting Program, which took place this year at the New York Hilton on January 23, 2013.



Tracee E. Davis

The Annual Meeting Program, organized by Paul Sarkozi, our Section's Vice-Chair, included timely and thought-provoking Continuing Legal Education Programs focusing on the future of litigation in New York State and an afternoon awards luncheon honoring Judge Jed S. Rakoff, which was full to capacity. The morning's first panel, moderated by former New York Chief Judge Judith Kaye, now of counsel at Skadden, Arps, Slate, Meagher & Flom, focused on how best to execute some of the reforms to the New York State Commercial Division recommended by the Report of the Chief Judge's Task Force on Commercial Litigation in the 21st Century, as well as the importance, in light of the current economic climate, of a bench-bar collaboration to ensure the early and efficient resolution of commercial cases. The panel included Commercial Division Justice Elizabeth Hazlitt Emerson, Sullivan & Cromwell LLP partner Robert J. Giuffra, Howard Levine of Whiteman, Osterman

& Hanna, and our Executive Committee's own Macy's, Inc. Assistant General Counsel Mitchell F. Borger. The second panel, "Financial Crisis Litigation in the Commercial Division in Federal Courts," examined the effect of the financial collapse of 2008 on litigation in New York state and federal courts. Moderated by Benjamin Nagin, a partner at Sidley Austin, this panel included Commercial Division Justice Shirley Kornreich; Southern District Judge Victor Marrero; James Gange, Chief Compliance Officer of Davidson Kempner Capital Management;

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Kevin McCarthy, Deputy General Counsel at BNY Mellon; and Hector Gonazlez, a partner at Dechert LLP.

The Program was topped off by the Section's Annual Meeting luncheon, during which Second Circuit Judge Robert Katzmann, himself a Fuld Award recipient, presented Judge Rakoff with the Section's Fuld Award in front of a crowd including more than 60 state and federal judges as well as hundreds of practitioners from dozens of law firms throughout our State.

During the last half of 2012, just a few of the Section's many accomplishments included a Report of the Committee on Federal Procedure, co-chaired by Chair-Elect Gregory Arenson (Kaplan Fox & Kilsheimer) and Michael Rakower (Rakower Lupkin PLLC), recommending a revision to Rule 5 of the Federal Rules of Civil Procedure to allow for the electronic service of discovery without the advance consent of each party in writing, a Report completed thanks to the efforts of Jeffrey Haradine (Ward Greenberg Heller & Reidy LLP), a member of the Committee who contributed substantially to its drafting. This Report, adopted by the Executive Committee at its December meeting, has been sent to the Advisory Committee on Civil Rules for consideration. Our Section's Committee on Employment and Labor Relations, co-chaired by Gerald Hathaway (Mitchell Silberberg & Knupp LLP) and Robert N. Holtzman (Kramer Levin Naftalis & Frankel LLP), also completed a joint report with the Labor and Employment Law Section on the New York WARN statute, which recommends a revision to the language of this statute dealing with the obligations of employers contemplating mass layoffs. Mr. Hathaway presented the Report to the NYSBA House of Delegates, which was adopted at its January meeting.

Additionally, the American Bar Association has, with the co-sponsorship of the New York State Bar Association procured through our Section's efforts, recently adopted the very proposal that was set forth by this Section's Bankruptcy Litigation Committee in its Report on the seminal case *Stern v. Marshall*: that Bankruptcy Judges should, with the consent of the parties, be permitted to determine matters otherwise reserved to the jurisdiction of Article III courts. The *Stern v. Marshall* Report was the result of the tremendous efforts of our Bankruptcy Litigation Committee, chaired by Douglas Tabachnik.

In addition, the Committee on the Federal Judiciary, co-chaired by John Winter (Patterson Belknap Web & Tyler) and Jay Safer (Locke Lord Bissell & Liddell LLP), recently completed an updated *Guide to Individual Practices of Federal Magistrate Judges in the Southern and Eastern Districts*, a tremendous practical tool that is now available on the Section's website; and the Committee on Electronic Dis-

covery, co-chaired by Constance Boland (Nixon Peabody LLP) and Adam Cohen (Ernst & Young), recently completed an updated *Best Practices in E-Discovery in New York State and Federal Court*, another excellent practical tool that also is available to all Section members on our website.

As we progress into 2013, our Section and its members continue to make invaluable contributions to the Bar, with various projects and initiatives in the pipeline. Just a handful of these ongoing projects and initiatives include: the Section's newly formed Social Media Committee, co-chaired by Mark Berman (Ganfer & Shore, LLP) and Ignatius Grande (Hughes Hubbard & Reed, LLP), which is the first committee of the New York State Bar Association dedicated to social media issues and which will focus on social media's impact on our profession as well as evolving social media legislation; and the continued efforts of our Special Committee on Pattern Jury Instructions, led by Hon. Andrea Masley, New York City Civil Court, who is joined by Commercial Division Justice Shirley Kornreich, former Section Chair Lauren J. Wachtler (Mitchell Silberberg & Knupp LLP) and Hon. Melissa A. Crane, New York City Civil Court, to draft new instructions and explore new areas of law in ongoing collaboration with the Pattern Jury Instructions Committee of the Association of Supreme Court Justices, which will be available to our members in database form on our Section's website. Also, in keeping with our Section's goal to provide our members with important and useful information, on the Federal side, the Section under the leadership of Hon. Melanie Cyganowski (Otterbourg, Steindler, Houston & Rosen), in collaboration with the Committee on ADR, chaired by Charles J. Moxley (Moxley ADR LLC), continues to examine best practices for advancing mediation in the United States District Court for the Southern District of New York. These efforts will culminate in a Best Practices Guide, available to all Section members.

With respect to membership events, in addition to the Annual Meeting, we also recently co-sponsored, with the Bar Association of Erie County, a Commercial Division Appreciation and Welcoming Reception for the 8th Judicial District in Buffalo, which I was delighted to attend, as well as a cocktail reception honoring Maris Buckner, former ADR coordinator, at 60 Center Street, co-sponsored by the Dispute Resolution Section. In the coming months, the various Section events that we have to look forward to include the Section's annual Smooth Moves Event and CLE Program, which will be held again this year at Lincoln Center for the Performing Arts, a flagship event including free continuing legal education credits and a cocktail reception which is open to everyone; and our Section's Spring Meeting, scheduled this year for May 3-5 at the Gideon Putnam Hotel in Saratoga Springs, New York,

which promises to be an exciting weekend of continuing legal education classes as well as various opportunities to socialize and mingle with members of the Section.

Last, but not least, I am pleased to announce that I was invited, on behalf of the Section, to participate in the ABA's Delegation to Cambodia from February 18, 2013, to February 22, 2013, during which members of the United States bench and bar will participate in a series of lectures for Cambodian Judges on several substantive areas of U.S. law. I hope to parlay this experience into an ongoing opportunity for collaboration between our Section and members of the Bar in Cambodia. I hope that this trip will

result in exciting future opportunities for our Section's membership, and perhaps international exposure.

In short, our Section continues to reflect the talents, vitality, energy, and enthusiasm of our membership, without which the Section's contributions to Bar, overall, would not be possible. I encourage each and every one of you to become more involved in all that this Section has to offer. Please feel free to reach out to me at 212-826-5358, and I will personally assist you in becoming meaningfully involved.

Tracee E. Davis



Foundation Memorials

A fitting and lasting tribute to a deceased lawyer or loved one can be made through a memorial contribution to The New York Bar Foundation...

This meaningful gesture on the part of friends and associates will be appreciated by the family of the deceased. The family will be notified that a contribution has been made and by whom, although the contribution amount will not be specified.

Memorial contributions are listed in the Foundation Memorial Book at the New York Bar Center in Albany. Inscribed bronze plaques are also available to be displayed in the distinguished Memorial Hall.

To make your contribution call **The Foundation** at **(518) 487-5650** or visit our website at **www.tnybf.org**

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