

Minutes of the
Executive Committee of the
Commercial and Federal Litigation Section
New York State Bar Association

July 2005 – June 2006

Prepared by Michael D. Sant' Ambrogio,
Section Secretary

| Meeting Date | Speaker |
|---------------------|--|
| July 14, 2005 | Mitchell F. Borger General Counsel, Federated Department Stores Chair of the Corporate Counsel Section |
| September 15, 2005 | Daniel M. Weitz ADR Coordinator New York State Unified Court System |
| October 20, 2005 | David D. Brown, IV Bureau Chief, Investment Protection Bureau, New York Attorney General's Office |
| November 16, 2005 | Vincent Buzard President, New York State Bar Association |
| December 15, 2005 | Alvin K. Hellerstein U.S. District Judge, Southern District of New York |
| February 15, 2006 | Eva Wisnik President, Wisnik Career Enterprises, Inc. |
| March 15, 2006 | Honorable Barbara S. Jones U.S. District Judge, Southern District of New York |
| April 19, 2006 | Honorable Denise Cote U.S. District Judge, Southern District of New York |
| June 14, 2006 | Hon. Orin R. Kitzes and Hon. Marguerite A. Grays Queens County Commercial Division |

**Minutes of Meeting
of
July 14, 2005**

**NYSBA Commercial and Federal Litigation Section
Executive Committee Meeting, July 14, 2005**

MINUTES

Mitchell F. Borger, Federated Department Stores

Mr. Borger, who is the General Counsel of Federated Department Stores and the Chair of the Corporate Counsel Section, discussed his experiences as inside counsel.

Prior Minutes

The draft Minutes for June 16, 2005 were unanimously approved subject to the correction of a typographical error.

Annual Meeting of the Commercial and Federal Litigation Section

In Carrie Cohen's absence, Stephen Younger discussed planning for the Section's Annual Meeting. Mr. Younger said that planning for the event was still in the conceptual stage. The Chair also suggested timing the event so that it was coordinated with the Presidential Summit. The Chair solicited volunteers to assist Ms. Cohen, because Ms. Cohen works in the New York Attorney General's Office, and she is not permitted to utilize assistance from other attorneys in the office and has limited resources.

Spring Meeting of the Commercial and Federal Litigation Section

No date has been established for the Spring Meeting. The event would focus on entertainment and sports law, and probably take place in the area of Lincoln Center.

Diversity Report Card

The representation of minority attorneys in the Section was noted to be "very poor." Among 2,000 Section members, 30 are identified as minorities. To improve minority participation, it was recommended that the Section hold joint receptions with minority bar associations, which would be modeled on an effort by federal judges to encourage minority candidates to apply for clerkships.

Resolution Thanking Lisa Bataille

Because Lisa Bataille, the Section's liaison, had been reassigned, a resolution was proposed that the Section thank Ms. Bataille by preparing a resolution thanking her and framing the resolution. The resolution was seconded and accepted unanimously. The Chair volunteered to draft the formal resolution.

Selection of Alternate Delegate to House of Delegates

To fill an opening in the position of Alternate Delegate to the House of Delegates (which is the policy-making arm of the Association), the Chair solicited nominations and volunteers. The

House meets four times per year. Current delegates are Sharon Porcellio, Lew Smoley, and Lauren Wachtler.

New York State Bar Attorney Professionalism Award

The Chair solicited nominations for this award.

Judicial Ethics and the Internet (“Google Report”)

The Section engaged in a lively discussion of the Google Report. The Google Report was criticized because the current draft did not take a position on whether Courts may rely on the Internet in making decisions. It was noted that, according to the ABA model code on judicial conduct, “Judges shall not independently investigate facts,” which includes electronic sources. The question was raised, should the Section endorse this position, or limit itself to identifying the issue, or perform a survey to determine whether a consensus existed on one of these views. A motion was made to decide whether to take a position on the issue of Internet research, or to leave the report in its current form and raise the issue with the Section membership. The Section voted to keep the report in its present form, five to four.

Whereupon, the meeting was adjourned.

**Minutes of Meeting
of
September 15, 2005**

**NYSBA Commercial and Federal Litigation Section
Executive Committee Meeting, September 15, 2005**

MINUTES

Daniel M Weitz, ADR Coordinator for the New York State Unified Court System, discussed alternative dispute resolution in the New York State courts.

July 14, 2005 Minutes

The July 14, 2005 minutes were approved subject to the inclusion of the list of attendees.

New Projects

The Chair encouraged everyone to move forward with the projects that they identified during the meeting of the committee chairs in August. The Chair discussed the success in recruiting members of the Section to work on certain committees and offered to send an email on behalf of any other committees in need of new members.

The Chair announced that Jonathan Lupkin is stepping down as Editor of *The Litigator* and asked Executive Committee members to consider whether they or someone they know is interested in assuming the Editor position. The Section also needs a new chair of the Federal Court Attorneys' Committee.

November Executive Meeting in Rochester

The Chair announced that the Executive Committee will hold a meeting in Rochester, New York on November 16, 2005, 5:00-7:00 p.m., at the law firm of Harris Beach LLP. Vincent Buzard, President of the New York State Bar Association, will be our guest speaker. The meeting will be followed by a reception. There will be a companion meeting at Patterson Belknap Webb & Tyler LLP. The Executive Committee wishes to reach out to Section members and the Commercial Division judges upstate.

Tenth Anniversary of Commercial Division

The Chair-Elect reported on the Section's plans to celebrate the Tenth Anniversary of the Commercial Division on November 21, 2005, 5:00-7:00 p.m., at Lincoln Center. The Section will invite judges, law clerks, and general counsel to the event. The Chair asked for recommendations from the Executive Committee members on other guests that should be invited.

The question of selling tickets was discussed, but the Executive Committee favored obtaining sponsors to finance the event. The Chair-Elect estimated that the event would cost approximately \$10,000 and asked the Executive Committee members to email her if they were willing to be a sponsor.

MINUTES, Executive Committee Meeting, September 15, 2005

Mentoring Program

The Chair reported that the October 10, 2005 mentoring program will be rescheduled.

Federal Procedure Committee

Gregory K Arenson reported on the Federal Procedure Committee's Rule 45 Report. After a lively discussion of the subpoena power of federal courts, the Executive Committee unanimously approved the report. In addition, it was proposed that the Report be published in *The Litigator*.

Uniform Arbitration Act

Deborah Massucci reported on the New York Consensus Draft Revised Uniform Arbitration Act. The Executive Committee has already approved the draft. The section needs to propose the draft to the Executive Committee of the NYSBA. Carroll Neesemann will draft a report for NYSBA Executive Committee and Glen LeFebvre will assist.

Annual Meeting

The Vice-Chair reported on the Annual Meeting to be held on January 25, 2006. The morning will comprise panels on ethics and hot topics of the bench and bar. The Presidential Summit in the afternoon will either focus on the attorney-client privilege or the role of the United States Senate in confirming Supreme Court Justice nominees.

Spring Meeting

The Chair-Elect reported on the Spring Meeting. The Section has asked Chief Judge Walker to accept the Haig Award at the Spring meeting. The Section would like to hold the event at Lincoln Center. The Chair-Elect is discussing creative collaborative programming with the Entertainment Law Section.

Whereupon, the meeting was adjourned.

Attendees

Greg Arenson
James Bergin
Peter Brown
Carrie Cohen
Peter Craig
Charles Dorkey
Kathy Kass
Glenn LeFebvre
Dan Levitt
Hon. Frank Mass
Deborah Masucci
Lesley Rosenthal
Michael Sant'Ambrogio
Hon. Beatrice Shainswit
Douglas Tabachnik
Stephen Younger

**Minutes of Meeting
of
October 20, 2005**

**NYSBA Commercial and Federal Litigation Section
Executive Committee Meeting, October 20, 2005**

MINUTES

David D. Brown, IV, Bureau Chief, Investment Protection Bureau, New York Attorney General's Office, spoke about the recent work of the AG's office, including the investigations of illegal trading practices in the mutual fund industry and fraud and anti-competitive activity among insurance brokerage firms.

Glenn LeFebvre, Section Liaison

The Chair introduced Glenn LeFebvre, our Section Liaison, who attended the meeting.

September 15, 2005 Executive Committee Minutes

The Minutes of the September 15, 2005 Executive Committee Meeting were unanimously approved.

Reception for New Members, November 3, 2005

Lauren J. Wachtler discussed the Mentoring Program and the Reception for New Members and New Commercial Division Law Secretaries and Law Clerks to be held at Patterson Belknap on November 3, 2005 from 6:00 to 8:00 p.m. We have invited all members who have joined since June 2004.

Lauren is considering several other events for new members, including a tour of the courthouse and a CLE program on e-filing.

Annual Meeting, January 25, 2005

Carrie H. Cohen updated the Committee on Annual Meeting to be held in New York on January 25, 2005. The Section is planning two panels in the morning: (1) ethical issues in corporate investigations; and (2) ethical issues in state versus federal cases. Carrie presented the Committee with some of possible panelists.

Carrie confirmed that the Fuld award will be given to all ten Commercial Division judges. Chief Judge Judith Kaye will accept the award on behalf the Commercial Division and each judges will receive an engraved gavel.

The Section will be organizing the Presidential Summit in the afternoon. Subjects under consideration for the Summit include the Supreme Court confirmation process and attorney-client privilege issues, including the issue of executive privilege.

The Chair called for volunteers to help Carrie with the meeting.

Section Budget

Vincent J. Syracuse reported on the Section budget. The Section has a \$42,000 operating surplus. The Section is in the process of collecting executive committee member dues.

The Section is investing some of the surplus in new members and the Commercial Division Anniversary event.

Nominating Committee

The Chair announced that the Nominating Committee will be meeting soon to consider the slate of officers for 2006-2007. The Chair encouraged Committee members to submit the names of anyone that they think should be nominated to the Chair, the Chair Elect, or the Honorable Melanie Cyganoski, who is the Chair of the Nominating Committee.

The New York Litigator

Bernard Daskal has agreed to serve as the new editor of The New York Litigator. The Section appreciates all the hard work that Jonathan Lupkin has devoted to the Litigator over the years.

Committee Leadership

The Section is looking for a new Chair of the Federal Court Attorneys Committee. The Section also needs to activate the Membership Committee.

The Chair encouraged the committee chairs to move forward with the reports that their committees are working on. In addition, the Chair explained the need to involve new members who have volunteered in the work of their committees.

Executive Committee Meeting and Reception in Rochester, NY, November 16, 2005

The Executive Committee will meet in Rochester on November 16, 2005, at the law firm of Harris Beach LLP. The meeting will begin at 5:00 p.m. A. Vincent Buzard, President of the New York State Bar Association, will be the guest speaker: Patterson Belknap will be hosting a video or phone link. Please email Stephen Younger if you are planning to attend the meeting in Rochester.

Commercial Division Tenth Anniversary Celebration, November 21, 2005

Lesley Friedman Rosenthal updated the Committee on the plans for the Tenth Anniversary Celebration of the Commercial Division, which will be held in the Walter Reade Theater at Lincoln Center for the Performing Arts on November 21, 2005, from 5:00 p.m. to 7:00 p.m.

The Section is still looking for additional Firm sponsors.

Federal Procedure Committee Report: "Is Personal Service of a Subpoena Required Under Rule 45?"

Jim Parver presented the Federal Procedure Committee's Report to the Executive Committee. The Committee had a lively discussion on the due process required for service of a subpoena and whether a Rule 45 subpoena should be served personally. The Committee reached a consensus that service of a subpoena under Rule 45 should be by the same method used for a summons and complaint under Rule 4. The Federal Procedure Committee will revise the report accordingly.

Special Task Force on State Court Appeals.

The Chair announced the creation of a Special Task Force on State Court Appeals led by Preeta D. Bansal. Preeta spoke about the origins and focus of the Task Force. The idea for the task force arose out of several questions: (1) is there enough time for appellate argument in commercial cases with complicated facts; (2) is there enough state court precedents available in commercial cases; and (3) what has changed since Robert McCrate's study of commercial appeals in the state courts more than 20 years ago. In addition, Chief Judge Kaye has expressed concern that commercial cases are not reaching the Court of Appeals.

The Task Force's goal is to produce a 20-25 page report for Chief Judge Kaye on the issues related to commercial appeals that should be examined. The Chair encouraged the executive committee members to give any ideas they have to Preeta.

H.R. 420, the "Lawsuit Abuse Reduction Act" (LARA)

The Executive Committee unanimously approved the Federal Procedure Committee's Report opposing LARA.

Spring Meeting, New York City, May 5-7, 2006

The Chair reminded the Committee that the Spring meeting will be held at Lincoln Center for the Performing Arts this year.

Whereupon, the meeting was adjourned.

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Attendees

Preeta Bansal
Leonard Benning
James Bergin
Jim Blair
Carrie Cohen
Mark Davies
Zack Grubin
Jerry Hathaway
Glenn LeFebvre
Dan Levitt
Frank Maas
Jim Parver
Lesley Friedman Rosenthal (phone)
Charles Rosenzweig
Michael Sant'Ambrogio
Ira Schochet
Lew Smoley
Vincent Syracuse
David Tennant (phone)
Lauren J. Wachtler (phone)
Steve Younger

**Minutes of Meeting
of
November 16, 2005**

**NYSBA Commercial and Federal Litigation Section
Executive Committee Meeting**

November 16, 2005

MINUTES

A. Vincent Buzard, President, New York State Bar Association

The State Bar President discussed the priorities of the State Bar and the contributions of the Commercial and Federal Litigation Section. With the help of the Section, the Bar has taken a position opposing the LARA bill recently passed by the U.S. House of Representatives. The State Bar is developing its relationships in Washington in order to have a greater impact on federal legislation of concern to the State Bar. The State Bar is educating the public on the profession through public service announcements about attorney advertising, litigation, and constitutional questions. The State Bar's focus on attorney advertising is being led by the Section's Bernice Leber. The Section is also assisting with the Presidential Summit at the Annual Meeting in January, which will address the attorney-client privilege in the context of corporate investigations and the Supreme Court confirmation process.

October 20, 2005 Executive Committee Meeting

The Minutes of the October 20, 2005 Executive Committee Meeting were unanimously approved.

H.R. 420: The "Lawsuit Abuse Reduction Act" (LARA)

Gregory K. Arenson reported that the report of the Section on LARA had been adopted by the House of Delegates and will be implemented by the State Bar.

The Chair encouraged everyone to focus on their committee reports, which are critical to the Section's work. The Section is holding a committee chair meeting on February 8, 2005 at 8:30 a.m. at Patterson Belknap Webb & Tyler.

Section Activities

The Chair reported on the reception for new members held on November 3, 2005, which was a great success.

The Chair reported that the Section will be inviting more federal judges to speak at the Executive Committee meetings. Judge Alvin K. Hellerstein, who presides over the September 11th World Trade Center litigation, will speak at the December 15th Executive Committee Meeting.

Report on the Nominating Committee

The nominating committee has nominated Lesley Friedman Rosenthal as Chair, Carrie H. Cohen as Chair-Elect, and Peter Brown as Vice-Chair of the Section for the 2006-2007 term.

Commercial Division Tenth Anniversary Celebration

Leslie Rosenthal reported on the plans for the Commercial Division Anniversary on Monday, November 21, 2005 at Lincoln Center for the Performing Arts. The Chair thanked all the law firm sponsors of the event and encouraged everyone to attend.

Annual Meeting, January 25, 2005

The Chair reported on the planning for the annual meeting. The morning program will focus on ethics and the afternoon will include the Presidential Summit. The State Bar President thanked Carrie Cohen for her hard work organizing the Presidential Summit.

Spring Meeting, May 5-7, 2006, Lincoln Center for the Performing Arts

Lesley Rosenthal reported on the Spring Meeting. The Section will award the Haig Award to the Honorable John M. Walker, Chief Judge of the United States District Court for the Southern District of New York. Saturday's program will have an arts and litigation theme and Sunday's program will be a primer on bankruptcy litigation.

Federal Procedure Committee's Revised Rule 45 Report

Gregory K. Arenson reported on the Federal Procedure Committee's Rule 45 Report, which was revised based on the comments made at the Executive Committee Meeting in October. After Greg reviewed the changes, the Executive Committee unanimously approved the report. Greg acknowledged the significant contributions of Jim Parver, who presented the report to the Section in October.

CPLR Committee's Report on Proposed Amendment to CPLR § 3212(a)

James Bergin reported on the proposed amendment to CPLR § 3212(a), which will restore the court's discretion to consider all relevant factors in determining whether to permit belated summary judgment motions. There was a lively debate on whether the Section should endorse the proposed amendment. It was decided that the committee will re-visit the issue and the question of appellate review.

Adjournments in the Commercial Division

The Executive Committee members shared their experiences with adjournments in the Commercial Division that are agreed to by both parties.

Whereupon, the meeting was adjourned.

Attendees

A. Vincent Buzard
Peter Craig
Brian Eckman
Honorable Kenneth Fisher
Paul Keneally
Harold Kurland
Michael Norris
Paul Nunes
Sharon Porcellio
Michael Sant'Ambrogio
Lewis Smoley
Honorable Thomas Stander
David Tennant
Stephen Younger

On Telephone

Claire Bodkin
Lesley Rosenthal
Linda Marino
Tracee Davis
Peter Brown

Video-Conference

James Bergin
Greg Arenson

**Minutes of Meeting
of
December 15, 2005**

**NYSBA Commercial and Federal Litigation Section
Executive Committee Meeting**

December 15, 2005

MINUTES

Section Committees

Peter Brown reported that the Intellectual Property Committee is looking for new members.

November 16, 2005 Executive Committee Meeting

The Minutes of the November 16, 2005 Executive Committee Meeting were unanimously approved subject to the correction of Judge Walker's title.

Report on the Nominating Committee

The Chair reported that Susan M. Davies has accepted her nomination to serve as Section Secretary during the 2006-2007 term.

Section Leadership Conference, March 25, 2006

The Chair discussed the Section Leadership Conference that the Section is planning for March 25, 2006 in the afternoon and evening at Lincoln Center for the Performing Arts.

Introduction of New Executive Committee Members

The Chair welcomed Hon. Kiyoo A. Matsumoto, United States Magistrate Judge for the Eastern District of New York, and Linda M. Marino, Fleming Zulack & Williamson LLP, to the Executive Committee.

Update on the Spring Meeting, May 5-7, 2006, Lincoln Center for the Performing Arts

The Chair discussed the plans for the Spring Meeting, which is being organized by Lesley Friedman Rosenthal and Susan M. Davies. The meeting will be held at Lincoln Center for the Performing Arts. Douglas Tabachnik is planning a program on what every litigator needs to know about bankruptcy. There will be a dinner Saturday night at which the Section will present the Haig Award to Honorable John M. Walker, Jr., Chief Judge of the Second Circuit Court of Appeals.

Hon. Alvin K. Hellerstein, United States District Court, Southern District of New York

Judge Hellerstein discussed the World Trade Center litigation. Judge Hellerstein presides over all the liability cases arising out of the events of September 11, 2001. There are approximately 2000 cases, which run the gamut of substantive law.

Annual Meeting, January 25, 2005

The Chair reported on the planning for the annual meeting. The morning program will focus on ethics and the afternoon will include the Presidential Summit. The Chair encouraged everyone to attend and to ask their law firms to purchase a table at the lunch. The Section will present the Fuld Award to the entire Commercial Division bench. Chief Judge Kaye will accept the award on behalf of the Commercial Division Bench.

NY Litigator

Bernard Daskal discussed his plans for the *Litigator*. The next issue of the *Litigator* will be published in conjunction with the Annual Meeting. The Editor is currently soliciting articles for the May 2006 issue, which will be published in conjunction with the change of administration of the Section.

Joint Report on the New York Consensus Draft RUAA

Carroll E. Neeseman reported on the Joint Report on the New York Consensus Draft RUAA. The Executive Committee unanimously endorsed the Joint Report.

CPLR Committee's Report on Proposed Amendment to CPLR § 3212(a)

James Bergin reported on the CPLR Committee's revisions to the Memorandum in Support of Amendment to the CPLR § 3212(a). The revised Memorandum proposes that an order granting or denying leave to make a summary judgment motion after the deadline for making such a motion shall not be an appealable paper for purposes of CPLR § 5512 or any other purpose. There was a lively debate regarding revision, after which the Executive Committee approved the Memorandum by a majority.

Distinguished Service Award

The Chair solicited nominations for a Distinguished Service Award that will recognize a member of the Executive Committee who has made outstanding contributions to the Section.

Corporate Compliance and Civil Investigations

Neil Getnick reported that the Committee is planning to jointly sponsor a program with the Criminal Section of the NYSBA on what every criminal and corporate lawyer needs to know about monitors.

Whereupon, the meeting was adjourned.

Attendees

Peter Brown
Doug Tabachnik
Jim Bergin
Dan Levitt
Peter Pizzi
David Rosenberg
Bernard McCarthy
Greg Arenson
Ira A. Schochet
Alan Mansfield
Deborah Masucci
Vanessa Elliott
Kathy Kass
Bernard Daskal
Carroll Neeseman
Kiyō Matsumoto
Linda Marino
Neil Getnick
Frank Maas
Jay Himes
Michael Sant'Ambrogio
Stephen Younger
Cathi Hession

Telephone Participants

Tony Harwood

**Minutes of Meeting
of
February 15, 2006**

**NYSBA Commercial and Federal Litigation Section
Executive Committee Meeting**

February 15, 2005

MINUTES

Eva Wisnik, President of Wisnik Career Enterprises, Inc.

Ms. Wisnik discussed effective law firm marketing.

December 15, 2005 Executive Committee Meeting

The minutes of the December 15, 2005 Executive Committee Meeting were unanimously approved.

New Executive Committee Members

The Chair introduced three new members of the Executive Committee: Hon. Barry A. Cozier, Connie Boland, and Peter Mahler. The new members discussed their legal practice with the Executive Committee.

Section Committee Chairs Meeting, February 9, 2006

The Chair reported on the Section Committee Chairs Meeting held on February 9, 2006.

State Court Counsel Committee

Kathy Kass reported on the recent activities of the State Court Counsel Committee. The Committee held a meeting with the Commercial Division clerks, who expressed an interest in (1) an orientation program in September for new clerks and (2) law firm recruiting programs. The Chair suggested including a short piece about the graduating clerks in the next Newsletter. The Executive Committee agreed that members could provide the clerks with contact information if their firms were hiring attorneys.

Report on the Annual Meeting, January 25, 2005

The Chair reported on the Annual Meeting and thanked Carrie Cohen and everyone else involved in making it such a great success.

Update on the Spring Meeting, May 5-7, 2006, Lincoln Center for the Performing Arts

The Chair reported on the plans for the Spring Meeting, which is being organized by Lesley Friedman Rosenthal and Susan M. Davies. The meeting will be held at Lincoln Center for the Performing Arts. The Section will present the Haig Award to Honorable John M. Walker, Jr., Chief Judge of the Second Circuit Court of Appeals.

Section Leadership Conference, March 25, 2006

The Chair reported on the Section Leadership Conference that the Section is planning for March 25, 2006 at Lincoln Center for the Performing Arts. All Executive Committee and Section Committee members are invited to attend. Claire Gutekunst and the Chair encouraged the Executive Committee members to identify minority members of their committees who would be interested in attending.

Update on the NYSBA Manual on Cy Pres For Legal Services

Bernard McCarthy, Chair of the Pro Bono Committee, reported on the status of the NYSBA proposal concerning using cy pres funds for legal services for the poor. The original "Manual" was discarded based on the comments received. A revised version will be presented to the House of Delegates in April. Bernard plans to enlist the Class Action Committee to make a joint report with the Pro Bono Committee.

Model Rules of Professional Conduct in New York State

The Chair reported that in April the House of Delegates will vote on whether New York should consider adopting the ABA's model code of professional conduct. If the model code approach is adopted, the Section committees will need to coordinate a response to each section of the Model Rules as it is proposed.

Treasurer's Report

The Treasurer gave report on the Section's finances and reported that the Section currently has a surplus in its budget.

Report on the Uniform Rules of the Commercial Division

Vincent Syracuse reported on the Uniform Rules of the Commercial Division, which were enacted in January, and highlighted some of the significant issues to be aware of

Report on Proposed Changes to Fed. R. Civ. P. 30(b)(6)

Gregory Arenson reported on the response of the Administrative Office of the United States Courts to the Committee on Federal Procedure's February 12, 2004 Report on Civil Rule 30(b)(6). The Committee proposed a draft letter to the Rules Committee of the Administrative Office of the Courts reiterating the Section's position set forth in the February 12 report. The Executive Committee unanimously approved the draft letter.

Proposal and Report of the NYSBA CPLR Standing Committee

James Bergin reported on the proposal and report of the NYSBA CPLR Standing Committee to create a notice in lieu of trial subpoena. The Executive Committee discussed whether the "substitute witness" provision creates an opportunity for abuse and will undermine the notice's utility as a substitute for a subpoena. The Executive Committee agreed to endorse the proposal subject to its comments regarding this concern.

Whereupon, the meeting was adjourned.

Attendees

Greg Arenson
Leonard Benowich
Jim Bergin
James Blair
Connie Boland
Peter Brown
Barry A. Cozier
Susan Davies
Claire P. Gutekunst
Kathy Kass
Peter Mahler
Bernard McCarthy
Peter Pizzi
Michael Sant'Ambrogio
Vincent Syracuse
Stephen Younger

Telephone Participants

Lesley Friedman Rosenthal
Jay Safer

**Minutes of Meeting
of
March 15, 2006**

NYSBA COMMERCIAL AND FEDERAL LITIGATION SECTION

Executive Committee Meeting

March 15, 2006

MINUTES

Honorable Barbara S. Jones
United States District Judge, Southern District of New York

Judge Jones discussed several jury innovations that are presently being debated.

February 15, 2006 Executive Committee Meeting

The minutes of the February 15, 2006 Executive Committee Meeting were unanimously approved.

Executive Committee Member Activities

The Chair announced the April 21, 2006 Ethics and Civility in Litigation program, in which several members of the Section are participating, and the "Deconstruction of a Mediation" program, to be held in the Eastern District Courthouse on April 10, 2006.

The Chair encouraged members to attend the March 25, 2006 Leadership Meeting at Lincoln Center for the Performing Arts. The Chair-Elect encouraged committee chairs to recruit active members of the their committees to attend.

Update on the Spring Meeting, May 5-7, 2006, Lincoln Center for the Performing Arts

The Chair-Elect reported on the program for the Spring Meeting, to be held May 5-7, 2006 at Lincoln Center for the Performing Arts. The Chair encouraged members to circulate the Spring Meeting Program and Registration materials to their colleagues.

New York Code of Professional Responsibility Versus Adoption of the Model Rules

James Wicks, Chair of the Ethics and Professionalism Committee, and Richard Hans, a member of the Ethics and Professionalism Committee, reported on some of the differences between the New York Code of Professional Responsibility and the Model Rules of Professional Conduct, which New York is considering adopting. After a lively discussion of the advantages and disadvantages of the differences, the Executive Committee voted unanimously to endorse the adoption of the Model Rules.

NYSBA CPLR Standing Committee Report on "Notice in Lieu of Trial Subpoena

James Bergin, Chair of the Civil Practice Law and Rules ("CPLR") Committee, reported on the NYSBA's CPLR Standing Committee's proposal to create a Notice in Lieu of a Trial Subpoena. The CPLR Committee reported that after talking to the Standing Committee concerning the "substitute witness" provision, as suggested by the Section's Executive Committee at its February

2006 meeting, the CPLR Committee concluded that the notice provision should be permitted to be used in any circumstance in which a party may now use a subpoena to summon a witness. The Executive Committee approved the CPLR Committee's proposal with one member voting in opposition.

Federal Rules Amendments Regarding Electronic Discovery

Adam Cohen, Chair of the Electronic Discovery Committee, reported on the changes brought about by the adoption of the Federal Rules amendments regarding electronic discovery. He noted that the Section was mentioned in the Rules Committee Report as a group that did not merely reflect plaintiffs' or defendants' views. The Chair-Elect suggested that the Electronic Discovery Committee's work on this matter would be a good subject for an article in the Newsletter.

Update on the NYSBA Report on Cy Pres For Legal Services

Bernard McCarthy, Chair of the Pro Bono Committee, reported on the status of the NYSBA proposal concerning use of cy pres funds for legal services for the poor. Based on the Section's previous comments, the NYSBA Manual was revised and turned into a Report from the Special Committee on Funding for Civil Legal Services. The Pro Bono Committee proposed that the Section endorse the revised Report. Mr. McCarthy reported, however, that the Class Action Committee disagrees with the report and recounted the position of Ira Schochet, Chair of the Class Action Committee, as set forth in correspondence provided to the Executive Committee. After debating whether to submit an endorsement with a dissenting or concurring view, the Executive Committee voted unanimously (with one abstention) to endorse the Report without any concurring or dissenting view.

State False Claims Act

Neil Getnick, Chair of the Civil Prosecutions Committee, reported on bills pending in the New York legislature to create a State False Claims Act. Mr. Getnick proposed that the Section endorse a version of a State False Claims Act that complies with the Federal Deficit Reduction Act, which will provide the State with ten percent more Medicare Funds. The Executive Committee unanimously approved the proposal with one abstention.

Rule 23 Class Actions to Enforce State Wage Claims

Gerry Hathaway, Chair of the Employment and Labor Relations Committee, spoke about the developing use of Rule 23 class actions in the Southern District of New York to enforce state wage claims.

Whereupon, the meeting was adjourned.

ATTENDEES

Greg Arenson
Leonard Benowich
Jim Bergin
Connie Boland
Peter Brown
Carrie Cohen
Adam Cohen
Barry Cozier
Michael Cryan
Sharon Gruvin
Rich Haas
Jerry Hathaway
Dan Levitt
Jonathan Lupkin
Deborah Masucci
Bernie McCarthy
Maxwell Pfeifer
Lesley Rosenthal
Michael Sant'Ambrogio
Beatrice Shainswit
Vincent Syracuse
Jim Wicks
Stephen Younger

Telephone Participants

Jay Himes
Peter Pizzi
Doug Tabachnick

**Minutes of Meeting
of
April 19, 2006**

**NYSBA Commercial and Federal Litigation Section
Executive Committee Meeting**

April 19, 2006

MINUTES

Honorable Denise Cote
United States District Judge, Southern District of New York

The Honorable Denise Cote discussed her experiences on the federal bench.

Commercial Division Clerkship Program

Jeremy Feinberg, the liaison between the bench and bar in New York State, discussed the Commercial Division Clerkship Program. Kathy Kass introduced the current Commercial Division clerks, who discussed their work for the Commercial Division. Kathy Kass encouraged the members to contact her regarding job opportunities for the clerks.

Potential Minority Internship Program

The Executive Committee discussed what we can do to increase the diversity of the Section. Barbara Levi and Robert Haig discussed the Corporate Counsel Section's Diversity Internship Program and the Albany Diversity Program. The programs solicit applications for ten-week internships, identify host companies, and split the costs of summer internships with the host companies.

Robert Haig explained that the Section can set up a Bar Foundation restricted fund designed to fund a minority internship. The Foundation can solicit additional funding for the program from other groups as well. A restricted fund requires a minimum of \$10,000, but it can be accomplished by a donation over the course of multiple years. The Board is not comfortable funding internships for private, for-profit businesses, however.

The Chair proposed the establishment of a committee to explore the possibilities and volunteered to serve on the committee. The Treasurer and Maxwell Pfeiffer also volunteered to serve on the committee.

Spring Program at Lincoln Center for the Performing Arts

The Chair-Elect discussed the exciting program planned for the Spring Meeting at Lincoln Center for the Performing Arts. The Chair encouraged everyone to attend.

Leadership Conference

The Chair discussed the Section Leadership Conference held on March 25, 2006 at Lincoln Center for the Performing Arts, which was a great success. The Chair recounted the major themes, including the importance of the obligations of committee chairs and committee members.

Ethics and Civility In Litigation Seminar

The Treasurer discussed the up-coming seminars on ethics and civility in litigation. A large turnout was expected at the April 21st seminar in New York City.

Commercial Division Program in Nassau County

The Treasurer updated the members on the planning for a Commercial Division Program in Nassau County, which will include a cocktail hour and programs focusing on the practice of law in Nassau County. CLE credits will be available and there may also be a dinner.

The Commercial Division Committee is planning to replicate this program in other locations.

The Chair announced that the Section is also coordinating a June 6th seminar for Commercial Division judges with Jeremy Feinberg.

Update on the Final RUAA Proposal

Carroll Neeseman, Co-Chair of the Arbitration and Alternative Dispute Committee, discussed the latest changes to the Revised Uniform Arbitration Act ("RUAA"). The City Bar is still looking at the latest draft, but the changes from last version, which was approved by the Section, are insignificant. Mr. Neeseman asked that the Executive Committee approve the final draft by email.

Mr. Neeseman also discussed the other initiatives of the Alternative Dispute Committee. He suggested that the Committee address electronic discovery in arbitration. Connie Boland, Co-Chair of the Electronic Discovery Committee, volunteered to work with the Alternative Dispute Committee on preparing a report on this issue. The Arbitration Committee is also considering whether the CPLR should be amended to reflect changes to the Federal Rules concerning e-discovery.

Certification of Civil Trial Attorney

The Chair discussed a bill pending in New York State that would institute certification of civil trial attorneys. The Executive Committee agreed to refer the matter to the Ethics and Professionalism Committee.

Whereupon, the meeting was adjourned.

Attendees

Greg Arenson
Ed Baum
Jim Bergin
Connie Boland
Mario Choi
Carrie Cohen
Susan Davies
Ken Dreifach
Jeremy Feinberg
Emily Friedman
Bob Haig
Jay Himes
Kathy Kass
Rachael Katz
Barbara Levi (Corporate Counsel Section)
Harold Levy
Peter Mahler
Michael Maloney
Carroll Neesemann
Maxwell Pfeiffer
Lesley Rosenthal
Michael Sant'Ambrogio
Ira Schochet
Jodie Sopher
Vincent Syracuse
David Tenant (via telephone)
John Winter
Stephen Younger

**Minutes of Meeting
of
June 14, 2006**

**NYSBA Commercial and Federal Litigation Section
Executive Committee Meeting**

June 14, 2006

MINUTES

Approval of the Minutes of April 19, 2006 Executive Committee Meeting

The Minutes of April 19, 2006 Executive Committee Meeting were unanimously approved.

Welcome From New Officers

Stephen Younger, the immediate past Chair of the Section, handed over a ceremonial gavel to Lesley Rosenthal, the Chair of the Section for 2006-2007. The Chair expressed excitement for upcoming activities of the Section in the coming year, and encouraged continued growth and contributions by the Section.

Welcome to New Committee Chairs

The Chair welcomed Tom Bivona, the new Co-Chair of the CPLR Committee; Carla Miller and Richard Friedman, the Co-Chairs of the new Corporate Litigation Counsel Committee; Steve Elliot, the new Co-Chair of the Intellectual Property Committee; and Michael Sant'Ambrogio, the new Co-Chair of the Pro Bono and Public Service Committee. The Chair reminded the members of the requirement that each committee produce three reports and/or programs during the year.

The Chair also announced that Lauren Wachtler, past chair of the Section, would serve as the section's liaison to the State Bar Executive Committee. Claire Gutekunst, longtime liaison, has agreed to stay on as an At-Large member of the Section's Executive Committee.

Mission Statement of New Committee

The mission of the Corporate Litigation Counsel Committee is to provide a forum in which in-house litigators and firm litigators with in-house experience can share information and best practices, as well as address legislative, regulatory and policy issues impacting the corporate community with judges, public sector lawyers, and law firm practitioners. Carla Miller, the Co-Chair of the Committee, encouraged outside counsel members of the Executive Committee to ask their clients to become involved in the committee.

Report on May 2006 CLE Program for New York State Commercial Division Judges

Stephen Younger reported on the CLE program for the Commercial Division judges that he organized with Jeremy Feinberg. The Chair encouraged members to talk with her if they have ideas for upcoming CLE programs for the judiciary. She suggested that this is a good way to foster a strong relationship between the Bench and Bar.

Report on Meetings in Albany with State Legislators

Stephen Younger reported on his trip to Albany. Glenn LeFebvre arranged a meeting with the Counsel to the Assembly Judiciary Committee concerning the Section's legislative priorities. Mr. Younger also met with the new Albany Supreme Court Commercial Division Justice McCarthy about creating a Section committee to work with the judiciary in Albany.

Update on Status of Class Action Committee's Report on Multidistrict Litigation Restoration Act of 2005, H.R. 1038

Ira Schochet, Chair of the Class Action Committee, reported on the committee's work in crafting a Section position on the proposed Multidistrict Litigation Restoration Act. The Section adopted the Committee's recommendation that the governing choice of law in such litigations should be that of the original jurisdiction in which the plaintiff files the action.

Report on the Spring Meeting

The Chair reported that the Section had received wonderful feedback from participants in the Spring meeting, that the attendance was superb, and that for the first time in its history the Section showed positive net revenue from the event. The Chair also announced that the Section would take up Second Circuit Chief Judge John M. Walker's challenge to help foster judicial independence in emerging democracies.

Honorable Marguerite A. Grays and Honorable Orin R. Kitzes New York State Supreme Court, Commercial Division

The judges of the new Queens County Commercial Division bench, Hon. Marguerite A. Grays and Hon. Orin R. Kitzes, discussed the activities since beginning operations in January 2006. Their dockets are in transition now, with some non-commercial matters and some commercial matters. Although they are receiving new commercial cases, lawyers must request a transfer to the Commercial Division if their case was filed before the new commercial division was created.

Report on the Meeting with Algerian Judges

The Treasurer reported on the meeting with Algerian judges arranged by the United States Department of Commerce. Stephen Younger, Lauren Wachtler, Vincent Syracuse, and Lew Smoley participated in a Roundtable discussion with the judges, hosted by the Commercial Division, concerning a plethora of issues, including the need in both countries to develop strong Bench-Bar relationships. The Department of Commerce was pleased by the Section's participation in the program.

Update on the RUAA Report

Carroll Neeseman, Co-Chair of the Arbitration and Alternative Dispute Committee, discussed the latest changes to the Revised Uniform Arbitration Act ("RUAA"). The City Bar is still looking at the latest draft, but the State Bar Executive Committee will consider it at the next meeting. The only change from the last draft approved by the Section is that provisional remedies may be used in aid of arbitration outside New York State. The Executive Committee unanimously approved the RUAA Report. Carroll Neeseman and Lauren Wachtler will present the report to the State Bar Executive Committee.

2007 Annual Meeting

The Vice-Chair previewed ideas for the 2007 annual meeting and solicited help in planning the event. The Chair suggested that the new Corporate Litigation Counsel Committee could participate in planning a program for the annual meeting. Anthony Harwood, Co-Chair of the Ethics and Professionalism Committee, volunteered the Committee to work on an ethics component of the annual meeting program. The Chair encouraged everyone to consider vendors who might be appropriate to sponsor this meeting and other Section events.

Celebration of New Federal Chief Judges

The Chair announced that the Section is planning a program for the new federal chief judges in New York for September 29, 2006. Details will follow.

Update on Nassau County Commercial Division Event

The Treasurer discussed the Commercial Division Committee's plans for a program for the Nassau and Suffolk County Commercial Division, which will include a panel discussion on what makes Commercial Division cases on Long Island different from those elsewhere. The Commercial Division Committee plans to have more of these events with the Commercial Division around the state.

Update on State False Claims Act

Neal Getnick, Co-Chair of the Civil Prosecutions Committee, provided an update on the bills passed by the Assembly and the Senate ostensibly for the purpose of creating a State False Claims Act. Mr. Getnick reported that the bill passed by the House creates a State False Claims Act, but the bill passed by the Senate does not.

Whereupon, the meeting was adjourned.

Attendees

Telephone

Jim Blair
Peter Pizzi
Ira Schochet
Doug Tabachnik
Lauren Wachtler

Present

Tom Bivona
Peter Brown, Vice Chair
Adam Cohen
Carrie Cohen, Chair-Elect
Doug Conroy
Hon. Barry Cozier
Stephen Elliott
Jeremy Feinberg (invited guest)
Richard Friedman
Neil Getnick
Anthony Harwood
Jay Himes
Bernard McCarthy
Carla Miller
Carroll Neesemann
Maxwell Pfeifer
David Rosenberg
Lesley Friedman Rosenthal, Chair
Michael Sant'Ambrogio, Acting Secretary
Vincent Syracuse
Stephen Younger, Immediate Past Chair