

Commercial and Federal Litigation Section Newsletter

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

A Message from the Chair

What a privilege it is to assume the Chairmanship of this Section of the New York State Bar Association. At the present time, our members include 1,918 practicing attorneys and jurists from all over the state, and we are looking forward to increasing that membership above the 2,000 mark this year. My goal is to increase not only our numbers but also the diversity of our Section in gender, demographics, and years of litigation experience. We are making an effort to reach out to newer members of the Bar, who have so much to contribute to our Section.



Lauren J. Wachtler

Already this coming year, we have so many exciting projects on which the Section will be working that I have room here to highlight only a few. With the assistance of Jay Safer, I have put together a task force to investigate and report on the recent funding crisis that is threatening the federal courts in the fiscal year 2005 and beyond. Our task force is in the process of interviewing federal jurists and court administrators and expects to have a report by the end of the summer. It is our goal to present our Section’s report to the House of Delegates as a voice in support of increasing funding allocations by the House and Senate subcommittees in support of our federal judiciary and its administrators.

On the state side, I have created a task force to address, once again, the adoption of a uniform Rules of Evidence Code for the state of New York. The task force is called the New York State Bar Association’s Commercial and Federal Litigation Section Task Force on a New York Code of Evidence (NYCE) and will be chaired by Paul D. Montclare, a partner in the law firm Montclare & Wachtler. Paul’s task force will be comprised of law

professors, members of our Section, and state court justices throughout New York State and will examine the reasons why the prior attempts to obtain a Code of Evidence for this state have failed, and why the time is long overdue for the promulgation of a Code in New York. It is interesting to note that, when the Federal Rules of Evidence came into being in 1976, there were only four states in the country that had a state Code of Evidence. Now, New York, the leader in commercial litigation in the United States, is one of only four states that do *not* have a Code of Evidence. Our NYCE Task Force will be gathering the data for a report, which we expect to be

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ready by the end of the year. We welcome anyone who wishes to work on any aspect of this report and join the NYCE Task Force in this exciting and important project.

In addition to our task forces, our Section has always been at the forefront of developments in commercial litigation throughout the state, and has been recognized for the numerous reports that its various committees have drafted. Many of these incisive reports have been presented to the House of Delegates and have shaped and often changed the practice of commercial law in New York. It is my goal this year to continue to revitalize our committees and increase our recognition as leaders of the Bar. Toward this end, our committee chairs will be providing a brief description of their committees, a list of their committee members, and a photograph of themselves which will be posted on our website to encourage Section members to join a committee and work on a report or program during the course of the year. I encourage all of you to visit our website and join one of our many committees, which offer so many valuable opportunities for writing, speaking, and meeting other members of our Section with similar interests and areas of practice. Our committees are already hard at work. At the time of this writing, the Federal Procedure Committee has two reports in the works—one on the crime/fraud exception to the attorney-client privilege and another on spoliation of evidence—and the Securities Litigation and Arbitration and ADR Committees have already planned a program that will be held on October 26, entitled “Securities Arbitration 2004: A Primer for Practitioners” (*see infra*).

We have also formed a new committee, called the Electronic Discovery Committee, which will be chaired by Adam Cohen, a partner at Weil Gotshal & Manges. Adam, who was a panelist at our Spring Meeting this year, is a leader in the field of discovery and document retention issues associated with e-discovery. His treatise, “Electronic Discovery: Law and Practice,” is the first comprehensive analysis of case law involving e-discovery and was cited in two of the *Zubulake* decisions relating to cost-shifting. We welcome Adam to our Executive Committee and look forward to tapping into his expertise in the coming months. Because of the extraordinary impact e-discovery has had on litigation, and the wealth of issues it has raised, this committee will certainly be busy this year. Already our Section has been asked by the Commercial Division to present a seminar for the Commercial Division justices throughout the state to address some of the issues that they have been asked to adjudicate, and to assist them in dealing with some of the thorny issues that e-discovery continues to present. If you would like to be involved in this venture or Adam’s committee, please let us know.

On another front, as many of you know from experience, although we all litigate for a living, it’s not always

the best way to resolve disputes for either attorneys or clients. Both federal and state courts have often recommended the use of alternative dispute resolution (ADR) as a means of resolving commercial disputes and to avoid the vagaries and vicissitudes of the courtroom. Executive Committee members Lesley Rosenthal and Ed Beane, and new Section member Ruth Raisfeld, have been working with the Honorable Kenneth Rudolph, Commercial Division, Westchester County, and Dan Weitz, ADR Coordinator for the New York State Unified Court System, on revised rules and forms to implement an active ADR program in the Westchester Commercial Division. It is our goal to coordinate this type of program in the Commercial Divisions throughout the state to assist them in operating more efficiently and effectively.

I also want to welcome to our Executive Committee several new members in addition to Adam Cohen. We are proud to announce that the Honorable Bernard Fried, who is the most recently appointed Commercial Division justice in New York County, has joined the Executive Committee. Justice Fried is a highly regarded and scholarly jurist, who has impressed the bench and bar in both the criminal and civil arenas with his preparation, his respect for attorneys, and his thoughtful decisions. We are honored to have him on our Executive Committee.

Deborah Masucci will be Co-Chairing our Arbitration and ADR Committee with Carroll Neeseman. Debbie is Director of the Dispute Resolution and Litigation Management Division of AIG, Inc., which is responsible for the strategic use of ADR in the domestic brokerage group and for increasing the alternative methods of appropriate dispute resolution used within the claims organization at AIG. Debbie, along with Carroll, provided us with an excellent program at the Spring Meeting, and Debbie will be a strong addition to the important work of this committee, which continues to press for the adoption of the Uniform Mediation Act and the Uniform Arbitration Act in this state.

We also welcome Leonard Benowich from the White Plains law firm of Roosevelt & Benowich and Gerald Hathaway of Littler Mendelson, P.C. Len practices in the areas of commercial, corporate, and real estate law, and will be joining our Evidence Committee and assisting on the New York Code of Evidence Task Force. Gerry will be chairing the Employment and Labor Relations Committee.

I am looking forward to a great year and welcome this wonderful opportunity to join with our Section members to achieve our goals.

Lauren J. Wachtler

Commercial and Federal Litigation Section

Spring Meeting

May 21–23, 2004 • Mohegan Sun, Uncasville, CT



Friday evening's presentation with keynote speaker Professor Jonathan Zittrain of Harvard Law School.

Section Updates Members on Frontiers in Technology and Litigation

The Spring Meeting's Saturday Morning program updated members on three hot areas where litigation and technology meet. Entitled "Privacy, Piracy and Discovery: Litigating in the Electronic Age," the May 22, 2004, program included a panel discussion on each of these three timely topics.

On the subject of privacy laws, panel Chair Richard L. Ravin of Hartman & Winnicki, PC, the incoming Chair of the Intellectual Property Law Section, gave an overview of legal issues where commercial speech, the First Amendment, and privacy intersect. Panelist Catherine Harrington-McBride, the FTC's lead regulator



Privacy Laws panelists (l-r) Jim Conway; Catherine Harrington-McBride; Peter Pizzi; Panel Chair Richard Ravin; and Moderator Lesley Friedman Rosenthal.

on spam and do-not-call issues, spoke on current and planned regulatory efforts in those areas. The Direct Marketing Association provided a panelist, Jim Conway, Vice President of Governmental Relations, to discuss privacy and other regulatory efforts from the marketers' point of view. Peter J. Pizzi of Connell Foley LLP, Chair of the Section's Internet and Litigation Committee, incorporated an ethics component by discussing ex parte litigation against anonymous Internet posters.

The piracy wars raging between the downloading public and creators of copyrighted songs and movies provided a hot topic for the morning's second panel. Peter Brown of Brown Raysman Millstein Felder & Steiner LLP, Chair of the Section's Intellectual Property Committee, chaired the panel. Professor June M. Besek



Electronic Discovery panelists (l-r) Andrew Teichholz; Carol Heckman; Hon. Shira Scheindlin; Adam Cohen; and Panel Chair Lesley Friedman Rosenthal.

of Columbia Law School spoke about recent developments in the law in this area, including the Digital Millennium Copyright Act. Charles J. Sanders, General Counsel of the National Music Publishers Association, reviewed recent cases, including *Napster* and its spinoff litigation, and discussed other initiatives by songwriters, record labels, and movie studios to protect and enforce digital rights. The panelists also reflected on some of the ideas about the Internet and society that were presented by the previous evening's keynote speaker, Professor Jonathan Zittrain of Harvard Law School.

Lesley Friedman Rosenthal of Paul, Weiss, Rifkind, Wharton & Garrison, LLP, the Section's incoming Vice Chair, chaired the panel on Electronic Discovery. Adam I. Cohen of Weil Gotshal & Manges LLP summarized the state of the law in this fast-moving area. The full panel, which also included United States District Judge Shira A. Scheindlin, a former Chair of the Section, Carol E. Heckman of Harter Secrest & Emery LLP, and Andrew Teichholz of CaseCentral Inc., the lead sponsor of the program, then illustrated how these issues arise in practice through three hypotheticals prepared by Ms. Heckman. Judge Scheindlin concluded with an overview of proposed rules pertaining to electronic discovery that are being developed and considered by the Advisory Committee on Civil Rules.

Ms. Rosenthal organized the morning's program, together with incoming Section Chair Lauren J. Wachtler of Montclare & Wachtler. The Section is gratified to have had the meaningful participation of members of the Intellectual Property Section in the planning of the program. The Section is also indebted to CaseCentral for its sponsorship of the program.

* * *

Presentation of the Haig Award to Judge Winter

On Saturday, May 22, 2004, at the Commercial and Federal Litigation Section's Spring Meeting at Mohegan Sun, the Section gave its Robert L. Haig Award for Distinguished Public Service to the Honorable Ralph K. Winter, U.S. Circuit Senior Judge for the Second Circuit. The award is named for its first recipient, Robert L. Haig, the Section's founder and its first Chair. Judge Winter was honored for his lengthy service to the public as a Second Circuit Judge, as Chief Judge of the Second Circuit from 1977 through 2000, and as a Professor at Yale Law School. The award was presented to Judge Winter by Dean Joan G. Wexler of Brooklyn Law School.



Hon. Ralph K. Winter accepts Robert L. Haig Award for Distinguished Public Service from Dean Joan G. Wexler.

* * *

ADR and Arbitration



ADR and Arbitration panelists (l-r) Stephen Younger; David Plant; Hon. Milton Mollen; Luis Martinez; Jamie Levitt; Hon. Harold Baer; and Program Co-Chairs Carroll Neesemann and Deborah Masucci.

The large number of Section members who resisted the temptation on Sunday morning to gamble away any winnings of the night before found themselves winners again in being treated to the program of the Arbitration and ADR Committee on the subject of "A Litigation Strategy: Making Commercial Arbitration & Mediation Work for You and Your Client."

Popular commercial arbitrator and mediator, and trainer of same, Eugene Farber moderated and walked a panel of experts through the litigation, arbitration, and mediation of an international business/sports dispute, illustrating along the way how to exploit the advantages of ADR and avoid its pitfalls. Intertwined in the discussion were recent case law, as well as rule and ethical code changes that can affect how litigators approach a matter.

On the panel were prominent arbitrators/mediators John Wilkinson and David Plant; the Honorable Harold Baer, currently of the Southern District and formerly of the Supreme Court, New York County; mediator, arbitrator, and former Presiding Justice of the Second Department, Milton Mollen; Luis Martinez, Vice President of the International Centre for Dispute Resolution of the American Arbitration Association; and leading ADR litigators Jamie Levitt and Steve Younger, the latter of whom is Chair-Elect of the Section.

The program was co-chaired by arbitrator-mediator Carroll Neesemann and Deborah Masucci, the Director of ADR for the American International Group. Deborah has joined Carroll as Co-Chair of the Section's Arbitration and ADR Committee.

The Committee is currently working on a sequel: a role-play of the same scenario that will illustrate differences between litigation in court and other forms of dispute resolution and how to exploit those differences.

Spring Meeting Photos



(l-r) Former Section Chair Sharon Porcellio; retired Justice Beatrice Shainswit; former NYSBA President Tom Levin; and former Magistrate Judge Carol Heckman.



(l-r) Marion Auspitz and her husband, Jack Auspitz, former Section Chair; and current Section Chair Lauren Wachtler and her husband Paul Montclare.



(l-r) Retired Justice Beatrice Shainswit and Hon. Lois Bloom, E.D.N.Y.



(l-r) Julian Modesti; outgoing Chair Lew Smoley; former Section Chair Bob Haig; and former Magistrate Judge Carol Heckman.



(l-r) Publications Committee Chair Carrie Cohen; Joseph Kubarek; Herbert Eisenberg; and CPLR Committee Co-Chair James Bergin.



At the Saturday night dinner, new officers thank outgoing Chair Lew Smoley. (l-r) Treasurer Vincent Syracuse; Secretary Tracee Davis; Vice-Chair Lesley Friedman Rosenthal; outgoing Chair Lewis Smoley; Chair Lauren Wachtler; and Chair-Elect Stephen Younger.

Telephone Depositions in New York State Court

By Lauren J. Wachtler

Although Rule 30(b)(7) of the Federal Rules of Civil Procedure has, for some time, authorized the taking of a deposition by telephone, commencing January 1, 2005, a new CPLR 3113(d) will permit parties to an action in New York State court to stipulate to take a deposition by telephone or other remote electronic means and to allow a party to participate electronically. The stipulation must include provisions to ensure that an accurate record of the deposition is generated as well as provisions for the use of exhibits at the deposition. It also must specify who must and may be physically present at the deposition and “any other provisions appropriate under the circumstances.” Notwithstanding the fact that the parties need not be physically present, unless otherwise stipulated the officer administering the oath must be physically present at the place of the deposition. Also, unless otherwise stipulated, the additional costs of conducting the deposition by telephone or other electronic means are to be borne by the party requesting that the deposition be conducted by those means.

Notwithstanding the fact that the state has never had such a provision, it would not appear to be such a radical or innovative departure from normal practice. There is nothing that prior to the enactment of 3113(d) precluded parties from entering into a stipulation to take a deposition in whatever manner they chose, including the use of electronic means or telephone.

Indeed, many of us have participated in depositions by telephonic means.

In any event, interesting issues may arise as a result of the enactment of 3113(d). For example, where all parties but one agree to stipulate to take a deposition by electronic or telephonic means, can a court, utilizing the statute, be able to compel the recalcitrant party to participate in such a deposition? Conversely, where certain of the parties relying on the statute decide they want to stipulate and take a deposition by telephonic means, can a court prevent them from doing so, based on certain circumstances, or fashion a stipulation that would accommodate those parties who wish to take a deposition by certain means and those who do not—and how far can and will a court go to resolve the discovery dispute which will undoubtedly be engendered by the statute in the event that the parties are unable to work the matter out?

As all of us who practice law are painfully aware, notwithstanding a statute or lack of statute requiring, enabling, or providing the parties with discretion to conduct discovery in a certain manner, 3113(d) will no doubt provide a new and different basis for seeking court intervention in discovery matters, and undoubtedly a host of opportunities for creative lawyering.

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*Member information is confidential and is only used for official Association purposes. NYSBA does not sell member information to vendors.

34 Superstar CLE Lecturers and Acclaimed Treatise for Bargain Package Price

The New York State Bar Association will present a very special CLE program on Friday, October 22, 2004. The title of the program is "Advice from More Experts: More Successful Strategies for Winning Commercial Cases in Federal Courts." The format is exciting, the speakers are superstars, and all registrants will receive a copy of the critically acclaimed six-volume treatise *Business and Commercial Litigation in Federal Courts*, published by the American Bar Association's Section of Litigation and West Group, and a CD-ROM containing forms and jury instructions—a \$480 retail value—for a total package price of \$290.

In his review of this book in the *New York State Bar Journal*, Robert B. Fiske, Jr. of Davis Polk & Wardwell concluded: "From start to finish—from the choice of venue in filing the initial complaint through the completion of an appeal—this publication will be an extraordinarily valuable asset even for the most experienced practitioner. Few lawyers will not benefit greatly from consulting it at virtually every stage in the process of litigating a business or commercial case in the federal courts."

This program is the 2004 version of the highly successful CLE program on commercial litigation in federal courts which the New York State Bar Association presented on October 24, 2003. That program was sold out in advance with 444 registrants. Accordingly, early registration for this year's program is recommended.

At this year's program, an extraordinary panel of seven distinguished federal judges, 21 well-known commercial litigators, and six prominent in-house counsel for major corporations will provide you with practical advice and strategies for winning business and commercial cases in federal courts. The program will begin with discussion of the strategic issues involved in forum selection, removal, and transfer as well as in preliminary injunctions and temporary restraining orders. The next topics will be the effective handling of motions to dismiss and for summary judgment, and class actions. The program includes discussion of discovery of electronic records and of deposition techniques. Also covered will be mediation and arbitration, and attorney-client and work-product privileges. Trial advocacy and the use of expert testimony will be discussed in detail. The program covers appellate advocacy and settlement strategies, and concludes with insights into the client's perspective of business litigation.

This program will use an exciting, interactive format. The speakers will focus on strategies and practical advice for maximizing the effectiveness of each stage of the litigation. In particular, they will discuss techniques for advancing a client's interests as well as potential pitfalls or traps for the unwary.

The program chair is Robert L. Haig of Kelley Drye & Warren LLP in New York City. The speakers include United States District Judges Naomi Reice Buchwald, Miriam Goldman Cedarbaum, Denny Chin, Denise L. Cote, Victor Marrero, Colleen McMahon, and Shira A. Scheindlin. Other speakers are the following leading litigators: Robert M. Abrahams, Jeffrey Barist, James N. Benedict, David M. Brodsky, John M. Callagy, Evan A. Davis, Jeremy G. Epstein, Bruce E. Fader, William P. Frank, Robert D. Joffe, David Klingsberg, Harvey Kurzweil, Gregory A. Markel, William G. McGuinness, Richard L. Posen, James W. Quinn, Jay G. Safer, Herbert M. Wachtell, John L. Warden, Melvyn I. Weiss, and Robert F. Wise, Jr. Also speaking will be the following prominent in-house counsel for major corporations: Chester Paul Beach, Jr., Associate General Counsel, United Technologies Corporation; Hannah Berkowitz, General Counsel-Litigation and Senior Vice President, UBS Financial Services Inc.; Lawrence J. Hurley, Corporate Counsel, Lucent Technologies, Inc.; Stephanie A. Middleton, Chief Counsel, Litigation and Human Resources Law, CIGNA Companies; Mark E. Segall, Senior Vice President and Associate General Counsel, J.P. Morgan Chase & Co.; and Richard H. Walker, Managing Director and Global General Counsel, Deutsche Bank AG.

This program is designed for both newly admitted attorneys seeking an overview of business and commercial litigation in federal courts and experienced attorneys seeking to refine and update their litigation skills. The program will take place from 9:00 a.m. to 4:30 p.m. on October 22, 2004, in the Jury Assembly Room of the United States Courthouse at 500 Pearl Street in downtown Manhattan. Attendees will receive 7.0 MCLE credits. The American Bar Association's Section of Litigation is co-sponsoring the program. The program fee will be \$290 for NYSBA and ABA Section of Litigation members and \$345 for non-members. For reservations, call (800) 582-2452 or go to www.nysba.org/advice.

As noted above, all registrants at the program will receive a copy of the critically acclaimed six-volume

treatise *Business and Commercial Litigation in Federal Courts*. This publication was written by 152 outstanding attorneys and federal judges throughout the United States and gives you everything you need to handle commercial cases, from initial assessment through pleadings, discovery, motions, trial, and appeal. Great emphasis is placed on strategic considerations specific to commercial cases. Sample forms are provided as well as procedural checklists. In addition, there is comprehensive coverage of 28 areas of substantive law, including strategy, checklists, forms, and jury charges. Covered as well are compensatory and punitive damages and other remedies.

In their review of this book in the *New York Law Journal*, Paul C. Saunders and Katherine B. Forrest of

Cravath, Swaine & Moore LLP concluded: "Unlike any other of which we are aware, this treatise uses a litigator's perspective to combine a comprehensive overview of the procedural rules in federal commercial litigation with a useful, albeit summary, overview of the most often encountered areas of substantive law. This is truly a 'how-to' book that will be an indispensable asset to the federal commercial litigator."

The six-volume, 6,690-page set comes with a CD-ROM containing 349 forms and 319 jury instructions. The retail price of the set is ordinarily \$480. All royalties from sales of this publication go to the American Bar Association's Section of Litigation.



You're a New York State Bar Association member.

You recognize the relevance of
NYSBA membership.

For that we say, *thank you.*

The NYSBA leadership and staff extend thanks to our more than 72,000 members — attorneys, judges and law students alike — for their membership support in 2004.

Your commitment as members has made NYSBA the largest voluntary state bar association in the country. You keep us vibrant and help make us a strong, effective voice for the profession.

Kenneth G. Standard
President



Patricia K. Bucklin
Executive Director

Meet the Section's Officers

Lauren J. Wachtler, Chair of the Section



Lauren, a partner in the Manhattan-based law firm of Montclare & Wachtler and Chair of the Section, graduated cum laude from Mount Holyoke College and earned her law degree from St. John's University School of Law. She has been a trial lawyer and appellate advocate for more than 25 years.

Before joining Montclare & Wachtler, she was the first woman litigation partner at Shea & Gould. She has extensive litigation experience in real estate, commercial, financial, corporate, insurance defense, and premises liability.

Previously, Lauren was a charter member of the Section's task force on judicial independence. She also served as Co-Chair of the Section's Committee on Arbitration and Alternative Dispute Resolution. Her community service work includes active participation in the Jewish Women's Foundation, where she chairs the policy and strategy subcommittee.

Lauren has authored articles which have been included in the CLE course materials for programs conducted by the American Bar Association and the NYSBA, including one titled "Representing Clients in Automobile Accident Arbitrations."

* * *

Stephen P. Younger, Chair-Elect

Steve, Chair-Elect of the Section, is a partner in Patterson, Belknap, Webb & Tyler LLP in New York City, where he concentrates in commercial and securities litigation. He is a cum laude graduate of Harvard College and a magna cum laude graduate of Albany Law School, where he was Editor-in-Chief of the *Albany Law Review*. Prior to joining Patterson Belknap, he clerked for the Hon. Hugh R. Jones, Associate Judge of the New York Court of Appeals.



Steve served as Chair of the Section's Securities Litigation Committee. He is also a member of the Association of the Bar of the City of New York and a member of that association's Committee on Arbitration; a Trustee of Albany Law School; a member of the New York State Unified Court System ADR Advisory Committee; a Mediator for the United States District Court for the Southern and Eastern Districts of New York; a member of the Executive Committee of the CPR Institute for Dispute Resolution; Treasurer of the Historical Society of the New York State Courts; Assistant Counsel to the New York State Commission on Judicial Nomination; a member of the Congress of Fellows of the Center of International Legal Studies; and a Fellow of the New York Bar Foundation.

* * *

Lesley Friedman Rosenthal, Vice-Chair

Lesley, Vice-Chair of the Section, is an associate at Paul, Weiss, Rifkind, Wharton & Garrison LLP, where she concentrates in commercial litigation, including copyright, media and technology, securities, consumer regulatory, bankruptcy, franchising, and electronic privacy/security matters. She is a founding member of the Internet and



Litigation Committee and was the Editor-in-Chief of the *NYLitigator*. She is a member of the Board of Editors of the New York State Bar *Journal* and a member of the Second Circuit Committee of the Federal Bar Council. A graduate of Harvard College and Harvard Law School, Lesley was voted the NYSBA's Outstanding Young Lawyer of the Year in 1997. Lesley clerked for the Hon. Shirley Wohl Kram of the United States District Court for the Southern District of New York.

Lesley has chaired or served as a faculty member of a number of programs for the NYSBA, the New York State Judicial Institute on Professionalism in the Law, and the Practising Law Institute. She has also authored a number of articles for the New York State Bar *Journal*; *State Bar News*; *Entertainment, Arts and Sports Law Journal*; New York State Judicial Institute on Professionalism in the Law; *The Business Record*; and the *New York Law Journal*.

* * *

Vincent J. Syracuse, Treasurer



Vincent, Treasurer of the Section, is a senior partner at Tannenbaum Helpert Syracuse & Hirschtritt LLP in New York City, and the chair of its litigation department. He is a graduate of Brooklyn College and Brooklyn Law School, where he was a member of the *Brooklyn Law Review*. After graduation from law school, Vincent joined the Appeals

Bureau of the Office of the Corporation Counsel of the City of New York and then served as a law clerk to New York Court of Appeals Judge John F. Scileppi. He was an associate with Kaye, Scholer, Fierman, Hays & Handler, at which time he joined Tannenbaum Helpert and founded its litigation department. Vincent has also served as an arbitrator in the Civil Court of the City of New York and other dispute resolution forums.

Vincent frequently chairs and participates in continuing legal education programs on various commercial litigation subjects. He is active in bar association matters and has served on a variety of committees and programs, including the Commercial Division Advisory Committee; the Federal Bar Council; the Association of the Bar of the City of New York; the American Bar Association, where he is a member of the Litigation and Dispute Resolution Sections; and The Respect for Law Alliance, where he serves on the Board of Directors and as Vice President for Membership. He is the Chair of the Section's Commercial Division Committee and past-Chair of the Section's Committee on Complex Civil Litigation. He has co-chaired and authored the "Report on the Revision of CPLR 3213" (April 1995); has served as Planning Chair and a faculty member for six years, from 1998 to 2005, of "Civility and Ethics in Civil Litigation: What Every Lawyer Should Know"; has served as Planning Chair and a faculty member of "Deposition Practice and Practicalities in State and Federal Court"; served as a faculty member of "Litigating a Commercial Case: A Comparison of Strategies in Federal and State Court"; a faculty member of "Deposition Practice and Practicalities in State and Federal Court"; and a faculty member of "The Commercial Parts: One Year Later."

Tracee E. Davis, Secretary



Tracee, Secretary of the Section, is an associate in the commercial litigation group at Zeichner Ellman & Krause LLP. On behalf of the firm's corporate and banking clients, she handles lenders' liability class actions, sureties' liability claims, and actions involving Articles 3 and 4 of the Uniform Commercial Code. Prior to joining Zeichner Ellman, Tracee was the Principal Court Attorney to Justice Charles Edward Ramos of the Supreme Court, Commercial Division, New York County. During her five years in that position, she assisted in managing the disposition of more than 400 complex commercial cases. Tracee is a state-approved lecturer on real estate transactions and an Adjunct Professor of Law at New York Law School. Prior to her appointment as Principal Court Attorney, she served as a Senior Court Attorney in Supreme Court, New York County, Civil Term, and as the Deputy Chief Contracting Officer in the New York City Sheriff's Office. Tracee received her B.A. from Montclair State College, studied International and Comparative Law at Oxford University's Magdalen College and received her J.D. from the Washington College of Law at The American University.

Save the Dates!

NYSBA

Annual Meeting

January 24-29, 2005

**Commercial and Federal
Litigation Section**

Annual Meeting

Wednesday, January 26, 2005

**New York Marriott Marquis
New York City**

**CPLR Amendments
2004 Legislative Session (Chapters 1–209¹)**

CPLR §	Chapter (§)	Change	Eff. Date
105(s-1)	128	Extends until 6/30/09 definition of “sheriff,” including authorization of NYC Marshals to exercise the same duties as sheriffs in regard to execution of money judgments	6/29/04
214-b	68	Extends effective date for commencing agent orange actions until 6/16/06	5/4/04
2103-a	111	Provides for confidentiality of residential and business addresses and telephone numbers of parties in certain circumstances	7/15/04
2303(a)	26	Clarifies that requirements for service of a copy of the subpoena on each party apply only in civil judicial proceedings	1/1/04
3113(d)	66	Authorizes parties to stipulate to depositions by telephone or other remote electronic means	1/1/05

Endnote

1. Chapters 1-3, 50-51, 53-60, 94, 109, 138, 143, 146, 151, 156, 162, 170, 171, 186, 190, 198, and 207 are not yet available.

2004 Amendments to the Uniform Rules for Supreme and County Courts, Rules Governing Appeals in the Court of Appeals and the Appellate Division, and Certain Other Rules of Interest to Civil Litigators

22 N.Y.C.R.R. §	Court	Subject (Change)
202.5(c)	Sup./County	Specifies that “clerk of the court” with which papers commencing lawsuit must be filed is county clerk; requires posting of notice to that effect



Catch Us on the Web at
WWW.NYSBA.ORG/COMFED

Commercial Division Summary Judgment Rule Amended

Rule 19-a of the Consolidated Rules of the Justices of the Commercial Division of the Supreme Court, New York County, has been amended, effective June 1, 2004. That Rule now provides:

19-a. Statements of Material Facts on Motion for Summary Judgment. [Effective June 1, 2004]

(a) Upon any motion for summary judgment other than a motion pursuant to CPLR 3213, there shall be annexed to the notice of motion a separate, short and concise statement, in numbered paragraphs, of the material facts as to which the moving party contends there is no genuine issue to be tried. Failure to submit such a statement may constitute grounds for denial of the motion.

(b) The papers opposing a motion for summary judgment other than a motion pursuant to CPLR 3213 shall include a correspondingly numbered paragraph responding to each numbered paragraph in the statement of the moving party, and, if necessary, additional paragraphs containing a separate, short and concise statement of the additional material facts as to which it is contended that there exists a genuine issue to be tried.

(c) Each numbered paragraph in the statement of material facts required to be served by the moving party will be deemed to be admitted for purposes of the motion unless specifically controverted by a correspondingly numbered paragraph in the statement required to be served by the opposing party.

(d) Each statement by the movant or opponent pursuant to subdivision (a) and (b) hereof, including each statement controverting any statement of material fact, must be followed by citation to evidence submitted in support of or in opposition to the motion.

[Effective date: April 1, 2002][Revised May 3, 2002, Effective June 1, 2002; revision inserted references to CPLR 3213][Revised April 28, 2004, Effective June 1, 2004; revision inserted underscored material above and made certain deletions].

Section Presents Award to Robert C. Meade, Jr.



(l-r) John F. Werner, Lewis Smoley, Robert C. Meade, and Hon. Jacqueline W. Silbermann.

On May 12, Lewis Smoley, on behalf of the Section, presented an award for outstanding contribution to court administration to Robert C. Meade, Jr., Deputy Chief Clerk and Director of the Commercial Division, New York State Supreme Court, New York County, Civil Branch. The presentation was conducted in the Rotunda at the 60 Centre Street courthouse. Accompanying Lew in the presentation were Jacqueline W. Silbermann, Administrative Judge for Supreme Court, New York County, Civil Branch; and John F. Werner, Chief Clerk and Executive Officer of the Court.

Save the Dates!

Commercial and Federal Litigation Section Spring Meeting May 20-22, 2005

**Gideon Putnam Hotel
Saratoga Springs, NY**

Notes of the Section's Executive Committee Meetings

February 12, 2004

Guest speaker Clifford Kirsch, Chief Executive of the Southern District of New York, spoke on electronic case filing, demographics of the Southern District, budget, the Court Registry Investment System (CRIS), commercial cases in the Southern District, cell phones in the courthouse, and the renovations at 40 Centre Street.



The Executive Committee approved the report of the Federal Procedure Committee on Rule 30(b)(6). The Section's CPLR Committee reported on its efforts to work with the NYSBA's CPLR Committee to agree on a Report on Proposed Amendments to CPLR 105, 304, 306-1, and 2102. The Chair raised for discussion the issue of forming a full section from the ADR Committee.

March 11, 2004

Guest speaker Hon. Kenneth W. Rudolph, Presiding Justice of the Commercial Division, Supreme Court, Westchester County, spoke on his efforts, in conjunction

with the Section, to achieve uniformity among the Commercial Divisions; his hope to rejuvenate and reestablish a court-ordered mediation program in Westchester County; and a possible pilot program to bifurcate trials in complex cases.

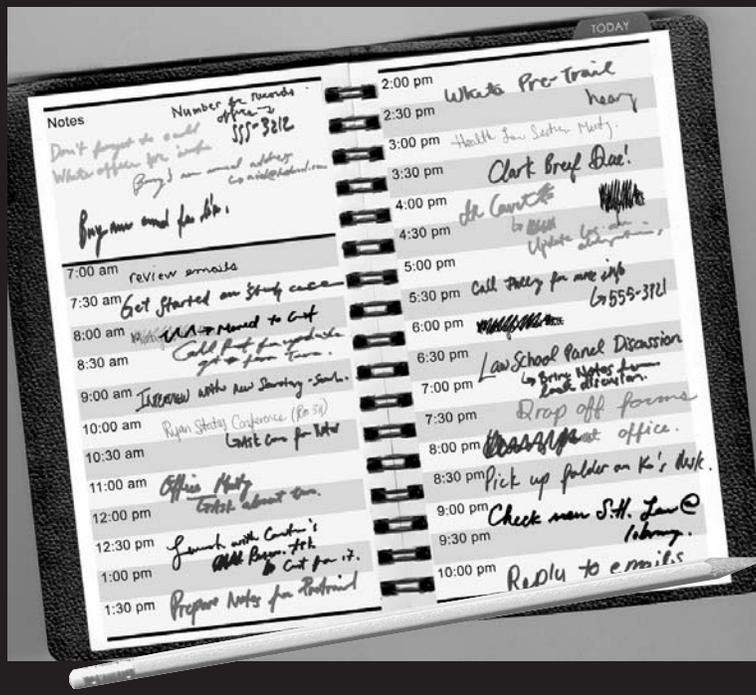
The Executive Committee discussed the revision of a report by the Section's CPLR Committee on amendments to the CPLR. The International Litigation Committee updated the Executive Committee on a proposed report on the revision of state law enforcement of extraterritorial judgments.

April 14, 2004

Guest speaker Hon. Carolyn E. Demarest, recently appointed to the Commercial Division, Supreme Court, Kings County, discussed her work with other Commercial Divisions to streamline and unify the rules of the Commercial Divisions.

The Section's CPLR Committee reported on proposed amendments to the CPLR to address the *Mendon Ponds* decision. The Pro Bono Committee reported on efforts to broaden the definition of pro bono.

Pencil yourself in.



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