NYSBA SUMMER 2018 | NO. 72

Trial Lawyers Section Digest

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

Message from the Chair

Dear members:

On February 1, 2018, I became the chairperson of the Trial Lawyers Section. I consider it an honor and privilege to be given the opportunity to serve in the position for the year 2018.

I look forward to working with Kevin Sullivan, (vice-chairperson), Betty Lugo, (secretary), Clotelle Drakeford, (treasurer) and all the former chairs and members of the executive committee to complete any unfinished project and embark upon new projects to advance the goals and vision of the Section, and continue with the traditions that set the Trial Lawyers Section apart from any other section.

Congratulations to Noreen DeWire Grimmick, the immediate past chairperson, on the successful completion of her year of service to the Section and best wishes for success in her new solo practice.

This year, the Section chose the Edison Ballroom (a trial run to save our resources) for the joint dinner with the Torts, Insurance and Compensation Law (TICL) Section and the passing of the gavel on January 24, 2018.

Although I didn't officially start my position for a few days, I began to work immediately. On January 25, 2018, I chaired the morning session of the Section's joint Continuing Legal Education (CLE) with TICL (our own Charles Siegel, a member of both Trial Lawyers Section and TICL, chaired the afternoon for TICL). The program entitled "The Mechanics of a Trial: From Jury Selection to Verdict—How to Improve Your Litigation Skills and Make the Case" was very well received. The presentation boasted a very diverse panel of presenters including attorneys and judges from various counties: Peter Thomas, Peter S. Thomas, P.C (Queens), Hon. Michelle Weston, Supreme Court Justice, and Jesus M. Zeno, Jesus M. Zeno, P.C. (Kings), William Pagan, The Pagan Law Firm, P.C., Hon. Carmen Victoria St. George, Supreme Court Justice, and Heather Palmore, Law Office of Charles J. Siegel (New York). The content was excellent and there were tremendous networking opportunities.

In February I had the pleasure of once again being a judge at the law schools National Trial Competition run by Thomas Valet. The results of an enormous amount of time, effort and preparation were apparent in the high quality of the students' presentations. The performances were amazing. We were able to conserve some of the resources we dedicated to this project by the use of the New York County Criminal Court for this "signature" project.

Our executive body has been very busy. Our newly formed Legislative Committee completed and submitted a comment on the proposed amendments to CPLR 213-c and the proposed new CPLR 214-g, as well as general policies relating to statutes of limitation periods for civil actions. The Legislative Committee also completed and issued a position statement on the proposed CPLR Article 99—The Truth in Asbestos Trust Claims—in March 2018.

Violet E. Samuels

We were looking forward to launching the Section's CLE and reception on diversity and inclusion in Albany on March 10, 2018; however, we had to cancel the event due to low enrollment. Kudos to Clotelle Drakeford, Betty Lugo, Charles Siegel, and Noreen Dewire Grimmick, on their work in putting the CLE together. As the work is already done and speakers were ready to go, we hope to put this project into use in Albany or, some other location, in the future.

The Trial Lawyers Section was a proud co-sponsor of the Young Lawyers Section's Trial Academy held at Cornell Law School April 4-8, 2018. On April 5, I participated in the program as a critique for the attendees opening statements. On that date, the luncheon was sponsored by the Trial Lawyers Section and I was privileged to speak to the attendees on behalf of the Section.

Our Spring Executive Committee Meeting, previously scheduled for March 10, was rescheduled as a consequence of the above-referenced canceled CLE and reception. It was held on April 16, at Jackson Lewis PC.

The Section's Summer Meeting will be held in Mystic, Connecticut, August 2-5, 2018. Program Chair Peter Kopff is proposing a tract for newly admitted attorneys as well as an advance tract for the seasoned attorneys. This is new for the trial lawyers and I am very excited about this proposed program format. Some exciting speakers are lined up and we look forward to early and enhanced enrollment in order to offer the proposed program format. We look forward to your support.

Stay tuned for other exciting new beginnings in our section. I hope that when my time is completed, I can look back with pride at my service to the Section.

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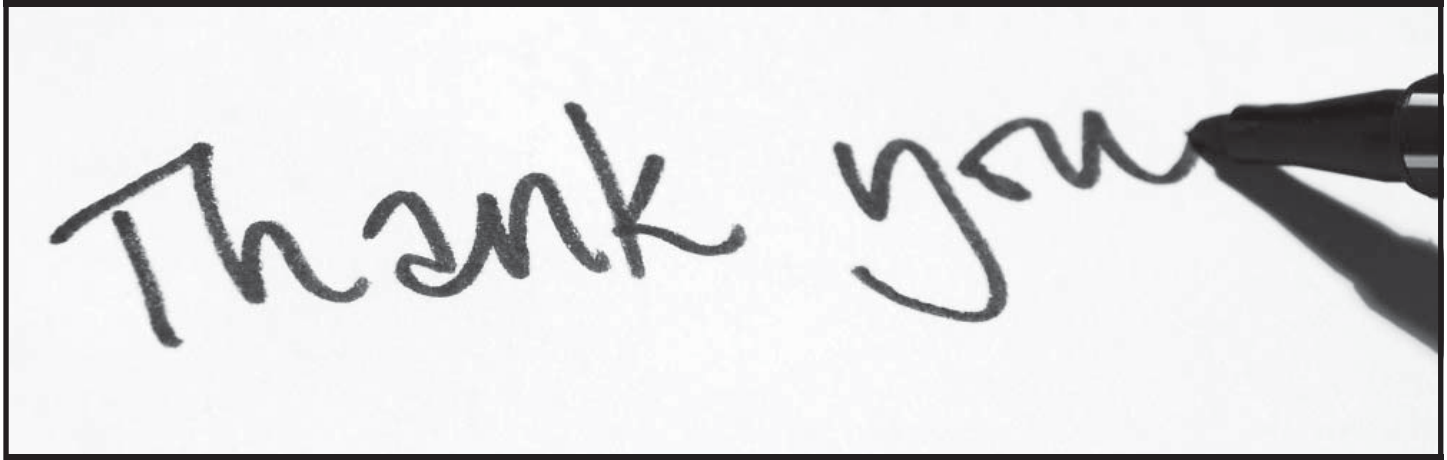
NEW YORK STATE BAR ASSOCIATION



As a New York State Bar Association member you recognize the value and relevance of NYSBA membership.

For that, we say thank you.

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.

Michael Miller
President

Pamela McDevitt
Executive Director

NYSBA

Message from the Editor

We are pleased to present this edition of the *Digest* highlighting some of New York's best trial lawyers. We applaud the transitions of two experienced trial lawyers from large firm backgrounds to the world of solo practice.

Former chair of our Section, Noreen Grimmick, and member Theresa Marangas share their thoughts as new solos. Also highlighted is another long-time trial lawyer and now judge, the Honorable Carmen Victoria St. George, who recently transitioned from the trenches to become a court of claims judge. We wish Noreen, Theresa and Judge St. George the very best. The *Digest* also features one of our newest Section members, David Varriale, who offers practice tips on how motions in limine can be used to narrow issues at trials. Another feature is an interview with a former chair of our Section, Evan Goldberg, who has had a distinguished career and was selected to be the first to be featured in our new Member Spotlight column. Lastly, failing to commend our outgoing *Digest* editors in our last edition, I want to take this opportunity to thank Andrew Seth Kowlowitz and Steven B. Prystowsky for their past years of dedicated service in making the *Digest* a success. I look forward to building upon their efforts.

T. Andrew Brown

Case Study: An Effective Motion in Limine Wins Malpractice Case at Trial

By David J. Varriale

Introduction

A motion in limine, when properly used, can be an effective weapon at trial. A successful motion can preclude anticipated testimony or evidence, and in some cases it can result in a complete dismissal of an opponent's case.

David J. Varriale

A motion in limine is made at the start of trial. It is an evidentiary motion, and its purpose is to exclude the admission of testimony or evidence for noncompliance with evidentiary rules, witness qualifications, foundation, or relevance. The subject testimony or evidence can be precluded if the trial court finds that its probative value is outweighed by its prejudice to a party. The motion is designed to resolve evidentiary issues before the trial, so the jury does not hear inadmissible or prejudicial evidence, which can result in reversible error on appeal. The motion, and its supporting memorandum of law, is simple. The goal is to identify the questionable evidence, and include it in the motion. The applicant should describe the purpose for which the evidence will be introduced, cite the applicable statutes or rules or applicable case law, and then explain why the evidence should be excluded.

Case Discussion

In the instant Westchester County Supreme Court case, *Rabasco v. Westchester County Health Care Corporation, et. al.*, the plaintiff alleged that the defendant-surgeon had been negligent in failing to properly utilize hardware in an open reduction internal fixation surgery to plate the plaintiff's bilateral mandibular fractures. Additionally, the plaintiff alleged that the surgeon and the hospital staff failed to timely diagnose a bone infection at one of the fracture sites.

"A motion in limine is an evidentiary motion. It is not a substitute for summary judgment, especially after the dispositive motion deadline."

At trial, the defense filed a motion in limine with the trial court judge seeking preclusion of the plaintiff's experts' opinions on the basis that no written reports were disclosed regarding any of the physical exams conducted of the plaintiff by the experts pursuant to N.Y.C.R.R. 202.17. The defense further argued that the experts should not only be precluded from referring to any and all opinions and observations derived from these exams, but on that same basis the plaintiff would be left without any supporting experts and the underlying malpractice case should be dismissed with prejudice. In further support of this argument, the defense highlighted that a review of both experts' affirmations submitted in opposition to the defendants' summary judgment motion, as well as their expert witness disclosures, revealed that all of their opinions necessary to support liability and causation were derived from the physical exams of the plaintiff. The trial court agreed with the defense, and precluded the experts' opinions and testimonies at trial. As such, without any experts left to criticize the defendant, the plaintiff was unable to proceed with his case sounding in medical malpractice, and the trial court dismissed the action with prejudice.

"A well-executed motion can result in a preclusion order from the trial court, which can ultimately result in a complete dismissal, as was the outcome in the instant case."

Advice and Results

First, draft the motion as concisely as possible. A motion in limine is an evidentiary motion. It is not a substitute for summary judgment, especially after the dispositive motion deadline. This is true, even though the practical effect of a granted motion in limine could make it impossible for a plaintiff to prove his or her claim's essential elements.

Second, a motion in limine is not a further discovery motion. The motion should not be used as a substitute for a motion to compel, or to exclude evidence as a discovery sanction. Article 31 of the New York Civil Practice Law and Rules governs discovery, and the preliminary or compliance conference order will likely contain certain deadlines for discovery motions. The trial court will likely not allow a late discovery motion filed as a motion in limine at trial.

Third, the trial court is busy. The court will not appreciate long, argumentative motions, including long factual

statements of your case without any reference to your opponent's position, which will be a disservice to your motion. Indeed, the trial court may view your otherwise well founded motion as a one-sided overstatement, and simply deny it. So, be brief and concise, and get to the point.

Similarly, you should choose your motions in limine prudently. In other words, file only those motions that have a reasonable chance of being granted. It will be a disservice to your client if you inundate the trial court with multiple motions, some of which are unlikely to succeed, and which may lead the court to deny them all. Keep in mind, you can always reserve argument on the weaker issues and object to questionable evidence during the trial.

If the trial court denies your motion in limine, be sure that your exception is placed on the record for appellate purposes. Also, the trial court may defer ruling on your motion until the end of the case, in order to further evaluate the proffered evidence in the context of other evidence at trial. However, your motion will have sensitized the trial judge to the evidentiary issues. When the evidence surfaces during the trial, be sure to re-assert your motion and obtain a ruling from the trial judge before the evidence is introduced.

Finally, if the trial court grants your motion in limine, it can result in successfully barring the proof of essential elements of a case and have the ultimate effect of a dispositive motion. Therefore, trial counsel should strongly consider the advantages of seeking an order from the trial court precluding inadmissible or irrelevant evidence from interfering with an otherwise fair and impartial trial. A successful motion in limine also eliminates the risk of prejudice to the jury as a result of exposure to such evidence. The motion in limine further allows the trial judge to consider the issues of a challenging evidentiary question while avoiding disruption of the trial. The most effective strategy is one that is focused on a specific item of prejudicial evidence rather than an overly broad approach designed to simply obstruct your opponent's case. A well-executed motion can result in a preclusion order from the trial court, which can ultimately result in a complete dismissal, as was the outcome in the instant case. Trial counsel should definitely consider and be prepared to file appropriate motions in limine because their efforts can make all the difference and result in positive outcomes for their clients at trial.

David is a partner with Kaufman Borgeest & Ryan LLP, whose practice focuses on the defense of professional liability claims brought in the state and federal courts of New York, New Jersey, Connecticut, and Pennsylvania. David also represents clients in the hotel and hospitality industry, in the state and federal courts of New York, New Jersey, Connecticut, and Pennsylvania. David is also a trial attorney who has defended clients in high exposure cases from inception to trial.

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Transitioning from Private Practice to the Bench…and Life as a New Judge

By Judge Carmen Victoria St. George

Working as a judge has been a long-standing dream of mine. Last year, I was appointed by Governor Andrew Cuomo and sworn in as a New York State Court of Claims judge. Immediately, I accepted a request to serve as an acting Supreme Court justice in the civil division in New York County. I consider it such an honor to serve the people of the State of New York and I absolutely love the work and the challenges thus far.

Judge Carmen Victoria St. George

"Especially as a woman, as a new judge, and as a relatively young jurist, I want to make a good impression and earn the respect of the Bar and of my colleagues on the bench."

I have been fortunate to have great job experiences throughout my legal career. After I graduated from Fordham Law School in 1997, I went to work in the Queens District Attorney's office as an Assistant District Attorney. I was affectionately dubbed a "whippersnapper," eager to take advantage of every opportunity. My fluency in Spanish served me well, as I was called in early in my career there to work on what was often referred to as the Zodiac Killer case. After that, I handled serious felonies with a tremendous record of success. Although I was very happy there, after a little over six years there I took a position at Levy Phillips & Konigsberg LLP where I had the opportunity to work on a class action case in which Latino and African American Police Officers claimed they were discriminated against in the NYPD. That was a hugely rewarding and high-profile case, which we settled successfully. After that, I was assigned to the asbestos department, and I remained in asbestos litigation on the plaintiffs' side throughout my years at Levy Phillips & Konigsberg LLP and, later, at Weitz & Luxenberg.

As much as I loved working at Weitz, after several years in asbestos litigation I became impatient to realize my dream of becoming a judge. Over the past several years I worked hard to get this job, with the full support of my family, friends, and my colleagues at Weitz.

Since last July, there have been a lot of "firsts": the first time I heard oral arguments on motions, signed an Order, presided over a trial, worked with my law clerks on a motion, made an evidentiary ruling, and many more. I prepared for each of these firsts, and, being determined to do well, it has been a surprisingly, heartteningly, smooth transition each time. It feels natural and truly rewarding to be able to realize this personal and professional dream of mine. I have also found that my prior work experience has come in handy. My work as a woman, both at the DA's office and as a mass tort litigator, taught me the need to be strong and confident. The strong organizational skills I developed have helped me to keep up with my workload. My experience settling asbestos cases for my clients has given me the tools to settle many of the cases that come before me, including some that began with a "no pay" position.

"I preside over a 'general' Part, which means a wide variety of cases comes before me, and in addition, I have proceedings that challenge government decisions."

One thing I learned is that even the parts of a judge's job that look easy from the outside require a lot of preparation and hard work. For example, as an attorney I watched judges listen to oral arguments but didn't appreciate the effort it takes to be prepared for those arguments. Especially as a woman, as a new judge, and as a relatively young jurist, I want to make a good impression and earn the respect of the Bar and of my colleagues on the bench. This involves a lot of prep work—reading the papers, looking up pertinent case law, jotting down my questions and comments. I have a court reporter on hand to create a transcript for every argument, which is extremely helpful when it comes to writing the decisions. I have learned, too, to decide as many motions as possible from the bench and on the record. This helps to keep up with the high workload in my busy part.

Of course, there have been challenges. I have had to adjust to the smaller budgets afforded to public servants, compared to private law firms—leaner staffs, shared

printers, different aesthetics, no fax machine—and the extra layers of bureaucracy which are inevitable in a system as large as the New York State Court System. Readjust, that is, as I started out in public service. Fortunately, I have found a good team to assist me, and found many helpful court employees along the way who have helped me assemble the various "amenities," equipment, and materials I need to run my Part smoothly.

Another challenge is balancing my many roles—something I faced in my former job, but not to this extent. Working in the Supreme Court in downtown Manhattan is a thrill, but it also comes at the cost of an approximately four-hour-plus roundtrip commute. As the mother of two young daughters, I have learned to juggle my schedule—coming in early so I can share some quality time with my girls at night.

Currently, there is a challenging, lengthy personal injury trial before me, with excellent litigators and a hard-working jury. It is an absolute honor to preside over the case and a treat to watch such fine lawyers ply their trade. In addition, we have a full day of motions and conferences each week. I preside over a "general" Part, which means a wide variety of cases comes before me, and in addition, I have proceedings which challenge government decisions. I have always loved learning, and when I prepare for the motions and trials I always learn something new. In addition, I have the privilege of helping the parties before me achieve a just result, such as a recent proceeding in which the parties worked out an equitable arrangement that kept the petitioner in his home. The position keeps me busy, which is my natural state, and thankfully the transition has been smooth. I balance the hectic days with my daily practice of bikram hot yoga, and my constant belief and faith in God. My instincts were right; this is the job I was meant to have, and I look forward to all that will flow from it.

In sum, the transition from private practice to the bench brings challenges and inevitable stress, but the rewards are immeasurable, gratifying, and priceless! May we all strive to achieve that which is in our hearts, for it is within this drive that we all excel and succeed, changing ourselves and our future selves—one person, one vision, and one dream at a time!

Judge Carmen Victoria St. George was appointed by Governor Andrew Cuomo and sworn in as a New York State Court of Claims judge in 2017. She graduated from Fordham Law School in 1997 and went to work in the Queens District Attorney's office as an Assistant District Attorney. After that, she took a position at Levy Phillips & Konigsberg LLP and later, at Weitz & Luxenberg.

Transitioning from Large Firm Life to Solo Practice

By Theresa Marangas

Congratulations on making the decision to open your own practice. This can be one of the most exciting and scariest times of your life. Now that you're determined to leave the large firm life or corporate America to spread your wings on your own, let's talk about the practical aspects of running your own business.

This month marks my 33rd year as an attorney and what a wonderful career it's been. I've had the honor of working as in-house counsel for fortune 500 companies, a large international firm with 850 attorneys, smaller firms, as well as my own practice, which I opened in 2015.

"Open an IOLA account and Operating Account with overdraft checking at a bank that allows businesses to use mobile checking. Determine what corporate structure you wish to create through the New York State Division of Corporations."

Whether you have clients who will transition with you or need to build a practice from scratch, you may wish to consider the following steps:

1. Create a new CV and start sharing it by email with fellow attorneys, former and current clients, mentors and contacts.
2. Spend some time thinking about what your new practice will look like. Will it be a combination of flat fee and billable hours? What areas of law will you concentrate on? Is there an area of law that you enjoyed learning about in law school but didn't pursue?
3. How will clients find you? Do you want to create a website or focus on LinkedIn or both?
4. What systems do you need to have in place? Do you want to subscribe to a time and billing software package and/or a research database?
5. What equipment do you need? Do you want to purchase a refurbished printer and/or computer?
6. Where will your office be located? Is shared space with other attorneys or professionals of interest to you or do you prefer to keep costs at a minimum and use your home to launch your new practice?

From my experience, I highly recommend speaking to other solo practitioners, including those who have been in practice for at least three years. Fellow attorneys are willing to help and will gladly share their insight into what has worked best and what mistakes they made along the way.

Theresa Marangas

The New York State Bar Association is another resource that is well worth exploring. From malpractice insurance to CLEs that specifically address many practical aspects of being a sole practitioner, the New York State Bar Association offers myriad assistance.

Be patient. Although you want your practice up and running as quickly as possible to serve your clients and generate income, going slow and being strategic are important in order to avoid mistakes that can cost you time and money. You may wish to consider hiring professionals to help with your website, LinkedIn profile and accounting system. Ask about which banks offer SBA loans if you need financial support to ease the transition from steady paycheck. Open an IOLA account and Operating Account with overdraft checking at a bank that allows businesses to use mobile checking. Determine what corporate structure you wish to create through the New York State Division of Corporations.

"I hope that you flourish during this exciting time in your career, recognize the importance of focusing on your mental and physical health, and remain open to seeking guidance from others who have successfully navigated the transition from big firm life to solo practice."

Creating strategic alliances with other solo practitioners is also extremely important, especially if you have

decided to expand into areas of the law that you previously have not focused on. Think about how you will handle your work flow. If you previously worked with an associate and/or paralegal, find a freelance attorney and/or paralegal who is open to assisting you on a project basis.

Personally there are certain aspects of running my own law practice that I'm very good at and other aspects that consume an inordinate amount of my time. This has led me to consider what are my strengths and weaknesses, what value do I bring to clients and what can others do to assist me? I hope that you flourish during this exciting time in your career, recognize the importance of focusing on your mental and physical health, and remain open to seeking guidance from others who have successfully navigated the transition from big firm life to solo practice.

Theresa is a certified Article 81 Guardian and a Guardian Ad Litem through the New York State Unified Court System. She is well versed in estate planning, trusts, and administration, and experienced in litigating estate matters in Surrogate's Court. She is also an experienced outside general counsel for minority and women-owned business enterprises (M/WBE), family-owned businesses, and homeowners associations. Theresa is versed in contracts, employee severance agreements and handbooks, corporate formation and buy/sell agreements, discrimination and real estate issues.

Theresa has more than 30 years of experience representing clients in a variety of civil litigation, employment, and regulatory compliance matters and has represented governmental entities, non-for-profits, financial organizations, management companies, educational institutions, and international corporations. She is also a certified National Institute for Trial Advocacy (NITA) instructor. She can be reached at 518.605.6476 or www. theresamarangaslaw.com.

NEW YORK STATE BAR ASSOCIATION

TRIAL LAWYERS SECTION

Summer Meeting 2018

MYSTIC, CT

August 2–5, 2018

Hyatt Place Mystic
224 Greenmanville Avenue

www.nysba.org/TRIASU18

Trial Lawyers Section Chair
Violet E. Samuels, Esq., Samuels & Associates, PC, Rosedale

Program Chair
Peter C. Kopff, Esq. , Peter C. Kopff, LLC, Garden City

6.0 MCLE CREDITS: 1.0 Ethics; 3.0 Skills; 2.0 Areas of Professional Practice
This course is approved for MCLE credit in New York for all attorneys, including those newly admitted.

IMPORTANT INFORMATION
The New York State Bar Association has been certified by the New York State Continuing Legal Education Board as an accredited provider of continuing legal education in the State of New York. For information about the CLE Rules, visit www.nycourts.gov/attorneys/cle

Discounts and Scholarships
New York State Bar Association members and non-members may receive financial aid to attend this program. Under this policy, anyone who required financial aid may apply in writing, not later than ten working days prior to the start of the program, explaining the basis of the hardship, and if approved, can receive a discount of scholarship, depending on the circumstances. For more details, please contact: Catheryn Teeter at cteeter@nysba.org

Accommodations for Persons with Disabilities
NYSBA welcomes participation by individuals with disabilities. NYSBA is committed to complying with all applicable laws that prohibit discrimination against individuals on the basis of disability in the full and equal enjoyment of its goods, services, programs, activities, facilities, privileges, advantages, or accommodations. To request auxiliary aids or services or if you have any questions regarding accessibility, please contact Catheryn Teeter at least 10 working days prior to the meeting start date at 518-487-5573 or cteeter@nysba.org

HOTEL INFORMATION/RESERVATIONS:

Hyatt Place Mystic
224 Greenmanville Avenue, Mystic, CT
Phone: 860-536-9997

Book Your Lodging via the Hotel Reservation Link at:
www.nysba.org/TRIASU18

Hotel Rates: $184 Single/Double plus local & state taxes. Triple or Quad occupancy, extra $10 per person per night. Rates include continental buffet breakfast, in room wi-fi, use of 24 hour fitness center and outdoor heated pool. Complimentary shuttle service within 5 miles of hotel.

DIRECTIONS:

From New York: Follow I-95 North take exit 90, take a right off the exit onto Route 27 (Route 27 turns into Greenmanville Avenue); hotel is a quarter-mile on left hand side just past the Shell Gas Station.

From Route 1: Turn onto Route 27 past Mystic Seaport. Hotel is a half-mile on the right hand side before Shell Gas Station.

Amtrak: Located at 2 Roosevelt Avenue, U.S. Route 1, Mystic. Several trains stop in Mystic daily from Boston and New York. Amtrak stops more frequently in New London which is 15 minutes from Mystic by cab. For departure times call Amtrak direct at 800-872-7245. The hotel offers complimentary shuttle service to/from the **Mystic station** on request.

Settled in 1654, Mystic was once a shipbuilding seaport village and a safe harbor for tall ships to weather a storm. Today, the shoreline community with iconic Bascule Bridge is reminiscent of its rich maritime past, but clad with quintessential New England charm. Old sea captain's homes dot the scenic roads along the Mystic River just outside of Downtown's booming food and drink scene.

Quaint and colorful mom and pop shops and eateries line Main Street. Diverse attractions are scattered over Mystic's 4 square miles. Mystic Seaport, Mystic Aquarium, Denison Homestead, Mystic Museum of Art and Olde Mistick Village attract numerous visitors during the milder months. The Seaport Museum is home to several ships designated National Historic Landmarks including the Charles W. Morgan, the Emma C. Berry, the schooner L.A. Dunton and the Steamship Sabino.

There are a plethora of beautiful sights and preserved land to see…Denison Pequotsepos Nature Center, Coogan Farm, Avalonia Preserves, and beautiful town trails make Mystic extraordinarily hike and bike-able. Are you feeling lucky? Mystic is 20 minutes from Foxwoods Casino and Mohegan Sun two of the largest Casinos in the nation. Rhode Island is a mere 15 minute drive from the heart of downtown.

SCHEDULE OF EVENTS

Thursday, August 2

3:00 – 5:00 p.m.	**Executive Committee Meeting** – Meeting Place 1 & 2
6:00 – 7:30 p.m.	**Welcome Cocktail Reception** – Meeting Place 1 & 2
7:30 p.m.	Dinner on Your Own

Friday, August 3

7:00 – 9:00 a.m. **Breakfast** for Hotel Guests at the Hotel Cafe
(Included in Room Rate for those booking accommodations in our Room Block)

7:30 – 8:30 a.m. **Executive Committee Meeting** – Meeting Place 1 & 2
Breakfast will not be served

8:00 a.m. – 12:00 p.m. **Registration** – Foyer

9:00 a.m. – 12:00 p.m. **General Session** – Meeting Place 1 & 2

9:00 – 9:15 a.m.

NYSBA Welcome	**Trial Lawyers Section Welcome**
Michael Miller, Esq.	Violet E. Samuels, Esq.
President	Section Chair

9:15 – 10:05 a.m. **How to be a "Super Lawyer": Success at Trial – Suggestions on Techniques and Handling Challenges**
Our "Blue Ribbon" panel of experts will discuss preparation and use of visual aids and records, using expert witness responses to advance Article 16 defenses, direct and cross examination of plaintiffs and experts (including difficult witnesses), working with a hostile judge, jury selection and summation.

Panelists:
Alfred P. Vigorito, Esq., Vigorito, Barker, Porter & Patterson, LLP, Valhalla
J. K. Hage, III, Esq., Hage & Hage LLC, Utica
W. Russell Corker, Esq., Law Offices of W. Russell Corker, PC, Huntington
John L.A. Lyddane, Esq., Dorf & Nelson LLP, Rye
Alicia Ouellette, Esq., President and Dean, Albany Law School, Albany

10:05 – 10:15 a.m. Refreshment Break

10:15 – 11:55 a.m. **Panel Presentation Continues**

1:00 – 5:15 p.m. **Golf at Lake of Isles**, 1 Clubhouse Road, North Stonington
Since opening in 2005, Lake of Isles has consistently been ranked as one of the top golf facilities in the country. The Rees Jones designed layout gives guests the ultimate golf experience. **$205 per person.** Fees include: greens fees, golf cart and box lunch. **Preregistration required**. Course directions will be provided. Meet in lobby to car pool to course.

12:25 – 5:15 p.m. **Optional Activity: Mystic Seaport Museum**, 75 Greenmanville Avenue
Tickets: $24 per person. **Preregistration required**.

6:30 – 10:00 p.m. **Cocktail Reception & Lobster Bake at Mystic Yachting Center**, 100 Essex Street
Join us at the Yachting Center located at the Mystic Shipyard with panoramic views of the river from it's lovely wrap-around porch. We will be regalled with tales of the sea and songs from chanteyman and banjo picker, **Don Sineti**. Don served as a consultant for the 20th Century Fox movie, "Master And Commander, The Far Side of The World". Meet in lobby for bus – it will make two trips to the Yachting Center at 6:15 pm sharp and 6:25 pm. **Preregistration required.**

SCHEDULE OF EVENTS

Saturday, August 4

7:00 – 9:00 a.m.	**Breakfast** for Hotel Guests at the Hotel Cafe (Included in Room Rate for those booking accommodations in our Room Block)
8:30 a.m. – 12:00 p.m.	**Registration** – Foyer
9:00 a.m. – 12:00 p.m.	**General Session** – Meeting Place 1 & 2
9:00 – 9:10 a.m.	Program Introduction Peter C. Kopff, Esq., Program Chair
9:10 – 10:00 a.m.	**2018 ETHICS UPDATE**
Speaker:	**Patrick Connors**, Albert and Angela Farone Distinguished Professor in New York Civil Practice, Albany Law School, Albany
10:00 – 10:15 a.m.	Refreshment Break
10:15 – 11:05 a.m.	**2018 CPLR Update**
Speaker:	**Patrick Connors**, Albert and Angela Farone Distinguished Professor in New York Civil Practice, Albany Law School, Albany
11:05 – 11:55 a.m.	**Social Media Discovery** Screening of clients, adverse parties, evidentiary issues and recent case law including Forman v Henkin 30 NY3D 656 (2018)
Speaker:	**Robert Gibson, Esq.**, Heidel, Pittoni, Murphy & Bach, LLC, White Plains
1:00 – 5:00 p.m.	**Golf at Pequot Golf Course**, 127 Wheeler Road, Stonington **$55 per person.** Fees include greens fees, golf cart and box lunch. **Preregistration required**. Course directions will be provided. Meet in lobby at 12:20 p.m. to car pool to course.
3:30 – 5:00 p.m.	**Optional Activity: Group Cruise on The Steamboat Sabino**, Mystic Seaport The steamboat *Sabino* is the oldest wooden, coal-fired steamboat in regular operation in the U.S. Built in 1908 in East Boothbay, Maine, she spent most of her career ferrying passengers and cargo between Maine towns and islands. Still powered by the two-cylinder Paine compound steam engine installed in 1908, The *Sabino* was purchased by Mystic Seaport in 1974 to serve as a working exhibit. She was designated a National Historic Landmark in 1992. She recently received *extensive* restoration before returning to service in August 2017. **Preregistration required. Tickets: $18 per person.**
6:30 p.m. –10:00 p.m.	**Cocktail Reception & Dinner at Mystic Museum of Art**, 9 Water Street, Mystic

Sunday, August 5

7:00 – 10:00 a.m.	Breakfast for Hotel Guests at Sika Restaurant (Included in Room Rate for those booking accommodations in our Room Block)
	Checkout

Update from the New York Court of Appeals

By Andrew Brown and Okeano N. Bell

The New York State Court of Appeals has recently handed down two decisions that are of interest to trial lawyers, and could have a definite impact on discovery and summary judgment practice. In the first case, *Rodriquez v. City of New York*, 2018 N.Y. Slip Op. 02287 (April 3, 2018), the Court held that a plaintiff moving for partial summary judgment on the issue of liability no longer has to make an affirmative showing that plaintiff had no comparative fault. In the second case, *Forman v. Henkin*, 30 N.Y.3d 656 (2018), the Court held that the disclosure of information from a party's social media accounts such as Facebook are governed by the same standards as other types of discovery, and that a party seeking such disclosure must show only that the request is reasonably tailored and likely to lead to the disclosure of relevant information.

T. Andrew Brown

Okeano N. Bell

I. *A Plaintiff Does Not Bear the Double Burden of Establishing a Prima Facie Case of Defendant's Liability and the Absence of His or Her Own Comparative Fault to Be Entitled to Partial Summary Judgment.*

The New York Court of Appeals recently revisited the comparative fault issue of whether a plaintiff seeking summary judgment on the issue of liability must affirmatively establish, as a matter of law, that he or she is free from comparative negligence.[1] *See Rodriquez v. City of New York*, 2018 N.Y. Slip Op. 02287 (April 3, 2018). The Court, in *Rodriquez*, held that a plaintiff is not required to show that he or she is free from comparative negligence in order to be successful on a motion for partial summary judgement on the issue of liability only. Prior to *Rodriguez*, there was a split in the Appellate Division as to this question, with the majority of opinions being issued by the Second Department holding that a plaintiff seeking summary judgment on liability had the burden of establishing that the plaintiff was free of comparative fault, while the First Department was divided on the issue, with some opinions holding that the plaintiff must meet that burden and other opinions holding the opposite. *Id.* at *11-12.

The Court noted that having plaintiffs carrying such a burden is inconsistent with codified comparative negligence principles set forth in CPLR Article 14-A. Specifically, "CPLR 1412 states that culpable conduct claimed in diminution of damages, in accordance with CPLR 1411, shall be an affirmative defense pleaded and proved by the party asserting the defense." *Id.* at *6. As such, the before-mentioned burden would be flipped if a plaintiff was required to prove the absence of comparative fault in order to make out a prima facie case on the issue of defendant's liability. The Court further noted that because comparative fault is not a defense to any element of a plaintiff's prima facie case of negligence, a finding of comparative fault does not bar a plaintiff's recovery, but instead only serves to reduce damages; therefore, the contention that a summary judgment motion pursuant to CPLRR 3212(b) requires that there exist no defense to the cause of action is without merit. The Court further noted that its approach is supported by CPLR Article 14-A's legislative history.[2] *Id*. at *9–10.

"The potential benefits at trial do contain the caveat, as expressed by the dissent, that the benefit of eliminating the issue of defendant's negligence from the jury's consideration may be illusory in cases where plaintiff's comparative fault is at issue..."

The Court took the opportunity address the apparent inconsistency created with its ruling in *Rodriquez* and its prior ruling in *Thoma v. Rona*, 82 N.Y.2d 736 (1993), a corresponding case on the subject. The Court in *Thoma* upheld a First Department order denying summary judgment to a plaintiff who did not meet her burden of demonstrating the absence of any material issue of fact as a question of fact existed as to her use of reasonable care. The Court distinguished its ruling in *Rodriquez* from its ruling in *Thoma* by noting that, despite the language in *Thoma* and the reliance on it by numerous appellate courts, the *Thoma*[3] Court did not address the specific question posed in *Rodriquez,* which was whether Plaintiff bears the burden to show absence of comparative negligence.[4]

The Court noted that the practical implications of granting partial summary judgment motions on liability to plaintiffs would be to narrow the number of issues that will be presented to a jury. In a typical comparative

negligence trial, a jury is usually asked five questions.[5] The Court reasoned that having a defendant's liability already established as a matter of law will eliminate the first two questions dealing with defendant's negligence and focus the jury's attention on the other questions and issues in dispute. *Rodriquez*, 2018 N.Y. Slip Op. 02287 (April 3, 2018) at *14. "When a defendant's liability is established as a matter of law before trial, the jury must still determine whether the plaintiff was negligent and whether such negligence was a substantial factor in causing plaintiff's injuries." *Id* at *13. "If so, the comparative fault of each party is then apportioned by the jury." *Id*. As such, "the jury is still tasked with considering the plaintiff's and defendant's culpability together." *Id*. As a matter of practice, a trial court will instruct the jury in a modified version of the Jury Instruction that the issue of defendant's negligence, and in some cases the related proximate cause question, have been previously determined as a matter of law.

"The Court in Forman *held that the First Department erred in employing a heightened threshold for the production of social media records that depended on what the account holder has chosen to share on the public portion of the account."*

The benefits of *Rodriquez* for plaintiffs in the pre-trial setting are: (1) a plaintiff is now able to get a summary judgment on the issue of defendant's liability, even if the plaintiff was comparatively negligent; (2) it aids a plaintiff in ferreting out the merits of a case before significant amounts of resources are expended during the pre-trial phase; (3) it is a useful tool to convince defendants and their insurers to settle cases before trial, as only damages will need to be determined then. Additionally, *Rodriquez* could have positive effects for plaintiffs in the trial setting as follows: (1) it arguably narrows the issues to be presented at trial, since a plaintiff is only required to go to trial to prove the issue of damages; (2) with the elimination of defendant's fault as an issue, plaintiff is guaranteed a recovery, albeit one that could still be significantly reduced by the assessment of comparative fault; (3) with the court instructing the jury that the defendant has legally been determined to be responsible for the accident, the plaintiff gets the benefit the psychological impact of those instructions will have on the jury. The potential benefits at trial do contain the caveat, as expressed by the dissent, that the benefit of eliminating the issue of defendant's negligence from the jury's consideration may be illusory in cases where plaintiff's comparative fault is at issue, because if defendant presents the question of plaintiff's comparative fault to the jury, this will necessitate the jury considering both parties' conduct in order to determine how to apportion fault. *Rodriquez* (Garcia, J., dissenting) at *8. But while the practical effect of the *Rodriguez* ruling on trial practice remains to be seen, there is no question that it will ease a plaintiff's burden when making a summary judgment motion as to liability.

II. *A Party Is Only Required to Show That the Materials Sought in Discovery Are Reasonably Calculated to Contain Relevant Information to Gain Access to the Otherwise Private Contents of Another Party's Social Media Accounts.*

In *Forman v. Henkin*, 30 N.Y.3d 656 (2018), the New York Court of Appeals recently clarified the standard to be used for evaluating discovery requests for otherwise private pages, content, and materials of another party's social media account.[6] The Court held that, to warrant a disclosure of social media records and materials, a party is only required to demonstrate that the information sought is reasonably calculated to result in the disclosure of relevant—material and necessary—information that bears on the prosecution or defense of a claim, which is the burden generally applicable in all other discovery situations. *See Forman*, 30 N.Y.3d at 661-65.

In its decision, the Court reviewed generally applicable discovery principles under CPLR 3101 and the New York case law. The Court reiterated long-standing discovery principles that CPLR 3101 is interpreted liberally "to require disclosure, upon request, of any facts bearing on the controversy [that] will assist with preparation for trial by sharpening the issues and reducing delay and prolixity," and that, although broad, the right to disclosure is not unlimited. *Id*. The Court held that requests for access to a party's social media accounts should be governed by these long-standing principles.

The Court in *Forman* held that the First Department erred in employing a heightened threshold for the production of social media records that depended on what the account holder has chosen to share on the public portion of the account. *Forman*, 30 N.Y.3d at 663. Under this heightened standard, previously articulated by the First Department in *Tapp v. New York State Urban Dev. Corp.*, 958 N.Y.S.2d 392 (1st Dep't 2013), a party seeking disclosure of information on the "private" portion of another party's social media account must establish a factual predicate for the request, whereby the party seeking the discovery is required to demonstrate that there is material in the "public" portion of the account that tends to contradict or conflict with the account holder's alleged restrictions, disabilities, losses, or other claims. *See Forman*, 30 N.Y.3d at 663-64; *Tapp*, *supra*. The Court noted that, in such an instant, unless the seeking party already has access as a friend to the private portion of the account holder's account, the seeking party may only view the information that the account holder has posted on the public portion of the account. *Forman*, 30 N.Y.3d at 664. As such, by first requiring the seeking party to identify relevant information on the account, disclosures can be unilaterally limited as the account holder may obstruct disclosures by manipulating

privacy settings or curating the materials on the public portion of the account. *Id*. The Court found this approach under *Tapp* unavailing because disclosures would turn on "the extent to which some of the information sought is already accessible—and not, as it should, on whether it is 'material and necessary to the prosecution or defense of an action'" pursuant to CPLR 3101 (a). *Id*.

The Court further opined that, in line with New York's liberal discovery principles, "there is no need to for a specialized or heightened factual predicate to avoid improper 'fishing' expeditions" in the social media context. *Id*. at 665. As such, the Court rejected "the notion that account holder's 'privacy' settings [should] govern the scope of discovery of social media materials." *Id*. at 664. The Court, likewise, noted that it rejects "the notion that a commencement of a personal injury action renders a party's entire [social media] account automatically discoverable." *Id*. According to the Court, "[r]ather than applying a one-size-fits-all rule at either of [the before-mentioned] extremes, courts addressing the disputes over the scope of social media discovery should employ" New York's well-settled rules, mentioned above. *Id*. at 665.

The Court went on to note that, in the event that judicial intervention is necessary,

> courts should first consider the nature of the event giving rise to the litigation and the injuries claimed, as well as any other information specific to the case, to assess whether relevant material is likely to be found on the social media account; second, balancing the potential utility of the information sought against any specific 'privacy' or other concerns raised by the account holder, the court should issue an order tailored to the particular controversy that identifies the types of materials that must be disclosed while avoiding disclosure of non-relevant materials." *Id*. at 665.
>
> In a personal injury case such as this it is appropriate to consider the nature of the underlying incident and the injuries claimed and to craft a rule for discovering information specific to each. *Id*. Temporal limitations may also be appropriate—for example, the court should consider whether photographs or messages posted years before an accident are likely to be germane to the litigation. *Id*. Moreover, to the extent the account may contain sensitive or embarrassing materials of marginal relevance, the account holder can seek protection from the court. *Id*.

The practical takeaway here is that a party seeking information from a social media account is no longer bound to the onerous standard set forth in *Tapp, supra*, which required a party to already be in possession of relevant material solely under the control of the opposing party in order to have any chance of obtaining social media account information. Instead, the traditional discovery process that is used to get information, from, for example, a party's file cabinet, can be used equally well where a party seeks disclosure of information in digital form and under the other party's control, and posted on his or her social networking site. In determining how much of a party's social media account will be discoverable, it is best for a requesting party to keep in mind that a request for a party's entire social media account is likely to be deemed impermissible, overly broad and unnecessarily onerous—comparable to requesting the discovery of every photograph or communication the party shared with any person on any topic before and after the incident in question. However, the courts may tailor the scope of disclosure to balance the competing interests of requiring the disclosure of all relevant information and a party's privacy interest in protecting certain potentially embarrassing information, by means such as limiting the time frame and content of which posts must be disclosed.

T. Andrew Brown is a Managing Partner, and Okeano Bell an Associate, at Brown Hutchinson LLP. Both attorneys practice civil litigation throughout the state of New York.

Endnotes

1. The issue stated differently is "[w]hether a plaintiff is entitled to partial summary judgment on the issue of a defendant's liability [when the defendant] has arguably raised an issue of fact regarding plaintiff's comparative negligence." *Rodriquez*, 2018 N.Y. Slip Op. 02287, at *1.
2. The Article 14-A's legislative history referenced provides that (1) neither the defense of contributory negligence or assumption of risk "shall continue to serve as complete defenses" in negligence actions, (2) the defendant claiming contributory negligence of the plaintiff has the burden of showing it," (3) "burden of pleading and burden of proof are usually parallel" and that "[t]his article may be viewed as having created a partial defense, the effect of which is to mitigate damages, and such defenses traditionally must be pleaded affirmatively." *Id*. at * 9–10. "The legislative history of article 14-A makes clear that a plaintiff's comparative negligence is no longer a complete defense to be pleaded and proven by the plaintiff, but rather is only relevant to the mitigation of plaintiff's damages and should be pleaded and proven by the defendant." *Id*.
3. The *Thoma* decision never considered the import of article 14-A and that the plaintiff proceeded on the assumption that if a question of fact existed as to her negligence, summary judgment on the issue of liability would be denied. *Id*. at *10.
4. The dissent, in an opinion by Judge Garcia, joined by Chief Judge DiFiore and Judge Stein, argues that the majority is, in effect if not explicitly, overruling *Thoma*. *Rodriguez* (Garcia, J., dissenting) at *4.
5. The five questions include: (1) Was the defendant negligent; (2) Was defendant's negligence a substantial factor in causing the injury or accident; (3) Was plaintiff negligent; (4) Was Plaintiff's negligence a substantial factor in causing his injuries; (5) What percentage of fault of the defendant and what was the percentage of fault of the plaintiff.
6. The issue stated differently is whether the standard that governs traditional forms of disclosures also governs the disclosures of a person's social media account. *See Forman*, 30 N.Y.3d at 665.

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NYSBA

Transition to Solo from "Big Law"

By Noreen DeWire Grimmick

Noreen Grimmick—solo practitioner for six months:

With 25 years' experience in legal practice, I began solo practice in mid-December 2017. As I write this from my office in the Spring of 2018 my outlook from both sides of my window is an appreciation of a new season, not only in my profession, but in all else that surrounds me as well. After a long winter, I am re-energized by Spring, but I have to admit it's quite an adjustment to go from a large firm to solo practice. In my case, I was formerly with a firm of approximately 200 lawyers for a period just short of 18 years. Having previously experienced a different kind of professional life as a nurse working in the neonatal intensive care unit before entering law school, whether deservedly or not, I still think of myself as one of those "Renaissance" women—always re-creating and re-imagining the outlines of my professional life. So, I embark on a new chapter with more vigor this season, and wherever this leads I am excited to begin again.

I have spent the past six months meeting up with many of my friends and acquaintances in practice and I have paid very close attention to the advice that has been offered freely and with sincerity by each. Interestingly, the first advice I received was from an attorney who had been a solo practitioner but left his practice. His advice was this: "Make sure you get paid." This same advice was echoed by the few former solo practitioners I met with. In the context of my conversations with former solo practitioners, the reasons they left solo practice generally tended to be based in financial issues. Some of the former solo practitioners indicated that they tended to "write down" the time they spent on clients' matters, or they didn't pursue payment of their outstanding invoices from clients who defaulted on their bills, or they failed to require a reasonable retainer at the outset of the engagement commensurate with the complexity of the matter. There is always a great deal to learn from practitioners who left solo practice. It's important to listen closely. In doing so, I also came to appreciate that while most expressed their frustration in managing the financial demands presented by the solo practice model, directly or indirectly, each also expressed a sense of loss in leaving solo practice. I sensed a kind of "wistful" recollection of their time in solo practice.

On my end, the greatest challenge thus far has been the practical side of running a firm that I never had to consider before. The first concern is making a decision on the areas of practice you will focus on—everyone you meet will ask that question first. Think about it and decide on the contours of your practice because this will also strategically target your business development plan. Making choices about printers, software programs, stationary, website support, and business development opportunities are fairly time consuming—far more than I expected. Integrating the various programs with computers and printers is also a time consumption beast and in my case, it required extensive phone conversations with support personnel.

Noreen DeWire Grimmick

I was fortunate enough to have really great space for client meetings and my office right in my own home. Given the fact that I had a client referral less than a month into my solo venture, this was a terrific asset. Recently, at a lunch meeting with another solo practitioner, as we were discussing our experiences, I shared that when all the business is done for the day or the week, it ends with me surveying a pile of papers! We both started laughing and said at the same time "filing"!! I always treasured having support staff, but these recent experiences put a much finer point on those feeling of gratefulness I always carried for support staff when they were there for me.

Transitions are challenging but they are what life is about. I am still just starting out and I hope the one thing you take away from this article is how precious it is to engage in all the aspects of your profession. Cultivating an active presence in local and state bar organizations is one way to develop a supportive community of fellow professionals. It not only serves your present situation well, on a more personal level, the friendships you develop inside and even outside the profession are invaluable. I am optimistic about going solo. I believe my goals are realistic and achievable. I am entirely grateful to the supportive people who continue to simply meet for lunch or coffee and offer their friendship and guidance along the way.

Senior Member Spotlight: Evan M. Goldberg

Interview by Shannon Howley

Evan M. Goldberg is a highly accomplished and well-respected senior personal injury trial attorney in New York. As a Partner with the law firm of Trolman, Glaser & Lichtman, P.C., Mr. Goldberg has represented thousands of accident victims in a variety of complex cases. Mr. Goldberg's dedication to superior trial advocacy has driven him to achieve exceptional recoveries in state and federal courtrooms and in appellate practice.

Evan M. Goldberg

Mr. Goldberg attended the State University of New York in Albany and is a 1989 graduate of Brooklyn Law School. In addition to successfully representing clients in negligence cases, Mr. Goldberg frequently lectures fellow attorneys and has authored numerous legal publications. He has received extensive media coverage for his trial verdicts and outstanding trial performance, including being named a New York State "Super Lawyer" and receiving listings in "Top Verdicts in New York."

Mr. Goldberg also remains active in many professional associations. He previously founded and chaired the Medical Malpractice Committee of the New York State Bar Association and has served on the NYSBA's Executive Committee and House of Delegates. He is also the past President (2015-2016) of the New York State Trial Lawyers Association (NYSTLA). Mr. Goldberg is a District Leader in the Westchester County Democratic Committee and a member of the American Association for Justice, the New York City Bar Association, the Brooklyn Bar Association, the Kings County Inns of Court, the Westchester County Democratic Committee, the Westchester County Bar Association, the Rockland County Bar Association, the Orange County Bar Association and the Puerto Rican Bar Association.

Q What do you find most rewarding and most challenging about being a trial attorney?

A Trials are the ultimate equalizer, where the most marginalized victims of society have a chance for justice. An attorney can practice for a lifetime, but it's in the courtroom that our traditions and laws become alive. Advancing individual causes and making peoples' lives better is very rewarding. Conversely, knowing and dealing with the consequences of an adversarial system can be quite challenging. No matter how much success you've had, every new trial has an equal amount of opportunity for success or failure. The stakes are always very high.

Q What advice would you give to a young attorney just beginning his or her career as a trial attorney?

A Go to trial practice seminars and see what makes sense to you, but, with a jury, always try to be yourself. Spontaneity in the courtroom is created by tireless preparation. Never stop being nervous; it's a sign that you have skin in the game. And lastly, within the bounds of zealous advocacy, win some cases. A well-earned second place doesn't help your client.

Q Whom do you consider your hero in the legal world?

A I recently had the good fortune to share a stage and work with legendary trial attorney Gerry Spence. Not only did he champion worthy causes, but he took stock in himself and the profession, seeking beneficial change in both. I also greatly admired my father, Hon. Richard A. Goldberg, a New York State Supreme Court Justice in Kings County. He was an extremely skilled jurist but even more importantly, a "pick up my own phone" kind of guy. He honored our profession.

Q If you could dine with any trial lawyer, real or fictional, from any time in history, who would it be and what would you discuss?

A That's a tough one. I wrote an article titled "Lincoln, Gandhi and Mandela Walk Into a Courtroom." All three were inspired advocates but I guess I'd pick Lincoln. He gut-wrenchingly lost eight elections, yet continued to persuade juries and ultimately the American electorate. I'd like to know how he was able to stay on track through such adversity and I'd also like to know his answer to this same question.

Q What is the funniest/most shocking thing you have seen in a courtroom?

A Actually, two come to mind. My adversary was waving a pen at a witness, caught up in the emotion of his cross examination, when the pen flew out of his hand,

sailed across the courtroom, hit my client in the chest and landed in his shirt pocket. The second incident involved a jury foreperson projectile vomiting onto the court reporter. The first trial worked out better than the second.

Q What is your favorite book, movie or television show featuring a trial lawyer?

A It's a tie between "To Kill a Mockingbird" and "My Cousin Vinny." Combining the nobility of a trial lawyer with the street smarts of a Brooklyn litigator is a sure recipe for success.

Q What is one thing most people do not know about you?

A Advocacy for children with special needs has been a big part of my life. Those of us who have been personally affected know what that entails. Hopefully, increasing awareness will foster meaningful and dignified opportunity for all, not only during school years but also during adulthood. It's a measure of a compassionate nation.

Q What other passions do you have outside of being a trial lawyer?

Shannon Howley

A Scientific studies show that trial lawyers have more testosterone than non-trial lawyers, but we have to manage it, or the stress will keep us from getting to the proverbial jury. When I'm going at top speed on my jet-ski, I'm not thinking about the expert witness who may not show up, or the judge who wanted my requests to charge before I filed suit. I'm just trying to hang on and stay alive. I'm passionate about family, boating, golfing, reading, living, loving and, of course, the New York State Bar Association!

Shannon, of Brown Hutchinson LLP, is skilled in both reaching amicable solutions through negotiation and in litigating matters to protect her client's rights. Shannon focuses on family court matters and general civil litigation in the greater Rochester and Buffalo areas.

Section Committees and Chairpersons

The Trial Lawyers Section encourages members to participate in its programs and to contact the Section Officers listed on the back page or the Committee Chairs for further information.

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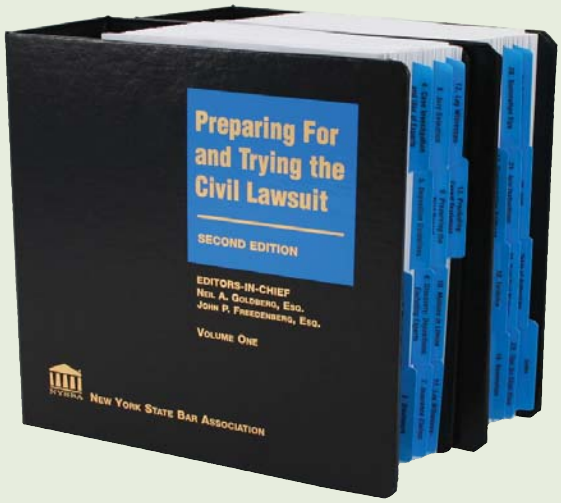

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