

APPROVED MINUTES

THE NEW YORK STATE BAR ASSOCIATION COMMERCIAL & FEDERAL LITIGATION SECTION EXECUTIVE COMMITTEE

Minutes of the Meeting of the Executive Committee of the Commercial & Federal Litigation Section held in accordance with the rules of the New York State Bar Association on Tuesday, April 5, 2016.

MEMBERS PRESENT

**James M. Wicks, Chair
Mark Berman, Chair Elect
Mitch Katz, Vice Chair
Deborah Edelman, Treasurer
Jeremy Corapi, Secretary
Hon. Sylvia Ash
James Bergin
Thomas Bivona
Joseph DeMarco
Clara Flebus
Hon. Helen Freedman
Hon. Marcy Friedman
Ignatius Grande
Anthony Harwood
Robert Holtzman
Kathy Kass
Hon. Frank Maas
Benjamin Nagin
Hon. Barry R. Ostrager**
James Potter
Stephen Roberts
Paul Sarkozi
Daniel Wiig
James Yellen
Isaac Zaur**

MEMBERS PARTICIPATING BY PHONE

**Richard Friedman
Beth Gould*
Jaclyn Grodin
Sharon Grubin
Claire Gutekunst
Patrick Rohan**

** indicates non-executive committee member guest*

*** indicates guest speaker for the meeting and non-executive committee member guest*

The meeting came to order at 6:05 p.m.

Section Chair Jim Wicks' Welcome Remarks

Mr. Wicks welcomed the Executive Committee Members to the meeting. Mr. Wicks welcomed the meeting's guest speaker, the Hon. Barry R. Ostrager, Justice of the New York State Supreme Court Commercial Division, New York County. Mr. Wicks noted that the Executive Committee was honored to have Justice Ostrager as the guest speaker for the meeting. He asked all Executive Committee Members attending the meeting by telephone to send Section Secretary Jeremy Corapi an email so that he could record their attendance for the meeting's minutes. Mr. Wicks also asked all Executive Committee Members attending the meeting in person to sign in on the meeting's attendance sheet.

Guest Speaker: Hon. Barry R. Ostrager, Justice, the New York State Supreme Court Commercial Division, New York County

Section Chair Mr. Wicks introduced Justice Ostrager to the Executive Committee and went over Justice Ostrager's illustrious background.

Justice Ostrager first discussed his transition from being a partner in private practice at Simpson Thacher & Bartlett LLP to being a justice in the New York State Supreme Court Commercial Division, New York County. Justice Ostrager then discussed his individual practices and daily schedule. He also shared his reverential and extremely positive view of his colleagues on the state bench. He also noted the state court system's need for increased funding and resources.

Justice Ostrager then fielded questions from the Executive Committee Members. In response to one particular question, Justice Ostrager noted the importance of law firms and partners giving young attorneys substantive legal work to do on cases so that young attorneys can develop their skills. He recalled that when he was a partner at Simpson Thacher & Bartlett LLP he would usually staff his cases with junior associates because he enjoyed working with them and found that junior associates were regularly up to the challenges and demands that come with working on complex litigations.

Justice Ostrager concluded his remarks by thanking the Executive Committee Members for their time and for allowing him to speak at the Executive Committee Meeting. He noted that he hoped to become more involved with the Section now that he is on the state bench. Mr. Wicks thanked Justice Ostrager for taking the time to speak to the Section's Executive Committee.

Approval of March 2016 Executive Committee Meeting Minutes

The Minutes for the March 2016 Executive Committee Meeting were unanimously approved by all Executive Committee Members present.

Report on Hedge Fund and Capital Markets Committee Events

Executive Committee Member and Hedge Fund and Capital Markets Committee Chair Benjamin Nagin provided the Executive Committee Members with a report on the Hedge Fund and Capital Markets Committee's recent events. Mr. Nagin gave a recap of the Hedge Fund and Capital Markets Committee's March 2016 meeting where JAMS arbitrator and mediator and retired New York State Supreme Court Commercial Division Justice, the Hon. Bernard J. Fried, was a guest speaker. Mr. Nagin reported that the meeting was well attended by all committee members and was extremely well received. Section Chair Mr. Wicks lauded Mr. Nagin and the Hedge Fund and Capital Markets Committee for putting this event together and encouraged all of the Section's committees to invite prominent guest speakers to their meetings to increase Section membership and involvement.

Mr. Nagin also advised that the Hedge Fund and Capital Markets Committee is putting on a CLE on May 11, 2016 at Sidley Austin LLP's New York office, which will feature two panels. The first panel will deal with the New York federal and state courts' application of non-New York law to cases through choice of law provisions, borrowing statutes, etc. The second panel will address cross-border disputes. Mr. Nagin noted that this CLE program will be a live program and may also be webcasted.

Section Chair Mr. Wicks noted that the Section is receiving a lot of positive attention because it is actively using webcasts and webinars to disseminate its content and CLE programs. He encouraged Mr. Nagin and the Hedge Fund and Capital Markets Committee to provide Webcast access to their May 11, 2016 CLE program.

Spring Meeting Update

Section Chair Elect Mark Berman provided the Executive Committee Members with an update on the Section's Spring Meeting. Mr. Berman noted that the Section went to press with marketing materials for the Spring Meeting. Mr. Berman noted that the Spring Meeting's Friday Night Dinner will be held at the Major League Baseball Hall of Fame. Mr. Berman noted that the keynote speaker for Friday Night's Dinner will be a professor from George Mason University School of Law, who is a legal scholar and expert in Major League Baseball's storied legal history. Mr. Berman noted that as part of his presentation, the keynote speaker will be doing an interesting review of the best lawyers involved with Major League Baseball over the years.

Mr. Berman also stated that there will be four (4) CLE programs, including one on Major League Baseball's antitrust exemption, one on social media and juries, one on e-discovery, and one on mediation. Mr. Berman also advised that the Section has already obtained four (4) sponsors for the Spring Meeting and that the weekend will feature kid-friendly

activities for those members who are bringing their families to the meeting. Section Chair Mr. Wicks commended Mr. Berman for his efforts and ability to obtain great sponsorships for the Spring Meeting.

Finally, Mr. Berman explained that 35 judges have already registered for the Spring Meeting, but that the Section needed to increase registration amongst other attorneys, law firms, and Section members. He encouraged all Executive Committee Members to register for the Spring Meeting if they have not already done so.

10th Anniversary Smooth Moves Program Reminder

Section Chair-Elect Mr. Berman reminded the Executive Committee Members that the 10th Anniversary Smooth Moves program will take place on April 19, 2016, from 4:00 p.m. – 7:30 p.m. at the Lincoln Center for the Performing Arts, Kaplan Penthouse, the Rose Building, 165 W. 65th Street, 10th Floor, New York, New York. Mr. Berman encouraged all Executive Committee Members to go online and sign up for the event as soon as possible and to think about sponsoring the event or having their respective firms sponsor the event as sponsorship and attendance are currently below where they were last year.

Executive Committee Member the Hon. Sylvia Ash advised that she would help promote the event. Executive Committee Member and Chair of the Hedge Fund and Capital Markets Committee Benjamin Nagin also advised that it would be a good idea to promote the event to various law school affinity groups.

Membership Report

Section Chair Mr. Wicks reported on the Section's latest membership numbers. Mr. Wicks stated that the Section currently has 2,246 members. He noted, however, that typically this is the time of year where the NYSBA's various sections see a drop off in their membership numbers because annual memberships that are not renewed are reported at this time of year. To that end, Section Liaison Beth Gould advised that the Section lost approximately 300 members based on the non-renewal figures.

NYSBA President-Elect Claire Gutekunst reported that she would be rolling out her "Membership Challenge Initiative" in the near future which should help all sections with their membership figures. She also recommended that the Section should take the list of members who did not renew their memberships and email them to encourage these individuals to renew. She also advised that the Section Leaders Conference is on May 12, 2016, and that it would be helpful for the Section to have a good turnout as a lot of useful information is provided during the conference.

Treasurer's Report

Section Treasurer Deborah Edelman reported on the Section's budget and finances. Ms. Edelman reported that the Section's surplus for 2015 was \$159,000, which is up \$32,000 from 2014. However, because the Section earmarked \$40,000 for the Section's federal

courts initiative, which the federal courts have not yet used, this must be taken into account when considering surplus amount. Ms. Edelman also noted that of the Section's three big events that it put on in 2015 (the Annual Meeting, Smooth Moves, and the Spring Meeting), two of the three events lost money. The Smooth Moves program lost \$9,000 and the Spring Meeting lost \$36,000. The Annual Meeting was \$2,000 above the event's breakeven point. Section Chair Mr. Wicks noted that overall, the Section was right about at budget for year to date.

NYSBA President-Elect Claire Gutekunst reminded the Executive Committee Members that, while the Section has not done this, it should not use surplus monies to cover program losses because the programs typically provide value only to the members that attend. She emphasized that Section events and meetings must be self-sustaining. She noted that surplus can be used for broad based initiatives that advance the general interests of the profession.

Section Chair Mr. Wicks noted that at the recent NYSBA House of Delegates Meeting, this was one of the issues that was touched on. Specifically, sections should think about the use of surplus and budgeting early on in the year. Mr. Wicks thanked Ms. Edelman for her report and Ms. Gutekunst for her advice on this subject.

House of Delegates Report

Section Chair Mr. Wicks reported on the NYSBA House of Delegates Meeting that he attended with the Section's other delegates, Gregory Arenson and Mark Berman. Mr. Wicks noted that the Section's delegates caucus is now going to be allowed to have two more people as caucus members, increasing the total number of people to five (5). He also reported that the NYSBA is debating whether to change the official term from "caucus" to "forum."

President-Elect Claire Gutekunst also thanked Executive Committee Members Mark Berman and Ignatius Grande for their report to the House of Delegates on social media and jury instructions.

Other Business

Section Chair Mr. Wicks informed the Executive Committee Members that the May 2016 Executive Committee Meeting is going to be moved from May 4, 2016 to a later date (May 18) because of an exciting guest speaker opportunity. Mr. Wicks noted that an email would soon be sent out to the Executive Committee Members informing them of the new meeting date and guest speaker.

Executive Committee Member and Co-Chair of the Section's Securities Litigation and Arbitration Committee James Yellen also asked Section Chair Mr. Wicks about a previous writing contest that the Section hosted for law students. Mr. Yellen inquired as to what happened to the contest and whether the Section had any plans to resurrect it. Mr. Wicks advised that, coincidentally, some of the Section's officers had just discussed this topic and

that the Section decided to bring back a writing contest in 2016-2017 for law students. Mr. Wicks noted that the winner would likely get some form of monetary prize, as well as publication in the *NY Litigator*. Section Chair-Elect Mr. Berman noted that this initiative was part of the Section's efforts to increase its involvement with law schools and law students.

The meeting adjourned at 7:24 p.m.