

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 Outgoing Chair

This has been a wonderful year for our Section. It has been my privilege to work with a remarkable group of officers who represented the ideal team to serve our Section. I want to thank Lesley Rosenthal, Carrie Cohen, Vince Syracuse, and Michael Sant’ Ambrogio for all their hard work this year. I also wish our new officers all the best of success in the coming year.



Stephen P. Younger
Outgoing Chair

With the help both of this year’s State Bar President, A. Vincent Buzard, and of incoming President Mark H. Alcott, our Section has forged a close working relationship with the State Bar at large. This has allowed us to be featured in a wide range of State Bar activities, including the Presidential Summit at the Annual Meeting. Thus, my thanks also go to Vince and Mark.

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A Message from the Incoming Chair

As I take on the leadership of our most distinguished Section, I look back in wonderment at the handiwork of those who have come before: exceptional leadership from our immediate past Chair, Steve Younger, and all that he achieved during his tenure; the accomplishments of the Chairs that preceded him, including, now, two Federal judges, Shira Scheindlin and P. Kevin Castel; the many initiatives begun during the tenure of the now-President of the New York State Bar Association Mark Alcott; and the remarkable legacy of the “George Washington” of our Section, founder Robert L. Haig.



Lesley F. Rosenthal
Incoming Chair

On the strength of its past leadership, including such notables as Jack Auspitz, Cathi Hession, Bernice

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This was a particularly exciting year for the Section, as we celebrated the Tenth Anniversary of the Commercial Division. The Division was first proposed in a 1995 report authored by the Section's Task Force on Commercial Courts. Today, the Commercial Division operates in seven counties around New York State and has fundamentally changed how commercial litigation is practiced in our state courts.

The Section has remained involved in the growth of the Commercial Division over the past decade, and the Commercial Division has looked to the Section for ideas and support. For example, our members were involved this year in helping to develop uniform rules for the Commercial Division. These rules have been of benefit to our members, who can now predictably advise their clients about what cases will qualify to be heard in the Division and what procedures will apply when they get there.

Our Section also identified delays in the resolution of motions in certain parts of the Commercial Division that resulted from an increasing caseload. In response to this issue, the Commercial Division for New York County implemented an innovative clerkship program designed to bring additional resources to the review of commercial cases. Our Section was pleased to be involved in helping to shape this program.

The development of the Commercial Division is illustrative of the type of impact that our Section's members can have on the way commercial litigation is handled in New York. The Section is more than a group in which members can discuss developments in the law and their practice, although it is certainly that. It is a place where individuals can bring their ideas, act upon those ideas, and shape the environment in which they practice. The Section's role in the Commercial Division, for example, is not just good for New York State. It has improved the practice of law for our Section's members.

One of our themes this year was the independence of the judiciary. Two of my columns have highlighted how important it is for all of us as lawyers to speak up for the judiciary's independence. At our first Executive Committee meeting this year, our Section endorsed a resolution opposing congressional actions that would have criticized our nation's judges for drawing guidance from foreign law. We felt it essential to stand up for the independence of our judiciary at this critical point in our country's history.

The Section continues to strive to improve the practice of law in our state in many other ways. This year, Greg Arenson's Federal Procedure Committee issued an important report opposing the Lawsuit Abuse Reduction Act ("LARA") in Congress. The LARA legislation would impose mandatory sanctions on lawyers, would federalize litigation that ought to remain in our state courts, and

would stifle innovations in the law. Our Section took the lead for the State Bar as a whole on this important issue.

The heart of the Section's work is in its committees. We have active committees that address a wide range of issues of interest to commercial litigators. The committees represent forums in which our members' ideas are translated into action through reports, CLE programs, and articles for the Section's two publications, the *Newsletter* and the *NYLitigator*.

This past year, for example:

- Our E-discovery Committee, co-chaired by Adam Cohen and Connie Boland, was cited for their helpful input in the commentary to the new federal rules in this area;
- The Appellate Practice Committee, led by David Tennant and Preeta Bansal, prepared a report on the use of Google by appellate judges;
- Our CPLR Committee, co-chaired by Jim Bergin and Susan Davies, commented on various proposals to amend the CPLR;
- The ADR Committee, under the leadership of Carroll Neesemann and Debbie Masucci, pressed for adoption of the Revised Uniform Arbitration Act and the Uniform Mediation Act;
- The Securities Litigation Committee, under Jim Yellen and Doug Conroy, sponsored a seminar on securities litigation;
- Our Ethics Committee, led by Jim Wicks and Tony Harwood, prepared a report on whether the State Bar should adopt the ABA's Model Code of Professional Responsibility;
- The Pro Bono Committee, headed by Bernie McCarthy, helped shape a proposal that would facilitate the use of cy pres funds to finance legal services for the poor;
- The Membership Committee, co-chaired by Peter Mahler and Ed Baum, hosted receptions for new members; and
- Finally, the Bankruptcy Committee, headed by Doug Tabachnik, developed a program on bankruptcy issues of interest to commercial litigators, which was presented at our Spring Meeting.

In sum, over the past year the Section has continued to have a real impact on the law and make a difference in our professional lives. Perhaps most important for me, however, my service this year has enabled me to forge new friendships, and enjoy old ones, thereby creating bonds that will last a lifetime. Thank you all for allowing me the opportunity to serve as your Chair.

Stephen P. Younger

Leber, John Nonna, Gerry Paul, Sharon Porcellio, Lew Smoley, Lauren Wachtler, and Mark Zauderer—all of whom continue to be active participants to this day—the Section is well poised for an extremely productive year.

Our Section is well-known for its memorable programs—indeed, we were singled out as exemplars at the recent NYSBA Section Leadership meeting in May—and planning is already underway for a very full calendar of special events for the coming year:

- a reception for the Nassau and Suffolk County Commercial Division Justices, being organized by Section Treasurer Vincent Syracuse;
- a welcoming tribute to the new Queens County Commercial Division, planned by Membership Co-chair Peter Mahler;
- an event to celebrate the installation of new Chief Judges in several federal benches in New York, for which the Federal Judiciary Committee Co-chairs Jay G. Safer and John Winter have graciously answered my call to assist;
- our Annual Meeting program, already being ably planned by Section Vice-Chair Peter Brown; and
- a Spring Meeting program to remember, by Section Chair-Elect Carrie Cohen, creator of the blockbuster Annual Meeting 2006.

The Section is also planning a full roster of CLE programs and judicial education programs for Commercial Division justices and their law clerks through our close association with the New York State Office of Court Administration. We welcome Section members' ideas for new programming.

As more and more litigators—including this one—cycle through in-house law departments during the course of their legal careers, I have inaugurated a new Section committee called the Corporate Litigation Counsel Committee. The mission of the new committee is to provide a forum in which in-house litigators and firm litigators with in-house experience can share informa-

tion and best practices, as well as address legislative, regulatory and policy issues impacting the corporate community with judges, public sector lawyers, and law firm practitioners. I encourage our members with relevant expertise to contact new committee Co-chairs Carla Miller or Richard Friedman through the Section's website, <http://www.nysba.org/comfed>.

The Section stands ready to assist President Alcott with his initiatives for the new year, including inaugurating the Empire State Counsel program to recognize pro bono service to the indigent, and contributing significantly to rule-of-law initiatives in emerging democracies, in answer to the call by Chief Judge John M. Walker, Jr. at the Section's recent spring meeting.

Striving for greater diversity among members and at the leadership level, the Section is working to identify and engage leading and rising commercial litigators in upstate communities as well as commercial litigators of color. There are new slots on the Section's Executive Committee for representatives from each county in the state with a Commercial Division or a federal court; members may self-nominate or nominate others with leadership potential. In addition, the Section continues its outreach to new members of the Bar, unaffiliated members of the Association in our practice area, and other Section leaders for fruitful collaborations on topics of mutual interest.

On a personal note, joining the Section and becoming involved in 1994 was a watershed decision in my career, leading to a most unexpected and welcome array of new friendships, professional relationships, leadership opportunities, and a chance to contribute to the betterment of the law in New York State. Whether you are a veteran member or just joining us now, I invite you to reach out to me and our team of exceptionally capable officers, committee chairs and at-large Executive Committee members to let us know what kinds of reports, educational programs, special events, and other activities would interest you in the coming year.

Lesley F. Rosenthal

Section Influence Seen in New Federal eDiscovery Rules

By Adam I. Cohen

As the litigating world waits with baited breath for the December 1, 2006, implementation of changes to the Federal Rules of Civil Procedure, designed to address a broad array of electronic discovery issues, members of the Section can take pride in the influence their organization had in the development of these groundbreaking new rules. In numerous changes that were made to the original proposals from the Rules Committee after the submission of comments from and oral testimony by the Section's Electronic Discovery and Federal Courts Committees, the Section's comments appear to have been directly incorporated into the final rules. The Section is also among the few groups submitting comments explicitly recognized in the Committee Notes to the new rules.¹

After years of study and input from experts and practitioners in the electronic discovery field, the Committee on Rules of Practice and Procedure of the Judicial Conference of the United States published Proposed Amendments to the Federal Rules of Civil Procedure on August 9, 2004. As part of the public comment period following the publication of these proposals, the Electronic Discovery Committee and the Federal Courts Committee submitted written comments on behalf of the Section on November 24, 2004. Gregory Arenson, Chair of the Federal Procedure Committee, and Adam Cohen, then Chair and now Co-chair of the Electronic Discovery Committee, appeared before the Rules Committee in Washington, D.C., and provided oral testimony on February 11, 2005.

After considering the many comments received from a wide variety of sources, the Civil Rules Advisory Committee issued its final recommendations for changes in the Fed. R. Civ. P. on June 15-16, 2005. On April 12, 2006, the United States Supreme Court approved these recommendations. Unless Congress takes action to prevent the implementation of the new rules, they will take effect on December 1, 2006. The areas in which the Section comments appear to have had an impact are summarized below:

- New Rule 26(b)(2) establishes a "two-tier" procedure for discovery of electronically stored information that is identified as "not reasonably accessible."² The Section's comments indicated that further guidance regarding the nature of the "not reasonably accessible" standard was warranted. The revised version of the new rule clarifies that

"the party from whom discovery is sought must show that the information is not reasonably accessible *because of undue burden or cost.*"³

- In Rule 26(b)(5)(B), the originally proposed amendment stated that when a party receives privileged information inadvertently, and production of that information was not intended to waive a claim of privilege, "after being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has."⁴ The Section suggested that the rule include a statement of the obligation not to use, disclose, or disseminate information once notified that it was inadvertently produced and is privileged. The final rule now includes the following provision: "After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has *and may not use or disclose the information until the claim is resolved.*"⁵
- The originally proposed version of the amendment to Rule 34(b) stated that if a party did not specify a preferred form for receiving electronically stored information, then the responding party would be required to produce that information "in a form which it is ordinarily maintained, or in an electronically searchable form."⁶ The Section pointed out the numerous technical complexities involved in requiring production in this manner for certain types of electronic information. The Rules Committee revised its proposal so that the rule requires that "the responding party produce the information in a form which it is ordinarily maintained, *or in a form or forms that are reasonably usable.*"⁷
- Rule 37(f) provides a limited "safe harbor" from certain sanctions where electronically stored information that is subject to a duty to preserve is lost. The original proposal for this new rule as well as the final version refer to "routine operation" of a computer system as a pre-requisite for eligibility for the safe harbor.⁸ The Section recommended that further explanation of the factors to be weighed in determining such eligibility be provided. The committee notes accompanying the new rule provide such elaboration, indicating, for example, that routine operation includes "the ways that such systems are designed, pro-

grammed and implemented to meet the party's technical and business needs."⁹

- Finally, in connection with the proposed amendment to Rule 45(d)(1)(C), the Section supported the proposed changes which correspond to the proposed changes in Rule 26(b)(2). However, the Section recommended that Rule 45(d)(1)(C) also include a statement that the court may specify terms and conditions for the discovery of electronically stored information that is not reasonably accessible, as it does in Rule 26(b)(2). The new rule does just this in 45(d)(1)(D), stating that "[t]he court may specify conditions for the discovery."¹⁰

It is apparent from the approved amendments to the Federal Rules of Civil Procedure that the Section's voice was heard by the federal Rules Committee. This emphasizes the important role the Section can play not only on our "home court" of New York State, but at the federal level as well. As we march forward into the brave new world of electronic discovery under the new Federal Rules of Civil Procedure, the Section can take pride in its role in creating that world.

Endnotes

1. Report of the Judicial Conference Committee on Rules of Practice and Procedure, p. 27 (September 2005).
2. Report on Proposed Changes in the Federal Rules of Civil Procedure Relating to Electronically Stored Information, New York State Bar Association Commercial and Federal Litigation Section, p. 9 (December 6, 2004).
3. Fed. R. Civ. P. 26(b)(2), 2005 Amendment (emphasis added).
4. Fed. R. Civ. P. 26(b)(5)(B), 2004 Amendment.
5. Fed. R. Civ. P. 26(b)(5)(B), 2005 Amendment (emphasis added).
6. Fed. R. Civ. P. 34(b), 2004 Amendment.
7. Fed. R. Civ. P. 34(b), 2005 Amendment (emphasis added).
8. Report on Proposed Changes in the Federal Rules of Civil Procedure Relating to Electronically Stored Information, New York State Bar Association Commercial and Federal Litigation Section, p. 28 (December 6, 2004).
9. Fed. R. Civ. P. 37(f) Advisory Committee's note, 2005 Amendment.
10. Fed. R. Civ. P. 45(d)(1)(D), 2005 Amendment.

Adam I. Cohen is Co-chair of the Commercial and Federal Litigation Section's Electronic Discovery Committee. He is a Senior Managing Director in the electronic evidence consulting group at FTI Consulting, Inc., a former partner of Weil, Gotshal & Manges LLP, and the co-author of the annually updated legal treatise *Electronic Discovery: Law and Practice* (Aspen Publishers).

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Section Leadership Helps Commercial Division Welcome Delegation of Judges from Algeria

By Vincent J. Syracuse

The New York County Commercial Division hosted a delegation of seventeen visiting Algerian trial judges on June 13, 2006. Their visit to the Commercial Division was sponsored by the Commercial Law Development Program of the U.S. Department of Commerce with the assistance of Bankruptcy Court Judge Elizabeth S. Stong and former Section Chair Robert Haig. Representatives of the Algerian judges have indicated that as part of its shift toward a full-fledged market economy, Algeria is interested in the creation of specialized business courts. The judges were here to learn about the Commercial Division, which has earned a reputation throughout the world for its judicial expertise and efficient resolution of commercial disputes and is seen by the Algerians as a model for the creation of a business court in Algeria.

After meeting with Administrative Judge Jacqueline Silberman and the Commercial Division judges and staff and touring the courthouse, Judge Stong and Robert Haig introduced the Algerian judges to Section representatives, former Section Chairs Mark Zauderer, Lewis Smoley, Lauren Wachtler, and Steve Younger; and Section Treasurer Vincent Syracuse, for a roundtable session that was designed to help the Algerian judges answer their questions about the role of business courts

in the judicial system. The discussion covered many commercial litigation topics and focused on the complexities of commercial litigation, rules of evidence and procedure, ethics and attorney responsibility, and court annexed mediation and ADR.

The session gave us an opportunity to outline the Section's involvement in the creation of the Commercial Division and its growth during the past ten years and the Section's mission to improve the quality of the representation of clients and the resolution of business disputes. We stressed the need for bench/bar cooperation and its contribution to the administration of justice.

One of the Section's major initiatives is the development of strong relationships with commercial litigators and business courts throughout the world. The Algerian judges reacted very favorably to our request for their assistance in helping us make contact with our counterparts in Algeria so that we can explore common interests. The meeting with the Algerian judges was an important first step in the Section's response to the challenge given at our spring meeting by Chief Judge John M. Walker, Jr., to promote the rule of law in jurisdictions throughout the world.



REQUEST FOR ARTICLES

If you have written an article, or have an idea for one, please contact *Commercial and Federal Litigation Section Newsletter* Editor:

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Articles should be submitted by e-mail or on a 3½" floppy disk, preferably in Microsoft Word or WordPerfect, along with a printed original and biographical information.

Spring Meeting 2006— “The Art of Commercial Litigation”

By Susan Davies

This year’s well-attended Spring Meeting was held on May 5-7, 2006, at Lincoln Center for the Performing Arts in New York City. The meeting’s theme—inspired by its setting—was “The Art of Commercial Litigation.” Lesley Friedman Rosenthal, who is VP, General Counsel, and Secretary of Lincoln Center for the Performing Arts, Inc., chaired the meeting as Section Chair-Elect, with the assistance of Cecelia Gilchrist of Lincoln Center, and Susan M. Davies of Gregory P. Joseph Law Offices LLC, as Section Secretary-Elect.



Hon. Albert M. Rosenblatt of the New York State Court of Appeals, and Gerard E. Harper of Paul Weiss, panelists for “Lawyers, Lyrics & the Art of Legal Writing”

Entertaining and Erudite Programs

The Saturday morning programs were devoted to the arts of written and oral legal advocacy. The morning began with a swinging panel on “Lawyers, Lyrics & the Art of Legal Writing,” moderated by Lesley Rosenthal to a soundtrack by Cole Porter, Ira Gershwin, and Lorenz Hart. Using song lyrics and well-written briefs to illustrate their points, Ms. Rosenthal and panelists, the Honorable Albert M. Rosenblatt of the New York State Court of Appeals and Gerard E. Harper of Paul, Weiss, Rifkind, Wharton & Garrison LLP, offered meeting attendees insight and inspiration for creative and effective legal writing. The rest of the morning was devoted to a panel on “Attorneys, Actors & the Art of Oral Advocacy,” which brought together actress, director, and acting coach Celeste Walker, former New Jersey Attorney General Peter C. Harvey—now a partner at Patterson Belknap Webb & Tyler LLP—and the Honorable Roger J. Miner of the United States Court of Appeals for the Second Circuit. The panelists addressed both the presentational and substantive aspects of courtroom technique, and former Section Chair Lauren J. Wachtler of Montclare and Wachtler demonstrated an opening statement.

On Sunday morning, a panel of bankruptcy experts, moderated by Douglas T. Tabachnick of the Law Offices of Douglas T. Tabachnick, represented the various inter-

ested parties in a hypothetical Chapter 11 proceeding. Mr. Tabachnick is Chair of the Section’s Bankruptcy Litigation Committee. The other participants on the panel, entitled “Bankruptcy Tips and Traps for Commercial Litigators,” were the Honorable Judge Allan L. Gropper of the U.S. Bankruptcy Court for the Southern District of New York, Elizabeth Austin of the Office of the U.S.



Section Chair Stephen P. Younger and State Bar President A. Vincent Buzard at the Welcoming Banquet



Acting coach Celeste Walker, the Hon. Roger J. Miner of the United States Court of Appeals for the Second Circuit, and Peter C. Harvey of Patterson Belknap Webb & Tyler LLP, (front) panelists for “Attorneys, Actors & the Art of Oral Advocacy”



Douglas T. Tabachnick, Barbra Parlin, Elizabeth Austin, Hon. Allan L. Gropper, Diane Harvey, Lori Lapin Jones, and Ian J. Gazes present “Bankruptcy Tips and Traps for Commercial Litigators”



New York County Commercial Division Justices Hon. Helen E. Freedman and Hon. Karla Moskowitz at the Welcoming Banquet

Trustee for the Southern District of New York, Ian J. Gazes of Gazes LLC, Diane Harvey of Weil Gotshal & Manges LLP, Lori Lapin Jones of Lori Lapin Jones PLLC, and Barbra Parlin of Holland & Knight LLP. The Sunday morning program closed with “Popcorn & Ethics”—a lively discussion of the “on-screen” legal ethics of

Paul Newman as the down-at-heels litigator Frank Galvin in Sidney Lumet’s 1982 film “The Verdict.” The discussion was led by panelists Mark J. Solomon of LoPinto Schlather Geldenhuys and Salk, and Mark C. Zauderer of Flemming Zulack Williamson Zauderer LLP.

Outgoing and Incoming State Bar Presidents Address the Meeting

State Bar President A. Vincent Buzard of Harris Beach PLLC gave the keynote address at the welcoming banquet on Friday, May 5, 2006. President Buzard recounted the State Bar Association’s accomplishments in the past year, including major initiatives on funding civil legal services for the poor and opposition to the so-called “Lawsuit Abuse Reduction Act.” President Buzard highlighted the involvement of the Section in both these and many other activities, and he thanked outgoing Chair Stephen P. Younger for his and the Section’s friendship and leadership during the year. In his capacity as President-Elect of the State Bar, Mark H. Alcott of



2005-06 Section Officers Vincent J. Syracuse, Michael D. Sant’Ambrogio, Stephen P. Younger, Carrie H. Cohen, and Lesley Rosenthal

Paul Weiss Rifkind Wharton & Garrison LLP, addressed meeting participants at the luncheon on Saturday, May 6, 2006. President-Elect Alcott outlined his priorities for the coming year, including improving access to justice for the poor and maintaining a neutral, impartial system of justice for all.



Section Chair-Elect Lesley Rosenthal and State Bar President-Elect Mark H. Alcott at the Saturday evening dinner

Extracurricular Activities, and a Call to Action

On Saturday afternoon, Section members and their families enjoyed matinee performances at Lincoln Center, including the six Tony Award winning musical *Light in the Piazza*, at Lincoln Center Theater, a New York Philharmonic *Young People’s Concert*, at Avery Fisher Hall, and *Midsummer Night’s Dream*, performed by the New York City Ballet at the New York State Theater.



Mark J. Solomon of LoPinto Schlather Geldenhuys and Salk, and Mark C. Zauderer, of Flemming Zulack Williamson Zauderer LLP, present “Popcorn & Ethics”

The highlight of the weekend was the presentation, on Saturday evening, of the Section’s Robert L. Haig Award for Distinguished Public Service to the Honorable John M. Walker, Jr., Chief Judge of the United States Court of Appeals for the Second Circuit. The gala dinner and cocktail reception were attended by a record number of members and friends of the Section, including over

25 federal and state judges, who enjoyed musical performances by students from The Juilliard School and stunning skyline views from the windows of the Kaplan Penthouse of the Rose Building at Lincoln Center. Chief Judge Walker called upon the Section to help foster judicial independence in emerging democracies, a challenge that the Section and the Bar Association eagerly accepted on the spot.

The Section Thanks Meeting Panelists and Sponsors

The Section is grateful to all of the panelists who participated in programs at this year’s meeting, and also to EZKR Certified Public Accountants & Consultants, Greyhawk North America, and JAMS for their sponsorship of the meeting.

Spring Meeting 2006—Section Awards

Carroll E. Neesemann and Jonathan D. Lupkin for Outstanding Contributions



Carroll E. Neesemann receives the inaugural Section Chair's Award for Distinguished Service from Chair Stephen P. Younger

On Friday, May 5, 2006, at the Spring Meeting's opening banquet in the Kaplan Penthouse of the Rose Building at Lincoln Center for the Performing Arts in New York City, Section Chair Stephen P. Younger, of Patterson Belknap Webb & Tyler LLP, presented awards to Carroll E. Neesemann of Morrison & Foerster LLP, and Jonathan D. Lupkin of Flemming Zulack Williamson Zauderer LLP, in recognition of their outstanding contributions to the work of the Section.

Carroll E. Neesemann was awarded the inaugural Section Chair's Award for Distinguished Service. In presenting the award, Mr. Younger noted Mr. Neesemann's long-standing chairmanship of the Section's Alternative Dispute Resolution Committee and his many contributions in the area of alternative dispute resolution, including recent work on the Revised Uniform Arbitration Act and the Uniform Mediation Act. Mr. Younger described Mr. Neesemann as a lawyer who exemplifies the high standards of professionalism to which all Section members strive.

Jonathan D. Lupkin was honored for his work as editor-in-chief of the Section's flagship publication *NYLitigator* from 2000 to 2005. Mr. Younger credited Mr. Lupkin, as both editor and a contributor, with ensuring that *NYLitigator* has been a true reflection of the high quality of the work of the Section.

The Section congratulates Carroll E. Neesemann and Jonathan D. Lupkin on their awards and thanks them for their efforts on behalf of the Section.

* * *

First Award for Excellence in the Art of Commercial Brief Writing

On May 6, 2006, the Section presented its first award for Excellence in the Art of Commercial Brief Writing to a team from Paul, Weiss, Rifkind, Wharton & Garrison LLP. The team, consisting of Section Executive Committee member Aidan Synnott as well as Sidney S. Rosdeitcher, Leslie Gordon Fagen, and Daniel A. Crane, were recognized for their Second Circuit brief on behalf of A.C. Nielsen Co., as an appellee, in *Information Resources, Inc. v. A.C. Nielsen Co.*¹ The award was presented at the luncheon at the Section's Spring Meeting, held at Lincoln Center for the Performing Arts in New York City, by the Honorable Andrew J. Peck, United States Magistrate Judge for the Southern District of New York, and Jonathan Lupkin of Flemming Zulack Williamson Zauderer LLP, the immediate past editor-in-chief of the *NYLitigator*, the Section's journal. James D. Yellen, Co-chair of the Section's Securities Litigation Committee and an adjunct legal writing professor at Fordham Law School, joined Judge Peck and Mr. Lupkin on the panel of judges, but was unable to attend the presentation.

In presenting the award, the writing competition judges also gave an honorable mention to Kenneth M. Dreifach, of the Office of the Attorney General of the State of New York, for his brief in *People v. Network Associates, Inc.*² At the luncheon the Section distributed a bound book of all of the finalist briefs.

"Good commercial litigators work so hard to craft briefs that are well-written and memorable," said Section Chair-Elect Lesley Rosenthal, who came up with the idea for the award. "It seems a shame to put them away on a shelf after the case is over, when many of them can and should be held up as inspiring examples of persuasive written advocacy."

The Section wishes to thank all of the Section members who submitted entries and Judge Peck, Jonathan Lupkin, and James Yellen for judging the competition, and incoming Section Secretary Susan M. Davies for helping administer the competition. A copy of the winning brief may be viewed at the Section's website, <http://www.nysba.org/comfed>.

Endnotes

1. 294 F.3d 447 (2d Cir. 2002).
2. 195 Misc. 2d 384 (Sup. Ct., N.Y. Co. 2003).

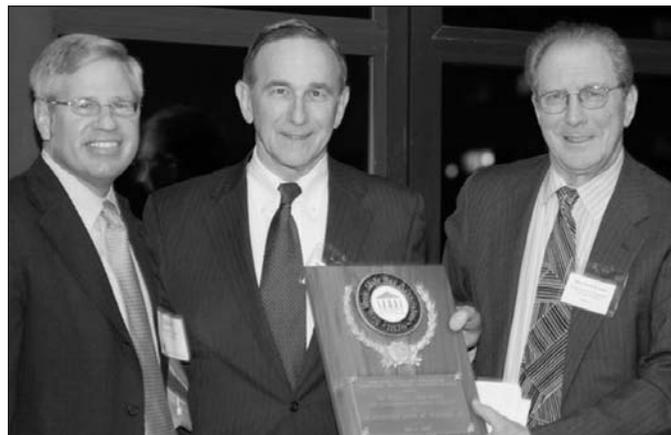
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Presentation of the Haig Award to Hon. John M. Walker, Jr.

On Saturday, May 6, 2006, at a gala dinner held in the Kaplan Penthouse of the Rose Building at Lincoln Center for the Performing Arts in New York City, the Section presented the Robert L. Haig Award for Distinguished Public Service to the Honorable John M. Walker, Jr., Chief Judge of the United States Court of Appeals for the Second Circuit. Chief Judge Walker was honored for his public service as a member of the federal judiciary (in the U.S. District Court for the Southern District of New York from 1985 to 1989 and in the U.S. Court of Appeals for the Second Circuit since 1989, including as Chief Judge since October 2002) as well as his service in the executive branch (as Assistant Secretary of the Treasury for Enforcement and Operations from 1981 to 1985 and Assistant U.S. Attorney in the Southern District of New York from 1970 to 1975). The Haig Award was presented to Chief Judge Walker by the Honorable Pierre N. Leval, Circuit Judge of the United States Court of Appeals for the Second Circuit, who was introduced by Reynold Levy, the President of Lincoln Center for the Performing Arts, Inc.

In his after-dinner remarks, Chief Judge Walker spoke about the importance of judicial independence in foreign legal systems and issued a “call to action” to the Section and the Association to work to promote independence, accountability, and “checks-and-balances” in judicial systems throughout the world. The Section and the Association accepted Chief Judge Walker’s challenge on the spot.

The dinner, which was the highlight of this year’s Spring Meeting, was attended by nearly 200 members and friends of the Section, including many members of the judiciary, among them Chief Judge Walker’s col-



Hon. John M. Walker, Jr., recipient of the 2006 Haig Award, flanked by Hon. Pierre N. Leval (right) and Section Chair Stephen P. Younger (left)

leagues on the Second Circuit: the Honorable Wilfred Feinberg, Pierre N. Leval, Reena Raggi, Robert D. Sack, and Richard C. Wesley. The event was sponsored by the following law firms, whose support is gratefully acknowledged by the Section: gold sponsors Flemming Zulack Williamson Zauderer LLP, Gregory P. Joseph Law Offices LLC, Kelley Drye & Warren LLP, Kramer Levin Naftalis & Frankel LLP, Morrison & Foerster LLP, Patterson Belknap Webb & Tyler LLP, and Paul Weiss Rifkind Wharton & Garrison LLP; silver sponsors LeBoeuf Lamb Greene & MacRae LLP and Nixon Peabody LLP; and bronze sponsors Connell Foley LLP and Tannenbaum Helpen Syracuse & Hirschtritt LLP.

The Haig Award is presented annually by the Section to honor a member of the legal profession who has rendered distinguished public service. The award is named in honor of its first recipient, Robert L. Haig, who is the Section’s founder and was its first Chair.



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

Welcome to New Section Officers

Lesley Friedman Rosenthal, Chair

Lesley Rosenthal, the VP, General Counsel, and Corporate Secretary of Lincoln Center for the Performing Arts, Inc., in New York City, is the Section's incoming Chair. As Section Chair, she will preside over monthly Executive Committee meetings, oversee the work of 30 committees representing the 2,200 members of the Section, and anchor Section events and CLE programs, including the Annual and Spring Meetings. She will also be part of the Section's delegation to the NYSBA House of Delegates.



In prior years she has held the offices of Chair-Elect, Vice-Chair, Treasurer, and Secretary of the Section, under the leadership of former Section Chairs Stephen P. Younger, Lauren J. Wachtler, Lewis M. Smoley, Cathi A. Hession, Jay G. Safer, and Mark H. Alcott. Ms. Rosenthal also serves on the Board of Editors of the *New York State Bar Journal* and NYSBA's CLE Committee.

As VP General Counsel of Lincoln Center for the Performing Arts, Ms. Rosenthal handles a wide variety of legal matters, including media, IP, financing, real estate and construction, labor and employment, tax, and other issues. In addition, she plays a lead role in fashioning the legal context for the forthcoming redevelopment projects on the Lincoln Center campus. She is also part of an interdisciplinary team that is modernizing how Lincoln Center manages retail sales, restaurant and catering transactions, and parking garage management. In her role as Secretary, Ms. Rosenthal interacts with the Board of Directors and advises on corporate governance matters.

For thirteen years, until January 2005, Ms. Rosenthal practiced in the litigation department and the communications & technology group at Paul, Weiss, Rifkind, Wharton & Garrison LLP in New York City. She serviced clients in the media/entertainment, financial, real estate, not-for-profit, and other sectors, and took a leading role in matters before the United States Supreme Court, federal and state courts of appeal, trial courts, administrative agencies, and arbitral forums.

Ms. Rosenthal's Bar Association presentations and publications include: Program Chair, "The Art of Commercial Litigation," Section Spring Meeting, May 2006; Lead Organizer, Tenth Anniversary Celebration, Commercial Division of the New York Supreme Court, November 2005; Co-organizer, "Arguing the Great Issues of the Day," NYSBA Presidential Summit, January 2005; Program Chair, Section Annual Meeting, January 2005; Panel Chair, "Piracy, Privacy and Discovery: Litigating in the Information Age," Section Spring Meeting, May 2004; Author, Cover Article: "Electronic Discovery Can Unearth Treasure Trove of Information or Potential Land Mines," *N.Y.S.B.J.*, September 2003; Co-organizer, "Managing the Media in Financial Fraud Cases," NYSBA Presidential Summit, January 2003; Co-organizer, "Corporate America Under Siege: The Commercial Litigator's Role," Section Annual Meeting, January 2003; Co-author, "New Trends in 'New Use' Analysis," *Entertainment, Arts and Sports L. J.*, Summer 2002; Moderator, "Balancing Liberty and Security Interests after 9/11," Section Spring Meeting, May 2002; and Program Chair, "Privacy in the Electronic Age," NYSBA CLE Program, April 2001.

In 1997, Ms. Rosenthal was named *Outstanding Young Lawyer of the Year* by the NYSBA Young Lawyers Section, "in recognition of commitment to the community and the profession."

Prior to joining Paul Weiss in 1991, Ms. Rosenthal was a judicial law clerk for the Honorable Shirley Wohl Kram in the United States District Court in Manhattan. She received her law degree in 1989 from Harvard Law School, and she received her undergraduate degree, *magna cum laude* and Phi Beta Kappa, from Harvard College in 1986.

* * *

Carrie H. Cohen, Chair-Elect

Carrie H. Cohen is Chief of the Public Integrity Unit in the Criminal Division of the Office of Attorney General Eliot Spitzer, where she is responsible for criminal and civil litigation and investigations in the areas of government corruption, fraud, and abuse of authority. Prior to that, she served as an Assistant Attorney General in the Office's Civil Rights Bureau. Ms. Cohen was the 2000 recipient of the Attorney General's Louis J. Lefkowitz Memorial Award for outstanding service and the 2002 recipient of the NOVA Award from Planned Parenthood Mohawk Hudson. In 2003, Ms. Cohen took

an administrative leave from the Office of the Attorney General to serve as a consultant to the Chief Justice of the Kingdom of Bhutan, where she helped draft the Kingdom's Penal Code and Evidence Act. Prior to joining the Office of the Attorney General, Ms. Cohen was a litigation associate at the law firms of Morrison & Foerster, LLP and Vladeck, Waldman, Elias & Engelhard, P.C. Ms. Cohen earned her J.D. from the University of Pennsylvania School of Law in 1993 and her B.A. from Cornell University in 1989. Ms. Cohen currently is the Chair of the Committee on Women in the Profession, New York City Bar. Ms. Cohen also is a member of the Inns of Court, Federal Bar Council, Council on Judicial Administration, New York City Bar, and Attorneys in the Public Service, New York State Bar Association.

Peter Brown, Vice-Chair

Peter Brown, Founder and Co-Managing Partner of Brown Raysman Millstein Felder & Steiner LLP in New York City, is the new Vice-Chair of the Section. He continues to serve as Chair of the Section's Intellectual Property Litigation Committee. Mr. Brown also serves on Lincoln Center's Counsels' Council, a legal advisory committee coordinating pro bono legal matters for the Vice President, General Counsel of Lincoln Center for the Performing Arts, Inc.



Mr. Brown is currently a Member of the Board of Directors of the International Technology Law Association, Chair of the Practicing Law Institute's Annual Computer Law Institute, former Co-chair of the Computer Litigation Committee of the American Bar Association, Chair of Computer Law Committee of the Association of the Bar of the City of New York, and President and Board Member of the Legal Services of the Hudson Valley.

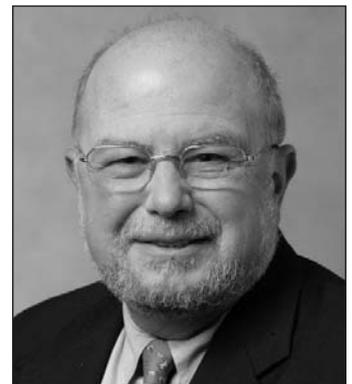
As Managing Partner of Brown Raysman, he is responsible for supervising all aspects of the firm's strategy and operations. Mr. Brown concentrates his practice on a variety of matters relating to intellectual property and information technology law, including litigation in various state and federal courts and arbitrations. In 2005, he was identified by *New York Magazine* as among the New York Area's Best Lawyers.

Mr. Brown's bar association presentations include: speaker, "Understanding Trade Secrets," New York State Judicial Institute, Seminar for Commercial Division Judges, May 11, 2005; Panel Chairman, "Digital Piracy," Section Spring Meeting, May 22, 2004; Co-chair, "B2B E-Commerce Essentials," Association of the Bar of the City of New York, June 2001; speaker, The Year 2000 Problem: A Litigation Time Bomb, "Overview of The Year 2000 Problem," ABA Annual Meeting, August 4, 1998; speaker, "Internet Litigation," Association of the Bar of the City of New York, May 1997.

His bar association publications include: "Bearing the Cost of Electronic Discovery," NYSBA Commercial and Federal Litigation Section Newsletter, Winter 2003; author, "Intellectual Property and Content Providers," *NYSBA Journal*, May/June 1995; publisher of seminar papers "Y2K Litigation Issues," August 10, 1999; A Litigation Time Bomb, "The Year 2000 Problem," August 4, 1998; Spamming, Meta-tags and Domain Names: "The Cutting-Edge Litigation Issues on the Internet," August 3, 1998. In addition, he has co-authored the treatises *Emerging Technologies and the Law: Forms and Analysis* and *Computer Law: Drafting and Negotiating Forms and Agreements*. He also co-authors a monthly column on computer law for the *New York Law Journal*.

Vincent J. Syracuse, Treasurer

Vincent J. Syracuse is a senior partner at Tannenbaum Helpert Syracuse & Hirschtritt LLP in New York City and is the chair of its litigation department. Mr. Syracuse is serving his third term as Section Treasurer and will continue his leadership role in the Section's activities.



Mr. Syracuse is a graduate of Brooklyn College (B.A. 1966) and Brooklyn Law School (J.D. 1969), where he was a member of the *Brooklyn Law Review*. He was a law clerk to Associate Judge John F. Scileppi in the Court of Appeals of the State of New York. Mr. Syracuse is an experienced commercial litigator, who represents a variety of clients in commercial litigation in all New York State and Federal Courts on the pre-trial, trial and appellate levels and in various alternate dispute resolution forums, including mediation and arbitration. He is a mediator in the Commercial Division of the New York County Supreme Court and has served

as an arbitrator in the Civil Court of the City of New York.

Active in numerous bar association activities, Mr. Syracuse has been a member of the Section's Executive Committee since 1995. He frequently chairs or participates as a faculty member in continuing legal education programs on various commercial litigation subjects, including the Association's highly successful program on ethics and civility in commercial litigation. As a member of the Advisory Committee for the Commercial Division of the Supreme Court of the State of New York and Chair of the Section's Commercial Division Committee, Mr. Syracuse has been involved in the development and expansion of the Commercial Division and has assisted in the drafting of the new Commercial Division rules that have refined the criteria for the assignment and retention of cases in the Commercial Division and that govern practice in the various Commercial Division venues.

* * *

Susan M. Davies, Secretary

Susan M. Davies is the incoming Secretary of the Section. She is also a member, and former Co-chair, of the Section's C.P.L.R. Committee and a member of the New York State Office of Court Administration Advisory Committee on Civil Practice.



Ms. Davies practices as a commercial litigator with the Gregory P. Joseph Law Offices LLC in New York City. She graduated LL.M. from Columbia Law School in 1990, after obtaining her LL.B. from the Australian National University with First Class Honors and the University Medal in 1986.

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Available on the Web
NYLitigator and Commercial and Federal Litigation Section Newsletter
www.nysba.org/comfed



Back issues of the *NYLitigator* and the *Commercial and Federal Litigation Section Newsletter* (2000-present) are available on the New York State Bar Association Web site

Back issues are available at no charge to Section members. You must be logged in as a member to access back issues. Need password assistance? Visit our Web site at www.nysba.org/pwhelp. For questions or log-in help, call (518) 463-3200.

***NYLitigator and Commercial and Federal Litigation Section Newsletter* Index**

For your convenience there is also a searchable index in pdf format. To search, click "Find" (binoculars icon) on the Adobe tool bar, and type in search word or phrase. Click "Find Again" (binoculars with arrow icon) to continue search.

Book Review

Business and Commercial Litigation in Federal Courts, Second Edition

Reviewed by Stephen P. Younger

The breadth and clarity of the Second Edition to Robert L. Haig's *Business and Commercial Litigation in Federal Courts* (West and ABA Section of Litigation 2005) make it a major contribution to legal scholarship and an essential resource for the active commercial litigator. The Second Edition comprises eight volumes with sixteen new chapters and 2,500 more pages than the previous edition. Yet the treatise remains remarkably user-friendly. Both the new associate in need of an introduction to an area of practice and the experienced litigation partner desiring to review a complex field will find this work extremely valuable.

The treatise covers federal civil procedure, alternative dispute resolution, trial and appellate practice, and a plethora of substantive legal areas related to business and commercial litigation, from agency to warranties and a wealth of other matters in between. With so much information, the key to the treatise's success lies in its table of contents, which is well-organized and enables the reader to quickly find the information a busy practitioner needs. The chapters on procedure flow logically according to the phases of a civil action, followed by numerous chapters that focus on specific substantive areas of law. In addition, each volume has its own table of contents, which breaks each chapter into more discrete sections and sub-sections.

Each chapter begins with a strong introduction outlining the framework of the chapter. What follows is a lively discussion of applicable legal principles with helpful case analysis, explanations of statutory codes, and cogent legal advice. The analysis comes from experienced practitioners, well-known jurists, and even former statesmen (e.g., Secretary of State Warren Christopher), who offer succinct explanations and personal advice. Each chapter concludes with a section entitled "Practice Aids," which includes practice or procedural checklists and sample forms. In addition, the second edition contains research references at the beginning of each chapter, such as the West Key Number Digest, the A.L.R. Library, other treatises, law review articles, and major legal encyclopedias, should the reader need additional sources to consult.

Chapter 10, entitled "Arbitration vs. Litigation: Enforceability and Access to Courts," is typical of the treatise. The chapter is written by three practicing attorneys with years of arbitration experience in different forums and under different rules. The chapter contains the most pertinent information that a practicing attorney would need to know about the process of domestic and international arbitrations. The chapter reviews the advantages and disadvantages of each arbitral forum, and the authors share their insights on which forums are preferred by

lawyers from different countries. The chapter explains each step in the arbitration process, including the procedures for vacating, modifying, and confirming arbitration awards in both domestic and international arbitrations. The chapter includes leading cases, statutes, and informative footnotes. The information is invaluable for an attorney seeking to challenge or enforce an arbitration agreement, as well as an attorney reviewing an arbitration agreement to determine if it will be enforceable.

Each chapter of *Business and Commercial Litigation* highlights pitfalls and traps for the unwary litigator. The chapter on third-party practice, for example, begins by discussing claims that may be brought as third-party actions, walks the reader through the process of filing a third-party complaint, and then addresses potential challenges, such as timeliness, joinder of additional claims, and judicial discretion. The chapter ends with a detailed discussion on the limited appeals process in third-party actions. This can save a busy litigator from headaches down the road.

Two of the most useful aspects of the treatise are the checklists and sample forms at the end of most chapters. The checklists assist attorneys in planning a strategic course of action while the sample declarations, letters, complaints, and jury instructions, just to name a few, provide an invaluable resource for practitioners who lack a large collection of in-house forms to consult. The comprehensive checklist in the chapter on "Ethical Issues in Commercial Cases" should be on every litigator's bulletin board. The checklist identifies virtually every professional conduct violation that could arise in commercial litigation with ample references to the Model Rules of Professional Conduct.

Not only is *Business and Commercial Litigation* the most comprehensive treatise of its kind, it reads with the clarity of a travel guidebook. It explains difficult topics like evidence and ERISA in simple and easy-to-understand language without sacrificing any of the complexity or nuance of the subject. As a result, Bob Haig's treatise is an invaluable resource for the busy attorney who needs either a quick introduction or a helpful review of an area of federal commercial litigation. *Business and Commercial Litigation* deserves a place on every commercial litigator's bookshelf.

Mr. Younger is a partner in Patterson Belknap Webb & Tyler LLP and is past Chair of the Section. Michael Sant'Ambrogio and Sean Weissbart of Patterson Belknap assisted in preparing this book review.

Corporate Monitoring—Our Section Was There First

By Neil V. Getnick

One of the most significant developments in recent years in the area of corporate fraud is the increased role of the independent monitor. Courts and government agencies have increasingly turned to these entities to oversee the operations of corporations that, for any of a number of reasons, require increased scrutiny. These business entities include multinational businesses such as KPMG and Computer Associates International, Inc., state-level entities such as the New York Racing Association, Inc. (“NYRA”) and the University of Medicine and Dentistry of New Jersey, and a variety of smaller vendors and contractors seeking to do business with local government.

Although independent monitoring has seen a lot of press recently, its origin dates back to New York in the late 1980s and early 1990s. Two reports of fundamental importance to the growth and acceptance of independent monitors came from the Commercial and Federal Litigation Section of the New York State Bar Association. The first was the 1994 report of the Civil Prosecution Committee, entitled “The Independent Private Sector Inspector General.” This report provided a concise definition for IPSIG,¹ set forth the IPSIG concept, and explained the various aspects of an IPSIG and the potential for broad application of the IPSIG model. The second was the 1995 Section report, entitled “Report and Recommendations on Reforming the Carting Industry in New York City.” This report recommended structural reform of the carting industry in New York City, to free it from the influence of organized crime and to allow it to operate in an open and competitive manner, through, among other things, the utilization of IPSIGs. Collectively the reports provided a foundation for New York City’s anti-corruption legislation and administrative program in areas including the Fulton Fish Market, the commercial trade waste industry, the Hunts Point fruit and vegetable markets, the school construction industry, and the construction industry more generally.

When done right, IPSIG monitoring is both pro-business and anti-corruption. The IPSIG concept serves as a compliance tool for mainstream business as well as a means of monitoring and reforming notoriously corruption-prone companies and industries. By designing and implementing effective internal controls to deter and detect illegal and unethical conduct in the broader concept of the monitored entity’s financial business goals and imperatives, the IPSIG aims to achieve a partnership of good conduct and good business.

In the last five years our law firm has had the opportunity to serve as an IPSIG-style integrity monitor for the post-9/11 disaster cleanup as well as overseeing the reform of the thoroughbred racing industry in New York State growing out of a deferred prosecution agreement between New York Racing Association and the Eastern District U.S. Attorney’s Office. These two assignments are representative of the broad contemporary application of independent monitoring. The future seems even brighter for the expanded use of independent monitors. Most recently, the government of Northern Ireland implemented an IPSIG program for monitoring construction projects in Belfast based directly on the New York model.

The expanded use of the IPSIG model is supported and promoted by the International Association of Independent Private Sector Inspectors General, a professional organization (including lawyers, investigators, and accountants) that grew directly out of the work of the Civil Prosecution Committee of our Section. Within the last year three bar associations, including our own, have held CLE seminars in New York City on IPSIGs and independent monitoring. And while it is true that this is a cutting edge topic, it is worthwhile remembering that our Section was there from the beginning more than a decade ago.

Endnote

1. The 1994 report sets forth the following primary definition for an IPSIG: “An IPSIG is an independent, private sector firm with legal, auditing, investigative, and loss prevention skills, employed by an organization (voluntarily or by compulsory process) to ensure compliance with relevant law and regulations and to deter, prevent, uncover and report unethical and illegal conduct by, within and against the organization. Where the culture of the organization is primarily legitimate or amenable to reform, the IPSIG may, in addition to the prevention and control of illegal or unethical conduct, be a major participant with management in enhancing the economy, efficiency and effectiveness of the organization. Where the culture is primarily illegitimate and hostile to change, the IPSIG’s role may be essentially adversarial, limited to instituting internal controls and monitoring organizational activities.”

Neil V. Getnick is the managing partner of the New York City based law firm Getnick & Getnick. He serves as Co-chair of the Section’s Civil Prosecution Committee and President of the International Association of Independent Private Sector Inspectors General.

State Bar Executive Committee Approves Consensus RUAA

By Carroll E. Neesemann

Adopted in 1955, the Uniform Arbitration Act (“UAA”) set forth a basic framework for the law of arbitration in 49 jurisdictions. But rapid developments in technology, globalization, and ever-increasing growth in caseloads and in the complexity of cases necessitated a revision of the UAA. Seeking to address that need, in 2000 the National Conference of Commissioners on Uniform State Laws adopted a Revised Uniform Arbitration Act (“RUAA”). The RUAA has been under consideration by bar groups in New York State for some time.

In mid-June, the New York City Bar gave final approval to the Consensus Draft RUAA and the Joint Report in support. On June 22, the State Bar Executive Committee unanimously approved the Consensus Draft and Joint Report on a voice vote.

I had the privilege of presenting the matter to the State Bar Executive Committee, together with Lauren Wachtler. As part of the presentation I briefly described the inclusive process that we had gone through to develop the final product. As I was telling the story, it came home to me, as never before, how important that process was to gaining the final support and approval of the New York bar associations.

It was also evident that the process had benefited greatly from the doubts expressed and questions raised in the initial Report of the State Bar’s ADR Committee that was circulated throughout the State Bar. That Report had tacitly put all potentially interested parties on notice of the fact that the RUAA was in the works for New York State and that there were issues to be

resolved by anyone wishing to participate in their resolution. Coming as they did, early on in the process, the negative aspects of the Report had added value when later the issues mentioned were resolved to the satisfaction of lawyers who had approached the process with a healthy dose of skepticism.

Similarly, it was critical to the credibility of the final product that the working group was able to win the support of the State Bar’s C.P.L.R. Committee by together coming to the conviction that in many respects the RUAA really was better than Article 75 and that the working group was not obsessed with the RUAA but was willing, and, indeed, desirous, of saving what was worth saving of Article 75.

Also important to the process was the work product and solid foundation of support of the City Bar Arbitration Committee that was always there from the beginning. And, finally, there was the push of the State Bar Commercial and Federal Litigation Section, which has a knack for getting things done.

There were different parts to play, and everyone played them well. That we now have the support of the City and State Bars is terrific, and many thanks are due to those who have shared in the effort to come this far. But the objective is not bar support. It is the enactment of the RUAA in New York State. Let us ride the crest of the successes of the early summer and get started with the legislative part of the process. In the words of Steve Critelli of the C.P.L.R. Committee, “Let’s get it passed.”

**CPLR Amendments
2006 Legislative Session
(Chapters 1, 4-35, 38-48, 50-61, 63-98, 104-106, 108-109, 111-150, 152-157)**

CPLR §	Chapter (§)	Change	Eff. Date
214-b	39	Extends effective date for commencing phenoxy herbicides personal injury actions to 6/16/08.	5/31/06
8012(a)	31	Ties the sheriff's mileage fees to the federal IRS mileage reimbursement rate.	5/2/06

Note: Section 1801-A(a) of the Uniform District Court Act has been amended to clarify where the defendant must reside in order for a commercial claim to be brought in a district court (when the defendant resides or has an office for the transaction of business or a regular employment within the district in the county where the court is located). 2006 N.Y. Laws ch. 41, effective 5/31/06.

2006 Amendments to the Uniform Rules for Supreme and County Courts, Rules Governing Appeals, and Certain Other Rules of Interest to Civil Litigators

22 N.Y.C.R.R. §	Court	Subject (Change)
202.8(h)	Sup./County	Repeals requirement that counsel for movant alert court by letter when a motion is not decided within 60 days from later of final submission or oral argument and requires Deputy Chief Administrators to notify judge by e-mail when 60 days have elapsed (120 days in motions designated as complex)
202.70	Sup.	Adopts statewide rules for the Commercial Division
730.2	A.T., 2d Dep't	Establishes a Civil Appeals Management Program for the appellate terms in the Second Department
1000.4(f)(2)	A.D., 4th Dep't	Adds requirement for one-inch margin for briefs
1000.14(a)(4)	A.D., 4th Dep't	Adds provision for certification in lieu of motion for permission to proceed on appeal as poor person and assignment of counsel
Part 1010	A.D., 4th Dep't	Establishes a Civil Appeals Settlement Program

Note that the court rules published on the Office of Court Administration's website include up-to-date amendments to those rules: <http://www.nycourts.gov/rules/trialcourts/index.shtml>.

Notes of the Section's Executive Committee Meetings

February 15, 2006

Guest Speaker Eva Wisnik, President of Wisnik Career Enterprises, Inc., discussed effective law firm marketing.

The Executive Committee approved a proposed draft letter to the Rules Committee of the Administrative Office of the Courts reiterating the Section's position on Fed. R. Civ. P. 30(b)(6) set forth in the Section's February 12, 2006, report.

The Executive Committee discussed a proposal and report of the Association's CPLR Standing Committee to create a notice in lieu of trial subpoena and suggested that the Section's CPLR Committee discuss the Section's concern with the Standing Committee and report back.

March 15, 2006

Guest speaker Hon. Barbara S. Jones, United States District Judge, Southern District of New York, discussed jury innovations that are presently being debated.

The Executive Committee voted to endorse the adoption of the Model Rules of Professional Conduct. Upon recommendation of the Section's CPLR Committee, the Executive Committee also approved the propos-



al of the Association's CPLR Standing Committee to permit the notice provision to be used in any circumstance in which a party may now use a trial subpoena to summon a witness.

Upon recommendation of the Section's Pro Bono Committee, the Executive Committee voted to endorse the revised Report from the Special Committee on Funding for Civil Legal Services concerning use of cy pres funds for legal services for the poor. The Executive Committee also voted to approve a proposal of the Section's Civil Prosecutions Committee endorsing a version of the State False Claims Act that complies with the Federal Deficit Reduction Act, which will provide the State with ten percent more Medicare Funds.

April 19, 2006

Guest speaker Hon. Denise Cote, United States District Judge, Southern District of New York, discussed her experience on the federal bench.

The Executive Committee discussed the latest changes to the Revised Uniform Arbitration Act, and discussed and referred to the Section's Ethics and Professionalism Committee a bill pending in New York State that would institute certification of civil trial attorneys.



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ISSN 1530-4043

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