NYSBA WINTER 2010

Perspective

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

Pleading Fraud and Breach of Contract in the Insurer-Insured Context

By Russell Bloch

New York has traditionally been a favorable venue for insurance companies.[1] If an insurer takes advantage of a claimant by engaging in fraudulent practices, the claimant who intends to hold its carrier accountable faces an uphill legal battle. This is because New York law does not liberally permit plaintiffs to plead both breach of contract and fraud claims that arise from the same series of events.[2] Courts in New York require plaintiffs to allege a distinct set of facts for each cause of action when the fraud is related to the contract claim, the so called "separate fact requirement." This legal reality can be particularly hard to swallow for disability claimants who are denied coverage by their carriers. Insurance companies, not always able to distinguish phony from genuine claims, are suspicious of all claims and often resort to predatory denial processes. Claimants tend to feel the denial was in bad faith, feel defrauded, and often seek punitive damages in addition to what they claim under the policy.[3] In New York, punitive damages are available only as a remedy in tort, not contract. As the "separate fact requirement" makes it difficult to sue for a tort that is related to a contract claim, it is therefore difficult for plaintiffs to seek punitive damages—which are only available when alleging a tort—when they are defrauded by an insurance company. [4]

This legal struggle has never been more relevant than it is today, with reports of insurance company mistreatment—as well as consumer fraud—higher than ever. This article discusses the troubled insurer-insured relationship, focusing on the legal hurdles facing a claimant who sues an insurance carrier for a tort in addition to a breach of contract.

I. A Troubled Relationship

Reports of insurance carrier underpayment, claim denial and delay have been increasing for several years.[5] Insurance companies in this economy flex their institutional muscles to fight claims while weakening an insured's claim, and it is often in their economic interest to do so.[6] Some reported tactics include obtrusive and misleading video surveillance,[7] over-reliance on independent medical examiners and consultants,[8] and employing out-of-date U.S. Department of Labor listings to find a claimant's job activity at sedentary level, thereby declaring he is not disabled and can go back to his job.[9] Insurers also tend to exploit their structural advantage in the claims process. Insurers are required to respond to claims within a certain time period, and if they fail to do so, their self-imposed penalties require payout of the policy. It is not unheard of for insurers who miss such a deadline to back-date a denial letter to a claimant so that it falls within the response window. As is discussed below, this may or may not be fraud in New York.

Deceitful practices are, of course, not limited to insurance companies. Fraud on behalf of claimants has

(Continued on page 10)

Inside

A Message from the Section Chair

So How Are You Going to Follow That One Up?

This was the question I asked myself when I was preparing my agenda for the 2010-2011 term. I have the honor and the challenge of taking the reins of the Young Lawyers Section after four very accomplished chairpersons.

Justina Cintron-Perino, who brought back the Fall Program and developed *Electronically In Touch,* reestablished the Section as a strong and vibrant group.

Through Valerie Cartright's leadership, the 70th Anniversary Program was a smash hit and brought in a number of new members.

The incomparable Sherry Levin Wallach helped elevate the Section's status within NYSBA and built great relationships with the substantive law sections and the YLS.

Tucker Stanclift's vision of a Young Lawyers Section's Trial Academy became reality during his term and became an unparalleled program not seen before in this Association.

So Phil, how are you going to follow that up?

My goals for this term are as follows:

1. Get District Representatives for all 13 Judicial Districts—I am proud to state that for the first time in a long time, every district has representation. We look forward to some great events throughout the State.
2. Get a full slate of Section Liaisons—We are still working on this goal. If you have an interest in Antitrust Law, Environmental Law, Tax Law or Municipal Law, have we got a task for you!

3. Have better representation on the Executive Committee from Western New York—We are a statewide Bar Association; however our Executive Committee has been a little light from Western New York (notwithstanding the efforts of Brett Farrow, our stalwart Health Law Section Liaison). We now have four members from the Buffalo area who have stepped up to take on leadership roles in the Section. Central New York—you're next!
4. Re-launch *EIT*—Nilesh Ameen has done a fantastic job with *Electronically In Touch*.
5. Have the YLS be an active participant in the Task Force on the Future of the Legal Profession—The Task Force has been asked to make recommendations on how young lawyers are trained and how they work. As the YLS has been the voice of young lawyers, we are requesting that we have a member sit on this group.

We have a few other ideas that are being developed and will keep you posted. Check *EIT* and the YLS Facebook page for more updates.

Thank you for being a member of the Young Lawyers Section.

Philip G. Fortino

India Recognizes Limited Liability Partnerships—*Any Attraction for U.S. Investors?*

By Vikas Varma

The Indian markets have never been more desirable for United States ("U.S.") manufacturers and investors, as U.S. buyers are holding back spending in the U.S. markets in the wake of the present market conditions.[1] The U.S. is the largest trading and investment partner of India, with direct investment in India estimated at more than $9 billion through 2006. The population of India is estimated at more than 1.1 billion and is growing at 1.3% a year. Real GDP growth in India for the fiscal year ending March 31, 2007 was 9.4%, up from 9.0% growth in the previous year. Although its growth for the fiscal year ending March 31, 2009 is expected to be 7.0% or less because of the financial crisis and resulting global economic slowdown, it has the world's 12th largest economy and the third largest in Asia behind Japan and China, with a total GDP in 2007 of around $1.1 trillion ($1,100 billion).[2]

Recognition of Limited Liability Partnerships ("LLP") as legal entities in India is likely to open significant business, professional, investment and market opportunities for U.S. investors, manufacturers and professionals who can team up with mid-size and small businesses and professional entities to harvest the Indian markets. As Limited Liability Companies, Professional Corporations and Limited Partnerships are not recognized as a form of body corporate in India, the LLP form of legal entity will be the first form of body corporate providing the hybrid benefits of a partnership with limited liability, i.e., the liability of a partner is limited to the extent of equity held by him.

After years of deliberations and waiting, the President of India on January 7, 2009, gave his assent to the Limited Liability Partnership Act, 2008. The Limited Liability Partnership Act, 2008 (hereinafter "the LLP Act") was published in *The Gazette of India*, and was notified as law on March 31, 2009.

The Indian form of LLP is broadly comparable to New York Registered Limited Liability Partnerships ("NY LLP") and to some extent to New York Limited Liability Companies ("NY LLC"). This article aims to highlight the important provisions of the LLP Act and its broad comparison to certain key aspects of NY LLP laws as well as certain aspects of NY LLC laws.

Formation[3] of a Limited Liability Partnership Under the LLP Act

Every LLP is required to register with the Registrar of Companies ("Registrar") by filing its incorporation document[4] with the Registrar of the State in which the registered office of the LLP is to be situated. The incorporation document, in addition to other information, shall state the names and addresses of the partners of the LLP as well as the names and addresses of the designated partners.

The LLP Act provides that an LLP formed under its provisions shall be a body corporate having a legal entity separate from that of its partners, and will have perpetual succession.

Partners of a LLP Under the LLP Act

The LLP Act provides that any two or more persons ("*Subscribers*") can form an LLP, by subscribing to the incorporation document,[5] for the conduct of any legitimate business, trade, profession or for the provision of services, including professional services. Any individual or body corporate may be a partner in an LLP.[6] The LLP structure is not restricted to any particular class of professionals and can be adopted by any enterprise which fulfills the requirements of the LLP Act.[7] Thus, interestingly, a limited company, a foreign company, an LLP, a foreign LLP or a non-resident of India can be a partner of an LLP formed under the LLP Act.

Note, however, that the LLP shall have at least two Designated Partners.[8] These two Designated Partners must be individuals and at least one of them must be a resident of India.[9] Thus, subject to certain exceptions,[10] the LLP Act prohibits formation of an LLP with Designated Partners that are *exclusively* corporate bodies. Further, the LLP Act prohibits an LLP with *only* non-resident partners. The legislative intent behind such provision might have been to ensure that there is an individual resident in the country to shoulder the legal responsibilities and to be held accountable for the doings of the entity in case the circumstances call for the piercing of the corporate veil.

Comparison with NY LLP and NY LLC Laws

The provisions of LLP Act are quite distinctive from the provisions of NY LLP and NY LLC laws. Under NY LLP laws,[11] only professionals (i.e., individuals) authorized by law to render a professional service within the state of New York can be the partners of a NY LLP.[12] However, NY LLC laws do not impose restrictions on corporate entities being partners, known as "members" in the statute.[13] Any association, corporation, joint stock company, estate, general partnership, registered limited liability partnership or foreign limited liability partnership, limited association, limited liability company (including a professional service limited liability company), foreign limited liability company (including a foreign professional service limited liability company), joint venture, limited

partnership, natural person, real estate investment trust, business trust or other trust, custodian, nominee or any other individual or entity in its own or any representative capacity can be a member of a NY LLC.

Designated Partners

Any partner of an LLP formed under the LLP Act may become, or cease to be, a Designated Partner under the terms of its limited liability partnership agreement. The prior consent of each partner to act as a Designated Partner[14] is required to be filed with the Registrar.

A Designated Partner is responsible for ensuring compliance of the LLP with the provisions of the LLP Act, and is liable for all penalties imposed on the LLP for any contravention of the provisions of the LLP Act.[15] If no Designated Partner is appointed, or if at any time there is only one Designated Partner, each partner of the LLP is deemed to be a Designated Partner.[16]

Although the position of a Designated Partner appears to be analogous to the position of a General Partner in a limited partnership constituted under the New York Partnership Law, this is not the case. Unlike the unlimited liability of a general partner in a New York limited partnership, the liability of a Designated Partner is limited. The Designated Partner, like any other partner of the LLP, is liable only for his or her own wrongful acts or omissions and not that of other partners or the LLP.[17] The obligations of the LLP, whether contractual or otherwise, are the sole obligations of the LLP and not that of its partners or Designated Partners.[18]

Partnership Agreement

Subject to specific provisions of the LLP Act, partners of an LLP have the leverage to determine their mutual rights and duties, and their rights and duties in relation to the LLP, by and through a limited liability partnership agreement ("Partnership Agreement"). In the absence of a Partnership Agreement or the failure by the partners to address specified matters, the rights and duties of the partners are determined by the First Schedule to the LLP Act, which acts as a default section setting out the rights and duties of the partners. The most important of such default provisions are: (1) all partners are entitled to share equally in the capital, profits and losses of the LLP, (2) partners cannot expel any partner unless a power to do so has been conferred by express agreement between the partners, and (3) all disputes between partners arising out of the Partnership Agreement, which cannot be resolved by the terms of the Partnership Agreement, shall be referred for arbitration.[19]

The Partnership Agreement is required to be filed with the Registrar. If the Partnership Agreement is executed between the subscribers to the incorporation documents before the registration of the LLP with the Registrar, the subscribers are required to obtain ratification of the Partnership Agreement by all partners before it will be binding on the LLP and such partners. The ratified Partnership Agreement is also required to be filed with the Registrar.

Partnership Agreement Under the New York LLP Laws

The right of the partners of an LLP to contractually decide their relationships inter se through their Partnership Agreement is quite comparable to the rights of the partners under NY LLP laws. Under NY LLP laws, if there is no statutory prohibition to the contrary, the partners as among themselves may make such agreements as they wish with regard to partnership affairs. As between themselves, the powers, rights, duties and liabilities of partners are determined by the partnership agreement.[20] The partnership agreement is the basic document setting forth the rights and duties of the partners among themselves.[21] If it is evident that a written partnership agreement is a complete expression of the parties' intentions, the language of such partnership agreement controls the relationship between the parties and will not be questioned.[22]

Limitation of Liability of the Partners and the Partnership Under the LLP Act

Every partner of an LLP formed under the LLP Act is an agent of the LLP but not of the other partners.[23] The obligations of the LLP whether arising in contract or otherwise, shall solely be the obligations of the LLP,[24] and not of the partners. The objective is to encourage persons to partner together, with a limitation upon liability, so that a partner is not personally responsible for the general obligations of the partnership or for the wrongful acts or omissions of the other partners.[25] A partner is, however, personally liable only for his or her own wrongful acts or omissions.[26] The LLP Act in its present form is silent as to the liability of the partners for the wrongful acts or omissions of the persons supervised by them in the partnership.

In case the number of partners of the LLP is reduced below two, the partner who carries on the business as the LLP for more than six months with less than two partners, *and* with the knowledge that he is carrying on the business alone, will incur personal liability for the obligations of the business during that period.[27]

Estate's Liability

In the instance that the LLP continues the business in the name of a demised partner, the mere use of the demised partner's name will not render his legal representatives or estate liable for any acts of the LLP committed, or which fail to be taken, after his death.

Liability in the Case of Fraud

Where an LLP or any of its partners acts with intent to defraud the creditors of the LLP or any other person or engage in any other fraudulent act, the LLP and all partners who participated in such fraudulent

act shall lose their limited liability protection and shall have unlimited liability for any and all debts or other liabilities of the LLP.[28] Furthermore, in addition to being liable for such debts and liabilities, every person who is a party to such fraudulent conduct is punishable with incarceration for a term which may extend to two years and a fine which may extend to five lakh rupees[29] (approx. U.S. $10,000).[30]

The LLP Act provides whistleblowing concessions for the persons who participated in the fraudulent act. Section 31 of the LLP Act gives discretion to the courts to reduce or waive any penalty that can be levied against any partner or employee of the LLP under Section 30 of the LLP Act, if the court is satisfied that: (1) such partner or employee has provided useful information during investigation of the fraudulent act; or (2) any information provided by such partner or employee leads to conviction of LLP or its partners. From the plain reading of the Section 31 of the LLP Act, it appears that the court is empowered to waive or reduce only the monetary penalty levied under Section 30 of the LLP Act. The LLP Act does not empower the Court to restore the limited liability protection for such partners against their unlimited liability for any and all debts or other liabilities of the LLP.

Limitation of Liability of the Partners and the Members Under New York LLP and LLC Laws

The liability position of a partner in an LLP formed under the LLP Act is quite similar to the position of a partner in a NY LLP or a member in a NY LLC. Under the New York Partnership Law, a partner of a registered limited liability partnership is not liable for the debts or liabilities of the registered limited liability partnership or of other partners. Nevertheless, a partner of a registered limited liability partnership is personally and fully liable and accountable for any negligent or wrongful act or misconduct committed by him or her or by any person under his or her direct supervision and control while rendering professional services on behalf of such registered limited liability partnership.[31]

Similarly, a member of a New York limited liability company is not liable for any debts, obligations or liabilities of the limited liability company or of another member, whether arising in tort, contract or otherwise, solely by reason of being a member or participating in the conduct of the business of the limited liability company.[32]

Furthermore, all or specified partners of a registered limited liability partnership may be liable in their capacity as partners for the debts and liabilities of such partnership if the majority of the partners so agree and unless the partnership agreement provides otherwise.[33] It is also worth mentioning here that in a registered limited liability partnership in New York, the partners are insulated only against the debts to third parties, and that the liability for breaches of partners' obligations inter se is not insulated by New York Partnership Law.[34]

In *Institute of Physical Medicine & Rehabilitation, LLP v. Country-Wide Insurance*, 752 NYS.2d 232 (NY City Civ. Ct. 2002) the court held that a limited liability partnership may sue and be sued as if it were a partnership formed pursuant to the general provisions of the partnership law except for the limitation on liability of the partners because, under New York law, a limited liability partnership is a partnership even though the partners have limited liability.

Conversion of Existing Entities in India into the Newly Permitted LLP Form

The LLP Act makes specific provisions for conversion[35] of existing entities into LLPs. An existing partnership, private company or unlisted[36] public company may convert into an LLP in accordance with the procedure provided in the LLP Act.

An existing partnership can convert itself into an LLP only if the partners of the LLP after conversion are identical to the partners prior to conversion and no one else is added.[37]

A private company may convert itself into an LLP if there is no security interest in its assets, subsisting or in force at the time of application to the Registrar for conversion and the partners of the LLP, after conversion, are identical to the partners of the existing private company prior to conversion. [38]

An unlisted public company[39] may convert into an LLP if there is no security interest in its assets, subsisting or in force at the time of application to the Registrar for conversion and the partners of the LLP, after conversion, are identical to the shareholders of the unlisted public company prior to the conversion.[40]

Cessation of Partnership Interest Under the LLP Act

In addition to the occurrence of any disqualifying event provided for in the LLP Act, such as death, insolvency or incompetency, a partner may also cease to be a partner of an LLP under circumstances provided for within the terms of the Partnership Agreement or, in absence of a Partnership Agreement or such terms, by such withdrawing partner giving a thirty-day notice to the other partners.[41] Cessation of a partner from the LLP does not discharge the partner from any obligation to the LLP, to other partners or to the third parties which he incurred during his partnership.[42]

The LLP Act also provides that with respect to third parties dealing with the LLP, a person or entity who ceases to be a partner of the LLP will be deemed to continue as a partner in relation to such third parties, unless notice of the cessation is given to the third party or to the Registrar. A failure to provide proper notice of his cessation, to the third party or Regis-

trar, continues the obligations of the former partner to the third parties dealing with the LLP.[43]

Recognition of Foreign Limited Liability Partnerships Under the LLP Act

Section 2(1)(m) of the LLP Act defines a foreign limited liability partnership as a limited liability partnership formed, incorporated or registered outside India which establishes a place of business within India.

The Central Government of India is empowered under the provisions of the LLP Act Section 59, read with Section 79, to make rules for establishment of places of business by foreign limited liability partnerships within India and carrying on the business of foreign limited liability partnerships in India. In exercising such powers, the Government of India, Ministry of Corporate Affairs, established Limited Liability Partnership Rules, 2009 (the "Rules"), as notified on April 1, 2009. The Rules provide as follows:

(1) A foreign limited liability partnership shall, within thirty days of establishing a place of business in India, file the requisite form with the Registrar along with: (a) its incorporation documents; (b) list of partners and designated partners, if any; and (c) name and address of two or more persons resident in India, authorized to accept on behalf of the LLP, service of process and any notices or other documents required to be served on the LLP.

(2) In case any alteration is made in the incorporation documents, partners or designated partners, or names or addresses of any person authorized to accept process and notice of service, the LLP shall notify the Registrar within the prescribed time and file the prescribed forms.

(3) Every foreign limited liability partnership is required to file a statement of accounts and solvency in the prescribed form within a period of 30 days after the end of six months of the financial year.

Taxation

The LLP Act does not provide any insight into the taxation of the LLP. However, the [*Indian*] Finance Act, 2009, amended the [*Indian*] Income Tax Act, to provide that the LLPs shall be taxed in the same manner as partnership firms are taxed in India. It is pertinent to mention here that under the [*Indian*] Income Tax Act, a Partnership firm is taxed as a separate entity, distinct from the partners. Under the provisions of the [*Indian*] Income Tax Act, the share of the partner in the income of the LLP is not included in computing his total income, i.e., his share in the total income of the LLP shall be exempt from double taxation.

Federal Taxation of NY LLPs and NY LLCs

NY LLP is taxed as a partnership. Partnerships are "flow-through" entities for taxation purpose, meaning that the entity does not pay taxes on its income. Instead, the owners of the entity pay tax on their distributive share of the entity's taxable income.

NY LLCs have an option either to be taxed as partnership (S corporation), i.e., pass-through taxation, or as a C corporation. The check box regulations of the Treasury Regulations provide that an LLC will be treated as partnerships for Federal tax purposes unless it specifically chooses to be taxed as a corporation.

Application of Provisions of [*Indian*] Companies Act, 1956

The LLP Act provides that [one or more] provisions of the *[Indian]* Companies Act, 1956 may be made applicable to LLPs formed under the LLP Act, with or without modification, as the Central Government of India may notify from time to time.[44]

Thus, the limited liability partnerships in India offer the foreign investors the much awaited form of business organization with limited liability and without double taxation. The LLP Act will have a remarkable effect on the ability of small and closely held U.S. businesses to target the impending and ever-growing Indian market. However, the LLP Act being a recent enactment, the various legal nuances pertaining to formation, operation and taxation of LLPs are yet to be discovered.

Endnotes

1. A monthly tally of 32 retail chains' sales found a 12th straight year-over-year decline in August 2009. http://www.nytimes.com/aponline/2009/09/03/business/AP-U.S.-Retail-Sales-Summary.html.
2. Based on a 2007 year-end exchange rate of 39.5 rupees to the U.S. dollar, http://www.state.gov/r/pa/ei/bgn/ 3454.
3. LLP Act § 11(1)(b).
4. Form 2 as prescribed under Rule 11 of the Limited Liability Partnership Rules, 2009.
5. Id.
6. The Limited Liability Partnership Act [LLP Act] § 5.
7. Press Release by Ministry of Corporate Affairs, India dated October 21, 2008.
8. LLP Act § 7(1).
9. LLP Act § (7)(1). The term "resident in India" means a person who has stayed in India for a period of not less than one hundred and eighty-two days during the immediately preceding one year.
10. An LLP can be organized in which all the partners are body corporate, or one or more partners are individuals or body corporate, if at least two individuals who are partners of such LLP or nominees of such body corporate, act as designated partners.
11. NY Partnership Law § 121-1500.
12. Seven states, including New York, limit the availability of Limited Liability Partnerships to professionals. Rhode Island permits only non-professionals and accountants to form Limited Liability Partnerships, and both Hawaii and Kentucky expressly prohibit attorneys from practicing in the Limited Liability Partnership form. *1 NY Prac., New York Limited Liability Companies and Partnerships § 1:1.*

13. NY LLC laws provide that an individual professional, a Professional Service Corporation, a Professional Service Limited Liability Company, a Foreign Professional Service Limited Liability Company, a Registered Limited Liability Partnership, a foreign limited liability partnership, a foreign professional service corporation or a professional partnership can be the member of a professional service limited liability company, i.e., a NY LLC, formed for the purpose of engaging in licensed professions. *NY Limited Liability Co. Law §§ 1207, 1201(c)*. Each member of a professional service limited liability company formed to provide medical services, dental services, veterinary services, professional engineering, land surveying, architectural services, landscaping services, clinical social services, creative arts therapy services, family and marriage therapy services and psychoanalysis services, shall be licensed to provide such services; and in case of members who are not individuals, each member, partner or shareholder of such member shall be licensed to provide such services; and all the members of such NY professional limited Liability Company shall be from the same professional discipline. *NY Limited Liability Co. Law § 1207(b).*
14. All Designated Partners of the proposed LLP shall obtain "Designated Partner Identification Number (DPIN)" by filing an application individually online in Form 7.
15. LLP Act § 8.
16. LLP Act § 9.
17. LLP Act § 28(2).
18. LLP Act § 27(3).
19. Disputes to be referred according to the provisions of [*Indian*] Arbitration and Conciliation Act, 1996.
20. *Bogoni v. Friedlander*, 197 A.D.2d 281, 290 (1st Dept.), lv. to app. den., 84 NY2d 803 (1994).
21. *In re Sturman*, 222 B.R. 694, 711 (S.D.NY 1998).
22. *Silverman v. Caplin*, 150 A.D.2d 673 (2nd Dept.), app. dism., 74 NY2d 793 (1989).
23. LLP Act § 26.
24. LLP Act § 27(3).
25. LLP Act § 28(2).
26. LLP Act § 28(2).
27. LLP Act § 6(2).
28. LLP Act § 30(1).
29. LLP Act § 30(2).
30. Conversion rate $1=INR50.
31. NY Partnership Law § 26(c).
32. NY Limited Liability Co. Law § 609(a).
33. NY Partnership Law § 26(d).
34. *Ederer v. Gursky*, 9 NY3d 514.
35. Provisions for conversion into LLP are contained in LLP Act §§ 55-57. These sections have not been notified and have not come into force.
36. "Unlisted Public Company" means a company which is not a Listed Company. A "Listed Company" means a listed company as defined in the Securities Exchange Board of India (Disclosure and Investor Protection) Guidelines, 2000 issued by the Securities and Exchange Board of India under section 11.
37. LLP Act, Second Schedule Cl. 3.
38. LLP Act, Third Schedule Cl. 2(2).
39. Public Company means a company which is not a private company. Private Company means a company which by its articles of association:
    a. Restricts the right of members to transfer its shares .
    b. Limits the number of its members to 50. In determining this number of 50, employee-members and ex-employee-members are not to be considered.
    c. Prohibits an invitation to the public to subscribe to any shares in or the debentures of the company.
40. LLP Act Fourth Schedule Cl. 2(2).
41. LLP Act § 24(1).
42. LLP Act § 24(4).
43. LLP Act § 24(3).
44. LLP Act § 67(1).

Vikas Varma (vvarma@riderweiner.com) is a corporate associate at Rider, Weiner & Frankel, P.C., where his practice focuses on general corporate, business and cross-border transactional law. http://riderweiner.com/vikasvarma.html.

Disclaimer: This article is for general information purposes only and does not amount to a legal opinion on any Indian law. The reader should seek appropriate legal representation in regard to any laws of the Republic of India.

Scenes from the
Young Lawyers Section

FALL MEETING

October 20-22, 2010

NYSBA Bar Center • Albany, NY


FENNELL
NYSBA
NYSBA
NYSBA
Opening Statement
Welcoming Dialogue &
Peacemaking
Earnest Inquiry
Iron Fist in a
Velvet Glove

(Continued from page 1)

spiked in the past year. Fraud fighting bureaus have seen a significant increase in all fifteen types of fraud schemes, including home arson cases, drivers ditching unwanted vehicles, and questionable slip and fall cases.[10] Some studies suggest that more than one-third of people hurt in auto accidents exaggerate their injuries, adding approximately $13 billion to America's annual insurance bill.[11] Other studies find nearly one-third of doctors exaggerate the severity of a patient's illness.[12] While this article focuses on fraud on the insurer side and the legal hurdles facing a plaintiff with a genuine claim, it is important to note the bad faith which travels on this two-way street.

II. Pleading Fraud and Breach of Contract in New York

A claimant who sues her insurer for fraud and breach of an insurance contract has three major hurdles to cross when fighting a Motion to Dismiss. The first is Rule 9(b) of the Federal Rules of Civil Procedure (FRCP), which sets a heightened pleading standard when alleging fraud: "In alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake."[13] Particularized allegations have an origin in public policy and are meant to prevent litigants from dragging defendants' names through mud based on broad, unfounded allegations.

Second, a plaintiff must plead the common law fraud elements by clear and convincing evidence. The required elements are: (i) a misrepresentation or omission of material fact; (ii) that the defendant knew to be false; (iii) that the defendant made with the intention of inducing reliance; (iv) upon which the plaintiff reasonably relied; and (v) that caused injury to the plaintiff.[14]

The third hurdle facing these plaintiffs is the requirement that the fraud and breach of contract together must allege separate facts for each cause of action. Case law demonstrates that "[a] claim for fraud will be found duplicative and dismissed where the fraud cannot sufficiently be distinguished from the breach of contract claim."[15] Though New York struggled to clarify this confusing requirement, it is now clear that a plaintiff may satisfy this requirement in one of three ways: (a) by establishing a legal duty separate from the duty to perform under the contract, (b) by showing a fraudulent misrepresentation collateral or extraneous to the contract, or (c) by showing special damages that have been caused by the misrepresentation and are unrecoverable as contract damages.[16] As discussed below, it is difficult for insurance claimants who want to plead both breach of contract and fraud to comply with any of these prerequisites.

(a) Establishing a Separate Legal Duty

This "separate fact" requirement has proven to be an extremely difficult threshold for these claimants to cross. First, unlike other states, an insurer in New York does not owe its client any special duty. [17] Courts will only find a special duty, and therefore the foundation for an independent tort, if (1) the parties stand in a confidential or fiduciary relationship with each other,[18] or (2) one party possesses superior knowledge, not available to the other, and knows the other is acting on the basis of mistaken knowledge.[19] Even though courts acknowledge the disparate bargaining positions inherent in an insurance contract,[20] an insurer in New York owes no more of a duty to an insured than an ordinary business party would to a commercial contract. [21]

(b) Collateral or Extraneous Exception

In New York, a mere allegation by the Plaintiff that the defendant entered into the contract without the intent to perform it is insufficient to support a fraud claim.[22] However, a false promise can support a claim for fraud where that promise was "collateral or extraneous" to the terms of the contract. These so-called "fraud in the inducement" cases surface where one party induces the other to enter a contract by misrepresenting present facts, like its financial policy,[23] as opposed to future promises to perform. Courts permit these fraud claims because the inducement is considered "collateral" to the contract it precedes.

Fraud in the inducement is widely considered *the* exception to the bar of asserting fraud and breach of contract together. This would not, though, include the back-dating example presented in section I, where a carrier, having missed its window to respond to a claimant, back-dates a letter so that it falls within that response period. It is unlikely a claimant could convince a court that it was induced to enter a contract because it thought the insurer would respond within, say, 30 days to its claim. Moreover, a carrier's promise at the time of contracting to respond within 30 days, even if insincere, relates to the performance of some future act, as opposed to present fact, and would fail the inducement exception. Since New York does not recognize a cause of action based upon a defendant's failure to reveal a breach, the question becomes whether the failure to reveal a breach can be distinguished from an affirmative effort to conceal a breach to the other party.

It would likely offend the public interest to exclude carriers who engage in practices such as back-dating from tort exposure. In fact, there is scattered support in the case law permitting a fraud claim where one party affirmatively misrepresents or conceals something material during performance of the contract. In *Freedman v. Pearlman*, the parties entered into a

working relationship and made several oral promises regarding profit sharing.[24] Under these contracts, Freedman was supposed to receive a percentage of defendant Pearlman's existing stock options. Throughout performance of the contract, Pearlman claimed that he did not receive any stock options in a joint venture, but this was untrue. Freedman, upon discovering the truth, sued Pearlman for various causes of action, including fraud and breach of contract. The Court sustained the fraud claims, finding them not duplicative of the breach of contract claim. With respect to the fraud claim, the court found it almost dispositive that the defendant "*deliberately concealed* the amount of income received from Bally's so that the one-third share Freedman was allegedly entitled to by contract was undercounted."[25] Similarly, in *Eagle Comtronics v. Pico Products*, the defendant allegedly "misrepresented or concealed existing facts" regarding patent licenses, and the court found the plaintiff's fraud claim "discrete" from the contract claim.[26]

In *Jordan Investment Co. v. Hunter Green*, the defendants, various investment firms, agreed to invest the plaintiff's money into non-leveraged assets.[27] Since the plaintiff was a charitable trust, it was important that its funds were invested in non-leveraged assets in order to preserve its tax-exempt status. Although the defendants assured them that this would be the case and that they would notify the plaintiff before making any investment decisions, the defendants invested the trust's money on a leveraged basis and intentionally concealed this fact from the plaintiff. In denying the defendants' motion to dismiss, the Court emphasized how the defendants went out of their way to conceal from the plaintiff that its funds were being invested in leveraged assets. The Court declared that "misrepresentations made after a contract is entered into which relate to a present fact that would exist if the contract were performed, are collateral or extraneous to the contract…and are actionable in fraud."[28] *Jordan* is significant in that the District Court extended the "collateral or extraneous" exception, which previously had only been applied to fraudulent inducement cases, to post-formation misrepresentations. These decisions suggest that affirmative misrepresentation that relate to post-formation contract performance might be actionable as an independent tort in New York.

(c) Alleging Extra-Contractual Damages

If a plaintiff establishes a separate legal duty or shows a collateral or extraneous misrepresentation, he must still show—or at the pleading stage, allege—damages that are not recoverable under the contract. The genesis of this requirement concerns the history between tort and contract remedies. Based on the classical English case *Hadley vs. Baxendale*, a party who breaches his promise owes only those damages that "…may reasonably be supposed to have been in the contemplation of both parties, at the time they made the contract, as the probable result of the breach of it."[29] Damages recoverable for a breach of contract are meant to put the nonbreaching party in the same place it would be had the contract been performed. Tort damages, on the other hand, exist to both compensate victims for injuries (compensatory damages) *and* vindicate some public value like deterring similar acts (punitive damages). Indeed, the tort duty of care is meant to "protect society's interest in freedom from harm."[30]

In a disability insurance context, a plaintiff's extra-contractual damages are most likely to be a combination of damages from pain, suffering, and emotional distress as well as punitive damages. Where an insurer acts fraudulently, punitive damages are meant to punish such behavior. The public has an in interest in ensuring that carriers do not engage in that type of behavior, and studies show that punitive damage awards help deter that type of conduct.[31]

These important justifications notwithstanding, it is difficult to recover punitive damages in New York. A plaintiff seeking punitive damages must show that the defendant engaged in "gross conduct that involves high moral culpability or demonstrates wanton dishonesty."[32] If the fraud claim arises from a related contract claim, such as the "back-dating" example, courts in New York require the plaintiff to show that defendant's conduct was "aimed at the public generally." This additional "public harm rule" is an exceedingly high burden that requires alleging "ultimate facts" that show a "fraudulent and deceitful scheme" in dealing with the general public, therefore making it very difficult for such a plaintiff to recover punitive damages.[33]

This "public harm rule" could very well relieve an insurer of exposure to punitive damages, as a claimant would have great difficulty in proving the carrier committed the act towards the public generally. This result is unjust, though, because it is unlikely a carrier back-dated a letter out of any personal animus towards a particular claimant. A carrier has one true north, and it applies equally to all of their cases: to limit policy payouts. This true north, therefore, can be said to apply to the public generally. Yet fraudulent acts to limit a policy payout would probably fail the public harm rule, absent some evidence the insurer committed back-dating previously. Where a plaintiff demonstrates evidence of intentional back-dating, courts should treat such behavior as dispositive fraudulent conduct.

III. Conclusion

The legal obstacles facing a plaintiff who feels defrauded by an insurance company are daunting, but they are not insurmountable. If an insurer goes out of its way to conceal a breach committed under a contract, some courts will hold it accountable by permitting a plaintiff to plead a tort in addition to breach of contract. This is a fair option.

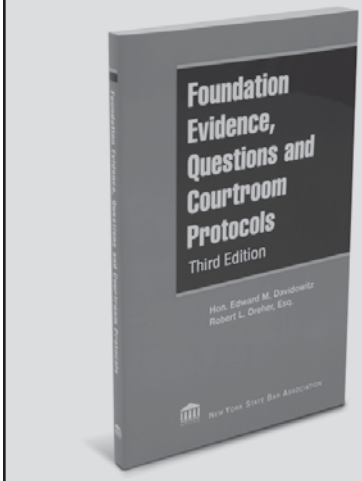
Holding responsible an insurer who commits fraud along with breaching a contract serves the public interest, punishes wrongdoing and deters future fraudulent acts. A plaintiff is usually also required to allege punitive damages when asserting a tort and breach of contract, a fair if strict requirement, as punitive damage is considered a drastic remedy. Courts, however, should take a second look at applying the "public harm rule" to cases, like the back-dating example, where its application tends to hurt an important group: the consuming public.

Endnotes

1. *See, e.g.*, Jeffrey Stempel, *Stempel on N.Y. Embraces Consequential Damages in Bad Faith Claims*, 2008 EMERGING ISSUES 191, at *1 (Mar. 27, 2008) ("finding that New York law is frequently the choice of insurers in drafting dispute resolution and choice-of-law clauses in policies").
2. *See* Sofi Classic v. Hurowitz et al., 444 F. Supp. 2d 231 (S.D.N.Y. 2006) (finding that "[w]hen a plaintiff alleges both a breach of contract and a fraud claim arising from the same series of events, New York courts have been cautious in sustaining an independent fraud claim.").
3. If a plaintiff survives the pleading and summary judgment phase of a trial, he has to convince a court that the insurer acted arbitrarily or capriciously in denying a claim for disability benefits. This requires proof that the administrative record did not contain substantial evidence to support the denial. Moreover, if it is a claim for benefits under ERISA, an insured has an even more difficult task as courts have a strong policy in favoring exhaustion of administrative remedies in ERISA cases. Paese v. Hartford Life & Accident Ins. Co., 449 F.3d 435, 443 (2d Cir. 2006).
4. A claimant who is taken advantage of by an insurer may also have relief under breach of the implied covenant of good faith and fair dealings (as a contractual remedy), or N.Y. Gen. Bus. Law § 349, which prohibits "deceptive acts or practices in the conduct of any business, trade or commerce…." These causes of action will be the subject of a different article.
5. *See New York Court of Appeals Holds that Insurers May Be Liable for Consequential Damages*, 122 HARV. L. REV. 998 (2009).
6. *See supra* note 5, citing Keith J. Crocker & Sharon Tennyson, *Insurance Fraud and Optimal Claims Settlement Strategies*, 45 J.L. & ECON. 469, 504 (2002) (finding that underpayment is an optimal strategy for insurance companies under certain circumstances).
7. *See* Montour v. Hartford Life & Accident Ins. Co., 2009 WL 2914516 (9th Cir. 2009).
8. *See* Culley v. Liberty Life Assur. Co., 339 Fed. App'x. 240 (3d Cir. 2009).
9. *Id*.
10. http://www.insurancejournal.com/news/national/2010/01/11/106510.htm.
11. Rand Institute for Civil Justice, *The U.S. Experience with No-Fault Automobile Insurance: A Retrospective*, James Anderson, Paul Heaton and Stephen Carroll, *available at* http://www.rand.org/pubs/research_briefs/RB9505/index1.html.
12. Coalition Against Insurance Fraud, citing Journal of the Medical Association.
13. FED. R.Civ. P. 9(b); s*ee also* CPLR 3016(b): "[C]auses of action based on fraud or misrepresentation must state in detail the circumstances constituting the wrong." *Id*.
14. Crigger v. Frahnestock & Co., Inc., 443 F. 3d 230, 234 (2d Cir. 2006).
15. Papa's-June Music v. McLean, 921 F. Supp. 1154, 1162 (S.D.N.Y. 1996).
16. *See id*.
17. *See* Foley v. Interactive Data Cooperation, 47 Ca. 3d 654 (CA. 1988) ("…[t]he propriety of a tort action for breach of the implied covenant in the insurance context was based on the 'special relationship' of insurer and insured…").
18. *See* Graubard Mollen Dannett & Horowitz v. Moskovitz, 86 N.Y.2d 112 (permitting plaintiffs to sue under fraud and breach of contract theories because the defendant partner owed a fiduciary duty not to solicit clients from his former law firm, where he made earlier assurances to encourage those clients to remain with the firm).
19. *See* International Electronics v. Media Syndication Global, 2002 U.S. Dist. LEXIS 15200 (S.D.N.Y. 2002) (finding that defendants owed plaintiffs a duty to disclose the market conditions for plaintiff's product).
20. *See* Batas v. Prudential Ins. Co. of America, 281 A.D.2d 260 (1st Dep't 2001).
21. *Id*. ("holding that no special relationship of trust or confidence arises out of an insurance contract between the insured and the insurer; the relationship is legal rather than equitable.")
22. New York University vs. Continental Ins. Co., 87 N.Y.2d 308 (1995).
23. Rojo v. Deutsche Bank, 2008 U.S. Dist. LEXIS 94007 (S.D.N.Y. 2008) (finding fraud in the inducement where Deutsche's misrepresentations concerned the structure of the deal that caused Rojo to accept Deutsche's offer).
24. Freedman v. Pearlman, 271 A.D.2d 301 (1st Dep't 2000).
25. *Id*. (emphasis added).
26. Eagle Comtronics v. Pico Prods., 270 A.D.2d 832 (4th Dep't, 2000).
27. Jordan Investment Co, No. 00 Civ. 9214 (RWS) (S.D.N.Y. 2003).
28. *Id*. The Court noted that there was no contractual agreement between this specific co-defendant and the plaintiff, and therefore the defendant could not claim duplicative claims, but this dicta was secondary to the Court's ruling that fraud was an actionable tort in this case.
29. Hadley v. Baxendale, 156 Eng. Rep. 145 (1854).
30. Spring Motors Distributors, Inc. v. Ford Motor Co., 489 A.2d 660, 672 (N.J. 1985).
31. *See* Catherine Paskoff Chang, *Two Wrongs Can Make Two Rights: Why Courts Should Allow Tortious Recovery for Intentional Concealment of Contract Breach*, 39 COLUM. J.L. & SOC. PROBS. 47 (2005).
32. Rocanova v. Equitable Life Assurance Society of the U.S., et al., 83 N.Y.2d 603 (1994).
33. New York courts are not consistent in their application of the public harm rule to "fraud in the inducement cases." *See* Sofi Classic et al. v. Hurowitz, 444 F. Supp. 2d 231 (S.D.N.Y. 2006) ("the Court concludes that the public harm requirement applies to Plaintiffs' fraudulent inducement claim."). *But see* Axa Versicherung v. New Hampshire Inc. Co. et al., 2008 U.S. Dist. LEXIS 33950 (S.D.N.Y. 2008) (declining to apply the public harm standard to plaintiff's claim that defendants induced them to enter a contract through misrepresentations.).

From the NYSBA Book Store

Foundation Evidence, Questions and Courtroom Protocols, Third Edition



Section Members get 20% discount* with coupon code PUB0982N

AUTHORS

Hon. Edward M. Davidowitz
Judicial Hearing Officer
Bronx County Supreme Court

Robert L. Dreher, Esq.
Executive Assistant District Attorney
Bronx County District Attorney's Office

Foundation Evidence, Questions and Courtroom Protocols, Third Edition aids litigators in preparing appropriate foundation testimony for the introduction of evidence and the examination of witnesses.

This manual contains a collection of forms and protocols that provide the necessary predicate or foundation questions for the introduction of common forms of evidence—such as business records, photos or contraband. It includes basic questions that should be answered before a document or item can be received in evidence or a witness qualified as an expert. The questions can be modified or changed to fit specific problems, issues or an individual judge's rulings.

In addition to updating case and statutory references, the third edition expands the coverage of the second edition, including two new chapters on Direct Examination and Cross Examination.

PRODUCT INFO AND PRICES
2010 / 238 pp., softbound
PN: 41070

NYSBA Members	**$55**
Non-members	$65

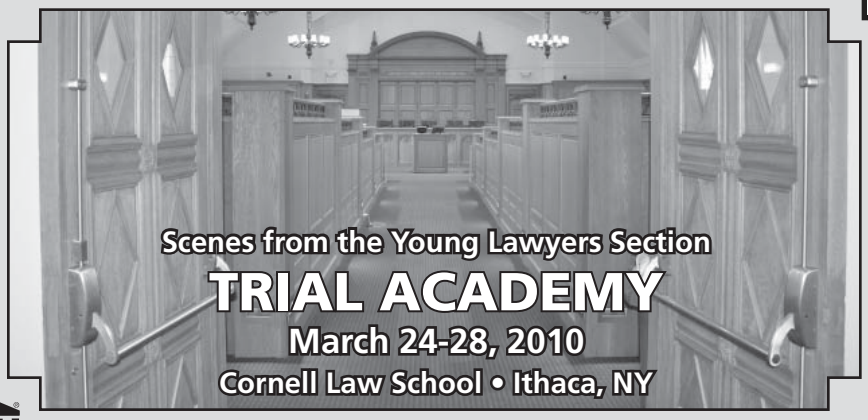
***Discount good until February 4, 2011**

Order multiple titles to take advantage of our low flat rate shipping charge of $5.95 per order, regardless of the number of items shipped. $5.95 shipping and handling offer applies to orders shipped within the continental U.S. Shipping and handling charges for orders shipped outside the continental U.S. will be based on destination and added to your total.

Get the Information Edge

NEW YORK STATE BAR ASSOCIATION
1.800.582.2452 www.nysba.org/pubs
Mention Code: PUB0982N

NYSBA



Scenes from the Young Lawyers Section

TRIAL ACADEMY

March 24-28, 2010

Cornell Law School • Ithaca, NY










Young Lawyers Section

Bridging the Gap: New Cases and Legislation for the Next Generation Day One

Thursday, January 27, 2011
Hilton New York
1335 Avenue of the Americas, New York City
MCLE Program, 9:00 a.m. - 5:00 p.m.
Gramercy Suite, 2nd Floor

IMPORTANT INFORMATION

Under New York's MCLE rule, this program has been approved for a total of **8.0 credit hours. 1.0 in the Skills category, 2.0 in Law Practice Management, 4.0 in Professional Practice and 1.0 in Ethics and Professionalism.** This is a transitional program and is suitable for MCLE credit for newly-admitted attorneys.

Discounts and Scholarships: New York State Bar Association members and non-members may apply for a discount or scholarship to attend this program based on financial hardship. This discount applies to the educational portion of the program only. Under that policy, any member of our Association or non-member who has a genuine basis for his/her hardship, and if approved, can receive a discount or scholarship depending on the circumstances. Request for discounts or scholarships must be received **ten business days prior** to the start of the program. To apply for a discount or scholarship, please send your request in writing to Bryana Wachowicz at: New York State Bar Association, One Elk Street, Albany, New York 12207 or email bwachowicz@nysba.org.

Section Chair
Philip G. Fortino, Esq.
nycm Insurance
Sherburne

Program Co-Chair
Lisa R. Schoenfeld, Esq.
Schlissel Ostrow Karabatos PLLC
Garden City

Program Co-Chair
Sarah E. Gold, Esq.
Albany

"NEW CASES AND LEGISLATION FOR THE NEXT GENERATION"

9:00-9:50 a.m. **Planning with Advance Directives**
Health Care Proxies, Powers of Attorney, DNR, MOLST and other advance directives
(1.0 credit hours in Areas of Professional Practice)

Speaker: **James R. Barnes, Esq.**
Burke & Casserly, P.C.
Albany

9:50-10:40 a.m. **The Ins and Outs of Running a Law Firm**
Setting it up, advertising, and escrow accounts
(2.0 credit hours in Law Practice Management)

Speaker: **Pery D. Krinsky, Esq.**
Law Offices of Michael S. Ross
New York City

BRIDGING THE GAP: DAY ONE

10:40-10:50 a.m. Refreshment Break

10:50-11:40 a.m. **The Ins and Outs of Running a Law Firm** *continues*

11:40-12:30 p.m. **Electronic Discovery and Document Preservation**
(1.0 credit hours in Skills)

Speaker: **Michael L. Fox, Esq.**
Jacobowitz & Gubits, LLP
Walden

12:30-1:30 p.m. Break for Lunch (On Your Own)

1:30-2:20 p.m. **DWI Ignition Interlock Device Systems**
(1.0 credit hours in Areas of Professional Practice)

Speakers: **Tucker C. Stanclift, Esq.**
Stanclift Ludemann & McMorris, PC
Glens Falls

Rich Pollack
Judicial Services Liasion
Smart Start of New York

2:20-3:10 p.m. **New Matrimonial Legislation**
(1.0 credit hours in Areas of Professional Practice)

Speaker: **Elena Karabatos, Esq.**
Schlissel Ostrow Karabatos, PLLC
Garden City

3:10-3:20 p.m. Refreshment Break

3:20-4:10 p.m. **Employment Discrimination**
(1.0 credit hours in Areas of Professional Practice)

Speaker: **Robert E. DiNardo, Esq.**
Jacobowitz & Gubits, LLP
Walden

4:10-5:00 p.m. **The Unauthorized Practice of Real Property Law and Other Ethical Distortions Under the Judiciary Law**
(1.0 credit hours in Ethics and Professionalism)

Speaker: **George J. Haggerty, Esq.**
George J. Haggerty & Associates, P.C.
Jericho

5:00 p.m. **Program Concludes**

For questions about this specific program, please contact Bryana Wachowicz at 518-487-5630. **For registration questions only, please call 518-487-5621. Please use 866-680-0946 to fax your registration form.**

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 Bryana Wachowicz at 518-487-5630.

Young Lawyers Section

Bridging the Gap: New Cases and Legislation for the Next Generation Day Two

Friday, January 28, 2011
Hilton New York
1335 Avenue of the Americas, New York City
MCLE Program, 9:00 a.m. - 5:00 p.m.
Gramercy Suite, 2nd Floor

IMPORTANT INFORMATION

Under New York's MCLE rule, this program has been approved for a total of **8.0 credit hours. 5.0 in the Skills category, 1.0 in Law Practice Management and 2.0 in Ethics and Professionalism.** This is a transitional program and is suitable for MCLE credit for newly-admitted attorneys.

Discounts and Scholarships: New York State Bar Association members and non-members may apply for a discount or scholarship to attend this program based on financial hardship. This discount applies to the educational portion of the program only. Under that policy, any member of our Association or non-member who has a genuine basis for his/her hardship, and if approved, can receive a discount or scholarship depending on the circumstances. Request for discounts or scholarships must be received **ten business days prior** to the start of the program. To apply for a discount or scholarship, please send your request in writing to Bryana Wachowicz at: New York State Bar Association, One Elk Street, Albany, New York 12207 or email bwachowicz@nysba.org.

Section Chair
Philip G. Fortino, Esq.
nycm Insurance
Sherburne

Program Co-Chair
Lisa R. Schoenfeld, Esq.
Schlissel Ostrow Karabatos PLLC
Garden City

Program Co-Chair
Sarah E. Gold, Esq.
Albany

"NEW CASES AND LEGISLATION FOR THE NEXT GENERATION"

9:00-10:40 a.m. **Introduction to Depositions and Expert Disclosure**
(2.0 credit hours in Skills)

Speaker: **David Paul Horowitz, Esq.**
Ressler & Ressler
New York City

10:40-10:50 a.m. Refreshment Break

10:50-12:30 p.m. ***This Really Happened?!?*** **- The Ethics Game Show**
Real life ethics issues for new and experienced attorneys
(2.0 credit hours in Ethics)

Panel Chair: **Jeremy R. Feinberg, Esq.**
Statewide Special Counsel for Ethics
Office of Court Administration
New York City

BRIDGING THE GAP: DAY TWO

Panelists: **Hon. Martin Schoenfeld**
Justice, Appellate Term of the Supreme Court, First Department
New York City

Marian C. Rice, Esq.
L'Abbate Balkan Colavita & Contini, LLP
Garden City

Lisa R. Schoenfeld, Esq.
Schlissel Ostrow Karabatos PLLC
Garden City

Anne E. Dello-Iacono, Esq.
Raskin & Makofsky
Garden City

12:30-1:30 p.m. Break for Lunch (On Your Own)

1:30-2:20 p.m. **Powerful Writing Techniques to Help You Persuade Judges and Win Clients**
(1.0 credit hours in Skills)

Speaker: **Lisa Solomon, Esq.**
Ardsley

2:20-3:10 p.m. **Jury Selection in State and Federal Courts**
(1.0 credit hours in Skills)

Speaker: **Martin B. Adelman, Esq.**
Martin B. Adelman, P.C.
New York City

3:10-3:20 p.m. Refreshment Break

3:20-4:10 p.m. **Effective Representation in Mediation**
(1.0 credit hours in Skills)

Speaker: **Simeon H. Baum, Esq.**
Resolve Mediation Services, Inc.
New York City

4:10-5:00 p.m. **Identity Theft for Lawyers**
(1.0 credit hours in Law Practice Management)

Speaker: **William R. Henrick, Esq.**
DealerTrack, Inc.
Lake Success

5:00 p.m. **Program Concludes**

For questions about this specific program, please contact Bryana Wachowicz at 518-487-5630. **For registration questions only, please call 518-487-5621. Please use 866-680-0946 to fax your registration form.**

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 Bryana Wachowicz at 518-487-5630.

NEW YORK STATE BAR ASSOCIATION
YOUNG LAWYERS SECTION
One Elk Street, Albany, New York 12207-1002

ADDRESS SERVICE REQUESTED

ISSN 0743-6475 (print) ISSN 1933-8511 (online)

PERSPECTIVE

Editor-in-Chief
Martin John McGuinness
Stanclift Ludemann & McMorris PC
7 East Tremont
Glens Falls, NY 12801
mjm@stancliftlaw.com

Section Officers

Chairperson
Philip G. Fortino
NYCM Insurance
P.O. Box 737
16 Chapel Street
Sherburne, NY 13460
pfortino@twcny.rr.com

Chairperson-Elect
James R. Barnes
Burke & Casserly, P.C.
255 Washington Avenue Ext.
Albany, NY 12205
jbarnes@burkecasserly.com

Secretary
Michael L. Fox, Esq.
Jacobowitz & Gubits, LLP
158 Orange Avenue
PO Box 367
Walden, NY 12586-0367
mlf@Jacobowitz.com

Treasurer
Dana V. Syracuse, Esq.
Hartman & Craven LLP
488 Madison Avenue, 16th Floor
New York, NY 10024
dana.syracuse@gmail.com