NYSBA FALL/WINTER 2000 | VOLUME 21 | NO. 3

ONEONONE

A publication of the General Practice, Solo & Small Firm Section
of the New York State Bar Association

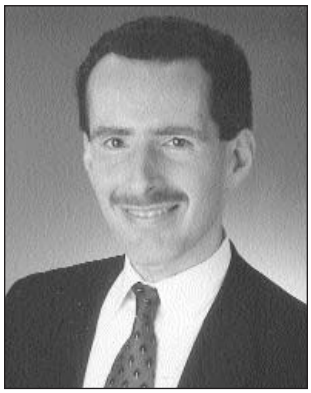
A Message from the Outgoing Chair

Lawyers, Hired Guns and Money

> *"I would rather be a doorkeeper in the house of God than live in that palace at Washington."*
>
> **First Lady Rachel Donelson, wife of President Andrew Jackson (1794-1828)**

> *"Let me tell you about Florida politicians. I make them. I make them out of whole cloth, just like a tailor makes a suit. I get their name in the newspaper. I get them some publicity and get them on the ballot. Then after the election, we count the votes. And if they don't turn out right, we recount them. And recount them again. Until they do."*
>
> **Edward G. Robinson to Humphrey Bogart in the 1948 classic *Key Largo***

On December 12, 2000, the Supreme Court of the United States declared a winner of the November 7, 2000 Presidential election. To say that there were problems with the election would be the quintessential understatement, but it is not my purpose here to editorialize on the election itself. Rather, what caught my attention most were events that reminded me how far we as attorneys have fallen.



After the first few days of exchanges between campaigns, both parties filed suit in court, for one remedy or another. On the front page of the *Daily News Express*, the banner headline screamed: "Here come the Lawyers." In the same issue of the newspaper, there was a survey that revealed that the law is one of the least sought after professions and that lawyers are among the least respected professionals. And, following the Supreme Court's final decision, the charges of partisanship, lack of integrity and incompetency elevated to the judicial level.

What has happened? Our great profession has become the whipping boy of the press and public. We are ranked two rungs above used car salesmen. Even Bob Costas felt compelled to make a nasty lawyer joke during the opening night of the Olympics coverage. (I suppose he forgot about the person who negotiated the multi-million dollar contract for him.) You want to throw some technicalities around to

Inside

do something nasty to someone else? Get a lawyer. You want some disingenuous, slimy argument to be made without getting your own hands dirty? Hire a lawyer. Even the term "lawyering" often carries with it a disparaging meaning.

Ironically, when the representatives of the Presidential candidates presented their arguments before Florida's Supreme Court, the "lawyers" were not making the arguments. Rather, it was the "attorneys," and *they* were quoting the individual parties, i.e., Gore said; Bush said. Similarly, when a person like former Secretary James Baker agreed with a judicial determination, he hailed the fairness of the judicial process. But when a court's ruling went against his colleague, Mr. Bush, the judges turned into Democratic political appointments. Why this awful turn of events regarding our profession?

I looked up "lawyer" and "attorney" in the Unabridged Random House Dictionary of the English Language (2d ed.). "Lawyer" has its root in the Middle English word "lag", meaning layer, stratum, a laying in order, fine tuning. The word "attorney" comes from the Middle English word "attourne," meaning "one who is turned to," i.e., for advice and assistance. It seems that, today, with the large number of lawyers, but the much smaller number of good ones, the public appears to believe that the lawyer always represents the bad guy. The "lawyer" defends the criminal, but the "State's attorney" or "prosecutor" puts him in jail. The public forgets that on *both* sides of a case stands an attorney to represent his or her client. The litigant believes that, hey, "I won my case because I was right, but I lost that case because of my bad lawyer." These wrong perceptions and half-truths must be changed. And, by the way, judges are lawyers, too.

It was only a few years back when a lawyer was a person to be admired and respected. "Stand up now," the mother told her son as they sat on their porch as Atticus Finch walked by, "a lawyer's passing." Now, the public, the media, even we tell lawyer jokes analogizing ourselves to the worst of the animal population. The change must begin with us. Don't laugh each time someone calls us sharks. Don't encourage abusive language toward attorneys by using those same words to describe *other* attorneys. The joke is that most people like and respect "their lawyer," but despise the profession in general. We must work hard to change that. And that work begins at home. Through the Bar Association, through our own practices, through our own actions as plain, regular people. Let us show offense at such language and actions. Let us show outrage at such remarks. And, all the while, let us do so with civility.

I am involved in a matter whereby I have attempted to contact the adversary's attorney. I have left messages with his secretary and on voice mail and I have sent no fewer than six certified letters. On November 17, 2000, 1½ *years* after this matter began, the lawyer answered me by faxing me a sarcastic, belligerent letter, taking issue with my recollection of the events, but giving my client the relief he had requested all along. How do I explain this to my client? In this case, it's easy—the client is my wife's grandfather. But what if he were a regular, paying client? What do you do? If the profession is painted with this brush and our impartial judicial arbiters are perceived as nothing more than political pawns, how can I tell my children what a noble profession their Daddy proudly represents? Saying this is someone else's problem is wrong. It is ours. We must address this major problem now before it completely destroys our profession.

* * * * *

This is my last message as Chair. On June 1, 1999, I assumed the position of Chair of the General Practice Section. Nineteen months later, after *two* millennium celebrations, and after having served as Chair during two centuries, on January 23, 2001, I will hand over the reins of this distinguished Section to my esteemed successor, Jeffrey M. Fetter from Syracuse.

What a wonderful ride it has been. What has made it so was the Section itself, our colleagues who tirelessly gave of themselves for the benefit of the membership. These folks get no financial remuneration, nothing other than the feeling of self-worth that comes from a job well done.

I have been privileged to work alongside of Bill Helmer. His stewardship in preparing the meetings and programs and his leadership at the Executive Commit-tee sessions during his tenure were attributes to emulate. I am proud to have been part of his team, and proud of his involvement with mine, especially his taking the helm as interim Executive Editor of *One on One* during my Chairmanship. Bill is a very special person and a very special friend.

I am privileged to have served our Section. A Chair could not have asked for a better, more supportive Executive Committee. My officers and district representatives were outstanding and a pleasure to work with. My Program Chair, Jeff Fetter, worked with me as a true leader, which will no doubt be reflected during his tenure as Chair beginning January 23, 2001. As a Section, we are also honored to have Steve Gallagher as our liaison to the NYSBA. I thank him for his diligent work and efforts on our behalf and for his friendship. I would be remiss, however, if I did not thank Sue Fitzpatrick who *is* the backbone behind Steve. Steve may think the thoughts, but Sue gets the work done. Also, our Summer and Annual Meetings would not have been possible if not for the remarkable work by Linda Castilla and her staff. Finally, I must publicly thank the beautiful and talented Wendy Pike and Lyn Curtis, who are singularly responsible for putting together *One on One*. I may not be easy to work with as Editor, but as Chair *and* Editor, well, thank you, ladies. I love you.

With these wonderful people, we accomplished much during my tenure. For starters, our 20th Anniversary celebration as a Section included many new things for our

Section. We designed and adapted a new three-color logo. Our publications also took on a new, svelte, upbeat, millennium look. We published Special issues of *One on One*, including a computer issue and two highly acclaimed issues of *The Best of the NYSBA*. The *Fax Update* has been praised and a special faxing to non-Section members of the Association actually *brought in new members* to our Section. Our Section was the first section to offer a monthly current awareness newsletter that is being distributed through broadcast fax. This has been acclaimed as an excellent presentation of cases of interest to members throughout the state. The feedback the Section received from members was that an electronic newsletter, distributed by e-mail, was the next logical step. And, indeed, it is now here.

The Section is in the forefront of introducing new products and services designed to help solo and small firm practitioners stay abreast of changes affecting all areas of legal practice. We have and will continue to make a concerted effort to provide information about emerging technology, including Web-based services to help members deliver legal services.

Our new "publication," *E-Brief*, was launched in October 2000 in conjunction with Stephen P. Gallagher, Ruth Leistensnider, and the Association's LOEM department. *E-Brief* is our attempt to bring practical, informative and useful information to the membership in a technologically advanced medium. It is a collection of article abstracts that have appeared in selected publications, including the *Harvard Business Review* and *Lawyers Weekly USA*, and elsewhere on the Web. It will supplement the valuable materials and membership benefits, including *One on One* and the *General Practice Fax Update*. The content will include substantive articles as well as materials focused on the business and practice of law. In just two "issues," it looks like a winner in the soon-to-come electronic, paperless generation. Click onto our Web page at http://www.nysba.org/sections/gp and"pick up" a copy.

We have finally uploaded our Web page, including selected articles from *One on One*, the *Fax Update*, and *E-Brief*, in full color, and summaries of minutes of Executive Committee Meetings and links to many law related sites of special interest to our membership.

We have increased the benefits for members of our Section, which include discounts on many NYSBA publications, such as the *Deskbook* and *Formbook* and the monograph series. Section members get special discounts with many outside vendors, including Lexis and Amicus Attorney.

True to the name of the Association, during my tenure, we expanded our Executive Committee Meetings outside the reach of the "City," holding them in Syracuse, the Catskills, and West Point, in addition to having our 2000 Summer Meeting and Executive Committee Meeting in the magnificent surroundings of Alexandria Bay in the 1000 Islands region of the state (following our resoundingly successful 1999 Summer Meeting in Hershey). We instituted monthly Executive Committee meetings, both in person and by telephone conference calls. We expanded our communications among the Executive Committee members by e-mail, to expedite results while reducing Section costs. We hope to include all Section members in our new listserv.

We continued our retreats and overnight Executive Committee meetings, at Villa Roma and West Point's Hotel Thayer, where our Executive Committee took two days from their busy schedules for the benefit of our Section.

The Section sponsored and co-sponsored exceptional CLE programs throughout the year. Among them was General Practice Day 2000 in New York City, held during the Association's Annual Meeting when we honored Chief Judge Judith Kaye. General Practice Day 2001 promises to be equally wonderful, with lectures and programs galore. As we did last year, the Section will hold an open meeting called the CyberCafe. This is a special technology exhibition featuring technology vendors who provide software and services of particular interest to solo and small firm practitioners. Some of the vendors who have committed to join us include: TechnoLawyer.com; Law.com; T.A.M.E., a trust accounting software vendor; PC Law, a popular time and billing software program from Alumni Computer Group; LexisOne, a new Web resource for small firm practice attorneys from Lexis Publishing; Amicus software for case management, and a number of other Web-based services. We look forward to greeting you there.

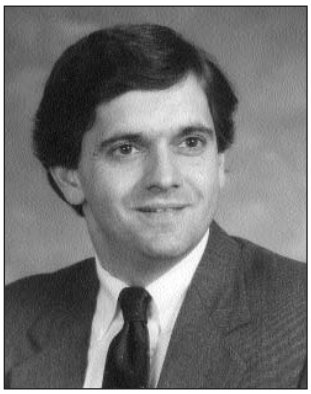
Probably the most lasting impact of my tenure will be our name change. During the better part of the last year, we have examined the Section's mission statement, evaluated the services the Section currently provides its members and explored new ways of creating member value. As a result, the Executive Committee decided that, with membership approval at the Annual Meeting, the Section will officially change its name to **General Practice, Solo & Small Firm Section** and complete a business plan to support the refinement in direction and purpose of the Section. This change is long overdue, and will bring about benefits to all Section members by increasing our partnership with LOEM and our focus on the business of law and its impact upon our substantial membership, while at the same time maintaining the core base of the Section. It is fitting that this change is being made during our 20th anniversary year and during a time of focus and introspection by all attorneys.

Every lawyer who practices in New York needs to attain a level of basic competence in order to serve the public. The General Practice, Solo & Small Firm Section is the one Section that works with other substantive sections to promote broad-based skills and competency in the practice of law.

Thanks again for a wonderful tenure.

Steven L. Kessler

A Message from the Incoming Chair



Just a brief message to introduce myself and to let you know what we have in mind for the 21st year of the General Practice, Solo & Small Firm Section. First and foremost, of course, is our change of name. In many cases when you see a new name for a product or service you find that that is all that was done—the name change. It's the same old product, the same old service. That is clearly not the case with your Section.

The change of name is enabling us to reach out to practitioners who may have believed that they have been underrepresented for some time within the NYSBA. Previously, there was a Special Solo & Small Firm Committee of the NYSBA, chaired by our own outgoing Chair, Steven L. Kessler. This committee has now been incorporated into our Section and we look forward to the active participation of the former members of the Committee. Our "new" Section now enables us to continue to serve on a more personal basis an even greater number of practitioners who are considered small firm or solo practitioners.

Not that we are going to abandon those members who may not meet the definition of a small or solo practitioner. All of us can now benefit from the expertise of each other, whatever the practice area, whatever the practice size. This is what our Section has prided itself on for many years. That is, being the only Section of the NYSBA that offers its members to interact with practitioners in all areas of practice—not in one limited specialty area. And, as many of you hopefully know, our membership is composed of many experts in many fields.

The common thread among all of us is that we appreciate the fact that you cannot practice law with blinders on. Keeping current on many areas of law or simply knowing who to turn to in unfamiliar areas of law is essential to a successful and fulfilling practice. In fact, we find that most of our members belong to other sections of the NYSBA as well as to our section for this purpose.

We hope that with our new name we will attract an even greater number of practitioners who will benefit from what the General Practice, Small & Solo Firm Section has to offer. Of course, if any of you wish to participate on an even greater basis in the direction of the Section, please contact any of our officers. Your input will be welcomed.

Now, on to 2001. The Annual Meeting of the Section will, we are certain, prove to be another successful event, offering not only interesting and timely programs, but ones that will assist our members in fulfilling their CLE obligations for the year, including enough ethics credits to fulfill your entire year's requirement.

This spring, the General Practice, Solo & Small Firm Section will be presenting a program to all attorneys that will be the first of its kind in New York State. Based on a program presented by the American Bar Association in Phoenix, Arizona in November of 1999, the program will examine the future of the practice of law in New York State. Nationally known experts, including the coordinators of the ABA conference, will join us in New York City on April 26, 2001 for our conference. We have all heard the threats of MDPs and the Internet on our practice. This program is designed to take those threats and the accompanying concerns and present them to New York practitioners in a manner that will allow us to capitalize on the opportunities of the future.

"Our 'new' Section now enables us to continue to serve on a more personal basis an even greater number of practitioners who are considered small firm or solo practitioners."

Summer 2001 will bring all of us back to New York City for the first Summer Program our Section has held in the Big Apple in many years. The title of the program will be "Representation of the Professional Client." This is a program that only our Section can present. Bringing together all aspects of the representation of a professional client, our panels of experts will examine how to assist the professional clients in all areas of practice including: selection of business entity, acquisitions and sales of practices, representing the professional in a matrimonial action or in a criminal action involving the professional's practice, estate and income tax planning as well as pension and retirement planning for the professional. Many of us represent profes-

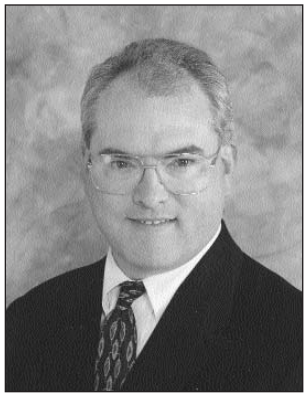
sional clients in one area of practice or another and many of us represent such clients in many areas of practice. How many meetings have you had with a professional client when a totally unrelated question comes up? One that begs for an immediate answer? We hope you will join us for this program as it is certain to be very helpful to all of us. When you couple a great program like that with a trip to a ball game in New York City and a dinner cruise around New York Harbor, how could life be better? And, of course, we are dedicated to presenting our program on the most cost efficient basis possible. What better time to bring your family with you to a meeting. Hey, we guarantee that you'll see a pennant winner, whatever game we go to. What other city can promise that?

"When you couple a great program like that with a trip to a ball game in New York City and a dinner cruise around New York Harbor, how could life be better?"

Well, that's my brief introduction to the new and improved General Practice, Small & Solo Firm Section. We all look forward to working together with all of you throughout the year. If you ever have any suggestions, comments or would like to just talk shop, please join us at one of our many programs throughout this coming year or just give any of the members of the Executive Committee a call at the numbers on the back page of this edition of *One on One* (did I mention the awards *One on One* has been awarded over the years?—maybe next time).

Jeffrey M. Fetter

From the Towpath



I spent the Sunday before Halloween visiting an exhibit at Union College dealing with the history of the Erie and Barge canals. As I looked over the models, drawings, paintings, and assorted artifacts, I was reminded of the astonishing vision and energy possessed by New York's political leaders during the early 19th century. They were not afraid to think big, even though the technology available to them was little more than hand tools and raw muscle. And the people of the Empire State put their backs into the Canal, too; it was an instance of a virtually unanimous community embracing a common future.

Next came the railroads, which were often financed by municipal debt issued by communities anxious to connect with the wider world. Unfortunately, the financial panics of the late 19th century triggered a landslide of defaults, and a chastened Constitutional Convention in 1894 enacted severe limitations on the ability of governments to borrow against the future. Yet, as a state, we still thought big. Another feature of the 1894 Convention was the dedication of millions of acres of the northern forest to the Adirondack Forest Preserve.

The scale of our achievements did not diminish through the first three-quarters of the 20th century. Witness the building of the Thomas E. Dewey Thruway and the career of Robert Moses, who spent over four decades changing the state's landscape. Here at the New York Power Authority, we have custody of two of his greatest achievements—the power projects at Niagara Falls and Massena. Not to be outdone, Governor Rockefeller built his mammoth Empire State Plaza in Albany and scores of new campuses in the State University System.

Have we seen the end of the era of the big project? I don't think so. Consider first the state's old big projects I just mentioned—the forest preserve, the canals, and the railroads. In recent years, we have seen the creation of the Long Island Pine Barrens Preserve and the purchase of new tracts within the Adirondack and Catskill Parks. The canals and the railroads are enjoying something of a renaissance, and major improvements are being planned. The late, great Pennsylvania Station will rise from the ashes if Senator Moynihan's plan to convert part of the old Post Office prevails.

And new opportunities and challenges are just around the corner. We may have to live with interim solutions for a period after the Fresh Kills landfill closes (on December 31, 2001!), but we will eventually have to meet this enormous challenge with a long-term solution. As energy demand continues to climb, we will have to develop additional sources of power. Fiber optic cable is making its way down old pipes underneath the City and new pipes along the Thruway, carrying with it the promise of a revolution in communications technology.

New York's lawyers bear a great responsibility as the state undertakes this program. We will be called upon to advise developers, citizens, governments, banks, vendors, contractors, professionals, and media outlets. We must work hard to protect the rights of our clients, but we must play fair. If a public project will serve the common good, a lawyer should think long and hard before adopting a strategy designed to increase transaction costs in the hope that it will provide the straw the breaks the camel's back.

Of course, as a state, we will never recover the unanimity that was possible when the Erie Canal was built, and that is probably a good thing. We are a more diverse people now, and the rich ethnic blend we offer to the world today is far removed from the situation that prevailed in 1825. Yet it was precisely that great project that first made our state the magnet for immigrants from every part of the globe. New York was able to invite and embrace diversity because, when the time came to work together towards a common future, its people did not shrink from that challenge.

I suppose that I should reveal that I come by my passion for Clinton's Ditch (that's Dewitt, not Hillary) honestly. My great-great-grandfather, "Black Bill" Dunn, owned a hotel along the Canal at State Bridge a mile or so down the road from the site of the Turning Stone Resort. It's too bad that the family did not hold on to that particular lot. And the canalside store of a distant cousin, William H. Helmer, figures prominently in what is probably the most famous of all Canal paintings. That painting, which is traveling with the exhibit, displays the proprietor's name above the door next to . . . a painting of the painting . . . within which one can see the store and the painting . . . and so on. *Ad infinitum*.

Well, with that infinite regression within a digression, I will now recede from view as Interim Editor-in-Chief of *One on One*. Although I will continue to contribute articles for our superb publication, the title of Editor-in-Chief will now revert to our esteemed outgoing Chair, Steven Kessler. By the way, the Erie Canal exhibit will be traveling throughout New York State over the next several months courtesy of Governor Pataki, so I urge you to keep your eye on your local events calendar. It opens a fascinating window on New York State history.

William S. Helmer

The Parsing of Section 107 of CERCLA

By William S. Helmer

In this issue, we offer two articles, each of which centers on a section of the law that has radically altered real estate practice in this state. Both rely upon the principle of "strict liability" for those persons unfortunate enough to be associated with an event that results in the contamination of the environment by certain substances. In the case of § 181 of New York's Navigation Law, the event that triggers liability is a "discharge" of "petroleum." In the case of § 107 of the federal "superfund" law,[1] otherwise known as the "Comprehensive Environmental Response, Compensation, and Liability Act" or "CERCLA," the event that triggers liability is a "release" of a "hazardous substance."

Andrew Gilchrist of the firm of Harris Beach & Wilcox, LLP takes on the State Navigation Law, while my article addresses CERCLA. Before plunging in, we must dispose of some preliminary matters. In the first place, New York State's own "superfund" law does not incorporate the strict liability concept. Title 13 of article 27 of the Environmental Conservation Law, wherein the State superfund provisions may be found, is really part of the state's federally approved program for dealing with hazardous "waste" (a far more narrow category than that involving hazardous "substances")[2] and the facilities at which such wastes are treated, stored, or disposed of.

Nor do we deal here with the concept of the "superlien." Several northeastern states, including nearby Massachusetts, have enacted statutes that create a lien in favor of the government for costs of cleanup, and this lien displaces previously filed liens, such as mortgages, and can attach to property of the owner other than the property requiring the cleanup.[3] These statues have bedeviled banks and title insurers in these states for over a decade, and very few states have been willing to follow the same path. New York has not embraced the "superlien" concept, although a statute dating back to the 19th century, § 1307 of the Public Health Law, gave cleanup liens priority until New York's banking industry had the statute amended in 1992. Both CERCLA and the Navigation Law do provide for liens, but these do not pre-empt previously perfected interests.[4]

Finally, we must explain the relationship of "hazardous substances" (CERCLA's *raison d'être*) and "petroleum" (the *bete noire* of the Navigation Law). CERCLA's broad category of "hazardous substances," which includes many things that are absolutely essential for human life and found in any box of Wheaties (such as "copper and compounds"),[5] excludes "petroleum" and "natural gas" and associated products. It has been wryly observed that the obtaining of this exclusion in the waning hours of the Carter administration was the single greatest achievement of any lobbyist at any time in American history and that, if the intrepid lobbyist had taken as a fee 1% of the savings realized by the industry by virtue of this provision, he would be able to buy and sell Bill Gates many times over.

But many states, before and after the enactment of CERCLA, had taken on the oil spill problem on their own. Four years before CERCLA was enacted, Governor Carey had signed into law the new article 12 of the Navigation Law, imposing strict liability for discharges of "petroleum," which was and is defined as "oil or petroleum of any kind and in any form."[6] Although not exactly parallel to the exclusion appearing in CERCLA, this definition would appear to be at least as broad. Thus, there is some potential for overlap, and it would seem that materials that would be covered by CERCLA but for the federal exclusion of petroleum will always be covered by the Navigation Law, as will any material, hazardous or otherwise, that meets that law's definition of petroleum.

What Hath Congress Wrought?

CERCLA is a very complicated and often obscure statute. As one court noted, the law was "hastily and inadequately drafted."[7] In the 20 years since its enactment, some of the obscurity has been rectified by amendments[8], regulatory clarification[9], and court-generated "federal common law," but much uncertainty remains. Evidence of the intent of the lame duck 94th Congress on many important aspects of the law is simply lacking, although the general purpose was clear—Congress was determined to provide for a federal response to the release of hazardous substances from typically abandoned and/or inactive sites and facilities.[10]

At the outset, two types of responses were identified: "remedial actions," generally designed to effectuate long-term solutions at such contaminated sites and facilities, and "removal actions," generally designed to implement rapid control, containment, and cleanup of spills or releases of hazardous substances.[11] Congress also provided for recovery of damages to natural resources, for recovery of health assessment costs, and, most strikingly, for recovery by *private parties* of cleanup costs under certain circumstances.

Congress was equally determined to ensure that the cost of any governmental response would not be borne by the public at large.[12] Instead, certain categories of persons bearing particular connections with

the contaminated location would be subjected to liability. Of the four such categories, two relate to the ownership or the operation of property subject to a remedial or removal action—the current owner or operator of the property and the owner or operator of the property "at the time of disposal of any hazardous substance." In the case of a different owner or operator intervening between the current owner or operator and the owner or operator "at the time of disposal," it would appear that liability is not triggered.[13] Two other categories of "potentially responsible parties" ("PRPs" in CERCLA lingo) were also identified: those who "arrange" to have others handle their hazardous substances and those who "transport" hazardous substances.

". . . CERCLA created a situation in which massive liability, as well as new statutory causes of action, could, and often did, pass silently across the closing table."

Soon after CERCLA became law, the courts concluded that the liability imposed by CERCLA was strict and subject to only the limited defenses allowed by the statute.[14] Furthermore, CERCLA was held to be retroactive, applicable to releases occurring at any time.[15] Finally, at least in cases in which the government is the plaintiff, joint and severable liability among multiple defendants was adopted as the model.[16] Thus, CERCLA created a situation in which massive liability, as well as new statutory causes of action, could, and often did, pass silently across the closing table. It is now apparent that CERCLA has had, and will continue to have, a radical impact on real property practice in a host of areas, including disclosure and due diligence requirements, contract negotiation, and conveyance structuring.

Environmental practitioners often refer to the "CERCLA 107(a) cause of action," but this is really a misnomer. As the preceding section noted, the section contemplates four kinds of recovery: for government removal or remedial actions, for private party costs, for natural resource damages, and for health assessments. And it contemplates recovery from four categories of persons: current owners and operators, former owners and operators, those who arrange to have others handle their hazardous substances, and those who transport hazardous substances. Thus, § 107(a) of CERCLA really creates *16* causes of action, each of which can stand upon its own. For instance, a private party can go after a transporter, just as the government can go after a facility's current owner.

Perhaps the best way to appreciate the complexity of this section is through a graphic presentation. The chart that accompanies this article tracks the language of the section into its various conceptual compartments, the four types of recovery appearing along the top half of the page left-to-right, and the four types of liable parties appearing along the bottom half of the page left-to-right. Following the statute, the latter four are identified by the arabic numerals "1" through "4", and the former four are identified by the roman capitals "A" through "D." Thus, the private party pursuing the transporter is using the "B-4" cause of action, and the government pursuing a facility owner is using the "A-1."

Of the four types of recovery, types "C" and "D" (health assessment costs and natural resource damages), have been infrequently made the subject of litigation. By contrast, types "A" and "B" (government recoveries of removal or remedial action costs and private party recoveries) have been the subject of continuous litigation for almost two decades. It should be noted that subtle, but important, distinctions exist between the elements that are required to be proven by a government plaintiff in the type A case and those required to be proven by a private party plaintiff in a type B case. Not surprisingly, the easy path to recovery laid out for the government becomes considerably more challenging when the private party selects this route.

Government Actions—The "Type A" Case

Courts have refined the basic elements of the government's cause of action to four. The government must establish by competent proof that (1) the place or thing in question is one of the locations identified by the statute; (2) a release or threatened release of a hazardous substance from the location has occurred; (3) the release or threatened release caused the incurrence of response costs; and (4) the defendant falls within one of the four PRP classes. If there are undisputed facts establishing these four elements, the government will be entitled to summary judgment as to the issue of liability.[17] The government also enjoys the benefit of critical presumptions in its favor. Assuming the other elements are proven, causation of the release is to be presumed.[18] A similar presumption relieves the government of showing consistency with the National Contingency Plan (NCP), the regulatory blueprint for all Superfund cleanups.[19]

Private Party Actions—The "Type B" Case

The federal common law of strict liability moved in a somewhat different direction when the private party CERCLA § 107(a) action was litigated. Such private parties found that they were obliged to prove consistency with the NCP and that the costs incurred were "neces-

sary."[20] More significantly, courts began to understand such actions as being in the nature of "contribution," which implies separate and divisible liability and, hence, a greater emphasis on causation.[21] In one case, a court noted that, in a private party CERCLA § 107(a) action, the plaintiff must prove not only the elements of CERCLA liability, but also the "accountability" of the defendant.[22] And the Supreme Court has held that attorney's fees were not recoverable in the Type "B" cause of action.[23]

At the same time, certain decisions afforded some relief to private party CERCLA § 107(a) plaintiffs. Compliance with the NCP did not require that the site be on the National Priorities List (NPL).[24] A cleanup conducted entirely under state auspices could support a private party cost recovery action.[25] Indeed, when a revised NCP was issued in 1990, the EPA acknowledged that a "substantial compliance" standard would generally apply in such cases.[26] It remains clear that the private party cause of action afforded by CERCLA § 107(a) is a continuing and fruitful source of the new federal common law of liability for releases of hazardous substances.

Express Affirmative Defenses

Three narrow defenses are allowed to PRPs seeking to avoid liability under CERCLA § 107(a). The first two, which depend upon God or War being the sole cause of the release, are obviously of limited utility to the PRP. The third, which depends upon an unrelated third party being the sole cause, is the most frequently utilized of the CERCLA affirmative defenses. The so-called "innocent landowner" defense, discussed below, is a subspecies of the third-party defense. A PRP seeking to establish the third-party defense must show that:

(a) the contamination was caused solely by a third party with whom the PRP did not share a direct or indirect contractual relationship;

(b) the PRP exercised due care with respect to the hazardous substance involved in the release or threatened release; and

(c) the PRP took precautions against the third party's foreseeable acts or omissions and the foreseeable consequences thereof.

The nature of the connection required between the "act or omission" causing the release and the "contractual relationship" is the subject of disagreement between the federal courts.[27]

The "Innocent Landowner" Defense

The "innocent landowner" defense stems from the inclusiveness of the definition of "contractual relationship." As set forth in CERCLA § 101(35), a contractual relationship arises from "land contracts, deeds or other instruments transferring title or possession."[28] Thus, if the third party to whom the PRP is attempting to shift the liability is the source of the PRP's interest, the very "contractual relationship" by which the interest was acquired from that third party will be a serious obstacle.

"Given the high stakes and the rigorous standards involved in CERCLA, it is little wonder that virtually every commercial real estate closing is now preceded by some kind of environment survey or audit."

This obstacle can be overcome, but only if the PRP can meet certain additional criteria. These additional criteria may be summarized as follows:

(a) the PRP acquired the site after the substances at issue were placed there, and

(b) the PRP (i) at the time of acquisition did not know or have reason to know that the released hazardous substances were disposed of on, in, or at the facility, (ii) was a government entity acquiring by escheat or other involuntary transfer or acquisition or pursuant to eminent domain authority, or (iii) took by inheritance or bequest.

If the PRP can successfully meet these additional criteria, the document tying the PRP to the third party to whom the PRP seeks to shift the liability will not constitute a "contractual relationship" and the third party defense will be available.

It is readily apparent that the criteria discussed above must focus the real property practitioner's attention on disclosure and due diligence obligations at every closing. The "contractual relationship" definition itself commands such attention by both the seller and the buyer. The seller must be aware that, if he has actual knowledge of a release or threatened release that occurred "when" he owned the contaminated facility and fails to disclose it, he "shall be treated as liable under Section 107(a)(1) and no defense under Section 107(b)(3) shall be available."[29] At the same time, the buyer must understand that, in order to establish that he had no "reason to know" of the contamination before acquisition, he must demonstrate that he conducted "all appropriate inquiry into the previous ownership and uses of the property consistent with good commercial and customary practice in order to minimize liability.[30] Given the high stakes and the rigorous standards involved in CERCLA, it is little wonder that

virtually every commercial real estate closing is now preceded by some kind of environment survey or audit.

Other Defenses

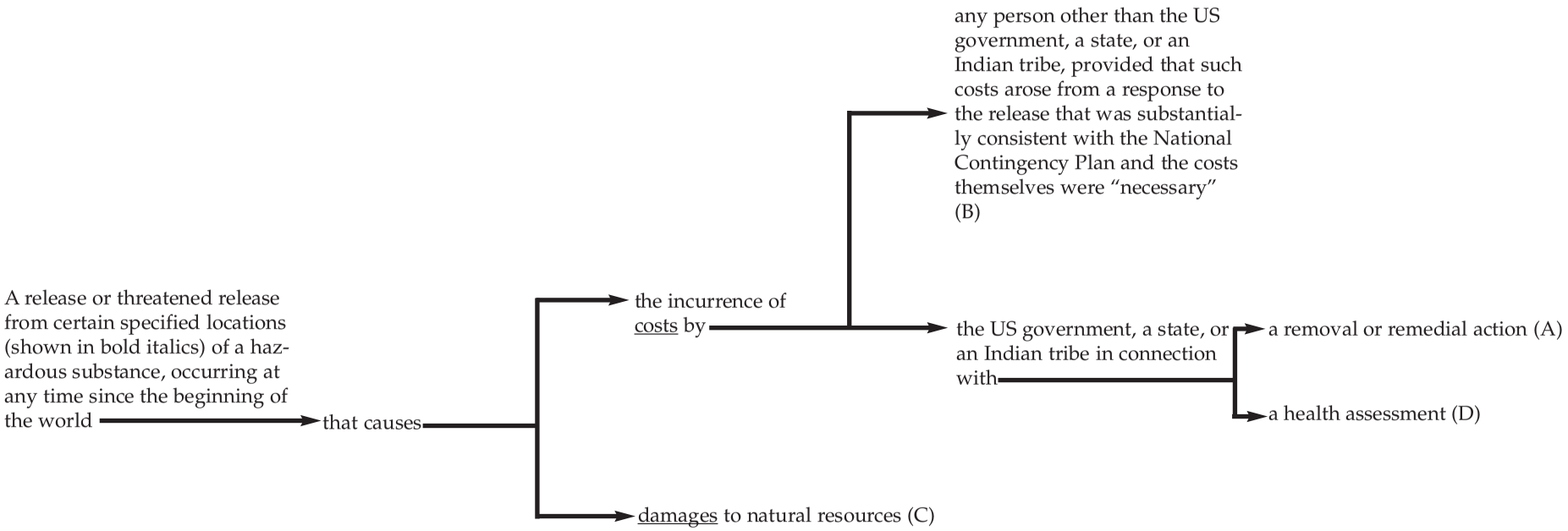
While the CERCLA § 107(b) defenses identify themselves as "exclusive," jurisdictional and certain other affirmative defenses remain available. In authorizing nationwide service of process,[31] SARA made very unlikely any successful objection to personal jurisdiction on the part of defendants in government-initiated cost recovery actions. Private party cost recovery actions continue to present the possibility that the contracts between the forum state and the sought-after PRP will be insufficient. Traditional challenges to subject-matter jurisdiction, such as those based on standing or failure to join a necessary party have not been successful.[32] Of course, the introduction of a six-year statute of limitations for cost recovery actions by Congress in 1986 creates a potential affirmative defense.[33] Equitable defenses, such as laches, unclean hands, and estoppel have been allowed by some courts and rejected by others.[34] In preparing an answer, the practitioner should take particular care to exclude defenses that have been clearly identified by controlling case law as unavailable under CERCLA and to include those that are supported by the facts and not so identified.

Endnotes

1. 42 U.S.C. § 9607.
2. Any "hazardous waste" covered by the Resource Conservation and Recovery Act is, by definition, a "hazardous substance" under CERCLA by virtue of 42 U.S.C. § 9601(14). This definition incorporates by reference the various elements, compounds, and mixtures that are made the subjects of regulatory attention in six major federal environmental programs.
3. *See, e.g.*, Mass. Gen. L., Ch. 21E.
4. 42 U.S.C. § 9607(l) and Navigation Law § 181-a.
5. 40 C.F.R. § 401.15(22).
6. L. 1977, ch. 845.
7. *United States v. A&F Materials Co.*, 578 F. Supp. 1249, 1253 (S.D. Ill. 1984).
8. The Superfund Amendments and Reauthorization Act, Pub.L. 99-499, 100 Stat. 1613 (1986), §§ 300-330.
9. For example, in 1995, the Environmental Protection Agency confirmed that blameless owners of property with contaminated acquifers generally would not be compelled to undertake cleanups. 60 Fed. Reg. 34790.
10. *United States v. A&F Materials Co.*, *supra*, at 1252.
11. *See Tri-County Business Lawyers Joint Ventures v. Clow Corp.*, 792 F. Supp. 984, 991 (E.D. Pa. 1992).
12. *United States v. Reilly Tar & Chem. Corp.*, 546 F. Supp. 1100, 1111-1112 (D. Minn. 1982).
13. *Cadillac Fairview/California v. Dow Chem. Co.*, 21 E.R.C. 1108, 1113 (C.D. Cal. 1984), *rev'd*, in part, 840 F.2d 691 (9th Cir. 1988).
14. *State of New York v. Shore Realty Corp.*, 759 F.2d 1032, 1042 (2d Cir. 1985).
15. *United States v. Northeastern Pharmaceutical & Chem. Co.*, 810 F.2d 726 (8th Cir. 1986), *cert den.*, 484 US. 848 (1987).
16. *Bedford Affiliates v. Sills*, 156 F.3d 416 (2d Cir. 1998).
17. *United States v. Conservation Chemical Co.*, 619 F. Supp. 162 (D.C. Mo. 1984).
18. *United States v. South Carolina Recycling and Disposal, Inc.*, 653 F. Supp. 984, 992, n.5 (D.S.C. 1984).
19. *City of Philadelphia v. Stepan Chem. Co.*, 713 F. Supp. 1484, 1486 (E.D. Pa. 1989)
20. *Id.*
21. *See, e.g., Bedford Affiliates v. Sills*, *supra.*
22. *FMC Corp. v. Northern Pump Co.*, 668 F. Supp. 1285 (D.Minn. 1987).
23. *Key Tronic Corp. v. United States*, 511 U.S. 809.
24. *See, e.g., Interchange Office Park, Ltd. v. Standard Industries, Inc.* 654 F. Supp. 166, 168-169 (W.D.Tex 1987).
25. *Wickland Oil Terminals v. Asarco*, 792 F.2d 887 (9th Cir. 1986).
26. The NCP, as revised and repromulgated on April 19, 1990, adopts a substantial compliance standard, and "immaterial or insubstantial deviations" from the NCP will not bar private party recovery. 40 C.F.R. §§ 300.700 (c)(3)(i), (4).
27. *Cf. United States v. Northernaire Plating Co.*, 670 F. Supp. 742, 748 (W.D. Mich. 1987) with *Westwood Pharmaceuticals, Inc. v. National Fuel Gas Distribution Corp.*, 964 F.2d 85, 91 (2d Cir. 1992).
28. 42 U.S.C. § 9601(35).
29. 42 U.S.C. § 9601(35)(c).
30. 42 U.S.C. § 9602(35)(b).
31. 42 U.S.C. § 9613(e).
32. *See, e.g., United States v. Dickerson*, 640 F. Supp. 448, 450 (D.Md. 1986) and *City of Philadelphia v. Stepan Chemical Co.*, *supra*, at 1143; *but see D'Imperio v. United States*, 575 F. Supp. 248, 253 (D.N.J. 1983).
33. 42 U.S.C. § 9613(g).
34. *Cf. United States v. Conservation Chemical Co.*, 619 F. Supp. 162, 206 (W.D.Mo. 1985) with *United States v. Davis*, 794 F. Supp. 67, 71 (D.R.I. 1992).

The elements of a 107 cause of action.

CERCLA § 107(a)(1-4)(A)
§ 107(a)(1-4)(B)
§ 107(a)(1-4)(C)
§ 107(a)(1-4)(D)



subjects the following persons (shown in regular italics) to liability to the party bearing such damages or costs in the first instance *eo instanti* for any and all such damages or costs:

1. the *"current" owner and/or operator of a **vessel or facility.***
2. any *past owner or operator of **a facility*** whose period of ownership or operation coincided with the disposal of any hazardous substance or substances at ***the facility.***
3. any person who *owned or possessed any hazardous substance or substances and, by contract, agreement, or otherwise, arranged* to have it or them disposed of or treated at ***a facility or incineration vessel*** or transported to a ***facility or incineration vessel*** for those purposes.
4. any person *who accepts or accepted any hazardous substance or substances for transport to **disposal or treatment facilities, incineration vessels, or sites*** selected by such person.

Fundamentals of Liability for Oil Spills in New York State

By Andrew W. Gilchrist

This article offers the fundamentals on liability for oil spill remediation in New York State. A discussion is presented on the sources of the law on oil spill liability, who is liable, the standard of liability, contractual allocation of liability, and contribution among responsible parties.

Where is the Law?

The law in New York concerning liability for oil spills is found at article 12 of the Navigation Law, entitled Oil Spill Prevention, Control and Compensation.[1] The general scheme under article 12 is similar to many statutes concerning environmental remediation: certain parties are deemed strictly liable[2] for cleaning up oil spills; if such a party fails or refuses to perform the cleanup, the Government will perform the cleanup through the use of a state fund[3] and thereafter seek cost recovery from the responsible party or parties.

This statutory scheme under the Navigation Law places emphasis on the *immediate* cleanup of oil spills. Once the cleanup is underway or complete, the emphasis shifts to responsibility for the cost of that cleanup. As one court has explained:

> When a spill is discovered, response must be swift. If the Government must bear the cost of cleanup, there must be a ready pocket for reimbursement. It is the owner or operator at the time the spill is first discovered who has control of the site and the source of discharge. He is readily identifiable. He is most likely to be in position to halt the discharge, to effect an immediate cleanup, or to prevent a discharge in the first place. If the onus of cleanup falls on the Government, he is the clearest and most expeditious source of reimbursement.[4]

Thus, the policy in New York is to protect the environment through prompt and effective remediation of oil spills upon discovery. Scrutiny is heightened when private drinking water supplies are at risk. The issue of who pays for the cleanup, while critical, is secondary to getting the cleanup started and completed. Ultimately, the question of who is responsible for the cost of the oil spill cleanup implicates both statutory liability and common law principles of allocation and contribution. These issues are discussed below.

Also, in those cases where a private party fails or refuses to perform the cleanup and the State performs the cleanup through the State Spill Fund, the State will not only commence a cost recovery action for reimbursement but also has the authority to file an environmental lien upon the real property on which the discharge occurred as well as any other real property owned by the responsible party.[5] The Navigation Law presents a statutory scheme where defenses are few and liability is broad.

". . . in those cases where a private party fails or refuses to perform the cleanup and the State performs the cleanup through the State Spill Fund, the State will not only commence a cost recovery action for reimbursement but also has the authority to file an environmental lien upon the real property on which the discharge occurred as well as any other real property owned by the responsible party."

The practitioner should also be aware that the New York State Department of Environmental Conservation (NYSDEC) has adopted regulations concerning petroleum bulk storage, including tank and container requirements, registration requirements, and spill reporting requirements. These regulations are found at Parts 612-614 of Title 6 of the New York Code of Rules and Regulations (N.Y.C.R.R.).[6] Attention to these regulations is important for ongoing facility operations as well as spill incidents.

Who is Liable?

Navigation Law § 181(1) provides: "Any person who has discharged petroleum shall be strictly liable, without regard to fault, for all cleanup and removal costs and all direct and indirect damages, no matter by whom sustained."[7]

The Navigation Law defines "discharge" as:

> any intentional or unintentional action or omission resulting in the releasing, spilling, leaking, pumping, pouring, emitting, emptying or dumping of

> petroleum into the waters of the state or onto lands from which it might flow or drain into said waters, or into waters outside the jurisdiction of the State where damage might result to the lands, waters or natural resources within the jurisdiction of the state.[8]

Further, "waters" is defined under the Navigation Law as including all "bodies of surface or groundwater, whether natural or artificial."[9]

The Courts in New York have applied these statutory provisions to accord strict liability[10] to owners and operators of petroleum systems from which releases have occurred, as well as additional third parties based upon the facts of each situation.[11] This is discussed below.

Owners

Courts are both clear and uniform that the Navigation Law imposes strict liability for oil spill remediation upon the owner of the petroleum system from which the release occurred.[12]

This principle was recently reaffirmed by the Appellate Division, Third Department[13] in *State v. Green*[14] and *State v. Speonk Fuel Inc.*[15] Indeed, in *State v. Green*, the Third Department approvingly reviewed its prior decisions on Navigation Law liability based on system ownership status:

> In State of New York v. New York Cent. Mut. Fire Ins. Co. (147 A.D.2d 77, 542 N.Y.S.2d 402), this court was first faced with the question of whether the owner of residential property could be held liable under Navigation Law article 12 for a petroleum spill occurring on the premises, holding that "by virtue of ownership and control of the heating system from which the fuel oil leaked, the homeowner is strictly liable for the clean-up costs of the spill; proof of a wrongful act or omission is not required" (id., at 79, 542 N.Y.S.2d 402 [emphasis supplied]). Next, in State of New York v. Wisser Co. (170 A.D.2d 918, 566 N.Y.S.2d 747), we considered a claim of liability against the owner of a gasoline service station that had been leased and subleased to other entities and was apparently under the control of the lessee or sublessee at the time of the discharge. Our analysis focused on the issue of ownership of the underground petroleum storage tanks and, finding as a matter of law that the defendant had retained ownership, we upheld the imposition of liability against it as "the owner of a system from which a discharge occurred * * * regardless of a lack of proof of any wrongful act or omission by such owner directly causing the discharge" (id., at 919, 566 N.Y.S.2d 747 [citation omitted]; see, Domermuth Petroleum Equip. & Maintenance Corp. v. Herzog & Hopkins, 111 A.D.2d 957, 958-959, 490 N.Y.S.2d 54).

". . . ownership of the petroleum system is key under the Navigation Law, not the ownership of the impacted real property."

> Likewise, in Matter of White v. Regan [171 A.D.2d 197, 575 N.Y.S.2d 375, *lv. denied* 79 N.Y.2d 754] and State of New York v. Tartan Oil Co. [219 A.D.2d 111, 638 N.Y.S.2d 989], we imposed liability against the current owners of leaking underground storage tanks, despite evidence that the discharges may have taken place before they took title to the property, based upon their ownership of the buried tanks. In Matter of White v. Regan (supra, at 199-200), we noted that "[t]his court has consistently construed Navigation Law §181(1) so as to impose liability on the owner of a system from which a discharge occurred" (emphasis supplied).[16]

Critically, the practitioner must be aware that strict liability attaches to the system owner without regard to intent or fault. No evidence is needed showing such owner caused or contributed to the petroleum release. Mere title is the ticket to liability. Such draconian rules make for particularly disgruntled clients.

The practitioner must also appreciate that strict liability based upon ownership status under the Navigation Law attaches to the owner of the petroleum system from which the discharge occurred, not to the owner of the real property onto or into which the petroleum is released. In other words, ownership of the petroleum system is key under the Navigation Law, not the ownership of the impacted real property. This distinction was made clear in *State v. Speonk Fuel, Inc.*:

> This court has consistently construed Navigation Law § 181(1) so as to impose liability on the owner of a system from which a discharge occurred in the absence of evidence that the owner caused or contributed to the discharge *** (Matter of White v. Regan, 171 A.D.2d 197, 199-200, 575 N.Y.S.2d 375, lv. denied 79 N.Y.2d 754 [citations omitted]). In most cases, the property owner and system owner are one and the same (see, e.g., State of New York v. Arthur L. Moon Inc., 228 A.D.2d 826, 643 N.Y.S.2d 760, lv. denied 89 N.Y.2d 861, 653 N.Y.S.2d 282, 675 N.E.2d 1235; State of New York v. Tartan Oil Corp., 219 A.D.2d 111, 638 N.Y.S.2d 989), but where there is no such unity of ownership, liability without regard to fault is properly imposed on the system owner and not on the faultless property owner (see, State of New York v. Green, __A.D.2d__ [decided herewith]).[17]

Further, strict liability attaches to the petroleum system owner regardless of when the petroleum release occurred. Again, the Third Department in *State v. Green* reiterated the rule that strict liability will be imposed against the current owner of a petroleum system from which a release has occurred, despite evidence that the releases occurred before the current owner took title.[18] In such cases, the current owner cannot shift its primary liability for remediation to the prior owner of the petroleum system; rather, its remedy lies with its secondary claim against that prior owner for indemnification or contribution.[19]

Operators

The Navigation Law imposes strict liability not only upon the owners of the petroleum system, but also those parties operating the system at the time of the release. Here, the statute imposes strict liability upon the operator as a "person who has discharged petroleum."[20]

Other Third Parties

Courts have also imposed strict liability upon parties who neither own nor operate the petroleum system from which a release has occurred, finding nonetheless that such parties fit within the expansive category of "discharger." Thus, liability has been imposed upon contractors who have improperly installed underground storage tanks,[21] the owner of an oil truck involved in a motor vehicle accident,[22] the deliverer of oil,[23] the repairer of an oil tank,[24] and even upon firefighters who damaged an aboveground petroleum tank while fighting a fire.[25] The rationale for finding these parties within the purview of the Navigation Law is that they set in motion the events which resulted in the discharge,[26] and that they were in a position to halt the discharge, to effect an immediate cleanup or prevent the discharge in the first place.[27]

Recently, the Third Department addressed the question of whether the stockholders or officers of corporations which own or operate petroleum systems can be held individually liable in the event of a release. The court declined to attach the liability to stockholders or officers based on that status alone.[28] However, the court went on to hold that if such a stockholder or officer is directly, actively and knowingly involved in the culpable activities or inaction which led to a spill or which allowed a spill to continue unabated, strict liability under the Navigation Law as a "discharger" will attach regardless of corporate title.[29] On this issue, the Third Department opined that such an approach "strikes the appropriate balance between holding only culpable individuals personally liable for wrongful corporate activities leading to a discharge and protecting those individual stockholders and officers who remain uninvolved in corporate wrongdoing who are entitled to rely on the corporate form to insulate them from personal liability."[30]

Having been accorded strict liability without regard to fault for the cleanup of an oil spill under the Navigation Law, are there any remedies for a faultless yet statutorily responsible party? This is discussed below.

Remedies

Contractual Allocation

Although a party may be deemed a "discharger" under the Navigation Law, and thus strictly liable for cleanup costs in the first instance, parties may determine ultimate responsibility for such costs through contract. Thus, contracts shifting ultimate responsibility for cleanup costs from owner to tenant[31] and vendor to vendee[32] will be upheld. These claims, however, are secondary in nature; primary liability under the Navigation Law will remain with the "discharger," subject to subsequent indemnification or contribution under private contractual allocation. In other words, and consistent with the overall scheme of the Navigation Law, even the faultless yet statutorily liable party is required to immediately effectuate the cleanup, leaving the ultimate cost responsibility therefor to be determined later.

Contribution: Discharger v. Discharger

The Navigation Law § 181(5) provides for a private right of action for anyone damaged by an oil spill: "Any claim by any injured person for the costs of

cleanup and removal and direct and indirect damages based on the strict liability imposed by this section [Navigation Law § 181] may be brought directly against the person who has discharged the petroleum."[33]

Certainly, an innocent party damaged by an oil spill may use this provision in a claim against a discharger. However, may a party itself deemed a "discharger" under the Navigation Law use this provision to seek indemnification or contribution from other "dischargers"? The Court of Appeals in *White v. Long* held that such a claim does exist:

> The Navigation Law provides for a private cause of action without denying standing to a property owner deemed a discharger to sue another discharger in strict liability for clean-up costs. The plain language of section 181(1) imposes liability on any discharger for clean-up costs "no matter by whom sustained," and subdivision (5) permits "any injured person" to bring a claim against a discharger for clean-up costs and damages. In fact, subdivision (5) was added by amendment in 1991 specifically to establish a private right of action under the statute in response to an Appellate Division decision (*Snyder v. Jessie*, 164 A.D.2d 405, 565 N.Y.S.2d 924) which rejected such lawsuits.
>
> In that same year, the Legislature added the definition of "claim" with the limitation that persons "responsible for the discharge" could not bring a claim. Although even faultless owners of contaminated lands have been deemed "dischargers" for purposes of their own section 181(1) liability, where they have not caused or contributed to (and thus are not "responsible for") the discharge, they should not be precluded from suing those who have actually caused or contributed to such damage. To preclude reimbursement in that situation would significantly diminish the reach of section 181(5).[34]

The strict liability claim under Navigation Law is, of course, in addition to common law claims for indemnification and/or contribution, among others.

Due to the strict liability scheme of the Navigation Law and policy of effecting immediate cleanups, oil spill cases generally focus not on defense on the liability issue but rather on allocation of cost. In cases where the private discharger initiates cleanup, private contribution litigation is common. In those cases where the State performs the cleanup and has commenced a cost recovery action, third party practice by the discharge defendant is likewise common. Not surprisingly, the facts of each case will determine ultimate allocation of cleanup costs, based primarily upon each party's relative role in the events causing the petroleum release.

Given the strict liability scheme of the Navigation Law, it makes practical sense in oil spill matters to engage in discussions with NYSDEC immediately upon knowledge of the release. These discussions should not focus strictly upon liability issues, but on the scope and extent of required remediation. These discussions will necessarily include technical consultants, who should be retained early on as well. The goal of this effort will be to limit the scope and extent of remediation, which in turn will save your client money both in terms of remedial expenses and transactional costs. An early and cost-effective practical resolution is often a more realistic strategy in oil spill cases than litigation.

Conclusion

When confronted with an oil spill matter, attention must be brought to the matter immediately upon knowledge of the release. The liability scheme under the Navigation Law is draconian, and efforts toward limiting the scope and extent of remediation to appropriate standards are often advantageous and cost-effective for your client. Additionally, an investigation into the release may uncover additional responsible parties to which some of the remedial costs may be allocated.[35]

Endnotes

1. Navigation Law §§ 170 *et seq*. (McKinney's 2000).
2. Navigation Law § 181(1). The standard of liability for oil spill releases is further discussed below.
3. The state fund dedicated to oil spill remediation is known as the New York Environmental Protection and Spill Compensation Fund. *See* Navigation Law § 179.
4. *White v. Regan*, 171 A.D.2d 197, 200-201, 575 N.Y.S.2d 375, 377 (3d Dep't 1991) (*citing Quaker State Corp. v. United States Coast Guard*, 681 F. Supp. 280, 285 (WDPa 1988)).
5. Navigation Law § 181-a. As to the form of State cost recovery actions, *see State v. Stewart's Ice Cream Co., Inc.*, 64 N.Y.2d 83, 484 N.Y.S.2d 810, 473 N.E.2d 1184 (1984). *See also State v. Gorman Bros., Inc.*, 166 A.D.2d 859, 563 N.Y.S.2d 187 (3d Dep't 1990).
6. 6 N.Y.C.R.R. Parts 612-614. The practitioner should also be aware that these regulations include immediate reporting requirements of any discovered oil spill. *See* 6 N.Y.C.R.R. § 613.8.
7. Navigation Law § 181(1). *See, e.g. White v. Long*, 85 N.Y.2d 564, 626 N.Y.S.2d 989, 650 N.E.2d 836 (1995).
8. Navigation Law § 172(8).
9. Navigation Law § 172(18).

10. The standard of liability imposed by statute is strict liability, regardless of fault. Navigation Law § 181(1). No proof is required of a specific wrongful act or omission which directly caused a spill in order to impose liability under the Navigation Law for spill remediation. *See, e.g., Hilltop Nyack Corp. v. TRMI Holdings, Inc.*, 264 A.D.2d 503, 694 N.Y.S.2d 717 (2d Dep't 1999); *Domermuth Petroleum Equipment and Maintenance Corp. v. Herzog & Hopkins, Inc.*, 111 A.D.2d 957, 490 N.Y.S.2d 54 (3d Dep't 1985); *Premier National Bank v. Effron Fuel Oil Company*, 182 Misc. 2d 169, 698 N.Y.S.2d 434 (Sup. Ct., Dutchess Co. 1999).

11. Indeed, the provisions of article 12 of the Navigation Law are accorded liberal construction. Navigation Law § 195. *See 145 Kisco Ave. Corp. v. Dufner Enterprises, Inc.*, 198 A.D.2d 482, 604 N.Y.S.2d 963 (2d Dep't 1993); *State v. Montayne*, 199 A.D.2d 674, 604 N.Y.S.2d 978 (3d Dep't 1993); *Premier National Bank v. Effron Fuel Oil Company*, 182 Misc. 2d 169, 698 N.Y.S.2d 434 (Sup. Ct., Dutchess Co. 1999). *See also State v. New York Central Mutual Fire Insurance Company*, 147 A.D.2d 77, 78, 542 N.Y.S.2d 402, 403 (3d Dep't 1989) ("the straightforward and expansive language of article 12 fastens strict liability upon anyone, large or small, commercial or residential, responsible for a discharge of petroleum which threatens the State's waters").

12. *See, e.g., Leone v. Leewood Service Station, Inc.*, 212 A.D.2d 669, 624 N.Y.S.2d 610 (2d Dep't 1995); *State v. Montayne*, 199 A.D.2d 674, 604 N.Y.S.2d 978 (3d Dep't 1993); *State v. Wisser Company, Inc.*, 170 A.D.2d 918, 566 N.Y.S.2d 747 (3d Dep't 1991); *State v. New York Central Fire Insurance Company*, 147 A.D.2d 77, 542 N.Y.S.2d 402 (3d Dep't 1989).

13. The Appellate Division, Third Department has addressed the provisions of the Navigation Law on a number of occasions, as many cost recovery actions commenced by the State of New York against "dischargers" are venued in Albany County Supreme Court, from which appeals are heard at the Third Department.

14. __A.D.2d__, 2000 WL 798812 (3d Dep't June 22, 2000).

15. __A.D.2d__, 2000 WL 798839 (3d Dep't June 22, 2000).

16. *State v. Green*, __A.D.2d__, 2000 WL 798812 (3d Dep't June 22, 2000).

17. *State v. Speonk Fuel, Inc.*, __A.D.2d__, 2000 WL 798839 (3d Dep't June 22, 2000).

18. *State v. Green*, __A.D.2d__, 2000 WL 798812 (3d Dep't June 22, 2000). *See also State v. Tartan Oil Corporation*, 219 A.D.2d 111, 638 N.Y.S.2d 989 (3d Dep't 1996); *White v. Regan*, 171 A.D.2d 197, 575 N.Y.S.2d 375 (3d Dep't 1991). The *Green* court clarified any confusion which may have existed concerning whether Navigation Law liability exists based solely upon real property ownership by holding that "[i]n those somewhat infrequent cases where there is no unity of ownership of the land and the system, there will be no corresponding per se landowner liability. Where . . . the owner of the system from which the discharge occurred and the owner of the property on which the system is located are not the same, liability without regard to fault is properly imposed upon the system owner." *State v. Green*, __A.D.2d__, 2000 WL 798812 (3d Dep't June 22, 2000). *See also Whitesell v. Walchli*, 237 A.D.2d 953, 654 N.Y.S.2d 541 (4th Dep't 1997).

19. *White v. Regan*, 171 A.D.2d 197, 575 N.Y.S.2d 375 (3d Dep't 1991). *See also White v. Long*, 85 N.Y.2d 564, 626 N.Y.S.2d 989, 650 N.E.2d 836 (1995). The issue of indemnification and contribution claims is further discussed below.

20. Navigation Law § 181(1); *see, e.g., Berens v. Cook*, 263 A.D.2d 521, 694 N.Y.S.2d 684 (2d Dep't 1999); *Domermuth Petroleum Equipment and Maintenance Corp. v. Herzog & Hopkins, Inc.*, 111 A.D.2d 957, 490 N.Y.S.2d 54 (3d Dep't 1985).

21. *Huntington Hospital v. Anron Heating and Air Conditioning, Inc.*, 250 A.D.2d 814, 673 N.Y.S.2d 456 (2d Dep't 1998); *Mendler v. Federal Insurance Company*, 159 Misc. 2d 1099, 607 N.Y.S.2d 1000 (Sup. Ct., New York Co. 1993).

22. *Merrill Transp. Co. v. State of New York*, 94 A.D.2d 39, 464 N.Y.S.2d 249 (3d Dep't 1983) *lv. denied* 60 N.Y.2d 555, 467 N.Y.S.2d 1030, 455 N.E.2d 487 (1983).

23. *Domermuth Petroleum Equipment and Maintenance Corp. v. Herzog & Hopkins, Inc.*, 111 A.D.2d 957, 490 N.Y.S.2d 54 (3d Dep't 1985); *see also Premier National Bank v. Effron Fuel Oil Company*, 182 Misc. 2d 169, 698 N.Y.S.2d 434 (Sup. Ct., Dutchess Co. 1999).

24. *Domermuth Petroleum Equipment and Maintenance Corp. v. Herzog & Hopkins, Inc.*, 111 A.D.2d 957, 490 N.Y.S.2d 54 (3d Dep't 1985).

25. *Nicol v. Jenkins Fire Company*, 192 A.D.2d 164, 600 N.Y.S.2d 519 (3d Dep't 1993).

26. *Domermuth Petroleum Equipment and Maintenance Corp. v. Herzog & Hopkins, Inc.*, 111 A.D.2d 957, 958-959, 490 N.Y.S.2d 54, 56 (3d Dep't 1985) ("First, under the Navigation Law, no proof is required of a specific wrongful act or omission which directly caused the spill in order to impose liability. It is sufficient and uncontested that . . . the deliverer of the oil and repairer of the tank set in motion the events which resulted in the discharge").

27. *State v. Montayne*, 199 A.D.2d 674, 604 N.Y.S.2d 978 (3d Dep't 1993); *see also Domermuth Petroleum Equipment and Maintenance Corp. v. Herzog & Hopkins, Inc.*, 111 A.D.2d 957, 490 N.Y.S.2d 54 (3d Dep't 1985).

28. *State v. Markowitz* __A.D.2d__, 2000 WL 798801 (3d Dep't June 22, 2000).

29. *Id*. ("Consistent with the relevant Federal and State statutes and developing case law, we hold that in order to hold a corporate stockholder, officer or employee personally liable under the Navigation Law for a discharge occurring at a site owned or operated by the corporation, that individual must, at a minimum, have been directly, actively and knowingly involved in the culpable activities or inaction which led to a spill or which allowed a spill to continue unabated").

30. *Id*.

31. *Star Nissan, Inc. v. Frishwasser*, 253 A.D.2d 491, 677 N.Y.S.2d 145 (2d Dep't 1998).

32. *Umbra USA, Inc. v. Niagara Frontier Transportation Authority*, 262 A.D.2d 980, 693 N.Y.S.2d 371 (4th Dep't 1999).

33. Navigation Law § 181(5); *see generally Wheeler v. National School Bus Service*, 193 A.D.2d 998, 598 N.Y.S.2d 109 (3d Dep't 1993). The practitioner must be aware that the damages which are recoverable in private actions under the Navigation Law are limited to economic damages only. *See Wever Petroleum, Inc. v. Gord's Ltd.*, 225 A.D.2d 27, 649 N.Y.S.2d 726 (3d Dep't 1996). Of course, non-economic damages may be recoverable under other common law remedies. Further, the practitioner should be aware that attorneys fees incurred by a party injured by a petroleum release are considered an "indirect damage" and recoverable in a Navigation Law claim. *See Strand v. Neglia*, 232 A.D.2d 907, 649 N.Y.S.2d 729 (3d Dep't 1996).

34. *White v. Long*, 85 N.Y.2d 564, 568-569, 626 N.Y.S.2d 989, 991, 650 N.E.2d 836 (1995). The practitioner should be aware, however, that while a "discharger" can use Navigation Law § 181(5) as the basis for a claim against another private "discharger," a "discharger" does not have a claim under the Navigation Law against the State Spill Fund for reimbursement. *See White v. Regan*, 171 A.D.2d 197, 575 N.Y.S.2d 375 (3d Dep't 1991). Thus, in those situations where a private party undertakes oil spill remediation, its only claim under the Navigation Law is against other private parties and not against the State Spill Fund for reimbursement.

35. While beyond the scope of this article, an investigation into insurance coverage should also be immediately undertaken, and notices of claim timely sent to all carriers.

Scenes from the Summer Meeting

Riveredge Hotel Alexandria Bay July 20-23, 2000

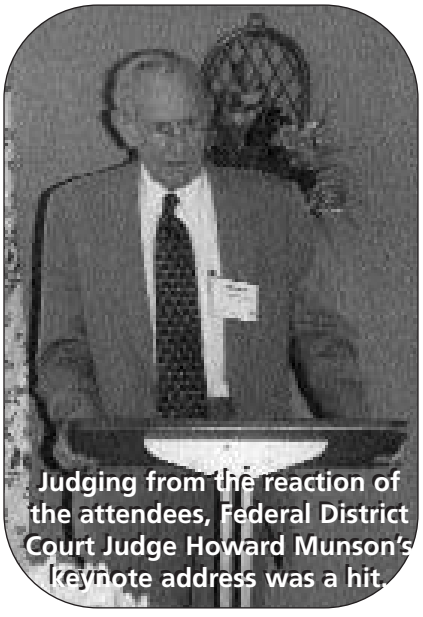
Beauty is what beauty does: The stunning harpist and her matching music calm the wild beasts, eh, guests at the Summer Banquet.

All work and no play. . .: Section Chair Steven Kessler goes home with the lion's share of the booty after a joyful evening with the troops.

Attention: Do Not Try This at Home: Professional jugglers entertaining the children.

Simply beautiful: *Esquire* may have its "Women We Love" but they don't hold a candle to our own Marita Paredez and Caitlin O'Brien (standing) and Elizabeth Helmer and Rachel Rose Kessler (sitting).

Sunning on the St. Lawrence: Marge Lashley, flanked by Dorothy and Bob Espach, enjoying the ambience at the beautiful Riveredge Resort.



Judging from the reaction of the attendees, Federal District Court Judge Howard Munson's keynote address was a hit.

Orders to Seal Files and Return or Destroy Fingerprints and Photography

By Steven R. Jones

As a general practitioner, with offices in two college towns, I spend many hours working with college students and their parents. Helping a student in trouble allows me the chance to introduce them to the criminal justice system.

When I explain to the student the four grades of offenses under New York law (felony, misdemeanor, violation and traffic infraction) and the possible punishments for each, I find that most students are as concerned about a criminal record as they are with going to jail.

Whenever I represent a student charged with a crime (felony or misdemeanor) whose disposition on the case is a non-criminal offense (violation or traffic infraction) or even a dismissal (such as an Adjournment in Contemplation of Dismissal), I submit to the Court an Order to Seal and Return or Destroy Pursuant to Criminal Procedure Law § 160.50 or 160.55.

I started using these Orders to Seal and Return or Destroy nearly 20 years ago. I understand that the State now automatically seals files and returns or destroys fingerprints and photographs; however, I found that by preparing the Order (an excellent form can be found in McKinney's Forms) and having the Judge sign it and affix the Court seal, it gives my client a permanent record of the outcome of their case. I serve the original Order to Seal and Return upon the Division of Criminal Justice Services in Albany (they insist upon the original with the raised seal) and they are usually kind enough to send me a letter confirming that they have actually destroyed the fingerprints. I also serve a certified copy upon the arresting police agency. I have attempted to serve a copy upon the FBI, but they refuse to accept these Orders, other than from the arresting agency or from the Division of Criminal Justice Services; I have had excellent experiences with the FBI expunging fingerprints once they receive a copy of the Order from the appropriate agency.

Perhaps the Order to Seal and Return or Destroy is unnecessary, but I find that it gives my client a degree of security in how their case was resolved, and a sense of confidence about how to answer questions on job applications and the future regarding the disposition of their case.

Recently, a lady employed by a bank contacted me regarding a shoplifting charge that she received 15 years ago while she was in college. I did not represent her on that charge, but her attorney was able to get the charge reduced to disorderly conduct. She had entered a plea of guilty to the reduced charge and paid her fines. Apparently that attorney did not prepare an order to seal and return, and at that time the law did not make the order to seal and return automatic. She graduated from college and had a successful career in business until she was about to change jobs. After completing the job application to show that she had never been convicted of a crime (absolutely true), she was informed that the FBI had a set of her fingerprints from her arrest for petit larceny. I prepared an Order under CPL § 160.55 and submitted it to the Court that had sentenced her. I served the signed Order upon her arresting police agency and the Division of Criminal Justice Services and within days the FBI expunged her fingerprints, resulting in a happy client with a new job.

Steven R. Jones is a partner in the firm of Nodell, Jones, and Kendall, LLP, with offices in Morrisville and Hamilton, two of the eight picturesque villages found in Madison County. The two colleges Mr. Jones refers to are Colgate University in Hamilton and SUNY Morrisville.

Congratulations to our own

Joel K. Asarch

on his election as
Judge of the District Court of Nassau County.
And he won without a recount.
Congratulations, Joel.

So Tough They Wrote a Book on It!

By Stephan Leimberg

In 1976, former President Jimmy Carter called the income tax "a disgrace to the human race."

Things are still going downhill.

Whatever happened to simplicity?

On April 1, The Joint Economic Committee officially released their TAX COMPLEXITY FACTBOOK (See, the folks in Washington DO have a sense of humor!).

According to the FACTBOOK:

- The corporate income tax is the most complicated federal tax.
- The income tax became effective in 1909 with a 1-percent rate.
- The individual income tax followed in 1913 with just 16 pages of laws and a basic rate of 1 percent.

The payroll tax to fund Social Security was added in 1937.

By the late 1930s, the entire tax code still had only 100 pages.

"Out of more than 110 million phone calls received from taxpayers by the IRS each year, in 1999, the IRS was able to answer only 73 percent of the inquiries correctly."

The need to finance World War II coupled with the concept of employer withholding in 1943 launched the income tax on a trajectory of seemingly continual growth. The federal payroll tax rose in tandem, expanding from a 1 percent rate to today's 15.3 percent rate.

For your weekend reading amusement (and consternation), here are some of this book's high (and low) lights:

- There are currently over 46,000 pages that comprise the complete volume of federal tax rules and regulations. (This is more than twice the length of tax rules and regulations in the 1970s. The number of pages of federal tax rules has doubled in less than 25 years).
- The Internal Revenue Code consists of 2,840 pages.
- The Code has about 2.8 million words. (Compare this to the Bible which has 1,340 pages, and about 0.8 million words).
- Income tax law accounts for 78 percent of tax code pages.
- Americans will spend 6.1 billion hours complying with the federal tax system. (That's more than 3 million person-years).

Compliance is expensive. The OMB estimates that the measure of the "opportunity cost" of compliance time is about $30 an hour. So federal tax compliance costs based on 6.1 billion hours of compliance time are about $183 billion a year. (Mobil Corporation once brought their tax return and related documents into a congressional hearing to illustrate the tax monster that they must comply with. Their tax documents ran 6,300 pages and weighed 76 pounds.)

- Businesses are forced to deal with 481 separate IRS tax forms.
- In just the two years between 1996 and 1998, there were 6,500 changes in 61 separate pieces of legislation.
- This year, more than half of individual taxpayers will pay a professional to prepare their income tax return. (That's up from less than 20 percent in 1960).
- It costs approximately $200 billion to comply with federal tax law. (That's approximately 10 percent of the total tax revenue collected).
- Compliance costs for small businesses of less than $1 million can be as much as three times larger than taxes paid.

Out of more than 110 million phone calls received from taxpayers by the IRS each year, in 1999, the IRS was able to answer only 73 percent of the inquiries correctly. (Think what that number would have been had all the folks that called actually reached someone! The IRS itself states that just 55 percent of taxpayers calling last year got through to ask their questions.)

It's not just the IRS that has problems with tax law: "*Money* magazine asked a panel of tax experts to each compute tax liability for a hypothetical family. The results have consistently shown wide variations in the experts' answers, as a result of both errors and ambiguity in the tax laws. In 1998, 46 out of 46 experts sur-

veyed came up with different answers, which ranged widely from $34,240 to $68,912."

- The IRS National Taxpayer Advocate says that tax law complexity is the most serious problem facing taxpayers.
- Tax complexity leads Americans to view the system as unfair, contributes to high error rates, increases tax evasion, and creates taxpayer uncertainty which impedes economic decision-making.
- The IRS has a budget of $8.2 billion in fiscal 2000, and employs 100,000 workers to administer the federal tax system.

The people on the payroll of the IRS are only part of the cost: The "hidden" part of the federal tax system includes the Treasury, the Department of Justice, Congress, the tax courts, and other agencies. This may be as much as another 24,000 individuals.

The IRS may not exactly be at the pinnacle of technology. In fact, IRS Commissioner Charles Rossotti stated that "IRS technology is just remarkable for how backward it is." (Much of its computer architecture still dates to the 1960s.)

Responding to IRS audits, notices, liens, levies, seizures, and fighting the IRS in court can cost individuals thousands of dollars and businesses millions of dollars. For example, the IRS assesses about 30 million penalties each year, which, because they are often erroneous, can impose significant time and monetary costs on taxpayers.

Since the 1970s, a major tax law change has occurred about every 18 months. "This has created planning difficulties for businesses, investors, and other taxpayers. Tax rates have gone up and down, tax credits and other provisions have come and gone, with the result that nobody knows what to expect next from the government. Even just the threat of a tax rule change can cause taxpayers to alter their behavior, thus resulting in less efficient economic choices being made."

About 60 percent of Americans surveyed think the current tax system is "unfair." Examples given include families with similar incomes who pay substantially different amounts of tax and when similar activities (e.g., tax incentives for a paid school class but no reward for the purchase of a book for self-study) are treated differently.

High levels of tax coupled with high levels of complexity have spawned high levels of tax evasion. Estimates are that about $200 billion of taxes are evaded each year (more than 20 percent of taxes collected).

"Excess burdens" are forced on the economy by the tax system because taxes create incentives and disincentives for individuals and businesses to take actions that are not economically efficient. Due to tax-induced changes in prices, wages, interest rates, and profits, various industries may receive too much or too little investment, individuals may not save and invest enough, and businesses may take actions which minimize tax liability, but don't maximize economic growth. As Adam Smith put it in his classic work, *The Wealth of Nations*, the total cost of taxation is "a great deal more" than just the amount of revenue collected.

The computational complexity of the tax, additional record-keeping, and errors is due to many factors. Among these are that simplification has not been given the priority that the creation of special incentives or social engineering have (e.g., for example, there are now eight different higher education incentive provisions under the income tax—each with its own set of qualification rules). The excessive focus on "ability to pay" as an important feature of the income tax system has exacerbated the problem. (E.g., the five-bracket rate structure, exemptions, credits, the alternative minimum tax, the earned income tax credit, and phase-outs, and the 22 provisions which phase-out as incomes rise, such as personal exemptions and the child tax credit.). The need for revenue-neutrality and fitting revenue changes into precise budgetary projections has also made simplicity difficult to achieve.

"High levels of tax coupled with high levels of complexity have spawned high levels of tax evasion."

A major factor in tax complexity and its resulting errors and costs is the number of times the tax law has changed since the 1970s. A major tax bill with hundreds of changes has occurred every year or two. (E.g., approximately 6,500 changes from 1986 to 1989). This triggers rounds of changes in federal tax regulations, almost always requires substantial tax form changes, and thousands of hours must be spent relearning the rules each time tax changes occur. Businesses face complications because they must apply different rules to different time periods. (E.g., depreciation).

There is rampant inconsistency—numerical, definitional, and operational—within the Code. For example, the 22 different phase-outs in the income tax code have varying rates and applicable income levels. Key terms

have different definitions in different parts of the Code. Two businesses, one a C corporation and the other a partnership with substantially similar operations, may trigger significantly different income tax totals—often solely due to their different legal structures.

The American Institute of Certified Public Accountants, the American Bar Association, and the Tax Executives Institute recommended the following "10 Ways to Simplify the Tax Code":

1. Scrap the alternative minimum tax (AMT).
2. Simplify education tax incentives.
3. Streamline capital gains taxes.
4. Simplify definitions of a family.
5. Phase out the "phase-outs."
6. Provide safe harbors for the self-employed.
7. Make rules for independent contractors more objective.
8. Make temporary provisions permanent.
9. Simplify capitalization and expensing rules.
10. Simplify international tax rules.

My favorite quote from the entire piece was that of Senator Daniel Patrick Moynihan who, in Senate Finance Committee hearings on February 2, 2000, said: "We're beginning to write tax measures late at night, behind closed doors . . . creating 1,200 page monsters. We vote for it, no one knows what's in it. . . . It's our doing . . . We're the ones doing it, not the IRS."

I hope this gives you a few things to think about and mention in your next talk to the Rotary.

You may contact Steve Leimberg at Leimberg Information Services, Inc. (LISI) in Bryn Mawr, Pennsylvania or on the Web at http://www.leimbergservices.com.

Can We Have a Little Order Around Here?

By Pat Evans

Have you ever been hit with a sinking feeling before chairing a meeting that some rat, armed with evil intent and a lawyer's grasp of parliamentary procedure, will make you look a fool? Did you ever have your eyes slip out of focus when you looked at one of those parliamentary law sheets with microscopic print that lay out "incidental motions that are subordinate to subsidiary motions which are allied but inferior to privileged motions that only can be invoked on the third Thursday of the month? Yes or No?" There are two simple ways to avoid the evil parliamentarian . . . ask him to be on your side or read on.

For the hundreds of meetings over 30 years that I have chaired or served as parliamentarian or legal counsel, I have never had a procedural problem that couldn't be worked out with common sense and honesty. It's only when someone is trying to cheat the democratic process with parliamentary rules that trouble arises. If you are straightforward and democratic, common sense will prevail and procedure will not get in the way of substance.

Here then is **The Primary Rule**: *Run the meeting fairly.* We hate cliques because they exclude. Don't ever exclude people from participating, but draw the line at needless repetition. Fairness calls for each view to be heard, but it doesn't require that everyone be allowed to ramble. If you want the thanks of your fellow members for pushing through an agenda quickly and fairly, don't fear a bit of authoritarian firmness. That doesn't mean you can bully your own view through. Try not to argue from the Chair. You are responsible for keeping the meeting fair, and it's hard if you are leading the debate rather than moderating it.

Here are **The Eight Basic Phrases** that you need to run a good meeting. I've taught teachers, mayors, boards, officers, presidents of companies, volunteers, even other lawyers about these simple rules. Although not an exhaustive parliamentary list, these eight phrases can give you the control you need to move your meetings in good productive work patterns rather than wordy wastes of time. Be fair and let the majority prevail.

1.) "*Let's* ***call the meeting to order****. Mr. Secretary, is there a quorum?*" This question should bring the babble to a halt and commence the meeting. It's nice if you talk to your secretary beforehand so he expects the question and doesn't fall off his chair in surprise.

2.) "Pardon me, but this is a little ***out of order*** *from our agenda*, we can get to that under (new) (old) business. Please hold that thought for later." This is an honest and fair way of deflecting rambling talk that doesn't follow the agenda.

"For the hundreds of meetings over 30 years that I have chaired or served as parliamentarian or legal counsel, I have never had a procedural problem that couldn't be worked out with common sense and honesty."

3.) "***I'll entertain a motion that ******.*" This is **the most powerful and useful parliamentary phrase of all**. It's where you pull together the general talk into a proposition that can be discussed and voted on. For example, you are discussing an agenda item such as cleaning up the club room. There has been some good talk and it appears that almost everybody is in agreement that each section should have a month in rotation. You can cut the talk by simply saying, "*OK, I'll entertain a motion that* each section shall clean the club rooms for one month in an order to be established by the house committee." Hopefully, you will hear a "*So moved,*" and a "*Seconded.*" If nobody speaks, ask "*Do I hear a motion to that effect?*" Then you call, "*Do I have a second for that?*" This should get you into it. With the second the matter is properly before the members to be discussed and voted on. If it appears that somebody has come up with an improvement on the motion, you can *entertain a motion* to amend, or you can admit that it's better than yours and ask the secretary to amend your motion to the new one. Make sure of course that the secretary knows the proposition so that the minutes are accurate.

4.) "***Can I have a motion on that? . . . Do I hear a second?***" In your efforts to cut short a lot of unfocused talk, the Chair has a right to limit discussions to motions before the body. Asking for a motion occasionally stops loose talk because nobody wants to second the loudmouth. More often it focuses attention on the specific wording of a proposition and by defining the matter clarifies it. If you feel that you understand the sense of the members, you can frame the proposition yourself as suggested in #3. If not, ask the proponent to tell what motion he wants.

5.) "*Failing to hear a second,* ***the motion fails****, and we'll have to move on.*" If there's no second, there is no motion, and therefore no more discussion.

6.) "***Any discussion? Hearing none, let's call the question. All in favor say aye, all opposed say nay. The ayes have it.***" If it's obvious that all are agreed, don't waste any time after the motion is seconded, just call the vote. If discussion is important, let it run until you feel that the time has come to bring it to a vote. You can do this by saying, "I think we've had enough discussion, I'd like to *call the question* . . . all in favor etc."

7.) If there is more thought needed or if you are afraid a pet project of yours will be voted down you can say, "**I'll entertain** ***(a motion to table this) or (a motion to refer this to the **** committee)***" anybody agree? . . . is there a second?" If you get your second you'll immediately call for a vote, without discussion, to table or to refer putting the issue off to a later time.

8.) "***Do I have a motion to adjourn?***" That's all there is!

While technically many of these motions should come from the floor, the Chair almost always will get the cooperation of the members if he is being fair. Good luck!

Pat Evans maintains a general legal practice in Watertown, New York.

Converting Documents from WordPerfect to Word in Ten Easy Steps

By Marilyn Monrose

You are about to discover a fast, simple, no-frills way to convert documents from WordPerfect to Word without the aid of conversion programs like Conversion Plus® or DocXchange®. Even with the use of these applications, converted documents still need to be reformatted and stripped of all imported codes from the previous program. This procedure must be done in order to prevent document corruption from wreaking havoc on a file that may reach 200 pages or more.

The only feature you need to use for this simple method is PASTE SPECIAL. Just follow these steps:

1. Open the WordPerfect file to be converted.
2. Highlight and <COPY> everything in the document, except the LAST paragraph mark (the last paragraph contains all the formatting codes from the original program).
3. Go to a blank window in Word, then click **<Edit>, <Paste Special>** for the **<Paste Special>** dialog box.
4. Highlight **<Unformatted Text>** in the **<As:>** box, then hit **<OK>** to insert.

   Look at your screen for a moment. All of the section and hard page breaks have disappeared, as well as all of the field codes. The paragraph numbers have been replaced with real ("hard") numbers. Even the table of contents is in normal text. When the **<Paste Special>** feature is used to paste text as **<Unformatted Text>** it takes away all field codes and paragraph formatting (bold, italics, underline, etc.). The text comes back as normal text, with only tabs and hard returns remaining. You can now reformat the document.
5. Change document compatibility to Word 97. Click **<Tools>, <Options>, <Compatibility>**. The **<Recommended options for:>** box will probably say **<Custom>**, choose **<Microsoft Word 97>**, then hit **<OK>**.
6. Unfortunately, <**Paste Special>** does not always take in the Header and Footer menus. Check the **<Header and Footer>** menu and delete all text located in any graphic text boxes by selecting and pressing **<CTRL+X>** to CUT the entire box (if you don't delete this box entirely, your document will become corrupt and lockup later). Replace the box with regular text and Word's formatting codes.
7. Use the **<Find and Replace>** feature to remove all tabs and extra blank paragraphs. For *Tabs*: press **<CTRL+H>**, type **"^t"** (must be lowercase) in **<Find>**, leave **<Replace>** blank. Hit **<OK>** until they are all replaced. For *Paragraphs*: type **"^p^p"** (must be lowercase) in **<Find>**, then type **"^p"** in **<Replace>**. Hit **<OK>** until complete.
8. There shouldn't be any section breaks in the document using this method, but just in case there is they should all be removed. Never leave section breaks in a converted document, if you don't want any problems with it in the future. It's just better to reinsert them. Press **<CTRL+H>**, type **"^b"** (must be lowercase) in **<Find>**, leave **<Replace>** blank. Hit **<OK>** until all section breaks are replaced.
9. Add and create styles for all the paragraphs in the document. ***Tip*:** Since most legal briefs and agreements can reach up to 100 pages or more, the "NORMAL" style should rarely be used, except in numeric tables. It's just easier to format paragraphs when headings and body text are in different styles. So, the general rule for legal documents in Word is *STYLE, STYLE, STYLE*.
10. If there are any *numeric tables* that need to be copied, then perform these instructions:
    (a) Go back into the WordPerfect file and COPY the entire table.
    (b) Click inside Word and PASTE the table.
    (c) Reformat the table using Words features (tabs, underline, bold, styles, etc.).

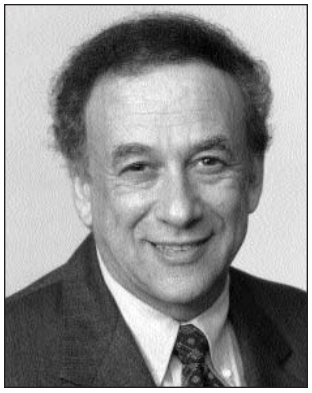
Wasn't that simple? There is nothing wrong with using your present conversion application to convert documents, but if you're in a hurry and you don't have access to one, this technique is the best.

NOTE: Footnotes in WordPerfect do not carry over during the conversion process. Here's a great tip: Turn the footnotes into endnotes *first*, then convert the document. This way you'll be able to copy the footnotes back into their proper spot during formatting.

Marilyn Monrose, the Legal Word Processing, "Doctor" is the author of two legal word processing training manuals entitled ADVANCED WORD 97 FOR THE LEGAL USER MADE EASY and ADVANCED WORDPERFECT 7&8 FOR THE LEGAL USER MADE EASY. For more information, call 212-579-9306 or e-mail: trainmanuals@dialalesson.com.

Drunk & Disorderly

By Martin Minkowitz



There is no need to suggest that the words drunk and disorderly have a different meaning to a district attorney than to a workers' compensation lawyer. Also obvious is that the difference in the meaning of these words depends upon the statute one is reading. Under the Workers' Compensation Law (WCL), as opposed to interpretation by a district attorney, the result of being drunk and disorderly may not be imprisonment. Depending on what is presented to the Workers' Compensation Board, however, it may be the difference between an award of compensation benefits and no such award.

While the Workers' Compensation Board more often than not tends to award benefits, the WCL prohibits an award of compensation to be made to an injured worker when the injury has been *solely* caused by the intoxication (from alcohol or a controlled substance) of the injured employee while on duty, or by the willful intention of the injured employee to bring about the injury or death of himself or another person.[1] Case law reveals that it is difficult, though not impossible, to present substantial evidence of intoxication and to establish how the accident occurred which will allow the Board to find that the claimant is not entitled to an award of compensation benefits.

Since it must be established that there was no other contributing cause to the accident other than the intoxication, even high levels of alcohol content in the blood have been found not to fall within the category of an accident caused "solely" due to intoxication. There is also a provision in WCL § 21 which affords the claimant a presumption that the injury was not caused by the willful intention of the injured employee to bring about the injury or death of himself or someone else, or that the injury did not result solely from the intoxication of the injured employee while on duty.[2] Therefore, to rebut the presumption, the employer has the burden of proof to go forward and demonstrate that the injury was solely due to intoxication or the willful intent of the claimant to injure himself or another person.

Two cases demonstrate how the issue of assault is dealt with in the Workers' Compensation System. In one case, an employee approached his shop steward and, during a heated argument, they agreed "to take it outside." While walking behind the shop steward, the employee pulled out a knife and cut the shop steward on the shoulder and arm and continued to try and stab the steward as he backed away and attempted to defend himself. The steward, in an act of self-preservation, grabbed a wood board and struck the employee in the head, killing him. The employee's widow filed a claim for death benefits under the WCL. The Workers' Compensation Board ruled that the willful intent of the employee to injure another applied to the right to benefits and denied the claim.

On appeal, the widow's counsel cited WCL § 21(3), arguing that the employer had to prove that the worker had willfully intended to injure the shop steward. The widow conceded that her husband had acted impulsively and thoughtlessly, but argued that his acts were neither *willful* nor premeditated. The Appellate Division held that the circumstances surrounding the event and the worker's state of mind were factual issues for the Board to decide. Finding that the worker brought the knife to work and then proceeded with a vicious unprovoked attack, the court held that there was substantial evidence to demonstrate that the worker acted in a willful and deliberate matter. The shop steward, however, because he acted only in self-defense, could receive Workers' Compensation benefits.

"While the Workers' Compensation Board more often than not tends to award benefits, the WCL prohibits an award of compensation to be made to an injured worker when the injury has been solely *caused by the intoxication (from alcohol or a controlled substance) of the injured employee while on duty, or by the willful intention of the injured employee to bring about the injury or death of himself or another person."*

A second case involved a nurse who was taking a coffee break with a co-employee when a third employee approached the nurse and accused her of spreading gossip about another employee and her boyfriend. The nurse denied the charge, but was called a "slut" and pushed onto a bench, causing her injuries. The Workers' Compensation Board found in favor of the nurse and awarded her benefits. The employer appealed.

To determine whether a victim of an assault is entitled to Workers' Compensation benefits, the appellate court said it would explore whether the assault arose from work-related differences or was solely the result of personal animosity between the two combatants. Such questions, in fact, are precisely for the Board to resolve. When supported by substantial evidence, the decision of the board will not be disturbed on appeal. The court quoted *Seymour v. Rivera Appliances Corp.*[3] and *Privatera v. Yellow Cab*[4] to clarify that "an award of compensation may be sustained even though [it is] the result of an assault . . . so long as there is any nexus, however slender, between the motivation for the assault and the employment." The appellate court concluded that the facts before it demonstrated that the assault had occurred during working hours on the employers' premises involving comments about another employee. The court held that the Board had substantial evidence to make an award of compensation.[5]

"To determine whether a victim of an assault is entitled to Workers' Compensation benefits, the appellate court said it would explore whether the assault arose from work-related differences or was solely the result of personal animosity between the two combatants."

While the defense of "solely due to intoxication" is rarely successful, it will have greater success when it can be established that an assault is either unrelated to the employment or resulted from a personal dispute and a willful act.

Endnotes

1. See WCL § 10 and N.Y.S. Const. Art. I § 18.
2. See WCL §§ 21(3) and 21(4).
3. *Seymour v. Rivera Appliances Corp.*, 28 N.Y.2d 406, __N.Y.S.2d__ (1971).
4. *Privatera v. Yellow Cab*, 158 A.D.2d 835, __N.Y.S.2d__ (__ Dep't 1990).
5. *Baker v. Hudson Valley Nursing Home*, __A.D.2d__ , 649 N.Y.S.2d 105 (__ Dep't 1996).

Martin Minkowitz is a partner with Stroock & Stroock & Lavan in New York City. A former Deputy Superintendent and General Counsel of the New York State Insurance Department and former General Counsel with the NYS Workers' Compensation Board, Mr. Minkowitz is an Adjunct Professor at New York Law School and is the author of the commentaries to McKinney's Worker's Compensation Law.

Learn a Lesson from a Second Grader

By Charles B. Rosenstein

Most recently, I was asked by my daughter's second grade teacher to come to her class and speak to the students about what I did for a living. In preparing for this little talk to the second graders, I had the opportunity to step back and think about what it is I do in my practice and how I was going to explain it to a group of seven-year-olds. If you think this was easy, I recommend that you just try it.

In fact, I found this exercise to be very worthwhile and beneficial for me and I am very glad that Mrs. Reed asked me to speak to the class. I realized that when I spoke to the group, which had no idea what a lawyer does every day (or even what a lawyer is for that matter), I would have to be simple, concise and to the point. I would not be able to bedazzle them with big words or legal phrases. I would not be able to explain the intricate nature of the day-to-day activities of running a law practice with an emphasis on real estate law. Instead, I would have to explain to the students, in a manner they could understand, what it means to be a lawyer and what I do for my clients (after trying to explain exactly what a client is, of course).

As I thought further about what I should say and how best to convey what I do as a lawyer and, more specifically, as a real estate lawyer, I realized that speaking to this group of seven-year-olds was very similar to speaking with my client about his real estate transaction. I in no way mean this to disparage clients. Instead, I realize that when speaking to a client, I am speaking to a person who is completely unfamiliar with the process of buying, selling and or financing a real estate transaction and it is up to me to help him understand the process about which he knows nothing. Because I am involved with these transactions on a daily basis, I may forget that although I know what needs to be done and the steps in the process which need to be completed, I cannot expect everyone else involved to be as knowledgeable. In fact, to be effective at assisting my client with this process, I must treat him as if he is a second grader, and be able to explain the process in a simple manner that he can understand. I must be able to answer very simple questions that he may ask (as might a second grader) and realize that I asked the very same questions before I became familiar with the process. I cannot take the process for granted and it is incumbent upon me to educate the client as to what will be required of him and how the process will work from inception to closing.

After stepping back a moment and placing myself in the shoes of the seven-year-old, I asked myself how I would convey to these children the workings of the legal process. I decided that the best way to accomplish this daunting task was to attempt to set forth the different steps along the path to a closing, how they all fit together and how they must be completed before the goal (the closing day) can be achieved. Although it is impossible for any practitioner to set forth every potential issue and every potential pitfall along the way, a detailed explanation at the outset of the process will go a long way towards educating the child—and indeed the client—about what and how to accomplish our goal. This mental exercise clarified for me why our firm has a policy of always sending an engagement letter to our clients detailing the process and the information the client needs. Specifically, we advise our clients about all of the important dates as set forth in the contract, i.e., the mortgage contingency date, the structural and termite contingency date, the radon, well flow, water purity and or perk test contingency dates, etc. We explain title insurance and when it will be ordered and provided to the lender's attorney. We then explain to the client about the "transfer of title" date. We are very clear that the date is only a "target" and they have to understand that a closing may not happen on the date set forth in the contract. This disclosure usually brings about the response of "why not?" and we explain the different factors that go into scheduling a closing date. Finally, we tell the client what he will need at closing and how we will be there with him to answer all of his questions before, during and after the closing.

We must treat our clients with dignity and respect. Of course, it is not recommended that we treat a client EXACTLY like a second grader. However, often it is beneficial to both the client and us to assume that our client is like the second graders that I recently spoke to who knew nothing about what a lawyer does or is, let alone how he handles a real estate transaction. If you have a second grader at home, be sure to hug him and thank him for reminding you how helpful he can be in dealing with your clients each and every day.

Charles B. Rosenstein is managing partner at Rosenstein & Bouchard in Albany. Mr. Rosenstein, chair of the Real Estate Committee of the General Practice, Solo & Small Firm Section, also serves as a member of the Section's Executive Committee.

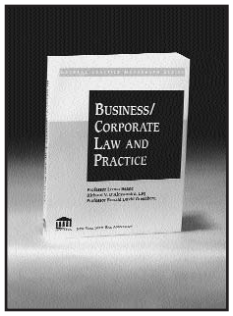
Complete your library with titles from our General Practice Monograph Series

Practical references written by practicing attorneys—for practicing attorneys

The eleven volumes in the GENERAL PRACTICE MONOGRAPH SERIES offer concise, practical overviews of some of the more frequently encountered practice areas of New York law and address the most important issues within those subjects. Each book in the series is designed to give both the novice practitioner and seasoned attorney a starting point for effective practice in a new field.

Written and edited by leading practitioners, the GENERAL PRACTICE MONOGRAPH SERIES provides attorneys with a clear, thorough review of the necessary steps involved when handling a specific transaction in a new field of law or in understanding a particular subject area. By concentrating on the basics in an area of law, each book in the GENERAL PRACTICE MONOGRAPH SERIES fills in the gaps between sketchy outlines, which are of little help to novice attorneys who may need more detail and practical guidance, and the voluminous reference sources, which can offer lengthy discussions of rarely encountered aspects of law that often seem obscure or difficult to understand.

A major benefit of the volumes in this series is their numerous "Practice Guides"—short synopses of issues encountered by the authors in their own practices with practical pointers for dealing with those issues. The GENERAL PRACTICE MONOGRAPH SERIES offers refresher courses and solid advice for the attorney already familiar with a field and a jump-start on different areas of law for the new practitioner. And, annual replacement volumes ensure that your GENERAL PRACTICE MONOGRAPH SERIES library stays up-to-date.



Business/Corporate Law and Practice

Authors

Professor Leona Beane
Richard V. D'Alessandro, Esq.
Professor Ronald David Greenberg

1999 • 488 pp., softbound • PN: 40519

List Price: $75 (incls. $5.56 tax)
Mmbr. Price: $60 (incls. $4.44 tax)

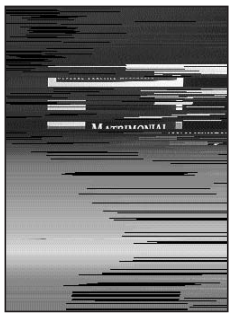
Criminal Practice

Authors

Honorable Leslie Crocker Snyder
Alex Calabrese, Esq.
Bonnie R. Cohen-Gallett, Esq.

1999 • 206 pp., softbound • PN: 40649

List Price: $60 (incls. $4.44 tax)
Mmbr. Price: $38 (incls. $3.56 tax)



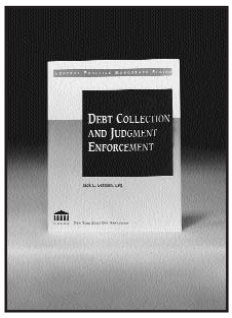
Matrimonial Law

Author

Willard H. DaSilva, Esq.

1999 • 196 pages, softbound • PN: 41219

List Price: $75 (incls. $5.56 tax)
Mmbr. Price: $65 (incls. $4.81 tax)



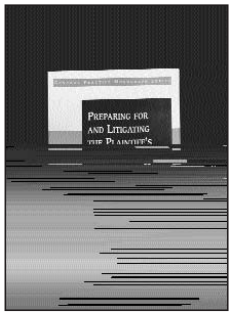
Debt Collection and Judgment Enforcement

Author

Jack L. Getman, Esq.

1999 • 128 pp., softbound • PN: 42389

List Price: $50 (incls. $3.70 tax)
Mmbr. Price: $38 (incls. $2.81 tax)



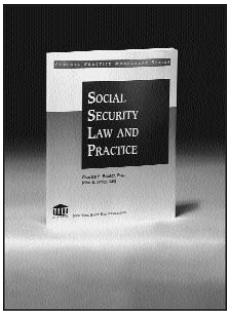
Preparing for and Litigating the Plaintiff's Personal Injury Case in New York

Authors

James E. Reid, Esq.
Arthur M. Greene, Esq.
David M. Gouldin, Esq.

1999 • 130 pp., softbound • PN: 41919

List Price: $65 (incls. $4.81 tax)
Mmbr. Price: $50 (incls. $3.70 tax)

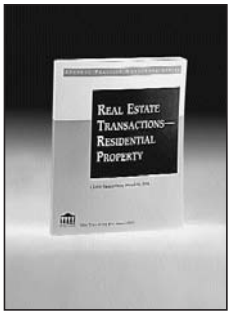


Social Security Law and Practice

Authors

Charles E. Binder, Esq.
John S. Hogg, Esq.

1999 • 200 pp., softbound • PN: 42299
List Price: $65 (incls. $4.81 tax)
Mmbr. Price: $45 (incls. $3.33 tax)



Real Estate Transactions—Residential Property

Author

Claire Samuelson Meadow, Esq.

1999 • 292 pp. • PN: 42149
List Price: $75 (incls. $5.56 tax)
Mmbr. Price: $62 (incls. $4.59 tax)

Mortgage Foreclosures

Authors

Marvin R. Baum, Esq.
Thomas P. Connolly, Esq.
Joseph M. Gaug, Esq.

1999 • 72 pp., softbound • PN: 41419
List Price: $50 (incls. $3.70 tax)
Mmbr. Price: $40 (incls. $2.96 tax)

Mechanic's Liens

Authors

George Foster Mackey, Esq.
Norman D. Alvy, Esq.

1999 • 128 pp. • PN: 40319
List Price: $55 (incls. $4.07 tax)
Mmbr. Price: $45 (incls. $3.33 tax)

Probate and Administration of Decedents' Estates

Authors

Jessica R. Amelar, Esq.
Arlene Harris, Esq.

1999 • 188 pp. • PN: 41969
List Price: $60 (incls. $4.44 tax)
Mmbr. Price: $45 (incls. $3.33 tax)

Zoning and Land Use

Authors

Michael E. Cusack, Esq.
John P. Stockli, Jr., Esq.

1999 • 106 pp., softbound • PN: 42399
List Price: $65 (incls. $4.81 tax)
Mmbr. Price: $55 (incls. $4.07 tax)

The eleven titles in the GENERAL PRACTICE MONOGRAPH SERIES are compiled from the most frequently consulted chapters in the *New York Lawyer's Deskbook* and the *New York Lawyer's Formbook*, a four-volume set that covers 22 areas of practice. The list price for all four volumes of the *Deskbook* and *Formbook* is $350.

To order

Call 1-800-582-2452
Source code: cl1237

New York State Bar Association

NYSBA

Back to the Source—Etymological Trivia

By Musty Tomes

Fascinating stories lie at the roots of many common English words. Appearing below is a collection of words that are still commonly used, together with an explanation of their uncommon origins.

Bonfire. My littlest one still thinks the word is "bomb-fire." In fact, the word is a combination of two terms, but the *bon* is not the French word for "good;" nor is it a derivative of *baun*, the Scandinavian word for "beacon." In fact, during the time of Henry VIII, ecclesiastical relics were seized from churches, chapels, and monasteries by Cromwell's agents and consigned to the flames—thus "bone fire."

Client. In ancient Rome, a client was a plebian under the patronage of a patrician. He performed certain services for his patron, who was thereby obliged to protect his life and interests. Now, of course, the word denotes a customer and connotes employment of a professional.

Conversation. This word means "two keeping company with one another" in the Old French, and now usually means talking—a verbal exchange. In previous centuries, this word meant sex, just as did another word we now associate with speech(es)—Congress. When Dr. Johnson said that "congress" or "conversation" was taking place, he did not mean chit chat. Ironically, when he mentioned "intercourse" or "making love," he meant . . . just talking. Go figure.

Gossip. This is an abbreviation of "God sibling." Sponsorship at baptism creates a spiritual kinship that is as real at canon law as blood relations. For instance, a marriage to your godfather's daughter is prohibited because it constitutes incest; you cannot marry your spiritual sister any more than you could marry your actual sister. How the word took on its unsavory association is unclear, although it has been suggested that the practice of having the parents and godparents chat before the baptism ceremony may explain the association with talking.

Mile. The pace (two steps) of the Roman soldier was set at 5.28 feet. One thousand of these paces, a *mille* in Latin, was 5,280 feet—our modern mile.

Nice. This word has come to mean the opposite of its Latin original. *Nescius* meant ignorant and the Old French *niche* meant simple or foolish. The word "fond" also meant foolish and underwent a similar translation. By the way, I have always been extremely fond of that all-around nice guy, Steve Kessler.

Opportune. Portunus was the old Roman God of Harbors. The prefix *Ob* means "before," so "opportune" means before-the-harbor-god. An opportune arrival occurs when one arrives safely in a harbor.

Paraphernalia. Besides her dowry, a bride brought articles such as clothes and ornaments to which the marital right of her husband to her personal property did not extend. This was her "paraphernalia," which is a combination of the Greek words for "beside" (*para*) and "dowry" (*pherne*).

Quick. The Anglo-Saxon word *cwic* means "alive." Thus, the expression "the quick and the dead."

Sundae. This one is a child of the "blue laws." In Norfolk, Virginia, it was illegal to sell carbonated beverages on Sunday. So an enterprising drug store proprietor decided to keep the customers coming in with a concoction of vanilla ice cream, chocolate syrup, and a cherry. He named the invention "Sundae" to tweak the blue noses, one supposes.

Section Committees & Chairs

Committee on Alternative Dispute Resolution
Irwin Kahn
299 Broadway, Room 700
New York, NY 10007

Committee on Business Law
Cora T. Walker
501 West 123rd Street, Apt. 8F
New York, NY 10027

Committee on Bylaws
Hon. Joel K. Asarch
129 Broadway
P.O. Box 765
Lynbrook, NY 11563

Committee on Continuing Legal Education
Bernard M. Eiber
55 Northern Boulevard, Suite 302
Great Neck, NY 11021

Committee on Elder Law
Dean S. Bress
399 Knollwood Avenue, Suite 107
White Plains, NY 10603

Committee on Family Law
Frank G. D'Angelo
999 Franklin Avenue, Suite 100
Garden City, NY 11530

Committee on Immigration Law
David W. Meyers
1734 Western Avenue
Albany, NY 12203

Committee on Labor and Employment Law
Betty M. Semel
100 Park Avenue, 12th Floor
New York, NY 10017

Committee on Law Office Economics & Management
Charles W. Shorter
111 Marshall Road Spur
P.O. Box 847
Norwich, NY 13815

Committee on Litigation
James P. O'Brien
20 Hawley Street
P.O. Box 2039
Binghamton, NY 13902

Committee on Member Relations
Dwayne Weissman
2171 Jericho Turnpike, Suite 212
Commack, NY 11725

Committee on Nominating
Steven L. Kessler
60 East 42nd Street, Su. 1136
New York, NY 10165

Committee on Professional Issues & Standards
Frank R. Rosiny
225 Broadway, 40th Floor
New York, NY 10007

Committee on Publications
Steven L. Kessler
60 East 42nd Street, Suite 1136
New York, NY 10165

Committee on Real Estate Practice
Charles B. Rosenstein
Executive Woods
4 Atrium Drive, Suite 250
Albany, NY 12205

Committee on Trusts and Estates Law
Lynne S. Hilowitz
120 North Main Street, 4th Floor
New City, NY 10956

Committee on Workers' Compensation
Martin Minkowitz
180 Maiden Lane
New York, NY 10038

ONEONONE

This Newsletter is published for members of the General Practice, Solo & Small Firm Section of the New York State Bar Association. Members of the Section receive a subscription to *One on One* without charge. The views expressed in articles in the Newsletter represent only the authors' viewpoints and not necessarily the views of the Editors, Editorial Board or Section Officers.

NYSBA
General Practice, Solo & Small Firm Section
New York State Bar Association
One Elk Street
Albany, NY 12207-1002

ADDRESS SERVICE REQUESTED

PRSRT STD
U.S. POSTAGE
PAID
ALBANY, N.Y.
PERMIT NO. 155