A Message from the Chair

It is my privilege and honor to serve as the twenty-fifth Chair of the Commercial and Federal Litigation Section. That calls for a celebration (of the Section’s accomplishments, not my accession to the chairmanship), and the Section will celebrate its 25 years of existence on October 23, 2013, with a reception at the Stanley H. Kaplan Penthouse in the Samuel B. and David Rose Building in New York City. All Section members are invited.

Looking back at the 25 years of the Section’s history (and I have been a member the entire time), I see that, among other things, the Section has played major roles in the formation of the Commercial Division, the elimination of occupational exemptions for jurors, the enactment of Local Rule 26.3 of the Rules of the United States District Courts for the Southern and Eastern Districts of New York providing for uniform definitions for discovery requests, and the promotion of civility in litigation resulting in the New York State Standards of Civility, which are now Appendix A to the Rules of Professional Conduct adopted by the Appellate Divisions effective April 1, 2009. We have taken the lead in promoting diversity and in mentoring young lawyers. We have also become one of the premier sources of policy proposals for the entire New York State Bar Association.

As I said at the Section’s spring meeting on May 4, I have three themes for my year as Chair: continuation, communication, and celebration. I have already discussed the last; I will now turn to the other two.

Continuation

In June 2012, as the culmination of former Chair David Tennant’s initiative, the Section adopted the report of its Faster-Cheaper-Smarter Working Group describing ways to reduce the time and cost of traditional commercial litigation, with some emphasis on alternative dispute resolution. Many of the same ideas resurfaced in the Report and Recommendations to the Chief Judge of the State of New York of The Chief Judge’s Task Force on Commercial Litigation in the 21st Century. Now, Chief Judge Jonathan Lippman has appointed a Commercial Division Advisory Council to implement those ideas. I expect the Section to support the efforts of the Advisory Council through its members on the Council (including my three immediate predecessors as Chair—Tracee Davis, David Tennant, and Jonathan Lupkin—and my successor, Paul Sarkozi, and through further proselytization of the ideas underlying the Section’s commitment to faster, cheaper and smarter commercial litigation. We also will explore ways to support the New York International Arbitration Center created earlier this year.

The Section has long had a commitment to diversity. We have an annual networking program, Smooth Moves, Career Strategies for Attorneys of Color, which, under the leadership of previous Chair Tracee Davis, Carla Miller, and former Judge Barry Cozier, had its highest attendance (in excess of 250 persons) last spring. The Section also sponsors a minority law student summer fellowship with a Commercial Division justice. For the last two years, the Section has conducted the Theodore T. Jones Jr. Students of Color Moot Court Competition at the University of Buffalo Law School. I hope to continue and expand these initiatives.

This spring, the Section adopted a report outlining issues regarding third-party litigation funding and continued the dialog with a CLE panel at our spring meeting. I am encouraging the Section’s Ethics and Professionalism Committee co-chaired by Jim Wicks and Tony Harwood to distill the learning and produce a report expressing a reasoned view of third-party litigation funding which can be adopted as the policy of the State Bar.

Last winter, the Section created one of the first bar association committees devoted to social media, co-chaired by Ignatius Grande and Mark Berman. The Social Media Committee has already instituted the Section’s Twitter feed and has organized a CLE program on “How Social Media Is Changing the Practice of Law.” I anticipate that the Committee will comment on proposed legislation and continue to educate the Section about the risks and benefits of using social media.

Last year, the Section formed a Committee on Commercial Jury Charges co-chaired by Judges Andrea Masley and Melissa Crane to comment upon and develop recommendations for pattern jury instructions to be considered by the New York State Official Committee on Pattern Jury Instructions. The Section submitted recommendations concerning piercing the corporate veil, bona fide and good faith purchasers for value, breach of fiduciary duty, aiding breach of fiduciary duty, breach of contract warranty, and fraudulent inducement. I expect that the Committee will present further recommendations concerning pattern jury instructions relating to contract issues in the upcoming year.

The Section published version 2.0 of its Best Practices in E-Discovery in New York State and Federal Courts. At its April 5, 2013 meeting, the Executive Committee of the State Bar adopted it as the policy of the entire Association. It provides practical, concise advice and a reference for best practices in a rapidly evolving area of the law. We
now must make it available electronically and otherwise to as many judges and practitioners as feasible.

For two decades, the Section has commented upon proposed changes in the Federal Rules of Civil Procedure and Federal Rules of Evidence. The Standing Committee on Rules of Practice and Procedure of the Judicial Conference of the United States has just authorized the publication for comment of substantial revisions to Rules 1, 4, 16, 26, 30, 31, 33, 34, 36, 37, and 84 of the Federal Rules of Civil Procedure proposed by the Advisory Committee on Federal Rules of Civil Procedure. I hope that the Section will provide comments on the proposals including controversial changes in the scope of discovery and the implementation of sanctions for preservation failures.

This past year’s Chair, Tracee Davis, has been at the forefront of the State Bar’s efforts to bring to Congress’s attention the debilitating impact of sequestration on the ability of the third branch of the government, the federal judiciary, to fulfill its constitutional mandate and provide a forum where our commercial clients may resolve their disputes fairly and expeditiously. I will continue these efforts.

Communication

All these activities are less meaningful if Section members cannot learn about and participate in them. The key is communication. Thanks to the Social Media Committee, the Section now tweets. Our handle is: @NYSBAComFed. Our website at www.nysba.org/ComFed is scheduled to be re-launched in the fall of 2013. For Section members only, it includes archived and searchable editions of this publication, our Section’s newsletter featuring articles about issues currently affecting our practice areas and updates on Section activities (published three times a year), and substantive case reviews from Loislaw LawWatch. For all visitors, it includes special reports, committee activities, and a calendar of events. It is my goal to provide information to Section members that will aid them in their daily practice of law and provide a tangible benefit for membership in the Section.

In sum, I see my role as Chair of the Commercial and Federal Litigation Section to facilitate the work of the outstanding Section committees through CLE, reports, and articles; to enable communications with our many Section members through traditional, electronic and social media; and to encourage new members and participation in the Section’s many worthy activities.

Greg Arenson