

REMARKS ON THE ROLE OF THE EXPERT ON NEW YORK LAW IN FOREIGN LITIGATION

By Hon. Robert S. Smith (Ret.)

I. Introduction

II. When an Expert on New York Law is Needed

- A. Primarily in contract cases with a choice of law clause
- B. Primarily in court, not arbitration, proceedings

III. Problems of Bias and Independence

- A. The general principle of expert independence
- B. Acceptance of the assignment
- C. Conditions of acceptance
- D. The extent of the opinion
- E. The role of the lawyer

IV. Special Problems

- A. Opinions on the ultimate issue
 - 1. In contract interpretation cases
 - 2. In other cases
- B. Identification of relevant principles

V. Matters of Style: The Difference Between the Expert and the Advocate