

MINUTES OF DECEMBER 8, 2005 NYSBA CPLR COMMITTEE TELEPHONE CONFERENCE MEETING AT 2:30PM

MEMBERS PARTICIPATING: David L. Ferstendig, Allan Young, Raymond Bragar, Harold Obstfeld, Lewis Smoley, Sharon S. Gerstman, Paul Aloe, Jim Gacloch, Maurice Chayt, Steve Critelli, Oscar Chase, Bob Redis, Charles Jacobs, Bill Altreuter, Patrick Connors, Lou Cristo, Phil Pinsky.

The meeting was called to order at 2:40pm.

I. CPLR 4533-a (Maurice Chayt):

Maurice presented and explained a new version of the proposed bill based on the work done by his subcommittee (Maurice, J. Michael Stallman and Matt Kreinces). Issues raised about the proposal included:

- Its applicability to a No Fault coverage action (not meant to be applicable);
- \$10,000 calculation (agreed it was a proper figure, regardless of calculation; but calculation should be removed); and
- the inclusion of “medical necessity” in the statute.

After a thorough discussion, it was decided that:

- Maurice would rewrite the statute to remove the “medical necessity” reference and to incorporate (b) and (c) into one subsection.
- We will provide a “draft” to Amy Vance at OCA for distribution and comment.
- The revised draft will be redistributed to the committee and the proposal will be on the agenda for the January 2006 meeting (in conjunction with the SBA meetings).

II. CPLR 2305-a (Allan Young):

The committee discussed the revised proposal circulated by Allan on November 27, 2005. After a relatively short discussion (primarily referable to the agent issue) it was agreed that the proposal, as written, would be submitted.

III. Mendon Ponds (Sharon Gerstman):

The issue is whether we should break the proposal into two separate bills or await the election of a new governor. Once the legislative session begins, Sharon will canvass the appropriate legislative people and then we will determine whether we will “take another shot” this year.

IV. Harris/ Alianz:

Sharon suggested that David Ferstendig consider making a presentation to the OCA committee at its January 2006 meeting (which is generally held in the morning before our meeting), to gauge the reaction and the interplay of e-mail filing.

V. Electronic Discovery Committee (Steve Critelli):

At our January meeting we will discuss our participation in the Electronic Discovery Task Force.

Respectfully submitted,

David L. Ferstendig