

Commercial and Federal Litigation Section Newsletter

A publication of the Commercial and Federal Litigation Section of the New York State Bar Association

A Message from the Outgoing Chair

It has been an honor and pleasure to serve as the Chair of the Commercial and Federal Litigation Section for the past year. Our growing and strong Section is in wonderful condition and ready to receive the vigorous leadership of our new Chair, Vince Syracuse. I know that Vince is ready to lead the Section to even greater achievements in the coming year.



Peter Brown

Looking back on our accomplishments, I see the results of the hard work and dedication of so many of our Section’s members and committee Chairs. They are the engine that makes this Section one of the most successful in the New York State Bar Association. I feel particular pride in several significant accomplishments.

Having had the privilege of serving during the Section’s 20th Anniversary, I wanted a celebration which might include all of our members. The result was the Section’s 20th Anniversary celebration on November 18, 2008, at the ornate Russian Tea Room in New York City.

(Continued on page 2)

A Message from the Incoming Chair

It is a great privilege for me to take the helm of the Commercial and Federal Litigation Section as its 21st Chair. During the 15 years that I have been associated with the Section, I have had the honor of serving in several capacities under the leadership of the many outstanding and talented people who have guided the Section—making it one of the most successful Sections



Vincent J. Syracuse

in the New York State Bar Association. I want to thank Mark Zauderer, who introduced me to the Section and has inspired me to assume ever-increasing leadership responsibilities during the years. As a committee member, committee chair, member of the Section’s Executive Committee and Section officer, I have worked with 15 Section Chairs: Mark Alcott, Gerald Paul, Mark Zauderer, Bernice Leber, John Nonna, Jack Auspitz, Sharon Porcellio, Jay Safer, Cathi Hession, Lewis Smoley, Lauren J. Wachtler, Stephen Younger, Lesley Rosenthal, Carrie Cohen and, of course, Peter Brown. I thank you all for your mentoring and kindness. These are very big shoes to fill, and I will try my best to remember what you have taught me.

(Continued on page 3)

Inside

Section Welcomes New Officers:
David H. Tennant and Paul D. Sarkozi 4

Third Annual “Smooth Moves” CLE Program for Attorneys of Color 5

The Commercial and Federal Litigation Section Goes to the Hall of Fame and Hits a Home Run 7

Wachtell Lipton Team Wins Section’s 2009 Brief Writing Award 10

CPLR Amendments: 2009 Legislative Session 11

2009 Amendments to the Uniform Rules for Supreme and County Courts, Rules Governing Appeals, and Certain Other Rules of Interest to Civil Litigators 12

Notes of the Section’s Executive Committee Meetings 13



A Message from the Outgoing Chair

(Continued from page 1)

Over 200 Section members and judges attended. We were honored to have New York State Bar Association President Bernice Leber greet the Section members and add her voice in celebration of our accomplishments.

Every year, the Section presents an outstanding program at the Annual Meeting of the New York State Bar Association. This past January was no exception as the Section's Vice-Chair, Jonathan Lupkin, organized an excellent set of presentations. The Section's Annual Luncheon is a highlight event for commercial lawyers across New York State. The luncheon had a record attendance of over 400 lawyers and judges. The Stanley H. Fuld Award was presented to the Honorable Loretta A. Preska, a District Court judge in the Southern District of New York.

One of the legacy programs of former Section Chair Lesley Friedman Rosenthal is the "Smooth Moves" program directed at involving minority lawyers in Section activities. This program has become a model for the New York State Bar Association as to how each Section can better serve the needs of minority lawyers in New York State. The CLE portion of the program was directed at practice development strategies. As the second part of the program, the Honorable George Bundy Smith Pioneer Award was presented to Elaine R. Jones, the former President and General Counsel of the NAACP Legal Defense Fund.

The Section has funded an internship in the Commercial Division directed at minority law students completing their first year of school. This year, we were pleased to present the award to Ms. Nia Kitwana Ngozi Jackson of Hofstra University School of Law.

Our Section committees put on a number of very high quality CLE programs during the past year. However, I must make a special note of the "Ethics & Civility" program, which this year celebrated its tenth anniversary, drawing hundreds of lawyers in locations across the New York State. The leadership and participation of

Section members in every region of the state made this a high-quality program in every venue.

Our Section's Spring Meeting was held on May 1-3 in Cooperstown, New York. Incoming Chair Vince Syracuse organized an enlightening program directed at "Litigation in the Modern Age." Over three dozen judges, guest speakers, and Section members participated as instructors in the lively CLE presentations. A highlight of each Spring Meeting is the presentation of the Robert L. Haig Award for Distinguished Public Service. This year the award was presented to the Honorable Judith S. Kaye, former Chief Judge of the New York State Court of Appeals. We were honored to have the award presented by her successor, the Honorable Jonathan Lippman, the current Chief Judge of the Court of Appeals.

Our Section's activities benefited from the continued strong support of the Association's outgoing President and a former Chair of this Section, Bernice Leber. Bernice has been one of our consistent cheerleaders. I must also acknowledge our incoming President, Michael Getnick, who has been an active participant in this Section's Spring Meeting for a number of years. We were honored to have his thoughtful welcoming remarks as part of our Spring Meeting.

The Section's success during the past year would not have been possible without the hard work and support from my distinguished team of officers, including Vince Syracuse, Jonathan Lupkin, Susan Davies, and Deborah Kaplan. The Section's Executive Committee and committee chairs have been another source of constant support in this past year. In addition, many of our past Section chairs have continued to provide informal advice and support as I led the Section's activities.

Thank you for the honor of serving as your Section Chair for the past year. I am certain that our new leadership team will continue our history of accomplishment.

Peter Brown

A Message from the Incoming Chair

(Continued from page 1)

I truly appreciate your confidence in me and hope that I will merit your trust.

Our Section owes its success to people, and we all owe a debt of gratitude to our outgoing officers. They have worked so hard to make this past year one of the most successful in the Section's history. Thanks go to Peter Brown, who led the Section last year as Chair, and Susan Davies, whose outstanding work as Treasurer has kept our house in good financial order. The 2009/2010 year promises to be a great one for our Section, and I am looking forward to the support of a team composed of some very experienced Section leaders: Jonathan Lupkin, Chair-Elect; David Tennant, Vice-Chair (who brings us upstate representation); Paul Sarkozi, our new Treasurer; and Deborah Kaplan, who will continue as Secretary.

Our goal at the Section is to help connect New York State's leading commercial litigators with one another, as well as with the judges deciding their cases, in order to improve the quality of representation of clients, to provide a forum for the further development of law and procedure in the areas of commercial and federal litigation, and to enhance the administration of justice. We provide the bench and bar with a laboratory through which changes to procedural and substantive law and court rules can be proposed, vetted, and discussed. We also develop and present numerous continuing legal education programs on topics most useful and relevant to our members' practice areas. Our more than 30 active Section committees promote research and discussion on the current issues affecting our practices. These committees produce reports that are the lifeblood of the Section, which allow us to play a crucial role in the development of commercial litigation practice to better serve our clients.

The Section further serves its mission by providing valuable networking opportunities for commercial and federal litigators to develop relationships and share practice experiences with one another, with federal and state judges, and with arbitral, regulatory, and administrative officers. Most importantly, active membership in the Section provides an opportunity to be of service to the court system and the administration of justice.

Our biggest challenge this year is membership. I know that lawyers lead very busy lives and that many demands are placed on our time. Whether it is the need to bill hours or family responsibilities, it is certainly easy to find "excuses." Participation in Bar Association activities is an integral element of our practices. I have always felt that my participation in the work of our Section has made me a better lawyer. I hope that you will continue to support the Section and that you will encourage your friends and attorneys at your firms to do so as well.

As part of my efforts to build and maintain membership, I plan on continuing our close partnership with the

Young Lawyers Section and hope that we can encourage YLS members to join our committees. We started this process in 2008 and continued this year, when we partnered with the YLS at our Spring Meeting by offering subsidies and discounts to those who have been admitted for less than 10 years. We also presented two-track CLE programs, which allowed newly admitted attorneys to earn CLE credits at the Spring Meeting and encouraged them not only to attend the Spring Meeting but also to participate in our Section's many activities.

The continuation of our various diversity initiatives, including our highly successful "Smooth Moves" program, is another important item on the 2009/2010 agenda. It is my hope that Smooth Moves, which will be in its fourth year in 2010, can serve as a membership gateway. Our diversity committee is working to accomplish that objective and is also preparing a long-range plan to help increase the diversity of our Section at the membership, committee, and leadership levels.

I also believe that it is essential for us to have greater upstate representation on our committees and on the Section's Executive Committee; I will try to appoint upstate committee chairs and co-chairs. I also want to encourage the participation of upstate lawyers at the officer level. It is important to note that with the election of David Tennant from Rochester as Vice-Chair, we will have an upstate Section Chair in 2011. This creates several important opportunities for us, and we are exploring the possible use of video conferencing for Executive Committee meetings, so that we can have a greater upstate presence.

I look forward to working with all of you during my year as Chair and hope that you will share your thoughts with me and our other Section officers and committee chairs about the Section's activities, or any issue that may be of interest to you that can help us in the fulfillment of our mission. More importantly, my goal is to help you get the most out of your Section membership; we want to make sure the Section offers programs that satisfy your needs. We have many activities that are now in the planning stage, but your input is essential to our success. Please do not be shy about contacting any officer or committee chair; your ideas and suggestions are what our Section is about, so we welcome what you have to say about committee activities, CLE programs, proposed legislation, or any commercial litigation issue that may be relevant to your practices.

Thanks for your continued support of the Section and its activities. I look forward to seeing you at Section events during the months to come. I know that you will give me your support during the next year and am confident that our Section will prosper with your assistance.

Vincent J. Syracuse

Section Welcomes New Officers: David H. Tennant and Paul D. Sarkozi



David H. Tennant

The Section's 2009-2010 officers assumed their duties on June 1, 2009. Pursuant to Article III of the Section's by-laws, Vincent J. Syracuse of Tannenbaum Help-ern Syracuse & Hirschtritt LLP succeeded Peter Brown of Baker & Hostetler as Section Chair, and Jonathan D. Lupkin of Flem-ning Zulak Williamson Zauderer LLP succeeded Mr. Syracuse as Section Chair-Elect. David

H. Tennant of Nixon Peabody LLP was elected Section Vice-Chair, and Paul D. Sarkozi of Tannenbaum Help-ern Syracuse & Hirschtritt LLP was elected Section Treasurer, at the Section's Annual meeting on January 28, 2009. Deborah Kaplan of Baker & Hostetler was re-elected Sec-tion Secretary.

David H. Tennant is a partner with Nixon Peabody LLP (Rochester, New York) where his practice includes complex commercial litigation and appellate matters. He is a founding member of his firm's appellate team. Mr. Tennant serves on the Executive Committee for the Com-mercial and Federal Litigation Section, co-chairs the Sec-tion's Committee on Appellate Practice, and is a member of the Section's Committee on the Commercial Division. He serves as the Section's liaison to the Commercial Division for the Seventh Judicial District. Mr. Tennant is a frequent lecturer and writer on appellate practice and ethics, serves as program chair for the NYSBA Ethics & Civility program in Rochester, and moderated the first-ever Commercial Division CLE involving all three Com-mercial Division Justices from Syracuse, Rochester, and Buffalo. Mr. Tennant recently served as a CLE presenter to Commercial Division justices and judicial staff at the New York State Judicial Institute at Pace University. He is a past chair of the NYSBA's Committee on Mass Disas-ter Response, on which he remains active, with his most recent committee service helping families affected by the mass shootings at the American Civic Association in Binghamton, New York.

Paul Sarkozi is a partner at Tannenbaum Help-ern Syracuse & Hirschtritt LLP in New York City and a member of its litigation and alternate dispute resolution practice group. Mr. Sarkozi has been a member of the Section's Executive Committee since 2006, is the Chair of the Section's Committee on the Commercial Division, and

is the former Co-chair of the Sec-tion's Commercial Division Law Report Committee. A graduate of Yale University and Harvard Law School, Mr. Sarkozi's practice focuses on business litigation and arbitration, both in the United States and internationally, with a particular concentration on dis-putes in New York's Commercial Division. His experience covers a broad range of matters involving banking, media, technology, securities, contracts, partner-ships, real estate, antitrust, and employment disputes, and he has also represented corporations and individuals in U.S. Securities and Exchange Commission investigations. Mr. Sarkozi has extensive experience in settling business disputes—both in the context of litigation and through mediation. He currently serves on the Adjunct Faculty at Columbia Law School, where he teaches the "Negotiation Workshop," and also serves as a private mediator and in the Commercial Division of the Supreme Court, New York County. Mr. Sarkozi has also played an active role in the Section's CLE offerings. In 2009, he organized and coordinated several programs for the Section's Spring Meeting. In 2008, he presented programs on "Piercing the Corporate Veil" and "Conducting Effective Depositions." Finally, in 2007 Mr. Sarkozi participated in the presenta-tions given to the Justices of the Commercial Division at the New York State Judicial Institute at Pace University.



Paul D. Sarkozi

Biographical information for Mr. Syracuse, Mr. Lup-kin, and Ms. Kaplan can be found on the Section's Web pages at www.nysba.org/comfed.

The Section also elected Section Chair Vincent J. Syra-cuse and former Section Chairs Peter Brown and Lesley F. Rosenthal of Lincoln Center for the Performing Arts, Inc. as the Section's delegates to the New York Bar Associa-tion's House of Delegates. David Rosenberg of Marcus Rosenberg & Diamond LLP and Co-chair of the Section's Committee on Real Estate and Construction Litigation was elected as an alternate delegate.

The Section expresses its appreciation to outgoing 2008-2009 Section Chair Peter Brown and outgoing 2007-2009 Section Treasurer Susan M. Davies for their outstand-ing service to the Section.

Third Annual "Smooth Moves" CLE Program for Attorneys of Color

On March 25, 2009, the Commercial and Federal Litigation Section presented its third annual "Smooth Moves" program at Lincoln Center for the Performing Arts in New York City. Smooth Moves is the Section's premiere diversity event, organized annually to attract attorneys of color to more active participation within the Section. This year's event, which was hosted by the Section at no charge, attracted more than 200 participants from all sectors of the profession—law firms large and small, in-house legal departments, government, and not-for-profit organizations.

Since its inception in 2007, the event has included both a CLE program and a networking reception, culminating in the presentation of the Section's Honorable George Bundy Smith Pioneer Award. The Pioneer Award is given each year to a litigator of color whose career accomplishments exemplify those of the retired Court of Appeals judge for whom the award is named: legal excellence, community involvement, and mentoring. The award was established by the Section in recognition of Judge Smith's work in the civil rights movement, and his 30 years of public service in the New York judiciary, including 14 years as an associate judge of the Court of Appeals. The Section also awards a Minority Law Student Summer Fellowship at the event to a first year law student, who spends the summer working in the chambers of a Commercial Division justice. The Fellowship is funded by the Section and administered by The New York Bar Foundation.

The CLE program this year was entitled "Business Development Strategies for Attorneys of Color in Challenging Economic Times" and featured an absolutely stellar panel of practitioners: Andrew T. Hahn, Sr., Partner, Seyfarth Shaw LLP and president of the National Asian Pacific American Bar Association; James E. Johnson, Partner, Debevoise & Plimpton LLP; Elizabeth D. Moore, Partner, Nixon Peabody LLP; Elpidio "PD" Villarreal, Director of Litigation for New Jersey-based Schering-Plough Corporation; and Theodore V. Wells, Jr., Partner, Paul, Weiss, Rifkind, Wharton & Garrison LLP. Loretta E. Lynch, Partner, Hogan & Hartson LLP, and formerly the U.S.

Attorney for the Eastern District of New York, was the moderator for the panel's discussion, which focused on imparting practical advice for attorneys of color on effective techniques toward building a client base in a down economy, including developing subject matter expertise, mining business contacts, marketing oneself within one's own law firm, and other ways to proactively translate contacts into lucrative business.

Elaine R. Jones, the President and Director-Counsel Emeritus of the NAACP Legal Defense and Educational Fund (LDF), was this year's recipient of the George Bundy Smith Pioneer Award. "During her remarkable career, Elaine Jones worked determinedly to fight for justice and equality. She is a dynamic leader and trailblazer, embodying the pioneering example set by retired Court of Appeals Judge George Bundy Smith," said Peter Brown, the Section's 2008-09 Chair.

Ms. Jones received her undergraduate degree from Howard University, and then became the first black woman to enroll in the University of Virginia School of Law and, ultimately, the school's first African-American graduate. Ms. Jones' career continued to encompass a series of pioneering "firsts," as she became one of the first African-Americans to serve in Turkey as part of the Peace Corps; the first African-American to be elected to the American Bar Association's Board of Governors; and the first woman to lead the acclaimed and historic NAACP LDF, which was founded by Thurgood Marshall. Ms. Jones joined the NAACP LDF as a staff attorney in 1970, defending death row inmates and taking on countless civil rights cases. She also served as counsel of record in the landmark Supreme Court death penalty case *Furman v. Georgia*. During her nearly 30-year career at NAACP LDF, she played an integral role in shaping LDF's contributions to the Voting Rights Act Amendments of 1982 and the Civil Rights Act of 1991. Ms. Jones also received the Eleanor Roosevelt Human Rights Award from President Clinton in 2000.

After a stirring and inspiring tribute to her life and career, Ms. Jones was presented with the Pioneer Award by her immediate successor at NAACP LDF, Ted Shaw, who is currently a



From Left: Andrew Hahn, Seyfarth Shaw (CLE Panelist); Elpidio "PD" Villarreal, Schering-Plough (CLE Panelist); Elaine R. Jones, George Bundy Smith Pioneer Award Recipient; Elizabeth Moore, Nixon Peabody (CLE Panelist); Loretta Lynch, Hogan & Hartson (CLE Moderator); Ted Wells, Paul Weiss (CLE Panelist); James Johnson, Debevoise & Plimpton (CLE Panelist); Hon. George Bundy Smith, Chadbourne & Parke; Carla Miller, Program Co-Chair; Barry Cozier, Program Co-chair

Professor at Columbia University School of Law and Of Counsel to Fulbright & Jaworski LLP. During his presentation, Mr. Shaw stated,

[Elaine] has this life force. And I thank God that that life force has been given to the cause of human rights, racial and social justice, [and] to making our country better. She is one of the great Americans. And George Bundy Smith is one of the great Americans. To link them even more closely through the presentation of this award is a singular honor.

Judge George Bundy Smith also noted at the awards presentation,

I am delighted that tonight's awardee is Elaine Jones. She was a legend at the Legal Defense Fund. . . . So, I am particularly honored that she is going to accept this award this evening. . . . And, again, we still have an awful lot of work to do. But, as long as we have leadership like Elaine Jones gave to America, America is in good hands.

In accepting the award, Ms. Jones noted,

[A]ll of the problems of past history of social and economic significance find their way into the court. And so we, as lawyers, help establish the rules. What are the guideposts? What is the gateway? And, therefore, that is our charge. Our public service is critical to us . . . I thank you, Judge Smith. I thank you New York State Bar, Commercial and Federal Litigation Section, for embracing me. I thank all of you for coming out and this show of support. And the work goes on.

The past recipients of the Section's Pioneer Award are Hon. George Bundy Smith of New York (Chadbourne



From Left: Ted Shaw, Fulbright & Jaworski, Award Presenter; Elaine R. Jones, George Bundy Smith Pioneer Award Recipient; Hon. George Bundy Smith, Chadbourne & Parke

& Parke LLP) and Cesar A. Perales (Co-Founder, President, and General Counsel, Puerto Rican Legal Defense and Education Fund).

Ms. Nia Jackson, a first-year law student at Hofstra Law School, was awarded the Commercial Division's Minority Law Student Fellowship. Ms. Jackson received her undergraduate degree from Villanova University and holds an International M.B.A. from Pepperdine University. Ms. Jackson will spend the summer of 2009 in the chambers of Commercial Division Justice Eileen Bransten.

The Section gratefully acknowledges the sponsorship generously provided by the following law firms: **Gold Sponsor:** Lowenstein Sandler PC; **Silver Sponsors:** Baker & Hostetler LLP, Cadwalader, Wickersham & Taft LLP, Chadbourne & Parke LLP, Fried Frank LLP, Jenner & Block LLP, Labaton Sucharow LLP, Patterson Belknap Webb & Tyler LLP, Paul, Weiss, Rifkind, Wharton & Garrison LLP, Seyfarth Shaw LLP; **Bronze Sponsors:** Epstein Becker & Green, P.C., Hiscock & Barclay LLP, Latham & Watkins LLP, Mitchell Silberberg & Knupp LLP, Shalov Stone Bonner & Rocco LLP, and Tannenbaum Helpert Syracuse & Hirschtritt LLP. Thanks to the support of these law firms, the Section is able to provide the Smooth Moves CLE program and reception at no charge. The Section also thanks Ellen Grauer Court Reporting Co. LLC for contributing the transcription of the award ceremony that will be reprinted in the Fall 2009 issue of *NYLitigator*.

Finally, the Section also acknowledges the tireless work of the Smooth Moves Planning Committee: Barry A. Cozier, Epstein Becker & Green P.C. and Carla M. Miller, Universal Music Group, the event's Co-chairs; Lesley Friedman Rosenthal (Section Chair, 2006-07), Zenola Harper and Cecelia Gilchrist, all of Lincoln Center for the Performing Arts; Tracee Davis, Zeichner Ellman & Krause LLP; Susan Davies, Shalov Stone Bonner & Rocco LLP; and Hon. George Bundy Smith, Chadbourne & Parke LLP.



From Left: Hon. Eileen Bransten, New York Supreme Court, Commercial Division; Ted Shaw, Fulbright & Jaworski, Award Presenter; Elaine R. Jones, George Bundy Smith Pioneer Award Recipient; Nia Jackson, Minority Law Student Summer Fellowship Recipient; Hon. George Bundy Smith, Chadbourne & Parke

The Commercial and Federal Litigation Section Goes to the Hall of Fame and Hits a Home Run

The Commercial and Federal Litigation Section held its annual Spring Meeting at the Otesaga Resort in Cooperstown, New York, on May 1-3, 2009. The Spring Meeting attracted attorneys and judges from across New York State for an outstanding weekend of eight informative CLE programs, which featured over 35 different speakers, and nightly social and networking events. The weekend was organized by Incoming Section Chair Vincent J. Syracuse of Tannenbaum Helpert Syracuse & Hirschtritt LLP. Following last year's success, in partnership with the Young Lawyers



Dana V. Syracuse (YLS), Sherry Levin Wallach (YLS), Jonathan Lupkin (C&FLS), Hon. Judith S. Kaye, Vincent J. Syracuse (C&FLS), Hon. Jonathan Lippman, Philip Fortino (YLS)

Section and the help of YLS Chair Sherry Levin Wallach, the Spring Meeting offered a dual-track CLE program: "Track A" for experienced litigators and "Track B" for young lawyers. The "Track B" programs were organized by Paul D. Sarkozi, also of Tannenbaum Helpert.

The 2009 Spring Meeting was an out-of-the-park home run for the Section. The highlight of



Outgoing Section Chair Peter Brown Presenting the Section's Award for Distinguished Service to Outgoing Section Treasurer Susan Davies

the weekend was the presentation of the 2009 Robert L. Haig Award for Distinguished Public Service. Chief Judge Jonathan Lippman presented the award to former Chief



Section Officers for 2009/2010 Jonathan D. Lupkin (Chair-Elect), David H. Tennant (Vice-Chair), Vincent J. Syracuse (Chair), Deborah Kaplan (Secretary), and Paul Sarkozi (Treasurer)

Judge Judith S. Kaye. The Haig Award is presented annually by the Section to honor a member of the legal profession who has rendered distinguished public service. This award is named in honor of Robert L. Haig, the founder of the Commercial and Federal Litigation Section and our first Section Chair. NYSBA President-elect Stephen P. Younger introduced Chief Judge Lippman who presented the award to Chief Judge Kaye. Because Chief Judge Kaye has been a consistent supporter of the Section and its activities, we

were all privileged to honor her at the Spring Meeting.

Other highlights of the weekend included:

- An Opening Dinner in the Great Hall of the Baseball Hall of Fame. NYSBA President Michael E. Getnick gave the keynote speech, which emphasized the importance of Bar Association activities. Dinner was followed by the stand-up comedy of Paul Eyre of Baker and Hostetler LLP, whose routine was called the "Reminiscences of an Ex-Managing Partner."



Presentation of Service Award to Peter Brown by Incoming Chair Vincent J. Syracuse



Jonathan D. Lupkin, Vincent J. Syracuse, Stephen Younger, Hon. Judith S. Kaye, Hon. Jonathan Lippman, Peter Brown, Michael E. Getnick

- Former Chief Judge Judith S. Kaye's presentation of the Section's 2009 Award for Excellence in Commercial Brief Writing to Garrett B. Moritz of Wachtell, Lipton, Rosen & Katz. The competition was judged by Hon. Andrew J. Peck, James D. Yellen and Jonathan D. Lupkin and was open to all Section members who filed briefs or memoranda of law of up to 25 pages in commercial litigation during 2008/2009, in either New York State or federal courts.



CLE Track A—"Ethical Issues in the Investigation of a Lawsuit, Part 2"—Jeremy R. Feinberg, James M. Wicks, Benton Campbell, Richard Marc Plansky, Prof. Edward D. Cavanagh

- Seven innings of "Who's on First—What's on Second"-style softball at the Clark Sports Center on a beautiful spring Saturday afternoon. The game



Presentation of Robert L. Haig Award for Distinguished Public Service to Former Chief Judge Judith S. Kaye by Chief Judge Jonathan Lippman and Robert L. Haig

marked the debut of the Commercials, managed by OCA's Special Counsel to the Commercial Division, Jeremy R. Feinberg, and the Federals, managed by Tannenbaum

Helpern's Jamie B.W. Stecher. By special order of various judges who were asked to oversee the competition and guarantee that our Section would not pose any threat to Major League Baseball, the outcome of the game has been placed under seal.

- The Section's "All Star" Gala Dinner, featuring more than 180 judges, lawyers, spouses, and guests. During the dinner, welcoming remarks were made by outgoing Chair Peter Brown, who also presented the 2009 Chair's Award for Distinguished Service to the Section to Susan M. Davies, retiring Section Treasurer. Incoming Chair Vincent J. Syracuse outlined his plans for 2009/2010 and expressed the Section's thanks to Peter Brown for his



Presentation of the 2009 Brief Writing Award to Garrett Moritz of the Wachtell Lipton team

service as Chair in 2008/2009, our other outgoing officers, the former Chairs who joined us, and the many people who helped make our Spring Meeting a success, especially our speakers at the eight CLE programs that were presented during the weekend.

- Four "Track A" CLE programs:

- "What to Do When the Media Calls?"—moderated by the Hon. Barbara R. Kapnick with panelists Eric Dash, *The New York Times*; Aaron Lucchetti, *The Wall Street*

Journal; Ken Sunshine, Ken Sunshine Consultants, Inc.; and Mark C. Zauderer, Flemming Zulack Williamson Zauderer LLP.

- "Sports Law and Lore"—moderated by Jamie B.W. Stecher, Tannenbaum Helpen Syracuse & Hirschtritt LLP; with Dan Halem, Senior VP, General Counsel—Labor, Office of the Commissioner of



CLE Track A—"Sports Law and Lore"—David W. Sussman, Bradley I. Ruskin, Jamie B.W. Stecher, Jeffrey Kessler, Dan Halem

Baseball; Jeffrey L. Kessler, Dewey & LeBoeuf LLP; Bradley I. Ruskin, Proskauer Rose LLP; and David W. Sussman, Skadden, Arps, Slate, Meagher and Flom LLP.

- "Strategies for Protecting Sports, Music and Publication Content on the Internet: Litigating Against Domestic and Foreign Content Pirates"—moderated by Peter J. Pizzi, Connell Foley LLP; with panelists John Curran, Stroz Friedberg; Joseph DeMarco, DeVore & DeMarco LLP; Lance R. Griffin, Executive Counsel, Corporate Legal, the Walt Disney Company; and Michael J. Mellis, Senior Vice President and General Counsel, MLB Advanced Media, L.P.

- "Ethical Issues in the Investigation of a Lawsuit, Part 2"—moderated by Anthony J. Harwood and James M. Wicks, Farrell Fritz PC;

with Benton Campbell, U.S. Attorney, Eastern District of New York; Professor Edward D. Cavanagh, St. John's University School of Law, Queens; Jeremy R. Feinberg, NYS Unified Court System, Statewide Special Counsel for Ethics and the Commercial Division; and Richard Marc Plansky, Kroll Associates, Inc.



Taking a Break During CLE

and Melinda H. Waterhouse, DLA Piper LLP (US).

– “E-Discovery: What Every Junior Lawyer Needs to Know About Litigation Holds and Gathering, Reviewing and Producing Electronic Documents,” presented by Colleen Voshell, FTI Consulting, Inc.; Erika J. Duthiers, Nixon Peabody LLP; and Patrick G. Radel, Getnick Livingston Atkinson & Priore, LLP.

• Four “Track B” CLE programs:

– “What to Do When the Prosecutor Calls: Practical Criminal Defense Tips for the Junior Lawyer,” presented by Jonathan S. Abernethy, Fulbright & Jaworski; Michael C. Miller, Steptoe & Johnson LLP; and Sherry Levin Wallach, Wallach & Rendo LLP.



CLE Track B—“Trying Your First Non-Jury Case and Preserving Issues for Appeal: The Mechanics for Success”—Jonathan D. Lupkin, Dana V. Syracuse, Justice Karla Moskowitz, Robert H. Holtzman

– “Trying Your First Non-Jury Case and Preserving Issues for Appeal: The Mechanics for Success”—moderated by Dana V. Syracuse, Hartman & Craven LLP; with the Hon.

Karla Moskowitz, Associate Justice, Appellate Division, First Department; Robert N. Holtzman, Kramer Levin Naf-talis & Frankel LLP; and Jonathan D. Lupkin, Flemming Zulack Williamson Zauderer.

– “Beyond the MPRE: Real Life Ethics for the New Business Lawyer,” presented by Hon. John M. Curran, Supreme Court, Erie County; Jeremy R. Feinberg; David A. Lewis, Proskauer Rose LLP;

The Section appreciates the support of former chairs Robert L. Haig, Mark C. Zauderer, Lauren J. Wachtler, Stephen P. Younger, and Carrie H. Cohen, who joined us and helped make the weekend a success. The Section thanks Hudson Reporting for transcribing several of the CLE presentations as well as the Friday and Saturday evening after-dinner speeches. Thanks to Hudson, those of you who were unable to be with us in Cooperstown will be able to read about the weekend programs and events in the *NY Litigator*. The Section further thanks Flemming Zulack Williamson Zauderer for its sponsorship of the Saturday evening dinner, the Forensic CPA Council for its sponsorship of the Saturday evening cocktail reception, and Forensics Consulting Solutions for its sponsorship of the Saturday morning breakfast. Most importantly, the success of the Spring Meeting was the direct result of the hard work and dedication of Lori Nicoll and her team at the NYSBA. Brava, Lori!



Anthony Harwood, Dana V. Syracuse, Paul D. Sarkozi, Susan M. Davies

Plans are already being made for the 2010 Spring Meeting, which will take place at The Sagamore in Lake George on May 21–23, 2010. Please save the date and get ready for another exciting weekend.



The Commercials vs. The Federals

Wachtell Lipton Team Wins Section's 2009 Brief Writing Award

At the Spring Meeting in Cooperstown, New York, on May 2, 2009, the Honorable Judith S. Kaye announced Marc Wolinsky, Peter C. Hein, Ian Boczko, Garrett B. Moritz, Catherine Hardee, Carrie M. Reilly, and Jennifer R. Galeon of Wachtell, Lipton, Rosen & Katz as the winners of the Section's 2009 Award for Excellence in Commercial Brief Writing. The Wachtell Lipton team received the award for its Memorandum of Law in Support of Motion for Summary Judgment filed on June 13, 2008, on behalf of Defendant JPMorgan Chase & Co. in *In re Bear Stearns Litigation*, a New York County Commercial Division case assigned to Justice Herman Cahn.

This year, submissions for the Brief Writing Award competition were accepted from members of the Young Lawyers Section as well as the Commercial and Federal

Litigation Section. As in prior years, briefs and memoranda of law of up to 25 pages that had been filed in New York State or federal courts during the prior calendar year were eligible for consideration. The entries were judged by U.S. Magistrate Judge Andrew J. Peck, Jonathan D. Lupkin, and James P. Yellen. The competition was coordinated by Susan M. Davies.

The Section congratulates the Wachtell Lipton team on being the 2009 winners, and expresses its thanks to the competition judges and to everyone who entered the competition.

A copy of the Wachtell Lipton's team's Award-winning brief is available on the Section's Web site at www.nysba.org/comfed.



Garrett B. Moritz, who accepted the 2009 Award for Excellence in Commercial Brief Writing on behalf of the team from Wachtell, Lipton, Rosen & Katz, is pictured (second from left) with Vincent J. Syracuse, Hon. Judith S. Kaye, and Susan M. Davies.

CPLR Amendments: 2009 Legislative Session

(Chapters 1-14, 16-217)

CPLR §	Chapter (§)	Change	Eff. Date
1101(f)	56(17)	Extends sunset until Sept. 1, 2011	4/7/09
5205(l), (o)	24(1), 24(2)	Eliminates exemptions in CPLR 5205(l)-(n) where NYS or a municipality is the judgment creditor or where debt is for child support or maintenance	5/4/09
5222(k)	24(3)	Eliminates exemptions in CPLR 5222(h)-(j) where NYS or a municipality is the judgment creditor or where debt is for child support or maintenance	5/4/09
5222-a(a), (b)(1), (b)(2), (c)(1), (c)(4)	24(4), 24(5), 24(6)	Eliminates support collection units	5/4/09
5222-a(i)	24(7)	Provides that CPLR 5222-a does not apply where NYS or a municipality is the judgment creditor or where debt is for child support or maintenance	5/4/09
5230(a)	24(8)	Exempts execution notices where NYS or a municipality is the judgment creditor or where debt is for child support or maintenance	5/4/09
5232(e)	24(9)	Adds to preservation clause restraint, removal, and execution required to enforce a child support or maintenance obligation	5/4/09
5232(h)	24(10)	Eliminates exemptions in CPLR 5232(e)-(g) where NYS or a municipality is the judgment creditor or where debt is for child support or maintenance	5/4/09
5241(b)(2)(l)	215(11)	Corrects cross-references to Fam. Ct. Act and Dom. Rel. Law	10/9/09
5241(h)	215(12)	Modifies priority of deductions	10/9/09

Save the Dates

January 27, 2010
 Commercial and Federal Litigation Section
 Annual Meeting
 Hilton New York • New York City

May 21–23, 2010
 Commercial and Federal Litigation Section
 Spring Meeting
 The Sagamore Resort • Lake George, NY

2009 Amendments to the Uniform Rules for Supreme and County Courts, Rules Governing Appeals, and Certain Other Rules of Interest to Civil Litigators

(N.Y. Orders 1-13 of 2009)

22 N.Y.C.R.R. §	Court	Subject (Change)
202.12(c)(3)	Sup.	Adds establishment of method and scope of electronic discovery to matters to be considered at preliminary conference
202.12(l)	Sup.	Deletes proviso that requests for CPLR 3407 preliminary conferences need not be accompanied by § 202.12(a) good-faith affirmations
202.70(a)	Sup.	Increases monetary threshold of Commercial Division in New York County to \$150,000 and in Nassau County to \$100,000
Parts 691, 700	2d Dep't	Changes cross-references from Code of Professional Responsibility to Rules of Professional Conduct
700.4	2d Dep't	Gender-neutralizes the rule on Obligations of Attorneys
Part 1200	All	Replaces Code of Professional Responsibility with Rules of Professional Conduct

Note that the court rules published on the Office of Court Administration's Web site include up-to-date amendments to those rules: <http://www.nycourts.gov/rules/trialcourts/index.shtml>.

***NYLitigator* Invites Submissions**

The *NYLitigator* welcomes submissions on topics of interest to members of the Section. An article in *NYLitigator* is a great way to get your name out in the legal community and advertise your knowledge. Our authors are respected statewide for their legal expertise in such areas as ADR, settlements, depositions, discovery, and corporate liability. MCLE credit may also be earned for legal-based writing directed to an attorney audience upon application to the CLE Board.

If you have written an article and would like to have it considered for publication in the *NYLitigator*, please send it in electronic document format (pdfs are NOT acceptable), along with biographical information to its Editor:

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Authors' Guidelines are available on the Section's Web site: www.nysba.org/comfed.

www.nysba.org/NYLitigator

Notes of the Section's Executive Committee Meetings

December 9, 2008

Guest speaker the Hon. Ira B. Warshawsky, Justice of the Supreme Court, Commercial Division, Nassau County, shared with the Section his thoughts on current trends in litigation, from electronic discovery to summary judgment motions, articulated several of his own personal preferences with respect to litigations and trials, and suggested cost-saving measures of which parties might avail themselves, such as sharing litigation databases.

The Executive Committee received a report of the Committee on Class Action on the differences in the circuits' approaches to satisfying Rule 23's class certification requirements. The Executive Committee approved the Committee on Federal Procedure's reports on the Advisory Committee on Civil Rules' proposed changes to Fed. R. Civ. P. 26 and 56.

February 10, 2009

Guest speaker John W. Moscow, Partner, Baker & Hostetler LLP, shared with the Executive Committee his experience at the New York County District Attorney's Office investigating and prosecuting the Bank of Credit and Commerce International (BCCI) for its role in one of the largest "Ponzi schemes" in history. He provided a historical overview of both the origin of BCCI and the Government's investigation of BCCI.

The Executive Committee discussed a draft report of the NYSBA Task Force on Privacy. The Executive Committee also discussed plans for upcoming Section events and programs.

March 10, 2009

Guest speaker Simeon H. Baum, Chair of the NYSBA Dispute Resolution Section, engaged the Section in an interactive discussion of various models of dispute resolution, including the merits of joint sessions versus caucus. Mr. Baum also distributed two reports by the Dispute Resolution Section, one regarding the Arbitration Fairness Act and one concerning arbitration discovery in domestic commercial cases.

The Executive Committee discussed plans for the "Smooth Moves" program and the Spring Meeting.

April 7, 2009

Guest Speaker the Honorable Justice Herman Cahn, recently retired Justice of the Supreme Court, Commercial Division, New York County, discussed various issues affecting the Commercial Division, including adjusting judicial salaries and continuing the New York State Supreme Court Commercial Division's judicial internship program. Justice Cahn posited mediation as a valuable tool, and the Executive Committee discussed the merits of various methods of mediation, as well as which types of cases ought to be heard by the Commercial Division.

The Executive Committee discussed upcoming Section events and programs and the possible filing of an amicus brief in a case certified to the New York State Court of Appeals involving the issue of whether, as a matter of law, a party commits champerty when, as the holder of a defaulted debt obligation, it acquires the right to pursue a lawsuit against a third party in order to collect more damages through that litigation than it had demanded in settlement from the assignor.



Catch Us on the Web at
WWW.NYSBA.ORG/COMFED

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