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Commercial and Federal Litigation Section Newsletter

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

Message from the Outgoing Chair

Vincent J. Syracuse

It is impossible for me to believe that a year has passed since I took my turn at the helm of the Section and that I have now joined the ranks of our former Section chairs.

We should all be very proud of our Section's accomplishments. First and foremost, we have continued our Section's close association with the Young Lawyers Section. The future of our profession is dependent on the nurturing and professional development of the younger members of our profession, a point that was recently made by NYSBA President and former Section Chair Stephen P. Younger. To use his words, "We owe it to the great lawyers who have come before us—those who have served as mentors to me and many others—to be good stewards of our

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Message from the Incoming Chair

Jonathan D. Lupkin

Those reading this *Newsletter* know well that our Section—the Commercial and Federal Litigation Section—is arguably the most active and prolific section of the New York State Bar Association. Our Section's success is hardly coincidental, but it is relatively simple to explain. Its members include outstanding lawyers, legal academics, and members of the judiciary who selflessly contribute their considerable energy and legal acumen to further the Section's work.

Over the years, our Section's efforts have produced exceptional continuing legal education programs, impacted upon the drafting and enactment of significant pieces of legislation, and been instrumental in the creation and development of the Commercial Division of

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Inside

NYSBA

Commercial and Federal Litigation Section's 2010 Spring Meeting

By Clara Flebus

The Commercial and Federal Litigation Section held its annual Spring Meeting at the beautiful Sagamore Resort in Bolton Landing, New York, on May 21-23. The weekend, organized by Incoming Section Chair Jonathan D. Lupkin of Flemming Zulack Williamson Zauderer LLP, featured five thought-provoking, instructive, and exciting CLE programs, with 27 distinguished justices and seasoned practitioners discussing various cutting-edge aspects of commercial litigation. The 2010 Spring Meeting attracted 30 judges from the New York and Delaware federal and state courts and over 100 attorneys.

The Spring Meeting began with an Opening Banquet and welcoming remarks given by Outgoing NYSBA President Michael E. Getnick, Outgoing Section Chair Vincent J. Syracuse, and Young Lawyers Section Chair Tucker C. Stanclift. Following the Banquet, guests screened a film, "The Response," a courtroom drama based upon actual transcripts of the Guantanamo Bay military tribunals. A discussion followed with guest speakers Sig Libowitz, Venable LLP, who wrote and produced the movie, actor Peter Riegert, Matthew Waxman, Associate Professor at Columbia Law School, and Brigadier General James Cullen, Anderson Kill & Olick, P.C. The discussion highlighted the moral, legal, and strategic dilemmas that military tribunals face in deciding a detainee's status as an enemy combatant.

On Saturday, the Section presented a CLE program entitled "Delaware Chancery Court and the Commercial Division of the New York State Supreme Court: A Discussion Among Leading Jurists and Practitioners About the Basics of Commercial Law and Litigation in the Two Commercial Epicenters of the United States"—moderated by the Honorable Karla Moskowitz, Justice of the Appellate Division, First Department, with panelists Hon. Vice Chancellor John W. Noble, Delaware Court of Chancery; Hon. Henry duPont Ridgely, Supreme Court of Delaware; Hon. Carolyn E. Demarest, Commercial Division, Kings County Supreme Court; Hon. Bernard J. Fried, Commercial Division, New York County Supreme Court; and Joseph S. Allerhand, Weil Gotshal & Manges LLP. Judge Moskowitz was assisted by her Law Clerk, Melissa Crane, and Deborah Edelman, Assistant Deputy Counsel, both of New York State Supreme Court.

The beautiful weather allowed judges, lawyers, and guests to spend the afternoon enjoying either golf, tennis, biking, boating, or simply strolling along the shores of sparkling Lake George.

In the evening, the Section hosted a Gala Dinner, featuring more than 130 judges, lawyers, spouses, and guests. During the dinner, welcoming remarks were made by Incoming Chair Jonathan D. Lupkin, who expressed the Section's appreciation to Outgoing Chair Vincent J. Syracuse, our other outgoing officers, the former Section chairs, and the many people who helped make the Spring Meeting a tremendous success. Incoming President of the New York State Bar Association Stephen P. Younger gave a keynote speech, which addressed changes in the practice of law and the importance of mentorship development.

The highlight of the dinner came with the presentation of the 2010 Robert L. Haig Award for Distinguished Public Service to the Honorable Reena Raggi, United States Court of Appeals for the Second Circuit. 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 Section and its first Chair. Hon. Edward R. Korman, United States District Court for the Eastern District of New York, presented the award to Judge Raggi. In her acceptance remarks, Judge Raggi expounded on the importance of maintaining juries in our legal system as a means to sensitize citizens to the administration of justice and to heighten their belief in equity and democracy.

The weekend offered four more insightful and informative CLE programs, which included:

- "How to Win (and Lose) an Injunction in New York State and Federal Court," organized and moderated by Mark C. Zauderer of Flemming Zulack Williamson Zauderer LLP, with panelists Hon. Helen E. Freedman, Appellate Division, First Department; Hon. James A. Yates, Commercial Division, New York County Supreme Court; Hon. Lawrence Kahn, United States District Court for the Northern District of New York; Vincent J. Syracuse, Tannenbaum Helpern Syracuse & Hirschtritt LLP; and Marcia B. Paul, Davis Wright Tremaine LLP.
- "Introduction to Appearing Before the Commercial Division: Preparation, Practices and Potential Pitfalls," organized by Janel Alania, Commercial Division Law Clerk, who also moderated the panel, Clara Flebus, Commercial Division Law Clerk, and Deborah Edelman, all of New York State Supreme Court. The panel comprised Hon. James E. D'Auguste, New York City Civil Court; Anna Marie Fontana, Court Attorney, and Michael L. Katz, Principal Law Secretary, both of New York State Supreme Court; and Peter J. Glennon, Nixon Peabody LLP.
- "Did That Actually Happen? The Ethics Game Show," organized and moderated by Statewide

Special Counsel for Ethics Jeremy R. Feinberg, with panelists Hon. Deborah H. Karalunas, Commercial Division, Onondaga County Supreme Court; Hon. Timothy S. Driscoll, Commercial Division, Nassau County Supreme Court; Jonathan D. Lupkin, Flemming Zulack Williamson Zauderer LLP; and David H. Tennant, Nixon Peabody LLP.

- "Fundamental Ethical and Practical Considerations in E-Discovery: Views From the Bench," organized and moderated by Emily K. Stitelman of Flemming Zulack Williamson Zauderer LLP, with panelists Hon. Leonard B. Austin, Appellate Division, Second Department; Hon. Frank Maas, Magistrate Judge, United States District Court for the Southern District of New York; Paul Taylor, Director of Forensics at First Advantage Litigation Consulting; and Sheldon K. Smith, Nixon Peabody LLP.

By all measures, the 2010 Spring Meeting was a resounding success. The Section appreciates the support of former chairs Robert L. Haig, Mark C. Zauderer, Jay G. Safer, Cathi A. Hession, Lauren J. Wachtler, Stephen P. Younger, Lesley Friedman Rosenthal, and Carrie H. Cohen, who joined us and helped make the weekend successful. The Section thanks Hudson Reporting for transcribing and videotaping several of the CLE presentations and speeches. The Section further thanks platinum sponsor Bloomberg Law, bronze sponsor First Advantage Litigation Consulting, and sponsor JAMS for their generous financial support. The Section especially thanks Flemming Zulack Williamson Zauderer LLP, Kelley Drye & Warren LLP, and Getnick & Getnick for their sponsorship of the Saturday evening Gala Dinner. Last, but certainly not least, the Section thanks Lori Nicoll and her team at the NYSBA. Because of their hard work and dedication, the Section's annual Spring Meetings are a tremendous success year after year.

Plans are already being made for the 2011 Spring Meeting, which will take place at the Hyatt Regency in Newport, Rhode Island, on May 20-22, 2011. Please save the date and get ready for another spectacular weekend.

Clara Flebus is the Commercial Division Law Clerk to Justice Barbara R. Kapnick, New York State Supreme Court, Commercial Division, in Manhattan.

Scenes from the Commercial and Federal Litigation Section

SPRING MEETING

May 21-23, 2010

The Sagamore Resort • Bolton Landing, NY

Incoming Section Chair Jonathan Lupkin's inaugural address

Outgoing Section Chair Vincent Syracuse presents Chair's Award for Outstanding Service to the Commercial and Federal Litigation Section to Mark Zauderer

Outgoing NYSBA President Michael Getnick

Commercial Division Justice Timothy Driscoll discusses ethics issue

Judge Edward Korman presents Haig Award to Judge Reena Raggi

Justice Bernard Fried reflecting on a point of New York commercial law

Incoming Chair Jonathan Lupkin presents anniversary cake to Judges Nina Gershon and Bernard Fried

Justice Leonard Austin and his wife, Deborah, receive anniversary cake from Section Chair Jonathan Lupkin

A welcome from incoming NYSBA President Stephen Younger (l to r) Stephen Younger, Wendy Waxman, and Columbia Law School Professor Matthew Waxman

(l to r) Outgoing Chair Vincent Syracuse, Haig Award recipient, Judge Reena Raggi, and Incoming Chair Jonathan Lupkin

Marcia Paul and Outgoing Chair Vincent Syracuse, panelists on injunctive relief program

Vice-Chancellor John Noble discussing Delaware commercial law with Appellate Division Justice Karla Moskowitz

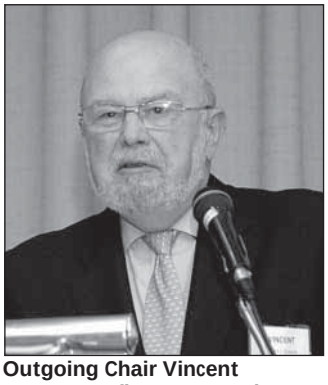
Anna Marie Fontana (left) and Clara Flebus (right)

Michael Katz, Principal Law Secretary to Justice Barbara R. Kapnick, discusses practice in the Commercial Division

All in the Family—Vincent Syracuse, Dana Syracuse and Katie Syracuse

Haig Award recipient Judge Reena Raggi with Award's namesake and former Section Chair Robert Haig

Shining stars of Gala Dinner (l to r) Outgoing Section Chair Vincent Syracuse, Haig Award recipient Judge Reena Raggi, and Chair's Award for Outstanding Service to the Section recipient Mark C. Zauderer



Outgoing Chair Vincent Syracuse reflects on another successful and productive year for the Commercial and Federal Litigation Section

Hon. James D'Auguste and Panel Moderator Janel Alania, Commercial Division Law Clerk to Justice Bernard Fried, discussing points of practice in the Commercial Division

A friendly debate between Section Treasurer Paul Sarkozi and Incoming Section Chair Jonathan Lupkin

Actor Peter Riegert discussing his role in THE RESPONSE

(l to r) Section Vice Chair Tracee Davis, Former Section Chair Lesley Friedman Rosenthal and General James Cullen

Welcome Dinner (l to r) Hon. Nicholas Garaufis, Hon. Stephen Crane, Michael Katz, Esq. and Meredith Katz

Outgoing NYSBA President Michael Getnick congratulates panel moderator Jeremy Feinberg on a job well done

E-discovery dialogue (l to r) Paul Taylor, Hon. Frank Maas, Hon. Leonard Austin, Sheldon Smith and Panel Moderator Emily Stitelman

The Section Presents Its Fourth Annual "Smooth Moves" CLE Program for Attorneys of Color, and the Honorable George Bundy Smith Pioneer Award to Norman Kee and Glenn Lau-Kee

On April 27, 2010, the Commercial and Federal Litigation Section presented its third annual "Smooth Moves" program, which is the Section's premiere diversity event organized to attract attorneys of color to more active participation within the Section. 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 an attorney of color whose career accomplishments exemplify those of retired Court of Appeals Judge George Bundy Smith: 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 its 1L Minority Law Student Fellowship at the event to a first-year law student, who spends the summer working in the chambers of a Commercial Division justice. The New York Bar Foundation provides a stipend for the fellowship recipient.

This year's CLE program was entitled "The Obama Administration's Call To Service—One Year Later: Perspectives on Growth Opportunities for Attorneys of Color in the Public and Private Sectors." The program once again featured a stellar array of panelists, including Administration officials Preeta Bansal (General Counsel and Special Policy Advisor for the White House Office of Management and Budget) and George Madison (General Counsel, Department of the Treasury); private practitioners Ki P. Hong (Partner, Political Law Practice Group, Skadden Arps–Washington, D.C.) and Barbara Johnson (Partner, Labor and Employment Law Department, Paul Hastings–Washington, D.C.); and the Honorable Arthur Gonzalez, Chief Judge of the United States Bankruptcy Court for the Southern District of New York. The panel discussion was moderated by Ms. Bansal and featured an overview of the Obama Administration's key legislative and policy initiatives to date, with a focus on ways in which practitioners of color might expand their existing practice specialties or develop new subject matter expertise in those areas. Judge Gonzalez also discussed the federal judicial appointment process.

The father-and-son legal team of Norman Lau Kee and Glenn Lau-Kee were dual recipients of The Honorable George Bundy Smith Pioneer Award for 2010. Partners in the Chinatown-based law firm of Kee & Lau-Kee, this unique, intergenerational award, conferred on these two equally exceptional practitioners, speaks volumes of the depth of the legal and public service contributions made by attorneys of color to the New York community. Vince Syracuse, the outgoing Section Chair, noted that "Norman Lau Kee and Glenn Lau-Kee have made a real difference for Asian-Americans and the legal profession as a whole with trailblazing leadership, a deep commitment to the public good, and a distinguished record of excellence." The evening's award presentation was especially touching because the event coincided with the celebration of Norman Lau Kee's 83rd birthday. In honor of both events, Glenn Lau-Kee surprised his father with a vintage photograph that he had unearthed in the City's archives of his grandfather, a World War I veteran, marching down Broadway in triumphant return from the conflict. Mr. Lau-Kee noted in presenting this rare gift to his father that he truly "stands on the shoulders" of many who had come before him.

Past recipients of the Section's Pioneer Award include Judge George Bundy Smith himself (Chadbourne & Parke LLP), who received the inaugural award in 2007, Cesar A. Perales (Co-Founder, President and General Counsel, Puerto Rican Legal Defense and Education Fund), and Elaine R. Jones (Director-Counsel Emeritus, NAACP Legal Defense and Educational Fund).

Ms. Alet Brown, a first year law student at St. John's University School of Law, was awarded the Commercial Division's 1L Minority Law Student Fellowship. Ms. Brown received her undergraduate degree from John Jay College of Criminal Justice. Ms. Brown will spend the summer of 2010 in the chambers of Commercial Division Justice Bernard Fried.

First Department Mandates Filing and Service of Briefs, Appendices, and Records on Appeal by E-mail

By Mark Davies

By amendments to its rules, the First Department has now mandated:

1. The indorsement required by CPLR 2101(d) on papers served or filed in the Appellate Division, First Department, must include an e-mail address;

2. Each party perfecting or answering an appeal must file, in addition to the requisite number of paper (hard) copies, one searchable PDF copy of the brief via e-mail;

3. Each party filing an appendix (or record on appeal) must file, in addition to the requisite number of paper copies, one searchable PDF copy of the appendix (or record on appeal).

The amendments, together with the specifications for filing a searchable PDF (portable document file) document by e-mail, may be found on the court's website at http://www.nycourts.gov/courts/ad1/E-mailFilingRule6.pdf. This article will briefly summarize the new requirements and specifications.

Indorsements. CPLR 2101(d) requires that every paper served or filed in an action be indorsed with the name, address, and telephone number of the attorney for the party serving or filing the paper, or if the party does not appear by attorney, with the name, address, and telephone number of the party. The First Department adopted a new rule, 22 NYCRR § 600.10(f), effective May 2010, mandating that each indorsement required by CPLR 2101(d) include an e-mail address.

Briefs. For appeals perfected after June 30, 2010, one of the copies of each appellant, answering, and reply brief must be filed and served by e-mail, and that copy must satisfy the Clerk's Office's specifications for filing a text-searchable portable document format file by e-mail (discussed below).[1] The number of paper copies of briefs required to be filed with the Court has been reduced from ten to eight. The e-mails to the Court must be directed

(a) In civil matters (except in appeals from Family Court) to AD1copy-civil@courts.state.ny.us;

(b) In criminal matters to AD1copy-criminal@courts.state.ny.us; and

(c) In Family Court matters to AD1copy-family@courts.state.ny.us.[2]

Records on Appeal and Appendices. For appendices filed after August 31, 2010, one of the copies of each appendix filed and served by a party must be filed and served by e-mail. That copy must also satisfy the Clerk's Office's specifications for filing a text-searchable portable document format file by e-mail.[3] Although the rule does not specifically require a copy of the record on appeal to be filed and served by e-mail, the accompanying memorandum from the Clerk's Office does include records on appeal with the e-mail filing and e-mail service requirement. The e-mail address for filing the appendix (or record on appeal) is the same as that for filing the brief. Here, too, the number of paper copies required to be filed with the Court has been reduced from ten to eight.

Document and Filing Specifications. The Clerk's Memorandum on the amendments sets forth the various specifications for the documents and their filing. These specifications are summarized below, together with comments by this author.

Each brief, record on appeal, or appendix filed and served by e-mail must be in a text-searchable portable document file (PDF) format, not exceeding ten megabytes (10MB). This requirement means that practitioners must save the document into PDF. Scanning the document on a copier will ordinarily not yield a text-searchable document. Some word processing software enables one to save documents into PDF, but this software ordinarily provides only limited ability to manipulate the PDF document and may not allow one to add page numbers, insert or replace pages, or merge documents. In order to perform those additional tasks, one may need to purchase Adobe Acrobat Professional (retailing for about $450). In addition, the PDF document filed must conform to the filed original document submitted to the Court. Briefs and records (or appendices) must be book-marked (this is like an electronic table of contents).

All PDF documents must be named according to a convention established by the Clerk's Office. For all appeals, the file names must begin with the year of the index/indictment/docket number, not the current year; and where the appeal has multiple index/indictment/docket numbers, the file name must be the first number listed on the notice of appeal. In addition, for civil appeals specifically, the file name must be: Year_Index #_abbreviated title of action (use the title of the main action in a third-party or multiple action case)_party's name_description of document (see below). Criminal appeals and Family Court appeals have slightly different naming conventions from civil appeals.

The Clerk's Office requests that attorneys use self-evident abbreviations to identify documents, for example:

-for appellant's brief: "appbrief"

-for cross-appellant's brief: "respxappbrief" (second brief in cross-appeal)

-for respondent's brief: "respbrief"

-for respondent child's brief: "respbrief_child

-for reply brief: "replybrief"

-for record on appeal: "record"

-for appendix: "appx"

-for respondent's appendix: "respappx"

The Clerk's Office gives the following examples for civil appeals:

2008_600124_Smith v Jones_Jones_respbrief

2008_600124_Smith v Jones_Smith_appx

2008_600124_Smith v Jones_Smith_record

2008_600234_Smith v Jones_Doe_respbrief (Doe is respondent in a 3rd party action)

2009_600124_2_Smith v Jones_Foe_respbrief (Foe is not a named party, but appeals; e.g., counsel in litigation with a client named in the caption).

With respect to e-mailing the documents, the brief and appendix / record on appeal may be attached to one e-mail, provided that their total size does not exceed 10MB. (See below in regard to filing oversized appendices / records on appeal on CD-ROM.) The subject (header, "Re") box of the e-mail to which the PDF is attached must include the following:

1. The index / indictment / docket number used in the trial court;
2. The caption of the case (e.g., Smith v Jones);
3. Identification of the attorney / firm;
4. Identification of the PDF document (e.g., "appellant's brief");
5. If the attachment to the e-mail is part of a document, a number that identifies that the attachment is a portion of document (e.g., "Part 1 of 4");
6. If a document is corrected, the date the corrected paper copy version is submitted to the clerk.

For example: "601230 / 10, Smith v Jones, *Name of Law Firm*, reply brief."

The body (message) portion of the e-mail must first include the same information from the subject line, followed by:

1. The name of the filing attorney;
2. If more than one PDF document is attached to the e-mail, an index or list of all PDF files attached to that e-mail.

As noted above, the e-mail address for filing the document in civil appeals (other than in appeals from Family Court) is AD1copy-civil@courts.state.ny.us. The PDF version of the document must also be e-mailed to all parties. The PDF version of a brief must be e-mailed no later than the time for filing the required paper copies with the Clerk's Office. Filing fees are payable in advance at the Clerk's Office.[4]

A PDF appendix (or record on appeal) that exceeds 10MB is exempt from the electronic filing requirement. However, in that event, the appendix / record on appeal must be filed on a compact disk (CD-ROM). Each such CD-ROM containing an appendix or record on appeal must contain a label identifying:

1. The title of the action;
2. The Supreme Court index number;
3. A description of the contents of the disk (brief, record on appeal, or appendix); and
4. The name of the party who prepared the disk.

If a filing party discovers that a PDF document is incomplete, illegible, or otherwise does not conform to the filed original document, the filing party must notify the Clerk's Office immediately and transmit a corrected document.

As noted above, in addition to the text-searchable PDF copy of each brief, record on appeal, or appendix, eight paper copies (seven copies in Family Court matters) must be filed with the Court. Exhibits not included in an appendix must be filed, or available for filing on telephone notice, pursuant to 22 NYCRR § 600.10(c)(2) of the Court's rules.

Filing by e-mail in the First Department does not require registration with the Court. Attorneys are, however, encouraged to register with the New York State Courts Electronic Filing System in anticipation of e-filing (as distinguished from e-mailing) PDF documents. The latest issue of the *NYLitigator* contains an article by Hon. Sherry Klein Heitler and Jeffrey Carucci on mandatory e-filing in New York County Supreme Court.

Endnotes

1. 22 NYCRR §§ 600.11(b)(2), 600.11(c).
2. 22 NYCRR § 600.11(b)(3).
3. 22 NYCRR §§ 600.11(b)(2), 600.11(c).
4. *See* CPLR 8022.

Mark Davies is an Adjunct Professor of Law at Fordham Law School, where he teaches New York Practice, and is the editor of the *Newsletter*.

Enjoining State Courts Under the All Writs Act: How to Stop Frivolous Litigation

By Thomas F. Liotti

Introduction

The article defines what the All Writs Act[1] states and then briefly explores the history of the Act, dating back to the origins of issuing writs in English law and the origin of the enactment of the Act, dating back to the Judiciary Act of 1789 and former versions in the United States Code from the early Twentieth Century. This article then examines the purpose and scope of the Act, as well as the specific limitations of it, stemming from the Anti-Injunction Act. Finally, this article analyzes how federal courts may utilize the Act to enjoin state courts and the litigants who bring frivolous claims in those proceedings.

The All Writs Act

The All Writs Act, 28 U.S.C. § 1651 (2008)[2] (hereinafter "AWA") is separated into two subdivisions: "(a) The Supreme Court and all courts established by the Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law;" the second subdivision reads as "(b) An alternative writ or *rule nisi*[3] may be issued by a justice or judge of a court which has jurisdiction." 28 U.S.C. § 1651. A writ, as defined by *Black's Law Dictionary*, 8th Edition, is "a court's written order, in the name of a state or other competent legal authority, commanding the addressee to do or refrain from doing some specified act." Generally speaking, the Courts of Appeals have the general power under the AWA to issue all writs which are necessary or appropriate for the exercise of their appellate or potential appellate jurisdiction. *McClellan v. Carland*, 217 U.S. 268 (1910).

Brief History of Writs

Writs have a long tradition in both American and English law. The origin of the issuance of writs can be traced back to the Anglo-Saxon era, where a king used writs to communicate to persons and courts. The Anglo-Norman writs, which developed after the Norman Conquest in the middle Eleventh Century, were essentially Saxon writs that were written in Latin and sealed with the King's seal. *See* F. W. Maitland, THE FORMS OF ACTION AT COMMON LAW (Cambridge University Press, 1962). At the very early stage of English common law, most cases were heard in the Royal Courts, such as the Court of Common Pleas. In order to avail oneself of the Royal Court, a plaintiff would need the permission of the King. *See* J. H. Baker, AN INTRODUCTION TO ENGLISH LEGAL HISTORY (Butterworth Press 1990). For Royal Courts, the writ would usually have been purchased from the Chancery, although the Court of Exchequer, being in essence another government department, was also able to issue its own writs. By the time of Henry II in the late Twelfth Century, the uses of writs had become a regular part of the royal justice in England. *See* Maitland. By the middle Thirteenth Century, the creation of new writs had become so popular that there was an overabundance of writs being created. This resulted in the Provisions of Oxford (1258), which prohibited the creation of new forms of writ without the sanction of the King's council. *See* S. F. C. Milsom, HISTORICAL FOUNDATIONS OF THE COMMON LAW (Second Edition, Butterworth Press, 1981). Essentially, the forms of writs remained the same and each defined a particular form of action or refrain from action. In Colonial America, the writ system carried over and was used as a means of controlling colonists. In fact, a particular writ, called a writ of assistance, which was issued by superior colonial courts authorizing an officer of the Crown to enter and search any premise suspected of containing contraband, was one of the acts that led to the American Revolution.

The current version of the AWA can trace its roots to two specific areas of law: The Judiciary Act of 1789, ch. 20, §§ 13-14 and Title 28 of the United States Code, sections 342 and 377 (1948).[4] Section 14 of the Judiciary Act of 1789 provided, in part, that all the courts created by the federal government "shall have the power to issue writs of *scire facias*,[5] *habeas corpus*, and all other writs not specially provided for by statute, which may be necessary for the exercise of their respective jurisdictions, and agreeable to the principles and usages of law." Judiciary Act of 1789, ch. 20, § 14, 1 Stat. 73, 82. *See* Lonny Sheinkopf Hoffman, *Removal Jurisdiction and the All Writs Act*, 148 University of Pennsylvania Law Review 401 (1999). In Section 13 of the Act, Congress further empowered the Supreme Court to "issue writs of prohibition to the District Courts, when proceeding as courts of admiralty and maritime jurisdiction, and writs of *mandamus*, in cases warranted by the principles and usages of law, to any courts, appointed, or persons holding office, under the authority of the United States." *Id.* at 81.

After the Franklin Delano Roosevelt Administration, the judicial code began to undergo revisions. In 1948, the code took much of what the Judiciary Act had said, further revising the codes originally enacted in 1911.

28 U.S.C. § 342 (as amended in 1948) incorporated Section 13 of the Act, and provided that "the Supreme Court shall have the power to issue writs of prohibition to district courts, when proceeding as courts of admiralty and maritime jurisdiction; and writs of *mandamus*, in cases warranted by the principles and usages of law, to any courts appointed under the authority of the United States, or to persons holding office under the authority of the United States, where a State, or an ambassador, or other public minister, or a consul, or vice consul, is a party." 28 U.S.C. § 342 (1948). Further, § 377 used the language from Section 14 of the Act, to read "the Supreme Court and the district courts shall have the power to issue writs of *scire facias*. The Supreme Court, the Circuit Courts of Appeals, and the District Courts *shall have the power to issue all writs not expressly provided for by statute*, which may be necessary for the exercise of their respective jurisdictions, and agreeable to the usages and principles of law." 28 U.S.C. § 377 (1948) (emphasis added). The AWA simply combines these sections and others[6] to allow courts to issue all writs that are "necessary or appropriate."

In addition to the codes, several court cases in the early half of the Twentieth Century, also reaffirmed the power of appellate courts to issue writs. For example, courts were permitted to issue writs of *supersedeas*, which was a writ containing the command to halt or stay a legal proceeding,[7] a writ of *scire facias*,[8] a writ of *habeas corpus*,[9] and injunctions.[10] With the court decisions and the reorganizing of the federal judicial code (Title 28), there were now several equivalent and parallel codes. A major reason why the AWA was created was to combine and simplify these statutes and judicial rulings, thus making the code easier to cite and more rationally defined.

Purpose of the All Writs Act

The AWA serves as a "legislatively approved source of procedural instruments designed to achieve rational ends of law and may be relied upon by courts in issuing orders appropriate to assist them in conducting factual inquiries." *Harris v. Nelson*, 394 U.S. 286, *rehearing denied*, 394 U.S. 1025 (1969). The basic purpose of the AWA is to provide federal courts with the "power to issue appropriate writs in aid of their respective jurisdictions as conferred by other provisions of law"; however, the AWA does not "expand or extend territorial jurisdiction to such courts." *Edgerly v. Kennelly*, 215 F.2d 420, *cert. denied*, 348 U.S. 938 (1954); *Torres v. Walsh*, 221 F.2d 319 (2d Cir. 1955); *United States, ex rel., State of Wisconsin v. First Federal Savings and Loan Association*, 248 F.2d, *cert. denied*, 355 U.S. 957 (1957); *United States v. Spadafora*, 207 F.2d 291 (1953). Most importantly, the power to issue the writ "comprehends the court's responsibility for the orderly and efficient administration of justice within the Circuit." *In re Richards*, 213 F.3d 773 (3d Cir. 2000).

One of the Congressional policies accomplished by the AWA is the obstruction of piecemeal litigation by parties filing multiple and frivolous applications for writs. The Supreme Court of the United States has held that the AWA may not be used to thwart Congressional policy against such appeals. *Will v. United States*, 389 U.S. 90 (1967). Former Chief Justice Rehnquist, sitting as a single Justice, stated "the authority granted to courts under the All Writs Act is to be used sparingly and only in the most critical and exigent circumstances." *Wisconsin Right to Life, Inc. v. Federal Election Commission*, 542 U.S. 1305 (2004). One court has held that factors to be considered in determining whether prerogative writs[11] should issue are whether the matter "is of public importance, whether the policy against piecemeal appeals would be frustrated, whether there has been a willful disregard of legislative policy, or of rules of a higher court, and whether refusal to issue the writ may work a serious hardship on the parties." *Morrow v. District of Columbia*, 417 F.2d 728 (1969). For example, in *Peters v. Brants Grocery*,[12] the court held that the AWA did not afford the federal court the authority to issue an injunction to prevent the filing of other lawsuits in other courts because there was no showing made that the court's subject matter jurisdiction or its ability to manage the case would be seriously impaired, absent an injunction, and because the other litigation that might be filed would not affect the court's ability to hear and determine motions to dismiss or for class certification.

Scope of the All Writs Act

Where a specific statute addresses a particular issue at hand, it is the authority of the statute, and not the AWA, that is controlling. *United States v. Perry*, 360 F.3d 519 (6th Cir. 2004). The AWA also does not create subject matter jurisdiction for courts where such jurisdiction was otherwise lacking. *Burr & Forman v. Blair*, 470 3d 1019 (11th Cir. 2006); *Auburn Medical Center, Inc. v. Peters*, 953 F. Supp. 1518 (M.D. Ala. 1996). The AWA is not an independent grant of jurisdiction and merely permits a court to issue writs in aid of jurisdiction acquired to grant some other form of relief. *Commercial Sec. Bank v. Walker Bank & Trust Co.*, 456 F.2d 1352 (10th Cir. 1972). Even if another act provides that a District Court shall have original jurisdiction of any action in the nature of a *mandamus*, the AWA allows a court to order a remedy only where subject matter jurisdiction already exists. *Carson v. United States Office of Special Counsel*, 534 F. Supp. 2d 103 (D. D.C. 2008).[13]

The AWA not only does not confer subject matter jurisdiction, but also does not constitute a separate basis for original jurisdiction for a district court. *Hill v. United States Board of Parole*, 257 F. Supp. 129 (M.D. Pa. 1966); *Stephenson v. Dow Chemical Co.*, 346 F.3d 19 (2d Cir. 2003). Even if the AWA is applicable, it is entirely permissive in nature. It in no way mandates a particular result or the entry of a particular order. *Roche v. Evaporated Milk Association*, 319 U.S. 21 (1943); *see also Application of United States in Matter of Order Authorizing the Use of a Pen Register*, 538

F.2d 956 (2d Cir.), *cert. granted*, 429 U.S. 1072, *rev'd on other grounds*, 434 U.S. 159 (1976).

Limitations on the All Writs Act by the Anti-Injunction Act

Under the Anti-Injunction Act, 28 U.S.C. § 2283 (2008) (hereinafter "AIA"), federal courts are statutorily prohibited from enjoining state court proceedings except in three narrowly defined cases.[14] The first exception is if Congress expressly authorizes the enjoinment. 28 U.S.C. § 2283. The second exception occurs in a case where it is necessary for the federal court to aid its jurisdiction. *Id.* The third exception occurs in cases where it is necessary for the federal court to protect or effectuate its judgments. *Id.* Courts have held that in the interest of federalism and comity, "exceptions to the Anti-Injunction Act's bar are construed strictly or narrowly, and may not be enlarged by loose statutory construction." *G.C. and K.B. Investments, Inc. v. Wilson*, 326 F.3d 1096 (9th Cir. 2003); *Zurich American Ins. Co. v. Superior Court for State of California*, 326 F.3d 816 (7th Cir. 2003); *In Re: Prudential Ins. Co. of American Sales Practice Litigation*, 261 F.3d 355 (3d Cir. 2001).

If an injunction falls into any of the three aforementioned exceptions, then the AWA is applicable. Generally speaking, while the AWA may have an open interpretation of when it may be used, since it has no qualifier, except that the writ be "necessary and appropriate," the AIA effectively limits its use because its prohibits federal courts from enjoining state court actions *except* where necessary in aid of jurisdiction or to protect or effectuate its judgments, which is when the AWA is supposed to be utilized. *See Sandpiper Village Condominium Association, Inc. v. Louisiana-Pacific Corp.*, 428 F.3d 831, *cert. denied*, 126 S. Ct. 2970 (2005). The narrowing function also makes the scope of the AWA clearer because if a case does not meet one of the defined exceptions set forth in the AIA, a court may not issue a writ under the AWA.

Requirements of Appellate Courts

Under the AWA, a court must first determine that the issuance of the writ complies with the Act, namely that the issuance of the writ is in aid of its jurisdiction and that the issuance is agreeable to the usages and principles of law. 28 U.S.C. § 1651(a). In order to establish that § 1651(a) is met, counsel should provide the court with a "checklist" in order to demonstrate and substantiate that the court has the authority to issue the extraordinary writ. The first matter that must be established is that there is no other adequate means to obtain the relief desired. *Kerr v. United States District Court for Northern District of California*, 426 U.S. 394 (1976); *Allied Chemical Corp. v. Daiflon, Inc.*, 499 U.S. 33 (1980). Secondly, it must be established that the right to the issuance of the writ is "clear" and "indisputable." *Will v. Calvert Fire Ins. Co.*, 437 U.S. 655 (1978); *Allied Chemical Corp., supra.* Third and finally, depending on the jurisdiction, it may be required that a question of first impression is raised. *See International Union, United Auto., Aerospace and Agr. Implement Workers of America v. National Caucus of Labor Committees*, 525 F.2d 323 (2d Cir. 1975); *Bauman v. United States District Court*, 557 F.2d 650 (9th Cir. 1977); *DeGeorge v. United States District Court for Central District of California*, 219 F.3d 930 (9th Cir. 2000).[15] A writ will ordinarily be denied, however, if the jurisdiction of the lower court is doubtful, or if the jurisdiction depends on a finding of fact made on evidence which is not in the record or if the complaining party has an adequate remedy by appeal or otherwise. *Hazeltine Corp. v. Kirkpatrick*, 165 F.2d 683 (3d Cir. 1948); *Gulf Research and Development Co. v. Leahy*, 193 F.2d 302 (3d Cir. 1951), *judgment aff'd*, 344 U.S. 861 (1952).[16]

Barring State Claims

In the Second Circuit, as elsewhere, under the AWA federal courts are able to enjoin plaintiffs from filing claims in state courts. For example, in *Selletti v. Carey, et al.*,[17] a Federal District Court Judge enjoined a plaintiff from filing an action in the Supreme Court of New York. The state complaint made "the same factual allegations that had been asserted in the instant [federal] case," although it added, as defendants, a co-writer, as well as the attorneys who represented the defendant and others. *Id.* The plaintiff in the case had already lost in federal court, and his appeal was denied. The defendants in the case filed a petition for relief under the AWA requesting that the plaintiff and his attorneys and other agents be "enjoined from prosecuting the state court action and seeking to re-litigate in any forum the claims and issues decided in this case." *Id.* The case also briefly outlined the prohibition writ, stating that the order granted under the AWA prohibited the plaintiff and his attorney from "seeking to re-litigate in any forum, claims and issues decided in this action and taking any action that is inconsistent with, undermines, or frustrates the judgement and orders of [the] court." Essentially, it was deemed necessary to aid the court's jurisdiction and preserve the findings of fact. *See Baker v. Gotz*, 415 F. Supp. 1243 (D.C. Del.), *aff'd* 546 F.2d 415 (1976).

Similarly, other courts have held that the AWA authorizes orders to refrain from instituting other litigation against a defendant in any state or federal court based upon "the same events or evidence that a proper court has previously examined in earlier rulings." *See Browning Debenture Holders' Committee v. DASA Corp.*, 605 F.2d 35 (2d Cir. 1978); *Royal Ins. Co. of America v. Quinn-L Capital Corp.*, 759 F. Supp. 1216 (N.D. Tex.), *aff'd in part, rev'd in part on other grounds*, 960 F.2d 1286, *rehearing denied*, 966 F.2d 674 (1990); *Foyt v. Championship Auto Racing Teams, Inc.*, 847 F. Supp. 290 (S.D. Tex. 1996). For example, it was held in *In re March*[18] that a federal District Judge in Virginia did not abuse her discretion, but rather acted within her authority under the AWA, by enjoining further proceedings in a New York Bankruptcy Court because the

question raised by the plaintiff in the New York Court was identical to that decided by the Virginia Court and an appeal to the Fourth Circuit, and thus the plaintiff had sufficient opportunity to obtain relief if he believed the Virginia Court's ruling was wrong. *See also Keith v. Volpe*, 118 F.3d 1386 (9th Cir. 1997) (a District Court is empowered to enjoin state proceedings that interfere with federal judgments).

When presented with a motion under the AWA to declare a litigant vexatious, a court must (1) give the plaintiff an opportunity to oppose the order; (2) indicate what court filings support issuance of the order: and (3) find that the filings were frivolous and harassing. *Doran v. Vicorp Restaurants, Inc.*, 407 F. Supp. 2d 1115 (C.D. Cal. 2005). A court also has the authority to issue an injunction to restrict the filing of a meritless pleading. *Matter of Packer Avenue Associates*, 884 F.2d 745 (3d Cir. 1989) (In the case, the Third Circuit defined meritless as pleadings that raise issues identical or similar to those that have already been adjudicated.) In addition, if a plaintiff is not entitled to a form of relief, he or she may be barred from further pursuing such relief under the AWA. *Lacks v. Fahmi*, 623 F.2d 254 (2d Cir. 1980). *See In Re Oliver*, 682 F.2d 443 (3d Cir. 1982); *Mich. v. City of Allen Park*, 573 F. Supp. 1481 (E.D. Mich. 1983); *Morgan Consultants v. American Tel. and Tel. Co.*, 546 F. Supp. 844 (S.D. N.Y. 1982).[19]

Conclusion

The All Writs Act is an under-used tool that all too often goes unnoticed by attorneys who are constantly frustrated by having to defend frivolous lawsuits. Oftentimes, losers in cases who no longer are able to appeal in the same jurisdiction seek to obtain a second bite at the apple when they were properly denied relief in the first jurisdiction. While defendants and courts cannot stop vexatious or frivolous claims from being *initiated*, the All Writs Act is a tool to be utilized to enjoin state courts from entertaining frivolous litigation that wastes time, energy, and resources. The Act and prohibition should be considered for use against unscrupulous lawyers and their vexatious clients in order to stop them from engaging in frivolous litigation and other harassment under the guise of a legal proceeding. Those who simply will neither accept their loss nor will stop litigating can be enjoined. When the vexatious veil of endless litigation cannot be pierced, federal judges may intervene by doing so in the form of an injunction under the All Writs Act.

Endnotes

1. 28 U.S.C. § 1651.
2. Unless otherwise noted, references to the All Writs Act relate to the statute as it is currently amended as of 2008.
3. A "rule nisi" is an "unless" rule, meaning that unless a procedure by which one party through an ex parte application or an order to show cause calls upon another to show cause why the relief set forth in the proposed order should not be made final by the court, the order will be made final. If no cause is shown, the court will enter an order rendering the relief "absolute," thereby requiring whatever was sought to be accomplished by the relief.
4. Revised from 1911.
5. In English Law a writ of *scire facias* (from the Latin meaning "to cause to be known") was a writ founded upon some judicial record directing the sheriff to make the record known to a specified party, and requiring the defendant to show cause why the party bringing the writ should not be able to cite that record in his own interest, or why, in the case of patents or grants, the record should not be annulled and vacated.
6. For example, 28 U.S.C. § 376 (1948) specifically concerned writs of *ne exeat* (Latin, meaning do not leave), which are writs that were issued to restrain a person from leaving the county or the jurisdiction of the court, unless a suitable bond (bail) had been posted.
7. *In Re McKenzie*, 180 U.S. 536 (1901).
8. *McClellan v. Carland*, 217 U.S. 268 (1910).
9. *Ex Parte Moran*, 144 F. 594 (8th Cir. 1906).
10. *Toledo Scale Co. v. Computing Scale Co.*, 261 U.S. 399 (1923).
11. A prerogative writ is a subset of writs that are to be heard ahead of any other cases on a court's docket except other such writs. The most common prerogative writs are writs of *habeas corpus*, *quo warranto* (a writ brought before a proper tribunal to inquire by what warrant a person, corporation, or authority exercises a power or act), *prohibito*, *mandamus*, *procedendo* (a writ by which a cause has been removed on insufficient grounds from an inferior court to a superior court on *certiorari*, or otherwise, and is then properly sent back to the lower court; in English law it is a writ issuing out of Chancery in cases where the judges of subordinate courts delay in giving judgment, commanding them to proceed to judgment), and *certiorari*.
12. 990 F. Supp. 1337 (M.D. Ala. 1998).
13. The AWA, which is itself "limited by jurisdiction of federal courts, cannot be used to circumvent or supersede constitutional limitations of the Eleventh Amendment." *In re Baldwin-United Corp*, 770 F.2d 328 (2d Cir. 1985).
14. See *Drelles v. Metropolitan Life Ins. Co.*, 357 F.3d 344 (3d Cir. 2003). *See generally*, CJS Courts § 299 (2008).
15. Other factors that Courts may examine are the possibility of interference with foreign policy, the possibility that the question will evade review for practical, rather than legal reasons, the possibility that the action will interfere with the basic principles of federalism, the possibility that the action will interfere with and cause irreparable harm or injury to a clear Congressional plan, and the possibility that the action will cause unnecessary and unseemly interference with a coordinate branch of the government. *See National Right To Work Legal Defense v. Richey*, 510 F.2d 1239 (D.C. Cir. 1975). *See also Nixon v. Sirica*, 487 F.2d 700, 19 A.L.R. Fed. 343 (D.C. Cir. 1973).
16. *See also* Suzanne L. Bailey, *et al.*, *Courts of Appeals*, 36 C.J.S. Federal Courts § 402 (June 2008).
17. Not reported in F. Supp. 2d, 2003 WL 1900770 (S.D.N.Y.).
18. 988 F. 2d 498 (4th Cir.), *cert. denied*, 510 U.S. 864 (1993).
19. *See also BGW Associates, Inc. v. Valley Broadcasting Co.*, 532 F. Supp. 1115 (S.D.N.Y. 1982); *Boruski v. Stewart*, 381 F. Supp. 529 (S.D.N.Y. 1974).

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CPLR Amendments: 2010 Legislative Session

(Chapters 1-56, 58-59, 61-223)

CPLR	Chapter, Part	Change	Eff. Date
214-b	118	Revives agent orange causes of action until 6/16/12	6/15/10
1101(e)	41(1)	Replaces "law guardian" with "child's attorney"	4/14/10
1311(11)	56, A-1(47)	Corrects reference to Office of Victims Services	6/22/10
1349(4)	56, A-1(48)	Corrects reference to Office of Victims Services	6/22/10
3102(e)	29(3)	Adds CPLR 3119 as an exception	1/1/11
3119	29(2)	Adds new section on uniform interstate depositions and discovery	1/1/11
4510(d)	56, A-1(49)	Corrects reference to Office of Victims Services	6/22/10
5011	56, A-1(50)	Corrects reference to Office of Victims Services	6/22/10
7601	25(3)	Adds appraisal clause exception to fire insurance proviso	3/30/10
8018(a)(1)	56, K(5)	Adds an additional $190 fee for actions to foreclose under RPAPL Art. 13	9/1/10

Notes: (1) 2010 NY Laws ch. 65, effective 1/1/11, amended sections 212-a, 1801, and 1805 of the NYC Civ. Ct. Act, Uniform District Court Act, and Uniform City Court Act to provide for review of awards rendered pursuant to 22 N.Y.C.R.R. part 137 (fee dispute resolution program).

2010 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 1-21, 23-25 of 2010)

22 N.Y.C.R.R. §	Court	Subject (Change)
202.5(d)	Sup.	Specifies papers that county clerk or chief clerk may refuse to accept for filing
202.5-b	Sup.	Expands electronic filing on consent
202.5-bb	Sup.	Establishes a mandatory pilot program for electronic filing
202.12-a	Sup.	Amends procedures relating to residential mortgage foreclosure actions
202.16-a(c)(2)	Sup.	Amends automatic orders served with summons in matrimonial actions to provide that receipt of retirement benefits or annuity payments may continue
202.70(a)	Sup.	Raises monetary threshold of Commercial Division, Westchester County, to $100,000
600.2(b)	1st Dep't	Requires that special proceedings originating in 1st Dep't be noticed for 10:00 a.m. and that proof of service be filed by 4:00 p.m. of business day preceding return date
600.10(f)	1st Dep't	Requires that indorsements (signature blocks) required by CPLR 2101(d) include an email address
600.11(b), (c)	1st Dep't	Requires that each appellant's, respondent's, and reply brief (for appeals perfected after 6/30/10) and each appendix/record on appeal (for appeals perfected after 8/31/10) be served and filed in PDF by email; provides court email addresses; reduces number of paper copies required to be filed from 10 to 8

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

Notes of the Section's Executive Committee Meetings

March 16, 2010

Guest speaker the Hon. Karla Moskowitz, Justice of the Supreme Court, Appellate Division, First Department, spoke to the Executive Committee on a range of subjects, including e-filing in the Appellate Division, First Dept., the short decisions being issued by the Commercial Division, and the dynamic of the current court, many of whose members have been on it for fewer than three years.

The Executive Committee discussed and adopted a report by the Antitrust Committee on Donnelly Act Diversions from Federal Antitrust Law and a report by the Appellate Practice Committee on the City Bar's memorandum recommending an *en banc* procedure for resolving intra-court conflicts.

April 20, 2010

Guest speaker the Hon. Nicolas Garaufis, United States District Judge for the Eastern District of New York, discussed how he became a judge and his diverse docket, as well as the role of the Bar in lending assistance to the judiciary when it is unfairly attacked in the media and in taking a more active role in urging Senators to timely fill court vacancies.

The Executive Committee discussed and approved a report of the Special Committee on Standards for Pleading in Federal Litigation. The Executive Committee also discussed the upcoming Spring Meeting and the Smooth Moves program.

May 12, 2010

Guest speaker the Hon. Robert S. Smith, Associate Judge of the New York State Court of Appeals, discussed his transition from private practice to the bench, his favorite and least favorite aspects of the position, and the importance of impartiality and the appearance of impartiality, the responsibility of being on a court of last resort, and the value of dissenting opinions.

The Executive Committee discussed and approved a report by the White Collar Crime Subcommittee of the Criminal Litigation Committee on securities fraud. The Executive Committee also discussed a report of the State Bar's Dispute Resolution Section.

NYLitigator Invites Submissions

The *NYLitigator* welcomes submissions on topics of interest to members of the Section. An article in the *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 under the "Article Submission" tab on the Section's Web site: www.nysba.org/NYLitigator.

www.nysba.org/NYLitigator

Message from the Outgoing Chair

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profession and to make sure that it remains a profession of which those great role models would be proud." On a personal note, I am thrilled to mention that my son Dana Syracuse has taken a leadership position in the Young Lawyers Section, which underscores the fact that mentoring of young lawyers is something that I take seriously.

Any success that I had this year as Section Chair is directly attributable to the members of our Executive Committee and the hard work of our committees, which never fail to produce reports or create programs that constantly draw attention and receive rave reviews from all levels of the bench and bar. Our Section owes its success to the many dedicated and talented people who volunteer their precious time to our committees and our many activities. One of the perks enjoyed by Section Chairs is the annual award of the Chair's Award for Distinguished Service to the Section. It was my honor to recognize the many years of service of former Section Chair Mark C. Zauderer, who received this year's award at our spring meeting.

Our committees really pulled out the stops this year. This has truly been a banner year for our Section, and there are several people whose extraordinary efforts have made my year as Chair very special:

- The Committee on Immigration Litigation, chaired by Clarence Smith, Jr. and Michael D. Patrick, gave us a report on the continuing impact of immigration cases in the Second Circuit Court of Appeals.
- The Committee on the Commercial Division, chaired by Paul D. Sarkozi and Mitchell Katz, gave us several important reports, including a report on the Sealing of Records in Commercial Litigation prepared by Bob Schrager, Howard Fischer, Steve Madra, and Megan McHugh, and a report that reviewed all of the individual rules of all the Commercial Division judges from across the state, which was prepared by committee members Victor Metsch, Lisa Coppola, Paula Estrada De Martin, Brem Moldovsky, and Daniel Wiig. This same committee also gave us our second Bench-Bar Forum with Commercial Division justices from Nassau and Suffolk counties and an unprecedented committee meeting that linked by video conference commercial litigators in Albany, New York City, Rochester, and Syracuse, who participated in a discussion about Commercial Division practice with Justice Deborah H. Karalunas.
- Evan Barr, Joanna C. Hendon, Jeffrey Plotkin, and the members of the Securities Subcommittee of the White Collar Criminal Litigation Committee submitted a report on prosecutorial discretion in insider trading cases.
- Greg Arenson represented our Section on the Special Committee on Standards for Pleading in Federal Litigation.
- The Appellate Practice Committee, which is chaired by David Tennant and Melissa Crane, gave us a report on the issue of en banc appeals in the Appellate Division.
- Jay Himes, Hollis Salzman, and the members of the Antitrust Committee gave us a report entitled "Experiments in the Lab: Donnelly Act Diversions from Federal Antitrust Law," which has been well-received.

We have also been fortunate to have been able to present several outstanding special programs.

Our Annual Meeting in January drew a standing-room-only audience thanks to the hard work of program chair David Tennant. We had a capacity attendance at our luncheon, including over 50 judges from across the state who joined us for the Section's presentation of the Stanley H. Fuld Award for Outstanding Contributions to Commercial Litigation by former Chief Judge Judith Kaye to Chief Judge Jonathan Lippman.

Our Smooth Moves Program grows every year thanks to the excellent work of Planning Committee members Barry Cozier, Carla Miller, former Section Chair Lesley Friedman Rosenthal, and incoming Vice-Chair Tracee Davis, a team that has been in place for the past four years. They were joined this year by Deborah Kaplan. In addition to offering an outstanding CLE program directed to minority lawyers, the Section presented its George Bundy Smith Pioneer Award to father and son, Norman Kee and Glenn Lau-Kee, and its Minority Law Student Fellowship to Alet A. Brown, a first-year law student at St. John's University School of Law. Ms. Brown will be interning this summer in the chambers of Commercial Division Justice Bernard J. Fried.

My favorite program, our Section's Ethics and Civility Program, was presented for the 11th time this year in five venues and drew over 600 lawyers from all levels of practice. It's a great example of why we are the Section that gets things done. The program evolved from a report that our Section issued that resulted in the adoption of civility guidelines and is based in the belief that experienced, aggressive litigators are uniquely suited to educate other lawyers in a way that affects their attitudes and emphasizes the important place that civility has as a part of professional responsibility. I am the planning Chair for

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Message from the Outgoing Chair

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this program and the moderator of the New York City venue. I am assisted by our local chairs for the program, David Tennant in Rochester, Sharon Porcellio in Buffalo, Scott Fein in Albany, and John Brickman on Long Island.

The year ended with our very successful Spring Meeting at the Sagamore in Lake George. Incoming Chair Jonathan D. Lupkin did a fantastic job organizing the weekend, which featured several outstanding CLE programs and many opportunities for socializing and camaraderie. It was probably the most well-attended meeting in recent years and drew over 30 judges from New York and Delaware. Of course, the highlight of the weekend was the presentation of the Section's Robert L. Haig Award for Distinguished Public Service by Judge Edward R. Korman to Circuit Judge Reena Raggi.

I would not have accomplished anything this year without the support of my wife Rita and the truly world-class leadership team that I was fortunate to have: Jonathan Lupkin, David Tennant, Paul Sarkozi, and Deborah Kaplan, our Section Secretary for the past two years. Jon takes the tiller as Chair for 2010/2011 with the assistance of David, who steps up the ladder as Chair-Elect, and Paul, who will serve a second year as Treasurer. They are joined by our new Vice-Chair Tracee Davis and Secretary Erica Fabrikant. Our Section is all about teamwork, and I am certain that our new crew will keep the Section on a starboard tack during the coming year.

It has been my privilege to have been able to serve the Section over the years in various capacities, including the past six years as a part of its leadership team. I look forward to continuing to play an active role in the Section's activities and thank all of you for the strong support that you have always given me. I hope to see you at future Section events.

Vincent J. Syracuse

Message from the Incoming Chair

(Continued from page 1)

the New York State Supreme Court. In fact, it would not be hyperbole to suggest that since its inception, our Section has had its hand in virtually every major development in New York commercial litigation at both the state and federal levels.

On June 1, I became the 22nd Chair of our Section. I am honored to have been given this extraordinary opportunity, but I know well that having been entrusted with the helm, I now shoulder a huge responsibility: a responsibility not only to promote the future of our Section, but to honor its distinguished legacy. Just perusing the list of our twenty-one former Chairs reveals a veritable pantheon of legal superstars, from Bob Haig, the founder of our Section, to Vince Syracuse, our immediate past Chair. I must confess that to have been placed in the company of such luminaries is humbling, to say the least.

I am exceedingly fortunate to be working this year with a highly motivated and talented slate of Section Officers: Chair-Elect David Tennant, Vice-Chair Tracee Davis, Treasurer Paul Sarkozi, and Secretary Erica Fabrikant. Due largely to their efforts, we already have several projects in the proverbial hopper. Planning for both next year's Annual Meeting and Spring Meeting is already well under way. In addition, we have been asked by NYSBA President (and former Section Chair) Steve Younger to examine whether the proliferation of e-discovery warrants a modification of the scope of civil discovery. Finally, with valuable assistance and insight from indefatigable former Section Chair Lesley Friedman Rosenthal and Matthew Maron, we are exploring ways to weave a meaningful and concrete mentoring program into the fabric of our Section.

I would like to extend a special "thank you" to Vincent Syracuse for providing such exemplary leadership over the past year. I am fortunate indeed to be succeeding someone like Vince, who is the consummate lawyer and a true gentleman. I will make every effort to continue his outstanding work.

Shammai, the renowned first century rabbinic scholar, counseled that one should "say little and do much." I intend to follow Shammai's advice, end my remarks here and turn my attention to the challenges of the upcoming year. I encourage vigorous participation by all Section members and would welcome any ideas that might contribute toward making 2010-2011 a year that befits the Section's illustrious history.

Jonathan D. Lupkin

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