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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

A Message from the Chair

One of the most interesting and rewarding parts of my job as Chair is the opportunity to work closely with our Section's more than 30 committees. The breadth and scope of the work done by our committees truly is outstanding. During a time when attorneys face enormous pressures on their time and energies, it has been amazing to learn firsthand how devoted our committee chairs and members are to the important work of our Section.

For example, our Commercial Division Committee, under the leadership of Co-Chairs Vincent Syracuse, Tannenbaum Helpern Syracuse & Hirschtritt LLP and the Section's Vice-Chair, and Paul Sarkozi, Hogan & Hartson LLP, is continuing our Section's long-standing relationship with the Commercial Division. Working with the Commercial Division Justices, the Office of Court Administration, and the Pattern Jury Instructions Committee of the Association of Supreme Court Justices of the State of New York, the Commercial Division Committee has taken a leading role in drafting pattern jury instructions for commercial cases. The pattern jury instructions project is a perfect example of our Section's ability to create bench/bar dialogues and produce what I am sure will be a product that will be of tremendous help to both litigators and the judiciary.

Another example of our Section's important work with the Commercial Division and our ability to create bench/bar dialogues was an exciting MCLE bench/bar program that took place in Rochester, New York, on November 8, 2007. This program was the first of its kind, in that the Section was honored to have the three Commercial Division Justices—the Honorable John M. Curran, Erie County; the Honorable Kenneth R. Fisher,

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Monroe County; and the Honorable Deborah H. Karalunas, Onondaga County—discuss various issues that arise in commercial litigation with three leading commercial litigators, one from each of the Justices' counties. Special thanks to David Tennant, Nixon Peabody LLP and Co-Chair of our Section's Appellate Practice Committee, for putting this event together; and to Sharon Porcellio, Lippes Mathias Wexler Friedman LLP and past Section Chair, and Mitchell J. Katz, Menter, Rudin & Trivelpiece, for their invaluable help with this program.

To round out our work with the Commercial Division, Richard Friedman, Dreier LLP and Co-Chair of our Section's Committee on Corporate Litigation Counsel, has been working with our Commercial Division Committee to put together a series of roundtable discussions between in-house litigation counsel and the Commercial Division justices to discuss areas of mutual interest regarding commercial litigation. Again, these roundtable discussions are the first of their kind and exemplify the important work of our Section in creating bench/bar dialogues.

"All our committees are working on great projects, and I guarantee that committee membership will enrich your Section experience."

Not to be outdone, our Federal Judiciary Committee, Co-Chaired by Jay Safer, Lord, Bissell & Brook LLP and past Section Chair, and John D. Winter, Patterson Belknap Webb & Tyler LLP, has been hard at work on a report that will provide practitioners and the judiciary with invaluable information regarding the judges' and magistrate judges' individual practices in the Southern District of New York.

The Committee on Evidence, Co-Chaired by Lauren Wachtler, Montclare & Wachtler and past Section Chair, and Michael Gerard, Morrison & Foerster LLP, also is hard at work on a report regarding model rules of evidence for New York. In addition, our newest committee, Immigration Litigation, Co-Chaired by Michael Patrick, Fragomen, Del Rey, Bernsen & Loewy, P.C., and Clarence Smith, Connell Foley, LLP, is working on a report examining the current state of immigration litigation before the Second Circuit, including the massive increases in volume, the general nature of the cases making up this volume, and how the Circuit has been addressing some of the key issues.

Our relatively new Committee on White Collar Criminal Litigation, Co-Chaired by Evan T. Barr, Steptoe & Johnson LLP, and Joanna C. Hendon, Merrill Lynch, has been quite active organizing a variety of programs, including an evening MCLE program held on November 14, 2007, at the Princeton Club entitled "Engaging and Working with Investigative Consultants" and our Committee on Arbitration and Alternative Dispute Resolution, Co-Chaired by Deborah Masucci, AIG Domestic Brokerage Group, and Carroll Neesemann, Morrison & Foerster LLP, put together a four-part mediation training geared toward women and minorities.

While I do not have sufficient room in this Chair's Message to include all the great work of our Section's committees, I hope that this Message has given all Section members a better sense of the important work being done by our committees. For those of you who are not yet a member of a Section committee, please visit our Section's webpage at www.nysba.org/comfed for a complete description of all our committees and then join one, either online, by contacting our Section's liaison Jon Sullivan at jsullivan@nysba.org, or by contacting me. All our committees are working on great projects, and I guarantee that committee membership will enrich your Section experience.

Carrie H. Cohen

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

Foreign Governments Are Not Immune from New York City's Assertion of Tax Liens Against Their Diplomatic Property

By Sali A. Rakower

Can New York City successfully assert a tax lien against real property owned by a foreign government? "Yes," declared the United States Supreme Court in a recent case in which the City took India and Mongolia to task for back taxes owed in connection with certain properties owned by their governments. The Supreme Court's decision in *Permanent Mission of India to the United Nations v. City of New York*, 127 S. Ct. 2352 (2007), is significant in that it interprets one of the exceptions to the U.S. Foreign Sovereign Immunities Act ("FSIA"), which normally shields foreign governments from suit in U.S. courts, as encompassing lawsuits seeking to assert the validity of tax liens against real property.[1]

For years, New York City has levied taxes against the Indian and Mongolian governments for portions of their diplomatic office buildings used to house lower-level employees and their families.[2] Under New York law, real property owned by a foreign government is exempt from taxation only when it is "used exclusively" for diplomatic offices or for the residences of ambassadors or ministers plenipotentiary to the United Nations. N.Y. Real Prop. Tax Law Ann. § 418 (West 2000).

Although the governments of India and Mongolia refused to pay the taxes levied by New York City against what the City asserted were the non-tax-exempt portions of their respective buildings, New York City continued to tax these properties and, by operation of New York law, the unpaid taxes converted into tax liens held by the City. As of February 1, 2003, the Indian Mission owed approximately $16.4 million in unpaid property taxes and interest, and the Mongolian Ministry owed about $2.1 million. 127 S. Ct. at 2355.

The FSIA, which Congress passed in 1976, has been a powerful shield for foreign sovereigns in that it provides the "sole basis" for obtaining jurisdiction over them in federal court. *Argentine Republic v. Amerada Hess Shipping Corp.*, 488 U.S. 428, 439 (1989). The FSIA does not provide blanket immunity for foreign states, however, in that, in accordance with international practice at the time, it codified the "restrictive theory" of sovereign immunity—that is, the concept that a sovereign's immunity is recognized with respect to sovereign or public acts (*jure imperii*), but not with regard to private acts (*jure gestionis*). *Republic of Argentina v. Weltover, Inc.*, 504 U.S. 607, 612 (1992); *Alfred Dunhill of London, Inc. v. Republic of Cuba*, 425 U.S. 682, 711-12 (1976).

In the case at bar, the Supreme Court pronounced that "[a]s a threshold matter, property ownership is not an inherently sovereign function," 127 S. Ct. at 2357 (citations omitted), and highlighted the FSIA's adoption of the pre-existing real property exception to sovereign immunity recognized by international practice. *Id.* The specific language of the FSIA's "immovable property" exception provides that a foreign state shall not be immune from jurisdiction in any case in which "rights in immovable property situated in the United States are in issue." 28 U.S.C. § 1605(a)(4).

"Under New York law, real property owned by a foreign government is exempt from taxation only when it is 'used exclusively' for diplomatic offices or for the residences of ambassadors or ministers plenipotentiary to the United Nations."

The City of New York argued, and the Supreme Court (along with the Second Circuit, whose decision it affirmed) agreed, that the City's action seeking a declaration of the validity of a tax lien fits this particular exception in that it places "rights in immovable property . . . in issue." 127 S. Ct. at 2356. The Court, in reaching its determination that the present action satisfies the FSIA exception, turned to the definition of "lien" as defined by *Black's Law Dictionary* in 1976, New York real property law, and its previous interpretations of the Bankruptcy Code. It also noted that "[t]he practical effects of a lien bear out these definitions of liens as interests in property. A lien on real property runs with the land and is enforceable against subsequent purchasers." 127 S. Ct. at 2356 (citing 5 Restatement of Property § 540 (1944)). Thus, the Court held, given that a tax lien "inhibits one of the quintessential rights of property ownership—the right to convey[,] . . . [i]t is therefore plain that a suit to establish the validity of a lien implicates 'rights in immovable property.'" *Id.*

The governments of India and Mongolia, on the other hand, argued that § 1605(a)(4) expressly limits itself to

cases in which the specific right at issue is title, ownership, or possession of property. Even Justice Stevens (joined by Justice Breyer) in his dissent, however, disagreed with this position, asserting that "a literal application of the FSIA's text provides a basis for applying the [immovable property] exception to this case." *Id.* at 2359. And yet, notwithstanding this literal application, Justice Stevens declared, "Given the breadth and vintage of the background general rule [providing immunity to foreign sovereigns] . . . it seems to me highly unlikely that the drafters of the FSIA intended to abrogate sovereign immunity in suits over property interests whose primary function is to provide a remedy against delinquency taxpayers." *Id.*

Justice Stevens' concern is that the Court's "broad exception" to sovereign immunity as articulated in its decision threatens to "swallow the rule" affording immunity. *Id.* He points out that under the municipal law of New York City, liens are available against real property to compel landowners to pay for pest control and sidewalk upkeep, among other things. Thus, a "whole host of routine civil controversies, from sidewalk slip-and-falls to landlord-tenant disputes, could be converted into property liens under local law, and then used—as the tax lien was used in this case—to pierce a foreign sovereign's traditional and statutory immunity." *Id.*

Despite Justice Stevens' articulation of the risks inherent in the majority's decision, it seems highly unlikely that a court would hold that a sidewalk slip-and-fall case that was converted into a tax lien under local law, for example, implicates "rights in immovable property," as required by the FSIA exception. Justice Stevens appears to acknowledge this unlikelihood, yet asserts that the "burden of answering such complaints and making such arguments is itself an imposition that foreign sovereigns should not have to bear." *Id.*

The City of New York gained a significant victory in this latest round of its dispute with India and Mongolia, although the ultimate decision was not altogether a surprise given that the District Court, the Second Circuit, and the majority of the Supreme Court agreed that the FSIA did not preclude the City of New York from asserting tax liens against foreign governments; and even the Supreme Court's dissent agreed that the plain language of the FSIA—if not historical deference to sovereign immunity—supported this decision.

Endnotes

1. Interestingly, and as the Supreme Court noted, New York City concedes that even if the liens are valid, the foreign governments are immune from foreclosure proceedings. 127 S. Ct. at 2355 n.1. Nevertheless, the City asserts that the Court's declaration of the tax liens' validity is necessary because (i) once the tax liens are declared valid, foreign sovereigns normally concede and pay; (ii) if the foreign state refuses to pay in the face of a valid judgment, that country's foreign aid may be reduced by the United States by 110% of the outstanding debt, pursuant to 2005 and 2006 foreign appropriations acts; and (iii) the liens would be enforceable against subsequent purchasers. *Id.*
2. In the case of India, its Permanent Mission to the United Nations is located in a 26-floor building in New York City owned by the government of India. Approximately 20 of these floors contain residential units for diplomatic employees of the Mission and their families. Mongolia's Ministry for Foreign Affairs is housed in a six-story building in New York City owned by the Mongolian government. Certain of the floors in this building also house residences for lower-level employees of the Ministry and their families. 127 S. Ct. at 2354.

Sali A. Rakower is a member of the Section's Immigration Litigation Committee and an Associate with the law firm of White & Case LLP in New York City, where her practice focuses on complex commercial litigation, litigation involving foreign sovereigns and their state-owned subsidiaries, and litigation involving issues of international public law. She has extensive experience with the U.S. Foreign Sovereign Immunities Act.

Amendment to Section's Bylaws Ensures Continued Support for the Commercial Division

The New York State Bar Association has approved the Section's proposed amendment to its Bylaws to require that the Section Executive Committee include at least one representative from each county or judicial district in the state that has a Commercial Division. The Executive Committee consists of the Section's officers, past Section Chairs, the Section Delegates to the House of Delegates, and such other members as the Executive Committee appoints. The amendment adds the following provision to Article III, Section 4, of the Bylaws, which governs appointed members: "The Appointed Members shall include at least one representative from each county or judicial district in which a branch of the Commercial Division of the Supreme Court of the State of New York is located."

Section's 2008 Annual Meeting Will Feature Programs on E-Discovery and the Ethics of Witness Preparation

E-discovery and the ethics of witness preparation are two complicated issues that commercial litigators face every day. The Commercial and Federal Litigation Section's two-part program at the Annual Meeting of the New York State Bar Association on January 30, 2008, at the New York Marriott Marquis, will discuss both issues from 9:00 a.m. to noon. The program will be chaired by the Section's Vice-Chair, Vincent J. Syracuse of Tannenbaum Helpern Syracuse & Hirschtritt LLP.

"Developments in E-Discovery in New York Federal and State Courts and in Arbitration" will address the different approaches to e-discovery taken by New York federal and state courts and arbitrators. The program will be moderated by Richard B. Friedman of Dreier LLP and Co-Chair of the Section's Committee on Corporate Litigation Counsel. Panelists will include the Honorable Leonard B. Austin, Supreme Court Nassau County Commercial Division; the Honorable Andrew J. Peck, United States Magistrate Judge, Southern District of New York; Constance M. Boland of Nixon Peabody LLP and Co-Chair of the Section's Committee on E-Discovery; Adam I. Cohen, Senior Managing Director, Electronic Evidence, FTI Consulting, Inc., and Co-Chair of the Section's Committee on E-Discovery; and Robert B. Davidson of JAMS. The panelists will discuss the impact of the December 1, 2006 amendments to the Federal Rules of Civil Procedure and how e-discovery is handled in the Commercial Division, and will also address topics such as the types and sources of electronically stored information ("ESI"), the issue of what constitutes accessible versus inaccessible ESI, the practical implications of the amended Federal Rules in connection with scheduling orders and conferences, and the rights of parties and non-parties under the applicable rules and the circumstances that have or are likely to give rise to sanctions against parties and non-parties.

"The Ethics of Witness Preparation" is being put together by Anthony J. Harwood of Labaton Sucharow LLP and James M. Wicks of Farrell Fritz LLP, who are the Co-Chairs of the Section's Committee on Ethics and Professionalism. The panel will address various ethical issues raised in the context of preparing witnesses for depositions and trial. The program will be moderated by Ellen Yaroshefsky, Clinical Professor of Law and Director, Jacob M. Burns Center for Ethics in the Practice of Law, Cardozo Law School. Panelists will include the Honorable Denny Chin, United States District Judge, Southern District of New York; Jeremy Feinberg, Statewide Special Counsel for Ethics and the Commercial Division; Geri Krauss of Krauss PLLC; and Michael Ross, Law Offices of Michael S. Ross. The panelists will illustrate these ethical dilemmas through live hypothetical scenarios acted out as a series of four vignettes. This role play will be followed by a panel discussion, with audience participation.

Both programs will be followed by a reception and luncheon that will include the presentation of the Section's Stanley H. Fuld Award for Outstanding Contributions to Commercial Law and Litigation to Albert M. Rosenblatt, former Associate Judge of the New York Court of Appeals. After the luncheon, Section members are welcome to attend the Presidential Summit hosted by New York State Bar President Kathryn Grant Madigan.

2008 Award for Excellence in Commercial Brief Writing Deadline for Submissions is March 5, 2008

The Section's third annual *Award for Excellence in Commercial Brief Writing* will be conferred at the 2008 Spring Meeting, to be held May 2-4, 2008, at The Equinox Resort & Spa, Manchester, Vermont. Competition for the award is open to Section members, who may submit for consideration a brief or memorandum of law of no more than 25 pages that was filed in a commercial case in a New York State or federal court during 2007. Submissions should be sent, no later than March 5, 2008, to:

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Committee on International Litigation

By Ted G. Semaya

If asked to name meetings among officials of many nations in New York City, you might think of the recent United Nations gridlock spectacle or any of the many international organizations located in the City. Many practitioners are not aware that international exchanges between judges and litigators take place throughout the year. Through the good offices of a number of government agencies (including frequently the United States Department of State, Office of International Visitors) and nongovernmental organizations, our courts host visiting judicial delegations from around the world, and our Section plays an integral role in these exchanges., I was fortunate that Section Chair Carrie H. Cohen asked me, as Chair of the Committee on International Litigation, to represent the Section at many of these exchanges.

One of the most popular destinations for foreign delegations—which typically visit a number of courts in various venues—is the New York County Supreme Court, Civil Branch, particularly the Commercial Division. In fact, the Civil Branch has the largest court tour program in New York State. In addition to coordinating the visits of foreign judicial delegations, Yasmin Beydoun, the New York County Court Tour Director, conducts tours regularly for jurists and court personnel from elsewhere in the country; students in public and private schools, colleges, and law schools; and law firm summer associate programs.

The foreign delegation visits, of course, are different from the average tour. The centerpiece is the meeting of the foreign jurists and court officers with their counterparts from New York Supreme Court. These meetings are conducted in different formats. Often, members of our Section are asked to participate to provide the practitioner's viewpoint. For some visits, a private session among the judges is followed by a panel session with several members of our Section. Our own Bob Haig has moderated several such panels; Vincent Syracuse, Section Vice-Chair and Chair of the Commercial Division Committee, and I, on behalf of the Committee on International Litigation, have participated as well. On other occasions, the judges, court personnel, and practitioners participate in a single meeting. Joining these participants are representatives of sponsoring organizations and interpreters.

From my participation in a few of the foreign delegation visits during the past year, I have observed that each visit is unique but has aspects in common with other visits. The most predictable differences are those in language and judicial systems. When an English-speaking delegation from a common law jurisdiction visits, such as the Cayman Islands' visit this summer, the absence of translators makes the meeting quicker paced and less formal, and the common legal approach allows the judges to discuss issues of interest with less background and explanation.

On the other hand, some of the most interesting and productive exchanges occur, despite the filter of simultaneous language interpretation, when the judges each address a common issue from their individual experiences in different systems. An example occurred in a discussion of court-sponsored mediation, a popular subject in these meetings. To answer the foreign jurists' question about the proper time in a case to refer it to mediation, the judges discussed the different procedural phases of a case in our system as compared to a civil law system.

As noted, Alternative Dispute Resolution is one of several areas of particular interest to foreign jurists. Another area is the Commercial Division. Discussions range from the concept of specialty courts within a court of general jurisdiction to the nuts and bolts of judicial training, judicial assignments, case management, administration, and resources. Another common area of interest is our jury system. I am told that, recently, the Court has had exchanges with representatives from Japan who have expressed interest in introducing a jury system there.

Included among the many foreign countries that have sent one or more judicial delegations to visit "Foley Square" are China, Mexico, France, England, Israel, Spain, Russia, Poland, South Korea, Thailand, The Netherlands, Japan, Germany, Bhutan, Argentina, Serbia, Moldova, Cameroon, Cayman Islands, Jordan, Turkey, Egypt, Afghanistan, Syria, Saudi Arabia, and Kuwait.

Remarkably, in addition to Administrative Judge Jacqueline W. Silbermann, who hosts the meetings, the seven Commercial Division Justices in New York Supreme Court (the Honorable Herman Cahn, the Honorable Helen E. Freedman, the Honorable Bernard J. Fried, the Honorable Ira Gammerman, the Honorable Richard B. Lowe, III, the Honorable Karla Moskowitz, and the Honorable Charles E. Ramos) nearly all manage to attend the meetings with the foreign delegations and are often joined by other Justices from the Civil Branch, including the General, Medical Malpractice, and Matrimonial Parts. In addition to the Justices and Yasmine Beydoun, court personnel contributing to these efforts are John Werner, Chief Clerk; Norman Goodman, County Clerk; Robert C. Meade, Jr., Director of the Commercial Division; James Rossetti, Chief Deputy County Clerk; Pablo Rivera, Clerk in Charge of the Commercial Division; Dan Weitz, Coordinator of Alternate Dispute Resolution for the Unified Court System; Jeff Carucci, First Deputy Chief Clerk and UCS Statewide Coordinator for E-filing; Ed Kvarantan, Case Management Coordinator; Jeremy Feinberg, Statewide Special Counsel for Ethics and the Commercial Division; Brian Di Giovanna, Director of Courtroom Technology; and Reginald Bouchereau, Senior Management Analyst.

Among the topics most favored by foreign delegations is the demonstration of the technologically advanced courtroom, Courtroom 21 (for the Twenty-First Century). Appropriate attention is also paid to E-Filing, the Supreme Court Records On-Line Library ("SCROLL"), and court Web sites, all of which are truly transforming the manner in which our courts and practitioners function. As to each of these areas, and many more, the Civil Branch provides extensive printed information, from the history and structure of the Court to the hardware and software supporting courthouse technology.

There is more to share about foreign judicial delegation visits beyond this brief introduction. Perhaps most interesting are the issues raised in the meetings and the views expressed, especially those of our Justices. Also, the Justices and personnel of our courts, of whom only a few deserving credit are mentioned here, are involved in many other programs in connection with which they often work with members of our Section. A few examples are CLE courses, training programs, and the *Commercial Division Law Report*, the last being an outstanding example of the ongoing collaborative work between the Commercial Division and our Section. Participating in the visits by foreign delegations has been a highlight of my Section work, and I thank Justice Silbermann and the Justices of the Commercial Division for giving the Section the opportunity to participate.

Members of the Section interested in joining the Committee should contact Commitee Chair Ted G. Semaya at tsemaya@evw.com.

Ted G. Semaya, Eaton & Van Winkle LLP, is Chair of the Section's Committee on International Litigation.

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Committee on Civil Prosecution

By Richard Dircks

The Committee on Civil Prosecution is focused on the dynamic and increasingly important legal practice area involving the civil prosecution of commercial fraud. During the last two decades, Civil Prosecution has risen to prominence. From the groundbreaking use of the civil RICO statute as an agent of industry-wide structural reform, to the dominance of the Federal Civil False Claims Act in the recovery of ill-gotten gains lost to federal and state program fraud, to the utilization of Monitors and Independent Private Sector Inspectors General in the resolution of criminal actions and as an adjunct to government oversight of public contracts, this is an area of law relevant to both public- and private-sector practitioners, including prosecutors, plaintiffs' attorneys, defense attorneys, and corporate counsel.

The mission of the Committee on Civil Prosecution is to educate NYSBA members about developments in this practice area, to develop and propose innovative approaches and legislation, and to provide a forum for the exchange of ideas and the development of professional contacts. The Committee serves its mission by publicly addressing matters of interest to the Section's membership, developing Continuing Legal Education programs relevant to the Civil Prosecution practice area, holding periodic meetings, and working with other NYSBA Sections and Committees on issues of mutual interest.

In the past, and continuing through today, the Committee on Civil Prosecution and the Commercial and Federal Litigation Section together have played a fundamental and lasting role in the establishment, support, and promotion of the field of civil prosecution. Accomplishments pertaining to independent corporate monitoring and the New York State False Claims Act are illustrative of this point.

Independent Corporate Monitoring. In the area of independent corporate monitoring, two reports of fundamental importance came from the Commercial and Federal Litigation Section. The first was the 1994 Section report written by the Committee on Civil Prosecution entitled, "The Independent Private Sector Inspector General." This report provided a definition for the Independent Private Sector Inspector General ("IPSIG"), the platinum standard for independent monitors. The report set forth the IPSIG concept, and explained the various aspects of an IPSIG and the potential for broad application of the IPSIG model. The second was the 1995 Section report entitled "Report and Recommendations on Reforming the Carting Industry in New York City." This report recommended structural reform to free the carting industry from the influence of organized crime. Among other things, the report recommended the utilization of IPSIGs. These reports set the groundwork for New York City's anti-corruption legislation and administrative program in areas including the Fulton Fish Market, the commercial trade waste industry, the Hunts Point fruit and vegetable markets, the school construction industry and the construction industry more generally. The successful utilization of IPSIGs in New York has drawn national attention and commendation. In an August 2006 report by the Subcommittee of the Congressional House Committee on Homeland Security on the subject of "An Examination of Federal 9/11 Assistance to New York: Lessons Learned in Preventing Waste, Fraud, Abuse, and Lax Management," IPSIGs are identified as a "best practice." Further, the Subcommittee opined that the successful federal oversight of the removal of debris from the World Trade Center site "resulted from the presence of private integrity monitors and occurred in spite of very challenging conditions."

New York State False Claims Act. In April 2007, New York State passed the False Claims Act ("FCA"). This law allows the state and any local government to bring a civil action to recover three times its financial losses from fraud. It also allows a private citizen with inside knowledge of such fraud to bring an action on behalf of the government—known as a *qui tam* action—and to recover up to 30 percent of the proceeds. The state law is modeled on the Federal False Claims Act, a fraud-fighting tool through which, over the past two decades, the federal government has recovered over $20 billion in misappropriated funds. During the past two decades, the Section has played a key role, through the issuance of two reports, in obtaining the endorsement of the New York State Bar Association in support of the False Claims Act generally. In addition, in the spring of 2006, when draft legislation was being debated by the state legislature, the Section passed a resolution, presented by the Committee on Civil Prosecution, that pointed out certain deficiencies in then-pending draft legislation that would have prevented the state from capitalizing on benefits (a 20 percent increase in the state share of Medicaid recoveries) afforded by the Federal Deficit Reduction Act ("DRA"). The substantive change recommended in the Section's resolution came to be incorporated in the final legislation, i.e., a DRA-compliant FCA law, enacted in April 2007. The State of New York will now obtain maximum benefit from civil Medicaid fraud prosecutions brought under the FCA.

During the course of this year, the Committee on Civil Prosecution anticipates holding periodic Committee meetings and producing reports on (i) non-prosecution and deferred prosecution agreements at the state and federal levels, (ii) the history of IPSIG programs, and (iii) the newly enacted New York State False Claims Act. We are actively seeking members of the Section who are interested in joining the Committee and contributing to these projects. All inquiries should be directed to either of the Committee Co-Chairs: Richard Dircks at rdircks@getnicklaw.com or Neil Getnick at ngetnick@getnicklaw.com.

Section Provides Additional Funding for Minority Law Student Summer Fellowship

By Susan M. Davies

On July 11, 2007, the Section's Executive Committee unanimously voted to contribute an additional $10,000 to the restricted fund established by The New York Bar Foundation in 2006 for the purpose of funding a Minority Law Student Summer Fellowship. The Fellowship, which is open to all first-year (1L) minority students enrolled in New York law schools, provides a $5,000 stipend for ten weeks of work in a public sector litigation position. With this additional $10,000 contribution by the Section, the Fellowship will be funded for the next three summers, through and including 2010. Carrie H. Cohen, Chair of the Section, said, "I am thrilled as Section Chair to announce the Section's funding of the Minority Law Student Summer Fellowship through 2010. The Section's continued funding of this Fellowship demonstrates the Section's long-standing commitment to diversity in the legal profession and to the Commercial Division."

The recipient of the 2007 Summer Fellowship, Lina M. Martinez, spent ten weeks this summer working as a law clerk in the chambers of the Honorable Charles E. Ramos of the Commercial Division of New York State Supreme Court, New York County. Ms. Martinez, who is currently a 2L at Fordham Law School, reports the Fellowship was a very positive learning experience that has given her insight into "what commercial litigation is all about" and greatly improved her legal writing skills. Ms. Martinez will be spending summer 2008 as a summer associate at the law firm of Mayer Brown in New York City.

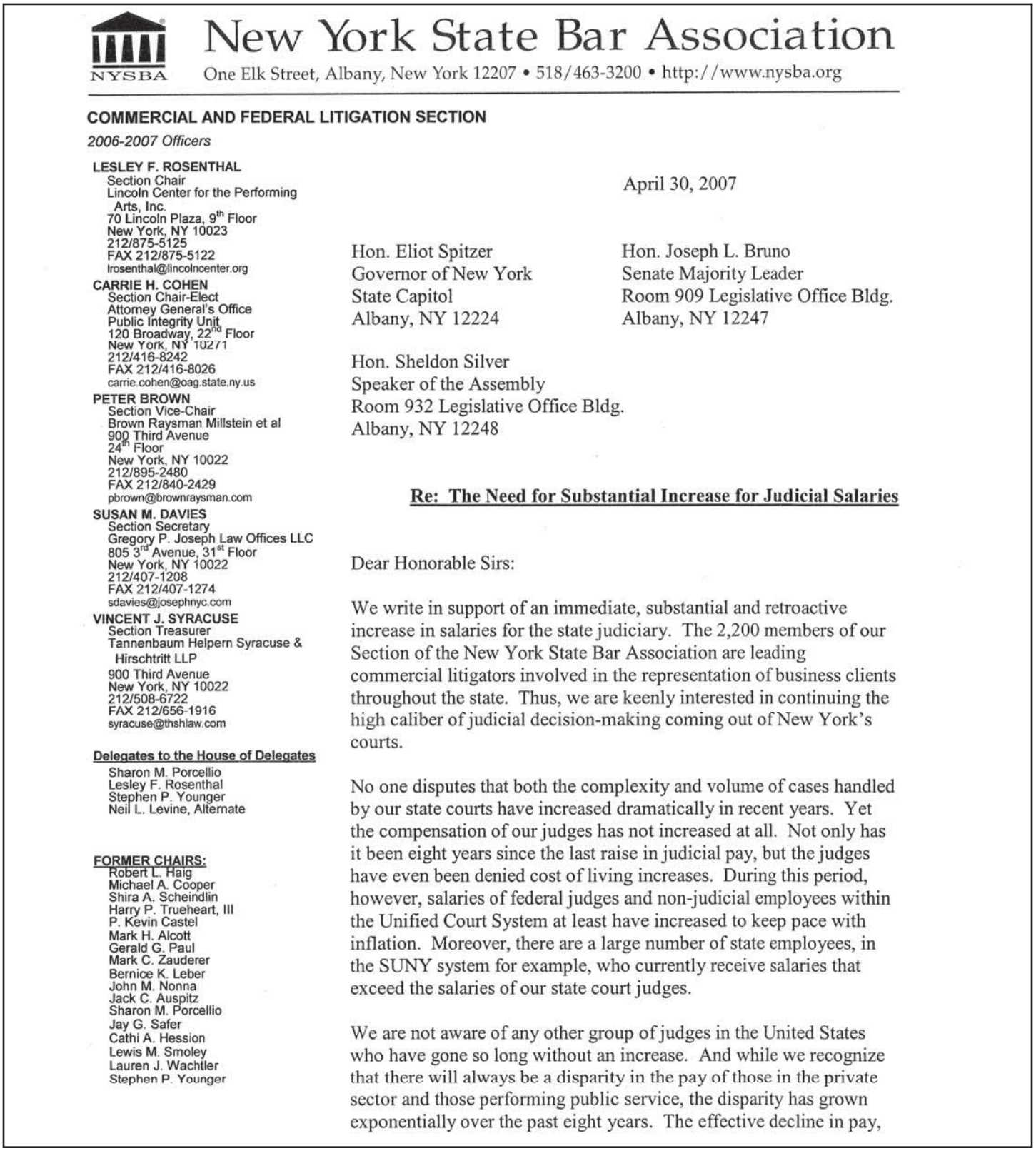
Applications for the 2008 Summer Fellowship close on December 31, 2007. The winner, who will be selected jointly by the Section and The New York Bar Foundation, will be announced in March 2008. The 2008 Summer Fellow will work as a law clerk to Honorable Herman Cahn, New York State Supreme Court, New York County, Commercial Division.

The Section thanks The New York Bar Foundation for establishing and administering the Fellowship. For more information about The New York Bar Foundation, contact Rosanne Van Heertum, Director of Development, The New York Bar Foundation, One Elk Street, Albany, New York 12207, rvanh@tnybf.org, or visit the Foundation's Web site at www.tnybf.org.

Susan M. Davies is the Treasurer of the Section.

Section Supports Pay Raises for the Judiciary

Consistent with its previous strong support of pay raises for the judiciary, both state and federal, the Section has twice this year written to Governor Eliot Spitzer, Senate Majority Leader Joseph L. Bruno, and Speaker of the Assembly Sheldon Silver endorsing and encouraging substantial increases to judicial salaries for New York State judges. A copy of the two letters, from April 30, 2007, and June 1, 2007, are reproduced below. It is hoped that, by the time this newsletter hits your desk, the Governor and the Legislature will have taken appropriate action on this critical issue.



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April 30, 2007

Hon. Eliot Spitzer
Governor of New York
State Capitol
Albany, NY 12224

Hon. Joseph L. Bruno
Senate Majority Leader
Room 909 Legislative Office Bldg.
Albany, NY 12247

Hon. Sheldon Silver
Speaker of the Assembly
Room 932 Legislative Office Bldg.
Albany, NY 12248

Re: The Need for Substantial Increase for Judicial Salaries

Dear Honorable Sirs:

We write in support of an immediate, substantial and retroactive increase in salaries for the state judiciary. The 2,200 members of our Section of the New York State Bar Association are leading commercial litigators involved in the representation of business clients throughout the state. Thus, we are keenly interested in continuing the high caliber of judicial decision-making coming out of New York's courts.

No one disputes that both the complexity and volume of cases handled by our state courts have increased dramatically in recent years. Yet the compensation of our judges has not increased at all. Not only has it been eight years since the last raise in judicial pay, but the judges have even been denied cost of living increases. During this period, however, salaries of federal judges and non-judicial employees within the Unified Court System at least have increased to keep pace with inflation. Moreover, there are a large number of state employees, in the SUNY system for example, who currently receive salaries that exceed the salaries of our state court judges.

We are not aware of any other group of judges in the United States who have gone so long without an increase. And while we recognize that there will always be a disparity in the pay of those in the private sector and those performing public service, the disparity has grown exponentially over the past eight years. The effective decline in pay,

both in absolute terms and relative to the rest of the legal profession, discourages highly qualified lawyers from entering the judiciary and causes good, experienced judges to leave the bench.

The crisis that exists because of the inadequacy of New York's judicial pay is real and requires immediate attention. Preserving the quality of New York's judiciary is critical to our state's continued leadership as an international economic center. New York remains a leading jurisdiction for the conduct of business, in part, because of the well-reasoned and timely guidance provided by the state's judiciary on a wide range of commercial disputes. Our courts need and deserve the most qualified people to serve as judges. To attract and retain a high-quality state judiciary selected from a diverse pool of candidates, judicial salaries need to be increased substantially now.

We hope you will quickly enact a significant increase in judicial salaries.

Very truly yours,

Lesley F Rosenthal

Lesley Friedman Rosenthal

cc.: Hon. Judith Kaye,
Chief Judge, New York State Court of Appeals

Honorable Jonathan Lippman
Chief Administrative Judge

Mark H. Alcott, Esq.
President, New York State Bar Association
Paul Weiss Rifkind Wharton & Garrison LLP

NYSBA

New York State Bar Association

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June 1, 2007

Hon. Eliot Spitzer
Governor of New York
State Capital
Albany, NY 12224

Hon. Joseph L. Bruno
Senate Majority Leader
Room 909, Legislative Office Building
Albany, NY 12247

Hon. Sheldon Silver
Speaker of the Assembly
Room 932, Legislative Office Building
Albany, NY 12248

Dear Honorable Sirs:

I respectfully write on behalf of the Commercial & Federal Litigation Section of the New York State Bar Association to once again support an immediate and retroactive increase in salaries for the state judiciary. Our Section is comprised of more than 2,200 commercial litigators who represent numerous businesses and other clients in matters across the state. The Section thus is extremely concerned about the need to maintain New York's independent and high caliber of judicial decision-making.

The Section previously has written to your Honors about the need for a state judicial pay increase. The recent study by the National Center for State Courts and the nearing of the end of the legislative session, however, prompt the Section to write once again. The Section was particularly alarmed by the finding in the National Center of State Courts study that judicial pay in New York ranked 48th in the nation when adjusted for cost-of-living. New York, especially with its docket of complex and important commercial cases and as an international financial center, should be ranked at the top regarding its judicial pay, not at the very bottom. The State of New York is a leader in so many ways and it is shameful that it falls so far short in terms of justly compensating its excellent and hard working judiciary.

Our state court judges need and deserve a retroactive increase in judicial pay and we hope that you will enact the appropriate legislation immediately.

Respectfully yours,

Carrie H. Cohen
Section Chair

cc: Honorable Judith Kaye
Chief Judge, New York State Court of Appeals

Honorable Ann Pfau
Chief Administrative Judge

Kathryn Madigan, Esq.
President, New York State Bar Association

Do the Public Good • Volunteer for Pro Bono

Pro Bono Corner
Legal Services for New York City (LSNY)

By Michael D. Sant'Ambrogio

Legal Services for New York City ("LSNY") is the largest provider of free civil legal services to low-income persons in the United States. Each year, LSNY's programs assist more than 25,000 low-income clients in New York City with the full range of their civil legal needs. I spoke with Edwina Frances Martin, Director of Communications and Government Relations for LSNY, about pro bono opportunities with LSNY for attorneys in private practice.

What is LSNY?

EFM: LSNY is a network of non-profit legal services programs and offices that provide access to justice for low-income New Yorkers who have nowhere else to turn. Any New Yorker who does not earn more than 125 percent of the poverty level is generally eligible for our services.

What types of legal services does LSNY provide?

EFM: Our core practice areas are family, housing, benefits, consumer, and education law, but LSNY provides whatever legal services our clients need. We also have special projects that respond to legal needs that may be particular to a group of people, a neighborhood, or a period of time. For example, our offices have special projects for the elderly, individuals with disabilities, victims of predatory lending practices, individuals in bankruptcy, low-wage workers, victims of domestic violence, immigrants, students, and people living with HIV.

Who are some of LSNY's clients?

EFM: LSNY's clients include mothers with children whose child support or food stamps have been improperly terminated, families who face eviction, elderly people faced with foreclosure or who have been victims of predatory lending practices, children with physical or mental disabilities who need special services, and victims of domestic violence for whom a protective order may be a matter of life or death.

How do pro bono attorneys assist LSNY in carrying out its mission?

EFM: Pro bono attorneys play a vital role in our organization. They assist clients in preserving their homes and averting homelessness by defending them in eviction and mortgage foreclosure proceedings; help clients access and retain government benefits so that they can maintain enough income to keep food on the table and a roof over their heads; help victims of domestic violence obtain orders of protection and other relief; ensure that students with special education needs have those needs addressed by the City; advocate for the rights of children, the elderly, people with HIV, and individuals with disabilities; or counsel community-based client groups in their efforts to improve the quality of life in our clients' communities. In short, pro bono attorneys assist us with just about all the different legal services we provide and greatly increase the number of low-income New Yorkers whom we are able to help.

What types of skills do pro bono attorneys need to assist you?

EFM: We can find pro bono opportunities for lawyers with just about any type of practice experience. We are always looking for real estate, trust and estates, and tax lawyers to help out in these areas, but general litigation skills—research and writing, taking and defending depositions, and oral advocacy—are all that is required for most of our work.

Does LSNY provide any training for pro bono attorneys?

EFM: Yes. We provide pro bono attorneys with the training and support they need to assist clients in housing, landlord / tenant, public benefits, education, and disability law, to name a few. Pro bono attorneys do not need any prior experience in these areas to help out. We can also arrange trainings for firms or litigation departments that want to become involved as a group.

How much of a time commitment does LSNY require from pro bono attorneys?

EFM: The time required depends on the case. It could range from five hours for a simple research project to eighty hours for handling a predatory lending matter. We also offer four- to six-month externship programs for attorneys from medium to large firms.

What are the greatest needs for pro bono services now?

EFM: As you can imagine with what's going on in the mortgage and real estate market, we desperately need attorneys to help clients who have been the victims of predatory lending practices and to assist with our foreclosure prevention efforts. In particular, we need real estate attorneys to help with real estate closings as part of our foreclosure prevention project. The situation has reached crisis proportions, and we cannot help all the clients in need with the attorneys we have on staff.

We also always need assistance with divorces. There are so many divorces in New York City that we generally provide assistance only with divorces that involve domestic violence. But thousands of low-income New Yorkers are taken advantage of in divorce proceedings. Uncontested divorces do not usually involve a significant time commitment on the part of the pro bono attorney, but a lawyer's assistance is tremendously helpful to the client.

But any pro bono work helps LSNY provide services to more clients, so we will always try to find an opportunity that fits with a pro bono attorney's interests.

Can attorneys obtain CLE credit through LSNY?

EFM: Yes. Attorneys in New York may now fulfill up to six hours of their mandatory CLE requirements through pro bono work performed at any of LSNY's offices.

How can attorneys get involved?

EFM: The best way for attorneys to get involved is to call me at 646-442-3386, and I will match them with a project and an office that fits with their background and interests.

Michael D. Sant'Ambrogio is Co-Chair of the Section's Committee on Pro Bono and Public Service.

Save The Date!!!

Commercial and Federal Litigation Section
Spring Meeting, May 2 - 4, 2008
The Equinox, Manchester, VT

The Equinox Resort & Spa, A RockResort, located in Manchester Village, is at the foot of Mount Equinox, this 2,300-acre resort can trace its roots to 1769, when the first lodging was erected. The Equinox offers the finest combination of natural beauty, elegant settings, and relaxing activities. Ideally situated, the resort is close to the cultural happenings of Vermont and offers an extensive array of activities year-round.

The Equinox is home to: 13,000-square-foot Avanyu Spa with fitness center; the renowned Gleneagles Golf Course; courses in falconry; a unique Off-Road Driving School; the Archery School; the 800-acre-plus Equinox Preservation Trust; a new, 3,400-square-foot ballroom; Volvo at Rock Test Drive Program; high-speed Wireless Internet access; three tennis courts; a 75' x 25' indoor swimming pool; three restaurants with varying ambience.

Mark Your Calendars

To Join Us Next Spring

Ten Best and Worst Practices of Outside and Inside Litigation Counsel

By Richard B. Friedman

On July 18, 2007, numerous Section members and other guests attended a luncheon program at The Princeton Club in New York City entitled "Ten Best and Worst Practices of Outside and Inside Litigation Counsel." The program was moderated by Richard B. Friedman, a litigation partner at Dreier LLP and the Co-chair of the Section's Committee on Corporate Litigation Counsel. The esteemed panel consisted of Steven C. Bennett, a litigation partner at Jones Day; Carla M. Miller, Senior Director—Litigation Counsel at Universal Music Group and the Co-chair of the Section's Committee on Corporate Litigation Counsel; Lesley Friedman Rosenthal, Vice President, General Counsel and Secretary of Lincoln Center for the Performing Arts and past Section Chair; and William J.A. Sparks, Senior Litigation Counsel at W.R. Grace & Co.

The in-house panelists discussed their respective views of the ten best and worst practices of outside litigation counsel. Among other things, Ms. Miller stated that the best outside litigation counsel prepare bills in plain English, address billing issues proactively, treat their assistants as an integral part of the service team, endeavor to keep a consistent team of associates working on a corporation's matters, ask in-house counsel for briefs or memoranda on an issue before undertaking research as most large companies repeatedly face the same legal issues, and always bear in mind that corporate legal departments are cost centers, not revenue generators. Ms. Miller also stated that outside counsel should not (a) wait until the last minute to send drafts for review, (b) send "working drafts" of briefs that do not represent the firm's best work, (c) bill for internal research memorandum writing, (d) bill for basic research on a subject by junior associates, and (e) bill for vitriolic letter writing. She also pointed out that outside litigation counsel should return telephone calls and e-mails the same day.

Ms. Rosenthal identified the following as some of the best practices of outside litigation counsel: being an "institute" of higher education for clients, getting to know the client's business, industry, and the executives surrounding the in-house attorney to whom outside counsel reports, taking a broader perspective in counseling a client on compliance / regulatory matters, thinking like a judge vis-à-vis litigation matters, and including in-house counsel as a member of the litigation team. She also identified the following worst practices of in-house litigation counsel: failing adequately to educate outside advisors about all pertinent aspect of a business, asking vague questions and giving amorphous assignments, allowing outside counsel to lose perspective as to the relative importance of a particular matter, not being candid with outside counsel about problems in a case, and not treating outside counsel as a member of the client's team.

Mr. Sparks stated that, among other things, the best outside litigation counsel evaluate cases early in the litigation process, make realistic cost-benefit analyses for cases likely to go to trial, have candid and frequent discussions with in-house counsel about possible settlements, communicate regularly with in-house counsel, always keep in-house counsel informed about any upcoming changes in personnel, and advise in-house counsel about the application of the attorney-client privilege to their activities. Mr. Sparks identified the following as some of the worst practices of outside counsel: failure to evaluate a lawsuit in a timely manner, failure to focus in a timely manner on likely legal costs through trial preparation, waiting until the last minute to require in-house counsel to make a decision on any significant corporate matter, and communicating with the media without first having a candid and thorough discussion with in-house counsel.

Best and Worst Practices Panel
(l to r) Richard B. Friedman, Steven C. Bennett, Lesley Friedman Rosenthal, Carla M. Miller and William J.A. Sparks

Messrs. Bennett and Friedman discussed their respective views of the ten best and worst practices of in-house litigation counsel. Mr. Bennett identified establishing good communication protocols with outside counsel, communicating to outside counsel what types of matters require senior in-house review, providing a clear description of any special methods of billing, establishing a good document management system, and being willing to focus on the possible early settlement of a case as best practices of in-house litigation counsel. He cited late identification of a dispute and of case problems as well as an unreasonable assessment of outcome predictions, the desire to use unwarranted "hardball tactics," and failure to inform outside counsel of changes in corporate personnel, policies, or objectives as among the worst practices of in-house litigation counsel.

Among other things, Mr. Friedman stated that the best in-house litigation counsel use outside counsel as advisors when a business dispute arises so that a variety of approaches can be considered before the dispute becomes a litigation or arbitration, discuss with outside counsel the relative importance of the matter to the client, discuss with outside counsel the respective roles of both types of counsel in staffing all aspects of the matter, are proactive in developing a document management system, and discuss with outside counsel preferred methods of communication and back-up arrangements as well as expected staffing levels.

Mr. Friedman identified the following examples of worst practices of in-house litigation counsel: failure to consult outside counsel until a dispute is certain to result in litigation, viewing outside counsel's desire to discuss the weaknesses as well as the strengths of a case as a sign of a lack of aggressive advocacy, confusing vitriolic correspondence with effective advocacy, urging outside counsel to engage in overly aggressive tactics, and preventing outside counsel from interfacing directly with key business personnel along with in-house counsel when important discussions concerning the matter have to be made.

The program was a tremendous success and the Section, especially the Committee on Corporate Litigation Counsel, thanks all of the panelists and attendees.

Richard B. Friedman is Co-Chair of the Section's Committee on Corporate Litigation Counsel.

CPLR Amendments: 2007 Legislative Session

(Chapters 1-678)

CPLR §	Chapter (§)	Change	Eff. Date
105(e)	125(1)	Defines "clerk," in supreme and county court, to mean clerk of the county	1/1/08[1]
304	125(2)	Reorganizes section; provides that the summons or petition must be filed in accordance with CPLR 2102; prohibits acceptance of filing unless required fee is paid, except in case of e-filing where fee is paid as authorized by chief administrator	1/1/08[1]
306-a	125(3)	Clarifies that summons or petition is filed with county clerk	1/1/08[1]
1101(d), (f)	56, Part C, § 18	Extends sunset from 9/1/07 to 9/1/09	4/9/07
2001	529	Adds mistake in filing summons as excusable mistake, provided that fees are paid	8/15/07
2102	125(4)	Provides that papers in supreme and county court must be filed with county clerk; provides that a paper filed in accordance with the chief administrator's rules or local court rule or practice shall be deemed filed; requires transmittal of papers to clerk of court; prohibits clerk from refusing papers except where directed to do so by statute, rule, or order	1/1/08[1]
2214(b)	185(1)	Provides that in order to require service of answering papers at least 7 days before return date, motion papers must be served at least 16 days before return date (instead of 12 days); sets same requirement for cross-motions	7/3/07[2]
2215	185(2)	Requires service of cross-motion at least 7 days before return date if demand is made pursuant to CPLR 2214(b) (10 days if cross-motion is mailed, 8 days if delivered overnight)	7/3/07[2]
2302(b)	136	Provides for production of prisoners in NYC Civil Court	7/3/07
2303-a	192	Provides for service of trial subpeonaes	1/1/08
2308(a)	205	Increases penalty for non-compliance from $50 to $150	1/1/08
2308(b)(2)	601(9)	Replaces DSS with Office of Temporary and Disability Assistance	8/15/07
3215(g)(3)(iii)	458(2)	Excepts residential mortgage foreclosure actions from exclusions from additional notice requirement	8/1/07
4518(f)	601(10)	Replaces DSS with Office of Temporary and Disability Assistance	8/15/07
5241(b)(3)(ii)	601(11)	Replaces DSS with Office of Temporary and Disability Assistance	8/15/07
5242(c)	601(12)	Replaces DSS with Office of Temporary and Disability Assistance	8/15/07
7009(a)(2)	40	Provides that the attorney general, not the corporation counsel/county attorney, shall represent the court	5/29/07
8011(h)	36	Eliminates fee for serving order of protection	8/19/07

Notes: (1) Gen. Oblig. Law § 15-108 has been amended to add a new subdivision (d) limiting the circumstances under which a release or covenant not to sue shall be deemed a release or covenant under section 15-108. 2007 N.Y. Laws ch. 70, eff. July 4, 2007, and applicable to releases and covenants not to sue effective on or after that date. (2) The pilot program for commencement of civil actions and proceedings by fax or email has been expanded to include certain cases in Supreme Court, Livingston County, NYC Civil Court, and Surrogate's Court in Chautauqua, Monroe, Queens, and Suffolk counties. 2007 N.Y. Laws ch. 369. (3) Ct. Claims Act § 11(b) has been amended to provide that the total sum claimed need not be stated in actions to recover damages for personal injury, medical, dental, or podiatric malpractice or wrongful death. 2007 N.Y. Laws ch. 606.

Endnotes

1. Applies to actions and proceedings commenced on or after 1/1/08.
2. Applies to notices of motion served on or after 7/3/07.

2007 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 1-23 of 2007)

22 N.Y.C.R.R. §	Court	Subject (Change)
202.7(f)	Sup./County	Clarifies that notification requirement applies to any application for temporary injunctive relief, including, but not limited to, motion for stay or TRO; excludes from notification requirement motions for orders of protection
202.8(h)	Sup./County	Provides for reports to justices, upon request, of undecided motions pending 60 days or more
202.48(c)(2)	Sup./County	Requires that proposed counter-orders and counter-judgments be submitted with a copy marked to delineate proposed changes to the order or judgment to which objection is made
202.70(a)	Sup./County	Increases Kings County monetary threshold to $75,000; decreases Westchester County monetary threshold to $75,000; adds $25,000 monetary threshold for Onondaga County
Part 217	Trial Courts	Provides for access to court interpreter services for persons with limited English proficiency
Part 1010	A.D., 4th Dep't	Abolishes Civil Appeals Settlement Program established in 2006

Note: 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.

Caution to Attorneys on Notices of Appeal in State Court

A reader, Marianne Stecich, of Stecich Murphy & Lammers, LLP, in Tarrytown, New York, points out a recent and troubling decision by the Second Department. We reproduce her email here:

In *Xander Corp. v. Haberman*, 41 A.D.3d 489, 838 N.Y.S.2d 133 (2d Dep't 2007), the appellate division ruled that an order stamped with a date of entry that was included in a set of motion papers (not a motion for leave to appeal), combined with an affirmation by an attorney in support of the motion that referred to the order, constituted the service of an order with notice of entry so as to start the time to appeal running. Xander, who had been successful in obtaining a preliminary injunction in the supreme court, never formally served a copy of the order with notice of entry on Haberman. After six months, Haberman served the order with notice of entry and, a week later, filed a notice of appeal. Xander moved to dismiss the appeal as untimely and the appellate division granted the motion. "Service by [Haberman] on [Xander] of motion papers, which included a copy of the subject order stamped with the date of its entry and an affirmation by an attorney in support of the motion which referred to the enclosed order, was sufficient to trigger the 30-day period to take an appeal for both parties." Whether *Xander v. Haberman* represents a trend toward relaxing the formerly strict requirements of a notice of entry remains to be seen. In the meantime, an attorney representing a party wishing to appeal should be vigilant. Any time the order to be appealed crosses one's desk, even as an enclosure in a letter to someone else, be aware that it could be treated as service of the order with notice of entry. The better—and less nerve-wracking—way to protect the client's right to appeal is, if after a reasonable period the adversary does not serve the order or judgment with notice of entry, serve it oneself and then file a notice of appeal.

Notes of the Section's Executive Committee Meetings

June 20, 2007

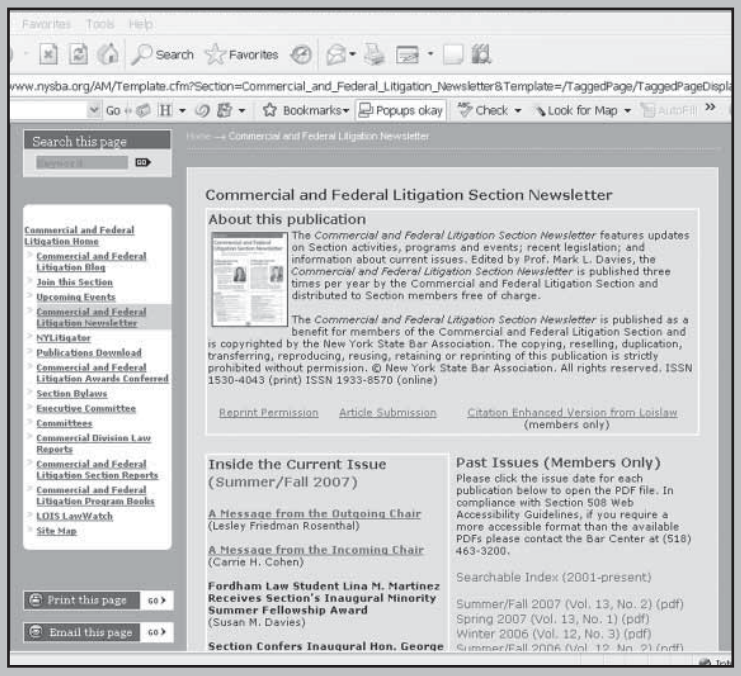
Guest speaker Rick Lipsey, author of *Golfing on the Roof of the World: In Pursuit of Gross National Happiness,* discussed his experience living in Bhutan and teaching golf for three months and also discussed the contributions of Section Chair Carrie H. Cohen to the criminal justice system in Bhutan. Past Chair Lesley Rosenthal presented the Chair's Award for Service to the Section to Gregory K. Arenson of Kaplan Fox & Kilsheimer LLP, noting that Mr. Arenson has worked on more than a dozen reports, projects, and committees in the Section and is currently Chair of the Section's Federal Procedure Committee. The Ethics and Professionalism Committee reported on Revised Rules for Lawyer Advertising, concluding that the rules were adhered to in part and ignored in part. The Executive Committee voted to amend the bylaws to increase geographic representation on the Executive Committee.

July 11, 2007

Guest speaker the Hon. P. Kevin Castel, U.S. District Judge for the Southern District of New York, discussed the history of the Commercial and Federal Litigation Section and provided the Section with insight about federal practice and practicing in his court.

The Executive Committee approved the report of the Antitrust Committee on the *Trinko* decision and discussed a draft report of the White Collar Criminal Litigation Committee on "Independence of U.S. Attorneys." The Executive Committee voted to send letters to the Commercial Division Justices requesting sample jury charges in commercial cases.

The *Commercial and Federal Litigation Section Newsletter* has a new online look!



Go to www.nysba.org/ComFedNews to access:

- Past Issues (2000-present) of the *Commercial and Federal Litigation Section Newsletter**
- *Commercial and Federal Litigation Section Newsletter* Searchable Index (2000-present)
- Searchable articles from the *Commercial and Federal Litigation Section Newsletter* that include links to cites and statutes. This service is provided by Loislaw and is an exclusive Section member benefit*

*You must be a Commercial and Federal Litigation Section member and logged in to access. Need password assistance? Visit our Web site at www.nysba.org/pwhelp. For questions or log-in help, call (518) 463-3200.

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