

# 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

As Chair of the Section, I am thrilled to report that our Section has had a highly productive past several months. Because of the work of many talented people who contribute their time to our numerous activities, our Section has been busy at work on several CLE programs, putting together our Annual Meeting in January, planning our Spring Meeting, preparing reports, and meeting in our various committees.



Tracee E. Davis

Since our newsletter last summer our Section, through its Special Committee on Pattern Jury Charges, led by Civil Court Judge Andrea Masley, who is joined by Commercial Division Justice Shirley Kornreich, former Section Chair Lauren J. Wachtler (Mitchell Silberberg & Knupp LLP), and Committee Co-Chair on Appellate Practice Melissa A. Crane, has taken a leading role in drafting pattern jury instructions for commercial cases. Working diligently over the summer, our Special Committee produced draft instructions on piercing the corporate veil and breach of fiduciary duty that the Section approved and presented to the Official Pattern Jury Instructions Committee of the Association of Supreme Court Justices of the State of New York. (A detailed article about the Pattern Jury project appears on p. 6 of this *Newsletter*.) The Section's proposed instructions and other recommendations were enthusiastically received by the Official PJI Committee which expressed interest in working further with the Section on adopting these and other commercial pattern jury instructions.

The Pattern Jury Instructions project is a part of the major goals of our Section for this year to develop new and improved means of providing our members with important and useful information about commercial litigation. To that end, on the federal side, the Section has established a Special Task Force, under the leadership of Hon. Melanie L. Cyganowski (Otterbourg, Steindler, Houston & Rosen), to examine best practices for advancing mediation in the United States District Court for the Southern District of New York. Joined by the new Chair of the Committee on Arbitration and ADR, Charles J. Moxley, Jr. (MoxleyADR LLC), the Task Force will study best practices from the perspectives of the main interested parties, including the judiciary, counsel, and mediators and will produce what I am sure will be a product

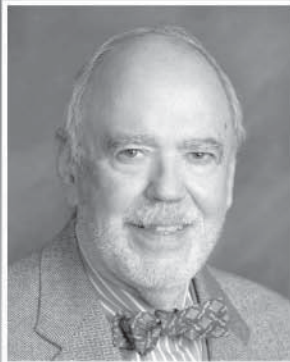
*(continued on page 3)*

## Inside

The Section's New Committee on Legislative and Judicial Initiatives .....	5
The Commercial and Federal Litigation Section Collaborates with the Official Committee on Pattern Jury Instructions.....	6
Task Force on Commercial Litigation in the 21st Century .....	7
Letter to Chief Judge Lippman and Chief Administrative Judge Prudenti from the Commercial and Federal Litigation Section	
The Section's Committee on Arbitration and ADR Welcomes a New Chair.....	9
A Call to All Members: The Commercial and Federal Litigation Section's Mentoring Program Needs Mentors .....	10
Committee Spotlight: Committee on Immigration Litigation.....	11
Distinguished Service Award to Justice Bernard J. Fried.....	13
CPLR Amendments: 2012 Legislative Session .....	14
2012 Amendments to the Uniform Rules for Supreme and County Courts, Rules Governing Appeals, and Certain Other Rules of Interest to Civil Litigators .....	14
Notes of the Section's Executive Committee Meetings .....	15

# NAM COMMERCIAL

## COMMERCIAL DIVISION LEADERSHIP TEAM



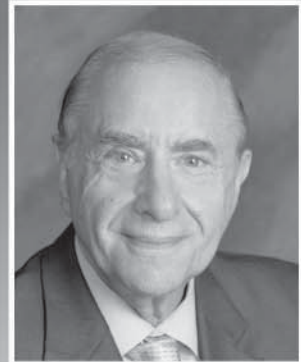
**Hon. Francis G. Conrad**  
*Judge of the Federal  
 Bankruptcy Court - Retired;  
 Certified Public Accountant*



**Hon. John P. DiBlasi**  
*Justice of the Supreme Court,  
 Westchester - Retired;  
 Ranked by the New York Law Journal  
 in 2010 and 2011 as one of the  
 top two mediators in New York State*



**Hon. Ira Gammerman**  
*Justice of the Supreme Court,  
 New York - Retired*



**Hon. Howard Miller**  
*Assoc. Justice, Appellate Division,  
 2nd Department, Rockland  
 - Retired*

### A sample of cases resolved by our commercial panel:

- Claim against indenture trustees for not making appropriate claims in bankruptcy of major airline, resulting in loss of \$75 million.
- Dispute between two hedge funds and Russian mathematicians concerning codes and models involving statistical arbitrage.
- Alleged breach of fiduciary duty by lawyers hired to represent former finance minister of oil-rich country.
- Accounting malpractice claim by high-income clients based on tax shelter recommendations made by national accounting firm.
- Dispute between satellite company and giant entertainment network about appropriate charges for television channels.
- Commercial libel and tortious interference claim on media personality's contract covering his on-air statements.
- Dispute concerning control of a magazine between popular television host and publishing company.
- Dispute between prominent film maker and financial backer concerning allocation of costs and profits on a series of six movies.
- Dispute between a landowner and a municipality regarding road construction and drainage easement.
- Dispute about quality of manuscript submitted by popular author and book publisher.
- Brokerage fee dispute involving properties sold for over of \$20 million.
- Breach of an agreement to insure against the criminal acts of Bernard Madoff in his capacity of financial advisor/security broker which resulted in an investor loss in excess of \$20 million.
- Fraud and breach of contract involving the construction of a large condominium.



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## Message from the Chair

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(Continued from page 1)

that will be of tremendous help to both litigators and the judiciary.

We have also formed a new committee, called the Committee on Legislative and Judicial Initiatives, which will be chaired by former Section Chair Vincent J. Syracuse ((Tannenbaum Helpers Syracuse & Hirschtritt LLP). (A detailed article about the Committee on Legislative and Judicial Initiatives appears on p. 5 of this *Newsletter*.) The mission of the Committee is to coordinate the Section's efforts in promoting, both at the state and federal levels and implementing through the NYSBA, matters that are important to our members and their clients. Mr. Syracuse has noted that the Section has been involved in "procedural and substantive issues that have helped shape the development of commercial law in New York," and he "felt that it was time for it to have a more formal voice as to when and how these matters are considered by the legislature and other rulemaking authorities." As part of its initial priorities for the coming year, the Committee will focus on the recommendations made in the report issued this past June by the Chief Judge's Task Force on Commercial Litigation in the 21st Century. We are looking forward to working, under Mr. Syracuse's leadership, in playing a leadership role on these and other legislative and judicial initiatives in the coming year.

Other activities that we are working on this year include our Annual Meeting at the Hilton New York on January 23, 2013. Section Vice-Chair Paul D. Sarkozi (Tannenbaum Helpers Syracuse & Hirschtritt LLP) is planning what promises to be an outstanding meeting that will feature a two-part continuing legal education program followed by our annual luncheon and the presentation of the Stanley H. Fuld Award. The two CLE programs will present engaging speakers who will address topics of interest to commercial litigators: one panel will discuss the implementation of the Chief Judge's Task Force Report on Commercial Litigation and the impact it will have on the practice of commercial law in New York. And the other will examine the financial crisis and prevailing issues in-house counsel and outside counsel confront in the Commercial Division and federal courts.

We are also gearing up for our Spring Meeting at The Gideon Putnam Hotel, May 3rd through 5th, 2013. The weekend will feature a Friday evening welcoming reception, followed by two mornings of CLE programs that are being developed by Section Chair-Elect Gregory K. Arenson (Kaplan Fox & Kilsheimer LLP). The Saturday CLE program will be followed by an afternoon of recreational activities and an evening reception and dinner for the presentation of the Haig Award to the Honorable Jed S. Rakoff, United States District Court Judge for the South-

ern District of New York, for his contribution to the legal profession and distinguished public service.

Our Committees also have been busily working on many interesting reports, CLE programs, and other projects. The breadth and scope of the work done by our committees truly is outstanding.

For example, this year alone our Committee on Ethics and Professionalism, chaired by Anthony J. Harwood, Esq., and James M. Wicks (Farrell Fritz, P.C.), have provided comments to our State's delegation on an ABA proposal on fee sharing with law firms having non-lawyer owners; our Committee on Employment and Labor Relations, chaired by Gerald T. Hathaway (Mitchell Silberberg & Knupp LLP) and Robert N. Holtzman (Kramer Levin Naftalis & Frankel LLP) submitted a joint report with the NYSBA Labor and Employment Law Section on New York State's proposed WARN legislation; and the Committee on Bankruptcy Litigation, chaired by Douglas T. Tabachnik (Law Offices of Douglas T. Tabachnik, P.C.), prepared a report on the ABA's proposed resolution regarding *Stern v. Marshall*.

We have also presented timely and popular CLE programs, many of which offer privileged access or pricing for Section members. We congratulate the Committee on CLE, chaired by Kevin J. Smith (Kelly Drye Warren), in organizing the tremendously successful second annual Commercial Litigation Academy, sponsored by our Section; the Committee on Electronic Discovery, chaired by Constance M. Boland (Nixon Peabody LLP) and Adam I. Cohen (Ernst & Young LLP), on working with the NYSBA's CLE Department in planning the well-attended program on recent developments in electronic discovery; the Committee on Corporate Litigation Counsel, chaired by Jamie E. Stern (UBS AG), in planning with the Dispute Resolution Section a joint program on Arbitration; and the Committee on Civil Prosecution, chaired by Neil V. Getnick and Richard J. Dircks (both of Getnick & Getnick), in planning, with the incredible contribution of Margaret J. Finerty, a program on the False Claims Act.

The Section cannot adequately express its appreciation to all of them and many other individuals who chair or serve as committee members and make our Section so successful. And there is more to come.

For example, the Committee on Membership, under the leadership of Co-Chairs Nicole Mastropieri (Nixon Peabody LLP) and Anna S. Park (Zeichner Ellman & Krause LLP), have undertaken to craft a Section brochure that highlights the Section's contributions to the practice of law and the benefits of membership. Next year, 2013, will be the 25th anniversary of the founding of our Sec-



tion by a group of visionaries led by Robert L. Haig (Kelly Drye Warren LLP). More than a few of the founders and past Chairs are in leading positions on the federal bench, as the Presidents of major bar associations, and/or at the very pinnacle of private practice and pro bono service. I am sure the Section will note and plan for the forthcoming anniversary year, gathering those who have brought the Section to greatness and use the Section's brochure to lead the way in encouraging members to take on leadership roles within the Section.

We also look forward to publishing a handbook being finalized by our Appellate Practice Committee, chaired by immediate past Chair, David H. Tennant (Nixon Peabody LLP) and Melissa A. Crane (Appellate Division, First Department). The handbook is on Standards of Review for United States Court of Appeals for the Second Circuit, which I am certain will be a useful reference tool for use in appeals of commercial cases.

Also, our Electronic Discovery Committee, chaired by Constance M. Boland (Nixon Peabody LLP) and Adam I.

Cohen (Ernest & Young LLP), is drafting an update to the Section's highly acclaimed *Best Practices Guide for E-Discovery in New York State and Federal Court*. The committee is also working on an e-discovery website that contains substantive content, including articles, case summaries, and alerts discussing recent developments in e-discovery.

And our Committee on Diversity is working to increase the involvement of attorneys of color. Planning is already under way for the Smooth Moves Program, now in its seventh year. And with the assistance of our immediate past Chair, David H. Tennant, the Committee is planning its second annual Minority Moot Court Program.

As the year progresses, I hope all of you will become involved in these and numerous other Section activities and will continue to take advantage of the many opportunities our Section offers all of our members. I look forward to working with you.

Tracee E. Davis

## NEW YORK STATE BAR ASSOCIATION

# Annual Meeting

**January 21-26, 2013**

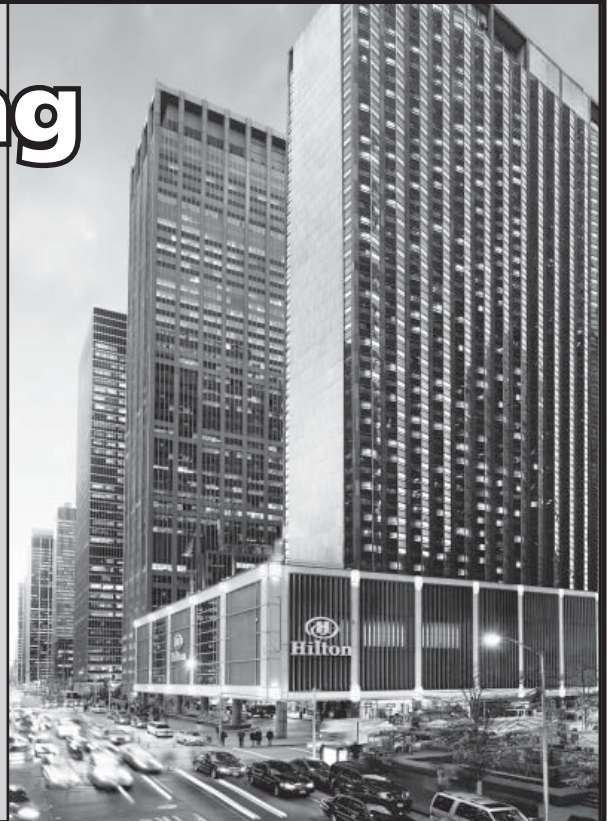
**Hilton New York**

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New York City

**Commercial and Federal  
Litigation Section Program**

**Wednesday, January 23, 2013**

***Save the Dates***



# The Section's New Committee on Legislative and Judicial Initiatives

In response to the ever-growing need to address the interests of the courts, commercial litigators, and the business community at large, the Commercial and Federal Litigation Section, at the initiative of Section Chair Tracee E. Davis, has established a new committee to handle the Section's legislative initiatives both at the state and federal levels. Led by former Section Chair Vincent J. Syracuse, the Section's Committee on Legislative and Judicial Initiatives will take up many of the new and innovative proposals that the Section believes will benefit the continuing development of New York as a center for business dispute resolution. As Chief Judge Jonathan Lippman stressed during his State of the Judiciary address in February 2012, "[w]e must make sure that New York remains at the cutting edge of how commercial disputes are resolved. It is time to set a new vision for how we in the New York State court system might better serve the needs of the business community and our state's economy."

As part of its Legislative Priorities for the coming year, the Section supports the recommendations made in the report recently issued this past June by the Chief Judge's Task Force on Commercial Litigation in the 21st Century. The Task Force has made several important recommendations to help facilitate the continuing growth of commercial litigation in the state courts including suggestions as to case docket reform, judicial support and engagement, procedural reforms, early case resolution, and procedures to support international arbitration. As noted in the Task Force's report, "the number and complexity of cases in the Commercial Division [had] grown dramatically." The report further recognized that "the judges of the Commercial Division adjudicated thousands of cases and motions that include[d] some of the most important, complex commercial disputes being litigated anywhere." In addition, the Task Force suggested that its recommendations "may also serve as a model for broader

reform throughout the courts" despite the reduced financial resources allocated to the court system in the current economic environment.

"The Section has traditionally taken an active role on numerous legislative initiatives regarding procedural and substantive issues that have helped shape the development of commercial law in New York and felt that it was time for it to have a more formal voice as to when and how these matters are considered by the legislature and other rulemaking authorities," Mr. Syracuse noted. "The Section's role has not been traditionally limited to writing reports and making recommendations. It has had a highly proactive role in the implementation of those recommendations, including the establishment of the Commercial Division itself as well as the civility guidelines," Syracuse added.

In addition to supporting the Chief Judge's Task Force on Commercial Litigation in the 21st Century, both the Committee and the Section will advocate for an increased budget for the judiciary, which would allow for greater support and expansion of the Commercial Division. Finally, with regards to potential amendments to the New York Civil Practice Law and Rules ("CPLR"), both the Committee and the Section support the enactment of the proposed CPLR 4549, which would govern circumstances involving the disclosure of a communication or information covered by the attorney-client privilege or work-product protection. This proposed statute would track the language of Rule 502 of the Federal Rules of Evidence.

These proposals are only the beginning of what the Committee hopes to advocate on behalf of the Section in its continuing support of the commercial litigation bar in New York.



**Commercial and Federal Litigation Section**  
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**[WWW.NYSBA.ORG/COMFED](http://WWW.NYSBA.ORG/COMFED)**

# The Commercial and Federal Litigation Section Collaborates with the Official Committee on Pattern Jury Instructions

At the initiative of Section Chair Tracee E. Davis, the Commercial and Federal Litigation Section recently assembled a Special Committee on Commercial Jury Charges (the “Special Committee”) to review and examine, in conjunction with the Committee on Pattern Jury Instructions of the Association of Justices of the Supreme Court of the State of New York (the “PJI Committee”), pattern instructions (“PJIs”) for commercial claims in state court. The Special Committee is chaired by Judge Andrea Masley, who is joined by Commercial Division Justice Shirley Kornreich, former Section Chair Lauren J. Wachtler, and Co-Chair of the Committee on Appellate Practice Melissa A. Crane. This past summer, the Special Committee began working closely with various members of the PJI Committee, who requested the Section’s assistance in drafting changes to existing charges for commercial claims, proposing new charges, and submitting sample jury charges from Section Members who may have drafted charges for commercial jury trials in the past.

After working diligently on this project, the Special Committee completed its first set of proposed Pattern Jury Instructions in early October, which includes draft PJIs and comments addressing, among other topics: alter ego and piercing the corporate veil; breach of fiduciary duty and aiding and abetting breach of fiduciary duty; and comments on existing PJIs on fraudulent inducement of contractual warranty. Following the Special Committee’s vetting and integrating of comments from this Section’s Executive Committee, the Executive Committee approved the presentment of the proposed Pattern Jury Instructions to the PJI Committee and approved the authority of the Section’s Special Committee to continue working with the PJI Committee to revise the proposed PJIs. The Special Committee attended and formally pre-

sented its initial set of proposed PJIs to the PJI Committee during its meeting on October 12, 2012.

The Section’s proposed Pattern Jury Instructions were enthusiastically received by the PJI Committee, so much so that it has asked the Section’s Special Committee to continue to work together on commercial jury instructions. As a direct result of the Special Committee’s efforts, the PJI Committee is considering expedited revision of the pattern instructions on piercing the corporate veil and seeking additional Executive Committee’s comments on their revisions. In addition, the PJI Committee has asked the Special Committee to draft pattern instructions on bona fide purchaser status and to examine the need for instructions on intellectual property issues, as well as revisions to expert witness charges.

Thanks to the hard work of the Special Committee and its members, the Section is poised to make an important and substantive contribution to the efforts of the PJI Committee and commercial law.

As the Special Committee’s efforts remain a work in progress, the Special Committee invites from Section members suggestions with respect to proposed new charges, changes to existing charges, or the submission of sample jury charges that Section members may have drafted for commercial trials in which they have been involved. (Please note, any instructions the Special Committee receives will not be shared without your prior knowledge and consent.)

This is a wonderful opportunity for you to make an extraordinary contribution to this important project of the Section. Any suggestions or proposed charges may be submitted to **Judge Andrea Masley at [amasley@courts.state.ny.us](mailto:amasley@courts.state.ny.us)**.



# NEW YORK STATE BAR ASSOCIATION

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Jonathan D. Lupkin  
David H. Tennant

October 19, 2012

Chief Judge Jonathan Lippman  
New York State Court of Appeals  
20 Eagle Street  
Albany, New York 12207

Chief Administrative Judge A. Gail Prudenti  
Office of Court Administration  
25 Beaver Street  
New York, New York 10004

**Re: Task Force on Commercial Litigation in the 21st Century**

Dear Chief Judge Lippman and Chief Administrative Judge Prudenti:

I write on behalf of the Commercial and Federal Litigation Section of the New York State Bar Association (the "Section") to express the Section's support for the proposals outlined in the Report and Recommendations of the Chief Judge's Task Force on Commercial Litigation in the 21<sup>st</sup> Century (the "Report").

The Task Force has made several important recommendations to help facilitate the continuing growth of commercial litigation in the state courts including suggestions as to case docket reform, judicial support and engagement, procedural reforms, early case resolution and procedures to support international arbitration.

We discussed these and the Report's other recommendations extensively at our September Executive Committee meeting and enthusiastically approved the Section throwing its full support behind these initiatives. Indeed, the Section intends to devote half of its program at its Annual Meeting on January 23, 2013 to the Report and its implementation. In this way, we hope to educate the Bar about these well-considered initiatives and build greater support for their adoption.



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Please know the Section welcomes any opportunity to assist you and the Office of Court Administration in implementing the recommendations and advancing the goals of the Report.

Respectfully,

Tracee E. Davis  
Chair, Commercial and Federal  
Litigation Section  
New York State Bar Association

cc: Gregory K. Arenson, Esq. (Section Chair-Elect by email)  
Paul D. Sarkozi, Esq. (Vice-Chair by email)  
Rebecca Adams Hollis, Esq. (Secretary by email)  
James M. Wicks, Esq. (Treasurer by email)  
Jeremy Feinberg, Esq. (Executive Committee Member by email)



# The Section's Committee on Arbitration and ADR Welcomes a New Chair

The Commercial and Federal Litigation Section welcomes Charles J. Moxley, Jr., as the new Chair of the Section's Committee on Arbitration and ADR. Mr. Moxley is an experienced arbitrator, mediator, and litigator and the principal of MoxleyADR LLC. He is also the immediate past Chair of NYSBA's Dispute Resolution Section.



**Charles J. Moxley, Jr.**

With Mr. Moxley at the helm, the Committee on Arbitration and ADR contemplates numerous projects over the next year. Most centrally, the Committee, under the leadership of Section Chair Tracee E. Davis and the Section's Executive Committee, will be preparing a study of Best Practices for advancing mediation in the United States District Court for the Southern District of New York under the various mediation programs of the Court. This study will be conducted from the perspectives of the main interested parties, including the judiciary, counsel, and mediators.

The Committee is also considering numerous other areas in which it might become involved, including that of how litigators can best represent their clients in mediations and arbitrations to achieve their clients' objectives. The prevailing sense is that, while there has been a lot of focus on how arbitrators and mediators should best conduct these processes, more remains to be done to develop Best Practices from the perspective of counsel.

This appears to be particularly the case, for example, in arbitration, given the extent to which some users in recent years have reportedly become disenchanted with the extent to which arbitration is perceived to have become

too much like litigation, burdened with litigation-style levels of discovery and motion practice. "The Committee will consider developing Best Practices for counsel in arbitrations, consistent with the needs of a particular case, to convince arbitrators to conduct their arbitrations in a proactive, 'muscular,' way so as to limit discovery and motion practice where appropriate and achieve the arbitration objectives of expedition and economy without sacrificing fairness," Mr. Moxley noted.

"There is room for litigators in arbitrations to understand the differences between effective advocacy in arbitration versus litigation," Mr. Moxley explained. Hence, "it might be interesting for the Committee to identify some of the specific approaches and techniques that might be used in arbitrations that litigators might never consider trying in litigation."

The Committee will also explore the appropriate circumstances and bases upon which arbitrators may or should award attorneys' fees in arbitrations, an area as to which there is a considerable lack of clarity and a wide and often conflicting range of views and assumptions held by knowledgeable counsel and arbitrators. Also, given that some of our Section members who are litigators may have a potential interest in becoming arbitrators and mediators or in expanding their practice in those areas, the Committee will consider projects that facilitate this process.

These projects are just a few of those which the Committee hopes to consider. Both the Section and the Committee look forward to input from you as to suggestions and ideas for interesting projects for the Committee. If you have any comments, feedback, and, most of all, an interest in participating in the Committee's exciting activities, please feel free to send an email to Mr. Moxley at [cmoxley@moxleyadr.com](mailto:cmoxley@moxleyadr.com).

# A Call to All Members: The Commercial and Federal Litigation Section's Mentoring Program Needs Mentors

In November of 2010, motivated by the inspiring words of former Chief Judge Judith Kaye, the Commercial and Federal Litigation Section launched, under the stellar leadership of former Chair Jonathan D. Lupkin (Rakower Lupkin PLLC), its groundbreaking Mentoring Program. The program grew out of former NYSBA President Steve Younger's emphasis on the future of the legal profession. The program provides newer attorneys (0-9 years in practice) with the opportunity to build one-on-one relationships with seasoned practitioners (10 years and more) for the purpose of opening new avenues for professional development. In addition, the program has organized special events for its participants. These have included a private tour of New York County Supreme Court, where participants interacted with, and learned from, key court personnel about the front and back-office operations of one of the busiest and most important courts in the nation, and a judicial speaker series, featuring informal discussions with prominent members of the state and federal bench. Finally, the Section benefits from the program by recruiting, maintaining, and more deeply engaging program participants in Section committees, report-writing, and other mainstay Section activities.

Now in its third year, the Mentoring program boasts participation by 41 mentors. Our mentors include some of the state's most experienced attorneys, including present and former Presidents of the NYSBA, present and former Chairs of the Commercial and Federal Litigation Section, Section Executive Committee members, and other prominent commercial litigators. Despite the selfless devotion of our current cadre of mentors, we face a practical problem: an embarrassment of riches, if you will. We currently have almost 60 mentees, and at the current rate, the number of mentees will soon far outpace the number of available mentors. The solution is obvious; we need more mentors. In short, WE NEED YOU! Please help our Section expand this vital program and enable us to offer the program to the ever-increasing number of our newer colleagues who could benefit greatly from your wisdom and guidance.

For more information on the Section's Mentoring Program, please call or email Jonathan D. Lupkin. He can be reached at (212) 660-5554 and at [jlupkin@rakowerlupkin.com](mailto:jlupkin@rakowerlupkin.com).

## ***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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Morrison & Foerster  
1290 Avenue of the Americas  
New York, NY 10104  
(212) 336-4069  
[dfiocco@mof.com](mailto:dfiocco@mof.com)

Authors' Guidelines are available under the "Article Submission" tab on the Section's Web site: [www.nysba.org/NYLitigator](http://www.nysba.org/NYLitigator).

[www.nysba.org/NYLitigator](http://www.nysba.org/NYLitigator)



## Committee on Immigration Litigation

The mission of the Section's Committee on Immigration Litigation is to provide a forum for the improvement of substantive law and procedure in the area of immigration litigation and to assist in the administration of justice as it pertains to immigration litigation and litigants. The Committee serves its mission by:

- Developing relationships and sharing practical experience with fellow immigration practitioners, state, federal, and immigration judges, and with regulatory and administrative bodies;
- Promoting research and discussion on current issues and trends affecting immigration law;
- Influencing and proposing legislation affecting immigration law; and
- Providing networking opportunities for its members.

Since it was established in 2007 by then Section Chair Carrie Cohen, the Committee on Immigration Litigation, previously co-chaired by Michael D. Patrick and Clarence Smith, Jr., has reviewed and discussed issues presented in scholarly articles on the surge in immigration appeals in the federal courts, particularly in the Second Circuit Court of Appeals. The Circuit Court of Appeals has jurisdiction to review decisions of the Board of Immigration Appeals ("BIA"). The BIA, within the Department of Justice, is a judicial body that provides appellate review of decisions of immigration judges in removal proceedings. Past reports indicated that the BIA issued many of its decisions through summary affirmances without opinion, which generally affirms the immigration judge's decision to remove the non-citizen litigant who is the subject of removal from the United States. As a result, litigants flock to the federal courts seeking review of the BIA decisions in order to remain in the United States. In 2010, the Committee published an update on the New York City Bar Association's 2004 report on "The Surge of Immigration Appeals and Its Impact on the Second Circuit Court of Appeals." That report was produced by the City Bar's Committee on Federal Courts. The Committee's published report entitled, "The Continuing Surge in Immigration Appeals in the Second Circuit: The Past, The Present and The Future," evaluated to what extent the surge in immigration appeals continued and made recommendations as to what additional efforts the Second Circuit could make to

address the issue. Committee members presented highlights of the report at the House of Delegates meeting in early 2010.

In the Fall of 2010, the Committee undertook a review of then New York State Governor David Paterson's Immigration Pardon Panel. The Panel, under former Governor Paterson's directive, undertook an historic effort to accept and review pardon applications specifically from immigrants with prior criminal convictions in order to prevent their possible deportation from the United States. Former Governor Paterson issued pardons to a limited number of applicants prior to the end of his term in office.

The Committee is currently comprised of members from private bar immigration attorneys throughout the State, including law firm partners, associates, and solo practitioners.

### Upcoming Projects

The Committee anticipates publishing a report that provides a review of the U.S. Department of Homeland Security's ("DHS") prosecutorial discretion program that the agency implemented in August 2011. The nationwide program was implemented in order to provide administrative ease to the Department of Justice's Executive Office for Immigration Review's ("EOIR") docket of over 300,000 deportation cases nationwide. A little over one year since implementation of the prosecutorial discretion program, reports indicate that issues still arise with respect to the agency's review and closure of cases that appear to be low enforcement priority deportation cases. The report will also provide a comparison of the 2011 prosecutorial discretion program to the agency's new program of Deferred Action for Childhood Arrivals ("DACA"), which was publicly announced in June 2012 by President Barack Obama. The new program provides a means for certain undocumented youth to request deferred action in order to halt deportation proceedings, or for those living under the radar of DHS's Immigration and Customs Enforcement, to affirmatively seek deferred action and obtain work authorization for an initial two-year period, with the ability to renew. Initial reports indicated that 800,000 to 1.2 million undocumented youth might be eligible for the program. The agency began accepting affirmative requests for consideration of DACA from undocumented individuals in August 2012, and at the present the agency is approving a significant number of requests.

The Committee is also open to receiving new ideas on scholarly and public service initiatives that will continue to serve its mission.

Members of the Section who are interested in joining the Committee on Immigration Litigation should contact Jill Apa at [japa@damonmorey.com](mailto:japa@damonmorey.com), Sophia M. Goring-Piard at [sgpiard@gmail.com](mailto:sgpiard@gmail.com), or Harlan York at [hyork@immigrationlawnj.com](mailto:hyork@immigrationlawnj.com).

## Committee on Immigration Litigation Co-Chair Biographies

### Jill A. Apa, Esq.

Jill A. Apa is Special Counsel at Damon Morey LLP, in Buffalo, NY, in the firm's Labor & Employment Department, where she practices exclusively in the area of U.S. immigration law. Ms. Apa has focused her practice in the field of immigration since 2001 and is licensed in the states of New York and Ohio.

Ms. Apa received a dual B.A. degree, magna cum laude, in English/Journalism and History from the University of New Hampshire in 1993. She went on to earn her J.D., with distinction, from Ohio Northern University's Claude W. Pettit College of Law in 1997.

In 2011, Ms. Apa was appointed to serve a co-chair of the Section's Immigration Litigation Committee.

An accomplished writer, Ms. Apa has been a regular author for Bender's Immigration Bulletin. She also has written numerous legal articles on various immigration issues for local and national publications, including the American Immigration Lawyers Association, the *Buffalo Law Journal*, and *The Daily Record* (Rochester, New York). Ms. Apa also is credited with editing and revising immigration law chapters for *The Homeland Security Deskbook* and *The Immigration Law and Procedure Desk Edition*, both published by Mathew Bender/Lexis.

Ms. Apa also serves each week as a moderator for an online immigration law chat. This chat, hosted by Lawyers.com, allows Ms. Apa to provide general information on U.S. immigration law in response to questions from lay persons.

Additionally, Ms. Apa was recently listed in the 2012 "Who's Who in Law" list published by Business First of Buffalo, a recognition she also received in 2008 and 2009.

Prior to joining Damon Morey, Ms. Apa served as an adjunct Legal Research & Writing instructor at Ohio Northern University. During that time, she also was employed as an Appellate Law Clerk to Judges John Evans

and Sumner Walters at the Court of Appeals for the Third District of Ohio.



### Sophia M. Goring-Piard, Esq.

Sophia M. Goring-Piard is a solo practitioner, with offices in Harlem, New York, where she practices exclusively in the area of U.S. immigration law. She is licensed in the State of New York and the Commonwealth of Massachusetts. For seven years, she worked as an Associate Attorney at a large corporate immigration law

firm in New York City. There she managed a staff of paralegals and legal assistants in devising strategies and processes for the successful preparation and filing of high-volume nonimmigrant and immigrant employment-based visa petitions on behalf of foreign national personnel for corporate employers, as well as naturalization applications and re-entry permit applications. She also provided counsel on the resolution of consular processing matters and advised corporate clients on the immigration impact of mergers and acquisitions. For the past five years, through her solo practice, she has expanded her areas of representation to defend individual clients in deportation and removal proceedings, advise immigrants on the immigration consequences of criminal convictions, and prepare and file applications for asylum, self-petitions under the Violence Against Women's Act, applications for Temporary Protected Status, and Special Immigrant Juvenile petitions. She has also participated in numerous *pro bono* opportunities to advise indigent immigrants in various immigration matters throughout the Bronx and Harlem.

She was also recognized by *New York Magazine* in the section of NY Area's Top Attorneys in 2012, and she was included in the 2012 edition of *The Best Lawyers in America* in the practice area of Immigration Law, based on peer nominations.

Ms. Goring-Piard is a member of the American Immigration Lawyers Association, the Association of Black Women Attorneys, the Metropolitan Black Bar Association, and Board Member of Mount Carmel Pentecostal Church, Inc., in the Bronx, NY. She has also served on the Section's Immigration Litigation Committee since 2008. In 2011, Ms. Goring-Piard was appointed to serve as co-chair of the Committee.

Ms. Goring-Piard received a B.A. from Washington University in St. Louis, Missouri, in 1994 and a J.D. from Fordham University in 2000. At Fordham, Ms. Goring-Piard was a member of the Stein Scholars Program and served as Vice-President of the Black Law Students Association. In her third year of law school, she was selected as a Thurgood Marshall Fellow with the Justice Center's Immigrant Women and Children Project of the Association of the Bar of the City of New York.



## Harlan York, Esq.

Harlan York was appointed Co-Chair of the Section's Immigration Litigation Committee in 2012. He is the managing partner at Harlan York and Associates, a four-attorney, full-service immigration firm in Newark, New Jersey, handling cases all over the United States. The firm has received a Tier One Ranking from *U.S. News and World Report Best Law Firms*.



on Univision's *Primer Impacto*, as well as commenting on a host of immigration issues on Telemundo, NBC, and PBS.

He frequently guest lectures on Immigration Law at academic institutions, including both New York Law School and Rutgers Law School. He also speaks at events sponsored by the New Jersey State Bar Foundation and Federal Bar Association. Mr. York was also a judge at the American Mock Trial Tournament at Yale University. His highly rated Lawline.com Lecture Series is available for attorneys, law students, and the public, to study online for free. Mr. York moderates panels annually for the New Jersey Institute for Continuing Legal Education, on the topics of "Protecting Immigrant Victims of Violence" and "Immigration and Crime."

A graduate of Choate Rosemary Hall, the State University of New York at Albany, and the Tulane Law School, Mr. York is fluent in Spanish. He is also a Certified Women's Self-Defense Instructor.

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## Distinguished Service Award to Justice Bernard J. Fried

The Section confers a distinguish service award on newly retired New York State Commercial Division Justice Bernard J. Fried. Assigned to the Commercial Division in 2004, Justice Fried served on the bench over 32 years in the New York State Court system.



(l. to r.) Chair-Elect Gregory K. Arenson, Section Secretary Rebecca Adams Hollis, Section Chair Tracee E. Davis, Justice Bernard J. Fried, Treasurer James M. Wicks, and Vice-Chair Paul D. Sarkozi.

# CPLR Amendments: 2012 Legislative Session

(2012 N.Y. Laws ch. 1-490)

CPLR §	Chapter, Part (Subpart, §)	Change	Eff. Date
214-b	69	Extends commencement deadline to June 16, 2014	6/29/12
2310	333(1)	Repeals CPLR 2310	8/1/12
3015(e)	458	Requires a license at the time services were rendered	10/3/12
3101(d)(1)(iv)	438(5)	Provides that a physician may be called as an expert witness at trial in a podiatric medical malpractice action	2/17/14
7701	155(47)	Deletes second reference to Superintendent of Financial Services	7/18/12

Notes: (1) 2012 N.Y. Laws ch. 184, § 3, eff. 7/18/12, extends until January 1, 2015, the deadline for the Chief Administrator's report to the legislature, governor, and Chief Judge on commencement, filing, and service by electronic means in criminal and certain family court proceedings and expands the scope of the report; (2) 2012 N.Y. Laws ch.478, eff. 1/1/13, amends Jud. Law §§ 475 and 475-a to include ADR.

## 2012 Amendments to the Uniform Rules for Supreme and County Courts, Rules Governing Appeals, and Certain Other Rules of Interest to Civil Litigators

(West's N.Y. Orders 1-22 of 2012)

22 NYCRR §	Court	Subject (Change)
202.5-b(d)(3)(iii)	Sup.	Prohibits secure filings of a affirmation/affidavit of service, notice of pendency, cancellation of notice of pendency, bill of costs, proof of service, RJI, release of liens, and satisfaction of judgment
202.5-bb	Sup.	Amends requirements for mandatory e-filing to include breach of contract actions; permits authorized representatives to claim exemptions from e-filing
202.6(b)	Sup.	Eliminates default applications to the clerk from RJIs filed without fee
202.12-a	Sup.	Authorizes Chief Administrator to require parties to bring additional documents to settlement conference

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

June 12, 2012

Guest speaker Hon. George B. Daniels, United State District Court, Southern District of New York, discussed the importance of attorneys knowing the practice, strengths, weaknesses, and idiosyncrasies of the judge before whom they appear. Judge Daniels also reviewed his Ten Commandments of Court Appearances and discussed the complex commercial mediation initiative in the Southern District.

The Executive Committee discussed the reports it had previously adopted on proposed legislative amendments to CPLR 5011-a and 7500. The Executive Committee adopted the report of the Faster-Cheaper-Smarter Working Group and voted to table a report of the Ethics and Professionalism Committee on allowing foreign firms to have New York offices. The Executive Committee also discussed a survey of Section Committee Chairs, the work of a State Bar task force on international matters, and a Chief Judge's Advisory Committee meeting that focused on the Section's report on expert disclosure.

July 11, 2012

Guest speaker Hon. Rosalyn Richter, Associate Justice, Appellate Division, First Department, discussed sitting on the First Department bench without a commer-



cial background and also discussed First Department practice.

The Executive Committee discussed a report of the Ethics and Professionalism Committee on fee sharing with non-lawyer owners of law firms and adopted a report of that Committee on the ABA's guidelines on expert witnesses. Subject to a suggested modification, the Executive Committee also adopted a report of the Bankruptcy Litigation Committee on the ABA's proposed resolution of the issues raised by *Stern v. Marshall*.

September 12, 2012

Guest speaker Richard P. Swanson, General Counsel of York Capital Management, compared and contrasted the benefits and costs of litigating in New York versus Delaware and London.

The Executive Committee adopted, as amended, a joint report of the Section's Employment and Labor Relations Committee and the Labor and Employment Law Section on NY WARN. The Executive Committee also heard and discussed a report of the Special Committee on Commercial Jury Charges and discussed the report of the Chief Judge's Task Force on Commercial Litigation in the 21st Century.

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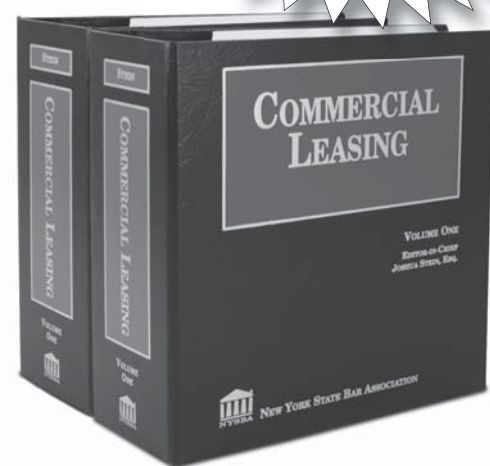
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The screenshot shows the NYSBA website interface for the NYLitigator. At the top, it says "NEW YORK STATE BAR ASSOCIATION" with the tagline "Serving the legal profession and the community since 1876". Below this is a navigation bar with links like "My NYSBA | Login | Job | Renew | Web Survey | FAQ | Online Store | About NYSBA | Contact | Site Map". The main content area is titled "NYLitigator" and includes a "About this publication" section, a "Recent Permission" section, and a "Past Issues (Section Members Only)" section with a list of publications from Summer 2012 to Spring 2007.

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