

## TRANSCRIPT OF PROCEEDINGS

### COLLOQUIUM ON THE FUTURE OF COMMERCIAL LITIGATION IN NEW YORK: DEVELOPING A COST-EFFICIENT PROCESS FOR THE ELECTRONIC AGE

at

THE NEW YORK CITY BAR  
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New York, New York

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Official Court Reporters

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#### A.M. APPEARANCES:

Honorable Robert G.M. Keating, Dean, New York State Judicial Institute

Honorable Judith S. Kaye, Chief Judge of the State of New York

Morning Keynote Speaker: Kenneth J. Withers, Esq., Director of Judicial Education and Content, the Sedona Conference®

E-Discovery Moderator: Maura R. Grossman, Esq., Wachtell, Lipton, Rosen & Katz

E-Discovery Panelists: Thomas Y. Allman, Esq., Attorney  
and Consultant, Former General  
Counsel of BASF Corporation

James M. Bergin, Esq., Morrison &  
Foerster, LLP

Honorable John L. Carroll, Dean,  
Cumberland School of Law,  
Samford University

Honorable Elizabeth H. Emerson,  
New York Supreme Court,  
Commercial Division, Suffolk  
County.

P.M. APPEARANCES:

Peter Passidomo, Esq., Vice Dean, New York State Judicial  
Institute

Afternoon Keynote Speaker: Honorable Stephen Crane, JAMS,  
Associate Justice (ret.), New York Supreme Court, Appellate Di-  
vision, First Department

ADR Moderator: Dan Weitz, Esq., Coordinator, Unified  
Court System, Office of ADR Programs

ADR Panelists: Simeon Baum, Esq., President, Resolve  
Mediation Services, Inc.

Honorable Alan Scheinkman, New York  
Supreme Court, 9th Judicial District

Honorable Elizabeth S. Stong, United  
States Bankruptcy Judge, Eastern District  
of New York

Stephen P. Younger, Esq. Patterson,  
Belknap Webb & Tyler, LLP.

DEAN KEATING: It's been my pleasure over the last six years to introduce the Chief Judge on a number of occasions on a number of subject matters most of which are defined and expanded by the Chief Judge's keen intellect and leadership. When you look at the things that the Court system's done over the last decade and a half, it's been really extraordinary. In the area of jury reform, problem-solving courts, domestic violence, the list goes on and on and ends in some measure with the Commercial Division and the increased efficiency and hopefully commercial litigation around the state.

Now, all of these subjects and all these initiatives really have been the product of just an extraordinary commitment to making the New York State Court System the best in the United States and in the world, and I think that's been the commitment of the Chief Judge. It's an extraordinary experience for me and I think for all of us to be a witness to these initiatives and it's my privilege to introduce the Chief Judge of the State of New York, Judith Kaye.

JUDGE KAYE: Thank you, Bob, for that really very nice introduction. I have the easiest role of all today and that is simply to say welcome to all of you. . . . [M]ine will simply be a brief welcome because this is really a wonderful program today and I myself will be a beneficiary of it and I'm eager to hear, especially this panel and the events that follow it.

Developing a cost-efficient judicial process for the electronic age, my goodness, what a challenge. "Cost efficient," those words are the bell ringer today for all of us in every single thing that we do, being cost-efficient while always a by-word for the courts, being cost-efficient and being efficient and being effective today more than ever. We know how significant that is in the court system and especially for litigants in the court system.

Of course, in our internal operations, we are pressed today more than ever, and I see your wonderful Chief Administrative Judge is seated at the back of the courtroom, Ann Pfau, good morning. I'm so pleased that you're here today. If she looks a little more stressed than usual, it's because we have just come through the budget difficulties. In fact, has our budget already gone in today, December 1st? The magic day. Congratulations

Ann, but it has been a trying time as it is for all of us to find ways in today's economy to be cost efficient.

Of course, one of the things, looking forward, and we always do look as far forward as we can, we are looking forward to increases in all of our dockets. How can this economy not drive up the numbers of cases in the New York State court system. If you just think of things like the housing court, for example, all the employment issues that we're going to be seeing. Today, as a matter of fact, it's not just the day that our budget goes in, it's also the day that the brand new state legislation mandates that in every single foreclosure filing, and goodness we have hundreds of thousands of foreclosure filings in the State of New York, there is a mandated court conference. So, I know we have many of our fabulous judges here in the audience and we are going to be facing more and more mandatory court conferences. And in so many ways cost efficiency is just driving everything that we do. I see Judge Demarest<sup>1</sup> and so many others here who know of what I speak, right? So, beginning today, like everybody else, we're expected to do much more with less and that brings us directly to the issue at hand, which is e-discovery and our commercial filings. I have no doubt that our commercial filings are going to be driven up, too. I don't know how many of you have been following the debate in the press, are there going to be fewer commercial filings or more commercial filings? I love the piece that was buried in *The [New York]Times*, you just sense that something is wrong somewhere, don't you? You just don't know quite who to sue. But clearly the commercial docket should go way up because there's somebody behind a lot of these ups and downs and I have no doubt that when this gets figured out, boy is this going to land in our commercial courts. And the mention of commercial litigation and the commercial courts, of course, for me is synonymous with the Commercial Division of the Supreme Court of the State of New York. And I see so many familiar faces here today, so many of our commercial division judges here in the audience.

You know that I have a very sentimental attachment to the Commercial Division of the Supreme Court of the State of New

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1. Honorable Carolyn Demarest, Supreme Court Justice, Kings County, NY.

York. That was one of the earliest initiatives in my tenure as Chief Judge, and I guess this being December 1st, it's kind of a nice coincidence that this is my last month as Chief Judge, so I'm really pleased to be celebrating the commercial division and commercial litigation among so many other things. But it's far more than a sentimental or emotional attachment to the Commercial Division that brings me here today.

First and foremost, when I think of the Commercial Division, which was created as I'm sure most of you in the audience know, in 1995, what I think of chiefly is that it for us represents genuine partnership with the bar. That really was what led to the organization of the Commercial Division. And Bob Haig, thank you so much for your efforts in spearheading this. But the truth is from the moment of its birth, from the moment of its conception, the Commercial Division has been a partnership with the bar of the State of New York and beyond the State of New York.

There's been an on-going exchange of ideas and suggestions and I think there is no question, there can be no question that it's not just the origin, but also the great success of our Commercial Division is attributable to the fact that we work with the Bar. We are attentive to ideas and suggestions always, finding new ways and better ways to make our Commercial Division, like our courts generally, the absolutely premiere tribunal for the vexing day-to-day issues that come into the courts and face the litigants.

So first and foremost, that's what I think of and I'm here to thank the judges and thank the bar for what I think is a very, very successful enterprise: The Commercial Division. But I think of it also, not just of the partnership with the New York Bar when I think of the Commercial Division. I also think of how many innovations have arisen from that partnership that have benefited our court system generally. And I think today's colloquium is a very fine example, an outstanding example of that. I think of alternative dispute resolution and it's really the Commercial Division that has helped to bring ADR into the 21st Century. But I think, too, this issue of e-discovery, electronic discovery, e-mail, electronic files, everything that starts with the letter "E" and how much we look to the Commercial Division to, again, to bring us into the 21st Century, to enable us to better

serve all of our litigants. A vexing, vexing problem, e-discovery, and I feel confident that the wonderful exciting discussion that's going to emerge from this program is going to help answer the question, not "[I]s the volume and cost of e-discovery driving litigants out of the court system?", but "[H]ow do we see that that does not happen?"

So I don't know what lies ahead. I have to admit that in the economy, I do not know what lies ahead. But I do know what lies ahead today and I do know we're all in for a really terrific, exciting day. I would now like to turn the program over to Maura Grossman, today's moderator.