

Virtually Litigating: Pros and Cons of Litigation Practices Developed During COVID-19 (CLE 1 credit)

Friday, September 24, 2021

This presentation will discuss the pros and cons of litigation technology and practices developed during the coronavirus pandemic. Specific topics will include how costs have changed, how the virtual environmental impacts advocacy, and what gets lost when cases proceed outside of a courtroom.



MODERATOR
Michael A. Kaplan L'11
Partner, Lowenstein Sadler LLP
New York, NY

Michael represents clients in high-stakes litigation and appeals in federal and state courts throughout the country, as well as in domestic and international arbitrations.

He has extensive experience in every stage of bankruptcy litigation, from investigating potential claims and causes of action to commencing adversary proceedings on behalf of committees and liquidating trusts. Michael's experience enables him not only to respond to any type of litigation that arises during a bankruptcy case but also to craft litigation strategies that are both effective and efficient. His experience investigating and litigating claims against directors and officers allows him to provide vigorous representation to clients facing such claims or seeking to bring them.

Because of his diverse commercial litigation experience, which includes extensive work on products liability, mass tort, toxic tort, and dram shop cases, Michael understands that litigation is an evolving art and that litigators need to possess a constantly changing array of skills. His focus is always on understanding his clients' goals and then creating and executing a litigation strategy to achieve them.

In addition to his passion for litigation, Michael is committed to giving back to the community. He regularly provides pro bono representation to victims of domestic violence through the firm's relationship with Partners for Women and Justice and the Rachel Coalition.

Prior to joining the firm, Michael served as a judicial law clerk to Chief Judge Gary L. Sharpe of the U.S. District Court for the Northern District of New York.

EXPERIENCE

Bankruptcy Litigation, Committee Representations: Century 21 Department Stores: Investigated potential estate causes of action relating to prepetition transactions involving the company's family owners and their network of entities. Based on its investigative findings, the Committee was able to negotiate a global settlement that involved the sale of insurance claims and mutual releases for the family and entities in exchange for \$59 million for the estate, plus potential proceedings sharing on the insurance claims.

Exide Holdings, Inc.: Investigated potential causes of action for fraudulent conveyances and preference avoidance held by the Debtors' estates. In connection with its investigation, the Committee conducted over a dozen witness interviews and reviewed over 10,000 documents. Based on its findings, the Committee was able to negotiate a global settlement that included a \$2.4 million settlement for unsecured creditors.

Mission Coal Company, LLC, a Tennessee coal mining company: Led a three-month Rule 2004 investigation and filed a motion seeking standing to prosecute a 52-count complaint, which included claims for avoidance of fraudulent transfers, recharacterization of debt as equity, equitable subordination, and corporate waste. The matter culminated in a contested confirmation trial, which resulted in the parties resolving all outstanding issues for total consideration of approximately \$29 million for the estate.

SportCo Holdings, Inc.: Prosecuted Rule 2004 motions against the debtors; conducted extensive investigation into potential claims held by the debtors' estates; successfully negotiated a resolution with the lender that established a litigation trust for the benefit of creditors

BUSINESS LITIGATION

Telcordia Technologies Inc., a subsidiary of Ericsson: Successfully defended subcontractor in bench trial over breach of contract and quantum meruit claims where the prime contractor had declared bankruptcy.

AGL Resources Inc.: Secured significant victory in a civil case arising from claims of injuries from a minor vehicle accident; jury rendered a no-cause verdict and found the client was not negligent.

Aramark Corporation: In litigation arising from an accident on property managed by Aramark, the jury determined that the client was not liable.

LifeCell Corporation: Multiple products liability cases involving cutting-edge medical technology.

HONORS & AWARDS

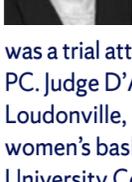
- Order of the Coif
- The Order of Barristers
- ALL-ABA Scholarship and Leadership Award
- National Order of Scribes
- College of Law Ambassador Award

EDUCATION

- Syracuse University College of Law (J.D. 2011), *summa cum laude*; Lead Articles Editor, *Syracuse Law Review*; Executive Director, Moot Court Honor Society
- Temple University (B.A. 2008), Political Science, *summa cum laude*

ADMISSIONS

- New York
- New Jersey
- District of Columbia
- Pennsylvania



Hon. Mae A. D'Agostino L'80
U.S. District Judge, Northern District of New York
Albany, NY

Mae Avila D'Agostino is a United States District Judge for the Northern District of New York. At the time of her appointment in 2011, she was a trial attorney with the law firm of D'Agostino, Krackeler, Maguire & Cardona, PC. Judge D'Agostino is a 1977 *magna cum laude* graduate of Siena College in Loudonville, New York. At Siena College Judge D'Agostino was a member of the women's basketball team. After graduating from College, she attended Syracuse University College of Law, receiving her Juris Doctor degree in May of 1980. At Syracuse University College of Law, she was awarded the International Academy of Trial Lawyers award for distinguished achievement in the art and science of advocacy.

After graduating from Law School, Judge D'Agostino began her career as a trial attorney. She has tried numerous civil cases including medical malpractice, products liability, negligence, and civil assault.

Judge D'Agostino is a past chair of the Trial Lawyers Section of the New York State Bar Association and is a member of the International Academy of Trial Lawyers and the American College of Trial Lawyers.

Judge D'Agostino has participated in numerous Continuing Legal Education programs. She is an Adjunct Professor at Albany Law School where she teaches Medical Malpractice. She is a past member of the Siena College Board of Trustees, and Albany Law School Board of Trustees. She is a member of the New York State Bar Association and Albany County Bar Association.



Allison B. Fiut L'11
Partner, Harris Beach PLLC
Buffalo, NY

Allison Fiut is a civil litigator who focuses her practice on resolving a range of commercial disputes in New York state and federal courts and through alternative dispute resolution. Fiut represents clients in business divorce, breach of contract, non-compete, and trade secret misappropriation matters; as well as shareholder, commercial lease, real estate title, environmental contamination, and tax disputes. Fiut also handles CPLR Article 78 proceedings, including reviews under the New York State Environmental Quality Review Act (SEQRA). She has significant appellate litigation experience in New York state and federal appellate courts, having briefed and argued appeals on a wide range of issues.

Ms. Fiut received her Bachelor of Arts degree *cum laude* from Boston University and her Juris Doctorate degree *magna cum laude* from Syracuse University College of Law.

Representative Matters:

- Counsel for national Greek yogurt manufacturer and its CEO, defending against derivative and other claims in Supreme Court, New York County.
- Counsel for national oil and gas company in case involving numerous claims for breach of oil and gas leases, successfully resolving or securing dismissal on summary judgment of various plaintiffs' claims.
- Counsel for international oil company, defending against claims alleging liability under New York Navigation Law and common law for alleged petroleum contamination at commercial gas station.
- Counsel for national commercial real estate management companies in commercial lease disputes.
- Counsel for global pharmaceutical company in prosecution of commercial claims including breach of contract, breach of fiduciary duty, and misappropriation of trade secrets.
- Independent counsel for international client in connection with corporate financial investigation. Conducted interviews across multiple states of employees at all levels of the company, analyzed paperwork, and designed criteria and queries to pull relevant data and to run analytics. Prepared numerous analytical investigatory reports for client.
- Counsel to association of energy service companies (ESCOs) in hybrid declaratory judgment article 78 proceeding challenging New York Public Service Commission's issuance of order adopting new rules. Obtained temporary restraining order staying enforcement of the PSC's order.
- Counsel to national liquor wholesaler in Article 78 proceeding challenging New York State Liquor Authority's approval of off-premises liquor license. Obtained affirmance of the license from New York County Supreme Court.

Professional and Community Activities:

- During law school, Allison clerked for the Hon. David E. Peebles, United States Magistrate Judge for the Northern District of New York.
- New York State Bar Association, member
- Erie County Bar Association, member
- Our Lady of Mercy Mock Trial Team, former coach, co-coach
- Monroe County Public Defender Office's Pro Bono Appellate Program, volunteer counsel
- Buffalo Say Yes to Education Legal Clinic, volunteer attorney



Kara J. Krueger L'11
Senior Counsel I, National Grid
Syracuse, NY

Kara J. Krueger L'11 is a Senior Legal Counsel at National Grid, one of the world's largest international investor-owned electric and gas utilities. Mrs. Krueger is based in National Grid's office in downtown Syracuse. She focuses on regulatory and legal matters affecting National Grid's New York operating companies and has been with National Grid for over nine years. Mrs. Krueger is admitted to the bars of New York and New Jersey.

Mrs. Krueger graduated *cum laude* in May 2011. While at the College of Law, Mrs. Krueger was a Form and Accuracy Editor for the *Syracuse Law Review*, served as a legal writing teaching assistant, and was an active member of the Student Bar Association. Mrs. Krueger graduated from the University of Wisconsin—Madison in 2008 with a B.S. in Psychology.

Mrs. Krueger currently serves on the Friends of the Central Library Board and is an active board member of several tennis associations in Central New York.