

Nassau Lawyer



THE JOURNAL OF THE NASSAU COUNTY BAR ASSOCIATION

March 2016

www.nassaubar.org

Vol. 65, No. 7

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Breaking Bread with the Bench

OF NOTE

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NCBA COMMITTEE MEETING CALENDAR

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EVENTS

WE CARE

Dressed to a Tea

Wednesday, March 16, 2016
5:00 p.m. at Domus

SOLD OUT!

NASSAU ACADEMY OF LAW

Hon. Elaine Jackson Stack MOOT COURT COMPETITION

Tuesday & Wednesday
March 22 & 23, 2016 at Domus
Details pg 14

LAW DAY

Tuesday, May 3, 2016
5:30 p.m.

Details pg. 6

117TH ANNUAL DINNER DANCE

Saturday, May 14, 2016
Long Island Marriott, Uniondale
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Invitations mailed in March

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UPCOMING PUBLICATIONS

COMMITTEE MEETINGS

Thursday, March 10, 2016 12:45 at Domus

Thursday, April 14, 2016 12:45 at Domus



During the first luncheon between new lawyers and members of the Judiciary, NCBA President Martha Krisel asked District Court Judge, Hon. Andrew M. Engel, and all invited Judges, to speak to the lawyers on a variety of topics including practicing law, exploring other practice areas and becoming involved in the Bar Association. (Photo by Hector Herrera)

By Andrea M. Brodie
and Jennifer L. Koo

One of the initiatives promulgated by President Steven J. Eisman was the creation of a task force to help foster connections between new lawyers (admitted less than 10 years) and the more active members of the Nassau County Bar Association, particularly the judiciary. This task force, now known as the Steven J. Eisman New Lawyer/Judiciary Relations Task Force, is co-chaired by the Hon. Jeffrey S. Goodstein of the Nassau County Supreme Court and Andrea M. Brodie, Esq. of Abrams, Fensterman, Fensterman, Eisman, Formato, Ferrara & Wolf, LLP.

One of the programs created by the Task Force is a monthly lunch between new lawyers and members of the judiciary. The Task Force and the New Lawyers Committee held its first lunch at Domus with Justices of the Nassau County District and Supreme Courts on

See BENCH, Page 9

Canvas and Wine

Channel Your Creativity at the Bar

By Adam D'Antonio

Discover your inner Rembrandt on the evening of Thursday, April 14, 2016 at 6:30p.m. when a professional artist guides us in creating masterpieces on canvas. **NO ARTISTIC EXPERIENCE REQUIRED!**

Adult paint nights are the new craze and we've managed to line up one of the best artists in town. Even the least artistic will be amazed at what can be created with a paintbrush in one hand and a wine glass in the other. All you need to bring is your enthusiasm! We'll supply the rest including a 16" x 20" canvas, easel, apron and supplies to create a moonlit skyline suitable for hanging in your home or office. Refreshments, including wraps, music and other surprises will round out this casual and fun-filled evening.

Tickets are only \$35 per person, but seating is limited, so reserve your easel now. A portion of each ticket will support the Steven J. Eisman Memorial



Moonlit Skyline

Building Fund. Canvas and Wine follows on the heels of NCBA's wildly successful Oktoberfest and is sure to be another hit with members and their guests. Don't miss out on having your firm featured as an event sponsor, too. Contact Valerie Zurbilis for sponsorship details at (516)747-4070 x204.

For more information and to purchase tickets for Canvas and Wine, please contact Special Events (516)747-4070 x226, events@nassaubar.org or register on-line at www.nassaubar.org.

For NCBA Members
Notice of
Nassau County Bar Association
Annual Meeting
May 10, 2016 • 7 p.m.
Domus

Proxy statement can be found on the insert in this issue of the Nassau Lawyer. In addition to the election of Nassau County Bar Association officers, directors, Nominating Committee members and Nassau Academy of Law officers, amendments to the Nassau County Bar Association By-Laws will be voted upon.

A complete set of the By-Laws, including the proposed amendments, can be found on the Nassau County Bar Association website at www.nassaubar.org. Copies are available at the reception desk at the home of the Association or by mail upon request.

Richard D. Collins
Secretary

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One Size Does Not Fit All – Ten Reasons Why Commercial Litigators Should Consider Commercial Mediation

Most commercial litigators love to litigate. Their fondness for the art of advocacy, competitive instinct, keen interest in pre-trial and trial strategizing, drive for personal satisfaction, and—let's be honest—love of lucre all drive these warriors' dreams of "scorched earth" legal victory. In some cases, their pugilistic desires are fine, even commendable. However, in other cases, these desires can lead to an endless descent into needlessly protracted proceedings. The negative consequences of such trench warfare include, but are not limited to inefficiency, waste, reputational damage, and public distrust of litigators.



Elan E. Weinreb

There are just some situations where litigation is not an appropriate form of dispute resolution (and exactly what those situations are is a topic well beyond the scope of this article). In such circumstances, mediation—"an informal and confidential process wherein the parties meet with a mutually selected impartial and neutral person who assists them in the negotiation of their differences"¹—can present itself as an optimal (at least initially) dispute resolution method for one or more of the following ten reasons.

10: Scheduling Flexibility

In any commercial litigation involving judicial intervention, the parties and their attorneys are at the mercy of at least one judicial schedule. In contrast, in commercial mediation, the parties and their attorneys generally remain in control of their respective schedules, rendering it a more attractive dispute resolution option.

9: Recognition for Problem Solving

According to one founder of a firm which specializes in representing entrepreneurs, the top reason why entrepreneurs generally hate to deal with lawyers is the perception that the latter cause problems instead of solving them: "Good lawyers are able to identify significant potential legal problems; great lawyers provide solutions to those problems."²

Commercial mediation defies this stereotype by its essence as an alternative dispute resolution modality controlled by the disputants, not their attorneys. As such, commercial litigators who support commercial mediation stand in support of "doing something"—problem solving—and not just "saying something"—problem identification.

8: Judicial Support

Judges abhor (at least) two administrative nightmares: (a) an out-of-control docket; and (b) reversal or significant modification of their decisions.

Successfully mediated cases resulting in settlement prevent these nightmares from becoming reality. It follows that judges throughout the world ardently support mediation,³ and commercial litigators who ignore this trend do so at their peril.

7: Speed

Mediation is simply faster. Business mediations "usually take between one and four months from start to finish, and many are completed with just one in-person session. Shorter duration = fewer billable hours expended (= fractional cost relative to adversarial proceedings)."⁴

6: Increased Law Practice Efficiency

The odds of a civil case ultimately proceeding to trial are not exactly high. "According to the National Center for State Courts, only about 7.6 percent of civil cases go to trial in the United States, and only 0.6 percent receives a jury trial."⁵ In contrast, commercial mediation offers practically mirror-opposite odds: "more than 85% of mediated business cases result[] in settlement agreements."⁶

Considering these odds, allocating resources to mediation initiatives that can resolve more cases in less time is worthwhile and will likely increase law practice efficiency.

5: Confidentiality

In the Information Age, any case can be tried twice: once in the courtroom, and once in the court of public opinion. Blasting a 160-character text or tweet of trial testimony to cyberspace that "goes viral" can easily cost any client—regardless of mainstream media presence—thousands of dollars in reputational damage in less than 160 seconds. Such damage can even occur when a client prevails.⁷

However, unlike a public trial environment, with narrow exceptions,⁸ commercial mediation is "entirely confidential."⁹ While this designation of confidentiality is no guarantee against a wrongful disclosure of confidential information, it is certainly better than no protection at all. Furthermore, while the remedies for breach of mediation confidentiality are not particularly punitive,¹⁰ courts do not take such breaches lightly.¹¹

4: Neutral Assessment of Case Strengths and Weaknesses

The best commercial litigators recognize that an assessment of case strengths and weaknesses is an essential component of trial preparation.¹² A type of evaluative mediation known as "information centered mediation" is particularly useful in testing case strength.¹³ This process involves the appointment of a mediator having practical or technical expertise who receives written submissions and significant documents from the parties in advance of meeting with them.¹⁴ After reviewing these materials and hearing from the parties or their attorneys, the appointed mediator renders an opinion on "the likely outcome and value of the dispute," which he or she proceeds to

defend.¹⁵

It is in the defense of the mediator's opinion that an astute commercial litigator can strike gold by exposure to the mediator's opposing perspectives on the case.¹⁶ And even where a case returns to a litigation track, analysis of case strengths and weaknesses will have occurred as part of the mediation process.

3: Reduced Discovery Expenses

Clients often discover early that the discovery process "can be lengthy, expensive, intrusive, and frustrating."¹⁷ While in commercial mediation, it is practically impossible to entirely eliminate discovery in advance of mediation sessions, "[e]ssential discovery can be conducted early, setting the stage for prompt resolution that saves the parties the vast bulk of fees and expenses that they otherwise would have incurred."¹⁸

2: "Win-Win" Potential

When judges, court attorneys, or even the parties' attorneys settle a matter without mediator assistance, it is often done in the limited framework of compromise—what is also known as a "win-lose" framework because the parties sacrifice items to gain others or avoid liability exposure.¹⁹ This is largely because the restrictive structure of litigation limits available remedies and options. Courts, for example, are rarely able to compel parties to interact with each other outside of the scope of contractual arrangements that they have established or award remedies to them beyond those available at law.²⁰

However, commercial mediators are not so limited and are often able to propose extra-legal, "out of the box" creative options that open the proverbial door to collaborative "win-win" conflict resolution.²¹

1: Client Retention Driven by Cost Savings

Finally, commercial mediation is often superior to commercial litigation because it offers a greater probability of client retention driven by cost savings.²² In the United States, "parties spend \$50,700 on average on each litigated case, [but] only \$7,500 (\$3,500 per party [in a two-party case]) for resolving their case by mediation, a cost-savings of approximately 85%.²³ Outside of the United States, the savings are similarly significant.²⁴

Moreover, it is not only clients who stand in support of commercial mediation in light of these savings, but the transactional attorneys counseling them, who in turn affect the future retention of commercial litigators. Recently, Loretta Gastwirth, Chair of the NCBA's ADR Committee and a commercial litigator herself, advised that "inserting a mediation clause in a contract . . . is a no-brainer" in light of its potential to "save clients tons of money in the long run . . ."²⁵ The proverbial stage for commercial mediation is thus now being set by clients' transactional attorneys prophylactically, well before any submission of pleadings.

Towards the Future

It bears emphasis that commercial mediation—or any dispute resolution process, for that matter—is no talismanic panacea. "One size does not fit all" applies equally to commercial litigation and commercial mediation such that either is optimal only in appropriate cases, not every case. It is for this reason that some practitioners refer to ADR as "Appropriate Dispute Resolution"²⁶ instead of "Alternative Dispute Resolution."

However, as ADR continues to grow in popularity, it is not a question of "if" but "when" commercial mediation replaces it as a "first-line" option for dispute resolution. And at the end of the day, even those commercial litigators who stubbornly cling to the gladiatorial mindset of days gone by may come to welcome the turning of the tide. After all, it was no less than the great Chinese general Sun Tzu who declared, "For to win one hundred victories in one hundred battles is not the acme of skill. To subdue the enemy without fighting is the acme of skill."²⁷

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1. *Arbitration & Mediation: Alternative Dispute Resolution Through the Nassau County Bar Association*, Nassau County Bar Association, Feb. 19, 2013, http://www.nassaubar.org/UserFiles/Arbitration_Mediation_Brochure.pdf (last visited Oct. 27, 2015).

2. Scott Edward Walker, *Top 10 reasons why entrepreneurs hate lawyers*, Venture Hacks, Jan. 14, 2010, <http://venturehacks.com/articles/hate-lawyers> (last visited Nov. 12, 2015) (emphasis in original).

3. See *ADR Overview*, Commercial Division – New York Supreme Court, July 9, 2015, http://www.nycourts.gov/courts/comdiv/ny/ADR_overview.shtml (last visited Nov. 11, 2015); *Mediation*, Supreme Court of Victoria (Australia), Feb. 19, 2015, <http://www.supremecourt.vic.gov.au/home/forms+fees+and+services/mediation/> (last visited Nov. 11, 2015).

4. David J. Abeshouse, *Business Alternative Dispute Resolution (ADR) Provides Fast, Fair, Flexible, Expert, Economical, Private, Customized Justice*, 32 NYSBA Inside (No. 2) 18, 19, N.Y. State Bar Association Corporate Counsel Section, Fall 2014.

5. Philip B. Ytterberg, *A Baker's Dozen of ADR Practice Pointers to Boost Your Bottom Line*, 3 GP|Solo Law Trends & News (No. 2) 44, 44, American Bar Association (General Practice, Solo & Small Firm Division), Sept. 2007 (available at http://www.americanbar.org/content/dam/aba/publishing/law_trends_news_practice_area_eneewsletter/lawtrends0709.pdf).

6. David J. Abeshouse, *Business ADR (Arbitration and Mediation) vs. Court Litigation for Commercial Cases*, Avvo.com, June 18, 2013, <http://www.avvo.com/legal-guides/ugc/business-adr-arbitration-and-mediation-vs-court-litigation-for-commercial-cases> (last visited Nov. 16, 2015).

7. See Joshua E. Bienstock, *Students' Lawsuits Proliferate: Is Mediation the Cure?*, 65 Nassau Lawyer (No. 3) 7, 10 (Nov. 2015).

8. See generally Max Factor III & Alice M. Graham, *Better Practice Tip: Recognized Exceptions to Mediation Confidentiality and Remedies That Every Litigator Should Know*, Mediate.com, July 2005, <http://www.mediate.com/articles/factor4.cfm> (last visited Nov. 16, 2015).

9. Ytterberg, *supra* n.5 at 45; see also Abeshouse, *supra* n.4 at 21; Bienstock, *supra* n.7 at 7.

10. See Factor III & Graham, *supra* n.8.

11. See *id.*

12. See John Stuart Mill, *On Liberty* § II ¶ 23

INSPECTIONS ...

Continued From Page 10

istration of taxes, can regulate businesses and individuals that engage in various commercial activities; it also has exclusive regulatory authority over businesses and individuals dealing in the wholesale and retail distribution of cigarettes and tobacco products, and regulatory oversight over the importation, transportation and sale of petroleum products, i.e., motor fuel (gasoline) diesel motor fuel,⁶ and alcoholic beverages.⁷

In regards to cigarettes and tobacco products, Investigators have authority

... to examine the books, papers, invoices and ... records of any person in possession, control or occupancy of any premises where cigarettes or tobacco products are placed, stored, sold or offered for sale ... as well as the stock of cigarettes or tobacco products in any such premises... (And), (t)o verify the accuracy of the tax imposed and assessed by this article, each such person is hereby directed and required to give to the commissioner of taxation and finance or his duly authorized representatives, the means, facilities and opportunity for such examinations.⁸

The Tax Department also has criminal enforcement authority with respect to certain taxes that it administers. In fact, Department Investigators are also police officers as defined under the New York State Criminal Procedure Law, regarding enforcement of such taxes.⁹ Possession of unstamped, counterfeit-stamped or out-of-state stamped cigarettes 'for purposes of sale' is a crime and such cigarettes are seized whenever or wherever they are discovered¹⁰ and vehicles if any, that were used to transport such cigarettes may also be seized for forfeiture.¹¹ The crimes of *Possession for Purposes of Sale or Sale of Unstamped or Illegally Stamped Cigarettes* range from Class D felony to Class A misdemeanor.¹²

In regard to sentencing, periods of incarceration or probation that may be imposed are based upon Penal Law criteria. However, under the Tax Law courts may impose fines substantially higher than those provided for in the Penal Law : for a felony, a fine not to exceed the greater of double the amount of the underpaid tax liability resulting from the commission of the crime or \$50,000, or, in the case of a corporation the fine may not exceed the greater of double the amount of the underpaid tax liability resulting from the commission of the crime or \$250,000 and for a misdemeanor the court may impose a fine not to exceed \$10,000, except that in the case of a corporation the fine may not exceed \$20,000.¹³

In addition to the criminal fines, it should also be noted that the Department has the authority to levy civil fines varying in severity, depend-

ing upon quantities of unstamped or counterfeit stamped cigarettes or counterfeit stamps found in possession of the defendant,¹⁴ (even if the defendant is not convicted of the above mentioned crimes.)

Case Law

The lead case in New York addressing the Department's authority to do administrative inspections involving cigarettes and tobacco products, and which had Fourth Amendment ramifications, was *People v. Rizzo*.¹⁵

There, the Tax Department received a complaint that a Ronald Rizzo had been arrested in New Jersey in possession of approximately 400 cartons of untaxed cigarettes, indicating two New York addresses connected with him. During surveillance at one of the addresses, an investigator observed the defendant in the garage in possession of 30 cartons of various brands of cigarettes. The investigator entered the garage without Rizzo's consent, seized about 90 cartons of cigarettes in the garage and about 54 cartons from the trunk of his car and arrested the defendant for the crime of Possession of Untaxed Cigarettes.¹⁶

The trial court suppressed the evidence of the cigarettes as an unconstitutional search and seizure. The Second Department upheld the trial court's decision and the Court of Appeals followed suit. The Court confirmed that the investigator lacked probable cause to believe that the storage or sale of cigarettes was taking place on the defendant's property prior to entering the premises. It also outlined three situations¹⁷ that could be considered guidelines for Tax Investigators while conducting administrative inspections involving cigarettes and tobacco products, as follows:

- Where the dealer is open and notorious either by license or holding himself out to the public, Tax Department Investigators are authorized to inspect records and inventory of that dealer.
- Where a party is engaging in regulated activity out of premises which are not publicly recognized as those of a dealer in that commodity and investigators have probable cause to believe that regulated activity is taking place, they may lawfully enter the premises and inspect records and inventory pursuant to their statutory power.
- However, where the regulated activity is in fact occurring but the investigators have nothing more than a suspicion (as opposed to probable cause) to believe that such activity is taking place, statutory authority will not suffice as the basis upon which to enter the premises under investigation.

The Impact of Inspections

Notwithstanding inspections of unlicensed individuals and businesses, such as the Rizzo case, the majority of the Department's regulatory inspections

involve businesses to which it has issued licenses and permits: cigarette stamping agents, wholesale and retail distributors. The Department is very proactive in its efforts to enforce the law. For example, for calendar year 2014 the Department had seized 2,017 cartons of cigarettes, 254,723 cigars, 2,059 pounds of loose tobacco, 14,738 counterfeit cigarette tax stamps and \$35,658 cash.¹⁸

Consider the following example of a store that was found in violation of the law during an inspection: On June 25, 2015... Tax Department Cigarette Strike Force Investigators conducted a cigarette inspection at Stop & Go Friend Corp. located at 730 South St., in Peekskill. In total, the investigators seized 159 packages of cigarettes with counterfeit tax stamps. Sultan Ahmed Mosleh Ali, 28 was charged with criminal tax fraud and felony possession of counterfeit tax stamps. The defendant was processed at the Peekskill Police Department and remanded to the Westchester County Jail.¹⁹

As in the above case generally,

- The store owner is either arrested or issued summonses,
- untaxed cigarettes are seized, and
- the store's permit (license) to do business (its Certificate of Registration²⁰) is also seized.

Confiscation of the Certificate of Registration translates into dire consequences for the business owner. Since Investigators have seized the store's Certificate of Registration, the store is prohibited from purchasing cigarettes from wholesale distributors or continuing to sell any such product (including existing inventory) to its customers. *Business is suspended!*

- loss of customers!
- loss of income!
- financial loss in money spent for inventory of legally-stamped cigarettes that the proprietor cannot sell!

And, in some cases finality; the shut down and discontinuance of business.

Options After Suspension

A defendant whose Certificate of Registration has been suspended because of unstamped or counterfeit-stamped cigarettes discovered on its premises has recourse. The Tax Law offers the business owner a procedure to apply for return of the store's Certificate of Registration and reinstatement of the store's authority to continue in business, i.e., the purchase and sale of cigarettes.

By filing a petition with the Department, the store owner has the right to have the seizure and suspension of the store's Registration reviewed. The Commissioner designates a Review Officer to hear the case. A hearing is conducted, during which the Petitioner may present evidence and witnesses in an effort to prove to the Review Officer's satisfaction a basis for lifting the suspension.²¹

Petitioner has the burden of proof, to prove by a preponderance of the

evidence that the cigarettes were not unstamped or unlawfully stamped. However, based upon this writer's experience as a Department Review Officer, the Petitioner usually is unable to sustain this burden and the alternative is to present evidence of mitigating circumstances concerning the incident. Counsel's presentation of the case should include information such as:

- Period during which the petitioner operated 'in good' standing with the Department
- information identifying the distributors from whom the client regularly purchases product, with copies of invoices and receipts reflecting such purchases
- explanation as to how the untaxed product came to be on the premises
- and, if available, information the client may have concerning incidents of illegal trafficking in cigarettes.

The Review Officer will decide the period of suspension or revocation of the Petitioner's Registration and will submit findings to the Department's Commissioner. Thereafter, the Commissioner will issue a decision regarding the Petitioner's suspension. If the decision is to continue the suspension or revoke the Certificate of Registration, the Petitioner may appeal the Commissioner's decision by commencing an Article 78 against the Tax Department Commissioner, in Supreme Court in Albany, NY.²²

Gary Alpert is in private practice and Of Counsel to Hein, Waters & Klein, Garden City, and formerly as an attorney with Tax Department's Criminal Investigations Division, supervised Tax Fraud Investigations and served as a Certificate of Registrations Review Officer.

¹ United States Constitution, Fourth Amendment.

² New York State Constitution, Article One, § Twelve.

³ New Criminal Procedure Law, Article 690, §§ 690.05 et. seq.

⁴ *Colonade Catering Corp. v. United States*, 397 U.S. 722 (1970). The Supreme Court approved the statutory authorization of Internal Revenue Agents to conduct warrantless inspections of federally licensed dealers in alcoholic beverages.

⁵ *United States v. Biswell*, 406 U.S. 311 (1972). Dealer engaged in the pervasively regulated business of firearms sales accepts a license to do so with knowledge that his business records and inventory will be subject to effective inspection.

⁶ Tax Law Art. 12-A, §§ 281 et. seq.

⁷ Tax Law Art. 18, §§ 420-445.

⁸ Tax Law § 474(4).

⁹ New York Criminal Procedure Law § 1.20(34)

(g).

¹⁰ Tax Law Art. 37, § 1846 et. seq.

¹¹ Tax Law Art. 37, § 1847 et. seq.

¹² Tax Law Art. 37, § 1814(a) et. seq.

¹³ Tax Law Art. 37, § 1800.

¹⁴ Tax Law § 481(1)(b)(i) et. seq.

¹⁵ *People v. Rizzo*, 40 N.Y.2d 425 (1976).

¹⁶ *Rizzo*, 47 A.D.2d at 470 (1975).

¹⁷ *Rizzo*, 40 N.Y.2d at 428 and 429 (1976).

¹⁸ Press Release, NYS Dept. Taxation & Finance

(Apr. 7, 2014)(on file with author).

¹⁹ Press Release, NYS Dept. Taxation & Finance

(July 1, 2015)(on file with author).

²⁰ Tax Law § 480-a(1)(a).

²¹ Tax Law § 480-a(4)(b).

²² Tax Law § 480-a(4)(c).

MEDIATION ...

Continued From Page 11

(Online ed., Bartleby 1999), <http://www.bartleby.com/130/2.html> (last visited Nov. 17, 2015).

13. See Norman Brand, *Learning To Use The Mediation Process - A Guide For Lawyers*, Mediate.com, Sept. 2000, <http://www.mediate.com/articles/nbrand4.cfm> (last visited Nov. 17, 2015).

14. See *id.*

15. *Id.*

16. See *id.*; Loretta Gastwirth, *To ADR or Not to ADR: That is the Question*, 65 Nassau Lawyer (No. 3) 16, 16 (Nov. 2015).

17. *Fact-Finding and Discovery*, FindLaw, 2015, <http://litigation.findlaw.com/filing-a-lawsuit/fact-finding-and-discovery.html> (last visited Nov. 17, 2015).

18. Abeshouse, *supra* n.4 at 24.

19. See Janet C. Neuman, *Run, River, Run: Mediation of a Water-Rights Dispute Keeps Fish and Farmers Happy - For A Time*, 67 U. Colo. L. Rev. 259, 309 (1996); Gastwirth, *supra* n.16 at 16.

20. See *Am. Express Bank, Ltd. v. Uniroyal, Inc.*,

164 A.D.2d 275, 277 (1st Dept. 1990) ("Rather

than rewrite an unambiguous agreement, a court should enforce the plain meaning of that agreement."); *Caruso v. HSBC Private Bank*, No. 650347/2010, 2015 N.Y. Slip Op 30736(U), ¶¶ 12-15 (Sup. Ct. N.Y. Co. Apr. 29, 2015) (Singh, J.) (denying cross-motion to amend complaint where relevant contract proscribed recovery for consequential and punitive damages); Gastwirth, *supra* n.16 at 16.

21. See Harriette M. Steinberg & Elizabeth P. Donlon, *Using Mediation to Resolve a Will Contest (Maybe Even Before It Happens)*, 65

Nassau Lawyer (No. 3) 8, 22 (Nov. 2015).

22. Brand, *supra* n.13 (section entitled "Building

a Practice").

23. Ytterberg, *supra* n.5, at 45.

24. See Arran Dowling-Hussey, *A Cheaper Way to Solve Disputes*, Retail News, May 2014, at 62, 63 (*available at* http://issuu.com/retailnews/docs/rn_may_2014).

25. Gastwirth, *supra* n.16, at 16.

26. See Eugene S. Ginsberg, Eugene S. Ginsberg - Mediator Arbitration Long Island Attorney

Nassau County Lawyer, 2015, <http://www.eugeneginsberg.com> (last visited Nov. 18, 2015).

27. Sun Tzu, *The Art of War* 77 (Samuel B. Griffith trans., Oxford Univ. Press 1971).