

THEODORE ROOSEVELT INN OF COURT
PRESENTS

**The Civil Action Series:
Trial Techniques
Part III Direct & Cross-
Examination**

**Nassau County Bar Association
Monday, February 11, 2013
6:00 p.m.
(2 CLE credits in Skills)**

Presented by:

Kevin Schlosser, Esq.
Hon. Timothy S. Driscoll
Juan Luis Garcia, Esq.
Douglas J. Good, Esq.
Elizabeth Schlissel, Esq.

And Hofstra Law School Student Presenters:

Angela Anderson
Meredith-Anne Kurz
Kristin Rizzi
Benjamin Siegel

INNS OF COURT FEBRUARY 11, 2013 PROGRAM

CIVIL ACTION PROGRAM

DIRECT AND CROSS-EXAMINATION OUTLINE

I. **Introduction, Strategy and Planning**

Kevin Schlosser will introduce the strategic issues.

II. **Discussion with Court Prior to Examinations**

The attorneys representing the parties will have a conference with the court (Honorable Timothy Driscoll) to discuss anticipated issues.

Participants:

Justice Driscoll, Kristin Rizzi for plaintiff and Meredith-Anne Kurz for defendant.

III. **Direct Examination of Defendant by the Plaintiff**

Kristin Rizzi.

IV. **Interview of Opposing Counsel before Cross-Examination**

Juan Luis Garcia and Meredith-Anne Kurz

V. **Cross-Examination of Defendant by Defense Counsel**

Meredith-Anne Kurz

VI. **Direct Examination of Plaintiff by Plaintiff's Counsel**

Angela Anderson

VII. **Interview of Defense Attorney for Cross-Examination**

Juan Luis Garcia and Benjamin Siegel

VIII. **Cross-Examination of Plaintiff by Defense Counsel**

Benjamin Siegel

Witnesses:

The plaintiff will be played by Douglas J. Good.

The defendant will be played by Elizabeth Schlissel.

THEODORE ROOSEVELT INN OF COURT

FACT PATTERN FOR PROGRAMS ON CIVIL ACTION

Plaintiff is an individual named Chuck Emerald. He is a sophisticated real estate developer with 30 years of experience in the acquisition, management and sale of office buildings in the metropolitan New York area. He has a B.S. degree in economics from the Wharton School of Business.

Although Mr. Emerald has several real estate holdings, this case involves one discreet property that Mr. Emerald owned through a limited liability company with one other individual. Mr. Emerald and a man named Ronald Radah each owned a 50% membership interest in an LLC named Green Chip LLC. Mr. Emerald contributed \$5 million capital for the formation of Green Chip. Mr. Radah contributed \$2.5 million, but they agreed to split the ownership 50-50 because Mr. Radah was going to manage the business on a full-time basis, while Mr. Emerald assumed no responsibilities for the day-to-day operations of the business.

With the benefit of bank financing (with no personal guarantees), Green Chip acquired a substantial piece of real property located near the "hub" of Nassau County -- the anticipated site of a potential new office and sports complex. The mortgage for the acquisition was \$25 million. The real property was valued at \$35 million at that time, but Green Chip paid \$30 million. The real property will be referred to herein as the "HUB Site."

As they anticipated, Mr. Radah worked extensively in developing the HUB Site, working 10 to 11 hours a day, 6 days a week. He hired consultants and obtained extensive plans for development of the HUB Site as a major income producer. Mr. Emerald neither asked for nor received any documentation of Mr. Radah's work efforts.

About 8 months after Green Chip acquired the HUB Site, Mr. Radah approached Mr. Emerald with a proposition. Mr. Radah explained to Mr. Emerald that there were several technical difficulties relating to their plans to develop the HUB Site for office and residential use. Among other things, Mr. Radah advised Mr. Emerald that local political opposition to the development would likely prevent their ambitious plans from being implemented. In order to satisfy local opposition to the development and eliminate the technical difficulties, it would be necessary to alter the plans at a cost of an additional \$25 million. Mr. Radah further disclosed to Mr. Emerald that he had received several inquiries from entities interested in acquiring the HUB Site from Green Chip. He identified 5 specific entities that had made proposals, totaling between \$25 million and \$50 million. Radah gave Emerald each of the written proposals. Radah then gave Emerald a choice: Contribute another \$15 million necessary for the strategic

development of the HUB Site (Radah would raise the other \$10 million needed) or sell his interest to Radah for \$20 million.

Mr. Radah did not advise Mr. Emerald at the time of these discussions that one of the parties interested in purchasing the site (named Greener Pastures) had negotiated the purchase price with Radah beyond the terms of the written proposal submitted. During those discussions, Greener Pastures indicated it would be prepared to offer as much as \$100 million to acquire the entire real property of the HUB Site from Green Chip. Greener Pastures and Mr. Radah exchanged dozens of emails concerning the negotiations, none of which were provided to Mr. Emerald.

Mr. Emerald decided to accept Mr. Radah's proposal and sell his interest in Green Chip to Mr. Radah for \$20 million. Mr. Emerald did not in any way suspect that Mr. Radah had been anything other than completely candid and truthful with him. He trusted Mr. Radah without question. He had no indication that anything was being withheld from him.

Mr. Emerald and Mr. Radah both hired experienced legal counsel to represent them in connection with the buy-out transaction. Extensive documentation was prepared for the transaction. In the actual buy-out agreement, Mr. Radah represented that all of the parties with whom he discussed a possible sale of the Hub Site were identified on a schedule incorporated into the agreement. The written proposals Mr. Radah received were also attached to the agreement and incorporated therein as the actual written proposals that he received. Mr. Emerald acknowledged that he was entering into the buy-out agreement without having received or relying upon any other "representations or warranties" from Mr. Radah including as to "the actual or projected value of the Hub Site for sale or leasing or any other matter affecting or relating to the Hub Site." The buy-out agreement further provided that Mr. Emerald "had been afforded an opportunity to conduct his own due diligence with respect to the HUB Site and the prospective purchasers listed in the schedule and was satisfied with the information made available to him in conducting such due diligence." Mr. Emerald further disclaimed in the agreement "(1) any interest in any profit realized by Mr. Radah on a future sale of the HUB Site to any of the disclosed prospective purchasers and (2) any claim for fraud, or breach of loyalty or fiduciary duty arising out of their participation in Green Chip."

The transaction between Mr. Emerald and Mr. Radah was fully consummated, resulting in Mr. Emerald selling his entire interest in Green Chip to Mr. Radah. Mr. Emerald received the full \$20 million in this transaction.

Two months after the transaction closed, Mr. Emerald read in the newspaper that Greener Pastures had signed a contract to purchase the HUB Site from Green Chip for a reported \$115 million. Within a week, Mr. Emerald had instituted an action in the Supreme Court, Nassau County, against Mr. Radah alleging causes of action for breach of the buy-out agreement and its representations and warranties, fraud in the inducement

and breach of fiduciary duty. Mr. Emerald did not seek to stop the pending sale of the Hub from Green Chip to Greener Pastures. Rather, Mr. Emerald sought damages in the form of the difference between what he had received from Mr. Radah for his 50% interest in Green Chip and half of the net proceeds of the sale of the Hub Site.

The case was assigned to the Commercial Division in Nassau Supreme Court and is now ready for jury trial.

The foregoing fact pattern will form the basis of the Civil Action Program on various segments of trial techniques:

1. Jury Selection. (February 15, 2012)
2. Opening Statements. (March 15, 2012)
3. Direct and Cross-examination of Witnesses.
4. Closing Arguments and Post-trial Motions.

BIOGRAPHICAL INFORMATION

OF PRESENTERS

Angela Anderson

Ms. Anderson is a second year Hofstra Law student, originally from Southern California. Prior to law school she attended California State University, Long Beach. There she received her Bachelor of Arts in Political Science with a Public Law emphasis. As a senior at Long Beach she volunteered at the Women's Resource Center, where she participated in programs surrounding women's issues ranging from domestic abuse to women in combat. Ms. Anderson also briefly volunteered at the Orange County AIDS Services Foundation in Irvine, CA. She is currently an intern in the Legal Department at the Nassau County Department of Social Services, which handles legal issues surrounding Child Abuse and Neglect, Medicare/Medicaid, Housing, and Guardianships among many others.

HON. TIMOTHY SEAN DRISCOLL
Justice of the New York State Supreme Court
100 Supreme Court Drive
Mineola, NY 11501
516-493-3184
tdriscol@courts.state.ny.us

Timothy S. Driscoll is a Justice of the Supreme Court of the State of New York. Elected to a fourteen-year term in November 2007, Judge Driscoll serves in the Nassau County Commercial Division. He is also the co-chairman of the Chief Administrative Judge's working group on electronic discovery. In addition to his judicial responsibilities, Judge Driscoll is an adjunct professor at Brooklyn Law School and Nassau Community College, and a teaching team member at the Harvard Law School's Trial Advocacy Workshop.

Prior to beginning his term on January 1, 2008, Judge Driscoll held a number of posts in the public and private sector. He served as Deputy Nassau County Executive for Law Enforcement and Public Safety from July 2004 to December 2007. In that position, Judge Driscoll oversaw all of the public safety and law enforcement agencies in the County, including the Police, Fire Marshal, Probation, Sheriff, Office of Consumer Affairs, Traffic and Parking Violations Agency, Medical Examiner, and Office of Emergency Management.

Judge Driscoll was an Assistant United States Attorney in the Eastern District of New York from November 2000 to July 2004. His case load included violent crime matters including racketeering, murder, gun possession and trafficking, and narcotics distribution, as well as white collar matters including mail fraud, wire fraud and health care fraud. His work as a federal prosecutor was recognized by the FBI, Nassau County Police Department, Old Brookville Police Department, and the Drug Enforcement Administration.

As an Assistant District Attorney in Nassau County from September 1996 through November 2000, Judge Driscoll's docket included cases involving burglary, robbery, narcotics and driving while intoxicated, as well as investigations into official corruption.

Prior to beginning his service as a prosecutor, Judge Driscoll was associated with Williams & Connolly in Washington D.C. from November 1992 through July 1996. Before joining the law firm, Judge Driscoll served as a law clerk to the Honorable Joseph M. McLaughlin, United States Court of Appeals for the Second Circuit.

Judge Driscoll is a graduate of Harvard Law School (cum laude 1991), Hofstra University (summa cum laude 1988) and Holy Trinity High School in Hicksville, which inducted him into its Hall of Fame in 2005. He is the Secretary of the Irish Americans in Government, and the President of the Catholic Lawyers Guild of Nassau County.



Juan Luis Garcia
Associate
jgarcia@moritthock.com

JUAN LUIS GARCIA

Practice Areas

Commercial Litigation

Juan Luis Garcia is an associate with the firm of Moritt Hock & Hamroff LLP practicing in the area of commercial litigation. Prior to joining the firm, Mr. Garcia served as a Law Clerk to the Honorable Ira B. Warshawsky of the New York State Supreme Court Commercial Division.

Education

Columbia University School of Law, J.D. 2009

Columbia Human Rights Law Review

Foundation Moot Court Board of Editors

University of Kansas, B.A. 2006 *summa cum laude*

Phi Beta Kappa

Admissions

Mr. Garcia is admitted to practice in New York and Connecticut. He is also admitted to practice before the United States District Courts in the Eastern and Southern Districts of New York.

Affiliations

Mr. Garcia is a member of the New York City and Nassau County Bar Associations, the Long Island Hispanic Bar Association, and the Theodore Roosevelt American Inn of Court.

Languages

Spanish

Proficient in French

Douglas Good is a partner at Ruskin Moscou Faltischek, where he is Chairman Emeritus of the firm's Litigation Department and member of the Employment Law and Corporate Governance Practice Groups. Mr. Good is also the Chair of the firm's Practice Management Committee, which, among other things, deals with ethical issues and conflicts of interest. In early 2012, Mr. Good was appointed as the firm's first General Counsel, with responsibility for all legal and compliance issues encountered by the firm. Mr. Good has extensive experience in trial and appellate advocacy in both the state and federal courts, as well as substantial experience in alternative dispute resolution. He has handled a diverse assortment of cases, with particular emphasis on employment law issues (including restrictive covenants, unfair competition and discrimination), shareholder and partnership disputes, creditors' rights (including defense of lender liability claims), health law, trade secrets, RICO, real property issues, and civil rights, among others. Mr. Good is certified as a mediator in the Commercial Division of the Supreme Court of Nassau County.

Mr. Good is a past president of the Nassau County Bar Association, a fellow of both the American Bar Foundation and the New York Bar Foundation, as well as a member of the Federal Bar Council. He has served as a member of the House of Delegates of the New York State Bar Association, and is an alternate member of the State Bar Nominating Committee and a member of the President's Committee on Access to Justice. He has also lectured before the American, New York State and Nassau County Bar Associations on topics including professional ethics, corporate and not-for-profit governance and a variety of litigation subjects and has been published in various legal and business journals.

Mr. Good has served as Chairperson of the Board of Directors of Nassau/Suffolk Law Services Committee, Inc. for many years. While at the firm, he has been an Assistant Adjunct Professor at the New York University Institute of Paralegal Studies. Prior to joining Ruskin Moscou Faltischek, P.C., Mr. Good was the Executive Director of the Legal Aid Society of Rockland County, Inc.

Meredith-Anne Kurz is in her second year of the JD/MBA program at Hofstra University. She is currently a law clerk at Salenger, Sack, Kimmel, and Bavaro, LLP, which she will continue into the summer. Since graduating in three years from Barnard College of Columbia University, Meredith has worked as a legal intern for Henry Schein, a multinational corporation, a legal assistant at Sahn, Ward, Coshignano, and Baker, and an intern in the Nassau County Supreme Court. She also coaches Our Lady of Mercy Academy's mock trial team in the Nassau County Bar Association competition. She is a Junior Staff member of the Hofstra Labor and Employment Law Journal. Meredith is very involved in trial advocacy, completing the NITA program this Winter, competing on two interscholastic trial teams representing Hofstra, and was a finalist in Hofstra's intrascholastic competition. She hopes to practice corporate law or civil litigation upon graduating in 2015.

Kristin Rizzi

19 Moody Avenue, Freeport, NY 11520

(516) 965-8437

rizzi.kristin@gmail.com

EDUCATION:

Hofstra University School of Law, Hempstead, NY

Juris Doctor anticipated, May 2014

G.P.A: 3.68; Rank: 13/331, Top 4%

Honors: *Hofstra Law Review*, Staff Member, Volume 41; Dean's Scholar; Dean's List, Spring 2012, Fall 2012; Merit Scholarship

Activities: Phi Alpha Delta Law Fraternity (Event Chair); Student Planning Committee for 2012 Presidential Debate; Theodore Roosevelt American Inn of Court, Student Member and Civil Trial Program Participant

Hofstra University, Hempstead, NY

B.A., *cum laude*, in Political Science, December 2010 G.P.A.: 3.69

Honors: Hofstra University Honors College; Phi Eta Sigma Honor Society; Pi Sigma Alpha Honor Society; Dean's List (6 semesters)

Istituto Canossiano, Venice, Italy

Hofstra University Study Abroad Program, Winter 2010

LEGAL EXPERIENCE:

Wand, Powers & Goody, LLP, Huntington, NY

Legal Intern, Summer 2012

Worked closely with attorneys in matrimonial cases. Conducted legal research. Drafted memoranda, motions and net worth statements. Corresponded with clients, the Court and opposing counsel through phone, email, and letters.

Nassau County District Attorney's Office, Mineola, NY

Legal Intern – Fraud Division; Animal Cruelty Division, Feb. – May 2010

Conducted background and factual research before cases went to trial and organized my research into memoranda and spreadsheets.

OTHER EXPERIENCE:

CVS/pharmacy, Baldwin, NY

Shift Supervisor, October 2009 – July 2011

Key holder responsible for opening and closing the store, inventory control, cash control, customer relations, and delegating work to and supervising work of staff.

Head Cashier, June 2008 – October 2009

Responsible for register operation, cash control, delivery intake, and stocking shelves.

Cashier, May 2006 – June 2008

Responsible for register operation and stocking shelves.

INTERESTS:

Baking Specialty Cakes, Gymnastics, Broadway Plays.

Elizabeth E. Schlissel

Elizabeth E. Schlissel is an Assistant District Attorney at the Nassau County District Attorney's Office where she is currently in the Appeals Bureau. While at the District Attorney's Office, Ms. Schlissel has tried numerous cases including the prosecution of DWIs, assaults, harassment and drug offenses. In addition, Ms. Schlissel was a member of the specialized Animal Crimes Unit, during which she prosecuted various crimes against animals. Currently, Ms. Schlissel is part of the newly formed Mental Health Unit; she handles insanity acquittee defendants who have committed very serious crimes. As a member of the Appeals Bureau, she is responsible for the briefing and oral arguments of appeals in appellate courts.

Ms. Schlissel is a member of the Nassau Bar Association, Inn of Court, Co-Chair of the Animal Law Committee and actively attends several committee meetings and events.

During her time at Hofstra Law School, Ms. Schlissel was a student member of the Inn of Court and on the Hofstra Mock Trial Team, where she competed in a national trial competition. Ms. Schlissel earned her undergraduate degree from Boston University where she was on the Dean's List, and a member of several organizations, including the BU Democrats and Pre-Law Society.

Kevin Schlosser

Kevin Schlosser is a Partner and the Chair of the Litigation and Dispute Resolution Department at Meyer, Suozzi, English & Klein, P.C. He has experience in a broad range of cases and arbitrations, including complex commercial disputes, business torts, professional liability and malpractice claims, construction law, real estate and landlord-tenant disputes, corporate and partnership disputes, ERISA, health law, Federal Fair Debt Collection Practices Act class actions, employment and restrictive covenants, products liability, insurance claims and defense, including disability insurance claims and the prosecution and defense of other tort-related claims.

In 2012, Mr. Schlosser obtained a jury verdict resulting in a \$12.6 million judgment in favor of his clients in a case with facts very similar to the fictitious case used for the Inns Civil Action series of programs.

Education

Hofstra University School of Law, J.D. with distinction.

John Jay College of Criminal Justice, City University of New York, B.A., magna cum laude.

During law school, Mr. Schlosser was a Member and then Articles Editor of the Hofstra Law Review. He also clerked for the Honorable George C. Pratt, United States Circuit Court Judge, as well as in the Criminal Division of the United States Attorney's Office for the Eastern District of New York, where he assisted in the prosecution of several major felony cases. Mr. Schlosser graduated law school with the highest honors.

Professional Affiliations

Mr. Schlosser is a member of the Executive Board and Master in the Nassau chapter of the American Inns of Court. He also serves in various teaching capacities: He is a member of the faculty of the National Institute for Trial Advocacy; has chaired the Continuing Legal Education Program on New York Civil Motion Practice at Hofstra Law School; is a member of the Continuing Legal Education faculty panel of the New York State Bar Association and the Nassau County Bar Association Academy of Law; and he lectures and participates in various programs providing intensive practical training in appellate practice at Hofstra Law School as well as at seminars on construction law and litigation.

Mr. Schlosser is a member of the American Bar Association, Litigation Section; the New York State Bar Association, Commercial and Federal Litigation Section; and the Nassau County Bar Association, Commercial Litigation and Publications Committees. He is currently Vice Chair of the Commercial Litigation Committee of the Nassau County Bar Association.

Mr. Schlosser has written extensively on many aspects of the law, publishing numerous articles. He has authored the "Litigation Review" column in the New York Law Journal and has served on the Board of Editors of the Nassau Lawyer, which is the official publication of the Nassau County Bar Association. He is rated "AV" by Martindale-Hubbell, the highest level in professional excellence and ethics.

Admissions

Mr. Schlosser is admitted to the New York State Bar, the United States Supreme Court, the United States Court of Appeals for the Second Circuit, the United States District Courts for the Southern and Eastern Districts of New York, the United States District Court for the Eastern District of Michigan and the United States District Court for the Eastern District of Wisconsin.

Benjamin Siegel is currently a second-year student at Maurice A. Deane School of Law at Hofstra University. Mr. Siegel was placed on the Dean's list in each of his first three semesters and was named a "Dean's Scholar" after his first year at Hofstra. He is a Staff Member of Volume 41 of the Hofstra Law Review, a member of the Charity Committee in the Sports & Entertainment Law Society, and is a first-time participant in the Theodore Roosevelt American Inn of Court program.

Mr. Siegel's work experience includes serving as a Judicial Intern for the Honorable Daniel McCullough of the New York State Supreme Court, Criminal Term in the First Judicial District. Prior to attending law school, Mr. Siegel was also a Conflict Check Clerk for Kaufman, Dolowich, Voluck & Gonzo, LLP's Long Island office.

Upon graduating in May of 2014, Mr. Siegel is aiming to work in commercial litigation. Outside of law school, Mr. Siegel enjoys writing, film production, entrepreneurship, and table tennis.