

## John P. McCahey: From assistant counsel to 'complete lawyer'

*Editor's note: John P. McCahey is a partner with Hahn & Hessen LLP in New York, where he represents corporations and financial institutions in a wide range of complex commercial and business litigations. Commercial Lending Litigation News spoke with McCahey about his background, his most memorable legal victory and the challenges he faces in his practice.*

### Don't be shy!

Do you know an outstanding commercial lending litigator who should be featured in the Practitioner Spotlight? E-mail your suggestions to legal editor Amy Slater at [aslater@lrp.com](mailto:aslater@lrp.com).

### Q: Tell us about your background with your firm.

A: I joined Hahn & Hessen in 1983 after working as an assistant corporation counsel for the City of New York in the commercial litigation division. Our practice encompasses a broad spectrum of commercial and financial matters on the transactional, litigation and bankruptcy fronts. As a litigation partner, I represent financial institution and

other corporate clients at both the trial and appellate level in a variety of commercial litigations. These cases have included those in the areas of creditors' rights, contract law, "lender liability," letters of credit, inter-creditor disputes, and accountant's negligence.

### Q: What led you into the commercial litigation sector?

A: In my third year of law school, I thought that civil litigation might interest me and one of my professors suggested that the corporation counsel's office rather than a big firm might be a place to see if I liked it. At least for me, it was good advice. When I joined H&H four years later, I began to concentrate on financial and business disputes. Early in my career at the city and H&H, I was very fortunate to work with a few attorneys who not only were talented commercial litigators, but patient teachers.

I found from the start that I enjoyed commercial litigation and the challenges it offers. Commercial litigators develop the facts of a case through documents and testimony, and then shape those facts within legal principles. They have the opportunity to write briefs and draft documents, to examine witnesses, try cases and argue appeals, counsel clients, and negotiate with opposing counsel. One of my former partners explained to me that he was a commercial litigator because it gave him the opportunity to be a complete lawyer. I think that most, if not all, commercial litigators share that sentiment.

### Q: What was your most memorable legal victory?

A: One of mine is a case that involved a substantial claim against our client for fraud, breach of contract and other nefarious deeds arising out of a failed franchising arrangement with the plaintiff. We were faced with a short discovery schedule and early trial. Working with in-house counsel and a forensic accounting expert, we were able to use the plaintiff's documents

and extensive depositions of their witnesses to seize the offensive and show that the plaintiff and its officers had misrepresented itself and defrauded our client. We were also successful, with the help of our own expert, in substantially discrediting the opinions of the plaintiff's experts. On the eve of trial, we were permitted to assert a sizeable counterclaim against the plaintiff and its insiders. Shortly thereafter, our client accepted a very favorable settlement. While there are other cases that have been memorable, none invoke more pleasant memories for me.

### Q: Is it a challenge to explain business concepts and transactions to judges and juries? How do you keep them interested in your case?

A: Yes, but it is one that varies from case to case depending upon the particular concept or transaction involved. It is a lot easier to explain a simple loan transaction between a borrower and a lender than it is to explain a residual interest granted as security in connection with a securitization of mortgage notes. Some courts in New York and elsewhere have created commercial parts dedicated to hearing financial and business disputes. The judges sitting in these parts generally have a good understanding of the concepts and types of transactions underlying those cases.

Since the parties to commercial loan agreements often agree to waive a jury trial, these commercial parts alleviate at least to some extent the challenges you referred to in your question. Still, whether presented to a judge or a jury, commercial litigators will look to organize and develop their case through understandable themes and concepts. The litigator will then present the facts within those themes and concepts to tell a story as to why his or her client should prevail. They will spend substantial time selecting the evidence to be presented and organizing the sequence and manner of its presentation. They will also work with their fact and expert witnesses to explain unfamiliar concepts and develop demonstrative exhibits. That said, the typical financial dispute will never be confused with an episode of *Desperate Housewives*.

### Q: What advice would you give to practitioners just starting out in the commercial lending litigation field?

A: If you find that on a Saturday evening you would rather be revising a brief on commercial reasonableness under UCC Article 9 that is due in two weeks instead of being with your friends, then you know you have found your niche in litigating commercial lending cases!

Seriously, you should know early in your career whether you enjoy litigation and dealing with issues such as contract law, the UCC and accounting. When you work with experienced commercial litigators, observe their practice styles and how they approach their cases, such as in writing briefs, examining witnesses and negotiating with opposing counsel. Take from each of them and adapt for yourself any approaches and styles that you find are effective and may work for you. ■

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