

Justice O. Peter Sherwood



The Honorable O. Peter Sherwood (Ret.) retired from the bench in 2021 where he was a Justice of the New York State Supreme Court, New York County, assigned to the eight member Commercial Division. The Commercial Division is a highly regarded branch of the Court that handles complex commercial cases – many of national and even international importance – involving business disputes exceeding \$500,000. Sherwood also served on the Court of Claims, which is the only state court authorized to decide claims brought against the State of New York.

Before beginning his judicial career, Sherwood was a partner in a large national law firm where he handled complex commercial matters. He also served as Corporation Counsel of the City of New York, where he was the City’s chief legal officer and oversaw a staff of 700 lawyers. Previously, he was Assistant Counsel of the NAACP Legal Defense and Educational Fund, Inc., where he litigated precedent-setting civil rights matters. He also served as Solicitor General of the State of New York overseeing and arguing appellate litigation on behalf of the State and State institutions. During this phase of his career, Sherwood successfully argued a major civil rights case and a major First Amendment case before the United States Supreme Court.

Since returning to private practice, Sherwood has focused his practice on service as a neutral, presiding over arbitrations, mediations, and other proceedings requiring an experienced, independent, and impartial decision-maker. Among other things, within the past year, Sherwood has presided over several arbitrations and mediations under the auspices of the American Arbitration Association and the International Center for Dispute Resolution, where he is a member of the commercial and employment panels of arbitrators and mediators.

Areas of Expertise:

- APPELLATE
- CIVIL RIGHTS
- COMMERCIAL LITIGATION
- CONSTRUCTION
- CONTRACTS
- EMPLOYMENT
- INSURANCE/REINSURANCE
- PROFESSIONAL RESPONSIBILITY AND MALPRACTICE

REPRESENTATIVE MATTERS

Securities/Corporations:

- In *Good Hill Master Fund, LP v Deutsche Bank AG*, 2016 NY Misc LEXIS 2317 (NY Sup Ct, Feb. 3, 2016) aff’d 146 AD 3d 632 (2017), Justice Sherwood presided over a non-jury trial alleging breach of ISDA swap agreements relating to securitizations backed by \$10.3 billion in residential mortgages.

- In a case involving residential mortgage -backed securities, the New York Court of Appeals, following the reasoning of Justice Sherwood in a similar case, *Nomura Asset Assurance Corp. Alternative Loan Trust Series 2005-S4 v Nomura Credit & Capital, Inc.*, 39 Misc 3d 1226 (A) (Sup Ct, NY County, May 10, 2013) reversed the Appellate Division, 1st Dept and held , similarly to Justice Sherwood that plaintiff’s cause of action for breach of warranty accrued when the representation was made, not when defendant refused to cure the allegedly defective mortgages (see *ACE Sec. Corp. Home Equity Loan Trust, Series 2006-SL2 v. DB Structured Prods., Inc.*, 25 NY 3d 581, 596, n. 4 (2015)).
- *Schron v Grunstein*, 36 Misc 3d 1238(A) (2012), aff’d 105 AD 3d 430 (1st Dept 2013). Following a non-jury trial for breach of contract and fraud, Justice Sherwood interpreted intricate agreements and analyzed the complex financial transactions involved in determining ownership of several hundred nursing homes valued at over \$1.5 billion.
- *Panattoni Dev. Co., Inc. v Scout Fund I-A, LP*, aff’d 188 AD 3d 498 (1st Dept 2020) after a non-jury trial, Justice Sherwood rejected a claim that plaintiff owed defendant millions based on plaintiff’s purported role as investment manager for billion-dollar real estate joint venture.
- *Colton v Gilber*, 2016 NY Misc LEXIS 1387 (NY Sup Ct, NY County 2016). This family business dispute involved half-sisters who had inherited equal shares in Manhattan apartment buildings valued at several hundred million dollars. Justice Sherwood supervised protracted litigation and negotiations that culminated in sale of the properties and settlement of the case.
- *Primus Pac. Partners LLP v Goldman Sachs Group, Inc.*, 2017 NY Misc LEXIS 4359(NY Sup Ct, NY County, 2017), affd 175 AD 3d 401 (1st Dept 2019). In a breach of fiduciary duty case arising out a claim against Goldman Sachs Group, Inc., and a Goldman Sachs (Singapore) investment banker whose advice to the target of an unsolicited bid by a Malaysian bank with close ties to the family of the Malaysian Prime Minister, was allegedly influenced by his relationship with the Prime Minister, the case was dismissed on grounds of forum non-conveniences in favor of Singapore or Malaysia.
- *Aba Dhabi Commercial Bank, P.J.S.C v. Credit Suisse Sec. (USA) LLL*, 2011 NY Misc LEXIS 6930 (NY Sup Ct, NY County 2011), aff’d 114 AD 3d 432 (1st Dept 2014). In this case plaintiff alleged *Credit Suisse* and S& P fraudulently induced it to enter into a purported low risk collateral debt obligation. The court held that the documentary evidence undermined the fraudulent inducement claim and there was no fiduciary relationship among the parties.
- *Schroeder v. Cohen*, 2017 NY Misc LEXIS 4516 (NY Sup Ct, NY County, November 14, 2017) aff’d 169 AD 3d 412 (1st Dept 2019). Here Justice Sherwood granted summary judgment dismissing plaintiff’s misappropriation of trade secrets and ideas claim because plaintiff failed to describe the allegedly misappropriated ideas with sufficient specificity.

- *In A&F Hamilton Hgts Cluster, Inc. v Urban Green Mgt, Inc.*, 2018 NY Misc LEXIS 5134 (NY Sup Ct Nov. 2, 2016) aff'd 186 AD 3d 409 (1st Dept 2020), Justice Sherwood held that a minority shareholder of a limited partnership lacked authority to bring a double derivative claim on behalf of the limited partnership and dismissed claim that an unsigned 2004 amendment to an earlier limited partnership agreement governs ownership of a housing partnership.
- *Getty Properties Corp. v. Lukoil Americas Corp.*, 2017 NY Misc LEXIS 3099 (NY Sup Ct, NY County, August 14, 2017). Under the terms of a master lease for hundreds of gas stations, defendant was required to remediate environmental contamination. The complaint alleged that in order to avoid responsibility for the cleanup, defendant transferred nominal ownership to another entity for \$1 which just over two years later filed for bankruptcy, after the claw-back period under the Bankruptcy Code had expired. The Court rejected the argument that plaintiff's claim was barred by res judicata and that defendants could not use the bankruptcy filing of its debtor affiliate to shield its own liability when defendant itself did not seek bankruptcy protection.
- *Linkable Networks, Inc. v. Mastercard, Inc.*, 2019 NY Misc LEXIS 8737 (NY Sup Ct, NY County September 12, 2019) aff'd 184 AD 3d 418 (1st Dept 2020). In this case, Justice Sherwood dismissed claims for misappropriation of trade secrets, unfair competition, misappropriation of ideas and unjust enrichment because those causes of action alleged conduct that was based entirely on alleged conduct that is prescribed by contract and therefore are duplicative of plaintiff's breach of contract claim.
- *Crystal Run Assoc., LLC v State of New York*, 50 Misc 3d 1221(A), 31 NYS 3d 920 (NY Court of Claims 2016) aff'd 167 AD 3d 764 (2d Dept 2019). Here, Justice Sherwood presided over non-jury trial to fix the value of 44 acres of land taken by eminent domain.

Insurance:

- *Sabre, Inc. v The Insurance Co. of the State of Pennsylvania*, 2014 NY Misc LEXIS 3832 (NY Sup Ct, NY County 2014) aff'd 149 AD 3d 589 (1st Dept 2017) is one of many insurance coverage cases over which Justice Sherwood presided. Here, the court held that the insurer had a duty to defend plaintiffs in the underlying actions and that a conflict of interest precluded the insurer from controlling the defense. The court also rejected a late notice defense as the insurer could not have participated in the defense of the underlying action prior to its receipt of the notice of claim and there was no showing of prejudice.
- *Andy Warhol Foundation for the Visual Arts, Inc. v. Philadelphia Indemnity Ins. Co.*, 2012 NY Misc LEXIS 5487 NY Sup Ct, NY County, December 6, 2012). In this case, Justice Sherwood held that the "Professional Services Exclusion" endorsement to D&O policies issued to plaintiff in connection with its reviews of artwork submitted for authentication as works created by Andy Warhol, did not apply and accordingly defendant was obligated to cover defense costs for claims alleging fraud and other causes of action arising out of defendants' determinations that certain pieces of art were not created by Warhol.

- *Alexander v. Starr Surplus Lines, Ins. Co.*, 2022 NY Misc LEXIS 461 (NY Sup Ct, NY County 2020). In this case, the court granted the insured's motion to declare that the Major Shareholder exclusion in the D&O policy applies only to major shareholders who held stock at the time the policy was issued. The court rejected the insurer's argument that because this was a claims made policy and the shareholder who held notes at the time the policy was issued had converted the notes by the time the claim was made, the exclusion applied.
- *Freedom Specialty Ins. Co. v. Platinum Mgt. (NY), LLC*, 2018 NY Misc LEXIS 3891 (2018). Citing an exclusion clause in the policy applicable to claims that involved any litigation or investigation that existed prior to a certain date, the insurer sought a declaration that it had no duty to defend or indemnify the directors and officers of defendants in the underlying prosecution charging them with conducting a ponzi like scheme. Justice Sherwood granted summary judgment to the insured because the prior investigation cited by the insurer involved different conduct.

Defamation:

- In *Alcor Life Extension Foundation v Johnson*, 43 Misc 3d 1225(A), (NY Sup Ct, NY County May 1, 2018), *aff'd* 136 AD 3d 464 (1st Dept 2016), the issue was whether a defamation claim against a book publisher should be judged by the actual malice standard of proof applicable to public figures. Justice Sherwood found that plaintiff which was in the business of freezing cadavers in the hope that medical science will advance sufficiently for the individuals to be brought back to life, had thrust itself into the limelight in order to bolster its public profile as the self-described "world leader" in the field of cryonics.

Malpractice:

- *Red Zone, LLC v Calwalder, Wickersham & Taft LLP*, 2018 NY LEXIS 2882 (NY Sup, Ct, NY County 2018), In a legal malpractice suit arising out of the acquisition of the Six Flags amusement park, the issue was whether the continuous representation doctrine applied to toll the statute of limitations.
- *Melcher v. Greenberg Traurig LLP*, 2017 NY Misc LEXIS 3097 Op (NY County, August 15, 2017), *aff'd* as modified in the court's discretion, 164 AD 3d 1171 (1st Dept 2018). In this case, brought under N.Y. Judiciary Law §487(1) against an attorney for deceit on the court, the court limited plaintiff's potential damages to the excess of legal costs incurred in the underlying action that were proximately caused by the lawyer's deceit.
- *Glaubach v. Pricewaterhouse Coopers, LLP*, 2018 NY. Misc LEXIS 1792 (NY Sup Ct, NY County 2018), denying a motions to amend complaint to assert (1) a derivative claim for accounting malpractice as barred by the statute of limitations and (2) a breach of fiduciary duty claim against the largest shareholder due to insufficient factual allegations that the shareholder actually dominated the board.
- *Razinski v Katten Muchin Rosenman LLP*, 2019 NY Misc LEXIS 6170 (NY Sup Ct, NY County 2019). Holding that where proof showed that the property in the underlying case was sold, not mortgaged, the alleged failure of counsel to introduce evidence of released liens was not malpractice.

- *Binn v Muchnick Gotlieb & Gotlieb P.C.*, 2019 NY Misc LEXIS 928, aff'd 180 AD 3d 598 (1st Dept 2020). This legal malpractice case was dismissed as the documentary evidence showed plaintiffs were advised of and otherwise understood the terms of the transaction that resulted in loss of plaintiffs' majority interest in a chain of airport spas.

Class Actions:

- *M/O Empire State Bldg Assoc. v LLC Participant Litigation*, 2014 NY Misc LEXIS 3246 (NY Sup Ct, NY County 2014), aff'd 133 AD 3d 538 (1st Dept 2015). In this class action by minority "Participants" of the entity that owned the Empire State Building sought to block an initial public offering involving the iconic building. Justice Sherwood held the suit was barred by the terms of an earlier class action settlement that contained a covenant not to sue.

Employment:

- In *Creative Circle LLC v Norelle-Bortone*, NY Misc LEXIS 2168, (NY Sup Ct, NY County 2019) a former employer sued former employees and their new employer for breach of noncompetition and confidentiality agreements, unfair competition and other business torts.
- In *Veronis Suhler Stevenson Holdings, LLC v. Cole*, 2015 NY Misc LEXIS 2302 (NY Sup Ct, NY County 2015), the court granted summary judgment dismissing six of eight causes of actions brought by a private equity firm against senior investment professionals who resigned rather than sign a new employment agreement containing strict confidentiality and non-competition rules.

Commercial Contracts:

- *Stonehill Capital Mgt. LLC v. Bank of The West*, 2014 NY Misc LEXIS 1345 (NY Sup Ct, NY County, March 24, 2014), rev'd 127 AD 3d 429, rev'd 26 NY 3d 439 (2016) is among the many breach of contract cases involving complex commercial transactions decided by Justice Sherwood. In this case, Justice Sherwood rejected a claim that the parties did not have a binding agreement under the terms of a pre-negotiated auction sale of a syndicated loan portfolio because the signed agreement was "subject to" execution of a loan sale agreement. The Appellate Division reversed holding that the "subject to language...clearly expresses an intent not to be bound to the sale...". The Court of Appeals reversed the Appellate Division. The court held that Justice Sherwood was correct in holding that the "subject to" language was not a clear expression that the parties intended not to be bound to consummate the sale.
- In *Neumann v. Sotheby's, Inc.*, 209 NY Misc LEXIS 837 (NY Sup. Ct., NY County February 27, 2019) the issue was whether there was an enforceable contract between a widower and Sotheby's requiring Sotheby's to obtain his approval to sell valuable art from the Neumann Family Collection where the piece to be actioned, "Flesh and Spirit" by acclaimed "graffiti artist" Jean-Michael Basquiat, was being consigned by the executor of the estate that owned the art and if so, whether the executor could sell it through Sotheby's.

- *Ariflex Indus., Inc. v Pabco Constr. Corp.*, 2019 NY Misc 5731 (NY Sup Ct, NY County 2019) was a construction case in which Justice Sherwood dismissed quasi-contract claims by subcontractor against the developer for delay and extra work because the subject matter of the claim was governed by an enforceable written contract.
- *Avery Hall Invs. LLC v Concord Village Owners, Inc.*, 2019 NY Misc LEXIS 4295 (NY Sup Ct, NY County 2019). In the case of a real estate transaction gone bad, the case was dismissed as the parties had not entered into an enforceable contract for sale of the property, the offeror did not state a claim for unjust enrichment and the alleged wrongful use of the plaintiff's plans and research by an employee of the eventual purchaser who sat was on the board of directors of the seller, did not state a claim for tortious interference with contract.

Other Engagements:

- Justice Sherwood was also designated as the impartial Hearing Officer to conduct a pre-deprivation due-process hearing by the New York Racing Association, the non-profit organization that operates New York's three major thoroughbred racetracks. As the press has reported, he presided over a five-day evidentiary hearing and rendered a decision on April 23, 2022.
- He is also serving as the court-appointed Discovery Special Master in the action brought by the New York Attorney General against the National Rifle Association.

Admitted to Practice:

- New York (1972)
- U.S. Supreme Court (1974)
- U.S. Courts of Appeals for the 2nd, 4th, 5th, 6th, 8th, and 11th Circuits
- U.S. Districts Courts for the Southern, Eastern and Northern Districts of New York

Education:

Justice Sherwood is a graduate of Brooklyn College of the City University of New York (1968) and of the New York University School of Law (1971).