

Justice Barry R. Ostrager



Barry R. Ostrager served as a New York State Supreme Court Justice in the Commercial Division, retiring on December 31, 2023 after eight and one-half years of judicial service. Prior to his appointment to the Bench, Justice Ostrager was a litigation partner at Simpson Thacher & Bartlett LLP and served as the long-time head in the Litigation Department.

Justice Ostrager was prominently involved in many high-profile securities, antitrust, and commercial cases, and was lead trial counsel in many major insurance coverage cases. He was lead trial counsel for Swiss Re in the highly publicized insurance coverage dispute involving the World Trade Center tragedy which resulted in a unanimous jury verdict in favor of Swiss Re, and lead counsel for Hanwha in a multi-billion-dollar dispute with the Korean government that was the subject of a multi-week trial. In all, Justice Ostrager successfully tried five cases to verdict involving \$1 billion or more in dispute as well as dozens of other trials.

Justice Ostrager successfully argued before the United States Supreme Court the closely followed *Epstein v. Matsushita* case that arose out of Matsushita's successful tender offer for MCA, Inc. He successfully argued again before the Supreme Court the *Travelers v. Bailey* case, which resolved important issues relating to the rights of settling insurers in asbestos-related bankruptcy.

Justice Ostrager also successfully represented Andersen Consulting against a \$14 billion claim by Arthur Andersen in connection with Andersen Consulting's successful bid to win a separation without cost from the Andersen Worldwide organization in the largest ICC arbitration in history. Among other successes as a trial attorney, Justice Ostrager represented J.P. Morgan Chase in a breach of guarantee contract action against Motorola in which J.P. Morgan Chase obtained a \$370 million verdict against Motorola. In 1993 Justice Ostrager was lead trial and appellate counsel for Paramount Communications in the widely publicized *QVC v. Paramount* tender offer litigation. Immediately prior to taking the bench, Justice Ostrager was actively involved as lead counsel for Countrywide Financial in mortgage-backed securities cases brought by FGIC and AMBAC in the New York state courts.

Justice Ostrager is co-author of the Handbook on Insurance Coverage Disputes (Wolters Kluwer 2022), a widely-used, three-volume treatise now in its 21st edition. He is also co-author of Modern Reinsurance Law and Practice, 3d. (LegalWorks 2014).

In June of 2006, Justice Ostrager was named the "Leading U.S. Litigation Business Trial Lawyer" by Chambers & Partners. For 11 consecutive years, Justice Ostrager was ranked by Chambers as a "Band One" General Commercial Litigator and "Band One" Insurance: Dispute Resolution Leading Lawyer. For 10 consecutive years (2005-2014), Justice Ostrager was recognized as one of the

leading trial lawyers in the U.S. by The Legal 500, which frequently identified him as one of the “Top Ten Trial Lawyers” in the U.S. and as an “exceptionally effective cross-examiner” with “brilliant litigation skills.” Euromoney’s Benchmark Litigation also recognized Justice Ostrager as a “Litigation Star” for both General Commercial Litigation and Insurance Litigation (2010–2014).

Areas of Expertise:

- LITIGATION
- INSURANCE/REINSURANCE

Notable Trial and Appeal:

- *Travelers Indemnity Co. v. Bailey*, 129 S. Ct. 2195 (U.S. June 18, 2009)
- *Matsushita Elec. Indus. Co., Ltd. v. Epstein*, 516 U.S. 367 (1996)
- *Anderson Consulting Business Unit Member Firms v. Arthur Andersen Business Unit Member Firms and Andersen Worldwide Societe Cooperative*, 9797/CK/AER/ACS
- *Chase Manhattan Bank v. Motorola, Inc.*, No. 00 Civ. 4838 (AKH) (S.D.N.Y.)
- *QVC Network v. Paramount*, 13208 (Del. Ch. Court 1994)
- *Shell Oil v. Travelers Ins.*, 15 Cal. Rptr. 2d 815 (Sup. Ct. San Mateo County)
- *MHTCo. v. Arthur Andersen*, 82 Civ. 6622 (S.D.N.Y.)
- *Stonewall Ins. v. National Gypsum*, 1998 WL 405047 (S.D.N.Y.)
- *US Air Group v. Carl Icahn*, 87-0524 (W.D. Pa.)
- *In re 1515 Broadway Associates, L.P.*, No. 90 B 13320 (Bankr. Ct. S.D.N.Y.)
- *SR International Business Insurance Co. Ltd. v. World Trade Center Properties LLC*, No. 01 CV 9291 (MBM) (S.D.N.Y.), *aff'd*, 467 F.3d 107 (2d Cir. 2006)
- *Korea Deposit Insurance Corp. v. Hanwha, et al.*, ICC Case No. 14501 JB/JEM/EBS/VRO
- *In the matter of the Arbitration between Centre Life Insurance Co. v. AXA Equitable Life Insurance Co.*
- *Aurelius Capital Partners v. The Republic of Argentina*, 584 F.3d 120 (2d Cir. 2009)
- *Commercial Money Center, Inc. v. Illinois Union Insurance Co.*, 508 F.3d 327 (6th Cir. 2007)
- *Dolan v. Fidelity National Title Insurance Co.*, No. 09-2697-cv (2d Cir. Feb. 11, 2010)
- *In re Johns-Manville Corporation*, 517 F.3d 52 (2d Cir. 2008)
- *Seijas v. Republic of Argentina*, Nos. 08-2847-cv, 08-2864-cv, 08-2922-cv, 082926-cv, 08-2943-cv (2d Cir. Nov. 5, 2009)
- *Winn v. Alamo Title Insurance Company*, No. 09-50511 (5th Cir. Mar. 30, 2010)
- *Bruckner Realty, LLC v. County Oil Company, Inc.*, 40 A.D.3d 898, 838 N.Y.S.2d 87 (2d Dep’t 2007)
- *Golden Gate Yacht Club v. Société Nautique de Genève*, 12 N.Y.3d 248, 907 N.E.2d 276, 879 N.Y.S.2d 363 (Ct. App. 2009)
- *In re MCA, Inc.*, 785 A. 2d 625 (Sup. Ct. Del. 2001)

Associations

- Association of the Bar of the City of New York
- American Bar Association



- American Law Institute
- International Academy of Trial Lawyers

Education

Justice Ostrager received his B.A. and M.A. from City College of the City University of New York. He earned his J.D. from New York University School of Law and served as a judicial clerk in the United States District Court for the Southern District of New York.

Mr. Ostrager is admitted in the New York and California State Bars; the United States District Courts for the Southern, Eastern and Northern Districts of New York, Connecticut, the Western District of Texas and the Northern and Central Districts of California; the United States Courts of Appeal for the Second, Third, Fourth, Sixth, Seventh, Ninth and District of Columbia Circuits; and the United States Supreme Court. He is also a member of the Association of the Bar of the City of New York, The American Bar Association, and The American Law Institute.