

Justice Barry R. Ostrager



Barry R. Ostrager served as a New York State Supreme Court Justice assigned to the Commercial Division for more than 8 years. During his tenure on the Bench, which concluded on December 31, 2023, Justice Ostrager resolved by motion, trial or settlement, more than 1,500 commercial cases. Prior to his appointment to the Bench, Justice Ostrager was a litigation partner at Simpson Thacher & Bartlett LLP and the long-time head of the 300-plus-attorney Simpson Thacher Litigation Department.

Justice Ostrager was prominently involved in many high-profile commercial cases and was lead trial counsel in many major insurance and reinsurance coverage cases. Among his notable representations, he served as lead trial counsel for Swiss Re in the World Trade Center insurance coverage litigation, securing a unanimous jury verdict, and represented Hanwha in a multi-billion-dollar dispute with the Korean government. In all, Justice Ostrager successfully tried five cases to verdict involving \$1 billion or more in dispute as well as dozens of other trials. In 1993, Justice Ostrager was lead trial and appellate counsel for Paramount Communications in the partially televised *QVC v. Paramount* tender offer litigation.

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 United States 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. It was, at the time, the largest ICC arbitration in history. Among other successes as a trial attorney, Justice Ostrager also litigated to conclusion another multi-billion-dollar ICC arbitration and has a wealth of experience in the resolution of international disputes.

Justice Ostrager is co-author of the Handbook on Insurance Coverage Disputes (Wolters Kluwer 2022), a widely used, three-volume treatise now in its twenty-first edition that has been cited by more than 350 courts. He is also co-author of Modern Reinsurance Law and Practice, 3d. (Legal Works 2014).

In June of 2006, Justice Ostrager was named the "Leading U.S. Litigation Business Trial Lawyer" by Chambers & Partners. For eleven consecutive years, Justice Ostrager was ranked by Chambers as a "Band One" General Commercial Litigator and "Band One" Insurance: Dispute Resolution



Leading Lawyer. For ten 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).

Justice Ostrager is a member of the Association of the Bar of the City of New York, The American Bar Association, and The American Law Institute. Justice Ostrager was recently elected to the National Academy of Distinguished Neutrals.

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. from City College of the City University of New York in 1968 and his M.A. in 1973. He earned his J.D. from New York University School of Law in 1972 and served as a judicial clerk in the United States District Court for the Southern District of New York.

Admittance

Justice 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.