Commercial Litigation Briefs - March 2013

March 29, 2013

New Jersey Revised Uniform Limited Liability Act Takes Effect March 18, 2013

By Michael L. Rich

The New Jersey Revised Limited Liability Act, enacted September 19, 2012 and codified at N.J.S.A. 42:2C-1,et seq., takes effect March 18, 2013 for all New Jersey LLCs formed after that date and any existing LLCs that elect to be subject to the Revised Act by amendment to the LLC's operating agreement. The Revised Act will apply to all New Jersey LLCs beginning April 1, 2014 regardless of election.

NJ Legislature Passes Bill Putting Strict Limits on Shareholder's Derivative Suits

By Charles J. Stoia

The New Jersey Senate and Assembly have passed legislation that would put strict limitations on derivative suits by corporate shareholders involving New Jersey corporations. The proposed law, S-2326 / A-3123, which won unanimous approval of the Senate Commerce Committee, passed the Assembly on December 17, 2012,and the Senate on February 7, 2013.

Delaware Supreme Court Upholds XTO's Bonus Plan Under the Business Judgment Rule
By Charles J. Stoia

In Friedman v. Adams, et al., No. 230, 2012 (decided January 14, 2013), the Delaware Supreme Court invoked the Business Judgment Rule to reject a shareholder's derivative complaint that challenged the decision of the XTO Energy Inc's corporate board to pay certain executive bonuses without adopting a plan that could make those bonuses tax deductible.

Courts Will Not Write a New Contract for Parties by Estoppel
By Charles J. Stoia

In Dombroski v. J.P. Morgan Chase Bank, N.A., 2013 U.S. App. LEXIS 2402 (3d Cir., decided February 4, 2013), the Third Circuit affirmed the district court's dismissal of plaintiff's complaint and refusal to allow leave to further amend his breach of contract claim. Dombroski contended that the contractual disclaimer in Chase's Code of Conduct is not sufficiently prominent and clear to preclude formation of a contract between Chase and him.