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refused to turn over a client's files to his successor. In the underlying wrongful-death action, attorney Kenneth Heller, 79, won a \$25 million jury award, which the trial court reduced to \$7.6 million and the Appellate Division, First Department, reversed and remanded. When Mr. Heller's client, Ruby Emanuel, whose husband died in a 1992 dry-docking accident, hired a new lawyer to retry the case, Mr. Heller refused to turn over his files, despite a sheriff's raid of his lower Manhattan office (NYLJ, March 27, 2007). Bronx Supreme Court Justice Howard R. Silver sanctioned Mr. Heller and sentenced him to 30 days in jail. Last week, another First Department panel upheld Justice Silver's order. In its unsigned decision, the unanimous panel held, "The finding of contempt and subsequent punishment and seizure order were warranted by appellant's disobedience of successive court orders unequivocally directing him to turn over his file to plaintiff's new attorney and the resulting prejudice to plaintiff's right to a new trial in this action for maritime wrongful death." *Emanuel v. Sheridan Transp. Corp.*, 00458/09, was published yesterday, page 28.

—Mark Fass

Judicial Nomination Chair Set to Testify in Albany

John F. O'Mara, the chair of the Commission on Judicial Nomination, is slated to appear this afternoon in Albany to answer questions from members of the Senate Judiciary Committee on the process the panel uses to select nominees for the Court

of Appeals. The Senate committee's chair, John L. Sampson, D-Queens, has questioned how the commission could produce a list of seven candidates to succeed Chief Judge Judith S. Kaye with no women and only one black among the nominees. Mr. O'Mara, a partner with Davidson & O'Mara in Elmira, said he could not appear at the Judiciary Committee's first hearing on the commission's work last week in Albany (NYLJ, Jan. 28) but welcomed the chance to publicly defend its selection process. Mr. O'Mara was appointed to the commission by former Governor George E. Pataki and will step down when his term ends on March 31. Mr. Paterson selected Presiding Justice Jonathan Lippman of the Appellate Division, First Department, to succeed Judge Kaye. The nomination is awaiting Senate confirmation. Today's hearing with Mr. O'Mara is set to begin at 1 p.m. in Hearing Room A of the Legislative Office Building.

—Joel Stashenko

New Charges in Murder Of Long Island Lawyer

The Long Island man charged with arranging the murder of attorney James DiMartino of Nesconset is facing new charges for an alleged plot to kidnap the daughter of an accomplice to stop her from cooperating with authorities. Ronald Thornton, 37, is charged with second-degree conspiracy for attempting to kidnap the daughter of codefendant Monique Randall, 20, a stripper who allegedly recruited the gunman who shot Mr. DiMartino, 44, in a restaurant parking lot in October. Mr. Thornton is

already facing first-degree murder charges (NYLJ, Nov. 19, 2008). Ms. Randall pleaded guilty to a second-degree murder charge in November and has agreed to testify against Mr. Thornton. In a statement, Suffolk County District Attorney Thomas J. Spota said Mr. Thornton made several calls from jail to an undercover detective he believed would carry out the kidnapping plot. As payment, Mr. Thornton allegedly offered a deed to a house already in foreclosure. Mr. Thornton's former attorney, Steven Whitis of Miller Place, said he presumed Mr. Thornton would plead not guilty to the conspiracy charges when he is arraigned Thursday.

—Vesselin Mitev

Bankruptcy Judge Slapped His Wife, Complaint Charges

The federal judge overseeing the bankruptcy of Wall Street investment bank Lehman Bros. has been arrested on charges of slapping his wife. Southern District Bankruptcy Judge James Peck was arrested Saturday at his Park Avenue home. He was charged with attempted assault and harassment. According to the misdemeanor court complaint, Judith Peck accused the 63-year-old judge of hitting her on the face with an open palm. It says the slap caused "substantial pain" in her jaw. Judge Peck was arraigned Sunday in Manhattan Criminal Court. Judge Lenora Gerald released him without bail and told him to return to court March 16. Judge Peck was initially represented by a Legal Aid Society lawyer but said he would retain a private attorney. He declined further comment.

—Associated Press

3rd of Feb.

February 3rd, 2009

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