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# Industry ROUNDTABLE

# WINE, BEER, CIDER AND SPIRITS

PRESENTED BY:



**Hodgson Russ**  
ATTORNEYS LLP

How do you grow your business in New York? How can distilleries and breweries work together? Is it hard to get your product in stores? What new regulations is the industry facing? Law firm Hodgson Russ and the Albany Business Review hosted a discussion to answer these questions and more. Melissa Mangini, editor of the Albany Business Review, moderated the discussion.



## ▶ MEET THE PANEL



**SONYA DEL PERAL**  
Title: Manager  
Company: Nine Pin Cider



**CHRIS MARTELL**  
Title: CEO  
Company: Druthers



**SERENE MASTRIANNI**  
Title: Co-Owner  
Company: Saratoga Courage Distillery



**ROBERT J. MCLAUGHLIN**  
Title: Attorney  
Company: Hodgson Russ, LLP



**RUSS TEPLITZKY**  
Title: General Manager  
Company: DeCrescente Distributing Co.



**ANDY WEBER**  
Title: Owner  
Company: Northern Cross Vineyards



## What are the biggest challenges to growing your business in New York?

**RUS TEPLITZKY:** We are a big employer in the Capital District, with about 400 employees. When you look at the universal health care proposal that's on the table, we're self-insured as a company. Do you want the government to manage that? Do you want private to manage it? This year we did not raise the rates for our health insurance to our employees. That's because we are able to manage our health care internally and have our employees really think through if they need something or don't need something, and have them be more of an advocate for what we do.

There are so many things on the books in New York state that are difficult to manage through: FMLA, disability, paid family leave. We have four folks in HR who manage through all the legislation that's coming up. We have our attorney on speed dial to say, 'hey, what's going on? What should we be doing? What should we be communicating?'

Regarding paid family leave and what's going on with that, we're very heavily blue collar. When a driver, merchandiser or warehouse person takes off, somebody needs to fill that role. We understand that it's being funded by the employee, but as it becomes bigger and bigger, and someone can get almost \$750 a week for eight to 10 weeks, you need to manage through that.

Sexual harassment training also just came down. You need to make sure that even your suppliers and customers are doing the right things there. There are lots of things that New York state wants us to work through as a company, and it becomes very difficult.

As you start putting fuel, benefits, unemployment, the bottle bill expansion – which is a new thing for us – it's a lot to deal with.

The labor market is very tough in upstate New York and it's very hard to recruit up here, as well. People don't want to come to the cold part of the country.

They'd rather go to other places. Even the suppliers that we deal with, when they lose somebody or somebody transfers, it's very difficult for them to recruit folks to come up here.

**CHRIS MARTELL:** It's hard getting qualified people in kitchens because of the very shallow labor pool that we have. We're in an atmosphere right now where if you go to school or maybe have a prep-cook or line-cook job for five months and you look on Instagram, all of a sudden you're a chef. You're not a first-year line cook or a six-month line cook, but rather you consider yourself an experienced individual with the ability to open your own shop. We are having some difficulty with that.


New York's Workers' Comp and unemployment rates are some of the highest in the nation. I practiced law for a number of years, and as you read these HR regs, we had to hire someone full-time. Regardless of whether you're big or small, the state can come knocking and do an audit. They are going to treat you the same as the big guys. The laws are laws and everyone has to follow them.

**SONYA DEL PERAL:** Specific to cider, one of the problems with New York is that there's a statutory cap on production for farm cider. After we reach that cap, we can't grow production any further. Our production is capped at 250,000 gallons, and that will be it for us unless we decide to give up that license and become a cider producer, in which case our entire model has to change. We still have some room for growth, but we will reach that cap within the next few years.

**ROBERT J. MCLAUGHLIN** The legal environment, unfortunately, in New York state, is, as you know: We're open for business, but here are all the strings that you have to comply with. It really is difficult for small businesses to grow and be successful beyond



where they are today because of all the strings, from a regulatory point, that New York state constantly imposes.

 **A lot of the governor's initiatives over the past few years were supposed to boost the craft beverage industry and distilleries. Has it gotten easier to operate in this industry, or has it gotten harder?**

**TEPLITZKY:** They've done a nice job with the Taste New York campaign, and when you go to the Times Union Center, there are more New York-based offerings. A lot of grant money has gone to some of the breweries, distilleries, wineries and cideries, and it brings awareness. The governor is trying, but there are still a lot of things to unwind.

**SERENE MASTRIANNI:** When we applied for our status as minority- and-women-in-business owned, we had the benefit of the Cuomo administration mandating support around facilitating that application process, which was really helpful for us. That's one way in which we were able to streamline the application and make sure that when it got in, it was reviewed.

There's an infrastructure in place with the Taste of New York. There's an opportunity for it to go deeper and include more of a robust offering of wines, spirits, beer and ciders, and I don't understand why we aren't part of that offering. We are small businesses and don't have the advertising budgets that national brands do.

Every time we have gone to the administration and asked for help, a lot of services have been made available to us. We actually started from a development fund and a low-interest loan that we were able to get to begin the distillery.

**ANDY WEBER:** The farm winery license, the way it's set up, is pretty easy. It's not a barrier to entry, by any means. It's inexpensive, a couple hundred dollars maybe, and you get to not only grow, but also manufacture and completely distribute under that license. Granted, there's the cap, but I don't see us coming up against that limit anytime soon. And you need the federal basic permit, which isn't difficult to get hold of, either. It just takes time.

Taste of New York seems to be a very vanilla kind of program to make sure everybody in New York state is included, and there isn't an emphasis or highlight on a specific industry or segments of that industry. One of the challenges is consumer education in New York state. They don't necessarily know what 'mead' or 'cider' is, and it's also getting them to understand what a true local product is. Is it grown here? Do you get product from someplace in New York state, from someplace out of New York state?

 **What can New York do better to help the industry?**

**DEL PERAL:** New York has done a great job of putting together these farm beverage sector laws. The real problem is that after Prohibition, they started chipping away piecemeal at the alcohol and beverage law, and there was never a comprehensive redo. There was not parity between the different beverage sectors, and wine ended up getting privileges that cider didn't get, and then beer got privileges that spirits didn't get. The law needs to have more of a global look.


**MASTRIANNI:** It's an archaic law in that beer and cider can be sold in beverage marts, but spirits and wine have to be separate. In other states, those laws don't exist. It's a fair and open market to sell in a



Standing, left, Andy Weber, Robert McLaughlin, Serene Mastrianni, Sonya del Peral; seated, left, Russ Teplitzky, Chris Martell

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variety of different locations, and I think that that is a perfect example of something that should be reviewed and overhauled. It's an opportunity, too, for the state to support local and allow local brands to be sold in a variety of these settings. We can go to a farmers market and sell our spirits, but we can't sell it at a Whole Foods. That's a real opportunity for us to grow.


 **Should the laws stay as they are, where you can't buy wine and spirits in a grocery store?**

**MCLAUGHLIN:** We know the laws are outdated, and we know that a lot of the laws don't encourage small businesses to grow or even to get started because of the hoops. Once you get going, there's no real encouragement on the state side to keep going and to keep growing. And in the legislature, unfortunately – and I find this in some of my other practices with the gaming stuff that I do – there's a mindset of, 'It's alcohol and therefore it's bad and therefore we need to save people from themselves,' which is a leftover from the 1920s and '30s that still continues. Until that mindset changes and until some people that are in the business get involved with the state legislature and get them to understand the issues, the law is going to be very slow to change.

I represent a couple of small liquor stores. Most liquor stores make their money on wine sales rather than liquor sales. You're not going in to buy as much liquor as maybe 20 or 30 years ago. If liquor stores lose the ability to have exclusive rights and they have to compete with grocery chains that can sell at a deep, deep discount, all those liquor stores are going to be gone. The vast majority of them, especially downstate, are in strip malls. You'll wind with empty strip malls, and that kind of cascades. And I think that's part of the legislature's mindset of not making those changes yet, but in 50 years it's going to be completely different.

**WEBER:** If I'm a small farm winery, I'm trying to give the consumer the experience of coming to see, look, feel, taste, touch. Compare this to someone in the Finger Lakes making 700,000 cases. They are never going to get the volume of traffic through a reasonably

sized tasting room. They just can't. So, they are going to need to go to as many distribution outlets as possible, and to include wine in supermarkets.


 **Are you worried about the potential of legal recreational marijuana?**

**MARTELL:** The only real literature I reviewed on this is on the NYS Brewers Association site. They've done studies in states that have recreational use and medicinal use, and compared those to state where it's illegal. And there's no real dip in alcohol sales. As a small business, you stand ready to adapt to whatever the next thing is.

**DEL PERAL:** If it's going to become legal, it should be done very carefully, just like any rollout of something that was once illegal and becomes legal. It has to be done very thoughtfully. If it has viability from an agricultural point of view and we roll it out in a way that would support small farming, as opposed to mega farming, that would be a better way to do it.

 **What's the importance of a wine trail and being a federally designated American Viticultural Area?**

**WEBER:** The Federal designation of the Upper Hudson AVA allows the wine producer to better identify the origin of the wine, and the consumer to better identify the wine. The wine trail helps reinforce the fact that we have this AVA in place, which is a great asset. The two work together. If you're on a wine trail, a certain percentage of your product is going to come from within the AVA. Now you have a true local product that a consumer can identify. The next step is to look at how the long-range plan for this as a wine region 40 years from now and look at we incorporate all the other adjacent industries – beer, wine, cider.

 **How can distilleries, breweries and wineries work together to create a better network?**

**DEL PERAL:** We formed the Capital Craft Beverage Trail. We started off as the four producers on



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Broadway in Albany, and now we have 42 producers in the eight counties that make up the Capital Region Economic Development Council. It has been a phenomenal success. We've put on these events that sell out, and because of the privileges of the farm beverage licenses, we support each other by selling each other's products in our tasting rooms.

**MASTRIANNI:** We're not open to the public because our license doesn't allow us to have a tasting room. But we've partnered with Saratoga Winery, which is kind of our official tasting room, and with Heron Hill, our official tasting room in the Finger Lakes area.

Some of our growth opportunity is coming together as a consortium and sharing resources, like equipment. We're reaching capacity with our labeler and our bottler. And so rather than investing in the next step, maybe there's an opportunity for us to rent a labeler from one of the other distilleries that might streamline our process, or bottle different sizes. We want to get into micro-sized bottles for spirits. My next step is to partner with other local companies.

### Is the craft beer industry still growing?

**MARTELL:** Yes. Just not as fast as it was maybe a few years ago. When we first got into this, I think we were experiencing double-digit growth every year. With 195 million barrels, or 88 percent, of the market not craft, there's certainly room to grow. But there's only a certain amount of shelf space out there and it's a bit more challenging now because there's a limited amount of shelf space.

There's room for growth, but it would be hard to imagine a small brewery going from a little spot

here to the next Sam Adams or the next Lagunitas. I can't imagine making the investments required to get that big into a market that you don't know too much about. There will probably be a shakeout at some point, depending on why people get into it.

### How is the wine industry faring?

**WEBER:** This is really microscale within the AVA, but we expect to double the amount of vineyards in the next couple years. It's still not a big number – probably just over 100 acres of vineyards in the ground – but there's been a surge of planting in the past couple years. It takes three years before you can actually start to pick and produce. There are still plenty of challenges, including marketing, branding, consumer education and the like, and it will be interesting, going forward, how big we get.

### With cider and craft beer, there's this notion of 'drink local.' It's not necessarily the same for wine, is it?

**WEBER:** It's the brand name. In the past decade or so, the Finger Lakes and New York wines have gotten much better. They're learning every year. It's going to be a long struggle for us in the Upper Hudson to take these grapes that no one has ever heard of, like Marquette and Frontenac, for the reds. They do have Vinifera, Pinot Noir and Merlot lineage in them, but they are not those grapes. The wineries are learning, too. There's that minimum historic knowledge that we have about how to make it, and that makes it fun. Every year it's a big experiment to say, hmm, I wonder what this is going to taste like now. It's a

slow learning process and we've got one shot a year digging grapes, mixing in whatever yeast we want, mixing in whatever malolactic bacteria we want, fermenting it, macerating it, all that sort of stuff to say, OK, how do I make a good product out of this, and then compete with the weather up here, and disease and bugs, too.

### Are there too many tasting rooms?

**MCLAUGHLIN:** There's not enough.

**DEL PERAL:** The whole point is to promote New York agriculture, and that's what a tasting room does. It means that somebody is manufacturing a fantastic product out of something that's grown in New York. New York is the second largest apple-producing state in the nation. But a lot of people don't know that New York is No. 1 in the U.S. for apple varieties. We are considered world-class for cider production because of the complexity of our cider, and because of the absolute range of cider apple varieties that are produced here. From the Finger Lakes to the Hudson Valley, you can have a different experience just based on the apple varieties that are local to these various areas. So, the more the merrier.

### How do you differentiate yourself in this industry?

**MASTRIANNI:** Saratoga Courage is laser-focused on vodka. Our flagship product is Pick Six Vodka. About 10 years ago, there was a shift from import to domestic, or made-in-the-U.S.A. premium vodka at a value price. When we entered the market as a

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local alternative into that space, we were really nicely positioned and looked at what plays the best in terms of making sure that people try our vodka and then sticking with it. We looked at resources that we had, and as much as you're talking about apples, we also had this amazing water, Saratoga water, and we knew that we would be able to hit what we call the Four Fs: fragrance, feel, flavor, and finish.

We took a lot of extra energy to make sure our product remained consistent because this was something that the craft spirits struggled with. We wanted to offer premium product at value cost, and something the consumer would reach for again and stay with.

From a marketing standpoint, it's been a little bit more challenging because we don't have the budget that a national brand would have. We're running such a fine line, and we've tried to encourage that local conversion. We came out with a campaign like "Drink My Vodka" because you can own this vodka. It's here and you can share it with your friends.

**MARTELL:** We differentiate in the land of IPAs. You go to any store and it's probably going to be in the craft section. If you're going to sell beer in this market, you're going to have to do the IPAs. But in our brewpubs, we try to have something for everyone and keep a varied board: German beers, Belgian beers, American beers, sours. We joke about it, but if you order a flight of beer, we are grading ourselves on the number of colors you're getting in that flight. It is not just going to be all pale. It's not going to be all-dark. We want to have a range of products.

We differentiate ourselves with community involvement. We do quite a few things in the community. We have a pretty distinct logo, but I don't know that we come close to mastering the market. We use the best ingredients, put out the best product. We have thrown away batches that didn't meet our standards.

**DEL PERAL:** We are lucky we can claim that we were New York's first farm cidery. Nobody else can claim that, and we use that as a tag line. I believe we were also New York's first urban cidery. Before we set up here in the Warehouse District, everybody would go to rural areas to go to a cidery. We have some other slogans, like "Drink New York Apples."

We partnered with the City of Albany and Washington Park Conservancy to plant an urban orchard in Washington Park, which we are tending to as an educational project. We have a couple more planned. We would like to distinguish ourselves as promoting this sort of educational mission about orchards.

**TEPLITZKY:** We represent so many different brands, but we still look at DeCrescente as a brand. For us, it's about recruiting suppliers that want to be with us. It's about recruiting people that want to work for us. Those are the things that we do when we start talking about DeCrescente as a brand. We have been here since 1948. We talk about our reputation. We think our people are everything. Community involvement really goes back to our guiding principles as a company, to make sure we're doing the right things within the community. We represent some of the folks on the panel who have a particular brand. Our job is to represent them the right way in the market.



#### Is it difficult to get into stores?

**MARTELL:** If you buy a bottling machine, you better have an outlet for that product. There are a lot of brands competing for the same space, and for every DeCrescente, you've got a Saratoga Eagle or a Remarkable Liquids. You're competing for the same shelf space. Everyone has a Salesforce now, so not only is your distributor trying to get you shelf space, you've got a Salesforce. And they are competing against the entire line.

Once you get the shelf space, your product actually has to sell. Someone walking through a Hannaford or a Price Chopper, we've got three SKUs and it's Druthers, Druthers, Druthers right in a row. Even if they are not buying your product, they are seeing it and it is re-enforcing your logo, your brand. But it is very difficult to get into stores.

**MASTRIANNI:** The Capital District represents a great model for the rest of the country because we have so many different geographic layers right here. And so what works in Albany might not work in Saratoga. Once you figure it out, you really can have a good model to grow and expand so you can be a national brand. We are in double-digit growth and we believe that if we do it right, we could be the next national brand.



#### What new regulations does the industry face?

**MCLAUGHLIN:** One of the disadvantages we have in New York state is that many of the people in these regulatory bodies have never really been in a small business. They have no idea what it takes. They have no idea what it means. If they add on a regulation that seems great and protects the consumer and maybe

gains some revenue for the state, they don't consider how it impacts the industry. Something regarding water purification, or whatever the issue is, might sound great in the incubator, but in the real world, these are the challenges we face.

**TEPLITZKY:** When a legislator doesn't understand downstream what happens with an idea, that's when things start coming up. To be able to educate a legislator on a bill and help them understand the ramifications, whether it's to us, the retailer, the supplier or the consumer, and they want to know more, those are the folks that we love. At that point, they're good advocates for us when they are on the floor because they understand our business a little bit better.

**MARTELL:** One thing I have seen recently floating out there that I think would be devastating is reducing the legal limit for driving while intoxicated to .05. Where it is now, most adults are comfortable that they could go out and have one drink with dinner and drive home. If it goes to .05, I think you'd get a lot of folks who'd just prefer to drink at home. But they are not typically the people we're talking about. If you read the police blotters, drivers that are getting hit are well into .12, .14. On paper, the idea of making sure the roadways are safer is great, but what are you doing for an entire industry? The restaurant industry would be crippled by something like that.



#### Did the government shutdown affect any of your businesses?

**WEBER:** It was hard getting our labels approved. We had to wait until government finally opened up so that TTB could approve the labels again. It's a minor hiccup, but it's a nuisance.

**MASTRIANNI:** We got caught in the shutdown also. We're in the process of getting one small word on our label changed, and it held up the whole process.

**MCLAUGHLIN:** We have some clients that import from Canada and their importing products were delayed at the border because there were no inspectors, or a limited number of inspectors. They ramped up and everything has been solved now, but this certainly was an effect.