Greetings and happy new year! Our Committee has just completed a highly successful Fall Meeting in New York City on November 30 and December 1, 2000, and preparations are under way for an outstanding series of Committee programs and meetings at the Business Law Section’s Spring Meeting in Philadelphia on March 23-26, 2001.

First, to the highlights of our Fall Meeting. Many of you, including a record number of first-time attendees, joined us in New York City on November 30 and December 1 for our Committee’s Fall Meeting. On November 30, Committee members and friends from around the country, including judges and inside and outside counsel, gathered at the opening event, a reception hosted by Willkie Farr & Gallagher and Committee dinner at Cité, organized by Linda Daly of Paul Weiss Rifkind Wharton & Garrison.

On December 1, the Committee presented three outstanding programs on topics of interest to all business litigators. Each panel featured distinguished members of the bench and bar. At the first, panelists addressed the new age of electronic board meetings and other recent developments in Delaware corporate governance law, including recent amendments to Delaware’s General Corporation Law that enable corporations to use electronic communications in various aspects of corporate governance, including annual stockholder meetings. At the second program, panelists addressed recent developments in class actions, including the prospects for legislative reform in light of the November election, the results of which remained uncertain at the time of the meeting. Our third program, presented by the new ADR Subcommittee, addressed how to succeed in judicial settlement conferences and mediation, from the
perspective of the state and federal judiciary, private practitioners, and in-house counsel.

As always, the informal format of the meeting permitted extensive discussion among panelists and audience members, both during and after the formal presentations. Also, because it is a smaller setting than the ABA Annual Meeting and Section Spring Meeting, the Committee’s Fall Meeting served as an ideal format for new Committee members to become familiar with Committee projects, and to become involved with publication, program, and other opportunities.

On to Philadelphia! The Business and Corporate Litigation Committee is sponsoring three substantive programs at the Section’s Spring Meeting, as well as more than a dozen substantive Subcommittee Meetings and a Committee Dinner at a location to be determined. Our programming activity begins on Thursday, March 22, when we will present a program on the Business Courts movement, from 10:30 AM to 12:30 PM, chaired by Mitchell Bach. Specialized business courts have been adopted by state court systems in several jurisdictions around the country to meet the particular needs of business litigants. Most recently, Philadelphia has formed a commercial division in its Court of Common Pleas; and one of the judges in that court, The Honorable John W. Herron, will join Vice Chancellor Jack B. Jacobs of the Delaware Chancery Court and others to discuss this important development for business litigators.

On Thursday afternoon, the Committee will present its annual Review of Developments in Business and Corporate Litigation program from 2:30 to 5:00 PM. This outstanding program, chaired this year by Jim Hawkins and Greg Varallo will update litigators and non-litigators on what they need to know about significant developments in a broad range of areas including antitrust, mergers and acquisitions and securities, to name just a few.

Our Committee Forum and meeting will take place on Friday, March 23, from 8:00 to 10:00 AM, organized by Jay Dubow and Martin Grant, new co-chairs of our Criminal and Enforcement Subcommittee, and will address the important topic of What To Do When Business Problems Become Business Crimes. Criminalization of conduct that was once addressed purely as a civil and regulatory matter has been a topic of great interest to the defense bar, and senior criminal and regulatory enforcement lawyers including Ron Long, Chief of the SEC’s enforcement efforts in the Philadelphia office of the SEC, as well as experienced defense lawyers, will discuss what makes a case “go criminal”, and what you can do to avoid that development.

Finally, don’t forget that Subcommittee meetings will take place throughout the Spring Meeting, on Thursday, Friday, and Saturday, March 22-24. Nearly all Committee projects, including programs for the Section Spring Meeting, ABA Annual Meeting, and Committee Fall Meeting, originate in our Subcommittees, and ideas from both newcomers and experienced members are welcome. As just one example, our Securities Litigation Subcommittee will sponsor a mini-program on Saturday, March 24, at 10:00 to 11:00 AM, on the Nuts and Bolts of Regulation FD, in which an expert panel of recent SEC alumni and corporate counsel will explain the new disclosure rules and provide practical guidance on managing analyst and investor communications. Our Class and Derivative Actions Subcommittee is also planning a mini-program on Saturday, March 24 from 2:00 to 3:00 PM on Recent Developments and cases of interest. A complete list of Subcommittee Chairs is included in this and every issue of Network, and you should feel free to contact any of them, or me, by e-mail before or after the Spring Meeting to pass along a suggestion or ask how you can become more involved.

So please put Philadelphia on your calendar and prepare for an interesting and in-depth discussion with your business litigator colleagues. We look forward to seeing you there!

Business and Corporate Committee Listserv Update

Did You Catch the Virus?

As you may know, many Committee listserv participants experienced problems with a copy of the Navidad virus that was transmitted inadvertently by a Committee member who had maintained a copy of an e-mail distributed by the listserv in his computer system. When his system became infected with the virus, it caused several recipients of the original e-mail to receive an infected, duplicate copy. In nearly every circumstance, antivirus software intercepted the virus, and no damage was done. But some Committee members experienced significant difficulties. Although this did not originate with the ABA’s computer system, it obviously caused great concern, because the Committee listserv must be viewed
as reliable in order to be useful for Committee communications. We understand that additional precautions have now been taken, so that this problem, unlikely in the first instance, should now be even less likely to recur. So please feel free to use the Committee’s listserv to communicate messages of interest to our membership, by sending messages to bclmembers@mail.abanet.org.

Special Invitation to People Who Like Breakfast!

Please plan to attend the Women’s Caucus Breakfast at the Business Law Section’s Spring Meeting on Saturday, March 24, beginning at 7:30 AM in Philadelphia. For newcomers -- women and non-women alike -- this breakfast is among the best ways to meet Section leadership and active Committee members, and to get connected with the Committees and Subcommittees that will best meet your needs. For experienced Committee hands -- again, women and non-women alike -- this breakfast will give you a great opportunity to be an informal mentor to a new member of the Section, and possibly to introduce a new Section member to our Committee. The coffee is hot, the food is good, and there is no charge or registration procedure to attend -- just stop by and say hello!

FEATURE ARTICLES

LITIGATION DEVELOPMENTS AND THE INTERNET

by Judy Y. Barrasso and Scott B. Arceneaux

I. Federal Statutes Giving Rise to Internet Litigation

The last ten years have seen the explosion of the internet, e-mail and a whole new e-based economy. Federal law, however, has struggled to keep pace with our changing economy. Even now, Congress is struggling with how to best deal with the internet and all of the issues it brings to the fore, particularly the issues of internet privacy and intellectual property protection. In fact, as regards privacy issues, Congress has concluded that, as things presently stand, federal law provides users of the internet with virtually no privacy protection. See S. 2606, 106th Cong. § 2(3) (2000).

This failure of federal law, however, to specifically address the internet is being rectified and, regardless, has not, in fact, discouraged internet litigation. A number of extant federal statutes can and are being used in internet litigation, while Congress continues to pass new legislation specifically targeted at the internet. For example, many federal statutes passed during the 1980’s to combat “computer hackers,” such as the Electronic Communication Privacy Act and the Computer Fraud and Abuse Act, are now being used to attack alleged internet violations.

A sampling of these statutes, along with a new internet specific law, are discussed below.


The Electronic Communications Privacy Act (“ECPA”), a criminal statute, was passed by Congress in the 1980’s in order to create a cause of action against “computer hackers.” It has two main provisions which prohibit two types of conduct. First, 18 U.S.C. § 2701, which applies universally (i.e., to all people and entities) and prohibits intentional accessing of data, without authorization, from a facility through which an electronic communication service is provided or in excess of authorization to access such a facility. Secondly, § 2702, which applies only to providers of electronic communication services to the public or to providers of remote computing services to the public, prohibits these types of providers from disclosure of the electronic data they come in contact with, save in certain enumerated circumstances, see 18 U.S.C. § 2702(b). Both statutes provide for criminal penalties.

What makes the ECPA a potentially popular vehicle for internet litigation is its litigant friendly private cause of action provision, 18 U.S.C. § 2707. Section 2707 provides a private right of action for any person or entity aggrieved by a violation of the ECPA and allows for injunctive relief and the recovery of damages and attorneys fees and other litigation costs. 18 U.S.C. § 2707(b). The statute appears to limit damages to “actual damages suffered by the plaintiff,” but includes as damages “any profits made by the violator as a result of the violation.” 18 U.S.C. § 2707(c). Moreover, the ECPA provides a statutory floor on damages, it states "in no case shall a person entitled to recover receive less than the sum of $1,000.00." Id. Furthermore, the ECPA also
provides for punitive damages. An action under this statute is subject to a two year prescriptive period.

**Leading Cases:**

1) *Anderson Consulting L.L.P. v. UOP*, 991 F. Supp. 1041 (N.D. Ill. 1998) (case dealt with a claim that e-mail had been divulged by a business in violation of the ECPA); and

2) *Sherman & Co. v. Salton Maxim Housewares, Inc.*, 94 F. Supp. 2d 817 (E.D. Mich. 2000) (dealt with a ECPA claim against a party who had accessed a business computer and obtained proprietary information which was disclosed to a competitor).


A pre-internet federal criminal statute which could be used as a possible vehicle for internet litigation is the Wiretap Act. The act generally prohibits intercepting, disclosing or using wire, oral or electronic communications absent authorization or consent. See 18 U.S.C. § 2511.

The Wiretap Act provides a private right of action, very similar to the ECPA, at 18 U.S.C. § 2520. Again, this private right of action is very plaintiff friendly. The act allows a party aggrieved by a violation of the Wiretap Act to recover from the violator equitable and general damages as defined by the act. As with the ECPA, the Wiretap Act provides for the recovery of punitive damages and attorney's fees and costs. 18 U.S.C. § 2520(b). Additionally, the Wiretap Act allows for the recovery of actual damages and any profits made by the violator. Interestingly, the Wiretap Act also contains a statutory floor on damages which could conceivably be an extremely large amount: “statutory damages of whichever is the greater of $100 a day for each day of violation or $10,000.” 18 U.S.C. § 2520(c)(2)(B). A plaintiff need not elect to receive statutory or actual damage for the court is simply directed to award the greater amount. Finally, the act also contains a list of good faith defenses along with a two year prescriptive period.

While it does not appear that the Wiretap Act has come in to wide us in internet litigation, it certainly could be a very effective tool for an aggrieved party considering the remedies provided.

**Leading Case:**


The Computer Fraud and Abuse Act (“CFAA”), 18 U.S.C. § 1030, is another criminal statute dealing with the illegal obtaining of information from certain enumerated computers or damage to those computers via illegal access. For example, a portion of the CFAA states, *inter alia*, “[w]hoever, intentionally accesses a computer without authorization or exceeds authorized access, and thereby obtains information contained in a financial record of a financial institution, or of a card issuer as defined in section 1602(n) of title 15, or contained in a file of a consumer reporting agency on a consumer, as such terms are defined in the Fair Credit Reporting Act (15 U.S.C. 1681 et seq.) . . . shall be punished as provided in subsection (c) of this section.” 18 U.S.C. § 1030(a)(2)(A). The CFCA also prohibits unauthorized access to federal government computer files. The plain language of the statute and the case law reveal that this particular criminal statute is directed, as was the ECPA, at people commonly referred to as “computer hackers,” i.e., those who intentionally and nefariously break into certain computer systems to gain protected information or damage information contained in those particular protected computer systems.

In 1994, the CFAA was amended to provide for a private right of action. See 18 U.S.C. § 1030(g). This provision states that “[a]ny person who suffers damage or loss by reason of a violation of this section may maintain a civil action against the violator.” Id. The CFAA, however, is not as generous as the ECPA or the Wiretap Act. It does not provide for the recovery of attorneys fees or punitive damages and provides no statutory floor on damages. The CFAA allows for only compensatory damages and injunctive relief.

While the CFAA has also not taken off as a litigation vehicle, it may provide consumers a cause of action against financial institutions or credit agencies who improperly obtain and/or use their financial information.

**Leading Cases and Articles:**

1) *United States v. Sablan*, 92 F.3d 865 (9th Cir. 1996) (former bank employee convicted of intentionally logging on to a bank’s mainframe without authorization and damaging bank files); and


There has been at least one federal statute recently passed addressing an internet specific problem, “cybersquatting.” The growth and popularity of the internet has been paralleled by the phenomenon of cybersquatting. Cybersquatting is a general term describing the act of registering another’s mark, or a variation of another’s mark, as a domain name in a bad faith attempt to gain profit off the mark or, in some instances, to dilute the mark or injure the owner of a mark. While such action could be attacked under traditional intellectual property statutes, in 1999, Congress chose to amend the Lanham Act to specifically address the problem of bad faith cybersquatting.

The Anti-Cybersquatting Consumer Protection Act (“ACPA”), codified at 15 U.S.C. § 1125(d), amended the Lanham Act to create a cause of action in favor of owners of marks (including personal names), protecting them from bad faith internet activities. The ACPA specifically attacks bad faith conduct and even contains factors meant to explain what is meant by bad faith under the act, § 1125(d)(1)(B)(i). The ACPA provides for the same remedies traditionally available under the Lanham Act. In addition, at the plaintiff’s election, the ACPA allows for the recovery of statutory damages, instead of actual damages, “in an amount not less than $1,000 and not more than $100,000 per domain name.” Moreover, the act provides for in rem jurisdiction and for a plaintiff to potentially take over the offending domain name.

While this statute is very new and untested, it will most likely see a great deal of action in the future.

**Leading Cases and Articles:**

1) Sporty’s Farm L.L.C. v. Sportsman’s Market, Inc., 202 F.3d 489 (2nd Cir. 2000) (the leading circuit court cases interpreting the ACPA);


E. Contemplated Federal Legislation

While Congress has been slow to answer the internet boom with legislation or regulation, it appears that this state of affairs will be quickly rectified. The following is merely a partial list of bills considered by the 106th Congress. These bills did not make it into law, but look for these bills to be re-filed with the next Congress.

1) **Unsolicited Electronic Mail Act of 1999:** A bill to protect individuals and internet service providers from unsolicited and unwanted electronic mail. This bill provides for criminal penalties as well as a private right of action whereby plaintiffs could recover statutory penalties and attorneys’ fees.

2) **Internet Gambling Prohibition Act of 1999:** A bill to prevent internet gambling.

3) **Online Privacy Protection Act of 2000:** A bill requiring the Federal Trade Commission to prescribe regulations to protect the privacy of personal information gathered about people and to provide greater individual control over the collection and use of personal information.

4) **Notice of Electronic Monitoring Act:** A bill effecting employment law, provides for the disclosure of electronic monitoring of employee communications and computer usage in the workplace. The bill seeks to create a private right of action where a plaintiff can recover liquidated damages (in place of actual damages), punitive damages and attorneys’ fees.

5) **Personal Pictures Protection Act of 2000:** Bill seeks to make it a federal crime to publish sexually explicit photographs on the internet without permission of the person photographed.

These statutes are just a sample of the kinds of federal laws which may be passed in the near future which will change the internet litigation landscape.

II. The Internet and Personal Jurisdiction


At one end of the spectrum are situations where a defendant clearly does business over the Internet. If the defendant enters into contracts with residents of a foreign
jurisdiction that involved the knowing and repeated transmission of computer files over the Internet, personal jurisdiction is proper. At the opposite end are situations where a defendant has simply posted information on an Internet Web site which is accessible to users in foreign jurisdictions. A passive Web site that does little more than make information available to those who are interested in it is not grounds for the exercise of personal jurisdiction. The middle ground is occupied by interactive Web sites where a user can exchange information with the host computer. In these cases, the exercise of jurisdiction is determined by examining the level of interactivity and commercial nature of the exchange of information that occurs on the Web site.

Following Zippo, courts continue to grapple with the issue, with the majority finding personal jurisdiction where the web site is interactive. Below is a sampling of recent federal court decisions.

1) Mink v. AAAA Devel. L.L.C., 190 F.3d 333 (5th Cir. 1999) (web site with printable mail-in form, a toll free call-in number and e-mail address is not sufficient to confer personal jurisdiction).

2) People Solutions, Inc. v. People Solutions, Inc., 2000 U.S. Dist. LEXIS 10444 (N.D. Tex. 7/25/00) (applying Zippo test and finding that defendant whose web site had the potential to interact with, sell products to, and contract with Texas residents but had not actually had significant Texas-based commercial activity was not subject to personal jurisdiction).


6) Where a defendant's only contact with a jurisdiction was through the domain name registration, the defendant lacked sufficient contact to confer personal jurisdiction. America Online, Inc. v. Chih Hsien Huang, 2000 U.S. Dist. LEXIS 10232 (E.D. Va. 7/13/00); Heathmont E.A. Corp. v. Technodome.Com, 2000 U.S. Dist. LEXIS 10591 (E.D. Va. 7/24/00).

Leading Articles:

1) Kevin R. Lyn, Personal Jurisdiction and the Internet: Is a Home Page Enough to Satisfy Minimum Contacts?, 22 Campbell L. Rev. 341 (2000);

2) Richard P. Rollo, The Morass of Internet Personal Jurisdiction: It is Time for a Paradigm Shift, 51 Fla. L. Rev. 667 (1999); and


III. Intellectual Property Litigation and the Internet

The internet has provided people with a powerful forum for the almost unlimited and unchecked dissemination of images and ideas. It is because of this almost unlimited power to distribute information, i.e., content, of all shapes and sizes and for users to potentially effect, change or redistribute that content, however, that very serious concerns have arisen regarding the protection of intellectual property rights in light of the internet.

For example, authors have been in a struggle recently with publishers regarding the re-publication of articles on the internet (everyone is probably familiar with virtual newspapers, e.g. the New York Times online). How authors can best protect their works and the rights of publishers are questions that have yet to be answered. See Tasini v. The New York Times, 206 F.3d 161 (2nd Cir. 1999) (cert. to the U.S. Supreme Court is pending).

Congress has attempted to address some concerns, at least the concerns of online service providers (e.g. “AOL”), with the Digital Millenium Copyright Act of

The Act defines four types of service provider involvement and in all instances the service provider is not liable for monetary damages as long as it is not the source of the infringing material and does not alter the content:

(1) In **transitory communications**\(^2\), a service provider is not liable for transmitting or routing the infringing material as long as the service provider does not initiate the transmission or select the recipients of the transmission.

(2) In **system caching**\(^3\), a service provider is not liable for caching as long as it fulfills reasonable requirements that the content provider imposes on caching.

(3) In **information storage**\(^4\), a service provider is not liable as long as it (a) does not have constructive knowledge that the material is infringing; (b) does not receive a direct financial benefit from the infringing activity; and (c) follows the notification procedures discussed below.

(4) In **information location tools**\(^5\), the same rules apply as apply to information storage.

To avoid liability, the new law includes specific **notification** procedures for all types of service provider involvement except for “transitory communications.” First, the copyright owners must notify the service providers of the alleged infringement. The notification must include:

(1) the physical or electronic signatures of the person authorized to act on behalf of the copyright owner, (2) identification or a representative list of the copyrighted works being infringed, (3) identification of the alleged infringing material, (4) contact information for the complaining party, (5) a statement that the complaining party in good faith believes the material to be infringing and (6) a statement that the notification is accurate and that (under penalty or perjury) the complaining party is authorized to act on behalf of the copyright owner. Once the service provider receives a notification, the service provider must respond “expeditiously to remove, or disable access to, the material that is claimed to be infringing…”\(^6\) The service provider then must notify the alleged infringer that access to the infringing material will be removed or blocked permanently unless the infringer submits a counter-claim to the service provider contesting the allegation of infringement.\(^7\) When the service provider receives such a counter-claim, the service provider must forward the counter-claim to the copyright owner. At this point, the service provider must wait 10 business days (but not more than 14) before restoring access to the material. If, within that time, the copyright owner notifies the service provider that the copyright owner has filed an action for a court order against the alleged infringer, the service provider is not obligated to restore access to the work.

A current knock against the act is that the Digital Millennium Copyright Act provides too much of an incentive for service providers to remove alleged infringing material, creating an imbalance in the “fair-use” tradition of copyright law and threatening freedom of speech. The act, however, is as yet untested.


### IV. Defamation and Trade Secret Litigation and the Internet

Defamation suits arise from the posting of false and defaming statements on message boards or web sites. When this occurs, the true defamer often is unknown since postings typically are done under assumed names. To make matters worse, the message board hosts and internet service providers ("ISP"), such as Yahoo, America Online or Microsoft Network, generally are immunized from liability for third-party postings by the Communication Decency Act, 47 U.S.C. § 230. This is in contrast to other publishers of information written by others who may be held liable for publishing or distributing obscene or defamatory information published by others. Congress decided to treat ISPs differently.

Nevertheless, legal redress is available to the defamed party. In these circumstances, suits have been filed against the message board host and Joe Doe defendants. For example, in California, an individual used 27 different aliases to post 163 messages disparaging Callaway Golf Corporation and encouraging shareholders to sue. The corporation was able to issue subpoenas and uncover the name of the John Doe poster. Suit was then filed by the individual identified. See R. Grover, "The Perils of Teeing Off Online," Business Week, March 13, 2000.

Raytheon Co. also was the subject of anonymous postings disclosing confidential inside information. Raytheon sued to enjoin the postings.
Although the ISP or message board host may not be liable, they may be required to disclose the identity of the poster or information that could lead to discovery of the identity. Recently, an Ontario, Canada trial court ordered an ISP to reveal the identity of poster. Such suits should be brought quickly after the defamatory postings because the ISPs only retain the information needed to identify the posters for a very short period of time. Subpoenae directed to the ISPs should be expeditiously issued, seeking disclosure of all information about the poster, including the ISPs through which each Joe Doe posted a message. Subsequent subpoenae may have to be issued to the ISPs used by the poster to access the message board. Include a request with the subpoena to preserve all evidence.

Some ISPs will produce the requested information without notice to the poster. Posters, however, have objected to the disclosure, and sued the ISP. See Doe a/a/a Aquacool 2000 v. Yahoo Inc., D. Ct. Cal. (2000) (challenging ISP’s disclosure of information without notice to poster). Digital Discovery & e-Evidence, 1 at p. 16 (Dec. 2000).

**Leading Case and Article:**


1 Judy Y. Barrasso is a partner at Stone, Pigman, Walther, Wittman & Hutchinson in New Orleans, Louisiana. Scott B. Arceneaux is an associate at the firm.

2 Where the service provider acts as a “mere conduit” and only transmits the material.

3 Where the service provider temporarily stores material.

4 Where the service provider provides storage space for its users.

5 Where the service provides links or other references to material.

6 If the service provider does not remove the material expeditiously, that provider faces full liability under the law.

7 If the service provider does not notify the alleged infringer that access to the infringing material will be blocked permanently unless the infringer submits a counter-claim, the service provider may be liable to the alleged infringer for blocking access.

**BUSINESS LAW SECTION SEeks Fellows**

by Heidi M. Staudenmaier

New members are the lifeblood of every organization, and the Section of Business Law is no different. For years, members have joined the Section as their practices began to focus more exclusively on business, often in their late thirties and early forties. Recent law graduates tend not to identify themselves as "business lawyers" but to focus on litigation, or a narrower subspecialty such as tax. The problem is not so much with the nature of their practices—the practice of business law has been booming in recent years. It's more a matter of developing a sense of what business lawyers do, and how the Section can help.

As a result, the Section of Business Law has not always experienced the growth that we wanted among younger lawyers who practice primarily or exclusively in areas that fall within our scope. To alleviate that situation, and to assure the Section a strong and steady supply of future leaders, Jim Cheek, past chair of the Section, developed the Business Law Fellows program in 1998. Through this program, the Section has reached out to leaders in the ABA Young Lawyers Division, and offered them access to the opportunities for personal and professional development that the Section can provide.

The Business Law Fellows program has proved to be a success, now in its fourth year. The Fellowship appointment is for two years. Five new Fellows are selected each year.

The goal of the program is to give active members of the Young Lawyers Division an opportunity to become involved in the substantive work of the Section, to develop future leaders of the Section, and to enhance
knowledge about the work of the Section among members of the Young Lawyers Division.

To be considered for selection, a person must be a member of the Section of Business Law who is also an active member of the Young Lawyers Division (or an active member who has aged out within the last three years); candidates must demonstrate significant interest and achievement in an area of business law that coincides with the work of a substantive Section Committee.

Each Fellow is assigned a Committee and a mentor to work with during his or her years of service. The Section leadership has committed to provide funding so Fellows may attend Section meetings and to involve the Fellow in the substantive work of the Committee to which the Fellow is assigned, and each mentor will work to maximize the opportunities for participation and professional development.

In return, the Fellows make the following commitments to the Section:

1. To attend the Spring and Annual meetings of the Section, as well as any stand-alone meetings of the Committee to which the Fellow is appointed;

2. To remain involved in the activities of the Young Lawyers Division (or be aware of the activities if the Fellow has aged out of the Young Lawyers) and to identify substantive areas of common interest where members of the Young Lawyers Division can participate in the work of the Section;

3. To work with the Young Lawyers Division Liaisons in recruiting members to join the Section, with a specific goal for each Fellow of recruiting no fewer than five persons in each year to participate in the work of the Section;

4. To work with the Young Lawyers Division Liaisons to expose members of the Young Lawyers Division to the benefits of Section membership, including the planning of joint social and substantive programs at the Annual Meeting;

5. To report to the Section Council and the Young Lawyers Division Executive Council on their activities within the Section;

6. To make a current commitment to continue active involvement at the Committee level in the Section after the Fellowship is completed; and

7. To act as a mentor to new Business Law Fellows and other Young Lawyers Division members recruited into the Section, and to help organize an annual Fellows alumni event to be held at the Spring meeting of the Section.

The selection of Fellows is a three-stage process. First, the candidate must be nominated by a member of the Young Lawyers Division or the Section. The candidate must be a lawyer practicing business law who is active in the ABA Young Lawyers Division at the local, state, or national level. Second, the candidate must complete an application describing his or her practice, involvement in the Young Lawyers, professional goals, and plans for the Business Law Fellows program. Applications are then reviewed by the Co-Chairs of the Fellows program, who then make recommendations to the Section Chair.

Co-Chairs of the Fellows program, Heidi McNeil Staudenmaier and Barbara Mendel Mayden, are pleased with the results of the program to date and anticipate its success to continue. Staudenmaier was a member of the first class of Fellows appointed in 1998. Both Mayden and Staudenmaier are former Young Lawyers Division officers.

The Business and Corporate Litigation Committee has been fortunate to have a Fellow appointed to it in each of the three years of the program, beginning with Staudenmaier in 1998. Tate London of Seattle and Patrick Clendenen are current Fellows appointed to the Committee.

If you have any questions about the Fellows program, have a Young Lawyer whom you would like to nominate to the next class of Fellows, or would like to sign up to be a mentor to a future Fellow, please contact Heidi McNeil Staudenmaier (602/382-6366 or hstaudenmaier@swlaw.com) or Barbara Mendel Mayden (615/742-6208 or bmayden@bassberry.com). Nominations must be submitted to Staudenmaier by no later than April 1, 2001. Deadline for the submission of applications is May 15, 2001. Appointments will be announced in early August, 2001.

Keep your eye on these rising Section stars! Watch for the Fellows at Section meetings, programs, and events, and welcome them.
SUBCOMMITTEE REPORTS

ALTERNATIVE DISPUTE RESOLUTION SUBCOMMITTEE

by Michael J. Crane

At the Committee’s Fall meeting on December 1, the subcommittee presented a ninety minute panel discussion that addressed some of the practical issues confronting practitioners who engage in judicial settlement conferences and mediations. The panelists were Judge Stephen Crane, the Administrative Judge of the New York Supreme Court for the First Judicial District, United States Magistrate Judge Donna Martinez of the United States District Court for the District of Connecticut, Shelby Grubbs of the Miller & Martin law firm and Vivien Shelanski and Kathleen Roberts from JAMS Endispute, Inc.

The panel discussed issues concerning the best time for ADR to occur. Among the timing issues were the pros and cons of having judicial settlement conferences or mediations occur before, during or after discovery. In addition, the panel discussed how motion practice could impact the timing of a settlement conference or mediation. Judge Crane discussed the ADR program that is in place in the Commercial Division of New York State Supreme Court. The panel then addressed the advantages and disadvantages of having the trial judge participate in judicial settlement conferences. The panel concluded with a discussion of various ground rules that have proven effective in mediations in which they have participated.

Please stop by our Subcommittee meeting in Philadelphia at the Spring meeting to sign up for the Subcommittee and to share your thoughts for future programs.

CRIMINAL AND ENFORCEMENT LITIGATION SUBCOMMITTEE

by Jay Dubow and Martin Grant

The Criminal and Enforcement Litigation Subcommittee is a newly reconstituted subcommittee which will provide a forum for keeping track of and analyzing developments in the criminal and regulatory environment. We will be holding our initial subcommittee meeting at the Spring Meeting in Philadelphia on Thursday, March 22, 2001 from 9:00 – 10:00 a.m. During that meeting we will discuss potential initiatives for the subcommittee to undertake. We will also discuss possible programs to be presented at future ABA Meetings. We encourage all of you who may be interested in this area to attend and provide input.

In addition to the subcommittee meeting, we will also be hosting the business Litigation Committee’s Forum on Friday, March 23, 2001 from 8:00 – 10:00 a.m. The Forum is "What to do when business problems become business crimes." We look forward to seeing all of you in Philadelphia.

MEMBERSHIP SUBCOMMITTEE

by Michael J. Crane

The Committee’s Fall Meeting has become a staple of our annual activities. This year’s meeting was our largest gathering yet and provided members with an opportunity to attend programs covering the impact of technology on Delaware corporate governance law, developments in class actions and some of the practical issues concerning judicial settlement conferences and mediations. As always, the events began with a Committee cocktail party and dinner the prior evening and many members avail themselves of the opportunity to spend the weekend in New York City. The Fall Meeting has become quite popular and we hope that you will attend next year’s event.

“BUSINESS LAW TODAY” ARTICLES REQUEST

by Heidi M. Staudenmaier

“Business Law Today” is the national magazine of the Section of Business Law of the American Bar Association. The magazine is published six times a year as a membership benefit for about 55,000 Section members. “Business Law Today” is a magazine, not a law review. We are looking for articles that are enjoyable to read. We publish basic articles directed to business lawyers unfamiliar with a substantive area as well as articles on technical legal issues, but the presentation
should be direct and comprehensible. Humor is encouraged, but not required.

Articles run around 2,000 to 3,000 words. Manuscripts must not have been published previously. However, seminar materials that have been revamped into simple, readable articles are acceptable. The complete author guidelines are available through the Business Law Section’s Website, or you can contact me directly at: Heidi McNeil Staudenmaier, “Business Law Today” Editorial Board Member, Snell & Wilmer, Phoenix, (602) 382-6366, hstaudenmaier@swlaw.com.
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BUSINESS AND CORPORATE LITIGATION COMMITTEE
Business Law Section Spring Meeting, Philadelphia, March 22-25, 2001

Committee Meeting and Committee Forum
Elizabeth S. Stong, Chair; Jay A. Dubow and Martin Grant, Forum Co-Chairs
Friday, March 23, 8:00-10:00 a.m.

Programs
Program – Business Courts
Mitchell L. Bach, Chair
Thursday, March 22, 10:30 a.m.-12:30 p.m.

Program – Annual Review of Developments in Business and Corporate Litigation
James R. Hawkins II and Gregory V. Varallo, Co-Chairs
Thursday, March 22, 2:30-5:00 p.m.

Substantive Subcommittee Meetings and Miniprograms
Alternative Dispute Resolution
Michael J. Crane, Chair
Friday, March 23, 11:00 a.m.-noon

Antitrust and Trade Litigation
Michael F. Saunders, Chair
Saturday, March 24, 1:00-2:00 p.m.

Bankruptcy Litigation
Philip S. Warden, Chair
Thursday, March 22, 1:00-2:30 p.m.

Business Torts
Jan P. Helder, Jr., Chair
Thursday, March 22, 1:00-2:00 p.m.

Class and Derivative Actions (including miniprogram)
Anne P. Wheeler and Gregory P. Williams, Co-Chairs
Saturday, March 24, 2:00-3:00 p.m.

Corporate Counseling and Litigation
Peter J. Walsh, Jr., Chair
Friday, March 23, 10:00-11:30 a.m.

Criminal and Enforcement Litigation
Jay A. Dubow, Chair
Thursday, March 22, 9:00-10:00 a.m.
Employment Litigation (including miniprogram)
Rosemary Daszkiewicz, Chair
Friday, March 23, 3:00-4:00 p.m.

Environmental Litigation
Seth R. Lesser, Chair
Saturday, March 24, 10:00-11:00 a.m.

ERISA and Pension Litigation
Jerome V. Bolkcom, Chair
Friday, March 23, 3:00-4:00 p.m.

Financial Institution Litigation
Marsha G. Rydberg, Chair
Saturday, March 24, 11:00 a.m.-noon

Indemnification and Insurance
William D. Johnston, Chair
Friday, March 23, 10:00-11:30 a.m.

Intellectual Property
Mitchell L. Bach and Cindy A. Elliott, Co-Chairs
Saturday, March 24, 11:00-noon

Partnerships and Alternative Business Entities
Vernon R. Proctor, Chair
Thursday, March 22, 1:00-2:00 p.m.

Securities Litigation (including miniprogram)
Lisa K. Wager and James R. Hawkins, II, Co-Chairs
Saturday, March 24, 10:00-11:00 a.m.

Task Force on Litigation Reform and Rules Revision
Gregory V. Varallo and Jan P. Helder, Jr., Co-Chairs
Saturday, March 24, 4:00-5:30 p.m.

Administrative Subcommittees Meetings

Membership
Michael J. Crane, Chair
Friday, March 23, 4:00-5:00 p.m.

Newsletter
Paul J. Masinter, Chair
Friday, March 23, 4:00-5:00 p.m.
Programs
Daniel C. Girard, Chair
Friday, March 23, 4:00-5:00 p.m.

Publications
Heidi M. Staudenmaier, Chair
Friday, March 23, 4:00-5:00 p.m.

Small Firms
James R. Hawkins, II, Chair
Friday, March 23, 4:00-5:00 p.m.

Subcommittee Chairs and Vice Chairs
Friday, March 23, 4:00-5:00 p.m.
Section of Business Law
Application for Membership

ζ I, ________________________________, hereby apply for membership in the ABA Section of
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ζ I am interested in joining the following Business and Corporate Litigation Subcommittees:

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ζ Business Courts
ζ Business Torts
ζ Class & Derivative Actions
ζ Corporate Counseling & Litigation
ζ Criminal and Enforcement Litigation
ζ Employment Litigation
ζ Environmental Litigation
ζ ERISA & Pension Litigation
ζ Financial Institution Litigation
ζ Indemnification & Insurance
ζ Intellectual Property
ζ Partnership & Alternative Business Entities Litigation
ζ Pro Bono
ζ Securities Litigation
ζ Membership
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ζ Please send information about the Business Law Section's Committee on Business and Corporate Litigation and its
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