Greetings and Happy New Year! This Letter from the Chair alerts you to some upcoming events at the ABA Business Law Section Spring Meeting in Boston, scheduled for April 4-7, 2002; recaps some of the highlights of our Committee’s Fall meeting on November 29 and 30, 2001, in New York City; and, for the long-range planners among you, addresses some changes that have been made to the registration procedures for the ABA Annual Meeting on August 8-11, 2002, in Washington, D.C.

**Business Law Section Spring Meeting.** Come to Boston for the Section’s Spring Meeting on April 4-7, 2002! Our Committee is presenting or co-sponsoring four outstanding programs that you will not want to miss, over a dozen Subcommittees are meeting, and we will gather for a festive and collegial dinner at a local restaurant.

Our first program, chaired by Steve Kupperman, set for Thursday, April 4, at 10:30 AM to 12:00 noon, is “Follow the Money: Recent Developments in Class Action Attorney Fee Awards.” This program will feature U.S. District Judge Jed Rakoff and several distinguished practitioners, who will discuss and debate recent developments in class action fees, including the impact of fees on selection of counsel, conduct of the litigation, and settlement dynamics, including mediation. On Thursday afternoon, April 4, from 2:00 to 5:00 PM, the Committee will present its annual Review of Developments in Business and Corporate Litigation, chaired by Jim Hawkins and Greg Varallo. Timely and engaging updates on areas from ADR and antitrust to director liability and...
corporate governance and many more will be presented. This program both keeps you current in your areas of specialty and helps assure that you are aware of hot topics in other fields, so you won’t want to miss it. (But if you do, you can purchase the materials, which the ABA now publishes as a stand-alone volume.)

On Friday, April 5, at 8:00 to 10:00 AM, we will present a Committee Forum on the new issues surrounding privacy litigation entitled “Customer Information – Asset or Liability? Privacy Litigation in the Information Age.” This program, chaired by Patrick Clendenen, will look at how courts and litigants are striking a balance between consumer privacy rights and the right of businesses to use consumer information to render more effective and efficient services. Finally, on Friday afternoon, at 2:30 to 4:30 PM, we will co-sponsor with the Criminal Law Committee a program on the Enron situation.

As always, we will have a Committee dinner at a local restaurant. The dinner will be held on Thursday night, April 6. Our many Subcommittees also will be meeting from Thursday morning through Saturday afternoon. So there will be ample opportunity for informal interaction among Committee members, and for new members to get involved. In particular, most Committee projects and programs originate in Subcommittee meetings, so attending these meetings, even if you have never been to one before, is the most effective way to become part of the Committee’s activities.

So sign up for the Spring Meeting soon! You should have received registration materials in the mail, and on-line registration is available at www.abanet.org/buslaw.

Business and Corporate Litigation Committee Fall Meeting. I hope you were among the nearly one hundred registrants who joined us on November 30 for our Committee’s annual stand-alone Fall Meeting at the Le Parker Meridien Hotel in New York City. The Committee presented two exceptional programs, including “What’s a Board To Do? Reviewing the Standard of Review under Delaware Corporation Law,” mock oral arguments before Delaware Supreme Court Justices Randy Holland and Myron Steele and Vice Chancellors Jack Jacobs and Leo Strine and former Chancellor William Allen of the Delaware Court of Chancery, a roundtable discussion on current issues in Delaware corporate governance law (including the standards applicable to boards of directors of Delaware corporations and the validity of certain deal protection mechanisms in a hypothetical takeover situation), and the pros and cons of applying the business judgment rule when a self-interested merger has been approved by an informed and uncoerced majority of the minority vote or an effective and uncoerced special committee of independent directors.

The Committee also presented a report on ethics for business lawyers, reviewing current proposals to change the rules governing conflicts of interest, fee and retainer agreements, and other fundamental aspects of the lawyer-client relationship. And, for the early risers, we heard a special update on developments in bankruptcy law, including the record bankruptcy filing numbers, prospects for bankruptcy legislation, turmoil in the courts over venue issues, and related subjects.

As always, the Friday programs were preceded by a Committee reception and dinner on Thursday evening. We plan to return to the Parker Meridien for our Fall Meeting late this year, so mark your calendars for December 5 and 6, 2002, and plan to join us in New York City.

New Procedures for the ABA Annual Meeting in August 2002. The ABA has made some changes to the registration procedures for the ABA Annual Meeting in August, which will take place in Washington, D.C. this year. In the past, there has been a single registration fee to cover attendance at all CLE programs presented at the meeting. This year, the basic registration fee has been drastically reduced – from $350 last year to just $95 this year – but separate charges will apply in order to attend CLE programs. In an effort to make this new structure as simple as possible, the Business Law Section will offer a “passport” for $175 that will permit unlimited
access to all Business Law Section CLE programs. No charges will be made for attendance at Committee or Subcommittee meetings for which CLE credit is not provided. With a Business Law Section "passport," you will be able to attend an unlimited number of Section programs, and to move from program to program without incurring additional charges. Look for more information about these new procedures as the Annual Meeting draws near – and don’t forget your passport!

FEATURE ARTICLE

RECKONING FOR THE COSTS OF COMPUTER DISCOVERY IN YOUR LITIGATION STRATEGY

by Bruce Fox and Brian Knipe

Introduction

Computer discovery is now a fact of commercial litigation, because it provides a fertile avenue for obtaining sometimes staggering amounts of potentially relevant information that is unavailable in paper form, including word processed documents and spreadsheets, deleted files, records of internet activity, and digital paths traveled by email. Fed.R.Civ.P. 34 explicitly defines "documents" discoverable under Rule 34 to include "data compilations from which information can be obtained" and under Fed.R.Civ.P. 26(a)(1)(B) parties must include among initial disclosures "a copy of, or a description by category and location of, all...data compilations ..., in the possession, custody, or control of the party and that the disclosing party may use to support its claims or defenses ...."

Litigants served with electronic discovery requests frequently object on the grounds that compliance would be unduly burdensome and expensive. The potentially overwhelming costs of electronic discovery are well documented, as businesses increasingly store far more information electronically than on paper, in numerous areas, including desktop, laptop and hand-held computers, network servers and backup tapes. Unlike paper files, electronic data is rarely organized, and locating information responsive to specific discovery requests can be likened to finding a needle in a haystack. Often electronic data is embedded or hidden in digital files, such as prior versions of a document, including deleted versions.

The services of technology consultants and computer forensics experts are frequently necessary to convert information stored in files and on backup tapes into a readable form, to recover embedded and supposedly "deleted" data, to comb through voluminous unorganized digital files to sort out privileged, irrelevant and possibly embarrassing information, and, in some instances, to create a "mirror image" of computer files. These experts' services are not inexpensive, and the experts may require special hardware or software to access or convert digital information.

Electronic discovery may engender additional costs, including the disruption of business beyond that typically resulting from paper discovery. In contrast with paper discovery, a litigant responding to digital discovery has no obvious incentive to pass the costs of compliance on to the discovering party by simply making its computer systems available for inspection. However, the substantial costs of compliance alone are not generally adequate grounds for resisting discovery of electronically stored data as oppressive, unduly burdensome or expensive.

When a court orders compliance with electronic discovery requests, which party should bear the associated costs? Generally, each party bears its own costs in discovery. Because of the potentially extravagant expenses involved (which may in some cases exceed the amount in controversy), litigants have used computer discovery not only as an investigative tool, but also as a weapon to force a settlement or squelch litigation. Federal courts have the general power under Federal Rule of Civil Procedure 26 to shift discovery costs to the requesting party in appropriate circumstances, but the Rules of Civil Procedure provide no specific guidance for digital discovery. Because the allocation of these
costs can substantially impact a litigant, counsel must be mindful of them and an understanding of how courts have approached the apportionment of electronic discovery costs is crucial.

1. **Requiring the Respondent to Bear Costs**

   Generally the respondent must bear the costs of complying with electronic discovery requests. This is particularly true in cases where the cost of compliance is comparatively small. See *e.g.*, *Mackey v. IBP, Inc.*, 167 F.R.D. 186, 199 (D. Kansas 1996) (holding that costs involving 30 hours of computer programming should be borne by the responding party). Some courts have regarded these costs as simply a part of doing business. For example, in *In re Brand Name Prescription Drugs Antitrust Litigation*, 94 C 897, MDL 997, 1995 WL 360526, at *1 (N.D. Ill. June 15, 1995), the defendant, a large corporation, contended that the plaintiffs should bear the costs incurred by it in producing email, because it had over 30 million pages of email on backup tapes, and compiling, formatting, searching and retrieving responsive email would cost it between $50,000 and $70,000. The court required the defendant to produce the email at its own expense because the defendant deliberately chose an electronic method of storing information. The court regarded the costs of responding to digital discovery as "an ordinary and foreseeable risk" of doing business, and observed that the plaintiffs had no control in selecting the defendant's method of storing data. See also *Linnen v. A.H. Robbins Company, Inc.*, 1999 WL 462015 (Mass. Super. 1999)(requiring defendant to bear costs of restoration of computer data amounting to up to $1.75 million on the basis that allowing the defendant to "reap the benefits of such technology and simultaneously use such technology as a shield in litigation would lead to incongruous and unfair results").

   The most difficult issue with the *Brand Name Prescription Drugs* approach is its arguably unrealistic and unstated assumption that modern companies can do business without using computers. In cases involving discovery compliance costs that exceed the amount in controversy, *Brand Name Prescription Drugs* creates a potent incentive for a plaintiff to proffer sweeping requests for digital discovery with the expectation that the defendant will prefer to settle rather than bear the costs of responding, and there is no effective deterrent to serving the broadest electronic discovery requests imaginable. This approach can be criticized on the basis that it invites litigants to attempt to coerce favorable settlements by including sweeping electronic discovery requests.

2. **Shifting Costs to the Discovering Party**

   As explained in the Advisory Committee Notes to the 1970 Amendment to Federal Rule of Civil Procedure 34, "the courts have ample power under Rule 26(c) to protect respondent against undue burden or expense, . . . by . . . requiring that the discovering party pay costs." This approach is also adopted in the Manual for Complex Litigation (Second), § 21.446. Section 29(b) of the ABA Litigation Section's Civil Discovery Standards also affirms that the requesting party should "generally bear any special expenses" incurred in producing electronic data. The cases where courts have shifted some or all of the costs of electronic discovery to the party seeking computer data generally fall into a few broad categories.

   a. **Disparity in Economic Power**

      Some courts have deemed gross disparity in the parties' economic strength as a deciding factor in allocating digital discovery costs. For example, in *Bills v. Kennecott Corp.*, 108 F.R.D. 459 (D. Utah 1985), an age discrimination suit, the district court denied the defendant corporation's motion to shift the costs of generating and producing a printout of computer data to the plaintiffs, the corporation's former employees. The court treated the motion like a motion for protective order, and focused its analysis on an inquiry into whether the corporation could show "undue expense or burden." The *Bills* court found no undue expense or burden because: (1) the amount at issue ($5,411.25) was not excessive, (2) the relative expense and burden of compiling the electronic data would be substantially greater for the former employees than for the corporation, (3) the amount of money required to obtain the data would be a substantial burden for the former employees, and (4) the production of the data would benefit the corporation in its case.
Like the later Brand Name Prescription Drugs case, Bills recognized that the respondent is usually in the best position to retrieve its own stored data. However, unlike Brand Name Prescription Drugs, Bills disagreed with the notion that onerous digital discovery costs should be imposed upon a litigant as a cost of doing business through computers. The Bills court was among the first to attempt to develop a cost-shifting analysis for digital discovery, which, while not intended to provide an "ironclad formula," has been influential.

In Hines v. Widnall, 183 F.R.D. 596 (N.D. Fla. 1998), the defendant, the United States government, hired a contractor to computer image records in preparation for litigation at a cost of approximately $250,000, and the plaintiffs requested a copy of the computer files. The court denied the government's request that the plaintiffs share the cost of the computer imaging, although production required the government to procure special software to search the data. While the court echoed the significance of the fact that the government had computerized its records voluntarily, consistent with Brand Name Prescription Drugs, the primary basis for its decision was that while the government had "virtually unlimited assets," the plaintiffs "undisputedly [were] of modest means."

An analysis focusing on the respective economic power of the litigants protects against the imposition of electronic discovery costs on a party who cannot afford it. However, it does little to eliminate the threat of discovery abuses.

b. Extraordinary Measures

Courts have shifted costs to requesting parties whose digital discovery requests required the respondents to take extraordinary steps, such as regenerating or reproducing electronic data. For example, in Zonaras v. General Motors Corporation, No. C-3-94-161, 1996 WL 1671236, at *1 (S.D. Ohio Oct. 17, 1996), a product liability suit, the court ordered the plaintiffs, parents of a child injured in an automobile collision, to pay half the cost of General Motors' production of electronically stored data on the results of crash tests. General Motors would have to regenerate the requested data for tests at a total cost of between $1,100 and $2,200, and the data was not certain to be admissible at trial. Also, in In re Air Crash Disaster at Detroit Metropolitan Airport, 130 F.R.D. 634 (E.D. Mich. 1989), the court ordered the defendant aircraft manufacturer to create and produce a computer tape of a flight simulation run program and test results, but ordered the plaintiff to pay all reasonable and necessary costs incurred by the defendant in creating the tape.

Another "extraordinary step" is the regeneration of deleted email, a laborious endeavor that requires an expert to create a "mirror image" or "snapshot" of the respondent's hard drive. In Playboy Enterprises, Inc. v. Welles, 60 F. Supp. 2d 1050 (S.D. Cal. 1999), a trademark infringement case, the court ordered the defendant to permit an outside expert, acting as an officer of the court, to attempt to discover deleted email by creating a "mirror image" of the defendant's hard drive and printing out responsive documents for defendant's counsel to review. The plaintiff, however, would have to pay the expert's considerable fees. The discovering party in Simon Property Group, L.P. v. MySimon, Inc., 194 F.R.D. 639 (S.D. Ind. 2000), obtained an identical result.

Rather than ordering discovery requiring the recreation of data and then shifting costs to the requesting party, some courts have simply conditioned such discovery on the discovering parties' willingness to pay the respondent's costs. See Anti-Monopoly, Inc. v. Hasbro, Inc., 94CIV.2120 (LMM) (AJP), 1995 WL 649934, at *1 (S.D.N.Y. Nov. 3, 1995). These cases emphasize the importance of requiring an opponent to preserve its data immediately in order to avoid the need to require the restoration of data. Also, in cases that promise to depend on older electronic evidence that has likely been deleted but not overwritten, counsel's discovery plan must factor in the potential costs of data reproduction.

c. "Piggybacking"

A resourceful litigant who compiles its records into a searchable electronic database as part of its litigation efforts may be rewarded for its efforts with discovery requests seeking a copy of the database. This "piggybacking" technique presents a
potential for abuse which a court may reduce through cost-shifting. For example, in *Williams v. E.I. du Pont de Nemours & Co.*, 119 F.R.D. 648 (W.D. Ky. 1987), the court permitted the defendant corporation to obtain a copy of a computerized database from the Equal Employment Opportunity Commission, but required the defendant to do so at its own expense. The database, prepared by the Equal Employment Opportunity Commission ("EEOC") for its expert's benefit, consisted of extensive employment records which the defendant had produced. Although the defendant had the original documents, the creation of a similar database would have required an inordinate amount of time and expense, involving the manual entry into the computer of over 3,000 employee personnel records, thirty-two years of collective bargaining agreements, six sets of responses to interrogatories and document requests and two sets of admissions. The court further ordered the defendant to pay to the EEOC a fair portion of the costs of creating the database, in an amount to be agreed upon by the parties.

Courts' use of cost-shifting in the three instances described above may help to reduce or eliminate potentially flagrant abuses of electronic discovery. In many instances, the discovering party will perform a cost-benefit analysis and only request that electronic data that the discovering party posits is necessary to prove its case. However, one criticism of this approach, is that liberal use of cost-shifting may cause courts to be receptive to discovery that would otherwise be disallowed under Federal Rule of Civil Procedure 26(b)(2). Also, cost-shifting in instances where electronic discovery is sought by parties with deep pockets may create "differential justice," where the wealthier parties will obtain broader digital discovery.

d. The Marginal Utility Theory

In *McPeek v. Ashcroft*, 202 F.R.D. 31 (D.C. Cir. 2001), the plaintiff, an employee of the Department of Justice, brought an employment retaliation claim against the Department of Justice ("DOJ"). Because the plaintiff alleged the DOJ employees that had retaliated against him used computers for word processing and email, the plaintiff requested not only electronic data currently residing on DOJ computers, but also responsive data on backup tapes. The DOJ objected to the requested production, claiming that restoration of the email from only one backup tape would take eight hours at a cost of at least $93 per hour.

Finding fault with making the DOJ assume the costs of restoring electronic data or simply shifting costs to the employee, the court articulated the following approach:

A fairer approach borrows, by analogy, from the economic principle of "marginal utility." The more likely it is that the backup tape contains information that is relevant to a claim or defense, the fairer it is that the government agency search at its own expense. The less likely it is, the more unjust it would be to make the agency search at its own expense. The difference is "at the margin."

202 F.R.D. at 34.

Under this theory, the court ordered the DOJ to restore at its own expense only a small portion of its backup tapes that were most likely to contain relevant information, and to document the time and money spent. Using the costs of the search and the results obtained as an aid, the court determined that it would revisit the issue of whether the DOJ should continue to restore backup tapes at its own expense.

**Conclusion**

The high costs of digital discovery necessitate that counsel factor them into litigation strategies and budgets, discovery plans, and settlement negotiations. As early as possible, counsel should attempt to forecast the cost of electronic discovery by learning about the client's electronic data storage systems, including operating systems, applications and backup procedures. This information may be necessary to determine whether a claim is worth pursuing or whether an adverse claim is worth defending. Where both parties are likely to serve electronic discovery, counsel should consider the possibility of negotiating a breakdown of electronic discovery costs with the opponent.
Bruce Fox is a partner at Klett Rooney Lieber & Schorling, P.C. Brian Knipe is an associate with the firm.

SUBCOMMITTEE REPORTS

BANKRUPTCY LITIGATION SUBCOMMITTEE
by William K. Zewadski

The Bankruptcy Litigation Subcommittee held its joint meeting with the Creditors' Rights Subcommittee in Chicago August 4, 2001, and heard an excellent presentation by Bankruptcy Judge Timothy Corcoran on his opinion in Toy King Distributors, Inc, 256 BR 1 (Bankr. M.D. Fla., 2000)(presently on appeal). It is an opinion running over 200 pages in the reported version and involves nearly every kind of avoidance, fraudulent transfer, and preference issue. The Subcommittees also voted to support the ABA resolution opposing attorney sanctions for errors in completing statements of affairs and schedules included under the proposed bankruptcy legislation.

The two subcommittees again met jointly at the National Bankruptcy Judges Conference in Orlando, October 17-20, 2001. At that time we heard an update on the ongoing Lawrence offshore assets case from Paul Singerman. The subcommittee also heard two presentations about recent cases from two bankruptcy judges. Bankruptcy Judge Friedman of West Palm Beach spoke about his recent opinion in Unico Holdings Inc. v. Nutramax Products Inc., 264 B.R. 779 (Bankr. M. D. Fla., July 13, 2001), in which he retained Florida state court venue for a dispute that might otherwise have gone to the Wilmington, Delaware situs of the debtor's bankruptcy case. Bankruptcy Judge Bufford of Los Angeles reviewed his opinion in In re Henry, 266 B. R. 457 (Bankr. C.D. Ca., Aug. 16, 2001), in which he ruled in an adversary proceeding that a finance company violated the automatic stay by post-petition collection efforts and he imposed both actual and punitive damages for contempt, totaling some $72,270, plus a separate award of attorneys' fees of hundreds of thousands of dollars more.

At the Committee's Fall Meeting in New York City, an early morning crowd heard Bill Zewadski report on the new record increases of bankruptcy filings, comments on the likely Enron filing (which occurred the next week), and the business bankruptcy aspects of the long stalled bankruptcy legislation in Washington.

At the Section's upcoming Spring Meeting, April 4-7, 2002 in Boston, the Subcommittee will consider the status of the proposed bankruptcy legislation and its effect on litigation and the courts, as well as timely updates on cases of importance.

The Subcommittee meets three times a year, at the ABA Annual Meeting, the Section's Spring Meeting and the National Bankruptcy Judges Conference. Join the Subcommittee by simply sending an email to William Zewadski, z@trenam.com, with your name, address and email address. Your suggestions for topics and speakers are always appreciated.

CORPORATE COUNSELING AND LITIGATION SUBCOMMITTEE
By Peter J. Walsh, Jr. and Anne C. Foster

The Corporate Counseling and Litigation Subcommittee assisted in presenting "What's A Board To Do? Reviewing the Standard of Review under Delaware Corporate Law" at the Committee’s Fall Meeting in New York City. The program was well attended and has received excellent reviews. The Subcommittee wishes to thank the Delaware judges who participated and our advocates and panelists, all of whom did a fabulous job in presenting the program.

Once again, our Subcommittee plans to hold a joint meeting with the Indemnification and Insurance Subcommittee in Boston at the Section's Spring Meeting. The past several months have seen a number of significant developments in the case law,
and so there will be much to discuss at the Spring Meeting. Our meetings are open to all, and we welcome new members.

FINANCIAL INSTITUTION LITIGATION SUBCOMMITTEE

by Marsha G. Rydberg

The Financial Institution Litigation Subcommittee, which is co-chaired by Marsha Griffin Rydberg, of Tampa, Florida, and John Whittington, of Birmingham, Alabama, regularly examines the complex and varied issues which confront bank litigators from bankruptcy to regulatory issues and all of the commercial litigation in between. The Gramm-Leach-Bliley Act, which became law a little more than a year ago, has opened the field of banking dramatically. Financial institutions are becoming one-stop providers of financial services, with the parent companies holding insurance, securities and other financial institutions, as well as owning one or more banks or branches. Inevitably, financial institution litigation will include these expanded topics.

In addition, the Act includes expanded consumer protection responsibilities. For example, the Act has stringent new privacy requirements applicable to banks, but also to numerous other entities outside of the traditional definitions of “financial institution.” Noncompliance, whether it be intentional or not, certainly will generate litigation. In short, the implications of the new banking laws are stunning. Because the law is relatively new, however, case law has not yet emerged, at appellate levels, to any substantial degree. The Subcommittee intends to remain on the cutting edge to monitor new decisions related to the Act and the regulations promulgated pursuant to the Act. Anyone with Act litigation is encouraged to contact either of the Subcommittee Chairs and to attend any of the Subcommittee meetings to share their experiences.

Also of interest to the Subcommittee is the emergence of UCC Article 9 and the potential new bankruptcy legislation. Both of these legislative re-writes have significant implications for financial institutions and their lawyers. Again, since these laws are of recent origin, the subcommittee intends to monitor appellate decisions to provide prompt, practical assistance to lawyers who represent financial institutions. Given the variety and complexity of the new legislation affecting practitioners in this field, the opportunity to collaborate with fellow bank lawyers at subcommittee meetings is extremely helpful and informative.

INDEMNIFICATION AND INSURANCE SUBCOMMITTEE

by Michael L. Gassmann

At the Section’s Spring Meeting in Boston in April, the Indemnification and Insurance Subcommittee will hold a joint meeting with the Corporate Counseling & Litigation Subcommittee. Summaries of recent decisions and articles about indemnification and directors’ and officers’ liability insurance will be available for distribution at the meeting.

Details about the date, time and location of the meeting will be forthcoming. As always, ideas about programs and articles are welcome, and new members (and interested parties) are encouraged to attend. We look forward to seeing you in Boston!

INTELLECTUAL PROPERTY SUBCOMMITTEE

by Cindy A. Elliott

The Intellectual Property Subcommittee spent the last quarter preparing its contribution to the Recent Developments publication. Many thanks to the repeat contributors from each circuit who come through with exemplary materials each year, and a welcoming thanks to those authors who provided materials for the first time.

The Subcommittee agenda for the Section’s Spring Meeting will include a discussion of possible programs for presentation, either alone or in concert with another committee or subcommittee, at either next summer’s ABA Annual Meeting or the fall stand-alone meeting.
If you have a program idea or any questions about the Subcommittee, please feel free to contact Cindy A. Elliott, Wolf, Block, Schorr & Solis-Cohen LLP, 1650 Arch Street, Philadelphia, PA 19103 (215) 977-2049, celliott@wolfblock.com or Andrew Halaby, Snell & Wilmer, One Arizona Center, Phoenix, AZ 85004-2202, (602) 294-0913, ahalaby@swlaw.com.

Please call or return e-mail if you have any questions.

PUBLICATIONS SUBCOMMITTEE

by Heidi M. Staudenmaier


The "Annual Review" publication is based on the seminar materials developed for the Committee's ever popular program held at the Section's Spring Meeting. The program traditionally entails a comprehensive update of the law at a very high level of interest to business and corporate lawyers, both transactional and litigators alike.

The 2001 "Annual Review" included legal updates and trends for ADR law, bankruptcy, business torts litigation, class action law, corporate law, derivative litigation, director liability and indemnification, employment law, labor law, financial institution litigation, general partnerships, joint ventures, limited partnerships and limited liability companies, intellectual property law, and securities litigation. The 2002 edition will cover these same topics, as well as the additional topics of antitrust, criminal and enforcement litigation, ERISA, pro bono, and securities arbitration.

Publication of the "Annual Review" permits a wider audience to receive the benefits of the exemplary and in-depth information included in the Spring program materials. Additionally, based on the substantial time and work involved in compiling the materials for each topic, the publication provides greater recognition to the multiple authors contributing to the effort.

It is hoped that the 2002 edition will be ready for publication by early summer.

WOMEN'S BUSINESS LAW NETWORK – SUBCOMMITTEE TO THE DIVERSITY COMMITTEE OF THE BUSINESS LAW SECTION

by Danielle B. Gibbs

At the Spring Meeting in Philadelphia, the Women's Business Law Network ("WBLN") sponsored a "Spring Meeting Host" program under the leadership of Vicki Tucker and Amy Williams. This program matched active members of the Business Law Section, who served as hosts, with new members of the Section attending their first meeting. The hosts agreed to (1) contact their new member before the meeting to introduce themselves, (2) meet and assist the new member in exploring the various choices of Section committees and subcommittees at the Committee Roundup, (3) attend the First Timers' Reception with their new member and introduce the person to other members and leaders of the Section and (4) attend either the Section dinner or luncheon with their new member. Approximately twenty hosts and new members participated in the program.

Also at the Philadelphia Meeting, Elizabeth Stong hosted the Women's Caucus Breakfast, which is sponsored annually by the WBLN. The Breakfast was successful again this year in bringing together committee chairs, Diversity Committee liaisons and past and present leadership of the Section to introduce current and new members of the Section to the work being done by its various committees and subcommittees.

At the Annual Meeting in Chicago, the WBLN presented a substantive program entitled "Steering Clear of Kryptonite: How to Navigate the Obstacle Course of Professional and Personal Obligations." The program was co-chaired by Anne Foster and Danielle Gibbs. Panelists for the program included, in addition to Danielle (who also moderated...
the program), Pamela Dashiell, Barbara Mendel Mayden and Anne Weisberg, who spoke on the demands facing professional women, the impact of technology and strategies for managing and balancing family, work and community priorities.

At the Spring Meeting in Boston in April 2002, the WBLN will again sponsor the Meeting Host program. In addition, Elizabeth Stong will host the Women's Caucus Breakfast, on Saturday April 6. Following the Breakfast, WBLN will have a business meeting to discuss current projects and seek participation from current and new members. Also on April 6, WBLN will present a one and one-half hour substantive program entitled "Women Getting the Business: How to Win Client Competitions and Influence Decision Makers." The program, chaired by Vicki Tucker, will be a cross-generational discussion of business development techniques. Top women rainmakers from diverse backgrounds discuss "old-economy" v. "new economy" techniques; what worked then and what works now for keeping and winning business relationships. The program is co-sponsored by the Women Rainmakers Division of the ABA Law Practice Management Section.

We invite and encourage all Subcommittee members to host a first timer at the Boston Meeting and to attend the Women's Caucus Breakfast and the "Women Getting the Business" program.

ATTENTION SPRING MEETING ATTENDEES: HAVE A HOST/BE A HOST!

If you're attending your first Section Spring Meeting, sign up for the "Spring Meeting Host Program," and let a more experienced member of the Section show you the ropes! The Host Program will match you with an active member of the Section who has agreed to: (1) contact you before the meeting to introduce himself or herself, (2) meet and assist you in exploring the various choices of Section committees and subcommittees at the Committee Roundup, (3) attend the First Timers' Reception with you and introduce you to other members and leaders of the Section and (4) attend either the Section dinner or luncheon with you. The Host Program is a great tool First Timers can use to make our big and friendly community a little smaller and friendlier.

If you've already attended one of our Section Meetings and can make the commitments outlined above, please sign up to be a Spring Meeting Host and help ensure that our First Timers become regular Meeting attendees!

All who are interested should contact Scarlett Spence at "scarlett.spence@dbr.com" or Sylvia Chin at "schin@whitecase.com"

BUSINESS LAW SECTION SEEKS FELLOWS

by Heidi M. Staudenmaier

It's time once again to nominate qualified candidates for the Business Law Section's Fellows Program. The Fellowship program, now in its fifth year, represents a commitment by the Section to increase the participation of young lawyers in Section activities. The goal of the program is to give active members of the Young Lawyers Division ("YLD") 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 YLD.

The Fellowship appointment is for two years, commencing after the ABA Annual Meeting in August of 2002. Five Fellows will be selected among the applicants. To be considered for selection, a person must be (1) a member of the Section and (2) an active member of the YLD (or an active member who has aged out within the last three years, as calculated by the YLD) who has demonstrated a significant interest in an area of business law that coincides with the work of substantive committees of the Section.

The following financial commitment is made by the Section to those selected as Fellows:

- To reimburse expenses, consistent with Section policies, for attendance at the Spring and Annual Meetings of the Section, as well as any stand-alone
meetings of the Committee to which the Fellow is appointed; and

- To involve the Fellow in the substantive work of the Committee to which the Fellow is assigned, and to appoint a mentor within the Committee to maximize the opportunities for participation and professional development.

The financial commitment described above is a contingent one. To obtain reimbursement the Fellow must:

- Undertake involvement in a substantive project of the Section; and
- Submit timely and responsive written reports on his or her activities and progress as a Fellow, as requested, by the Fellows Program Co-Chairs.

In addition, by acceptance of the Fellowship, the Fellow agrees to make the following commitments to the Section:

- 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;
- To remain involved in the activities of the YLD (or be aware of the activities if the Fellow has “aged out” of the YLD) and to identify substantive areas of common interest where members of the YLD can participate in the work of the Section;
- To work with the Liaisons of the YLD to the Section in recruiting members of the YLD to join the Section, with a specific goal for the Fellow to recruit no fewer than five persons in each Fellowship year to participate in the work of the Section;
- To work with the YLD Liaisons to the Section to introduce members of the YLD to the benefits of Section membership, including the planning of joint social and substantive programs at the Annual Meeting;
- To report annually to the Section Council and the Executive Council of the YLD on the Fellow’s individual activities within the Section;
- To make a current commitment to continue the Fellow’s active involvement at the committee level in the Section after the Fellowship is completed; and
- To act as a mentor to new Section Fellows and other YLD 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 YLD or the Section. The candidate must be a lawyer practicing business law who is active in the ABA YLD at the local, state, or national level. Second, the candidate must complete an application describing his or her practice, involvement in the YLD, professional goals, and plans for the Business Law Fellows program. Applications are reviewed by the Co-Chairs of the Fellows program, who then make recommendations to the Section Chair.

Co-Chairs of the Fellows program, Heidi M. 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 YLD officers.

The Business and Corporate Litigation Committee has been fortunate to have a Fellow appointed to it in each of the four years of the program, beginning with Staudenmaier in 1998. Tate London of Seattle just completed his two-year appointment in August of 2001. Current Fellows appointed to the committee are Patrick Clendenen and Jeff Paskert.

If you have any questions about the Fellows program, please contact Heidi M. 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, 2002. Deadline for the submission of applications is May 15, 2002. Appointments will be announced in early August, 2002.

**AUTHOR! AUTHOR! – “BUSINESS LAW TODAY” ARTICLES REQUEST**

_by Francis G.X. Pileggi_

“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 approximately 60,000 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.

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. Additionally, any articles previously published in an ABA newsletter (such as Network) or firm newsletters are acceptable. The complete author guidelines are available through the Business Law Section's Website, or Heidi M. Staudenmaier directly at “Business Law Today,” Editor-in-Chief, Snell & Wilmer, Phoenix, (602) 382-6366, hstaudenmaier@swlaw.com.
### SUBCOMMITTEE ROSTER

#### VICE-CHAIR:
**Daniel C. Girard**
Girard & Green, PC
160 Sansome Street, Ste. 300
San Francisco, CA 94104
e-mail: dgi@classcounsel.com  
(415) 981-4800  
FAX: (415) 981-4846

#### CHAIR:
**Elizabeth S. Stong**
Willkie Farr & Gallagher
787 7th Avenue
New York, NY 10019
e-mail: estong@willkie.com  
(212) 728-8272  
FAX: (212) 728-8111

#### PAST-CHAIR:
**James L. Holzman**
Prickett Jones & Elliott
1310 King Street
Wilmington, DE 19801
e-mail: jholzman@prickett.com  
(302) 888-6509  
FAX: (302) 658-8111

<table>
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<th>Committee</th>
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<tr>
<td>CHAIR</td>
<td><strong>Michael J. Crane</strong></td>
<td></td>
<td></td>
<td><a href="mailto:michael.crane@ey.com">michael.crane@ey.com</a></td>
<td>(212) 773-3815</td>
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<tr>
<td>VICE-CHAIR</td>
<td><strong>Abigail Pessen</strong></td>
<td></td>
<td></td>
<td><a href="mailto:pessenadr@earthlink.net">pessenadr@earthlink.net</a></td>
<td>(212) 961-0668</td>
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<td><strong>201 St. Louis Street</strong></td>
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<tr>
<td></td>
<td><strong>e-mail: <a href="mailto:warden_ps@pillsburylaw.com">warden_ps@pillsburylaw.com</a></strong></td>
<td><strong>101 East Kennedy Boulevard</strong></td>
<td><strong>Mobile, AL 36602</strong></td>
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<tr>
<td></td>
<td><strong>(415) 983-7260</strong></td>
<td><strong>P.O. Box 1102 (33601)</strong></td>
<td><strong>e-mail: <a href="mailto:mahoney@als.uscourts.gov">mahoney@als.uscourts.gov</a></strong></td>
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<td><strong>FAX: (415) 983-1200</strong></td>
<td><strong>Tampa, FL 33602-5150</strong></td>
<td><strong>(334) 441-5628</strong></td>
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<td></td>
<td><strong>FAX: (213) 227-7484</strong></td>
<td><strong>e-mail: <a href="mailto:z@trenam.com">z@trenam.com</a></strong></td>
<td><strong>FAX: (334) 441-5612</strong></td>
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<td><strong>FAX: (813) 229-6553</strong></td>
<td><strong>(813) 2299-6553</strong></td>
<td><strong>FAX: (334) 441-5612</strong></td>
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**NOTES:**
- All contact information includes phone numbers and fax numbers where available.
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CLASS AND DERIVATIVE ACTIONS
CO-CHAIR
Gregory P. Williams
Richards Layton & Finger
One Rodney Square
P.O. Box 551
Wilmington, DE 19899
e-mail: williams@rlf.com
(302) 651-7734
FAX: (302) 658-6548

CLASS AND DERIVATIVE ACTIONS VICE-CHAIR
Robert L. Gegios
Von Briesen Purtell & Roper
411 E. Wisconsin Avenue, Suite 700
Milwaukee, WI 53202-4470
e-mail: rgegios@vonbriesen.com
(414) 273-7000
FAX: (414) 276-6281

CORPORATE COUNSELING & LITIGATION CHAIR
Peter J. Walsh, Jr.
Richards Layton & Finger
One Rodney Square
P.O. Box 551
Wilmington, DE 19899
e-mail: pwalsh@pacdelaware.com
(302) 984-6000
FAX: (302) 658-1192

CORPORATE COUNSELING & LITIGATION VICE-CHAIR
Anne C. Foster
Richards Layton & Finger
One Rodney Square
P.O. Box 551
Wilmington, DE 19899
e-mail: foster@rlf.com
(302) 651-7744
FAX: (302) 658-6548

CRIMINAL AND ENFORCEMENT LITIGATION CO-CHAIR
Elizabeth K. Ainslie
Schnader Harrison Segal & Lewis, LLP
1600 Market Street, Suite 3600
Philadelphia, PA 19103-7286
e-mail: eainslie@schnader.com
(215) 751-2000
FAX: (215) 751-2205

CRIMINAL AND ENFORCEMENT LITIGATION VICE-CHAIR
Martin Grant
Federal Reserve Bank of New York
33 Liberty Street
New York, NY 10045
e-mail: martin.grant@ny.frb.org
(212) 720-5032
FAX: (212) 720-1530

EMPLOYMENT LITIGATION CHAIR
Rosemary Dazskiewicz
Cairncross & Hempelmann
524 Second Avenue
Suite 500
Seattle, WA 98104-2323
e-mail: rdazskiewicz@cairncross.com
(206) 587-0700
FAX: (206) 587-2308

EMPLOYMENT LITIGATION VICE-CHAIR
Stacey A. Campbell
Sonnenschein Nath & Rosenthal
4520 Main Street, Ste. 1100
Kansas City, MO 64111-7700
e-mail: 3SC@sonnenschein.com
(816) 932-4610
FAX: (816) 531-7545

ENVIRONMENTAL LITIGATION CHAIR
Seth R. Lesser
Bernstein Litowitz Berger & Grossman
1285 Avenue of the Americas
New York, NY 10019
e-mail: slesser@blbglaw.com
(212) 554-1400
FAX: (212) 554-1444

ENVIRONMENTAL LITIGATION VICE-CHAIR
Steven Russo
Sive Paget & Riesel, PC
460 Park Avenue
New York, NY 10022-1906
e-mail: sprlaw@aol.com
(212) 421-2150
FAX: (212) 421-1891

ERISA & PENSION LITIGATION CHAIR
Jerome V. Bolkcom
Jorden Burt Berenson & Johnson, LLP
Suite 400 East
1025 Thomas Jefferson Street, N.W.
Washington, DC 20007-0805
e-mail: jvb@wdc.jordenusa.com
(202) 965-8100
FAX: (202) 965-8104

ERISA & PENSION LITIGATION VICE-CHAIR
Jeannie L. Bakker
Montgomery McCracken Walker & Rhoads LLP
123 S. Broad Street
Philadelphia, PA 19109
e-mail: jbakker@mmwr.com
(215) 772-7521
FAX: (215) 772-7620

FINANCIAL INSTITUTION LITIGATION CHAIR
Marsha G. Rydberg
Foley & Larnder
100 N. Tampa St., Ste. 2700
P.O. Box 3391
Tampa, FL 33601-3391
e-mail: mrydberg@foleylaw.com
(813) 229-2300
FAX: (813) 221-4210

FINANCIAL INSTITUTION LITIGATION VICE-CHAIR
John P. Whittington
Bradley Arant Rose & White
Suite 2000, 420 North 20th Street
Birmingham, AL 35203
e-mail: jpw@barw.com
(205) 521-8242
FAX: (205) 521-8500

INDEMNIFICATION & INSURANCE CHAIR
William D. Johnston
Young Conaway Stargatt & Taylor
Rodney Square North, 11th Floor
P.O. Box 391 (19899)
Wilmington, DE 19801-0391
e-mail: wjohnston@ycst.com
(302) 571-6679
FAX: (302) 571-1253
INDEMNIFICATION & INSURANCE VICE-CHAIR
Michael L. Gassmann
Drinker Biddle & Reath
1500 K Street, NW, Suite 1100
Washington, DC 20005-1209
e-mail: gassmaml@dbr.com
(202) 842-8846
FAX: (202) 842-8465

INTELLECTUAL PROPERTY CHAIR
Cindy A. Elliott
Wolf and Solis-Cohen, L.L.P.
1650 Arch Street
22nd Floor
Philadelphia, PA 19103-2097
e-mail: cellelliott@wolfblock.com
(215) 977-2049
FAX: (215) 977-2334

INTELLECTUAL PROPERTY VICE-CHAIR
Andrew F. Halaby
Snell & Wilmer L.L.P.
One Arizona Center
Phoenix, AZ 85004-2202
e-mail: ahalaby@swlaw.com
(602) 382-6000
FAX: (602) 382-6070

PARTNERSHIPS & ALTERNATIVE BUSINESS ENTITIES CHAIR
Vernon R. Proctor
The Bayard Firm
222 Delaware Avenue, Ste. 900
P.O. Box 25130 (19899)
Wilmington, DE 19801
e-mail: vproctor@bayardfirm.com
(302) 429-4202
FAX: (302) 658-6395

PARTNERSHIPS & ALTERNATIVE BUSINESS ENTITIES VICE-CHAIR
Kevin R. Shannon
Potter Anderson & Corroon LLP
Hercules Plaza, 1313 N. Market Street,
P.O. Box 951
Wilmington, DE 19899-0951
e-mail: kshannon@pacdelaware.com
(302) 984-6000
FAX: (302) 658-1192

PRO BONO CO-CHAIR
Patrick T. Clendenen
Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.
One Financial Center
Boston, MA 02111
e-mail: ptclendenen@mintz.com
(617) 348-1827
FAX: (617) 542-2241

SECURITIES LITIGATION CO-CHAIR
Lisa K. Wager
Morgan Lewis & Bockius
101 Park Avenue
New York, NY 10178
e-mail: wage6113@mlb.com
(212) 309-6113
FAX: (212) 309-6273

SECURITIES LITIGATION VICE-CHAIR
Stephen D. Poss
Goodwin, Procter & Hoar, L.L.P.
Exchange Place
Boston, MA 02109-1000
e-mail: sposs@gph.com
(617) 570-1886
FAX: (617) 523-1231

ADMINISTRATIVE SUBCOMMITTEES
MEMBERSHIP CHAIR
J. Tate London
Cairncross & Hempelmann
524 Second Avenue
Suite 500
Seattle, WA 98104-2323
e-mail: jtlondon@cairncross.com
(206) 587-0700
FAX: (206) 587-2308

NEWSLETTER CHAIR
Paul J. Masinter
Stone Pigman Walther Wittmann & Hutchinson, LLP
546 Carondelet Street
New Orleans, LA 70130-3588
e-mail: pmasinter@stonepigman.com
(504) 581-3200
FAX: (504) 581-3361

NEWSLETTER VICE-CHAIR
Norman E. Siegel
Stueve Helder Siegel, LLP
330 West 47th Street, Ste. 250
Kansas City, MO 64112
e-mail: Siegel@Litigation-Results.com
(816) 714-7100
FAX: (816) 714-7101

PROGRAMS CHAIR
Daniel C. Girard
Girard & Green, LLP
160 Sansome Street, Suite 300
San Francisco, CA 94104
e-mail: dgc@classcounsel.com
(415) 981-4800
FAX: (415) 981-4846

PUBLICATIONS CHAIR
Heidi M. Staudenmaier
Snell & Wilmer, LLP
One Arizona Center
Phoenix, AZ 85004-2202
e-mail: hstaudenmaier@swlaw.com
(602) 382-6366
FAX: (602) 382-6070

SMALL FIRMS CHAIR
James R. Hawkins, II
Finn Dixon & Herling
One Landmark Sq., Ste. 1400
Stamford, CT 06901
e-mail: jhawkins@fdh.com
(203) 325-5042
FAX: (203) 348-5777
### Task Force on Litigation Reform and Rules Revision

#### Co-Chair
- **Gregory V. Varallo**
  - Richards Layton & Finger
  - One Rodney Square
  - P.O. Box 551
  - Wilmington, DE 19899
  - e-mail: varallo@rlf.com
  - (302) 651-7772
  - FAX: (302) 658-6548

#### Task Force on Litigation Reform and Rules Revision

#### Co-Chair
- **Jan P. Helder, Jr.**
  - Stueve Helder Siegel, LLP
  - 330 West 47th Street, Ste. 250
  - Kansas City, MO 64112
  - e-mail: Helder@Litigation-Results.com
  - (816) 714-7100
  - FAX: (816) 714-7101

### Liaison to Diversity Committee
- **Danielle B. Gibbs**
  - Young Conaway Stargatt & Taylor
  - Rodney Square North, 11th Floor
  - P.O. Box 391 (19899)
  - Wilmington, DE 19801-0391
  - e-mail: dgibbs@ycst.com
  - (302) 571-6600
  - FAX: (302) 571-1253

### Liaison to Technology Committee & Cyberspace Committee
- **Bruce E. Jameson**
  - Prickett Jones & Elliott
  - 1310 King Street
  - P.O. Box 1328 (19899)
  - Wilmington, DE 19801
  - e-mail: bejameson@prickett.com
  - (302) 888-6532
  - FAX: (302) 658-8111

### Liaison to Business Law Today
- **Francis G.X. Pileggi**
  - Fox, Rothschild, O’Brien & Frankel, LLP
  - Mellon Bank Center, Suite 1400
  - 919 Market Street
  - Wilmington, DE 19801
  - e-mail: fpileggi@frof.com
  - (302) 655-5667
  - FAX: (302) 655-7004

### Judicial Designees
- **The Honorable Alvin W. Thompson**
  - United States District Judge
  - United States District Court for the District of Connecticut
  - U.S. Courthouse
  - 450 Main Street
  - Hartford, CT 06103
  - e-mail: alvin_thompson@ce2.uscourts.gov
  - (860) 240-3224
  - FAX: (860) 240-3465

- **The Honorable Myron T. Steele**
  - Justice
  - Delaware Supreme Court
  - Supreme Court Building
  - 57 The Green
  - Dover, DE 19901
  - e-mail: msteele@state.de.us
  - (302) 739-4214
  - FAX: (302) 739-2004

### Section Fellow Designees
- **Jeff Paskert (2001-2003)**
  - Fowler, White, Gillen, Boggs, Villareal and Banker, P.A.
  - 501 East Kennedy Boulevard
  - Suite 1700
  - Tampa, FL 33602
  - email: jpaskert@fowlerwhite.com
  - (813) 222-1110
  - FAX: (813) 229-8313

  - Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.
  - One Financial Center
  - Boston, MA 02111
  - email: ptclendenen@mintz.com
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