FROM THE CHAIR

by Elizabeth S. Stong

Summer is upon us! In this Letter from the Chair, we will bring you up to date on the recent National Conference for the Minority Lawyer, held on June 5 and 6, 2003, in Philadelphia, and the Business and Corporate Litigation Committee’s plans for the ABA Annual Meeting on August 8-12, 2003, in San Francisco, and also express some very heartfelt thanks for the wonderful opportunity to serve as Chair of this Committee for the last three years.

National Conference for the Minority Lawyer - June 5-6, 2003 - Philadelphia

The Business and Corporate Litigation Committee played a significant role in the planning and program for the upcoming National Conference for the Minority Lawyer, on June 5-6, 2003, in Philadelphia. This Conference, which was sponsored jointly by the ABA's Business Law Section and Commission on Racial and Ethnic Diversity in the Profession, was attended by litigators, business lawyers, in-house counsel, and government lawyers, and presented programs addressing both recent developments and practical skills for lawyers in all of these practice settings. Keynote speakers included Robert J. Grey, Jr., the first minority lawyer elected to chair the ABA House of Delegates and the second African American to serve as President of the ABA beginning in August 2004. Notably, one of the most popular programs at the Conference was presented by our Committee, and took the form of a reprise of our Spring Meeting 2003 Review of Developments in Business and Corporate Litigation, moderated by Mitchell Bach and Jay Dubow. Panelists included...
There is still time to make your plans to attend the ABA Annual Meeting in San Francisco, scheduled for August 8-12, 2003. The Section will be based at the Fairmont Hotel, on Nob Hill – a wonderful location in a delightful city. Veterans of ABA Annual Meetings know that San Francisco – my home town – always provides a terrific setting for programs and events. Our Committee is planning a full schedule of programs, subcommittee meetings and mini-programs, and as always, our traditional Committee dinner, to be held at One Market, declared “best newcomer” on the San Francisco restaurant scene in 1993 and 1994 and now recognized as one of the best dining venues in a city that takes its dining very seriously indeed. The tentative schedule, descriptions of our programs, and a form to register for our committee dinner are set forth elsewhere in this issue.

You will not want to miss our featured program, a two-part litigation and corporate crisis management survey program chaired by Bob Gegios entitled “When The Going Gets Tough: Advising The Company In Crisis.” Part I of this program is scheduled for Saturday, August 9, from 2:30 p.m. to 4:30 p.m., and Part II is scheduled for Sunday, August 10, again from 2:30 p.m. to 4:30 p.m. At our Committee Forum on Monday, August 11, at 8:00 a.m. to 9:45 a.m., we will present a program on the latest developments in electronic discovery, “Land Mine or Treasure Trove? Managing and Planning for Electronic Discovery,” chaired by Mike Flynn and Bruce Jameson. Our Committee is also co-sponsoring a program chaired by Hilary Ware on “Get It Right: Successful Strategies To Make Mentoring Work,” which is scheduled for Friday, August 8, from 10:30 a.m. to 12:30 p.m.

On Saturday, August 9, in the afternoon, we are also planning a hands-on pro bono project, tentatively set for the Booker T. Washington Community Center, to be conducted jointly with the National Association of Women Judges, the ABA Young Lawyers Division, and SF Barristers, and organized by our Pro Bono Subcommittee. Our activities there may include such tasks as yard work, painting, and cleaning. This is the third year that we have undertaken this effort, co-chaired by Patrick Clendenen and La Ronda Barnes, and we hope that it will become a regular feature of your annual meeting plans. So if you can spare an afternoon during the busy Annual Meeting, bring work clothes and come join us as we lend a hand in public service to those who are truly in need. Please contact me or Patrick Clendenen if you have any questions about participating in this effort.

Finally, subcommittees in almost twenty substantive areas including two newer subcommittees, Securities Arbitration and Appellate Litigation, as well as ADR, Antitrust and Trade Litigation, Bankruptcy, Business Courts, Business Torts, Class and Derivative Actions, Criminal and Enforcement Litigation, Employment Litigation, Environmental Litigation, ERISA and Pension Litigation, Financial Institution Litigation, Intellectual Property, Corporate Counseling & Litigation and Indemnification and Insurance, Partnerships and Alternative Business Entities, Pro Bono, and Securities Litigation, will meet from Saturday to Monday, and mini-programs will be offered by many. Subcommittee meetings are an outstanding way for newcomers to the Committee to become involved.

The Committee’s Stand-Alone Meeting Heads Downtown!

The Fall Meeting of the Business and Corporate Litigation Committee is set for December 4 and 5, 2003, with a Committee Dinner on the evening of Thursday, December 4, and no less than five hours of first-rate and timely continuing legal education programs on Friday, December 5. This year, the meeting will take place in New York City at the recently re-opened Millennium Hilton, located at 55 Church Street, in the heart of New York's Financial
District. Many New York City landmarks, including Trinity Church, the New York Stock Exchange, and the Federal Reserve Bank of New York, are only steps away. The hotel is also across the street from Century 21, which true shopping aficionados will know as “New York’s best kept secret.” The location will have special meaning for many, as Ground Zero, the site of the September 11 attacks, is nearby as well. Plans are under way to arrange a private tour of the Federal Reserve Bank’s gold vault for those who are interested on Thursday or Friday afternoon. So save the dates!

Leadership Transitions and Special Thanks

After nearly three years as Committee Chair, I will finish my term at the close of the ABA Annual Meeting in August. As you may know, Mitchell Bach has been designated as the next Chair of the Business and Corporate Litigation Committee, and Peter Walsh has been appointed as Vice Chair of the Committee. Mitchell, a partner in Fineman & Bach PC, in Philadelphia, has been a leader on our Committee for many years, and has been particularly active in our business courts activities. Pete, a partner in Potter Anderson & Corroon LLP, has taken a leading role in many Committee efforts, including in particular our writing and program offerings in the corporate governance area. They have been, and will continue to be in these new roles, outstanding contributors and leaders for our Committee.

Our Committee has accomplished so many things in the last three years. My sincere thanks are due to so many Committee members, that it would be impossible adequately to list them here. Special thanks are nevertheless due to Jim Holzman, Frank Balotti, and Donald Scott, the previous Chairs of this Committee; to Justice Myron Steele, our Judicial Designee, for his splendid efforts in connection with our Committee’s programs, particularly at the Committee’s Fall Meeting in New York City; to Paul Masinter for his tireless efforts in editing Network, our Committee newsletter; to Heidi Staudenmaier for her equally tireless efforts in support of our publication’s efforts and the Review of Developments book, now entering into its third edition; to Pat Clendenen for his special efforts to launch our public service project, and to all of the Subcommittee leaders who are listed in the roster elsewhere in this issue of Network for their participation in our Committee’s programs, the Annual Review of Developments in Business and Corporate Litigation book, our administrative meetings, dozens of subcommittee meetings and mini-programs, and all of the other efforts that support our Committee’s work for the Section and all of its members. And my special thanks are also due to every member of the Committee – now almost 1,300, and one of the largest in the Business Law Section – for the opportunity to serve as Committee Chair.

We look forward to seeing you in San Francisco in August!

ABA ANNUAL MEETING
AUGUST 8-12, 2003
SAN FRANCISCO, CALIFORNIA
TENTATIVE SCHEDULE FOR MEETINGS AND FORUMS OF THE COMMITTEE

Administrative Subcommittees and Subcommittee Chairs and Vice Chairs
Saturday 8/9/2003 5:00PM - 6:00PM
Fairmont Frontier Room, Mezzanine Level

Alternative Dispute Resolution
Sunday 8/10/2003 11:00AM - 12:00PM
Fairmont International Room, Mezzanine Level

Antitrust and Trade Litigation
Sunday 8/10/2003 10:00AM - 11:00AM
Fairmont Grand Ballroom Lounge, Grand Ballroom Level

Appellate Litigation
Monday 8/11/2003 9:00AM - 11:00AM
Fairmont California Room, Mezzanine Level
Bankruptcy Litigation Joint Meeting
Saturday 8/9/2003 2:30PM - 4:00PM
Fairmont
Frontier Room, Mezzanine Level

Business Courts
Monday 8/11/2003 10:00AM - 11:00AM
Fairmont
Green Room, Lobby Level

Business Torts
Sunday 8/10/2003 8:00AM - 9:00AM
Fairmont
Empire Room, Lobby Level

Class and Derivative Actions
Monday 8/11/2003 10:00AM - 11:00AM
Fairmont
International Room, Mezzanine Level

Committee Forum: Land Mine or Treasure Trove? Managing and Planning for Electronic Discovery
Monday 8/11/2003 8:15AM - 10:00AM
Fairmont
French Room, Lobby Level

Corporate Counseling and Litigation and Indemnification and Insurance Joint Meeting
Sunday 8/10/2003 10:00AM - 11:30AM
Fairmont
Green Room, Lobby Level

Criminal and Enforcement Litigation, Financial Institution Litigation and Securities Litigation Joint Meeting
Monday 8/11/2003 10:30AM - 11:30AM
Fairmont
Empire Room, Lobby Level

Employment Litigation
Monday 8/11/2003 11:00AM - 12:00PM
Fairmont
Green Room, Lobby Level

Environmental Litigation
Sunday 8/10/2003 11:00AM - 12:00PM
Fairmont
Frontier Room, Mezzanine Level

ERISA and Pension Litigation
Monday 8/11/2003 11:00AM - 12:00PM
Fairmont
International Room, Mezzanine Level

Intellectual Property Litigation
Sunday 8/10/2003 2:00PM - 3:00PM
Fairmont
International Room, Mezzanine Level

Partnerships and Alternative Business Entities
Monday 8/11/2003 2:00PM - 3:00PM
Fairmont
International Room, Mezzanine Level

Pro Bono
Sunday 8/10/2003 10:00AM - 11:00AM
Fairmont
Frontier Room, Mezzanine Level

Program: When the Going Gets Tough: Advising a Company in Crisis (Part I)
Saturday 8/9/2003 2:30PM - 4:30PM
Fairmont
Pavilion Room, Lobby Level

Program: When the Going Gets Tough: Advising a Company in Crisis (Part II)
Sunday 8/10/2003 2:30PM - 4:30PM
Fairmont
French Room, Lobby Level
FEATURE ARTICLE

THE EXPANSION OF THE DELAWARE COURT OF CHANCERY’S JURISDICTION TO ADJUDICATE OR MEDIATE CERTAIN “TECHNOLOGY DISPUTES” AND MEDIATE OTHER MAJOR BUSINESS DISPUTES – AN EVOLUTION, NOT A REVOLUTION

by Michael Houghton, William M. Lafferty, and Andrew H. Lippstone

Delaware has a long and rich history of being on the cutting edge of corporation law, and the Delaware Court of Chancery, with its national (and international) reputation for deciding major corporate law disputes, has played a significant role in developing and enhancing Delaware’s reputation in the corporate law field. In keeping with that tradition, the Delaware General Assembly recently enacted legislation that expands the jurisdiction of the Court of Chancery over certain “technology disputes,” and allows the Court to mediate certain major business disputes. This article describes the new initiatives and attempts to explain them in the context of the Court of Chancery’s pre-existing jurisdiction.

I. The New Legislation.

On May 30, 2003, Delaware Governor Ruth Ann Minner signed into law Senate Bill 58, which permits the Delaware Court of Chancery, upon the consent of the parties, to (1) adjudicate or mediate certain so-called “technology disputes” (new 10 Del. C. § 346), and (2) mediate certain business disputes (new 10 Del. C. § 347). The legislation was developed by a working group of practitioners which included one of the authors of this article, Mike Houghton, along with members of the Court of Chancery and was developed, in part, to respond to a growing trend among the states to provide sophisticated judicial forums in which parties can efficiently mediate or litigate complex business disputes. As noted in the synopsis of the bill, these new provisions provide “additional benefits for businesses choosing to domicile in Delaware,” and were devised to “keep Delaware ahead-of-the-curve in meeting the evolving needs of businesses, thus strengthening the ability of the State to convince such businesses to incorporate and locate operations” in Delaware.

A. The “Technology Dispute” Provisions.

The new Title 10, Section 346 of the Delaware Code (titled “Technology Disputes”) confers upon the Court of Chancery the jurisdiction to adjudicate or mediate certain “technology disputes” as defined in the statute. The term “technology dispute” is broadly defined in Section 346(c) to mean “a dispute arising out of an agreement” that primarily relates to:

- the purchase or lease of computer hardware;
- the development, use, licensing or transfer of computer software;
- information, biological, pharmaceutical, agricultural or other technology of a complex or scientific nature “that has commercial value,” or the intellectual property rights pertaining thereto;
the creation or operation of Internet web sites; or

- rights or electronic access to electronic, digital, or similar information, or support or maintenance of the above.

Section 346(d) mandates that the “Court shall interpret the term ‘technology dispute’ liberally so as to effectuate the intent of this section to provide an expeditious and expert forum for the handling of technology disputes involving parties who have agreed to resolve their disputes in the Court of Chancery, whether the parties are seeking to have the Court of Chancery (i) mediate the dispute only, (ii) mediate the dispute initially, and if that fails, adjudicate the dispute, or (iii) adjudicate the dispute.” The definition of “technology dispute,” however, specifically excludes any dispute “arising out of an agreement (i) that is primarily a financing transaction, or (ii) merely because the parties’ agreement is formed by, or contemplates that communications about the transaction will be by, the transmission of electronic, digital or similar information.”

As is the case with the new mediation provisions in 10 Del. C. § 347 discussed below, in order for a “technology dispute” to be eligible to be filed in the Court of Chancery, the following minimum requirements must be satisfied:

- the parties must consent to jurisdiction by stipulation or agreement;

- at least one party must be a “business entity” as defined in Section 346(b) (i.e., a corporation, statutory trust, business trust or association, real estate investment trust, common-law trust, or any other unincorporated business — including partnerships, limited liability partnerships, limited liability limited partnerships, or limited liability companies); and

- at least one party must be a business entity formed under Delaware law, or must have its principal place of business in Delaware.

Further, where only money damages are involved in a “technology dispute,” the Court will have jurisdiction only when the amount in controversy is at least $1 million (or such greater amount as the Court of Chancery determines by rule). Consistent with long-standing precedent in the Court of Chancery, neither punitive damages nor a jury trial are available in a “technology dispute” heard pursuant to Section 346. Finally, Section 346 does not limit the existing jurisdiction of the Court of Chancery or any other Delaware court.

Section 346(d) specifically provides that the Court of Chancery “shall adopt rules to facilitate the efficient processing of technology disputes, including rules to govern the filing of mediation only technology disputes, and to set filing fees and other cost schedules for the processing of technology disputes.” The Court of Chancery recently appointed a committee (comprised of practitioners and members of the Court) to develop and recommend a comprehensive set of rules to govern the adjudication or mediation of disputes under the new provisions. The rules committee expects to propose such rules for adoption by the Court as early as the fall of 2003.


New Section 347 of Title 10 of the Delaware Code (titled “Mediation Proceedings For Business Disputes”) provides the Court of Chancery with jurisdiction to mediate high-stakes business disputes, thereby allowing it to apply its well-honed expertise in complex business disputes to mediations.1 By rule, the Court may define those types of cases eligible for submission as business disputes. However, the legislation provides that in order for such a dispute to be eligible for mediation in the Court of Chancery, the following minimum requirements must be met:
• the parties must consent to jurisdiction by stipulation or agreement;
• at least one party must be a “business entity” (as defined in Section 346 above);
• at least one party must be a business entity formed under Delaware law, or must have its principal place of business in Delaware; and
• no party is a consumer, as that term is defined in 10 Del. C. § 2731, with respect to the business dispute.

In addition, in disputes involving only money damages, the Court will have jurisdiction to mediate disputes only when the amount in controversy is at least $1 million, or such greater amount as the Court determines by rule. As in Section 346, no punitive damages are available in a mediation pursuant to Section 347. Consistent with the practice both in private mediations as well as under Court of Chancery Rule 174 (the Court’s existing voluntary mediation rule, which is described more fully below), proceedings under Section 347 shall be considered confidential and not of public record.

Section 347 specifically provides that the intent of the provision is “to encourage the Court of Chancery to include complex corporate and commercial disputes, including technology disputes, within the ambit of the business dispute mediation rules,” and that the “Court of Chancery should interpret its rule-making authority broadly to effectuate that intention.”

II. The Evolution of the Court of Chancery’s Jurisdiction.

The Delaware Court of Chancery dates to 1792, but its roots go back even further – to the ecclesiastic courts of Norman England. As a historical court of equity, its original jurisdiction was limited to hearing actions involving equitable principles or remedies traditionally available in equity – such as fiduciary obligations, rights of stockholders to sue derivatively, and the power of the Court to award injunctions, specific performance, and the like. However, with the adoption by Delaware of the 1899 General Corporation Law, the Court of Chancery’s jurisdiction was expanded to specifically cover some corporate matters, including certain matters involving corporate dissolution and insolvency.

By the early part of the twentieth century, the Court of Chancery had developed a reputation for expertise in corporate matters, in part due to the number of corporate disputes decided by the Court, and in large measure because there were no juries in Chancery and the judges were called upon to explain their rulings in written opinions. Moreover, as a traditional court of equity, the Court of Chancery does not have jurisdiction over criminal matters or tort actions seeking money damages – cases that tend to clog the dockets in other law courts. With the development of this well-honed body of decisional law, the Court’s reputation and expertise in corporate matters grew even more, causing the Delaware General Assembly to expand wisely, over time, the Court’s statutory jurisdiction over corporate matters even further. Today, the Court’s statutory jurisdiction covers many corporate matters, including actions (i) to interpret or enforce provisions of a certificate of incorporation or bylaws (8 Del. C. § 111), (ii) relating to director or officer indemnification or advancement of expenses (8 Del. C. § 145), (iii) to compel the holding of annual stockholders’ meetings (8 Del. C. § 211), (iv) to compel the production of corporate stocklists and other corporate books and records (8 Del. C. § 220), (v) to review the election of directors or the outcome of other stockholder votes (8 Del. C. § 225), (vi) seeking the appointment of a custodian due to stockholder or director deadlock (8 Del. C. § 226), and (vii) seeking appraisal of the fair value of corporate stock (8 Del. C. § 262), just to name a few.

Given the ever-evolving jurisdiction of the Court of Chancery and its reputation for deciding complex corporate and commercial law disputes quickly and fairly, it is not at all surprising that the Delaware General Assembly again seized the
initiative to enact the new Section 346 of Title 10 of the Delaware Code to further expand the jurisdiction of the Court to cover “technology disputes.” However, one might fairly ask the question – what experience does the Court of Chancery have in mediating corporate or commercial disputes? After all, it is a court generally charged with deciding cases once they have been commenced in the traditional fashion by the filing of a complaint. The answer may not be apparent to lawyers who do not practice actively in the Court of Chancery: Court of Chancery Rule 174 (titled “Voluntary Mediation in the Court of Chancery”).

Pursuant to Rule 174, which was adopted by the Court in 1998, the “Chancellor or Vice Chancellor presiding in a case, with the consent of the parties, may refer any case or issue in a case to any other judge or master sitting permanently in the Court of Chancery, who has no involvement in the case, or to a designated mediator for voluntary mediation.” The stated purpose of voluntary mediation under Rule 174 is “to provide the parties convenient access to dispute resolution proceedings that are fair, confidential, effective, inexpensive, and expeditious.” Under Rule 174, the parties to an action may consent to voluntary mediation at any stage of the proceeding, and such consent is required to be in a writing that identifies, among other things, the issues to be mediated (Rule 174(b)). Mediation conferences under Rule 174 are confidential, as are all communications made in, or in connection with, the mediation (unless the parties agree otherwise).

Importantly, Rule 174 provides that the mediator may be the Chancellor or a Vice Chancellor. This is significant for a number of reasons. First, by allowing a judge sitting on the Court where the case is pending to mediate the dispute, the parties are likely to have more confidence in the process, given that the judges on the Court are all well-versed in the applicable law and all have experience deciding complex cases. Second, the courthouse setting and the participation of a sitting judge bring a level of dignity and seriousness to the proceeding that may not be available in private mediations, and also provides an opportunity to the parties to present their positions to a member of the judiciary who is, each day, still actively engaged in resolving complex legal issues. Finally, the participation of a sitting judge as a mediator – a judge who is not shy about expressing a candid opinion of the risks facing both sides in a dispute – may help to overcome the views of recalcitrant clients or attorneys who have over-optimistic views that their positions are undoubtedly correct.

Viewed in the context of the historical jurisdiction of the Court of Chancery, the new initiatives recently enacted by the Delaware General Assembly, while novel, are by no means revolutionary. Rather, they are a logical extension of the Court of Chancery’s jurisdiction to include “technology disputes” and the mediation of major business disputes.

III. A Hypothetical Application of the New Legislation.

An example of how Section 346 may be employed can be demonstrated through the hypothetical example of UltraGame, a Delaware limited liability company that has developed cutting-edge technology for use in interactive video games. Assume that UltraGame enters into an intricate license agreement with PlayBox Software, a California company and the world’s largest manufacturer of home video game software. That license agreement includes a provision whereby PlayBox generally consents to personal jurisdiction in Delaware, as well as a provision under which the parties agree that any dispute arising under the agreement “shall be subject to mediation in the Court of Chancery of the State of Delaware, and the parties hereby agree to submit to the jurisdiction of the Court of Chancery for the purposes of enforcing any agreement reached during mediation.” Further assume that such provision also states that if mediation is unsuccessful, the parties agree to resolve the dispute in the Court of Chancery and consent to personal jurisdiction in the Court of Chancery for purposes of adjudicating “any dispute arising out of or relating to this agreement.”
The license agreement contains a complex formula for determining UltraGame’s royalties, which becomes a source of dispute when PlayBox (in the eyes of UltraGame) fails to pay UltraGame $1.2 million the latter believes it is owed under the license agreement. UltraGame promptly seeks redress under the new mediation provision in the Delaware Court of Chancery – which would, under the terms of 10 Del. C. §§ 346 and 347, have the authority to mediate the dispute because (1) UltraGame is a Delaware entity; (2) the conflict falls under the broad definition of “technology dispute”; and (3) the amount in controversy exceeds $1 million.

Having the dispute mediated in the Court of Chancery has obvious benefits for both parties. Mediation is much faster than litigation; the dispute is likely to be fully resolved in a matter of months. And given the complexity of the license agreement, the monetary costs of litigating the dispute may well approach cost-prohibitive levels, particularly when one considers that the entire amount of potential damages in dispute is only $1.2 million. In addition, because mediation is a more consensual and therefore less confrontational forum for resolving disputes than a lawsuit, the parties may be able to resolve their dispute in a more businesslike and amicable fashion, such that they could potentially preserve what may be a mutually beneficial contractual relationship. Finally, because their dispute will be adjudicated by a jurist with world-class expertise in resolving complex business disputes, the parties can proceed with the knowledge that their conflict will be handled fairly, expeditiously, and above all, competently.

If the mediation does not resolve the dispute between UltraGame and PlayBox, Section 346 grants the Delaware Court of Chancery the authority to adjudicate the dispute, even if money damages were the only remedy sought, because the amount in controversy exceeds $1 million. The section of the license agreement providing that disputes will be litigated in the Delaware Court of Chancery will, under Section 346, be given full force and effect – a result that will undoubtedly be heartening to parties who want to avail themselves of the expertise of the nation’s preeminent business court.

IV. Conclusion.

Delaware’s recently-enacted technology dispute and mediation provisions provide a new type of service to Delaware entities, at a time when businesses are more interested than ever in cost-effective and confidential methods to resolve litigable controversies consensually. While to some extent Sections 346 and 347 represent new ground for the Delaware Court of Chancery, those changes represent a logical progression for a Court long known for its flexibility and ability to meet the evolving demands of modern businesses. Businesses can expect that the Court will bring the same expertise to these new technology and business cases which it has consistently demonstrated in the corporate arena.

Michael Houghton and William M. Lafferty are partners of Morris, Nichols, Arsht & Tunnell in Wilmington, Delaware. Andrew H. Lippstone is an associate with the firm.

Persons other than members of the Court of Chancery may be authorized by rule to act as mediators.

SUBCOMMITTEE REPORTS

APPELLATE LITIGATION SUBCOMMITTEE

by LaRonda D. Barnes

The Appellate Litigation Subcommittee will present a mini-program entitled “Certiorari: Enhancing Your Chances of Getting the Grant” at the ABA Annual Meeting on Monday, August 11 from 9 a.m. to 11 a.m. in the Fairmont Hotel’s California Room (Mezzanine Level). The subcommittee welcomes all federal and state appellate litigators, appellate court personnel, and any other individuals interested in the appellate process.
with an interest in appellate litigation to attend. As a new subcommittee, we also plan to discuss future programming and activities at the August 11 meeting. Please contact subcommittee co-chairs LaRonda D. Barnes at barnesl@supreme.courts.state.ga.us or Kendall Butterworth at kendall.butterworth@bellsouth.com if you have any questions or interest in joining the subcommittee.

**BANKRUPTCY LITIGATION SUBCOMMITTEE**

*by William K. Zewadski and Philip S. Warden*

The Bankruptcy Litigation Subcommittee again met jointly with the Creditors’ Rights Subcommittee at the Spring Meeting in Los Angeles. Phil Warden of San Francisco gave a detailed presentation of "Drafting Technology Licenses in a Down Market – Protecting Licensees from the Bankruptcy or Business Failure of Licensors," complete with a research paper and, more especially, extensive forms that may be invaluable to the practitioner. The novel issues of a technology license in the era of "dot coms go bust" made the program especially relevant.

Our next meeting will be held in San Francisco at the ABA Annual Meeting at 2:30 p.m. on August 9, 2003, and it is hoped all will take note of the time for planning your meeting agenda. At that time several topics will be discussed, including an update on the famous and long-running Lawrence case, involving the parameters of the contempt power of the bankruptcy court and the jailing for an extended period of a debtor charged with sheltering assets offshore.

Joining the Bankruptcy Litigation subcommittee is as simple as being a member of the ABA and emailing to co-chair, William Zewadski, Tampa, your interest in joining. Send your email to z@trenam.com, or call (813) 227-7484.

**BUSINESS COURTS SUBCOMMITTEE**

*by Mitchell L. Bach*

The Business Courts Subcommittee continues to be quite busy. This activity is directly related to the increased level of interest in specialized business courts and commercial litigation programs throughout the country.

We continue to support attorneys, judges and local bar leaders who are interested in launching new specialized business courts or commercial litigation programs. We currently are assisting such efforts in Michigan, Florida, New Jersey, Ohio and Maine. We are also assisting a newly-formed group of business court judges which is now being organized and will meet for the first time at the ABA Annual Meeting in San Francisco.

We continuously monitor such efforts throughout the United States; and committee members participate in the update and circulation of a nationwide survey regarding attempts to establish business courts and specialized commercial litigation programs, in virtually every state. We currently intend to republish this survey in "The Business Lawyer," along with an article which summarizes these developments and advocates new efforts in other locations where we perceive a need for better methods of handling commercial litigation.

The Business Court Subcommittee has been asked to participate in a Symposium on Business Courts, on November 7, 2003, to be sponsored jointly by the staff of "The Business Lawyer" and the University of Maryland School of Law. We intend to submit an extensive paper and written materials for that symposium, and to provide speakers on subjects ranging from jurisdiction, procedure, judicial expertise and results of newly-created business courts.

Our next meeting will be in San Francisco in connection with the Annual Meeting. Please feel free to join us on Monday, August 11, 2003, from 10:00 a.m. to 11:00 a.m. in the Fairmont Hotel (Green Room, Lobby Level).
The Business Courts Subcommittee welcomes new members. If you are interested in participating or would like further information regarding the committee’s activities, please contact Mitchell L. Bach, Committee Chair, at Fineman & Bach, P.C., 1608 Walnut Street, 19th Floor, Philadelphia, PA 19103; 215-893-8708 (phone), 215-893-8719 (fax); mbach@finemanbach.com.

CORPORATE COUNSEL AND LITIGATION SUBCOMMITTEE
by Peter J. Walsh, Jr.

The Corporate Counseling and Litigation Subcommittee will be meeting jointly with the Indemnification and Insurance Subcommittee at the Annual Meeting in San Francisco. The meeting is scheduled for Sunday, August 10, 2003, from 10:00 a.m. to 11:30 a.m. in the Green Room (lobby level) of the Fairmont Hotel. We will be discussing significant case law developments in 2002 and the first half of 2003, as well as recent amendments to the Delaware General Corporation Law. New members are always welcome. We look forward to seeing you there.

INDEMNIFICATION AND INSURANCE SUBCOMMITTEE
by William D. Johnston

Members of the Indemnification and Insurance Subcommittee will next meet during the ABA Annual Meeting in San Francisco. We'll meet jointly with the Corporate Counseling and Litigation Subcommittee. The meeting will take place on Sunday, August 10, from 10:00 a.m. to 11:30 a.m. at the Fairmont Hotel (Green Room, Lobby Level). As before, we will discuss case law and legislative developments, and we will share “practice pointers.” We'll also discuss ideas for future programs and articles.

New members are always welcome. Vice Chair Mike Gassmann and I look forward to seeing you in San Francisco!

INTELLECTUAL PROPERTY SUBCOMMITTEE
by Andrew F. Halaby

The Supreme Court has issued a number of interesting opinions this year bearing on intellectual property issues, including, as recently as June 2, Dastar Corp. v. Twentieth Century Fox Film Corp., 123 S. Ct. 2041. The Intellectual Property Subcommittee will be meeting on Sunday, August 10 at 2:00 p.m. in the International Room at the Fairmont Hotel. Anyone interested in discussing these cases, or any other intellectual property litigation issues of interest, should feel free to drop by. We look forward to seeing you!

PRO BONO SUBCOMMITTEE
by Patrick T. Clendenen

I am thrilled to report that at the ABA Annual Meeting, on Saturday, August 9, from 2:00 to 4:00 p.m., we have confirmed our Third Annual “Hands-On” Public Service Project at the Booker T. Washington Community Service Center, to be conducted jointly with the National Association of Women Judges, the ABA Young Lawyers Division, and SF Barristers, and organized and co-sponsored by the Business and Corporate Litigation's Pro Bono Subcommittee and the Business Law Section's Pro Bono Committee.

The Booker T. Washington Community Service Center is the oldest and only African American-owned center in San Francisco (founded in 1919). The Center provides a full spectrum of services to youth, seniors, and families. They own their own building and have been renovating it and the grounds. They can certainly use the physical labor of 20-25 lawyers. The Center will provide supplies and tools for necessary work, including cleaning, yard
work, and painting. The Mission of the Center is to provide leadership to a community in action, in an inclusive environment, and to respond to and nurture individuals to become positive, contributing leaders in the Greater San Francisco community. Its address is:

800 Presidio Avenue
San Francisco, California 94115
Phone: 415.928.6596
Fax: 415.928.6927.
For more information on the Center, see http://www.btwcsc.org/.

Many thanks to our host, who arranged for this ABA project:

Haydee Alfonso
Supervising Attorney
Community Organization Representation Project
Volunteer Legal Services Program
465 California St., Ste. 1100
San Francisco, CA 94104
415-782-8914

Please sign up for this project by responding directly to me by E-mail, ptclendenen@mintz.com, and bring some work clothes to the Annual Meeting! And spread the word. We will meet in the lobby of the Fairmont at or about 1:30 p.m. to share cabs to the Center.

PUBLICATIONS SUBCOMMITTEE

by Heidi M. Staudenmaier


Kudos to the more than 60 authors who made this massive publication undertaking possible. This is the third year that the Annual Review has been available as a publication. We also thank the good work and efforts of ABA Publication staff Jackie McGlamery and Whitney Ward.

The Publications Subcommittee will commence work on the 2004 Annual Review this Fall, which already is shaping up to be bigger and better than the prior editions. If you are interested in working on any of the chapters, please contact Heidi Staudenmaier at (602) 382-6366 or hstaudenmaier@swlaw.com.

ANNUAL REVIEW OF DEVELOPMENTS IN BUSINESS AND CORPORATE LITIGATION

The 2003 Edition of the Annual Review of Developments in Business and Corporate Litigation, a time-saving guide summarizing legal developments on business and corporate litigation issues, is available. By the Committee, the Annual Review brings together thorough summaries of recent cases, legislation, trends and developments in business litigation topics. Experts with in-depth litigation experiences address key concerns such as What issues did the Supreme Court address in deciding a key securities arbitration case last year?; and What are the latest developments in intellectual property law? Other topics addressed in the 2003 Annual Review include Antitrust Litigation, Criminal and Enforcement Litigation, ERISA, and Securities Arbitration. This reference will keep you current with annual updates. A necessary reference for every business litigator.

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**AT ABA ANNUAL MEETING: "GET IT RIGHT: SUCCESSFUL STRATEGIES TO MAKE MENTORING WORK"**

*by Hillary E. Ware*

At the ABA Annual Meeting in San Francisco, the Business Litigation Committee and the Commission on Racial and Ethnic Diversity are sponsoring a panel on "Get It Right: Successful Strategies to Make Mentoring Work." Hillary Ware of Heller Ehrman in San Francisco will moderate the discussion.

The panel is scheduled for Friday, August 8, from 10:30 a.m. to 12:30 p.m. The panel includes attorneys from private firms, the non-profit sector, and in-house. They will discuss effective mentoring from the perspective of establishing and maintaining such relationships both institutionally and personally, mentoring (or being mentored) across racial or gender lines, and different kinds of mentoring that may be needed at different points in one's career.

Mentoring and being mentored is an ongoing process for all lawyers. This promises to be an interesting panel that will have many practical observations and suggestions you can utilize in your own firm or law practice. For more information, please contact Hillary Ware at hware@hewm.com.

**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 Section's Website, www.abanet.org/buslaw/blt/guidelines.html, or Heidi M. Staudenmaier directly at “Business Law Today,” Editor-in-Chief, Snell & Wilmer, Phoenix, (602) 382-6366, hstaudenmaier@swlaw.com.
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