From the Chair

Peter J. Walsh, Jr.

First of all, best wishes for the New Year. All indications are that it will be a challenging year professionally, even for those of you who are fortunate enough to engage in practice areas that are expected to "hold their own" in this dismal economic environment. On the bright side, there could not be a more promising year to become (or remain) active in the Business & Corporate Litigation Committee.

The Spring Meeting

In a few short months, the Committee will meet at the Spring Meeting in Vancouver, British Columbia, host city of the 2010 Olympic and Paralympics Winter Games. Vancouver is a spectacular geographical venue, and the meeting will of course provide many opportunities for networking and quality CLE. The Committee is the primary sponsor for three programs: The Annual Review of Developments in Business and Corporate Litigation (emphasizing this year bankruptcy and financial institution litigation); International Business Courts; and Judicial Dispute Resolution in China, India and Vietnam. The Committee is also co-sponsoring a number of other programs. Also, in addition to the always popular Committee Dinner on Thursday, April 16, 2009, the Women’s Business Advocates Subcommittee will be organizing and sponsoring a reception to be held before the Section Dinner on Friday, April 17, 2009. Please plan on attending all or as many of these events as you can.

The Global Meeting

I also want to mention the Global Business Law Forum in Hong Kong on June 10-12, 2009. The theme for this year's Forum is "legal developments impacting companies doing business in Asia and the Pacific Rim." The Section anticipates that the Forum will attract a large number of lawyers in Pacific Rim/Asian practices, as well as expatriate lawyers (both private practice and in-house) working in Asia. The Forum should prove to be an excellent educational and networking opportunity, especially if your practice involves Pacific Rim-based clients.

The Annual Meeting

The Annual Meeting will be held in Chicago from July 30 - August 4, 2009. As usual, we will have a Committee dinner and/or social event, and planning for that is already underway.

Until I see you in Vancouver, all the best!

Peter J. Walsh, Jr.
Chair, Committee on Business and Corporate Litigation
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Subcommittee Updates

Subcommittee on Appellate Litigation
Kendyl Hanks, Chairs

Last year the Subcommittee on Appellate Litigation participated in a program sponsored by the Business and Corporate Litigation Committee entitled "Raising the Pleading Bar - How Much Has the Supreme Court Changed the Landscape for Business Litigation?", presented to the ABA Section of Business Law Spring Meeting, Dallas, Texas, April 11, 2008. Utilizing both a panel discussion and a mock argument, the panel explored and debated the legal and practical implications of the United States Supreme Court’s recent decision in Bell Atlantic Corp. v. Twombly, in which the Court overruled the fifty-year-old precedent of Conley v. Gibson and may have dramatically changed general pleading requirements. Topics included the nature of the new pleading standards; how state and federal courts may apply them (narrowly or broadly); and the many potential and unpredictable effects of the new standards on the selection, presentation, viability and defense of business claims in federal and state courts.

Subcommittee Chair Kendyl Hanks, a senior associate with the Appellate Practice Group of Haynes and Boone, LLP in Dallas and New York presented mock argument to the Honorable Judge Mary Murphy, of the 14th Judicial District Court, Dallas County, Texas. Local business litigator Victor Vital, a partner with Baker Botts, LLP in Dallas, presented oral argument as well. Panelists included John L. Cooper, of Farella Braun + Martel LLP, in San Francisco, CA; Maria C. Dunn, of ConocoPhillips in Houston, TX; Richard M. Paul, of Shughart Thomson & Kilroy in Kansas City, MO; and Theodore C. Whitehouse, of Willkie Farr & Gallagher LLP in Washington, DC. Robert L. Gegios, of Kohner, Mann & Kailas, S.C., Milwaukee, WI served as Program Chair and Moderator. The program was very well-attended, and received excellent reviews from both in-house and outside counsel.

The Appellate Subcommittee is looking for new ideas for programming. Based on positive feedback the Subcommittee is considering a revival of its March 16, 2007 “Tour of the Ivory Tower” program, in which Supreme Court specialists presented a review of significant developments in the Supreme Court, including the impact of recent nominations to the Court, and a possible moot court presentation on a pending Supreme Court case. The Subcommittee is also planning programs concerning developments and problems in the area of business torts (specifically contract/fraudulent inducement and fiduciary duty), and an integrated panel discussion of the process of affecting policy change through lobbying and appellate law, which we anticipate will include government affairs specialists, industry group representatives, appellate lawyers, and will address significant changes in national policy that have been brought about by lobbying efforts on the one end, and appellate advocacy (e.g., through amicus briefs in Supreme Court cases) on the other. We will explore opportunities to co-sponsor such a program with other committees and, possibly, sections (including but not limited to the Council of Appellate Lawyers, and the ABA Young Lawyers Division, which is presenting the series Anatomy of an Appeal to young lawyer audiences in 2009).

Join us for our subcommittee meeting in Vancouver, where we
hope to put these plans into action. We are always looking for new participants and ideas—so sign up online, or contact the Subcommittee Chair, Kendyl Hanks of Haynes and Boone, e-mail: kendyl.hanks@haynesboone.com. For more information, visit our Subcommittee website at: http://www.abanet.org/dch/committee.cfm?com=CL150009

Subcommittee on Business Courts
Lee Applebaum and Rick Gross, Chairs, Cory Manning, Vice-Chair

The Subcommittee on Business Courts has worked with a number of judges in planning and providing materials for the upcoming program, Business Courts Around the World, to be presented on April 17th in Vancouver at 8:15 a.m. The Subcommittee’s meeting during the Annual Meeting in New York, attended by a number of judges, provided a springboard to that effort. Program panelists include five business courts judges from across the United States, as well as two Canadian Justices and Justice David Steel from London’s Commercial Court. The Subcommittee has continued to provide information and resources to those interested in establishing business courts in various states, as well to the American College of Business Court Judges, and to the National Center for State Courts in its putting on a business courts program with the Conference of Chief Justices. For the sixth year, Subcommittee co-chair Lee Applebaum coordinated the Business Courts chapter in the Annual Review of Developments in Business and Corporate Litigation, which includes a number of Subcommittee members as authors.

Subcommittee on Class and Derivative Actions
Patrick T. Clendenen, Chair

The Business and Corporate Litigation (BCL) Committee’s Subcommittee on Class and Derivative Actions is pleased to report that it authored two chapters again in BCL’s Annual Review of Developments in Business and Corporate Litigation. The first, on Class Actions, was co-authored by Kevin McGinty and Pat Clendenen at Mintz Levin (Boston) and Joe Ianno, Matt Allen, and Mac McCoy at Carlton Fields (West Palm Beach), and the second, on Derivative Actions, was co-authored by Pat Clendenen and Chip Phinney at Mintz Levin (Boston). Representatives from our subcommittee will be highlighting topics in these areas at the Business Law Section’s Spring Meeting Annual Review of Developments Program on Thursday, April 16 from 2-5 p.m. at the Vancouver Convention and Exhibition Center, Rooms 217-219.

We are also teaming up with the Business Courts and International Litigation Subcommittees to hold a Joint Meeting titled “Judicial Perspectives on Cross-Border Litigation,” on Thursday, April 16 from 9-10:30 a.m. at the Vancouver Convention and Exhibition Center, Rooms 205. The Honorable Justice James Farley Q.C. (ret.), Ontario, Canada Superior Court, Commercial List Division; The Honorable Justice Daniel H. Tingley, Quebec, Canada Superior Court, Commercial List Division; and The Honorable Philip H. Brandt, U.S. Bankruptcy Court Judge, United States Bankruptcy Court for the Western District of Washington are confirmed speakers.

Please be sure to add these programs to your Spring Meeting plans.
Subcommittee on Employment Law
Bret A. Cohen, Chair

The Subcommittee on Employment Law produced a nearly 200-page summary of virtually every court decision in 2008 related to employment law from every U.S. federal circuit, the U.S. Supreme Court, and key Canadian courts. The summary is categorized by subject matter and will appear as Chapter 15 in the ABA's Annual Review of Developments in Business and Corporate Litigation - 2008 Edition. This series is the ABA's best-selling book.


Subcommittee on International Litigation
Peter Lukasiewicz, Chair, Deborah Templer, Vice-Chair

The Subcommittee on International Litigation, still a relatively young subcommittee of the Business and Corporate Litigation Committee, held its annual meeting at the Business Law Section Spring Meeting in Dallas, Texas, on April 10, 2008. A significant portion of our meeting was devoted to a discussion of the role that our Subcommittee might play in the 2009 Business Law Section Spring Meeting, particularly given the location of the 2009 meeting in Vancouver, British Columbia.

Following this discussion, Chair Peter Lukasiewicz and Vice-Chair Deborah Templer have put together a Business and Corporate Litigation CLE program on "Dispute Resolution in China and India" to take place at the Spring Meeting in Vancouver on April 17, 2009 from 2:30-4:30 p.m. Confirmed panel speakers include practitioners and experts from India, China and Vancouver, who will share their knowledge and first-hand experiences in resolving complex commercial disputes in China and India.

As well, the Subcommittee on International Litigation will join with the Subcommittees on Business Courts and Class and Derivative Actions in putting on a joint subcommittee program on "Judicial Perspectives on Cross-Border Litigation", scheduled to take place on April 16, 2009 from 9-10:30 a.m. Guest speakers will include judges from U.S. and Canadian business courts.

Our Subcommittee continues to contribute to the Annual Review of Developments in Business and Corporate Litigation, having just submitted our chapter for the 2009 edition - this year, focusing on international commercial arbitration. The Subcommittee welcomes new or existing members who would like to contribute to our chapter in next year's edition of the Annual Review.

Finally, we welcome new members to the Subcommittee. We will have a Subcommittee meeting at the Business Law Section Spring Meeting in Vancouver and we encourage any attorneys
with an interest in international litigation to join us.

Subcommittee on Pro Bono
Mac R. McCoy, Chair

The Subcommittee on Pro Bono is working with the Host Committee for the Spring Meeting in Vancouver to plan and co-sponsor a public service project to benefit a local charitable organization. The details of the project have not been finalized, but several proposals are currently under consideration. The project, which will take place during the Spring Meeting, will provide Section volunteers with a meaningful opportunity to give back to the local community and to network. Any members of the Business and Corporate Litigation Committee who would like to volunteer for the public service project should email Mac McCoy (mmccoy@carltonfields.com) for more information.
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