Message from the Chair

William D. Johnston
Chair, Business and Corporate Litigation Committee

I write this message at the close of the Business Law Section Spring Meeting in Boston. I'll touch briefly on four topics: (i) results of the Boston meeting; (ii) offerings at the upcoming Annual Meeting in Toronto, (iii) offerings at the September 2011 Global Business Law Forum, and (iv) thanks and best wishes to a good friend of our Committee.

Boston Meeting. Thanks again to the moderators of our Committee's three terrific programs in Boston -- Rolin Bissell ("Dodd-Frank: Will Increased Federal Regulation of Corporate Governance Improve Corporate Performance"?), Bret Cohen ("The 2011 Annual Review of Developments in Business and Corporate Litigation"), and Denise Kraft ("Managing Electronically Stored Information Before, During and After Litigation: Views from the Trenches and the Benches"). Thanks also to all program panelists, with special thanks to Chief Justice Myron T. Steele, Justice Henry duPont Ridgely, Vice Chancellor Donald F. Parsons, Jr., (Ret.) Judge Ben F. Tennille, and (Ret.) Justice Allan van Gestel.

The Boston meeting featured numerous gatherings of our Committee's subcommittees, task forces, and working groups. In addition, we had a very well-attended meeting of Committee leaders and other members, and we enjoyed a sold-out Committee Dinner -- with thanks to Bret Cohen and Mintz Levin for the generous hosting of the pre-dinner reception. We were treated to another outstanding reception and awards presentation sponsored by the Women's Business and Commercial Advocates (chaired by Melanie Damian), also generously underwritten by Mintz Levin.

We were very pleased to welcome to our Committee new Business Court Representatives Judge Mark I. Bernstein (Commerce Case Management Program, Court of Common Pleas, Philadelphia, PA), Judge Allen S. Goldberg (Law Division, Commercial Court, Cook County, IL), and Judge Sean D. Wallace (Prince George's County Circuit Court, Upper Marlboro, MD).

For the first time at the Boston meeting, the Section made available broadly "dial-in" participation in various meetings. I and other Section committee chairs had encouraged this opportunity for enhanced participation, and I applaud (and thank) Section leadership and ABA staff for their helpful follow-through. We will all want to keep this opportunity in mind as we plan our future meetings.

Finally, in connection with the Boston meeting, I would be remiss if I were not to acknowledge that our Committee's immediate past Chair, Pete Walsh, did us proud by completing his 12th Boston Marathon!

Annual Meeting. As a reminder, this year's ABA Annual Meeting will be in Toronto, Ontario, Canada, on August 4-8. Our Committee has submitted CLE program proposals for the meeting. Stay tuned!

I encourage all of our subcommittee, task force, and working group leaders to present substantive updates to their members (and visitors) during meetings in Toronto and to consider future Committee program topics as well as opportunities for publication (through this newsletter, the Annual Review of Developments in Business and Corporate Litigation, Business Law Today, and/or The Business Lawyer).

As always, the Annual Meeting will provide an opportunity both for worthwhile substantive programming and meetings and also for wonderful camaraderie amongst our Committee members -- new and longtime. To that end, our
Committee Dinner will be a very special one, thanks to great assistance from our friends and colleagues from Toronto. Details to follow.

If you haven’t already done so, please register for the Annual Meeting at the earliest opportunity (www.americanbar.org). The Business Law Section will be headquartered at the Westin Harbour Castle, a fabulous location, and I’m told that the room block is filling up quickly.

**Global Business Law Forum.** As we have heard from Business Law Section Chair Lynne Barr, the Section will be hosting its second Global Business Law Forum, this time in London, England on September 21-23, 2011. The Forum will focus on cross-border issues, with a special emphasis on financial reform and its effects on clients of business lawyers. Areas to be highlighted during 15 CLE programs will include mergers and acquisitions, corporate finance, creditors' rights, and corporate practice.

The Forum should be worthwhile and enjoyable. Please see the Forum's website, [www.ambar.org/gbf](http://www.ambar.org/gbf), for registration info.

**Tribute to Judge Tennille.** During our Committee Dinner in Boston, past Committee Chair Mitchell Bach offered a tribute to The Honorable Ben F. Tennille. Mitch put it so well, celebrating Judge Tennille, on the occasion of his retirement from the North Carolina Business Court, as the "father of business courts." Time and again, Judge Tennille has contributed his time and insights to our Committee. And he always has done so incisively and with good humor.

The good news is that our Committee -- and, more broadly, the Section -- will continue to benefit from Judge Tennille's participation and support. In addition, many will be fortunate to avail themselves of his services as a conflict resolution professional through his newly-formed "Black Swan ADR."

We wish Judge Tennille and his wife, Dr. Marty Tennille, the best for all continued success.

* * *

It continues to be my privilege and pleasure to serve as Chair of the Business and Corporate Litigation Committee. Please let me know if you have any questions or comments, or if I otherwise can be of assistance in any way ([wjohnston@ycst.com](mailto:wjohnston@ycst.com) or 302.571.6679). And please continue to do all that you can do to encourage others to join our Committee and to become involved with one or more of our subcommittees, task forces, and working groups.

Bill Johnston is a partner in the Wilmington, Delaware-based law firm of Young Conaway Stargatt & Taylor, LLP. He is a past chair of the firm’s Corporate Counseling and Litigation practice group.

---

**Featured Article**

**The White House Proposes Comprehensive National Breach Notification Law**

*Gary Zhao*

On May 12, 2011, the Obama Administration forwarded a comprehensive cybersecurity legislative proposal to Congress. Certain provisions of this proposal, if enacted, would establish a national data breach notification law (hereinafter sometimes referred as "the proposal"). Presently, there is no comprehensive regulatory scheme, state or federal, for notifying affected consumers about data breaches and remedying the breaches. However, forty-six states and the District of Columbia require that individuals be notified if their personal information is disclosed or accessed without authorization. These laws are known as state "breach notification laws." The proposed national breach notification law would apply to any business entity that uses...
"sensitive personally identifiable information" of more than 10,000 individuals during any 12-month period.

More...

**Subcommittee Updates**

**Appellate Litigation Subcommittee**

**Kendyl Hanks and Mark Trachtenberg, Co-Chairs**

On April 14, 2011 at the ABA Section of Business Law meeting in Boston, a distinguished panel discussed trends in Appellate Law and International Litigation in connection with the presentation entitled "2011 Annual Review of Developments in Business and Corporate Litigation." The panel was composed of (1) the Honorable Myron Steele, Chief Justice of the Delaware Supreme Court, (2) the Honorable Ralph Gants, an Associate Justice of the Massachusetts Supreme Judicial Court, (3) Mark Trachtenberg, partner in the appellate section of Haynes and Boone, LLP in Houston, Texas (and Appellate Subcommittee Co-Chair), and (4) Deborah Templar, associate at Gowlings in Toronto, CA, and was moderated by Bret Cohen, partner in the Boston office of Mintz Levin. The panel focused on cases of interest to the business community from the Supreme Court's 2010-11 term, as well as Canadian court decisions with international implications.

The panel's discussion drew from the Appellate Litigation Subcommittee's chapter in the *Annual Review of Developments in Business and Corporate Litigation* (2011), published each year by the ABA's Section of Business Law, Business and Corporate Litigation Committee. The *Annual Review* can be purchased on the ABA's website. The Subcommittee's Appellate Practice Chapter covers the United States Supreme Court's business-related jurisprudence from the 2009-10 term, and key cases impacting the business community pending before the Court through the end of 2010. Topics include, among other important business-law topics, securities fraud, preemption, honest services fraud, antitrust, and patent. The 2011 Appellate Practice Chapter can be viewed here.

Finally, the Subcommittee is in the midst of planning its 2011 Supreme Court Developments panel, a revival of last year's standing-room-only panel "Oyez! Oyez! Oyez! Significant Supreme Court Trends and Decisions for Business Lawyers and Their Clients," presented in Washington, D.C. on November 19, 2010 (view the materials here). We look forward to seeing everyone at this year's panel in Washington on Friday, November 18, 2011.

**Bankruptcy Litigation Subcommittee**

**Michael D. Rubenstein, Chair**

1. We gathered for a brief meeting at the Spring Business Law Section Meeting in Boston.
2. We have a chapter on 2010 Court of Appeals decisions on bankruptcy law issues that will be included in the Business Law Section's Annual Review.
3. We would welcome a new co-author for the 2011 chapter for the Annual Review.

**Corporate Counseling and Litigation Subcommittee**

**Kurt M Heyman, Chair**

On Friday, April 15th, the Corporate Counseling and Litigation Subcommittee and Business Courts Subcommittee jointly planned and
moderated a 2 hour CLE program at the American Bar Association, Section of Business Law Spring Meeting in Boston, MA. The program was titled "Managing Electronically Stored Information Before, During, and After Litigation: Views from the Trenches and the Benches" and discussed best practices for records management, legal holds, production of electronically stored information (ESI), emerging technologies in the workplace, impact of non-traditional communications such as social networking sites, the ethical impact of new and emerging technologies, mobile devices, cloud computing, acceptable use policies, and recent e-discovery guidance found in legal decisions and business court rules and guidelines. The program panel was moderated by commercial litigators Denise Seastone Kraft, a partner at DLA Piper who practices in Wilmington, Delaware and Cory Manning, a partner at Nelson Mullins Riley & Scarborough LLP who practices in Columbia, SC. The panel featured two prominent members of the American business court judiciary: The Honorable Donald F. Parsons, Jr., Vice Chancellor, Delaware Court of Chancery and The Honorable Ben F. Tennille (Ret.), former Special Superior Court Judge For Complex Business Cases, North Carolina Business Court. In addition, the panel also included in-house legal counsel from two prominent companies: Ricoh Americas Corporation (Beth Ann Jakoboski) and Ally Financial, Inc, formerly known as GMAC LLC (Tricia A. R. Dennis) and was rounded out by Kevin F. Brady, a partner at Connolly Bove Lodge & Hutz LLP in Wilmington, Delaware, who also is a member of the Advisory Board of the cutting edge Sedona Conference Working Group on Best Practices for Electronic Document Retention and Production and John Martin, a partner at Nelson Mullins Riley & Scarborough LLP who practices in Columbia, SC and focuses on electronic discovery and information management.

The Corporate Counseling and Litigation Subcommittee also had its annual Spring meeting at the Business Law Spring Meeting to discuss new developments in the field of corporate counseling and litigation and potential future programming ideas. Thank you to all those that attended and brought their wonderful ideas as it was another fruitful session!

Membership Subcommittee
Elizabeth Snow Stong, Chair

The Committee is working to increase its membership among law students and young lawyers in the areas of social media, Business Law Section programs for law students, and possible implementation of new programs geared towards law students and young lawyers.

The Committee has a group on LinkedIn, which promotes awareness of the Committee to interested LinkedIn users and can drive membership among law students and young lawyers who are interested in the Committee's practice areas. We are also considering the use of Facebook to promote the Committee among Facebook users, especially law students and young lawyers, and which can also promote Committee programs at the Annual, Fall, and Spring Meetings.

Two Business Law Section programs can also increase membership in the Committee among law students. The Senior Counsel mentoring program for law students at the Fall and Spring meetings, which many Committee leaders participate in, as well as the Diversity Clerkship program at the Delaware Court of Chancery, are ideal ways to introduce law students to membership in the Committee.

Finally, other programs may be implemented by the Committee to promote awareness and increase membership. For law students, the Committee may consider sponsoring or participating in career panels at law schools to discuss our practice areas. The Committee may also want to solicit student volunteers to assist in researching and drafting articles for Business Law Today or other Committee publications. For young lawyers, the Committee may consider participating in the
Institute for the Young Business Lawyer programs, such as recently held at the 2011 Spring Meeting.

Tribal Court Litigation Subcommittee
Heidi McNeil Staudenmaier and Gabriel Galanda, Co-Chairs

The Tribal Court Litigation Subcommittee actively participated in the planning and securing of speakers to the 15th Annual National Institute on the Gaming Law Minefield held in February in Las Vegas, Nevada. The two-day seminar featured several programs on tribal gaming. Subcommittee Co-Chair Heidi McNeil Staudenmaier moderated the program: "Off-Reservation Gaming: Does it have a future in Indian Country?" Members of the Subcommittee have also been asked to assist in programming at the International Masters of Gaming Law Spring Conference in Napa Valley, California in May.

The Subcommittee again successfully authored the chapter on "Tribal Court Litigation" for the 2011 edition of the Annual Review of Developments in Business and Corporate Litigation. The authors for the chapter for the 2011 edition were the Subcommittee Co-Chairs Gabriel Galanda and Heidi McNeil Staudenmaier, as well as Ruth Khalsa. Members of the Subcommittee also regularly contribute articles on Tribal law matters to various ABA and other publications.

Finally, the Subcommittee members continue to keep current on developments in Tribal law matters and communicate regular updates to others involved in the Subcommittee.

Leadership Roster

<table>
<thead>
<tr>
<th>VICE CHAIRS:</th>
<th>CHAIR:</th>
<th>IMMEDIATE PAST-CHAIR:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Heidi McNeil Staudenmaier Snell &amp; Wilmer L.L.P. Suite 1900 400 E. Van Buren Street Phoenix, AZ 85004-2509 e-mail: <a href="mailto:hstaudenmaier@law.com">hstaudenmaier@law.com</a> (602) 382-6366 FAX: (602) 6070</td>
<td>William D. Johnston Young Conaway Stargatt &amp; Taylor, LLP The Brandywine Building 1000 West Street, 17th Fl. Wilmington, DE 19801 e-mail: <a href="mailto:wjohnston@ycst.com">wjohnston@ycst.com</a> (302) 571-6679 FAX: (302) 576-3304</td>
<td>Peter J. Walsh, Jr. Potter Anderson &amp; Corroon LLP 1313 North Market Street Wilmington, DE 19899 e-mail: <a href="mailto:pwalsh@potteranderson.com">pwalsh@potteranderson.com</a> (302) 984-6037 FAX: (302) 658-1192</td>
</tr>
<tr>
<td>Patrick Thomas Clendenen Nelson Mullins Riley &amp; Scarborough, LLP One Post Office Square Boston, MA 02109-2127 e-mail: <a href="mailto:Patrick.clendenen@nelsonmullins.com">Patrick.clendenen@nelsonmullins.com</a> (617) 573-4709 FAX: (617) 573-4710</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>ALTERNATIVE DISPUTE RESOLUTION CHAIR</th>
<th>ALTERNATIVE DISPUTE RESOLUTION VICE CHAIR</th>
<th>ANTITRUST AND TRADE LITIGATION CHAIR</th>
</tr>
</thead>
<tbody>
<tr>
<td>Brigida Benitez Inter-American Development Bank Office of Institutional Integrity 1300 New York Avenue, NW Washington, DC 20577 e-mail: <a href="mailto:brigidab@iad.org">brigidab@iad.org</a> (202) 623-2277 FAX: (202) 663-6363</td>
<td>Ernest Ehling, Jr. Attorney at Law 509 Stillwells Corner Road, #E4 Freehold, NJ 07728-2965 e-mail: <a href="mailto:ehlinglaw@optonline.net">ehlinglaw@optonline.net</a> (732) 431-5235 FAX: (732) 431-5237</td>
<td>Barbara Sicalides Pepper Hamilton LLP 2 Logan Square, #3000 Philadelphia, PA 19103-2799 e-mail: <a href="mailto:sicalidesb@pepperlaw.com">sicalidesb@pepperlaw.com</a> (215) 981-4000 FAX: (215) 981-4750</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>APPELLATE LITIGATION CHAIRS</th>
<th>BANKRUPTCY LITIGATION CHAIR</th>
<th>BANKRUPTCY LITIGATION VICE CHAIRS</th>
</tr>
</thead>
</table>

http://apps.americanbar.org/buslaw/committees/CL150000pub/newsletters/201105/
<table>
<thead>
<tr>
<th>BUSINESS COURTS CHAIR</th>
<th>BUSINESS TORTS CHAIR</th>
<th>BUSINESS TORTS VICE CHAIR</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cory E. Manning</td>
<td>Dale Michael Weppner</td>
<td>James F. Williams</td>
</tr>
<tr>
<td>Nelson Mullins Riley &amp; ScarborOUGH, LLP</td>
<td>Greensfelder, Henker &amp; Gale, P.C.</td>
<td>Perkins Cole LLP</td>
</tr>
<tr>
<td>The Meridian 17th Floor</td>
<td>10 S. Broadway, #2000</td>
<td>1201 3rd Avenue</td>
</tr>
<tr>
<td>1320 Main Street</td>
<td>St. Louis, MO 63102-1747</td>
<td>Seattle, WA 98101-3099</td>
</tr>
<tr>
<td>Columbia, SC 29201-3204</td>
<td>e-mail: <a href="mailto:dmw@greensfelder.com">dmw@greensfelder.com</a></td>
<td>e-mail: <a href="mailto:williams@perkinscoie.com">williams@perkinscoie.com</a></td>
</tr>
<tr>
<td>e-mail: <a href="mailto:cory.manning@nelsonmullins.com">cory.manning@nelsonmullins.com</a></td>
<td>(314) 241-9990</td>
<td>(206) 359-3543</td>
</tr>
<tr>
<td>(803) 255-5524</td>
<td>FAX: (314) 241-8624</td>
<td>FAX: (206) 359-4543</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>CLASS AND DERIVATIVE ACTIONS CHAIRS</th>
<th>CORPORATE COUNSELING AND LITIGATION CHAIR</th>
<th>CORPORATE COUNSELING AND LITIGATION VICE CHAIR</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mac Richard McCoy</td>
<td>Kurt M. Heyman</td>
<td>Denise Seastone Kraft</td>
</tr>
<tr>
<td>Carlton Fields</td>
<td>Proctor Heyman LLP</td>
<td>Edwards Angell Palmer &amp; Dodge LLP</td>
</tr>
<tr>
<td>4221 W. Boy Scout Boulevard</td>
<td>116 North West Street</td>
<td>919 N. Market Street, #1500</td>
</tr>
<tr>
<td>Tampa, FL 33607-5780</td>
<td>Wilmington, DE 19801</td>
<td>Wilmington, DE 19801-3046</td>
</tr>
<tr>
<td>e-mail: <a href="mailto:mmccoy@carltonfields.com">mmccoy@carltonfields.com</a></td>
<td>e-mail: <a href="mailto:kheyman@proctorheyman.com">kheyman@proctorheyman.com</a></td>
<td>e-mail: <a href="mailto:ikraft@apollaw.com">ikraft@apollaw.com</a></td>
</tr>
<tr>
<td>(813) 229-4165</td>
<td>(302) 472-7302</td>
<td>(302) 425-7106</td>
</tr>
<tr>
<td>FAX: (813) 229-4133</td>
<td>FAX: (302) 472-7320</td>
<td>FAX: (888) 325-9741</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>CRIMINAL AND ENFORCEMENT LITIGATION CHAIR</th>
<th>CRIMINAL AND ENFORCEMENT LITIGATION VICE CHAIR</th>
<th>E-DISCOVERY CHAIR</th>
</tr>
</thead>
<tbody>
<tr>
<td>Martin C. Grant</td>
<td>Kevin R. Puvakowski</td>
<td>Robert J. Witte</td>
</tr>
<tr>
<td>Federal Reserve Bank of New York</td>
<td>Sheppard, Mullin, Richter &amp; Hampton LLP</td>
<td>Strasburger &amp; Price LLP</td>
</tr>
<tr>
<td>33 Liberty Street</td>
<td>Twenty-Fourth Floor</td>
<td>901 Main Street, #4400</td>
</tr>
<tr>
<td>New York, NY 10045-1003</td>
<td>30 Rockefeller Plaza</td>
<td>Dallas, TX 75202-3279</td>
</tr>
<tr>
<td>e-mail: <a href="mailto:martin.grant@nyfrb.org">martin.grant@nyfrb.org</a></td>
<td>New York, NY 10112</td>
<td>e-mail: <a href="mailto:robert.witte@strasburger.com">robert.witte@strasburger.com</a></td>
</tr>
<tr>
<td>(212) 720-5032</td>
<td>e-mail: <a href="mailto:Kpuvakowski@sheppardmullin.com">Kpuvakowski@sheppardmullin.com</a></td>
<td>(214) 651-4612</td>
</tr>
<tr>
<td>FAX: (212) 720-5860</td>
<td>(212) 634-3033</td>
<td>FAX: (214) 659-4089</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>E-DISCOVERY VICE CHAIR</th>
<th>EMPLOYMENT LITIGATION CHAIR</th>
<th>EMPLOYMENT LITIGATION VICE CHAIR</th>
</tr>
</thead>
<tbody>
<tr>
<td>Kevin F. Brady</td>
<td>Bradford Newman</td>
<td>Melanie Emmons Damian</td>
</tr>
<tr>
<td>Connolly Bove Lodge &amp; Hutz LLP</td>
<td>Paul, Hastings, Janosky &amp; Walker LLP</td>
<td>Damian &amp; Valori, LLP</td>
</tr>
<tr>
<td>Wilmington, DE 19899</td>
<td>1117 S. California Avenue</td>
<td>1000 Brickell Avenue, #1020</td>
</tr>
<tr>
<td>e-mail: <a href="mailto:kbrady@cbllh.com">kbrady@cbllh.com</a></td>
<td>Palo Alto, CA 94304-1106</td>
<td>33131-3014</td>
</tr>
<tr>
<td>(302) 888-6257</td>
<td>e-mail: <a href="mailto:bradfordnewman@paulhastings.com">bradfordnewman@paulhastings.com</a></td>
<td>e-mail: <a href="mailto:mdamian@dvllp.com">mdamian@dvllp.com</a></td>
</tr>
<tr>
<td>FAX: (302) 656-0116</td>
<td></td>
<td>(305) 371-3960</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>лицениум лисков</th>
<th>Даниел Б. Рубенштейн Лисков</th>
<th>Каролайн Петерсен Ричтер Труман Сандерс LLP</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lisков, Лисков, Лисков, Лисков</td>
<td>1001 Fannin Street, #1800</td>
<td>600 Peachtree Street, NE #5200</td>
</tr>
<tr>
<td>Houston, TX 77002-6756</td>
<td>e-mail: <a href="mailto:mrubenstein@liskow.com">mrubenstein@liskow.com</a></td>
<td>Atlanta, GA 30308-2216</td>
</tr>
<tr>
<td>(504) 556-4092</td>
<td>FAX: (713) 651-2952</td>
<td>e-mail: <a href="mailto:carolyn.richter@troutmansanders.com">carolyn.richter@troutmansanders.com</a></td>
</tr>
<tr>
<td>(404) 865-3358</td>
<td>FAX: (404) 962-6667</td>
<td>(404) 865-3358</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Sarah Loomis Cave</th>
<th>Hughes Hubbard &amp; Reed LLP</th>
<th>New York, NY 10004-1482</th>
</tr>
</thead>
<tbody>
<tr>
<td>One Battery Park Plaza</td>
<td>e-mail: <a href="mailto:cave@hugheshubbard.com">cave@hugheshubbard.com</a></td>
<td>e-mail: <a href="mailto:cave@hugheshubbard.com">cave@hugheshubbard.com</a></td>
</tr>
<tr>
<td>(212) 837-6559</td>
<td>FAX: (212) 422-4726</td>
<td>(212) 837-6559</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><a href="mailto:-mark.trachtenberg@haynesboone.com">-mark.trachtenberg@haynesboone.com</a></th>
<th>(713) 547-2528</th>
<th>FAX: (713) 236-5567</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>(302) 472-7302</th>
<th>FAX: (302) 472-7320</th>
<th>FAX: (302) 472-7302</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>(325) 371-3960</th>
<th>FAX: (305) 371-3960</th>
<th>FAX: (305) 371-3960</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>(302) 425-7106</th>
<th>FAX: (302) 425-7106</th>
<th>FAX: (302) 425-7106</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>(212) 651-4612</th>
<th>FAX: (212) 659-4089</th>
<th>FAX: (212) 651-4612</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>@nelsonmullics.com</th>
<th>e-mail: <a href="mailto:TBradfordnewman@paulhastings.com">TBradfordnewman@paulhastings.com</a></th>
<th>e-mail: <a href="mailto:mdamian@dvllp.com">mdamian@dvllp.com</a></th>
</tr>
</thead>
<tbody>
<tr>
<td>(214) 651-4612</td>
<td>FAX: (305) 371-3960</td>
<td>FAX: (305) 371-3960</td>
</tr>
</tbody>
</table>
ENVIRONMENTAL LITIGATION CHAIR
John Fehrenbach
Winston & Strawn LLP
1700 K Street NW
Washington, DC 20006-3817
e-mail: jfehrenbach@winston.com
(202) 282-5000
FAX: (202) 282-5100

ENVIRONMENTAL LITIGATION VICE CHAIR
Susan A. MacIntyre
126 Home Avenue
Alexandria, VA 22301-1015
e-mail: smacintyre@winston.com
(202) 371-5840
FAX: (202) 371-5950

ERISA AND PENSION LITIGATION CHAIR
James Patrick Baker
Jones Day
555 California Street, Fl. 26
San Francisco, CA 94101
e-mail: jpbaker@jonesday.com
(415) 875-5721
FAX: (415) 875-5700

ERISA AND PENSION LITIGATION VICE CHAIR
John R. Cornell
Jones Day
222 E. 41st Street
New York, NY 10017-6739
e-mail: jrcornell@jonesday.com
(212) 326-8332
FAX: (212) 755-7306

ETHICS, PROFESSIONALISM AND CIVILITY CHAIR
Andrew F. Halaby
Snell & Wilmer L.L.P.
1 Arizona Center
Phoenix, AZ 85004-2289
e-mail: ahalaby@swlaw.com
(602) 382-6277
FAX: (602) 382-6070

FINANCIAL INSTITUTIONS LITIGATION CHAIR
Kevin J. Mitchell
Baker & Daniels LLP
111 E. Wayne Street
Suite 800
Fort Wayne, IN46802
e-mail: kevin.mitchell@bakerd.com
(260) 460-1754
FAX: (260) 423-6264

FINANCIAL INSTITUTIONS LITIGATION VICE CHAIR
Peter J. Walsh, Jr.
Potter Anderson & Corroon LLP
1313 North Market Street
P.O. Box 951
Wilmington, DE 19899-0951
e-mail: pwalsh@potteranderson.com
(302) 984-6037
FAX: (302) 658-1192

FORMER CHAIRS ADVISORY CHAIR
Jay A. Dubow
Advanta Corporation
P.O. Box 844
Spring House, PA 19477-0844
e-mail: jay.dubow@advanta.com
(215) 444-5927
FAX: (215) 444-5915

IN-HOUSE LITIGATION MANAGEMENT CHAIRS
Stephen M. Flynn
PNC/National City Mortgage
650 Warrenville Road, #500
Downers Grove, IL 60515
e-mail: Michael.Flynn@NCMC.com
(630) 663-5645

INDEMNIFICATION AND INSURANCE CHAIR
Janet R. McFadden
Drinker Biddle
1500 K Street, NW
Washington, DC 20005-1209
e-mail: janet.mcfadden@dbr.com
(202) 842-8892
FAX: (202) 842-9465

INDEMNIFICATION AND INSURANCE VICE CHAIR
Michael A. Pittenger
Potter Anderson & Corroon LLP
1313 N. Market Street
P.O. Box 951
Wilmington, DE 19899-0951
e-mail: mpittenger@potteranderson.com
(302) 984-6000
FAX: (302) 658-1192

INTELLECTUAL PROPERTY LITIGATION VICE CHAIRS
Howard J. Susser
Burns & Levinson LLP
125 Summer Street
Boston, MA 02110-1616
e-mail: hsusser@burnslev.com

INTERNATIONAL LITIGATION CHAIR
Peter Lukasiewicz
Gowling Lafleur Henderson LLP
1 First Canadian Place
P.O. Box 121
Toronto, ONM5X 1G5

INTERNATIONAL LITIGATION VICE CHAIR
Deborah Templer
Gowling Lafleur Henderson LLP
1 First Canadian Place
P.O. Box 121
Toronto, ONM5X 1G5
### MEMBERSHIP CHAIR
Hon. Elizabeth S. Strong
U.S. Bankruptcy Court
271 Cadman Plaza E., #1595
Brooklyn, NY 11201-1800
E-mail: elizabeth.stong@nyeb.uscourts.gov
(347) 394-1862
FAX: (347) 394-1865

### MEMBERSHIP VICE CHAIRS
Martin C. Grant
Federal Reserve Bank of New York
33 Liberty Street
New York, NY 10045-1003
E-mail: martin.grant@ny.frb.org
(212) 720-5032
FAX: (212) 720-5860

Kendyl T. Hanks
Haynes and Boone, LLP
1221 Avenue of the Americas
Floor 26
New York, NY 10020-1007
E-mail: kendyl.hanks@haynesboone.com
(212) 659-4972
FAX: (212) 884-8232

Caroline D. Pham
The George Washington University
School of Law
1919 Pennsylvania Avenue, N.W.
Washington, DC 20006
E-mail: cpham@law.gwu.edu
(202) 324-5013

### NETWORK NEWSLETTER CHAIR
Peter Valori
Damian & Valori, LLP
1000 Brickell Avenue, #1020
Miami, FL 33131-3014
E-mail: pvalori@dvlplp.com
(305) 371-3960
FAX: (305) 371-3965

### NETWORK NEWSLETTER VICE CHAIR
Gary Zhao
SmithAnnundsen LLC
150 N. Michigan Avenue
Suite 3300
Chicago, IL 60601
E-mail: gzhaosalawus.com
(312) 894-3377
FAX: (312) 997-1871

### PARTNERSHIP & ALTERNATIVE BUSINESS ENTITIES CHAIR
Dominick T. Gattuso
Proctor Heyman LLP
1116 West Street
Wilmington, DE 19801
E-mail: dgattuso@proctorheyman.com
(302) 472-7311
FAX: (302) 472-7320

### PRO BONO AND PUBLIC SERVICE CHAIRS
Victoria H. Mitchell
Holland & Knight LLP
200 S. Orange Avenue,
#2600
Orlando, FL 32801-3453
E-mail: victoria.mitchell@hklaw.com

### PRO BONO AND PUBLIC SERVICE VICE CHAIR
J. David Wicker
Corbett Crockett
Suite 1050 American Center
3100 West End Avenue
Nashville, TN 37203
E-mail: dwicker@corbett.com
(615) 292-3600

### PROGRAMS CHAIRS
Robert L. Gegios
Kohner Mann & Kailas, S.C.
4650 N. Port Washington Road
Floor 2 North
Milwaukee, WI 53212-1077
E-mail: rgegios@kmksc.com
(414) 962-5110

---

**ABA Business Law Section eNewsletter: Business and Corporate Litigation Committee**

**http://apps.americanbar.org/buslaw/committees/CL150000pubnewsletters/201105/**
ADVCORATES CHAIR
Melanie Emmons Damian
Damian & Valori, LLP
1000 Brickell Avenue, #1020
Miami, FL 33131-3014
e-mail: mdamian@dvlplp.com
(305) 371-3960
FAX: (305) 371-3965

ADVCORATES VICE CHAIR
Stefanie C. Moon
Berger Singerman
350 East Las Olas Boulevard
Ft. Lauderdale, FL 33301
e-mail: smoon@bergersingerman.com
(954) 712-5151
FAX: (954) 523-2872

INITIATIVE CHAIRS
Merrick L. Gross
Carlton Fields
100 SE 2nd Street, #4000
Miami, FL 33131-2114
e-mail: mgross@carltonfields.com
(305) 530-4056
FAX: (305) 530-0055

Hon. Donald F. Parsons, Jr.
Court of Chancery
500 N. King Street, #11400
Wilmington, DE 19801
(302) 255-0509
FAX: (302) 255-2210

Mitchell L. Bach
Eckert Seamans Cherin & Mellott, LLC
2 Liberty Place
50 S. 16th Street
Philadelphia, PA 19102-2523
e-mail: mbach@eckertseamans.com
(215) 851-8466
FAX: (215) 851-8383

TASK FORCE ON DIVERSITY CLERKSHIP PROGRAM CHAIRS
Mitchell L. Bach
Eckert Seamans Cherin & Mellott, LLC
2 Liberty Place
50 S. 16th Street
Philadelphia, PA 19102-2523
e-mail: mbach@eckertseamans.com
(215) 851-8466
FAX: (215) 851-8383

Amelia H. Boss
The Earle-Mack School of Law
at Drexel University
3320 Market Street
Philadelphia, PA 19104-3397
e-mail: aboss@drexel.edu
(215) 571-4806
FAX: (215) 571-4763

William J. Woodward, Jr.
Temple University School of Law
1719 N. Broad Street
Philadelphia, PA 19122-6098
e-mail: woodward@temple.edu
(215) 204-8984
FAX: (215) 204-1185

BUSINESS LAW FELLOW
J. David Wicker
Corbett Crockett
Suite 1050 American Center
3100 West End Avenue
Nashville, TN 37203
e-mail: dwicker@corbettn.com
(615) 292-3600
FAX: (615) 385-5556

BUSINESS LAW SECTION ADVISORS
Hon. Donald F. Parsons, Jr.
Court of Chancery
500 N. King Street, #11400
Wilmington, DE 19801
(302) 255-0509
FAX: (302) 255-2210

Hon. Ben F. Tennille
North Carolina Business Court
211 N. Greene Street
Greensboro, NC 27401-2410
e-mail: businessjudge@gmail.com

BUSINESS COURT REPRESENTATIVES
Hon. Gail A. Anderson
Orange County Superior Court
Civil Complex Center
751 W. Santa Ana Blvd.
Santa Ana, CA 92701
e-mail: gardner@occourts.org
(657) 622-5302
FAX: (714) 568-5195

Hon. Mark I. Bernstein
Court of Common Pleas
530 City Hall
Philadelphia, PA 19107

JUDICIAL DESIGNEES
Hon. Philip H. Brandt
U.S. Bankruptcy Court
Western District of Washington
700 Stewart Street, #8135
Seattle, WA 98101-1271
e-mail: philip.brandt@wcb.uscourts.gov
(206) 370-5320
FAX: (206) 370-5325

Hon. Henry duPont Ridgely
Supreme Court of Delaware
502 South State Street
Dover, DE 19901
(302) 739-1128
FAX: (302) 739-1152

Hon. Elizabeth S. Stong
U.S. Bankruptcy Court
271 Cadman Plaza E, #1595
Brooklyn, NY 11201-1800
e-mail: elizabeth.stong@nyeb.uscourts.gov
(347) 394-1862
FAX: (347) 394-1865

http://apps.americanbar.org/buslaw/committees/CL150000pub/newsletters/201105/
LIAISON TO BUSINESS LAW TODAY
Francis G.X. Pileggi
Fox Rothschild
919 N. Market Street, #1300
P.O. Box 2323
Wilmington, DE 19899-2323
e-mail: fpileggi@foxrothschild.com
(302) 655-3667
FAX: (302) 656-8920

LIAISON TO CONTENT COMMITTEE
William D. Johnston
Young Conaway Stargatt & Taylor, LLP
The Brandywine Building
1000 West Street, 17Th Fl.
Wilmington, DE 19801
e-mail: wjohnston@ycst.com
(302) 571-6679
FAX: (302) 576-3304

LIAISON TO DIVERSITY COMMITTEE
Melanie Emmons Damian
Damian & Valori, LLP
1000 Brickell Avenue, #1020
Miami, FL 33131-3014
e-mail: mdamian@dvllp.com
(305) 371-3960
FAX: (305) 371-3965

LIAISON TO EDUCATIONAL PROGRAMMING COMMITTEE
Paul J. Masiinter
Stone Pigman Walther Wittmann L.L.C.
546 Carondelet Street
New Orleans, LA 70130-3588
e-mail: pmasiinter@stonepigman.com
(504) 593-0882
FAX: (504) 596-0882

LIAISON TO LITIGATION SECTION
Merrick L. Gross
Carlton Fields
100 SE 2nd Street, #4000
Miami, FL 33131-2114
e-mail: mgross@carltonfields.com
(305) 530-4046
(305) 530-0055

LIAISON TO MEETINGS COMMITTEE
Patrick T. Clendenen
Nelson Mullins Riley & Scarborough, LLP
One Post Office Square
Boston, MA 02109-2127
e-mail: Patrick.Clendenen@nelsonmullins.com
(617) 573-4709
FAX: (617) 573-4710

LIAISON TO MEMBERSHIP

LIAISON TO PRO BONO

LIAISON TO

http://apps.americanbar.org/buslaw/committees/CL150000pub/newsletters/201105/
### COMMITTEE
Hon. Elizabeth S. Stong  
U.S. Bankruptcy Court  
271 Cadman Plaza E, #1595  
Brooklyn, NY 11201-1800  
e-mail: elizabeth_stong@nyeb.uscourts.gov  
(347) 394-1862  
FAX: (347) 394-1865

### COMMITTEE
Kristen A. Gore  
Carlton Fields, P.A.  
CityPlace Tower  
525 Okeechobee Boulevard Suite 1200  
West Palm Beach, FL 33401-6350  
e-mail: kgore@carltonfields.com  
(561) 650-8046  
FAX: (561) 659-7368

### PUBLICATIONS BOARD
William D. Johnston  
Young Conaway Stargatt & Taylor, LLP  
The Brandywine Building  
1000 West Street, 17th Floor  
Wilmington, DE 19801  
e-mail: wjohnston@ycst.com  
(302) 571-6679  
FAX: (302) 576-3304

### LIAISON TO TECHNOLOGY COMMITTEE
Bruce E. Jameson  
Pritchett, Jones, & Elliott, P.A.  
1310 King Street  
Wilmington, DE 19801-3200  
e-mail: bejameson@pritchetjones.com  
(302) 888-6532  
FAX: (302) 658-8111

### LIAISON TO INTERNATIONAL INSOLVENCY INSTITUTE
Hon. Elizabeth S. Stong  
U.S. Bankruptcy Court  
271 Cadman Plaza E, #1595  
Brooklyn, NY 11201-1800  
e-mail: elizabeth_stong@nyeb.uscourts.gov  
(347) 394-1862  
FAX: (347) 394-1865

---

**You are receiving this Committee Newsletter because you are a member of the ABA Business Law Section Business and Corporate Litigation Committee. To opt-out of this publication, please visit the ABA Subscription Portal.**

---

Your e-mail address will only be used within the ABA and its entities. We do not sell or rent e-mail addresses to anyone outside the ABA.

[Update your profile]  |  [Unsubscribe]  |  [Privacy Policy]

American Bar Association: 321 N Clark | Chicago, IL 60654 | 800-285-2221

Business Law Section: 312-988-5588 | Section Staff | businesslaw@americanbar.org | www.ababusinesslaw.org

Copyright © 2011
On May 12, 2011, the Obama Administration forwarded a comprehensive cybersecurity legislative proposal to Congress. Certain provisions of this proposal, if enacted, would establish a national data breach notification law (hereinafter sometimes referred as “the proposal”). Presently, there is no comprehensive regulatory scheme, state or federal, for notifying affected consumers about data breaches and remedying the breaches. However, forty-six states and the District of Columbia require that individuals be notified if their personal information is disclosed or accessed without authorization. These laws are known as state “breach notification laws.” The proposed national breach notification law would apply to any business entity that uses “sensitive personally identifiable information” of more than 10,000 individuals during any 12-month period.

Sensitive Personally Identifiable Information

According to the proposal, sensitive personally identifiable information (SPII) would include (1) an individual’s social security number; (2) driver’s license or passport number, (3) or debit or credit card numbers. Moreover, SPII would also encompass the combination of certain personal information, such as an individual’s first and last name, home address or telephone number, and his or her month, day, and year of birth.

The proposed definition of SPII encompasses most if not all personal information protected by state breach notification laws. Generally, state breach notification laws define protected information as a person’s first name and last name, in combination with any of the following: (1) social security number; (2) driver’s license or I.D. card number; and (3) account, credit card, or debit card number, in combination with any required security access code or password. See, e.g., Wis. Stat. §134.98 (2010).

Security Breach Defined

Under certain state breach notification laws, notification is required regardless of risk of harm to the affected consumers. As defined in the proposal, a security breach occurs when there is a compromise of the security, confidentiality, or integrity of, or the loss of computerized data which results in (1) unauthorized acquisition of sensitive personally identifiable information or (2) access to sensitive personally identifiable information for an unauthorized purpose, or in excess of authorization.
Delivery of Notification

Each state’s breach notification law differs in certain respects. But for the most part, these statutes do not penalize businesses for allowing the data breach itself to occur, but only provide penalties if a business fails (or is too slow in taking steps) to notify affected individuals.

Under the proposed national data breach legislation, if a data breach occurs at a business entity covered by the proposal, then the entity must, within a reasonable time period, notify any individual whose sensitive personally identifiable information have been compromised. This period is not to exceed 60 days, although upon written request, the agency may extend this time period for up to 30 days.

Individual notice is to be delivered by written notification, telephone notice to the individual personally, or by e-mail, as long as the e-mail conforms to applicable electronic notice law. Further, if the security breach involves more than 5,000 individuals in a given state, then the entity shall provide notice to a media outlet reasonably calculated to reach such individuals. Notice shall include a description of the sensitive personally identifiable information subject to the breach, and toll-free numbers to contact the FTC and the business entity to learn more about the breach.

Additional Notifications

In cases where the covered business entity is required to provide notification to more than 5,000 individuals, regardless of state of residency, the entity shall notify all nationwide consumer reporting agencies of the timing and distribution of notices. Notice to such consumer reporting agencies is to occur prior to the distribution of notices to the affected individuals, as long as this does not result in an unreasonable delay of notice to the individual.

Additionally, business entities are to notify a unit or agency designated by the Secretary of Homeland Security, and that agency is to notify the U.S. Secret Service, the FBI, and the FTC for civil law enforcement purposes under certain circumstances, including (1) any breach requiring notice to more than 5,000 individuals, (2) any breach involving a database with sensitive personally identifiable information of more than 500,000 individuals nationwide, (3) any breach involving databases owned by the federal government, or (4) any security breach involving the information of employees or contractors of the Federal Government.

Exemptions/Safe Harbor
The proposal provides several exemptions and one safe harbor where a covered entity is not required to notify affected individuals. The exemption for national security and law enforcement provides that if the FBI or U.S. Secret Service determines that notification of the breach may impede the ability of the agency to conduct investigations or may cause damage to the national security, then notification is not required. The financial fraud prevention exemption applies if the business uses a security program that effectively blocks the use of personally identifiable information to initiate unauthorized financial transactions before they are charged to the account and provides for notice to affected individuals after a security breach that has resulted in fraud or unauthorized transactions. Finally, the risk assessment safe harbor applies if an entity’s risk assessment concludes that there is no reasonable risk that a security breach has or will result in harm to individuals whose sensitive personally identifiable information was subject to the security breach. To qualify for the last exemption, the entity must conduct the risk assessment in a reasonable manner, as well as notify the FTC of the results of its risk assessment and its decision to invoke the risk assessment exemption.

FTC Enforcement and Other Civil Actions

A violation of the proposed notification law would constitute an unfair or deceptive practice or act. The FTC is charged with enforcing the proposal under the FTC Act. The proposal also authorizes state attorney generals to bring civil actions on behalf of the residents of their respective states to enjoin practices in violation of the proposal, enforce compliance with the proposal, or to recover damages of up to $1 million. The state attorney general must first provide notice to the FTC before pursuing its civil case under this proposal; and the FTC has the right to stay the action, intervene, or initiate an action in federal court.

Under certain state breach notification laws, affected individuals may also bring private cause of action against a person or entity that violates the law to recover any actual damages the plaintiff suffered as a result of a violation of the law. See 815 ILCS 505/10(a) (2010). The proposal here does not confer a private cause of action against any covered any entities covered by the proposal.

Impact of the Proposed National Breach Notification Law

The proposed national breach notification law, if enacted, would preempt all existing state breach notification laws, thereby establishing a national standard for reporting data breaches to affected consumers, and possibly streamline the notification process. If passed, the proposal would also modify and/or expand FTC’s rulemaking authority and enforcement capabilities with respect to breach notification process. Although several data security laws have been previously introduced by various lawmakers, none have gained enough
traction to secure passage. The proposal will undoubtedly be subject of further debates and hearing in Congress.