Message from the Chair

William D. Johnston
Chair, Business and Corporate Litigation Committee

I write this "Message from the Chair" on the eve of wrapping up my three-year term as Chair of the Business and Corporate Litigation Committee.

My final message is one of thanks. It has been a privilege and a pleasure to serve as Chair of our Committee. I am especially grateful to Pete Walsh, Immediate Past Chair, and to Pat Clendenen and Heidi McNeil Staudenmaier, Co-Vice Chairs, for their invaluable assistance.

I am also grateful to the nearly 100 leaders of our Committee - chairs and vice chairs of subcommittees, working groups, and task forces, and Advisors, Continuing Advisors, Judicial Designees, Business Court Representatives, Fellows, Ambassadors, Diplomats, and Committee Directors -- for the time, talent, and financial resources that they have dedicated time and again to the work of the Committee. Hats off to the leaders of our two newest subcommittees - Sports-related Disputes and Trial Practice - for their energy, enthusiasm, and substantive contributions!

And we are all appreciative of the financial contributions of law firms and other sponsors without whose support ticket prices would be much higher and certain events would not even take place.

Special thanks to Bret Cohen, who has served tirelessly and with distinction as Editor-in-Chief of our Annual Review of Developments in Business and Corporate Litigation publication and as the moderator of each Spring’s CLE program that has launched the book. Special thanks also to Peter Valori for his work as Editor-in-Chief of this Network newsletter, and thanks in advance to Gary Zhao for continuing his excellent work on the newsletter as he succeeds Peter. And special thanks to our Meetings and Programs Subcommittee Co-Chairs Rick Lambert, Paul Masinter, and Stuart Riback for their coordination of our programs presented during in-person meetings and, increasingly, presented between meetings via webinars and podcasts.

I also applaud Kristin Gore and Victoria Newman, Co-Chairs of our Pro Bono and Public Service Subcommittee, for the initiatives pursued. And I applaud all of our Committee members for their efforts to enhance diversity within our Committee and in connection with our Committee publications and programs.

We have all benefited from the first-ever Photo Leadership Directory created and updated by Mac McCoy.

Last, but certainly not least, I would be remiss if I were not also to acknowledge, with thanks, the partnering efforts of our Section’s officers and of the Section’s professional, day-to-day staff. After all, what we strive to accomplish as a committee never takes place in isolation; we very much benefit from the structure and support of the Business Law Section, the ABA’s second largest section numbering almost 50,000 members. Special thanks to Section Chairs Lynne Barr, Linda Rusch, and Marty Lybecker, to other Section officers, and to Sue Daly Tobias, Mark Page, Maggie Hadyjuk, Susana Darwin, Adam Burling, Graham Hunt, and all other Section staff members past and present.

The Business and Corporate Litigation Committee will be in good hands with Pat Clendenen at the helm and with Heidi McNeil Staudenmaier, Melanie Emmons Damian, and Stuart Riback serving as Co-Vice Chairs. Please join me in supporting them in any way that we can during the three years to come.

Thanks again to all, and I hope to see you in San Francisco at the Annual Meeting!
Upcoming CLE Programs at the ABA Annual Meeting

Keeping Cool While Betting the Company: The Ethical Counsel In Corporate Crisis

August 10, 2013, 2:30 pm - 4:30 pm
InterContinental Mark Hopkins Hotel
Peacock Room, Lobby Level

The panel, including Ninth Circuit Chief Judge Alex Kozinski, Assistant U.S. Attorney Dorothy Kim (Deputy Chief of the Criminal Division of the Central District of California), the former SEC Northeast Regional Director Wayne Carlin, and renowned media consultant Judy Smith, will discuss the critical issues faced by in-house counsel and outside counsel in advising a company faced with a major corporate crisis. Also on the panel are defense and plaintiffs' counsel experienced in litigating and trying corporate crisis cases, as well as a former general counsel who recently guided a company through a major crisis. The issues to be discussed will include:

- The importance of a company creating a corporate crisis plan;
- The creation of an effective corporate compliance program;
- How a company should respond to a crisis, including the Sarbanes-Oxley reporting requirements, how to conduct an effective and ethical internal investigation and the use of media/public relations consultants;
- The preservation of the attorney-client privilege in the internal investigation and when dealing with the government;
- Preparing for and managing the litigation that will inevitably arise from the crisis in the form of "whistleblower" and class actions;
- The use of bankruptcy in addressing a corporate crisis; and
- Litigation strategy -- how hard should the company fight?

The program is being co-sponsored by Corporate Governance, Business Bankruptcy and Governmental Affairs Practice Committees of the Business Law Section.

Protecting Trade Secrets and Proprietary Information of Companies with Multi-State Operations Amidst Onboarding and Exiting of Employees

Friday, August 9, 2013, 10:30 a.m. - 12:30 p.m., InterContinental Mark Hopkins Hotel, California/Powell room (California Street Level)

Don't Miss this CLE Panel at the Annual Meeting Featuring Two Business Court Judges/Liaisons to the BCL Committee!

With the prevalence of "mobile" computing in the workplace, such as instant messaging, portable and "cloud" storage systems, and social media, companies and their employees can efficiently coordinate operations across states, countries, and even continents. However, that technology also exposes companies' trade secrets and proprietary information to new and unprecedented risks. This panel features unique perspectives from two distinguished jurists: Judge Gail A. Andler of the Superior Court of California (Orange County), and Vice Chancellor Donald F. Parsons of the Delaware Court of Chancery, as well as senior counsel for Zynga and Applied Materials. Four expert litigators from around the country round out the panel which will feature practical ways in which companies can mitigate those risks - both when onboarding employees from a competitor and when key employees depart. Covered topics also include the rapidly-developing body of law governing data theft in the digital age: computer forensics; the enforceability of non-compete in multiple jurisdictions; Uniform Trade Secrets Act preemption; and current jurisprudence interpreting the Computer Fraud and Abuse Act.
Subcommittee Reports and Updates

Subcommittee On Sports-related Disputes

The Subcommittee is happy to report on the very successful Session held at the Section Spring Meeting in Washington DC. The meeting was chaired by Michael A.R. Bernasconi and J. Allen S. Goldberg. An impressive Panel discussed interesting issues involving litigation and arbitration in the world of sports. The Panelists were: Jeffrey G. Benz, Benz Law Group, Los Angeles; George H. Cohen, Director of the Federal Mediation and Conciliation Service, Washington D.C., Jay W. Fee, Nelson Mullins, Boston; Richard W. Pound, Stikeman Elliott, Montreal, Canada; Mike Rohde, 2L at John Marshall Law School, Chicago and former professional baseball player; John Ruger, US Olympic Team, Colorado Springs.

The speakers addressed issues relating to dispute resolution formats that have been successfully developed in sports organizations like the Olympic Games and Major League Baseball. The panelists gave in-sights on the position of athletes, their legal needs and difficulties. The fight against doping was addressed by Mr. Dick Pound, former President of the World Anti-Doping Agency. Mr. George Cohen, Director of the US Federal Mediation services and the person who helped solve the NBA and NHL lock-outs shared his views on the legal issues involved in such litigation. Finally, Chair Bernasconi gave a quick outline of his personal experience as judge of the Olympic Division of the Court of Arbitration for Sport at the London 2012 Olympic Games. The Subcommittee was very happy with the number of attendees and with the high level of the debate subsequently developed. The subcommittee leadership would like to also thank the audience for their contribution.

Partnerships and Alternative Entities Subcommittee

Over the next year, the Partnerships and Alternative Entities Subcommittee plans to focus on recruitment. In furtherance of that goal, the subcommittee's new leadership team is in the process of discussing what additional benefits it can provide to its members, such as opportunities to participate in CLEs or potentially a subject-matter specific newsletter. If you have colleagues that practice in the area of alternative entity litigation, please do encourage them to get involved with our subcommittee.

Business Courts Subcommittee

As the incoming Chairman for this Subcommittee, I humbly look forward to trying to fill the shoes of those that have so ably come before me and made significant contributions to the development of business courts not only in the United States, but also around the world. On behalf of the membership and my Vice-Chairman, Aleine Porterfield, I want to thank Cory Manning (as well as his colleague, Carmen Thomas) for the tireless and excellent efforts he has put forth in his service to this Subcommittee, and I sincerely hope and trust he will remain actively involved going forward.

The jurisdictions recognizing the benefits of having business courts available to their citizens continues to grow with Iowa, Michigan, and West Virginia all adding business courts or commercial docket in the last year. Moreover, Minnesota has recently adopted amendments to its rules to provide for complex case management (with its jurisdiction also covering some types of non-business or commercial disputes), and South Carolina has renewed its business court pilot program.

If you are a practitioner or a jurist in a jurisdiction with a business court or a special commercial docket, or otherwise have an interest in the topic, I hope you will consider joining this Subcommittee. We often hold combined meetings with the members of the Judges Initiative, which always is a wonderful opportunity for judges and practitioners to share knowledge and socialize. In a few short months, the Subcommittee will begin work on its chapter in the Business and Corporate Litigation Committee's Developments.
in Business and Corporate Litigation. This year, we would like to include summaries and updates from jurisdictions that have not been covered in recent years. To that end, if you would like to assist as an author for a particular jurisdiction, we are looking for authors for the following states: Alabama, Colorado, Georgia, Illinois, Iowa, Maine, Nevada, New Jersey, and Ohio. Please call me (302-654-1888) or send me an email (renck@ashby-geddes.com) if you are interested in helping out or otherwise becoming involved in the work of the Subcommittee.

Bankruptcy Litigation Subcommittee

The Bankruptcy Litigation Subcommittee has been busy planning a non-CLE program for this year's ABA Annual Meeting. The program is entitled, "When the financing party isn't on the 'sunny side' of solar: Hot issues and enforcement of remedies in solar financing," and will be held on Saturday, August 10, from 9-10:30am. The panel is comprised of experts from all sides of the solar financing process - industry, consumer, and financial institutions - and promises to be a lively discussion about a topic that is heating up commercial negotiations and litigation.

In addition, the Subcommittee was pleased once again to prepare and submit to the Annual Review the chapter on Bankruptcy Litigation.

Business and Corporate Litigation Pro Bono Subcommittee

The Subcommittee is partnering with the Young Lawyer Committee and Pro Bono Committee to organize an exciting pro bono and public service project for the upcoming Annual Meeting in San Francisco. We will be supporting the San Francisco Food Bank, a wonderful organization that does a lot for the community by hosting a virtual food drive. This will allow ABA members to donate to The Food Bank online, and for every $1 donated, the Food Bank is able to supply six times worth of food. The link to the ABA Donation webpage is the following: http://fooddrive.sfoodbank.org/team/9595924671.

Additionally, we will have containers at the Registration site and elsewhere at the Fairmont Hotel for canned goods and other non-perishable items to donate to the Food Bank. Finally, we will also be volunteering at GLIDE, an organization that provides daily meals to those in need, to prepare lunch from 9:30 a.m. - 11:30 a.m. on Friday, August