



BUSINESS AND CORPORATE LITIGATION COMMITTEE NEWSLETTER

Summer 2017

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Message from the Chair



Dear Fellow Members of the Business and Corporate Litigation Committee:

Summer is nearly over, which means the Section's Annual Meeting is almost here (September 14-16 in Chicago). The Business and Corporate Litigation Committee has an action-packed schedule, which includes:

- Several excellent CLE programs ranging from ethical issues in billing/litigation financing, to data breaches, to whistleblower situations
- Numerous Subcommittee meetings
 - The BCLC Joint Dinner with Judges Initiative/ADR/Sports Law/Young Lawyer Committees—Thursday night, September 14 (7-10 pm) at The Metropolitan Club
 - THANK YOU to Dinner Sponsors: **Huron Consulting, Tressler LLP, and Morris, Nichols, Arsht & Tunnell**
- BCLC Open Committee Meeting—Friday, September 15 (4:30-5:30 pm Central)

Additional information concerning these events is in this Newsletter. To view the complete Annual Meeting schedule, including dial-in information, [click HERE](#).

Special Thanks to: (1) **Dan Formeller** for his hard work in organizing numerous BCLC events in Chicago; (2) **Brad Newman** for leading the 2017 *Recent Developments* publication efforts; (3) **Lee Applebaum**, who has dedicated countless hours to the BCLC on webpage content, the Business Courts Subcommittee, the Judges Initiative, and other projects over the years; (4) **Hon. Gail Andler, Hon. Mac McCoy, and Stuart Riback** for their tireless efforts as BCLC Vice Chairs; and (5) **Anne Steadman** for her excellent work on this Summer Newsletter. Anne has taken over as Newsletter Editor from **Alyn Beauregard** to whom we extend our thanks for her great efforts over the past couple years. Finally, kudos to the incredible ABA Business Law Section staff who make it all happen!

As part of celebrating the BCLC's 25th Anniversary at the 2016 Annual Meeting last September, our Historical Subcommittee, chaired by **Steve Brauerman and Vanessa Tiradentes**, conducted interviews of all the past BCLC chairs. We have been sharing these interviews in our Network Newsletters - this issue will feature **Mitch Bach**, who served as BCLC Chair from 2003-2007. Mitch was one of my initial mentors, and I appreciate everything he has done for me and for the BCLC over the years.

Our Fall Meeting will be held in Washington, DC, November 16-18. SAVE THE DATE for the BCLC Spring Meeting in beautiful and sunny Orlando, Florida, April 12-14, 2018.

[Bono in New Orleans](#)

Upcoming Meetings

- [Annual Meeting Programming Preview](#)
- [BCLC Annual Meeting Dinner at the Metropolitan Club](#)
- [Boost Your Intelligence on Artificial Intelligence](#)

Publications

- [Recent Developments in Business and Corporate Litigation](#)

Important Dates

- [Business Law Section Annual Meeting](#)
September 14-16, 2017
Chicago, IL
- [Business and Corporate Litigation Committee Fall Meeting](#)
November 16-18, 2017
Washington, D.C.
- [Business Law Section Spring Meeting](#)
April 12-14, 2018
Orlando, FL

Editorial Board

- [Anne Steadman](#)
- [Sasha A. Francis](#)
- [Keola R. Whittaker](#)
- [Abigail Van Hook](#)

If you're passing through Phoenix, please let me know and we can grab a cup of coffee. Enjoy what's left of Summer and see you in Chicago!

Best,
Heidi

Heidi McNeil Staudenmaier, Chair
Business and Corporate Litigation Committee
American Bar Association, Business Law Section

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Former Chair Profile: Mitchell L. Bach—BCLC Chair 2003-2007

By Steve Brauerman and Vanessa Tiradentes



Mitchell Bach ("Mitch") is a litigator at the Philadelphia office of Eckert Seamans Cherin & Mellott, LLC. Mitch served as the BCLC Chair from 2003 to 2007-succeeding The Honorable Elizabeth S. Stong.

Mitch was somewhat involved in the Business Law Section before the BCLC was even formed. However, he became more involved in the late 1980s when he "crashed" (as he describes it) a

BCLC leadership meeting in New York and volunteered to be co-chair of a newly formed subcommittee of the BCLC.

Prior to becoming Chair, Mitch served as Co-Chair of the Intellectual Property Litigation Subcommittee and Chair of the Business Courts Subcommittee. He was also involved in many CLE programs, and played an active role in getting business court judges involved in the Section.

After being appointed Vice-Chair when Judge Stong was about to start her term as Chair, it was clear that others saw Mitch's leadership potential. Moved by the confidence of Jim Holzman and others in his ability to lead the Committee, Mitch agreed to serve as the fifth chair of the BCLC. Though his original term was from 2003 to 2006, at the request of Section leadership, he agreed to serve a fourth year, until 2007.

During his tenure, Mitch focused on growing and diversifying the Committee and its leadership. He made a concerted effort to get young lawyers involved and to line up younger leadership, and tried to increase the diversity of Committee leadership, getting more women and minorities involved in leadership roles. He also tried to have the Committee co-sponsor programs with other committees, both within the Section and completely outside the Section.

Mitch was successful in his goals, growing the Committee to more than 2,000 members. However, he is most proud of the creation of the Diversity Clerkship Program, the Business Court Representative Program, and the formation of the

Women Business and Commercial Advocates. These projects, started by Mitch, with the assistance of other leaders, continue to play an important role in providing leadership opportunities for young lawyers, women, and minorities within the Committee and the Business Law Section at large. In addition, Mitch has continued to play an active role in the creation of business courts around the country after his tenure as BCLC Chair, ensuring the continued participation of business court judges in the Committee and the Section.

When asked what advice he would give to future chairs of the BCLC, Mitch responded: "The best advice I ever got was from Jim Holzman: 'Never make it about you. Don't use this position to promote yourself, or to make yourself more visible. For example, give others the opportunity to sit on CLE panels.'" Mitch continues to follow this advice and remains involved with the Diversity Clerkship Program and attending Committee events.

Featured Articles

How to Kill a Rule 68 Offer Once and for All: Just Say "No"

By Stuart Riback

The Second Circuit has just confirmed that it really doesn't matter how favorable a defendant's Rule 68 offer might be; it counts for nothing if the plaintiff just turns it down.

The Supreme Court last year held in *Campbell-Ewald Co. v. Gomez*, 136 S.Ct. 663 (2016) that an unaccepted offer of judgment under Fed. R. Civ. P. 68 was a nullity. That meant (among other things) that a class action defendant could not "pick off" a named individual plaintiff and would-be class representative by offering him under Rule 68 the full relief he was seeking individually, in the expectation that that would moot the action. So long as the individual plaintiff refused the offer, no matter how good it was, the case would proceed.

[Read more...](#)

Reflections on the BCLC Diversity Clerkship Program: A Judge's Perspective

By Judge Nancy Allf

The ABA Business Law Section sponsors a Diversity Clerkship Program to further our mission of encouraging diversity in the Section by fostering a welcoming environment and promoting full and equal participation by all lawyers, including Diverse Lawyers. In the summer of 2017, I had the distinct honor of having the placement of Maryam Najam as a Diversity Clerk in District Court for Clark County, Nevada.

[Read more...](#)

2017 Clerks Reflect on the Diversity Clerkship Program

By Maryam Najam

In 2017, the ABA Business Law Section Diversity Clerkship Program selected 8 finalists nationwide to clerk in business courts. The Diversity Clerkship Program focuses on exposing rising second and third year law students to business law and business litigation in various cities and industries. I had the unique opportunity to work with the Honorable Nancy Allf in Las Vegas. As my clerkship ends, I reflect on the valuable insights I have gained over the summer. Additionally, I interviewed my fellow Diversity Clerkship Scholars to reflect on our experiences in the program.

[Read more...](#)

Subcommittee Reports

Alternative Dispute Resolution Subcommittee

The ADR Subcommittee met by telephone on Wednesday, June 21, 2017, to plan for the September 2017 Annual Meeting and the April 2018 Spring Meeting.

Deborah Masucci, Chair of the International Mediation Institute, addressed the Subcommittee on the series of Global Pound Conferences that have been held around the world in the past 12 months, concluding in London in July 2017. Contemporaneous voting by thousands of Conference participants resulted in specific data on the dispute resolution perspectives and preferences of five distinct categories within the ADR community: business end-users, judges/arbitrators, mediators, consultant/attorneys, and "influencers" (such as scholars and trainers). The data are now being studied and are publicly available at www.GlobalPoundConference.org.

The ADR Subcommittee is co-sponsoring a panel at the Annual Meeting on "How Corporate Counsel Can Maximize Results in Arbitrating Commercial (B2B) Disputes." Moderated by AAA Vice President-Commercial Jeffrey T. Zaino, the panel is sponsored by the Dispute Resolution Committee of the Business Law Section and will feature Albert P. Parker of GC Legal Advisers LLC; Hon. Gail Andler (Ret.); William Crosby, Associate General Counsel of Interpublic Group; and Richard Ziegler, Co-Chair of the International Arbitration Practice Group at Jenner & Block. The panel is scheduled for 10:30 a.m. Central on Friday September 15.

Also scheduled for the Chicago Annual Meeting is a joint committee meeting of the ADR Subcommittee, the Judges Initiative, and the Dispute Resolution Committee. That will take place at 9:00 a.m. Central on Thursday September 14.

For more information, please contact Peter Phillips, peter.phillips@businessconflictmanagement.com.

Business Divorce Subcommittee

The Business Divorce Subcommittee will be meeting on Friday morning at 9:00 a.m. Central at the Annual Meeting in Chicago. As usual, we try to make these meetings substantive even though CLE credit is not offered. Our friend Peter Wollmeringer, a Managing Director at Huron Consulting Group is scheduled to give a presentation on valuation issues in the business divorce. Attorneys and other professionals are welcome to share their thoughts, experiences, and questions as well. We hope to see you in the Windy City! Contact Melissa Donimirski, mdonimirski@hegh.law, with questions.

Class and Derivative Actions Subcommittee

The Class and Derivative Actions Subcommittee is looking forward to hosting a joint subcommittee meeting at the Business Law Section Annual Meeting in Chicago along with the Securities Litigation Committee and the Criminal & Enforcement Litigation Joint Subcommittee. The meeting is scheduled to take place on Thursday, September 14 at 1:00 p.m. Central. We look forward to speaking with Subcommittee members and other interested counsel about topics of mutual interest and import.

The Subcommittee is also excited to be working on updating its chapter on Class and Derivative Actions in the annually published *Recent Developments in Business and Corporate Litigation*.

The Subcommittee continues to welcome new members, and encourages anyone interested in this robust and growing area of litigation, whether defense or

plaintiff-side advocates, or in-house counsel, to join. If anyone is interested in getting involved or learning more about the Class and Derivative Actions subcommittee, we encourage you to contact one of our co-chairs: Kevin Metz (Kevin.Metz@lw.com) or Kristian Brabander (kbrabander@mccarthy.ca); or one of our vice-chairs: Sarah Greenfield (Sarah.Greenfield@lw.com), Michael O'Brien (mobrien@mccarthy.ca), Jennifer Gray (Jennifer.Gray@gtlaw.com), or Michael Hargens (michael.hargens@huschblackwell.com).

Communications and Technology Subcommittee

The Communications and Technology Subcommittee would like to thank all the subcommittee leaders. Thanks to your hard work, and that of Lee Applebaum, our webpages are really starting to look good. Some of the subcommittee pages could still use some additional work. Here are some suggestions for keeping up your webpages:

- Add links to articles from Business Law Today or The Business Lawyer relevant to your subcommittee, even if not produced by your subcommittee;
- Add pictures from any upcoming meetings at the fall conference;
- Add links to program audio or materials from meetings; and
- Add some narrative on what your subcommittee is doing or what your subcommittee focuses on.

You can send text, links, or pictures to Graham Hunt, graham.hunt@americanbar.org, or Laura Readinger, lreadinger@morrisjames.com, and we will make sure they get posted.

Securities Litigation Subcommittee

The Securities Litigation Subcommittee is looking forward to the Business Law Section's Annual Meeting in Chicago this September. The Subcommittee has a CLE program that it will be presenting and is collaborating with other subcommittees for a non-CLE combined meeting with a guest speaker from the SEC's Chicago Regional Office.

The CLE Program is on Friday, September 15 from 2:00 p.m. to 3:30 p.m. Central The program is: You Have a Whistleblower-Now What? The program will explore how companies should react when faced with a whistleblower using a hypothetical with the input of different perspectives, including plaintiff's and defense lawyers as well as the governmental view

The Subcommittee meeting is from 1:00 p.m. to 2:00 p.m. Central on Thursday, September 14. It will be a combined meeting with the Class and Derivative Litigation and Criminal and Enforcement Litigation Subcommittees of the Business and Corporate Litigation Committee and with the Civil Litigation and SEC Enforcement Matters Subcommittee of the Federal Regulation of Securities Committee. Our special guest will be Tina Diamantopoulos, who is the Counsel to the Regional Director of the SEC's Chicago Regional Office. Tina will give us some insights into current developments at the SEC, and we will then have the opportunity for a roundtable discussion with her about issues of interest to the participants.

Both of these events should be interesting and we look forward to your participation. For more information, please contact Jay Dubow, dubowj@pepperlaw.com.

Sports-Related Disputes Subcommittee

The Sports-Related Disputes Subcommittee will hold a joint meeting with the newly formed Sports Committee at the upcoming Business Law Section Meeting in Chicago. The meeting will be held on Thursday, September 14 from 1:00 p.m. to 2:30 p.m. Central The Subcommittee is pleased to introduce its new leadership

team:

Co Chairs: Judge Joseph Iannazzone
Jeffrey Schlerf
Vice Chair: Nick Sanchez

The Subcommittee welcomes new members and encourages BCLC members interested in the area of sports-related disputes to join us at the meeting. If you are interested, please contact one of the Co Chairs: Jeffery Schlerf, jschlerf@foxrothschild.com, or Judge Iannazzone, Joseph.Iannazzone@gwinnettcounty.com.

Working Group to Draft Human Rights Protections in Supply Contracts

The Working Group to Draft Human Right Protections in Supply Contracts formed by the UCC Subcommittee of the ABA's Business Law Section met on April 7, 2017 in New Orleans. The Group discussed a variety of issues which pose challenges in the context of anti-forced labor requirements within contracts incorporating standard provisions under the Uniform Commercial Code or the United Nations Convention on Contracts for the International Sale of Goods.

A working draft of a Preliminary Report is undergoing internal review. The draft includes: (1) a brief introduction to explain the benefits of these clauses, some identification of the risks in this area, and the strategy adopted; and (2) the draft clauses, including annotations explaining certain decisions made by the drafters including why certain text is included, why certain text was omitted, and strategic or policy decisions to be made by future users. The Preliminary Report is projected to be no more than 10 pages.

The Group will meet at the Annual Meeting in Chicago on Thursday, September 14, 3-5 p.m. Central, to discuss and then edit the draft before soliciting broader feedback, participation, and ultimately adoption from other Business Section Committees (possibly Corporate Compliance, Corporate Counsel, Corporate Governance, Corporate Social Responsibility Law, International Business Law, and Mergers and Acquisitions). Outreach to one or more of these groups may precede publication of the Preliminary Report to address specific deficiencies identified in earlier drafts.

To get involved in the project, contact the Chair of the Working Group, Prof. David Snyder, dsnyder@wcl.american.edu, or Vice Chair, Susan Maslow, at smaslow@ammlaw.com.

Leadership

[BCLC Leadership Roster](#)

Updated!

Meet Our New Class of Business Court Representatives

Our new Business Court Representatives began their tenure at the 2017 Spring Meeting in New Orleans. They will serve as Business Court Representatives through the 2018 Fall Meeting. We are excited and honored to have Judge Alf, Judge Licht, and Judge Wilkes.

[Read more...](#)

Past Meetings

WBCA Honors Three Exceptional Business Lawyers in New Orleans

The Women's Business and Commercial Advocates Subcommittee ("WBCA") honored three outstanding women business litigators at the American Bar Association Business Law Section Spring Meeting in April 2017. The WBCA's signature event is its annual reception recognizing and celebrating the accomplishments of women in the profession. This year, the WBCA selected three prominent women business lawyers and judges as honorees, two of whom are notable members of the New Orleans legal community, and a third who is truly "one of our own."

[Read more...](#)

The BCLC Goes Pro Bono in New Orleans

The Business and Corporate Litigation Pro Bono & Public Service Subcommittee partnered with the Young Lawyer Committee and Pro Bono Committee, as well as Junior Achievement, to organize an exciting public service project for the Spring Meeting in New Orleans. A group of nine volunteers, including attorneys and judges, visited the Lake Area New Tech Early College High School on Thursday, April 6. The volunteers discussed their career paths, backgrounds, and legal practice areas with high school students who had the opportunity to learn from the impressive panel and have many of their career questions answered.

[Read more...](#)

Upcoming Meetings

Annual Meeting Programming Preview

The Business and Corporate Litigation Committee will be offering a top-notch lineup of CLE programs at the ABA Business Law Section Annual Meeting in Chicago. In addition to the three programs the BCLC will be presenting, the Committee will also be co-sponsoring a number of high quality offerings from other committees.

[Read more...](#)

BCLC Annual Meeting Dinner at the Metropolitan Club

The BCLC, in cooperation with the Judges' Initiative and the Sports Law, Alternative Dispute, and Young Lawyers Committees invites you to join your colleagues on Thursday evening, September 14, at our Committee Dinner. The dinner will be held at the Metropolitan Club located on the 67th floor of the iconic Willis Tower. The East Room features floor to ceiling windows with spectacular view of Lake Michigan and the downtown Chicago skyline. The Willis Tower is a five minute cab ride from the meeting hotel. Dress is business casual with jackets required for men. A picture ID will be required for everyone attending the dinner. Tickets will be on sale at the Registration Desk in Chicago until sold out.

[Read more...](#)

Boost Your Intelligence on Artificial Intelligence

One of the exciting programs that the BCLC will be co-sponsoring is **"What Lawyers Need to Know About AI and Machine Learning,"** presented on September 14 from 8:30-10 a.m. Central.

This program will provide a non-technical introduction to artificial intelligence and machine learning for lawyers across practice groups. The panelists will define key terms, demonstrate how the technology currently works, and discuss where it's

headed. The program will help attendees provide better answers to their clients about how AI enhances their legal services.

Speakers and Chairs include:

- Moderator: Diane Holt, Managing Editor, Bloomberg Law
- J. Stephen Poor, Chair Emeritus, Seyfarth Shaw LLP
- Kingsley Martin, CEO, KMStandards LLC
- Dave Lewis, Chief Data Scientist, Brainspace Corporation
- Program Co-Chairs: Cara Bradley, Assistant General Counsel, Schneider Electric, and Kristin Haugen, KC Haugen Law, LLC

Co-sponsors: Young Lawyers, Business & Corporation Litigation, Cyberspace

Publications

Recent Developments in Business and Corporate Litigation Is Searching for Contributors

Bradford K. Newman, 2018 Editor

Recent Developments in Business and Corporate Litigation will be published by early April 2018. For those interested in contributing to the publication, we will begin our efforts in the fall of 2017, with chapters due November 30, 2017. If you are interested in contributing or editing a chapter, please reach out to Julie Lam (julielam@paulhastings.com).

In addition, the 2017 Edition of Recent Developments in Business and Corporate Litigation is now available for purchase [here](#). This book comprises 19 chapters that provide practical analysis along with 2016 case citations organized by specific areas of corporate litigation. Over 150 experienced attorneys from across the country have contributed to this publication. They offer concise commentary on key issues, detailed outlines, and useful summaries of recent cases, legislation, trends, and developments during the past year. The 2017 edition contains the following Chapters: (1) Alternative Dispute Resolution Law; (2) Bankruptcy Litigation; (3) Business Courts; (4) Class Action Law; (5) Criminal and Enforcement Litigation; (6) Electronic Discovery; (7) International Litigation; (8) Tribal Court Litigation; (9) Antitrust Litigation; (10) Corporate Law; (11) Director and Officer Indemnification and Advancement Rights; (12) General Partnerships, Joint Ventures, Limited Partnerships, and Limited Liability Companies; (13) Employee Mobility, Restrictive Covenants, and Trade Secrets; (14) Employment Law; (15) ERISA Baker; (16) Derivative Litigation; (17) Financial Institutions Litigation; (18) Securities Arbitration Law; and (19) Securities Litigation. Members are encouraged to purchase this practical guide, which incorporates superb insight from a diverse collection of national practitioners designed to assist both junior and seasoned practitioners.

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How to Kill a Rule 68 Offer Once and for All: Just Say “No”

Stuart Riback

The Second Circuit has just confirmed that it really doesn't matter how favorable a defendant's Rule 68 offer might be; it counts for nothing if the plaintiff just turns it down.

The Supreme Court last year held in *Campbell-Ewald Co. v. Gomez*, 136 S.Ct. 663 (2016) that an unaccepted offer of judgment under Fed. R. Civ. P. 68 was a nullity. That meant (among other things) that a class action defendant could not “pick off” a named individual plaintiff and would-be class representative by offering him under Rule 68 the full relief he was seeking individually, in the expectation that that would moot the action. So long as the individual plaintiff refused the offer, no matter how good it was, the case would proceed.

But how about if the lower court entered a judgment based on the Rule 68 offer? And how about if the defendant deposited with the court the full amount of the monetary relief the individual plaintiff was seeking?

The Second Circuit held in February in *Geismann v. ZocDoc, Inc.*, 850 F.3d 507 (2d Cir. 2017) that neither of these can work. In *Geismann*, the plaintiff alleged that ZocDoc had sent to its office two unauthorized faxes in violation of the Telephone Consumers Protection Act. It sought, for itself and for a purported class of victims, statutory damages for each violation, attorneys' fees and an injunction prohibiting further violations. (This happened before the Supreme Court decided *Campbell-Ewald*.)

ZocDoc countered by making a Rule 68 offer of judgment: more than the maximum statutory damages for each fax Geismann claimed to have received, plus attorneys' fees, plus a stipulated judgment prohibiting further violations. Geismann turned the offer down. One of its arguments was that it was entitled to statutory damages per violation, not per fax, and that because each fax was a multiple violation, the offer of judgment was not in full satisfaction of the claim. The district court disagreed, and based on the district court's conclusion that the plaintiff had been offered complete relief, entered judgment for the damages plus injunction ZocDoc had offered.

Geismann appealed. While the appeal was pending, ZocDoc asked for and received permission to deposit with the district court the amount of damages it had offered. Also while the appeal was pending, the Supreme Court decided *Campbell-Ewald*. That decision changed the posture of the case before the Second Circuit.

The Second Circuit, unsurprisingly, held that, under *Campbell-Ewald*, ZocDoc's offer was a nullity: Once Geismann turned it down it had no further effect and could not have been a valid basis for a judgment. The more interesting aspect of the case is the Second Circuit's skepticism that after *Campbell-Ewald* there is any way for a defendant in a pre-certification class action to “pick off” the named class plaintiff by offering full relief.

The Supreme Court in *Campbell-Ewald* had declined to consider whether its decision would have been

different if, after the plaintiff declined the defendant's Rule 68 offer of complete judgment, the defendant then deposited the full amount with the district court and the district court then entered judgment based on the deposit. In the case of *Geismann*, of course, that is not what happened: the deposit came after the judgment, not before. Additionally, the Second Circuit noted that there remained a legal issue in that case as to whether a single fax could generate multiple claims for statutory damages—so it may be that ZocDoc had not in fact offered complete relief. But the Second Circuit went further and observed in a long footnote (footnote 8) that, even if the facts in *Geismann* really had tracked the Supreme Court's hypothetical, the defendant's tactic still might not work. While disclaiming any view on what might happen if such a case were actually presented, the footnote took note of the Supreme Court's criticism of efforts to deter class actions by tactics that would result in multiple plaintiffs resorting to multiple lawsuits rather than a single class action. The Second Circuit suggested that perhaps "Rule 68 should be harmonized with Rule 23." *Geismann*, slip op at 17 n. 8.

These ruminations by the Second Circuit imply that the door may be closing on defendants' ability to moot as-yet-uncertified class actions by satisfying the claims of individual defendants. Indeed, it may already be closed, and may just be waiting for a court to say so—perhaps one less litigation tool for class-action defendants to use.

A previous version of this article appeared in Practice Points, a publication of the ABA Commercial & Business Litigation Committee of the ABA Section of Litigation.

Reflections on the BCLC Diversity Clerkship Program: A Judge's Perspective

Judge Nancy Allf

The ABA Business Law Section sponsors a Diversity Clerkship Program to further our mission of encouraging diversity in the Section by fostering a welcoming environment and promoting full and equal participation by all lawyers, including Diverse Lawyers. In the summer of 2017, I had the distinct honor of having the placement of Maryam Najam as a Diversity Clerk in District Court for Clark County, Nevada.

The program objectives were clear, so my staff and I assembled with the intent to implement them. My law clerk Daven Cameron pitched in to assist Maryam in learning how to prepare bench memoranda, using our preferred format. This required Maryam to research cases and the history of pending matters. While she worked primarily with the law clerk, I was available to her. In addition, we worked to make sure Maryam was able to see arguments on matters in which she had participated. We took care to discuss and explain rulings after court. She was also included in preparation for and attendance at court mediations conducted in Business Court and other civil cases. She was also able to observe trials and jury selection. She learned how we provide enhanced case management in Business Court cases, and gained insight into the preparation of orders and written decisions.

Since networking is also an objective of the program, and Nevada has a unified state bar, we made sure she was exposed to local bar association events, specialty bar association events, and State Bar events, plus local community events such as the annual Anti-Defamation League Jurisprudence luncheon. She attended the year-end dinner for our local American Inns of Court chapter, where she met members of the judiciary, bar leaders, and justices from our appellate court, and learned about the history of our very young and small legal community. She was offered a tour of the new Supreme Court building and was invited to lunch by Kristina Pickering, a justice on the Nevada Supreme Court. She met our Chief Justice Michael Cherry, who gave her a personalized photo of the Court. She attended a luncheon sponsored by the Southern Nevada Association of Women Attorneys and heard a presentation on pro bono service by Justice Michael Douglas from the Nevada Supreme Court. She attended a monthly luncheon held by the Clark County Bar Association, where the speaker was John Guedry, the president of a local bank, who spoke about education and vocational training, including workforce development and STEM training needed to support business expansion plans in Southern Nevada. The presentation also emphasized the need to leverage assets in industry targets and expand business opportunities in our community. She met Mr. Guedry and his daughter Jacqueline, who is currently pursuing a JD/MBA at the Boyd College of Law.

Finally, to enhance her networking opportunities Maryam attended the Court's monthly Civil Bench bar luncheon, a quarterly Business Court Bench Bar luncheon, and a Civil Judges meeting, at which she was introduced and the Diversity Clerk program was explained.

At the end of her eight week clerkship, I marveled at how fast the time went. But most importantly, when Maryam told me just how much she'd learned about the practice of Business Law from her clerkship, I realized that I had learned as much from the experience as she had.

2017 Clerks Reflect on the Diversity Clerkship Program

Maryam Najam

In 2017, the ABA Business Law Section Diversity Clerkship Program selected 8 finalists nationwide to clerk in business courts. The Diversity Clerkship Program focuses on exposing rising second and third year law students to business law and business litigation in various cities and industries. I had the unique opportunity to work with the Honorable Nancy Allf in Las Vegas. As my clerkship ends, I reflect on the valuable insights I have gained over the summer. Additionally, I interviewed my fellow Diversity Clerkship Scholars to reflect on our experiences in the program.

Assignments

All of the clerks were able to observe oral arguments in court, write bench memoranda to assist judges with hearings, and research statutes and case law to analyze issues before the court. Malcolm Torino enjoyed Vice Chancellor Tamika Montgomery-Reeves's approach to easing the steep learning curve in business courts. Torino states he started off working on isolated issues and slowly transitioned to working on more complex and interrelated litigation matters. Maryam Najam and Ashley Moya were appreciative of the "open door policy" of their judges. The clerks were encouraged to ask for further explanation on rulings and freely discuss the reasoning with the judges directly. This allowed the clerks to access the expansive judicial and legal experience of each judge and analyze how the judge's experience in the legal field assists in rulings. Additionally, each clerk was exposed to different industries in each location. In Las Vegas, clerk Maryam Najam worked on real estate Homeowners Association litigation. In Pittsburgh, clerk Ashley Moya was exposed to litigation in the construction industry. Overall, the clerks enjoyed analyzing legal issues and various business matters concerning the application of the law.

Insight into Business Courts and Business Litigation

Clerking in business courts allowed the diversity scholars to gain unique insight into legal developments that are changing the business landscape. Michelle Bae stated that her clerkship experience in the Commercial Division of the Nassau County Supreme Court provided an invaluable chance to learn about how the court provides an efficient forum for the resolution of complex commercial disputes. Additionally, the diverse range of business matters in court allowed greater opportunities for learning and growth. Michelle Bae stated that "having a chance to observe detailed procedures such as pre-trial conferences, trials, and settlement conferences challenged me to think and ask questions on aspects that I did not think about before. For example, I learned that the court performs a crucial role in giving guidance to the parties to move the case forward." Additionally, clerks observed the "lifespan of a case" and different motions that can be made in business litigation. The clerks were challenged to broaden

their understanding of business litigation and develop a big picture view of current emerging and evolving legal issues in business law.

Valuable Takeaways from the Clerkship Program

Justin Schilling states that one of the most valuable aspects of his clerkship was observing different kinds of advocacy and learning how to be an effective attorney. Schilling observed that the high caliber of attorneys in business court were often well prepared and skillful in simplifying complex business matters down to a few core legal issues. Similarly, Ashley Moya stated that working with a judge allowed her to see the level of professionalism that is expected of attorneys in and out of court when interacting with the judge and court staff. Maryam Najam states that her clerkship experience was enhanced by networking opportunities, allowing her to observe the formal and informal relationships amongst the legal community. Additionally, Maliq Kendricks enjoyed being able to improve and further cultivate his research and writing skills. All of the Diversity Clerks found feedback on their written work to be valuable in refining their legal research and writing skills throughout the course of the clerkship. Overall, the Diversity Clerkship created a strong foundation in legal work and business litigation for future legal endeavors.

Background on Diversity Scholars:

Michelle EunJung Bae- University of Illinois College of Law, *Clerk for Judge Timothy Driscoll in New York, NY*

Michelle Bae worked in the legal department of Citi Korea prior to attending law school. Her experience at Citi in corporate governance matters and launching a banking product sparked her interest in business law.

Maliq Kendricks- University of Nevada Las Vegas Boyd School of Law, *Clerk for Judge Elizabeth Gonzalez in Las Vegas, NV*

Maliq Kendricks hopes to work with international corporations after law school. He hopes to contribute his perspective as an African American to foster diversity in the legal field.

Ashley Moya- Southern Illinois University, *Clerk for Judge Christine Ward in Pittsburgh, PA*

Ashley Moya aspires to be a judge one day and is from Miami, Florida. Her first language is Spanish, and she hopes to bring her unique perspective as a Latin American to the legal field.

Maryam Najam- Columbia Law School, *Clerk for Judge Nancy Allf in Las Vegas, NV*

Maryam Najam worked in banking and finance prior to attending law school. Her interest in business law developed while working with the legal team during her time in corporate finance. She hopes to be a litigator and utilize her passion for business analysis to shape emerging business trends in the legal field.

Justin Schilling- Villanova University Charles Widger School of Law, *Clerk for Judge Sean Wallace in Upper Marlboro, MD*

Justin Schilling has had a lifelong interest in business and originally wanted to pursue an MBA. He pursued law school to combine his passion for research and writing and business. He appreciates the challenging nature of business litigation.

Malcolm Torino- Brigham Young University Law School, *Clerk for Vice Chancellor Tamika Montgomery-Reeves in Wilmington, DE*

Malcolm Torino worked with patents prior to law school. He did not have any exposure to business law prior to his clerkship, however the experience in the program has trained him with the work ethic for other types of professions in the legal field.

Meet Our New Class of Business Court Representatives

Our new Business Court Representatives began their tenure at the 2017 Spring Meeting in New Orleans. They will serve as Business Court Representatives through the 2018 Fall Meeting. We are excited and honored to have Judge Allf, Judge Licht, and Judge Wilkes.

Nancy Allf, Las Vegas, Nevada



Judge Allf graduated from Transylvania University in 1979, receiving her Bachelor of Arts Degree in Pre-Law and French. She received her law degree from the Salmon P. Chase College of Law at Northern Kentucky University in 1982. After graduation, she moved to Las Vegas and was admitted to practice in 1983.

Judge Allf entered private practice in 1983 where she focused primarily on commercial litigation and bankruptcy law. Since her admission to the bar, Judge Allf has taken an active role in enhancing the legal community in Nevada. In 1999, she served as the President of the Clark County Bar Association and later as President of the State Bar of Nevada in 2007. In 2000, she served as President of the Board of Directors of the Clark County Law Foundation. She is currently an active member of the American Bar Association, the Southern Nevada Association of Women Attorneys, and the Southern Nevada Association of Bankruptcy Attorneys.

In 1999, Judge Allf was awarded a Distinguished Alumni Award from her alma mater, Transylvania University. Her law school selected her as Alumna of the Year in 2010. Judge Allf has also been honored by the Clark County Pro Bono Project for her public service to the community. In 2005 she was named as one of the 300 women who shaped the history of Las Vegas by the Women of Diversity Project.

The Nevada Supreme Court appointed Judge Allf as a Settlement Judge from 1998-2007. In 2005, she was appointed to become a Judge in the Short Trial Program of the 8th Judicial District. The Nevada Supreme Court also appointed Judge Allf to the Business Court Task Force in March 2000 and the Pro Bono Compliance Committee in September 2002. She was elected to the 8th Judicial District Court in 2010.

Richard Licht, Providence, Rhode Island



Richard Licht is an Associate Justice of the Superior Court of Rhode Island. Prior to his appointment to the bench, he was the Director of Administration for the State of Rhode Island, from January 2011 to August 2014. He also served as State Senator (1974-1984) and two terms as Rhode Island's Lieutenant Governor (D), from 1985 to 1989. He was a member of the Board of Governors for Higher Education from 1991 to 1996, chairing the Board from 1992 to 1995. Richard was the Democratic nominee for the United States Senate in 1988 and the endorsed Democrat for the same seat in 2000.

He is admitted to the bar in Rhode Island and Massachusetts, and was the managing partner and financial partner of his law firm for many years. Richard's law practice concentrated extensively in the areas of corporate law, real estate law, and government relations. Formerly active in Democratic politics, he served as the Rhode Island Chair for John Kerry's presidential campaign.

Richard has had extensive experience on community and philanthropic boards including Save the Bay, the Samaritans, Roger Williams Hospital, and NARAL Pro-Choice America (which he chaired from 2009-2011). He has been a leader in the Rhode Island Jewish Community having served as the first Board Chair of the Jewish Alliance of Greater Rhode Island.

Christopher C. Wilkes, Martinsburg, West Virginia



Judge Wilkes is Chief Judge, Twenty-Third Judicial Circuit (Berkeley, Jefferson, and Morgan Counties), West Virginia.

Judge Wilkes holds a bachelor's degree in Political Science from West Virginia University (1980) and law degree from The Ohio Northern University Pettit College of Law (1982) where he was inducted into the Willis Society of Legal Scholars having graduated in the top 10% of his class. He has successfully completed numerous courses at the National Judicial College and the Law and Economics program at the George Mason University Antonin Scalia Law School.

He was a partner in the law firm of Wilkes & Wilkes, L.C., in Martinsburg from 1983 to 1993, and was a municipal judge in the cities of Martinsburg and Ranson from 1985 to 1993.

In 1992, he was elected to the bench in the Twenty-Third Judicial Circuit (Berkeley, Jefferson, and Morgan Counties) and re-elected in 2000, 2008, and 2016.

Judge Wilkes is the chairman of the West Virginia Business Court Division. He is past chairman of the Youth Services Committee of the Court Improvement Board and is a member of the Juvenile Justice Commission and State Bar ADR committee. He is President of the West Virginia Judicial Association, a member of the ABA National Conference of State Trial Judges and serves as a Business Court Representative to the ABA Business Law Section. He is a member of the American Judges Association, Eastern Panhandle Bar Association, and the American College of Business Court Judges. He has been honored as a West Virginia Bar Foundation Fellow.

He is the author of "Emerging Fronts in Alternative Dispute Resolution: Judicial Mediation in West Virginia Business Court," and "West Virginia's New Business Court Division: An Overview of the Development and Operation of Trial Court Rule 29". He has been a guest lecturer, panelist, and presenter at numerous trainings and conferences, and has been appointed several times to sit as a temporary Justice on the Supreme Court of Appeals of West Virginia and authored two published opinions.

Judge Wilkes and his wife, Patricia, live in Martinsburg. They have two daughters and one granddaughter.

WBCA Honors Three Exceptional Business Lawyers in New Orleans

Alyn B. Beauregard

The Women's Business and Commercial Advocates Subcommittee ("WBCA") honored three outstanding women business litigators at the American Bar Association Business Law Section Spring Meeting in April 2017. The WBCA's signature event is its annual reception recognizing and celebrating the accomplishments of women in the profession. This year, the WBCA selected three prominent women business lawyers and judges as honorees, two of whom are notable members of the New Orleans legal community, and a third who is truly "one of our own."



2017 Spring Meeting Women Business and Commercial Advocates Reception: (L-R) Heidi Staudenmaier (BCLC Chair), Daniel Formeller (WBCA Subcommittee Co-Chair), Honoree Lynn E. Swanson, Honoree Sharonda R. Williams, Honoree Judge Gail Andler (BCLC Co-Vice Chair and WBCA Subcommittee Co-Chair), Melissa Damian Visconti (WBCA Subcommittee Co-Chair).



Sharonda R. Williams, Special Counsel at the Louisiana-based law firm Fishman Haygood LLP, was selected as an honoree for her distinguished career in public service and private practice. Before joining Fishman Haygood in 2015, Sharonda served as City Attorney for the City of New Orleans, the City's Chief of Litigation, and as a skilled litigator in private practice. A woman of many talents, she even graduated from medical school before joining the legal profession. Sharonda is extremely active in her local community, including involvement with Bridge House and Grace House, which are nonprofit, long-term alcoholism and drug addiction treatment centers in the greater New Orleans area. She is also active in various segments of the legal community, including the Louis A. Martinet Legal Society, Inc.; the American Civil Liberties Union; the Judiciary Commission of Louisiana; and the National Association of Women Judges. Sharonda is committed to helping young lawyers develop their skills, and has served as a Trial Advocacy Instructor at Tulane University School of Law, and also as a guest lecturer and Skills Course Instructor at Loyola

University College of Law, New Orleans.



Lynn Swanson, Managing Member of the New Orleans law firm Jones, Swanson, Huddell and Garrison LLC was also among the honorees. Lynn was recognized for her leadership, contributions to the profession, and for her stature as a role model for women seeking and pursuing a career as courtroom lawyers. Lynn's early career was focused on representing plaintiffs in class action litigation. When she joined Jones Swanson in 2004, she became instrumental in developing the firm's commercial litigation practice. In that role she has been lead counsel in a number of high profile cases and has gained the reputation as a skilled trial lawyer and a worthy adversary. In accepting the Award, she commented on the need for women courtroom lawyers to encourage and mentor younger women and to lend their experience and

expertise to women who wish to engage in a trial practice. This award follows Lynn being named "Woman of the Year" by the *New Orleans CityBusiness* magazine in 2016 for her professional achievements and her contributions to the New Orleans Community.



Much to her surprise, **The Honorable Gail A. Andler** was selected as the final honoree. Judge Andler recently retired from the bench after more than twenty-three years of public service on the Orange County Superior Court, where she served ten years on the Complex Civil Litigation Panel. Before joining the court, she represented individuals and closely held corporations in business and real estate litigation, and also gained substantial jury trial experience as a prosecutor. Judge Andler has joined JAMS as a mediator, arbitrator, and special master in a variety of disputes. Judge Andler is extensively involved in the legal community, including active roles in the ABA Business Law Section; the ABA Judicial Division; the American College of Business Court Judges; the National Conference of State Trial Judges; the American Board of Trial Advocates; and the Association of Business Trial Lawyers. Judge Andler's leadership has been a model for the enhancement of women in the legal profession, as she regularly mentors and

encourages young lawyers and law students.

The WBCA was proud to celebrate the accomplishments that Sharonda, Lynn, and Judge Andler have achieved in their careers. These women truly embody the spirit of the Subcommittee and are highly deserving of this recognition.



Women Business and Commercial Advocates Honorees Lynn E. Swanson (Jones, Swanson, Huddell & Garrison – New Orleans) and Sharonda R. Williams (Fishman Haygood – New Orleans).



Women Business and Commercial Advocates Subcommittee Co-Chairs Daniel Formeller and Melissa Damian Visconti, and Program Subcommittee Co-Chair Paul Masinter (our New Orleans host).



Honoree Sharonda R. Williams and Subcommittee Co-Chair Melissa Damian Visconti.



2017 Spring Meeting Business and Corporate Litigation, Dispute Resolution, and Judges Initiative Committee Dinner.

The BCLC Goes Pro Bono in New Orleans

Kristin A. Gore

The Business and Corporate Litigation Pro Bono & Public Service Subcommittee partnered with the Young Lawyer Committee and Pro Bono Committee, as well as Junior Achievement, to organize an exciting public service project for the Spring Meeting in New Orleans. A group of nine volunteers, including attorneys and judges, visited the Lake Area New Tech Early College High School



on Thursday, April 6. The volunteers discussed their career paths, backgrounds, and legal practice areas with high school students who had the opportunity to learn from the impressive panel and have many of their career questions answered.

We are working on organizing another meaningful and exciting event for the Spring Meeting in Orlando! More information to come as we get closer to the date. For more information or to get involved with the Subcommittee, contact Kristin A. Gore, kgore@carltonfields.com



Pro Bono and Public Service Subcommittee Chair, Kristin Gore, and Business Law Section Secretary, Patrick Clendenen, with Junior Achievement students at Lake Area New Tech Early College High School.

Annual Meeting Programming Preview

Stuart Riback

The Business and Corporate Litigation Committee will be offering a top-notch lineup of CLE programs at the ABA Business Law Section Annual Meeting in Chicago. In addition to the three programs the BCLC will be presenting, the Committee will also be co-sponsoring a number of high quality offerings from other committees.

“Cybersecurity and Data Protection Guidance for Law Firms: Protecting Your Client’s Crown Jewels in the Age of the Internet” will be presented at 10:30 a.m. on Thursday September 14. This Program will address: 1) the current cyberthreat environment; 2) review of law firm cyberattacks; and 3) a review of recent guidance from the Association of Corporate Counsel, entitled *Model Information Protection and Security Controls for Outside Counsel Possessing Company Confidential Information*. The panel will include in-house counsel, a federal prosecutor, attorneys in private practice, and a cybersecurity consultant. The program chair and moderator will be James Melendres of Snell & Wilmer in Phoenix.

Later that day, at 2:30 p.m., will be a two-hour ethics program on **“Alternative Billing Arrangements and Litigation Financing: Ethical Issues and Practical Solutions.”** Alternative fee agreements and litigation financing have become powerful new forces in complex litigation. This program explains, in practical terms, the use of litigation financing and alternative fee arrangements and focuses on the ethical issues faced by clients, prospective funders and practitioners. Dan Formeller of Tressler LLP and Doug Eyre of McAlpin LLP are chairing the program, and Dan Formeller will moderate. The panel will include a state disciplinary chief counsel, in-house counsel, a managing director of a litigation financing company, two law professors, and a private practice attorney.

“You Have a Whistleblower – Now What?” will be presented at 2:30 p.m. on Friday, September 15. Jay Dubow of Pepper Hamilton in Philadelphia is program chair and moderator. On the panel will be attorneys from both plaintiff’s and defense firms, including former government and in-house attorneys. The program will consider some important issues: How should a corporation react when it is faced with a whistleblower? Does it matter if the whistleblower is anonymous? What is retaliation? Using a hypothetical, this program will answer these questions and provide perspectives from plaintiff’s and defense counsel, as well as governmental and in-house views.

The BCLC will also be cosponsoring a number of dispute resolution, corporate compliance, antitrust, sports law, and legal analytics programs that have a litigation aspect. It also will be cosponsoring a Judges Initiative program celebrating Constitution Day and considering the impact of attacks on the judicial system and the effect on businesses.

BCLC Annual Meeting Dinner at the Metropolitan Club

Dan Formeller



The BCLC, in cooperation with the Judges' Initiative and the Sports Law, Alternative Dispute, and Young Lawyers Committees invites you to join your colleagues on Thursday evening, September 14, at our Committee Dinner. The dinner will be held at the Metropolitan Club located on the 67th floor of the iconic Willis Tower. The East Room features floor to ceiling windows with spectacular view of Lake Michigan and the downtown Chicago skyline. The Willis

Tower is a five minute cab ride from the meeting hotel. Dress is business casual with jackets required for men. A picture ID will be required for everyone attending the dinner.

This year our Committee dinner is facilitated by the generous sponsorships provided by Huron Consulting, Morris, Nichols, Arsht & Tunnell LLP, and Tressler LLP.

Our Committee dinner is always one of the highlights of the Section meeting with friends and colleagues, old and new, having an opportunity to share stories and experiences in a spectacular venue. Seating will be limited so please make plans to purchase your tickets as early as possible.

