Message from the Chair

Dear Business and Corporate Litigation Committee Members:

As you read this Newsletter, I hope you are finalizing your plans to attend the Spring Section Meeting in Orlando, Florida at the Rosen Shingle Creek Resort, April 12-14, 2018. As always, the BCLC is proud to present a stellar lineup of programming and substantive subcommittee meetings. Our CLE programs include:

Breaking Up is Hard to Do - What To Do When A Key Employee Leaves and Goes to a Competitor?
Thursday 4/12/2018 10:30a.m. - 12:00p.m.

Annual Review: Recent Developments in Business Litigation with Perspectives from the Bench
Thursday 4/12/2018 2:30p.m. - 4:30p.m.

Traps for the Unwary - Avoiding Ethical Traps in Cross-Border Transactions and Disputes
Friday 4/13/2018 11:00a.m. - 12:30p.m.

Slants, Redskins, Credit Cards and Wedding Cakes: First Amendment Limits on Regulation of Business Speech
Friday 4/13/2018 2:30p.m. - 4:30p.m.

The BCLC’s ever popular joint dinner with the Judges Initiative, Dispute Resolution Committee, and Sports Law Committee will be held on Thursday night at Del Frisco's. The Women's Business & Commercial Advocates Reception honoring several luminaries in the Florida legal community will precede the dinner at 7:00 p.m. Thank you to our dinner/reception sponsors: Judge Gail Andler (Ret.), Bayard, P.A., Damian & Valori, Holland & Knight LLP, JAMS, McAlpine, PC, Nelson Mullins Riley & Scarborough LLP, and Ulmer & Berne LLP.

The BCLC meeting - open to all members - will be held on Thursday from 4:30 p.m.-5:30 p.m. Multiple BCLC Subcommittee meetings are scheduled, including several with substantive speakers/presentations. All BCLC members are welcome to attend any of the Subcommittee meetings, regardless of whether you are actively involved. Additionally, the BCLC will sponsor a Public Service Project with Boone High School on Thursday morning from 8:00 a.m. to 10:00 a.m. where our volunteers will engage in speed mentoring with the students.

As part of celebrating the BCLC’s 25th Anniversary two years ago in Boston, our Historical Subcommittee, chaired by Steve Brauerman and Vanessa Tiradentes, conducted interviews of all the past BCLC chairs. We have shared those interviews in past Network Newsletters and are pleased in this issue to profile Past BCLC Chair Bill Johnston, who went on to serve as Chair of the Business Law Section. Bill has been a terrific mentor and friend to me over the years. The article is a fitting tribute to his dedication and commitment to the BCLC.
Past Meetings

- BCLC Fall Meeting Recap by Anne M. Steadman

Upcoming Meetings

- Join Us in the Magic City for the 2018 Spring Meeting for a little magic, a lot of fun and of course - CLE and Programs! by Kathy McLeroy
- BCLC to Present Four Programs at 2018 Spring Meeting by Stuart Riback
- The Women Business & Commercial Advocates Subcommittee to Celebrate Women Leaders at the Spring Meeting in Orlando by Judge Gail A. Andler (Ret.)
- Alexander Hamilton to Appear at Orlando Conference in Special "Meet the Press" Event by F. Peter Phillips
- Orlando Panel: How to Zealously Advocate for Yourself and Create a Brand by Kate Harmon

Publications

- Business Law Today Successfully Re-Launches on New Platform
- 2018 Annual Review of Recent Developments in Business and Corporate Litigation to be Published April 2018
- The Business Lawyer Invites Submissions

Members in the News & Notes

Important Dates

- Business Law Section Spring Meeting
  April 12-14, 2018
  Orlando, FL
- Business Law Section Annual Meeting
  September 13-15, 2018
  Austin, TX

SAVE THE DATE for the Section's Annual Meeting in Austin, Texas - September 13-15, 2018. Planning is underway for the Tips from the Trial Bench event - which we are hoping to hold in coordination with the University of Texas Law School.

I would be remiss without a few words of thanks - to Anne Steadman and her Editorial Board for their exemplary efforts on this Newsletter; to Melissa Visconti and Paul Masinter for their assistance in securing sponsorships for the BCLC Dinner and WBCA Reception; to the BCLC Vice Chairs, Stuart Riback, Hon. Gail Andler (Ret.), and Hon. Mac McCoy; to all of the BCLC Subcommittee leaders for their continuing efforts in making the BCLC among the most active and successful Section Committees; and last but not least, major kudos to the ABA Staff who pull everything together for our Section meetings and events, with particular thanks to Katie Koszky, Nicole Nikodem, Kate Chopp, Julia Passamani, and Graham Hunt.

If you’re passing through Phoenix, please let me know and we can grab a cup of coffee. Enjoy the spring season!

Best,
Heidi

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

Former Chair Profile: William D. Johnston—BCLC Chair 2010-2013

By Steve Brauerman and Vanessa Tiradentes

William (“Bill”) D. Johnston is a partner at Young, Conaway, Stargatt & Taylor LLP in Wilmington, Delaware, where he concentrates his practice on corporate and other business counseling and litigation. Bill served as Chair of the Business and Corporate Litigation Committee (the “Committee”) from 2010 through 2013. After completing his term, Bill served in various leadership roles and ultimately as chair of the Business Law Section (the "Section").

Bill first became involved with the Committee after attending a Spring Meeting of the Section in Washington, D.C. The Committee was very welcoming - a hallmark that Bill is proud to say continues to this day. As Bill was developing an advancement and indemnification specialty, he wandered into a meeting of the Indemnification and Insurance Subcommittee. Before he knew it, the Chair of the Subcommittee suggested that Bill become Vice Chair of the Subcommittee. He gladly accepted the appointment, serving in that capacity from 1995 to 1996 and then serving as Chair from 1997 to 2005.

After serving in leadership roles with the Indemnification and Insurance Subcommittee, Bill was appointed as Co-Chair of Programs in 2005 to 2007. In 2008, Bill was appointed as Co-Vice Chair of the Committee. His service as Chair followed from 2010 to 2013.

As chair, Bill worked with other leaders within the Committee to accomplish
A Special Thank You to Our BCLC Sponsors:

[Image]

Editorial Board

- Anne Steadman
- Sarah Ennis
- Kate Harmon
- Kristen Swift

**A Special Thank You to Our BCLC Sponsors:**

[Image]

**Editorial Board**

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- Sarah Ennis
- Kate Harmon
- Kristen Swift

**Member Spotlight: Past and Present**

*By Brian M. Castro*

*Editor's Note: In this Edition's Member Spotlight, BCLC's Brian Castro writes about his passion for pro bono work and his connection, rooted in his family's history, to his work for KIND, Kids in Need of Defense.*

**Gomésende, Galicia, Spain, April 14, 1937** - Julio Castro-Alvarez looked out the open window of the room he shared with his brothers as the sun set on the village square of Gomésende, the only home he had known in his short life. Though he could not know it then, this would be the last time he would take in that vista. For early the next morning, Julio was to set out on a certain agreed upon goals - a project that began before Bill's tenure as Chair. Those goals included: (a) considering whether any new subcommittees, task forces, or working groups should be created, and/or whether any such existing groups should be "sunsetted," (b) promoting the recruitment, retention, and promotion of Committee members, (c) actively supporting the Business Law Section's diversity and inclusion initiatives in particular, efforts directed to the recruitment, retention, and promotion of diverse members, (d) determining how best to benefit from the dedicated participation on the part of the Committee's Business Court Representatives and the assigned Section Advisor, and (e) working to improve communications between leaders within the Committee, and all Committee members - most of all, to avoid the onslaught of emails that members were receiving from the ABA and others.

During Bill's tenure, the Committee added two new subcommittees, the Sports-Related Disputes Subcommittee and Trial Practice Subcommittee. In addition, under the creative guidance of Magistrate Judge Mac McCoy, the committee created a directory of Committee leaders and populated it with photos. The directory was a big hit, literally attaching a face to a name - and provided substantial assistance to the leaders and to other members who could view the directory on the Committee's website.

Bill's fondest memories as Chair of the Committee include partnering with wonderful leaders within the Committee and, more broadly, within the Business Law Section; getting to know new members of the Committee; getting to know better more seasoned members of the Committee; and knowing that the Committee would be in excellent hands when Pat Clendenen succeeded Bill as Chair. Bill is most proud of the lead that the Committee took in the Section's preparation of model principles and policies directed to the eradication of supply chain labor trafficking and child labor. The principles were adopted by the ABA House of Delegates as ABA policy. And, already, the principles and related policies are making a difference in assisting businesses worldwide to address the scourge that labor trafficking and child labor represent. Bill credits much of this success to Business and Corporate Litigation Committee leaders Denise Kraft, Brad Newman, and Chris Johnson (and of course ABA Past President Laurel Bellows).

Bill hopes that future Committee leaders "will remember that this Committee, established 25 years ago, has a rich history and a promising future. Please partner with others in leading it with care. And enjoy yourselves!"
journey that would take him far from the small, tight-knit family life he knew in northwestern Spain to the bustling, unfamiliar tableau of New York, the big city about which he knew little more than that it offered a future for a family like his.

Read more...

**Featured Articles**

**Avoiding Federal Securities Fraud Liability for Statements**  
*By Elizabeth M. Del Cid*

In an enforcement environment in which regulators point to corporate culture and the "tone from the top," companies have not shied away from touting their compliance and ethics codes when responding to reports of malfeasance, such as bribery or an executive's improper behavior. Although such statements are meant to reassure the market, they potentially give rise to liability under the federal securities antifraud law. Recent cases addressing the issue have cut both ways. In this article, we review those cases for the guidance they give about which statements might create potential securities fraud liability, and which might not.

Read more...

**Pennsylvania Regulation of Mortgage Servicers**  
*By Robert J. Hobaugh, Jr.*

Senate Bill No. 75, now known as Pennsylvania Act No. 81 of 2017 (the "Amendment"), amends Pennsylvania's Mortgage Licensing Act (the "Law") to provide for licensing and regulation of non-bank residential mortgage loan servicers (each a "Servicer") by the Pennsylvania Department of Banking and Securities (the "Department"). Sen. Donald White (R 41) sponsored Senate Bill No. 751 to implement state enforcement of Servicers by authorizing the Department to adopt regulations modeled on federal regulations. Those federal regulations, found at 12 CFR Part 1024 and known as the 2016 Mortgage Servicing Rule, were promulgated August 4, 2016, by the Consumer Financial Protection Bureau ("Bureau"). Thirty-six other states have adopted rules to license and regulate Servicers following the 2016 Mortgage Servicing Rule. Pennsylvania has embraced new licensing and regulation of Servicers previously unregulated by the Commonwealth, but the Act raises many questions for Servicers.

Read more...

**The Role of Attorneys and Personal Relationships at the Settlement Conference**  
*By Katherine Higginbotham*

Most people are aware that the majority of cases of every kind eventually settle. But far fewer people have the opportunity to consider the process by which two or more parties reach a settlement. Like many people, I associated "lawyering skills" with those that are typically connected with the litigation process: research, writing, oral presentation and argument, for example. Observing a settlement conference as part of my externship with a United States magistrate judge led me to question some of my notions regarding the role of attorneys and the need to acknowledge a client's personal relationships in the context of settlements.

Read more...
Subcommittee Reports

Business Divorce

The Business Divorce Subcommittee will be meeting at the BCLC Spring Meeting in Orlando on Friday, April 13, from 9:30 a.m. to 10:30 a.m. Richik Sarkar of McGlinchey Stafford PLLC will be giving a presentation titled “Close or Just a Corporation?” and will be discussing the distinction between close and “regular” corporations, how the difference can alter litigating a business divorce, and how different jurisdictional definitions of close corporations affect business divorce cases. The Subcommittee welcomes all attorneys interested in the Business Divorce practice area and is always seeking members who would be interested in speaking at Subcommittee meetings. Members interested in presenting at Subcommittee meetings should contact Melissa Donimirski (mdonimirski@hegh.law).

Cannabis and Alcoholic Beverages Litigation

The new working group, Cannabis and Alcoholic Beverages Litigation, will have an initial meeting at the Spring Meeting in Orlando on Friday, April 13, from 2:00 p.m. to 3:00 p.m. In addition to a general discussion of the interest in these topics and whether we should create a formal subcommittee, we plan on having a discussion of a number of substantive topics. Cannabis is legal in 29 states for medical and/or recreational use. However, since it is still illegal under federal law there are many issues that these businesses have to face. Included in these are the federal government's enforcement efforts regarding cannabis. What is the impact of the recent announcement by AG Sessions of a withdrawal of the Cole memorandum? Will the Rohrabacher-Farr amendment be continued to limit funds for federal enforcement? Will banks be able to do business with cannabis companies or will these businesses be limited to dealing in cash? What is the international landscape for cannabis related businesses? What differences are there among the states? We also plan on gauging interest in alcohol related issues, which also are heavily regulated on many levels. We hope you will participate in our introductory meeting. For information, contact Jay Dubow (dubowj@pepperlaw.com) or Alva Mather (matherac@pepperlaw.com).

Communications and Technology

The Communications and Technology Subcommittee is continuing to work on the subcommittee webpages. Here are some suggestions for your pages:

- Add links to articles from Business Law Today or The Business Lawyer relevant to your Subcommittee, even if not produced by your Subcommittee;
  - If you would like to add links to other articles, please get permission from the original publisher.
- Add pictures from any upcoming meetings or presentations;
  - Don't forget to provide captions for smaller group photos identifying names and roles in the committee or subcommittee.
- Add links to program audio or materials from meetings or presentations; 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.

Human Rights

The Working Group to Draft Human Rights Protections in Supply Contracts will offer a CLE program at the Spring Meeting in Orlando, on Friday, April 13,
from 10:30 a.m. to 12:30 p.m., entitled *Protecting Human Rights in Supply Chains: Moving from Policy to Action*. Speakers include practitioners in private firms, industry representatives from multibillion-dollar international businesses, and academics. The program will focus on the Working Group's draft of a report with model contract clauses to protect the human rights of workers in international supply chains. The UCC Committee is the primary sponsor of the CLE Program and the International Coordinating, Corporate Governance, Corporate Social Responsibility, Commercial Finance, Corporate Compliance, and Federal Regulation of Securities Committees are all co-sponsoring.

The Report addresses a number of difficult legal issues and attempts to identify risks as well as benefits involved in managing supply chains to protect human rights—whether through combating human trafficking, protecting worker health and safety, removing economic incentives to fuel violent conflicts, or conserving environmental resources. The hope is that adopting the suggested text in supply contracts, purchase orders, and delivery documents will be more effective at preventing the kind of abuses that have recurred with horrifying frequency over the last few years, resulting in hundreds of deaths and countless injuries.

As with all legal work, there are tradeoffs, and the draft report and model clauses aim to help companies manage their risk—which they face with or without supply chain management—and protect workers. Indeed, the program and materials include research and reading on recent and pending litigation on these issues; the suits are cautionary tales that provided important guidance to the drafting of the model clauses. The program will focus on the difficult choices and in doing so will draw on the knowledge and skill of those who have worked in the area, with perspectives from private practice, in-house lawyers, and law professors.

The Working Group is gathering feedback on the current draft of the report and model clauses and hopes for more input at the CLE program. To discuss and digest the comments, and to make a plan for finalizing the report and clauses, a working session will be held the following morning, Saturday, April 14, from 9:00 a.m. to 11:00 a.m. All are welcome. The Working Group will then move on to a final draft and the last stage of its project. For more information, contact David Snyder (dsnyder@wcl.american.edu) or Susan Maslow (smaslow@ammlaw.com).

**Membership**

The **Membership Subcommittee** reports that the Business and Corporate Litigation Committee is currently the eighth largest committee in the Section with 1,712 members. From January 2017 to January 2018, the BCLC membership count experienced only a slight decline in overall members, going 1,792 members to 1,712 members. However, these numbers are consistent with the overall trend of the Section. During this period, Section membership experienced a similar 3.4% decline.

In an effort to address the membership issues facing the Section, at the recent Mid-Winter Leadership Meeting in January, Section leadership met and participated in the Advance V, two days of programming led by Former Section Chair William Rosenberg focused entirely on increasing membership in the Section. The emphasis of the program was on growing membership among private practitioners, and particularly amongst young lawyers. Section leadership participated in several panel and roundtable discussions in an effort to develop ideas to attract new members in this segment. Following the Advance V meeting, a large survey was delivered in February to young lawyers in the ABA asking what they are looking for and what they need as young lawyers. Following the results of the survey, the Advance committee will develop new goals and specific action items to target and engage current and prospective young lawyer members.

For the 2017-2018 term, Judge Elizabeth Stong and Edward Fitzgerald will serve
as Co-Chairs of the Membership Subcommittee. The Membership Subcommittee will report on updated membership statistics and recruitment efforts at the upcoming Spring Meeting in Orlando. As always, the Membership Subcommittee welcomes the participation of all BCLC members in its efforts to increase our membership. Please contact Edward Fitzgerald (edward.fitzgerald@hklaw.com).

**Pro Bono**

The BCLC's Pro Bono and Public Service Subcommittee, in conjunction with the Young Lawyer Committee, is planning another exciting project for the Spring Meeting in Orlando. This year's project will take place on Thursday, April 12, 2018 from 8 a.m. to 10 a.m. at Boone High School in Orlando. Volunteers, along with local law school students from Florida A&M Law School, will offer career "speed mentoring" to high school students who are participants in the pre-law magnet program at Boone. Volunteers will have the opportunity to discuss their respective backgrounds, education, and career paths, and to answer questions and provide career advice to the students. Please sign up to volunteer by e-mailing sub-committee chair, Kristin Gore (kgore@carltonfields.com).

**Securities Litigation**

The Securities Litigation Subcommittee is looking forward to Orlando and we will be having a Subcommittee meeting on Friday, April 13 from 11:00 a.m. to 12:00 p.m. It will be a joint meeting of the Securities Litigation and Arbitration Subcommittee along with the Class & Derivative Actions and Criminal and Enforcement Litigation Subcommittees. We will be discussing current developments in securities litigation and enforcement. We also will use the meeting to discuss transition of Subcommittee leadership. We welcome all who are interested in becoming involved in leadership of this Subcommittee. Finally, we also want to plan for the fall meeting in Austin, Texas. As with other past Subcommittee meetings, we will consider inviting a guest to speak for a non-CLE program at that meeting. For more information, contact Jay Dubow (dubowj@pepperlaw.com).

**Sports-Related Disputes**

The Sports-Related Disputes Subcommittee is teaming up with the Corporate Governance Committee at the upcoming Business Law Section Meeting in Orlando to present the following panel discussion: **Hoop Dreams and Shoe Schemes: Where is the Internal Governance in Collegiate Athletics?** The presentation will take place on Friday, April 13, from 9:30 a.m. to 11:00 a.m. The panel will address the recent indictments of four assistant men's basketball coaches, an Adidas executive, and others. The scandal will be explored from an internal governance standpoint. Featured speakers will include:

- Len Elmore-attorney; sports broadcaster; former collegiate and NBA player
- Peter Roby-Northeastern University; formerly V.P. of Marketing at Reebok
- Michael Glazer-collegiate sports attorney, Bond Schoeneck & King

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: Jeffrey Schlerf (jschlerf@foxrothschild.com), Nick Sanchez (nsanchez@tocounsel.com) or Joseph Iannazzone (Joseph.Iannazzone@gwinnettcounty.com).

**Leadership**

The BCLC Welcomes Our New Business Court Representatives
The Business and Corporate Litigation Committee is pleased to welcome Judge Bledsoe, Judge Trapp, and Judge Welch.

Read more...

An Interview with Roberta Cooper Ramo: Business Law Advisor

By Anne M. Steadman

I had the pleasure of sitting down with Roberta Cooper Ramo, new Business Law Advisor assigned to the Business and Corporate Litigation Committee, at the Fall Meeting in Washington, D.C. to speak about her journey in the legal profession. Roberta is Shareholder with Modrall Sperling in Albuquerque, New Mexico. She concentrates her practice in alternative dispute resolution, transactional business law, real estate, probate, and estate planning. She has been recognized for her work in corporate governance and often works with corporations on their strategic and long term planning. Roberta was appointed by the United States Senate and served as co-chair of a committee to review governance issues of the U.S. Olympic Committee in 2003. Roberta previously served as the first female president of the ABA (1995-1996), and the first female president of The American Law Institute (from 2008 to 2017) and is now the Chair of the ALI Council.

Read more...

Business Law Fellows Program—Applications for 2018-2020 Due May 1!

The Business Law Fellows Program is designed to involve underrepresented groups in the substantive work of the Section and to launch participants into leadership roles. Each year, the Section funds up to 20 Fellows for two-year terms. Fellows participate in three meetings each year (Spring Meeting, Annual Meeting and a stand-alone committee meeting). Program participants are assigned mentors from their substantive Committee of interest and from the Business Law Fellows Committee, and are provided special guidance on getting involved in the leadership of the Section.

Applications can be downloaded from the website and are due on May 1, 2018. Please encourage any of your qualified associates to apply.

All applicants must have demonstrated leadership involvement within the ABA, Business Law Section, and/or a bar organization committed to one of the following areas:

- Young lawyer (under 40 years of age or in practice for less than 10 years)
- Lawyer of color
- LGBT lawyer
- Lawyer with a disability

Visit the program website or contact Gina Dickinson (gina.dickinson@americanbar.org) for more information on this career-changing program.

Past Meetings

BCLC Fall Meeting Recap

By Anne M. Steadman

The BCLC held its Fall Meeting in conjunction with the larger Business Law Section Fall Meeting in Washington, D.C., November 17-18. The BCLC sponsored three great substantive programs.
Upcoming Meetings

Join Us in the Magic City for the 2018 Spring Meeting for a little magic, a lot of fun and of course - CLE and Programs!

By Kathy McIeroy

The ABA Business Law Section (BLS) will present more than ninety CLE programs at its Spring Meeting in at the Rosen Shingle Creek in Orlando this April. Almost 1,500 registrants are expected to attend. Each registrant may choose from hundreds of substantive sessions that are open to all attendees.

BCLC to Present Four Programs at 2018 Spring Meeting

By Stuart Riback

The Business and Corporate Litigation Committee is pleased to present four CLE programs at the Business Law Section 2018 Spring Meeting in Orlando this April. These programs address a wide range of cutting-edge legal issues of interest to businesses and their counsel.

The Women Business & Commercial Advocates Subcommittee to Celebrate Women Leaders at the Spring Meeting in Orlando

By Judge Gail A. Andler (Ret.)

At the Spring Meeting on April 12, 2018, the Women Business & Commercial Advocates Subcommittee will be honoring Judge Alice L. Blackwell. Melissa Visconti, Co-Chair of the WBCA Subcommittee, will present the award to Judge Blackwell. Judge Blackwell has distinguished herself in her nearly 40 years as an attorney and judge by her intellect, demeanor, and many contributions to the advancement of women in our profession, which will be described in more detail when she is presented with her award. The presentation will be made during the reception at Del Frisco's Double Eagle Steak House prior to the Committee dinner.

Alexander Hamilton to Appear at Orlando Conference in Special "Meet the Press" Event

By F. Peter Phillips

Several well-known members of the Business Law Section leadership will take part in an entertaining play reading at the Section’s Spring Meeting in Orlando. Former Chair William Rosenberg will take the role of Meet the Press’ Chuck Todd, moderating a heated conversation among John Jay, Alexander Hamilton, Elbridge Gerry, and other historical figures as they debate whether the U.S. Constitution should be adopted.

Orlando Panel: How to Zealously Advocate for Yourself and Create a Brand

By Kate Harmon

Kate Harmon, a member of the Business and Corporate Litigation Committee
and a 2017-2019 Business Law Fellow, is chairing an event on the Young Lawyers’ Track at the Spring Meeting titled *How to Zealously Advocate for Yourself and Create a Brand*. Kate is putting on the event with the Corporate Homies, Demetra Liggins and Bemetra Simmons. While this event is part of the Young Lawyers’ Track, it will include information applicable to attorneys throughout their career trajectory. Please come out and support this event.

Read more...

**Publications**

**Business Law Today Successfully Re-Launches on New Platform**

In November, Business Law Today ("BLT") successfully re-launched on its new and improved platform: [https://businesslawtoday.org/](https://businesslawtoday.org/).

The new website contains a wealth of content - including articles and brief summaries on current news - across a broad range of legal practices, including Business Litigation and Dispute Resolution. BLT allows users to create a personal profile and select article and subject matter preferences based on one’s practice area and interests.

BLT invites all members of the Business and Corporate Litigation Committee who are interested in sharing original or re-purposed work with the broader Business Law Section readership to submit articles or other work to Judge McCoy (mac_mccoy@flmd.uscourts.gov) (Executive Editor), Sara Bussiere (sbussiere@bayardlaw.com) (Managing Editor), and Rick Paszkiet (rick.paszkiet@americanbar.org) (the Section “Content Guy”). Please also feel free to contact Judge McCoy, Sara, or Rick with any questions or to learn more about BLT.

**2018 Annual Review of Recent Developments in Business and Corporate Litigation to be Published April 2018**

The 2018 Annual Review of Recent Developments in Business and Corporate Litigation will be published by early April 2018. The Annual Review comprises 26 chapters that provide practical analysis along with 2017 case citations organized by specific areas of corporate litigation. This year’s edition will be published in an e-book format, and certain Chapters will be available on an individual basis.

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 2018 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) Appellate Practice; (10) Health Law & Life Sciences; (11) Trial Practice; (12) Sports; (13) Antitrust Litigation; (14) Business Torts; (15) Intellectual Property Law; (16) Corporate Law; (17) Director and Officer Indemnification and Advancement Rights; (18) General Partnerships, Joint Ventures, Limited Partnerships, and Limited Liability Companies; (19) Business Divorce; (20) Employee Mobility, Restrictive Covenants and Trade Secrets; (21) Employment Law; (22) ERISA; (23) Derivative Litigation; (24) Financial Institutions Litigation; (25) Securities Arbitration Law, and (26) Securities Litigation.

Thank you to all the editors and authors who participated in this project. 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.
The Business and Corporate Litigation Committee will be sponsoring a panel at the Business Law Section Spring Meetings in Orlando on Thursday April 12, 2:30 p.m. to 4:30 p.m., entitled "Annual Review: Recent Developments in Business Litigation With Perspectives from the Bench." The panel will cover recent litigation updates in the following substantive areas: insights into the world of Sports Law, such as cheating and doping scandals, concussion controversies and media wars; a crash course on doing business in Indian country and under Indian laws; and finally, an overview on enforcing IP rights in light of current trends and cases. The panel will be moderated by Bradford K. Newman of Paul Hastings LLP. Panelists include Grant Christensen with University of North Dakota; Sheila Swaroop of Knobbe, Martens, Olson & Bear, LLP; Jeffrey Schlerf of Fox Rothschild; the Honorable Joseph C. Iannazzone, Judge for the State Court of Gwinnett County; the Honorable Elihu M. Berle, Judge for the State Court of Los Angeles County; Heidi Staudenmaier of Snell & Wilmer, LLP; and the Honorable Alvin Thompson, Judge for the U.S. District Court, District of Connecticut. If you plan to be at the Spring Meeting, please consider attending the panel!

For more information regarding Recent Developments please contact Bradford Newman (bradfordnewman@paulhastings.com).

The Business Lawyer Invites Submissions

The Business Lawyer Editorial Board invites topical, scholarly submissions, including case law analyses and commentary on developing trends, that may be of interest to business lawyers generally and other members of the Business Law Section. An editorial decision is made on lead articles typically within two to four weeks after submission, with detailed substantive editing thereafter. We are looking for interesting, well-researched submissions on areas of topical interest. Lead time with full peer review and professional staff editing is approximately four to six months.

Articles (and questions concerning submissions) should be submitted to Diane Babal, Production Manager (diane.babal@americanbar.org) or to BCLC's own Pat Clendenen (pclendenen@davismalm.com).

Members in the News & Notes

Check out the recent activities and achievements of our BCLC members!

Ryan M. Billings, Deputy Chair of Litigation, Kohner, Mann & Kailas, S.C., recently became Partner of the firm and was promoted to Deputy Chair of Litigation.

Brian Fraser, Partner with Akerman LLP, New York, New York, spoke about recent changes in the law on personal jurisdiction on the panel "Hot Topics in International Law" at the ILS Global Forum on International Law on February 16, 2018 at the Conrad Hotel in Miami.

Alan Goldberger, of the Law Offices of Alan S. Goldberger in Florham Park, New Jersey, author of Sports Officiating: A Legal Guide, was a featured speaker at two national officials’ conferences this winter. In December, Goldberger addressed the Professional Association of Volleyball Officials (PAVO) Annual Convention held during the week of the NCAA Final Four Women’s Volleyball Tournament in Kansas City, Missouri. He presented "The Best Defense: Officiating Safely 2018" to volleyball referees and line judges at the general session; and "Official Business-Legal Issues for PAVO Board Chairs," a special presentation to the Association's Board Chair Assembly.

Last month, Goldberger returned for the 10th consecutive year as a featured speaker to the US Lacrosse Men's Officials Council at the US Lacrosse National
Convention in Baltimore, Maryland, where he presented "Officiating Rules Modifications and Legal Issues-5 Things You Need to Know."

Goldberger serves as counsel to local, state, and national sports and officiating organizations; and also serves as an adjunct instructor in the Master of Sports Administration program at Fairleigh Dickinson University, Florham campus. He officiated college and high school basketball for over 30 years, most recently working in the Northeast Conference. He also umpired college baseball for the Eastern College Athletic Conference; and worked as a high school football official throughout the State of New Jersey. Goldberger is a frequent speaker to groups of officials, coaches, athletic administrators, and attorneys nationwide.

**Raymond Kisswany.** Senior Associate with Charles Russell Speechlys LLP in Dubai, UAE, celebrated his daughter's first birthday in July 2017 and shortly after started his new job at CRS. Raymond joined CRS along with Jonathan Brown, a partner from his previous firm, Hadef & Partners. Raymond and Jonathan moved to CRS together as a team to start the international trade practice of the firm. A month after starting at CRS, Raymond and Jonathan co-authored the UAE chapter for *Getting the Deal Through - Trade and Customs Law* (2018). CRS is headquartered in London with offices across Europe, the Middle East, and in Hong Kong. Raymond's practice is based out of Dubai and covers the GCC, Middle East, and North Africa on a range of international trade cases.

**Joseph H. Spiegel.** Joseph H Spiegel, PLLC in Ann Arbor, Michigan, was honored for over 20 years as Chairman and Co-Chairman of the Midwest Securities Law Institute at Michigan State College of Law. Joseph also recently served as a member of a Securities Expert Roundtable.

**Neil J. Wertlieb.** Principal at Wertlieb Law Corp., just completed his first year at his own firm, after three decades in "Big Law" (the past 2 decades as a transactional partner at Milbank Tweed). Neil's work now focuses on providing expert witness services in disputes involving business transactions and corporate governance, and in cases involving attorney malpractice and attorney ethics.
Member Spotlight: Past and Present

By Brian M. Castro

Editor’s Note: In this Edition’s Member Spotlight, BCLC’s Brian Castro writes about his passion for pro bono work and his connection, rooted in his family’s history, to his work for KIND, Kids in Need of Defense.

Gomesende, Galicia, Spain, April 14, 1937—Julio Castro-Alvarez looked out the open window of the room he shared with his brothers as the sun set on the village square of Gomesende, the only home he had known in his short life. Though he could not know it then, this would be the last time he would take in that vista. For early the next morning, Julio was to set out on a journey that would take him far from the small, tight-knit family life he knew in northwestern Spain to the bustling, unfamiliar tableau of New York, the big city about which he knew little more than that it offered a future for a family like his.

With Francisco Franco’s forces pushing closer every day, and prospects for Franco’s democratic opponents shrinking even more quickly, Edelmira, Julio’s mother and the family matriarch, had confronted the most difficult decision of her life. She must send Julio to the New World. There he would find the opportunities that no longer existed in their native home.

After her husband’s death the year before, with the nation torn by civil war and the government in chaos, Edelmira understood that the life they had known was over. As resourceful as she was resilient, the widow learned what she could from her network of family and friends throughout Galicia and beyond about the world outside of Gomesende, finally concluding that the best future for her family was not here, but an ocean away in America.

Downstairs, Edelmira rushed about the tidy kitchen of her modest home, gathering the potatoes, meat pies, and seafood endemic to Galicia – the fish already cured for longevity – as well as bread, olives, and dried fruit to fortify her son on his journey to New York. First he would take a train from Orense, the
nearest city, to the port city of Vigo, and from there a long, damp voyage to their destination, Ellis Island in the United States. Silently, she prayed that the life he would build in America would sustain and eventually reunite her family.

**Ellis Island, New York City, NY, U.S., April 25-26, 1937**—The USS Siboney neared New York harbor and its eager passengers could glimpse, just beyond, that famous beacon they had yearned to see for so long. As the Statue of Liberty swung into view, the ship was completing its latest Spain-Cuba-New York circuit. It was April 25, 1937, a day of calm seas with temperatures just topping 60 degrees. Aboard were mail, some returning tourists, and passengers traveling on QIVs (Quota Immigrant Visas) that, they hoped, would allow them to call America home. Among the hopeful travelers was Julio Castro-Alvarez, listed on the passenger manifest as 28 years old, bilingual, and neither an anarchist nor polygamist. Still, Julio would not be granted entry that day.

For, on arrival, that passenger—who also was my paternal grandfather—had paid the $50 fee ($880 USD today), only to be informed that, like the other QIVs aboard, he would be detained, having been designated “LPC,” an immigrant deemed at risk of becoming a likely public charge. So Julio spent the night in detention, our American dream at a veritable crossroads, with little but the clothes on his back and a small suitcase. After a long, rough voyage, his body was beyond exhaustion, but sleep would not come that first night on American soil. Nerves, mixed with excitement and even dread, conspired with the unfamiliar, cramped room to keep him alert, his mind racing throughout the night. The moon on that April 25th, though, was at its peak of fullness, so as he gazed out the window, taking in a skyline that—even then—was unlike anything he’d ever seen in rural Spain, he found some solace in that harbinger and tried to imagine what his first sunrise over this new country would bring.

Fortuitously for my family and me, that full moon did augur a propitious day ahead. Shortly after 2:00 p.m. on April 26, 1937, Grandfather was released from detention, having somehow convinced the immigration inspector that his support from others already in America was sufficient to erase the ignominious LPC label.

**Supreme Court of the United States, Washington, DC, April 26, 2017**—As part of ABA Lobby Day, I was attending a reception in the Great Hall of the U.S. Supreme Court, where the recipients of the 2017 Grassroots Award were honored. Our host, Associate Justice Elena Kagan, reflected on our vital mission that day—advocating before an unwelcome Congress to fight draconian cuts to funding of the Legal Services Corporation and, by extension, the legal aid programs LSC supports around the country.

Just that week, I’d been surprised and excited to learn the exact timing of my Grandfather’s arrival to this country, exactly 80 years earlier as it turned out. So as I stood among the vast columns of that living monument to the American justice system, the famous chamber and its nine high-backed chairs visible just yards away, I had to pause. Being in that place, on that day, to mark that occasion was a remarkable confluence of circumstances. The serendipity of it all brought into stark relief for me all that had gone before that moment, the sacrifices I’d never know, by ancestors I’d never meet, their hopes and dreams for our family and their new country, my great good fortune to be part of that legacy, and how to live a life worthy of the heritage that brought me here.
When it was time to recognize the award recipients, I learned about KIND, Kids In Need of Defense, a group working to ensure that unaccompanied immigrant and refugee children who enter the United States have a fair shot in their deportation hearings through representation by pro bono counsel. I knew then that I had to be a part of that work, and so I spoke with several KIND attorneys there to learn more. Within weeks, together with a former Department of Commerce colleague, Kelvin Stroud, as co-counsel, we were representing two teenage brothers from an area of Honduras that is plagued by ongoing battles between MS-13 and a rival gang.

Post Script—The process is a long, slow one, but in February a Washington, D.C. court issued the predicate order required to move forward with our clients’ request for relief at the federal level. This order is the first step in securing Special Immigrant Juvenile Status (SIJS) for our clients. Juveniles who adjust status after obtaining SIJS are eligible for all of the benefits of lawful permanent residence, including eligibility to naturalize after five years of continuous residence in the U.S. Our SIJS petition is now pending with U.S. Citizenship and Immigration Services. To learn more about KIND, including how to take on a pro bono case, visit supportkind.org.

This past summer our family was grateful for the opportunity to visit Gomesende, see my Grandfather’s childhood home, and connect with distant relatives in the region, where family ties are especially powerful and enduring. There, I was able to better appreciate what Grandfather undertook, all he overcame, and the daunting magnitude of leaving all that he knew: family, friends, community, church, history. Today I wonder which turn of events he would find more improbable: that his grandson would become a lawyer in America or that his grandson’s law practice one day would center on crypto currencies, distributed ledgers, and other technologies beyond imagination, seemingly centuries and worlds removed from a tiny village in Galicia, Spain.

Throughout twenty years of law practice spanning law firms, in-house practice, and service in the Obama Administration, pro bono work has been a personal and professional priority. This experience, however, is qualitatively different in so many ways. Different not only because I’m learning a new area of law, the beneficiary of the patient tutelage of KIND experts, but also because our clients have helped to forge a bridge to my heritage. It is impossible for me to look at these children, to talk with them and try to envision their terror on an arduous journey that ended alone, held in custody by the USCIS, without a keen awareness of my Grandfather on that bright, moonlit night 80 years ago, sitting in detention on Ellis Island and gazing expectantly toward what would become his country—and now is mine.

The author counsels financial services providers and early-stage technology companies on compliance with the laws and regulations governing securities offerings, crypto-assets, crowdfunding, broker-dealers and investment advisers. Previously he served as CLO for one of the first SEC-registered crowdfunding portals created under Title III of the JOBS Act. He can be reached at 202-460-3180 or bcastro@wsgr.com.
Avoiding Federal Securities Fraud Liability for Statements about Corporate Compliance and Ethics Codes

By Elizabeth M. Del Cid

In an enforcement environment in which regulators point to corporate culture and the “tone from the top,” companies have not shied away from touting their compliance and ethics codes when responding to reports of malfeasance, such as bribery or an executive’s improper behavior. Although such statements are meant to reassure the market, they potentially give rise to liability under the federal securities antifraud law. Recent cases addressing the issue have cut both ways. In this article, we review those cases for the guidance they give about which statements might create potential securities fraud liability, and which might not.

Background

A private cause of action for money damages exists under Section 10(b) of the Securities Exchange Act of 1934 (“1934 Act”) for investors who suffer a loss from buying or selling securities in reliance on misstatements of material fact. An investor seeking to prevail on a Section 10(b) claim must plead and prove not only what the misstatement was, why it was material, and how the misstatement caused the alleged loss, but also that the maker of the misstatement acted with scienter—the intent to deceive.

Materiality: Avoid making False Guarantees to Investors

False statements that investors would rely on in considering whether to buy or sell shares of a corporation’s securities are potentially actionable. At the pleading stage of a securities fraud suit, a plaintiff satisfies the materiality requirement by alleging a statement or omission that a reasonable investor would have considered significant in making investment decisions. A complaint fails to state a claim of securities fraud if no reasonable investor could have been misled about the nature of the risk when he invested. “Puffery,” a general statement of corporate optimism and “sales talk,” is the quintessential example of an inactionable fraudulent statement under Section 10(b) because it is immaterial as a matter of law. But statements (i) outlining concrete steps that have been taken or (ii) making specific commitments to the public, which suggest that compliance and ethics codes essentially guarantee clean operations, potentially create liability.

For example, the corporate defendant in Eletrobras allegedly emphasized, repeatedly, its reputation for integrity and ethical conduct as central to its financial condition in an effort to assuage concerns about media reports of bribery, bid-rigging, lack of internal controls over its corruption prevention program, and criminal convictions against former officers. The court found that plaintiffs had alleged material misstatements or omissions with respect to Eletrobras’s repeated references to its ethics and integrity because there was a substantial likelihood that these statements, made to reassure investors, would be important to a reasonable person in considering whether to buy or sell shares of Eletrobras securities.¹
In another case, *Bradesco*, a fraud action against a bank and its senior executives who allegedly made false and misleading statements in the bank’s code of ethical conduct, Forms 20-F, and a press release regarding alleged bribery schemes, the court found that the code of ethical conduct was not an actionable misrepresentation but the statements made in the bank’s Forms 20-F and press release about the code of conduct or anti-corruption policies were actionable. Plaintiffs alleged that the bank’s ethical code stated that the practice of bribery or corruption was unacceptable, whereas the Forms 20-F and press release stated that a formal process to prevent and combat bribery and corruption had been adopted. The court noted that the code of ethics is “inherently aspirational” and made no guarantee that it would be followed. In contrast, the statements made in the Forms 20-F and press release were not made in a vacuum, and they spoke about bribery and corruption specifically, so they could not be treated as immaterial as a matter of law at the motion to dismiss stage.2

In *VEON*, an action arising out of a company’s admitted bribery in Uzbekistan, plaintiffs alleged that a multinational telecommunications company (VEON) made false disclosures and certifications regarding its “financial reporting” controls in SEC filings, including falsely recording a bribe as the acquisition of an asset or consulting services in its Forms 6-K. VEON moved to dismiss the complaint on grounds, in part, that there was no actionable misstatement. The court disagreed with VEON in this respect because the false recording—failure to mention the bribe—would seem to violate policies or procedures that “[p]ertain to the maintenance of records that in reasonable detail accurately and fairly reflect the transactions . . . of the issuer” as a matter of law.3

In contrast, in *HP*, a case arising out of allegedly improper behavior, investors alleged securities fraud against the company and its former president for adopting business conduct standards without disclosing that the president was, at the same time, violating the code by submitting false expense reports and making unwanted advances toward a company contractor. The code’s preamble stated, “let us commit together, as individuals and as a company, to build trust in everything we do by living our values and conducting business consistent with high ethical standards.” In addition, plaintiffs alleged that defendants made aspirational, public representations (including a statement by the company’s former president before the House Committee on Energy and Commerce) to reassure investors of the company’s compliance with ethical standards. The court granted defendants’ dismissal motion because, it held, the subject preamble and public representations were puffery that added nothing to the company’s code.4

In *Braskem*, a case arising out of an alleged long-running bribery scheme, the court also found that alleged statements that touted a company’s culture and ethics including a statement in a press release from the CFO that “Creating value for shareholders is a crucial part of our work, aligned with a policy of transparency and good corporate governance practices”, were not actionable misrepresentations. The court explained that the complaint did not allege that these statements were made to “reassure investors in the wake of growing concerns about general corporate wrongdoing”. Thus, there was no deceit. Instead, the court characterized these statements as immaterial.5
In sum, public guarantees about (i) a public company’s financial reports or (ii) track record of abiding with the law, if false, are potentially actionable under Section 10(b).

Scienter: Avoid making False Opinions about Internal Compliance

Opinions about a company’s adherence to its compliance program potentially are actionable if the opinion was without basis in fact or the speaker withheld material information bearing on the weight of the opinion. For example, in Goldman Sachs, a complaint alleging that the defendants misrepresented that the firm’s securities research analysts were independent, unbiased, and without conflict survived a motion to dismiss because the opinions were not simply rosy predictions or vague statements about integrity. Rather, they were made with the intent to deceive the public because the firm allegedly knew about pervasive conflicts and their effect on research reports and buy recommendations, as well as certain undisclosed facts that undermined the accuracy of professed opinions or beliefs.6

Applying similar logic, in Och-Ziff, a case arising out of an alleged bribery scandal, the court found that alleged misstatements in SEC filings regarding the corporation’s global compliance program and policies and procedures aiming to ensure FCPA compliance but making no guarantees, were not actionable because the statements did not contain literal untruths or profess an opinion on the efficacy of the corporation’s compliance program.7

Collectively, these two cases reflect that opinions about corporate compliance that are made to deceive the investing public are likely actionable.

Officers who are Aware of Company Misrepresentations

Corporate officers who know that a company’s public disclosures contain material misrepresentations are liable under federal securities fraud laws. To adequately plead the scienter element of a securities fraud claim, the complaint must allege facts that give rise to a strong inference of intent to deceive, manipulate or defraud.

For example, in Petrobras, a case against a Brazilian oil company and its individual officers for fraudulent overstating the value of company’s assets and misstating the effectiveness of internal controls in preventing the bribery and corruption that was allegedly rampant in the company and impacted the price at which the company acquired its refineries and other physical assets, the court held that these alleged misstatements were actionable because plaintiffs alleged that the officers making these statements were aware of the rampant corporate culture of bribe-paying and illegal kickbacks at the time the statements were made. Plaintiffs alleged, in relevant part, that the individual officers were alerted to the fraud at the company by a former Petrobras manager who testified that she told the officers about inflated contracts and payments for services that had not been carried out.8

In contrast, in Godinez, a case alleging that corporate officers made misrepresentations and omissions regarding company products that needed to be recalled, billing improprieties, and violations of the Foreign Corrupt Practice Act, the court found, in relevant part, that the alleged misrepresentations were not actionable because plaintiffs failed to allege facts that would give rise to a strong inference of scienter. The court explained that the complaint was devoid of
allegations that the officers knew of the errors at the time they were made, and the mere fact that the corrective disclosures occurred soon after a merger announcement did not necessarily give rise to a strong inference of scienter.9

Conclusion

It is well held that “Statements of general corporate optimism . . . do not give rise to securities violations” unless “they are worded as guarantees or are supported by specific statements of fact, or if the speaker does not genuinely or reasonably believe them.”10 Viewed collectively, the cases discussed above suggest that (i) material promises to the public that a company is in compliance with the law when it is not, (ii) false opinions regarding the company’s efforts to be in compliance, and/or (iii) other misrepresentations or omissions that affect an investor’s decision to invest in a company, are potentially actionable statements if well pled under the securities fraud provisions of the 1934 Act. In contrast, immaterial puffery is not so actionable. Given these guidelines, companies should be cautious about how they draft their corporate compliance statements.

10 IBEW Local Union No. 58 Pension Tr. Fund & Annuity Fund v. Royal Bank of Scotland Grp., PLC, 783 F.3d 383, 392 (2d Cir. 2015).
Pennsylvania Regulation of Mortgage Servicers

By Robert J. Hobaugh, Jr.

Senate Bill No. 75, now known as Pennsylvania Act No. 81 of 2017 (the “Amendment”), amends Pennsylvania’s Mortgage Licensing Act (the “Law”) to provide for licensing and regulation of non-bank residential mortgage loan servicers (each a “Servicer”) by the Pennsylvania Department of Banking and Securities (the “Department”). Sen. Donald White (R-41) sponsored Senate Bill No. 75 to implement state enforcement of Servicers by authorizing the Department to adopt regulations modeled on federal regulations. Those federal regulations, found at 12 CFR Part 1024 and known as the 2016 Mortgage Servicing Rule, were promulgated August 4, 2016, by the Consumer Financial Protection Bureau (“Bureau”). Thirty-six other states have adopted rules to license and regulate Servicers following the 2016 Mortgage Servicing Rule. Pennsylvania has embraced new licensing and regulation of Servicers previously unregulated by the Commonwealth, but the Act raises many questions for Servicers.

The Amendment requires Servicers to be licensed and provides separate licenses for mortgage lenders, brokers, correspondents, and Servicers who collectively engage in the mortgage loan business. Such business is defined as “[t]he business of (1) advertising, causing to be advertised, soliciting, negotiating or arranging in the ordinary course of business or offering to make or making mortgage loans; or (2) servicing mortgage loans.” 7 Pa. C.S.A. § 6102. A “mortgage servicer” is defined as “[a] person who engages in the mortgage loan business by directly or indirectly servicing a mortgage loan.” 7 Pa. C.S.A. § 6102. Direct servicing under the Amendment is “the power and authority to collect and remit for a lender, mortgagee, note owner, note holder, trustee or primary beneficiary of a residential mortgage loan payment of principal, interest, or an amount to be placed into escrow for any combination of the payment of insurance, hazard insurance or taxes, [related to the borrower’s residential real estate].” 7 Pa. C.S.A. § 6122(c). Although the Amendment does not define indirect servicing, such practice might refer to the work of a subservicer, one who contracts with the Servicer to perform some or all of the loan servicing.

Under the exemption to licensure, a licensed mortgage lender may (i) be a broker, or a correspondent lender without a separate broker or correspondent license or (ii) service mortgage loans it has originated, negotiated, and owns without a separate mortgage servicer license. However, a person licensed only as a mortgage servicer may perform mortgage servicing for itself or others. Accordingly, a mortgage lender licensed as such in Pennsylvania must be separately licensed as a Servicer in order to service mortgage loans owned by others.

Certain persons may perform mortgage servicing without a mortgage servicing license. First, an attorney at law who does not hold himself or herself out as a broker or originator is exempt from licensure unless the attorney is compensated by a broker, lender, correspondent, exempt person, originator or servicer or an agent of any of the foregoing. Second, a Servicer who services fewer than four mortgage loans in a calendar year is exempt from licensure. Third, a consumer discount company is exempt from licensure except that if it acts as a Servicer it will be subject to Subchapter C of the Mortgage Loan Licensing and Consumer Protection provisions of the Law (“Restrictions and Requirements”) and parts of Subchapter D related to...
administrative and licensure provisions of the Law. Fourth, employees and individuals supervised and controlled by a Servicer are exempt. Fifth, exempt also are affiliates of banking institutions and subsidiaries and affiliates of federally chartered or State-chartered credit unions which (i) are subject to some of the Restrictions and Requirements, (ii) provide financial reports to the Department, (iii) are registered with the Department, (iv) maintain bond coverage and (v) assure that certain employees have obtained any required mortgage originator’s license. Finally, persons licensed under the Money Transmission Business Licensing Law are exempt to the extent funds are transmitted from a mortgagor (borrower) in excess of the scheduled monthly minimum.

The Amendment supplements the Commonwealth’s Mortgage Satisfaction Act. New terms require a Servicer to respond in good faith when a mortgage loan is paid in full and when a lender is no longer obligated to make advances on an open-end mortgage loan which is paid in full. Under such circumstances the Servicer must in good faith (1) request the mortgage holder to release its lien on the residential real estate and deliver to the consumer good and sufficient documents to evidence the release; (2) request the mortgage holder (lender) to cancel any insurance in connection with the mortgage and refund any unearned premium; and (3) satisfy the duties of the mortgage holder in (1) and (2) if the holder has delegated those tasks to the Servicer.

The Amendment requires the Servicer to establish a single point of contact with whom the borrower “can communicate about foreclosure matters or loss mitigation options [not] later than the 36th day of a borrower’s delinquency, unless contact is inconsistent with applicable bankruptcy law court order.” 7 Pa. C.S.A. § 6123(b). This is more restrictive than federal law which allows 45 days of delinquency to establish a single point of contact. A single point of contact means “[a]n individual or team of personnel, each of whom has the ability and authority to discuss mortgage loan mitigation options with a borrower on behalf of a mortgage servicer. The mortgage servicer shall ensure that each member of the team is knowledgeable about the borrower’s situation and current status.” 7 Pa. C.S.A. § 6102. Loss mitigation means alternatives to mortgage foreclosure offered by the owner, holder, or assignee of a delinquent mortgage loan.

The Department shall issue a Servicer license under the Restrictions and Requirements if the applicant: (1) has been approved or meets current eligibility criteria as a residential mortgage loan servicer of at least one Federal GSE, government corporation or agency; (2) has a net worth of at least $250,000; (3) maintains fidelity bond coverage under the guidelines of Fannie Mae or Freddie Mac; (4) maintains a surety bond in the amount of $500,000 which runs to the Commonwealth and in a form acceptable to the Department; and (5) designates a qualifying individual for the principal place of business.

The Amendment establishes licensing fees for mortgage servicers. The initial fee is $2,500 for the principal place of business and $1,250 for each branch location. The renewal fee is $1,000 for the principal place of business and $500 for each branch location. If the applicant is a mortgage servicer applicant it is not required to pay the fee for a mortgage originator license.
The Amendment requires Servicers that maintain surety bonds under 7 Pa. C.S.A. § 6131(f)(4) to file periodic reports. These reports are filed with the Nationwide Multistate Licensing System and Registry (“NMLS”) as the Department determines. The NMLS was created under the Secure and Fair Enforcement for Mortgage Lending Act of 2008, 12 U.S.C. Chapter 51 (“SAFE Act”) and the regulations of the Bureau under the SAFE Act. Those reports are to include information regarding first or secondary mortgage loan business conducted by the Servicer as required by the Department. The penalty for non-filing is $100 per day after the due date until the report is filed.

The Amendment further authorizes the Department to adopt, as to Servicers, regulations “which effectively incorporate the Consumer Financial Protection Bureau’s mortgage servicer regulations at 12 CFR Pt. 1024, Subpt. C (relating to mortgage servicing), other than 12 CFR 1024.30 (relating to scope),” 7 Pa. C.S.A. § 6141(a)(1). In light of mortgage industry criticism of the Bureau, the question arises whether and to what extent such federal regulations (“CFPB Regulations”) will survive. The Amendment contemplates the possibility that these CFPB Regulations could change or be repealed, and if they change, the Department “shall promulgate regulations making the appropriate incorporation.” 7 Pa. C.S.A. § 6141(a)(2). If the CFPB Regulations are deleted, “[t]he version of the Pennsylvania regulations in effect at the time of the alteration shall remain in effect for two years.” 12 Pa. C.S.A. § 6141(b)(1). During that two-year period, “the [D]epartment shall promulgate replacement regulations.” 12 Pa. C.S.A. § 6141(b)(2). Accordingly, the Amendment creates two sets of regulations, one federal and one state, which could require Servicers to comply with possibly conflicting regulations. Further, the Amendment contemplates ongoing state regulation of Servicers if the federal government determines to no longer regulate the industry. That could benefit bank servicers which would be free of CFPB Regulations but non-bank Servicers would still be subject to Department regulations promulgated under the Amendment.

The Governor approved the Amendment on December 22, 2017. 7 Pa. C.S.A. § 6141 and the effective date section took effect immediately. The remainder of the Amendment took effect on February 6, 2018, the effective date of the regulations promulgated under 7 Pa. C.S.A. § 6141. The Department has provided a web link for those Servicer regulations at [http://www.dobs.pa.gov/Documents/Statutes/PA%20Modified%20Mortgage%20Servicing%20Rules.pdf](http://www.dobs.pa.gov/Documents/Statutes/PA%20Modified%20Mortgage%20Servicing%20Rules.pdf). Secretary of Banking and Securities Robin L. Weissman announced January 23, 2018 that the Department anticipates accepting applications for Servicers beginning April 1, 2018 through the NMLS. The deadline for licensing applications is June 30, 2018.
The Role of Attorneys and Personal Relationships at the Settlement Conference

By Katherine Higginbotham

Most people are aware that the majority of cases of every kind eventually settle. But far fewer people have the opportunity to consider the process by which two or more parties reach a settlement. Like many people, I associated “lawyering skills” with those that are typically connected with the litigation process: research, writing, oral presentation and argument, for example. Observing a settlement conference as part of my externship with a United States magistrate judge led me to question some of my notions regarding the role of attorneys and the need to acknowledge a client’s personal relationships in the context of settlements.

I had heard the judge mention on numerous occasions that she expected attorneys to communicate in good faith with one another, rather than making no attempt to come to an agreement on a given issue and relying on her to resolve it. As I observed a settlement conference in which both of the parties were present for the negotiation, I thought that it must be challenging for the attorneys to strike the right balance. While it seems intuitive that being more cooperative would lead to a greater chance of reaching a settlement, attorneys like the ones that I observed are hired to be adversarial. I imagine that some clients would be displeased if they perceived their attorneys to be too conciliatory. It was interesting to watch both of the attorneys attempt to negotiate in good faith while maintaining an adversarial position for the benefit of their respective clients.

Attorney A used a conversational tone and volume, which I felt was more effective and appropriate in this context. It gave me the sense that he perceived the settlement conference as a discussion. He was also direct in terms of answering the judge’s questions and drawing her attention to the issue that he felt was most important.

Attorney B, who spoke after Attorney A was finished making his points and answering the judge’s questions, sounded as if he was giving an opening statement. He was projecting his voice in the small room, and it seemed that he had prepared a speech ahead of time. There was no real opportunity for the judge to ask a clarifying question without interrupting him. Attorney B also used his opportunity to speak as an opportunity to deride the other party, describing Attorney A’s arguments as “ridiculous,” and calling Party A “emotional,” which seemed dismissive and potentially alienating. While Attorney B acted like a lawyer from television, I did not think that he acted like a lawyer that wanted to settle a case.

During this initial part of the conference, Party A directed Attorney A to take notes while Attorney B was speaking, although it did not appear that Attorney A had any such intention. On the other hand, Party B told Attorney B to “let [the judge] speak,” when he interrupted her. Perhaps this illustrated the parties’ perceptions of their respective attorneys’ approaches: one felt his attorney was too relaxed and another felt his attorney was too aggressive.

The judge directed the parties and their attorneys to two different rooms so that she could speak with them separately, as they were nowhere close to agreeing on settlement terms. When she met
with Party A and his attorney, Party A asked to speak with Party B outside the presence of the attorneys and in the presence of the judge. It was clear that the two parties had had a long-standing business relationship, and had built some level of trust over the years, but it was also clear that Party A felt betrayed based on the language he was using. He described how he and Party B had gotten to know each other and shared aspects of their personal lives, and he said that he did not understand why Party B, in his view, had refused to meet his obligation to Party A. Party A explained that he intended to confront Party B about what he had done; he said that because he knew Party B well, he felt that he could convince him to accept his terms. To my surprise, his attorney and Party B’s attorney agreed to this arrangement.

I thought that this was a terrible idea. It seemed to me that it could place the attorneys in a bad position, as either of the parties might make a problematic statement that could be used against him. It also seemed to me that Party A really just wanted the opportunity to look Party B in the eye and inform him that he felt betrayed. Initially, that is exactly what happened. The judge allowed Party A to express his feelings for a few minutes and then reminded the parties that the purpose of their meeting was to settle. I was astonished when, within fifteen minutes, they came to an agreement that seemed to satisfy both parties. Interestingly, the terms of the agreement incorporated components that each of them had refused to consider when they were separately discussing the settlement with the judge and the attorneys. However, after Party A brought the deal—which seemed fair based on the strength of his case, the cost of litigating, and the amount he might have won at trial—to his attorneys, he returned with a very different counteroffer and there was no settlement.

I was surprised to find myself wondering if attorneys may have been a detriment to the process in this particular instance. While my perception of the case and the negotiation was necessarily limited to what I observed during the settlement conference, the clients seemed satisfied and relieved to have come to an agreement. Perhaps being a good lawyer in this context meant trusting a client’s perception of a longstanding business relationship and envisioning a unique solution based on that unique relationship.

I imagine that leaving lawyers out of the final negotiation would be disastrous in some, if not the majority of, cases. These parties were very sophisticated and equally so, and once the lawyers were out of the room, they seemed to have a degree of affection and respect for one another. Both were also uniquely well-versed in the value of the various terms that were considered as part of the settlement. Both parties felt betrayed, but both wanted an explanation as to why their relationship had changed, and the ability to talk as two reasonable people was a clear turning point. Upon reflection, I think that the very reason that I thought it was a bad idea for them to talk—the evident close business relationship that had led to a personal attachment—was the reason that it worked. Had the parties been too emotionally involved, however, I doubt that a meeting outside the presence of attorneys would have been effective.

Before observing this settlement conference, I believed personal sentiment was distracting and superfluous in a legal setting. I now believe that my instincts were incorrect in that regard. Personal sentiment can be a tool for both the attorneys and their clients when attempting to reach an agreement that is mutually beneficial. Indeed, acknowledging the value of personal relationships seems like a great place to start a negotiation.
The Business and Corporate Litigation Committee is pleased to welcome Judge Bledsoe, Judge Trapp, and Judge Welch.

JUDGE LOUIS A. BLEDSOE, III

Judge Louis A. Bledsoe, III has served as a North Carolina Special Superior Court Judge for Complex Business Cases in Charlotte since July 1, 2014. A native of Charlotte, Judge Bledsoe graduated from the University of North Carolina at Chapel Hill in 1981, where he was a Morehead Scholar, a member of Phi Beta Kappa, and the recipient of the William P. Jacocks Award as the outstanding man in UNC’s graduating class. Judge Bledsoe graduated from Harvard Law School, cum laude, in 1984, and immediately after graduation served as a law clerk to Judge Sam J. Ervin, III on the United States Court of Appeals for the Fourth Circuit. Upon completion of his clerkship in 1985, Judge Bledsoe joined the law firm of Robinson, Bradshaw & Hinson, P.A. in Charlotte, North Carolina, where he practiced commercial and business litigation for nearly 29 years until his appointment to the bench.

During his time in private practice, Judge Bledsoe was regularly selected to appear in Woodward/White’s Best Lawyers in America (bet-the-company litigation, commercial litigation, employment-management, and litigation – labor and employment), North Carolina Super Lawyers (business litigation), and Benchmark Litigation (commercial litigation).

Judge Bledsoe has also been very active in the Charlotte community, serving on the boards of, among others, Charlotte Country Day School (chair), the Charlotte City Club (president), the Charlotte-Mecklenburg Historic Landmarks Commission (chair), the Charlotte Chamber of Commerce (executive committee), Christ Episcopal Church (vestry), and the Mecklenburg County Bar (executive committee).
JUDGE RANDA M. TRAPP

Randa M. Trapp, Judge of the San Diego Superior Court, is a graduate of San Jose State University with a B.A. in Political Science and earned her J.D. from Georgetown University Law Center. She was appointed to the Superior Court on July 23, 2003. Prior to her appointment, Judge Trapp was a member of the Sempra Energy Law Department where she represented Sempra Energy, a Fortune 500 company, in all aspects of complex commercial litigation and transactions.

Judge Trapp currently presides over a civil independent calendar department.

Judge Trapp has been an active member of several local, state and national bar associations. She is a past president of the Earl B. Gilliam Bar Association and past Regional Director of the California Women Lawyers. Judge Trapp currently serves as president of the J. Clifford Wallace American Inns of Court and chair of the Association of Business Trial Lawyers Judicial Advisory Board. She is also on the Lawyers Club Advisory Board and is a former Chair of the National Bar Association Judicial Council. Additionally, Judge Trapp serves as co-Chair of the In-House Litigation Management subcommittee of the Business Law Section of the American Bar Association.

Judge Trapp previously served as president of the local Branch of the NAACP, chair of the Board of Directors of Southeastern Economic Development Corporation, Trustee of the San Diego County Retirement Board, a member of the San Diego Convention & Visitors Bureau Board of Directors, and served two terms on Senator Barbara Boxer’s Judicial Advisory Committee. Judge Trapp currently serves on the Jackie Robinson Family YMCA Board of Managers, and she is also an active, life-member of Alpha Kappa Alpha Sorority, Inc.

Judge Trapp, a native San Diegan and veteran of the United States Navy, is a graduate of Leadership America, a recipient of the YWCA’s Tribute to Women and Industry (TWIN) Award and the Earl B. Gilliam Bar Association’s Thurgood Marshall Award. The Palvara Tree honored her as a Living African American Legend, the City Council proclaimed October 15, 2001, “Randa Trapp Day” in the city of San Diego, the State Legislature named her “Woman of the Year” for the 79th Assembly District, and the California Association of Black Lawyers awarded her the prestigious “Bernard S. Jefferson Judge of the Year Award.”

Judge Trapp has been married to Larry Trapp for more than 35 years and they are the proud parents of two adult sons.
Hon. Heather A. Welch is a Judge in the Marion Superior Court, Civil Division, Room 1. Judge Welch was elected in 2006 and began serving as a Judge in January 1, 2007. Judge Welch is one of the six judges serving the Indiana Commercial Court, which is a pilot project established by the Indiana Supreme Court. She presides over civil matters and has been assigned to the Civil Division since January of 2009. She presides over complex civil litigation which includes business/commercial litigation, medical malpractice cases, insurance coverage cases, negligence cases, mortgage foreclosure, and commercial/individual collection cases. Judge Welch served in the Criminal Division from 2007 to 2008.

Judge Welch was formerly a Master Commissioner/Magistrate for six years and presided over cases for Judge Tanya Walton Pratt in the Criminal Division and for Judge David Dreyer in the Civil Division. Commissioner Welch presided over cases involving major felonies and murders, all matters of Family Law and other civil matters.

Previously, she served as a Marion County Deputy Prosecutor and a Deputy Attorney General. She was also in private practice with the law firm of Kiefer & McGoff where she represented clients in attorney discipline cases, family law matters, and in state and federal criminal cases. Judge Welch serves the legal community in the following organizations and committees: American Bar Association: Executive Committee Member National Conference of State Trial Judges, Chair of the Judicial Division Communications Committee, and member of the Commission on the American Jury Project; Improvements in the Judiciary Committee, Indiana State Bar Association; Indianapolis Bar Association, Chair of the Indiana Judicial Center Professionalism and Ethics Committee to name a few.
An Interview with Roberta Cooper Ramo: Business Law Advisor

By Anne M. Steadman

I had the pleasure of sitting down with Roberta Cooper Ramo, new Business Law Advisor assigned to the Business and Corporate Litigation Committee, at the Fall Meeting in Washington, D.C. to speak about her journey in the legal profession. Roberta is Shareholder with Modrall Sperling in Albuquerque, New Mexico. She concentrates her practice in alternative dispute resolution, transactional business law, real estate, probate, and estate planning. She has been recognized for her work in corporate governance and often works with corporations on their strategic and long term planning. Roberta was appointed by the United States Senate and served as co-chair of a committee to review governance issues of the U.S. Olympic Committee in 2003. Roberta previously served as the first female president of the ABA (1995-1996), and the first female president of The American Law Institute (from 2008 to 2017) and is now the Chair of the ALI Council.

Roberta grew up in Albuquerque and has a passion for New Mexico’s unique culture and history. As an undergraduate, she attended the University of Colorado, graduating in 1964 with majors in Philosophy and Italian. Her vibrant undergraduate experience at Colorado gave her a deep appreciation for the humanities and love of education in general. After her undergraduate work, Roberta decided to enroll in law school at the University of Chicago. Roberta recalls that she came to study law through her interest in higher education, viewing the American college and university system as “the core of the country,” and as such must be “both elegant and inclusive.” She entered law school with the thought that a legal background might prepare her for a career in higher education, particularly on the administrative side. Just before she was accepted at Chicago, Roberta received the first of what she describes as her many “lucky breaks”: She met her husband, Barry Ramo, a medical student at Colorado who was also headed to Chicago to continue his studies. Having only known each other three months, the couple headed to Chicago together and have been married ever since.

Roberta found the University of Chicago Law School to be “everything that I had hoped.” There were very few women, perhaps eight in a class of 120. Despite being in the minority, Roberta flourished at Chicago, citing it as “the most important intellectual experience of her life,” crediting her wonderful professors and classmates. It was also a historically momentous time to be in the city of Chicago, and Roberta had the opportunity of working with the ACLU (at the time, an all-volunteer organization) over the summer at the same time Dr. Martin Luther King was organizing in Chicago.
After graduating law school in 1967, Roberta moved to North Carolina with her husband, who would be starting a fellowship at Duke University. Roberta could not find a job; “everyone assumed I was married to a doctor and I was never really going to work.” Somehow word got back to her law school dean, Phil Neal, who intervened. Neal contacted Terry Sanford, who has just finished serving as governor of North Carolina, and asked Sanford to help Roberta find a position. Sanford helped Roberta get a position with the Ford Foundation, working on the allocation of money through antipoverty programs. Roberta describes her work with the Ford Foundation as “an amazing introduction to the South in a turbulent,” which gave her an education on the interplay of race and poverty in the South. After working with the Ford Foundation for a year Roberta received another call from Phil Neal, who told her that the president of historically-African American Shaw University was looking for someone to teach constitutional law. Neal recommended Roberta.

Roberta joined the Shaw faculty in Raleigh—starting another formative chapter in her life. Although Roberta had been exposed to the civil rights movement in Chicago, it was yet a further experience to see it from the southern perspective. Her students were marching for civil rights on the weekends, and she did not know if they would show up on Monday unharmed. Roberta’s students believed in the United States Constitution and the Supreme Court, as did Dr. King, and Roberta found their faith in the legal system to eventually “get things right” inspirational.

Roberta left North Carolina when her husband was drafted and posted at a military hospital in San Antonio, Texas. Roberta arrived in Texas nine-months pregnant with her second child. Again, few firms were interested in a woman who was soon to have two young children. She was eventually hired by a business law firm that she found through a high school classmate. She joked that the partners hired her to get her out of their waiting room, concerned she would deliver the baby there. Roberta entered private practice on the transactional side—and never left. By 1972, Roberta and her family were able to return to her hometown of Albuquerque. She eventually joined a larger firm and also worked as a solo practitioner for a few years, but “missed being with other lawyers.” Roberta joined Modrall Sperling in 1993.

Among all her achievements, Roberta is most proud of her two children: Her daughter, Jenny, an attorney who is Executive Director of New Mexico Appleseed; and her son, Joshua, Co-CEO of Kissinger Associates and author of the best-selling books The Age of the Unthinkable and The Seventh Sense.

Roberta speaks eloquently of the moral imperative for young attorneys to be active in the profession and to become involved in the ABA. She explains that “our justice system is under attack from shocking places,” and calls upon all of us as members of the profession to stand for the independent legal system that has made our country strong.

We are delighted and honored to have Roberta with us as Business Law Section advisor, and we look forward to her input and influence in shaping the next chapter of the BCLC.
**BCLC Fall Meeting Recap**

*By Anne M. Steadman*

The BCLC held its Fall Meeting in conjunction with the larger Business Law Section Fall Meeting in Washington, D.C., November 17-18. The BCLC sponsored three great substantive programs.

**Bankruptcy for Breakfast**, chaired and moderated by Katherine Good of Whiteford, Taylor & Preston, focused on developments in bankruptcy in 2017, including an overview of statistical filing information from the courts, analysis of recent significant cases, trends in international insolvencies and cross-border cases, and predictions for the bankruptcy and insolvency industry in 2018. Panelists included The Honorable Elizabeth S. Stong, Bankruptcy Court for the Eastern District of New York; The Honorable Christopher S. Sontchi, Bankruptcy Court for the District of Delaware; Sarah Cave, Hughes Hubbard & Reed; Michael Rubenstein, Liskow & Lewis; and Javier Lorente, Naveira, Truffat, Martinez, Anido, Lorente & Lopez Abogados.

**Valuation and Damages in Business Divorce Cases**, presented by the Business Divorce Subcommittee, was chaired and moderated by Kurt Heyman of Heyman Enerio Gattuso & Hirzel LLP. The program examined issues in calculating, proving, and defending against valuation and damage claims in cases involving privately held entities, with views from practitioners, experts, and the bench—with a special appearance by Vice Chancellor Sam Glasscock, III of the Delaware Court of Chancery. Other panelists included: Melissa Donimirski, Heyman Enerio Gattuso & Hirzel LLP, Wilmington, DE; Vanessa Tiradentes, Gould & Ratner LLP, Chicago, IL; Brett Margolin, Ph.D., BLDS, LLC, Wilmington, DE; and Jaime d’Almeida, Duff & Phelps, Boston, MA.
Tour of the Ivory Tower: Developments in the U.S. Supreme Court for Business Lawyers and Clients treated attendees to an academic perspective on U.S. Supreme Court decisions of the past term as well as a discussion of where the Court is headed—with an emphasis on developments and projections relevant to business lawyers and their clients. The program was chaired and moderated by Kendyl Hanks of Greenberg Traurig, LLP, with distinguished panelists: Robert Barnes, Supreme Court correspondent for the Washington Post; Brianne Gorod, Chief Counsel for the Constitutional Accountability Center and former clerk for Justice Breyer; William Jay, Co-Chair of the Appellate Litigation Practice and head of the Litigation Department at Goodwin in Washington; and Neal Katyal of Hogan Lovells who previously served as acting U.S. Solicitor General and clerked for Justice Breyer.

In addition to our content events, the BCLC also held its popular Business and Corporate Litigation Committee Dinner in conjunction with the Dispute Resolution and Judges Initiative Committees at Teddy and the Bully Bar—with a great turnout of practitioners and members of the judiciary in a unique venue.
The BCLC Dinner was a great success in a lively, but intimate, atmosphere.
Join Us in the Magic City for the 2018 Spring Meeting for a little magic, a lot of fun and of course —CLE and Programs!

By Kathy McLeroy

The ABA Business Law Section (BLS) will present more than ninety CLE programs at its Spring Meeting in at the Rosen Shingle Creek in Orlando this April. Almost 1,500 registrants are expected to attend. Each registrant may choose from hundreds of substantive sessions that are open to all attendees.

As one of the highlights, plan to attend our perennially-popular BCLC Committee Dinner, held jointly with Judges Initiative and Alternative Dispute Resolution Committee at Del Frisco’s Double Eagle Steak House, located at 9150 International Dr, Orlando, FL 32819 on Thursday, April 12—with pre-dinner reception beginning at 7:00 p.m. and dinner at 8:00 p.m. The Women’s Business & Commercial Advocates Reception will immediately precede the dinner. We will honor prominent members of the legal community. Del Frisco’s is a short 10 minute cab ride from the meeting hotel. This year our Committee dinner is facilitated by the generous sponsorships provided by Judge Gail Andler (Ret.), Bayard, P.A., Damian & Valori, Holland & Knight LLP, JAMS, McAlpine, PC, Nelson Mullins Riley & Scarborough, and Ulmer & Berne 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.

Below are our Committee’s substantive programs at the Spring Meeting. For a detailed preview check out BCLC to Present Four Programs at 2018 Spring Meeting in Orlando—also in this edition of BCLC Newsletter:

- **Program: Breaking Up is Hard to Do - What To Do When A Key Employee Leaves and Goes to a Competitor?**
  Thursday 4 /12/2018 10:30AM - 12:00PM

- **Program: Annual Review: Recent Developments in Business Litigation With Perspectives from the Bench**
  Thursday 4 /12/2018 2:30PM - 4:30PM

- **Program: Traps for the Unwary - Avoiding Ethical Traps in Cross-Border Transactions and Disputes**
  Friday 4 /13/2018 11:00AM - 12:30PM

- **Program: Slants, Redskins, Credit Cards and Wedding Cakes: First Amendment Limits on Regulation of Business Speech**
  Friday 4 /13/2018 2:30PM - 4:30PM
Spring Meeting receptions are another opportunity to connect. The Diversity Networking Reception will kick off the meeting by celebrating the Section’s commitment to diversity and inclusion on Wednesday, April 11 from 6:30 p.m. to 8:00 p.m. The Section Welcome Reception will be held on Thursday, April 12 from 6:00 p.m. to 7:30 p.m., featuring cocktails and a variety of food stations. It is a great place to meet and mingle with colleagues before committee dinners.

While the keynote speaker is yet to be named, please plan on attending the Section Luncheon Friday, April 13 from 12:30 p.m. to 2:15 p.m. The luncheon features Section awards and recognitions, including the National Public Service Award, the Jean Allard Glass Cutter Award, and the Mendes Hershman Student Writing Contest. Sea World will be the venue for the Section Dinner on Friday, April 13, from 7:00 p.m. to 10:00 p.m. (transportation will be provided, departing at 6:30 p.m.).

Program titles and panels are listed in the online schedule. On-site registration opens at the Rosen Shingle Creek on Wednesday, April 11, from 3:00 p.m. to 7:00 p.m., and will open daily at 7:00 a.m. Thursday through Saturday.
BCLC to Present Four Programs at 2018 Spring Meeting

By Stuart Riback

The Business and Corporate Litigation Committee is pleased to present four CLE programs at the Business Law Section 2018 Spring Meeting in Orlando this April. These programs address a wide range of cutting-edge legal issues of interest to businesses and their counsel.

The Annual Review of Recent Developments in Business Litigation with Perspectives from the Bench will be presented on Thursday, April 12 at 2:30 p.m. This program selects several topics from the BCLC’s annual publication on recent developments in business litigation. This year, a series of three panels will discuss (1) recent developments affecting in-house counsel; (2) recent developments in tribal litigation; and (3) recent developments in sports law and intellectual property. The panels will include judges, law professors, and practitioners. The program chair and moderator of the program will be Bradford Newman of Paul Hastings LLP in Silicon Valley.

Earlier on Thursday, at 10:30 a.m., BCLC will present “Breaking Up Is Hard to Do: What to Do When A Key Employee Leaves and Goes to a Competitor?” Judge Nancy Allf of the Eighth Judicial District of Nevada and Anat Maytal of Baker Hostetler LLP in New York are co-program chairs and co-moderators. The program will look at how to plan for and deal with a key employee’s departure from a company—including protection of proprietary information, restrictions on the new employer, and financial issues. The panel will include two practitioners and two judges who have encountered such situations and will discuss the issues as well as the legal and business ramifications.

As business increasingly is global in scope, attorneys confront novel ethical issues in handling transactions and litigations across national borders. “Traps for the Unwary: Avoiding Ethical Traps in Cross-Border Transactions and Litigation” will examine some of these issues and provide pointers for how to handle them. The panel will include in-house counsel and practitioners from the US and abroad. The program co-chairs and co-moderators will be Judge James Gale of the North Carolina Business Court in Greensboro, NC, and Bret Cohen of Nelson Mullins Riley & Scarborough LLP in Boston. The program will be held at 11:00 a.m. on Friday April 13.

The fourth program addresses issues that have been making headlines for years. “Slants, Redskins, Credit Cards and Wedding Cakes: First Amendment Limits on Regulation of Business Speech” will be presented at 2:30 p.m. on Friday April 13. The program co-chairs are Judge Richard Licht of Rhode Island Superior Court in Providence and Keola Whittaker of McGuire Woods LLP in Los Angeles. Judge Licht will moderate a panel of attorneys and academics who will examine significant recent Supreme Court cases affecting business speech.

The BCLC prides itself on consistently presenting high-quality programs for its members and others. The Committee relies on its members to let leadership know what sorts of subjects are of interest to members and to suggest programs for future presentation. If you have an idea for a program, please contact a member of the Committee’s programming team: Committee Vice-
Chair Stuart Riback (sriback@wilkauslander.com), or Meeting and Programs Subcommittee Co-Chairs Paul Masinter (pmasinter@stonepigman.com), Jay Dubow (dubowj@pepperlaw.com) or Robert Witte (Robert.witte@strasburger.com).

Looking forward to seeing you in Orlando!
The Women Business & Commercial Advocates Subcommittee to Celebrate Women Leaders at the Spring Meeting in Orlando

By Judge Gail A. Andler (Ret.)

At the Spring Meeting on April 12, 2018, the Women Business & Commercial Advocates Subcommittee will be honoring Judge Alice L. Blackwell. Melissa Visconti, Co-Chair of the WBCA Subcommittee, will present the award to Judge Blackwell. Judge Blackwell has distinguished herself in her nearly 40 years as an attorney and judge by her intellect, demeanor, and many contributions to the advancement of women in our profession, which will be described in more detail when she is presented with her award. The presentation will be made during the reception at Del Frisco’s Double Eagle Steak House prior to the Committee dinner.

Following the presentation to Judge Blackwell, a special award will be presented by Heidi McNeil Staudenmaier, BCLC Chair, to an attorney who has made significant contributions to the advancement of women advocates and to our Committee.

The Women Business and Commercial Advocates Subcommittee provides a forum for all attorneys in the committee to come together to celebrate and to support the advancement of women business litigators. This is one of the fastest-growing groups in the committee and provides a venue for business litigators to network with one another and learn from prominent women business lawyers and judges. The committee also seeks to increase the number of women who practice in business and commercial litigation by providing mentoring and programming geared toward women business advocates. In addition, the subcommittee annually hosts a program or reception recognizing and celebrating the accomplishment of women in the profession and particularly the judiciary. The group welcomes all attorneys who are interested in promoting participation of women business lawyers and judges in the legal profession.

Last year in New Orleans the WBCA committee honored Sharonda R. Williams, Special Counsel at the Louisiana-based law firm Fishman Haygood LLP; Lynn Swanson, Managing Member of the New Orleans law firm Jones, Swanson, Huddell and Garrison LLC; and the surprise honoree was me! (Gail A. Andler, a retired judge serving as a mediator and arbitrator with JAMS.)

We look forward to seeing you in Orlando to honor Judge Blackwell and an outstanding “surprise” honoree!
Alexander Hamilton to Appear at Orlando Conference in Special “Meet the Press” Event

By F. Peter Phillips

Several well-known members of the Business Law Section leadership will take part in an entertaining play reading at the Section’s Spring Meeting in Orlando. Former Chair William Rosenberg will take the role of Meet the Press’ Chuck Todd, moderating a heated conversation among John Jay, Alexander Hamilton, Elbridge Gerry, and other historical figures as they debate whether the U.S. Constitution should be adopted.

The 35-minute presentation, based on a script developed by the Center for the Study of the American Constitution at the University of Wisconsin—Madison, is largely drawn from contemporaneous sources. It raises the question whether a nation as geographically and economically diverse as America could feasibly be governed by a central federal system. Hamilton, Madison, and Jay predict that there’s more that unites the people of the various states than divides them. Gerry and the anti-federalists warn the opposite. These days, Gerry might be seen to have had the better crystal ball.

The event takes place at 4:30 p.m. Friday April 13. Joining Bill Rosenberg will be Hon. Elizabeth Stong, Hon. Alvin Thompson, Vicki Tucker, Pat Clendenen, and others.

Many Section members will be familiar with Federalist 10, in which James Madison argued that the clashing of diverse interests in a large republic is not an evil to be avoided, but instead a cure for the ancient disease of factionalism. To Madison’s thinking, representatives in an extended republic would effectively filter varied regional interests so as to “refine and enlarge the public views.”

By contrast, anti-federalists warned that, in a large republic, representatives would no longer accurately reflect the interests of their constituents; representatives would be little known by, and distant from, their constituents; and the government and laws would become complex as legislators connived to interject parochial concerns. After 1789, as populations would become even more remote and local interests even more diverse, the anti-federalists predicted that the federal legislature would engage in constant clashing and disorder. Regions would persist in advocating interests that diverge from others, and the central government would fall into factionalism and dysfunction.

We all know that “it can’t happen here.” But as we know, in 1860 it did. And sometimes it sure looks like it might again…
Orlando Panel: How to Zealously Advocate for Yourself and Create a Brand

By Kate Harmon

Kate Harmon, a member of the Business and Corporate Litigation Committee and a 2017-2019 Business Law Fellow, is chairing an event on the Young Lawyers’ Track at the Spring Meeting titled How to Zealously Advocate for Yourself and Create a Brand. Kate is putting on the event with the Corporate Homies, Demetra Liggins and Bemetra Simmons. While this event is part of the Young Lawyers’ Track, it will include information applicable to attorneys throughout their career trajectory. Please come out and support this event.

Beginning in law school, aspiring lawyers are taught about a lawyer’s ethical mandate to zealously advocate for her or his clients. What is rarely taught is that lawyers should zealously advocate for themselves. Gone are the days where a lawyer will start, spend, and end a decades-long career with the same firm or organization. The natural trajectory of many lawyers’ careers now involves multiple lateral moves to other firms or organizations and/or transitions from private practice to public service. Knowing how to effectively brand and advocate for oneself is a necessary skill for each lawyer to develop in order to make the most of potential career opportunities.

Young lawyers are often hyper-focused on obtain their first position with a firm or organization such that they do not consider the long-term implications that their actions (or inaction) may have on their career. Further, young lawyers often feel out of their depth when starting out and may lack the confidence or resources to take control of their reputations. Every lawyer has a brand with various dimensions and that brand has a direct impact on professional development and career trajectory. Mentorship and sponsorship are integral to creating, managing and, when necessary, rehabilitating one’s brand.

Branding is all about shaping others’ perceptions of you. Intentionally branding oneself to fully capitalize on one’s unique strengths is a practice that requires focus and attention. There are both inward-facing (within your organization) and outward facing (outside of your organization) dimensions to one’s professional brand; focusing on both of these dimensions is key to maximizing one’s brand.

With regard to one’s inward-facing professional brand, one’s colleagues’ opinions matter up, down, and across the management chain. Performance evaluations are a good indicator of how one is perceived by her or his colleagues. Additionally, within an organization, one’s brand is largely communicated by word of mouth, making it important to effectively and actively manage one’s brand. Sponsorship can play a key role in that pursuit. Obtaining a sponsor, an individual with authority within your organization who will advocate for you and will intentionally use their influence to help you advance, can be an important part of one’s brand. Choice of sponsor will reflect upon the young lawyer and the brands of the young lawyer and her or his sponsor will become linked from the organization’s perspective. Mindfully choosing to pursue a sponsor relationship can be an effective tool in managing one’s brand.
Networking is a major component of creating and managing one’s outward-facing professional brand. A service-oriented approach to networking is a positive way to build a brand and shape others’ perceptions. One’s outward-facing professional brand can also be positively impacted through intentional and effective use of mentoring. Mentors are often outside of one’s organization. They are generally individuals with relevant experience who are willing to provide support and assistance. As a young lawyer progresses through her or his career, paying it forward by becoming a mentor is another avenue through which to manage one’s brand.

Knowing how to rehabilitate one’s brand is also critical. The old cliché is true – everyone makes mistakes. Learning from one’s mistakes and using them as opportunities for growth and change are key aspects of brand rehabilitation, as is the strategic use of mentorship and sponsorship.

Developing the substantive knowledge and practical skills requires of lawyers are obvious, critical components of a lawyer’s career. Advocating for oneself and developing an effective professional brand is a less obvious but still critical component for the long-term success of a lawyer. Being mindful and intentional about creating, managing, and, when necessary, rehabilitating one’s brand will aid a young lawyer in leading a successful and rewarding career.