Fall 2018

In This Issue

Message from the Chair by Heidi McNeil Staudenmaier

Featured Articles

- Pennsylvania Adopts Revised Uniform Arbitration Act by Robert J. Hobaugh, Jr.
- Getting Ready - The Challenges In-House Counsel Face Preparing for Trial by Greg Marshall and Mark Webb
- The Mediator's Anchor - They Asked You to Be There by Lee Applebaum

Special Feature: Business Law Diversity Clerkship Program

Subcommittee Reports

- Subcommittee Reports
- Committee and Subcommittee Website
- Pages are Changing

Leadership

Past Meetings

- Annual Meeting 2018 Recap by Stuart Riback
- Tips from the Trial Bench by Hon. Mary Johnston and Michaela Sozio

Upcoming Meetings

Publications

- Business Law Today
- The Business Lawyer

Members in the News & Notes

A Special Thank You to Our BCLC Sponsors:

Message from the Chair

Dear Business and Corporate Litigation Committee Members:

Congratulations to our new Network Newsletter Co-Editors Sarah Ennis and Kate Harmon for spearheading an excellent Fall Newsletter, particularly given the short time fuse between the Annual Meeting and Fall Meeting. Welcome to the newest Editorial Board member, Stephanie Kanan, who is one of our new Section Fellows. And Thank You to our continuing Editorial Board members, Kristin Swift and Anne Steadman.

On the topic of meetings, I hope you are able to attend the Fall Section Meeting in Washington, DC at the Ritz-Carlton, November 15-16, 2018. The BCLC will present a full day of excellent CLE programs on Friday, November 16:

Bankruptcy for Breakfast 2018
8:30 AM - 10:00 AM
Ritz-Carlton Roosevelt, Ballroom Level
Chair - Christopher M. Samis

The Future of Class Actions
10:30 AM - 12:00 PM
Ritz-Carlton Roosevelt, Ballroom Level
Co-chairs - George R. Calhoun and Hon. Heather Welch

Tour of the Ivory Tower: Developments in the U.S. Supreme Court for Business Lawyers & Clients
2:00 PM - 4:00 PM
Ritz-Carlton Roosevelt, Ballroom Level
Chair - Kendyl Hanks

The BCLC's ever popular joint dinner with the Judges Initiative, Dispute Resolution Committee, and Sports Law Committee will be held on Thursday night, November 15 at Tredici Enoteca (2033 M St NW, located inside the St. Gregory Hotel, approximately 2 blocks from our meeting hotel). The reception will begin at 6:30 PM, followed by dinner at 7:00 PM. This is always a great opportunity for networking with old and new colleagues in the BCLC.

The BCLC Open Meeting will be held right before the Friday CLE programs - 8:00 AM - 8:30 AM, Ritz-Carlton Roosevelt, Ballroom Level. For those unable to attend in person, call in information will be provided in advance.

Two BCLC Subcommittee Meetings are scheduled for Friday, November 16:

Sports Related Disputes Subcommittee Meeting
12:00 PM - 1:00 PM
Ritz-Carlton Lincoln, Ballroom Level
Co-chairs - Jeffrey Schlerf and Mary Braza
1:00 PM - 2:00 PM
Ritz-Carlton Lincoln, Ballroom Level
Co-chairs - Peter B. Ladig and Melissa Donimirski

Congratulations and Thank You to the outgoing and new incoming Subcommittee Chairs as of the conclusion of the 2018 Annual Meeting:

- **ADR** - outgoing Chair Peter Phillips; incoming Co-Chairs Jeffrey Benz & Hon. Joseph Iannazzone
- **Appellate Litigation** - outgoing Co-Chairs Mark Trachtenberg & Brigid Cech Samole; incoming Co-Chairs Keola Whittaker & Todd Lundell
- **Cannabis & Alcoholic Beverages** (elevated from Task Force status): Co-Chairs Jay Dubow & Alva Mather
- **E-Discovery** - outgoing Co-Chair Hon. Joseph Iannazzone; incoming Co-Chair Hon. Christopher Comas Wilkes
- **Ethics, Professionalism & Civility** - outgoing Chair Andy Halaby; incoming Co-Chairs Michael Rubenstein & Hon. Stephen Schuster
- **Securities Litigation & Arbitration** - outgoing Co-Chair Jay Dubow; incoming Co-Chair James Rollins
- **Sports-Related Disputes** - outgoing Co-Chair Hon. Joseph Iannazzone; incoming Co-Chair Mary Braza
- **Judges Initiative Committee** - outgoing Co-Chair Hon. Clifton Newman; incoming Co-Chair Hon. Christopher Yates

The BCLC is quite proud of former BCLC Chair Pat Clendenen, who will follow in the footsteps of another former BCLC Chair Bill Johnston. Pat is the new Section Chair-Elect and is positioned to become Section Chair at the conclusion of the 2019 Annual Meeting. Congrats to Pat!

**SAVE THE DATES:**

- Section 2019 Spring Meeting - Vancouver, British Columbia, Canada - March 28-30, 2019
- Section 2019 Annual Meeting - Washington, DC - September 11-14, 2019

As always, I need to give a few "shout outs":

- BCLC Vice Chairs who provide invaluable assistance and support - Stuart Riback, Hon. Gail Andler and Hon. Mac McCoy
- Roberta Cooper Ramo - for serving as an invaluable resource in her role as a Section Advisor
- BCLC "veterans" Hon. Elizabeth Stong and Michaela Sozio - for serving as Mentors to our BCLC Fellows
- BCLC Trial Practice Subcommittee Co-Chairs Hon. Mary Johnston and Michaela Sozio - for coordinating the "Tips from Trial Bench" event at the UT Law School
- BCLC Program Chairs & Speakers - for organizing and presenting quality CLE programs at the 2018 Annual Meeting
- BCLC Dinner Sponsors at the 2018 Annual Meeting - Bayard, P.A.; Case Anywhere LLC; Capitol Core Group; CourtCall; McAlpine & Associates PC; Hon. Stephen Schuster
- ABA Staff who pull everything together for our Section meetings/events - Katie Koszyk, Nicole Nikodem, Julia Passamani, Leslie Archer, Gina Dickinson and Graham Hunt

If you're passing through Phoenix, please let me know and we can grab a cup of coffee. Enjoy the nice Fall weather!

Best,
Heidi
Pennsylvania Adopts Revised Uniform Arbitration Act

By Robert J. Hobaugh, Jr.

Pennsylvania has joined 20 other states and the District of Columbia in adopting the Revised Uniform Arbitration Act ("RUAA") following model legislation promulgated by the Uniform Law Commission ("ULC") in 2000. The Pennsylvania Bar Association Alternative Dispute Committee ("PBA") supported the RUAA to resolve ambiguities and provide greater procedural rights than those found in the Uniform Arbitration Act ("UAA") adopted by Pennsylvania in 1958. The PBA cited improvements in the RUAA over the UAA as follows: party autonomy, provisional remedies, consolidation, arbitrator disclosure, arbitrator immunity, remedies, fees and expenses, compelling compliance with or vacating arbitration awards and electronic records. The RUAA, known as Act 55 of 2018, will promote the orderly and efficient use of arbitration procedures by parties to contracts who stipulate arbitration in Pennsylvania to resolve disputes.

Read more...

Getting Ready - The Challenges In-House Counsel Face Preparing for Trial

By Greg Marshall and Mark Webb

Many aspiring lawyers go to law school envisioning they will one day be in court arguing motions and trying cases, only to discover that civil litigation is nothing like it is portrayed. There's no need to cite the statistics. It is well known the vast majority of cases settle or resolve through motion practice, often with the litigants never having stepped inside the courthouse. For this reason, those few times outside counsel are called to trial, it is cause for excitement, if not outright celebration. Finally, outside counsel get to showcase their finely tuned advocacy skills too long suppressed by the daily grind of modern civil litigation.

Read more...

The Mediator's Anchor - They Asked You to Be There

By Lee Applebaum

As a child, the future mediator watches fights differently than other kids. Other children look on with the spectator's fascination, rapt in who will win, whether blood will spill, or mesmerized by the promise of violence. The future mediator, however, might wordlessly try to get in between the combatants to create enough pause so they can think twice about doing battle; or to give them an opportunity to step back without losing face.

This effort might be rejected with a "butt out," much harsher language, or even violence directed at a well-intended interloper. Knowing the propensity of their child, the future mediator already may have received parental admonitions like "don't get in the middle of things," "don't stick your nose in where it doesn't belong," or "stay out of other people's business." This is typically wise advice. One thinks of the postscript in the movie Stand by Me, when we're told that adult Chris Chambers, now a lawyer, is killed trying to break up a fight in a fast food line.

Read more...
Special Feature: Business Law Diversity Clerkship Program

This Special Feature includes reflections from five of the 2018 Business Law Diversity Clerks sharing their experiences.

Creating a Pathway to Legal Success: The Invaluable Experience of Being Selected as a 2018 American Bar Association Business Law Section Diversity Clerk

By Vernetra Gavin

While competing in a moot court competition in New York, I received a call stating that I had been chosen by the ABA Business Law Section to be a 2018 Business Law Section Diversity Clerk. This is an honor because this summer program provides business law clerkship placements to only 9 finalists nationally. The focus is on helping students obtaining judicial clerkships, where diversity among judicial clerks remains disproportionately low. The summer clerks are placed with judges across the nation who mentor and support them in the business law field; I was placed with Judge Nancy Allf in Las Vegas, NV. My experience has been very beneficial and has enhanced my knowledge through courtroom observation, legal writing, leadership, networking, and mentorship.

Read more...

Subcommittee Reports

Subcommittee Reports

Business Divorce

The Business Divorce Subcommittee met at the Annual Meeting in Austin, where John Sciaccotta led an interesting discussion on Developments in Business Divorce Law. At the Fall Meeting in Washington, D.C., the Business Divorce Subcommittee will meet on Friday, November 16 from 1:00-2:00pm and is excited to welcome Curtis Golkow of Golkow Business Law LLC. Mr. Golkow will be speaking on "A Transactional Lawyer's Approach to Business Divorce." 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

First, we are pleased that the Cannabis and Alcoholic Beverages Working Group has now become a permanent Subcommittee. We had a well-attended meeting in Austin both in person and on the phone. We discussed recent litigation and regulatory developments impacting the cannabis and alcoholic beverages industries. The group also discussed putting together a CLE program for the Vancouver meeting this spring, which will take place in a venue at which cannabis is legal on all levels. We have submitted a proposal to the Business Law Section for such a CLE program. Stay tuned. There also was a lot of interest in preparing a chapter of recent developments for the Committee's annual book. If you are interested in contributing to the chapter please contact any of the Subcommittee's leadership. Finally, we will have a Subcommittee meeting in Vancouver. We hope that you will be able to attend. For information, contact Jay Dubow (dubowj@pepperlaw.com) or Alva Mather (matherac@pepperlaw.com).

Communications and Technology Subcommittee
Dear Subcommittee Leaders:

We are continuing to work on the subcommittee webpages, which will be updated to a new platform at the end of the year. 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.
- For those of you attending the fall meeting in Washington DC, make sure you take a few pictures from any meetings or presentations your subcommittee has;
  - 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.

**Committee and Subcommittee Website Pages are Changing**

The ABA launched a completely redesigned website at americanbar.org on October 9. Why is this big news?

*First*, the new public-facing website features improved accessibility from mobile devices, optimized registration and ecommerce experiences, new join/renew processes, and a new login process.

*Second*, as it relates to subcommittees, the public-facing website contains only a basic list of BCLC subcommittees, their summary descriptions, and their leadership information. This limited information will be prepared by Section Staff in consultation with the BCLC Chair and Vice Chairs.

*Third*, old subcommittee webpages will be deleted entirely by the end of the calendar year. You must take immediate action to capture and preserve any special content (e.g., photos, meeting minutes, etc.) on your old subcommittee page that the subcommittee may want to repurpose on the new website after it launches. Otherwise, that information may be lost forever when the subcommittee webpages are deleted at the end of the year. Click here to access your old subcommittee webpage.

*Fourth*, the ABA also plans very soon to launch a new and separate online tool named ABA Connect. Unlike the new public-facing website, ABA Connect will serve as a members-only interactive forum and collaborative space for committee and subcommittee members to discuss legal topics, share content, and build a professional network via discussion threads, comprehensive content libraries, community events, and a detailed member directory. Any special content you proactively choose to re-purpose from your old subcommittee pages will find a new home on ABA Connect.

*Fifth*, ABA Connect will feature an email alert system that will replace the Section’s existing committee and subcommittee email listservs by the end of the year.

*Sixth*, in order to keep the content on ABA Connect engaging and fresh, the Section will require a minimum number of content updates to be
posted periodically. **Failure to comply with these requirements will result in the removal of your subcommittee’s page from ABA Connect**. Please start thinking now about how your subcommittee leadership will accomplish this. More announcements and instructions concerning the new ABA website and the ABA Connect service will be disseminated between now and the end of the year.

### Past Meetings

#### Annual Meeting 2018 Recap

*By Stuart Riback*

The Business and Corporate Litigation Committee presented four CLE programs at the Business Law Section Annual Meeting in Austin, Texas, on Thursday and Friday, September 13 and 14, 2018. All were well-attended and well-received. Thanks and kudos to the program chairs and the panelists.

[Read more...](#)

#### Tips from the Trial Bench

*By Hon. Mary Johnston and Michaela Sozio*

Law students at University of Texas enthusiastically engaged in discussions with seasoned business court judges and lawyers during the Business Law Section meeting in Austin. The annual "Tips from the Trial Bench" program shifted focus to take advantage of the proximity to the law school. Through the excellent assistance of Ralph Molina, Chair of the law school's Board of Advocates, the event was standing-room only.

[Read more...](#)

### Upcoming Meetings

#### BCLC Programs in Vancouver

*By Stuart M. Riback*

After the successful presentations in Austin, BCLC is looking forward to the Spring 2019 Meeting in Vancouver. The Committee expects to present another set of four engaging and compelling programs at the upcoming Spring Meeting, which will take place on March 28-30, 2019.

As usual, the Committee will present the Annual Review of Developments in Business and Corporate Litigation, for which over 200 committee members are participating in presenting written materials that will be published in book form. **Bradford Newman** of Paul Hastings in Palo Alto and **Judge Elihu Berle** of California Superior Court, Los Angeles County will be co-chairs.

"Taming the Gig Economy; Freelance isn't Free" will look at issues raised by the disintermediation of business and the rise of peer-to-peer businesses, including the developing law relating to independent contractors. **Barbara Johnson** of BLJohnsonLaw PLLC and **Judge Randa Trapp** of California Superior Court, San Diego, will co-chair the program.

**Emily Burton** of Young, Conaway, Stargatt & Taylor LLP in Wilmington, Delaware, and **Stephanie Lapierre** of Stikeman Elliott LLP in Montreal will co-chair "Director Independence Issues in the United States and Canada." The
program will consider how board members are supposed to react to various kinds of events, including corporate crises and takeover attempts, and will compare the requirements in the United States and Canada.

Rounding out the program, BCLC will present "Law & Order: Discovery Victims Unit," a dramatization and interactive program that will present a simulated discovery dispute that will include points of view from attorneys and clients as well as rulings from judges. Robert Witte of Strasburger Price in Dallas and Judge Christopher Wilkes of the West Virginia 23rd Circuit Court will co-chair the program.

Looking forward to seeing you in Vancouver!

Publications

Business Law Today

The Section's recently re-imagined web publication, Business Law Today (BLT), provides exciting new opportunities for Business and Corporate Litigation Committee members to become internationally published authors.

With a worldwide readership of tens of thousands of business law practitioners, BLT is indisputably the fastest and easiest way for Section members to gain meaningful exposure to national and international business law communities. Article authors are featured on their very own author page, allowing you to expand your professional digital footprint beyond your employer's website and traditional social media.

Whether you are a newer lawyer or an existing influencer and thought leader, we encourage you to consider submitting any of the following content types to the BLT Editorial Board for consideration: Month-In-Brief (a 1-paragraph summary concerning recent legal developments within the past 30 days); Short Articles (750 words or less on a timely business law topic without footnotes or extensive citations); or In-Depth Articles (longer-form content offering deep analysis of a topic with footnotes and more citations). If you were a panelist at a recent Section CLE program or substantive presentation, convert your topic to a short article! If you recently published a case law alert for your law firm, convert it to an original Month-In-Brief! If you want to promote awareness of a complex issue or topic relevant to business law or litigation, transform your idea into an in-depth article!

To get started, email your pitch or original manuscript to Hon. Mac R. McCoy (mac_mccoy@flmd.uscourts.gov) (Executive Editor) and Sara E. Bussiere (sbussiere@bayardlaw.com) (Managing Editor).

The Business Lawyer

The Business Lawyer Editorial Board invites Business Law Section committee, subcommittee, and task force submissions as well as 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, at diane.babal@americanbar.org.
Members in the News & Notes

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

Fred W. Bopp III, Partner with Holman, Howard, Bopp & Guecia, recently changed law firms and is now a named partner with his new firm.

Steven E. Clark, Clark Firm PLLC, was named SuperLawyer (Labor & Employment) in Texas and Lead Counsel in Business Law. He also recently gave a presentation on Advantageous Use of LLCs at an NBI teleconference on September 25, 2018, and will be speaking at the upcoming NBI Seminar on Social Media Evidence on November 15, 2018.

Byron F. Egan, Partner with Jackson Walker LLP in Dallas, Texas, was presented on September 19, 2018 with a Lifetime Achievement Award by the Texas Lawyer as part of its 2018 Professional Excellence Awards that honor impact players in the Texas legal community. An article about the Texas Lawyer Honors Byron Egan With Lifetime Achievement Award has been posted at https://www.jw.com/news/texas-lawyer-byron-eganlifetime-achievement-award.

Henry Ian Pass, a business transactional and commercial litigation attorney in Bala Cynwyd, Pennsylvania, and Managing Director of the Law Offices of Henry Ian Pass, was recently appointed to serve on the Children's Hospital of Philadelphia's Innovation Council. The Innovation Council assists CHOP's Office of Entrepreneurship & Innovation in its mission to create a culture of entrepreneurship and innovation by identifying and elevating innovative solutions for pediatric pain points in healthcare, developing an innovation and entrepreneurship knowledge base, and forging strategic partnerships to serve the community.

Admitted to practice in Pennsylvania and Massachusetts, Mr. Pass has served on several non-profit boards of directors and has provided proactive, personalized legal services in diverse and sophisticated matters since 1975. He currently serves as a director of the Private Investors Forum and the Vesper Boat Club.

Mr. Pass is also the founder and Managing Director of Patriot Venture Capital Group, LLC, a venture capital firm focusing on investment opportunities in early stage companies.

For further information, please contact Henry Pass at (610) 660-8001 (telephone), (610) 660-8004 (fax) or hip@hipesq.com (e-mail).

Michael Wayne Ullman, President of Ullman & Ullman P.A., was a speaker at the International Factoring Associations "Think Ahead or be Left Behind" training course on October 18-19, 2018 in Las Vegas, Nevada.
Pennsylvania Adopts Revised Uniform Arbitration Act

By Robert J. Hobaugh, Jr.

Pennsylvania has joined 20 other states and the District of Columbia in adopting the Revised Uniform Arbitration Act (“RUAA”) following model legislation promulgated by the Uniform Law Commission (“ULC”) in 2000. The Pennsylvania Bar Association Alternative Dispute Committee (“PBA”) supported the RUAA to resolve ambiguities and provide greater procedural rights than those found in the Uniform Arbitration Act (“UAA”) adopted by Pennsylvania in 1958. The PBA cited improvements in the RUAA over the UAA as follows: party autonomy, provisional remedies, consolidation, arbitrator disclosure, arbitrator immunity, remedies, fees and expenses, compelling compliance with or vacating arbitration awards and electronic records. The RUAA, known as Act 55 of 2018, will promote the orderly and efficient use of arbitration procedures by parties to contracts who stipulate arbitration in Pennsylvania to resolve disputes.

The UAA does not state how an arbitration proceeding is initiated. The RUAA, under 42 Pa.C.S.A. §7321.10, provides that a party initiates arbitration by a record delivered to the other parties to the agreement by certified or registered mail, return receipt requested or in the manner of service of notice in a civil action. The record must describe the nature of the controversy and the relief sought. A “record” is newly defined as “Information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form,” 42 Pa.C.S.A. §7321.2, thus addressing electronic communications.

The RUAA provides for consolidation of claims brought in separate arbitration proceedings unless the arbitration agreement prohibits consolidation of claims. A party to an agreement to arbitrate or to an arbitration proceeding may ask the court for such an order. The order may consolidate some or all of the claims where: (1) there are separate agreements to arbitrate or separate arbitration proceedings between the same persons, (2) the claims relate to the same transaction or series of transactions, (3) there exists a common issue of law or of fact that could lead to conflicting decisions, and (4) the prejudice resulting from a failure to consolidate is not outweighed by the prejudice of delay for the persons opposing consolidation. 42 Pa.C.S.A. §7321.11.

Arbitrators must now disclose conflicts before they are appointed. The prospective arbitrator must disclose to all parties to the agreement and to the arbitration and to all arbitrators known facts that a reasonable person would consider likely to affect the impartiality of the arbitrator in the proceedings, including: (a) financial and personal interest in the outcome, and (b) existing past relationship with any party, their counsel, witness, or other arbitrators. The arbitrator’s duty to disclose is ongoing. If a conflict in either (a) or (b) is revealed by the arbitrator or not revealed and later learned, that fact can be the basis for vacating an award made by the arbitrator.

To incent persons to serve as arbitrators, the RUAA provides arbitrators and arbitration organizations the same status as judges of the Commonwealth of Pennsylvania acting in a
judicial capacity. This status provides immunity from civil liability and non-competency to testify or produce records as to any statement, conduct, decision or ruling in the arbitration proceeding. That incompetency does not apply in an action by the arbitrator or to a party on a motion to vacate an award if the movant provides prima facie that a ground for vacating does exist. In an action brought against an arbitrator, arbitration organization or representative of an arbitration organization arising from its or his services, or if a person seeks to compel an arbitrator or representative of an arbitration organization to testify or produce records in violation of the testimonial or production protections afforded the arbitrator or arbitration organization, the court in its decision on immunity or competency, may award the prevailing party reasonable attorney fees and reasonable expenses of litigation. 42 Pa.C.S.A.§7321.15.

The RUAA gives the arbitrator much discretion on how to proceed in an expeditious manner as to conferences, admissibility, relevance and materiality of evidence. Procedural rights of due process are conferred should the arbitrator be asked to make a summary disposition: the parties must agree or there must be notice and opportunity to be heard. If the arbitrator decides to hold a hearing, the RUAA provides procedural due process (including the right to be heard, present evidence and cross-examine adverse witnesses) and representation by counsel.

The arbitrator may issue subpoenas, allow discovery, allow depositions to be used as evidence and issue protective orders regarding confidential information, trade secrets or other protected information as if the matter were before a court of the Commonwealth of Pennsylvania. A party may request the arbitrator to include in the award a pre-award ruling by the arbitrator and the party may obtain judicial confirmation of the award. The arbitrator must timely provide a record of the award with notice, including a copy of the record, to each party. The arbitrator may correct, clarify or modify the award on motion of a party and the court may include that matter in any proceeding to confirm or vacate the award. In such a contested hearing, the court may award attorney fees and costs to the prevailing party if such are authorized in a civil action of the same claim. Punitive damages are now limited in that the arbitrator must “specify in the award the basis in fact justifying and the basis in law authorizing the award and state separately the amount of the punitive damages or other exemplary relief.” 42 Pa.C.S.A.§7321.22(e). An award may be vacated under the RUAA if it was obtained by corruption, fraud, or other undue means, in addition to the grounds for vacating an award under the UAA: arbitrator corruption, partiality, exceeding powers, prejudicing a party or no agreement to arbitrate.

The RUAA contains terms to implement arbitration under the terms contemplated by the ULC. In applying the RUAA, consideration is to be given not just to Pennsylvania law but also to “the need to promote uniformity of the law with respect to the subject matter among states that enact it.” 42 Pa.C.S.A. §7321.30. Further, nothing in the RUAA is to require any person to waive rights to trial by jury in the United States Constitution and the Constitution of the Commonwealth of Pennsylvania. Finally, the legal effect, enforceability and validity of electronic records and electronic signatures and their use are to conform to section 102 of the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. §7002.

The UAA does not provide much flexibility to parties entering into a contract subject to statutory arbitration. The RUAA permits parties to a contract to waive or vary the terms of
RUAA to suit their needs. But the parties may not waive or vary those terms before a controversy arises regarding (1) application of judicial relief, (2) the validity of the agreement to arbitrate, (3) provisional remedies, (4) witnesses, subpoenas, deposition and discovery, (5) jurisdiction and (6) appeals. Nor may the parties unreasonably restrict terms of the RUAA regarding: (a) notice of initiation of arbitration proceedings and (b) disclosure of any facts to a neutral arbitrator, or waive the right to be represented by counsel except in certain labor matters. Nor may any party to such an agreement waive or vary the effects of the RUAA, under any circumstances, as to: (i) the section on prohibited waivers and variations, (ii) motion to compel or stay arbitration, (iii) immunity of arbitrator, competency to testify or attorney fees and costs, (iv) judicial enforcement of preaward ruling by the arbitrator, (v) change of award by the arbitrator, (vi) change, vacating, modification or correction of award, (vii) judgment on award, (vii) uniformity of application and construction and (viii) relationship to electronic signatures in Global and National Commerce Act.

The RUAA was initially introduced as House Bill 781 sponsored by Representatives Tedd Nesbit (R8) and R. Lee James (R64) and was combined with House Bill 1644 sponsored by Representative Kate Klunk (R-169) covering a new collaborative law process in Pennsylvania for domestic relations and estate disputes and the revised statutory arbitration (the “Act”). Governor Wolf approved the Act on June 28, 2018. The collaborative law process will take effect 60 days thereafter and the RUAA will take effect on July 1, 2019, applying to contracts to arbitrate entered on and after that date. Also, for agreements requiring arbitration entered after July 1, 2019, the Act eliminates common law arbitration which provides limited procedural rights and limited rights to vacate awards. The RUAA provides fairness, protecting the rights of the parties and enhancing the judicial stature of arbitrators.
GETTING READY – THE CHALLENGES IN-HOUSE COUNSEL FACE PREPARING FOR TRIAL

By Greg Marshall and Mark Webb

Many aspiring lawyers go to law school envisioning they will one day be in court arguing motions and trying cases, only to discover that civil litigation is nothing like it is portrayed. There’s no need to cite the statistics. It is well known the vast majority of cases settle or resolve through motion practice, often with the litigants never having stepped inside the courthouse. For this reason, those few times outside counsel are called to trial, it is cause for excitement, if not outright celebration. Finally, outside counsel get to showcase their finely tuned advocacy skills too long suppressed by the daily grind of modern civil litigation.

But while outside counsel are fist pumping and slapping high fives, their in-house counsel counterparts don’t often share the enthusiasm. Trials can be necessary to protect the company’s reputation and dissuade meritless litigation, but trying cases isn’t a particularly good way of resolving them from an in-house counsel’s perspective. In-house attorneys are generally charged with resolving litigation quickly and efficiently, and to do so in a way that does not distract the company from its revenue generating activities. That typically means resolving cases through dispositive motion practice or settlement. Contrary to business objectives, trials often present undefined monetary exposure and reputational risk. They require the business to devote resources to activities that typically do not generate revenue.

Once that last summary judgment motion is denied, and that final mediation concludes without a settlement, getting ready for trial presents many challenges that mostly lie on the shoulders of in-house counsel to meet. Unlike the often singularly-minded objective of outside counsel to win the case, in-house counsel are balancing lots of competing interests, only one of which is to win. This paper will explore some of those competing interests.
Can I get a witness?

Identifying the right company witnesses is often the hardest task of in-house counsel. Aside from those few companies who specifically employ individuals whose job description is to provide testimony for the company, no one wants to assume this role. Asking can lead to endless buck passing and ultimately relegation to someone unsuited to the task. That’s not surprising. These employees have many competing responsibilities, both professional and personal. Preparation is tedious. The stakes can be high, as juries tend to decide cases based on the relative strength of the live witness testimony. Testifying isn’t any fun either. Opposing counsel can be belligerent, and the process can smack of gamesmanship.

The process of designating the right company witnesses generally starts during the discovery phase. Arguably the most intrusive discovery tool in the arsenal of lawyers suing big companies is Federal Rule of Civil Procedure 30(b)(6) or its state rule equivalent. The Rule obligates a company to designate one or more witnesses to respond to one or more topics of the noticing party’s choosing. As the Rule provides no limit on the number of topics, and their scope is limited only by the liberal rules underlying discovery, the Rule is often the source of angst for in-house counsel.

It’s not unusual for Rule 30(b)(6) deposition notices to have dozens of topics. They often involve varied areas of the business ranging from engineering to accounting, varied geographic regions, and varied times that may span decades. They may call for knowledge uniquely in the possession of apex level officers, whom the company can’t afford to be distracted with litigation. Outside counsel is tasked with guarding the gate by ensuring the topics are described with “reasonable particularity,”ii within the bounds of discovery, and proportionate to the needs of the
case, and challenging them when they are not. But once the topics are set, the task of identifying the right witnesses falls squarely on the shoulders of in-house counsel.

There’s rarely an opportunity for in-house counsel to identify one or even a small, discrete group of employees with personal, substantive knowledge that cover all the topics, meaning that in-house counsel must often create a witness from whole cloth prepared to testify about “all information known or reasonably available to the organization.” Unlike fact witnesses, who are not expected to know everything, Rule 30(b)(6) deponents are answering on behalf of the company. Answering “I don’t know” comes with peril, as the mere fact that the company doesn’t know something can have great significance.iii

But it’s important to appreciate that the work of in-house counsel identifying company witnesses does not end when discovery concludes, because the company’s trial witnesses may not be the same as those designated to testify in response to Rule 30(b)(6) notices. Unlike Rule 30(b)(6), the rules of evidence generally require a foundation in personal knowledge before the witness may testify.iv In other words, the witnesses the company designated to respond to discovery may be entirely unsuited to present the company’s case at trial.v Getting ready for trial often requires in-house counsel to start the process anew.

Preparation the witness

With the exception of those few businesses with heavy litigation caseloads who employ individuals whose job description is to provide testimony on behalf of the company, chances are that the employees in-house counsel have identified to present the company’s case at trial have little or no litigation experience, and likely have a limited understanding of what the case is about. Preparation starts with educating the witnesses with what the case is about, where their anticipated testimony fits with the company’s defense or prosecution of the case, identifying research tasks
for the witness to prepare to give their best, most accurate testimony, and then practicing examinations and cross examinations until the witness is comfortable with the process.

When it comes to witness preparation, in-house attorneys have competing interests to balance. Businesses view witness preparation time as a resource allocation question. These employees were presumably hired because they would help the company make money. Every hour spent on the litigation is another hour they are not doing their work. Depending on the employee’s position, their distraction can have an appreciable, negative effect on the company’s bottom line. Outside counsels’ primary concern is winning the case, while the concerns of their in-house counsel counterparts and clients are not so narrowly focused.

This tension between the needs of the business and pending litigation can be exacerbated when domestic litigation involves foreign business interests and employees. While most companies with a significant U.S. presence appreciate that litigation is generally the cost of doing business in this country, foreign businesses (or foreign divisions of the same business) may not. The U.S. legal system is unique and does not easily translate to other cultures. With cultural differences and English as a second (or third) language, preparing foreign witnesses for trial in the U.S. presents a different set of challenges that in-house counsel must meet when getting ready for trial.

*In electronic data we trust*

Business memory does not primarily reside in the memory of its employees. It resides in the company’s electronic data, which creates unique challenges when it comes to getting ready for trial. While the duties and hardships imposed on in-house counsel are many and varied when it comes to ESI – commencing with litigation holds and preservation activities with respect to systems that were not likely designed with evidence preservation in mind – getting ready for trial
switches the inquiry from location, preservation, and disclosure, to admissibility. Finding the evidence is often the easiest part.

Business data is classic hearsay, inadmissible unless an exception applies. The most often utilized exception is the so-called “business records exception.” See Fed. R. Evid. 803(6) (records of a regularly conducted business activity). The exception permits the introduction of business records if: (A) the record is made at or near the time by – or from information transmitted by – someone with knowledge; (B) the record was kept in the course of a regularly conducted activity of a business …; (C) making the record was a regular practice of that activity; (D) all these conditions are shown by the testimony of the custodian or another qualified witness…; and (E) the opponent does not show … a lack of trustworthiness.

The systems businesses establish to house electronic data are set up for efficiency, not admissibility in U.S. courts. The data relevant to any pending case might be several systems removed from the system of record, archived, and awash with codes no longer used. It might be legacy data from an acquisition or merger. The electronic data may be computer generated or auto populated. For these reasons, there may be no one with knowledge to testify about how data was entered into the system or how it was maintained in the ordinary course of business. Or, that person may be located half-way around the world and retired, with no pragmatic means to bring them into a U.S. court to establish foundation. These challenges can be complicated by global privacy laws, restricting the means and process of in-house counsel securing the information from foreign divisions.

While outside counsel will advise their in-house counsel clients of what is needed, ultimately, the burden of securing the witnesses and information needed to seek admissibility of the company’s electronic data at trial is a heavy one that ultimately falls on in-house counsel.
Litigation consultants and mock trials

Another consideration of in-house counsel is when and whether to mock try their cases. There is a robust industry that provides trial consulting services ranging from focus groups, mock trials, and shadow juries, but convincing business leaders that the expense is worthwhile is not always easy. Outside lawyers are experts in logical thinking, but juries are not composed of lawyers. Consultant-led focus groups and shadow juries can help outside counsel develop themes that resonate with prospective jurors, test how potential jurors may react to complex facts and arguments, and can provide insight into whether settlement should be reprioritized. Mock trials can also be used as a tool for witness preparation, particularly when the company faces pattern litigation. With the expense of mock trials – and the associated outside counsel fees – ranging in the six figures, the decision to take on this expense is not an easy one for in-house counsel to make when getting ready for trial.viii

Victory at all cost – Not!

Outside counsel fees are treated as a cost center, and those costs escalate dramatically when getting ready for trial. So while outside counsel are often singularly focused on victory, their in-house counsel counterparts – and the company they both represent – are focused on cost forecasting and setting reserves. The needs of the business demand predictability and accuracy. In-house counsel do not have the luxury of responding that outside counsel fees are just too hard to estimate, or depend on too many variables. And while it might seem that over-budgeting is prudent, coming in under-budget is just as problematic when the time comes for in-house counsel to explain why so much company money was set aside for litigation when it could have been used for something that might have generated income for the company.
For outside counsel, getting ready for trial – and trying cases – is often the highlight of their practice, but recognizing and treating the challenges it imposes on their in-house counsel counterparts and clients may control whether they get the chance to do so again.

Greg Marshall is a partner with Snell & Wilmer LLP in Phoenix, Arizona, and co-chair of the firm’s financial services litigation practice group.

Mark Webb is an associate with Snell & Wilmer LLP in Phoenix, Arizona.

---

i Rodolfo Rivera & Frank Morreale, Can We Learn Anything from Mock Trial Exercises If We Rarely Go to Trial?, 35 No. 4 ACC Docket 58 (2017) (“It is widely accepted that since 2009 almost 99 percent of civil cases are resolved before trial.”)

ii William A. Yoder, Amy M. Crouch, & Melissa M. Plunkett, Reasonable Particularity: The Starting Point for Effective Rule 30(b)(6) Depositions, 56 No. 7 DRI For Def. 48 (2014) (analyzing Rule 30(b)(6)’s “reasonable particularly” standard).

iii William Yoder & Melissa Plunkett, Adequate Preparation: Avoiding Pitfalls and Using the Rule 30(b)(6) Deposition to Strengthen Your Client’s Themes, 12 No. 2 In-House Def. Q. 16 (2017) (collecting cases that answers during a Rule 30(b)(6) deposition may not bind the corporation in the sense of a judicial admission, but may be used for impeachment purposes).

iv Stephen J. O’Neil, Rule 30(b)(6) Witnesses at Trial, 60-Sep Fed. Law. 70 (2013) (observing that Rule 30(b)(6) does not require “personal knowledge,” as the corporation is the deponent and accordingly the witness “presents the knowledge, opinion, or position of the corporation, not of the witness himself or herself.”)

v Of course, the opposing party can generally use the corporation’s deposition at trial for any purpose. See, e.g., Fed. R. Civ. Proc. 32(a)(3) and Fed. R. Evid. 801(d)(2) (admission by party opponent), but that does not mean the corporation can introduce the testimony on its own behalf.


vii Daniel J. Capra, Electronically Stored Information and The Ancient Documents Exception To The Hearsay Rule: Fix It Before People Find Out About It, 17 Yale J. L. & Tech. 1 (2015) (theorizing that the ancient records exception to hearsay may apply to electronic data that is over 20 years old, but advocating to abrogate the rule).

THE MEDIATOR’S ANCHOR – THEY ASKED YOU TO BE THERE

By Lee Applebaum

As a child, the future mediator watches fights differently than other kids. Other children look on with the spectator’s fascination, rapt in who will win, whether blood will spill, or mesmerized by the promise of violence. The future mediator, however, might wordlessly try to get in between the combatants to create enough pause so they can think twice about doing battle; or to give them an opportunity to step back without losing face.

This effort might be rejected with a “butt out,” much harsher language, or even violence directed at a well-intended interloper. Knowing the propensity of their child, the future mediator already may have received parental admonitions like “don’t get in the middle of things,” “don’t stick your nose in where it doesn’t belong,” or “stay out of other people’s business.” This is typically wise advice. One thinks of the postscript in the movie Stand by Me, when we’re told that adult Chris Chambers, now a lawyer, is killed trying to break up a fight in a fast food line.

One dictionary definition of the word mediate does include “to be in the middle, intercede.” Dictionary.com, https://www.dictionary.com/browse/mediate. This instinct to “intercede” without being invited is beyond what lawyers know as mediation. It is more like a religious calling.

Legal mediation is different. It does not begin with the active intercession of a stranger trying to save two people from their own worst inclinations.

Legal mediation begins with an ask. The parties themselves call on the mediator to work with them in resolving their differences.

This fundamental point is likely the most powerful force in mediation. The mediator must never forget it during the process. It is the anchor. It is the source of strength to persevere, and to regain clarity, when passions seem to overcome reason and anger is rocketing the parties out the door.

Each party had some desire for resolution bringing them to the table in the first place. The parties entrust the mediator with this anchoring knowledge because they will forget it often during mediation. As a mediator, know that and remind yourself of it again and again. You will certainly need to remind the parties when they inevitably forget their original sentiment, and that absent recalling their original intention they are headed back into the whirlpool of litigation.

Lee Applebaum is a mediator and appellate litigator in Philadelphia, Pennsylvania, and former Co-Chair of the Judges Initiative Committee and Business Courts Subcommittee.
BUSINESS LAW SECTION DIVERSITY CLERKSHIP PROGRAM

This Special Feature includes reflections from five of the 2018 Diversity Clerks sharing their experiences.

Creating a Pathway to Legal Success: The Invaluable Experience of Being Selected as a 2018 American Bar Association Business Law Section Diversity Clerk

By Vernetra Gavin

While competing in a moot court competition in New York, I received a call stating that I had been chosen by the ABA Business Law Section to be a 2018 Business Law Section Diversity Clerk. This is an honor because this summer program provides business law clerkship placements to only 9 finalists nationally. The focus is on helping students obtaining judicial clerkships, where diversity among judicial clerks remains disproportionately low. The summer clerks are placed with judges across the nation who mentor and support them in the business law field; I was placed with Judge Nancy Allf in Las Vegas, NV. My experience has been very beneficial and has enhanced my knowledge through courtroom observation, legal writing, leadership, networking, and mentorship.

Courtroom Experience: This summer, I was able to observe Business Court, in addition to Civil, Criminal, and Probate Court. My Business and Civil Court observations with Judge Allf included but are not limited to hearings, settlement conferences, a personal injury jury trial with juror feedback, and conferences. These observations were valuable because I saw—firsthand—the importance of being professional and prepared. After court, the other clerks and I would meet with Judge Allf in her chambers to debrief. We discussed relevant law that led to her decisions, the strengths and weakness of each case, and what evidence or strategy could have aided the parties. After observing the personal injury jury trial, I was able to observe post-trial juror feedback. It was invaluable to hear the perspective of the jurors; I learned very beneficial information to add to my litigator’s toolbox.

1 American Bar Association, Business Law Section, https://www.americanbar.org/groups/business_law/initiatives_awards/diversity.html
Additionally, I observed Judge Karen Bennett-Haron’s Criminal Court and Judge Gloria Sturman’s Probate Court. I noticed admirable traits that I plan to emulate when I become a judge. For example, Judge Bennett-Haron’s compassion and fairness for the accused individuals was touching. She treated the inmates with respect and dignity while making sure to admonish unlawful behavior. When I observed Probate Court, Judge Sturman emanated experience and a profound knowledge of the law. Her demeanor exuded confidence and attentiveness. Lastly, Judge Allf displayed a unique way of simultaneously being firm and polite. She never showed agitation or irritation, and she was very accommodating to attorneys within the latitude of her legal discretion. So if I implement these judges’ compassion, fairness, confidence, and courteous firmness, I believe I would be “winning.”

**Legal Writing:** I assisted with writing an Order and Bench Memos that included but are not limited to Arbitration, Alter Ego, Judicial Review, Personal injury, and Consolidation. Also, I assisted in preparing the ABA Business Section Article entitled “Breaking Up Is Hard to Do: The Role of Non-Compete Agreements When Employees Leave to Work for the Competition,” which is based on an ABA Business Section presentation where Judge Allf co-chaired the panel. Being that I have background in English, Collegiate writing, and now, two years of academic legal writing; I considered legal writing to be one of my areas of strength. However, this clerkship has showed me unknown areas of improvement and has definitely sharpened my legal writing skills. By working with my judge and her law clerk, Adam Ellis, I have become a more polished legal writer. Through implementation of the feedback I received during my clerkship, I am certain that I will be an even greater, exceptional legal writer.

**Leadership:** Emotional intelligence is just as important as academic intelligence. A good leader effectively achieves the given objective with a happy and efficient team. I have noticed how the entire chambers staff really loves and appreciates my judge. I believe this is because she respects her staff as professional individuals who understand that job execution is mandatory; I appreciate this type of leadership style. It is my hope to create a similar, amicable working and learning environments where team building and seeing others thrive is at the forefront. These are leadership traits that I plan to emulate.

**Network/Mentorship:** During my first week, Judge Allf held a welcoming luncheon for me to introduce me to many members in the legal community. As a result, I have had almost daily lunch meetings with many judges, attorneys, and other prominent people in the Las Vegas community, including the United States Supreme Court short list nominee, the Honorable Johnnie Rawlinson and the Nevada Supreme Court Chief Justice Michael Douglas. I received so many valuable nuggets of wisdom. For example, Judge Rawlinson expressed how she meticulously evaluates potential law clerk applications, allowing no room for error, and she revealed criteria of her previous exceptional clerks. Chief Justice Douglas gave me valuable advice on knowing and accepting the right timing for opportunities and the importance of keeping a Judges’ Book (which is a dictation of Judges’ expectations). Also, Judge Tierra Jones and Commissioner Lawrence Weekly both shared with me their background, their experience,
and their processes which resulted in their career success. There were so many people who
selflessly shared information with me. While I am not able to mention everyone individually, I
truly am grateful for all the advice and warmness bestowed upon me by my new proclaimed
Vegas community.

Also, Judge Allf arranged luncheons for her law clerk, another extern, and me to meet with two
national law firms. Both firms shared insight on their firm’s culture, expectation, and
employment candidate criteria.

Takeaway/Value Added: I am leaving the ABA Clerkship with these three enhancements: (1) a
better understanding of business court with a stronger writing ability; (2) a better understanding
of the importance of becoming involved in the leadership within the legal community; and (3) a
better understanding of the importance of balance. Similar to many other people in the legal
field, finding a work/life balance can be difficult. I am a very ambitious person who often sets
extremely challenging (arguably unascertainable) goals for herself. One of the first lessons I
learned from Judge Allf is the importance of having a work/life balance, which is an indirect
derivative of combining expectation and pace. After communicating some of my goals to her,
she said to me, “How do you drink from a water hose: one sip at a time.” I am very appreciative
of this opportunity.
Dakota Larson  
Michigan State University College of Law  
Clerked for: Judge Christopher P. Yates; Grand Rapids, MI

I learned about the ABA Business Law Section Diversity Clerkship Program through my law school’s career website. My experience at the Kent County 17th Circuit Court in Grand Rapids, Michigan with the Honorable Christopher P. Yates was more than I could have asked for. I plan on practicing in Michigan after graduation, particularly in corporate law, so it was a perfect fit that Judge Yates runs the Specialized Business Docket.

The hands-on experience I received has been invaluable to my career. I wrote bench memoranda, a slightly different writing style than what I have been exposed to in law school. Additionally, I conducted research and wrote articles for an upcoming ABA Business Law Section publication comparing and contrasting mediators, special masters, class actions, and business divorce from multiple jurisdictions. I also observed motions, trials, and status conferences. Throughout my experience, I had the opportunity to meet with many attorneys and make invaluable networking connections along the way. Receiving my clerkship through the ABA Business Law Section Diversity Clerkship Program also provided me a perfect segue to inquire about the degree of diversity in the legal market here in Michigan.

I thoroughly enjoyed working with Judge Yates and his staff. Judge Yates was very energetic, intelligent, and easy to talk with. He was approachable and had an open-door policy, so he was always eager to discuss cases or answer any questions I had. Judge Yates also took the time to get to know me and provided invaluable career advice. Overall, I had a very positive experience, and I would strongly encourage students to apply for the ABA Business Law Section Diversity Clerkship Program.
Joanetta Fields van Rijn
Indiana University Maurer School of Law
Clerked for: Judge James E. Snyder; Chicago, IL

As a student member of the ABA and Business Law Section exploring a career in commercial law, I began researching summer internship opportunities during my 2L year at IU Maurer School of Law. While researching on the ABA website, I read the mission statement of the Diversity Clerkship Program and instantly knew this was the opportunity I was seeking. I was fortunate to be among those selected, and even more fortunate to be assigned to Judge James E. Snyder in the Cook County Circuit Court in Chicago, Illinois.

Working with Judge Snyder and his staff was an exceptional opportunity to become familiar with a broad range of commercial litigation issues. Most impactful was Judge Snyder’s encouragement and confidence in my abilities. My first day was exciting – voir dire for a two week jury trial. My first work assignment was to review motions submitted to the court, draft a bench memorandum, and discuss my findings first, with Judge Snyder’s law clerk then with Judge Snyder. Judge Snyder’s law clerk, Jaclyn was new to her role with Judge Snyder, but was incredibly generous with her time and expertise.

Within a few days, I was given other assignments and began drafting proposed orders. In addition to analyzing motions, I had the exceptional opportunity to witness a full jury trial from voir dire to verdict on a wrongful discharge whistleblower case that resulted in a near $3M verdict. On this case and other matters that involved oral arguments on motions, Judge Snyder made sure that I was able to witness the side-bar discussions. After counsel departed, Judge Snyder made himself available to answer any questions I had.

What I enjoyed most about my clerkship experience was that Judge Snyder provided me with open access to all aspects of the court’s proceedings. In addition to the courtroom experience, I became familiar with the operations of all aspects of the various departments in the Daley Center Courthouse. Also, when I discussed with Judge Snyder than one of my goals was to become a more effective networker and I would be attending the ABA Annual Meeting in Chicago, he immediately arranged an introduction for me to the Honorable Sophia H. Hall, Administrative Presiding Judge in Cook County Circuit Court – ranked by Judge Snyder as one of “the” most effective networkers. Judge Hall was generous with her time and guidance.
The eight weeks clerking in Judge Snyder’s court was an invaluable experience. If there was anything lacking in this assignment, it is that it ended too soon.

I greatly appreciate the opportunities that the Business Law Section Diversity Clerkship has provided for me. It is hoped that the program can grow to allow such opportunities to be experienced by greater numbers of promising law students; in particular, if such clerkships were made available in those states in the Fifth Circuit Court of Appeals, being Texas, Louisiana, and Mississippi.
Billie Saunders  
Southern Illinois University School of Law  
Clerked for: Judge James L. Gale; Greensboro, NC

I learned about the Diversity Clerkship opportunity through a law school colleague who participated last summer. Without a clear idea of the type of law I'm looking to practice and wanting to experience as much as possible prior to graduating law school, I thought this would be an interesting experience. Also, having taken Agency & Partnership and Corporations in the last semester and not completely grasping all the significant areas of law it seemed to me that seeing the cases in real time would add to my understanding. I applied for the clerkship knowing that it was competitive and that I may not be chosen.

When I was chosen to participate in the program, I had no expectation but that I would be working in a judge's office and I would learn. That's exactly what happened. Judge Gale is very hands on as the (now former) chief judge ran the North Carolina Business Court as a well-oiled machine. The staff (clerks and judicial assistants) know their jobs well and perform them with efficiency and accuracy. The overall experience was exactly what I needed.

Throughout my experience I was able to see the difference in circuit court, district court, and business court. The difference is impressive. A business court judge has such a deep understanding of the issues of the case (in fact all the cases before him) that there’s little reason for attorneys to spend time arguing over anything but the finest point of their case. The cases decided during my time in North Carolina were complicated and yet, completely understandable in the written opinion. I thoroughly enjoyed the listening, reading, and observing the various cases. Specifically, I watched an entire trial; listened to numerous discussions between the Judge and his clerks as they wrestled over opinions; and, observed conference calls where the Judge was both sympathetic and direct. Of course, I also read hundreds of pages of case law and opinions.

It may have been this placement, but I would say if you are not self-motivated working in a business court may be difficult. There is a great deal of quiet. It is not a bustling circuit court where there are phones constantly ringing and deals being made in the hall. I also don’t have another Judge’s chambers to compare the experience. It may be that in circuit courthouses, judges are just as sequestered.

I found this clerkship to be a tremendous opportunity. There is nothing I can specifically point to that would have improved it. Thank you for choosing me.
This summer, I clerked for the Hon. Judge Christine Ward in the commerce and complex litigation center through the ABA. I found out about this ABA opportunity through my own research and decided to apply. After acceptance, The ABA placed me in Pittsburgh, PA with Judge Ward. Judge Ward is the administrative judge for the civil division. The court was located in the Fifth Judicial District of Pennsylvania, Allegheny County (Pittsburgh), Pennsylvania. This is my second summer in Pennsylvania. Pittsburgh, as a city, was an interesting place to clerk. Pittsburgh is a large city with a small-town feel. The legal community is small and amicable. The bench and the bar have a supportive relationship.

Judge Ward has the dual role of being an Administrative judge and part of the Commerce and Complex Litigation Center. Therefore, I had the pleasure of learning about the administrative side and the legal side of civil litigation. The administrative side of litigation enabled me to see how cases were assigned, calendar-control motions, and scheduling hearings. The commerce and complex litigation side of litigation allowed me to witness the ins and outs of complex and business litigation. The Commerce and Complex Litigation Center acts like a Chancery Court. I observed preliminary injunctions, trials, pre-trial conferences, weddings, and name-change ceremonies. While observing litigation-in-action, I also had the opportunity to write bench memorandums, write opinions, brief the judge on whether cases should be assigned to the center, and research questions that came up form calendar control motions.

I have three takeaways from this clerkship experience. First, good and bad lawyering skills. Clerks have a front-row seat to good and bad lawyering skills at all stages of litigation. The benefit is that clerks learn what to do and what not to do in and out of court. Another unforeseen benefit was learning to use the rules of evidence and civil procedure. Second, time management and organization are essential skills when clerking for a judge. Clerks have the task of organizing, synthesizing, and compiling information for the judge. That job is also coupled with scheduling, research, and writing. For judicial efficiency, clerks have effective time management skills and organization skills. Third, two minds can reach completely different conclusions in a case. As an intern, I always struggled with whether or not I was correct in my interpretation of a case or articulating the law. It was not until Judge Ward pointed out that two minds can come out completely different on a case. Coming from law school, it always seemed
as if ruling on a case was pretty straightforward. However, in practice, it proves to be pretty difficult.

Going forward, I have a few takeaways from this summer’s experience. Attention to detail defines you as a lawyer. Your decorum with the court speaks volumes about your reputation. Maintaining a calm demeanor is an essential skill. I thoroughly enjoyed my time with Judge Ward. As a result of this summer clerkship, I have been applying to Pennsylvania's Commerce and Complex litigation centers for judicial clerkship positions. The experience was truly one of a kind, the Business Law Section has put together an amazing opportunity for minority law students.
The Business and Corporate Litigation Committee presented four CLE programs at the Business Law Section Annual Meeting in Austin, Texas, on Thursday and Friday, September 13 and 14, 2018. All were well-attended and well-received. Thanks and kudos to the program chairs and the panelists.

On Thursday at 10:30am was Admitting Digital Evidence, a two-hour program. Program Chair Peter Valori of Damian & Valori LLP in Miami could not make the meeting, so Melissa Visconti of his firm filled in as moderator. The Co-chair was Hon. Stephen Schuster of Superior Court of Cobb County, Georgia. Judge Schuster also served on the panel, together with Michaela Sozio of Tressler LLP’s Los Angeles office and Victor Vital of Barnes & Thornburg LLP in Dallas. The program examined how traditional concepts admissibility such as relevance, authentication and hearsay apply to the various new forms of electronic evidence: emails, social media posts, website posts, text messages, chat and others.

Managing Corporate Crisis In House, In Court and In the Market -- Counsel, Compliance, and Public Affairs Experts Shares Tips on Navigating Through Crisis” was a 90 minute program presented Thursday afternoon at 3:00 pm. Kevin Metz of Latham & Watkins in DC co-chaired and moderated the program; the other co-chairs were Judge Louis A. Bledsoe III, Special Superior Court of North Carolina Judge for Complex Business Cases, and Judge Heather Welch of the Indiana Business Court. Judge Welch participated as a panelist as well. The other panelists were Natalia Shehadeh, Senior Vice President and Chief Compliance Officer of TechnipFMC in Houston; Valerie Banner, Vice-President, General Counsel & Corporate Secretary of Exterran Energy Solutions, L.P. in Houston, Erin Pelton, Managing Director of Mercury Public Affairs in New York; and David R. Woodcock, a partner at Jones Day in Dallas.
On Friday morning at 10:30, BCLC presented Business Divorce in Delaware, New York and California: Around the Horn. Peter Ladig of Bayard PA in Wilmington, Delaware and Justice Timothy Driscoll of New York Supreme Court Commercial Division (Nassau County) co-chaired the program; Pete served as moderator and Justice Driscoll was a panelist. The other panelists were Helen Maher of Boies, Schiller & Flexner LLP in New York; Vice Chancellor Joseph Slights of the Delaware Court of Chancery; Susan Wood Waesco of Morris Nichols Arsht & Tunnell in Wilmington, Delaware; and Judge Gail Andler (Ret.), now with JAMS in Orange County, California. In this program, judges and lawyers from New York, Delaware and California engaged in a lively discussion about how each state handles common issues in business divorce.

On Friday afternoon, a panel of judges and attorneys discussed ethical issues raised when more than one party has access to privileged information. Sharing the Attorney-Client Privilege: Too Much of a Good Thing was a 60-minute program that ran from 2:30 to 3:30pm. The panel addressed the ethical issues that arise when a lawyer represents multiple clients. For instance, who controls the privilege when the clients’ interests become antagonistic? The panelists discussed a
number of issues concerning the common interest privilege: does the doctrine extends beyond co-parties in litigation to include business co-venturers, or co-parties to a deal that the parties expect will be the subject of litigation? Can it be expanded by a written agreement? Need there be a written agreement for it to apply? What should an agreement cover?  Michael Rubenstein of Liskow & Lewis moderated the panel, and co-chaired the program together with Judge Mary M. Johnston of Delaware Superior Court. Judge Johnston also was a panelist, together with Vice Chancellor Joseph Sights of the Delaware Court of Chancery; Merrick L. Gross of Carlton Fields LLP in Miami; Jason Panzer of Herring & Panzer in Austin, Texas; and Melissa Visconti of Damian & Valori LLP in Miami.

Attorney-Client Privilege Panelists
In addition to the BCLC’s amazing set of substantive programs, the BCLC also held its always-popular Business and Corporate Litigation Committee Dinner in conjunction with the Judges Initiative, Dispute Resolution Committee, Sports Law Committee, and Young Lawyer Committee at Lamberts Downtown Barbecue, with excellent turnout of practitioners and members of the judiciary to enjoy barbeque in the restored and historic Schneider Brothers Building.
The dinner was a great success in a relaxed and collegial atmosphere.
Law students at University of Texas enthusiastically engaged in discussions with seasoned business court judges and lawyers during the Business Law Section meeting in Austin. The annual “Tips from the Trial Bench” program shifted focus to take advantage of the proximity to the law school. Through the excellent assistance of Ralph Molina, Chair of the law school’s Board of Advocates, the event was standing-room only.

Each table included at least one judge, a practitioner and several law students. Conversations ranged from courtroom dynamics and best practices, to career advice. Participants were encouraged to play “musical chairs” to enable exposure to as many views as possible.

Although organized by the Trial Practice Subcommittee of the Business and Corporate Litigation Committee, the event owes its success to the generous and valuable participation of the Business Court Representatives (past and present) and other judges active in the Section. Future programs will be intended to reach new trial lawyers, as well as including law students.

Many thanks to all!