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APRIL 1-4, 2004 MEETING OF THE SECTION SEATTLE, WASHINGTON

THE COMMITTEE WILL HAVE BOTH A MEETING AND PRESENT A PROGRAM AT THE APRIL MEETING

EXCERPTS FROM FINAL BATSON REPORT RELATING TO OPINIONS ARE ATTACHED

REPORT ON DECEMBER 4 MEETING IN WASHINGTON, DC

GREETINGS OF THE SEASON TO ALL!

Arthur Norman Field, Chair
E. Carolan Berkley, Vice Chair
Donald W. Glazer, Immediate Past Chair
Report on December 4 Washington, DC Meeting/April Meeting

Those present decided to utilize a new format for the Report. Part I is to be a commentary (primarily the current text) and Part II is to be the survey questions and responses. It was also decided that the Report should assert that all firms should periodically review the need for opinion procedures based on their own practice. As the Committee had previously decided, the diversity of current practices will be noted and there will be no recommendations beyond that stated above.

A new draft will be circulated at the end of January. Comments will be sought by February 21. A further re-draft will be circulated prior to the April meeting. The expectation is that we will be able to get the Report in an advanced (or perhaps even near final) form at the April meeting. At the April meeting of the Committee we will review a redraft of the (yet to be circulated) January 2004 redraft.

Negotiated Acquisitions, Committee’s Model Stock Purchase Agreement – Should An Accord Opinion Be Included?

The Negotiated Acquisitions Committee of the Section is revising its very useful Model Stock Purchase Agreement. It inquired as to whether the Opinion Committee believed that (as in the past) an Accord Opinion should be included along with a customary practice opinion. The Committee (at the 12-4 meeting) advised in favor of continuing the inclusion of an Accord Opinion.

The Enron Examiner’s (“Batson”) Report

There was an extended discussion of the Batson Report at the meeting. See the attached excerpts.

Enron creditor suits alleging malpractice have been authorized against Vinson & Elkins and Andrews & Kurth. It is not clear whether the allegations will include claims related to legal opinions. However, these cases and the Batson Reports will require new thinking about opinions to clients. Opinions to clients may arise by implication from opinions given to third parties. Customs relating to third party opinions will have significance in interpreting opinions to clients. However, opinions to clients fall into the broader category of advice to clients. Unlike the third party situation, a client may be entitled to advice not set forth in the formal opinion letter rendered to a third party or the client. The duty to provide advice may arise by implication from the circumstances of a representation. Matters properly excluded from a third party opinion may require coverage in advising the client, unless the client agrees otherwise. We may be thinking much more about opinions to clients than we have in the past.

April Program – Batson Report and Opinion litigation

The Committee’s April Program (Friday, April 2 at 3:15PM) will be on Opinion Letter Litigation and the Final Batson Report. The panel will include Rebecca Lambert of Alston & Bird, Donald Bernstein (current Chair of TriBar) and Dick Howe of Sullivan. Further details in a month.
New Members

I suggest the following lawyer(s) who are interested in legal opinions and might join the Committee. They are members of the Section. Please contact them.

Name: 
E-mail: 

Name: 
E-mail: 

From: 

Contact Information: 

Fax to A. N. Field (212) 504-8078 or e-mail anfield@igxg.com