FROM THE CHAIR

It is a privilege to share with you the Winter issue of our Committee’s Newsletter, “In Our Opinion.” As in the past, without the tireless work of our Newsletter editor, Jim Fotenos, we would not have a newsletter.

Leadership Meeting in January 2020. As one of my first duties as the incoming Chair of the Legal Opinions Committee, I attended a two-day ABA leadership conference in Southern California where the Business Law Section conducted a boot camp on outreach to new and diverse members. The good news to report is that the Legal Opinions Committee added 18 new members during the fourth quarter of 2019, including young and diverse men and women. The bad news: we lost more members than we gained. Consequently, I am taking further action at the Committee level to expand our membership, especially among younger and diverse lawyers, by seeking volunteers to serve as diversity vice chair and/or membership vice chair. I am also asking that each of you consider what you can do to help increase and better balance our membership during the next six months by undertaking the following actions:

1. Among attorneys in your firm who are already Business Law Section members but may not be a member of the Legal Opinions Committee: They can join the Committee without any additional cost and assure your firm of a steady number of firm leaders who are conversant in opinion practice issues.

2. Among attorneys in your firm who are not already BLS members: They can either:

   (a) participate in Committee educational activities at no additional cost by joining a current Committee member in your firm who is “dialing in” to Committee meetings or participating in online CLE programs (but credit for CLE can only be had if a participant logs in), and/or

   (b) follow the Committee at no cost on Twitter @ABALegalOpinion. If nothing else, the younger, non-member attorneys can bring tweeted cases and other materials to the attention of the “more senior” (but technologically challenged) attorneys in your firm who don’t “have the time (or inclination)” to learn how to access Twitter!

Please take a few minutes to help the Legal Opinions Committee as well as enhance the legal opinion training of the younger lawyers in your firm by taking advantage of sharing your access to our Committee at little or no cost to your firm.

2019 Fall Meeting. We had a successful Fall Meeting in Washington D.C. in November 2019. A summary of our Fall meeting is included elsewhere in this issue of the Newsletter.

2020 Spring Meeting. As you have undoubtedly heard or read, due to the public health concerns posed by the coronavirus, the Business Law Section Spring Meeting in Boston, scheduled for March 26-28, 2020, has been cancelled. We are hopeful the Annual Meeting will be held as scheduled in Chicago on September 10-12, 2020, and look forward to a full complement of meetings and programs at the Annual Meeting.

This Issue of the Newsletter. This issue of the Newsletter includes summaries of the meetings held at the Fall Meeting of the Section by our Committee and the Audit Responses Committee. We also include, from the Audit Responses Committee, its summary of recent listserv activity, and Notes From the Listserv of our Committee, summarizing two recent dialogues that occurred on the Listserv.

- Richard Frasch, Chair
  rmfrasch@gmail.com
Due to the public health concerns posed by the coronavirus, the ABA Business Law Section Spring Meeting, scheduled for March 26-28, 2020, in Boston, Massachusetts, has been cancelled.

Legal Opinions Committee

The Business Law Section held its Fall Meeting in Washington, D.C., on November 22-23, 2019. The Legal Opinions Committee met on Friday, November 22, 2019. The following is a summary of the meeting.

The Chair of the Committee, Rick Frasch, had circulated an agenda for the meeting to the members of the Committee by his ABA Connect posting of November 12, 2019. Rick’s introductory remarks focused on a declining Committee membership of approximately 3% (2019 v. 2018), but noted that the percentage decline was less than the 13% decline in membership for the Business Law Section as a whole during the same period. Among his objectives as Chair are to reverse the decline in membership of the Committee and to pursue greater diversity in the Committee’s membership. To this end, he will be seeking volunteers from the Committee to serve as directors of membership and diversity.

Task Force Reports. The Committee currently has three active task forces. All three task forces were scheduled to meet the following day, Saturday, November 23. John Power and Arthur Cohen, Co-Chairs, reported on the Third Survey of Law Firm Opinion Practices, being conducted and tabulated by the Survey of Opinion Practices Subcommittee. The Subcommittee received some 350 responses from law firms to the survey and is now compiling and summarizing the responses. The compilation is 20% complete, and John and Arthur are looking forward to publishing a report on the results of the survey in 2021.

Ettore Santucci reported on the Intellectual Property and Cross-Border Opinions Task Forces. Ettore and Truman Bidwell are heading up the Cross-Border Task Force. They are currently focused on soliciting the involvement of non-U.S. lawyers in the effort, designed to promote a common understanding of cross-border opinion letters.
With respect to the IP Opinions Task Force, Ettore reported that a draft of an outline of the report would be the subject of the task force meeting the following day. The objective of this task force is to develop, in conjunction with the Section’s Intellectual Property Committee, a common understanding of the IP opinions that should be required by, and delivered to underwriters in conjunction with, registered offerings of securities.

**TriBar; WGLO Reports.** The TriBar Opinion Committee is currently working on two projects. Steve Weise, reporter for the TriBar Report on Opinions on the Enforceability of Contract Provisions Allocating Risk, stated that the report is nearing completion and should be approved by TriBar later this year. Don Glazer, Co-Chair of TriBar, reported that TriBar is making good progress on its new report on LLC opinions, a report designed to update TriBar’s two earlier reports on LLC opinions (“Third-Party Closing Opinions: Limited Liability Companies,” 61 Bus. Law. 679 (2006), and “Supplemental TriBar LLC Opinion Report: Opinions on LLC Membership Interests,” 66 Bus. Law. 1065 (2011)).

Andy Kaufman, President of the Working Group on Legal Opinions (“WGLO”), reported on the October 28-29, 2019 meeting of the WGLO. WGLO had a full complement of panels and break-out sessions, including a lively session on the coverage of risk allocation provisions in enforceability opinions. Andy also reported that the 2019 Fuld Award was made to Gail Merel. WGLO’s Spring Seminar will be held in New York on May 4-5, 2020.

**GemCap Presentation.** The Fall 2019 issue of In Our Opinion includes an article by Arthur Field, “Lessons from the GemCap Lending Litigation.” A program discussing the decision was to be presented by Arthur, Rick Frasch, Jeff Smith, and Sylvia Chin at the Spring 2020 Meeting of the Business Law Section in Boston (now canceled). Arthur Field discussed the decision and its lessons for opinion practice. (Arthur served as an expert witness for the defendant law firm in the case.)

**Recent Case Law Developments**

*Kotler v. Shipman Associates, LLC*, 2019 WL 3945950 (Del. Ch. Aug. 21, 2019). Stan Keller reported that this decision illustrates a basic requirement of contract law, namely, that the parties have a “meeting of the minds” to form a contract. This requirement is all the more important in an age of cyber closings and email. In this decision, the court concluded a purported warrant agreement between Ms. Kotler and Shipman Associates was not a binding contract, even though the parties had engaged in extensive negotiations, exchanged numerous drafts of the warrant agreement and signed signature pages that were attached to versions of the agreement, for the simple reason that the parties never had a meeting of the minds on a key term — a non-competition covenant.

*Manti Holdings, LLC v. Authentix Acquisition Company, Inc.*, 2019 WL 3814453 (Del. Ch. Aug. 14, 2019). In an earlier decision in this case (2018 WL 4698255 (Oct. 1, 2018), Vice Chancellor Glasscock upheld the validity of a contractual waiver of appraisal rights in a stockholders agreement, finding that the waiver applied to the merger before the court. Stan Keller reported that, on re-argument, the Vice Chancellor confirmed his decision, addressing directly the petitioner’s contention that an advance waiver of appraisal rights was invalid under DGCL § 262. The Vice Chancellor rejected the claim, at least in the context of a stockholders agreement negotiated by sophisticated parties represented by counsel: “... I find that waiver of appraisal rights is permitted under Delaware law, as long as the relevant contractual provisions are clear and unambiguous.” 2019 WL 3814453 at *4.

*In re Altor BioScience Corp.* (Del. Ch.) (No. 2017-0466-JRS). This case involves a challenge by stockholders and former directors of Altor BioScience Corp. to a merger of privately-held Altor with an affiliate of the controlling stockholder of Altor. In a decision announced from the bench by Vice Chancellor Slichts on May 15, 2019, the Vice Chancellor granted, in part, defendants’ motion for summary judgment on the ground that the plaintiffs had agreed to a
settlement of prior claims brought by the plaintiffs not to sue Altor or its affiliates for a period of five years, and the challenge to the merger occurred within the covenant not to sue period. The Vice Chancellor concluded that the covenant not to sue applied to plaintiffs’ fiduciary duty claims against the directors and controlling stockholder of Altor with respect to the merger because the covenant not to sue was clear and unambiguous, and, since the covenant did not apply to the other stockholders of Altor unaffiliated with the plaintiffs, those stockholders were in a position to bring breach of fiduciary claims against the directors and the controlling stockholder.

The Vice Chancellor did, however, conclude that the covenant not to sue did not apply to plaintiffs’ appraisal claims since the settlement agreement did not include an express waiver of their statutory appraisal rights. The Vice Chancellor concluded that a waiver of a statutory right was invalid unless the waiver was clearly and affirmatively expressed in the agreement.

Because the Vice Chancellor’s decision was a bench ruling and has not been published, its precedential effect is limited. Summaries of the decision appear in law firm memos.¹

**Handoush v. Lease Finance Group, LLC**, 254 Cal. Rptr. 3d 461 (1st Dist. 2019). Steve Weise reviewed the California Court of Appeal’s October 31, 2019 decision in *Handoush*, voiding a choice-of-forum provision in a lease agreement for credit card processing equipment between plaintiff, a cigar store owner, and Lease Finance Group, LLC. The complaint included claims for fraud, rescission, injunctive relief, and violation of California’s unfair competition statute (Business and Professions Code § 17200). The lease agreement included a New York choice of law provision and a pre-dispute waiver of the right to a jury trial. The Court of Appeal concluded, in light of California’s fundamental policy protecting jury trial rights (*Grafion Partners v. Superior Court*, 32 Cal. Rptr. 3d 5 (Cal. 2005)), that the choice of forum provision was unenforceable in California. The Court of Appeal’s reasoning is captured in the following quotation:

“Here, enforcing the forum selection clause in favor of New York will put the issue of enforceability of the jury trial waiver contained in the same agreement [selecting New York as the chosen law and the New York courts as the exclusive forum for resolving disputes] before a New York court. Because New York permits predispute jury trial waivers, and California law does not, enforcing the forum selection clause has the potential to operate as a waiver of a right the Legislature and our high court have declared unwaivable.”

254 Cal. Rptr. 3d at 468 (footnote omitted).²

Steve also briefly summarized another 2019 California decision, this from the Ninth Circuit, illustrating why opinion givers often exclude forum selection clauses from the scope of their enforceability opinions. In *Gemini Technologies, Inc. v. Smith & Wesson Corp.*, 931 F.3d 911, the Ninth Circuit concluded that a Delaware forum selection clause in an asset purchase agreement between plaintiff and Smith & Wesson was unenforceable in an action brought by plaintiff against Smith & Wesson in the Idaho U.S. District Court (in a diversity

² The California Supreme Court has granted a petition for review of the Court of Appeal’s decision in *Handoush*. 2020 WL 722746 (Feb. 11, 2020). With the grant of review by the Supreme Court, the Court of Appeal’s decision in *Handoush* while review by the Supreme Court is pending has no binding or precedential effect, and “may be cited for potentially persuasive value only.” CA R. Ct. 8.1115(e)(1).

action alleging breach of contract) because of Idaho’s strong public policy recognizing the right of Idaho residents to enforce their contractual rights in Idaho tribunals (Idaho Code § 29-110(1)). The Ninth Circuit applied the Bremen analysis (931 F.3d at 915-917) in concluding that the forum selection clause was unenforceable.\(^3\)

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**Audit Responses Committee**

The Committee met on Friday, November 22, 2019. The principal discussion points are summarized below.

**Update on Article for Business Lawyer 75th Anniversary Issues, “Developments in Guidance on Audit Responses.”** Alan Wilson updated the Committee on the status of a draft article chronicling pivotal developments in audit response letters. He noted that the draft was well-advanced and would be circulated among a smaller working group for review and comment so as to submit the article for publication in the Summer 2020 publication of The Business Lawyer. As a post-meeting update, the article was submitted to The Business Lawyer in January 2020 and is under peer review for publication.

**Discussion of Proposed “Statement on Timing Issues Under Audit Responses.”** Noël Para discussed a draft outline, which was circulated to the Committee prior to the meeting, for a proposed Committee publication that will address difficult timing issues to be considered in preparing audit response letters. The Committee discussed the proposed topics and suggested some minor modifications to the topic headings to expand the scope of the proposed statement. Given differences in practice, including those discussed during the Committee’s September 2019 meeting, the proposed statement is intended to be drafted in a manner that avoids prescriptive recommendations. Members of the Committee generally supported the goal of advancing a draft of the proposed statement that would offer descriptive guidance on generally acceptable methods of preparing audit response letters in certain situations. An initial draft will be developed among a smaller working group before being shared with the broader Committee.

**Discussion of Update Requests by Successor Law Firms.** Randy McClanahan led a discussion about common approaches firms take when asked to provide an audit response letter update where the attorney representing the client provided an initial audit response letter at a prior law firm. Mr. McClanahan polled the Committee to see whether members would, if in that position with a successor firm: (a) provide a new audit response letter; or (b) issue an update letter assuming the successor firm has a copy of the initial audit response letter by the predecessor firm. Members generally agreed that any response by the successor law firm should be drafted to avoid adopting the predecessor law firm’s audit response letter. As to the matters covered by the update letter, members tended to split over whether the update letter should address all updates to matters handled by the attorney who joined the successor firm or whether the update should be limited to matters over which the successor firm has devoted substantive attention since the new attorney joined. Facts and circumstances related to the scope of representation would be important in this context, including the availability of information in the public record that would inform the scope of information a successor law firm may be comfortable disclosing in an update letter. Committee members also noted that another important factor is whether lawyers are responding as to all matters handled during the period under audit or whether the response relates only to matters outstanding as of the relevant balance sheet date, and which approach was taken in the predecessor law firm’s audit response letter.

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Update on Dealing with Government Investigations. Stan Keller provided an update to the Committee on the recent enforcement action, SEC Accounting and Auditing Release 4096, Securities and Exchange Commission v. Mylan N.V., No. 19-civ-2904 (D.D.C. filed September 27, 2019), and its impact on preparing audit response letters. Referencing a recent article on the matter that was authored by Thomas White, Mr. Keller summarized the facts of the case, in which Mylan, without admitting or denying the facts of the case, agreed to pay $30 million to settle SEC charges that Mylan failed to follow Accounting Standards Codification (“ASC”) 450-20 in connection with a Department of Justice investigation of possible violations of the False Claims Act that ultimately resulted in a $465 million settlement. Mr. Keller compared the Mylan settlement to SEC v. RPM International Inc., 282 F. Supp. 3d 1 (D.D.C. 2017), noting that the SEC’s arguments in the Mylan matter were generally consistent with those in RPM, though noting that RPM involved a decision at the motion to dismiss stage and that the ultimate outcome of the RPM case remains to be resolved.

Mr. Keller highlighted how RPM and Mylan can complicate the disclosure analysis surrounding unasserted claims where a potential claimant has manifested an awareness of a potential claim. He noted that while neither case directly impacts how lawyers prepare audit response letters, they do impact lawyers’ professional obligations to their clients and how lawyers advise on clients’ disclosure obligations under ASC 450-20. Mr. Keller underscored the importance of continually revisiting judgments as to pending government investigations and the premium placed on forward thinking in light of case law developments involving ASC 450-20.

Report on Recent Committee Listserve Activity. Mr. Keller briefly commented on a recent listserve discussion, which involved a request for guidance on whether to correct certain language in an audit inquiry letter that modified standard language under the Statement of Policy Regarding Lawyers’ Responses to Auditors’ Requests for Information. A summary of recent relevant activity on the Committee’s listserv is included in this issue of the Newsletter.

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**SUMMARY OF RECENT LISTSERVE ACTIVITY OCTOBER 2019 – NOVEMBER 2019 (AUDIT RESPONSES COMMITTEE)**

[Editor’s Note: This summary of listserv activity during the period of October 2019 – November 2019 among members of the Audit Responses Committee does not necessarily represent the views of the Committee or authoritative pronouncements regarding audit response practice, but rather reflects views of individual members of the Committee on current practice topics. The ABA has reorganized its website. Listserv dialogues that formerly appeared under the “listserv” item on the Audit Responses Committee’s web page now appear under “Audit Responses Connect” on the reorganized web page of the Committee.]

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Unasserted Possible Claim Assurance Language. A Committee member asked how other members handled audit inquiry letters that modified language from Paragraph 6 of the Statement of Policy Regarding Lawyers’ Responses to Auditors’ Requests for Information (the “ABA Statement of Policy”) and the illustrative form of audit inquiry letter, regarding a lawyer’s professional responsibility to advise a client with regard to unasserted possible claims or assessments. The request specifically involved an audit inquiry letter that used “should” in place of “must” in the following statement:

We understand that whenever, in the course of performing legal services for us with respect to a matter recognized to involve an unasserted possible claim or assessment which may call for financial statement disclosure, if you have formed a professional conclusion that we must disclose or consider disclosure concerning such possible claim or assessment, as a matter of professional responsibility to us, you will so advise us and will consult with us concerning the question of such disclosure and the applicable requirements of [Accounting Standards Codification 450-20].

While noting that he had not seen this issue presented directly, one member noted that his firm consistently uses the “must” formulation, in accordance with the ABA Statement of Policy, and that the difference, if any, between “must” and “should” is not material, and it did not seem necessary to expressly disclaim use of “should” in this context.

EEOC and Other Dismissals with Notice of Rights to Sue. A Committee member asked how other members describe in audit response letters Equal Employment Opportunity Commission and similar agency charges that have been dismissed with a notice of a right to sue. Specifically, the member asked whether the summary of such matters should make any reference to a 90-day right-to-sue period or other limitations on the right of the charging party to pursue the claim in court, notwithstanding the closure of the administrative proceedings. The member asked whether describing the right to sue could emphasize such right in a way that would be misleading where, for instance, other claims encompassed by the charge may have statutes of limitations unaffected by the right-to-sue period.

Responding members indicated that their general practice is to disclose that the plaintiff has the ability to file suit and also disclose the date the applicable statute of limitations would run. One member suggested restating what the relevant tribunal said in its decision. Another member noted that if there is concern about how the response will be interpreted by auditors for financial statement purposes, a lawyer could also add a brief statement indicating that it is not possible to predict what the claimant might do, but as of the date of the response, the claimant has not taken further action (if true).

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[Editor’s Note: Dialogues on the Committee’s Listserve are not intended to be authoritative pronouncements of customary opinion practice, but represent the views of individual lawyers (and not their respective law firms) on opinion topics of current interest. Members of the Committee may review the comments referred to below by visiting the Committee’s website and going to “Legal Opinions Connect – ABA Connect” to view Latest Discussion Posts and archived posts (under “More”).]

Massachusetts Usury Opinions

By his inquiry to the Listserve of January 22, 2020, Robert J. Gordon of Jaffe Raitt Heuer & Weiss, Southfield, Michigan, asked if the following is a customary form of usury opinion given by Massachusetts opinion givers: “Provided Lender files a notice with the Attorney General of the Commonwealth of Massachusetts prior to the loan [being] made, and maintains the same, all in accordance with Massachusetts General Laws Chapter 271, Section 49(d), the Loan Documents are not subject to the usury laws of the Commonwealth of Massachusetts.”

When Robert (representing the opinion recipient) asked the opinion giver whether it could opin that Massachusetts’ usury laws would not be violated if the interest and fees payable under the Loan Documents did not exceed 20% per annum, the opinion giver declined. Ettore A. Santucci, of Goodwin’s Boston office, confirmed that the form of opinion quoted by Robert was customary in Massachusetts, and John L. Whitlock of Locke Lord LLP, Boston, explained Massachusetts usury opinion practice in detail. Massachusetts’ criminal usury statute, found in the Massachusetts General Laws cited by Robert, sets an annual limit of 20% of permissible fees and charges on a loan subject to the statute. Section 49(e) contains an exemption for “any lender subject to control, regulation or examination by any state or federal regulatory agency.” As explained by John, state chartered banks and credit unions, as well as federally chartered banks, are exempt from the usury statute. For lenders that are not subject to the control, regulation or examination by any state or federal regulatory agency, John explained that it is standard practice to file a notice with the Attorney General, and that the notice should be filed before the loan is made. The notice is effective for two years, and so it must be renewed if the lender will make additional loans. John explained that, because the definition of interest is so broad under the statute it is “less common” for Massachusetts opinion givers to include a usury opinion to the effect that the interest and fees chargeable under a loan will not violate the statute. One of the primary difficulties in determining the amount of interest and fees to be taken into account in determining the usury limitation is whether a particular charge should be included in the calculation and how one-time charges are to be amortized over the term of the loan.

John further explained that it is common practice in Massachusetts where usury is not excluded altogether from the scope of an enforceability opinion for the opinion giver to assume that any lender that is not subject to the control, regulation or examination of any state or federal regulatory agency has filed the required notice with the Massachusetts Attorney General.

James A. Smith of Foley Hoag LLP, Boston, concurred with John that the definition of expenses and interest under the Massachusetts statute is so broad that the general practice is to make a filing where the lender is not a regulated financial institution, pointing out that it is not just federal and Massachusetts regulated financial institutions that are exempt, but institutions subject to any state or federal regulatory agency.
Permitting Disclosure of Opinion Letters to Non-Reliance Persons

Jacqueline A. Brooks, by her inquiry of February 5, 2020, inquired of the Listserv whether others had experienced a request by an opinion recipient to allow the disclosure, but not the reliance, of an opinion letter to third parties in relation to legal proceedings brought in connection with the opinion letter. Jacqueline was familiar with requests to allow a recipient to share the opinion letter with its counsel, auditors, and regulatory agencies, but she had not previously seen a recipient’s request for the additional language relating to legal proceedings.

Robert A. Grauman of Baker McKenzie, New York, New York, responded that he believed the request somewhat broader than is customary, but noted that if there is litigation by a regulatory agency with subpoena power, then the lender would likely be compelled to produce the opinion letter, and the same would generally be true in private litigation.

Jack Burton of Rodey Dickason, Sloan, Akin & Robb, P.A. Santa Fe, New Mexico, stated that his firm usually permits disclosure, but not reliance (i) in response to an order or other legal process of any court or other governmental agency, and (ii) in connection with the defense of any proceeding to which the addressee of the opinion letter is a party and in which the opinion letter is relevant and necessary to its defense.

Ettore A. Santucci noted that the list of persons who are allowed to expressly receive copies of an opinion letter on a non-reliance basis is ever growing. While opinion givers find it difficult to push back on these requests, Ettore asked whether the practice has gone too far. Why would not opinion givers be better off just stating that only the addressee(s) of the opinion letter can rely on it and say nothing about who can review a copy of the opinion letter? Realistically, noted Ettore, a recipient will show the opinion letter to anyone it wishes to, and that an opinion giver’s sanctioning of the sharing of the opinion letter even on a non-reliance basis may undermine the opinion giver’s stated reliance limitations.

Norman R. Newman, Taft Stettinius & Hollister LLP, Indianapolis, agreed with Ettore, observing that the issue is not who can see the opinion, but who can rely on it. Alan S. Dubin, Arent Fox LLP, Washington, D.C., concurred, noting that he is taking the position advocated by Ettore that favors carefully restricting explicitly those persons who can rely on the opinion letter but removing any restriction on the sharing of the opinion letter with other persons. He also noted that in transactions in which the loan will be securitized he adds a sentence to the opinion letter to the effect that it can be “made available to or by any rating agency as required by Rule 17g-5 under the Securities Exchange Act [of 1934].”

As always, members are encouraged to raise legal opinion issues on the Listserv and to participate in the exchanges. Members also are encouraged to bring new developments (such as recent case law or newly identified issues) to the attention of Committee members through the Listserv. Members are also encouraged to stay current on legal opinion developments by following the Committee on Twitter, @ABALegalOpinion.

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LEGAL OPINION REPORTS

(See Chart of Published and Pending Reports on following page.)
Chart of Published and Pending Reports

[Editors’ Note: The chart of published and pending legal opinion reports below has been prepared by John Power, O’Melveny & Myers LLP, Los Angeles, and is current through February 29, 2020.]

### A. Published Reports Available From Legal Opinions Resource Center

| ABA Business Law Section | 2009 | Effect of FIN 48 – Audit Responses Committee
| ABA Business Law Section | 2010 | Negative Assurance – Securities Law Opinions Subcommittee
| ABA Business Law Section | 2011 | Sample Stock Purchase Agreement Opinion – Mergers and Acquisitions Committee
| ABA Business Law Section | 2012 | Diligence Memoranda – Task Force on Diligence Memoranda
| ABA Business Law Section | 2013 | Survey of Office Practices – Legal Opinions Committee
| ABA Business Law Section | 2014 | Legal Opinions in SEC Filings (Update) – Securities Law Opinions Subcommittee
| ABA Business Law Section | 2015 | Revised Handbook – Audit Responses Committee
| ABA Business Law Section | 2016 | Updates to Audit Response Letters – Audit Responses Committee
| ABA Business Law Section | 2017 | No Registration Opinions (Update) – Securities Law Opinions Subcommittee

| ABA Business Law Section | 2013 | Cross-Border Closing Opinions of U.S. Counsel
| ABA Business Law Section | 2014 | Report on the Use of confirmation.com – Audit Responses Committee
| ABA Business Law Section | 2016 | Opinions on Debt Tender Offers – Securities Law Opinions Subcommittee

| ABA Real Property Section (and others) | 2012 | Real Estate Finance Opinion Report of 2012
| ABA Real Property Section (and others) | 2016 | Local Counsel Opinion Letters in Real Estate Financing Transactions

| Arizona | 2004 | Comprehensive Report

| California | 2007 | Remedies Opinion Report
| California | 2009 | Comprehensive Report
| California | 2014 | Venture Capital Opinions
| California | 2014 | Revised Sample Opinion
| California | 2014 | Sample Venture Capital Financing Opinion
| California | 2016 | Third-Party Closing Opinions: Limited Liability Companies and Partnerships

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8 These reports are available (or soon will be available) in the Legal Opinion Resource Center on the web site of the ABA Legal Opinions Committee, [https://www.americanbar.org/groups/business_law/migrated/tribar/](https://www.americanbar.org/groups/business_law/migrated/tribar/). Reports marked with an asterisk have been added to this Chart since the publication of the Chart in the last quarterly issue of this Newsletter.

9 These Reports are the product of the Committee on Legal Opinions in Real Estate Transactions of the Section of Real Property, Trust and Estate Law, Attorneys’ Opinions Committee of the American College of Real Estate Lawyers, and the Opinions Committee of the American College of Mortgage Attorneys (collectively, the “Real Estate Opinions Committees”).
Published Reports Available From Legal Opinions Resource Center (continued)

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^10 A joint project of the ABA Legal Opinions Committee and the Working Group on Legal Opinions, each of which has approved the documents, along with many other bar and lawyer groups. For a list of the approving groups, see [https://www.americanbar.org/content/dam/aba/administrative/business_law/buslaw/tribar/materials/schedule_of_approving_organizations.pdf](https://www.americanbar.org/content/dam/aba/administrative/business_law/buslaw/tribar/materials/schedule_of_approving_organizations.pdf)
Published Reports Available From Legal Opinions Resource Center (continued)

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<td>2006</td>
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B. Pending Reports

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<td>(and others)</td>
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<td>Sample Personal Property Security Interest Opinion</td>
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<td>Exceptions and Other Qualifications to the Remedies Opinion</td>
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<td>Opinions on LLCs (Update)</td>
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11 See note 9.
MEMBERSHIP

If you are not a member of our Committee and would like to join, or you know someone who would like to join the Committee and receive our newsletter, please direct him or her here.¹² If you have not visited the website lately, we recommend you do so. Our mission statement, prior newsletters, and opinion resource materials are posted there. For answers to any questions about membership, you should contact our Committee Chair Rick Frasch at rnfrasch@gmail.com.

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¹² The URL is https://www.americanbar.org/groups/business_law/committees/opinions/.

NEXT NEWSLETTER

We expect the next newsletter to be circulated before the next meeting of the Committee. Please forward cases, news and items of interest to Rick Frasch (rnfrasch@gmail.com) or Jim Fotenos (jfotenos@greeneradovsky.com).