The blue sky community mourns the death of Royce O. Griffin Jr., 58, after a brief illness. Griffin was a partner in the Griffin & Block Law Firm, and at various times in his career, general counsel to NASAA, Chief Deputy Attorney General, Deputy Attorney General and Assistant Securities Commissioner of Arkansas, Securities Commissioner of Colorado, senior counsel to the Telecommunications and Finance Subcommittee in the U.S. House of Representatives, Special Counsel to the New Mexico Securities Division, an associate with the Owens, McHaney and McHaney Law Firm and senior law clerk in the U.S. District Court in Little Rock. He was an avid fisherman, enjoyed sailing, and was a legendary chef serving Chinese feasts to President Bill Clinton, Attorney General Jim Guy Tucker and others. Our sincere condolences to his wife, Brenda Lilly. He will be missed.

It is with sadness that we also report the death of Chuck Potuznik on March 22, 2005 after a year-long struggle with lung cancer. Chuck practiced blue sky law with Dorsey & Whitney LLP in Minnesota and was a valued colleague and friend to many in the blue sky community.

On a much happier note-- Wedding bells! Congratulations to Christine A. Bergin (nee Will), Counsel to LeBoeuf, Lamb, Greene & MacRae, L.L.P., on her marriage to Dan Bergin. Her colleagues wish them much joy and happiness and enjoyed meeting Dan at the NASAA/ABA meeting in Arizona.

Congratulations to our new Blue Sky Bugle editor, Martin A. Hewitt who relocated
his securities law practice as of January 4, 2005 to Cadwalader, Wickersham & Taft LLP in New York City. Martin, who was previously with Tannenbaum Halpern Syracuse & Hirschtritt, LLP, will now be working with Alan M. Parness.

Franklin L. Widmann, Chief of the New Jersey Bureau of Securities, took office as NASAA’s new President, stepping into the shoes vacated by Ralph A. Lambiase, Connecticut Director of Securities. Newly appointed to NASAA’s Board of Trustees are new NASAA President-elect Patricia D. Struck, Administrator of the Wisconsin Division of Securities, Fred J. Joseph, Colorado Securities Commissioner, James B. Ropp, Delaware Securities Commissioner, Karen Tyler, North Dakota Commissioner of Securities, and Ryan Ushijima, Hawaii Commissioner of Securities; Donald G. Murray, Chairman of the Manitoba Securities Commission, remains on the Board.

Wayne Howell, who served as Chief of Staff to US Senator Max Cleland, serves as Interim Director of the Georgia Division of Securities & Business Regulation. Ashley Hodges has been named Deputy Director and Tonya Cureton Curry Chief Enforcement Attorney.

Rex A. Staples joined NASAA on September 7, 2004 as its General Counsel, reporting to NASAA Executive Director John H. Hanley. Staples was most recently with the Washington State Securities Division, and before that was a registered representative with several firms. He played a key role in last year’s analyst global settlement and was the attorney-in-charge for the U.S. Bancorp Piper Jaffray analyst investigation. Stephen W. Hall was promoted on September 7 to become Deputy General Counsel of NASAA; he has been with NASAA since 2001 following nearly two decades as an attorney in Washington, D.C., with litigation firms and a private corporation.

Commissioner John P. Crowley of the Vermont Department of Banking, Insurance, Securities & Health Care Administration has appointed Tanya A. Durkee Deputy Commissioner of Securities. Former Deputy Phillips Keller, III, accepted a new position with the Department. Ms. Durkee was a partner in a Portland, Oregon, law firm where her practice focused on complex disputes in commercial litigation, including securities cases.

As previously reported, G. Philip Rutledge retired as Chief Counsel to the Pennsylvania Securities Commission. Phil has become a shareholder of Shumaker Williams, P.C. in Harrisburg, PA. Michael J. Byrne has stepped in as Chief Counsel and his deputy is Mary E. Peters.

Lynn D. Naefach, who has served with the Arizona Securities Division and the Pennsylvania Securities Commission, is now Senior Analyst-Compliance for Wachovia Securities located in Virginia.

Anne G. (Polly) Plimpton is moving her securities law practice to McDermott Will & Emery LLP in Boston effective February 1, 2005. She was previously with Testa, Hurwitz & Thibeault, LLP.

Doug White, a former Ohio Senate President, was recently appointed Director of the Ohio Department of Commerce. Deborah Dye Joyce, previously Ohio Securities Commissioner, was appointed Assistant Director of the Department of Commerce. Dale A. Jewell was named to replace her as the new Ohio Securities Commissioner. Dale has managed the Ohio Division of Securities Licensing and Examination Section since 1978.

On March 8, Washington Governor Christine Gregoire announced the appointment of Scott Jarvis as director of the State of Washington Department of Financial Institutions. Jarvis has served as deputy
commissioner in the Office of the Insurance Commissioner and legal counsel in the Office of the State Treasurer.

Bob Terry has joined SunTrust Securities in Atlanta Georgia as Broker-Dealer Compliance Director.

Linda Cena formerly with Jackson National Life Insurance Company has become the new Director of Securities for the Michigan Office of Financial & Insurance Services.

And would you believe! Dan Waller of Secore and Waller must have been feeling pretty lucky when he went partying. Seems he won the grand prize at the Texas State Society Black Tie and Boots Ball on January 19th at the Inauguration. General Tommy Franks picked his name out of the hat and he won a $45,000 one-of-a-kind Toyota Tundra. The one-of-a-kind salsa red pearl colored Tundra Double Cab features sandstone brown Lucchese leather with ostrich leather accents, custom embossed seats with a "W" emblem in honor of the President, as well as Lucchese embossed headrests and special Texas edition exterior badging. Unique 20-inch chrome wheels are also included, plus brushed stainless steel running boards, custom floor mats and a stainless steel exhaust tip. Dan said to this reporter: Do I rock or what????

FRANKLIN L. WIDMANN
CHIEF, NEW JERSEY BUREAU OF SECURITIES & PRESIDENT
NORTH AMERICAN SECURITIES ADMINISTRATORS ASSOCIATION, INC.

I want to thank Martin Miller and Martin Hewitt for this opportunity to communicate with the members of the American Bar Association State Regulation of Securities Committee. NASAA has a long standing relationship with the ABA Committee and many of you, individually. Over the years, I have appreciated the wise counsel from you and the friendships that have developed. I want to take this opportunity to brief you on some matters of interest to NASAA and the states.

In connection with our primary mission to protect investors is the need to restore true confidence in our financial markets. As I stated in my NASAA presidential address last year, our economy and markets have been tested in recent years both by a series of scandals in the accounting, brokerage, and mutual fund industries, and by acts of terrorism at home and abroad. Investors remain concerned about what they can do to protect the investments they have made to secure their financial futures.

While my comments below are cast in terms of the “securities industry”, the securities bar has a unique and critical role to play. Many of these firms are your clients. Whether you represent the industry in the context of doing the due diligence related to bringing public and private offerings to market and making the requisite disclosures, advising clients in connection with broker-dealer and investment adviser examinations, or representing clients in investigations and litigation proceedings, you represent an important independent voice in ensuring that your clients are guided by what they can and cannot do under the regulatory regime in place, opposed to simply what they want to do. As officers of the court, you retain a significant role in bolstering the integrity of the capital raising process and the regulatory environment.

With that said, I believe that of all the tasks that demand our attention, one calls on regulators and industry alike. I believe this is critical to our continued success and prosperity in North America. Regulators and industry must focus our priorities to help investors regain confidence in our financial markets. Together, with the assistance of the
bar, we must honor our responsibilities to ensure that all investors are treated fairly. After all, as citizens, we are all in this together, and regulators and the industry each have to live up to their own responsibilities.

Both industry and regulators must strive to make sure that investors receive a fair shake. They must ensure that the marketplace is stable, which combined with a positive economic climate, encourages investors to invest not only for short-term gains, but to keep their money in the market over the long haul. The securities industry should focus on the long-term success of our national economies and the financial health of future generations, not just short-term corporate or individual bottom lines. Our financial markets must be fair and open, and those who sell for the firms must have a higher ethical responsibility than their own well being or that of their firm, so that all investors have confidence not only in the markets but also in the systems in place to protect their interests.

The securities industry must continue to work with us to restore the integrity of our financial markets. Specifically, the industry should take every possible step to strengthen its supervision, not by simply complying with the rules, but by actually making sure that their employees comply with the law and put their customers’ interests ahead of their own. The bar plays a critical role in advising clients about supervision, both in terms of ensuring compliance and structuring remedial measures for past lapses.

I also urge the industry to continue strengthening its compliance and supervision efforts, not only at the major Wall Street firms, but especially at remote branch offices and smaller firms. For the past several years, NASAA has been a driving force behind Form BR, the branch office registration proposal. Once operational, the locations of branch offices and the agents working from each of location will be available on the WebCRD system, allowing firms and regulators to more effectively track the whereabouts of the agents.

The mission of state and provincial securities regulators is to protect investors, and we will do our part to fulfill our responsibilities to do all that we can do as regulators to ensure that financial markets provide for economic growth and offer a level playing field for all investors. Specifically, we will continue to monitor the firms and agents, through our registration procedures. We will continue to conduct examinations of firms and review securities offerings to ensure compliance with state and provincial securities laws and regulations. We will continue to bring enforcement actions against those who would let their own self-interest take precedence over the public interest. We will continue to train our people so they remain highly skilled and competent when dealing with securities compliance and regulatory issues with the bar and industry.

In October, 2004, I outlined NASAA’s three key priorities for 2004-5: training, investor education, and enforcement. NASAA is committed to providing a multitude of training programs for our membership. Providing knowledge and training is our responsibility and NASAA continues to enhance its training programs as a core goal of the association. This year, NASAA is sponsoring 12 training seminars. In addition to annual training programs in the areas of broker-dealer regulation, investment adviser regulation, investor education, and corporation finance, NASAA holds an annual enforcement conference. These conferences and training seminars bring state and provincial regulators together to enhance their skills and knowledge. In 2004, we held the first-ever training session with the National Association of Insurance Commissioners to share information about laws and enforcement practices that can be put to practical use in combating securities fraud by insurance agents. In 2005, NASAA recently completed
a training program for senior attorneys through the National Institute of Trial Advocacy (NITA).

In the area of investor education, NASAA has been a leader and will continue to help support the ongoing financial education efforts of state and provincial securities regulators. I will work to make certain that investor education remains a top priority of both NASAA and its members. For example, under the guidance of the Section’s Senior Outreach Project Group, we initiated a major education campaign aimed at senior investors. The Section also helped produce guides to help investors better understand Section 529 college savings plans and brokerage account statements. NASAA members are also working to deliver financial education to members of the military. NASAA continues to develop the successful series of “NASAA Listens” Forums, which help to educate investors, industry and others.

In the area of enforcement, the states and provinces have a primary role to play. In the United States, as a matter of sovereignty, the states have a separate and distinct role to play in protecting investors, a role that Congress recognizes is different from that played by the SEC and membership organizations such as the NASD and New York Stock Exchange. The responsibility of protecting investors is too large to be handled by a single federal agency, and industry self-regulatory organizations. Investors need the protection of state securities regulators. As more investors turn to the market for their financial security, this responsibility is only going to grow.

Matters of sovereignty aside, with 100 million investors, the regulators cannot do it all, nor should we. Industry and regulators share a responsibility to protect investors. The securities industry is among the most sophisticated in the world and must not lose sight of the ultimate beneficiary – the capital markets and the investors that rely on them.

On the Corporation Finance front, NASAA is working with the SEC Division of Corporation Finance on a number of initiatives.

MARCH 28, 2005

WORD FROM THE CHAIR

By Martin R. Miller
Willkie Farr & Gallagher LLP (New York)

During the past three years I have been honored to serve as Chair of the Committee on State Regulation of Securities. I have practiced in the blue sky area for over twenty years and am happy to have known many Committee members for almost as long. This summer my three year term is up and at the Annual Meeting of the ABA in Chicago I will turn over the Chair to the very capable Ms. Ellen Lieberman.

The enactment of the National Securities Markets Improvement Act of 1996 has accelerated the trend for many of us to take on other matters in addition to blue sky work. However, I have always felt because we have a grounding in the state securities law we bring to the table a sophistication in meeting the needs of clients that someone who knows only the federal law would lack.

A recent example of this in my practice was in the area of investment adviser regulation. Specifically, the adoption on October 26, 2004 by the Securities and Exchange Commission (the “Commission”) of New Rule 203(b)(3)-2 (the “New Rule”) and amendments to existing rules, which will require investment advisers to certain private investment pools, such as hedge funds, to register with the Commission under the Investment Advisers Act of 1940 by February 1, 2006 raised concerns where knowledge of state Blue Sky law was important. The New Rule changes past practice and will require investment advisers to “look through” a “private fund” and count each owner of the private fund as a client for purposes of
determining whether they meet the 14-client exemption from the federal investment adviser registration requirements. As originally proposed, the New Rule and amendments would have had an apparently unintended effect on the availability of the preemption for employees of federally registered advisers from state registration as well as the provisions applicable to state registered advisers based in other states. This would have resulted in a number of employees of federally registered advisers to hedge funds having to register in various states, and take the Series 65 exam. For state registered advisers, the result would have been that many state registered advisers to hedge funds would become subject to registration in neighboring states where investors in their funds reside. This issue was raised by me and other practitioners with the Commission staff. The Commission, acknowledging the comments received concerning these unintended results, revised Rules 222-2 and 203A-3 to clarify that advisers and Supervised Persons of advisers should for the purposes of those rules count clients as provided in Rule 203(b)(3)-1 without applying the look-through provisions of New Rule 203(b)(3)-2 and the unintended consequences were avoided.

This result may not have happened if it weren’t for persons knowledgeable in the state as well as federal law in this area.

However, covering both state and federal securities law in even a narrow practice area can be a daunting task. Therefore, it becomes more important for us to look to the Committee and our colleagues to help us keep current with state securities law. The states continue to enact changes to their rules and regulations, and the recent flurry of federal and SRO regulation has also had its impact on blue sky practice as the recent investment adviser changes demonstrate. Therefore, I encourage everyone to make use of the Listserv, bl-

statergs@mail.abanet.org, and the Bugle, and submit articles, comments or questions. I encourage all of our Committee members to review the list of Subcommittees and contact Subcommittee chairs to sign up for membership in Subcommittees that are of interest. I also encourage all of the Committee members who are members of the various Federal Regulation of Securities Committees to remember to report any new developments effecting blue sky practice discussed in those meetings, as well as other groups or bar associations to our Committee.

CALIFORNIA SEEKS COMMENTS ON CORPORATE DISCLOSURE ACT

The California Department of Corporations announced on December 1, 2004, that it is requesting public comment for a study on the effectiveness of the California Corporate Disclosure Act aimed at providing investor protection. The Act, which was enacted in late 2002, requires that publicly traded companies annually disclose detailed information to the Secretary of State, although most of that information is currently available through the Securities and Exchange Commission's website.

In September 2004, Governor Arnold Schwarzenegger directed that the Department of Corporations, California's securities regulator, review the efficacy of the Act and make recommendations to eliminate duplicative reporting requirements and further align its provisions with federal reporting requirements.

The California Department of Corporations study seeks to review:

- The effectiveness of the Act in protecting California investors against securities and investment fraud and provide
enhanced transparency in the financial marketplace;

- The costs and other burdens imposed on publicly traded corporations by the Act; and

- The cost-effectiveness of alternative methods of disclosing the information required by the Act, including through filings required and disseminated by federal regulators.

Notably, the Act goes beyond federal disclosure requirements in several respects. California requires compensation information for the five highest compensated officers while the SEC requires such information for four such officers. California requires a more detailed description of material legal proceedings during the previous five years in which the corporation, in a final ruling, was found liable, while the SEC requires disclosure of material non-routine litigation incidental to the corporation’s business. California requires disclosure of director or executive officer fraud, or director, officer or company bankruptcy, during the previous ten years, while the SEC requires such information for the preceding five years.

The Department’s request for information can be found on its website at www.corp.ca.gov. Interested parties may submit written comments no later than January 14, 2005 by any of the following methods:

Write:
California Department of Corporations
Attn: Kathy Womack, Office of Law and Legislation
1515 - K Street, Suite 200
Sacramento, CA 95814

Fax: (916) 322-3205
E-mail: regulations@corp.ca.gov

DISTRICT OF COLUMBIA NOTICE FILING REQUIREMENTS HAVE NOT BEEN REPEALED - WEBSITE TO BE CORRECTED

For a period of time the website for the securities division of the District of Columbia carried the following statement indicating that Chapter 19 of the securities regulations had been repealed: “Chapters 18 and 19 are repealed and a new Chapter 18, Broker-Dealers, Agents, Investment Advisers, and Investment Adviser Representatives is added . . . .” Chapter 19 requires, among other things, notice filing when reliance is placed on certain exemptions from securities registration.

In response to an inquiry from Committee member Michele Kulerman, of the Washington, D.C. office of Hogan & Hartson, Lilah Blackstone, Securities Attorney with the District of Columbia Department of Insurance, Securities, & Banking, stated that the website representative had been remiss in updating and correcting the District’s website. Ms. Blackstone provided assurance that Chapter 19 had not been repealed, and that proper adjustments would be made to the website. She invited anyone who has questions or comments to present to the Department may call her directly at 202/442-4810.

EDITORIAL

By Martin A. Hewitt
Cadwalader, Wickersham & Taft LLP

I would like to take this opportunity to introduce myself to those of you who may not yet know me. I have been practicing law since graduating from Seton Hall University School of Law in 1999. Prior to that, I worked for various Wall Street firms starting in 1982 at Herzog, Heine, Geduld as an assistant trader, Sheriff Securities as an
arbitrageur and finally at Spear, Leeds & Kellogg where I worked in the compliance and legal departments during the day while attending law school at night. Being a confirmed contrarian, I first went to Wall Street and then into law. Many have told me that I have it backwards and yet, thus far, I have found my choice of direction to make more sense to me.

My goal as editor of the Bugle is to provide a forum for practitioners and regulators alike to discuss various matters of importance to our community at large. To that end, I ask all readers of this publication to contact me via email to let me know what topics you would like to see addressed in this space. Our readers are an eclectic lot with many unique experiences. As much communication as possible is essential to this publication. The articles here should not be the work of just a few individuals. To quote Tom Lehrer “What you get out of a sewer system is based entirely upon what you put into it.” Therefore, if I have one goal for this publication it is greater participation by a greater number of practitioners and regulators alike.
OFFICERS
ABA COMMITTEE ON STATE REGULATION OF SECURITIES

Chair: Martin R. Miller
Willkie, Farr & Gallagher, 787 Seventh Avenue, New York NY 10019-6099

Vice Chair: Ellen Lieberman
Debevoise & Plimpton, 919 Third Avenue, New York, NY 10022

Secretary Alan Parness
Cadwalader, Wickersham & Taft, 100 Maiden Lane, New York, NY 10038

Subcommittee Chairs:

Broker-Dealers and Investment Advisors
Robert A. Boresta
Goodwin Procter LLP, 599 Lexington Avenue New York, NY 10022

CLE & Publications
Bruce Elwood Johnson
Morrison & Foerster LLP, 425 Market Street, San Francisco, CA 94105

Direct Participation, Commodities & Other Hybrid Securities
Alan M. Parness
Cadwalader, Wickersham & Taft, 100 Maiden Lane, New York, NY 10038

eCommerce
James A. Klimek
Lewis & Kappes, P.C., 1700 One American Square, Box 82053, Indianapolis, IN 46282-0003

Employee Plans
Michele A. Kulerman
Hogan & Hartson L.L.P., 555 13th Street N.W., Washington, D.C., 20004

Enforcement
R. Michael Underwood
Steel Hector & Davis LLP, 215 S. Monroe St., Ste 601, Tallahassee, FL 32301-1804

Exempt Securities
Mark T. Lab
Simpson Thacher & Bartlett, 425 Lexington Avenue, New York, NY 10017

International Securities
Ellen M. Creede
Cleary, Gottlieb, Steen & Hamilton, One Liberty Plaza, New York, New York 10006

Investment Companies
Patricia (Patty) Louie
Equitable Life Assurance Society, 1290 Ave. of the Americas, 12th Floor, New York, NY 10104

Liaison with Securities Administrators and NASD
Donald A. Rett
1660 Metropolitan Circle, Tallahassee, FL 32308

Limited Offerings
Mike Liles, Jr.
Karr Tuttle & Campbell, 1201 Third Avenue, Suite 2900, Seattle, WA 98101

Uniform Securities Act of 2002
Philip Feigin
Rothgerber, Johnson & Lyons LLP, One Tabor Center, 1200 Seventeenth Street, Suite 3000
Denver, Colorado 80202-5855
STATE LIAISONS

ABA BUSINESS LAW SECTION
COMMITTEE ON STATE REGULATION OF SECURITIES

AL
Ms. Carolyn L. Duncan
Ritchie Duncan & Goodwin, LLC
312 North 23rd Street
Birmingham, Alabama  35203-3878
E-Mail – cduncan@rdg-law.com
(205) 251-1288 (Work)
(205) 324-7832 (Fax)

AK
Mr. Julius J. Brecht
Wohlfarth, Argetsinger, Johnson & Brecht, a Professional Corporation
900 West 5th Avenue, Suite 600
Anchorage, Alaska  99501-2048
Firm E-Mail – wajb@alaska.net
Direct E-Mail – jbrecht@gci.com
(907) 276-6401 (Work)
(907) 276-5093 (Fax)
or 276-5098

AZ
Mr. Dee Riddell Harris
Carmichael & Company LLC
2415 E. Camelback Rd., Suite 700
Phoenix, Arizona  85016
E-Mail – deeharris@carmichaelandco.com
(602) 508-6088 (Work)
(602) 508-6099 (Fax)
(602) 840-6824 (Home Fax)

AR
Mr. John S. Selig
Mitchell, Williams, Selig, Gates & Woodyard, P.L.L.C.
425 West Capitol Avenue, Suite 1800
Little Rock, Arkansas  72201-3525
E-Mail – jselig@mwsbgw.com
(501) 688-8804 (Work)
(501) 688-8807 (Fax)

CA
Mr. Bruce Elwood Johnson
Morrison & Foerster LLP
425 Market Street
San Francisco, CA  94105
E-Mail – bjohnson@mofo.com
(415) 268-6628 (Work)
(415) 268-7522 (Fax)

CO/MT/WY
Mr. Robert J. Ahrenholz
Kutak Rock LLP
1801 California Street, Suite 3100
Denver, Colorado  80202
E-Mail – robert.ahrenholz@kutakrock.com
(303) 297-2400 (Work)
(303) 292-7799 (Fax)
<table>
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<th>State</th>
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<tr>
<td>CT</td>
<td>Ms. Susan E. Bryant</td>
<td>Six Forest Park Drive (06032)</td>
<td>(860) 674-0111</td>
<td><a href="mailto:sebry@aol.com">sebry@aol.com</a></td>
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<td>P.O. Box 444</td>
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<td>Farmington, CT 06034-0444</td>
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<td>DE</td>
<td>Mr. Andrew M. Johnston</td>
<td>Morris, Nichols, Arsh &amp; Tunnell</td>
<td>(302) 658-9200</td>
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<td>1201 North Market Street</td>
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<tr>
<td>DC</td>
<td>Ms. Michele A. Kulerman</td>
<td>Hogan &amp; Hartson L.L.P.</td>
<td>(202) 637-5743</td>
<td><a href="mailto:makulerman@hhlaw.com">makulerman@hhlaw.com</a></td>
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<td>Columbia Square</td>
<td>(301) 279-6772</td>
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<td>Washington, D.C. 20004-1109</td>
<td>(302) 658-3989</td>
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<tr>
<td>FL</td>
<td>Mr. Donald A. Rett</td>
<td>Law Office of Donald Rett</td>
<td>(850) 298-4454</td>
<td><a href="mailto:drett52687@aol.com">drett52687@aol.com</a></td>
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<td>1660 Metropolitan Circle</td>
<td>(904) 894-0700</td>
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<td>E-Mail – <a href="mailto:drett52687@aol.com">drett52687@aol.com</a></td>
<td>(850) 298-4494</td>
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<tr>
<td>GA</td>
<td>Robert D. Terry</td>
<td>B/D Solutions</td>
<td>(404) 303-8840 x.204</td>
<td><a href="mailto:Rterry@bdsolutions.com">Rterry@bdsolutions.com</a></td>
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<td>Eleven Piedmont Center, Suite 125</td>
<td>(404) 250-9972</td>
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<td></td>
<td>Atlanta, Georgia 30305</td>
<td>(404) 250-9972</td>
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<td>HA</td>
<td>Mr. David J. Reber</td>
<td>Goodsmill Anderson Quinn &amp; Stifel</td>
<td>(808) 547-5611</td>
<td><a href="mailto:dreber@goodsill.com">dreber@goodsill.com</a></td>
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<td>1099 Alakea Street, Suite 1800</td>
<td>(808) 395-7994</td>
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<td>Honolulu, Hawaii 96813</td>
<td>(808) 547-5880</td>
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<td>E-Mail – <a href="mailto:dreber@goodsill.com">dreber@goodsill.com</a></td>
<td>(808) 395-7994</td>
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<tr>
<td>ID</td>
<td>Mr. Jeffrey W. Pusch</td>
<td>Marshall Batt &amp; Fisher, LLP</td>
<td>(208) 331-1000</td>
<td><a href="mailto:jwpusch@marshallbatt.com">jwpusch@marshallbatt.com</a></td>
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<td>Boise, Idaho 83701</td>
<td>(208) 331-2400</td>
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<td>IL</td>
<td>Ms. Misty S. Gruber</td>
<td>Sonnenschein Nath &amp; Rosenthal LLP</td>
<td>(312) 876-7920</td>
<td><a href="mailto:mgruber@sonnenschein.com">mgruber@sonnenschein.com</a></td>
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<td>8000 Sears Tower</td>
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</tbody>
</table>
IN  Mr. Stephen W. Sutherlin  (317) 639-5454  (Work)
Stewart & Irwin  (317) 733-8084  (Home)
251 East Ohio Street  (317) 632-1319  (Fax)
Suite 1100
Indianapolis, Indiana  46204
E-Mail – SSutherlin@Stewart-Irwin.com

IA  Mr. Matthew L. Fornshell  (216) 696-8700  (Work)
Kohrman Jackson & Krantz P.L.L.  (____) ____-____  (Home)
One Cleveland Center, 20th Floor  (216) 621-6536  (Fax)
1375 East Ninth Street
Cleveland, OH  44114-1793

KS/MO  Mr. William M. Schutte  (913) 234-7414  (Work)
Polsinelli/Shalton/Welte  (913) 451-6205  (Fax)
6201 College Blvd., Suite 500  (913) 345-0054  (Home)
Overland, KS  66211
E-Mail – wschutte@pslaw.com

KY  Mr. Manning G. Warren III  (502) 852-7383  (Work)
University of Louisville  (____) ____-____  (Home)
Louis D. Brandeis School of Law  (502) 852-0862  (Fax)
2301 South Third Street
Louisville, Kentucky  40292
E-Mail – mgw111@louisville.edu

LA  Mr. Carl C. Hanemann  (504) 582-8156  (Work)
Jones, Walker, Waechter, Poitevent, Carrere & Denegre, L.L.P.  (504) 861-3992  (Home)
Place St. Charles  (504) 582-8012  (Fax)
201 St. Charles Avenue, 51st Floor
New Orleans, Louisiana  70170-5100
E-Mail – chanemann@joneswalker.com

ME  Mr. Wayne E. Tumlin  (207) 774-1200  (Work)
Bernstein, Shur, Sawyer & Nelson, P.A.  (____) ____-____  (Home)
100 Middle Street - W. Tower  (207) 774-1127  (Fax)
P.O. Box 9729
Portland, ME  04104-5029
E-Mail – wtumlin@mainelaw.com
wtumlin@bernsteinshur.com

MD  Mr. Wm. David Chalk  (410) 580-4120  (Work)
Piper Marbury Rudnick & Wolfe LLP  (____) ____-____  (Home)
6225 Smith Avenue  (410) 580-3001  (Fax)
Baltimore, MD  21209-3600
E-Mail – david.chalk@piperrudnick.com
MA
Ms. Anne (Polly) G. Plimpton
Testa, Hurwitz & Thibeault, LLP
125 High Street
Boston, Massachusetts 02110
E-Mail – plimpton@tht.com
(617) 248-7514 (Work)
(617) 248-7100 (Fax)

MI
Mr. Shane B. Hansen
Warner Norcross & Judd LLP
111 Lyon Street, N.W.
Grand Rapids, Michigan 49503
E-mail -- shansen@wnj.com
(616) 752-2145 (Work)
(616) 752-2500 (Fax)

MN
(See Iowa)

MS
Mr. Daniel G. Hise
Butler, Snow, O’Mara, Stevens & Cannada, PLLC
P.O. Box 22567
Jackson, MS 39225-2567
E-Mail – dan.hise@butlersnow.com
(601) 985-5711 (Work)
(601) 985-4500 (Fax)

MO
(See Kansas)

MT
(See Colorado)

NE
Mr. David R. Tarvin, Jr.
Kutak Rock LLP
1650 Farnam Street
Omaha, Nebraska 68102-2186
E-Mail – david.tarvin@kutakrock.com
(402) 346-6000 (Work)
(402) 346-1148 (Fax)

NV
Mr. Ken Creighton
9295 Prototype Drive
Reno, NV 89511
E-Mail – ken.creighton@igt.com
(775) 448-0119 (Work)
(775) 448-0120 (Fax)

NH
Richard A. Samuels
McLane, Graf, Raulerson & Middleton P.A.
900 Elm Street
P.O. Box 326
Manchester, NH 03105-0326
E-Mail – rsamuels@mclane.com
(603) 628-1470 (Work)
(603) 625-5650 (Fax)

NJ
Mr. Peter D. Hutcheon
Norris, McLaughlin & Marcus, P.A.
721 Route 202-206
Somerville, New Jersey 08876-1018
E-Mail – pdhutcheon@nmmlaw.com
(908) 722-0700 (Work)
(908) 722-0755 (Fax)
<table>
<thead>
<tr>
<th>State</th>
<th>Name</th>
<th>Address</th>
<th>Phone Numbers</th>
</tr>
</thead>
<tbody>
<tr>
<td>NM</td>
<td>Mr. Robert G. Heyman</td>
<td>Sutin Thayer &amp; Browne, 100 North Guadalupe, Suite 202, Santa Fe, NM 87501</td>
<td>(Work) 986-5493, (Home) - , (Fax) 982-5297</td>
</tr>
<tr>
<td>NY</td>
<td>Mr. F. Lee Liebolt, Jr.</td>
<td>Sidley, Austin, Brown &amp; Wood LLP, 787 Seventh Avenue, New York, New York 10019</td>
<td>(Work) 839-5357, (Home) 369-8067, (Fax) 839-5599</td>
</tr>
<tr>
<td>NC</td>
<td>Ms. Heather K. Mallard</td>
<td>Womble Carlyle Sandridge &amp; Rice, PLLC, P.O. Box 831, Raleigh, North Carolina 27602</td>
<td>(Work) 755-2176, (Home) 639-0598, (Fax) 755-6077</td>
</tr>
<tr>
<td>ND</td>
<td>Mr. Craig A. Boeckel</td>
<td>Tschider &amp; Boeckel, Provident Life Building, 316 N. 5th Street, Bismarck, North Dakota 58502-0668</td>
<td>(Work) 258-2400, (Home) - , (Fax) 258-9269</td>
</tr>
<tr>
<td>OH</td>
<td>Mr. Richard S. Slavin</td>
<td>Cohen and Wolf, P.C., 1115 Broad Street, Bridgeport, CT 06604</td>
<td>(Work) 337-4103, (Home) - , (Fax) 576-8504</td>
</tr>
<tr>
<td>OK</td>
<td>Mr. C. Raymond Patton, Jr.</td>
<td>Conner &amp; Winters, A Professional Corporation, 3700 First Plaza Tower, Tulsa, OK 74103</td>
<td>(Work) 586-8523, (Home) 299-5838, (Fax) 586-8548</td>
</tr>
<tr>
<td>OR</td>
<td>Mr. Richard M. Layne</td>
<td>Layne &amp; Lewis, 1 SW Columbia Street, Suite 1800, Portland, OR 97258-2040</td>
<td>(Work) 295-1882, (Home) 246-1441, (Fax) 295-2057</td>
</tr>
</tbody>
</table>

Note: Addresses and phone numbers may have been updated since this information was extracted.
PA  Mr. Michael Pollack  
Reed, Smith, Shaw & McClay LLP  
One Liberty Place, Suite 2500
1650 Market Street
Philadelphia, PA 19103-7301
E-Mail – mpollack@reedsmith.com
(215) 851-8182 (Work)
(215) 628-9904 (Home)
(215) 851-1420 (Fax)

RI  Mr. John F. Corrigan  
Adler Pollock & Sheehan PC  
2300 Financial Plaza
Providence, Rhode Island 02903-2443
E-Mail – jcorrigan@APSLAW.com
(401) 274-7200 (Work)
(401) 885-1025 (Home)
(401) 751-0604 (Fax)
or 351-4607

SC  Mr. F. Daniel Bell III  
Kennedy Covington Lobdell & Hickman L.L.A.
434 Fayetteville Street Mall, 19th Fl.
Raleigh, NC 27602-1070
E-Mail – dbell@kennedycovington.com
(919) 743-7335 (Work)
(919) 872-7886 (Home)
(919) 516-2035 (Fax)

SD  Mr. Charles D. Gullickson  
Davenport, Evans, Hurwitz & Smith, L.L.P.
206 West 14th Street
P. O. Box 1030
Sioux Falls, South Dakota 57101-1030
E-Mail – cgullickson@dehs.com
(605) 357-1270 (Work)
(605) 331-3880 (Home)
(605) 335-3639 (Fax)

TN  Ms. E. Marlee Mitchell  
Waller Lansden Dortch & Davis, PLLC
Nashville City Center
Suite 2100, 511 Union Street
Nashville, Tennessee 37219-1760
E-Mail – mmitchell@wallerlaw.com
(615) 244-6380 (Work)
(615) 298-2514 (Home)
(615) 244-6804 (Fax)

TX  Mr. Daniel R. Waller  
Secore & Waller LLP
13355 Noel Rd., LB 75, Suite 2290
Dallas, TX 75240-6657
E-Mail – dan@secorewaller.com
(972) 776-0200 (Work)
(972) 392-2452 (Home)
(972) 776-0240 (Fax)

UT  Mr. Arthur B. Ralph  
Van Cott, Bagley, Cornwall & McCarthy, P.C.
50 South Main Street, Suite 1600
Salt Lake City, Utah 84144-0450
E-Mail – aralph@vancott.com
(801) 532-3333 (Work)
(801) 272-5027 (Home)
(801) 534-0058 (Fax)

VT  Mr. Charles H. B. Braisted  
167 Orchard Run
Cornwall, VT 05753
E-Mail – braisted@together.net
(802) 462-3923 (Work)
(____) ___-____ (Home)
(802) 462-3922 (Fax)

VA  (SEE WEST VIRGINIA)
<table>
<thead>
<tr>
<th>State</th>
<th>Name</th>
<th>Address</th>
<th>Phone</th>
<th>Email</th>
</tr>
</thead>
<tbody>
<tr>
<td>WA</td>
<td>Mr. John L. Mericle</td>
<td>Harris, Mericle &amp; Wakayama</td>
<td>999 Third Avenue, Suite 3210</td>
<td>(425) 742-3985</td>
</tr>
<tr>
<td>WV/VA</td>
<td>Mr. Edward D. McDevitt</td>
<td>Bowles Rice McDavid Graff &amp; Love, PLLC</td>
<td>600 Quarrier Street</td>
<td>(304) 347-1711</td>
</tr>
<tr>
<td>WI</td>
<td>Mr. Joseph P. Hildebrandt</td>
<td>Foley &amp; Lardner</td>
<td>150 East Gilman</td>
<td>(608) 258-4232</td>
</tr>
<tr>
<td>WY</td>
<td>Mr. Paul G. Findlay</td>
<td>Borden Ladner Gervais LLP</td>
<td>Scotia Plaza, Suite 4400</td>
<td>(416) 367-6191</td>
</tr>
<tr>
<td>CAN</td>
<td>Peter W. LaVigne</td>
<td>Sullivan &amp; Cromwell LLP</td>
<td>125 Broad St.</td>
<td>(212) 558-7402</td>
</tr>
<tr>
<td>NASD</td>
<td>Peter W. LaVigne</td>
<td>Sullivan &amp; Cromwell LLP</td>
<td>125 Broad St.</td>
<td>(212) 558-3588</td>
</tr>
</tbody>
</table>
DIRECTORY OF OFFICERS, EDITORS AND CONTRIBUTORS

Hewitt, Martin A.  Cadwalader, Wickersham & Taft LLP, One World Financial Center, New York, NY 10281, (212) 504-6228, fax (212) 504-6666  martin.hewitt@cwt.com

Johnson, Bruce Elwood  Morrison & Foerster LLP, 425 Market Street, San Francisco, CA 94105, (415) 268-7000, fax (415) 268-7522  bjohnson@mofo.com

Lieberman, Ellen  Debevoise & Plimpton, 919 Third Avenue, New York, NY 10022, (212) 909-6096, fax (212) 909-6836  elieberman@debevoise.com

Miller, Martin R.  Willkie, Farr & Gallagher, 787 Seventh Avenue, New York NY 10019-6099, (212) 728-8690, fax (212) 728-8111  mmiller@willkie.com

Parness, Alan M.  Cadwalader, Wickersham & Taft LLP, One World Financial Center, New York, NY 10281, (212) 504-6342, fax (212) 504-6666  aparness@cwt.com

Rett, Donald A.  Law Office of Donald Rett, 1660 Metropolitan Circle, Tallahassee FL 32308 (850) 298-4454, fax (850) 298-4494  drett52687@aol.com

Underwood, R. Michael  Steel Hector & Davis LLP, 215 S. Monroe St., Ste 601, Tallahassee, FL 32301-222-2300, fax (850) 222-8410  munderwood@steelhector.com
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Editor: Martin A. Hewitt       Assistant Editor: Bruce Elwood Johnson

To submit materials for future editions contact:
Cadwalader, Wickersham & Taft LLP, One World Financial Center, New York, NY 10281, (212) 504-6228, fax (212) 504-6666  martin.hewitt@cwt.com
or
Bruce Elwood Johnson, Morrison & Foerster LLP, 425 Market Street, San Francisco, CA 94105-2482
(415) 268-7000, fax (415) 268-7522  bjohnson@mofo.com

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