**Message from the Chair**

**Steven M. Mayer**  
Mayer & Glassman Law Corp.  
Los Angeles, CA

As Chair of the Business Law Section's Young Lawyer Forum, I invite you to join us for the Sixth Annual Institute for the Young Business Lawyer, scheduled for Thursday, April 16, 2009, in Vancouver, Canada, during the Section's Annual Meeting.

The Institute will feature an activity-filled day of "nuts and bolts" programming on such topics as Contract Drafting and the Deal; The Future of Consumer Lending — Back to Basics; Understanding LLC Operating Agreements: How the Deal Affects Drafting; What to Expect When Your Deal Goes Bad; Career Management for Young Lawyers in a Troubled Economy; Everything You've Always Wanted to Know About Cross-Border Insolvency; and The Legal Side of the World of Sports and Entertainment - Vancouver 2010.

There will also be a networking lunch, a welcome reception, a leadership opportunity meeting, and a high-energy evening event. All of these opportunities are offered to you in a one-day package for the very low cost of $199 plus the cost of a dinner ticket for our committee dinner at the beautiful, waterfront restaurant **Aqua Riva**. For a limited time, the program brochure and registration information are available [here](#).

With more demands upon us than time, one-stop opportunities such as those offered by Young Lawyer Forum are a wise choice. The Young Lawyer Forum serves as a center of gravity for business lawyers under the age of 40 or in practice for less than 10 years. Every Business Law Section lawyer member who meets these criteria is automatically a member of the Young Lawyer Forum. The Form provides its members with numerous opportunities for education, training, networking, socializing, leadership and business development. The Forum also provides a soft landing for younger and newer lawyers in the Section's committees and assists them in finding a home in active Section work.

Make friends, generate business, network with lawyers from around the world, join a committee and learn something new. Your firm might even sponsor you. We encourage your participation and activism, and look forward to seeing you on April 16th.

You are welcome to contact me by [email](#), or call me at 310-207-0007, with any questions about the Institute or how to become involved with the YLF. I look forward to hearing from you.

--Steve Mayer

---

**Vancouver Welcomes You to the ABA Section of Business Law Spring Meeting**

**Selina Koonar, B.A., J.D., L.L.M. Candidate, Richmond, British Columbia**

A scenic, cosmopolitan city bordered on one side by rugged mountain wilderness and on the other by sparkling Pacific waters, the city of Vancouver offers an unending variety of captivating...
Sights and activities. Located in the southwest corner of Canada in the province of British Columbia, at about 49° Latitude and 123° Longitude, next to the Pacific Ocean, Vancouver's climate is one of the mildest in Canada. Visiting Vancouver in the spring, against the enchanting backdrop of the cherry blossom season, takes full advantage of all the city has to offer. From skiing on the mountains, to kayaking or sailing in the ocean, to hiking nature's stair master the Grouse Grind on Grouse Mountain, or shopping and experiencing the many neighborhoods and districts, there are indoor and outdoor activities to please adults, families, couples and friends to no end.

More...

Subcommittee Reports

Newsletter
Tracy A. Cinocca, J.D./M.B.A., Tulsa, OK

The Newsletter Subcommittee has had a fantastic year with the help of so many important people. First, I would like to thank our committee chair Steve Mayer, and all the committee leaders for their input and direction. Also, seminal to our efforts is Sarah Rice, the Section of Business Law Marketing and Communications Manager and our new YLF advisor. Another thanks is owed to Heather Scheidt, Committee Project Specialist, and Alvin Thompson, Co-Chair of the Committee on Fellows, Ambassadors, and Diplomats for helping us get more young lawyers involved with our committee. And, last but not least, is Frank Hillis. Without his efforts, our newsletter would not be possible due to his graphic and computer expertise!

We are also looking forward to working more with David Kinman and Adam Segal, the Co Chairs of the Young Lawyers Membership Subcommittee to coordinate our efforts.

Our next deadline for article submissions is May 1, 2009. Our e-newsletter circulates to over 10,200 members and is published and archived on the ABA website here. Our materials are usually around 1500 words and may be on any topic of interest to young lawyers or those new to practice in a certain area of law. If you have an expertise in a particular area of business law, please feel free to submit an article as to the basics of that area for our general edification. We at the ABA Business Law Young Lawyer Forum, and at the ABA thank you, while you will be getting international exposure with your name and article likely to appear at the top of many search engines. Please feel free to contact me the newsletter editor.

And, finally I hope to see you all in Vancouver! Be sure to double check the new requirements for admission into Canada if you are traveling there from outside of Canada. See U.S. Customs and Border Protection with any questions you may have or ask your airline. Also do not forget to make your hotel reservations on or before March 16, 2009 to get discounted rates. The hotels do sell

http://apps.americanbar.org/buslaw/committees/CL983500pub/newsletter/200902/
out so the sooner the better! You can also get more information by clicking here. I will attend the Young Lawyer Institute on April 16, 2009, as well as the social activities. I hope to see you there!

**Pro Bono**

Mac R. McCoy, Tampa, Florida, Chair, Pro Bono Subcommittee

The YLF Pro Bono Subcommittee is working with the Host Committee for the Spring Meeting in Vancouver to plan and co-sponsor a public service project to benefit a local charitable organization. The details of the project have not been finalized, but several different proposals are currently under consideration. The project, which will take place during the Spring Meeting, will provide Section volunteers with a meaningful opportunity to give back to the local community and to network. Any YLF members who would like to volunteer for the public service project should email Mac McCoy for more information.

**Solo and Small Firm**

Aaron D. Lovaas, Las Vegas, Nevada, YLF Vice Chair, Chair, Solo and Small Firm Subcommittee

The Solo and Small Firm Subcommittee of the YLF reaches out to those young business law practitioners who practice on their own, or within small firms. There is a general shortage of programming within the BLS aimed at solo and small firm business law practitioners. The Subcommittee seeks to change that by beginning to integrate those young practitioners into the Section who may then work to develop programming and resources for the solo and small firm business law practitioner on a Section-wide basis.

The Solo and Small Firm Subcommittee has a history of significant contributions to the YLF and the Business Law Section as a whole. Namely, the Subcommittee has twice presented *Rainmaking, Retention and Referrals: The Three R's of Solo and Small Firm Client Development* - once at the ABA Annual Meeting in San Francisco in 2007, and again at the Business Law Section Spring Meeting in Dallas last year. While the Subcommittee is not presenting its own program at the 2009 Spring Meeting in Vancouver, we are extremely pleased that one of our Subcommittee members, Kristan Lehtinen, a partner with Lovaas & Lehtinen, P.C. in Las Vegas, Nevada, will serve as a panelist for the program *Nuts and Bolts of Conducting Cross Border Negotiations*, which will be presented during the 2009 Spring Meeting on Saturday, April 18. Hence, the Subcommittee is not only a vibrant part of the YLF through its own programming, but its members are sought after to contribute their expertise to other programming as well.

For those of you solo and small firm business law practitioners in the YLF who have programming ideas, requests for information, or thoughts on how this subcommittee might better serve you, please don't hesitate to contact me.
FACTA May Not Bar Later Fair Credit Suits

J. Douglas Cuthbertson, Miles & Stockbridge P.C., McLean, Virginia

A Virginia federal court recently held that a consumer's fair-credit lawsuit against a credit card issuer was not time-barred, even though she discovered that she was the victim of identity theft half a decade earlier.


More...

The Startup Lawyer

Dividing Up the Pie: Dealing with Initial Capitalization Issues for a Startup Company


"Don't gamble; take all your savings and buy some good stock and hold it till it goes up, then sell it. If it don't go up, don't buy it."

--Will Rogers, Social Commentator and Humorist

How to divvy up the company's equity is often, understandably, one of the first things a company founder thinks about for the new business. Some founders are concerned about liquidity; others want to ensure they keep the largest piece of ownership as they build the next Google or Genentech; still others are focused on control of the business. The reality is, ownership of the business is why many entrepreneurs join or form a startup, and ensuring that this ownership is well-thought out is crucial for a new business.

More...

Network Now- Reap Rewards Later!

Michael Sachs, Managing Director, Major, Lindsey & Africa, Chicago, Illinois

For nearly two years, I was the primary in-house lawyer for "The Jerry Springer Show." OK, sure, I have some wild stories to share. But this article isn't about me, or about Jerry Springer. It's about you and how you can obtain the same type of opportunities other lawyers and I have received...through the power of networking.

The only reason I even knew the Springer job existed was because after leaving the law firm where I had worked for nearly seven years, I reached out and invited one of the firm's partners and a mentor of mine to lunch. During the meal, he casually mentioned the Springer opening and I, of course, jumped at it! Again, this article isn't about the Springer job. It's about keeping in
touch with as many people as possible, since you never know when they might turn you on to a golden opportunity.

More...

YLF Events at the ABA Section of Business Law Spring Meeting

2009 Institute for the Young Business Lawyer
7 "Business Law Basics" programs plus networking events for only $199
Thursday, April 16, 2009
Vancouver Convention & Exhibition Centre

- Institute Website
- Institute Brochure
- REGISTER ONLINE
  (*"Early Bird" Registration ends February 27, 2009)
- Hotel Accomodations at Discounted ABA Rates
  - Pan Pacific Vancouver
  - Fairmont Waterfront Hotel
  - Marriott Pinnacle Vancouver
- Currency Calculator

Social Events

Hospitality Suites
Wednesday, April 15 -- 9:00PM - 11:00PM
Friday, April 17 -- 10:00PM - 1:00AM
Pan Pacific Hotel Vancouver
Suite 300-999 Canada Place
Vancouver, BC V6C 3B5
Telephone: 1 (604) 662-8111
Oceanview Suites 3 & 4
Gallery Level
» Website

Dinner at Aqua Riva
Thursday, April 16
$75/person (includes 2 drink tickets before dinner + two glasses of wine w/dinner)
7:30 PM - Cocktail Reception
8:30 PM - Dinner
» Registration Form

Aqua Riva
200 Granville St., Suite 30
Vancouver, BC V6C 1S4
Telephone: 1 (604) 683-5599
» Website
The Section of Business Law is Now Accepting Applications for the Business Law Fellows and Ambassadors Programs

The Fellows and Ambassadors Programs are designed to get young lawyers and lawyers of color, respectively, involved in the substantive work of the Section. The Section funds five Fellows and five Ambassadors for a two-year term to participate in three Section meetings each year (Spring and Annual Meetings and a stand-alone committee meeting). Applications are due April 15. For more information about the programs, please click here.

- Ambassadors
- Fellows

Submit Nominations for the 2009 Outstanding Nonprofit Lawyer Awards

The Committee on Nonprofit Organizations is calling for nominations for the 2009 Outstanding Nonprofit Lawyer Awards. Awards are given annually in the following categories: Academic, Attorney, Nonprofit In-House Counsel, Young Attorney (under 35 or in practice for less than 10 years) and Vanguard Award (lifetime commitment/achievement). For a nomination form, click here. For a list of prior award recipients, click here. Nominations are due by February 28, 2009, and the Awards will be announced at the Business Law Section's Spring Meeting in Vancouver.

Nominations should be sent to:

Michael E. Malamut
Attorney-at-Law
Kopelman and Paige, P.C.
101 Arch Street
12th Floor
Boston, MA 02110-1162

Get Published Now! Articles Needed!

There are over 400,000 ABA members of which more than 57,000 are Business Law Section members, in addition to the general public, that will have access to your article through high ranking search engine results. Your article will also be memorialized on the ABA website. The Young Lawyer Forum is collecting articles for future newsletters which are circulated to our members worldwide. Please send your submissions to Tracy A. Cinocca.

Articles should be 1500 words or less, and on any topic of interest to young lawyers. From short scholarly articles, to practice tips, reviews/summaries of a Section program, life in the trenches, interesting pro bono projects, humorous looks at life and the law, or even how you balance work and personal life. We appreciate your help in making this newsletter a success.

Committee Leadership
Committee Chairs:

Chair: Steven Mayer
Vice-chairs: Aaron Lovaas, Sherwin Simmons

Subcommittees:

International Lawyers: Sajai Singh
Membership: David Kinman, Adam Segal
Newsletter: Tracy A Cinocca
Pro Bono/Public Service: Mac McCoy
Programming: Sherwin Simmons
Social: Stephanie Cohen, Richik Sarkar
Solo/Small Firm: Aaron Lovaas
A scenic, cosmopolitan city bordered on one side by rugged mountain wilderness and on the other by sparkling Pacific waters, the city of Vancouver offers an unending variety of captivating sights and activities. Located in the southwest corner of Canada in the province of British Columbia, at about 49° Latitude and 123° Longitude, next to the Pacific Ocean, Vancouver’s climate is one of the mildest in Canada. Visiting Vancouver in the spring, against the enchanting backdrop of the cherry blossom season, takes full advantage of all the city has to offer. From skiing on the mountains, to kayaking or sailing in the ocean, to hiking nature’s stair master the Grouse Grind on Grouse Mountain, or shopping and experiencing the many neighborhoods and districts, there are indoor and outdoor activities to please adults, families, couples and friends to no end.

With a population of about 600,000 (BC Stat estimate), Vancouver lies in a region (Lower Mainland) of more than 2.8 million people. Vancouver is the largest city in Western Canada and the third largest in Canada. It covers an area of 114 sq km.

Vancouver was first explored by British naval captain George Vancouver in 1792. However, archaeological evidence shows that coastal Indians had settled the Vancouver area by 500 B.C. The Fraser Canyon Gold Rush in the 1860s encouraged Vancouver’s first settlement, particularly from the United States, although many immigrants did not remain after the rush. Vancouver was founded as a sawmill settlement called Granville in the 1870s. The city then developed rapidly from a small lumber mill town into a metropolitan centre following the arrival of the transcontinental railway. In 1886, the city was incorporated and renamed after Captain Vancouver.

Today, the City of Vancouver is consistently recognized as one of the three most livable cities in the world. It has accomplished this by recognizing that livability is affected by many different aspects life in the community. According to a 2008 survey by magazine 'The Economist,' Vancouver has the highest quality of living in the world, and ranked 4th after Zürich, Vienna and Geneva in a report by Mercer Human Resource Consulting. In 2007, Vancouver was ranked as the 10th cleanest city in the world. In 2007, according to Forbes, Vancouver had the 6th most overpriced real estate market in the world and second in North America after Los Angeles. In 2007, Vancouver was ranked Canada's second most expensive city to live after Toronto and the 89th most expensive globally, and, in 2006, the 56th most expensive city in which to live among 143 major cities in the world. For 2004, 2005, and 2006, Condé Nast Traveler magazine voted Vancouver as the "Best City in the Americas" based on the categories of ambience, friendliness, culture and sites, restaurants, lodging, and shopping. These are just a few of the city's many awards and accolades that clearly demonstrate the many reasons to visit Vancouver.

With quick and easy access to Whistler Resort, the Canadian Rockies, Victoria, Vancouver Island, and of
course, endless year round water and land sports, whether extreme sport or family fun, you can find your personal adventure in Vancouver. Vancouver also is the home port for Alaska cruises May through October. Catering to any interest throughout the year, you can enjoy spectacular sights and attractions, gourmet meals, outstanding live entertainment, sporting events, theatre, world class shopping, outdoor adventure - it's all waiting for you in Vancouver!

Among the many popular destinations within a few minutes of the city center are Stanley Park, one of North America's largest urban parks, North America's second largest Chinatown, and many distinct neighborhoods. The world-famous Stanley Park is a combination of natural forest and parklands near the city center. It is a 404.9 hectare (1,000 acre) urban park bordering downtown Vancouver. It is the largest city-operated park in Canada and the third largest in North America. It is more than 10% larger than New York City's Central Park and almost half the size of London's Richmond Park. An 8.8 kilometer (5.5 miles) seawall path circles the park, which is used by pedestrians, joggers, cyclists, and inline skaters every year. The park was opened in 1888 by Lord Stanley of Preston, the Governor-General of Canada (the same Lord Stanley of the National Hockey League's Stanley Cup).

Vancouver is a dynamic, multicultural city set in a spectacular natural environment. Vancouver is ethnically diverse, with 52% of city residents and 43% of Metro residents having a first language other than English. Vancouver has been called a "city of neighborhoods," each with a distinct character and ethnic mix. People of English, Scottish, and Irish origins were historically the largest ethnic groups in the city, and elements of British society and culture are still highly visible in some areas, particularly South Granville and Kerrisdale. The Chinese are by far the largest visible ethnic group in the city, which accounts to Vancouver having the second largest Chinatown in North America. There are many other distinct ethnic neighborhoods, such as the Punjabi Market, Little Italy, Greektown, and Japantown. Bilingual street signs can be seen in various neighborhoods, including Chinatown and the Punjabi Market. Each of these neighborhoods is a great destination for authentic ethnic cuisine, shopping, and cultural experiences.

Other popular, trendy neighborhoods include Yaletown and Granville Island both within a few minutes of the city center. Once an industrial district, today Yaletown is one of Vancouver's hottest neighborhoods. It is home to many of the city's trendiest restaurants, bars and night spots, hip shopping boutiques, and celebrity haunts. Hamilton Street and Mainland Street are two of the busiest streets for nightlife in Vancouver. Both streets have a collection of bars and restaurants.

Granville Island is a small island and shopping district located in False Creek directly across from Downtown Vancouver's peninsula, under the south end of the Granville Street Bridge. The island is now more or less connected with the mainland so it is not technically an island. Originally a factory district, Granville island boasts rebirth as a Public Market, an art school, shops, restaurants, theatres, galleries, a
hotel, and a great deal more. Embracing the surrounding metropolitan bustle, Granville Island's ambiance is matchless; its gritty, industrial past is proudly displayed in today's people-friendly, artistic, and energetic incarnation.

The historic district of Gastown was Vancouver's first downtown core. It originally prospered as the site of a sawmill, seaport, and quickly became a general centre of trade and commerce on Burrard Inlet. Today, the area has been completely rebuilt and declared as historic district. The renovated Gastown, with its cobbled streets and restored Victorian buildings, is a pleasant place for strolling, shopping or dining. Gastown is a mix of "hip" contemporary fashion and interior furnishing boutiques, tourist-oriented businesses (generally restricted to Water Street), restaurants, nightclubs, poverty and newly-upsacle housing. The main tourist attractions in Gastown are the unique steam clock and the statue of 'Gassy Jack' Deighton. The Gastown Steam Clock was the world's first steam clock and was originally built to cover a steam vent. The 2 ton weighing oddly looking clock whistles every 15 minutes.

Vancouver is home to world class shopping. Perhaps the most famous shopping district in Vancouver is Robson Street. Robson Street is a major southeast-northwest thoroughfare in downtown and West End of Vancouver. Robson Street's best shops can be found on the stretch between Granville and Jervis Streets; these core commercial blocks are also known as Robsonstrasse. The upscale thoroughfare has hundreds of shops to suit many tastes. Whether you are looking for food, beauty products, clothing or gifts, chances are Robson Street has what you need, or better yet, what you want. It's perfect for a serious day of shopping, or a day of leisure walking.

The economy of Vancouver has traditionally relied on British Columbia's resource sectors: forestry, mining, fishing and agriculture. It has diversified over time, however, and Vancouver today has a large service industry, a growing tourism industry, and it has become the third-largest film production centre in North America after Los Angeles and New York City, earning it the nickname Hollywood North. In recent years, Vancouver has expanded in high-tech industries as a centre for software development and biotechnology. Vancouver's Central Area has 60% of the region's office space and is home to headquarters of forest products and mining companies as well as branches of national and international banks, accounting and law firms.

Majestic mountains, sparkling ocean, rainforests and beautiful foliage all four seasons make Vancouver one of the most beautiful cities in the world. Selected for its beauty, accessibility, unlimited services and activities, Vancouver is Host City to the 2010 Olympic and Paralympic Winter Games.

Canada is known for our people's friendly nature, and Vancouver's citizens take great pride in our welcoming, clean, safe streets - day or night, all year round. Exceptional public transportation is
overshadowed slightly by the convenience of Vancouver as a great walking city - clean, green, safe, and easily accessible.

A vast multicultural population, endless activities, excellent infrastructure, and a spectacular and safe setting, Vancouver welcomes you!
FACTA May Not Bar Later Fair Credit Suits
By J. Douglas Cuthbertson,
Miles & Stockbridge P.C.
McLean, Virginia

A Virginia federal court recently held that a consumer’s fair-credit lawsuit against a credit card issuer was not time-barred, even though she discovered that she was the victim of identity theft half a decade earlier.

U.S. District Judge Henry E. Hudson ruled on May 6, 2008 that a new statute of limitations in the Fair Credit Reporting Act (FCRA), 15 U.S.C. § 1681 et seq., did not bar the woman’s claims, which she discovered and first complained about in 2003.

“FCRA provides damages when a bank or credit reporting agency fails to take certain steps once notice of a consumer dispute is received,” Judge Hudson wrote in Broccuto v. Experian Information Solutions, Inc., 2008 WL 1969222 (E.D.Va., May 06, 2008) (NO. CIV.A. 3:07CV782HEH). “It is the failure to act . . . which creates the cause of action,” he wrote in holding that a new limitations period started each time the credit card issuer failed to act.

The new statute of limitations requires FCRA lawsuits to be filed within two years after a consumer discovers a violation, or five years after a violation occurs, whichever is earlier. 15 U.S.C. § 1681p.


Plaintiff Robin Broccuto filed her complaint on December 26, 2007, more than four years after she discovered the fraudulent account, but within two years of her last dispute.

The credit card issuer argued that “the FCRA violations Broccuto claims occurred in 2006 must be tied to her original discovery” of the fraud in 2003. It argued that she should not be able “to rekindle an FCRA claim simply by making another complaint about the same account.”

Only a handful of courts across the country have addressed the new statute of limitations, issuing conflicting opinions.

The Decision in Broccuto

Broccuto claimed she discovered a past due Lane Bryant account on her credit report in April 2006. She maintained that she did not open the account and was the victim of identity theft.
Broccuto filed disputes with the three major credit reporting agencies, Experian, Equifax and TransUnion.

She alleged that World Financial Network National Bank, the issuer of the Lane Bryant credit card, did not investigate her disputes or note them on her account, in violation of the FCRA, 15 U.S.C. § 1681s-2(b)(1)(C) and (D).

World Financial moved to dismiss her complaint as barred by the two-year statute of limitations.

World Financial alleged that Broccuto actually discovered the identity theft in 2003 and contacted it and the credit reporting agencies several times since then. Broccuto later admitted the allegations.

Judge Hudson denied World Financial’s motion, holding that Broccuto’s suit was timely.

“A plain reading of the Act reveals that [the duty to investigate a dispute is] triggered when a credit reporting agency or lender receives notice of a dispute from a consumer,” he wrote. A creditor’s failure to investigate creates the cause of action, he said.

Broccuto only sought damages for World Financial’s investigation of her April 2006 dispute.

Any violations in response to her earlier disputes “may indeed be time-barred,” Judge Hudson wrote.

World Financial argued that Broccuto’s later disputes were in effect the same dispute over the same account and should not give rise to multiple claims, each subject to its own statute of limitations.

Judge Hudson rejected that argument, holding that Broccuto’s April 2006 dispute was not part of her original dispute in 2003.

But he recognized that other district courts have come to the opposite conclusion.

U.S. District Judge Terry R. Means of the Northern District of Texas refused to allow additional complaints about the same allegedly inaccurate information to restart the statute of limitations in Bittick v. Experian Information Solutions, Inc., 419 F.Supp.2d 917 (N.D.Tex., Feb. 08, 2006) (NO. 4:05 CV 405 Y).

To hold otherwise, Judge Means said, “would allow plaintiffs to indefinitely extend the limitations period by simply sending another complaint letter to the credit reporting agency.”

“The Court will not read the statute so as to provide such an anomalous result,” he said. “If Congress intended such a result it would have said so clearly.”

Judge Hudson said he “cannot square the logic of those opinions with a plain reading of FCRA.” He held that the FCRA is violated every time a consumer submits a dispute to a credit reporting agency and a creditor does not investigate it.

“The fact that the account . . . may have also been the subject of a previous dispute does not mitigate the obligations of the bank” to investigate, he said.

**The FACTA**

The new statute of limitations was part of the FACTA, which amended the FCRA to help consumers fight the growing crime of identity theft.

The FACTA changed the statute of limitations by adding a “discovery” rule. That is, the new statute does not begin to run until consumers discover an identity theft, giving them more time to file suit. The prior version had a discovery rule only in cases of misrepresentation by the defendant.

The new statute was part of the “Cantwell-Enzi Restore Your Good Name Act,” which was incorporated into FACTA.

Senator Maria Cantwell (D-Wash.) said the reason for the amendment was to give consumers more time to sue.

“In the 2001 Supreme Court case of *TRW v. Andrews*, the Court ruled that the statute of limitations in these cases runs for 2 years from the time the crime is committed,” she said.

“But what we have found is that some victims of identity theft don’t even realize they are victims until a year or 2 years after the identity theft has occurred. The statute of limitations therefore impacted the ability of victims to get justice,” she said. 149 Cong. Rec. S13863-02, 20 (Statement of Sen. Cantwell).

Broccuto’s discovery of the identity theft was not an issue, since she learned of it shortly after it occurred in 2003. In her case, the statute of limitations merely limited the number of disputes for which she could seek damages.

**Decisions by Other Courts**
Other U.S. District Courts have issued conflicting opinions on the issue.

Less than a month after Judge Hudson’s opinion in Broccuto, U.S. District Judge Victoria A. Roberts of the Eastern District of Michigan held that additional consumer complaints do not restart the statute of limitations.


“The Hancock’s subsequent dispute letters regarding the same erroneous information do not restart of the statute of limitations clock,” wrote Judge Roberts, who considered the Bittick case controlling.

“A perpetual statute of limitations not intended by the FCRA would be the result if the Court adopted the Hancocks’ argument,” she said. “The Hancocks knew of the errors on their credit report more than two years before they filed suit.”

But Judge Hudson’s ruling found support in an earlier opinion issued by then-U.S. Chief District Judge James M. Rosenbaum of the District of Minnesota.

In Larson v. Ford Credit, 2007 WL 1875989 (D.Minn., June 28, 2007) (NO. 06-CV-1811 JMR/FLN), Judge Rosenbaum held that “each re-report of inaccurate information, and each failure to conduct a reasonable investigation in response to a dispute, is a separate FCRA violation subject to its own statute of limitations.”

While these opinions are conflicting, the Broccuto and Larson courts found it important that the plaintiffs alleged FCRA violations that occurred after discovery, but within two years of bringing suit. These allegations, they held, were enough to state claims.

Broccuto was represented by Leonard A. Bennett of Consumer Litigation Associates, P.C. in Newport News, Va.

DIVIDING UP THE PIE: 2
DEALING WITH INITIAL CAPITALIZATION
ISSUES FOR A STARTUP COMPANY

“Don't gamble; take all your savings and buy some good stock and hold it till it goes up, then sell it. If it don't go up, don't buy it.”

Will Rogers
Social Commentator and Humorist

How to divvy up the company’s equity is often, understandably, one of the first things a company founder thinks about for the new business. Some founders are concerned about liquidity; others want to ensure they keep the largest piece of ownership as they build the next Google or Genentech; still others are focused on control of the business. The reality is, ownership of the business is why many entrepreneurs join or form a startup, and ensuring that this ownership is well-thought out is crucial for a new business.

As a startup lawyer, you may find yourself as an intermediary between the company’s founders – helping the team “mediate” the sticky questions of dividing founder’s equity, coming up with vesting terms on equity, allocating equity to employees, and putting in place decision-making protocol. At the beginning, a startup lawyer’s involvement is an opportunity to ensure that structures are put in place that lay the foundation for a stable but flexible capitalization structure. While some of these choices seem like nothing more than business decisions – the truth is the founders will often turn to (or need to turn to) their lawyer to help figure out to divide up the pie.

In this article, we will discuss (i) allocating founder ownership – identifying who is a founder, how to protect the founders in the event of a departure or termination, and how to plan for future investors or employees, (ii) 83(b) elections – the importance of understanding when key tax benefits can be lost and how to put procedures in place to protect your clients, and (iii) common employee incentive plans – including options, restricted stock, bonuses, and others, and how each of them fit together to provide a flexible capital structure.

1 Eric Koester is an attorney in the Seattle office of Cooley Godward Kronish LLP. His practice is focused on advising startup and emerging companies, particularly in the fields of information technology, life sciences, and clean technologies. Eric’s blog can be found at http://www.myhightechstartup.com and he can be reached at ekoester@cooley.com.

2 Portions of this article are from What Every Engineer Should Know About Starting a High-Tech Business Venture by Eric Koester, published in January 2009 by CRC Press.
As the popular phrase goes – “50% of nuthin’ is nuthin’.” But what gets more interesting (and why founders care, frankly) is the potential for 50% of ‘somethin’.’ And that’s why a startup’s founder team needs to consider its initial equity allocations early in its formation.

When a founder team is ready to move forward with their business and issue ownership in their company, the first step is to discuss the equity allocations as between the founders. Rather than think about ownership in the abstract, a helpful first step is to prepare an initial capitalization model (a sample is included as Exhibit A). For some founders who have a detailed fundraising plan for the future – also encourage them to look out further and identify likely funding events and how this could affect the capitalization structure today and tomorrow.

As a startup lawyer helping your client to set out their capitalization table and ownership allocations, there are a number of key questions you should ask to help the team:

1. **Are all of these people really founders?**

   A founder or founder team sometimes includes a much bigger set of people in its definition of founders – sometimes because of the mutual excitement, sometimes they feel bad about excluding people or other times because they haven’t identified exactly why it matters.

   Many founders round up an initial management team and identify them all as “founders,” when in reality some of them would be better classified as rank-and-file employees or service providers. This distinction can be important, especially when one considers that founders and their “founders’ stock” usually enjoy unique status relative to optionees, investors and other shareholders. For example, founders’ stock is often (a) voting stock (versus options, which are not able to be voted until exercised), (b) included as a “Registrable security” alongside the preferred stock in a public offering, and (c) subject to vesting and transfer restrictions that are designed to retain the founder’s services to the company (and are a reflection of the founder’s importance to the company’s success). In addition, future investors may impose more restrictions on founders rather than other company employees.

   As counsel to these companies, lawyers should encourage clients to limit the granting of founder status to only those people who are bringing significant value (in the form of assets, IP or unique expertise) to the company. The rest of the team can be incentivized in other ways, including through option grants.

2. **Do you want to reserve shares for employees and contractors under a stock option plan?**

   Particularly in the case of high-tech businesses or in some high-tech markets, employees (especially the good ones) will expect some component of equity compensation built into their employment package. This sometimes means you can use additional equity in exchange for a lower starting salary, or as a way to lure a high-value hire from a large company. As a result, thinking ahead about equity for future hires is an important consideration.
Many founders believe this is a decision that can be deferred until later, but building an equity incentive plan reserve into the model early can help the founders be proactive in their equity strategy. Also, many cash-strapped start-ups want to use equity in lieu of salary early on (this has its own issues which are not addressed here), but also want to be very careful and stingy with issued equity so as to avoid piecemeal dilution – a stock option plan can be an effective way to accomplish this while imposing some equity discipline on management. Later, you’ll find a summary of the various equity and non-equity incentive plans is below. In Exhibit A, you’ll notice that the company has set aside a portion of its equity for its stock option plan.

3. **Do you want vesting imposed on your stock?**

The discussion of vesting is sometimes difficult – particularly if a team has just formed and remains full of optimism. (In many cases, the startup lawyer is uniquely positioned to address present these questions to the team – possibly avoiding any bruised egos or hurt feelings.) In most cases, no one wants to think about the all-too-real possibility that the group might not make it through to the IPO with a couple defections, terminations, or departures. But the reality is that very few startup founder teams make it through the early stages without a shake-up. So putting in place protections – a key one being vesting on founder’s stock – isn’t something to overlook.

Clearly, founders would prefer to own their stock outright; however, there are many reasons to choose to impose vesting on their shares. For example, when there is more than one founder, the choice is often made to impose vesting as a show of commitment to the company as between the founders. Additionally, new companies that expect to raise venture capital often choose to impose vesting because they anticipate that such vesting will be a condition to the venture fund’s investment in the company. The table below offers some additional information on common structures for vesting on founder’s stock or employee equity.

4. **What is your equity strategy for investors?**

While decisions around future funding could again be deferred, laying out the ongoing needs for capital are very important for the startup lawyer to be able to counsel on matters from future equity to entity type. As a result, having an early understanding of such financing’s effect on the founders’ ownership can be important in determining allocations initially.

Many founders are surprised when their attorney, accountant or other advisor shows a detailed calculation identifying the impact of dilution on a founder’s share of the company. While it may seem obvious to some, the effect on a founder’s shares is sometimes not clearly understood – and helping a founder to identify how future financing could affect the company is paramount.

<table>
<thead>
<tr>
<th>Types of Vesting</th>
</tr>
</thead>
<tbody>
<tr>
<td>There are numerous ways to structure vesting restrictions on founders stock, including the use of time-based vesting, milestone-based vesting, and a combination approach.</td>
</tr>
<tr>
<td>• <strong>Time-Based</strong> (Straight Line).</td>
</tr>
<tr>
<td>o Stock is released from vesting in equal amounts each month over a</td>
</tr>
</tbody>
</table>
particular time period (say monthly, quarterly or annually over a number of years, usually between two and five years).

- As an example, a founder has straight monthly vesting over a three year period. After being employed for twelve months, the founder leaves the company. At this point, the departed founder would only own one-third of the original stock issued to him or her. The rest of his or her shares (2/3rds of the original amount issued) would then be repurchased by the company at the par value.

- **Time-Based** (Cliff).
  - No vesting for a particular time period (for instance, the first six months or first year or until financing occurs). Then, once that initial period is completed, the company will then release a certain portion from vesting. Once the cliff period has passed, the rest will typically vest on a straight line basis afterwards (monthly, quarterly or annually).
  - As an example, a founder’s stock is vested over three years. The vesting will be a one year (twelve month) cliff, followed by straight line monthly vesting over the remaining two years. If the founder departs after six months, he or she will have no shares vested and the company will repurchase the entire amount of original shares issued. However, if the founder departs after eighteen months, then one-third will have vested after the cliff and six more months of vesting would have occurred. So the founder would have fifty percent of his or her stock vested at that time.

- **Milestone-Based**
  - Stock will be released upon the achievement of particular milestones, rather than based on time periods.
  - As an example, a certain portion of unvested stock will be released from vesting when (1) the company receives at least $1 million in funding (to incentivize fundraising efforts), (2) the company reaches $250,000 in annual revenue (to incentivize sales), and (3) when the company releases its second generation product (to incentivize product development).

- **A Combination-Based Approach**
  - Stock will be released on a combination of milestone-based and time-based vesting.
  - As an example, half of the stock will vest monthly over a three year period and the other half will vest based on achievement of certain milestones.

**83(b) ELECTIONS**

Vesting on stock has other consequences than just restricting a founder’s ability to own the stock outright. The decision to apply vesting on founder’s stock also has important federal and state income tax consequences which both the company and the founder need to consider carefully and take into account in their respective tax planning. These income tax consequences arise principally from a provision of the typical founder’s stock purchase agreement which entitles the company to
repurchase the shares of stock sold under the agreement at the original purchase price if the founder terminates his employment or a consulting relationship with the company prior to “vesting” of those shares. *Improper or ill-considered handling of 83(b) issues is one of the few things in the emerging company practice that cannot be easily fixed; therefore, keep close tabs on the 83(b) decision making process, and any filings and their timing, to avoid unintended consequences.*

<table>
<thead>
<tr>
<th>The Missed § 83(b) Election</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>What could happen...</strong> You issued stock to the founders subject to vesting terms, but you forgot to file § 83(b) election.</td>
</tr>
<tr>
<td>If a founder is issued stock and the stock is subject to a substantial risk of forfeiture (per the IRS rules), then the stock purchase isn’t complete until this risk of forfeiture is gone. Once the founders stock has vested, the risk is deemed to be gone and the IRS judges the stock purchase to be complete. At this point, according to the IRS, the difference between the original price you paid (let’s say $0.01 per share) and today’s fair market value after the vesting has run (let’s say $10.00 per share) is subject to taxation. This difference ($9.99 per share) would be taxed as ordinary income. By filing a timely 83(b) election, you are able to avoid this problem.</td>
</tr>
<tr>
<td>When you sell this stock at a later date (after it has appreciated greatly), the appreciation would be taxed as ordinary income at almost twice the rate if you’d filed the 83(b) election and the gain was taxed as long-term capital gains! In our example, you’d only pay long-term capital gains rates on the $9.99 per share gain.</td>
</tr>
<tr>
<td><strong>Watch out for...</strong> In the company’s early stages, it is easy to miss 83(b) election filings with the IRS – so make sure that this responsibility is delegated to someone. A § 83(b) election must be filed no later than 30 days following the transfer of property. (Income Tax Regs. § 1.83-2(b)). When you issue stock to founders (subject to vesting), make sure this filing is made.</td>
</tr>
<tr>
<td>Note: If a startup allows early exercise of options (which is oftentimes done for the advantageous tax treatment), you also will need to file timely 83(b) elections in this case.</td>
</tr>
<tr>
<td><strong>TIP:</strong> File timely 83(b) elections for vested stock.</td>
</tr>
</tbody>
</table>

Federal and most state income tax laws generally provide that a transfer of stock or other property to an employee, consultant or other provider of services to the transferor results in recognition of taxable compensation income by the transferee in the amount of the excess of the fair market value of the property over the amount paid for it. Therefore, the founder will recognize such income on the purchase of stock under the agreement to the extent that the fair market value of the stock exceeds its purchase price. The amount and timing of such income recognition will
depend on whether or not the founder makes a special election, referred to as a “Section 83(b) election,” in connection with the purchase of the stock.

As the startup lawyer, this decision to file or not to file the 83(b) election seems like it should be the responsibility of the individual. But the reality is few founders understand the impact of a missed filing or know what they need to do. Therefore, the responsibility usually falls to the lawyer for the startup – and a missed election filing isn’t a bell you can unring.

ESTABLISHING AND USING STOCK/INCENTIVE PLANS (AND ALTERNATIVES)

For many entrepreneurs and early employees of startup companies, one of the main reasons they join the venture is the lure of receiving stock or options to purchase stock that may one day skyrocket in value. Stock grants and stock options represent important tools to attract and motivate talented employees. Managing equity compensation is a complex issue to juggle for most entrepreneurs, and oftentimes becomes the responsibility of the lawyer for the startup. The most common forms of equity incentives for the employees of young, growing companies are:

- Stock option plans;
- Stock grants; and
- Stock purchase plans.

As you can see from the charts above, companies utilize a variety of different programs to provide incentives to their employees, but may rely more heavily on one type of plan over the others at various points in the company’s growth.

In particular for technology companies, one of the primary recruiting and retention tools is the chance for employees to become owners of the company through participation in an equity compensation plan. As discussed previously, ‘budgeting’ for equity to be assigned to certain new hires is a helpful and important process. Modeling such a plan into the capitalization structure early will allow the founders to see these plans’ effect on their ownership percentages and will provide them with a powerful, flexible recruiting and retention tool. However, there are also alternatives to such equity-based plans.

**How does a Stock Option Work?**

Startup, Inc. grants one of its employees an option to purchase 100 shares of stock of the company.

Startup believes its stock is currently worth $1.00 per share. Therefore, Startup sets the exercise price or strike price at $1.00 per share. This means the employee may give the company $100.00 and will receive 100 shares, but Startup doesn’t ask for the money now. The stock option can be exercised for 10 years. Therefore, the employee doesn’t have to exercise until he or she has the cash to exercise (at $1.00 per share) or believes the value of the stock exceeds $1.00 per share.

For some employees, this is the best of both worlds – the employee has the right to buy the stock for $1.00, but is not obligated to buy the stock. The employee keeps his or her $100.00 but knows he or she can purchase the stock at any time until the option expires. Startup is able to grant an option to the employee which may motivate the employee, but has not had to issue actual stock to the employee.
Fast-forward to several years later... Startup has gone gang-busters and now Startup has had experts value its stock at $10.00 per share. The employee is holding an option to purchase the stock at $1.00 per share. When the option is exercised, the employee will pay $100.00, but will receive stock that is valued at $1,000, a gain of $900.00.

However, if instead, the Startup stock had decreased to $0.10 per share (from the initial exercise price of $1.00 per share), the employee can just hold the option (and not exercise the option) until it expires and hope that its value increases. The employee keeps the $100. If the employee had purchased the stock for $1.00 per share, it would now only be worth $0.10 or $10, a loss of $90. This is why options continue to be attractive to startups and their employees.

The following are descriptions of various incentive compensation alternatives, with particular emphasis on equity compensation plans. A chart is provided at the end of this discussion which lists and compares the principal relevant characteristics of each alternative.

**Equity Compensation Arrangements.**

**Restricted Stock.**

Restricted stock plans provide for the grant or sale to employees of actual equity of the employer. Employees typically receive the stock subject to restrictions which require them to perform services for the employer for a specified number of years in order to vest in the stock. If the employee terminates employment before the service period is completed, the unvested portion of the stock typically must be sold back to the employer at the purchase price originally paid by the employee, if any. The employee is generally treated as the legal and beneficial owner of the shares for all periods unless the shares are returned to the employer by reason of failure to satisfy the vesting requirement or, for certain purposes, unless the employee fails to make a Section 83(b) election (see above). Restricted stock is typically sold to an employee at a purchase price equal to the fair market value of the stock at the time of grant, although in certain circumstances the employer may choose to issue the stock at a discount to its fair market value (usually a discount of not more than 15% of the stock's fair market value).

**Stock Options.**

Stock options are the most commonly used form of equity-based compensation. A stock option gives the employee the right to purchase stock of the employer or its parent corporation for a prescribed price (generally the fair market value of the stock on the date the option is granted). The employee therefore receives the benefit upon exercise of the option of the increase in the value of the stock above the exercise price. Like most of the other forms of compensation discussed in this article, stock options typically are granted to employees subject to vesting requirements which prohibit exercise of the unvested portion of the option prior to completion of specified employment or service requirements (or may permit immediate exercise but with the stock subject to a repurchase right on the employer’s part that lapses over the vesting period in a manner similar to restricted stock).
An employee will generally receive one of two types of stock options: ISOs and NSOs, which are discussed in more detail below. In particular, ISOs require a stock option plan to be in place and that the company follows certain steps to properly issue its options. **Remember, improper option issuances may lead to unintended tax liabilities for both the company and the employee.** To properly enact and maintain your stock option plan, the company should follow certain rules to properly grant stock options to its employees.

### Rules for a proper ISO Stock Option Plan

- Stock Option Plan must be in writing;
- Stock Option Plan must be approved by the shareholders of the company within twelve months of the plan’s adoption by the board of directors (the plan may also be approved up to twelve months prior to adoption by the board);
- Options must be granted within ten years of the formal approval of the option plan;
- Options must expire less than ten years from issuance (or five years from issuance for any holders of more than 10% of the company’s stock);
- Options must be granted only to employees of the company (not to directors or consultants);
- Options must be exercised within ninety days of termination of employee status or one year following the death or disability of the employee;
- The value of the stock to vest in any one year under the option (based on the value at the grant date) shall not exceed $100,000; and
- Options may not be transferable except in the event of death by will or laws of distribution of assets.

The company should have a stock option plan in place that meets the criteria above before issuing any options to employees.

- **Incentive stock options.** Incentive stock options (“ISOs”) are options that satisfy the requirements of Section 422 of the Internal Revenue Code of 1986 (the “Code”). The Code provides special tax treatment in connection with the exercise of the option and the disposition of shares subject to the option. Key requirements of Section 422 are that ISOs be granted only to employees of the company or its parent or subsidiary, and that the exercise price of an ISO be no less than the fair market value of the stock (as determined in good faith by the company’s board of directors) on the date of grant.

There are no federal income tax consequences upon grant of an ISO. Upon exercise, the employee incurs no tax liability unless he or she is subject to the alternative minimum tax (“AMT”) under Section 55 of the Code. Upon sale of the shares (assuming that the sale does not occur within one year after the date of exercise nor within two years after the date of grant), any gain is taxed to the employee as long-term capital gain. If the shares are disposed of within one year after the date of exercise or within two years from the date of grant, the employee will recognize ordinary income to the extent of the lesser of
the excess, if any, of (1) the fair market value of the shares on the date of exercise or (2) the sales proceeds, over the exercise price. “Disposition” includes not only a sale but also gifts and certain other transfers.

The company is entitled to a federal income tax deduction only to the extent that the employee recognizes ordinary income on the disposition of the shares acquired pursuant to the ISO. No deduction for the company arises from any AMT liability incurred by the employee. Therefore, in situations where the option qualifies as an ISO at all times, the company has no federal tax consequences with respect to that option.

- **Nonstatutory stock options.** Nonstatutory stock options (“NSOs”) are stock options which do not satisfy the requirements of Section 422 of the Code and are not eligible for special tax treatment. NSOs are often issued to non-employees such as consultants, who are not eligible to receive ISOs or participate in statutory employee stock purchase plans, and to key employees or directors to whom the company wishes to grant options containing terms not permitted by Sections 422 and 423 of the Code.

Assuming that the NSO does not have a “readily ascertainable value” at the time of grant (and virtually no NSOs do), there are no tax consequences for the optionee at the time of grant. Upon exercise of the NSO, the employee will recognize ordinary income in the amount of the excess, if any, of the fair market value of the shares at the time of exercise over the exercise price. This ordinary income will be subject to withholding by the company if the optionee is an employee, either from the current earnings paid to the employee, by an out-of-pocket direct payment to the company, or through other means the company may choose to allow. Upon sale of the shares, the employee will recognize capital gain or loss in an amount equal to the difference between the sale price and the fair market value of the shares on the date of exercise. If the shares have been held for more than one year prior to the sale, the gain or loss will be treated as long-term capital gain or loss to the optionee.

The company is entitled to a federal income tax deduction to the extent of the ordinary income recognized by the optionee upon exercise of the NSO.

**NSOs and ISOs: Tax Impacts**

<table>
<thead>
<tr>
<th>NSOs and ISOs: Tax Impacts</th>
<th>Employee</th>
<th>Employer</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Option is Granted</strong></td>
<td>No Tax Deduction</td>
<td>No Tax Deduction (unless option has a “readily ascertainable market value”)</td>
</tr>
<tr>
<td><strong>Option is Exercised</strong></td>
<td>No Tax Deduction</td>
<td>Tax Deduction on spread between exercise price and market value at time of</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Tax on spread between exercise price and market value at time of exercise</td>
</tr>
</tbody>
</table>
### Equity-Based Cash Compensation Alternatives.

**Phantom Stock.** Phantom stock is a form of incentive compensation which gives the employee a contractual right to receive amounts linked to the value of the employer’s equity (or some other measure of the value of its business or a portion thereof), but which does not involve the actual issuance of stock or options to the employee.

**Stock Appreciation Rights.** Stock appreciation rights (“SARs”) are similar to phantom stock in that an SAR gives the employee a contractual right to receive compensation based on the value of the employer’s stock or some other performance measure, but does not involve the issuance of any actual equity or options of the employer.

**Cash Bonuses.** A third common form of cash incentive compensation are employee bonuses tied to achievement of specified performance goals. In contrast to phantom stock or SARs, where the amount of cash compensation received by the employee is based on the value of the employer’s equity or business (or a portion thereof), bonuses typically provide for payment of fixed dollar amounts to the extent that specified performance goals for the employer are a particular business unit of the employer are met.

### Summary

For most companies, stock options (as well as cash bonuses) are still the preferred incentive method, at least for high-growth, venture-backed companies; however, each company’s circumstances are different, and counsel’s role is to introduce the various options to our clients so that they can make an informed decision.
Here is a summary of the common forms of employee compensation programs:

<table>
<thead>
<tr>
<th>Payment form</th>
<th>Restricted Stock</th>
<th>Option</th>
<th>Phantom Stock</th>
<th>SARs</th>
<th>Cash Bonus</th>
</tr>
</thead>
<tbody>
<tr>
<td>Economic benefit to employee</td>
<td>Value of equity</td>
<td>Stock value increase</td>
<td>Value of equity or other performance measure</td>
<td>Increase in value of equity</td>
<td>Set dollar amount if goals met</td>
</tr>
<tr>
<td>Legal rights of employee</td>
<td>Equity ownership</td>
<td>Equity ownership</td>
<td>Contract right</td>
<td>Contract right</td>
<td>Contract right</td>
</tr>
<tr>
<td>Vesting</td>
<td>Usually</td>
<td>Usually</td>
<td>Usually</td>
<td>Usually</td>
<td>None</td>
</tr>
<tr>
<td>Tax Treatment of Employee</td>
<td>Income on receipt based on then value, if election made</td>
<td>Income generally on exercise unless ISO (in which case may be AMT)</td>
<td>Income when phantom stock cashed out</td>
<td>Income when exercised</td>
<td>Income when bonus paid</td>
</tr>
<tr>
<td>Tax Treatment of Employer</td>
<td>Deduction equal to employee’s income</td>
<td>Same, except no deduction if ISO and holding periods met</td>
<td>Deduction equal to employee’s income</td>
<td>Deduction equal to employee’s income</td>
<td>Deduction equal to employee’s income</td>
</tr>
<tr>
<td>Accounting Treatment</td>
<td>Comp. expense over vesting period</td>
<td>No comp. expense if exercise price not less than stock’s FMV at grant</td>
<td>Comp. expense as value increases</td>
<td>Same as phantom stock</td>
<td>Comp. expense when paid</td>
</tr>
</tbody>
</table>

Please note that the above discussion only covers some of the more commonly used forms of equity and equity-like compensation and is summary in nature. There are a number of qualifications and special tax, accounting and other rules which may apply depending on the circumstances. In addition, there may be securities law implications associated with certain of the alternatives discussed above. Each of these compensation alternatives may be modified to suit the needs of the particular company.
**EXHIBIT A**

High Tech Startup, Inc.

*Initial Capitalization*
Capitalization Table as of >= 1/1/2009

<table>
<thead>
<tr>
<th>Assumptions:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Authorized Shares</td>
</tr>
<tr>
<td>Founders Stock - To Be Issued</td>
</tr>
<tr>
<td>Option Pool - To Be Reserved</td>
</tr>
<tr>
<td>Remaining shares available for issuance</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>CLASS</th>
<th>RECIPIENT</th>
<th>SHARES</th>
<th>% of Series</th>
<th>Fully Diluted</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>FOUNDER SHARES</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sally Founder</td>
<td>4,000,000</td>
<td>50.0%</td>
<td>40.0%</td>
<td></td>
</tr>
<tr>
<td>Mike Techie</td>
<td>2,400,000</td>
<td>30.0%</td>
<td>24.0%</td>
<td></td>
</tr>
<tr>
<td>Jane Designer</td>
<td>800,000</td>
<td>10.0%</td>
<td>8.0%</td>
<td></td>
</tr>
<tr>
<td>Mark Angel</td>
<td>800,000</td>
<td>10.0%</td>
<td>8.0%</td>
<td></td>
</tr>
<tr>
<td>[TBD]</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Issued Founders / Executive</td>
<td>8,000,000</td>
<td>100.0%</td>
<td>80.0%</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>2009 STOCK PLAN</strong></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Options Reserved</td>
<td>2,000,000</td>
</tr>
<tr>
<td>Total Options Granted</td>
<td></td>
</tr>
<tr>
<td>Options Exercised</td>
<td></td>
</tr>
<tr>
<td>Cancelled/Expired Options</td>
<td></td>
</tr>
<tr>
<td>Options Outstanding</td>
<td></td>
</tr>
<tr>
<td>Options/Shares Available for Future Issuance</td>
<td></td>
</tr>
</tbody>
</table>

| TOTAL (fully diluted) | |
|-----------------------|---|---|
|                       | 10,000,000 | 100.0% | 100.0% |

<table>
<thead>
<tr>
<th>Shares Issued under Plan:</th>
<th>8,000,000</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Options:</td>
<td>2,000,000</td>
</tr>
<tr>
<td>Shares Issued Upon Exercise of Options and Purchase Rights:</td>
<td>0</td>
</tr>
<tr>
<td>Reserved but Unissued Under Plan:</td>
<td>2,000,000</td>
</tr>
</tbody>
</table>
Network Now– Reap Rewards Later!

By Michael Sachs, Managing Director
Major, Lindsey & Africa
Chicago, Illinois

For nearly two years, I was the primary in-house lawyer for “The Jerry Springer Show.” OK, sure, I have some wild stories to share. But this article isn’t about me, or about Jerry Springer. It’s about you…and how you can obtain the same type of opportunities other lawyers and I have received…through the power of networking.

The only reason I even knew the Springer job existed was because after leaving the law firm where I had worked for nearly seven years, I reached out and invited one of the firm’s partners and a mentor of mine to lunch. During the meal, he casually mentioned the Springer opening and I, of course, jumped at it! Again, this article isn’t about the Springer job. It’s about keeping in touch with as many people as possible, since you never know when they might turn you on to a golden opportunity. I could have easily let my relationship with this partner languish, but I didn’t. And because of my efforts to stay in touch, I now have a far keener insight into the world of stripper love triangles and ‘hillbilly smackdowns’ than I ever thought possible (and, more seriously, I have In-House Counsel, NBC Universal on my resume).

I also met my fiancée through networking. Shortly after being offered the Springer position, I called another former colleague to ask if I should take the job. During our conversation, she told me about a friend she thought I should meet. Had I not contacted that former colleague purely to ask career advice, I wouldn’t be getting married this spring.

The point here is that networking works! And the sooner you accept this maxim, the better off you will be…personally and professionally.

Starting to Build a Book of Business

In these turbulent times, law firm partners are expected to amass a substantial book of business – to help keep themselves, their support staff and their firms busy and profitable. This means you need a stable of clients that consistently provides you with work, and that you must be adding new clients all the time – and you must accomplish both while fulfilling all the other tasks expected of a top-notch attorney. Hey, no one said it was going to be easy!

No wonder so many mid-level associates panic. When you are trapped in the office until the wee hours, in the depths of ‘associate despair,’ it often seems flat-out impossible to accomplish all that is being asked of you, especially in terms of client development. Most attorneys don’t know where to begin. They certainly don’t teach you how to ‘build a book of business’ in law school. The difficulty of getting your own clients and developing new business are the primary reasons skilled associates jump off the partnership track and look for new careers. One of the ways to avoid this problem is to start networking…right now!

Just Do It!
As we all know, lawyering is not rocket science or brain surgery. Even the best brief writers, deal negotiators and client counselors have no guarantee of success. The unspoken truth is that there are 100 other lawyers waiting in line who are just as good as you. Being a skilled attorney is only a start. What ultimately makes you successful is if clients are willing to pay you for your services. How do you get paid, you ask? Answer: You get clients. Next question: How do you get clients? Answer: Well, they generally don’t come knocking on your door. You have to go out and get them!

For the newly-minted partner who has been laboring away in an office for the last seven to ten years, and who has been ignoring emails for lunch and dinner dates, requests to join boards and non-profit groups, and even (gulp!) deleting Facebook and LinkedIn invites, it can be very awkward to start playing catch-up. It will be fairly transparent to old friends, colleagues and classmates when you finally emerge from nearly a decade of self-inflicted hibernation and start handing out business cards, in an attempt to be social.

You can avoid this problem by incorporating networking into your life years before you make partner, so that what should appear as a sincere effort to offer your services to those closest to you doesn’t come off as cold, ambitious and desperate. It can be quite challenging to shoot emails to your former classmates or colleagues out of the blue asking them to meet you at Chipotle’s for lunch or join you at a charity benefit. But the people you contact will likely appreciate your attempts to keep alive the friendship or relationship and/or be impressed that you made the effort to connect.

Don’t expect immediate results, though, especially if you start networking in or immediately after law school. The chances are close to nil that the law school classmate who sat next to you in Torts class is going to be named a GC any time soon, let alone at a company with enough money to pay your exorbitant law firm fees. And if you’re attempting a career transition, the meetings may not lead to helpful information right off the bat, but believe me, they will pay off. You will be planting important seeds for the future. The seeds will take time to grow and some will die off, but most will flourish, often in ways you least expect. So plant as many as possible.

You need to network all the time, with all sorts of people. There will be times, however, when your networking efforts will be guided by very precise goals. Looking for a new job? Then, get out and network! Ask your friends and colleagues to recommend a good recruiter and to let you know about any opportunities they hear of. Are you a third-year law student trying to find out what an entertainment lawyer actually does? Then, get out and network! Contact well-known entertainment lawyers in your area and invite them for coffee. Are you considering a departure from the practice of law but you don’t know what path to choose? G-O-A-N!

We’ve all heard stories about the wonders of networking. How about Partner X, who first met the GC of Company A (now a client that pays $2 million in legal fees every year) when they were on the same charity board 20 years ago? Or Partner Y, who was invited to enter a “beauty contest” to represent Company B in a $100 million class action lawsuit because her law school classmate is now the company’s vice president and she stayed in touch with him? Perhaps Partners X and Y were just lucky. Trust me; they weren’t. They worked hard over the years to
develop those relationships and keep them alive. When work was particularly busy or stressful or when faced with their own domestic demands, it would have been much easier to let those relationships die, but they didn’t. And now they are reaping the rewards of proper network maintenance.

**Start Slow**

Like the most successful weight loss programs and climate change initiatives, the best way to get into networking is to start small, with baby steps. Assign yourself some simple and reachable goals. Here are five suggestions:

- **How frequently do you have lunch dates?** If the answer is under three times a week, add one more date to your weekly schedule.

- **How involved are you with your community?** If the answer is “I’m not,” think about joining your condo board, your church or synagogue, a charity board, running for City Council, or assistant coaching your kid’s little league team. All are viable options that will get you into the swing of things and introduce you to new people.

- **Schedule one fairly involved networking event every three months (at a minimum).** Make it something you enjoy, whether it’s a golf outing, a couples’ night at the theatre, a sports event, or a charity function.

- **Keep up on Facebook and LinkedIn.** These social networking sites, and others like them, are easy, free and valuable. If you are worried about them being time sucks, allot yourself a specific amount of time to spend on them each week.

- **Respond to phone calls and emails from people in your network.** Not answering them communicates a very unfriendly message: “You are so unimportant that I couldn’t find ten seconds in the day to write back to you.” No one is that busy. Find the ten seconds. If you can’t stop what you are doing at the moment, write yourself a note, and respond later that night or the next morning. Don’t let important contacts get away from you.

Yes, your life will become busier after you embrace networking. Yes, networking is work. But it should also be fun – you can dine out at fabulous restaurants, go to star-studded affairs and functions (sometimes on your employer’s dime), and take a break from the daily grind to see your friends and discover new developments in their lives. For the most part, you have a choice regarding who is in your network – if you don’t want to keep in touch with certain acquaintances, then don’t. Bring people into your network that you are excited to know.

Remember, skill in the actual practice of law is only one component to being a successful attorney. Whether it’s a matter of landing clients, securing an in-house position, changing careers, or finding your future spouse, chances are you won’t succeed by sitting at your desk. You have to get out there and network. Don’t be afraid; just do it. Your life and career are at stake.