Developing and Delivering Substantive Law Content

Chair:

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Chair, ABA Business Law Section, State and Local Bar Relations Committee
Former Chair, The State Bar of California, Business Law Section
San Francisco, California

Speakers:

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Council Member, ABA Business Law Section
Past-Chair, State Bar of Wisconsin, Business Law Section
Milwaukee, Wisconsin

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Member, Business Law Today Editorial Board
Chair, ABA Standing Committee on Technology and Information Systems
Bloomfield Hills, Michigan

Robert T. Rupp
Deputy Publisher, American Bar Association
Chicago, Illinois
AMERICAN BAR ASSOCIATION
SECTION OF BUSINESS LAW
BUSINESS BAR LEADERS CONFERENCE
MAY 11-12, 2010

CONTENT

I. Introduction to Topic and ABA SBL Content Report Brandel 6 min
   A. Section service of highest value to members is receipt of information that helps
      their professional competence
   B. Content is your most valuable asset
   C. How to create and how to deliver
   D. SBL spent several years intensively analyzing content issues, opportunities
   E. Result: Content Report: 2009 – a work always “in progress”
   F. Some Content principles

II. Generation of Content Goodkind 5 min
   A. Value to creators / author / speakers
   B. Use of items created for other purposes – e.g. law firm or internal committee
      working papers
   C. Value to recipients
   D. Time, effort to change the “culture” regarding Content creation

III. Delivery of Content – Non- Electronic Goodkind 7 min
   A. In person programs
      1. members still insist this is the delivery method they prefer, but, near their
         offices – hence, the Joint Programming project
      2. institutes
      3. programs at major meetings
      4. stand alone programs
   B. Hard copy publications
1. Hard copy advantages
2. multiple channel – hard copy and electronic (active and passive)
3. conversion to electronic only – a process

IV. Delivery of Content – Electronic

A. Characteristics

1. active v. passive
2. inexpensive
3. instant delivery
4. selective audience – slice & dice
5. easy to price, collect payment
6. searchability, accessibility after initial distribution
7. need current email address
8. subject to spam filters
9. quality control issues
10. redistributable at no cost to unintended recipients

B. e-Newsletters

1. Section
   a. Leaders Digest
   b. eSource

2. Committee

C. e-Bulletins

1. committee only – specialized audience
2. growing the audience
3. active sending
4. timely news flashes / analysis
5. short to very short
6. linked to more detailed materials – lengthier write up on Website or elsewhere – or to primary materials (e.g. case report, statute)
7. use standardized, “branded” template
8. by nature, no schedule (event dependent), but do not disappear for weeks
9. robust monitoring / encouragement by leadership

D. Websites
   Polley (Rupp) 9 min
   1. passive nature
   2. navigation
   3. searchability
   4. current information v. archival functions
   5. infinite capacity
   6. quality control
   7. how to keep current

E. Webinars
   Polley 6 min
   1. what are they
   2. after-market
   3. trained production staff
   4. good economics

F. Video conferences
   Polley 4 min

G. Social media
   separate segment - “Dealing with the Media”

V. Multi or Re – Purposing of Content
   Rupp (Polley) 5 min
   A. Life cycle examples
   B. Auto updates across silos

VI. Access / Pricing
    Polley (Rupp) 10 min
A. Goals – tensions
   1. revenue
   2. member service
   3. exposure for authors
   4. exposure of favored position

B. Options
   1. limited distribution
   2. delayed access / distribution
   3. priced access
   4. tiered pricing

VII. Joint Programming  Goodkind (Brandel) 7 min

VIII. The ABA as a Service Bureau  Rupp 5 min
Most Important Reasons for Belonging to the ABA Section of Business Law

- Personal satisfaction and development (89.8%)
- Networking for business (85.6%)
- Opportunities to participate in association (65.7%)
- To belong to a professional association (66.2%)
- Professional colleagues to use for consultation on legal issues (66.2%)
- SBL CLEs
ABA Members Want:

1. To monitor the latest developments in their specialty
2. To obtain specialized content.

Lawyers are very clear about what is important to them in joining a Section – information on their specialty

Q14. How important was each of the following elements in your decision to join a Section or special interest group?

- Monitoring the latest developments in their specialty
- To obtain specialized content
- Networking
- To influence policy or have the power to make changes
- To receive specific publications and resources available
- Because their employer requested it or because it was reasonably priced
23. Please indicate to what extent you agree or disagree with each of the following statements about the **SBL** CLE programs.

<table>
<thead>
<tr>
<th><strong>SBL</strong> CLE programs are too advanced</th>
<th>Strongly agree</th>
<th>Somewhat agree</th>
<th>Somewhat disagree</th>
<th>Strongly disagree</th>
<th>Total</th>
<th>Base</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.1%</td>
<td>9.2%</td>
<td>53.9%</td>
<td>35.8%</td>
<td>100.0%</td>
<td>1,108</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>SBL</strong> CLE programs should deal more with the business side of the issues and not just the legal issues</th>
<th>Strongly agree</th>
<th>Somewhat agree</th>
<th>Somewhat disagree</th>
<th>Strongly disagree</th>
<th>Total</th>
<th>Base</th>
</tr>
</thead>
<tbody>
<tr>
<td>9.6</td>
<td>44.7</td>
<td>37.6</td>
<td>8.1</td>
<td>100.0</td>
<td>1,099</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>SBL</strong> CLE programs should deal more with the legal side of the issues and not just the business issues</th>
<th>Strongly agree</th>
<th>Somewhat agree</th>
<th>Somewhat disagree</th>
<th>Strongly disagree</th>
<th>Total</th>
<th>Base</th>
</tr>
</thead>
<tbody>
<tr>
<td>5.8</td>
<td>30.0</td>
<td>55.3</td>
<td>8.9</td>
<td>100.0</td>
<td>1,085</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>SBL</strong> CLE programs are too basic</th>
<th>Strongly agree</th>
<th>Somewhat agree</th>
<th>Somewhat disagree</th>
<th>Strongly disagree</th>
<th>Total</th>
<th>Base</th>
</tr>
</thead>
<tbody>
<tr>
<td>2.2</td>
<td>22.9</td>
<td>47.8</td>
<td>27.1</td>
<td>100.0</td>
<td>1,099</td>
<td></td>
</tr>
</tbody>
</table>
27. What is the basis for choosing SBL CLEs to attend?

<table>
<thead>
<tr>
<th>Basis</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Content</td>
<td>69.6%</td>
</tr>
<tr>
<td>Location</td>
<td>57.5</td>
</tr>
<tr>
<td>Cost</td>
<td>53.6</td>
</tr>
<tr>
<td>Timing</td>
<td>41.6</td>
</tr>
<tr>
<td>Level of programming</td>
<td>31.7</td>
</tr>
<tr>
<td>Method of delivery</td>
<td>26.4</td>
</tr>
<tr>
<td>Other</td>
<td>2.1</td>
</tr>
<tr>
<td>None of these</td>
<td>16.0</td>
</tr>
<tr>
<td>One or more</td>
<td>84.0%</td>
</tr>
</tbody>
</table>

Base: 2,027
28. How likely would you be to participate in a **SBL CLE** program offered by the following methods?

<table>
<thead>
<tr>
<th>Method</th>
<th>Very likely</th>
<th>Somewhat likely</th>
<th>Not very likely</th>
<th>Not at all likely</th>
<th>Total</th>
<th>Base</th>
</tr>
</thead>
<tbody>
<tr>
<td>Download</td>
<td>38.6%</td>
<td>35.2%</td>
<td>17.7%</td>
<td>8.5%</td>
<td>100.0%</td>
<td>(1,982)</td>
</tr>
<tr>
<td>Teleconference</td>
<td>28.6</td>
<td>43.1</td>
<td>20.8</td>
<td>7.5</td>
<td>100.0</td>
<td>(2,007)</td>
</tr>
<tr>
<td>Live attendance at national program</td>
<td>19.8</td>
<td>38.9</td>
<td>31.1</td>
<td>10.2</td>
<td>100.0</td>
<td>(2,002)</td>
</tr>
<tr>
<td>Home study written materials</td>
<td>20.3</td>
<td>35.8</td>
<td>29.5</td>
<td>14.4</td>
<td>100.0</td>
<td>(1,986)</td>
</tr>
<tr>
<td>Multi-program meetings (Annual, Spring, and Committee meetings)</td>
<td>16.8</td>
<td>31.3</td>
<td>36.6</td>
<td>15.3</td>
<td>100.0</td>
<td>(1,987)</td>
</tr>
<tr>
<td>Home study audiotape</td>
<td>12.0</td>
<td>26.0</td>
<td>39.1</td>
<td>22.9</td>
<td>100.0</td>
<td>(1,977)</td>
</tr>
<tr>
<td>Home study videotape</td>
<td>12.4</td>
<td>28.6</td>
<td>37.2</td>
<td>21.8</td>
<td>100.0</td>
<td>(1,971)</td>
</tr>
<tr>
<td>Teleconference (telephone-based learning)</td>
<td>20.6</td>
<td>40.3</td>
<td>27.3</td>
<td>11.8</td>
<td>100.0</td>
<td>(1,976)</td>
</tr>
<tr>
<td>Internet-based course/Webcast</td>
<td>42.9</td>
<td>39.5</td>
<td>10.7</td>
<td>6.9</td>
<td>100.0</td>
<td>(1,992)</td>
</tr>
<tr>
<td>Software or CD-ROM</td>
<td>26.1</td>
<td>37.7</td>
<td>24.7</td>
<td>11.5</td>
<td>100.0</td>
<td>(1,971)</td>
</tr>
<tr>
<td>Regional seminar</td>
<td>21.4</td>
<td>50.6</td>
<td>20.1</td>
<td>7.9</td>
<td>100.0</td>
<td>(1,996)</td>
</tr>
</tbody>
</table>
**Meetings**

29. How many of the last three SBL Spring Meetings have you attended?

<table>
<thead>
<tr>
<th>Attendance Level</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>None</td>
<td>82.0%</td>
</tr>
<tr>
<td>1</td>
<td>8.5</td>
</tr>
<tr>
<td>2</td>
<td>4.0</td>
</tr>
<tr>
<td>3</td>
<td>5.5</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>100.0%</strong></td>
</tr>
</tbody>
</table>

One or more: 18.0%

Base: 2,083
30. If you did **not** attend one or more of the last three **SBL Spring meetings**, what was the reason(s) why you did not?

<table>
<thead>
<tr>
<th>Reason</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Other costs (travel, food, hotel) did not meet my budget</td>
<td>42.1%</td>
</tr>
<tr>
<td>Location of the meeting</td>
<td>39.9</td>
</tr>
<tr>
<td>Meeting date was not convenient</td>
<td>37.8</td>
</tr>
<tr>
<td>Registration fee did not meet my budget</td>
<td>30.6</td>
</tr>
<tr>
<td>Did not need CLE credits</td>
<td>25.1</td>
</tr>
<tr>
<td>Program was not relevant to my practice needs</td>
<td>17.7</td>
</tr>
<tr>
<td>Meeting was too long</td>
<td>5.0</td>
</tr>
<tr>
<td>Quality of speakers</td>
<td>.9</td>
</tr>
<tr>
<td>Other</td>
<td>21.1</td>
</tr>
</tbody>
</table>

Base: 1,634
ABA Section of Business Law
State and Local Bar Association
Joint Programming

Partners for Quality CLE

Problem: Flat or Declining Membership.

ABA Members Want:

1. To monitor the latest developments in their specialty
2. To obtain specialized content.

Lawyers are very clear about what is important to them in joining a Section – information on their specialty

Q14. How important was each of the following elements in your decision to join a section or special interest group?

- To monitor the latest developments in my specialty: 4.8
- To obtain specialized content: 3.9
- To network: 3.7
- To influence policy or have the power to make changes: 2.3
- To receive specific publications and resources available, because their employer requested it or because it was reasonably priced: 2.3
- To share ideas and experiences: 2.2
- To create new opportunities: 2.1

Monitoring the latest developments in their specialty and obtaining specialized content were significantly more important than other motivations.

Networking was slightly more important than receiving program discounts, internet-based discussions or membership opportunities.

Other reasons given in open-ended comments include: to influence policy or have the power to make changes, to receive specific publications and resources available, because their employer requested it or because it was reasonably priced.
Active Business Law Bar Groups Have The Main Ingredient.

CONTENT

Content Delivery

1. Printed publications
2. Meetings and CLE
3. Electronic delivery
   a. Website – passive
   b. Email – active
   c. Audio / Visual
Content Delivery

1. Printed publications
2. Meetings and in-person CLE
3. Electronic delivery
   a. Website – passive
   b. Email – active
   c. Webinars

- slow, costly
- 3-4% attend
- adolescence

ABA Section of Business Law Members Who do Not Attend Spring and Annual Meetings Want:

(1) Locally held,
(2) Short, and
(3) Advanced programs in their fields of practice

Sources: 2003 Survey of Non-Attendees
          2006 Survey of UCC Committee
          2007 Survey of SBL Membership
2003 Section of Business Law Survey

- Over 88% of those responding have never been to any type of Section meeting.
- 93% of respondents said they would likely or very likely attend a Section program in their own city.
- 69% of those responding indicated an interest in advanced topic CLE programs.
- 65% of those responding indicated an interest in a two-hour CLE program length and 56% showed interest in a one-day CLE program length.

2006 UCC Committee Survey

- 91% of respondents are members of the state and/or local bar.
- 91% of respondents said they would likely or very likely attend a UCC Committee sponsored program in their own city.
- 77% of those responding indicated an interest in a 1-2 hour event.
- 63-65% of those responding indicated an interest in a half-day event.
- 87% of respondents indicated a preference for live, in-person CLE.
- Even though all respondents were members of the UCC Committee, only 40% of the respondents had attended more than two Spring or Annual Meetings in the last five years.
2007 SBL Member Survey

- 90% feel SBL programming is sufficiently advanced
- 40% have used their state bar as a CLE resource
- 66% rate Section CLE as among the best or above average when compared to other sources
- Over 50% rated Section CLE as the best content when compared to seven specific cases.
- Top factors considered for choosing to participate in CLE are content (69%), location (58%) cost (54%) and timing (42%)
- 72% indicated they would be likely or very likely to attend a local program with Section content. (Second only to web based instruction.)

Possible Way of Meeting This Need

Local/State Bar – ABA Section of Business Law Partnerships
Possible Formats

Live programming on site
   Local speakers only
   ABA speaker involvement

Live programming on site with audio or video
national speaker involvement

Audio or video programming at local sites with a
local coordinator who is a member of both our bar
association.

ABA SBL Resources to Contribute

More than 200 programs per year
   Nationally recognized speakers
   High quality materials
   Cutting edge, advanced content

Frequently involve federal and state officials
discussing the latest developments and priorities
from their agencies as well as business leaders and
lawyers responsible for head-line making
transactions.
Characteristics

1. Ongoing relationships between SBA and ABA committees (UCC as a pilot)
2. SBL materials/"celebrity" speakers
3. SBL electronic marketing to Committee members/AOC in geographic area
4. “Regional” entity provides site
5. “Regional” entity markets to whoever it wishes
6. “Regional” entity or law firm provides CLE credit if desired
7. “Regional” entity provides local speakers
8. Early identification of cutting edge topics

Comments and Questions
TERMINOLOGY AND GLOBAL ISSUES

BASIC TERMINOLOGY USED IN THE PLAN

It is important to understand some basic terminology that is used throughout the plan and the tactics.

- Content Management – The process through which content is created, distributed, and evaluated.


- Content Life Cycle – The linear process through which an idea is developed (usually at the committee level), it becomes content through a content generator (defined below), it is distributed through and stored in a content silo (defined below), it is maximized and repurposed through other generators and silos, and it is finally evaluated for archive or sunset.

- Content Management System (CMS) – The technological infrastructure that supports content management by integrating content development tools, relational databases, production channels for non-electronic products and online distribution platforms.

- Content Generators– All those responsible for the creation and production of content (substantive committees, individual authors, editorial boards).

- Content Silos – The ultimate locations within the Section through which an individual element of content is distributed and stored (BLT, TBL, Books, Online Library, Web Store).

- Granularity – Pricing and packaging that allows consumers and users of content to have access to individual components of what would otherwise be a larger piece of content.

- Web Store – The ABA’s online retail space from which revenue generating content is distributed.
GLOBAL ISSUES

The Committee has identified several global issues that affect the plan as a whole and should be considered as basic context for the entire plan:

- The Committee believes that content is central to member engagement and the Sections long term survival and success. People will pay to be a part of the ABA and the Section because of what they gain from our content, both as contributors and users.

- “One touch” content management across the content life cycle is integral to the Section’s ability to successfully manage its content. Any system adopted in whole or in part to support the goals and tactics of this plan should handle work-flow in such a way that any granular piece of content is stored in one version in one place and that the most recent version of that content is populated across systems wherever and whenever it is needed. In this regard, identify optimum content format for channel of delivery and standardize each format.

- Collaboration must be encouraged at all levels of this plan. The Section should take actions that encourage committees to work together across their traditional subject-related jurisdictional boundaries (e.g. programming collaboration at meetings). The Section should work with other entities to identify shared concerns and potential solutions at the ABA enterprise level.

- In order to provide the “just in time” delivery required by our audiences, the Section requires a greater ability to influence positive search returns and online navigation so customers can find our content, granular packaging of individual components of larger products so our customers can have access to exactly what they need and granular pricing to ensure that members see value for their dues investment when using Section content.

- While the Committee does not seek to insert itself into the content silos’ individual price setting or setting of determination of promotional levels on specific programs or products, it will address an overall pricing model to set the baseline from which staff and budgetary resources needed to make Section-produced content widely and easily available can be identified. The Committee will periodically review the expense side of the delivery costs of the Section’s content with a view towards reducing such costs, while bringing better value to the Section’s members and the public.

- The Committee believes that the Section should adopt a formal policy mandating the utilization of the tools and platforms developed and supported by ABA Information Systems. The Committee believes it is in the Section’s best interest to engage ABA IS and clearly present the Section’s goals, formally requesting the support those goals require and implementing interim steps to advance this plan utilizing existing systems as new tools are developed. The Committee further believes that the Section should offer its assistance to ABA IS in any way possible and offer to serve as a tester and early-adopter of appropriate platforms that are developed.

The Committee believes that additional staff will be required to support the efforts set forth in the plan.
## 2009-2010

**Idea Development Goal:** Establish processes and develop tools within the Section that promote the efficient and methodical capturing of potential content and make that potential content available to all content generators.

<table>
<thead>
<tr>
<th>TACTIC</th>
<th>STATUS/PRIORITY</th>
</tr>
</thead>
<tbody>
<tr>
<td>Regularly conduct training for chairs and content liaisons that</td>
<td>To be addressed through the training programs of the Council Committee on Committee Support and Structure. Additional online guides under development for posting in the Leadership Portal with existing materials.</td>
</tr>
<tr>
<td>addresses current issues with content production and distribution and</td>
<td></td>
</tr>
<tr>
<td>allows for feedback into the work of the Content Committee</td>
<td></td>
</tr>
<tr>
<td>Provide additional instructions to program chairs regarding the</td>
<td>Incorporated by Meetings Committee into routine correspondence.</td>
</tr>
<tr>
<td>manner in which program materials are used and how quality program</td>
<td></td>
</tr>
<tr>
<td>materials are central to “repurposing” the content presented in their</td>
<td></td>
</tr>
<tr>
<td>programs</td>
<td></td>
</tr>
<tr>
<td>Conduct regular meetings of the Content Committee with</td>
<td>Meetings scheduled through August of 2010.</td>
</tr>
<tr>
<td>representation from all content silos to review the status of content</td>
<td></td>
</tr>
<tr>
<td>plan recommendations, monitor the development/use of content systems,</td>
<td></td>
</tr>
<tr>
<td>identify potential problems and recommend corrective action.</td>
<td></td>
</tr>
<tr>
<td>Monitor the ongoing surveys conducted by the ABA and the Section and</td>
<td>No Section surveys are currently in field. Staff is monitoring ABA market research currently being conducted and will report back to the committee when completed.</td>
</tr>
<tr>
<td>recommend areas for examination.</td>
<td></td>
</tr>
<tr>
<td>Provide all committee chairs with a comprehensive document containing</td>
<td>The Technology Committee will draft a document with staff assistance over the Summer that will be available for the new chairs orientation session at the Annual Meeting.</td>
</tr>
<tr>
<td>descriptions and examples of Section tools that can be used for</td>
<td></td>
</tr>
<tr>
<td>communication with and between their members</td>
<td></td>
</tr>
</tbody>
</table>

**CONTENT DISTRIBUTION GOAL:** Fully utilize existing distribution channels and develop new channels to the fullest extent possible to ensure the timely distribution of Section content in a manner that is easily accessible to all member and non-member audiences at appropriate price levels consistent with mission of the Section and the ABA.

<table>
<thead>
<tr>
<th>TACTIC</th>
<th>STATUS/PRIORITY</th>
</tr>
</thead>
<tbody>
<tr>
<td>Develop policies and pricing for access to meeting materials and</td>
<td>Content Committee to make recommendation for consideration by officers in September.</td>
</tr>
<tr>
<td>recordings by individuals not registering for the meeting for which the</td>
<td></td>
</tr>
<tr>
<td>content was created.</td>
<td></td>
</tr>
<tr>
<td>2009-2010</td>
<td></td>
</tr>
<tr>
<td>-----------</td>
<td></td>
</tr>
<tr>
<td>Review the existing non-member subscription pricing structure for Section periodicals and make recommendations for any amendment to that structure as well as possible recommended price points for sale of individual articles.</td>
<td></td>
</tr>
<tr>
<td>Content Committee to discuss, with recommendation to Officers in March.</td>
<td></td>
</tr>
<tr>
<td>Collect data from website users to determine usage patterns and satisfaction. Share this data with ABA IS and develop a plan for corrective action based on findings.</td>
<td></td>
</tr>
<tr>
<td>ABA IS Staff is collecting user feedback through page level surveys and is collecting observational data through search monitoring and performance reports. Data will feed into the project driving site modification currently underway by the Standing Committee on Strategic Communication.</td>
<td></td>
</tr>
<tr>
<td>To better utilize BLT as a vehicle for distributing committee-generated content, ask that the Section expect each committee to provide at least one article or mini-theme every two years. Launch a Delaware column with rotating submission from Delaware firms.</td>
<td></td>
</tr>
<tr>
<td>Under consideration by the BLT Editorial Board</td>
<td></td>
</tr>
<tr>
<td>To increase the spread of content generated for BLT, provide podcasts of articles or interviews with article authors.</td>
<td></td>
</tr>
<tr>
<td>Discussed by BLT Editorial Board and currently gathering information on the production and distribution process.</td>
<td></td>
</tr>
<tr>
<td>Open eSource as a vehicle for quick publication of the original work of individual members and committees.</td>
<td></td>
</tr>
<tr>
<td>Current practice. Staff to highlight as an opportunity in other member communications.</td>
<td></td>
</tr>
<tr>
<td>When appropriate and possible, promote newsletters around the subject matter of the newsletter and not around sponsoring / authoring committee.</td>
<td></td>
</tr>
<tr>
<td>To be addressed in the redesign of the Section's website.</td>
<td></td>
</tr>
<tr>
<td>To maintain the profitability of Section products, ensure that committee-posted content does not undercut the value of that which is sold elsewhere by the Section.</td>
<td></td>
</tr>
<tr>
<td>Adopted as general guidance for the committee</td>
<td></td>
</tr>
<tr>
<td>To enhance revenue and promote the timely update of Section publications, encourage committees to move toward development of committee works that can be updated annually and sold on a subscription basis.</td>
<td></td>
</tr>
<tr>
<td>To be communicated by Publications Board in communication to Committee Chairs.</td>
<td></td>
</tr>
<tr>
<td>To enhance the perception of committee membership as a Section benefit, provide an efficient platform for committees to host and archive substantive, non-CLE webinars for their members.</td>
<td></td>
</tr>
<tr>
<td>Current practice overseen by staff.</td>
<td></td>
</tr>
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</table>
### 2009-2010

To ensure that resources are in place to efficiently deliver the CLE programs of the Section, establish the staffing level and contractual relationships necessary to meet the Section’s expectations for delivery of and revenue generated by its CLE offerings.

The ABA Center for CLE is providing additional services for program development and distribution, including enhanced support for sales and archiving of past programs. Educational Programming will continue to monitor.

To reduce meeting expense, determine the usefulness of CD ROMS as a material distribution method and explore methods to limit the number of CD ROMs produced for meetings including alternative distribution methods and the potential of pre-order.

Content Committee to research the use and popularity of CDs and make recommendation for future use in time for implementation at Spring 2010 meeting.

### CONTENT MAXIMIZATION:

Provide mechanisms that enable users of Section content to be directed to similar content in the same content silo or in other silos that would be of value to them and that promotes the use of existing content to generate new content.

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<tbody>
<tr>
<td>Notify the authoring content contributors any time a piece of content is repurposed beyond its original intent.</td>
<td>General instruction for all content silos.</td>
</tr>
<tr>
<td>To encourage the cross-marketing of all Section products in <em>BLT</em>, include sidebars and breakout boxes within articles to promote Section committees, programs and products that relate to the topic of the article.</td>
<td>BLT editorial staff working closely with other silo staff members on each issue to highlight appropriate products and programs.</td>
</tr>
<tr>
<td>To expand the content of <em>BLT</em> and better engage the Section’s authors and promote their publications, feature articles by book authors in <em>BLT</em> on the subject of their book.</td>
<td>BLT Editorial Board to work with Publications Board to gain access to book authors.</td>
</tr>
<tr>
<td>To increase the pool of available CLE and promote other Section products, establish a model and procedure to offer a CLE program on the topic of every new Section publication.</td>
<td>Publication Board to work in consort with Educational Programming to time programs to book releases.</td>
</tr>
<tr>
<td>Monitor all CLE presentations and encourage presenters to author publications and articles whenever possible.</td>
<td>Staff to work with all silos on the preparation, implementation and review of all meeting surveys to support these tactics.</td>
</tr>
<tr>
<td>Conduct quarterly meetings with all silos to review new content that is in or near the production stage.</td>
<td>General agenda item for all Content Committee meetings.</td>
</tr>
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</table>
**2010-2011**

**Idea Development Goal:** Establish processes and develop tools within the Section that promote the efficient and methodical capturing of potential content and make that potential content available to all content generators.

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<tbody>
<tr>
<td>Provide an online bulletin board for committees to share programming ideas and suggest collaboration in all CLE programming.</td>
<td>Systems in place to allow greater ability for online entry of program ideas, description and information. Refining for Annual Meeting 2010.</td>
</tr>
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</table>

**CONTENT CREATION:** Streamline the processes employed by all content generators that lead to deliverable content, including utilizing standardized formats for content that are usable across all content silos and require little to no effort to repurpose the content.

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<tr>
<td>Review each content silo's process for opportunities to reduce time of production, increase quality and consistent interaction with various content generators, while reducing the cost of publishing the content.</td>
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</tr>
<tr>
<td>Encourage a review of ABA copyright policy governing the use of ABA as it relates to the use of content by other entities within the organization to generate new content, authors providing indemnity to the ABA, and use of ABA content by allied organizations.</td>
<td>Content Committee</td>
</tr>
</tbody>
</table>

**CONTENT DISTRIBUTION GOAL:** Fully utilize existing distribution channels and develop new channels to the fullest extent possible to ensure the timely distribution of Section content in a manner that is easily accessible to all member and non-member audiences at appropriate price levels consistent with mission of the Section and the ABA.

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<tr>
<td>Establish content access points and pricing schemes with content silos that are consistent with the Section’s goals to recruit and retain Section members. Explore the possibility and impact of selling content historically available only to members. Gather feedback from all content silos with regard to the issues below and develop an overall pricing policy for all Section content.</td>
<td></td>
</tr>
<tr>
<td>Increase the interactivity of TBL articles posted on line by including links to cited cases, hyperlinks to author biographies, and other features as deemed appropriate. Revisit the policy of complimentary open access for members to fund improvements.</td>
<td></td>
</tr>
<tr>
<td>To generate revenue and offset increased development expenses, review open access online of TBL for a nominal fee for members.</td>
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<tr>
<td>To enhance the ability of readers to interact with the content presented, provide a hyperlink to cited material in articles.</td>
<td></td>
</tr>
<tr>
<td>To generate interest and increase the timeliness of <em>TBL</em> content, select key portions or abstracts from <em>TBL</em> articles that are in printing process and distribute prior to publication.</td>
<td></td>
</tr>
<tr>
<td>To provide more timely and efficient publication, explore a mechanism for distribution of surveys and reports outside of the formal TBL peer review process and editorial policies.</td>
<td></td>
</tr>
<tr>
<td>To provide members with the most recent developments in their specific practice area, develop mechanisms to allow committees to push out committee-generated content on hot topics in a timelier manner and in a less formal manner than required by traditional content silos, while maintaining the quality control that exists under the traditional silos.</td>
<td></td>
</tr>
<tr>
<td>To generate Section revenue, make the recordings and archive of all Section CLE available on the Web Store and priced accordingly.</td>
<td></td>
</tr>
<tr>
<td>To address the needs of individuals unable to attend Section meetings in person, determine a strategy for distance learning of the CLE presented at Section meetings.</td>
<td></td>
</tr>
<tr>
<td>To reduce the necessity for distribution of printed materials at meetings, explore alternatives to posting meeting materials in a format that can be easily used on wireless devices (e.g., computers and blackberries) and portable electronic readers (e.g., Kindle)</td>
<td></td>
</tr>
<tr>
<td>To reduce the need for pre-meeting production of hard copies of program materials, improve the hardware and access points provided at meetings for printing program materials and explore provision of print-on-demand services for attendees desiring hard copies of materials.</td>
<td></td>
</tr>
<tr>
<td><strong>CONTENT MAXIMIZATION:</strong> Provide mechanisms that enable users of Section content to be directed to similar content in the same content silo or in other silos that would be of value to them and that promotes the use of existing content to generate new content.</td>
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### 2010-2011

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<th>Content Committee</th>
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**Conduct periodic inter-entity content reviews with an eye toward marketing and programming synergies.**

**CONTENT EVALUATION:** Subject all content to routine and regular evaluation to ensure that it is still valuable, timely and accurate and make accommodation for old content to be archived or sunset as appropriate.

- Ensure that an evaluation schedule and sunset date is attached to all content.
- Provide automatic electronic notification to content silo and/or content generator of pending evaluations, archival or sunsetting of content.
- Establish archiving policies that support preservation of the Section’s content while at the same time removing roadblocks to the quick and clean identification of current content. Explore development of a searchable archive separate from main web files to reduce the prominence of old content in search returns.
- For each content silo, assist in information gathering and goal setting in each of the following areas and regularly evaluate based on:
  a. Content input (e.g., volume of content available, forms of content available, number of committees producing content);
  b. Content output (e.g., website hits, downloads, class of member or individual accessing content) whether a committee’s members are accessing content, what committees’ content is being accessed);
  c. Content Value (e.g. production cost, revenue generated, use by members).
## 2011-2012

### Idea Development Goal: Establish processes and develop tools within the Section that promote the efficient and methodical capturing of potential content and make that potential content available to all content generators.

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<tr>
<td>Use members, possibly students, young lawyers or new committee members, with an interest in subject matter to assist in recording idea creation activities (monitoring list serves, capturing ideas at meetings, aggregating content from other media)</td>
<td>Committee Chairs. Incorporate into committee chair training. Sci tech model?</td>
</tr>
<tr>
<td>Change committee Publications Liaisons to Content Liaisons, tasked with monitoring idea and content development within their committee and regularly reporting to the content committee on those activities as well as actively communicating with all content generators. Provide these liaisons with the tools required to do this task effectively (reporting channels, online planning and collaboration tools). Encourage content liaisons within the committee to repurpose all committee content (e-newsletters, programs, articles, surveys) to spur additional (more formal and less formal) content.</td>
<td>Content Committee oversight of liaisons with support from Council Committee on Committee Support and Structure. To be recommended in this report and taken forward as committee leadership shifts at Annual Meeting. Online training will be available (see tactic j).</td>
</tr>
<tr>
<td>Provide Content Liaisons with a template for their reports to the content committee with automatic copy to their committee’s chair. Encourage chairs to review these reports and communicate with their content liaison in order to share relevant content issues in their reports to Council.</td>
<td>Content Committee. Reporting structure in place for first reports in December, 2009.</td>
</tr>
<tr>
<td>Develop mechanisms for members not attending meetings to have the opportunity to participate in and have direct input to idea development, e.g. proprietary work areas for online idea development.</td>
<td>ABA IS is developing tools to provide both secure and open workspace for use by committees. Staff and the Section Technology Committee members are monitoring this development and will regularly report back to the committee, recommending implementation plans when appropriate.</td>
</tr>
</tbody>
</table>

### CONTENT DISTRIBUTION GOAL: Fully utilize existing distribution channels and develop new channels to the fullest extent possible to ensure the timely distribution of Section content in a manner that is easily accessible to all member and non-member audiences at appropriate price levels consistent with mission of the Section and the ABA.


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<tr>
<td>Ensure that migration of the all Section content (e.g., Program Library) is a viable option for any new library developed by ABA IS using the new Sharepoint Content Management System.</td>
<td>Website Subcommittee. Preliminary report on migration in August, ongoing oversight.</td>
</tr>
<tr>
<td>Establish the necessary systems to reliably sell publications that are regularly updated on a subscription basis.</td>
<td>Publications Board. Preliminary review with ABA Publishing and ABS IS staff for recommendations in August, 2009. (amended from version accepted by Council)</td>
</tr>
<tr>
<td>Coordinate efforts with other ABA entities and ABA IS to establish a standard model for distribution of granular content (articles, podcasts, etc.) that allows for tiered pricing and distribution strategies through the ABA Web Store.</td>
<td>Content Committee. Propose a meeting with other Sections in conjunction with the 2009 Fall SOC meeting.</td>
</tr>
<tr>
<td>Subject to existing ABA license agreements, evaluate whether content published electronically should be done in a way that it is accessible via the content aggregators (West, Lexis, etc) that are most commonly used and that it is recognized as a product of the Section.</td>
<td>Content Committee</td>
</tr>
<tr>
<td>Adopt an architecture for the Section website that is based on the subject matter of the content rather than the content silos and utilizes visual tools to facilitate navigation by subject.</td>
<td></td>
</tr>
<tr>
<td>Maximize search functionality by establishing posting criteria (tagging, keywords, file format etc.) that take full advantage of the internal Google search appliance, is optimized for external search engines and clearly presents search tools and options to users.</td>
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</tr>
<tr>
<td>Create a segregated portion of the website for members familiar with the Section and seeking administrative Section information that does not encumber users seeking substantive content.</td>
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<td><strong>2011-2012</strong></td>
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<tr>
<td>Ensure that any interaction with the Section’s online presence promotes the value of membership, (e.g., “join the Section now” option that pops up in appropriate places. “Your membership saved you _____” language at checkout in the Web Store.)</td>
<td></td>
</tr>
<tr>
<td>The chapters and/or appendices of publications can be sold as individual components, separate from the entire publication, without jeopardizing the overall context of the content or adversely effecting sales of the complete publication. Coordinate with the existing “package plan” marketed by the ABA. Define the scope in which we participate, what is included, and the manner in which the price is established. Create &quot;subscription-based&quot; model for various annually recurring content. Establish a pricing model whereby all, some or part of the content for a an individual publication can be sold.</td>
<td></td>
</tr>
<tr>
<td>The publication (or components) can be released for sale electronically prior to the publication being available in print.</td>
<td></td>
</tr>
<tr>
<td>Adopt a standard format for committee newsletters that promotes full text search and meets general tagging guidelines.</td>
<td></td>
</tr>
<tr>
<td>Make subscriptions to all Section newsletters available on Web Store for non-Section member purchase individually or as a package.</td>
<td></td>
</tr>
<tr>
<td>To enhance the attendee experience and assist in appropriation of meeting space and logistical planning, provide an itinerary planner for program attendees that incorporates links to program materials.</td>
<td></td>
</tr>
<tr>
<td>August, 2010, in conjunction with broader webstore improvement project currently underway by ABA IS. (Modification from version accepted by Council)</td>
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<tr>
<td>Preliminary reports and implementation recommendations due from all Content Silos October 2009.</td>
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<tr>
<td>1st Generation to be in place by Spring Meeting 2009; however, the system will not allow for information for the Section.</td>
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## Long Range Goals

**CONTENT CREATION:** Streamline the processes employed by all content generators that lead to deliverable content including utilizing standardized formats for content that are usable across all content silos and require little to no effort to repurpose the content.

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<tr>
<td>Provide a standard set of editing and production tools to all content generators that will provide the final content in a uniform format that is compliant with the structure of the content management system, including standardizing synopsis.</td>
<td>This will flow from the development of the CMS by ABA IS. Content Committee will take a strong advisory role in the system development and serve as the platform for implementation across content silos.</td>
</tr>
<tr>
<td>Adopt workflow tools that allow editors to create visual checkpoints with automatic e-mail notification to alert contributors of the project’s status and next steps.</td>
<td>This will largely be a product of systems developed by ABA Publishing in consort with ABA IS. This is another case were the role of the Committee will be one of input at the development stage and promoting implementation.</td>
</tr>
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**CONTENT DISTRIBUTION GOAL:** Fully utilize existing distribution channels and develop new channels to the fullest extent possible to ensure the timely distribution of Section content in a manner that is easily accessible to all member and non-member audiences at appropriate price levels consistent with mission of the Section and the ABA.

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<tr>
<td>Employ methods to push content out by subject matter (area of concentration) instead of just by committee membership, e.g., “RSS subscription” features, thus allowing a customizable “My-BLS” webpage.</td>
<td>Website Subcommittee</td>
</tr>
<tr>
<td>To improve the usability of <em>TBL</em> and reduce production costs, develop an advanced electronic version with the goal of reducing the proliferation of the print versions through an “opt-in” subscription for print.</td>
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# Long Range Goals

To improve the usability of BLT and reduce production costs, explore development of advanced electronic versions of *Business Law Today* with the goal of reducing the proliferation of the print version by allowing members to choose the format in which they prefer to receive their subscription (print or electronic).

Explore merging of BLT and other Section content into an enhanced e-mail service delivered weekly to provide real time delivery of articles and content as it is available.

Explore merging of eSource and other Section content into an enhanced web-based service to provide real time delivery of articles and content as it is available.

**CONTENT MAXIMIZATION:** Provide mechanisms that enable users of Section content to be directed to similar content in the same content silo or in other silos that would be of value to them and that promotes the use of existing content to generate new content.

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<tr>
<td>Record content contributions of all authors and presenters as a component of the member database with the subject matter of the content noted. Allow member directory search to return the names of individuals providing content in a given area.</td>
<td>(Content Committee) Address with ABA IS as a component of the Member Directory and new AMS.</td>
</tr>
</tbody>
</table>
Message from the Chair, Nathaniel L. Doliner

I mentioned in last month's column that The Association for Corporate Growth® (ACG®) is one of the sponsors of our Spring Meeting.

ACG is a global organization for middle market M&A dealmakers and business leaders. Its membership includes business executives, private equity and venture capital funds advisors, investment bankers, accountants, valuation professionals, attorneys and other professionals involved in investing in or advising companies. Den White, who is an active member of our Section and our Mergers and Acquisitions Committee, is ACG's Chairman of the Board. Congratulations, Den, on this important role.

ACG is promoting our Spring Meeting to its membership, and I would like to call your attention to ACG's 2010 Intergrowth Conference, May 4-6, in Miami Beach, where you can network with and discuss, with leading middle market M&A and corporate development professionals, the business outlook in the middle market sector. You can obtain more information about ACG and the Intergrowth Conference at http://www.acg.org/. Our Section looks forward to an ongoing relationship with ACG.

Thanks to our Program Partner, the Colorado Bar Association (Cobar), www.cobar.org, and especially Cobar's Business Law Section and Chair, Carolyn Hariton, for their great efforts in promoting and participating in our Spring Meeting.

We are very pleased that Harry C. Alford, President and CEO of the National Black Chamber of Commerce and a member of the U.S. Chamber of Commerce's board of directors, will be the keynote speaker at the Section Luncheon on Friday at the Spring Meeting. African American entrepreneurship is a very important and rapidly growing part of our economy. You will not want to miss Mr. Alford's important remarks.

Although online registration for the Spring Meeting has been closed, you can still register on site. The schedule, program book and preliminary program materials are available here.

Many of our committee meetings and programs will be available by teleconference, and committee chairs are providing dial-in instructions to their members, by listserv, as to such meetings and programs. Reports from committee meetings and program materials will also be posted on committee web pages and in the Section's online program library. So, even if you cannot attend the Spring Meeting, your membership gives you access to a great deal of content from the Spring Meeting.

Nathaniel L. Doliner
Chair, Business Law Section
include member submitted practice pointers. These member submitted practice pointers will be in addition to featuring interesting and timely programs and materials produced by the committees of the Business Law Section. Please send your submissions to the eSource editor via email.

All submissions must be through email and must include the author's full contact information and affiliations. The eSource editor has sole discretion regarding the decision to publish any member submitted practice pointer. Authors of selected submissions must sign the ABA's standard copyright release prior to publication.

1. **Proposed Rulemaking on Bank-Sponsored Securitizations.**

2. **Differences Between Bank Receivership and Bankruptcy.**

3. **Citizens United Implications for Federally-Chartered Banks and Thrift Institutions.**

The Banking Law Committee Journal's March 2010 edition is especially informative, containing articles on the FDIC's advanced notice of proposed rulemaking on bank-sponsored securitizations, on the February report of the Senate Permanent Subcommittee on Investigations regarding the anti-money laundering aspects of instances of access by politically exposed persons to the U.S. financial system, on the important and profound differences between bank receivership and bankruptcy regimes, and on the implications for federally-chartered banks and thrift institutions of the Supreme Court's decision in Citizens United v. Federal Election Commission.

As readers of eSource may recall, the editors of the BLC Journal also have a clever "test your knowledge" feature; the question in the last edition of the BLC Journal was "What do Alan Greenspan and the late Ernesto "Che" Guevara have in common?" The answer is that each served as the head of his country's central bank. You'll have to read this edition to find the new question that involves "The Godfather." Who said that banking lawyers are dull?

**E-mail to a Colleague**

**Web Store Featured Product:**

- **The Portable Bankruptcy Code & Rules, 2010 Edition**

This convenient and updated portable compendium provides you with easy access to the Bankruptcy Code and Rule provisions including all the new changes that became effective through December 2009. This easy-to-use reference guide features page tabs and complete keyword indexes that guide you straight to material relevant to your case. The indices are useful to lawyers with diverse practices who use the Code, from the general practitioner who occasionally represents a chapter 13 debtor, to the lawyer whose practice is almost exclusively bankruptcy related.

- **Banking Law Basics 2009 (Audio CD Package)**

This fundamental banking law course was developed to provide practitioners with an understanding of the basic laws and regulations governing banks and bank holding companies. The course is a comprehensive introduction to banking law regulations for attorneys, consultants, and bank professionals who intend to work in the field.

4. **U.S. District Court Ruling on Secured Creditors Right to Credit Bid Their Debt in an Asset Sale.**

5. **Pending Rules and Legislation Affecting Bankruptcy Practitioners.**

The Spring 2010 edition of the Business Bankruptcy eNewsletter contains two articles with broad appeal. The first discusses a recent U.S. District Court decision holding that secured creditors do not have a right to credit bid their debt in an asset sale conducted pursuant to a "cramdown" plan of reorganization in a Chapter 11 proceeding, so long as the plan provides the secured creditors with the "indubitable equivalent" of their claims. The second describes pending rules and legislation that affects bankruptcy practitioners. The second article serves as a stark reminder that those on Capitol Hill who craft legislation in substantive areas, like bankruptcy and consumer protection, can be unmindful of (or indifferent to) the adverse effect that their work can have on lawyers acting as lawyers, including the FTC's "red flag" rule and the breadth and coverage of the jurisdiction of the proposed Consumer Financial Product Agency. In both of those instances, the ABA has had to get
directly involved to protect the attorney-client privilege, work product doctrine, and right of state bar associations to oversee the ethical behavior of lawyers.

E-mail to a Colleague

Web Store Featured Product:

- **(Almost) Everything You Need to Know About Getting Retained in a Bankruptcy Case**
  The process of being retained by a Chapter 11 debtor can be treacherous, steeped in practical and ethical quagmires. This program focuses on the ins and outs of the retention of professionals in Chapter 11 cases, and outlines the steps to ensure the Bankruptcy Court will approve your retention in a Chapter 11 case.

- **Asserting and Defending Claims in Business Bankruptcy Cases:**
  **Part I: Bankruptcy Claims 101 for the Non-Bankruptcy Practitioner (MP3 Audio Download)**
  As bankruptcy filings increase, more and more non-bankruptcy attorneys are becoming involved in bankruptcy cases. Learn the basics of preparing and filing Proofs of Claim and defending objections to claims.

  **Part II: Proofs of Claim and Claims Objections Landmines (Audio CD Package)**
  Although the concept of filing a proof of claim stating the amount due and owed to your client by the debtor appears to be a simple task (and is often delegated to junior associates), the claims process is fraught with peril. The panelists explores many of the "trickiest" issues in preserving and maximizing your client's claim and defending it from objections.

- **Bankruptcy Deadline Checklist, 4th edition**
  This new fourth edition of Bankruptcy Deadline Checklist is a quick reference guide for anyone who deals with a bankruptcy case including bankruptcy judges, lawyers, paralegals, credit managers, collection agents, professors, law students and others participating in bankruptcy cases or study. It has been updated to incorporate relevant Code and Rule changes. The Checklist incorporates the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 and other amendments to the code through August 31, 2009, as well as the corresponding rules adopted by the Supreme Court, which became effective as of December 1, 2009, and should prove useful in learning the extensive changes contained in the most material revision of the Code since the 1978 enactment.


7. **IRS Requirements on Disclosure of Uncertain Tax Positions.**

The March 2010 edition of Tax News for Business Lawyers is jammed full of interesting scholarship, including articles on "Tax Provisions in President Obama's Budget Proposal; Expiring Tax Provisions," "Uncharted Waters – The "Repeat" of the Estate Tax and Your Estate Planning," "Could a VAT be Coming to the U.S.?," "Applying for Tax Exemption? Toy with the IRS at Your Peril," "IRS Intends to Require Businesses to Disclose Uncertain Tax Positions," and "Update to IRS Wants a Roadmap; IRS Announces Draft Schedule Coming in April for 2010 Tax Year." These are wide-ranging topics that should be of interest to many business lawyers.

E-mail to a Colleague

Committee Spotlight

To learn more about or join the committees that contributed to this month's practice points, just click on the committee name below.

- Banking Law
- Business Bankruptcy
- Taxation

Section members are eligible to join the Section's committees at no additional cost. Become involved or simply stay in the information flow. It's FREE!

Section News

The Section is Now Accepting Applications for the Business Law Fellows, Ambassadors and Diplomats Program.

The goal of the Business Law Fellows, Ambassadors and Diplomats Program is to increase the participation of young lawyers, lawyers of color and lawyers with disabilities in Section activities. The Section is committed to investing dollars in these individuals who are expected to participate actively in the substantive work of the Section and to grow into future leadership positions. The Program is designed not only to develop future Section leaders but also to enhance the image of the Section among members of the Young Lawyers Division and national bars of color in order to attract these individuals into Section membership. The Section will select five Fellows, five Ambassadors and one Diplomat and will fund their expenses to participate in Section activities for two years. Applications are due April 30, 2010. For more information about the program, click here.

For more news and updates visit the Section's newsletter index.
Message from the Chair, Nathaniel L. Doliner

Congratulations to Carol Hansell, Chair of our Section's Corporate Governance Committee, who was interviewed in Business Week recently on how boards of directors can better understand and effectively deal with shareholder issues. Click here to read this insightful interview.

The Corporate Governance Committee, with more than 2,200 members, is one of our Section's most active committees with members from the U.S., Canada and many other parts of the world. It is truly an international committee. Follow what our Corporate Governance Committee is doing through their Web site.

Registrations for the 2010 Spring Meeting are brisk, and, if you have not done so, I urge you to register online soon for what promises to be a tremendous Spring Meeting. I also encourage you to review the great list of sponsors for the Spring Meeting. In addition to our wonderful law firm and corporate sponsors, we are honored to welcome as sponsors this year a number of non-profit industry or membership organizations, including the Association for Corporate Growth-Denver Chapter, the Turnaround Management Association, and the National Association of Corporate Directors. The Business Law Section's association with these very important organizations will enrich our Section greatly.

At each Spring Meeting, our Section sponsors a public service project benefiting a charity in the host city. This year, our Section will partner with the Colorado Coalition to End Hunger to provide food and good nutrition to children from low-income families who typically lose access to school meal programs during the summer months. If you wish to donate to this very worthy cause, please click here.

Franchise issues can present traps for the unwary business lawyer. A BLT Live program on April 14 will focus on how to avoid these traps. Please visit the Section Web site for more information about this important program. While you are there, please note some of the other great upcoming Business Law Section programs.

Nathaniel L. Doliner
Chair, Business Law Section

Practice Points

Note from the Editor

eSource is interested in practice pointers that you want to share with the members of the Business Law Section, and so we are expanding the scope of this section of eSource to include member submitted practice pointers. These member submitted practice pointers will be in addition to featuring interesting and timely programs and materials produced by the committees of the Business Law Section. Please send your submissions to the eSource editor via email.

All submissions must be through email and must include the author's full contact information and affiliations. The eSource editor has sole discretion regarding the decision to publish any member submitted practice pointer. Authors of selected submissions must sign the ABA's standard copyright release prior to publication.

1. A Trap for the Unwary - Corporate Aggregation Rules in the States for Political Contributions.
   The Hatch Act - It's Not Just for Federal Employees Anymore.
2. **U.S. Companies Beware - Canada's Tough New Lobbying Act.**

The inaugural newsletter of the newly-formed Government Affairs Practice Committee has just been published. In addition to an introduction to the Committee and its aspirations, there are three featured articles:

- "A Trap for the Unwary - Corporate Aggregation Rules in the States for Political Contributions."
- "The Hatch Act - It's Not Just for Federal Employees Anymore."
- "U.S. Companies Beware - Canada's Tough New Lobbying Act."

Understanding government relations and government affairs isn't just for those who happen to live and work inside the Beltway, but is important to any business lawyer who interacts with Federal and state governments even on an irregular basis. The inaugural newsletter of the Government Affairs Practice Committee is a worthy addition to the literature. Welcome!

3. **E-mail to a Colleague**

4. **Web Store Featured Product:**

   **Increased Regulation of Lobbying and Other Political Activities**
   **(Audio CD Package)**

   Government affairs and lobbying have become a critical component of most corporations, trade associations, and other non-profit associations. Lobbying not only protects an organization, it is also an effective tool to create competitive advantages. But with the scandals surrounding lobbyists like Jack Abramoff, and increasing state and federal restrictions, how can you be sure your clients will emerge unscathed? What about other political activities beyond lobbying, like campaign financing? Do you know the latest ethics rulings and how these will affect your clients?

5. **E-mail to a Colleague**

4. **The Commercial Real Estate Loan Workout: Strategies for Minimizing Losses in a Troubled Market**

5. **2009 Developments in FDIC Failed Bank Resolutions**

In the November 2009 issue of the Banking Law Committee Journal, featured articles included "The Commercial Real Estate Loan Workout: Strategies for Minimizing Losses in a Troubled Market," and "2009 Developments in FDIC Failed Bank Resolutions." These two articles alone would be worth the price of admission, but the teaser is a test of your banking knowledge with the question, "What do Alan Greenspan and the late Ernesto ‘Che’ Guevara have in common?" The Editor promises to publish the names of the first five correct respondents in the next issue of the Journal. Perhaps Alan Greenspan will be willing to donate a signed version of his famous Congressional testimony in which he first uttered the memorable phrase "irrational exuberance"?

4. **Web Store Featured Product:**

   **Commercial Loan Workout Collection**
   **(CD-ROM)**

   Learn the ins and outs of loan workouts with this comprehensive CD-ROM featuring the following bestselling CLE programs:

   - Anatomy of a Loan Workout
   - Loan Restructuring: Let's Make a (new) Deal
   - Workouts 101

Commercial Lending Law: A State-By-State Guide is a practical, easy-to-use compendium that outlines the essential information about commercial lending law in all 50 states. This is an especially valuable resource for lawyers negotiating or reviewing commercial lending laws outside their own jurisdiction. This compilation of state surveys covers all aspects of commercial lending laws for each state.

6. Post-Cuomo - The Floodgates Have Not Opened and Watters Still Predominates.

The November-December 2009 newsletter of the Consumer Financial Services Committee contains several articles of broad appeal. Two recent decisions of the Supreme Court and the U.S. Court of Appeals for the Second Circuit have revolved around the ability of the Federal banking laws through the Commerce Clause in the US Constitution to preempt state laws and/or the enforcement thereof. The newsletter contains a thoughtful analysis of the law of preemption: "Post-Cuomo - The Floodgates Have Not Opened and Watters Still Predominates." This is a useful exercise for a business lawyer involved in any aspect of consumer finance.

7. Professional Reflections from Business Law Advisor Jerry Hyman.

Jerry Hyman is an extraordinary person who has lived through very interesting times and has represented some of the most demanding clients. His dedication to the Bar, to public service, and to the civil rights movement cannot be questioned. Those present when Jerry gave his remarks at the Midwinter Council Meeting were moved by his grace and insight. The Section has been blessed by those who have accepted our offer to be Business Law Advisors and share their wisdom and experience with us.

Business Law Advisors are distinguished leaders of the profession who the Section has chosen to involve in the Section's activities at its expense. Each year, three outstanding business lawyers are chosen for this honor for a two-year term. Business Law Advisors are individuals who have distinguished themselves as practitioners, teachers, or government officials in one or more of the areas in which committees of the Section are active. Click here for more information on the Advisors Program and nomination process.

Committee Spotlight

To learn more about or join the committees that contributed to this month's practice points, just click on the committee name below.

- Banking Law
- Consumer Financial Services
- Government Affairs Practice

Section members are eligible to join the Section's committees at no additional cost. Become involved or simply stay in the information flow. It's FREE!

The Business Lawyer

February 2010 · Vol. 65 · No. 2

Published quarterly, The Business Lawyer is the premier business law journal in the country, circulating to approximately 60,000 readers. It contains articles of significant interest to the business lawyer, including case law analysis, and developing trends.

Note: access to articles requires membership in the ABA Business Law Section.
Private Ordering and the Proxy Access Debate
This Article examines two "meta" issues raised by opponents of the SEC's proposal to provide shareholders with rights to place director candidates on the company's proxy materials. First, opponents argue that, even assuming proxy access is desirable in many circumstances, the existing no-access default should be retained and the adoption of proxy access arrangements should be left to opting out of this default on a company-by-company basis. This Article, however, identifies strong reasons against retaining no-access as the default. There is substantial empirical evidence indicating that director insulation from removal is associated with lower firm value and worse performance. Furthermore, when opting out from a default arrangement serves shareholder interests, a switch is more likely to occur when it is favored by the board than when disfavored by the board. We analyze the impediments to shareholders' obtaining opt-outs that they favor but the board does not, and we present evidence indicating that such impediments are substantial. The asymmetry in the reversibility of defaults highlighted in this Article should play an important role in default selection. Print Article

The SEC's Proposed Proxy Access Rules: Politics, Economics, and the Law
The U.S. Securities and Exchange Commission has proposed proxy rules that would mandate shareholder access to conditions that could be modified by a shareholder majority to make proxy access easier, but not more difficult. From a legal perspective, this Mandatory Minimum Access Regime is so riddled with internal contradictions that it is unlikely to withstand review under the arbitrary and capricious standard of the Administrative Procedure Act. In contrast, a fully enabling opt-in proxy access rule is consistent with the administrative record developed to date and can be implemented with little delay. Print Article

Reforming the Regulation of Broker-Dealers and Investment Advisers
A key component of financial regulatory reform is harmonizing the law governing brokers-dealers and investment advisers. Historically, brokers charged commissions and were regulated under the Securities Exchange Act of 1934. Advisers charged asset-based fees and were subject to the Investment Advisers Act of 1940, which contains a special exclusion for brokers. In recent years, brokers have changed their compensation structure and many now market themselves as advisers, raising questions about whether they should be treated as such. The Obama Administration's 2009 white paper on regulatory reform and draft legislation call for a fiduciary duty to be imposed on brokers that provide advice. This Article explores the debate over regulating brokers and advisers, and makes four key claims. First, changes in brokers' compensation and marketing methods vitiate application of the broker-dealer exclusion and should subject brokers to the Advisers Act. Second, changes in the nature of brokerage, spurred by changes in technology, make the broker-dealer exclusion unsustainable and Congress should repeal it. The third claim is that imposing fiduciary duties on brokers is incompatible with their historical roles as dealers and underwriters. To resolve this tension, this Article suggests a compromise that enhances brokers' duties but does not hobble their ability to perform their traditional functions. Finally, regulating brokers as advisers would overburden the U.S. Securities and Exchange Commission. This Article offers alternatives to alleviate the strain. Print Article

Attacking the Classified Board of Directors: Shaky Foundations for Shareholder Zeal
The practice of dividing the corporate board into classes, with each class up for election in successive years, has venerable roots in corporate practice. However, it has recently come under concerted attack by institutional shareholders that fear its misuse as a takeover defense. Examining the issue from several perspectives, this Article argues that the possible misuse of the classified board as a takeover defense justifies no more than case-by-case consideration. A separate concern is that the classified board may constitute a barrier to a minority shareholder voice. While this concern has some merit, this Article argues that the classified board is a redundant barrier to a minority shareholder voice that has importance only if preceded by other reforms to enfranchise minority shareholders. Print Article

Annual Survey of Consumer Financial Services Law
The "credit crisis" began in 2007 and built up steam in 2008, leading to an inexorable urge to enact more laws and regulations governing consumer financial services. Whether or not the deep recession fueled by the crisis is over, the aftereffects will remain with attorneys, judges, and policymakers for years to come. As the pieces in this Survey highlight, federal and state legislators, regulators, and judges are more active than ever in the field of consumer financial services. The sheer volume of new laws, regulations, and court decisions in this field is virtually unprecedented. Print Article

Annual Survey of Judicial Developments Pertaining to Mergers and Acquisitions
The primary charge of the Annual Survey Task Force is to summarize annually significant judicial decisions in the area of mergers and acquisitions ("M&A") and to publish the summaries as a service to American Bar Association members who practice in the M&A area. The Annual Survey is written from the perspective of the practicing M&A lawyer. The summarized cases are limited to those we believe to be of greatest interest and...
Section News

The Section is Now Accepting Applications for the Business Law Fellows, Ambassadors and Diplomats Program.

The goal of the Business Law Fellows, Ambassadors and Diplomats Program is to increase the participation of young lawyers, lawyers of color and lawyers with disabilities in Section activities. The Section is committed to investing dollars in these individuals who are expected to participate actively in the substantive work of the Section and to grow into future leadership positions. The Program is designed not only to develop future Section leaders but also to enhance the image of the Section among members of the Young Lawyers Division and national bars of color in order to attract these individuals into Section membership. The Section will select five Fellows, five Ambassadors and one Diplomat and will fund their expenses to participate in Section activities for two years. Applications are due April 30, 2010. For more information about the program, click here.

For more news and updates visit the Section's newsletter index.
Leader's Digest

April 29, 2010

If you have trouble viewing this email, click here or copy and paste the following link into your browser:
http://www.abanet.org/buslaw/leadership/nosearch/leaders-digest/issues/current.html

- **Annual Meeting Program Request Forms Are Due 4/30/2010.**
- **Let Us Know If We Missed You At the Council Meeting.**
- **Last Chance to Help the Section Recruit the Incoming Business Law Fellows, Ambassadors and Diplomat Class - Deadline: 4/30/2010**
- **TIP of the Week!**
- **Leadership Calendar**

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- **Annual Meeting Program Request Forms Are Due 4/30/2010.**
  Please submit your Annual Meeting Program Request Forms and requests for additional Discretionary Slots by **Friday, April 30, 2010.** The general planning memo can be found by clicking here and contains links to a number of critical planning documents. Please read this information carefully to become familiar with the changes.

  Please feel free to contact Mark Page or Donna Nesbit in the Section office with any questions.

- **Let Us Know If We Missed You At the Council Meeting.**
  Check the attendance list for the Spring Meeting Council Meeting and let Lauren Shores know if we missed you.

- **Last Chance to Help the Section Recruit the Incoming Business Law Fellows, Ambassadors and Diplomat Class - Deadline: 4/30/2010**
  The Fellows, Ambassadors and Diplomat Programs are designed to get young lawyers, lawyers of color and lawyers with disabilities, respectively, involved in the substantive work of the Section. The Section funds five Fellows, five Ambassadors and one Diplomat 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 **Friday, April 30, 2010.** Please encourage your associates to submit an application to one of the programs. For more information about the
programs, please click here.

Please note that criteria for Ambassadors have expanded to now include those who may not be a member of a national minority bar organization. To be considered for selection as a Business Law Ambassador, a person must be a lawyer of color who practices business law in a law firm, corporate entity or government agency and whose practice coincides with the work of a substantive committee of the Section; while favorable consideration is given to the fact that an applicant is an active member of a national minority bar organization, being an active member of such an association is not a requirement.

- TIP of the Week!
  Committee Chairs should avoid taking the "front" or first-chair role in public events (such as panel presentations); leave the speaking opportunities to others. For more leadership development and retention techniques, click here or visit the Leadership Portal.
Leaders Digest

April 15, 2010

If you have trouble viewing this email, click here or copy and paste the following link into your browser:
http://www.abanet.org/buslaw/leadership/nosearch/leaders-digest/issues/current.html

• **The Next Issue of Leaders Digest Will Be Sent 4/29/2010.**

• **Nominations for the Next Class of Advisors Are Due 5/7/10.**

• **The Section is Now Accepting Applications for the Business Law Fellows, Ambassadors and Diplomat Programs - New Criteria for Ambassadors!**

• **TIP of the Week!**

• **Leadership Calendar**

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• **The Next Issue of Leaders Digest Will Be Sent 4/29/2010.**
  See you all in Denver

• **Nominations for the Next Class of Advisors Are Due 5/7/10.**
  The next class of Advisors will take office at the 2010 Annual Meeting in August. To permit them to plan to attend that meeting, it is important that they be selected shortly after the Section Spring Meeting in Denver, CO. Please spend time at the Spring Meeting with your Committee considering who your Committee would like to nominate. To read a special note from the Co-Chairs of the Committee, Lawrence Goldman and Steven Mayer and for information on how to submit a nomination form, click here.

• **The Section is Now Accepting Applications for the Business Law Fellows, Ambassadors and Diplomat Programs - New Criteria for Ambassadors!**
  The Fellows, Ambassadors and Diplomat Programs are designed to get young lawyers, lawyers of color and lawyers with disabilities, respectively, involved in the substantive work of the Section. The Section funds five Fellows, five Ambassadors and one Diplomat 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 30. Please encourage your associates to submit an application to one of the programs. For more information about the programs, please click here.
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- **TIP of the Week!**
  Find the right publishing vehicle for your committee. For example, your committee may be the best one to do a symposium issue of *The Business Lawyer* or a series of articles for *BLT*, or your committee may be better suited for books or e-newsletters. For more tips on how to involve committee members, read the "Getting Involved Guide" which can be found by [clicking here](#) or in the Leadership Handbook.
Welcome to the Consumer Financial Services Committee’s new and improved newsletter. We hope that you find the information will be helpful to you in your practice.

One of the goals for our committee is to help our members stay up to date with the latest developments in our industry. Our newsletter is one of the tools to accomplish this goal. In the coming months, you can look forward to increased opportunities for learning through webinars and video seminars, which will replay the most popular CLE programs from our conferences. We are also exploring whether a Face Book, or other social networking outlet, would help us better communicate with our membership. We hope that you will be able to attend one of our upcoming meetings - Denver, April 22-24 and San Francisco, August 6-9. In addition to the great CLE and other programming, you will be able to talk with experts in our field, meet new colleagues who share your professional interests, and renew old friendships, all in two of the most beautiful cities in the world. See you there!

Terry Franzén  
CFSC Committee Chair  
tfranzen@franzen-saltzano.com

Leadership Message

CFSC Fast Facts

- Number of Current Members: 1171
- Number of Young Lawyer Members: 100
- Number of Active Past Chairs: 7
- Number of Consumer Fellows: 7
- Subcommittee with the Most Members: Truth in Lending (319 Members)

Newsletter Editorial Board

- Managing Editor: Frank Springfield  
  Burr & Forman LLP  
  205/458-5187
- Editors: Lynette Hotchkiss  
  FTC - Division of Financial Practices  
  202/326-2303
- Stephanie Shaw  
  Womble Carlyle  
  202/957-4509

Thanks to everyone that attended our Winter Meeting in Park City, Utah. For those that were not able to attend, you missed a great time. While the programming was top notch as always, the high point of the meeting was the Committee Dinner (a/k/a "Don Fest") where our our former fearless leader was roasted and reduced to wearing a Blue Devils hat all night. About the only thing missing from our meeting, was huge amounts of snow. However, Terry has already promised to start working on the weather for our 2012 Winter Meeting in Park City.

If you have not already signed up for our Spring Meeting in Denver, Colorado, April 21-24, 2010, it is not too late to do so. You can sign up on line by registering here. We will be staying at the Sheraton Denver Downtown Hotel and the meeting will kickoff on Wednesday, April 21, 2010 with a welcome reception at 7:00 pm. The Young (and Not-So-Young) Lawyers will be going to dinner following the reception and you can email Doug Cuthbertson (jcuthber@milesstockbridge.com) if you want to go to this dinner. The programs will start Thursday morning at 8:00 and, if you have never attended, you will want to make sure you are there at 8:00 for the introduction of all the attendees. There will be a wide array of programs ranging from "Dramatic Shifts in Consumer Financial Product Regulation" to "Trends in Default Litigation from the Creditor's Perspective." Our Committee Dinner with also be Thursday night, April 22, 2010 at the Broker Restaurant. We hope to see you in Denver.
The Litigation and Arbitration Subcommittee of the ABA Business Law Section's Consumer Financial Services Committee expects 2010 to be another busy year in the realms of litigation and arbitration. The Subcommittee is planning a program for the ABA Spring Meeting in Denver tentatively titled "Emerging Exposures: Are Robocalls and Autodialers A Next Wave of Junk-Fax Type Litigation?" Invited speakers include Carolyn L. Hann of the Federal Trade Commission, William Himpler, Executive Vice President of Federal Government Affairs of the American Financial Services Association, and Jon Ledsky of Varga Berger Ledsky Hayes & Casey. This program is very timely with the increase in the use of robocalls and autodialers by collection agents or servicers of different types of consumer debt due to the struggling economy. All litigators should find this program a worthwhile event to attend.

Read the Full Article...

There is never a shortage of developments in the world of servicing, selling, and collecting debt. The Debt Collection Practices and Bankruptcy Subcommittee strives to keep its members current on emerging legislation and litigation trends by putting on programs that examine these issues from the consumer, collector and creditor perspective. We pride ourselves on inviting panelists from all segments of the industry, including consumer advocates, trade associations, government lawyers, in-house lawyers, and defense counsel. In the past year, we heard from Pete Barry, a well-known plaintiff's lawyer, regarding "Abusive Debt Collection Practices: Why Collectors Get Sued" and John Bedard, a prominent defense lawyer, regarding "Technology in the Collection Industry: Friend or Foe."

Read the Full Article...

We regret that an informative article about CFSC's amazing constituents is absent from this issue. Unfortunately, no one stepped forward to write such an article. BUT IT'S NOT TOO LATE! You too can be published in the CFSC Newsletter! For our next issue, we would like to feature two of our constituent groups, and you may be just the person to write about these fine folks.

CFSC Veterans: We would like to feature our CFSC Veterans, those who helped found CFCS and/or who have been a part of CFSC for 25 years or more. There is quite a bit of background information available to get you started. Maybe you are one of these veterans, and want to share a few war stories and solicit them from your veteran colleagues. Or maybe you are a young lawyer who wants the opportunity to learn more about these amazing experienced people and the contributions they have made to consumer financial services law. Either way, writing an article featuring our CFSC veterans presents you with a great opportunity.

CFSC Consumer Fellows/Consumer Advocates: Are you one of our Consumer Fellows? Do you consider yourself a consumer advocate, or maybe a consumer financial services specialist with consumer advocate tendencies? Maybe you are a young lawyer trying to decide which way to take your consumer financial services career. If you fit into any of these categories, writing an article featuring our "consumer side" friends will give you greater insight into these dedicated individuals and the unique perspective they bring to the consumer financial services legal field.

If you would like to contribute an article featuring either of the above constituent groups, please contact Lynette Hotchkiss at lhotchkiss@ftc.gov as soon as possible.
A Short History of Safeborrowing.com

The Consumer Financial Services Committee's website for consumers, Safeborrowing.com, was first published in 2001. At the request of Committee Chair Lynne Barr, committee members Jim Brown, Margie Corwin, Don Lampe, Jackie Parker, Nina Simon and Steve Zeisel put together information designed to assist consumers in making informed choices about home mortgages.

In 2004, under the leadership of Committee Chair Jeff Langer and Pro Bono Liaison John Ropiequet, committee members Nathan Bowden, Terry Franzen, David Melcer and Trish Obara expanded the existing information about home mortgage products by adding links to other websites. This was designed to give consumers additional useful information about financial services prepared by government agencies, trade associations, educational groups and others, to help the Committee achieve its goal of promoting financial literacy among consumers.

When the website was rebuilt by the Committee in 2004, there was a consensus that the Committee should provide more information to consumers than what was then provided, which was limited to information about home mortgages. The next area targeted was auto finance. As discussions continued, the perception grew that the website should also cover credit cards and student loans.

This led to a complete revision of Safeborrowing.com which was rolled out in April 2008 under the leadership of Committee Chair Don Lampe and Pro Bono Liaison John Ropiequet, who drew on the expertise of numerous committee members. With the help of Business Law Section IT staff member Frank Hillis, the home mortgage section of the website was completely rewritten, redesigned and updated by Terry Franzen, Bob Jaworski and Nina Simon. An auto finance section was prepared by Liz Huber and Scott Johnson, and Scott and

Strategic Default in Anti-Deficiency States

By: Mariana E. Gomez, American University's Washington College of Law

Mortgage lenders coping with rising foreclosure rates have a growing problem on their hands: underwater borrowers are walking away from their homes in increasing numbers. These borrowers can afford their mortgage payments but choose to "strategically default" because the amount owing on their mortgage exceeds the value of the home. As many as one in four defaults may be strategic.

"Strategic default" is fast replacing traditionally accepted mores surrounding debt and repayment. Consumer advocates are encouraging underwater borrowers to divorce themselves from their mortgages and start over.

Read the Full Article...

Is Donohue the Death Knell For Technical FDCPA Violations?

By: Tomio B. Narita, Simmonds & Narita LLP

In its recent opinion, Donohue v. Quick Collect, Inc., _ F.3d _, 2010 WL 103653 (9th Cir. 2010), the Ninth Circuit joined the Seventh Circuit and the Sixth Circuit, holding that a false and misleading statement does not violate sections 1692e or 1692f of the FDCPA unless the statement is "material." See Donohue, 2010 WL 103653, *5-6. Does Donohue mark the end of the era of hyper-technical FDCPA violations? While it is probably too early for collection professionals to celebrate, the Donohue case provides strong additional support for notion that technical FDCPA violations are on their way out.

The plaintiff in Donohue asserted a highly-technical alleged violation of the FDCPA. She claimed the collector violated the Act by serving her with a state court complaint which sought the "sum of $270.99, together with interest thereon of 12% per annum...in the amount of $32.89."

Read the Full Article...
Ducie Le prepared a section on credit cards. A section on student loans was assembled by Amy Bizar, Rick Hackett, Matt McIntyre, Laura Rogers, Arthur Rotatori and Steven Scott.

Today, under the leadership of Committee Chair Terry Franzen and Co-Pro Bono Liaison Scott Johnson, the website is being reviewed on regular basis to make sure that it takes into account significant legal and regulatory developments that may affect each of the four areas covered by the website. The Committee’s goal is to make sure that the information provided is accurate, up-to-date and user friendly for all consumers who want to know more about financial transactions.
Nonprofit News
Week of March 29, 2010

1. Governor Vetoes Tax Conformity Legislation

Governor Schwarzenegger vetoed SBX8 32 on March 25, 2010. The bill would change the specified date for references to the Internal Revenue Code in the Revenue and Taxation Code to January 1, 2010, for taxable years beginning on or after January 1, 2010. For tax-exempt organizations, it would revise various provisions, in modified conformity with the federal income tax laws. This bill was substantially the same as AB 1580, which was also vetoed by the Governor last year.

2. IRS Seeks Comments on Rev Proc 98-19 and Form 8868


3. Comments by Belinda Johns at January 12, 2010 Joint Committees Meeting

Part 5 of a 5 part series: Comments by Belinda John, Office of the California Attorney General, at the Joint Meeting of the NPO/TEO Committees on January 12, 2010.
General Questions:

Q: How often do you audit organizations with less than $100,000 in revenue?

A: “We don’t have a dollar threshold. What we look for is how bad the behavior is and whether we can send a message to a whole subsector, whether the behavior is so bad we have to take the money away. We might just do that, if it was to send a message. The other thing we do is meet with the board and give them the facts of life and tell them they have a choice, they can fix it, or we can take further action. Usually the board will just turn around and take the action we want them to take, to bring themselves back into compliance. We don’t have a dollar threshold and it would be wrong for small organizations to think we are not going to focus on them.”

Q: What’s going on with staffing in the LA office?
A: “We have 5 attorneys and no Supervising Deputy, and we won’t have a supervising deputy in the very near term. The decision has been made that it’s more important to have attorneys doing the work and try to get along with one supervising deputy, so Kelvin Gong goes down to LA every couple of months, or I go down, and we talk to staff on the phone. I know they’d like to have a supervisor down there, but we probably won’t be able to hire in the near term. We would appoint from inside the section, and the supervisor can’t handle a full caseload. This fiscal year we have simply taken the money that we would have spent paying a supervising deputy and put it into other funds, like litigation costs.”

Patrick Sternal
Communications Vice-Chair
Nonprofit Organizations Committee
patrick@runquist.com

For more information about Business Law Section’s Nonprofits Committee, please see their web page:
www.calbar.org/buslaw/nonprofit.

These periodic e-mails are being sent to you because you expressed interest in receiving news and information from the Nonprofit Committee of the State Bar of California’s Business Law Section. If you no longer wish to receive these communications or you have a new e-mail address -- or if you have a friend or colleague who would like to add his or her e-mail address to our distributions list, please contact Susan Oteff, Section Coordinator of the Business Law Section.

4/12/2010
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4/12/2010
Delta report says fish protection lacks flexibility

Issue Date: March 24, 2010

By Kate Campbell
Assistant Editor

Reprinted with permission from the California Farm Bureau Federation

As farmers south of the Sacramento-San Joaquin Delta face continued water supply cuts, a scientific report on actions to protect delta fish confirmed the need for more research and coordination.

The National Academy of Sciences, at the urging of Sen. Dianne Feinstein, D-Calif., and other congressional representatives, reviewed conclusions and methods contained in two biological opinions—one from the U.S. Fish and Wildlife Service on protections for delta smelt, the other from the National Marine Fisheries Service on protections for salmon, steelhead and green sturgeon.

California Farm Bureau Federation President Paul Wenger noted that federal agencies have addressed fish problems chiefly by reducing water pumping from the delta.

"This report is an important step toward balanced management of the California water system," Wenger said.

He said the council’s much anticipated 83-page report also confirms flaws in the federal Endangered Species Act. The report is the first of two detailed reviews of the science and research related to environmental problems in the delta and the federal response to those problems.
"The report notes that the existing water system can be managed better for people and fish," Wenger said, and "it reaffirms our existing water system must be improved. We believe the government must do a better job of managing the delta pumps, to make more water available to people while minimizing impacts on fish."

The academy's National Research Council concluded that reversing or even slowing declines of protected delta fish species cannot be accomplished immediately.

For delta smelt, the council said the actions triggered by the biological opinion have a sound conceptual basis. However, the report said there's "substantial uncertainty" regarding circumstances that should trigger a reduction in water exports into the state and federal water projects.

For salmon, steelhead and green sturgeon, the committee said actions in the biological opinion "are scientifically justified" but "given the absence of a transparent, quantitative framework for analyzing the effects of individual and collective actions, it is difficult to make definitive statements" regarding the merits of those actions.

The report said it's difficult to judge whether government actions to protect delta smelt and salmon might conflict with one another, in part because the Endangered Species Act does not require government agencies to take that into account.

Wenger noted the scientific panel concluded that in addition to the delta's water transfer pumps, a number of other factors—such as sewage treatment plants, non-native fish and other invasive species—present a "potentially large" threat to protected native fish.

"We know that other factors affect the fish," he said. "We look forward to the follow-up report from the Research Council that will explore those factors in detail and offer recommendations on potential, long-term solutions."

In looking for long-term solutions, Wenger said, "we must remember that the real solution is to increase water storage north and south of the delta, so water can be captured in high runoff periods to be used for environmental purposes in dry times, and by farmers to grow food."

"The National Research Council has given us a prescription for how science should be used to manage California's water projects more effectively to avoid the potential jeopardy to vulnerable species," said Tom Birmingham, Westlands Water District general manager. "Caution, cooperation and careful analysis are the keys to delivering the benefits of this prescription."

In reviewing the council's initial report, Feinstein said, "The finding that
other stressors and predators—such as striped and largemouth bass, silverside and some species of catfish—may have a potentially large impact on endangered species in the delta is, in my view, extremely important."

For her, Feinstein said, "the key conclusion from this report is the need to integrate the two biological opinions, which would provide better clarity, better management and stronger scientific justification for all federal actions in the delta. I strongly urge the departments of the Interior and Commerce to take immediate action to implement the biological opinions with additional flexibility wherever possible, particularly with respect to the likely water limitations this April and May, so that we can ensure that any federal actions to restrict water supplies are absolutely necessary."

Applauding the report's call for agencies to work together more closely to protect fish species and limit the impact on water supplies, Wenger said, "The species-by-species approach of the ESA prevents overall analysis of the delta, and the report underscores the need to make the ESA more flexible and less punitive."

Water restrictions linked to ESA fish protections have punished Central Valley farmers with reduced water supplies.

Last week, the U.S. Bureau of Reclamation updated its forecast for Central Valley Project water deliveries south of delta for agricultural water service customers from 5 percent to 25 percent, while preliminary allocations for those north of the delta increased from 5 percent to 50 percent, under the most conservative scenario.

The bureau cited wet weather in February for the increased preliminary allocations, saying snowpack and improved storage at Shasta Reservoir and the federal share of San Luis Reservoir had improved.

U.S. Interior Secretary Ken Salazar said the bureau is "working hard to find additional water supplies that would go to the south of delta contractors. We're trying to secure an additional 150,000 to 200,000 acre-feet of water."

Wenger said the improved water allocation will help to replenish groundwater supplies in regions plagued by water shortages, and will help assure availability of water for post-harvest irrigation of orchards and vineyards this summer.

"This is certainly a big improvement from the 5 percent supplies that the CVP promised last month," Wenger said, "and we appreciate the Interior Department's pledge to enhance the allocation further through actions that could add another 8 percent to 10 percent to CVP supplies. We will continue to press the department to make that additional water available as soon as possible."

(Kate Campbell is an assistant editor of Ag Alert. She may be contacted at
For more information about the Agribusiness Committee, please see the committee's Web site: www.calbar.org/buslaw/agribusiness.

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March 23, 2010

Dear Insolvency Law Committee Constituency List Members:

The following is a recent case update from Professor Dan Schechter, Loyola Law School. Guest authors are welcome. If you know of a recent case or legislative development that you would like to review, please contact Molly J. Baier of Reed Smith LLP, at the address and telephone number listed on the left side of this e-bulletin, to discuss your proposal.

Alter Ego Claim Against Bankrupt Subsidiary’s Parent Entity Is General, Not Particular, Since It Does Not Involve Unique Damage to the Subsidiary’s Landlord.

A district court in California has held that a bankruptcy court correctly permitted a trustee in bankruptcy to settle an alter ego claim brought against the bankrupt corporation’s parent entity because the claim was “general,” rather than “particularized;” the claim did not implicate unique damage suffered by the subsidiary’s landlord as a result of the parent’s conduct. [In re Advanced Packaging & Products Co., 2010 Westlaw 234795 (C.D. Cal.).]

Facts: A wholesale paint supply business was destroyed in a fire, causing the release of hazardous substances. Its landlord brought suit against the paint supplier and its parent entity, claiming (among other things) that the parent corporation was the alter ego of the paint supplier and was responsible for clearing up the toxic materials. The paint supplier filed a bankruptcy petition. The supplier’s trustee immediately asserted the same alter ego claim against the parent entity and soon sought to settle it by “selling” the claim to the parent company. The bankruptcy court approved the settlement.

Reasoning: On appeal, the landlord argued that the alter ego claim did not belong to the estate because it involved “particularized” damage to the landlord and was not a “generalized” claim that could have been asserted by the trustee. But the district court affirmed, holding that none of the alleged conduct of the parent entity...
had caused the contamination:

[1] It was not the undercapitalization of [the subsidiary], the failure to observe corporate formalities, or [the parent's] use of [the subsidiary] as an instrumentality for conducting business that caused contamination at [the landlord's] property. That injury arose from specific actions taken by [the subsidiary] as a tenant at the property and operator of facilities there . . . [The landlord's] alter ego claim is based on the assertion that [the subsidiary] was not an independent corporate entity. It does not allege that [the parent] directed [the subsidiary's] storage of hazardous substances at the property or that [the parent] took action to render [the subsidiary] insolvent . . . Thus, while [the landlord] can pursue its direct claims against [the parent] and recover if it demonstrates that [the parent] itself caused the contamination, it cannot pursue its alter ego claim, which appears to be no different than those of any other creditor of [the bankrupt subsidiary].

AUTHOR'S COMMENT: Assuming that the distinction between "particularized" and "generalized" alter ego claims has any validity, this opinion is correct: the alleged conduct of the parent was not uniquely directed at the landlord but was instead a result of its control of the subsidiary, the entity whose behavior directly harmed the landlord. But the hidden problem is whether the bankruptcy trustee really has standing to assert "generalized" alter ego claims on behalf of the estate against its parent entity. The court placed primary reliance on In re Folks, 211 B.R. 378 (9th Cir. BAP 1997), and In re Davey Roofing, Inc., 167 B.R. 604 (Bankr. C.D. Cal. 1994), both of which indeed stand for the proposition that the trustee may assert "generalized" alter ego claims.

Inexplicably, the court in this case did not even mention Williams v. California 1st Bank, 859 F.2d 664, 667 (9th Cir. 1988), which held: "[N]o trustee . . . has the power under . . . the Code to assert general causes of action, such as [an] alter ego claim, on behalf of the bankrupt estate's creditors." The court in Williams placed primary reliance on In re Ozark Restaurant Equipment Co., 816 F.2d 1222, 1228 (8th Cir. 97), cert. den., 484 U.S. 848 (1987).

A lower court faced with this issue cannot simply ignore Williams and Ozark, as the court made clear in Estate of Daily vs. Title Guar. Escrow Service, Inc., 178 B.R. 837, 842-843 (D. Hawaii 1995):

Williams obviously endorsed, if not outright adopted, the Eighth Circuit's reasoning in Ozark, Williams, 859 F.2d at 666-67 (quoting three times from Ozark). In Ozark, the Eighth Circuit carefully analyzed and rejected a bankruptcy trustee's standing to assert an alter ego claim on behalf of the debtor's unsecured creditors under three different areas of the Bankruptcy Code: 11 U.S.C. §541 (as "property of the estate"); 11 U.S.C. §544 (the trustee's "strongarm clause"); and 11 U.S.C. §105 (general equitable principles). Both Williams and Ozark found it "extremely noteworthy" that Congress considered and explicitly rejected giving a trustee authority to bring suits on behalf of the estate's creditors against third parties . . . . Absent a clear statement from the Ninth Circuit, it is imprudent for this court to simply ignore Williams.
This is the second California decision in the last few months to ignore Williams and to follow Folks. See 2010 Comm. Fin. News. 13, General Alter Ego Claim May Be Asserted by Bankruptcy Estate and Cannot Be Asserted by Individual Creditors. Since it would be very difficult for the Ninth Circuit to repudiate Williams, I think that the Ninth Circuit is likely to reverse both of these recent decisions, if they are appealed. At the same time, there is an emerging circuit conflict on this issue; see, e.g., In re Icarus Holding, LLC, 391 F.3d 1315, 1319-1320 (11th Cir. 2004). If this issue ever makes it to the Supreme Court, I predict that Williams and Ozark will carry the day: the legislative history shows that when Congress enacted the 1978 Bankruptcy Code, it ratified the result in Caplin v. Marine Midland Grace Trust Co. of New York, 406 U.S. 416, 92 S. Ct. 1678, 32 L. Ed. 2d 195 (1972).

These materials were written by Professor Dan Schechter of Loyola Law School for his Commercial Finance Newsletter, published weekly on Westlaw. Westlaw holds the copyright on these materials and has permitted the Insolvency Law Committee to reprint them.

Thank you for your continued support of the Committee.

Best regards,

Insolvency Law Committee

The Insolvency Law Committee of the Business Law Section of the California State Bar provides a forum for interested bankruptcy practitioners to act for the benefit of all lawyers in the areas of legislation, education and promoting efficiency of practice. For more information about Business Law Standing Committees, please see the standing committees page: www.calbar.org/buslaw/insolvency.

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4/12/2010
Dear UCC Committee members and constituents:

Please see below for an update on the UCC Committee’s (the “Committee”) activities.

- Article 9 Amendments Project: The American Law Institute and the Uniform Law Commission (formerly the National Conference of Commissioners on Uniform State Laws) previously formed a Joint Review Committee to identify specific provisions of Article 9 that may need revision. Among other changes, over the past eighteen months, the Joint Review Committee has been considering changes to be made with respect to the filing rules regarding UCC1 financing statements filed against individual debtors. As previously reported, the Committee provided its views on this issue by a letter to the Joint Review Committee (a copy of which can be found by clicking here) and has been continuing to monitor the Joint Review Committee’s consideration of various proposals regarding this issue. During a recent conference call regarding this issue, the Joint Review Committee decided to recommend that the individual states be given two options regarding the resolution of this issue. One option would provide for a safe harbor option for the use of the name set forth in a designated identification card such as a driver’s license. The other option would provide that the only correct name would be the name that is set forth in such identification card. In making that choice, states will be counseled to consider whether differences between the databases of the applicable Department of Motor Vehicles and the Secretary of State with respect to such things as accented characters and field length would make adoption of the second option problematic. The Committee will continue to monitor further developments regarding this issue and the other amendments to Article 9 of the Uniform Commercial Code.

- 2009 California Commercial Law Cases: Professor Stephen L. Sepinuck, Gonzaga University School of Law and Chair of the ABA UCC Committee (as well as a member of the Committee) has prepared a summary of certain notable commercial law cases that were decided by the 9th Circuit Court of Appeals and by various state and federal courts within California during 2008. Professor Sepinuck’s summary of these cases is available by clicking here.
• Essentials of Business Law: The Committee is participating in the "Essentials of Business Law" program series presented by the Business Law Section of the State Bar of California. The "Essentials" program consists of a series of one-hour informative presentations to be given by the various Standing Committees of the Business Law Section during the first calendar quarter of 2010 (generally, at noon on each Wednesday). Committee members Michael duQuesnay of Hicks Park LLP, Kenneth Miller of Ervin Cohen & Jessup LLP, and Zach Finley of Orrick, Herrington & Sutcliffe LLP will present a one-hour webinar on March 3, 2010 regarding personal property secured transactions under Division 9 of the California Commercial Code. The program will explain how to properly document transactions in which a security interest is taken in personal property and will cover the legal requirements of lien creation and perfection, as well as considerations regarding priority. The program will also address the enforcement of personal property liens, including the rights and responsibilities of an enforcing party, and will include pointers from real life experiences and traps for the unwary to avoid. Registration is free for Business Law Section members. Click here for additional information and how to register.

Thank you for your continued interest in and support of the UCC Committee.

Best regards,

Peter Burke
Paul, Hastings, Janofsky & Walker LLP
peterburke@paulhastings.com
Chair of the E-Communications Subcommittee

Michael duQuesnay
Hicks Park LLP
mduquesnay@hicksparklaw.com
Co-Chair

Zach Finley
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zfinley@orrick.com
Co-Chair

For more information about Business Law Standing Committees, please see the standing committees page: www.calbar.org/buslaw/ucc.

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California Rejects Delaware’s “Zone of Insolvency” Rule

In Berg & Berg Enterprises, LLC v. Boyle, 178 Cal. App. 4th 1020 (2009), the California Court of Appeal delimited for the first time the scope of the duties owed by directors of a financially distressed California corporation to the corporation’s creditors. Rejecting Delaware precedent, the court held that directors owe no special duties to creditors, beyond those imposed by the traditional trust fund doctrine.

Berg & Berg Enterprises, LLC was a creditor of Pluris, Inc. when Pluris found itself in financial distress. After learning of the trouble at Pluris, Berg proposed that Pluris maximize the value of its net operating losses, if Pluris could not obtain financing to continue operations. When Pluris failed to secure the needed financing, Pluris chose not to follow Berg’s suggestion but made an assignment for the benefit of creditors instead. In its complaint, Berg alleged that by making the assignment the Pluris directors had breached their fiduciary duties to creditors, which arose when the company entered the “zone of insolvency.”

The Court of Appeal held that a director’s fiduciary duties of care and loyalty are owed only to the corporation and its shareholders, not to the corporation’s creditors. Instead, a director’s only duty to an insolvent company’s creditors is to avoid diverting, dissipating, or unduly risking assets that might otherwise be used to pay creditors. This rule is known as the “trust fund doctrine.”

Applying the trust fund doctrine, the court found that the decision by the Pluris directors not to maximize the net operating loss value did not involve
self-dealing, the preferential treatment of creditors or the diversion of assets otherwise available to pay creditors. Moreover, the court noted that even if a fiduciary duty did exist, the directors’ decision would have fallen within the protection of the business judgment rule.

The Berg court declined to follow Delaware cases holding that directors of a company in the zone of insolvency have a fiduciary duty to creditors beyond that required under the trust fund doctrine. However, the court did not fully describe the scope of a director’s duty under the doctrine in California, or the remedies for its breach, leaving it to future cases to reveal the details and illuminate other differences, if any, between California and Delaware law on this point. Ultimately, although Berg may have shifted the balance slightly in favor of directors in California, directors still owe a duty to their companies’ creditors under the trust fund doctrine and are still prohibited from engaging in self-dealing or diverting company assets.

For more information about Business Law Standing Committees, please see the standing committees page: www.calbar.org/buslaw/corporations.

These periodic e-mails are being sent to you because you expressed interest in receiving news and information from the Corporations Committee of the State Bar of California’s Business Law Section. If you no longer wish to receive these communications or you have a new e-mail address -- or if you have a friend or colleague who would like to add his or her e-mail address to our distributions list, please contact Susan Oljeff, Section Coordinator of the Business Law Section.

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4/12/2010
Guide for Building Standing Committee Constituency List

This guide is to assist Business Law Section Standing Committees in building their constituency lists. This guide is based on the experience of the Insolvency Law Committee in growing its constituency list. Generally, there are three steps to the process. One is to create a form of solicitation for joining the standing committee constituency list. The second is to identify organizations and other sources for emails to whom the committee can send the solicitation form. Finally, standing committees should continue to update their constituency list by reviewing and sending further solicitations to the identified sources for emails. Below are the steps and a further explanation of this process.

1. Creation of a Solicitation Form.

We attach a form of solicitation letter that can be used to either email as text or an attachment or to mail hard copies to potential new constituents. Generally, the letter or email identifies briefly what the committee does, then offers to include the recipient on the committee’s constituency list. The letter or email then explains that the recipient would receive periodic updates on topics of interest to the committee constituency by e-bulletin. Sample e-bulletins are either included in the letter or email, or are linked for easy reference. Using recent e-bulletins with interesting topics as examples is recommended. We also suggest you note that e-bulletins are free of charge.

The letter or email goes on to state how to join the constituency list. The preferred course is for the person to go to their state bar profile and click the proper boxes. The letter should also point out other standing committee constituency lists are available and should be considered. The letter also should note that if the user has any problem going through the state bar profile, that the user can contact the committee chair or the administrator, in the case of the Business Law Section, Susan Orloff. The letter should note that the recipient will not be added to any lists without his/her permission and that the person can remove their name from the list at any time. The letter should note that the Business Law Section does not sell or share email addresses.

The letter should also take the opportunity to remind the recipient of the benefits of joining the Business Law Section. The Business Law Section has a brochure that lists the many benefits that can be linked or included in the letter or email. Finally, the letter can also remind the recipient of the applicable standing committee website and could include the link.

As recent survey by the ABA indicates that the primary reasons lawyers join bar sections is to monitor the latest developments in the lawyer’s specialty area and to obtain specialized content. Other reasons for joining a section in order of importance are networking, discounts on publications, programs and MCLE, and socializing. Thus, we suggest you gear the message in your solicitation form to the fact that e-bulletins provide the latest developments and specialized content in the relevant area of the law.
II. Identification of Sources to Solicit.

There are numerous sources for email addresses for the solicitation letter. These include: relevant organizations in the substantive area of law for the standing committee; law firms of the members of the standing committee; county bar associations in the same substantive area of law; law school professors; and any other group or list that might be relevant to the particular standing committee.

Many organizations will give their membership lists to other organizations. In that case, the standing committee should request that the organization send the letter or email to its members on the standing committee's behalf. For organizations that will share its membership lists, it is important to review the list to eliminate any recipient for the solicitation that is already on the standing committee's constituency list. This will eliminate any confusion by someone already on the list wondering why they are receiving the solicitation.

III. Continuous Process of Updating and Growing the Constituency List.

We recommend that each standing committee have as an ongoing project updating and growing its constituency list. The Insolvency Law Committee has recently made constituency and BLS membership a separate subcommittee. Since emails change when lawyers change firms and new lawyers are joining the ranks every year, updating and growing the constituency list is an important and ongoing task for each standing committee.
[Letterhead of Standing Committee]

[Date]

Re: Joining the Constituency List of [name of standing committee]

Dear [standing committee area of law] Professional,

I am the chair of the [insert appropriate standing committee] of the Business Law Section, State Bar of California. The [name of standing committee] provides a forum for interested practitioners to act for the benefit of all lawyers in the areas of legislation, education and promotion of efficiency of practice. The [name of standing committee] would like to include you in its constituency list. If you elect to be added to the constituency list, you will receive e-Bulletins concerning the activities of the [name of standing committee] as well as latest developments in [insert relevant area of law]. E-Bulletins often contain links to recent cases and timely updates on legislative and case law developments. Enclosed with this letter are several sample e-Bulletins sent by the [name of standing committee] at various times for your information.

E-Bulletins are available to lawyers, free of charge, whether or not members of the California State Bar, and non-lawyers alike. If you would like to be added to the constituency list and are a member of the California State Bar, please update your State Bar profile to include the [name of standing committee] constituency list. To do so, look for the "My State Bar Profile" section on the State Bar homepage, then follow the directions. The e-Bulletin dated [date] provides step by step instructions. If you encounter difficulties, please contact Susan Orloff, the Section Coordinator at susan.orloff@calbar.ca.gov. If you are not a member of the California State Bar, please send your name and e-mail information to [name and email address of appropriate standing committee contact] and she will make sure your name is placed on our listserve. You will not be added to the constituency list without your permission, and you can withdraw from the list at any time. The State Bar does not sell or share your e-mail address. If you are already receiving e-Bulletins, you do not need to do anything further.

The [name of standing committee] also invites you to visit and bookmark its website [insert website of standing committee here], where you will find a wide range of resources.

In addition, if you are a member of the California State Bar, the [name of standing committee] encourages you to join the Business Law Section of the State Bar. The Business Law Section provides an array of benefits ranging from the work of members of the Section and its Subcommittees, available for download in a members-only website, to the ability to participate in Committees of the Section like the [name of standing committee] and 35% discounts on ABA books. You also receive The Business Law News, which offers articles geared to the needs of practitioners as well as updates on Section activities. To join, check the “Business Law Section” box on your annual dues statement.
We look forward to having you join our constituency list and receiving the materials and resources developed by our standing committee. If you would like to become an active member of our standing committee, please contact the undersigned.

Best regards,

[name of chair of standing committee]

[name of standing committee], Chair
[<email address of standing committee chair>]
Message from the Chair

I am pleased to present the Spring 2010 issue of the Banking Law Committee Journal. You've done it again! Thanks to the contributions of Committee Members Pete Bergan, Satish Kini, Paul Lee, Tom Vartanian, Gordon Miller and Travis Nelson, this issue of the Journal is filled with up-to-date information and insightful commentary about recent developments of interest to banking lawyers.

Pete has prepared a great summary and pointed critique of the FDIC's ANPR on bank-sponsored securitizations. Satish's and Paul's article on the February report of the Senate Permanent Subcommittee on Investigations, detailing instances of access by politically exposed persons to the U.S. financial system, serves as an important reminder of regulatory concerns about PEPs that banks neglect at their peril. Tom and Gordon have provided a thorough and thoughtful comparison of bank receivership and bankruptcy regimes, questioning whether it makes sense to apply the receivership template to non-bank financial companies, as proposed in the House-approved Wall Street Reform and Consumer Protection Act. And Travis has explained the implications for federal chartered banks and thrifts of the closely-divided Supreme Court's corporate political spending decision in Citizens United v. Federal Election Commission.

Finally, last and, yes, least, we have the answer to last issue's Test Your Banking Knowledge question and the names of the four Committee Members who got it right, as well as a new question for your entertainment.

All Committee members are encouraged to contribute articles to the Journal. Analyses of recent developments are always welcome, but book reviews, opinion pieces or other submissions relevant to the banking business are also appropriate. You will be reaching a nationwide audience of more than 2000. Feel free to contact Peter Heyward at peheyward@venable.com or 202-344-4616 if you would like to propose an item for the next issue.

Sally Miller
Chair, Banking Law Committee
smiller@aba.com

Featured Articles

FDIC Issues ANPR on Its Role As Receiver or Conservator of Assets Transferred in Connection with a Bank-Sponsored Securitization
Peter C. Bergan

In mid-December, the Federal Deposit Insurance Commission (the "FDIC") released an Advance Notice of Proposed Rulemaking regarding Treatment by the FDIC as Conservator or Receiver of Financial Assets Transferred by an Insured Depository Institution in Connection with a Securitization or Participation After March 31, 2010 (the "ANPR"). 75 Fed. Reg. 934 (January 7, 2010) (to be codified at 12 C.F.R. pt. 360). The FDIC solicited public comment regarding possible amendments to the "safe harbor" rule for off-balance sheet securitizations.
currently codified in 12 C.F.R. § 360.6. The ANPR seeks comment on a draft revised rule (the "Proposed Rule") that would permanent make the interim grandfathering of securitizations closed before March 31, 2010.

The Proposed Rule, however, goes beyond extending this safe harbor and ventures into other securitization issues, such as disclosure and risk retention requirements creating a potentially sweeping rule change in the area of bank-sponsored securitizations.

More...

A Renewed Focus on Foreign Corruption and Access by Politically Exposed Persons to the U.S. Financial System
Satish M. Kini and Paul L. Lee

On February 4, 2010, the Senate Permanent Subcommittee on Investigations released a 325-page report detailing instances of access gained by politically exposed persons ("PEPs") to the U.S. financial system. The Subcommittee Report provides a cautionary tale for U.S. financial institutions and professionals, including lawyers, in dealing with PEPs. Through four case histories, the Report chronicles how PEPs were able to use U.S. lawyers, real estate agents and escrow agents to circumvent anti-money laundering ("AML") controls at U.S. financial institutions. It also highlights deficiencies in the AML procedures of these financial institutions. The Report concludes that U.S. financial institutions need to strengthen, and other intermediaries, including lawyers, realtors and escrow agents, need to adopt, PEP programs to prevent U.S. institutions from being used to conceal, protect and use gains from foreign corruption. The Subcommittee Report itself comes on the heels of a World Bank survey report issued in November 2009 that found a low level of compliance with internationally recommended measures directed at PEPs and political corruption.

More...

Changing the Rules to Create Systemic Safety: Federal Receiverships for Nonbanks
Thomas P. Vartanian and Gordon L. Miller

Special rules to deal with bank insolvency pre-date the Great Depression and the Federal Deposit Insurance Act, enacted in 1933 (FDIA). In 1864, The National Bank Act authorized the Comptroller of the Currency, rather than a court, to appoint a receiver for national banks, and in 1873 shareholders of an impaired national bank were made liable for an assessment up to the par value of their stock. Bank insolvency measures were introduced in Congress as early as 1837 in response to banking panics. Thus, while FDIA and the Federal Deposit Insurance Corporation (FDIC), with the assistance of deposit insurance, have unquestionably succeeded in preventing bank runs, resolving failed banks and reducing the destabilizing effects of bank failures, the issue today is whether the bank receivership
model is the best way to deal with nonbank financial companies that pose systemic risk.

More...

Political Spending By Banks After Citizens United v. Federal Election Commission
Travis P. Nelson

"If the First Amendment has any force, it prohibits Congress from fining or jailing citizens, or associations of citizens, for simply engaging in political speech." -- Justice Anthony Kennedy, Citizens United

I. Introduction The U.S. Supreme Court's January 21, 2010, 5-4 decision in Citizens United v. Federal Election Commission has sparked immediate debate at the highest levels of our Government as to the propriety of political spending by corporations. In his January 27, 2010 State of the Union Address, President Barack Obama said of the decision:

With all due deference to separation of powers, last week the Supreme Court reversed a century of law that I believe will open the floodgates for special interests -- including foreign corporations -- to spend without limit in our elections. I don't think American elections should be bankrolled by America's most powerful interests, or worse, by foreign entities. They should be decided by the American people. And I'd urge Democrats and Republicans to pass a bill that helps to correct some of these problems.

More...

Test Your Banking Knowledge

First, the answer to last issue's question: What do Alan Greenspan and the late Ernesto “Che” Guevara have in common? The answer is that each served as the head of his country's central bank. Of course, one can't push the comparison too far: Che's tenure was marred by his rigid adherence to an outdated ideology, and he served for less than two years (from November 1959 to February 1961). The Maestro's tenure lasted more than 18 years, from 1987 to 2006.

Congratulations to Committee members Pete Bergan, Scott Smith, Peggy Mevs and John Knoeckel for getting the right answer!

Here is the new question: Which real-world financial institution did director Francis Ford Coppola use for the exterior shot of the fictitious bank where New York's Five Families negotiated a truce to their long-running war in Godfather I?

The first five respondents with the correct answer will have their names published in the next issue. Good Luck!
Roland Brandel is active primarily in the field of consumer financial services and financial institution regulation. In addition to regularly advising clients, he has been directly involved in many federal legislative and regulatory efforts affecting the field in the past 30 years.

Mr. Brandel has given numerous lectures before national audiences of lawyers and businessmen on such subjects as electronic signature legislation, credit disclosure, equal credit opportunity, community reinvestment, fair lending, electronic fund transfer, cyberbanking, and financial privacy laws.


He served for seven years as Co-Chair of an annual national conference on the Emerging Law of Cyberbanking and Electronic Commerce. Mr. Brandel also has had primary responsibility for joint efforts in the financial services industry in development of products such as bankcards, electronic fund transfer systems, and other innovative lending and value transfer services.

Roland Brandel is recommended as a leading lawyer by *PLC Which lawyer?* 2010.
**Best Lawyers In America 2010 and Super Lawyers 2009.**

**Speaking Engagements.**

<table>
<thead>
<tr>
<th>Event Title</th>
<th>Date</th>
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<tr>
<td>Consumer Law Issues</td>
<td>10/22/2008</td>
<td>Banking + Financial Services, Financial Institutions + Financial Services, Financial Services, Financial Services Boston, MA</td>
</tr>
<tr>
<td>ABA Business Bar Leaders Conference</td>
<td>5/14/2008</td>
<td>Chicago, Illinois</td>
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<tr>
<td>Back Bank To The Future: Glimpses Of Tomorrow From Yesterday</td>
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<td>San Francisco, CA</td>
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<td>The 40th Annual Bank Counsel Seminar, California Bankers Association</td>
<td>3/29/2007</td>
<td>Dana Point, CA</td>
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Conrad G. Goodkind / Retired Partner

Professional Experience

Conrad Goodkind is a retired partner with Quarles & Brady. He focused his practice in securities and corporate law, specializing in corporate and investment company securities matters and governance. His practice included public and private offerings of securities as issuer’s or underwriter’s counsel, investment company (mutual fund) registration and compliance, broker-dealer and investment adviser compliance and operation, federal and state securities enforcement proceedings, and mergers and acquisitions. His experience included:

- Represented mutual funds and their independent directors in compliance, regulatory and corporate matters.
- Represented public reporting companies in compliance with SEC, Stock Exchange and corporate compliance.
- Represented brokers and investment advisors in transactions and compliance matters, including federal and state regulatory and enforcement matters.
- Provided advice and counsel to privately held entities and their owners.
- Represented purchasers and sellers in mergers, acquisitions and public or private capital formation transitions.

Education and Honors

- University of Wisconsin Law School (J.D., 1969)
- University of Wisconsin (B.S., 1966)

Bar Admissions
Wisconsin, 1969

Court Admissions
U.S. District Court, Western District of Wisconsin, 1969
U.S. District Court, Eastern District of Wisconsin, 1969

Professional Recognition

- Listed in Chambers USA (Corporate/M&A).
- Martindale-Hubbell AV® Peer Review Rated.

Professional and Civic Activities
American Bar Association, (Member, Business Law Section; Member of the Council, 2006-present).

ABA Standing Committee on Continuing Legal Education (Member, 2006-present).

ABA Committee on Institutes and Seminars (Chair, Business Law Section, 2003-2006; Vice Chair, Business Law Section, 2001-2003).

ABA Federal Regulation of Securities Committee and Subcommittee on Investment Companies and Investment Advisors (Member); Mergers and Acquisitions Committee (Member).

ABA State Regulation of Securities Committee, (Chair, 1989-1992).

State Bar of Wisconsin (Chair, Business Law Section, 1998-2000; Director, 1991-2001; Vice Chair, 1996-1998).

State Bar of Wisconsin Securities Law Committee (Chair, 1981-1995).


Brady Corporation (Member, 2007-present; lead director 2009-present).

Cade Industries, Inc. (Director & Secretary, 1989-1999).

Able Distributing Co., Inc. (Director, 1994-2005).


Marquette University (Lecturer, 1981-1983).


Citizens Study Committee on Judicial Organization (Counsel, 1971-1973).


Wisconsin Historical Society Board of Curators (2006-present).

Milwaukee Repertory Theater (Board Member, 1995-2001; Executive Committee, 1997-2001).

Governor’s Business Courts Task Force (Member, 1994-1998).

Law Alumni Association (President, 1986).

Selected Presentations/Publications

- “SEC Adopts New Form N-CSR and Related Certification Disclosure and Internal Control Requirements for Mutual Funds,” 2003 Q&B Update.


- "Securities Law for Non-Securities Lawyers,” Council on Professional Education program, Quarles & Brady program, 1997; "Rule 701 Offerings.”
Vincent I. Polley holds a degree in mathematics from Harvard and in law from the University of Michigan.

In 2006 and 2007 Vince co-chaired the Information Technology and Security Law practice group at the law firm Dickinson Wright PLLC, where he helped clients prevent, plan for, and effectively manage IT security/privacy problems (e.g., security breaches), and implement effective internal controls and procedures. Under Vince's supervision the firm also provided specialized IT law assistance (e.g., privacy, e-contracting, IP protection and licensing, record retention programs).

Earlier, Vince spent 20 years at Schlumberger Limited, and was its Deputy General Counsel from 1998 through 2004, with substantive responsibilities for computer, privacy, and security law. In his role at Schlumberger, Polley was the driving force in planning, developing and deploying the Schlumberger legal KM initiative, the LawHub, bringing together lawyers in twenty countries, who are expert in a dozen areas of substantive law, and enabling them to work together, sharing their expertise and more efficiently serving their clients. The Schlumberger LawHub represented seven years of KM practice, and was the most sophisticated KM deployment in the legal arena. It became the leading model for fully-realized KM systems in in-house legal departments. In 2004, Polley retired from Schlumberger to form KnowConnect.

Polley was co-chair of the ABA Commission on Second Season of Service, and served on the Advisory Commission for the ABA World Justice Project and the Council of the ABA’s Section of Business Law. A former member of the ABA’s Standing Committee on Law and National Security, Polley now chairs the ABA Standing Committee on Technology & Information Services. He serves on the editorial board of Business Law Today, chaired the Cyberspace Law Committee (2002-2005), and wrote "Employee Use of the Internet and E-Mail" (ABA Press, 2002). He continues to publish MIRLN, a monthly e-newsletter on IT related legal news (begun in 1997), was a founding member of the Internet Law & Policy Forum, and is a Life Fellow of the American Bar Foundation, an arbitrator on the AAA’s Commercial Panel, and a member of the American Law Institute.
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Mr. Rupp is the Deputy Publisher in the newly formed ABA Publishing Services Group, overseeing the operations of ABA Publishing, the ABA Center for CLE, the ABA Journal, and the ABA Interactive Services Division. Prior to accepting this role, Robert served six years as the Associate Director of the ABA Business Law Section, managing all marketing, communications, and member benefit delivery.

Robert has spent his entire career in association management. Prior to joining the ABA, he worked for the National Nursing Staff Development Association, the Healthcare Compliance Association, and the Association for Research in Vision and Ophthalmology.

Robert attended Concordia University of Chicago and Loyola University of Chicago, earning degrees in political science and communications with a focus of study on non-profit affairs.