



## 2006 Midwinter Reports to Council: COMMITTEE ON BUSINESS AND CORPORATE LITIGATION

**Last Modified by:** Mitchell L Bach

**Date:** Sunday, 11 December 2005 at 12:30:19 PM

### Mission Statement

This Committee focuses on the principal substantive areas of litigation affecting business enterprises and promotes the establishment of business courts and other effective means of resolving business disputes. Through its more than 20 subcommittees, in programs, publications and other activities, the Committee monitors important litigation developments affecting business, facilitates a sharing of professional experiences and ideas among our members, including in-house and outside counsel and members of the judiciary, fosters high professional standards, and serves as a "litigation education" resource both to our membership and to the entire Section.

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### 1. Membership

#### Business and Corporate Litigation

1566 Members

#### Subcommittees:

Alternative Dispute Resolution

73 Members

Antitrust and Trade Litigation

50 Members

Appellate Litigation

30 Members

Bankruptcy Litigation

173 Members

Business Courts

60 Members

Business Torts

236 Members

Class and Derivative Actions

148 Members

Corporate Counseling and Litigation

89 Members

Criminal Enforcement Litigation

56 Members

ERISA and Pension Litigation

27 Members

Employment Litigation

19 Members

Environmental Litigation	44 Members
Financial Institution Litigation	48 Members
Indemnification and Insurance	155 Members
Intellectual Property Litigation	100 Members
Litigation Reform and Rules Revision	10 Members
Membership	16 Members
Newsletters	7 Members
Partnerships and Alternative Business Entities	46 Members
Pro Bono	13 Members
Programs	11 Members
Publications	10 Members
Securities Arbitration	55 Members
Securities Litigation	244 Members
Small Firms	7 Members
Tribal Court Litigation	4 Members
Women Business and Commercial Advocates	8 Members

Provide specific examples of any membership outreach, recruitment, and retention efforts your Committee has implemented or has planned for the 2005-2006 fiscal year.

The Committee has been using its well-established Annual Review project to recruit new members. By offering opportunities to new authors and their law firms to research and write certain chapters of the Recent Developments volume, new members of our Committee have emerged. This also has created opportunities for potential new leaders of our subcommittees in the various substantive areas of commercial litigation. As described in my previous reports, we make a concerted effort to welcome all new members with individualized email communications; and we continue to make a concerted effort to attract and to involve more young lawyers, women and minorities.

## 2. Diversity

**Race:**

Asian/Pacific Islander	0.96%
Black/African American	0.87%
Hispanic	1.14%
Native American	0.12%
White/Caucasian	55.07%
Other	1.02%
Unknown	40.81%

**Gender:**

Female	15.95%
Male	83.81%
Unknown	0.24%

**2a.** Describe your efforts to involve minorities, young lawyers, women, and lawyers with disabilities in its activities. What steps do you undertake to facilitate their participation, i.e., what opportunities have you provided? Do you assign a mentor? Also, describe your committee's efforts to involve these minority groups at the committee leadership level.

Our Committee continues to make a consistent and focused effort to involve minorities, women and lawyers with disabilities in all its activities. Our immediate past Chair was a woman; quite a few of the current chairs and vice-chairs of our subcommittees are minorities, women or young lawyers; and some subcommittee leaders fall into more than one of these categories. During the past year, the number of subcommittee leaders in all these categories has grown. This is due partly to the replacement of chairs and vice-chairs, in accordance with

Section policy. We have also added new subcommittees during 2005 to facilitate these goals. Our new Subcommittee on Tribal Court Litigation and our new Woman Business and Commercial Advocates have made considerable headway, and already have organized several CLE programs at 2005 Annual Meeting, and to be presented at the 2006 Spring Meeting in Tampa. Because of this burst of activity, we expect significant growth and addition of new members to these subcommittees in 2006. We do not have a formal mentoring system; but in accordance with the tradition of our Committee, experienced leaders have always taken young lawyers and potential future leaders under their wing in most of our subcommittees.

**2b.** If you have a Business Law Advisor, Fellow, Ambassador or Diplomat assigned to your committee, in what projects have you involved him/her?

Gabriel S. Galanda of Seattle, a current Business Law Ambassador, was appointed Vice-Chair of our new Subcommittee on Tribal Court Litigation in 2005. In fact, Gabe was instrumental in the creation of this new subcommittee, and quickly has become one of the dynamic and energetic young leaders of our Committee. Gabe is now slated to assume the duties of coordinator and organizer to oversee our many authors nation-wide who will prepare the 2007 edition of our Annual Review materials. As reported in our 2005 Annual Report, many Business Law Fellows have become active leaders of our Committee, throughout its subcommittee structure.

### 3. Programs and Meetings

#### **Programs: 2005 ABA Annual Meeting**

- Getting Commercial in Indian Country: High-Stakes Tribal Contractual and Litigation Considerations; Attendance: 25
- Employment Law Issues/Traps for the Unwary: The 5 Hottest Topics Facing In-House Corporate Counsel; Attendance: 53
- Bankruptcy for Breakfast: The Top Ten Developments in Bankruptcy Law and Litigation in 2005; Attendance: TBD

#### **Co-Sponsored and Joint Programs: 2005 ABA Annual Meeting**

- Emergent Regulatory and Policy Issues Surrounding the \$18.5 Billion Indian Gaming Industry; Attendance: 18
- Indemnifying and Insuring Management in Crisis; Attendance: TBD
- Tensions on the Border-An Update on the Sometimes Uneasy Relationship Between State and Federal Corporate Governance Regimes; Attendance: TBD

#### **Committee Forums: 2005 ABA Annual Meeting**

- What Is a BAP and Why Did I Go There? Strange and Wonderful Tales From the Bankruptcy Appellate System; Attendance: 19

### 4. Books and Newsletters

#### **Books**

- Annual Review of Developments in Business and Corporate Litigation, 2005

#### **Newsletters**

- Network October 2005

### 5. Special Projects

If your Committee or task force is working on a project that has significance beyond the members of the Committee, please describe it here. The Strategic Communications Committee will be selecting several Section projects to promote with special communication plans in the coming year.

Our Committee and its Subcommittee on Business Courts continues to work with a new organization of business court judges. We arranged for the Section to co-sponsor the recent First Annual Conference of the American College of Business Court Judges, which was recently conducted at the Brookings Institution in Washington, DC, from October 30 to November 2, 2005. We actively assisted in the planning and organization of this very

successful event, which was the first national program ever developed for the education and training of judges in business courts and specialized commercial litigation programs. We worked with the Section Staff to assemble CLE materials on a CD-ROM which was distributed to all the judges who attended the conference, and we provided speakers on various subjects of interest to the judges. We expect this project to continue in 2006, and to result in additional judges becoming actively involved in Section activities and programs. We also expect this program to be repeated, on an annual basis; and we anticipate that it will facilitate the creation of new business courts, and will promote better communication and exchange of information and ideas among lawyers and judges interested in this subject. It is also expected that this continuing program will enable judges to coordinated efforts and to assure more consistent rulings in related cases, in different jurisdictions.

## 6. Accomplishments/Objectives

Describe any significant accomplishments of the Committee for this year and those objectives it plans to accomplish during the 2005-2006 fiscal year. It is important that you identify any projects (ongoing or completed) that the Committee has undertaken and about which the Council and officers should be aware.

We feel that the 2005 Annual Review of Developments in Business and Commercial Litigation may have been the very best we have produced, to date. This year's volume produced more chapters, excellently written by the largest group of authors we have ever assembled nation-wide, than ever before. We are especially proud of our work in the area of business courts, as described above, and the publication of the exhaustive article entitled "A History of the Creation and Jurisdiction of Business Courts in the Last Decade", authored by the leaders of our Subcommittee on Business Courts, in the 2004 edition of *The Business Lawyer*. This article has received much acclaim during 2005, and was distributed to all of the judges who attended the recent conference of business court judges in Washington. We are also proud of the recently successful Fall Meeting in Washington, DC, which our Committee again combined with the meeting of the Committee on Federal Regulation of Securities. For the first time, we worked with the leaders of that Committee to organize and present jointly-sponsored CLE programs at the Fall Meeting, which were well attended and well received. We believe that the joint meeting again enabled both Committees to increase attendance and to develop even better CLE programs. It also facilitated the Section's goals of promoting regional meetings, avoiding duplication of effort and conserving Section resources. We are now working with Committee members in Tampa and throughout Florida to plan programs and events at the Section Spring Meeting in Tampa, including a CLE program entitled "A View from the Bench and Jury Box-a Female Perspective", on Friday April 7, 2006, and a very special reception we are organizing celebrating women judiciary which will be immediately following the CLE program. Finally, our Committee is extremely proud that both of its proposals for CLE programs at the 2006 Annual Meeting have been approved.

## 7. Long Term Planning and Goals

Describe any significant long term (i.e., beyond the 2005-2006 fiscal year) projects or goals of the Committee. It is important that you identify any projects which the Council and officers should be aware.

Our long-term goal is to remain the largest and the premier organization of commercial litigators in the United States. Our Recent Developments project has been ongoing for many years, and we expect to continue it indefinitely. As described above, we have begun to use this remarkable project as a vehicle for outreach and development of new members and subcommittee leadership. This project continues to culminate each spring with the compilation of extensive written CLE materials, which are distributed at the Section's Annual Spring Meeting, in connection with our Committee's live Recent Developments CLE program. This enormous effort every winter by a large number of attorneys and law firms throughout the country has become the chief focus of our substantive subcommittees, and the recognized excellence of these comprehensive materials are a source of pride for Committee members. The Section continues to publish these materials each year, around the time of the Annual Meeting, and they have become a Section best-seller and a substantial source of Section revenues.

**8. Pro Bono**

Describe the Committee's pro bono activities, if any, since your last report or planned during 2005-2006.

Our Committee always participates in the pro bono project at the Section's Annual Spring Meeting and at the Annual Meeting. We had a number of members at the pro bono project in Nashville at the Spring Meeting in April of 2005. We are proud that a number of the Business Law Fellows assigned to our Committee have become Section leaders in the pro bono area.

**9. Legislative Developments (Optional)**

Describe any significant federal or state legislation adopted since your last report or that you anticipate may be adopted during the 2005-2006 fiscal year affecting the substantive law interests of your Committee and indicate any steps your Committee has taken or plans to take (e.g., CLE programs, study, recommendation as to ABA position) with respect to such legislation.

Our Task Force on Litigation Reform and Rules Revision continues to study and to comment upon the proposed amendments to the Federal Rules of Civil Procedure, as they pertain to electronic discovery. Our Task Force has been involved in that project for several years, and our input has helped to shape the proposals which are now being considered in various circles nationally.

**10. Judicial and Administrative Developments (Optional)**

Describe any significant judicial and administrative developments since your last report that affect the substantive interests of your Committee.

Our Task Force on Litigation Reform and Rules Revision is working on a number of projects including review of the Model Code of Judicial Conduct. Working closely with the Section's Committee on Professional Responsibility and the Committee on Criminal Laws, we are monitoring the work of the ABA Joint Commission to Evaluate the Model Code of Judicial Conduct. As described above, our Subcommittee on Business Courts has been instrumental in assisting lawyers and judges in creating new business courts and improving existing ones. We are currently working on such projects in New Jersey, Michigan, Florida and Ohio. Our Subcommittee on Business Courts also drafted a pamphlet in 2005 entitled "Establishing a Business Court in Your State", a "how-to" guide which was recently published by the Section and distributed at the conference of business court judges in Washington this past Fall.

**11. Section Staff and Leadership Support**

How can the Section Officers and Section staff assist you in your role as committee chairs? What questions do you have for us?

I have no complaints about the Section Officers and Staff. They have been extremely helpful and supportive. I continue to be concerned about the turnover in Staff positions, and we especially will miss Sarah Bolm. I would suggest that input from Committee leaders be sought in connection with the promotion of existing Staff to fill Staff vacancies.