

Subcommittee on Creditors' Rights

Shannon Lowry Nagle, Chair, Elizabeth M. Bohn, Vice Chair

We hope you can join us in Vancouver for the next ABA Section of Business Law Spring Meeting (April 16-18). Our topic will most likely focus on recent cases on cross-border insolvency issues. Since we will be "across the border" we hope to have Canadian lawyers involved in some of the recent cases as well as insights shared by our subcommittee members who are involved in some of the global restructurings.

At our last meeting on August 9, 2008, in New York, we reviewed new developments in Delaware law on breach of fiduciary duty by officers and directors and damage claims for deepening insolvency. The program focused on the current status of Delaware law following the decision of Judge Mary Walrath in *In re Brown Schools (Miller v. McCown De Leeuw & Co.)*, wherein the court refused to dismiss a Chapter 7 trustee's breach of fiduciary duty claims against the former directors of a debtor corporation in which some of the damages claimed were for the "deepening insolvency" of the debtor allegedly caused by the defendants' breaches of their duties of loyalty to the corporation and its creditors. The discussion during the meeting focused not only on the *Brown Schools* decision, but a more recent decision, *Bridgeport Holdings*, and provided an overview of the current standards under Delaware law for breach of fiduciary duty.