



May 2011

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Business Law Section Council Members (2010-11):

Roger A. Bartlett <i>Law Office of Roger A. Bartlett</i>
E. Steve Bolden II <i>Mahomes Bolden & Warren PC</i>
Ronald L. Chichester <i>Law Office of Ronald Chichester, P.C.</i>
Thomas R. Felger <i>Baker Botts LLP</i>
David E. Harrell <i>Locke Lord Bissell & Liddell, LLP</i>
David R. Keyes <i>Kelly Hart & Hallman LLP</i>
Carol Bavousett Mattick <i>Carol Bavousett Mattick, PC</i>
John F. Podvin, Jr. <i>Haynes and Boone, LLP</i>
Gregory R. Samuel <i>Haynes and Boone, LLP</i>
Stephen C. Tarry <i>Vinson & Elkins LLP</i>
Richard A. Tulli <i>Gardere Wynne Sewell LLP</i>

Business Law Section Newsletter

Message From The Chair



Fellow Section Members:

Although the Texas Legislature is still working hard on various pieces of proposed legislation, the end of its 2011 Regular Session is in sight. I am pleased to acknowledge and report that a few of the bills that the Section's committees originally drafted, including amendments to the Texas Business Organizations Code and to Article 9 of the Texas Uniform Commercial Code, have been passed by the Legislature and sent to the Governor for consideration. Members of the Section's committees devoted significant time over more than a year to draft the bills, and they deserve thanks for their efforts to improve business laws in Texas.

Late Spring also means preparation for the State Bar Annual Meeting, which will be in San Antonio next month. As in past years, the Section will co-sponsor, with the Corporate Counsel Section, a one-and-a-half day CLE program. This year's program will be held on Thursday, June 23rd, and the morning of Friday, June 24th. A description of the program, which was planned by David Harrell, the Chair-Elect of the Section, is included in this Newsletter. Also, for the first time this year, the Section is co-sponsoring one of the leading speakers at the Annual Meeting Special Program, Edmund Morris. Mr. Morris, who has recently published the third volume of his biography of Theodore Roosevelt, will be speaking about former President Roosevelt after the CLE program, at 1:45 p.m. on Friday, June 24th. Members of the Section will be able to attend the CLE program and Mr. Morris's presentation without charge, and members who register to attend the Annual Meeting will also be able to receive CLE credit for attending the CLE program and Mr. Morris's presentation.

The Section will also conduct its annual meetings at the State Bar Annual Meeting on Thursday, June 23rd, after the CLE program concludes for that day. The list of the Council members and officers of the Section nominated for election is included in this Newsletter. The nominees are all committed to the Section and well-qualified to lead it, and I am confident of their future success.

The Council members and chairs and vice-chairs of the committees of the Section provided benefits to Section members this year in various ways, and I thank them for their hard work and applaud them for their successes. It has been my pleasure to serve as Chair of the Section this year, and I thank you for the opportunity. I wish all of you a wonderful summer.

Rick Tulli,

Chair of the Business Law Section, 2010-11

Notice of the Annual Meeting of the Business Law Section of the State Bar of Texas and Report of the Nominating Committee

The annual meeting of the Business Law Section of the State Bar of Texas (the "**Section**") will be held on June 23, 2011, at 4:45 p.m. at the Henry B. Gonzalez Convention Center, San Antonio, Texas, in connection with the State Bar of Texas Annual Meeting. The business transacted at the meeting will include the election of Section Council members. The report of the Section Nominating Committee is set forth below.

As provided in Article IV, Section 1 of the Bylaws of the Business Law Section of the State Bar of Texas, the current Chair of the Section, Richard A. Tulli, appointed John C. Ale, Elizabeth Miller and Brad L. Whitlock to serve as the Nominating Committee for members of the Council of the Section to be elected at its annual meeting in 2011. Mr. Tulli asked Mr. Ale to serve as Chair of the Nominating Committee.

The members of the Committee met via telephone conference call and communicated via electronic messages. The Nominating Committee is pleased to make and report the following nominations for two-year terms on the Section's Council, to serve commencing immediately following the close of the Section's 2011 annual meeting:

Ronald L. Chichester
Shanna Nugent Cobbs
David E. Harrell
Carol Bavousett Mattick
Stephen C. Tarry

The five members of the Council elected for two-year terms in 2010 will continue to serve, and Mr. Tulli will also serve as a member of the Council as its immediate past Chair as provided in Article II, Section 2 of the Bylaws of the Section.

The Committee also recommends that the Council, at its annual meeting following the annual meeting of the Section, elect the following individuals as officers of the Section, to serve commencing at the close of the Council's annual meeting:

David E Harrell, Chair
Gregory R. Samuel, Chair-Elect
David R. Keyes, Vice-Chair
D. Ryan Nayar, Secretary-Treasurer



Beth Miller Receives Award from ABA Business Law Section

In April 2011, Professor Elizabeth Miller, the Chair of our Section in 2008-09, received the ABA Business Law Section's prestigious Jean Allard Glass Cutter Award. The Award is presented annually to an exceptional woman business lawyer who has made significant contributions both to the profession and to the ABA's Business Law Section. The Award is named for Jean Allard, the first woman to chair the ABA's Business Law Section, and is presented to a woman who has (1) made significant contributions to the profession and the ABA's Business Law Section, (2) achieved professional excellence in her field and demonstrated a dedication to the work of that Section, and (3) worked to advance opportunities for other women in the profession and that Section. Past recipients are listed on the ABA's web page dedicated to the Award (<http://www.abanet.org/buslaw/committees/CL360000pub/glasscutter.shtml>). Congratulations to Beth on her well-deserved honor!

Weekly Legislative Reports Available

During the regular 2011 Texas legislative session, the Section is posting on its website weekly legislative reports. The reports include a list of bills filed in the Texas Legislature that are believed to be of interest to Texas business lawyers. The bills are listed by categories, beginning with ones that were originally drafted by, or are of particular interest to, the Section and then grouped by the principal topics of the bills: business entities, UCC, securities, financial services and financial institutions, business liability (including privacy and related matters), taxation and related topics, and real estate and related topics. The report includes only a brief description and an abbreviated history of each bill, but the report links to the Texas legislative website and all of the information regarding the bill at that site. Therefore, by clicking on a bill in the report, the reader has access to extensive information about the bill, including the texts of the bill, the bill analysis for the bill, and the legislative history of the bill. The reports are posted weekly and are available to all Section members.



State Bar Convention CLE

The State Bar of Texas Annual Meeting will be held at the Grand Hyatt, San Antonio, Texas, on June 23-24, 2011. The Business Law Section and Corporate Counsel Section are co-sponsoring the following CLE programs at the Annual Meeting:

On Thursday, June 23rd, the Business Law Section and Corporate Counsel Section will co-sponsor the following CLE presentations:

1. Legislative Update, 9:00 AM to 10:00 AM, Speakers include: Val Perkins, P. John Kuhl and Daryl Robertson;
2. Hot Topics in Human Resources, 10:00 AM to 10:45 AM, Speaker is Gayla C. Crain;
3. Negotiating Ethics: Are You Smarter than A First Year Associate?, 11:00 AM to 12:00 PM, Speakers include: Wilson Chu and Barrett Howell;
4. Dealing With the Board—Compliance, Risk Management and Day to Day Considerations, 1:30 PM to 2:45 PM, Speakers include: Robert Walls, Catherine Paulsen, and Noelle Reed;
5. Securities Law—New Trends in Enforcement, 3:00 PM to 3:30 PM, Speaker is Katherine Smith Addleman;
6. When the FBI Comes Knocking, 3:30 PM to 4:15 PM, Speaker is John B. Wear; and
7. Texas Access to Justice: Pro Bono Update, 4:15 PM to 4:45 PM.

The Business Law Section will hold its section meeting at 4:45 PM on Thursday, June 23rd after the conclusion of the CLE presentations.

On Friday, June 25th, the Business Law Section and Corporate Counsel Section will co-sponsor the following CLE presentations:

1. Negotiation—Tips, Tools, and Trends, 9:00 AM to 10:00 AM, Speaker is Trey Bergman;
2. Privacy and Compliance—What is Coming Next?, 10:00 AM to 10:45 AM, Speakers include: Christopher J. Volkmer, Gary E. Zausmer, and Jeffery D. Dunn;
3. Effective Dispute Resolutions—Options That Work; 11:00 AM to 12:15 PM, Speakers include Anne Shuttee, and Ann Ryan Robertson.

For more information concerning the meeting, please see <http://www.texasbar.com>

Bankruptcy Court Ordered ADR: What Every Business Litigator Should Know



By David Dummer¹

Today, the word “alternative” in the phrase “alternative dispute resolution” (“ADR”) is a bit of misnomer. While ADR certainly remains an alternative to trial in the truest sense, it is no longer a novel curiosity. Parties involved in traditional litigation routinely utilize mediation before trial (whether contractually required or not), and numerous contracts now obligate parties to resolve disputes by way of binding arbitration without resort to trial. In fact, most business litigators likely spend as much or more time resolving cases through ADR than through trial.

Even though ADR is certainly more commonplace than it was in the past, there remain types of ADR that are not standard and might be unfamiliar to some business litigators. One such area is bankruptcy court ordered ADR.

In some recent bankruptcies, debtors have found themselves with a large number of outstanding disputes with similar factual or legal issues. For example, a debtor may have a large number of products liability claims or a large number related to a financial product. To facilitate an efficient resolution of the disputes, some debtors have requested that the bankruptcy court enter an ADR procedures order to address an entire group (or a subset of a group) of disputes.

Why would a debtor want an ADR process?

There are a variety of reasons why a debtor might want an ADR process. Many ADR procedures orders establish a panel of mediators. When a debtor has large number of disputes with similar fact patterns and legal issues, having a panel of mediators creates efficiency. It also results in a highly educated panel that has a strong feeling for the value and merits of the various cases. Having an ADR procedures order also allows a debtor to move through a large number of disputes with a consistent procedural process often facilitated by an entity like JAMS or the AAA. Finally, the ADR process allows debtors to resolve disputes more quickly with a resulting savings to the estate (and a larger distribution to creditors).

What should I do if a ADR procedures order is entered?

The most important thing a business litigator can do when an ADR procedures order is entered is to read it carefully noting any procedural requirements and any potential benefits to his or her client. Orders vary widely. Some ADR systems are set up to process claims against the estate. Others are established to assist the debtor in recovering monies owed it. In some instances, a claimant or litigant can opt into the program voluntarily while in other instances participation is mandatory even if the dispute is with a party who would otherwise have had no obligation to participate in ADR outside of the bankruptcy context.

I have a stayed lawsuit and a pending claim against the debtor. Is there any benefit to settling in the ADR process?

The value to a business litigator’s clients varies from bankruptcy to bankruptcy and from order to order. That is why it is so critical to understand precisely what the order says. But there are some likely benefits that might result from participating in the ADR process and resolving a claim through it.

First, it is important to understand the priority of your client’s claim and whether such claims are being paid in full to understand whether full-blown litigation remains a viable option. For example, litigation costs associated with a \$10,000,000 case often vary dramatically from the costs associated with a \$1,000,000 case. If creditors are only receiving ten cents on the dollar, this may require a strategy change, and there may be tremendous benefit to a court ordered ADR process that is streamlined to minimize cost. In some instances, the ADR procedures order will require the estate to pay the costs associated with a mediation. In others, discovery is expressly prohibited. Thus, the process can provide one of the most cost-efficient opportunities to resolve a dispute.

Another factor to consider is whether the order allows a settling party to have an allowed claim against the estate. In some larger bankruptcies, there is an active market of traders who will purchase allowed claims. By selling the claim to a trader, a claimant might be able to receive a cash payment far in advance of any official distribution from the estate. (Of course, this is accompanied by the inherent risk of trading a claim before the official value has been established.)

What is the takeaway?

There is not a uniform process for ADR in bankruptcy. Large ADR programs are tailored to create efficiency given the particular factual circumstances. Therefore, it is critical for business litigators to familiarize themselves with the ADR procedures order early in the process to create maximum protection and benefits for their clients.

1. David Dummer is a litigation/regulatory associate with Weil, Gotshal & Manges LLP in Dallas, Texas. His practice focuses on complex commercial litigation and he has recently been involved on the litigation side of a number of bankruptcies. He earned his J.D., with honors, at Duke University School of Law in 1999 and clerked for the Honorable Thomas B. Russell of the U.S. District Court for the Western District of Kentucky. This article expresses no legal opinion.

Securities Law Committee Spotlight



Chair: Carol B. Mattick

Get Involved:

Email Carol B. Matticks at carol@cbmattick.com

I. What Securities Lawyers Do:

As business lawyers, we all know clients that need additional financing. While the first thought of a CEO might be bank financing, that impulse is often misplaced. Whether the client is large or small, banks want to lend to them in situations that either match a long term loan to the acquisition of a long term asset or that simply fill a short term gap between the business' receipt of revenues and ongoing expenses. When they need financing for other purposes and particularly when they are in a growth phase, businesses need equity capital. That is what securities lawyers do—representing the business seeking capital (whether in public or private transactions) or representing the intermediaries such as underwriters and brokers that help effect these transactions between businesses and investors. Another offshoot of regulation and practice that has grown tremendously since the advent of sophisticated securities markets is the management of wealth through investment in financial assets. Funds are formed to pool financial assets and advisers make their living advising the funds on the types of financial investments to make. On a smaller and more individual level, advisers may seek out individual clients and call themselves financial planners.

II. What the Securities Law Committee of the Business Law Section Does:

The Securities Law Committee of the Business Law Section provides a gathering place for lawyers involved in different aspects of securities law to find other lawyers who can be resources to them and their clients. Committee members also do the following:

- communicate with and advise the state regulator of securities in Texas about rulemaking and interpretation;
- make comments on proposed rulemaking and statutory changes with a variety of federal financial regulators;
- provide input on proposed legislation in Texas affecting securities offerings and professionals; and
- find outlets for professional writing and speaking.

Currently, the Securities Law Committee has 74 members, with 20-30 who are active. They include solo practitioners with niche practices to members of large firms and every type and client base of securities law practice mentioned above. Typically, the committee meets 4-6 times a year with an in-person meeting venue and opportunities to conference call in at each meeting. Lawyers interested in joining the group should join the business law section and contact the committee's chair, Carol Bavousett Mattick, at 210-272-1860 or via email at carol@cbmattick.com.

Newsletter Submissions



If you would like to submit an article for inclusion in the Business Law Section's Newsletter, please email it to our Newsletter Committee Chair, Shanna Nugent, at snugent@slnlegal.com or Newsletter Committee Vice Chair, Wendy Curtis, at wcurtis@akingump.com. The Newsletter Committee reserves the right to edit contributions for clarity and content.

Keeping Your Email Address Updated



With the electronic distribution of the newsletter, it will be important for every Section member to keep an updated email address with the State Bar of Texas since that agency will distribute the email on behalf of the Section. You may update your email address at the [MyBarPage](#) of the State Bar's website. Please note that the Section will not sell or distribute your email address to anyone, including the State Bar's CLE Division.

UPCOMING CLE PROGRAMS



STATE BAR OF TEXAS BUSINESS LAW SECTION

State Bar of Texas
Attn: Business Law Section
P.O. Box 12487
Austin, Texas 78711

We're on the Web!
www.texasbusinesslaw.org

UPCOMING CLE PROGRAMS

Choice and Acquisition of Entities in Texas 2011:

Hyatt Hill Country Resort & Spa, San Antonio, Texas – May 27, 2011
Presented by State Bar of Texas
Section members get a \$25 discount

Free CLE at State Bar of Texas Annual Meeting:

Grand Hyatt Hotel and Henry B. Gonzalez Convention Center, San Antonio, Texas
June 23-24, 2011
Presented jointly by the Business Law Section and the Corporate Counsel Section
Admission is free to all members of either section

Advanced In-House Counsel Course:

Westin Galleria, Dallas, Texas
July 28-29, 2011
Presented jointly by the Business Law Section and the Corporate Counsel Section
Section members get a \$25 discount

*Business Law Section Members
Hard at Work*



Above: Rick Tulli, Chair and Nick Peters, Secretary-Treasurer at the December 2010 Business Law Section Meeting

Below: Scott Knight and Greg Samuel take a break during the December 2010 Business Law Section Meeting