The Commercial Law Connection

The National Bar Association
Commercial Law Section

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CONNECTING PEOPLE, IDEAS AND OPPORTUNITIES

INSIDE THIS ISSUE:

Message from the Chair

Kimberly R. Phillips, Chair

I consider it an honor and privilege to serve as the Chair of the Commercial Law Section. I am thankful that the Section has enjoyed distinguished leadership and is on solid footing. Our past is full of historical accomplishments, not the least of which are our annual Corporate Counsel Conferences. We, however, have a unique opportunity to build on the Section's legacy of greatness, and we already are taking full advantage of this opportunity.

As we have for more than 20 years, we will soon host the Corporate Counsel Conference in New Orleans, Louisiana, February 21-23, 2008 at The Ritz-Carlton. The Section's Executive Committee made the decision to host the conference in New Orleans to demonstrate the Section's commitment to the revitalization effort of New Orleans. This commitment to community is not only important to the Section but also to the National Bar Association, and it is embodied in this year's national theme: Carrying the Torch: Power Through Collaboration. Not only will the Conference attract positive attention and revenue to the City of New Orleans, the Section will be collaborating with a local organization, Rebuilding Together New Orleans, to help families impacted by Hurricane Katrina. (Read more about the Section's work with Rebuilding Together on page 3.)

Supporting these types of community-based initiatives is not new to the Section. For example, over the last two years, the Section has been a key contributor to the National Bar Association's Crump Law Camp. The Law Camp provides high-school students the opportunity to participate in a two-week law program at Howard University in Washington, D.C. The Section also has been a strong supporter of the National Bar Institute, the philanthropic arm of the National Bar Association, which, among other things, provides scholarships to college and law school students. While the Section retains its strong commitment to increasing the number of African-American lawyers representing major corporations, we must continue to share our time, talent and resources with the communities we serve.

I look forward to collaborating with you as we continue to grow the Section and to enhance the services and opportunities that it provides to our members and the community that we serve. Please join me and the Executive Committee as we work to build on the legacy of the Commercial Law Section.

I look forward to seeing you in New Orleans for a productive, informative and fruitful Corporate Counsel Conference!

Authenticating E-Discovery: A Manifest for ESI

By Maurice A. Bellan, Esq. and W. Damon Dennis, Esq.

As a practitioner, you may have read a few articles and even attended a CLE course concerning electronic discovery and the effect it has on a company's responsibility to maintain, safeguard and produce electronically stored information ("ESI"). You may be familiar with your clients' obligations to maintain ESI, but do you understand how ESI can be used as evidence in a particular case?

Discovery involving ESI, such as emails, PDF files, spreadsheets and other electronic information, has become increasingly routine in federal courts. No longer is electronic discovery used solely in complex civil litigation cases involving the largest global corporations. It is now used in all types of cases, including simple contract disputes and negligence actions. Electronic discovery has received so much attention it led to the December 2006 amendments to the Federal Rules of Civil Procedure.

How do the amendments alter your approach to litigation? To be more direct, imagine that, during discovery, you found the smoking gun, *e.g.*, an e-mail that could be dispositive of claims asserted against your client. What is your next move? Does it comply with the new amendments to the Federal Rules? The latter question has many litigators scratching their heads.

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Welcome to a City of Opportunities

By Mayor C. Ray Nagin, Jr.

I am pleased to welcome the NBA Commercial Law Section's 21st Annual Corporate Counsel Conference to New Orleans. Thank you for your commitment to the rebuilding of our city. We are recovering, and New Orleans remains a great place to visit, live and conduct business.

We are a city with opportunities for people in every type of business. Builders, contractors, engineers and other technical professionals are the obvious beneficiaries, but none of them can function without the other components that allow cities to operate and businesses to function. Given that, physicians, teachers, retailers, various types of equipment suppliers and a long list of other providers are essential.

All of these businesses depend on commercial law professionals. Government, businesses and individuals are entering into an unprecedented number of contracts, providing a steady stream of business for those who have an interest and capacity in contract law. And as the manufacture and sale of various consumer goods continues to heighten, your expertise will be increasingly necessary. In fact, there is almost no area of commercial law that will not see increased demand within our city during the next few years.

New Orleans is entering a long-term rebuilding phase. Within City government alone, we are set to undertake more than $1 billion in construction projects. In addition, other governmental entities, such as the Orleans Parish Schools and the Sewerage and Water Board, businesses and individual homeowners are repairing their properties and rebuilding their lives. Many residents are seeking counsel as they negotiate with their insurance companies or navigate their way to resolution of claims made against governmental entities.

Because our recovery is about the people, we can measure our success – at least in part – by the number of people who live here. Just two years after the worst natural and manmade disaster in our country's history, our population is 70 percent of its Pre-Katrina level, according to the Greater New Orleans Community Data Center. That means that about 318,000 people now live in this city. That is astounding, considering the predictions that we would never return.

Other statistics further demonstrate that we are rebuilding. We have issued more than 179,000 building permits valued at more than $4.6 billion. Our sales tax collections are nearing 90 percent of its Pre-Katrina level, our airport is nearing pre-Katrina passenger levels and the Port of New Orleans is operating above pre-Katrina levels.

Our citizens are returning because New Orleans is home. New Orleans is critical to the country's culture, but it also is essential to the nation's petroleum industry. We are a major shipping port and a place to visit for quality entertainment.

We have gotten to this point as a result of wise decision-making. Hurricane Katrina completely shut down our economy. We were forced to cut our city government dramatically and eliminated nearly 3,000 employee positions. Decisions such as this one – which required us to make difficult choices – have earned us the respect of Wall Street and other financial leaders.

Thirty days after Hurricane Katrina made landfall, I convened the Bring New Orleans Back Commission to begin planning for our full recovery. Our citizens also have gone through a number of other planning processes, all of which culminated with the Unified New Orleans Plan, or UNOP. The UNOP planning process included unprecedented public involvement, including citizens here and those displaced elsewhere who participated via satellite.

The Office of Recovery Management, which I implemented in January 2007, drew from all of these plans to create the Citywide Strategic Recovery and Redevelopment Plan, which outlines a plan for our recovery, focusing first of 17 strategic recovery areas. We were the first municipality in Louisiana to have a recovery plan approved by the Louisiana Recovery Authority. Several of our trigger projects are taking shape, such as the Freret Market, which opened in September, and the St. Roch Walkway.

Our recovery has not occurred as rapidly as we would have liked because we have not had access to the federal dollars that have been promised for our recovery. Even with these barriers, we have worked with the City Council to borrow more than $45 million from other city projects to jumpstart critical public safety projects. Today, as a result of our hard work and vision, we have more than $1 billion available for our rebuilding.

As we continue to rebuild, our struggle lies in ensuring access to quality healthcare for our citizens as our entire healthcare industry recovers from the crippling effects of Hurricane Katrina. We also must ensure access to that our citizens have access to the opportunities that arise.

We are at a pivotal time in our city's development. Now, more than ever, New Orleans is a place poised with opportunities for today and tomorrow. We will move ahead with the vision of people from various backgrounds. Thank you again for visiting New Orleans, and I welcome you to become a part of our future.

**C. Ray Nagin, Jr. is the mayor of New Orleans. He was first elected on March 2, 2002. Mayor Nagin gained international attention in 2005 in the aftermath of Hurricane Katrina, which devastated the New Orleans area. He was born in New Orleans and is a former vice president and general manager at Cox Communications. Mayor Nagin received a B.S. in Accounting from Tuskegee University in Tuskegee, Alabama in 1978 and an M.B.A. from Tulane University in 1994.*

NBACLS WELCOMES ITS NEW CHAIR

By David B. Cade, Esq.

During the NBACLS's annual meeting in Atlanta, as part of the NBA Annual Convention in August, the Section unanimously elected Kimberly R. Phillips its new Chair. Kim served as First Vice Chair under Immediate Past Chair Karol Corbin Walker as well as Treasurer for prior Section Chair, John Lewis. Kim certainly is no stranger to the NBACLS. She has shown serious dedication and commitment to ensuring that our Section has the best thematic programming, financial standing, and, of course, networking opportunities. Little wonder we have been NBA Section of the Year six times in the last seven years!

Many of you may recognize or know Kim from the Corporate Counsel Conferences (yes, she is the 4'10½" ball of energy with the walkie-talkie pacing around or rushing down a hotel corridor going from one meeting to the next). But other than that, what do we really know about our new leader? The perfunctories are easy. Kim is a graduate of Central Missouri University and the Thurgood Marshall School of Law. She is Board Certified in Civil Appellate Law by the Texas Board of Legal Specialization. She was named in 2005 as a "Texas Rising Star," one of the top up and coming Texas attorneys under 40, by members of the elite Texas Super Lawyers list (so basically, she is pretty good at what she does). Kim lives in Houston, Texas with her very supportive husband, Jason.

Kim was a partner at Gardere Wynne before she made the leap in-house to Shell Oil Company. She likes to shop. A lot. A lot more than most of us know (and for those of us who have been in this Section for more than a few months, this clearly explains why she and Karol get along so well). Finally, she likes football (which I guess is a good thing since her husband, after a pro career, now is a college football coach).

Kim is very good at soliciting volunteers for the Section. I first met Kim years ago at a Superbowl party in suburban Detroit. Not more than 10 minutes into our initial conversation, she immediately roped me into the NBACLS with her standard line "So, can I count on you to help out?" Now, once you say the obligatory "yes" to Kim (which she has a way of getting you to do), expect to work really hard. She is very focused, and like Karol and John before her, Kim practices what she preaches. She devotes considerable energy to getting it right. She wants everything our Section does to be organized and precise. If it is not the best or well done, plan to hear her (many) suggestions for improvement (I sure have). Fortunately, you can be assured your time won't be wasted. Kim is punctual. She starts meetings on time and on the hour and ends promptly at the designated time. She also follows up with detailed lists. A lot of lists.

But finally, please know that Kim is also a wonderful friend. She makes a point to get to know people personally and to remember little things about you. It is not unexpected to get an email, card or note from her just asking how you are doing or if she can help you in any way. She appreciates the personal sacrifices Section members make to help her out, and they do not go unnoticed. And, despite her obvious career successes, she is quite humble and down to earth. I cannot think of a more compassionate, friendly, business-oriented person to step into Karol's (Jimmy Choo) shoes and lead our Section.

** David B. Cade is the First Vice Chair of the Commercial Law Section and is in-house counsel at General Motors Corporation.*

NBACLS HOSTS COMMUNITY OUTREACH PROJECT IN NEW ORLEANS

By DeMonica D. Gladney, Esq.

During the 21st Annual Corporate Counsel Conference, the NBACLS will host a Community Outreach Project to help revitalize and rebuild New Orleans. The NBACLS has partnered with Rebuilding Together New Orleans (RTNO), a local affiliate of a national nonprofit organization, Rebuilding Together, which has restored and revitalized more than 100,000 homes over the past 19 years. More than two years after hurricanes Katrina and Rita, many neighborhoods in New Orleans still remain devastated. Through the NBACLS and RTNO partnership, three homes in the Broadmoor and Holy Cross areas will be rebuilt with more than $100,000 in funds donated by the NBACLS.

On Thursday, February 21, 2008, during the Conference, the Community Outreach Project will kickoff with a bus tour of the devastated areas in the Lower Ninth Ward of New Orleans and the selected rehabilitation sites with the RTNO staff, community participants and the NBACLS members. Following the tour, NBA President Vanita Banks and newly-elected State Senator Cheryl Gray (NBACLS member and former NBA Vice President) will participate in a community dedication ceremony in the Broadmoor area in Sen. Gray's district to commemorate the rebuilding efforts and celebrate another incremental step in bringing back the greatness of a legendary city.

Plan now to attend the Conference and participate in the NBACLS Community Outreach Project! Don't miss out on this great opportunity to see how we have given back to the New Orleans community at a time when the need is so great.

** DeMonica D. Gladney is the Secretary of the Commercial Law Section's Executive Committee and is in-house counsel at Exxon Mobil Corporation, where she has practiced for twelve years.*

The 2008 NBA Corporate Counsel Conference: The Taste Will Be Uniquely New Orleans

By Eugene J. Radcliff, Esq.

Laissez Les Bon Temps Roullet! Let the good times roll in New Orleans, the city where everybody feels right at home. New Orleans is best known for its unique food, culture, music, and fun. Just steps away from the site of this year's conference (the Ritz-Carlton Hotel), you will find non-stop nightlife and entertainment, shopping, art galleries, history, and old world charm. There are myriad attractions to accommodate all "tastes."

"The Taste of New Orleans"

First, and foremost, this is New Orleans! You cannot come here and not indulge in the exquisite southern delicacies. Situated on the fringe of the legendary French Quarter, the site of this year's conference offers enviable access to some of the most widely acclaimed restaurants in the world, all within walking distance.

Let's begin with the grand dame of old-line New Orleans restaurants, "Galatoire's," a New Orleans original, which has featured the finest in French Creole cuisine for over 100 years (209 Bourbon St.). If you go, you must order the soufflé potatoes. Nearby you will find the regal taste of New Orleans cuisine at the "Palace Café" (605 Canal Street).

The New Orleans experience will not be complete without dining at "Dickie Brennan's Steakhouse," one of New Orleans' fine steak establishments (716 Iberville St.). The Brennans are New Orleans' first family of restaurant owners. Looking for treasures from the sea, just around the corner is "The Bourbon House Seafood and Oyster Bar," another Brennan family restaurant (739 Canal St.).

As you venture further into "the Quarter,"[1] "Olivier's Creole Restaurant" is where you will find what makes New Orleans food famous, Creole cooking (204 Decatur St). "Irene's" serves the finest Creole-Italian cuisine you will find anywhere on the planet (539 St. Philip St.). Not far from Irene's, abutting the famed Jackson Square, is "Muriel's," the area's finest contemporary Creole restaurant "set in an historic building with exposed brick walls and private banquet rooms upstairs including the Séance Lounge" (801 Chartres St.). Not far from there is the legendary "The Court of Two Sisters" (613 Rue Royale). It features old style Creole food and one of the City's most renowned Sunday Brunches.[2]

A few other sure-fire, but less formal, restaurants to visit in the Quarter are "Acme Oyster House" (724 Iberville St.), "Red Fish Grille" (115 Bourbon St.), "Café Maspero" (601 Decatur St.), the always fun "Hard Rock Café" (418 N. Peters St.), and the "House of Blues" — gotta try the Gospel brunch (225 Decatur St.).

Outside of the Quarter, New Orleans boasts the internationally famous "Emeril's," Chef Emeril Lagasse's prized creation (800 Tchoupitoulas St.). You are bound to find the city's high profile visitors nestled in a corner here, enjoying Emeril's award-winning New Orleans cuisine. Not far from Emeril's is "Restaurant August," the home of America's Next Iron Chef finalist John Besh (301 Tchoupitoulas St.). On the corner, across the street in the Lowes Hotel is "Café Adeliede's," another Brennan family gem (300 Poydras St.).

Farther away, in the Garden District is New Orleans' flagship Brennan's restaurant, "Commander's Palace" (1403 Washington Ave.). When you are done with the serious eating, make your way down to "Café Du Monde" in the Quarter at the River for "an order of beignets (powdered sugar pastries) and café au lait (coffee with milk)" (800 Decatur St.). Also, treat yourself to New Orleans original pralines at "Leah's" (714 Saint Louis St.) or "Loretta's Authentic Pralines" (2101 N. Rampart St.).

"New Orleans Sounds"

The nightlife in New Orleans is the stuff of legend. For those of you who want to forego the touristy Quarter club scene, "International House" makes a fine grown-folk alternative (221 Camp St.). A few blocks away, the "Wine Loft" is equally entertaining (752 Tchoupitoulas St.). For a nice night out with the city's professional crowd, try the "Whiskey Blue" at the W Hotel (333 Poydras St.). "Tommy's" provides slightly more of a party atmosphere (746 Tchoupitoulas); while "Ray's on the River" (World Trade Center) is all out fun, as is the "Cricket Club" (2040 St. Charles Ave.).

My personal favorite for mixing with the adult crowd is the "Oxygen Bar" at "Sweet Fire and Ice," just outside the city, but only five minutes away (701 Veterans Blvd.). Its restaurant offers excellent cuisine from New Orleans' own Al Copeland, creator of "Copeland's," "Cheesecake Bistro," and "Popeye's Famous Fried Chicken" restaurants. For more entertainment, please visit Harrah's Jazz Lounge, Harrah's Masquerade Lounge, and Harrah's Casino.

Have fun in our wonderful city. Enjoy, and welcome! *Bienvenue*!

** Eugene J. Radcliff is a Partner in the New Orleans office of Montgomery, Barnett, Brown, Read, Hammond & Mintz, L.L.P. See the Member Spotlight article for more information about Mr. Radcliff.*

[1] Hint: So as not to sound like a tourist, please refer to the French Quarter as "the Quarter."

[2] An interesting point of fact, the 600 block of Rue Royale was home to five governors, two state Supreme Court justices, a future Justice of the U.S. Supreme Court, and a future President of the United States.

Highlights from the NBA Annual Conference in Atlanta, Georgia

2008 CORPORATE COUNSEL CONFERENCE

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NEW PORTAL ALLIANCE INTENDS TO INCREASE TRANSPARENCY AND LIQUIDITY OF 144A MARKET

By E. Steve Bolden II, Esq. and Eric C. Blue, Esq.

On November 12, 2007, the NASDAQ Stock Market announced an agreement entered into with a group of leading investment banks to collaborate on the creation of The Portal Alliance (the "***Portal***"). The Portal is an industry-wide platform for the offering and trading of privately-placed equity securities pursuant to Rule 144A of the Securities Act of 1933 (the "***Act***"). The Portal is expected to become operational within the first half of 2008. NASDAQ and the relevant investment banks assert that the Portal will provide liquidity for Rule 144A equity securities and create transparency and enhanced shareholder value by providing a standardized trading platform for Rule 144A securities. In this short article, we will briefly discuss (i) the emergence of Rule 144A offerings and (ii) the intended purpose and benefit of the Portal: to increase liquidity and transparency of Rule 144A offerings.

Restricted Securities and Alternative Purchaser Exit Strategies

The United States securities laws require that an issuer who offers its securities in the public market comply with the registration requirements set out in Section 5 of the Act. Under Section 5 of the Act, if an issuer cannot avail himself or his securities of an exemption from registration, the issuer must file a registration statement in order to offer or sell the securities.[1] There are a number of exemptions that issuers rely on to avoid registration of their securities. One such exemption is Section 4(2) of the Act, which provides that the registration requirements of Section 5 shall not apply to any transactions by an issuer not involving a public offering.[2] Regulation D is another exemption. It consists of Rules 501 through 506 of the Act, with Rules 504 through 506 providing exemptions to issuers based, in part, on the purported dollar amount of the offering.

From a liquidity perspective, a purchaser who purchases a security from an issuer who relies on a registration exemption must consider what exit strategies are available to the purchaser when the purchaser ultimately decides to sell the restricted security. To emphasize the point, Rule 502(d) of Regulation D provides that any security purchased in a Regulation D private offering that exceeded in the aggregate $1,000,000 shall have the status of securities sold pursuant to Section 4(2) of the Act. That means that such securities cannot be resold without registration of the security or an available exemption from the registration requirements. Historically, issuers who conducted private placements of securities would grant purchasers registration rights, which consisted of: (a) "demand registration rights," permitting the holders of a finite amount of a security to demand the issuer to register the securities; and (b) "shelf registration rights," requiring that an issuer register the securities under a shelf registration statement pursuant to Rule 415 of the Act. These registration rights came with certain negative consequences such as exposing the holders of these restricted securities who exercised their registration rights to (1) underwriter liability under Section 11 of the Act in connection with the resale of their securities and (2) liability under Section 12(a)(1) of the Act for offers and sales of securities in violation of Section 5 of the Act, including the prospectus delivery requirements.

Another liquidity concern associated with the grant and subsequent exercise of these registration rights is the liquidity discount that is often applied to restricted securities to determine the security's actual value in light of certain statutory resale restrictions (such as Rule 502(d) of Regulation D). As a corollary to this liquidity discount, it is customary for registration rights agreements to have "black out" periods during which the holders of restricted securities are not permitted to demand registration or, if a registration statement is already effective, to deliver a prospectus in connection with the resale of their restricted securities.

The Emergence of Rule 144A as a Liquidity Driver

Rule 144A was adopted to deal primarily with the private placement of restricted securities and their subsequent resale. Although a Regulation D issuer must adopt appropriate restrictions to ensure that the securities are not resold in violation of the registration provisions, Rule 144A was adopted on the assumption that purchasers in a Regulation D offering may acquire the securities with a view towards reselling them later pursuant to Rule 144A. Rule 144A was designed to provide an efficient, liquid market among large institutional investors – investors with securities portfolios in excess of $100 million – for securities issued in exempt offerings or in reliance on Regulation S of the Act. In order to qualify for the Rule 144A exemption, four (4) conditions must be satisfied:

- The securities must have been offered or sold only to a qualified institutional buyer or to an offeree or purchaser that the seller reasonably believes is a qualified institutional investor or QIB;
- The purchaser of the restricted securities must be made aware that the seller may rely on the exemption from the registration requirements of Section 5 of the Act;
- The restricted securities cannot be "fungible securities" or part of the same class as securities listed on a U.S. securities exchange or traded in an automated U.S. inter-dealer quotation system or securities of an open-end investment company, unit trust, or face-certificate company; and
- For certain classes of restricted securities, the issuer must provide certain financial information from the issuer to the purchaser.

The result of Rule144A has been to provide a practical framework for the resale of securities while they are within the applicable Rule 144 holding period.

The Portal: Providing a Liquidity Premium for Rule 144A Securities

In its press release, NASDAQ indicated the following as the rationales underpinning the need for the Portal:

- The Portal would serve the interests of both issuers and investors by developing a standardized trading platform that would include major market participants and attract and centralize the capital formation process for Rule 144A issuers and investors;
- The Portal would provide liquidity for Rule 144A equity securities; and
- The Portal would create transparency and enhanced shareholder value by providing a standardized trading platform for Rule 144A securities, consistent shareholder tracking, and a means of clearing and settling trades in Rule 144A securities under an established regime.

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Networking at its Best—The Value in Attending the NBA's 82nd Annual Convention

By Carl W. Gordon, Esq.

Many of you were able to attend the NBA's highly successful 82nd Annual Convention in Atlanta, Georgia. This was my first NBA convention, and I will always cherish the experience. The convention has a wealth of benefits, which include: (1) an opportunity to build and foster life-long relationships, (2) an annual forum to recognize the accomplishments of NBA members, and (3) the ability to empower our communities.

Spotlight on New Relationships

While at the convention, I established several new relationships with attorneys in diverse practice areas from throughout the country and around the globe. Below is a sample of the new friends and colleagues that I met at the conference.

First, I made the acquaintance of Jason L. Williams. Mr. Williams is an attorney with The Gary Law firm in Stuart, Florida. His primary area of practice is personal injury. Mr. Williams is a well-polished individual who, in my opinion, is a glowing example for all junior attorneys seeking a role-model. I very much look forward to staying in touch with Mr. Williams.

Second, I met Nedra E. Austin. Mrs. Austin is the Director of Franchise & Property Administration and Real Estate Counsel for IHOP, Inc., based out of Glendale, California. It was a delight to have met Mrs. Austin. Everyone, including me, seemed to enjoy her company, and she is not bad at Spades either.

Last, but certainly not least, I would be remiss if I did not mention meeting Demetrius Shelton. Mr. Shelton is the Deputy City Attorney for the City of Oakland, California. Mr. Shelton is one of the newly elected NBA Vice Presidents. In the short time that we met, it became evident to me why he was elected by his peers. Mr. Shelton exemplifies the hard work, dedication, and commitment to empowering our community that sits at the foundation of the NBA.

I look forward to developing all of the relationships that I established during the convention. Indeed, it will be a pleasure to keep in touch from time to time, if for no other reason than to just say hello, offer encouragement or receive advice. I am confident that all of my new found relationships will continue to grow for years to come.

The Commercial Law Section—Rewarding Success And Helping the Community

Also, while in Atlanta, I attended my first Commercial Law Section (CLS) meeting. It was great to hear about the past successes and future initiatives the section has planned for 2008. It is an exciting time for the CLS as it welcomes Kimberly Phillips, Senior Counsel for Shell Oil Company, as its new Chair. Furthermore, the section is sure to have enormous success in achieving its goals with the great foundation laid by Immediate-Past Chair, Karol Corbin Walker, and the section's other past chairs.

As an acknowledgment of the CLS's desire to uplift our community, the CLS has decided to hold the 21st Annual Corporate Counsel Conference in New Orleans instead of Las Vegas to help the city in its rebuilding efforts following Hurricane Katrina. This decision alone demonstrates the core principles that have made the CLS a premier section within the NBA. I look forward to attending the conference in New Orleans and assisting the CLS in bringing commerce back to the great city of New Orleans.

The Value in a Nutshell

In my opinion, attending the 82nd Annual Convention, or any NBA convention for that matter, is invaluable. The gathering of legal professionals from our community is noteworthy, and so are the networking and professional development opportunities. While we know it has been a struggle to break into this profession, we have not forgotten to recognize the sacrifices made by our leaders. Each convention is a reminder of the hard work we have accomplished in the past and the obstacles we will have to overcome in the future. I look forward to seeing everyone in Houston, my hometown, for the 83rd Annual Convention, as we continue as a team down the road to community success and empowerment.

Carl W. Gordon is a third year associate with the Business Litigation practice group in the Houston office of Haynes and Boone, LLP. Mr. Gordon has built his practice by focusing on the representation of clients in complex commercial matters. Mr. Gordon also has experience in a broad range of other matters from personal injury matters and commercial landlord tenant disputes to extraordinary writs and remedies.

Highlights from the NBA Annual Conference in Atlanta, Georgia

The Commercial Law Section received the NBA's 2007 Section of the Year Award.

Member Spotlights

Eugene J. Radcliff - New Partner

Eugene J. Radcliff was elected a Partner at Montgomery, Barnett, Brown, Read, Hammond &Mintz, L.L.P. Mr. Radcliff works in the firm's New Orleans and Baton Rouge, Louisiana offices. His practice focuses on corporate law, IP, product liability and general litigation. He has published works on matters including trial practice and Sarbanes Oxley. He is a member of the Louisiana State and Federal Bars and the United States Supreme Court and can be contacted at eradcliff@monbar.com.

Clarence Davis - Significant Litigation Victory

Clarence Davis, a Partner at Nelson Mullins Riley & Scarborough LLP, led a team of attorneys who obtained a complete defense victory on behalf of their client, Volvo Trucks North America Inc. (VTNA) in a dealer case when the Fourth Circuit Court of Appeals reversed a jury verdict against VTNA and ordered that the case be remanded to the district court for entry of a judgment in favor of VTNA. *See Carolina Trucks and Equipment, Inc. v. Volvo Trucks N. Am., Inc.*, 492 F.3d 484 (4th Cir. 2007).

In the case, a Volvo Trucks dealer in Columbia, South Carolina and its principal shareholders sued VTNA in South Carolina District Court, alleging a conspiracy to, among other things, wrongfully terminate the dealership. Seven of the dealer's eleven statutory and common law claims were resolved in VTNA's favor before trial. Following the four-week trial, the jury returned a verdict against VTNA on a single claim under the South Carolina Dealers Act related to VTNA's ownership of a used truck subsidiary that sold trucks to South Carolina residents from its Atlanta sales location. The sales were alleged to be in violation of a Dealer Act provision prohibiting the direct sales of motor vehicles by manufacturers in South Carolina. The verdict was $583,245.00. The statute provided for attorneys fees and costs to the prevailing party. Counsel for the plaintiff submitted a petition for an award of attorneys fees and costs in the amount of $1,222,683.70.

Both VTNA and the plaintiff dealer took cross-appeals to the Fourth Circuit. The primary grounds for VTNA's appeal were issues of statutory construction and the constitutional limitations on the extraterritorial application of state law. The Fourth Circuit reversed the jury verdict against VTNA, affirmed the jury verdict in favor of VTNA on the contract claim, and remanded the case to the district court with instructions to enter judgment in favor of VTNA.

Mr. Davis can be contacted at clarence.davis@nelsonmullins.com.

Sharon Bridges - New Member of the NBA Board of Governors

Sharon Bridges, J.D., RN, BSN was elected to be a member of the NBA Board of Governors during the NBA's annual Convention in August 2007 and is the Chair of the NBA's Technology Committee. Ms. Bridges, who also is a member of the NBA Commercial Law Section's Executive Committee, is a partner at Brunini, Grantham, Grower & Hewes in Jackson, Mississippi. Before joining the Brunini firm, she was Associate General Counsel for Tulane University Medical Center. Sharon's practice areas include product liability, asbestos, toxic torts, medical malpractice, and commercial litigation. She is licensed to practice in Mississippi and Louisiana.

Wilson J. Campbell - New Editorial Board Member

Wilson J. Campbell is a new member of the Editorial Board of the NBA Commercial Law Section's newsletter. He is a litigation associate in the New Jersey office of Sedgwick, Detert, Moran & Arnold LLP. His practice focuses on trials involving product liability, employment discrimination, and commercial cases in federal and state court. Mr. Campbell serves as a faculty member with the National Institute for Trial Advocacy (NITA) and he holds a Master of Laws degree in Trial Advocacy with honors. He is a former prosecutor, and he serves as a part-time municipal court judge in New Jersey.

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Gary Armstead - New Editorial Board Member

Gary Armstead is a new member of the Editorial Board of the NBA Commercial Law Section's newsletter. Mr. Armstead is an associate in the Litigation Practice

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Brian Telfair - Moves to LeClair Ryan

Brian Telfair has joined LeClair Ryan's Tort Defense Group in Richmond, Virginia as a shareholder with a practice that focuses on defending product designers, manufacturers and sellers against damage claims arising out of alleged product defects, malfunctions or failures. Mr. Telfair has defended insurance companies, automobile manufacturers, chemical companies, pharmaceutical companies, fast food companies and gas appliance manufacturers in a variety of matters. He is a member of the Virginia and Michigan State Bars and can be contacted at brian.telfair@leclairryan.com.

The Family Medical Leave Act—Milestone or Malady

By Patrick E. Beasley, Esq.

The Family Medical Leave Act of 1993 (hereinafter referred to as "FMLA" or "the Act") has been considered a milestone for employee rights since its inception in 1993; however, employers and employees alike have complained about abuses of the Act. Employers argue that many workers are taking time off for maladies that the FMLA was never created to cover and that workers are taking the 12 weeks of leave intermittently, rather that in blocks of time—making scheduling and staffing difficult to say the least. Employees counter by stating that employers are making it increasingly difficult to qualify for leave. Additionally, workers also cite instances in which employers resorted to retaliatory tactics, including terminating the employment of workers who elected to take FMLA leave.

No matter what position one takes, most employers and employees agree that many of the Act's provisions are difficult to interpret. This article addresses the following key questions: (1) which employers are covered by the FMLA; (2) which employees are eligible for leave under FMLA; (3) under what circumstances can an eligible employee take leave pursuant to the FMLA; and (4) what constitutes sufficient notice to the employer of an employee's intent to take leave under the Act.

Which Employers are Required to Provide Leave Pursuant to FMLA?

The Family Medical Leave Act requires an employer with 50 or more employers to provide its full-time employees the opportunity to take 12 weeks of unpaid leave during any 12-month period to care for a child after a birth or an adoption, to recuperate from the employees' own serious medical condition, or to care for a family member with a serious health ailment without the fear of losing their job. 29 U.S.C. § 2601(b) (2004). According to the latest data available to the Department of Labor, nearly 13 million workers took FMLA leave in 2005.

The provisions of the FMLA apply to any person engaged in commerce with 50 or more employees within 75 miles of the worksite for each working day during each of the twenty 20 or more calendar weeks in the current or preceding calendar year. 29 C.F.R § 825.104(a) (1995). In counting employees for FMLA purposes, employers must include employees that are on leave, including FMLA leave and disciplinary suspensions; however, employees that have been laid off are not included in this tabulation. 29 C.F.R. § 825.105(b) (1995).

The term *employer* for FMLA purposes also encompasses one who acts "directly or indirectly in the interest of an employer to any of the employees of such employer." 29 C.F.R. § 825.104(d) (1995). This interpretation of the term *employer* leaves little doubt that corporate officers throughout an organization's chain of command can be individually liable for violation of the FMLA.

Employee Eligibility

An employee is eligible for FMLA leave if he or she has worked for an employer for at least 12 months and has been employed for a minimum of 1,250 hours of service with such employer during the previous 12-month period. Additionally, the employee must work at a worksite where 50 or more "employees are employed by the employer within 75 miles that worksite." 29 C.F.R. § 825.110 (1995). Employees not eligible for FMLA leave are federal civil service employees, certain medical care providers employed by the Department of Veterans Affairs, and teachers employed by the Department of Defense who teach abroad. 29 C.F.R. § 825.109 (1995). The determination of whether an employee is eligible for FMLA protection must be made as of the date leave commences. 29 C.F.R. §825.110 (1995).

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The Family Medical Act ... *continued from page 9*

Leave Provisions of the FMLA

An eligible employee's "FMLA leave entitlement is limited to a total of 12 work weeks of [uncompensated] leave during any 12-month period" for any of the following: 1) the birth of a child and care of an infant; 2) the placement and care of an adopted or foster child; 3) a serious health condition "that makes the employee unable to perform one or more of the essential functions of his or her job"; or 4) the care of a spouse, child or parent with a serious health condition. 29 C.F.R. § 825.200(a) (1995).

As one might expect, the leave provisions of the FMLA have been a source of confusion as well as the basis for lawsuits. The employer has the sole responsibility for determining whether the need for leave is a FMLA qualifying event. *Manuel v, Westlake Polymers Corp.*, 66 F.3d 758, 762 (5th Cir. 1995). Additionally, the employer is permitted to choose any of the following periods as the 12-month period in which the 12 weeks of leave entitlement occurs: 1) the calendar year; 2) any fixed 12-month "leave year," such as a fiscal year, a year required by state law or a year starting on an employee's "anniversary" date; 3) the 12-month period measured forward from the date any employee's first FMLA leave begins; or 4) a rolling 12-month period measured forward from the date an employee uses any FMLA leave. 29 C.F.R. § 825.200(b) (1995).

Notice to the employer is required by the Act. If the need for leave is foreseeable, the employee must give a minimum of 30 days notice. A foreseeable event is one such as an expected birth or planned medical treatment. 29 C.F.R. § 825.302(a). When the event triggering the need for FMLA leave is unforeseeable, the employee should provide the employer with as much notice "as practicable" in the context of his or her specific case. 29 C.F.R. § 825.303). The critical inquiry "is whether the information imparted to the employer is sufficient to reasonably apprise it of the employee's request to take time off for a serious health condition. *Manuel*, 66 F.3d at 764.

Not only must the notice of leave be timely, it also must be sufficient to put the employer on notice of a FMLA qualifying condition. To be sufficient the notice need only inform the employer of the duration of the requested leave and state a reason/condition that would trigger protections under the FMLA. *Manuel*, 66 F.3d at 762. Interestingly enough, the notice provided does not have to be written, nor does the employee have to specifically mention the Act for the provisions of the FMLA to be invoked. The Fifth Circuit has stated that the Act does not specify the form of notification required for foreseeable leave, nor does it provide guidance concerning the notice requirements for unforeseeable leave. The employer has the sole responsibility for determining whether the underlying reason for the leave qualifies under the Act. *Manuel*, 66 F.3d at 761. Employers should be especially cognizant of this fact since they are responsible for notifying the employee of any event that may be FMLA qualifying.

An employer is not simply required to take the "word" of an employee that leave under the Act is needed. A employer may request orally or in writing that the employee provide medical certification for leave requested under the Act for both foreseeable and unforeseeable leave. 29 C.F.R. § 825.305(b). In the event that FMLA leave is required because of a serious health condition, the employee may be required to get certification from as many as three different physicians if the veracity of the health condition is doubted as qualifying for FMLA purposes. 29 U.S.C.§ 2613(d).

While abuses of the Act do occur, employers should find solace in the facts that there are many protections in the Act that prevent misuse and that having a thorough understanding of these protections can greatly minimize the economic impact that FMLA leave has on an organization. Conversely, employees can find comfort that the protections of the Act, in most cases, are invoked by the mere request for leave by the employee if the basis of the request is a FMLA triggering event. Moreover, Congress is actively seeking to expand the breadth of protections offered by the FMLA to provide employees with protections not contemplated a decade ago.

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Highlights from the NBA Annual Conference in Atlanta, Georgia

Authenticating E-Discovery… *continued from page 1*

Traditionally, you would file a motion for summary judgment citing to an affidavit that attaches the e-mail as an exhibit. However, in a recent lengthy decision concerning this very situation, the District of Maryland's Chief Magistrate Judge Paul W. Grimm issued an opinion in *Lorraine v. Markel American Insurance Co.*, 241 F.R.D. 534 (D.Md. 2007), holding that such actions are not enough. Judge Grimm specifically set forth common issues concerning the admissibility of ESI by illustrating the consequences litigants should avoid when proffering ESI as evidence in federal court.

Lorraine v. Markel American Insurance Company

In *Lorraine*, the parties were engaged in litigation over disputed terms of an arbitration agreement that was entered in June 2006. Plaintiffs subsequently brought an action in the District Court of Maryland to enforce a private arbitrator's award finding that the damage to their yacht, the *Chessie*, was caused by a lightning strike in May 2004 while the yacht was anchored in the Chesapeake Bay. The arbitrator found that lightning was the cause of the damage, but limited the award to $14,100. Plaintiffs brought the action to enforce the arbitrator's finding, but also to set aside the limits placed on the award, claiming the arbitrator exceeded his authority. Defendant/Counter-Plaintiff Markel American Insurance Company counterclaimed to enforce the arbitrator's award (including its damage limitation) in full.

After discovery, Plaintiffs filed a motion for summary judgment, and Defendants filed a response in opposition as well as a cross motion for summary judgment. The court denied both motions because neither party supplied any evidentiary foundation to support the various ESI that it sought to have entered into evidence. Instead, each party simply attached the ESI as exhibits to its motion – a method that most practitioners have done and continue to do.

Rather than simply denying both parties' motions, Judge Grimm took the opportunity to discuss how ESI should be proffered pursuant to the Federal Rules of Evidence. In doing so, he identified five broad evidentiary considerations that arise whenever ESI is offered as evidence:

Is the ESI relevant as determined by Rule 401;

If relevant under 401, is it authentic as required by Rule 901(a);

1. If the ESI is offered for its substantive truth, is it hearsay as defined by Rule 801, and, if so, is it covered by an applicable exception;
2. Is the form of the ESI that is being offered as evidence an original or duplicate under the original writing rule, or, if not, is there admissible secondary evidence to prove the content of the ESI; and
3. Is the probative value of the ESI substantially outweighed by the danger of unfair prejudice or one of the other factors identified by Rule 403, such that it should be excluded despite its relevance.

1. Relevance of ESI

Judge Grimm first examined the special relevance concerns for ESI evidence. The basic rule of relevance does not set a significantly high threshold, requiring only that the proffered evidence tends to make the existence of any material fact "more or less probable that it would be without the evidence." Fed. R. Evid. 401. Establishing that ESI has at least minor relevance to a material issue in the case is generally not difficult.

2. Authenticity of ESI

Once the proponent of ESI evidence establishes the evidence's relevance, he or she must show the ESI's authenticity under Rules 901 and 902. Authentication requires a prima facie showing that the evidence is what it purports to be, and, although this is not a severe burden, it does raise issues unique to electronic evidence.

Judge Grimm discussed how certain methods of authentication operate when applied to ESI. For example, Rule 901(b)(4) allows for authentication by "[a]ppearance, contents, substance, internal patterns, or other distinctive characteristics, taken in conjunction with circumstances." This method has unique applications in the context of ESI. First, courts allow authentication under Rule 901(b)(4) using "hash values" or "hash marks" when making electronic documents. Hash values are numerical identifiers that can be inserted into electronic documents to create "distinctive characteristics" that can satisfy this rule. Another way Rule 901(b)(4) can be used to authenticate ESI is through the evidence's metadata. Metadata is the automatically recorded information describing the history and statistics of a given document. Judge Grimm pointed out that the use of metadata is not always conclusive because of the risk of third party access to ESI on networked systems; however, he noted that metadata can be a useful source of distinctive characteristics.

3. Authentication of Particular Types of ESI

In general, authentication of ESI requires careful attention to the type of evidence proffered because courts apply differing standards depending on the form of the ESI.

A. E-mails

Particular issues are important when authenticating e-mail evidence. Circumstantial evidence of the sender's e-mail address in the document indicates that the named sender was the source of the e-mail; however, the sender's address alone is not conclusive because of potential outside access to the sender's e-mail account. Similarly, the contents of an e-mail may provide distinctive characteristics in the form of unique information known only to the sender and recipient. Judge Grimm listed the methods of authentication most frequently used for e-mails as: (1) testimony by a witness with personal knowledge; (2) expert or fact finder comparison with authenticated examples; (3) distinctive characteristics, including circumstantial evidence; (4) trade inscriptions; and (5) certified copies of business records.

B. Website Postings

The main concern with authenticating website postings is the difficulty of attributing website content to the sponsor of the website rather than to a third party. Some factors that assist a court in finding that a website posting is properly authenticated include: the length of time the information was posted, whether it remains posted for the court to verify, whether the owner has published such information elsewhere, whether others have cited that website as the source of the information, and whether the information is of the sort usually found on the website. Judge Grimm listed the methods of authentication most frequently used for website postings as: (1) testimony by a witness with personal knowledge; (2) expert testimony; (3) distinctive characteristics; (4) public records; (5) system or process capable of producing a reliable result; and (6) official publications.

C. Text Messages and Chat Room Content

Text and chat room messages are similarly difficult to attribute to a specific party. Factors to consider in authenticating these types of ESI include: evidence that an individual used the screen name in question in chat rooms, evidence that the person using the screen name identified himself in the chat room, evidence that the individual had information given to the person through the screen name, and evidence from the person's computer showing use of the screen name. Judge Grimm listed the methods most likely to be used in authenticating chat room and text messages as: (1) testimony by a witness with personal knowledge; and (2) circumstantial evidence of distinctive characteristics.

D. Computer Stored Records and Data

Electronic records are now a common method of data storage for businesses. Most courts tend to be lenient in authentication requirements for such records; however, some courts have begun to require a showing of

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Authenticating E-Discovery… *continued from page 11*

the accuracy and reliability of computer records before allowing them to be authenticated. At least one court has adopted an 11-step foundation for computer records, which establishes the reliability of the computer system, the business's data input procedure, and the witness's knowledge of the record output. Given the wide disparity between standards employed by various courts, it is best to be prepared to authenticate computer records by the most stringent requirements. Judge Grimm listed the methods most likely to be used in authenticating computer records as: (1) testimony by a witness with personal knowledge; (2) expert testimony; (3) distinctive characteristics; and (4) system or process capable of producing a reliable result.

E. Computer Animation and Computer Simulations

Computer animations are generally admitted if authenticated by "testimony of a witness with personal knowledge of the content of the animation and upon a showing that it fairly and adequately portrays the facts and that it will help to illustrate the testimony given in the case." Computer simulations are treated as a form of scientific evidence. Therefore, they are only admissible upon a showing that the computer is functioning reliably and that the input used to produce the simulations is also reliable. Judge Grimm listed the methods most likely to be used in authenticating computer animations and simulations as: (1) testimony by a witness with personal knowledge; and (2) testimony of an expert witness.

F. Digital Photographs

Original digital photographs may be authenticated by a witness with personal knowledge of the scene depicted. If the evidence is a digitally converted image, authentication may require testimony about the reliability of the process used to convert the image by a witness with personal knowledge of the technical process. Digitally enhanced photographs are images in which features of the original scene are altered (for example, shadows removed, colors enhanced). To authenticate a digitally enhanced image, a proponent will have to present proof that the process produces reliable and accurate results, which implicates the standards for scientific evidence under Rule 702.

ESI and Hearsay

Once ESI evidence is authenticated, a party must address its potential exclusion under the hearsay rule. Under Rule 801, hearsay is a statement made by a declarant offered to prove the truth of the matter asserted. ESI evidence often raises the question of whether the evidence is a "statement." Some courts have held that writings produced by machines are not statements and cannot be hearsay. Furthermore, non-assertive electronic evidence, such as an image from a website used to show the appearance of the website on a given date, is not a "statement" and, therefore, is not hearsay.

Statements found in electronic evidence have been found to satisfy the definition of "admissions by party opponents" if offered against that party, and, thus, they are admissible as non-hearsay under Rule 801(d)(2). Statements contained in electronic evidence may also be admissible as hearsay exceptions. Statements in e-mails can be admissible as present sense impressions, excited utterances, and as evidence of a then-existing state of mind, so long as the requisite elements of those exceptions are met.

Rule 803(6) allows an exception to the hearsay rule for records kept in the ordinary course of business. Some courts require all contributors to an e-mail chain to have written pursuant to a business duty. In other cases, courts have been more lenient and have admitted e-mail chains absent proof of actual alteration. Given the different standards for admitting electronic records under the business record hearsay exception, Judge Grimm recommended that a lawyer obtain a stipulation of genuineness or else be prepared to establish the exception under the most rigorous requirements.

4. ESI and The Original Writing Rule: Rules 1001-1008

For purposes of the original writing rule, courts generally admit computer generated documents without distinguishing between originals and duplicates. Rule 1004 provides that, even if the content of a document is at issue, the content may be proved by secondary evidence if the original is lost, destroyed, or unobtainable. This rule is particularly important with regard to ESI because of the ease and frequency with which electronic records are lost or destroyed. Rule 1006 allows for the use of summaries, which is especially important for cases involving often voluminous ESI.

5. ESI and Balancing Probative Value Against Unfair Prejudice: Rule 403

Rule 403 applies to all questions of admissibility; however, there are certain types of ESI for which the balance of probative value against the risk of unfair prejudice is particularly important. First, when evidence such as an e-mail or website posting contains highly offensive language that is likely to provoke an emotional response, it may be inadmissible as overly prejudicial. Second, when computer animations pose a high risk that the jury may confuse them with the actual events at issue in the case, they may be inadmissible. Third, when summaries of voluminous computer records are offered under Rule 1006, they may be inadmissible if the effect of the summary is to create unfair prejudice. Finally, Judge Grimm pointed out that if a court has serious concerns as to the accuracy of information contained in electronic evidence, a court may use Rule 403 as a means of excluding the evidence as overly prejudicial.

Conclusion

With the ever-burgeoning reliance on electronic communications, it is not surprising that the onus has never been greater for companies to track and store electronic records. Likewise, it is not surprising that electronic records are increasingly finding their way into the courtroom. In his decision, Judge Grimm outlines how ESI can be used as evidence and provides details about the standards for using different types of ESI in a courtroom. While the rules covered in this article apply to all forms of evidence, Judge Grimm's opinion identifies the unique concerns that are raised for electronic evidence. If properly followed, you should avoid the possible pitfalls associated with failing to authenticate ESI as evidence.

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New Portal Alliance ... *continued from page 6*

Prior to the industry-wide alliance to develop the Portal, a number of banks had established firm-specific Rule 144A trading platforms to provide enhanced liquidity for these securities, including Goldman Sachs' GSTrUE system, a multiple-broker trading platform for Rule 144A equity securities that was launched in May of 2007, and Bear Stearns' Best Markets.

There are definite advantages to a system such as the Portal, which include the ability of an issuer to access the capital markets without registration and the ability of the purchaser of these Rule 144A issues to resell them in an objective value-driven manner on an organized trading platform. Indeed, prior to the Portal and other recently created trading platforms, the 144A trading market was primarily a telephone-based market without independent access to pricing information. Furthermore, the proponents of the Portal argue that utilizing NASDAQ's trading platform will allow 144A investors to congregate at the same time, which could result in a more liquid-market. The access to the capital markets on a standardized trading platform such as the Portal presents tremendous growth opportunities for small and mid-cap private companies as well as alternative investment vehicles, such as hedge funds, venture capital funds and private equity funds.

Another major advantage touted by advocates of the Portal is the ability to track the number of shareholders. This is important because once the number of a company's shareholders goes beyond 499 for a U.S. company and 299 for a foreign company, the company must register the shares.

The future of the Portal is, in part, dependent upon the ability of the founding partners – which include NASDAQ, Bank of America, Bear Sterns, Citigroup, Credit Suisse, Deutsche Bank, Goldman Sachs, J.P. Morgan, Lehman Brothers, Merrill Lynch, Morgan Stanley, UBS and Wachovia Securities – to provide a trading platform focused on objective pricing mechanisms and overall market valuation given the universe of participants that are likely to avail themselves of the platform. Given the increased number of issuers utilizing Rule 144A offerings – according to NASDAQ, the total capital raised through such deals was greater than the amount raised on the exchanges combined – if the Portal achieves its intent, the Portal could make a serious impact on the Rule 144A securities market.

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[1] See 15 U.S.C. § 77e(c)(1988).

[2] See 15 U.S.C. § 77d(2)(1988)(codifying Section 4(2) of the Act).

Highlights from the NBA Annual Conference in Atlanta, Georgia

NBA Commercial Law Section Newsletter Editorial Board

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Coming Events

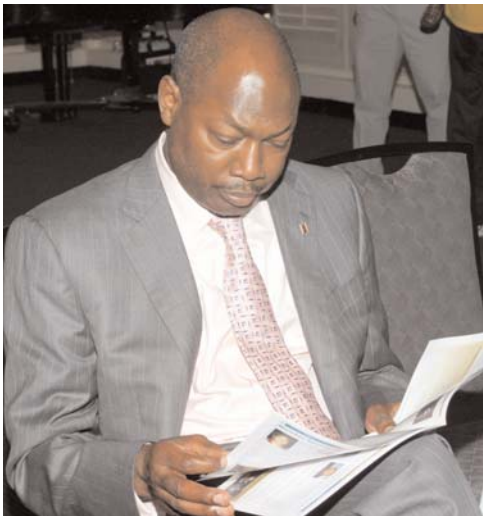
February 21 - 23, 2008
NBA Commercial Law Section's
21st Annual Corporate Counsel Conference
The Ritz-Carlton Hotel
New Orleans, Louisiana

March 12 - 16, 2008
Thirteenth Annual Small Firms &
Solo Practitioners Division Conference
Costa Rica

April 16 - 20, 2008
Mid-Year Conference &
Gertrude E. Rush Award Dinner
Sheraton Chicago Hotel & Towers
Chicago, Illinois

May 22 - 26, 2008
NBA Young Lawyers Division
5th Annual Retreat Cruising With
the Young Lawyers:
Diversity Roundtable &
Networking Retreat

July 26 - August 2, 2008
NBA 83rd Annual Convention
& Exhibits
The Westin Galleria and
the Westin Oaks
Houston, Texas



Everyone is reading the NBACLS Commercial Law Connection Newsletter.

You should too!

CORRECTION

In the last issue of the newsletter -- Summer 2007, the article "Diversity Town Hall Meeting" inaccurately attributed the idea for the meeting, which was held at last year's Corporate Counsel Conference, to the Section's current Chair, Kimberly Phillips. Mr. Tommy Shi of Mercedes-Benz USA actually came up with the idea, and Ms. Phillips helped bring his idea to fruition. We regret the error.

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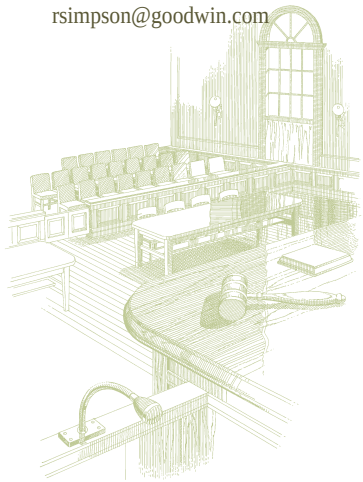

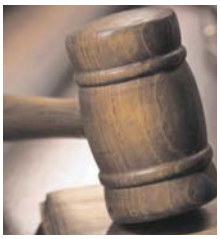

YOUR VOICE

If you have comments concerning the NBACLS newsletter, the Commercial Law Connection, or if you are a NBACLS member who wants to submit an article to us for publication consideration, please contact Donald O. Johnson at dojohnson@mckennalong.com.

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