MESSAGE FROM THE CHAIR

Kathleen M. Shay*

The Business Law Section’s transition into 2005 was highlighted by the annual Business Law Section reception held on February 3 at The Pyramid Club. This was a successful and enjoyable event, with several hundred Section members and guests attending. The reception provided an opportunity to thank outgoing Chair, Mitchell Bach, for his many years of service to the Section.

The 2004 Dennis H. Replansky Memorial Award was presented to Stephen J. Harmelin of Dilworth Paxson LLP. We congratulate Steve on this well-deserved honor. Steve was introduced by the Honorable Edward R. Becker, which was a highlight of the event. The annual award for the Committee of the Year was given to the Cyberspace and E-Commerce Committee, and the Committee Chair award was shared by Diane Loebell and Wanda Flowers, who co-chair the Human Resources and Employee Relations Committee.

The newly installed officers of the Business Law Section are myself, as Chair; Albert S. Dandridge, III, as Vice Chair; William H. Clark, Jr., as Treasurer; and Stephen M. Foxman, as Secretary. For 2005, the elected members of the Committee are Sandra A. Jeskie, Eric C. Milby, Brian S. Vargo and Raymond K. Walheim, and the appointed members of the Committee are Kim R. Jessum, Barbara T. Sicalides and Frederic M. Wilf. Walter W. Schambach of Sunoco, Inc. will continue to serve as the Section’s DELVACCA liaison, and Kristin Kenny has become the liaison to the Young Lawyers Division. Ellen Jerrehian will continue as the editor of The Business Law Report.

A key focus of the Business Law Section during 2005 will be to maintain strong and active committees. A list of the Section’s committees is printed in this Report. All Section members are encouraged to participate in a committee. To do so, simply contact the chair for the committee shown on the attached list.

The Business Law Section looks forward to working with Chancellor Chirls and the Board of Governors on 2005 initiatives. I encourage those of you with ideas for Business Law Section programs and initiatives to contact me or any other member of the Executive Committee.

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*Kathleen M. Shay is the Chair of the Business Law Section and a partner at Duane Morris LLP.

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I. Introduction

The Committee of Seventy recently published a study and analysis of the Commerce Case Management Program, the first part of its examination of the Civil Division of the Philadelphia Court of Common Pleas. On the whole, the Committee concluded that the Program is functioning well in its role as the arbiter of business disputes, and that it is quickly becoming a preferred medium for the resolution of such cases.

II. History of the Committee of Seventy

The Committee of Seventy was formed in 1904 by community leaders seeking to combat Philadelphia's well-deserved reputation for election fraud. Seventy is a bi-partisan and independent non-profit organization that long ago expanded its mandate to include a broader range of good governance issues. Its Board members are made up of the area's business, professional and academic community leaders. Under its new leadership – Zack Stalberg as its President and CEO, and Ned Dunham as its Board Chair – Seventy has set out to: a) positively change the culture of politics and government as it is practiced in Philadelphia; b) actively work toward honest, open and efficient government and thereby create a climate in which politics will again be seen as a respected calling; and c) create a new, more aggressive Committee that can act as the conscience of the community in driving reform. In addition to monitoring elections, the Committee engages in a number of other good governance and public policy initiatives in the Philadelphia region, including work on education reform, police department procedures and a continuing analysis of the Philadelphia court system.

III. History of the Commerce Case Management Program

The Commerce Case Management Program was created in January of 2000 as part of the continued effort that began in the early 1990s to increase the efficiency of the Philadelphia Courts and specifically to facilitate the efficient handling of business disputes. A subcommittee of the Business Law Section's Business Litigation Committee advised the Court in developing the Commerce Case Management rules and procedures. Initially, the Court assigned two judges to the Commerce Program. In March, 2002, a third judge was added to handle the increased case load. Although the Program handled only about fifty cases in the first two months of its existence, the volume of cases has dramatically increased — 1,767 cases were filed between January 1, 2000 and October 25, 2002, and 1,145 of these were disposed.

*Eric C. Milby is an attorney at Lundy Flitter Beldenos & Berger, P.C.

IV. The Committee's Analysis

As the first step in a larger effort to increase efficiency throughout the civil division of the Court of Common Pleas, the Committee undertook an analysis of the Commerce Program. The Committee retained Parente Randolph to survey attorneys and corporate litigants with experience in the Commerce Program. Fifty-six individuals responded to the survey. At the time the survey was taken, the respondents had appeared before a Program judge in an average of six cases. Although some
COMMITTEE OF SEVENTY
PUBLISHES STUDY AND ANALYSIS OF
COMMERCE CASE MANAGEMENT PROGRAM

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respondents expressed dissatisfaction with certain facets of the Program, overall, most conveyed that they were satisfied with the Program, and many highly praised its fairness and effectiveness.

The Program's case management process was evaluated by 67% of respondents as very good, while 8% felt that it was unnecessary. Sixty-two percent found the case management conference to be useful, while 24% thought it was not needed. In addition, 95% believed the three management tracks were adequate, and 60% thought the dates set forth by the Case Management Order were suitable.

Of the 42% of respondents who had used the Program's mediation process, 61% found it to be effective. However, only 39% found the assistance of the Pro Tems to be useful in the settlement process, and one respondent suggested that the Program needs to ensure that all Pro Tems abide by a strict set of rules.

The respondents found the Program to be very efficient. Over 96% believed the Program had provided a quicker disposition of commercial cases, and 84% thought the Program handled commercial cases efficiently. Ninety-six percent of respondents deemed the Program to be either successful or moderately successful overall. Ninety-seven percent of respondents said that, if given a choice of venue, they would direct a case to be heard in the Program.

Most respondents indicated that they were satisfied with the treatment they received from Program courtroom personnel. Seventy-three percent found courtroom personnel to be friendly and courteous, 62% found personnel available to answer questions, 56% thought courtroom personnel were willing to take the time to explain things, and 44% believed personnel were able to adequately answer questions. Of the 96% of respondents who had the opportunity to speak with a Program Judge, 80% said they had been treated very respectfully.

ARTICLES WANTED!

Please send any articles or news that would be of interest to the Business Law Section to:
Ellen Jerrehian at
jerre@ballardspahr.com

*The next deadline is May 6, 2005*

YLD SPRING FUNDRAISING AUCTION!

Mark your calendar for Wednesday, May 11th for the Young Lawyers Division Spring Fundraising Auction to benefit the Philadelphia Bar Foundation. Details to follow shortly!

Eighty Program decisions have been appealed to either the Superior Court or the Commonwealth Court. Thus far, twenty-four were withdrawn or discontinued, and fourteen were still pending at the time of the evaluation, meaning that forty-two cases have actually reached disposition. Of these forty-two, the appellate court has affirmed twenty-four, or 57.1%. If one omits from the analysis Program appeals that were dismissed or quashed, the affirmance rate of Program decisions was 85.7% and the reversal rate was 7.1%. The Committee found these rates impressive when compared with the Superior Court's overall reversal rate of 13.3%, and saw this as solid evidence that the Program is working well.

Lastly, the Committee evaluated case docketing procedures of the Program by having volunteer law students analyze files from the Prothonotary's Office during the spring of 2004. There were sixty-two available docket reports from cases on record with the Prothonotary's Office. Eight of these, or 12.9%, were not recovered because they were either located off-site or the file system rendered retrieval impossible. The Committee determined that all documents retrieved were well-preserved. Of the fifty-five docket reports retrieved, 61.8% of files included all relevant materials and 38.2% were missing one or more documents.

The Committee concluded that there are direct economic benefits to Philadelphia as a result of the Program. Because parties are increasingly choosing the Program as the venue to litigate commercial disputes, cases that may be brought somewhere else in the country are drawn to Philadelphia. Additionally, businesses often take into consideration the quality of available commercial dispute resolution when deciding on an area in which to locate their headquarters. The Commerce Program adds an additional, positive element to the calculation.

V. Conclusion

In conclusion, the Committee found that the members of the Bar and the Judiciary, as well as litigants, are very pleased with the Program and that it has no bona fide opposition. As long as it continues its record of efficient resolution of business disputes in Philadelphia, its permanence is not likely to be challenged.

The Committee of Seventy has announced its intention of proceeding with an analysis of the remainder of the Civil Division.
PHILADELPHIA LAWWORKS UPDATE

Alison Altman*

Philadelphia LawWorks, a creation of Philadelphia VIP, the Business Section of the Philadelphia Bar Association, and other Philadelphia public interest agencies, provides free legal services to eligible non-profit organizations and businesses to further community economic development and job creation in Philadelphia. Philadelphia LawWorks serves the community by providing organizations and businesses with pro bono legal referrals, which give transactional attorneys the opportunity to engage in pro bono work that utilizes their legal expertise. Philadelphia LawWorks also reaches out to law students, giving those who are interested in business law the opportunity to do pro bono work early in their careers.

Since its inception, Philadelphia LawWorks has served a wide range of clients. Nonprofits helped have included Community Development Corporations (CDCs), social services organizations, environmental advocacy groups, and arts and cultural organizations. Philadelphia LawWorks also helps small business owners that meet our income eligibility requirements.

In order to reach out to the community, Philadelphia LawWorks holds community education events. In the Fall of 2004, Philadelphia LawWorks, working with the Delaware Valley Association of Corporate Counsel and CorporateProBono.Org, held a legal clinic for nonprofit organizations. Volunteers attended a Continuing Legal Education seminar and provided local nonprofits with a pro bono legal consultation. Philadelphia LawWorks also held a series of seminars for small business owners at the Free Library of Philadelphia in January. These seminars, taught by volunteer attorneys, provided attendees with an introduction to business law topics essential to starting a business.

In recent months, Philadelphia LawWorks has also integrated a program designed to answer one of the most pressing legal needs of low income Philadelphians and prevent vacancy and blight in Philadelphia neighborhoods. Philadelphia LawWorks provides pro bono legal services for individuals who may have an equitable right to title in the homes in which they live but are not named on the deeds to the properties. In these cases, either the home is deeded in the name of a deceased family member or the person who sold our client the home never recorded a deed. As a result of these situations, individuals cannot obtain home repair grants or loans, pay back taxes, or get homeowners’ insurance. By resolving title problems, volunteer attorneys enable individuals to repair and maintain their homes, an essential tool in fighting urban blight and encouraging economic development.

In order to enable more attorneys to volunteer with our homeownership cases, Philadelphia LawWorks recently held two CLE’s—a probate and quiet title training. These CLE’s provided attorneys with the necessary training in order to help low income Philadelphians gain title to their homes and encourage community revitalization.

If you are interested in volunteering with Philadelphia LawWorks or attending a CLE, please contact Alison Altman at 215-523-9563 or aaltman@philadelphilawworks.org.

REPLANSKY AWARD PRESENTATION

During the Business Law Section’s Annual Reception on February 3, 2005, Judge Becker presented the Replansky Award to Steve Harmelin.

Dennis Replansky was a much loved and respected 51-year-old senior partner of the Blank Rome firm when he died in March of 1994. In 1997, the Section established the Dennis Replansky Memorial Award, to honor both Dennis’ memory and a recipient who embodies the significant professional talent and character for which Dennis is remembered and missed.

The criteria which have been established in determining who the recipient of the Award should be are: superior legal talent in the area of business law; unique contributions to and significant achievements within the business law community in the Philadelphia area; a reputation for mentoring young attorneys; significant participation in and contributions to civic and charitable causes in the community; and uniform recognition in the legal community of the recipient’s honesty, integrity and professionalism.

Each year, since 1997, the officers and Executive Committee of the Section have chosen a distinguished member of the Section who meets all of these criteria. The past recipients, in order of presentation, have been David Sykes, Vernon Stanton, Jr., Carl Schneider, Professor Amy Boss, William Zeiter (posthumously), Leon Forman and Vincent Garrity, Jr. Joining this illustrious group is the 2004 honoree, Stephen J. Harmelin of Dillworth Paxson, LLP.

COMMERCE CASE MANAGEMENT PROGRAM RECEPTION

On Thursday, May 12, 2005, the Business Litigation Committee will be sponsoring the annual Commerce Case Management Program reception at the Westin Hotel, from 6:00 p.m. to 8:30 p.m. The guests of honor will include Judges Frederica A. Massiah-Jackson, James J. Fitzgerald, III, William J. Manfredi, Albert W. Sheppard, Jr., C. Darnell Jones, II, Howland W. Abramson, and Bar Chancellor Andrew W. Chirls.

*Alison Altman is the Philadelphia LawWorks Americorps Attorney
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WOULD YOU LIKE TO BE A MEMBER OF A SUBCOMMITTEE OF THE BUSINESS LAW SECTION?

Subcommittee membership is free if you are a paid member of the Business Law Section.

E-mail Andrea Morris, Membership Coordinator, at amorris@philabar.org and specify which subcommittee(s) you would like to join.

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HEALTH CARE LAW COMMITTEE NEWS

The newly re-activated Health Care Law Committee held its first meeting, a lunch and learn, on February 24, 2005. The program, Lawyers As Business Associates Re-Visited: Security, OCR Update and Disclosure of Protected Health Information in Litigation, featured guest speaker Edward Shay of Post & Schell, P.C. discussing HIPAA’s business associate requirements for lawyers generally and implications of the new Office of Civil Rights FAQs on the now routine practices of legal counsel in connection with using and disclosing medical records and other protected health information in litigation.

The Committee is planning a series of lunch and learn programs throughout the year. The “learn” portion of the programs will be approved for 1 CLE credit for a tuition fee of $49 to PBI, which includes lunch. Lunch and the programs will be available for $7.50 without CLE credit.

For further information on the committee or to suggest meeting topics, please contact committee co-chairs Shelley Goldner at sgoldner@islex.com or Deborah Datte at ddatte@postschell.com. Check the Philadelphia Bar Association website www.philadelphiabar.org for updates on the committee and its programs.

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JOIN THE BUSINESS LAW SECTION!

If you would like to join the Business Law Section, please complete the form below and return it, along with a check for the amount of the dues, to the Bar Association today! Or, join securely online with a credit card at www.philadelphiabar.org.

Name: 
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Please indicate your Committee interests:

___ Antitrust Law
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___ Bankruptcy Law
___ Business Litigation
___ Business Organizations
___ Cyberspace & E-Commerce
___ Franchise Law
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___ Investment Companies
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Annual Dues:
Member of the Bar Association less than five years: $5
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Enclosed is my check for $_____ payable to the Philadelphia Bar Association. I am currently a member of the Association.

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