BUSINESS LAW SECTION
2010 ACTIVITY SUMMARY

One of the Philadelphia Bar Association’s oldest and largest sections, with over 1,100 members, the Business Law Section has 17 individual Committees with their own leadership, programs and web sites. Through its Committees, the Section offers business lawyers a wide array of educational opportunities (with CLE credit) across a broad range of substantive areas, as well as opportunities to network with other attorneys sharing similar professional interests.

The Section’s 2010 Executive Committee consists of 4 officers: Lee Applebaum (Chair), Sandra A. Jeskie (Vice Chair), Barbara Sicalides (Treasurer), and Wanda E. Flowers (Secretary); 4 elected members: Michael D. Ecker, Bradford J. Sandler, Shelley R. Goldner and Curtis L. Golkow; 3 appointed members: Mitchell L. Bach, Rachel E. Branson, and Ralph J. Mauro; and the immediate past chair, Eric C. Milby. In addition, the Executive Committee has been immeasurably enriched by the number of its past chairs who continue to attend and contribute to the Section’s leadership, and is especially indebted to the contributions of former chairs Albert S Dandridge, III., who provided invaluable leadership on the Section’s Diversity Plan, and Merritt A. Cole, who led the effort to establish the Advisory Council and greatly assisted in pursuing the law student initiative.

Among others, the Section’s 2010 Committee Leadership includes:

Antitrust Law, Gerard A. Dever (Chair); Bankruptcy, Anne M. Aaronson (Chair), Ashely M. Chan (Vice-Chair); Business Litigation, Robert R. Baron (Chair), E. David Chamin (Vice-Chair); Communications, Phyllis Horn Epstein (Chair); Franchise Law, A. Christopher Young (Chair), Bonne Chong (Vice-Chair); Health Care, John Washlick and Brad M. Rostolsky (Co-Chairs);
On October 21, 2010, Business Law Section Committee leaders met with Executive Committee Leaders Sandra Jeskie, Al Dandridge and Shelly Goldner, as well as new Bar Association Director of Diversity Naomi McLaurin to discuss the Section’s Diversity Action Plan, its revived newsletter, *The Philadelphia Business Law Insider*, and to share practical advice on how to run successful committees. The Committee Leaders in attendance were, sitting (L-R): E. David Chanin (Vice Chair, Business Litigation Committee), Phyllis Horn Epstein (Chair, Communications Committee, and Editor, *The Philadelphia Business Law Insider*), Michael Conley (Vice Chair, Insurance Committee), Graham R. “Gray” Laub (Chair, Mergers & Acquisitions and Securities Regulations Committees, and Business Law Section Chair of the Year 2010), Gerard A. Dever (Chair, Antitrust Committee, Business Law Section Committee of the Year 2010); and standing (L-R): A. Christopher Young (Chair, Franchise Law Committee), Eric Marr (incoming Chair, Business Organizations Committee), David F. Connor (Co-Chair, Investment Companies Committee), John Washlick (Co-Chair, Health Care Law Committee), Brad Rostolsky (Co-Chair, Health Care Law Committee), Jeffrey M. Taylor (Vice Chair, Securities Regulation Committee), and Anne M. Aaronson (Chair, Bankruptcy Committee).
BUSINESS LAW SECTION ACTIVITIES IN 2010

DIVERSITY PLAN

The Business Law Section believes that inclusion, participation and involvement of attorneys from underrepresented groups in Business Section programs and activities is essential. In 2010, after two years of effort, the Section adopted a Diversity Plan. As the Section lives and breathes through its Committees and members, the Executive Committee will work with the Committee leaders and members to adapt and implement the plan into real action. We dedicated considerable time and effort to achieving a plan that we believe provides goals, guidance and flexibility. Our goals include: creating a culture where all members of the bar association feel valued, supported, comfortable and included in an environment that affords an opportunity to attorneys from underrepresented groups to thrive and contribute; demonstrating the commitment of the Section’s Executive Committee to inclusion, participation and involvement of attorneys from underrepresented groups in Section programs and activities by developing policies, practices and plans that effectively and proactively implement this Plan; recruiting a more diverse pool of attorneys both for Committee membership and for Section presentations; establishing and maintaining a systematic and structured process and approach to professional program development that is proactive and will ensure full and equal opportunities and support for attorneys from underrepresented groups to be full and active participants.

LAW STUDENT INITIATIVE

The Section has committed to including area law schools and their students into Section events, activities and membership. We view the law schools and their students as part of Philadelphia’s broad legal community. Through our Business Litigation Committee, and coordinated by Lee Applebaum, area law students have been able to participate in the Commerce Court Opinion Project since 2006, and have co-authored 10 chapters in this effort. The Project matches up law student authors with practicing attorneys, who act as mentors and editors, in working together to summarize published Commerce Court opinions within specific substantive topics.

This year, the Section expanded its student initiative to include an ongoing effort by the Section’s individual Committees to design meetings specifically directed to area law students (the Practicing Business Law Series for Law Students), along with efforts to include area law students in actively working within the Committees. We have identified student leaders in area law schools who will act as liaisons with their school communities and the Section. At the Section’s invitation, student leaders from area law schools attended our January 2010 Annual Dinner and were able to interact with Judges and lawyers in Philadelphia’s legal community.

The Section has initiated the Practicing Business Law Series for Law Students. This series offers a collegial and informative setting where business lawyers can discuss their areas of the law and personal practices with law students. Our goal is to have each of the Section’s Committees hold a one hour program for all interested area law students, giving the students a greater sense of what practice in that area of law might be like for them. At each session, Committee leaders, or invited speakers, lead a discussion among attendees as to the nature of the law that their Committee
addresses, and the nature of their individual practice. The first program in this series, offered by the Bankruptcy Committee, was a truly exciting success.

NEWSLETTER REVIVAL

After a five year hiatus, the Section’s newsletter has been revived. The Philadelphia Business Law Insider will provide a forum for professional and open exchange on all issues related to the Section’s members and the law. The Newsletter is now the work of the Section’s Communications Committee, which was created in 2010. The Philadelphia Business Law Insider will be a vehicle for articles of in depth interest to Section members in relevant areas of practice; professional news regarding members; book reviews on topics of general interest to membership; timely articles on matters of professional interest representing changes in the law or developments in your practice affecting lawyers and clients; and a means for Committee leaders to inform the membership of their present and future projects. We hope all of our members take advantage of this opportunity.

COMMITTEE ACTIVITIES

The following are highlights from among the Section’s 17 Committees:

The Antitrust Committee held the programs: “Zubulake Revisited and Other Recent E-Discovery Developments and Their Implications for Antitrust Litigation”; “Antitrust at the Speed of Byte: Will enforcement agencies and private parties be able to keep up with the fast-paced IT world as it continues to accelerate?”; “Patent Hold Up: When Does the Abuse of a Private Standard Setting Process Amount to Actionable Conduct Under Section 2 of the Sherman Act or Deception Under Section 5 of the FTC Act?”; “Jury Psychology in Antitrust Cases”; and “Maximizing Your Impact in Antitrust Cases.”

The Bankruptcy Committee held the Section’s first program in the Practicing Business Law Series for Law Students. The Section greatly appreciates the role played by Executive Committee member Rachel Branson and Committee leaders Anne Aaronson and Ashley Chan in putting on this first program in the series, which was marked by real interchange between lawyers and students in a wide ranging discussion of bankruptcy law. The meeting also offered the students invaluable insights on life as a bankruptcy attorney from the Committee leaders, and from guest speakers Ronald S. Gellert and LeeAne O. Huggins, who were so generous with their time. The Committee’s leaders are also working with an area law student to enrich the Committee’s website. The Committee held a seminar, jointly with the Mergers and Acquisitions Committee, “Section 363 Sales: The Process, Benefits and Risks,” with the Honorable Magdeline D. Coleman of the United States Bankruptcy Court for the Eastern District of Pennsylvania among the speakers; and will hold a joint holiday party with the Turnaround Management Association and Commercial Finance Association of Philadelphia at the Loews Hotel.

In December 2009, the Business Litigation Committee presented a CLE on “Litigating Inevitable Disclosure Trade Secret Cases,” with Magistrate Judge Henry Perkin of the Eastern District of Pennsylvania. In January 2010, the Committee held its “State of the Commerce Court” meeting, with Judges Keogh, Manfredi, Sheppard, Bernstein and New on the panel. In June 2010, the Committee held its annual Commerce Court reception. This year marked the
Commerce Court’s 10th Anniversary, and the Committee did an excellent job in honoring this institution, and the many judges and attorneys whose contributions and vision were instrumental in creating and developing the Commerce Court, including special tributes to Judges Herron and Sheppard. The Committee held a joint program with the Insurance Committee, “Business Insurance: Key Risks and How to Cover Them.” The Committee was represented by its Chair, Robert Baron, in an ADR Summit program being planned by the ADR Committee of the Bar Association. Also, throughout the year, the Committee played a central role in the Commerce Court’s Judge Pro Tempore program, including via the screening and approval for the Court of new JPTs.

The newly created Communications Committee, under the leadership of Phyllis Horn Epstein, has revitalized the Section’s newsletter, now called The Business Law Insider.

The Franchise Law Committee and the International Law Committee held a joint meeting in which Alessandro Barzaghi, a lawyer from Milan, Italy spoke on “hot topic” franchising issues in the European Union.

The Health Care Committee continued its longstanding practice of monthly lunch meetings, with guest speakers addressing topical healthcare issues. The meetings are interactive, rather than speaker-listener format. The Committee experimented with a morning (breakfast) monthly meeting to see if it could increase attendance. Meeting topics included, among others: “Fair Market Value Process and Pitfalls: A Practical Approach”; “New Federal Income Tax Requirements for Tax-Exempt Hospital Organizations”; and “Understanding Key Areas of the HIPAA/HITECH Proposed Rule.” At another meeting, Ann S. Torregrossa, Esquire, the Director of the Governor’s Office of Health Care Reform, discussed “Health Information Exchange and Chronic Care/Patient-Centered Medical Home.” The Committee is working to develop a relationship with the Drexel Law School health law department. The Committee is working to develop opportunities for a broader range of its members to become more actively involved in Committee activities, and has initiated a campaign to increase Committee membership.

Consistent with its past practice, the Human Resources Committee held monthly meetings incorporating an informal discussion format. The meetings generally commence with such an informal discussion, followed by a topical program and discussion led by one of the regular committee participants. Among other subjects, in addition to its annual planning meeting, the Committee meetings included the following topics: “Executive Compensation”; “Off The Clock Issues - How Technology Has Changed What Is Compensable Time...And What is Time Worked Anyway?”; “What Employment Litigators Need to Know About Traditional Labor Law,” “Hot Topics for Employee Handbooks”; “Occupational Fraud: Prevention and Detection”; and a meeting on administrative and investigative procedures with the Chief Counsel of the Pennsylvania Human Relations Commission and a former Deputy City Solicitor from the City of Philadelphia Law Department’s Labor and Employment Unit. The Committee has begun to attract new interest and membership through its listing in the Bar Journal and electronic mailings. The Committee also put on “The Effective Use of Separation Agreements for Employee Terminations and Layoffs.”
A revitalized **Insurance Law Committee** held planning and membership meetings early in 2010. Later in the year, the Committee joined with the Securities Regulation Committee in co-sponsoring the program “Straight Talk About the Risks Facing Directors & Officers,” where the panel addressed the topics of current risks effecting directors and officers, an overview of the D&O liability insurance, recent case law on ethical risks for directors & officers during internal investigations and best practices during internal investigations. The Insurance Law Committee is also jointly sponsoring with the Business Litigation Committee a program entitled “Business Insurance: Key Risks and How to Cover Them.” In addition, the Committee put on the program, “Ethical Issues to Consider When an Insurance Company Issues a Reservation of Rights Letter.”

The **Investment Companies Committee** held a program on regulatory developments in the investment management industry, with the Managing Director of the Independent Directors Council and the General Counsel of the Investment Company Institute. It also held a seminar on FINRA perspectives on fund-related issues, featuring the Vice President and Director of Advertising Regulation for FINRA, and the Vice President of Investment Companies Regulation at FINRA. It held a meeting, “The SEC’s Division of Risk, Strategy, and Financial Innovation and Current Regulatory Initiatives,” with the Assistant Directors of the Offices of the Buy Sell and Sell Side of the SEC’s Division of Risk Strategy and Financial Innovation.

The **Mergers and Acquisitions Committee** had meetings on: “Shareholder Rights Plans - Defending Against Takeovers and Protecting NOLs”; “Protecting Your Business Assets with Restrictive Covenants”; “Accounting Issues in M&A Transactions”; “Update on the Current Middle Market M&A Environment and Outlook for 2010”; “Recent Cases on Delaware Corporate Law”; an overview of recent changes in the proxy solicitation landscape, including legal changes and recent shareholder activism; and “Earn-outs: Drafting Issues and Legal Considerations.” The Committee also jointly presented a program with the Bankruptcy Committee, “Section 363 Sales: The Process, Benefits and Risks,” with the Honorable Madeline D. Coleman of the United States Bankruptcy Court for the Eastern District of Pennsylvania among the speakers. The Committee also held a joint lunch meeting with the Securities Regulation Committee addressing the legal risks and uncertainties surrounding retaining private placement agents and brokers who are not registered brokers along with the issues involved in negotiating the terms of engagement letters for private placement agents and investment bankers.

The **Private Equity and Venture Capital Committee** put on the programs: “Fund Formation II: Tax Considerations”; “Using S-Corp ESOPs as Exit Transactions for Private Equity Firms”; and “The Dodd Frank Bill, the Volker Rule, and Other Recent ‘Fixes.’”

The **Securities Regulation Committee** put on the programs: “Morrison v. National Australia Bank: Territorial jurisdiction of the federal securities laws and ‘foreign cubed’ cases”; an overview of recent changes in the proxy solicitation landscape, including legal changes and recent shareholder activism; Robert B. Kaplan, District Director of the Philadelphia office of FINRA, speaking on FINRA’s operations and recent initiatives and developments for FINRA members; “Straight Talk About the Risks Facing Directors & Officers,” co-sponsored with the Insurance Law Committee; and “The SEC’s New Expanded Enforcement Capability: What You Need to Know Now.” The Committee also held a joint lunch meeting with the Mergers &
Acquisitions Committee addressing the legal risks and uncertainties surrounding retaining private placement agents and brokers who are not registered brokers along with the issues involved in negotiating the terms of engagement letters for private placement agents and investment bankers.

The Tax Exempt Finance Committee put on the program “PA Pension Issues and the New Schedule K to Form 990.”

The Section itself put on the program, “Counseling the Corporation,” at this Year’s Bench Bar Conference. A panel of accomplished General Counsel presented an informal moderated discussion about the inside/outside counsel relationship. The panel including John Chou, General Counsel of AmerisourceBergen and Marilyn Heffley, Chief Litigation Counsel for Sunoco discussed such topics as the likes, dislikes, and struggles of in-house counsel in their everyday dealings with outside counsel. The panel discussed rates, alternative fee arrangements, how they choose outside firms, communications, staffing and a variety of other topics designed to assist the Bar in better serving their corporate clients.

To support our members, and encourage membership, the Section has also provided financial support to the Committees to cover lunch costs to members, or those who become members, at Committee programs.

ADVISORY BOARD

In light of the deep commitment shown by the Section’s leaders over the years, the Section has formed an Advisory Board consisting of past Chairs. One of the great difficulties faced by any Bar Association is the loss of institutional memory, which too often leads to the periodic reinvention of the wheel, or projects fading before fruition because those invigorating and leading them leave their post after a year. We believe that the Advisory Board will be a means to preserve institutional memory and worthwhile projects, and that it will allow us to move more expeditiously toward tangible, working, achievements.

WEBSITE

For the first time, all of the Section’s Committees have some level of active presence on their own individual websites. All Committee web pages state the Committee’s purpose and goals, along with their leadership’s contact information. Many Committees have used their websites as vehicles to provide substantive content, as well as event calendars. These include, e.g., links to articles, podcasts, notices of specific events, meeting calendars, pictures and Committee endeavors and accomplishments. We consider this only a beginning to the services our Committees can provide via their websites. The Business Litigation Committee’s website provides one admirable model for what the Bar Association can do to keep its members informed, and to substantively engage members of the Bar with information and practical guidance.
SECTION AWARDS AND CONTRIBUTIONS

Each year, at its Annual Dinner, the Section gives awards and makes financial contributions to those who have shown great commitment and service. Since 1997, the Section has given the Dennis H. Replansky Memorial Award to a Section member whose life and practice reflect the qualities and actions that we honor in former Section Chair Dennis Replansky’s life: 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 candidate’s honesty, integrity and professionalism. The Replansky Award recipient has the privilege of designating a public interest organization to receive the Section’s annual charitable contribution. The Section also recognizes the contributions of its leaders and committees with awards for Chair and Committee of the Year. The 2010 Replansky Award winner is Jane Leslie Dalton. The Chair of the Year was Graham R. Laub who chaired both the Mergers & Acquisitions and Securities Regulation Committees, and the Committee of the Year was the Antitrust Committee chaired by Gerard A. Dever.

The Section has also supported Philadelphia LawWorks, a project of Philadelphia VIP, with contributions of $18,000 in 2009, $12,000 in 2010, with an additional $10,000 committed in 2011. Among other things, LawWorks serves nonprofit groups and small businesses that would often lack legal counsel without LawWorks. The Section also gave $500 toward scholarships at the Bench Bar conference for a public interest or government lawyer.