

THE BUSINESS LAW REPORT

The Newsletter of the Business Law Section
of the Philadelphia Bar Association

Volume 10, No. 2

Fall 2004

MESSAGE FROM THE CHAIR

*Mitchell L. Bach**

It is hard for me to believe that our Commerce Case Management Program (affectionately, but erroneously, referred to as "the Business Court") is now well into its fifth year. The Business Law Section played a leading role in the creation of the Commerce Program. The Section's Business Litigation Committee continues to play a key role, as the Commerce Program evolves and improves.

Section leaders had long championed the cause of creating a specialized court for handling business cases. Although New York's Commercial Division was established in 1993, legislation to create a state-wide business court had been introduced in Harrisburg in 1989, making Pennsylvania the first state nationally to propose such legislation. The Philadelphia Bar Association endorsed a later version of such legislation that was pending during the 1997-98 legislative session. Our Business Law Section played a key role in these efforts, and, when such legislation was not enacted, Section leaders, including former Section Chairs Len Bernstein and Greg Mathews, supported new legislative efforts to create a business court in Philadelphia in late 1998.

At approximately the same time, a new Business Litigation Committee was formed in the Business Law Section of the Philadelphia Bar Association; and Len Bernstein asked me, as one of the Chairs of this new Committee, to organize a group to draft a proposed set of rules which could be available for consideration if the latest legislative efforts were successful. Those hypothetical rules, drafted principally by Ed Biester and Darryl May, were used by Administrative Judge John Herron and Supervising Judge Albert Sheppard to create the protocols of the Commerce Case Management Program; and the Commerce Program was launched, by Administrative Order which dispensed with the need for any enabling legislation, on January 1, 2000.

Our Business Litigation Committee worked closely with the Court in the design and implementation of the Commerce Program, and to educate practitioners as to how the Program oper-

ated. The unqualified success of the Commerce Program is directly attributable to this cooperative effort between the respective leaders of the Common Pleas Court and the organized bar. This productive and rewarding relationship continues to this day, and the Section's Business Litigation Committee continues to work with the current Commerce Program Judges, Albert Sheppard, Gene Cohen and Darnell Jones, to monitor and support the Commerce Program. Moreover, from the creation of the Commerce Program to the present, the Committee has recruited some of our finest Philadelphia lawyers who serve the Court as Judges Pro Tempore, and have helped the Commerce Program Judges dispose of many cases by presiding over settlement conferences and mediations on a pro bono basis.

As many of you know, our current Chancellor, Gabe Bevilacqua, has made one of the principal planks of his platform and 2004 agenda renewed legislative efforts which would transform the Commerce Program into a new judicial division of the Court of Common Pleas. Once again, our Section and its Business Litigation Committee have assisted and supported Gabe's campaign.

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**Mitchell L. Bach is the Chair of the Business Law Section and a partner at Eckert Seamans Cherin & Mellott, LLC.*

**AMENDMENTS IMPROVE
NJ NON-PRIME LENDING LAW**

*Leonard A. Bernstein and
Robert M. Jaworski**

On July 6th, 2004, Governor McGreevey of New Jersey signed Senate Bill 279, which, effective immediately, amends the "New Jersey Homeownership Security Act of 2002" (the original law is referred to as the "Act" and the changes are referred to as the "Amendments"). The Amendments contain much needed improvements to what had been perhaps the most restrictive so-called "predatory lending law" in the country. It is anticipated that the Amendments will permit many "non-prime" lenders to resume business activities in New Jersey which had stopped when the Act first became effective. As you may recall, the Act set forth limits applicable to almost all residential mortgage loans, but established new disclosures, tough restrictions, and substantial penalties and assignee liability for borrowers, lenders and assignees of "high-cost" mortgage loans.

"Covered Home Loans" Removed

A key element of the Amendments is the removal of the "covered home loan" definition and the prohibition associated with it. Under the Act, a "covered home loan" was defined to include a residential mortgage loan with points and fees exceeding 4% of the total loan amount for loans of over \$40,000 (with certain exceptions and complications). A substantial number of non-prime loans fell within that definition. In connection with such "covered home loans," the Act prohibited the practice of "flipping." Flipping, under the Act, was defined to occur when a creditor made a covered home loan and used the proceeds to refinance an existing home loan made within the prior 60 months where the new loan did not provide a "reasonable, tangible net benefit" to the borrower. This imprecise and arbitrary standard (the Act included no definition of "reasonable tangible net benefit") made it almost impossible for responsible lenders to refinance "covered home loans" with any degree of comfort.

The Amendments delete the "covered home loan" concept and the prohibition against "flipping." This is extremely welcome news to the non-prime lending industry as a huge uncertainty that could have triggered substantial liability has been removed. Nevertheless, the Amendments contain a reminder that these deletions should not be read by a court to create a presumption that any refinance loan that suggests "flipping" is exempt from the prohibitions of New Jersey's Consumer Fraud Act.

"High-Cost Home Loan" Scope Broadened

To obtain the improvements which the Amendments represent to the lending industry, a concession was made to consumer

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Section of the Philadelphia Bar Association

Ellen Jerrehian, Editor

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advocates. The body of non-prime loans now deemed "high-cost home loans" under the Act is broadened by the Amendments. Specifically, the "total points and fees threshold," which under the Act determines whether or not a loan is a "high-cost mortgage loan," has been lowered from 5% to 4.5% of the total loan amount (when the loan is \$40,000 or more). While this change will increase the pool of loans subject to the Act's -3- "high-cost" provisions, the industry still seems to believe that the Amendments are valuable. Since the Amendments are effective immediately, lenders should be careful to review loan applications in their pipelines that previously were determined

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ANTITRUST COMPLIANCE IN AN ERA OF AGGRESSIVE ANTITRUST CRIMINAL ENFORCEMENT

*James E. Sheuermann**

Corporate antitrust compliance is more important now than ever before. As recently reported in the Department of Justice's **Status Report: An Overview of Recent Developments in the Antitrust Division's Criminal Enforcement Program** (Feb. 2004), the Department of Justice's Antitrust Division's Criminal Enforcement Program is operating at a record level of activity. The Division's results - in length and number of jail sentences and monetary fines for individuals and corporations - are similarly record setting. Consider the following:

- In FY 02, defendants in cases prosecuted by the Division were sentenced to a record number of jail days, more than 10,000 in all, with the average jail sentence reaching more than 18 months.
- In FY 02, a record-breaking 10-year sentence was imposed on an individual for his role in orchestrating a bid-rigging, bribery, and money laundering scheme.
- In FY 03, the average jail sentence for antitrust violations reached an all-time high of 21 months.
- The Division has publicly declared its position that the "best and surest way to deter and punish cartel activity is to hold the most culpable individuals accountable by seeking jail sentences."
- Today fines of \$10 million or more have been imposed against 40 corporate defendants and one individual defendant for cartel activities.
- The Division has obtained fines of \$100 million or more against corporations in six criminal prosecutions:
 - \$500 million against a participant in an international vitamin price-fixing cartel (May 1999), the largest fine ever imposed in a criminal prosecution of any kind;
 - \$225 million against a second participant in the same vitamin cartel (May 1999);
 - \$135 million, \$134 million, and \$110 million against three participants in a graphite electrodes price-fixing cartel (between April 1998 and May 2001); and

**James E. Scheuermann is a partner at Kirkpatrick & Lockhart LLP.*

- \$100 million against a participant in lysine and citric acid cartels (October 1996).

- Fines for corporate executives in the millions of dollars are not uncommon, including the Division's recently having secured fines of \$1 million, \$1.25 million, \$7.5 million, and \$10 million from executives involved in antitrust conspiracies.
- There are roughly 50 sitting grand juries investigating suspected international cartel activity.

To paraphrase one of the Founding Fathers, in this environment of vigorous antitrust enforcement, constant vigilance may be the price of liberty. An ongoing and effective antitrust compliance program may be an essential element of that constant vigilance. Such a program, of course, does not guarantee that all of a corporation's employees will respect antitrust prohibitions on price-fixing, bid-rigging, or customer or territorial allocation schemes - but it may be a prudent starting point to that end.

Even in those unfortunate circumstances in which an antitrust compliance program does not prevent criminal antitrust conduct, it may be an aid in preventing criminal antitrust penalties for the corporation and its employees. In many circumstances, under the Division's Corporate Leniency Program, the first company - and only the first company - to approach the Division with information about its participation in a price-fixing conspiracy or other cartel activity (and which meets certain other qualifications) is granted "amnesty" from criminal prosecution and fines. Cooperating officers, directors, and employees of the company "first in the door" are also immune from jail sentences and fines, if they satisfy certain conditions, including cooperating with the government's investigation. The first-to-disclose feature of the Leniency Program creates huge incentives for a co-conspirator to be the first to defect and to disclose all that the company and its employees know about the illegal conspiracy. Failing to be the first in the Division's door can be the difference between no criminal fines for the corporation and no fines and jail sentences for its executives, on the one hand, and substantial fines and jail sentences, on the other hand. The facts are revealing: in the first six months of FY 03, amnesty applications under the Leniency Program averaged three per month, and the Division reports that it "frequently" encounters situations in which a company approaches the government within days, or less than one business day, after a co-conspirator has secured its position as first applicant for amnesty.

Corporate counsel and executives will quickly recognize that the first-to-disclose feature of the Leniency Program also creates substantial incentives for companies to have in place an antitrust compliance program that effectively enables early de-

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COMMON SENSE REMAINS THE BASIC GUIDE IN ELECTRONIC DISCOVERY

*Lee Applebaum**

"Common sense grafted onto a huge amount of stuff." Magistrate Judge Jacob Hart gave this summary admonition toward the end of the seminar "Electronic Discovery: Litigation in the 21st Century" held on January 28, 2004. Judge Hart was among a panel that included the Honorable Vincent Poppiti, a long time Delaware jurist and experienced special discovery master, now in private practice; and Richard Hermann, Esquire, a leading expert on electronic discovery and the entire range of computerization and litigation. The seminar was sponsored by the Business Litigation Committee of the Philadelphia Bar Association's Business Law Section.

The magnitude of electronic information now subject to discovery, and the need to grasp the issues involved, cannot be understated. Mr. Hermann pointed out a 1998 statistic showing that while nearly 2 billion pieces of mail went through the U.S. Post Office that year, 1.5 billion emails were sent *each day*. Further, businesses today create 90% of their information in electronic form.

He reported that over the last 5 years, DuPont experienced an increase from 2% to 30% in discovery requests specifically asking for electronic data. Mr. Hermann also identified the unconventional areas for electronic discovery, e.g. voice mail, blackberries, palms and even home computers.

Case management and cost allocation

In pursuing electronic discovery, the first area of inquiry is whether the party has a record retention policy. If the answer is yes, then both counsel will want to find out: what is that policy; is it enforced; is the policy in written form; and are there remote computers connected to the system.

Judge Poppiti focused on the need for early and close case management of electronic discovery issues. He quoted one commentator describing how the combination of data volume and the expense of retrieval, combined with delay, can create the "perfect storm" scenario where the discovery issues and their cost take over the actual subject matter being litigated. Moreover, although case law has been developing on the issue over the last 8 to 10 years, parties are still struggling with the practicalities of dealing with electronic discovery; especially its economics.

In the current climate, the judge, magistrate or special master cannot stand back, solely acting as an umpire between the

parties; rather they must be actively involved early on in understanding and identifying the issues and providing a strong and clear case management order. The panelists observed that if the parties choose to use the services of a special master, they should take the steps necessary to assure there is no waiver of the attorney-client privilege or work product doctrine through disclosure of materials to the master.

Judge Hart agreed that electronic discovery is one area where neither the court nor the parties want surprises, and that the issues require early address. He said that the parties should work to identify the data that is going to be discovered, the people likely to know about it and those individuals likely to be responsible for the data, i.e. the future 30(b)(6) deponents. The parties should also discuss the very serious issue of cost allocation.

This last issue has become a focal point in electronic discovery disputes. Federal Rule 26(b)(2) presumes that the producing party will pay the cost of production; but with the enormous costs potentially at issue, producing parties often seek to shift that burden to the requesting party.

The most prominent national cases on cost shifting are Judge Shira A. Scheindlin's opinions in *Zubulake v. UBS Warburg LLC*, 217 F.R.D.309 (S.D.N.Y. 2003) ("*Zubulake I*") and *Zubulake v. UBS Warburg LLC*, 216 F.R.D. 280 (S.D.N.Y. 2003) ("*Zubulake III*"). Judge Scheindlin, a leading authority on electronic discovery, provides and applies a seven part cost allocation test. In *Zubulake*, UBS asserted that it could cost \$175,000 to produce backup tapes, exclusive of attorneys' fees. The court ultimately ruled that UBS would bear 75% of the restoration costs and all other costs.

Judge Hart observed that even with Judge Scheindlin's seven factor analysis, the actual application would remain subject to how any individual judge chooses to apply and weigh those different factors. This practical ambiguity would limit the predictive value for parties wanting to litigate the cost issue. Thus, absent an agreement on cost and resolving the matter cooperatively, the 26(b)(2) battle can itself become a high stakes piece of litigation.

Preservation and disclosure of electronic information

Judge Hart observed that with electronic discovery, the chance that a client will fail to produce data goes up exponentially. The Panelists agreed that non-disclosure or destruction is typically the result of: (a) the inability to deal with the sheer volume of data; and/or (b) internal communications problems about what is to be preserved, rather than any effort to hide or intentionally destroy relevant material.

*Lee Applebaum is a partner at Fineman, Krekstein & Harris, P.C.

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COMMON SENSE REMAINS THE BASIC GUIDE IN ELECTRONIC DISCOVERY

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Still, even if inadvertent, counsel have to be concerned about sanctions. Judge Hart, citing to an article by Gregory P. Joseph, *Rule Traps*, 30 *Litigation* 6 (Fall 2003), adduced the importance of Federal Rule 37(c)(1). If a party has failed to preserve, produce or identify electronic data, Rule 37 can function as an evidentiary rule that can limit or bar the use of that information as evidence.

The need to preserve electronic data is another important issue. In addition to live data, i.e. information currently in an email file or document file, there may be archival information. Further there may even be deleted information that has not yet been "written over" and still exists on a hard drive. (Judge Hart observed that the pencil eraser has been eliminated as a business tool.) *Zubulake III* gives a good overview of the different types of electronic data.

Counsel must be aware of (a) what data exists; (b) what data needs to be preserved for discovery; and (c) what data the court will likely order the parties to produce. In yet another *Zubulake* decision, 2003 U.S. Dist. LEXIS 18771 (Oct. 22, 2003) ("*Zubulake IV*"), Judge Scheindlin addresses a party's preservation obligation. This was quoted at length:

"Once a party reasonably anticipates litigation, it must suspend its routine document retention/destruction policy and put in place a 'litigation hold' to ensure the preservation of relevant documents. As a general rule, that litigation hold does not apply to inaccessible backup tapes (e.g., those typically maintained solely for the purpose of disaster recovery), which may continue to be recycled on the schedule set forth in the company's policy. On the other hand, if backup tapes are accessible (i.e., actively used for information retrieval), then such tapes would likely be subject to the litigation hold."

The Panel discussed the scope of what a party should be expected to preserve once litigation is reasonably anticipated. Among other things, a party should quickly identify its employees most involved in the dispute at hand, and put their individual data into an "electronic basket."

The Panel questioned the need to preserve non-archived deleted information that may still be on a hard drive. Thus, although a party may not have to preserve deleted data, the client had better stop using the delete key. Judge Hart recommended Minnesota Federal Judge James M. Rosenbaum's piece, *In Defense of the DELETE Key*, 3 *Green Bag* 2d 393 (2000), for some perspective on the issue.

Additional ethical and practical issues

Mr. Hermann raised a commonly occurring ethical conundrum that lawyers need to consider. If the producing party's counsel

has to review every electronic document before production, this may create untenable time constraints in meeting discovery deadlines; or impose unacceptable costs in the form of legal fees. Thus, to avoid shirking their duties as responsible counsel, while dealing with a mountain of data, some counsel agree to produce unreviewed electronic data subject to protective orders or stipulations permitting counsel to "pull back" or "call back" a privileged or confidential document that has been electronically produced.

This "pull back" solution permits discovery to be completed in time, without running the risk that haste will result in inadvertent disclosure of privileged or confidential data; but there is a concern that a concept as sacrosanct as the attorney-client privilege is being treated too lightly through this practice. As Judge Hart said, it is a terrible conflict, but it may be cost prohibitive in many cases to put a team of attorneys to the task of reviewing the equivalent of rooms full of documents.

Judge Hart stated that in addressing electronic discovery early on, he attempts to weigh the genuine likelihood that discoverable information is present and the intrusiveness of the request. For example, one party might seek to mirror the hard drive of an opposing party employee's home computer. Unless there is some evidence of withholding documents or spoliation, Judge Hart will not permit that discovery.

The Panel all agreed that the party seeking discovery could never unilaterally choose the expert who would retrieve the electronic data from the producing party; rather, it would be the producing party's choice as to who would perform that task. By way of comparison, in the normal course of litigation a party would not be allowed to go through its opponent's office space and paper files because it wanted to be sure the opponent was making full production.

The reality of electronic discovery is upon us, and common sense tells us not to ignore that reality. Fortunately, the realities are not too arcane or mysterious once the effort is made to learn those realities. We can, and must, understand the important practical parameters and elements shaping electronic discovery that are now simply another aspect of litigation practice.

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 February 18, 2004

**ANTITRUST COMPLIANCE IN AN ERA OF
AGGRESSIVE ANTITRUST CRIMINAL
ENFORCEMENT**

PHILADELPHIA LAWWORKS UPDATE

Barbara Sicalides*

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tection of cartel activity. In this area of life, as in so many others, a perfect method for creating drama, and possibly not insubstantial harm, is to do nothing or to do something late.

As part of its implementation of an ongoing and effective anti-trust compliance program, a corporation may find it prudent to analyze the antitrust implications of its ongoing business conduct, including, for example:

- sales and marketing activities;
- bidding;
- contacts with competitors and would-be-competitors, including contacts in the context of tolling or outsourcing arrangements;
- communications with potential merger and joint venture partners; and
- trade association activities.

Each of these areas represents a potential antitrust hotspot that can generate criminal fines and penalties or civil liabilities.

The Division has a vast armament of investigative weapons at its disposal when investigating suspected antitrust violations. The Division's recent **Status Report** demonstrates its abundant willingness to employ them, and its success in doing so.

MESSAGE FROM THE CHAIR

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Regardless of the outcome of Gabe's worthy efforts, I have little doubt that the Commerce Program is here to stay. Although the Court's leadership has changed, Administrative Judge James Fitzgerald and Supervising Judge William Manfredi are both extremely supportive and justifiably proud of the Commerce Program. They recently demonstrated their enthusiastic support by attending the extremely successful and well-attended reception organized by the Section's Business Litigation Committee to honor the Commerce Program Judges, on June 22nd.

I have included this success story here because of its importance to all Section members and our clients. Having a specialized and cost-efficient Commerce Program to deal with commercial disputes in Philadelphia is helping us to attract and retain business enterprises in this area. The Commerce Program is so effective and successful that transactional attorneys have begun to craft dispute resolution clauses which require adjudication before one of the Commerce Program Judges who oversee every case, from start to finish. Finally, I wanted to highlight this achievement because I feel that it should be a source of pride for all Section members.

LawWorks, Philadelphia VIP's business law pro bono project, matches community groups, nonprofit organizations, and small businesses with private attorneys who provide assistance on a range of legal matters, from corporate and tax issues to real estate transactions. LawWorks is sponsored by the Business Law Section of the Philadelphia Bar Association, VIP, and several regional legal aid agencies. We are very proud to report that the LawWorks project has picked up a tremendous amount of steam over the past fifteen months and is developing rapidly. This is evident both in the increasing number of applications and in the enthusiasm LawWorks has generated in the legal community and among its client communities.

Included among its referrals is the Community Health Collaborative, a newly formed organization that will deliver diabetes prevention and treatment services to low-income Philadelphians. Dechert LLP will be acting as the Collaborative's pro bono general counsel and has organized a transactional pro bono practice group that will work closely with LawWorks to provide pro bono services to other similar community groups and micro-entrepreneurs. Other LawWorks referrals include the Philip Jaisohn Academy, a new charter school that will serve language minority and immigrant students, and the Twilight Wish Foundation, an organization that provides services to senior citizens. They are being assisted on a pro bono basis by Duane Morris, LLP and Blank Rome, LLP, respectively. Aside from facilitating pro bono referrals, LawWorks has also been active in organizing community education seminars in various areas of business law, and will begin a CLE series next fall to introduce business attorneys to new pro bono opportunities.

LawWorks operates under the rubric of Philadelphia VIP, and is presently being coordinated by Equal Justice Works/Americorps Attorney Steve Grumm, who joined VIP's staff in October 2003. Steve has renewed his EJW/Americorps grant for a second year, and will remain with the LawWorks project through October 2005. In addition, a second EJW/Americorps Attorney will be hired in the coming weeks.

Nonprofit organizations and small businesses are vital members of our local communities because they do so much to keep them vibrant and strong. We at LawWorks encourage all interested attorneys to inquire about how they can contribute, either monetarily or through their expertise, to community economic development by getting involved in this exciting project.

Barbara T. Sicalides is the chair of the LawWorks Steering Committee and a partner at Pepper Hamilton, LLP.

**AMENDMENTS IMPROVE
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not to be high-cost home loans to make sure that they are still not high-cost under the Amendments.

No Class Action Enforcement

Observers have debated whether or not a class action is permitted as an enforcement mechanism under the Act. For example, the Act allows a borrower to seek damages under the state's Consumer Fraud Act or under the Act, but not both. The Consumer Fraud Act allows class actions.

The Amendments clarify that class actions are prohibited in connection with any "defense, claim or counterclaim" brought by a borrower under section 6(c) of the Act in connection with a high-cost home loan. In other words, such defense, claim or counterclaim may only be asserted in an individual capacity. That is certainly a welcome clarification.

A borrower may argue that this change to the Act contains the negative implication that a borrower seeking to enforce a violation of the original Act by employing New Jersey's Consumer Fraud Act may indeed do so on a class action basis. We would hope to convince a court that such is not the intent of the original Act or the Amendments and that class actions are not intended or permitted.

Expanded Corrective Action

The Act provided a lender with a 90-day period after loan closing but prior to receiving any notice of the error from the borrower within which to correct any unintentional bona fide error. The Amendment expands this period to 365 days after loan closing (but, again, prior to receiving notice from the borrower).

Department of Banking and Insurance Interpretations

One of the Act's key weaknesses as viewed by the lending industry was the Act's extremely narrow delegation of interpretive authority to a regulator. The Department of Banking and Insurance (the "DOBI") had very limited authority to interpret any part of the Act. Notwithstanding the DOBI's issuing of several helpful interpretive rulings, a borrower could have argued that the DOBI's pronouncements were of no effect and a court could have chosen to ignore them.

The Amendments now empower the Commissioner of Banking and Insurance, in consultation with the Division of Consumer Affairs in the Department of Law and Public Safety, to promulgate regulations to effectuate any provisions of the Act and Amendments. It can be expected that the DOBI will now reissue those interpretations as duly-promulgated regulations.

Points and Fees Definition Clarified

Under the Act, all prepayment fees incurred in a refinance of a previous loan made or held by the same creditor were to be included in the "points and fee" threshold calculation. The Amendments made a small change by stating that a prepayment fee is not to be included in "points and fees" when the new loan refinances a previous loan made by the same broker but funded by a different creditor. This change appears to mean that a correspondent lender refinancing a loan that it closed in its name with funds from a table-funding investor would not have to count in "points and fees" any prepayment fee that the borrower would be required to pay in connection with the payoff of the prior loan if a different table-funding investor were funding the new loan. Further clarification may be needed by the DOBI. There are still confusing aspects to the measurement of "points and fees" and lenders should consult counsel to make sure that their calculation method is correct. Hopefully, the DOBI will use its newly expanded regulatory authority to clarify the items that count as "points and fees" and those that do not.

Conclusion

New Jersey's enforcement and litigation environment for lenders in the "non-prime" residential mortgage industry continues to be challenging. We are gratified that recently the New Jersey Supreme Court upheld federal preemption of state law in the *Glukowsky v. Equity One* prepayment fee decision, for example. However, given this environment, lenders that expect to make or buy loans covered by the Act as amended should be careful as they reenter the market to confirm that all procedures and disclosures comply with New Jersey law.

MEMBER NEWS!

Greg Mathews, Chair of the Business Law Section in 1999, recently took early retirement from Wachovia's Legal Division in order to build an ADR practice. He has formed a firm, Effective Dispute Resolution, LLC, with an office at 1818 Market Street, Suite 2910 (telephone - 215-972-2876. Several other attorneys will be listed as neutrals with Greg's firm, including Peter Hearn, Nolan Atkinson, Professor Bill Woodward and Marcia Mulkey. In addition to ADR, Greg will provide risk management consulting services and training. Greg also is of counsel to Johnson & Perkinson, a law firm in Burlington Vermont that is lead counsel in several securities class actions.

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Please send news to:
Ellen Jerrehian at
jerre@ballardspahr.com

MARK YOUR CALENDARS! ANNUAL RECEPTION

The Business Law Section is holding its Annual Reception at the Pyramid Club on Thursday, January 27, 2005 from 5:30 p.m. to 7:30 p.m. The reception includes light dinner, cocktails and live music.

The 2004 Dennis H. Replansky Memorial Award, as well as the awards for Business Law Section Committee of the Year and Business Law Section Committee Chairperson of the Year, will be presented at the reception.

DENNIS H. REPLANSKY MEMORIAL AWARD

The Business Law Section is seeking nominations from the Philadelphia legal community for the Section's 2004 Dennis H. Replansky Memorial Award. The award will be presented at the Section's Annual Reception to be held on Thursday, January 27, 2005 at the Pyramid Club. The award recipient will receive the privilege of designating the recipient of the Section's annual charitable contribution to a public interest organization.

Award criteria 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 candidate's honesty, integrity and professionalism. Each candidate must be a member of the Philadelphia Bar Association's Business Law Section.

The Section established the award in recognition of Replansky's career as a lawyer and his contributions to legal, civic, religious and other charitable causes. Replansky was a 51-year old senior partner at the law firm of Blank Rome Comisky & McCauley when he died in March 1994. He was a former chair of the Business Law Section.

The deadline for award nominations is noon on Friday, December 17, 2004. Written nominations detailing the nominee's qualifications for the award should be sent to: Dennis H. Replansky Memorial Award, c/o Sandra A. Jeskie, Esquire, Duane Morris LLP, One Liberty Place, Philadelphia, PA 19103-7396; or e-mailed to jeskie@duanemorris.com.

More information about the Dennis H. Replansky Award or the nomination process for the award may be obtained by calling Sandra Jeskie at (215) 979-1395.

BUSINESS LAW SECTION COMMITTEE AND COMMITTEE CHAIR AWARDS

The Business Law Section of the Philadelphia Bar Association is soliciting written nominations for the annual Committee of the Year Award and Committee Chairperson of the Year Award, to be presented at the Business Law Section's Annual Reception on Thursday, January 27, 2005.

Criteria for Committee of the Year Award

The Committee of the Year Award will be presented to a committee of the Business Law Section that has actively engaged in furthering the work of the Business Law Section during 2003, including holding regular meetings, sponsoring CLE and non-CLE programs, and engaging in other Bar Association-related activities, such as drafting comment letters on pending legislation or rules and pro bono efforts. To be eligible for the award, the committee must have submitted its mission statement to the Executive Committee of the Business Law Section.

Criteria for Committee Chairperson of the Year Award

The Committee Chairperson of the Year Award will be presented to a chairperson of a Business Law Section committee who, during 2003, has demonstrated exemplary performance of the chairperson's ordinary duties, as well as extraordinary efforts to advance committee initiatives.

The deadline for nominations is 5:00 p.m. on Wednesday, January 5, 2005. Nominations must be in writing and should be sent to: Eric C. Milby, Lundy Flitter Beldecos & Berger, 450 N. Narberth Avenue, Narberth, PA 19072; or e-mailed to Milby@LFBB.com