

# NY Business Law Journal



A publication of the Business Law Section  
of the New York State Bar Association



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## New Section Chairs Announced

The New York State Bar Association has announced eight new section chairs. They are:

**Jay L. Himes** will lead the 534-member **Anti-trust Law Section**. Mr. Himes is a partner at **Labaton Sucharow**, where he co-chairs the antitrust practice group.



**Paul H. Silverman** will chair the 4,421-member **Business Law Section**. He is a partner at **McLaughlin & Stern**, where he concentrates on litigation and bankruptcy, reorganization and restructuring.



**Gregory H. Hoffman** will head up the 1,770-member **Corporate Counsel Section**. Mr. Hoffman serves as senior commercial counsel at **BT Americas Inc.**

**Walter T. Burke**, co-founder of **Burke & Casserly**, will chair the 1,640-member **Senior Lawyers Section**. He previously led the **Elder Law Section**.



**Jodi J. Schwartz** will chair the 2,752-member **Tax Law Section**. Ms. Schwartz is a partner at **Wachtell, Lipton, Rosen & Katz**, where she concentrates on tax aspects of corporate transactions.



**Thomas J. Maroney**, founding partner at **Maroney O'Connor**, will lead the 2,811 **Torts**,



**Insurance and Compensation Law Section**. Mr. Maroney concentrates on civil defense litigation.

**William J. Keniry** will chair the 2,530-member **Trial Lawyers Section**. He is a partner at **Tabner, Ryan & Keniry**, where he concentrates on litigation and personal injury law.



**Elizabeth A. Hartnett**, a partner at **Mackenzie Hughes**, will lead the 5,209-member **Trusts and Estates Law Section**. She concentrates on wealth management services.



# Business Law Section Fall Meeting

By Jay L. Hack

The annual Fall Meeting of the Business Law Section, under the leadership of Bruce Baker as Chair, was held at the Gideon Putnam Hotel in Saratoga Springs, New York. With so many diverse interests in the Section, which has 10 separate committees, it has been difficult in the past to provide



programs of interest to the entire Section. This year, Paul Silverman, Program Chair and Senior Vice Chair of the Section, took charge and solved this problem with a diversified approach to the CLE sessions by asking each committee to present a program during morning breakout sessions. Seven committees took up the challenge. (Committee Reports, which appear on pp. 74-75 in this issue, go into more detail on some of these programs).



At the session *"Business and Personal Identity Theft Risks for Lawyers,"* by the Consumer

Financial Services Committee (Randy Henrick, Chair), participants learned that you can't completely eliminate identity theft but described steps to reduce the chance that you will become a victim.

*Presenter: Randy Henrick*

*"Solutions to Corporate Law Credit and Finance Issues,"* by the Corporations Law Committee (Jeffrey Bagner, Chair) focused on resolving legal issues in M&A negotiations by having a better understanding of the economic

consequences of the contract terms in dispute.

*Presenter: Richard De Rose*

*"Current Issues Affecting the Insurance Industry,"* by the Insurance Law Committee (Matthew Kaplan, Chair) included a discussion of impending new regulations under Dodd-Frank and the need for attorneys to be pro-

active as soon as the regulations are promulgated.

*Presenters: Robert Goodman, Joseph Jean, Thomas Kelly, Martha Lees*

*"Current Developments in Private Placements and PIPEs,"* by the Securities Regulation Committee (Howard Dicker, Chair) discussed the rise of Registered Direct offerings in lieu of PIPEs because of increased post-closing investor flexibility.

*Presenters: William Hicks, Robert Schroeder*



*"Extraterritorial Reach of the Federal Securities Regulation,"* also by the Securities Regulation Committee, discussed the recent U.S. Supreme Court decision in *Morrison v. National Australia Bank, Ltd.*, in which the Court



limited the application of Securities Exchange Act Section 10(b) and Rule 10b-5 to transactions in U.S.-listed securities or other domestic purchases or sales.

*Presenters: Daniel Cahill, James Redwood*

*"Retaining Real Estate Using U.S. Bankruptcy Law"*

by the Bankruptcy Law Committee (Norma Ortiz, Chair) explained strategies that can be used by the bankruptcy practitioner to avoid foreclosure and reach a result acceptable to both lenders and borrowers.

*Presenter: Scott Bernstein*



*"Dodd-Frank and the Future of Banking"* by the Banking Law Committee (David Glass, Chair) taught us that although it may not yet have a catchy acronym, the Bureau of Consumer Financial Protection established under Dodd-Frank will have the authority to outlaw unfair, deceptive or abusive acts or practices.

*Presenters: Michael Campbell, David Glass, Jonathan Rushdoony*

*"The Effect of Regulatory Reform on OTC Derivatives,"* by the Derivatives and Structured Products Committee (Daniel Budofsky, Chair), cautioned lawyers that they need to be proactive in the process of formulating new regulations required under Dodd-Frank so that they respect the intent of the new law without depriving the financing and investing industry of an important product.

*Presenters: Daniel Budofsky, Gabriel Rosenberg*

Not wanting to give ethical obligations of attorneys short shrift, Mr. Silverman also organized a magnificent Ethics program designed for the entire Section, *"Everyday Opportunities to Choose Right From Wrong."* The participants included Thomas Baxter, Executive Vice President and General Counsel of the Federal Reserve Bank of New York; C. Evan Stewart, partner in the firm of Zuckerman Spaeder LLP and an adjunct professor at both



Fordham and Brooklyn Law Schools; and Michael Stone, formerly general counsel to Morgan Stanley and an adjunct Professor at Cardozo Law School. The riveting and sometimes contentious program had speakers and attendees continuing the debate of the decade—who's at fault for the mortgage crisis—

with ethics questions raised about attorneys participating in the residential mortgage collapse from origination through securitization. That was followed by a discussion of the extent to which the First Circuit's decision in *U.S. v. Textron*, 577 F.3d 21 (1st Cir. 2009) (*en banc*) eviscerates a good part of the work product privilege by limiting it to material prepared solely, or principally, for litigation.

In addition to the top quality educational programs, there was a lot of time for socializing and networking among the approximately 70 Section members and guests in attendance. The Thursday evening welcome dinner included a blind wine tasting of six wines in a room filled with over 300 pre-poured and numbered glasses of wine. The winners were the deliciously fruity 2009 Paumanok (Long Island, North Fork) Sauvignon Blanc in the white wine category and the complex structured 2004 Chateau Compassant (Bordeaux, Entre Deux Mers) in the red wine category.



At the Friday lunch session, President of the Association Stephen Younger spoke about the importance of bringing younger lawyers into the association. The closing dinner was held at the National Museum of Racing,

with everyone having the opportunity to tour the museum and its incredible collection of gold and silver victory trophies. Section members also had the opportunity to participate in a golf tournament at the Saratoga Spa Golf Course—regularly given four stars in *Golf Digest's* "Best Places to Play."