

ANTITRUST, FRANCHISING & TRADE REGULATION SECTION

STATE BAR OF MICHIGAN

SECTION MEETING MINUTES

CALL TO ORDER, ATTENDEES, & MINUTES

On August 31, 2011, at about 12:15 PM, Chairperson Andrew Morganti called the meeting to order at Kerr Russell and Weber PLLC, 2500 Detroit Center, 500 Woodward Avenue, Detroit, Michigan 48226, (313) 961-0200, fkf@krwlaw.com.

Besides Mr. Morganti, the meeting attendees were:

Vice Chairperson: Pahl Zinn

Secretary: Howard Lederman

Treasurer: David Janis

Publications Committee Chairperson: Justin Hakala

Fred Herrmann

Lance Young

Mr. Morganti, Mr. Zinn, and Mr. Janis discussed and resolved the problem with our call-in meeting number surfacing at our last meeting. The new call-in number had not been circulated to everyone needing to know it. As a result, some section members calling in were unable to connect to the meeting. **For reference purposes, the call-in number is (866) 829-2120.** The meeting agendas will have the password for our meeting.

The attendees approved the last meeting's (July 21, 2011) minutes.

PUBLICATIONS COMMITTEE REPORT

Mr. Hakala reported and Ms. Xeneli have published and distributed the e-newsletter discussed at our last meeting. Ms. Xeneli's intern term will expire on September 30, 2011. Since she has not forwarded all of her invoices, she needs to forward them by the September 30, 2011 deadline. We will begin our search for a new intern, and **we will discuss our search at our next meeting.**

Mr. Lederman has been in contact with the State Bar Journal editor, Ms. Novak. She has informed him that our section can reserve a 2013 month for a theme issue. A theme issue involves four or five articles and an introduction covering our section's

major focus areas. **This theme issue suggestion will be an agenda item for our next meeting.**

FRANCHISE COMMITTEE REPORT

Mr. Lederman has contacted four franchise attorney section members, and he has proposed a lunch meeting for the second half of October 2011 to discuss their needs, how our section can meet their needs, and related matters. After contacting more franchise attorney section members, he will schedule and publicize the meeting. **At the next section meeting, he will move for section funding of this event.** The e-newsletter has published Mr. Lederman's article. Outreach efforts will continue after the Section Annual Meeting.

EDUCATION/SEMINAR COMMITTEE REPORT

Since our last meeting, planning and publicity for the September 16, 2011 Section Annual Meeting has progressed further. This meeting will be part of the State Bar of Michigan Annual Meeting at the Hyatt Regency Hotel in Dearborn, Michigan. The panel of speakers will include Kevin Culum of the U.S. Department of Justice in Cleveland, Jay Himes of Labatan Surchow of New York, and Gordon Lang of Nixon Peabody in Washington. The subject will be Corporate Leniency in an Era of Increased Antitrust Enforcement.

At our last meeting, Mr. Zinn emphasized the need to generate as much attendance as possible for the Section's Annual Meeting. He stressed the need for the section to spend the necessary funds to make this event successful. To help publicize the meeting, Mr. Zinn has contacted the Business and Criminal Law sections. Though they will not co-sponsor the event, they are open to publicizing it. Mr. Zinn will contact them further about this later this week about e-blasts to their section members and other publicity. Further, Mr. Zinn will contact the Federal Bar Association and the U.S. Attorney's Office about the event and ask them to publicize it.

Mr. Morganti and Mr. Zinn stated that they expect to e-blast our entire section membership on this event on about Friday, September 2, 2011. Mr. Zinn suggested e-blasting the entire State Bar membership. Mr. Herrmann responded that in trying to e-blast the entire State Bar membership on events during his chairpersonship, he had met much State Bar resistance. Mr. Morganti responded that an all-State Bar e-blast would be expensive. Other conferees pointed out that the e-blast would be targeting many people unlikely to attend. Thus, the conferees opted for the e-blast and other publicity efforts outlined in the above paragraph. Mr. Morganti and Mr. Zinn will circulate our section membership list consisting of 275-300 members to the section council members by September 2, 2011, and each council member will call at least five members. Mr. Zinn will email his monopoly board event announcement for these phone calls. At the last meeting, Mr. Zinn had emphasized that each section member must call at least five section members and obtain at least one commitment to attend the meeting. Mr. Young will call David Miller. Mr. Lederman will call 25 section members.

On May 26, 2011, Mr. Morganti, Mr. Zinn, and Mr. Janis had communicated, completed the necessary arrangements, and forwarded them to Ms. Sproul of the State Bar of Michigan on time for inclusion in the State Bar of Michigan Annual Meeting announcements and program. The State Bar had finalized our meeting room arrangements, setting aside one room for our section meeting and another for our event. After some discussion, the attendees agreed to ask the State Bar to set aside one room able to hold at least 30 people for our meeting and our event. The meeting will be short and run from about 12:00 PM to about 12:45 PM. The event will begin at about 1:00 PM and end at about 3:00 PM.

The event will be in a panel discussion format, with questions at the end. Each panel member will present for 15-20 minutes. Mr. Zinn reported that he has seen the draft presentations, and they look good. During his presentation, Mr. Himes will use and refer to his article on the event subject.

Planning for the Third Annual Great Lakes Antitrust Seminar is continuing and progressing. The states involved are Michigan, Ohio, and Indiana. The seminar date will be October 28, 2011, and the location will be in Columbus, Ohio. The planners have not agreed on the attendance fee, but Mr. Zinn will announce the fee to the section as soon as he receives this information. Mr. Renfro has received the agenda. He will moderate a panel on state enforcement of antitrust laws. The panel will include state attorney general department attorneys.

To help Mr. Renfro in his moderator efforts, Mr. Zinn renewed his earlier suggestion that our section sponsor a happy hour before the dinner occurring on the night before the seminar. Mr. Zinn estimated the cost as \$1,000. Mr. Zinn will communicate with Mr. Renfro on this estimate. Then, Mr. Zinn will bring the proposed funding commitment to the section council for a vote at our next meeting.

The conferees again discussed the idea of simulcasting the conference. Mr. Zinn reiterated that for antitrust lawyers seeking to increase their knowledge and understanding of antitrust law, actual attendance far surpassed simulcast attendance. Unlike actual attendees, simulcast attendees cannot attend the informal events connected with the seminar and thus miss some significant learning opportunities.

At the June 2011 section meeting, Mr. Zinn had estimated that at the First Annual Great Lakes Antitrust Seminar, the total attendance was about 200-250 people. At the Second Annual Great Lakes Antitrust Seminar, the total attendance was similar. He estimated that about 50-75 people would attend the cocktail hour before the dinner. This year's dinner location will be the Ohio Bar Association building. The Planning Committee had not yet decided on a point hotel to recommend to prospective attendees. The seminar may include a night before dinner package deal.

LAW SCHOOL OUTREACH PROGRAM

The conferees discussed resumption of the law school outreach program in the upcoming fall. Mr. Lederman reported that he had preliminary contact with the Cooley Law School, Auburn Hills Campus, Career Services Officer. One attendee mentioned that he had received information from Professor Steven Sarmak of the Cooley Law School, Ann Arbor Campus, that his campus would like us to include this campus in its outreach program. Mr. Lederman responded that he would contact Professor Sarmak and work with both campuses to schedule our section's outreach presentations during February and early March 2012.

Regarding the Wayne State University Law School event, Mr. Janis again mentioned Professor Steven Calkins as an antitrust law professor there to contact to help arrange an outreach session and generate student interest. Mr. Janis and Mr. Morganti will contact him, any other antitrust law professors there, and any other necessary law school officials to schedule the outreach event there. At the June 10, 2011 section meeting, the conferees had also discussed a joint Wayne State Law School-University of Detroit Law School event at a bar to increase attendance. The conferees resumed discussion of this idea. The conferees will decide on whether to do joint or separate events at a Fall 2011 section meeting.

The conferees discussed the various law schools' responses to our outreach efforts. The Cooley Law School (Auburn Hills Campus) and University of Detroit responses were good. Regarding the University of Michigan, Mr. Morganti reported that he received little or no support from the antitrust law professors and other law school officials in his outreach efforts. Therefore, he suggested dropping our University of Michigan Law School outreach efforts. The conferees will review his suggestion and decide whether to drop these outreach efforts at a Fall 2011 section meeting. Efforts to arrange a Michigan State University Law School outreach event will continue. Mr. Morganti and Mr. Pahl will contact professors and officials there.

At the November 5, 2010 section meeting, the conferees had divided the responsibilities for contacting the area law schools and arranging outreach dates, times, and contents. As revised, these responsibilities are as follows:

Cooley Law School (Auburn Hills Campus and Ann Arbor Campus): Mr. Lederman

University of Detroit: Mr. Zinn

Wayne State University Law School: Mr. Janis

University of Michigan: Mr. Morganti

Michigan State University Law School: Mr. Renfro

SECTION WEB SITE

The attendees will discuss section web site improvements at a future section meeting. By then, everyone will have reviewed our section's web site for possible improvements. Mr. Zinn had suggested adding links to the ABA sections corresponding to our section's substantive law areas, the Federal Communications Commission, the Department of Justice, and other organizations likely to be of interest. Mr. Morganti had emphasized the importance of a schedule showing upcoming events. Mr. Lederman had suggested looking at other State Bar of Michigan sections' web sites for ideas. The attendees focused on several goals, like making our web site more attractive and useful for section members, in-house counsel, law students, and others interested in our substantive areas.

OTHER FUTURE EVENTS

At an earlier meeting, Mr. Zinn reported that he and Mr. Morganti had discussed a possible March 2012 section event featuring Professor Calkins as a speaker. Since Professor Calkins lives in Northville, Mr. Zinn had mentioned Northville as possible event location. The conferees will discuss this possible future event at an upcoming meeting.

Mr. Zinn suggested a possible panel event on antitrust law and intellectual property law. We will discuss his suggestion at a near-future meeting.

SECTION COUNCIL MEMBERSHIP INFORMATION

As of this date (September 6, 2011), our section council membership and expiration years are:

TERM EXPIRING 2011

1. Atleen Kaur
2. Fred Herrmann
3. Paul Novak
4. James Adams

TERM EXPIRING 2012

1. Brock Swartzle
2. Keith Essenmacher
3. Kimberly Kefalas
4. Craig Essenmacher

TERM EXPIRING 2013

1. Patrick Cafferty
2. Lance Young
3. Rick Juckniess

4. Ari Lehman

OTHER SECTION COUNCIL MEMBERS

1. Immediate Past Chairperson: Blair Renfro
2. Ex-Officio Publications Editor: Justin Hakala
3. Michigan Department of Attorney General Member: Vacant

The conferees noted the upcoming 2011 term expirations and the need to find new section council members. The next e-blast for our September 16, 2011 event will include our invitation to nominate candidates for the council positions at our September 16, 2011 meeting. There, we will receive nominations.

SECTION BYLAWS CHANGES

The October 2010 State Bar Journal published the approved section bylaws changes discussed at the last three meetings, and a Section E-Mail Newsletter contained these changes. Mr. Morganti has faxed them to the State Bar sections coordinator, Heather Anderson.

At the January 14, 2011 meeting, Mr. Zinn had informed the conferees that a State Bar individual had informed him that our section's bylaws needed to go through the formal bylaws changes and bylaws approval processes again, because apparently certain bylaws referred to nonexistent articles, or because other minor discrepancies were present. Mr. Lederman responded that he saw no need to redo the entire process over a few minor changes, and that he could see such a need only if a major problem with notice or approval of the changes existed. He emphasized that no such problem existed. After some discussion, Mr. Zinn agreed to lead in reviewing and changing the bylaws to make them easier to amend.

Mr. Zinn has continued communications with the State Bar to resolve these issues. The attendees agreed that if any further communications with the section membership on these issues were essential, they will be by e-mail to save time, money, and effort. He asked for the conferees' opinion on whether publishing our reapproved section bylaws changes in the State Bar Journal was necessary. Mr. Lederman responded that given the State Bar's bylaws position, publication would be necessary. The conferees unanimously passed a motion to increase section membership dues to \$25.00 beginning October 1, 2011.

Mr. Zinn reported that the completion process for the section bylaws amendments was almost complete. He stated that according to the State Bar's General Counsel, if we communicate the section's annual membership dues increase to the State Bar before it mails the annual dues notices, the dues increase can go into effect. Also, the General Counsel stated that before the dues increase becomes effective, the section must publish notice of the dues increase in the State Bar Journal. Given the publication deadlines involved, the notice must be in the September 2011 State Bar Journal. Mr. Zinn has

followed up on this. Finally, Mr. Zinn mentioned the need for 10 Section Council members to sign a document confirming approval of the amendments.

Mr. Zinn reported on his negotiations with the State Bar's General Counsel, Mr. Flood. They have agreed on final bylaws changes. But we will not be able to notify the section membership before the upcoming annual meeting. So, before and at the September 2012 annual meeting, we will notify the section members of the bylaws changes and of the September 2012 vote to approve or disapprove the bylaws changes. **Whether to notify the section members through the meeting minutes, the monthly State Bar Journal, or other means will be a September 16, 2011 meeting agenda item.** Mr. Lederman asked whether this unjustified and prolonged bylaws changes delay has impacted on our earlier-approved section annual membership dues increase to \$25.00. This increase brought our section into line with other similar sections. Mr. Zinn will investigate this issue and report on it at the next meeting.

OTHER BUSINESS

Mr. Zinn informed us that he has been updating the Antitrust Digest. He explained that before the section became moribund about 10 years, and before Mr. Herrmann revived it in April-May 2006, Mr. Irwin Alterman had compiled, edited, and published an Antitrust Digest. Since then, Mr. Zinn has been continuing this process. He mentioned the *Velassis*, *Ice Package*, and *Pay-Tel* Cases as examples of important antitrust digest cases that he has added. He suggested adding an electronic version to our section's website with a link from the website to the digest. He also suggested asking Mr. Alterman to write the forward. Further, Mr. Zinn suggested that the new student editor can compile, edit, and publish possible Franchise Law and Consumer Law digests. The conferees welcomed Mr. Zinn's efforts and suggestions. We will discuss them at our next meeting with a view to implementing them.

TREASURER'S REPORT

Mr. Janis presented the treasurer's report. As of July 31, 2011, the section treasury had \$17, 286.00. Our annual dues infusion should begin in October 2011. But Mr. Lederman pointed out that the size of this infusion and our budget will depend on whether the annual section membership dues increase goes into effect.

NEXT MEETING

The next section meeting will be our Annual Meeting. It will occur on September 16, 2011, 12:00 PM, at the Hyatt Regency Hotel, 600 Town Center Drive, Dearborn, Michigan in conjunction with the State Bar of Michigan's Annual Meeting. For registration details, see the July and August 2011 State Bar Journals or go to the State Bar's website, <http://www.michiganbar.org/annualmeeting.cfm>.

/s/Howard Yale Lederman, Section Secretary
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