COMMERCIAL LAW LEAGUE OF AMERICA
FREE PRESS
CREDITORS' RIGHTS SECTION NEWSLETTER

The Free Press - Volume 7, Fall 2010

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The Free Press Best Feature Article Award

The Creditors' Rights Section will annually recognize outstanding articles submitted to The Free Press, with a "Best Feature Article Award" to be presented to the author of the winning article, at the Creditors' Rights Section general

REPORT FROM THE CHAIR

By Nicholas D. Krawec, Esq.

I hope this message finds you well, and ready for a fun and successful meeting in New York. I know I am looking forward to it.

My last message to you in the Summer 2010 edition of The Free Press was shortly before the Strategic Planning Conference that was held in Boston in August so I thought it might be appropriate to share with those of you who were not there, some information about the League's 5-Year Strategic Plan. The Strategic Plan is an ongoing process, and it is incumbent upon those in positions of leadership in the League to foster and promote the vision and values embodied in the Strategic Plan. Everything we do as a Section, everything we do as League members, should be in furtherance of the vision and values. To that end, I am providing this information to you.

The core purpose of the CLLA is "to be the leader in providing legal, educational and professional services to the business and credit communities." That purpose is reflected in the CLLA's core values: (1) We provide service and value through competence; (2) ethics, and professionalism; (3) We foster relationships; (4) We create business and leadership opportunities; (4) We provide high quality education; and (5) We are the leader in our industry. I think that we can rightfully take pride in the knowledge that we already do live these core values. Of particular pride to the CRS is our history of providing high quality education. If you look at the education scheduled for New York, that high quality continues. We have fostered relationships with each other, and know, as a result, that when we entrust one of our clients to another Section member, or League member, we can take comfort in the knowledge that the client's matter will be handled in an ethical, professional and competent manner.

The League's vision for this five year Strategic Plan (2010 – 2015) is that in 2015, the CLLA will Identify and aggressively pursue

membership meeting at the CLLA Eastern Regional Meeting in New York.

Articles submitted for the Fall, Spring and Summer editions of The Free Press will be eligible for the award and will be considered for the award if so requested by the author.

Any articles submitted for the Summer edition of the Free Press for consideration for the Best Feature Article Award must be submitted to the Free Press by July 15, and judging of all articles submitted for the Award will take place in September and October.

Each year, the Best Feature Article Award will be presented in New York, for the best feature article submitted within the previous year. The following criteria should be adhered to for articles submitted for consideration for the Award:

- Article subjects should be

diverse and evolving business opportunities, related to all areas of the commercial practice and the credit community, to the benefit of its members; develop, organize and conduct education, meetings and advocacy efforts through substantive practice groups; and be recognized as the leader in providing legal, educational and professional services for the business and credit communities.

We all have a role to play in carrying out the Strategic Plan. You can actively participate in that process. Although the Strategic Planning group will have a quarterly review of its progress at the New York meeting, there will still be work to be done after that, and I encourage you to volunteer to assist. Four strategic issues (or key strategies) were identified at the conference, and each one has a chair (or champion) to lead the efforts in carrying forth those key strategies. Those key strategies and their champions are: (1) Business development (internal and external) – Fred Weinberg; (2) Membership relevance (criteria, diversity, development) – Annette Waggoner; (3) Continued practice group development – Barry Gammons and Meghan Flesch; and (4) Reoganize all meetings (refresh, redesign) – Brenda Majewski. So now, in addition to the CRS committees, here are four more teams in which you can get involved and help to chart the future of the League. I am part of the Practice Group team. But take a look at the teams, see which one most strikes your interest, contact its champion and volunteer to help. I can assure you that your help will be most welcome.

That's it for now. I look forward to seeing all of you in New York. Safe travels.

Nick Krawec
CRS Chair

Dear Committee Chairs:

I'm looking forward to seeing you in New York in November. I just wanted to send a reminder that at the CRS General Membership meeting on Saturday, November 13, part of the meeting agenda will be (as usual) committee reports. Please be prepared to report on any actions or initiatives your committee has undertaken. Also, I encourage you to reach out to your friends and colleagues in the CRS to participate on your committee. Thanks for your participation as CRS committee chairs. See you in New York.

educational in nature, on creditors' rights, debt collection, bankruptcy or creditors' rights practice management related topic.

- Authors must be a member of the CLLA.
- Articles must be original to The Free Press. Reprints will not be accepted.
- Each author may submit one article for consideration during any award year. However, authors awarded the Best Feature Article Award the previous year may submit a new article for consideration the following year.
- All entries will be judged, and at least three (3) entries must be received for the award to be given. If less than three

Sincerely,

Nick Krawec
CRS Chair

Editor's Note: Nicholas "Nick" Krawec is an attorney at Bernstein Law Firm, P.C. in Pittsburgh, PA. He is board certified in creditors' rights.

"BUSINESS NETWORKING… HOW DO I USE IT?"

By Mark V. Matz

By now, everyone has heard about all the social networking sites like MySpace, Facebook, and Twitter (to name just a few). These all have a number of applications, but there are also business networking sites that may hold some added value for those of us in the credit industry. While each type of site has their advantages, let us look at one business site in particular to investigate the pros and cons of what is being offered. That site is called "LinkedIn". The goal for any business person joining this site is not to add friends and swap stories and pictures like the more social varieties, but to enhance their business connections and, to a degree, reconnect with past contacts that, as often happens, we have lost touch with over time.

Launched in 2003, LinkedIn is a site that many entrepreneurs, business owners, and managers are joining. As I understand it, all 500 of the Fortune 500 are represented on LinkedIn, adding to the site's approximately 35 million registered users. Some estimates put the company's revenues at over one-hundred million dollars in 2008. Even more interesting for the legal community, Martindale-Hubbell entered into an agreement with LinkedIn in 2008 to provide that directory with this online networking function for their listees. So in plain terms, why not take advantage of all of these marketing leaders and market research and follow suit?

There are other ways your business could benefit from joining a business networking site which should be explored as well. One of the most important is to generate more business for the firm. Networking will increase your chances of reaching new clients,

(3) entries are received, honorable mention certificates will be distributed to the participating authors.

- All submissions are final, and no additions or changes are permitted to the entry after receipt by The Free Press editors.

All articles must be submitted in Word format, via e-mail to Eva Engelhart , co-editor.

Any questions may be directed to Eva Engelhart, (713) 626-1200, co-editor.

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much like in baseball where the more times you swing, the greater your chances for a home run. But, like the great players, you must practice and be willing to work at your craft because it will take time and effort if you want to do it right. If you or someone at your firm is already involved with other social networking sites, this person could be the resource you need to put in the time and effort to network on LinkedIn (and perhaps other sites as well). With limited time and interested personnel, picking one site would allow you to maximize your time and resources.

The chance to improve the marketing of your firm is another potential use that exceeds mere networking. By researching the site, you will be able to see who else is out there doing what you do. This a great way to find connections in other jurisdictions that might prove useful when looking to find new receiving attorneys. Of course, you should check in with your law lists to learn more about any future business connection prior to sending business. Visibility on the internet is another benefit that may be of interest to you, as some of the options available on LinkedIn will allow your profile to be indexed by search engines, like Google or Yahoo. Make use of these options and you will achieve greater visibility on the Web so those agency and law firm forwarders can find you more easily as they frantically search the web for a source in an unfamiliar county or state.

Are you somewhat shy about introducing yourself to potential clients? Using this service, you have the possibility to ask the people you already know to introduce you to someone whom you would like to meet. Introductions, in person or online, always give you greater credibility, and enhance your chances of actually meeting those people whom you have targeted to share all the positive attributes of your firm. Likewise, you may not only view what recommendations others have received, but essentially encourage those you have done business with to recommend your services.

There are probably many ways we can use LinkedIn, but the first step is to assemble your colleagues and simply ask them to participate. So take a moment and get started by going to www.linkedin.com and fill out your profile. Then, start inviting business associates, friends, and other contacts to link with you. Considering the six degrees of separation we've always heard about, you might gain access to hundreds or thousands of contacts as your personal network grows.

The system allows you to import data from other sources, such as

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Outlook or Excel, where you may store your business directory. Other methods might be to simply collect a series of emails, and, on the LinkedIn site, fill in the data and send the emails in smaller batches or individually. You can create your own invitation or use their template (or some variation) to ask. Also, don't be afraid to ask people you know casually or from other sources. You will be surprised to find out who you might just be one degree of separation away from!

Another helpful feature of the site is called LinkedIn Answers (similar to what you find on Google and Yahoo). This allows users to post questions to be answered by those in the system. At this time, the option is free and the questions asked seem more business-related in nature, and the identity of those asking and answering questions is shown. Being the source of education on a subject has always been a strong marketing tool, especially for professionals.

When creating your profile, of course include all your primary information. Put as much past data on there as you can too. The more information about your past (which is mostly public knowledge anyway), the greater your chances are to connect or reconnect with the people you might be searching for on the internet. Be sure to include a photo. Please make it a current one as you don't want some old friends or colleagues wondering why you haven't changed since graduating from Law School. This option makes your profile more credible and of course, more professional. If you want your firm's services to be found, try putting yourself where people are looking. Describe your interests and activities, so someone who happens across your profile will have some idea of whether they're interested in what you do as a person in addition to the good work you do professionally.

Let me offer two probable scenarios for your consideration. Let's say you want to meet a specific agency forwarder at XYZ Agency. You can look up that person on LinkedIn, and then see if the two of you have any common acquaintances. If you do, then you can ask for that coveted introduction. Perhaps you need local counsel to handle an appearance or some other matter for your client. You can check your LinkedIn network to see if someone you know might be that source or can provide the referral. As the use of this site grows, I see our law list publishers getting more involved in the process as well. Finding the right contact on LinkedIn now has accomplished your goal and one that may be able to be reciprocated by sending you business in the future.

Competition does exist and, with this service, you are unveiling your contacts for a larger viewing audience. This issue is integral to any online networking tool. But, considering the vastness of the internet universe, your potential benefits outweigh any possible negatives. The final decision is, of course, yours and your firm's, and naturally, the best course of action is the one that you are comfortable taking.

It's a brave new world out there. So take that first step, sign up today and create your LinkedIn profile right now. Then, invite me and just five other friends and associates to join your network. You'll be surprised how many people you already know, and who know you!

Editor's Note: Mark V. Matz is with Teller Levit & Silvertrust, PC. Mr. Matz has twenty-five years of experience in the collection industry to the firm. Mark has been involved with the Commercial Law League of America at many levels for 15 years, having written articles and presented educational programs for the benefit of the association and its members in addition to serving on various committees.

"SURVEY OF OPPRESSIVE TERMS IN COMMERCIAL REAL PROPERTY LEASES: UNINTENDED CONSEQUENCES, HIDDEN RISKS AND SURPRISES"

By David J. Cook

I. ABSTRACT AND SUMMARY

What is the rule in Shelly's case? How about Twine's case? How about the Rule Against Perpetuities? Do we remember these rules and apply them everyday?

What about the Law of Unintended Consequences? We should all apply this rule in signing leases, and here is why.

For an attorney in private practice, the Law of Unintended Consequences unifies every aspect of running a law office, large, medium and small. This Law focuses our attention to what we fear doing most of all: Signing your name to a business contract and learning later that you affixed your *name* to a very disastrous deal. You signed your name and what did you get?[1] Hopefully, you got what you wanted or hopefully understood.[2] Maybe.

Clients turn over their contracts to us and say: "What does this mean and how can I get hurt?" Actually, if you want to know, the term "attorney" is from an Old French derivation meaning to "attorn to" or "turn over to." Clients turn over matters to attorneys to act as their proxy. If you are the client, however, you need to work twice as hard lest you run smack dab into the old saw: An attorney who represents himself has a fool for a client.[3]

This commentary surveys[4] the hidden land mines, metastasizing risks, and oppressive terms found in the firm's office lease that, if poorly managed, can irreparably damage the operation, finance, standing and morale of any law firm.[5] The leased premises are the home to the attorneys and the staff, who typically spend more waking hours in the office than their homes, and makes the care and feeding of the lease agreement as the contractual entitlement to that second home essential to the success of the law firm.[6] The office lease is the most important, complex, long term and risk-laden transaction facing you, your partners, the firm, and your family.[7]

II. THE ATTORNEY'S LARGEST FINANCIAL LIABILITY

The office lease is usually the largest contingent liability burdening you, and your partnership, and aside from the payroll, the largest monthly expense. Landlords retained the Best and Brightest, and unless you are an expert in commercial leasing, the landlord has the upper hand in most commercial leasing transactions. Worse, today's landlords might demand that you personally guaranty the lease, creating a huge multi-million dollar contingent liability. The average base rent for a floor of a modern high-rise is about $25,000 a month, times 60 months creates a contingent liability of $1,500,000.00.[8] Admit that the landlord knows more than you[9] and if the firm tanks, you might stand shoulder to shoulder with your personal bankruptcy counsel at the first meeting of creditors.

Review the lease for the sinkholes.[10] Most lease negotiations start with the landlord handing you a 20-page, single-spaced lease[11] which you would bill your own clients $15,000 to navigate the

shoals.[12]

Before launching into the issues at hand, check out the landlord.[13] If the landlord is headed to a foreclosure[14] or bankruptcy, you will face the burden of insuring that you received basic services, such as utilities, security, maintenance, and janitorial.[15] In this era of imploding commercial real estate values and escalating debt service, a commercial landlord facing imminent foreclosure might well pull the plug on all building expenses, such as utilities, security, taxes, maintenance, and basic upkeep as raid on the cash kitty to either maintain ever constricting debt services or abscond with the remaining cash and stranding the tenants without any service.[16]

While each lease is different, most commercial leases have these terms.

III. PASS THROUGH - AN UNCONTROLLABLE EXPENSE IN THE HANDS OF THE RAPACIOUS LANDLORD

A pass through is an annual or even quarterly charge imposed by the landlord based on any number of formulas.[17] The typical pass-through is the increase in the cost of building's with a benchmark of the date of your lease, and predicated upon a formula comparing your square footage to the total amount.[18] What are these costs? Maintenance, repair, leasing and sales costs, property taxes, onsite management, local city taxes, plumbing, electrical, painting, and janitorial, just to name a few. In other more aggressively written leases, some costs might include capital costs, increase in property taxes, major repairs, such a new roof, or painting the entire building.[19] If, for example, the building is sold, Prop[20] bumps up the property taxes, and depending on your deal, you might get stuck for the increase.[21] The secret to the pass throughs is that the landlord will charge you for their operation of the building, including management, accounting, secretaries, sales and clerical, sales, maintenance salaries, and mark-up the lot and might tack on another management fee to boot.[22] This means that you are paying for the increase in costs plus a markup between 10% to 30%. The landlord converts an operating expense, such a general maintenance, into a profit center.[23]

Other leases have more nefarious pass-throughs shifts all costs and not just an *increase* in costs, upon the tenants. We have heard of many stories of the monthly pass-throughs equal or exceeding the

base rent.[24] Other pass-throughs are based on arbitrary escalators, such as the cost of living indexes, changes up and down in various T-Bill formulas and rising and failing interest rates set by various banks or the Federal Reserve Bank. Consider the pass throughs as the commercial landlord's ARM.[25]

Aside from subsidizing the landlord, at a profit, the landlord calculates the actual pass-throughs by a percentage based on the total square footage of the building against the tenant's own space. These calculations lend themselves to total guesswork and potential fraud.[26]

IV. COMMON AREA MAINTENANCE: PAYING FOR THE GARDENING, WALK WAYS AND FOUNTAINS

This is the first cousin of pass-throughs and works on the same principle, that the tenant bears a pro-rata of charges for maintenance of the common areas. Common area maintenance, or CAM charges, range from maintenance, management fees and expenses, security, repair, routine services, security and utilities for a common area, such as the lobby, hallways, atrium, enclosed patio or garden area, carports, or adjoining property alley and driveway.

CAM's are usually billed monthly or quarterly and you can presume that all charges are marked up. Is your office in a large building complex? Do you see that building security personnel putter around in glorified golf carts? Yes? You are paying for them. How about the Christmas tree in the lobby? Your expense, too. The ornaments? You guessed it. The gardener yanking out the crabgrass? How about his uniform? Yours, too, on both accounts and you are paying for the uniform cleaning services. Assume that the CAM charges are marked up, and do not assume that your pro-rata percentage is accurate.[27]

V. FORFEITING YOUR ADDRESS: GIVING THE LANDLORD THE RIGHT TO MOVE YOU OUT OF THE SPACE

Some leases give the landlord the right to move the tenant to another locale in the building or even another building controlled by the landlord.[28] While the landlord might pay for the costs of the move, today's move for an attorney might necessitate formal changes of an address for each file, including all previously filed

bankruptcy proofs of claims, otherwise the mail and the dividend check will bounce. The U.S. postal service change of an address is only good for six months and must be renewed.[29] In addition, given today's wired office, setting up the facilities to handle voice and data connection can easily run $10,000 for starters. You might be able to ameliorate this risk by re-establishing your mail through a USPS post office box.[30]

As an attorney, every move necessitates a change of address for every case. Assuming a caseload of 2,000 active, semi-active and closed files, getting the change of address notices to the court and the adverse party can be a financial hardship.

VI. CLIMATE CONTROL MONDAY THROUGH FRIDAY, 9:00 A.M. TO 5:00 P.M., BUT NOT THE WEEKEND

Do you work on the weekend? Do you work after 5:00 p.m.? Do you come into the office before 9:00 a.m.?

Most modern leases state that the utilities, such as air-conditioning and heating, only run from 8:00 a.m. to 6:00 p.m., Monday through Friday. If you want service after hours or on the weekend, the lease compels you to pay the landlord for the utilities potentially for your suite, or maybe the entire building and, of course, at a profit to the landlord.[31] Worse, absent utilities, most modern enclosed (and sealed) buildings are deathly stifling without air-conditioning on the weekend.[32] This is a serious problem for many attorneys who work through the weekend and find themselves looking wistfully for operable windows.[33]

In addition, the landlord will nickel and dime you for the use of the freight elevator, guard service (at retail and their mark-up) and overtime for the staff (same problem).[34]

VII. COMMON TELECOMMUNICATIONS RISKS IN LEASED SPACES

Modern building owners might compel you to use their own Internet connection that means that you are paying them for Internet services at a profit and potentially locked into their Internet access.[35] If you are running a small office and have a shared voice mail system, and common area receptionist, you might unknowingly lease your phone number from the landlord.[36]

This becomes a total disaster when you wish to leave and think that you can take the phone number and Internet connection with you. Virtually all dealings with the bankruptcy and federal courts are through email, and not paper, and therefore, uncluttered ownership of your email address is the lifeline to your federal cases.[37] In short, the building becomes a spider's web and guesses who has the eight legs.[38]

VIII. LEASE RENEWAL: THE FINE PRINT ARTIST

Most office's leases run typically five years.[39] Depending upon the long- term market projections, the landlord might give you an option to renew the lease for another five years. Options are very tricky. First, typically you need to exercise them about 90 to 180 days prior to the lease expiration or lose the option in writing. The option price is usually pre-ordained by some formula, such as market rates, but not less than current total lease charges, including pass throughs that are always disadvantageous to you. Some lease renewal clauses provide that an arbitrator fix the lease option price (very expensive). Letting an arbitrator fix the option lease means that you are letting a judge at $500.00 an hour to write your lease, and according to the arbitrator maybe that $24.00 a square foot is just too gosh darn low.[40]

The option term usually includes an escalator clause, which is nearly always inconsistent with market up and down pressures that is particularly apparent in today's current recessionary environment. Now, you are going to say, "I won't make that mistake," but if you find that the increase in rent is above market rates, and you might want to decline the renewal and move. Before fleeing the homestead, work up the cost of the move with a sharp pencil. You might find that the cost of moving to a new site, necessarily amortized over the next five years, might exceed the increased rent under the option. The cost to move a 6,000 square foot office, aside from any accommodations[41] provided by the new landlord, starts at the $30,000 range, primarily consisting of the cost of the move, new electronics and electrical, stationary, change of address for the case, new telecommunications and data, loss of productivity, and potentially new furniture. This is cheap. If we take $30,000, and presume that you are going to borrow that money from the bank at say, 7%, and amortize the loan over five years, your monthly payments are in the sum of $594.04 a month. Moves are expensive, and most commercial tenants like to stay put.[42] Staying in the same locale is important. Clients are leery of attorneys who change their address every few years. Maintaining

the same location and same phone number is always good for business.

IX. STAYING PUT IS GOOD BUSINESS

Like many other children of real estate brokers, I got a real estate sales license at a young age. Lumbleau Real Estate School. First day of class, first hour and the first lesson: "Thank you for attending. This is your first lesson in the real estate business, and there is no second lesson: "Location, Location and Location." That was nearly 40 years ago, and this rule is still valid today. Where you are sometimes is who you are. Particularly L.A: Century City Attorneys. Beverly Hills Attorneys. Downtown Attorneys. Wilshire Attorneys (The Wolves of Wilshire.)[43] But what about Barstow Attorneys? No? Does not have that ring? (Do not forget Lincoln Lawyers[44]) For any building, the trick is location, parking, amenities, and proximity to public transit for your employees and access to restaurants, Fed Ex and postal services. Do not underestimate any of these requirements. For L.A. and other commuter communities,[45] parking is a huge issue and never should be underestimated. What do you expect? Somebody is going to walk to your office?[46]

X. THE LANDLORD FROM HELL

All modern buildings are service intensive: Lights, plumbing, electrical, carpeting, elevator, HVAC and common areas. Be alert for the Landlord from Hell who views maintenance as a recreational or discretionary pastime and has phone service permanently on voice mail.[47] If you find the current tenants as members of the class action lawsuit against the landlord for a) shoddy maintenance, b) elevators that have a death wish, c) an HVAC unit which is kaput, or d) drinking water with living visible impurities, you should pass.[48]

This is a serious business.[49] Employees, attorneys, clients, adverse attorneys, and vendors are all adversely affected by the shabby appearance of the building. Given that successful lawyering sometimes involves the illusion of success, run down building suggest a run down law firm.[50] Avoid bad and treacherous landlords as they will drive away business, good staff and talented attorneys.[51]

XII. INSURANCE AND SECURITY

All modern leases compel you to insure your premises usually in the $1,000,000 to $10,000,000 range.[52] This could be pricey. In addition, some landlords have lax or inadequate security and in which robberies, or worse, thefts in the building are common. Robberies, purses, brief case and wallet snatching for tragically common in large buildings. Worse, post 9-11, why be the target of some unstable and very vengeful kook with a graduate degree in chemistry? We all remember the massacre at 101 California Street (SF), when a deranged client stormed a law firm and shot to death attorneys and staff.[53]

Read the lease carefully.[54] You might discover that the landlord has disclaimed liability for common negligence, and in the event that your office is burglarized due to shoddy, or non-existent discovery, your day in court might be short. Do not scrimp on security or your own insurance with the contents of the premises. In fact, you should take special care to acquire insurance for the current replacement value, rather than a replacement value predicated upon the fact that the equipment was used and presumptively obsolete. While we are on the subject of insurance, for less than $2,000 a year, you can buy a "crime policy"[55] which protects you against third party criminal acts, and any theft, embezzlement, forgery, or fraud, perpetrated upon you by your own employees. This will be the best investment you ever made in assuring yourself of financial security and peace of mind.

XII. SLAYING THE CHEATS WITH A LASER TAPE MEASURE

Under the lease agreement, bearing your John Hancock, you are paying the landlord for the "rentable" square footage.[56] What is that? Isn't that what you are getting? No. Rentable means the amount of square footage in the interior of the space that includes interior walls, closets, doors, column and interior bathrooms.[57] If you are renting the entire floor, you might pay for the elevator shafts.[58] What is usable? This number refers to square footage actually used for desks, chairs, copiers, computers and staff. The typical ratio between rentable and usable, depending upon the age of the building, is 100/90% or down 100/80%. To cut this Gordian knot, you must look at the floor plans. This is a big deal. Grade B space burdened with mediocre rental/usable ratio's are more costly than grade A modern space.[59]

Do you own a metal tape measure? Dump it and join the digital age.[60] Home Depot has a wonderful selection of laser tape measures that are accurate to a nanometer.[61] Buy one, measure the space yourself, and compare your measurement with the floor plan. You would be shocked to learn that the rentable square footage number in the lease is wrong.[62] How wrong? Here is the question: Do you think that the quoted rental square footage in the lease (1) understates or (2) overstates the actual square footage?[63]

XIII. BE YOUR OWN BEST ADVOCATE

Parting words. You can make a lot of money as an attorney. Generational wealth. However, you can lose the same money on a bad business deal such as the office lease. Your success therefore comes in two flavors: practicing law and running a business. Let us ask average business executive how to measure that success. Most will tell the following: I made it through the day without making any mistakes.

This is a no kidding moment, folks. Bad leases kill law firms. Therefore, the parable of this article: Avoid the common blunders and you will do great.

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[1] Business people lean on, and learn from, their phone-tree. A phone tree is a series of individuals who you can call to discuss a potential business transaction, such as a lease for a copier or the office, a purchase agreement for a building, a new employee or hire, a pension plan, an arrangement with co-counsel, a partnership agreement, or any other business deal. People on the phone tree, disassociated with the problem, will provide you with candid, complete, and sometimes caustic advice, which would enhance your insight whether to accept or reject the proposed deal, negotiate better terms or even walk from the deal. Self-reliance as a mantra, attorneys rarely employ phone trees, when in fact the phone trees would have the attorney from a disastrous business decision.

[2] Most incomprehensible contracts: Cell phones, copier maintenance and long distance telephone service

agreements.

3 Attorneys traditionally resist retaining another attorneys to advise, counsel, or litigate a case. This of course is a mistake. Confronted with a loss, claim, threat, business proposition or venture, attorneys, like every one else, take a myopic and sometimes irrational view that they can work out the problem without any help. Only can a third party provide an encyclopedic smorgasbord of potential solutions and probable outcomes.

4 As a survey of the hidden risks found in office lease, this commentary maps out contractual potholes. This survey is not a fix-it formula to resolve, unravel or ameliorate a particular lease term, or the lease itself. Once the lease is executed, these potholes, like ugly chickens, come home to roost. After the lease is signed and risks becomes reality, perish the though at running around the office and shouting "How do I rid myself of this troublesome lease."

5 While an attorney who represents himself has a fool for a client, the better expression is "an attorney as a client should 'attorn' the matter to another attorney."

6 The recent recession has claimed dozens of storied law firms with pedigrees dating to the 19th Century. When these firms crash, they go boom, leading a debris field spanning the federal, bankruptcy and the state courts. Landlords, ex-employees, aggrieved partners, vendors and clients take up arms in a wild melee that drives most firms into bankruptcy. Saddled with the largest claim and usually quickest on the litigation draw, the landlord files suit and seeks a pre-judgment writ of attachment to tie up the firm's cash, receivables and other assets. Senior partners who contractually guaranteed the lease face the awful conflict of either rooting for, if not assisting, the landlord to assure payment of the lease obligations, the ensuing relief of the partners' liability under the guaranty, or cheering on the "wind-down" committee in its attempt to fend off the landlord by typically claiming failure to mitigate damages.

Financing most large firms with both secured and unsecured loans, and supported by guaranties by the senior partners, the banks demand entire an entire raft of economic (payment on time) and non economic covenants, such as profit ratio's, cash on hand, revenue touchstones, draw-down restrictions, practice census, and minimum

receivables requirements. Upon the firm's failure, ensuing defaults on both economic and non-economic covenants and the implosion of asset values such as cash and receivables, the banks file suit on the guaranties and likewise seek to attach personal assets of the partners and the remaining unencumbered assets of the firm. Competing lawsuits of the landlord and the bank become very chaotic when these creditors seek to attach the same assets and fight with each over in attempt to gain priority. These battles invoke images of bottom-of-rung competitors on the food chain picking at scraps.

In the cauldron of the firm's financial demise and competing for the same assets, the banks chase down the same assets, sought by the landlord, and enjoy the cheers, and support, by the separate groups of partners, all contingently liable to the bank creditors to facilitate their payment. Other creditors, such as landlords and major suppliers might have scored personal guaranties. Law firm failures devolve into cat fights between warring partners who hoard over asset packages in an attempt to discharge one set of creditors over another set of creditors holding competing and conflicting guaranties.

The nightmares has no ending. Disgruntled employees, smoldering associates, outraged vendors, and long forgotten malpractice claimants all file suit bringing the firm dissolution to a frothy superheated boil. While the Constitution does not guaranty Americans financial security, the Constitution guaranties the right to file bankruptcy: "The Congress shall have Power . . . ... .to establish. . .uniform Laws on the subject of Bankruptcies throughout the United States . " (Art.1, Section 8)

Elevating bankruptcy to a Constitution right, the Founding Fathers (35 of the 55 were attorneys) believed that Americans have a Constitutional right to be bankrupt and end bloodshed by litigation.

7 The civil court docket for Los Angeles and New York are chalk full of six and even seven figure judgments against attorneys who defaulted on their office leases.

8 In executing the lease, the tenant agreed to pay $1,500,000 in installments over the 60 months. Upon default, the lease accelerates the unpaid total, making the tenant liable for the

entire amount. The landlord, at its option, may decline to retake the premises and hold the lessee liable for total. In response, the tenant (a) finds another tenant (subject to the standard restrictions against assignments and subleases), or (b) offers to return the space to the landlord and assuming the risk of liability for the difference between the "old" and "new" rent, or (c) makes a deal.

9 Landlords are in the *business* of marketing, selling and managing office space; attorney's are in the business of practicing law.

10 Most leases today appear on pre-printed forms that contain may irrelevant and unnecessary terms. Prepare to spend the afternoon on reviewing the document. Many local realty associations, stationary stores, and building owner's associations have their pre-printed own forms. Virtually all of these forms are "pro-landlord." Cowdery's blank legal forms is an example.

11 By their nature, leases are adversarial and invest in the landlord all possible legal rights. Per se, leases are never fair, benign or favorable. Leases are oppressive, lopsided, and harsh. Professional Oppression Accept this reality, you will do just fine.

12 Some leases are "home brewed," meaning custom drafted by the landlord's own attorney. These require enormous attention to detail as they are specifically drafted to grant the landlord every conceivable advantage (Courtesy of Scylla & Charybdis, LLP, premiere attorneys specializing in commercial leasing).

13 Public records searches provided by Lexis-Nexis or others are inexpensive, non-intrusive and very helpful. Just scrolling the landlord's name in the local court docket might unearth a filing in which the parties might reveal information that aids or educates you in the negotiation and hints that the lease might be toxic. (See note below)

14 Most county recorders or clerks are online and you would look for a recorded notice of default or notice of sale, which are part of the foreclosure process. The bankruptcy and federal courts, of course, are online and you can readily locate any bankruptcy filing through PACER. Most state courts are now online and you would be able to easily

locate any damage, warranty, habitability, contract or other adverse claims against the landlord.

15 At one lease renewal, I decided that the grass was greener on the other side. An older building down the block had five floors vacant with windows on four sides and offered lots of light. In walking through the space, I asked the rental agent giving the tour why the walls were freshly painted stark white. "Great landlord. Catastrophic plumbing failure, and main internal water pipe burst and flooded half the building. Water marks stained the walls. The tenants had to vacate, but rebated the rent and rehabbed the floors." I thought to my self, "What a sport. Brings Son of Katrina to an office building and discounts the rent." Went back to mow my own grass, which was not better because a pipe burst and flooded the back office. At the end of the day, both lawns had weeds.

16 The business section of the *New York Times* regales its readers with real estate deals gone bad, arising from the explosion of the values culminating in an extravaganza of 2004-2005 when billion dollar (not million) deals were done over breakfast at New York's swankiest restaurants. In 2009-2010, the news stories recounted rolling foreclosures, deeds in lieu of foreclosures, or "restructuring deals," for same exact business deals.

17 Some leases bury a pass through near the middle of the lease. Some pass through formulas are found in the "rules and regulations," or other documents which are not necessarily provided at the time of leasing.

18 Square footage calculations are subject to actual and physical confirmation.

19 Buildings are expensive to maintain. Other repairs costs are major plumbing, window, carpeting, and structural renovations.

20 Proposition 13 is the historic populace enacted stated constitutional amendment which restricts the galloping escalation of real property taxes based on billowing appreciation, and other state and local taxes, save and except by 66.6% vote. While Prop 13 protected the elderly, retired and those living on a fix income from gargantuan real property tax increases, and forced state, cities and counties to reign in fiscally irresponsible practices, Prop 13

hamstrung local governments in generating sufficient revenues to comply with the state and federal mandates, much less paying for basic governmental social, education and health services. No free lunch in local government.

21 Lease drafting is adversarial.

22 Many buildings are union, and after so many hours, a union employee is entitled to a paid lunch break and lunch itself. Some contracts provide for mandatory site managers. These union costs are factored into any work undertaken by the building management and charged to the tenant on a pro-rata basis. In some cases, these amounts that are included in the calculus are not actually paid, or even incurred, but are charged.

23 Before decrying the mercantile zeal of the landlord, most law and accounting firms regularly mark up many common client expenses from overnight delivery, postage, phone, copy, computerized legal research, out-of-pocket costs, travel, and third party vendors. Firms bill clients for goods and services and are billed at the gross and not the net or discounted price (i.e., Federal Express discounts for volume).

24 Pass through expenses are a goldmine to the landlord, shifting the entire expense to the tenant, and reaping an enormous profit on these expenses. Your MBA friends will tell you that "Expensing" the client turns into a profit center, when marking up the expenses, and even enhanced when the vendor's volume discount is excluded from the expense charged the client.

25 Attorneys view non attorneys to a business transaction as ill-informed or unskilled in negotiating complex business transactions. This is mistake number #1, and mistake #2 is failing to recognize that the non-attorney might have a much better grip on the transactions and possible business and legal ramifications. Mistake #3 is gripping the fact that the lease includes an integration clause, which the parties exploit to exclude pre-execution warranties, claims, promises, boasts and lies in the ensuing civil litigation. Embodied in the lease's integration clause, the Parole Evidence Rule becomes a license to lie. All leasing deals should be viewed with the greatest caution. Most leases have a warranty that the tenant has inspected the premises, and its condition, including all structural facets, prior to the

execution of the lease agreement and represents that the premises is suitable to the tenant and accepts the premises with all "flaws and faults." This single term is catastrophic in its application if the tenant assumes the responsibility of internal repairs, such as internal plumbing, piping, paint, carpeting, cabinetry, and electrical. Watch out for "ceiling to slab leases," which means that you are obligated for everything in the space. Look hard before you leap. Beauty and paint jobs are only skin deep.

26 Not every landlord commits these grievous acts, but commercial leasing provides for whole floors of full time and professional managers, agents, attorneys and sales people, all with very sharp elbows and even sharper pencils.

27 See succeeding sections on measuring your space with a digital tape measure.

28 This is usually found in fine print on page 15, Paragraph 43, or maybe the "rules and regulations."

29 No so fast. Check with your local post office.

30 Post office boxes are eternal and attorneys should use this address in any matter that would require long-term mail management, such as bankruptcy proofs of claims, creditor's claims in a probate, class action lawsuits, or multi-year transactions mandating notice to a designated individual at a specific address. Our record is 14 years for a bankruptcy dividend.

31 The lease provides for heating, ventilation and air conditioning but rarely specifies the pricing.

32 Think of the *Bridge On the River Kwai* starring Alec McGuiness before he became Obi-Wan Kenobi. On the east coast, the landlords routinely refuse to provide heating for commercial spaces due to the substantial heating costs. [Alec McGuiness starred in *Lawrence of Arabia* as King Faisel whose resemblance, tone, voice and even mannerism nearly replicate Obi-Wan Kenobi. This author leaves to the film and literary critics whether Obi-Wan Kenobi is truly King Faisel and the implication that the Force is Islam. Never a dull moment in these articles.]

Don't laugh about this. I spent a weekend at co-counsel's

office in Newport, California during the summer. The landlord shut off the air conditioning over the weekend, and the co-counsel's suite lacked operable windows that made the internal air leaden. I never thought that I would experience dead air.

33 From the days of King Henry II, and the rise of real property battles in the English courts, attorneys required a staff of assistants to litigate cases or run an office. A great staff fosters a great office, and a good working atmosphere is a necessity.

34 While outside the scope of this commentary, most landlords have "rules and regulations," which they claim to be part of the lease obligations borne by the tenants. These rules change from year to year, and contain terms are hours of operation for common areas, charges for utilities off hours, terms and hours for the use of freight elevators, provisions for signs, parking, communal conference room, bathroom locks and keys and exterior lighting. Aggrieved tenants might find these rules oppressive, and claim that the "rules and regulations" are unconscionable under general contract of adhesion principles, along with common formation defenses. "Rules and regulations" are common fodder in homeowner association, shopping center, tenants in common, and condominium litigation. Most leases compel arbitration of the disputes in the interpretation and enforcement of the "rules and regulations," which traditionally favor the landlord due to the daunting costs, unpredictability and finality of arbitration. Most contested arbitrations cost about $15,000 to $30,000 (borne 50/50% by the parties at the outset) and this price tag, aside from the party's own attorneys and out of pocket costs, cools the ardor of most disgruntled tenants particularly when the lease provides for a "winner take all," provision, imposing 100% liability for the arbitration fees, attorney's fee and costs upon the loser. The punchline: Battles over hedgerows lining a common area sidewalk might cost the parties $100,000.00.

35 State and federal anti-trust concerns intrude on these arrangements.

36 This is almost a certainty if the landlord provides "data services," which is necessarily attached to your phone number, which is really the landlord's property.

37 Anecdotal stories abound of sole practitioners seeking to exit from shared facilities that provided internet services confronting the landlord who politely refuses to release to them their own email address. Shared facilities, however, provide the sole practitioner or small firm with a vast array of otherwise inaccessible services, but come with the ball and chain tying the firm to the building.

38 Some office complexes incorporate telecommunications directly into the lease package and offer, for example, internet access, voice, data, video etc. From a pricing point of this, these services are attractive. However, the tenant might encounter tussle in exiting the building with the URL, email, voice, data, or other telecommunications services in hand. If the landlord collapses, or suffers a foreclosure, these telecommunications services might crater.

39 The average is five year and matches the effective life of office equipment such as leases, fax machines and most computers for their useful life.

40 Absent fraud, corruption, or other very extreme defects, the ruling by the arbitrator is final. The invisible hand of the marketplace will write you a better lease renewal as arbitrator.

41 Typically called tenant improvements ("TI's"), TI's, move in allowances, and other accommodations offers to prospective tenants in a "buyer's markets," can be very enticing and become part of the calculus considered by the tenant in vacating a space. The trick is to amortize those benefits, along with the cost of the move, and pencil out whether the move is financially attractive. Don't forget to add the cost of borrowed money, lost opportunity costs, onsite or offsite storage, parking, travel time and related burdens, access to public transportation for employees accustomed to public transit, attractiveness of community, proximity to restaurants, banks, post office, Fed Ex or UPS and other business amenities.

Proximity to this broad range of services enhances the firm's efficiency in easy reach to key services, such as Federal Express the United States Postal Services. Better yet, an office near the courthouses is the best in upgrading the ease of filing papers on a daily basis.

42 If you are not running a mega law firm and the partnership base is fixed, think about buying a building. Given today's still modest rates of interest, the debt service might only slightly exceed the rent on leased premises and with a -year mortgage the building is yours in short order. As a commercial landlord, this note serves as wonderful roadmap to extract the maximum from your tenants.

43 Very passe. That part of Wilshire Boulevard is now populated with museums. The La Brea Tar pits are nearby.

44 At the beginning stage of low level criminal cases during the 1960's, a bail bondsman with the attorney in tow would spring the suspect from jail. The attorney needed a flat surface to complete the initial round of paperwork, and at that time, attorneys favored the Lincoln Continental whose hood was the perfect desk. In the criminal court parking lots, you would see attorneys leaning over the hoods of their Lincoln Continentals completing the bond release forms. Some attorneys made a living using their Lincoln Continentals as their office and spent the day driving from court to court, and hence the name, Lincoln Lawyers.

45 Without parking, many clients would never see their attorney.

46 Convenience in reaching an attorney's offices is classic retail "point of sale." Despite the electronic age, many clients retain counsel based on their ability to readily arrange for face-to-face meetings.

47 Most leases exonerate the landlord from any civil liability, other than intentional or grossly negligent conduct. Worse, if the building become uninhabitable, the lease provides for either a lease termination (maybe) or a rent rebate during the period time that the tenant is forced to exit. If the rent is rebated, the lease remains in effect, and when the building is restored, the tenant necessarily would return to the premises and remain liable under the lease. Some leases might or might not cover the costs of the move and certainly do not cover the ancillary costs, such as the restoration of any data, voice and internet services, letterhead, down time, change of address and normal business interruption losses.

You can ameliorate these risks by increasing the business interruption policy coverage (or get a rider) in your

comprehensive general liability policy that covers all of these costs.

48 Declining real estate values and crushing debt services entice the landlord to find recourse to the operating expenses to make up any shortfall in monthly debt service. Neglecting deferred maintenance is the first target of opportunity for the hard pressed landlord to find a new source of cash.

49 Some attorneys change cars on a yearly basis as an ostensible sign of prosperity.

50 ***Jerry McGuire***, a recent movie, starring Tom Cruise coined the wonderful expression: "You had me at hello." For attorneys, this is correct, but the expression for some is: "You had me at first blush." Great appearances open many doors, and shoddy appearance closes others.

51 If Virgil, the property manager, is giving you the tour of the building, you should avoid the landlord's personal basement office.

52 A million dollar coverage is low these days. Dirt cheap to acquire umbrella coverage that provides coverage up to $5,000,000.00. The premium is less than the price of dinner for 6 at a tony New York restaurant. Million dollar verdicts are so passe.

53 Post 9-11 and 101 California Street, many large buildings upgraded their front door security and other large scale structures, such as the Willis Tower (f.k.a. Sears) has metal detectors. Being paranoid is being smart. Attorneys engaged in family law practices are particularly vulnerable to unprovoked acts of violence perpetrated by aggrieved spouses who bring down their wrath upon the attorney as responsible for the potential or actual loss of their fortune, family, and future.

54 You are bound to the lease, even if you fail to read the fine print.

55 These policies have other classic terms, such as fidelity policies, 3-D policies, and sometimes they take the form of fidelity bonds. If you are handling high six, seven, or even eight figure sums, you could never get enough insurance.

56 In surveying any floor plan, walls, doors and closets chew

up usable square feet.

57 You are renting the floor.

58 For 25 years, I rented the entire floor at 333 Pine Street, San Francisco, CA, which included the elevator, and therefore the elevator shaft. I constantly heckled the landlord with the threat that since I was paying for the elevator shaft, I should be able to use the space for storage. Initially ignoring my threats, the landlord adopted a more proactive approach to my demand: No problem. Just take the stairs.

59 Older buildings have more doorways, thicker walls, oddly or awkwardly located bathrooms and other facilities.

60 We were retained to sue a landlord for precisely this issue when the attorney/tenant carefully measured his space and found that he was overpaying about 10% per year, for many years.

61 A billionth of a meter.

62 Older buildings are far more susceptible to erroneous measurements as the lease might quote one figure, and the actual premises another based on the subsequent improvement to the premises. Be Ronald Reagan: Trust, but Verify.

63 Before every attorney, specializing in commercial leasing, vociferously complains that I missed other particular horrors, I can list a few: Leases who forbid subleasing, but if authorized, seize the profits. The accession clause converting trade fixtures into the landlord's property. The security interest clause creating a lien upon the tenant's personal property and authorizing the landlord to file a financing statement (UCC) with the Secretary of State, which is usually a default under the tenant's line of credit with the bank. Exculpation clauses which exonerates the landlord from virtual all liability. Repair and maintenance clauses that compel the tenants to only employ union labor, which increases the price of most renovations.

Editor's Note: David J. Cook is the senior attorney of Cook Collection Attorneys PLC, San Francisco, California. He has practiced in the area of debtor creditor and bankruptcy for the past 35 years. Mr. Cook is a regular contributor to business and legal

journals, legal publications and periodicals. We welcome his participation and insights in this difficult and perplexing area of the law. You can reach Mr. Cook at: Cook@SqueezeBloodFromTurnip.Com.

SPOLIGHT ON THE BEST ARTICLE AWARD WINNER: JEFFREY ALAN CARLINO

Interview by Eva Engelhart, Esq. and Emory Potter, Esq.

Full Name: Jeffrey Alan Carlino

Residence/Hometown: Warsaw, New York

Education: B.A. State University of New York at Buffalo; J.D. University of Pittsburgh School of Law

Work History: Blair & Roach, LLP 1999-2005; Goldberg Segalla LLP 2005-Present

Areas of practice and specialties: Commercial litigation, creditors' rights, commercial collections, bankruptcy litigation, and lender liability defense litigation.

Family: Spouse: Nicole; Jack (4) and Caroline(1)

What year did you join CLLA? 2010

What other offices have you held in the CLLA? None to date, but currently running for Executive Council.

Tell us about your life activities away from the office: I have a fantastic wife of 8 years, Nicole, and two beautiful children who make my world go around.

Have you written other articles besides the writing you have done for CLLA?

- "Section 502(d) Can Be Used to Delay Payment of §503(b)(9) Administrative Expenses," ABI *Bankruptcy Committee Newsletter*, April, 2010
- "The Availability and Application of Civil Sanctions in Bankruptcy Court," ABI *Bankruptcy Litigation Committee*

Have you received other recognition for the writing you have done? No.

When you're not practicing law, or tending to League matters, what do you do for fun and relaxation? I spend as much time with my wife and kids as possible, and enjoy puttering around on all sorts of construction/renovation/repair projects.

If you did not become a lawyer, what do you think would have become your life's work? I strongly considered a career in education before going to law school and while I don't regret my decision, it sure would be nice to have summers off!

What is your favorite quote or "words to live by"? "Never let the law interfere with a good argument."

If you could have dinner with one famous person in history, and one famous person alive today, who would they be, and why?
Tim Russert, late host of Meet the Press. Tim—born and raised in Buffalo—because he somehow found the magic formula for having a successful career while never compromising his strong, core values and while always being there for his family.

Bill Clinton—because I know he has some entertaining stories to tell.

What is your favorite:

Food: Duff's chicken wings, "hot", Amherst NY
Vacation spot: Hilton Head, SC
Movie: It's a Wonderful Life
Holiday: Independence Day

Musical group/Singer: Billy Joel

NEWSLETTER COMMITTEE REPORT

By: Emory Potter, Esq. and Eva Engelhart, Esq.

The newsletter is circulated three times per year electronically in

the Spring, Summer and Fall (and via fax for those rare few who are not online.) Emory Potter and Eva Engelhart are the Co-Chairs of the Committee. This issue features the annual newsletter spotlight on the Best Feature Article Award Winner, Jeffrey A. Carlino. The award and his gift will be presented at the CRS general membership meeting in New York. We want to thank Liviu Vogel, Emory Potter, and Mat Garcia for taking the time to judge the articles. Please let us know if you are interested in judging the articles in 2011.

Members, including members of the Executive Council, are encouraged to submit articles of interest or letters to the editor for inclusion along with a short bio for publication.

Editor's Note: Emory Potter, Esq. Has been a partner in the firm of Hays & Potter PC for over 15 years where he specializes in commercial and construction litigation. He acts as a Special Master for the Superior Court of Fulton County and has acted as a municipal court judge pro hac in the city of Chamblee, Georgia. He is a graduate of Auburn University and Georgia State University College of Law and has been a member of the CLLA for 15 years.

Eva Engelhart, Esq. has been an associate with Ross, Banks, May, Cron & Cavin, PC for 12 years. She focuses her practice on commercial and business litigation, primarily commercial collections. Eva's practice includes representing clients through trial involving collection of business accounts, contract payments, note payments, and post-judgment collections. She received her J.D. from the University of Houston Law Center in 1996 and received her B.A. from Brandeis University in 1993, Magna Cum Laude.

CREDITORS' RIGHTS SECTION NOVEMBER, 2010 TECHNOLOGY COMMITTEE REPORT

By: Elliott M. Portman

The CLLA has had online Discussion Boards for approximately two years. It is little-used and underappreciated. I have been the

Administrator of the Boards for that period of time and found that I have had little to do. It would be in everybody's best interest to see that change.

The Discussion Board permits us to share comments on the hot issues, in real time, as they happen. The Creditors' Rights Section underwrote the project and should be proud to have been on the forefront of this technology.

In my opinion, a posting board is better than the NARCA or ACA-style ListServ because it gives the User the ability to focus on areas of interest to them, without the constant bombardment of e-mails into the Inbox on areas that are not applicable to your jurisdiction or to your practice.

Registration is easy and can be accomplished by contacting the League Office. I can tell you that registration is easy because I routinely delete dozens of spammers from the User List every time I log on.

The Posting Boards can be found at:

http://www.clla.org/forum/

Hasn't it been your experience that there was a practice or office policy question that could not be answered by your best friend, your law partner or the local Bar Association? Many areas do not have a dedicated committee or organization devoted to creditors' rights. Wouldn't it be great to access the wealth of knowledge that the Commercial Law League provides?

Post a question; answer a post. Together, as a community, we can accomplish what we cannot achieve alone.

Please feel free to contact me at e.portman@rttplaw.com if you have any questions or wish to volunteer for committee service.

Editor's Note: Elliott M. Portman is a partner at Roe Taroff Taitz & Portman, LLP. His concentration of practice is in federal and state litigation, particularly in the area of creditor's rights and commercial litigation. He represents both international and domestic clients with regard to liquidation of their accounts receivable.

LETTERS TO THE EDITOR

Letters or comments can be sent to eengelhart@rossbanks.com. *The Free Press* has instituted a "Letters to the Editor" column. If you don't want to take time out of your busy schedule to do research for a scholarly article, if you have a suggestion, recommendation, or constructive criticism to direct to the Section leadership or the Free Press editorial board, or if you just want to "vent" (in a non-abusive manner, of course), you now have a forum. You can submit a letter any time it suits your fancy, and you need not wait until just prior to the publication of an edition of the Free Press. Submissions will be kept on file for future publication.

NOMINATIONS SOUGHT FOR 2011 AWARD OF EXCELLENCE

The Creditors' Rights Section of the Commercial Law League of America is seeking nominations for its **Award of Excellence**, which was established to recognize outstanding contributions in the field of law affecting creditors' rights. The first recipient of this award, in 2005, was Professor James J. White who, along with Robert Summers, published the most widely recognized treatise regarding the Uniform Commercial Code. The recipient must be a lawyer, legislator, professor of law, or judge, whose work has substantially and positively made an impact on creditors' rights. The recipient will be selected for presentation of the Award at the Annual Meeting of the League held in Chicago in April, 2011. Nomination forms are available at www.clla.org.

CALENDAR OF EVENTS

November 11, 2010 – November 14, 2010
90th Annual New York Meeting,
NY Sheraton Hotel & Towers, New York, NY

February 24, 2011 – February 26, 2011
Southern Region Conference,
Royal Sonesta, New Orleans, LA

April 14, 2011 – April 17, 2011
81st Annual Chicago/Spring Meeting
Westin Michigan Avenue, Chicago, IL