

Jacobs, Habbart Take Part In Australian Conference

Justice Jack B. Jacobs of the Delaware Supreme Court and **Ellisa Habbart**, founding partner of Wilmington firm The Delaware Counsel Group, traveled to Australia last month to speak at a conference held by the International Bar Association and the business law section of the Law Council of Australia called "Private Equity: The Subprime Crisis and Beyond."

The conference was in Sydney in early April. Jacobs discussed fiduciary duties in the context of private equity in his presentation. He touched on such things as directors' conflicts of interest, access to non-public information and exclusivity arrangements.

"I was very impressed with the sophistication of the Australian bench and bar," Jacobs said, adding that he expects Australia to become a strong Asian financial center.

Jacobs also discussed how Delaware is developed and how it differs from Australian law. He found that the Australian lawyers often looked to Delaware for guidance on how to advise client and how to structure deals.

"They are very mindful of what is going on in Delaware," he said.

While Jacobs said the atmosphere in Australia is hardly pessimistic, the liquidity crisis has arrived there.

"A lot of these private equity deals happen because of leverage, and right now the money is not there to borrow. It took a little longer, but it is having its effect in Australia."

Habbart, who spoke on the second day of the conference, is the vice chair of the private equity subcommittee of the IBA's business organization committee. She went to Sydney prepared to discuss private equity club deals, but instead found her audience had more basic questions about Delaware.

"If Australians are involved in a deal with a U.S. piece, 90 percent of the time the U.S. piece is a Delaware entity," Habbart said.

This led to a variety of questions, from filing requirements, to the reason why the big New York firms so often seek opinions from Delaware lawyers.

"I was prepared to go talk about club deals and dissolution issues and they wanted to hear this. I found that very interesting," Habbart said.

Hershman Named to BBB Panel

Douglas M. Hershman, a director of The Bayard Firm and chair of its executive and marketing committees, has been named to the executive committee of the Better Business Bureau of Delaware, the firm announced last month. He will serve a one-year term.

In addition, Bayard announced that Michael J. Scali, an associate with the firm, was named to the board of directors of The Committee of 100, a business organization committed to promoting responsible economic development in Delaware.

Hershman, who has been with Bayard for nearly a decade, leads the firm's real estate practice, representing clients engaged in all aspects of the real estate industry throughout Delaware and its surrounding states.

"As an active member of our binding arbitration program, Doug has helped us to resolve real estate disputes quickly, respectfully, and reasonably," said Christine R. Sauers, president of the Better Business Bureau of Delaware. "We look forward to his continued support as a trusted legal adviser and knowledgeable resource on the local marketplace. It is with great enthusiasm that we welcome him to the executive committee."

Scali concentrates his practice in the areas of commercial and residential real estate, corporate formation and governance, alternative business entities, and commercial transactions.

Beverly V. Baxter, executive director of The Committee of 100 said Scali is an active and enthusiastic member of her organization who has served on the scholarship committee, "participating in the selection of the organization's academic scholarship winners."

Green Honored at Luncheon

Margaret S. Green, long-time secretary to Judge Susan C. Del Pesco of the New Castle County Superior Court, received the Delaware State Bar Association's Myrna L. Rubenstein Professional Support Recognition Award at the Delaware Law Day luncheon held at the Hotel DuPont in Wilmington on May 5. Del Pesco presented the award to Green, who has worked for her for 29 years. •

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Law Council
OF AUSTRALIA

Business Law Section

*** UP TO 8.5 CPD
HOURS AVAILABLE**

A Conference co-presented by the IBA Business Organisations Committee and the Business Law Section of the Law Council of Australia, and supported by the IBA Asia Pacific Forum.

Private equity: the sub prime crisis and beyond

7 – 8 April 2008

InterContinental Hotel, Sydney

Topics include:

- A review of the private equity phenomenon and the sub prime crisis
- The view from the bench
- Regional trends in private equity and implications for globalisation
- Managing transitions in major corporate events
- The regulation of hedge funds
- A financing perspective on adverse marketing conditions on private equity deals

Who should attend?

Lawyers in private practice, in-house counsel, investment bankers, accountants and specialists from the private equity and mergers and acquisitions business.

* As per the Law Society of England and Wales. The number of CPD points/hours available may vary for other bar associations and law societies depending on their criteria.

Tuesday 8 April

0800 – 1300 Registration

0900 – 1030

The regulation of hedge funds

Current legislative and administrative rules, court rulings and proposed changes.

Moderators

Jeff Blount *Fulbright & Jaworski LLP, Beijing / Hong Kong SAR, Vice-Chair, IBA Asia Pacific Forum*

John Elliott *Clayton Utz, Sydney, NSW*

Speakers

Jeremy Cooper *Australian Securities & Investments Commission, Melbourne, Victoria*

Eric Mayne *Australian Securities Exchange, Sydney, NSW*

Ellisa Opstbaum Habbart *The Delaware Counsel Group LLP, Wilmington, Delaware*

1030 – 1100 Coffee / tea break

1100 – 1230

Impact of adverse market conditions on private equity deals – a financing perspective

This session will address the current issues and concerns, for example:

- How the debt markets have reacted - the European, US and Australasian experience
- Material Adverse Change Clauses (MAC) in bid conditions and market disclosure issues in withdrawing from a public bid ('truth in takeovers')
- MAC and Certain Funds clauses in finance documents
- Effectiveness of Market Flex provisions
- Increased activation of Equity Cure/ Mulligan / Yank-the-Bank / Snooze-&-Lose and other borrower-protection clauses;
- Actual / potential liability of PE sponsors when using SPVs
- Insolvency of the private equity bidder.

Moderators

Justice Robert Austin *Supreme Court of New South Wales, Sydney, NSW*

Professor Bob Baxt

Speakers

Yuen-Yee Cho *Mallesons Stephen Jacques, Sydney, NSW*

US and UK financial experts

1230 – 1245 Closing remarks

1245 – 1400 Lunch

Keynote Speaker

Senior Official of the Federal Government of Australia

Continuing Professional Development / Continuing Legal Education

For delegates from countries where CPD / CLE is mandatory, the international Bar Association will be pleased to provide a Conference Certificate of Attendance which, subject to the exact CPD / CLE requirements, may be used to obtain the equivalent accreditation in your jurisdiction.

This conference has been accredited for CPD / CLE by the Law Society of England and Wales. Delegates should ask staff at the registration desk for information as to how to obtain the hours.