

## **ANTITRUST, FRANCHISING, AND TRADE REGULATION SECTION**

### **CALL TO ORDER, ATTENDEES, & MINUTES**

On July 7, 2017 at about 12:15 PM, Vice Chairperson Cale Johnson called the meeting to order. Besides Mr. Johnson, the meeting attendees were:

Howard Lederman, Secretary;

Lance Young, Treasurer;

Matthew Powell, Former Chairperson;

Mark Burzych, Council Member;

Briar Siljander, Council Member;

Cody Rockey, Council Member;

Brian Witus, Council Member.

The conferees approved the April 14, 2017 section meeting minutes.

### **PUBLICATIONS REPORT**

In its May 2017 issue, the Michigan Bar Journal published our section's first three articles as follows:

Cale Johnson and Cody Rockey: Antitrust Treatment of Noncompetition Agreements Under Michigan Law.

Derek McLeod & David Steinberg: Joint Employer Developments and Their Impact on Franchising.

Howard Lederman: Response to Derek McLeod's and David Steinberg's above article from a different viewpoint.

Since the May 22, 2017 section meeting, Matthew Powell has forwarded a draft of his article as follows:

Matthew Powell: Resale Price Maintenance Agreements.

The Michigan Bar Journal Editor has informed Mr. Lederman that the Journal will publish Mr. Powell's article in its August 2017 edition.

Since the July 7, 2017 section meeting, David Guenther has contacted Mr.

Lederman regarding his and David Koch's article as follows:

David Guenther & David Koch: International Transactions Clinic's Involvement in Social Enterprise Franchising.

The Michigan Bar Journal Editor has informed Mr. Lederman that the Journal will publish their article in its October 2017 edition.

### **FRANCHISE PRACTITIONERS GROUP & FRANCHISING EVENT**

At its June 2, 2017 meeting, the group finalized the event's speakers (Dean Heyl of the International Franchise Association [IFA] and Peter Lagarias, a well-known franchise lawyer, teacher, and writer). The group has decided on the following panelists, and they have accepted:

Keith Paul, President, Handy Pro International (Franchisor)

John Bornoty, President, The Big Salad (Franchisor)

Mark Wayne, President, Dogtopia of Bloomfield Hills (Single Unit Franchisee)

Though Mr. Steinberg has asked other Franchisees to participate, they have declined to do so. The group is looking for one more franchisee panel member.

The group decided to e-blast our section's members as we have for past events. Mr. Johnson suggested a Save The Date email or e-blast. Mr. Lederman has emailed Heather Anderson of the State Bar of Michigan on that e-blast and the following e-blasts. We are awaiting her response. The group decided to ask the Business Law Section's Chairperson, Judy Carlton of Honigman Miller, for permission to e-blast her section's members on our event. Mr. Lederman has emailed her. We are awaiting her response. The group also decided to email all group members asking for their help on this event and emphasizing their help's importance.

At the meeting, Mr. Witus and Stuart Bordman suggested meeting with the panel members to discuss the panel discussion subjects. They suggested several subjects, such as the franchisor's obligation to change the franchise in accordance with changing public tastes and wants and The Tim Horton's/Dunkin Donuts case in Canada, BGJ Enterprises v Tim Horton's. The group will meet later this month to continue event preparation.

**The Above is a Next Meeting Action Item.**

### **CHAIRPERSON'S REPORT**

Mr. Steinberg mentioned the need to decide new officers at the State Bar annual meeting. The State Bar has asked if our section is increasing its dues. After discussion, the attendees responded no. **The New Officers Subject is a Next Meeting Action Item.**

## **COMBINED BUSINESS MEETING AND SOCIAL EVENT**

The first two paragraphs below are from the January 13, 2017, February 24, 2017, and April 14, 2017 meeting minutes:

Mr. Burzych sent Mr. Steinberg the Lansing Lugnuts schedule. Mr. Burzych suggested July 12 & 13 & August 10, 2017 as possible ball game dates. The conferees discussed the need to get section members to commit to buying tickets. After some discussion, the conferees agreed to schedule a section meeting at Mr. Burzych's firm before the ball game. Afterward, the attendees would attend the ball game. Mr. Steinberg will email council and section members and invite them to come to the ball game. Mr. Young suggested that the section could pay for colleagues. So, everyone could invite a colleague to interest him or her in our section. Since the meeting, our section council has decided on an August 10, 2017 combined council meeting and ballgame event.

Mr. Burzych wanted to know which section council members and others will attend the ball game. Since the meeting, he has emailed the council members. Some have confirmed their attendance. The remaining members need to do so soon so he can buy tickets. The conferees decided that the section would pay for the tickets. So, further follow-up is essential.

Since the July 7, 2017 meeting, Mr. Burzych has asked section members to confirm their attendance at the Lansing Lugnuts ball game. His firm has bought 15 tickets. They cost \$11.00 each. Mr. Steinberg, Mr. Johnson, Mr. Lederman, Mr. Witus, and Mr. Fransway have confirmed. Mr. Steinberg, Mr. Johnson, and Mr. Fransway have guests. The business meeting will be on August 10, 2017, 5:00 PM. After the meeting, the attendees will go to the ballgame.

## **ANTITRUST LAW EVENT**

The following two paragraphs are from the September 23, 2016, October 28, 2016, and November 18, 2016 section meeting minutes: At his August 31, 2016 meeting with Mr. Lederman, Mr. Toering suggested a joint Antitrust, Franchising, and Trade Regulation Section and Business Law Section program on Antitrust and Class Actions. The Business Law Section's Commercial Litigation Group would be the section's responsible group. Mr. Lederman suggested that Mr. Toering email a proposed program outline to Mr. Powell. On September 1, 2016, Mr. Toering did so. He explained that his section had done later afternoon/early evening programs with a schedule like the following:

5:00 PM: Networking and Registration;

5:30 PM: Speakers;

7:15 PM: Questions and Answers.

Before and since the September 23, 2016 section meeting, Mr. Powell, Mr. Steinberg, and Mr. Johnson have been working with Mr. Toering on this event. They are seeking program speakers. Some speakers have declined due to work commitments or schedule conflicts. But Mr. Johnson has volunteered to speak. He will email the section members asking for volunteers to speak and for event suggestions. He has suggested asking a federal judge or an in-house counsel to speak. He believes that these kinds of speakers would draw greater attendance. Mr. Steinberg mentioned the need to give such speakers much advance notice of the event. Mr. Johnson suggested a panel discussion as part of the event, with panel members addressing the same issue from different perspectives. Mr. Steinberg suggested that the federal judge could moderate the panel discussion. Mr. Steinberg suggested a conference call with Mr. Johnson to help push the event forward. The organizers have discussed various date and location options.

Mr. Johnson stated that the organizers are moving towards a panel discussion with a moderator. The discussion would feature different perspectives. The organizers are aiming for a late spring 2017 event. After they solidify the program content, Mr. Toering will reach out to Judge Friedman, and Mr. Steinberg will reach out to Judges Cohen and Rosen. Mr. Johnson mentioned that locking in at least one judge would help solidify the program.

The following paragraph is from the January 13, 2017 meeting: Section members have resumed work with Doug Toering on the event. Mr. Steinberg suggested giving the judges enough notice and not feeling pressure to schedule the program too early.

The following paragraph is from the February 24, 2017 meeting: Mr. Johnson said that Judge Rosen would speak at the event, but that the event organizers were looking for a moderator and an attorney speaker to complete the panel. They were looking at tentative April 20 & 27, 2017 event dates. Since then, the organizers have had to move the event back. They and Mr. Steinberg have scheduled an April 14, 2017 conference call on this event.

The following paragraph is from the April 14, 2017 meeting: Several conferees had scheduled a conference call right after the meeting. This conference call occurred. The conferees included Mr. Steinberg, Mr. Johnson, Mr. Lederman, Mr. Toering, Mr. Blum, and Mr. Honigman. The conference call summary is below:

Mr. Toering stated: We need speakers and a date. Judge Rosen is willing to speak. Get in-house counsel if willing. Mr. Toering will attend a May 2, 2017 program in Lansing on business courts, alternative dispute resolution, discovery protocols, and effective case management practices from transactional lawyers and in-house counsel.

Mr. Toering and Mr. Johnson urged the event organizers to set an event date. Mr. Steinberg mentioned October 6, 2017 as the probable Franchise Event date. Mr. Toering suggested late May, early June, and September 2017 for possible Antitrust Event dates. Mr. Lederman mentioned the September 23-25, 2017 Annual State Bar Meeting. Mr. Toering mentioned the Business Law Section's September 2017 Annual Meeting

Event in Grand Rapids. Mr. Blum responded that May-June 2017 was too close. Mr. Toering reported that finding in-house counsel for the above May 2, 2017 business court event was proving difficult. He also expressed agreement with Mr. Blum's opinion that May-June 2017 was too close. So, conferees determined that the event would occur during the October 15, 2017-November 20, 2017 period. Mr. Toering reiterated that the event would begin at 5:00 PM. It would include a light supper. The schedule would be:

5:00-5:30 PM networking and registration.

5:30-7:15 PM presentation.

7:15-7:30 PM questions and answers.

Mr. Blum and Mr. Toering suggested Thursday as best day with Tuesday as next best day. Mr. Toering suggested October 26, 2017 or November 2, 2017. Mr. Johnson raised Halloween as a possible date. Mr. Toering responded that he saw no impact from Halloween. So, the conferees agreed that October 26 would be the first choice, and that November 2 or 9 would be alternate dates. The location would remain the Columbia Center, Big Beaver Road & I-75, Troy. The Columbia Center is a red building. It has a conference room. Law firms are in the building. They can help get a conference room. Mr. Toering stated that the location was a good, central, convenient location.

The event organizers had not defined the event's scope other than general antitrust and class actions. The conferees settled on recent developments in class actions and antitrust law.

Mr. Toering reiterated the need to get speakers. Mr. Steinberg reported that Judge Rosen was ready and willing to speak. The event organizers needed only to arrange a date with his secretary. Mr. Toering responded that Judge Rosen was off the bench, and that he was working with JAMS. Mr. Toering feared that he might use the event to promote his own arbitration practice. Mr. Steinberg will contact Judge Freedman. Mr. Toering will reach out to in-house counsel. The event organizers are looking at four panelists plus a judge. Judges and in-house counsel help draw lawyers to attend an event. Mr. Toering will moderate.

Mr. Lederman suggested that if getting in-house counsel proved impossible, the event organizers should contact both above judges. Mr. Toering stated that since Mr. Steinberg had contacted Judge Rosen to speak, he should remain as a speaker. Mr. Johnson suggested: Set the format. Then, set the panelists. Mr. Lederman suggested reaching out to authors of articles on antitrust & class actions. After some discussion, the event organizers decided that Mr. Honigman, Mr. Blum, and Mr. Johnson would also speak.

The conferees determined that the event charge would be \$25 per person. Mr. Johnson asked: Should we offer a discount for section members? Mr. Steinberg

suggested: If, in registering for the event, an attendee joins a section, he/she would get a discount on his/her section membership or attendance fee. The conferees agreed that in organizing the event, Mr. Toering and Mr. Blum would take the lead. They will email Mr. Steinberg with progress.

The attendees did not have new event news.

**The Above is a Next Meeting Action Item.**

## **SECTION OUTREACH EVENTS**

Mr. Lederman conducted the June 2, 2017 section outreach event at Cooley Law School, Auburn Hills. Since summer semester attendance was far less than fall and winter semester attendance, event attendance was sparse. So, the section will not schedule any more summer semester outreach events.

The attendees discussed Mr. Lederman's plans for 2017-2018 outreach events at Cooley Law School, Wayne State University Law School, and University of Detroit Law School. Mr. Lederman suggested setting up a publicity table in well-traveled areas of the first two law schools. Since the third law school has a regular career day, where different kinds of organizations, including State Bar sections, have set up tables, Mr. Lederman suggested that our section set up a table there.

## **STATE BAR LEADERSHIP FORUM**

Mr. Johnson reported on State Bar Leadership Forum. His experience was good. State Bar speakers spoke on section vision, how to serve members better, suggestions for other ways to serve them, ways to increase membership and ways to increase active membership. The speakers mentioned that some sections do monthly publications and continuing education, while others do one or the other.

The conferees agreed that we need to gain more information on what our section's members want from our section. Mr. Lederman suggested surveying our members. Mr. Johnson suggested a one-minute survey listing options. He also suggested working on our section's website. At the forum, State Bar representative said State Bar would help. Mr. Lederman suggested asking members if they want to be more active in the section and if so, how. Mr. Siljander said that ABA is a big source of current articles and information. Mr. Johnson suggested bringing more people together in social settings for networking. A conferees said that The Marijuana Section is interested in working on joint events. An attendee should talk to its Chairperson about joint events and e-blasts.

## **OTHER**

Mr. Witus mentioned a movie, Founder, on franchising and recommended it for all to see.

## **SECTION OFFICERS INFORMATION:**

Our section's officers are:

David Steinberg, Chairperson;

Cale Johnson, Vice Chairperson;

Howard Lederman, Secretary;

Lance Young, Treasurer.

### **SECTION COUNCIL MEMBERSHIP INFORMATION**

Our section's council members are:

#### **TERM EXPIRING 2017:**

1. Rebecca Turner

#### **TERM EXPIRING 2018:**

1. Hassana Daouk
2. Brian Witus
3. Cody Rockey

#### **TERM EXPIRING 2019:**

1. Mark J. Burzych
2. Alex Blum
3. Paul Fransway
4. Robert E. Murkowski

### **OTHER SECTION COUNCIL MEMBERS**

1. Immediate Past Chairperson: Matthew Powell.

Ex-Officio Publications Editor: Vacant **Note:** With the State Bar Connect introduction and implementation, this position has ceased to exist.

### **FUTURE SECTION COUNCIL MEETING SCHEDULE**

August 10, 2017      Combined Council Meeting and Lansing Lugnuts Baseball Game in Lansing, Michigan at Mark Burzych's office, address, phone number, and email address above.

August 18, 2017      In Person or Telephone Depending on Annual Meeting Event

**Note: Due to the August 10, 2017 combined meeting and event, rescheduling the August 18, 2017 meeting is in order. Possibilities include September 1 and September 8, 2017. This is a Next Meeting Action Item.**

September 29, 2017 In Person State Bar of Michigan Annual Meeting (Detroit)

November 10, 2017 Telephone Meeting

December 4, 2017 Week or December 11, 2017 Week: Holiday Season Gathering

### **TREASURER'S REPORT**

Since Mr. Young could not attend the meeting, an updated treasurer's report was unavailable. As of March 31, 2017, our section account has \$29,105.33. On March 31, 2016, our section account had \$25,130.85. As of March 31, 2017, our section has 244 members, including 208 paid members, 3 discount members, and 33 free members.

### **NEXT MEETING**

The next meeting will be an in-person meeting on August 10, 2017, 5:00 PM, at Mark Burzych's firm, Burzych, Fahey, Schultz, Burzych & Rhodes, 4151 Okemos Road, Okemos, Michigan 48864, (517) 381-3159, [mburzych@fsbrlaw.com](mailto:mburzych@fsbrlaw.com). On August 3, 2017, Mr. Steinberg emailed the agenda and call-in instructions.

Dated: August 11, 2017

/s/Howard Yale Lederman, Section Secretary  
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