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“Bioterrorism Act” Goes Into Effect

By Peter Quinter, Esq.



Remember the phrase “You are what you eat”? Now, more than ever, the Government wants to protect you from eating food that has been intentionally contaminated by a terrorist. Hence, the idea of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 was born. Commonly known simply as the “Bioterrorism Act”, the law went into effect on December 12, 2003, and requires companies in the United States that process, manufacture, pack or hold food or beverages for sale to humans or animals to obtain a registration number from the U.S. Food and Drug Administration (FDA). The law also requires foreign

companies manufacturing and shipping food to the United States to obtain a United States agent as well as an FDA Registration Number. Moreover, shippers of food or beverages to the United States must notify the FDA hours before the food arrives at the land, ocean, or international airport border describing in detail the type, quantity, and origin of the food or beverage.

Obtaining an FDA Registration Number can be done on the FDA website for free at www.access.fda.gov/, but it is only in English and requires knowledge of the Bioterrorism Act and FDA regulations. The FDA itself expects the average person to take 2.5 hours to register a company. Private companies have established websites so that companies, for a fee, may more easily and quickly obtain an FDA Registration

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Chair’s Message

By David S. Willig



It is with mixed emotions that I observe the current events of the world as this issue of the *International Law Quarterly* goes to press. On the one hand, international lawyers can have a certain professional pride as an international practitioner, and perhaps, thus, gain greater-than-average insight into the international legal issues that present

themselves in the news on a daily basis. Examples include the occasional news bulletin that a human clone has been achieved in one jurisdiction or another where it is “legal,” or at least “not illegal” to do so, and reports about Americans crossing to Canada for prescription drugs, and sometimes even buying them from there over the Internet, or through the mail.

On the other hand, some international legal issues are enmeshed with violence, with terrorism, indeed, paradoxically, with

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CHARI'S MESSAGE

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disorder. Too often, events in the Middle East, and more recently from Haiti, conform to this pattern, sadly enough. The events unfolding in Haiti, toward an unknown and uncertain destiny at this writing, hit particularly close to home to our Section, not solely for their geographic proximity and their potential for demographic impact on our State.

The International Law Section of The Florida Bar, beginning from the Retreat hosted by the current Chair in August 2003, undertook to mobilize its resources, through our protocol partners from the Bars of Quebec (Canada) and Paris (France), to organize a donation of law books to aid

judicial reform and provide resources for the judiciary, as the Republic of Haiti embarked upon its bicentennial year. Alas, even as the nascent project began to take shape, at least conceptually within and among Section membership and leadership, things began to stall as storm clouds of dissent and dissatisfaction gathered in Haiti. As of this writing, whole towns and important roads are in the hands of "rebel" forces, and the news reports that the capital may soon be at risk.

I raise this point, ironically, not as a message of despair, but rather one of hope. Hope that, even though today Haiti's bicentennial year may seem to be, or indeed may be, marred by violence and uncertainty, we can still reach out someday in the future. Presumably, when the dust settles, the Republic of Haiti will, in some

form or other, continue to maintain a judicial system of one kind or another. Presumably, too, that will mean a future opportunity for us to help and serve our regional neighbor.

As lawyers, particularly those in active practice, we know, or we learn, that things take time, and some things take even more time than first anticipated. As Chair, I am hopeful that the current events will ultimately give way to an atmosphere and environment more conducive to giving effect to our Section's stated desire to assist in the evolution and development of a strong, independent and a just judiciary in Haiti.

It may not happen during my mandate as Chair, but I am as much confident as hopeful that our Section will give continuity to projects such as these for the unforeseeable future.

2004 - 2005 Section Calendar

April 21-23, 2004	Barcelona Forum, Barcelona, Spain
May 13 - 14, 2004	The Florida Bar Section Leadership Conference, Tallahassee
June 24, 2004	International Litigation Update at Annual Meeting, Boca Raton Resort & Club
June 25, 2004	International Law Section Annual Meeting, Boca Raton Resort & Club, Boca Raton
August, 2004	International Law Section Retreat
Early October 2004	International Financial Seminar, Montreal, Canada (with participation by Canadian, French & Russian Bars)
October 8, 2004	International Arbitration Update, Hyatt Regency Downtown, Miami
October 15, 2004	Executive Council Meeting and Reception for Board of Governors, Las Vegas, Nevada
November 4, 2004	Doing Business in Latin America, Hyatt Regency Downtown, Miami
January 19, 2005	International Law Certification Review, Hyatt Regency Downtown, Miami
February 14-16, 2005	European Business & Investments in USA (coordinating with German, French, Austrian, Spanish, Russian Bars & Notarial Associations)
February 17-18, 2005	Immigration Law Update, Hyatt Regency Downtown, Miami (co-sponsored by South Florida Chapter of AILA)
April 2005	Florida-Canada Forum

The 65,000 H-1B Numerical Cap is Back – Legal Strategies to Overcome the Cap

by Margaret Ioannides

H-1B Nonimmigrant visas are among the most commonly used visa classifications for U.S. employers seeking temporary employment authorization for foreign professionals in positions involving specialized knowledge and requiring at the entry level at least a bachelor's degree (or its equivalent) in the specialty.¹ These visas have been used by employers in various industries, including the information technology, education, medical, and life sciences sectors.

The Government has established an annual cap limiting the number of foreign nationals that can be issued these visas. Absent Congressional intervention, it is highly likely that this numerical cap will be reached by February or March 2004. This means that regardless of the filing of an H-1B petition or the requested "start date" for employment, potential H-1B employees will not be able to legally start working for their U.S. employers until the start of the new fiscal year on October 1, 2004. This article provides an overview of the H-1B numerical cap, as well as legal strategies counsel may employ in advising prospective H-1B employers and employees seeking to overcome the cap.

Numerical Cap for H-1B Nonimmigrant Visas

Pursuant to the Immigration Act of 1990, the Government established a 65,000 annual cap on the number of foreign nationals that could be issued H-1B visas or given this nonimmigrant status. This numerical limitation was temporarily raised for fiscal years 1999 and 2000 to 115,000 and to 195,000 for fiscal years 2001 through 2003.² However, on October 1, 2003, the numerical cap reverted back to the original 65,000 per year, despite the continuing demand for these visas. For example, in the last fiscal year, alone, there were approximately 76,000 H-1B cap subject approvals, and during the economic peak in fiscal year 2001, there were

approximately 164,000 cap subject approvals by the former Immigration and Naturalization Service.³

According to U.S. Citizenship and Immigration Services (USCIS) statistics released on January 21, 2004, there were already 43,500 pending cap subject cases and approvals for the first quarter of Fiscal Year (FY) 2004.⁴ Furthermore, two new free trade agreements with Chile and Singapore potentially set aside an additional 6,800 H-1B numbers, thus further reducing the numerical cap.

Absent Congressional intervention, it is highly likely that the numerical cap will be reached well before the start of the next fiscal year, and probably as early as February or March 2004. This means that regardless of the filing of an H-1B petition or the requested "start date" for employment, potential H-1B employees will not be able to legally start working for their employers in the United States until October 1, 2004. This could not only affect the start date for prospective "new hires", but also could result in a gap of employment authorization for F-1 students who may already be working for their U.S. employers pursuant to optional practical training, but whose employment authorization may expire before the end of this fiscal year.

Exemptions to the Cap

In dealing with this issue, counsel should first evaluate whether one of the exemptions, established pursuant to the American Competitiveness in the Twenty-First Century Act (AC 21), to the H-1B numerical cap is applicable. The most frequently applied exemption involves cases that do not involve "new employment." In this regard, only applications for "new employment" are counted against the cap. Specifically, petitions that are filed on behalf of foreign professionals who have already been counted against the cap within the past six years, such as individuals who are already in the United States in H-1B status, are cap exempt. Likewise, applications to extend or amend H-1B

status are exempt from the cap. Finally, in cases where multiple petitions are filed on behalf of one foreign national (i.e., concurrent employment scenarios), the INA provides that the foreign national shall only be counted once for purposes of the cap.⁵

Therefore, to the extent possible, counsel should advise employers to consider hiring foreign nationals that are already in the U.S. in H-1B status. In addition to avoiding the numerical cap issue, employers would also benefit from H-1B portability provisions that allow these individuals to begin working for their U.S. employers as soon as the H-1B petition is filed with the USCIS, rather than after the adjudication of the petition by the USCIS and, in certain cases, the issuance of the H-1B visa at a U.S. Consulate abroad.⁶

In addition to the exemption for "new employment", AC 21 also established exemptions to the numerical cap for individuals employed by institutions of higher education, or related or affiliated nonprofit entities, as well as for nonprofit research or governmental research organizations.⁷

Not Exempt-File H-1B Petitions at Earliest Date Possible

Assuming the filing is not exempt from the numerical cap and the cap has not yet been reached, counsel should advise employers to act as quickly as possible to file any H-1B cap subject cases via the USCIS Premium Processing Program, thus ensuring USCIS action on the petition within 15 calendar days. This would include advising the filing of such petitions for F-1 students who may currently be working pursuant to optional practical training, but whose employment authorization may expire before the end of this fiscal year. Counsel should advise employers to keep in mind, however, that the USCIS will likely temporarily "suspend" premium processing for cap

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H-1B NUMERICAL CAP

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subject petitions as the cap gets closer to being met.

Alternatives to H-1B Nonimmigrant Visas

Once the numerical cap is reached for the present fiscal year, employers seeking to hire foreign professionals for “new employment” will either need to delay the start of employment for these professionals until the next fiscal year (i.e., October 1, 2004) or will need to consider alternatives to the H-1B classification. The following are several nonimmigrant classifications that permit employment. In considering the use of these alternatives, counsel should carefully re-evaluate the facts of each particular case, as well as the goals and objectives of the foreign national and prospective employer.

TN (Trade NAFTA) – The North American Free Trade Agreement (NAFTA) provides for the temporary entry into the United States of Canadian and Mexican citizens seeking to engage in business activities at a professional level.⁸ Admission under the TN classification allows temporary employment authorization for qualified Canadians and Mexicans seeking to work in any of 63 listed professional occupations. These professions and the minimum requirements for qualification for each profession are enumerated at 8 CFR §214.6(c). Qualifying occupations include, for example, engineers, graphic designers, architects, medical/allied health professionals, scientists, and teachers.

Application procedures for the TN classification are considerably more streamlined than those for the H-1B. In this regard, employers are not required to file a petition with the USCIS or a labor condition application with the Department of Labor. Rather, Canadian citizens apply for TN status directly with an immigration officer at a U.S. class “A” port of entry, a U.S. airport handling international traffic, or a U.S. pre-clearance/pre-flight inspection station.⁹ Furthermore, as of January 1, 2004, Mexican citizens may apply for TN visas directly at a U.S. consulate,

without the need for prior petition approval from the USCIS or a certified labor condition application from the Department of Labor.¹⁰ Finally, there are no numerical limitations on this classification. Counsel should keep in mind, however, that the TN classification, unlike the H-1B classification, is subject to the presumption of immigrant intent imposed by section 214(b) of the Immigration and Nationality Act.

L-1 (Intracompany Transferee) - This classification allows temporary employment authorization for foreign nationals who have worked abroad continuously for one year (within three years prior to the filing of a petition) in an executive or managerial (L-1A)¹¹ or specialized knowledge (L-1B)¹² capacity for a firm or corporation or other legal entity or parent, branch, affiliate or subsidiary, and who seek to enter the US temporarily to continue to render their services to a branch of the same employer or parent, subsidiary or affiliate in a capacity that is managerial, executive, or involves specialized knowledge.¹³

Application procedures for L status are similar to those for the H-1B classification, except for Canadians who may apply directly with an immigration officer at a U.S. class “A” port of entry, a U.S. airport handling international traffic, or a U.S. pre-clearance/pre-flight inspection station. The L classification, however, “is not encumbered by additional Department of Labor (DOL) requirements, including the Labor Condition Application (LCA), and all of the LCA’s attestations relating to wages, employment terms, and employment conditions aimed at protecting US workers and avoiding abuses of the category.”¹⁴ There are also no numerical limitations on this classification. In addition, by statute enacted on January 16, 2002, accompanying spouses of L visa holders may apply for employment authorization based on their L “dependent” classification.¹⁵ This employment authorization does not currently exist for accompanying spouses of H-1B non-immigrants.

Finally, “blanket L” procedures are available to expedite and facilitate ease of processing for L intracompany transferees.¹⁶ The blanket is especially beneficial in decreasing

the amount of processing time, as the foreign national presents the documentation directly to the U.S. consulate abroad for adjudication. This process allows the foreign national to bypass increasingly lengthy processing times with the USCIS. By statute enacted on January 16, 2002, companies that have “blanket L” programs may transfer managers, executives, and specialized knowledge professionals that have worked abroad for six months, rather than one year.¹⁷

E-1 (Treaty Trader) and E-2 (Treaty Investors)- This classification allows the employment of foreign nationals as treaty traders (E-1) if they seek admission solely to carry on substantial trade between the U.S. and the foreign state of which they are nationals, or as treaty investors (E-2) to develop and direct the operations of an enterprise in which they have invested, or of an enterprise in which they are actively in the process of investing a substantial amount of capital. This classification is limited, however, to nationals of countries with which the US has a treaty providing for such trading or investing activities.¹⁸

Application procedures for this classification are more streamlined than those for the H-1B. Specifically, applications for E visas are made directly at U.S. Consulates abroad, without the need for prior petition approval by the USCIS. Guidelines for the adjudication of these petitions by the Consular Officers are set forth in the Department of State Foreign Affairs Manual.¹⁹ In addition, there are no numerical limitations on this classification. Finally, by statute enacted on January 16, 2002, accompanying spouses of E visa holders may apply for employment authorization based on their E “dependent” classification.

O-1 (Extraordinary Ability or Achievement) - This classification allows temporary employment authorization of foreign nationals who have demonstrated “extraordinary ability” in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim, or “extraordinary achievement” in motion picture and television productions, and whose achievements have been recognized in the field through

extensive documentation, and who are coming to the US to continue work in the area of “extraordinary ability” or “achievement.”²⁰

Application procedures for O-1 status are similar to those for the H-1B classification; however, there is no need for a labor condition application to be filed with the Department of Labor. Specific guidelines are set forth in the regulations regarding the evidence that must be submitted in order to demonstrate the foreign national’s “extraordinary ability” or “extraordinary achievement.”²¹ Finally, unlike the H-1B classification, there are no numerical limitations on the O-1 classification.

Conclusion

In light of the current economic climate, as well as the post September 11th anti-immigrant backlash, it is doubtful that Congress will intervene to raise the H-1B cap. Employers will, thus, be faced with either delaying the prospective start date of employment for such “new hires” or considering alternatives to the H-1B classification, such as those outlined above. Although proponents for maintaining the existing cap and for further restricting the use of H-1B and other employment based nonimmigrant visas argue that this will somehow protect U.S. workers and the U.S. economy, the reality is that employers will either seek out alternative legal strategies to overcome these restrictions or focus their efforts on outsourcing such positions.

Endnotes:

¹ The key issues in determining whether an individual is eligible for H-1B classification are as follows: (1) whether the position is a specialty occupation, and (2) whether the individual meets the requirements for the specialty occupation. The Immigration and Nationality Act defines the term “specialty occupation” as one that requires (A) theoretical and practical application of a body of highly specialized knowledge, and (B) attainment of a bachelor’s or higher degree in the specific specialty (or its equivalent) as minimum for entry into the occupation in the United States. Immigration and Nationality Act (INA) § 214(i)(1), 8 U.S.C. § 1184(i). For a more detailed discussion of “specialty occupation”, see Jonathan S. Greene, *H Nonimmigrants*, 2 Immigration & Nationality Law Handbook 1 (2003-04 ed.).

² INA §214(g), 8 U.S.C. §1184(g).

³ Stanley Mailman and Stephen Yale-Loehr, *Recent Changes in the H-1B Visa Category*, 8 Bender’s Immigr. Bull. 1697, 1698 (Nov. 1, 2003).

⁴ Department of Homeland Security, Press Office, FY 2004 First Quarter H-1B Processing (Jan. 21, 2004).

⁵ Pursuant to the Immigration and Nationality Act, any alien who has already been counted toward the numerical cap, within the six years prior to the approval of an H-1B petition, shall not again be counted toward the cap unless the alien would be eligible for a full six years of authorized admission at the time the petition is filed (i.e., unless the alien had been outside the United States for one year). Where multiple petitions are approved for one alien, that alien shall be counted only once. INA §214(g)(7), U.S.C. § 1184(g)(7).

⁶ INA §214(m), 8 U.S.C. § 1184(m).

⁷ INA §214(g)(5), 8 U.S.C. § 1184(g)(5).

⁸ INA § 214(e), 8 U.S.C. § 1184(e). 8 C.F.R. § 214.6.

⁹ 8 C.F.R. § 214.6(e).

¹⁰ On December 31, 2003, the ten year duration for the annual numerical cap and the petition procedures imposed on the TN category for Mexican citizens sunset. The Department of State updated the Foreign Affairs Manual to account for the changes in the processing of Mexican TN visa applications. 9 FAM 41.59 N1; *Posted on AILA InfoNet at Doc. No. 04020413* (Feb. 4, 2004).

¹¹ INA § 101(a)(44), 8 USC § 1101(a)(44) defines the terms “managerial capacity” and “executive capacity.” Guidelines for determining managerial or executive capacity are also set forth in the Department of State Foreign Affairs Manual, at 9 FAM 41.54, Note 8.2-1.

¹² Guidelines for determining specialized knowledge capacity are set forth in the Department of State Foreign Affairs Manual at 9 FAM 41.54, Note 8.2-2.

¹³ INA § 101(a)(15)(L), 8 USC § 1101(a)(15)(L). For a more detailed discussion of the L Nonimmigrant category, see Cheryl

Williams, *Intracompany Transferees (L Nonimmigrants)*, 2 Immigration & Nationality Law Handbook 76 (2003-04 ed.).

¹⁴ Dawn Lurie and Mahsa Aliaskari, *Congress Launches Assault on the Intracompany Transferee: Can the American Economy Withstand Proposed Changes to the L Visa*, Immigration Law Today 20,22 (Nov./Dec. 2003).

¹⁵ INA § 214(c)(2)(E), 8 U.S.C. § 1184(c)(2)(E).

¹⁶ 8 CFR § 214.2(l)(4).

¹⁷ INA § 214(c)(2)(A), 8 U.S.C. § 1184(c)(2)(A).

¹⁸ INA § 101(a)(15)(E), 8 USC § 1101(a)(15)(E).

¹⁹ 9 FAM 41.51, Notes 1-17.

²⁰ INA § 101(a)(15)(O)(i), 8 USC § 1101(a)(15)(O)(i). 8 CFR§ 214.2(o)(1).

²¹ 8 CFR 214.2(o)(3).

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Barcelona-Florida International Law Symposium

For registration information, see page 13.

An Overview of the Corporate Laws of England: Companies Act 1985

By Vincent O'Brien



This is the first in a series of articles which will touch upon the basic legal issues which United States (US) clients will encounter when they establish a base of operation in England. The articles will focus on the English laws which most contrast with general legal principles existing in Florida and the United States. The goal is to provide the corporate practitioner with a general knowledge on various English legal matters. In this way it is hoped the reader can assist his/her client in the formative stages of a planned European expansion.

The United Kingdom (UK), comprising England, Wales, Scotland and Northern Ireland, attracts the largest share of US investment in Europe. Why the UK? UK based companies are well placed to serve the overall European Market Place and its 320 million consumers¹. London is a European and World banking centre. The British transport network, which includes the Channel Tunnel, provides low cost delivery routes via road, rail, sea and air to the whole of Europe. The UK has a large skilled work force and one of the highest education standards in Europe. Labour regulation in the UK is the most flexible and it has the lowest main corporate tax rate in Europe. Finally, but perhaps most importantly, the UK has a common language and is a common law jurisdiction with long standing cultural, economic and political ties with the US.

This particular article will focus on the general corporation statute in England and Wales, the Companies Act of 1985 ("Act"). While the government has proposed changes to the Act such changes are not expected to be implemented until 2006 at the earliest.² For ease of reading I have

adopted standard US nomenclature even when such is not typically used in England. Future articles will focus on employment and labor law, real estate law and the law of contracts.

1. Financial Assistance

Section 151 – 153 of the Act prohibits the target of a share acquisition from providing "financial assistance" to the buyer. Specifically it prohibits the target or its subsidiaries from providing a gift, loan, indemnity, security³ or guarantee with respect to the purchase of its shares or permitting any reduction in the net assets of the target or its subsidiaries which exceeds 1% of the acquisition costs of the shares. This restriction includes a prohibition against use of the target's 24/11/2003 assets to reduce the purchaser's indebtedness post acquisition unless the target can lawfully dividend to the purchaser. The statute is drafted broadly and not surprisingly case law interpreting it has extended the scope of the restriction.

There are a number of exceptions to the financial assistance prohibition. As stated above a distribution of the company's assets by way of lawful dividend is exempt⁴ as is distribution in the course of the company's lawful liquidation. Also exempt is financial assistance to fund an employee share option or other similar plan. The statute provides an exemption for financial assistance where "the company's principal purpose in giving that assistance is not to give it for the purpose of the acquisition". Unfortunately, the judicial decisions interpreting this provision have rendered this exemption a virtual nullity.

The prohibition against financial assistance is absolute with respect to companies designated a public company ("plc"). All companies listed on the London Stock Exchange or otherwise traded publicly must be a plc. For private companies, however, sections 155-158 of the Act provide a reprieve from the financial assis-

tance restrictions. This is generally known as a "whitewash procedure". There are several requirements for a company to complete a whitewash procedure: a) the company must have net assets; b) the directors must sign a statutory declaration that the company is solvent; c) the shareholders must pass a resolution authorising the financial assistance; and d) the financial assistance must be given within 8 weeks of the directors' statutory declaration. A company that violates the financial assistance rules is liable to fine and every officer who is in default is liable to fine and imprisonment.

Sections 151-158 of the Act and the case law which has developed around financial assistance are complex and at times inconsistent. If the purchaser of an English company is borrowing funds in England, lender's counsel will be careful that the financial assistance provisions are not violated because this may void the lender's security. Otherwise, purchasers are best served to be cautious and to plan ahead so as to structure the transaction to avoid the financial assistance pitfalls.

2. Rules on Declaring and Paying Dividends

Part VIII of the Companies Act (sections 263 – 281) sets out specific rules as to how and when a dividend may or may not be paid to shareholders. Dividends may only be paid out of retained earnings of the Company. Specifically section 263(3) limits dividends to the amount of accumulated net earnings⁵ less accumulated losses⁶ since incorporation. In addition a public company may only pay a dividend if its net assets exceed its stated capital plus *undistributable reserves*.⁷

Directors may only recommend the payment of a dividend. It is typically the shareholders at an annual meeting who declare the dividend. Once declared the dividend is a debt payable to the shareholder. A dividend declared in excess of retained earnings is unlawful and a share-

holder receiving such a dividend, provided she/he had knowledge or reason to believe the dividend was unlawful, is liable to repay it. Directors of public companies who authorise the payment of an unlawful dividend, regardless of whether they receive it, may be personally liable to repay the sum to the company.⁸

3. Rules on the Maintenance of Capital

The maintenance of share capital is a fundamental principle of English company law. For example, a reduction in the authorized shares of a company requires a court order and in certain circumstances the consent or payment in full of the company's creditors.⁹

A company may only redeem shares if its Articles of Association¹⁰ designate the shares as redeemable or the company is generally authorized to redeem its shares. In either event and as with the payment of dividends, the redemption may only be made out of retained earnings if any or with the proceeds of a fresh issue of shares made for the purpose of the redemption.

There is no effective merger statute in England. The absence of a workable pure merger regime has not dampened the acquisition and disposal market in the UK. It does, however, at times create havoc when seeking to effect a group reorganisation. Without a merger option corporate consolidations are typically accomplished by means of a hive up of assets. Regrettably there are complicated income and capital gains tax considerations which arise in group asset transfers, particularly where there are foreign corporations involved in the group structure. Moreover, there is case law which deems a transfer of an asset to a parent at undervalue a dividend to the extent of the difference between the consideration and the current value.¹¹ One must take care when developing a group structure in the UK and monitor the strengths and weaknesses of the structure on a regular basis.

4. Obligation to Audit Financial Statements

Under the Act, the general rule is that all private and public companies

must engage an auditor and have an auditor's report prepared on the annual financial statements¹². Companies with gross revenue under £1.2 million and gross assets of less than £1.68 million are generally exempt. Certain small and medium sized companies are afforded limited relief with respect of scope of the financial statements and the delivery requirements. The general rule is that all companies must file their audited financial statements with Companies House¹³ where they are available for public inspection.

5. Directors' Duties

In England the term "director" connotes both a member of the board of directors and an officer engaged in day to day management of the company. Designations such as Managing Director and Financial Director are the norm.

The general rule is that directors' duties are owed to the company and not the shareholders. However, there are certain circumstances where the directors owe a duty to creditors¹⁴ and employees of the company.¹⁵ English directors have fiduciary duties similar to those in the United States. They are generally divided into the duties of 'good faith' and 'skill and care'.

A director is under a duty to act in the best interests of the company, to act honestly and in good faith and to use powers properly. This includes a ban on making a secret profit and an obligation to avoid conflicts of interest. There exists a duty for a director to exercise the skill and care expected from a person in his position with his particular knowledge and expertise.

There are a number of the statutory duties and limitations on directors:

- If a director is buying or selling something to or from the company, and the value of the item is either in excess of £100,000 or more than 10% of the company's assets, then majority shareholder consent is required.
- Loans from the company to the directors are prohibited.
- Directors are responsible for producing the requisite financial statements each year and sending them to shareholders and Companies House.
- Directors are responsible for keeping the minute book and stock transfer ledger accurate including maintaining a register of directors and directors' interests in shares of the Company.

Conclusion

Few will doubt the presence of a creditor protection, capital maintenance doctrine underlying the whole of English company law. Although the government has sought to "modernise" the legislation, it is not at all clear when or even if this process will be finalised. The regulatory environment in England will appear overly burdensome to the corporate practitioner in the United States. However, even with its shortcomings, Company law in England is far more user friendly than that on the Continent.

Endnotes

¹ An additional 10 countries are scheduled to join the EU in May 2004.

² The present government has been pro-
continued, next page

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Articles between 10 and 20 pages involving the various disciplines affecting international trade and commerce may be submitted on computer disk with accompanying hard copy, or on typewritten, double-spaced 8 1/2" x 11" paper (with the use of endnotes, rather than footnotes.) Please contact Francesca R. Di Staulo at FDistaulo@kpkb.com for submissions to the *Quarterly* and for any questions you may have concerning the *Quarterly*.

LAWS OF ENGLAND

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posing a comprehensive overhaul of the Act 1985 since 1998. While a series of consultations have occurred only one-third of the legislation has been drafted.

³ Financial Assistance will be present when the buyer utilises debt finance secured in whole or part by the assets of the target. Recent case law has confirmed that payments by the target to an accounting firm performing due diligence for the buyer is unlawful Financial Assistance.

⁴ See "Rules on Declaring and Paying Dividends" below which illustrates the limitations on declaration and payment of dividends generally.

⁵ Defined at section 263(3) as "accumulated realised profits, so far as not previously

utilised by distribution or capitalisation"

⁶ Defined at section 263(3) as "accumulated net losses, so far as not previously written off in a reduction or reorganisation of capital duly made"

⁷ Section 270 of the Act provides that the company's last annual financial statements are the proper basis to determine if the company has sufficient retained earnings to pay a dividend. See "Obligation to Audit Financial Statements" below.

⁸ *Bairstow and others v Queens Moat Houses plc* [2001] All ER (D) 211

⁹ Section 136(2)

¹⁰ The Articles of Association are roughly equivalent to the Articles of Incorporation under Florida law

¹¹ The limitations with respect to the declaration and payment of dividends apply to under valued transfers. See "Rules on Declaring and Paying Dividends" above.

¹² Section 235 of the Act

¹³ Companies House is an Executive Agency of the Department of Trade and Industry. The main functions of Companies House are to incorporate and dissolve limited companies, examine and store company information delivered under the Act and related legislation and make this information available to the public.

¹⁴ Section 214 of the Insolvency Act 1986

¹⁵ Section 309 of the Act.

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International Litigation Update

presented by the International Litigation and Arbitration Committee
of the International Law Section

Thursday, June 24, 2004

Boca Raton Resort & Club, Boca Raton

MORNING SCHEDULE

8:45 a.m. - 9:00 a.m.

Introductory Remarks

9:00 a.m. - 9:30 a.m.

Personal Jurisdiction

9:30 a.m. - 10:00 a.m.

Forum Selection Clauses

10:00 a.m. -- 10:15 a.m.

Break

10:15 a.m. - 11:00 a.m.

Choice of Law/ Conflicts of Law

11:00 a.m. - 11:30 a.m.

**New Tools For Your International
Discovery Tool Box**

11:30 a.m. - 12:00 p.m.

Enforcing Foreign Judgments in Florida

12:00 p.m. - 1:15 p.m.

**Luncheon (compliments of the
International Law Section)**

AFTERNOON SCHEDULE

1:15 p.m. - 1:45 p.m.

Forum Non Conveniens

1:45 p.m. - 2:15 p.m.

Anti-Suit Injunctions

2:15 p.m. -- 2:30 p.m.

Break

2:30 p.m. - 3:15 p.m.

**The Use of Criminal Proceedings in
International Litigation: A Comparative
Analysis**

3:15 p.m. -- 3:45 p.m.

Service of Process Abroad

3:45 p.m. - 4:15 p.m.

**Ethical Pitfalls for Florida Practitioners
Under the Foreign Corrupt Practices Act**

** See Hotel Reservation Form on page 9.

To register for the Annual Meeting, see the insert
in your May Bar Journal, or visit www.flabar.org
and follow the links for "Annual Meeting."

2004 Annual Meeting

The Florida Bar

June 23 - 26, 2004



Boca Raton Resort & Club
501 East Camino Real
Boca Raton, FL 33432
561/447-3000

For reservations, call:
800/327-0101 or 888/503-2622
 (Identify yourself as an attendee of the Florida Bar's Annual Meeting for group rate. Deposit required at time of reservation)

A daily service charge of \$10.00, plus tax, covers valet parking, maids and bell staff. Please select choice of hotel room from the following categories (plus state and local taxes).

Category	Addison Court	Villa room	Villa apartment	Cloister room	Tower room	Beachclub waterway	Beachclub oceanview
Single or Double occupancy	\$135	\$119	\$195	\$150	\$160	\$165	\$195

- Children under 16 free in same room with parents.
- Third adult in room is additional \$30 per day.
- Changes or cancellations must be received 48 hours prior to check in.

For reservations call 800/327-0101 or 888/503-2622

Travel Information

Airline Travel

Delta is offering special rates which allow you a 5% discount off published round-trip fares within the continental U.S. Ask about "zone fares" to compare with the regular published rates. You or your agent must call the appropriate number for Delta.



Delta File No. 200516A, Meeting Network, **800/241-6760**, Monday - Sunday, 8:00 a.m. - 11:00 p.m., eastern time.

Rental Car

Avis Convention Special: Special rates for our meeting are available by calling Avis at 800/331-1600, Worldwide Discount No. A421645.



Directions to the Boca Raton Resort & Club

From the south on I-95

1. Turn right on **Hillsboro Blvd.**, drive approximately 1 1/2 miles
2. Turn left on **Federal Hwy. (US 1)**, drive approximately 1 3/4 miles
3. Turn right on **Camino Real** to the Resort (on the left)

From the North on I-95

1. Turn left on **Palmetto Park Road**, drive approximately 2 miles
2. Turn right on **Federal Highway (US 1)**, drive 1/2 mile
3. Turn left on **Camino Real** to the Resort (on the left)

BIOTERRORISM ACT

from page 1

Number. Becker & Poliakoff, P.A. has established www.fda-usa.com which is in many languages, and has successfully registered companies from all over the world.

Although the law went into effect on December 12, 2003, the two Federal agencies responsible for enforcing the law, the FDA and the Bureau of Customs and Border Protection (U.S. Customs), announced on December 12, 2003, that they will not enforce the law until March 13, 2004. The reason for the delay in enforcement reveal the limitations of the new law, and support the argument of the United States food industry that the law should be scrapped as unworkable and ineffective.

The Bioterrorism Act has two objectives: (1) electronically target, physically examine, detect, and prevent intentionally contaminated food from entering the United States food supply chain, and (2) after the contaminated food is detected (before or after someone gets sick or dies), trace the source of the contaminated food as far back as the manufacturer. The Federal Food, Drug and Cosmetic Act already provided the FDA the legal authority to accomplish both objectives, and FDA Inspectors at the ports of entry routinely sample imported merchandise. Any food not fit for human consumption is rejected, and must be exported or destroyed. The FDA, however, had no legal authority overseas to inspect manufacturers or warehouses, and the new law does not give the FDA that additional authority.

Unlike the U.S. Department of Agriculture (USDA), FDA personnel are located only in the United States, and do not routinely inspect or certify food manufacturers overseas. Whereas USDA personnel, pursuant to the Meat Inspection Act, routinely inspect overseas meat suppliers to the United States, and the USDA cooperates with their meat inspection counterparts in the foreign country, the Bioterrorism Act does not even contemplate cooperating with foreign governmental agencies responsible for protecting the food supply. Consequently, many countries and enti-

ties such as the European Union have objected to the new law. Furthermore, several countries are now contemplating a reverse Bioterrorism Act which would require companies in the United States to register with the foreign country before any food or beverages are sold by the United States company to the foreign country.

Until March 13, 2004, companies may continue to import food and beverages from foreign countries without providing an electronic prior notice (PN) submission to the FDA, and not risk having the food or beverages detained by Customs or the FDA. The delay in the enforcement of the new law was simple – only 1 out of 4 companies expected to register with the FDA did so by December 12, 2003. If the enforcement began on that date, 3 out of every 4 shipments of food and beverages entering the United States could have been detained by Customs, transported to a Customs designated facility, and probably physically examined and refused entry into the United States. Food products, especially perishables such as fresh seafood, would at least have been delayed getting to the ultimate consumer, and at worst have to be destroyed. As it is, even with the delayed enforcement of the law, the food industry expects food prices to rise in 2004 as a direct result of the Bioterrorism Act.

The amount of food and beverage products being imported into the United States is enormous. Whether by airplane, ship, train, or truck at the hundreds of border crossings, food and beverages are a very significant portion of the overall trade to the United States. Moreover, whether manufactured overseas and imported, or manufactured in the United States, food and beverages typically passes through numerous entities before being purchased by the consumer at a restaurant, supermarket, or other retailer. Tracking that enormous amount of data is extremely difficult. Nevertheless, the Bioterrorism Act attempts to trace the movement of the food by requiring persons and companies which have contact with the food or beverages to keep certain records.

The FDA's "Recordkeeping Requirement" was issued on May 9, 2003 as a Proposed Rule, and re-

ceived plenty of opposition, hence the significant delay by the FDA in issuing a Final Rule. Even when the Final Rule is issued, the Recordkeeping Requirements will not be effective until 6 months following that date. Furthermore, the Recordkeeping Requirements will not apply to employers of less than 500 but more than 10 employees, for one year after the Final Rule is published, and for employers with 10 or fewer employees, not until 18 months after the Final Rule is published. The Recordkeeping Requirements apply to both companies in the United States and to companies outside the United States, which were also required to obtain an FDA Registration Number.

Records are required to be maintained for 2 years, unless the food is perishable, in which case the records are only required to be maintained for 1 year. The records must be made available to the FDA within 4 hours of any such request from the FDA. Under the new law, FDA personnel would have the authority to demand, examine, and copy those records whenever there is a "reasonable belief that a food is adulterated and presents a threat of serious adverse health consequences or death to humans or animals." The type of records required to be maintained includes the specific source of the food, a description of the food, the lot or code number, its quantity, how it is packaged, the date the food was received or shipped, and the name of the company transporting the food to and from the recordkeeper. As with the Registration Requirement, the FDA exempts United States and foreign farms and restaurants from the Recordkeeping Requirement.

As with the Registration Requirement, and the Prior Notice Requirement, failure to comply with the Recordkeeping Requirement is a "prohibited act." Committing a prohibited act may result in any of three options: (1) the United States files suit in Federal Court to obtain a court order preventing the person from repeating the prohibited act, or (2) the United States files a criminal action in Federal Court to prosecute a person who is responsible for the commission of a prohibited act, and upon conviction, will have his or her privilege of importing food or beverages into the United States revoked. It

will be uncommon for the United States to take such a drastic step, and even more rare for any criminal prosecution to be pursued. The third, standard option, is simply to have an food or beverage which is attempting to be imported into the United States refused admission into the United States by the FDA and denied entry by Customs.

So, do you feel any better now that you know the food that you give to your pet mouse came from a company that has an FDA Registration Number? Or, are you satisfied that when contaminated food which caused someone to become ill inside the United States but which originated outside the United States, is discovered not to have kept the required records, the punishment will be that is cannot send any more food to the United States? In my opinion, the Bioterrorism Act is overbroad, an unnecessary burden to the food and logistics industries, an affront to foreign countries, and will not significantly increase the security of the food supply in the United States. What it will do, unfortunately, is create a non-tariff barrier to international trade, and unnecessarily increase food prices around the world.

Peter Quinter, a shareholder, has been in charge of the Customs and International Trade Department of the international law firm of Becker & Poliakov, P.A. since May 1994. Mr. Quinter principally represents persons and companies involved in international trade and transportation, including litigation in the state and federal courts located in Florida, and the U.S. Court of International Trade in New York. Board Certified in International Law, Mr. Quinter was appointed by The Florida Bar to the International Law Certification Committee. For five years, Mr. Quinter served as legal counsel at the Southeast Regional Headquarters of the United States Customs Service in Miami, Florida. Responsibilities included providing legal advice and representation to management of Customs on all matters involving the administration and enforcement of the customs and international trade laws. Mr. Quinter provided assistance to the U.S. Department of Justice in civil and criminal prosecutions on a variety of customs violations, including commercial fraud, trade embargoes, and export controls.

Barcelona- Florida International Symposium 2004 Agenda

All meetings will be held at the Barcelona Bar Association:
IL.LUSTRE COL.LEGI D'ADVOCATS Mallorca 283Tel: 934 961 880

WEDNESDAY APRIL 21

Cocktail Reception *Location tbd*

THURSDAY APRIL 22

- 09:00 – 10:15 **Welcome.**
Speaker tbd.
Economic Aspects of the EU-US Relationship
EU: Jaime Malet, US: Senator George Firestone
- 10:15 – 11:15 **Foreign Investments**
EU: Jorge Adell, US: Senator Paul Steinber
Practical Legal Aspects of an Enlarged European Union
EU: Jose Ma. Balcells
- 11:15 – 11:30 **BREAK**
- 11:30 – 12:30 **How to Incorporate a Company**
EU: Salvador Bartolome, US: Senador Paul Steinberg
Immigration Update
EU: Roberto Sanchez, US: Oscar Levin
- 12:30 – 13:30 **Enforcement of US Judgments and Arbitration Awards in Spain**
EU: Francisco Ramos
Practical Considerations to Domesticating Spanish Judgments in the US
US: Edward H Davis Jr
Uniform Domain Name Dispute Resolution Policy
EU: Miquel RoviraUS:
- 13:30 – 15:00 **LUNCH**
- 15:00 – 16:00 **An Update on Mergers and Acquisitions**
EU: Ignacio Lopez Balcells, US: Patricia Menendez-Cambo
Tax Advantages of Spanish Holding Company Structures
EU: Gonzalo Rodes
- 16:00 – 17:00 **Private Equity Financing in the U.S.**
EU: Juan Manuel Vazquez, US: Juan Pablo Cappello
- 17:00 – 18:00 **Data Protection**
EU: Manuel AlonsoUS: Daniel W. Perry
Antitrust: Concerns and Trends
EU: Valeria Enrich, US: Shirley Johnson
- 18:00 – 19:00 **Franchise**
EU: Marita Dargallo, US: David A. Beyer
Agency and Distribution
EU: Enric Enrich, US: _____
- 21:30 **DINNER. Location tbd**

FRIDAY APRIL 23

- 09:00 – 10:00 **E-Commerce Taxation**
EU: Mario Gomariz, US: Lucius Smejda (tbd)/Mark Grossman (tbd)
Employment and Social Security
EU: Bernat Antras, US: Lyle Lieberman
- 10:00 – 11:00 **Tax Systems**
EU: Stella Raventos, US: Lucius Smejd
Update on issues of Corporate Governance including Sarbanes-Oxley and the USA Patriot Act:Legal and Ethical Considerations
EU: F Pineda, US: Paul Berkowitz
- 11:00 – 11:30 **BREAK**
- 11:30 – 12:30 **Russian Business Considerations**
EU: Vladimir Gladischev, US: Natalia Poliakov
Notaries/Colegio de Notarios
US: David Willig and William Hill
- 12:30 – 13:30 **Negotiating Technology Contracts with American Companies**
US: Mark Grossman
ADR Spain and USA
EU: Jaume Alonso Cuevillas, US: Tony Santos
- 13:30 – 14:00 **Closing**
Speaker tbd

PLEASE BOOK EARLY - SPACE IS LIMITED

CLER PROGRAM
(Maximum Credit: 13.0 hours)
General: 13.0 hours
Ethics: .5 hour

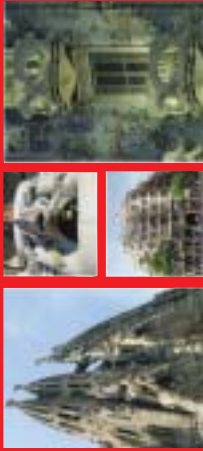
CERTIFICATION PROGRAM
(Maximum Credit: 13.0 hours)
Antitrust & Trade Regulation: 1.0 hour
Business Litigation: 9.5 hours
International Law: 13.0 hours
Labor & Employment Law: 1.0 hour
Tax Law: 3.5 hours

SPONSORS INCLUDE

- The International Law Section of The Florida Bar
- The Barcelona Bar Association
- The National Association of Civil Law Notaries
- Greenberg Traurig, LLP
- Smejda & Associates, P.A.

Organized by

The International Law Section of The Florida Bar
The Barcelona Bar Association
The National Association of Civil Law Notaries
Please visit our website for updated information and complete event program
www.ils-flabar.org



**BARCELONA - FLORIDA
INTERNATIONAL LEGAL
SYMPOSIUM 2004**

CONTACT

For civil law notary information

David Willig

Tel: 305.860.1881

Email: interlawlink@aol.com

For further information

Ambler Moss

Greenberg Traurig, LLP

Tel. 305.579.0500

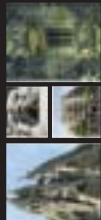
Email: mossa@gtlaw.com

Barcelona, Spain
APRIL 21 - 23, 2004

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www.ils-flabar.org

BARCELONA-FLORIDA INTERNATIONAL LEGAL SYMPOSIUM 2004



THE SYMPOSIUM

BARCELONA-FLORIDA: THE GATEWAY TO EUROPE AND LATIN AMERICA

Barcelona has become one of the most attractive business destinations in Europe and one of the main recipients of foreign investment in Spain as well as Europe. At the same time, European leaders have recognized the importance of Florida as a gateway to Latin America and the Caribbean. The symposium will bring together highly renowned legal and business specialists from Spain, Europe and the United States to discuss important issues for business including:

- Practical legal aspects of an enlarged European Union
- Tax advantages of Spanish holding company structures
- Update on Issues of Corporate Governance including Sarbanes-Oxley and the USA Patriot Act
- Antitrust, concerns and trends
- Alternative dispute resolution in US and Spain
- Florida Civil Law Notary (a new Florida law) : Closing the gap between European Civil Notaries and US Corporate law

CLE CREDITS

Course Number: 17114

The Florida Bar has authorized 13 hours of CLE credits for the entire program.

The symposium includes seminars and interactive workshops. Participants may choose programs tailored to their own interests. Our distinguished international faculty provides insights based on extensive experience in business, law firms, universities as well as in the public sector.

Please visit our website for updated information and complete program: www.iils-flabar.org

CULTURAL PROGRAM

From Roman remains to contemporary architectural projects recognized worldwide, seize the opportunity to discover Barcelona's extraordinary cultural heritage. Participants and companions will be able to experience: the most highlighted works of Gaudi such as the Sagrada Familia, la Pedrera, Casa Batlló.

- The Picasso Museum
- The Gothic Quarter
- Las Ramblas
- The Miró Foundation
- Annual feast of Sant Jordi



Casa Batlló

TRAVEL AND LODGING ARRANGEMENTS

TRAVEL VIA MADRID OR PARIS

Arranged by Lorraine Travel

- Air travel via Madrid or Paris, depart Miami: April 20 and arrive Barcelona April 21
- Hotel Claris - €270/single
- Hotel Majestic €260 single
- Hotel Balmes - €118 single

Contact:

Mr. Greg Guiteras

Lorraine Travel

377 Alhambra Circle

Coral Gables, FL 33134

Tel: 305.446.4433

Fax: 305.441.9444

Email: greg@lorrainetravel.com



Las Ramblas

REGISTRATION

Course Number: 17114 (IL003)

Name: _____

Florida Bar #: _____

Address: _____

City: _____

State: _____ ZIP: _____

Phone Number: _____

Fax Number: _____

E-mail: _____

REGISTRATION CHARGES

The following options include entry to all official events, including workshops, conferences, receptions, dinners, cultural events, and symposium documents.

International Law Section Members: \$350.00

Non-section Members : \$450.00

Significant Others: \$150.00

Optional Programs

Cocktail Reception Wednesday, April 21: \$50.00

Dinner Thursday, April 22: \$120.00

Tours of Barcelona - Details available upon request.

Please complete this form and send it with your payment to:

The Florida Bar

Angela Froelich

651 E. Jefferson Street, Tallahassee, FL 32399-2300

Tel: (850) 561-5633 • fax: (850) 561-5825

e-mail: afroelich@flabar.org

Checks payable to The Florida Bar.

\$100 will be added for on-site registration.

**SPONSORSHIP OPPORTUNITIES
ARE STILL AVAILABLE**

The Florida Bar – International Law Section - 2003-2004 Annual Report

It is my privilege and pleasure, as Chair, to report on the activities and advancements of the International Law Section of The Florida Bar.

One of the hallmarks I made of my mandate as Chair was the idea of a Florida Bar International Law Section Outreach, directed primarily at other members of the Bar. The idea behind the Outreach was to introduce to lawyers practicing in a wide variety of areas of the law that the breadth of International Law can reach into very many, if not all, of those practice areas.

One form of this Outreach is to offer expertise in international law, through joint programs with other Sections, or by providing an international aspect to programs produced by other Sections. One such development is a seminar organized in March with the Criminal Law Section on international aspects of criminal law.

Of course, the International Law Section for years has pursued a kind of “outreach” to lawyers and legal professionals from around the world. Our Section has entered into cooperation “Protocol” agreements with Bar organizations around the Americas, Europe and Asia, and in recent years, has organized programs in Quebec, Canada, Paris, France, and

in Moscow and St. Petersburg in the Russian Federation.

The Section continues that trend as we most recently undertook to organize a similar event in Barcelona, Spain in April, 2004. Others are planned for the future, in Germany, and an event bringing Russian jurists to Florida in 2005.

CLE Activities

Among the CLE activities of the Section are a number of perennial favorites. These include the annual Immigration Update, conducted along with AILA (American Immigration Lawyers Association), which regularly attracts speakers of national stature, and hundreds in attendance. Another example is the annual International Taxation series, in conjunction with the Tax Section.

Within the last year, the Section enjoyed success with new programs on International Litigation and International Arbitration, after many years of absence from our roster of seminars and other CLE programs. These programs were organized with the energy and enthusiasm of a newly reconstituted International Litigation & Arbitration Committee. Within the Section, it is our fervent hope that those committee members, and others like them will continue to benefit and help the Section grow and strengthen beyond this current year.

An planned program of interest is a visit with members of the British Parliament and the European Parliament, which the Section hopes to organize for 2005. At the mid-year meeting in January, the ILS offered a new course on International Legal Practice in Florida, which also serves as a review course for Certification in International Law, a certification unique to Florida among the United States.

Activities Benefitting Florida and Others

The Section does get involved in international issues of interest or likely to impact on Florida as a whole. The Section has demonstrated its in-

terest and support for Miami as the site of the Secretariat of the Free Trade Area of the America (FTAA). The Section has made efforts to disseminate information from a legal and economic point of view, about the benefits of Miami as the best location, hemisphere-wide, for the location of the Secretariat. Moreover, the Section has engaged in efforts to determine to what extent the legal system in Florida can render our State the most legally hospitable jurisdiction for the location, realization and implementation of the Free Trade Area, as well as to benefit our State from the increased international economic activity likely to ensue from it.

One such effort was mobilized as an educating force over the last year in order to urge the adjustment of proposed Bar rules affecting international arbitration in Florida.

Section members have given countless hours toward these efforts, always mindful that what they were doing was ultimately something that was not only good within the legal profession, but something that was good for Florida as a whole.

Another program which gained support within the Section, and that the Section hoped to implement during the course of the year 2004, making a contemplated gift for judicial reform in Haiti, has been put on hold. Utilizing the leverage of contacts we have with protocol partners in Quebec, Canada and in Paris, France, the Section may yet still organize a donation of legal texts, treatises and the like in the French language for the use of the judiciary in Haiti, though not necessarily to coincide with the bicentennial in 2004 of the founding the its Republic.

Conclusion

I will take the liberty of closing by inviting all members of The Florida Bar to join in our International Law Section Outreach – to see what we’re doing within our Section, and to join us.

*David S. Willig, Chair
International Law Section
2003-2004*

**The section
website has
MOVED!**

**Go to our
new site:**

ils-flabar.org



Thinking About Becoming Board Certified in International Law?

If you would like to become Board Certified in International Law or would like more complete information, please contact the area's staff liaison below:

Carol Vaught
Legal Specialization & Education

The Florida Bar
650 Apalachee Parkway
Tallahassee, FL 32399-2300
800/342-8060, ext. 5738 or
850/561-5842, ext. 5738

cvaught@flabar.org



Certification is granted for five years. To be recertified, requirements similar to those for initial certification must be met.



THE FLORIDA BAR

For more information, visit our website at

www.FLABAR.org

Click "member services," then "certification."

Certification can help you by giving you a way to make known your experience to the public and other lawyers. Certification also improves competence by requiring continuing legal education in a specialty field.

There are many benefits to becoming Board Certified in International Law such as:

- ★ Malpractice carriers discounts.
- ★ Advances the importance and significance of certification to large malpractice carriers.
- ★ Good source of referrals from both attorneys and the general public.
- ★ Ability to advertise yourself as a "certified specialist" in your chosen area of practice.
- ★ Young lawyers are seeking certification as a means of expediting their professional advancement.
- ★ Name is listed in the Directory issue of The Florida Bar *Journal* in the Certified Lawyers' section.

The application filing period is *July 1 - August 31* of each year. Applications may be requested year-round, but only filed during this two month period.

All requirements must be met by the the August 31st filing deadline of the year in which you apply.

Your application must be approved before you become eligible to sit for the examination, usually given in March.

What are the requirements?

- ☞ Have been engaged in the practice of law for at least five years prior to the date of the application.
- ☞ Demonstrate substantial involvement in the practice of international law during the three years immediately preceding the date of application. (Substantial involvement is defined as devoting not less than 50% of one's practice to matters in which issues of international law played a significant role and in which there was substantial and direct participation.)
- ☞ Complete at least 60 hours of continuing legal education (CLE) in international law activities within the three year period immediately preceding the date of application.
- ☞ Submit the names of five attorneys or judges who can attest to your reputation for knowledge, skills, proficiency and substantial involvement as well as your character, ethics and reputation for professional-ism in the field of international law.
- ☞ Pass a written examination demonstrating special knowledge, skills and proficiency in international law.

Certification Statistics

There are currently 27 attorneys Board Certified in International Law. The area was started in 1998. Certified attorneys make up approximately 6% of The Florida Bar's total membership. Attorneys certified in International Law make up roughly 1% of all board certified attorneys.



Become a Board Certified Lawyer

If you are interested in obtaining an application, complete this form and return it to: The Florida Bar, Certification Department, 650 Apalachee Parkway, Tallahassee, FL 32399-2300. Applications and information are also available through The Florida Bar website at www.flabar.org.

Please send me the following application(s):

Filing period is July 1 - August 31 for these areas:

- Admiralty & Maritime
- Appellate Practice
- Aviation Law
- City, County & Local Government Law
- Civil Trial Law
- Elder Law
- Immigration & Nationality
- International Law
- Labor & Employment Law
- Marital & Family Law
- Tax Law

Filing period is September 1 - October 31 for these areas:

- Antitrust & Trade Regulation
- Business Litigation
- Criminal Appellate
- Criminal Trial
- Health Law
- Real Estate
- Wills, Trusts, & Estates
- Workers' Compensation

PLEASE PRINT LEGIBLY

NAME _____ ATTORNEY NUMBER _____

ADDRESS _____

CITY/STATE/ZIP _____

Minutes of Florida Bar Liaison Meeting

Texas Service Center
Monday, September 22, 2003

Attending on behalf of Florida Bar:

- Larry S. Rifkin, Esq.
- Drucilla Bell, Esq.
- Elaine Weiss, Esq.

Attending on behalf of the Texas Service Center:

- Lisa Kehl
Associate Director, Operations
- John Allen
Special Projects Division
- Lynn Gros
Adjustment Division
- Ninfa Luna
Documents Division
- Nancy Moser
Work Flow Division
- Wyvette Covington
Employment Division
- Rose Reyna
Naturalization Division
- Marvin Estes
Supervisory Center Adjudications Officer
- Jeffery Brecht
Training and Q&A Division

- 1) **The receipt notices for Employment Based Adjustments are stating processing times of 990-999 days. Is this a realistic guideline? Is there anything being done to address this backlog? Our clients continue to receive fingerprint appointments just a few weeks after their cases are filed even though TSC stated that there was a problem with the automatic scheduler and a new policy had been implemented to delay fingerprints until 9 months after the date of filing.**

TSC has an aggressive backlog reduction plan to reduce adjustment processing times to between 12-18 months in the future. However at the present time 990-999 days is a realistic processing time as I-485 applications are not currently the Service's highest priority. As TSC hires additional new employees they will have additional re-

sources to reduce the backlog over the next year. The issuing of fingerprint appointments has been adjusted to a one year delay from filing the I-485.

- 2) **What is the current processing time for I-131s (Advance Paroles)? Is there a procedure to expedite the processing of I-131s in case there is: a) a medical emergency? b) A business emergency?**

I -131 applications received 3/20/2003 are currently being processed. However if the application was filed concurrently with an I-140/I-485 application TSC is processing 6/6/2003 cases. Applications are expedited on a case-by-case basis at the discretion of the Director. All requests should be addressed to the general correspondence address: BCIS TSC, PO Box 851488, Mesquite, TX 75185-1488.

- 3) **What is the current processing time for I-130s filed by Immediate Relatives? Is there a procedure to expedite the processing of these petitions in case of emergency? Is anything being done to address this backlog?**

TSC is currently processing cases filed 6/15/2001. Applications are considered for expedited processing on a case-by-case basis. There are local and national plans to address this backlog.

- 4) **The receipts for N-400 applications are stating processing times of between 750 and 999 days. However the customer service staff at the 1-800 number are advising individuals that these applications should be completed within 8 months. Please clarify what the processing times are in order to clarify the discrepancies between the receipts notices and the information provided by cus-**

tomers service staff.

The TSC Liaison will speak to the National Customer Service Center (NCSC) about this and advise them that the customer service staff should be advising callers that the processing time is 750-999 days. Requests to expedite a naturalization case are handled by the local office.

- 5) **Renewals of EADs & Advance Paroles: Can the Service implement a system in which the renewals would be approved from the date the previous EAD or Advance Parole expired?**

TSC has a 120 day window within which they will post date approvals. If the application is filed prior to the 120 days an RFE may be issued to verify the dates. Advance paroles are issued for one year from the date of approval.

- 6) **How can our members contact the TSC if there is a problem with documents, i.e. EAD cards, travel docs, approvals etc. The fax numbers are not working and the 1-800 number staff take the information and advise us that they will forward it to the Service Center and we should receive something in the mail in about 3 weeks. In most cases this does not work. Do you have a fax number where we can send our inquiries on these type of problems? Many of the Florida Bar Members are not AILA members and are not able to use the AILA Liaison for assistance.**

There are two ways to contact TSC – through the NCSC at 1-800-375-5283 or by mail to the general correspondence P.O. Box. TSC is current with its responses and inquiries will be responded

to within 3 weeks.

- 7) **How should we address the situation where an entire family is approved for residence with the exception of one child, or where an entire family gets fingerprint notices, but one spouse does not?**

Contact the NCSC with the details if one member of the family has not been approved. NCSC should be contacted if a spouse does not receive a fingerprint appointment but the rest of the family have received appointments.

- 8) **What steps can we take now to inquire about an EAD card that has been issued in error?**

- sex is incorrectly noted
- dob is incorrect
- spelling of name has typo
- A number has typo

The local office has advised us that as the EAD was issued at TSC, TSC must correct the document. These individuals cannot be issued Social Security numbers if the information on the EAD is not correct.

If the error is a TSC error the card and the proof of error can be sent by Federal Express to the attention of Dan Leavitt, Supervisory Applications Adjudicator. If the error is not a TSC error a new application must be filed.

- 9) **What can we do to inquire about a green card that has supposedly been mailed, but never received? The e-mail address for I-551 inquiries card-push.tsc@dhs.gov is useful if the card has not been issued or if it has been returned to TSC. How can we resolve problems where the card is missing?**

An inquiry should be made to the attention of Morris Whitacre at the e-mail address.

- 10) **Where an applicant moves during the period an I-131 or I-765 is pending and duly notifies BCIS of the address**

change, it appears that the documents are still mailed to the address on the form. What can we do to correct this and how can we get these documents re-sent?

An inquiry should be sent to Alien Address and Attorney Changes at BCIS TSC, PO Box 850891, Mesquite, TX 75185-0891.

- 11) **Has TSC received new guidance on B-2 extensions? If so, can you share this guidance with us?**

TSC has not received any new guidance regarding B-2 extensions.

- 12) **Where an alien has a B-2 extension pending and then files a change of status to some other visa category, should we continue to request TSC to adjudicate the extension concurrent with the change of status? At an earlier liaison meeting, we were advised to enclose a copy of the pending extension with the requested change of status.**

COS cases are processed according to filing date. If an adjudicator is made aware of a pending EOS, every effort is made to locate the file and get it adjudicated so that the COS can be processed. It is very helpful for the adjudicator if the COS contains a COPY of the EOS filing.

- 13) **Rumor has it that TSC will be issuing NTA's starting in October of 2003? Is this true? What will the criteria for issuance of NTA's be?**

The Service has always had the discretion to issue NTAs. Officers are currently being trained with regard to this issue. NTAs will be issued on a case-by-case basis as applicable.

- 14) **Given the memo from Bill Yates dated August 4, 2003, can we understand that once an I-140 is approved and an adjustment has been pending 180 days, the withdrawal of the I-140 by an employer will not impact the adjustment**

process as long as the foreign national continues to work in the same or similar occupational classification?

Yes, that is correct.

- 15) **As there are no regulations on portability on AC21 can you please advise us as to requirements TSC is looking for on processing these cases and the processing times?**

Basic requirements are a letter from the new employer stating the job title, job duties and salary offer. We recommend that evidence that the company has the financial ability to offer the salary also be included. It is likely that an RFE will be issued on these cases for additional information.

- 16) **Recently a TSC officer advised a colleague's staff member that the employer was required to pay the salary of the ETA 750A as of the date the employee obtained the EAD. The regulations state that the employer must demonstrate the ability to pay the employee as of the date the labor certification is filed through the adjustment process. The employer has an obligation to pay the wage on the ETA 750A when the employee obtains his/her residence. The memo referenced above by Bill Yates confirms that there is no requirement in statute or regulations that the beneficiary of a Form I-140 actually be in the underlying employment until permanent residence is approved. We believe that this may be a training issue. Please advise.**

This is a training issue. If you have similar cases please provide us with the SRC and/or A numbers of the alien.

- 17) **We have been advised that an investigator at TSC officer was conducting an investigation because of a difference between the wage on the H-1B1 petition and the wage offered in the immigrant visa petition. Regulations govern-**

ing H-1B1 visas and immigrant visas differ and there may be a difference in the salary. Is this investigation being conducted in error or are these grounds for investigation if these salary differences appear?

The Service is conducting various ongoing investigations, however please provide us with SRC and/or A numbers if you are contacted regarding these types of wage issues.

18) With regard to H-1B1 visa petitions, we are still seeing RFE's questioning whether a degree is standard for commonly accepted professional positions and also questioning whether or not the person is a professional or will be employed in a professional capacity. Some of the occupations where officers have questioned whether or not the position normally requires a degree are business analyst, financial analyst, civil engineer, mechanical engineer, market research analyst and economist. These positions are all recognized as professional positions in the OOH. The normal requirements for these positions are a bachelor's in a specialized course of study. We believe that this may be a training issue. Please advise.

The Examiner has the right to inquire about any position to determine if it is a specialty occupation. In many cases the job title may appear to be a specialty occupation but the duties do not match the title.

19) Religious Worker Adjustments. Is TSC seeking to complete these cases prior to October 1, 2003? Members have reported filing I-485 cases on recently approved I-360's, and not getting receipts for the I-485's. Are the cases being segregated and held without feeing-in? If so, for what purpose?

These cases are not being held.

TSC is working on all cases filed, however there has been an increase in I-360 filings and it is possible that on some late I-485 filings the fingerprint clearances may not be completed prior to October 1, 2003. We currently have 95% of all cases filed in our possession and we are expediting fingerprint notices. By Friday everyone should have received fingerprint notices.

20) I-130's pending at TSC when adjustment cases are filed or could be filed Where the local BCIS office has accepted a family based I-485 case based on the priority date established by a long-pending I-130 at TSC, the local offices are advising that they cannot

approve adjustments without adjudication of the pending I-130—even if we seek to withdraw the I-130 pending at TSC and file a replacement I-130. We are hearing reports from the local BCIS office that, despite their requests to TSC on particular pending I-130's, TSC neither expedites adjudication of the I-130's nor forwards the I-130's for adjudication at the local offices. What can be done to facilitate movement in these situations?

TSC is not aware that this situation exists. If there is a problem getting a file transferred the District Office should contact Jack Pittman at TSC.

International Law Section Events

Annual Meeting of The Florida Bar, Boca Raton Resort & Club

Thursday, June 24, 2004

8:45 a.m. – 4:15 p.m.

International Litigation Update

5:00 p.m. – 6:00 p.m.

Chair's Reception

Friday, June 25, 2004

10:00 a.m. – 11:00 a.m.

International Litigation & Arbitration Committee Meeting

12:00 noon – 2:00 p.m.

International Law Section Luncheon

2:00 p.m. – 6:00 p.m.

Section Executive Council Meeting

6:30 p.m. – 8:00 p.m.

Joint Reception (with Government Lawyers Section & Out-of-State Practitioners Division)

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