

**2017 BUSINESS LAW INSTITUTE**  
**February 16, 2017 – Pinehurst Resort – Pinehurst, NC**

**Table of Contents**

I. NEGOTIATION SKILLS AND STRATEGY FOR COMMERCIAL CONTRACTS

David S. Robinson (Moderator) – Raleigh  
Samuel W. “Sam” Whitt (Panelist) - Raleigh

INTRODUCTION .....	I-1
THE NEGOTIATIONS “PLAYING FIELD” .....	I-1
FACTORS INFLUENCING THE DRAFTING AND NEGOTIATION PROCESS .....	I-3
BUILDING BLOCKS OF A COMMERCIAL CONTRACT .....	I-4
THE MOST COMMON TYPES OF CONTRACTUAL BUILDING BLOCKS ARE:.....	I-4
A COMPILATION OF THE “GOLDEN RULES” OF CONTRACT NEGOTIATIONS .....	I-5
THE KEY STAGES OF A NEGOTIATION .....	I-6
ATTORNEY CONDUCT.....	I-7
KEY ISSUES .....	I-7
NEGOTIATING PITFALLS .....	I-11
STRUCTURING A READABLE/IMPLEMENTABLE AGREEMENT .....	I-13
DRAFT OR REVIEW MAJOR RISK ALLOCATION PROVISIONS .....	I-16
SAFEGUARD CORPORATE ASSETS .....	I-23
LASTLY, IT IS WELL TO END WITH A RECITATION OF AN ATTORNEY’S RESPONSIBILITIES (WITH AUTHOR HI-LITES) .....	I-26

II. COLLABORATIVE LAW PRACTICE – EXPLORING THE APPLICATION OF COLLABORATIVE PRINCIPLES TO BUSINESS DISPUTES

John L. Sarratt - Raleigh

INTRODUCTION .....	II-1
THE HALLMARKS OF THE COLLABORATIVE PROCESS .....	II-1
ADVANTAGES AND CAUTIONS .....	II-3
THE PARADIGM SHIFT .....	II-4
ROLE OF THE COLLABORATIVE LAWYER.....	II-6
Educating and Counseling the Client.....	II-6
Managing Conflict .....	II-6
Guiding Interest-Based/Principled Negotiation.....	II-7
Assisting the Parties in Implementing Agreements .....	II-7

ETHICAL CONSIDERATIONS IN COLLABORATIVE PRACTICE.....	II-7
Model Ethical Standards.....	II-7
North Carolina State Bar Ethical Rules and Opinions.....	II-8
Addressing Ethical Concerns.....	II-9
CONCLUSION.....	II-10

III. CREATING AND PRESERVING VALUABLE RIGHTS IN PRODUCTS, BRANDS AND PROPRIETARY CONTENT: THE CRITICAL ROLE OF THE BUSINESS ATTORNEY

Robert A. Monath – Raleigh

INTRODUCTION .....	III-1
COPYRIGHTS .....	III-1
Definitions.....	III-1
Copyright Notice.....	III-1
Duration .....	III-2
TRADEMARKS .....	III-2
Definition .....	III-2
First Use.....	III-2
Trade Names .....	III-3
Overlap with Copyright .....	III-3
RIGHTS OF PUBLICITY, PRIVACY AND DEFAMATION .....	III-3
In General.....	III-3
Right of Publicity.....	III-3
Right of Privacy .....	III-3
Defamation.....	III-4
CLEARANCE.....	III-4
Definition .....	III-4
Importance .....	III-4
TYPICAL WAYS IN WHICH IP LAW IMPACTS BUSINESS ATTORNEYS IN THE CONTEXT OF PRODUCTS, BRANDS AND PROPRIETARY CONTENT .....	III-5
Business Formation.....	III-5
Employment Contracts.....	III-5
Vendor Agreements .....	III-5
Corporate Governance .....	III-5
Asset Purchases.....	III-6

IV. BEST PRACTICES IN M&A DUE DILIGENCE

Jason L. Martinez and Justin G. Truesdale – Raleigh

INTRODUCTION TO M&A DUE DILIGENCE.....	IV-1
M&A DUE DILIGENCE PROCESS.....	IV-3
DATA – HOW TO GET IT AND WHAT TO DO WITH IT .....	IV-7

THE REPORT .....	IV-10
ADDING VALUE .....	IV-12
EXHIBIT – SAMPLE REVIEW TEMPLATE .....	IV-15
EXHIBIT – DUE DILIGENCE REQUEST LIST.....	IV-17

V. CYBERSECURITY: NAVIGATING A DATA BREACH

Charles F. Marshall – Raleigh

INTRODUCTION .....	V-1
OUT-OF-POCKET LOSSES.....	V-3
BUSINESS LOSSES .....	V-3
CUSTOMER SERVICE EMPLOYEE – TINA S.....	V-6
570 STAFFING CONTRACT .....	V-7
DIFFERENCE STATES, DIFFERENT DEADLINES.....	V-15
METHODS OF NOTICE .....	V-16
CONTENT OF NOTICE .....	V-16
ALTERNATE NOTICE SAFE HARBOR.....	V-17
ENCRYPTION SAFE HARBOR.....	V-18
BREACH MITIGATION SERVICES .....	V-19
HERE COME THE CALLS .....	V-21
OVERHEARD IN COMPANY CALL CENTER.....	V-21
REGULATOR INQUIRY .....	V-22
NOW WHAT? .....	V-23