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INCREASED SPENDING ON FRAUD ENFORCEMENT WILL RESULT IN THE EXECUTION OF MORE SEARCH WARRANTS - IS YOUR COMPANY READY?


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by Joseph D. Mancano, Esq. and Alexandra C. Gaugler, Esq.

Federal law enforcement activity is on the rise across the nation. With more funding on the way for federal law enforcement agencies, there is no question this trend will continue. One of the mainstays of any federal criminal investigation is the execution of search warrants during the early stages of an investigation. Federal agents arrive at the door of a target company, unannounced, search warrant in hand, and demand access to myriad company records. This tried-and-true law enforcement technique will likely increase as the current administration allocates more money to combating fraud and abuse. It is imperative that every company devise an action plan for responding to search warrants. While no company wants to believe that they could be or will be the subject of a criminal investigation, given the current enforcement climate, this is no time for a company to bury its head in the sand and hope for the best. Companies can and should prepare for the worst by implementing a few basic and inexpensive pro-active methods for responding to a search warrant.

I. The Increased Focus on Fraud Enforcement

On May 20, 2009 President Barack Obama signed into law the Fraud Enforcement and Recovery Act of 2009 ("FERA"). The principle objective of FERA is to increase government oversight of financial fraud. FERA authorizes substantial funding for federal law enforcement agencies. Specifically, FERA increases law enforcement funding by allocating:

• $165 million for years 2010 and 2011 for the hiring of fraud prosecutors and investigators at the Department of Justice

• $75 million and $65 million to the FBI for years 2010 and 2011, respectively

• $80 million for hiring investigators and analysts at the U.S. Postal Inspection Service, the U.S. Secret Service and the Office of Inspector General for the Department of Housing and Urban Development

• $20 million for the Securities and Exchange Commission for investigations and enforcement

The substantial funding authorized by FERA comes in addition to significant funds which have been allocated by the Obama administration to combat health care fraud, which the administration had stated is a top law enforcement priority. Health and Human Services Secretary, Kathleen Sebelius, recently remarked that HHS is committed to turning up the heat on Medicare fraud, and will employ all the weapons in the federal government's arsenal to target those who are defrauding the American taxpayers. It has been estimated that Medicare and Medicaid fraud cost taxpayers up to $600 billion a year. To combat such fraud and abuse, the Obama administration created a task force comprised of officials from the Department of Justice and the Department of Health and Human Services, as well as state and local investigators, to identify, investigate and prosecute Medicare fraud throughout the country. This task force, known as the Health Care Fraud Prevention and Enforcement Action Team ("HEAT") has already obtained

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Employees' Uphill Battle In Establishing A Class Action Under The ADA

by Eric P. Reif, Esq. and Divya Wallace, Esq.

In a case of first impression, the Third Circuit Court of Appeals recently reversed a district court's certification of a nationwide class of employees alleging a pattern or practice of unlawful discrimination under the Americans with Disabilities Act (ADA). In *Hohider v. United Parcel Service Inc.*, 574 F.3d 169 (3d Cir. 2009), the plaintiffs alleged that UPS implemented a company-wide policy of refusing to offer any accommodation to employees seeking to return to work with medical restrictions. Specifically, the plaintiffs alleged that UPS: (1) "enforced a '100% release' or 'no restrictions' unwritten policy, which prohibited employees from returning to UPS in any vacant position unless the employee could return to his or her last position without any medical restrictions;" (2) "disseminate[d] a written corporate ADA compliance policy, which [was] implemented nationwide to delay and avoid providing accommodations," and; (3) "used uniform job descriptions, which intentionally fail[ed] to describe the essential functions of available UPS jobs, as a pretext to prevent disabled employees from holding any UPS job."

The District Court's Decision

Using the Teamsters framework, the district court held that it could determine whether UPS engaged in a pattern or practice of unlawful discrimination without evaluating whether the class members were "qualified" under the ADA. Under the first stage of the Teamsters framework ("liability" stage), the plaintiff has the initial burden to establish that the employer has followed a regular policy of unlawful discrimination. If the plaintiff succeeds under the "liability" stage, then the court must decide the scope of individual relief under the second stage of the Teamsters framework ("relief" stage). While the district court recognized that it would have to make individualized inquiries during the "relief" stage, the court found that these inquiries were not necessary during the "liability" stage. Accordingly, the district court held that at the initial "liability" stage, the plaintiffs need not prove that each class member was a "qualified" individual with a disability or individually entitled to reasonable accommodation. Rather, these individualized inquiries would be determined at the "relief" stage. This approach was a decisive advantage for the employees.

> The *Hohider* decision is especially critical in light of the new ADA amendments that expand the definition of disability.

The Third Circuit Recognizes The Substantive Differences Between Title VII and the ADA

The Third Circuit, however, rejected the district court's decision stating that the plaintiffs' claims could only be properly adjudicated by determining whether class members are "qualified" under the ADA. The Third Circuit noted that the ADA, and not the Teamsters framework as applicable to Title VII, dictated the substantive elements necessary to reach a determination as to whether UPS engaged in a pattern or practice of unlawful discrimination. Importantly, the Third Circuit recognized the statutory differences between Title VII and the ADA stating that "the adjudication of a Title VII class action under the Teamsters framework may not require a showing of each class member's qualification", but that this same conclusion was not applicable in the ADA context. Specifically, in contrast to Title VII that prohibits discrimination based upon immutable characteristics (i.e. race, color, religion, sex, or national origin), the ADA does not prohibit discrimination against any individual with a disability. Rather, the ADA "…only protects from discrimination those disabled individuals who are able to perform, with or without reasonable accommodation, the essential functions of the job they hold or desire." The Third Circuit found that these individualized inquiries could not be made with respect to a class consistent with the rules applicable to class certification. Accordingly, the Third Circuit held that class certification was inappropriate.

The *Hohider* decision is an important victory for employers. Indeed, the decision makes it more difficult for employees to obtain class certification in ADA cases. The *Hohider* decision is especially critical in light of the new ADA amendments that expand the definition of disability. Even when considering the new amendments to the ADA, the Third Circuit stated its holding would not change because the recent amendments still require that a plaintiff be "qualified" in order to state a disability discrimination claim.

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A Sea Change In Government Contracts

by Marc S. Raspanti, Esq. and Douglas K. Rosenblum, Esq.

Given the current economic downturn and the transfer of power which occurred in Washington on January 20, 2009, it is crucial for contractors and taxpayers alike to analyze certain regulations that became effective in the waning days of the Bush administration and review how they may be applied by the Obama administration.

The Contractor Code of Business Ethics and Conduct, a comprehensive and onerous regulation of the Department of Defense ("DOD"), the General Services Administration ("GSA"), and the National Aeronautics and Space Administration ("NASA"), became law on December 12, 2008 and is codified at 48 C.F.R. § 52.203-13 (2008). This amendment to the Federal Acquisition Regulation ("FAR") requires government contractors to create corporate infrastructure to detect unethical behavior and, more importantly, the mandatory disclosure of any such behavior detected by the company to the federal government. This presents a significant sea change for the contracting industry.

The New Ground Rules

Under this new Code, government contractors who are awarded projects with a value in excess of $5 million and an anticipated duration in excess of 120 days shall institute a written code of business ethics and conduct. This written code must be in place within 30 days of the award of the contract. Within 90 days of award of the contract, the contractor must institute an ongoing business ethics awareness and compliance program, including training for principals and employees of the business and a full internal control system. Perhaps the most daunting requirement placed on government contractors under this new provision, and the most drastic departure from past practices, is the following mandatory disclosure requirement:

The Contractor shall timely disclose, in writing, to the agency Office of the Inspector General…whenever, in connection with the award, performance, or closeout of [the] contract or any subcontract thereunder, the Contractor has credible evidence that a principal, employee, agent, or subcontractor of the Contractor has committed…a violation of Federal criminal law involving fraud, conflict of interest, bribery, or gratuity…or…a violation of the civil False Claims Act.

Of significance, this disclosure requirement extends until three years have elapsed following the date of the final payment on the contract, but it is not retroactive.

The nature and timing of these disclosures are topics of great interest and were discussed at length in the November 12, 2008 publication of the new Code in the *Federal Register*. Contractors need not disclose past conduct of an employee discovered during a background check, for example, that an applicant was convicted of bribery, but commentary to the new Code suggests that such information should be part of the decision whether to hire the employee. Past criminal behavior of any type bears on that person's integrity and his ability to be an effective role model for company staff. The more difficult decisions arise when corporate compliance programs detect evidence of ongoing fraud.

> Procurement and defense contracting is too lucrative a business for contractors to crumble under the added cost of implementing ethical guidelines.

Higher Stakes

Contractors who rely on federal money for a substantial portion of their income must review these requirements carefully. A violation of the Contractor Code of Business Ethics and Conduct provides for suspension or debarment of a contractor. It may even form the basis for whistleblower lawsuits by insiders who become aware that these provisions are not being followed.

The federal government, along with 25 states and the municipalities of Chicago, New York, and the District of Columbia, have False Claims Acts in place that allow for private citizens to blow the whistle on companies submitting false or fraudulent claims for payment to the government.

Individuals with knowledge of such unlawful practices have financial incentive to come forward and file these "qui tam" suits. The statute provides for the whistleblower to receive up to 30 percent of any recovery received by the government. The contractor may be exposed to treble damages and sizeable penalties, including the payment of the whistleblower's attorneys' fees and costs.

Although recent recoveries under the statute have occurred in the pharmaceutical industry, and specifically in off-label marketing cases, defense contracting has been the subject of many past qui tam actions. Under the new Code, if a contractor certifies to the government that it has instituted a written code of business ethics and conduct and is in full compliance, but an employee or insider discovers that is not so, the potential exists for any claims for payment made by that contractor to be tainted as false and susceptible to penalties under the False Claims Act.

Evolution of the Code

Of course, this new Code is not without its vocal critics. This rule was promulgated in response to a request made to the Office of Federal Procurement Policy by the Department of Justice and in response to the Close the Contractor Fraud Loophole Act. In the publication of the final rule in the *Federal Register*, 28 pages of comments and responses followed the background and summary of the regulation.

Respondents to the proposed version of the new Code expressed concern over the time and money required of contractors to comply with the new regulation. The DOD, GSA, and NASA made clear that there will be additional costs and effort required on the part of contractors that do not have these important measures already in place, but these steps are reasonable and justified to mitigate "other and larger risks to the

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The Use of Arbitration Techniques to Resolve Modern Commercial Disputes

by Eric P. Reif, Esq.

Arbitration Clauses In Contract Documents

A concern about litigation costs as well as the length of time it may take to resolve a dispute through litigation has caused more companies and corporations to include arbitration clauses in contract documents. These clauses generally provide that any dispute arising under the contract will be resolved through arbitration and the selection of the arbitrator or arbitrators may occur in various ways.

A typical clause may provide that all disputes will be resolved in accordance with the commercial arbitration rules of the American Arbitration Association ("AAA"). If this language is used, the arbitration is commenced by filing a Demand For Arbitration with the Association which will then circulate a panel of proposed arbitrators to the parties. The number of arbitrators (one or three) assigned to the matter is governed by the amount in controversy and, if the parties cannot agree upon an arbitrator or arbitrators from said list, the Association will make the selection.

Another approach commonly used that does not involve the AAA is that the arbitration clause states that each party to the contract has the right to select a single arbitrator. The two arbitrators selected by the parties then select a so-called neutral or third arbitrator who is needed to prevent any deadlock. The role of the party-selected arbitrator at the arbitration is therefore to act as an advocate or spokesman for the party who selected him or her.

The Risks of Incorporating an Arbitration Clause

However, although arbitration in most cases may be more cost effective and reach a faster resolution than cases filed in state or federal courts, there are several factors to be weighed before selecting arbitration or agreeing to the insertion of an arbitration clause in a contract.

First and foremost is the fact that, unless the parties specify in the arbitration clause itself or by way of stipulation before the arbitration that the arbitration is non-binding, the decision of the arbitrator is final, binding and non-appealable. The only exception which the courts have allowed in many states, as typified in Pennsylvania by 42 Pennsylvania Consolidated Statutes Annotated, Section 7341, is that the arbitration award may be vacated or modified if it is clearly shown that a party was denied a hearing or that fraud, corruption or other irregularity caused the rendition of an unjust, inequitable or unconscionable award. In the vast majority of cases, this is extremely difficult to prove and the party who receives a bad arbitration award generally has no recourse.

The arbitration clause states that each party to the contract has the right to select a single arbitrator.

The Limits on Discovery

Second, depending upon the nature of the dispute which is likely to arise under a contract, parties selecting arbitration should be aware that most arbitrators do not allow extensive pre-hearing discovery by way of depositions, document requests or the use of written interrogatories since the underlying goal of arbitration is to resolve the dispute quickly and inexpensively.

What discovery is permitted, even if the parties request it, is quite often governed by the personal philosophy of the arbitrator as typified by Rule L-3 of the Commercial Arbitration Rules of the AAA pertaining to complex commercial cases in which the amount in controversy is at least $1,000,000. Even in cases of this magnitude, Rule L-3, pertaining to the preliminary hearing to be conducted by the arbitrator with the parties following his or her selection, states that one of the topics to be discussed is "…the extent to which discovery shall be conducted." Accordingly, there is no automatic right to any given type or amount of discovery.

Therefore, if it is foreseeable that a dispute which may arise under a particular contract will require extensive discovery in order to develop or defend a claim, arbitration may not be advisable. An example would be issues pertaining to a particular manufacturing process used, quality control procedures in place as part of the manufacturing process or the reason or reasons for a product defect. Agreeing to arbitration may severely limit your ability to obtain information pertaining to these issues from your opponent or third parties.

The Arbitrator's Limited Subpoena Power

Third, another consideration pertaining to discovery in a typical arbitration proceeding is that the arbitrator has extremely limited authority to issue subpoenas in general including those to non-parties who may possess relevant documents or information. Relevant case law in Pennsylvania, for example, stands for the proposition that, in the absence of authority conferred in the arbitration agreement, common-law arbitrators are without statutory authority to issue subpoenas enforceable at law. *Sports Factory, Inc. v. Ridley Park Associates*, 31 Pa. D. & C.3d 16 (1983).

In order to avoid this limitation, parties to arbitration proceedings will sometimes contend that the arbitrator's subpoena authority is governed by the Federal Rules of Civil Procedure because the issues involved in the arbitration fall within the broad definition of "commerce" under the Federal Arbitration Act, 9 U.S.C. §§ 1, et seq. (the "Act").

Even under these circumstances, the subpoena power the arbitrators have is extremely limited. With regard to non-parties, for example, the seminal opinion in the Third Circuit was authored by Judge Alito in *Hay Group, Inc. v. E.B.S. Acquisition Corp.*, 360 F.3d 404 (3d Cir. 2004) and stands for the proposition that

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The Third Circuit Narrows The Applicability And Enforceability of EMTALA

by Kathryn M. Kenyon, Esq. and P. Brennan Hart, Esq.

In *Torretti v. Main Line Hospitals, Inc.*, 580 F.3d 168 (3d Cir. 2009), the United States Court of Appeals for the Third Circuit for the first time interpreted the Emergency Medical Treatment and Active Labor Act ("EMTALA"). In its precedential opinion, the Circuit Court affirmed the United States District Court for the Eastern District of Pennsylvania's granting of summary judgment on plaintiffs' EMTALA claim finding a lack of evidence to create a reasonable inference of a medical emergency and that plaintiff-mother was an outpatient who came to the hospital for a scheduled appointment, thus EMTALA was inapplicable.

Over 20 years ago, EMTALA was enacted to preclude what has been described as "patient dumping" such that hospitals cannot refuse to treat individuals with emergency conditions. Hospitals and practitioners must also ensure that patients are stable when transferred or that the transfer was done appropriately. EMTALA was not meant to create federal causes of action for medical malpractice, but rather to address deficiencies in screening.

In *Torretti*, the minor plaintiff, Christopher, was born with severe brain damage. On the morning of his birth, Mrs. Torretti, who was high-risk because of insulin-dependent diabetes, went to a routine fetal monitoring appointment in a facility adjacent to Paoli Hospital. Two days prior to the appointment, Mrs. Torretti called her doctor reporting contractions. After drinking water, she noted increased fetal movement and did not go to the hospital that weekend. She also acknowledged that she did not think her condition was emergent. At her regular appointment, she was having a great deal of discomfort and noticed decreased fetal movement. The non-stress test did not show expected variability and, during the test, Mrs. Torretti again experienced contractions. An ultrasound showed movement in the limbs and body of the child. Dr. Gerson ended the non-stress test and directed Mrs. Torretti to Lankenau Hospital, her primary hospital, for extended monitoring. According to Dr. Gerson, delivery was not imminent. No one at Paoli, including Dr. Gerson, gave any indication that Mrs. Torretti's condition was emergent. Dr. Gerson indicated that going by ambulance was not necessary but he did request that the Torrettis proceed directly to Lankenau. They did not, choosing to stop at their home en route. After arriving at Lankenau, Mrs. Torretti reported her condition about the same as it had been at Paoli but then it worsened "very quickly." She was rushed into surgery and gave birth shortly after arriving at Lankenau.

EMTALA was not meant to create federal causes of action for medical malpractice, but rather to address deficiencies in screening.

The Torrettis claimed that EMTALA was triggered because Mrs. Torretti's visit to Paoli was a potential emergency medical condition. The Circuit Court emphatically found that the Torrettis' interpretation of EMTALA was unreasonable and served to inappropriately broaden the scope of EMTALA. On the Torrettis' stabilization theory, namely that Mrs. Torretti's transfer was improper because she was transferred in unstable condition, the Circuit Court pointed to the requirement of actual knowledge as a mens rea condition precedent that must be established. Here, there was no evidence that anyone at Paoli, including Mrs. Torretti herself, believed there was an emergency. The Circuit Court was not swayed by the Torrettis' experts who claimed Dr. Gerson should have sent Mrs. Torretti to the nearest facility as those opinions did not impute actual knowledge necessary to have a viable EMTALA claim.

Notably, the Circuit Court also found that Mrs. Torretti was an outpatient and thus EMTALA was not even triggered as it only applies to those presenting for emergency treatment. The Court was not swayed by the Torrettis' claim that because the mother was a high-risk pregnancy, each scheduled visit was a request for emergency treatment.

With this first confrontation between the Third Circuit and EMTALA, the Third Circuit joined several other jurisdictions that have tightly construed EMTALA and the companion regulations issued by the Department of Health and Human Services' Centers for Medicare and Medicaid Services ("CMS"). *Compare Ramonas v. West Virginia University Hospitals*, 2009 U.S. Dist. LEXIS 69303 (N.D. W.Va. Oct. 13, 2009) (treatment based on diagnostic judgment does not violate EMTALA). Accord, *Moses v. Providence Hospital and Medical Centers, Inc.*, 573 F3d 573 (6th Cir. 2009) (allowing a third party (the estate of a patient's wife) to pursue claims against a hospital but not the physician under EMTALA after the patient (who had a history of mental illness) murdered his wife ten days after discharge) (there is pending a petition for writ of certiorari to the United States Supreme Court, and on January 25, 2010, the Solicitor General was invited to file briefs expressing the view of the United States).

Patients who have scheduled outpatient appointments, even in high-risk settings, are not entitled to the protection afforded by EMTALA. Moreover, plaintiffs face a tough burden in the Third Circuit to establish the requisite knowledge of an emergency condition.

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Ohio Supreme Court Addresses Prevailing-Wage Laws

by Michelle L. Gorman, Esq.

On June 17, 2009, the Ohio Supreme Court issued its decision in *Sheet Metal Workers' Internatl. Assn., Local Union No. 33 v. Gene's Refrigeration, Heating & Air Conditioning, Inc.,* 2008-Ohio-1005. The case addressed two issues interpreting Ohio's prevailing-wage law.

The first issue pertained to whether a labor organization that obtains written authorization to represent one employee has standing as an "interested party" to pursue violations of prevailing-wage law on behalf of any other employee on the project.

The second issue involved whether shop employees who work off-site manufacturing materials to be used in or in connection with public improvement projects are entitled to prevailing wages.

In this case, Gene's Refrigeration was awarded a contract for the Granger Fire Station project. Gene's Refrigeration paid prevailing wages to its workers who performed work directly on-site, but did not pay prevailing wages to its employees who were fabricating duct-work off-site. The Sheet Metal Workers' International Association, Local Number 33 filed suit claiming that prevailing wages should be paid to all workers. Local 33 was not the bargaining representative for Gene's employees; however, it alleged that it had standing as an "interested party" under R.C. 4115.03(F)(3) based upon the written authorization of an employee in Gene's off-site fabrication shop.

As to the first issue, the Court determined that a labor organization that is an "interested party" under R.C. 4115.03(F) may file a prevailing-wage complaint only on behalf of the employee who specifically authorized the action. The Court concluded that one employee's authorization does not extend to all remaining employees and that a labor organization that obtains written authorization to represent one employee does not have standing as an interceding party to pursue violations of the prevailing wage law on behalf of any other employee on the project.

It is interesting to note that the Court previously determined that the signatures of three employees were sufficient to convey the representative status of a Union to authorize the filing of a complaint on behalf of all employees alleging prevailing-wage violations. The key difference in this case, other than the number of employees granting authorization, may have been the language of the actual authorization signed by the Gene's Refrigeration employee.

> Contractors for public improvement projects do not have to pay off-site laborers prevailing wages.

As to the second issue, the Court ruled that R.C. 4115.05 applies only to persons whose work is performed directly on the site of the public improvement project. The prevailing wage statutes, R.C. 4115.03 through R.C. 4115.05, require contractors and subcontractors for public improvement projects to pay laborers and mechanics the so-called prevailing wage in the locality where the project is to be performed. The Court determined that there is no reference in R.C. 4115.05 to where the work must be performed, so the Court looked at the language of the statute, the circumstances under which the statute was enacted, and the legislative history. The Court also considered the language in other provisions of the prevailing-wage law that suggested that the Legislature intended the statute to apply only to those who are actually working directly on the projects. The Court further considered the 70-plus-year industry practice of paying prevailing wages only to those who actually worked on the job site. The Court concluded that the Legislature could have amended the statute, but the absence of such an amendment was compelling to the Court in this case.

This Supreme Court decision makes it clear that contractors for public improvement projects do not have to pay off-site laborers prevailing wages. In the absence of a legislative change to R.C. 4115.05, contractors performing work on public improvement projects are not required to pay off-site laborers prevailing wages.

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The Pennsylvania Supreme Court Clarifies Some Aspects of Asbestos Law

by Mary Margaret Hill, Esq.

The Pennsylvania Supreme Court recently issued its long-anticipated opinion in *Abrams v. Pneumo Abex Corporation*, wherein it addressed the question of whether an individual who previously recovers damages for increased risk and fear of developing cancer due to asbestos exposure under the "one disease rule," may later recover damages - from a party he did not previously sue - for cancer that developed and was diagnosed after the "separate disease rule" was adopted by the Pennsylvania Court of Appeals in 2002. In a split opinion, the Court answered this question in the affirmative, providing clarification to asbestos litigants on an issue which is frequently raised in lower courts throughout Pennsylvania.

Background of the Litigation

Abrams involved consolidated actions for personal injuries sustained by two individuals who were occupationally exposed to asbestos, and who were both diagnosed with non-malignant asbestos-related disease in the mid-1980s. In that same time period, the *Abrams* plaintiffs filed complaints against various defendants, seeking damages for increased risk and/or fear of cancer. In 1993, the *Abrams* plaintiffs settled their 1980s lawsuits.

However, in 2002, the *Abrams* plaintiffs were diagnosed with lung cancer and, in 2003, each filed a separate lawsuit ("the 2003 lawsuits") against various companies, including John Crane, Inc. ("Crane"), a company which was not named in the 1980s lawsuits. In their 2003 lawsuits, the *Abrams* plaintiffs alleged that their lung cancer was caused by their occupational exposure to asbestos-containing products manufactured by various defendants, including Crane.

Crane filed a motion for summary judgment on the basis that the plaintiffs' claims were barred by the two-year statute of limitations applicable to asbestos injuries, which began to run upon their initial diagnosis with asbestos-related disease in the mid-1980s. The trial court agreed, and entered summary judgment for Crane. The Pennsylvania Superior Court affirmed the trial court's ruling, noting that the plaintiffs' claims in the 1980s lawsuits were premised upon the assertion that they would contract cancer in the future as a result of their occupational exposure to asbestos, and thus pertained to the same malignant asbestos-related disease for which they sought coverage in the 2003 lawsuits. Plaintiffs appealed the Superior Court's ruling with respect to Crane.

While the Court's ruling on the two-disease rule in its *Abrams* decision provides some clarification for litigants in the area of asbestos litigation, other portions of the Court's opinion may create some confusion, such as the Court's comments regarding a defendant's right to repose.

The "Separate" or "Two-Disease" Rule

At the time the *Abrams* plaintiffs were diagnosed with non-malignant asbestos-related disease in the 1980s, Pennsylvania law required them to file a single cause of action for all present and future harm caused by their exposure to asbestos within two years of the initial diagnosis of any asbestos-related condition. This rule is known as the "one - disease" rule. However, in 1992, Pennsylvania adopted a "separate-disease rule," also known as the "two-disease rule." Under the separate-disease rule, a plaintiff who discovers a non-malignant asbestos-related lung pathology does not trigger the statute of limitations with respect to an action for a later, separately diagnosed, disease of lung cancer.

Application of the "Separate" or "Two-Disease" Rule

Applying the separate-disease rule to the *Abrams* plaintiffs, the Supreme Court determined that the plaintiffs' prior recovery from certain other defendants for increased risk and fear of cancer (arising from diagnosis of non-malignant asbestos-related disease) did not preclude their recovery of compensation for a separate disease (here, lung cancer) from Crane, following Pennsylvania's adoption of the separate-disease rule. According to the Supreme Court, the plaintiffs' claims for lung cancer were separate and distinct from any claims for risk or fear of cancer that may have existed in the 1980s, upon their diagnosis of non-malignant asbestos-related disease. Accordingly, the statute of limitations on their lung cancer claims did not begin to run until they were diagnosed with lung cancer in 2002, and plaintiffs' claims against Crane were timely filed, requiring reversal of the trial court's ruling granting summary judgment to Crane.

The Statute of Repose

While the Court's ruling on the two-disease rule in its *Abrams* decision provides some clarification for litigants in the area of asbestos litigation, other portions of the Court's opinion may create some confusion, such as the Court's comments regarding a defendant's right to repose. In this regard, the Court rejected an argument made by Crane that allowing the *Abrams* plaintiffs to proceed with their causes of action for lung cancer would violate Crane's right to repose. In so ruling, the *Abrams* Court defined a statute of repose as "a statute barring any suit that is brought after a specified time since the defendant acted (such as designing or manufacturing a product), even if this period ends before the plaintiff has suffered a resulting injury." With respect to Crane's assertion that it had a right to repose from the plaintiffs' lung cancer claims, the *Abrams* Court noted that "no statutory right to repose exists with respect to asbestos cases."

According to the *Abrams* court, if the Pennsylvania legislature had wanted to subject asbestos cases to a statute of repose, it could have expressly indicated so

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indictments of more than 293 individuals and organizations across the country that collectively billed Medicaid more than $674 million.

The heightened focus on fraud enforcement activity will likely result in the execution of more search warrants. The execution of a search warrant, which frequently comes as a complete shock to executives and employees of the target company, is a primary tool in the government's arsenal when investigating fraud and abuse. With more money and more manpower, this favorite investigative technique will no doubt be on the rise. It is now more imperative than ever that your company and its employees be prepared for a potential surprise knock at the door by federal agents with search warrant in hand.

II. A Plan of Action is Needed Beforehand for Responding to Search Warrants

To prepare your company and its employees to effectively respond to a search warrant, as well as to assure your Board of Directors that you have a contingency plan in place should such an unpleasant event arise, we recommend the following practical Plans of Action (POAs) for responding to a search warrant.

While a search warrant scenario is always a fluid situation, our experience has demonstrated that the following POAs should help minimize the inevitable disruption to your business operations, and decrease the risk of your company being perceived by the government as being uncooperative, or even worse, obstructionistic. Given the current enforcement climate, all companies, big and small, are best served by devising a plan of action for responding to search warrants well in advance of any hint that it may be the target of a federal investigation.

POA #1: Designate a Manager-In-Charge Who Will Lead the Response Effort

Every company should designate one management-level individual who is tasked with responding to a search warrant. Frequently, this individual is the company's Chief Compliance Officer, or someone in the legal department.

POA #2: Dispatch Experienced Legal Counsel to the Scene

Once the manager-in-charge is informed that law enforcement agents are on the premises, the first thing the manager-in-charge should do is contact the company's outside legal counsel. Getting experienced white collar criminal attorneys on the scene as soon as possible is the best way for a business to protect itself during the execution of a search warrant.

POA #3: Obtain a Copy of the Search Warrant

Once the manager-in-charge determines that he or she will have to take charge of the scene, without the aid of experienced counsel, he or she should ask the lead law enforcement agent for a copy of the search warrant. The search warrant is the court order that legally permits the law enforcement officers to enter the premises and to take with them certain enumerated items. The corporation, acting through the manager-in-charge, is legally entitled to receive a copy of the search warrant.

The first thing the manager-in-charge should do is contact the company's outside legal counsel.

The manager-in-charge should carefully review the search warrant. The warrant must specify the premises to be searched and the items or documents to be seized. The search warrant therefore establishes the boundaries of precisely where the agents can go and what they can take with them.

By understanding what items the law enforcement officers are permitted to seize, the manager-in-charge may be able to expedite the search by directing the agents to the locations likely to contain items covered by the search warrant.

POA #4: Send Home All Non-essential Employees

As part of its advance planning, the corporation, in consultation with the designated manager-in-charge, should compile a list of all non-essential employees who may be dismissed from work in the event of the execution of a search warrant. This list should be vetted and blessed by the company's Human Resources Department. On the day of the search, the manager-in-charge should refer to this pre-determined list, and send those non-essential employees on the list home for the day. The employees may leave the premises, but must not remove anything that could potentially be the subject of the search warrant.

Prior to sending employees home, the manager-in-charge should speak with all employees, either individually or in a group, to explain what the agents are doing on the premises. Although the manager might not have much information about the investigation, there are a few basic facts that can usually be communicated. The manager should indicate to the employees that the company: 1) has not been charged with or accused of any wrongdoing (assuming this is accurate); 2) has retained competent legal counsel; 3) is cooperating fully with the agents; and 4) will provide further information as soon as practicable. The employees should also be advised that they could be approached by the media, and the manager-in-charge should remind each employee of the company's policy regarding communicating with the media, usually contained in the employee handbook.

POA #5: Offer Your Cooperation to the Agents

Once all of the non-essential employees have been sent home, the manager-in-charge should locate the agent-in-charge, and ask him whether there is anything he or she can do to help the agents locate the enumerated items for which they are looking. By then, the manager-in-

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Search Warrants - Is Your Company Ready? continued from page 8

charge will have reviewed the search warrant and may be able to direct the agents to the location of the items they are authorized to seize. The manager-in-charge should tell the agents that they are free to search within the limits of the warrant and that he or she will assist them as necessary. Without impeding the search, the manager-in-charge should attempt to determine whether the agents are searching in places and seizing items that are not authorized by the warrant. Such information could prove useful to the company's attorney later in the investigation. At no point, however, should the manager-in-charge disrupt or impede the search.

POA #6: Obtain and Scrutinize the Search Warrant Inventory

Once the agents have located and seized the items specified in the search warrant, they are legally obligated to provide an inventory of all items they intend to take with them. The manager-in-charge should carefully review the search warrant inventory and ask any questions he or she might have about the description of the items being seized.

POA #7: Once the Search is Over, Politely Ask the Agents to Leave the Premises

After the manager-in-charge is satisfied with the search warrant inventory, he or she should politely ask the agents to leave the premises. The manager-in-charge must remember that during all contact with the agents, he or she must remain calm, polite, and cordial. It is firmly against the company's interest to have any hostile confrontations during the execution of a search warrant.

POA #8: Conduct Your Own Post-Search Inventory

As soon as the agents have left the premises, the manager-in-charge should conduct an inventory of the offices to determine precisely where the agents looked during the search. It is important to note any damage that may have been done to the company's property during the course of the search.

The manager-in-charge should take detailed notes regarding his or her findings to be provided to the company's counsel as soon as he or she arrives.

POA #9: Debrief All Employees Who Remained on the Premises During the Search

The manager-in-charge should speak individually with each employee who remained on the scene during the execution of the search warrant. The employees' personal observations of what the agents were looking at, what they took, and what they said, could prove valuable to the corporation's lawyers. In addition, the manager-in-charge should ask if any employee gave any statements to the agents.

POA #10: Do Not Lower Your Guard Once the Government Leaves the Building

In the days, weeks and months following the execution of the search warrant, company management should report any inquiries or other events that they find out of the ordinary to corporate counsel. From our experience, law enforcement agents may pre-arrange telephone calls and meetings using individuals who are cooperating with the government. These calls, meetings, and other encounters may be taped and monitored by the government as part of its ongoing investigation. The government is obviously looking for the company to say or do something incriminating, or that supports its theory of wrongdoing.

II. Conclusion

To avoid or minimize the risks associated with responding to search warrants, we recommend that every company develop a plan of action for responding to search warrants. Implementing modest, inexpensive contingency plans, such as those detailed in this article, can go a long way in ensuring that your company has a fighting chance of survival when government agents come knocking at your door.

For more information, please contact Joseph D. Mancano at 215-320-6244 or via e-mail at JDM@PIETRAGALLO.com.

The Use of Arbitration Techniques continued from page 4

the arbitrator's authority under Section 7 of the Act is limited to issuing a subpoena to the non-party compelling him or her to appear at the arbitration proceeding as a witness and to bring documents with him or her if necessary.

Moreover, if the arbitration hearing is being held in Pittsburgh, for example, the provisions of Rule 45 of the Federal Rules of Civil Procedure preclude any such subpoena from being served at a location more than 100 miles from the place of the hearing. Moreover, developing case law, such as the recent decision by the Second Circuit in *Life Receivables Trust*, 549 F.3d 210 (2008), underscores the fact that Section 7 of the Act does not provide the arbitrator with authority to subpoena non-parties or third parties for pre-hearing discovery even if a special need or hardship is shown.

Therefore, in deciding whether or not you should agree to arbitration in a commercial context or the insertion of an arbitration clause in a contract, all of the factors discussed in this article and others should be weighed and discussed with inside or outside counsel. The arbitration procedure itself may very well save you legal fees, but there are downside factors to be considered as well in terms of your ability to present a winning case or challenge or modify an unfavorable decision.

For more information, please contact Eric P. Reif at 412-263-1474 or via e-mail at EPR@PIETRAGALLO.com

A Sea Change in Government Contracts continued from page 3

success and efficiency of Government Projects." Part of the justification provided for such measures is that some contractors have already invested in such precautions, and this rule will "level the playing field in competitive environments."

In the highly competitive environment of government contracting, mandatory disclosure is a monumental step forward from the past policy of voluntary disclosure (a policy largely ignored by contractors for the past 10 years). Mandatory disclosure has been adopted by the banking industry and public companies, and the practice has been stressed by the U.S. Sentencing Commission and the Department of Justice.

Defense contracting is a massive industry for the United States, but its reputation has not always been the most pristine. Anne Flaherty of the Associated Press published an article on March 23, 2009 entitled "Def. Sec. Gates: Use of Private Contractors 'Vital' in Afghanistan, US Military's 'Help Wanted' Sign," which addressed this very point. The mere mention of *Blackwater*, for example, is enough to evoke a negative impression of the industry based upon its errors in Iraq as a defense contractor - which is undoubtedly the reason the company recently changed its name to *Xe*.

With the U.S. currently entrenched in military activity in Iraq and Afghanistan, as well as in many other parts of the globe, many government contractors are providing large-scale support to U.S. troops. This new Code will impact how our country operates around the globe.

As of March 23, 2009, there were 71,700 U.S. government contractors in Afghanistan alone; this was more than double the number of U.S. troops in that country at the time. In the wake of *Blackwater's* much-publicized failures in Iraq, for example, a drunken *Blackwater* employee fatally shooting an Iraqi politician's bodyguard, the new Code appears relevant and needed. Despite these well-known issues, the first proposed version of the new Code included an exception for overseas contracts. One agency, the Office of Inspector General (OIG), opined:

"[I]t is counterproductive to exclude contracts performed entirely outside the United States because the United States is still party to such contracts and may be victimized when overpayments are made or fraud occurs in connection with those contracts…the contracts require greater vigilance because they are performed overseas where U.S. resources and remedies are more limited…and the inclusion would reduce the vulnerabilities that often plague overseas programs and increase the effectiveness of those programs."

The agencies agreed, and no such exclusion for contracts performed outside of the U.S. made its way into the final version of the Code.

The New Administration

President Obama issued a Memorandum for the Heads of Executive Departments and Agencies on March 4, 2009, without explicitly referencing safety and security concerns, but with a clear message of fiscal responsibility. Spending on government contracts has more than doubled since 2001, exceeding $500 million in 2008. The President cites a recent GAO study conducted in 2008 of 95 "major defense acquisition projects" that found cost overruns of 26 percent, totaling $295 billion over the life of the projects. In an effort to curb wasteful spending, President Obama has directed the following:

The Director of the Office of Management and Budget (OMB)…to develop and issue by July 1, 2009, Government-wide guidance to assist agencies in reviewing and creating processes for ongoing review of existing contracts in order to identify contracts that are wasteful, inefficient, or not otherwise likely to meet the agency's needs, and to formulate appropriate corrective action in a timely manner. Such corrective action may include modifying or canceling such contracts in a manner and to the extent consistent with applicable laws, regulations, and policy.

The President has instituted a tight timeline for this project and has set a deadline of September 30, 2009 for the Director of OMB to issue "Government-wide guidance" to govern the use of no-bid contracts versus competitive contracts, the assessment of when such contracts are needed or appropriate, and the oversight of these contracts going forward.

With heavy reliance on contractors, especially in the battle zones of Iraq and Afghanistan, the juxtaposition of the new Contractor Code and President Obama's March 4 Memorandum sets up a significant sea change in defense and procurement contracting. The new Administration is pushing for a leaner workforce and has not indicated any intent to repeal the new Code. Therefore, the contractors remaining after the intended thinning of the work force must spend time and money to create stringent ethical rules and notify the government of any credible evidence of unethical behavior by its own employees.

Will government contracting thrive, or will contractors find the negatives outweigh the positives of receiving paychecks from Uncle Sam? Aaron Smith's February 10, 2009 article published on CNNMoney.com entitled "Military Recruitment Surges as Jobs Disappear" provides interesting data. Given the historic level of job losses in the U.S., military recruiting is meeting and, in some cases, exceeding its goals, even though more than 4,800 soldiers have been killed in Iraq and Afghanistan.

The U.S. military provides a stable source of income and benefits when the U.S. civilian market lost 2.6 million jobs last year alone. Our country has so heavily relied upon defense contractors abroad, that it appears unlikely recruiting efforts will surmount the nearly 72,000 men and women needed in Afghanistan alone to replace the current workforce.

The Future

Although excessively stringent implementation and high costs could lead to companies dropping out of the race for some contracts, procurement and defense contracting is too lucrative a business for contractors to crumble under the added cost of implementing ethical guidelines.

As and if the new Code is enforced and the Obama Administration sets its course, contractors should proceed cautiously in a new and changing regulatory environment. Contractors may be wary of the federal government imposing more and more regulations on an industry with fewer and fewer officials to monitor compliance, but these changes are here to stay, and counsel must be ready to assist clients in navigating the new terrain.

Marc S. Raspanti is a name partner of Pietragallo and Chair of its White Collar Criminal Defense Practice and Douglas K. Rosenblum is an associate. They can be reached via phone at 215-320-6200 or via e-mail at MSR@PIETRAGALLO.com or DKR@PIETRAGALLO.com.

in its enactment of 42 Pa. C.S.A. §5524(8) (a now-repealed statutory provision providing a two-year statute of limitations applicable solely to asbestos-related conditions). As an example of an instance wherein the Pennsylvania Legislature did enact a statute of repose, the *Abrams* Court cited the statute of repose contained in Pennsylvania's Workers' Compensation Act at Section 301(c)(2), which provides that a claim expires within 300 weeks of the claimant's last exposure, regardless of whether occupational disease manifests or death occurs within that time period.

While the *Abrams* Court seemingly intended its repose-related comments to mean that no statute currently exists which provides for the wholesale abolishment or elimination of an asbestos plaintiff's cause of action against a designer or manufacturer of asbestos products after the expiration of a specified period of time, the language used by the Court is loosely crafted, thereby creating an opportunity for argument by asbestos plaintiffs that the *Abrams* Court's dicta should have broader application to all rights of repose. This is unfortunate, as there are statutes of repose which currently exist, and which clearly apply to certain entities frequently named as defendants in asbestos litigation. For example, 42 Pa. C.S.A. §5536 is a statute of repose which operates as a complete bar to causes of action arising from construction or improvements to real property if such actions are not brought within twelve years after the construction or improvement is complete. In current asbestos litigation, §5536 is often raised as a defense by entities involved in the initial design or construction of buildings into which asbestos was allegedly incorporated. Given the wording of the *Abrams* Court's dicta on this issue, we are likely to see the *Abrams* opinion cited in opposition to any assertion of a right to repose, no matter how viable such right may be under currently existing statutes of repose.

Dissenting Opinion

The dissent to the *Abrams* majority opinion focused on the expiration of plaintiffs' claims against Crane based on the legal framework in effect at the time the *Abrams* plaintiffs initiated their 1980s lawsuits, which provided a two-year statute of limitations applicable to all claims arising from asbestos exposure. According to the dissent, "statutes of limitations are designed to effectuate the preservation of evidence, the right of potential defendants to repose, administrative efficiency and convenience." In the dissent's view, when the *Abrams* plaintiffs' claims against Crane vested in the 1980s upon their diagnosis with non-malignant asbestos-related disease, the "one-disease rule" was the law in existence. At that time, Crane became vested with certain defenses against the *Abrams* plaintiffs, including the defense of expiration of the applicable limitations period. According to the dissent, Crane's entitlement to that defense has essentially been eliminated by the majority's opinion.

The dissent also noted that, given that the state of the law in the 1980s was based on the "one-disease rule," the compensation afforded to the *Abrams* plaintiffs as part of the settlement of their 1980s lawsuits included compensation for the increased risk that they might develop cancer at some point in the future. Indeed, as noted by the dissent, the availability of compensation for increased risk of cancer grew out of the "one-disease rule" because, pursuant to the "one-disease rule," later recovery would be unavailable for the actual development of cancer because the limitations period would most likely have expired. Thus, from the dissent's perspective, the *Abrams* plaintiffs were fully compensated for all cancers caused by their asbestos exposure in settlement of their 1980s lawsuits, and the majority opinion merely permits the *Abrams* plaintiffs to obtain full compensation for their asbestos-related injuries a second time.

Conclusion

The Abrams decision answers the long-debated question of whether an individual who previously recovers damages for increased risk and fear of developing cancer due to asbestos exposure under the "one-disease rule," may later recover damages - from a party he did not previously sue - for cancer that developed and was diagnosed after the "separate-disease rule" was adopted by the Pennsylvania Court of Appeals in 2002. In answering this question in the affirmative, the Pennsylvania Supreme Court confirmed that an individual initially diagnosed with asbestosis who brought suit prior to the adoption of the "separate-disease rule" in 2002 and thereafter recovered for his asbestosis-related injuries (including increased risk and fear of developing cancer due to asbestos exposure), may later bring a separate lawsuit and recover additional damages for increased risk and fear of developing cancer due to asbestos exposure if such individual later developed and was diagnosed with cancer following the Pennsylvania Court of Appeals' adoption of the "separate-disease rule" in 2002.

However, while the Abrams decision provides some clarification to Pennsylvania asbestos litigants on the "separate-disease rule," it unfortunately creates confusion and uncertainty regarding the application of certain statutes of repose to asbestos-related causes of action. While asbestos plaintiffs will argue that, under *Abrams*, no statutes of repose apply to asbestos-related claims, certain asbestos defendants will argue that the Court's comments regarding statutes of repose were mere dicta or, if applicable, apply only to non-statutory rights of repose. Thus, while the *Abrams* decision resolved one issue plaguing Pennsylvania asbestos litigants, the decision seemingly created another issue to take its place.

For more information, please contact Mary Margaret Hill at 412-263-1820 or via e-mail at MMH@PIETRAGALLO.com.

Pietragallo is Pleased to Announce the Return of Martin T. Durkin, Jr., The Health Care Lawyers' Lawyer

On March 1, 2010, Martin Durkin returned to the Pietragallo firm after working as Associate Counsel for one of the leading integrated non-profit health systems in the United States. As Associate Counsel, Mr. Durkin assisted with physician practice acquisitions, physician employment agreements, physician services agreements, and a variety of other legal matters germane to the daily operations of the physician practice plan.

Mr. Durkin rejoins the firm as a partner. He will continue to concentrate his practice in the areas of Health Law, Corporate Law and Commercial Transactions, assisting clients with navigating the rapidly changing regulatory environment in which they conduct their business.

Mr. Durkin represents health care entities and providers in matters that require analysis of federal and state fraud and abuse laws, such as the Stark and Anti-kickback statutes and regulations, the False Claims Act, HIPAA privacy compliance and confidentiality of medical records, as well as matters of a more general nature such as restrictive covenants and commercial leasing. He has assisted health care clients in a variety of matters, including negotiating and drafting asset purchase agreements, physician service agreements, medical directorship agreements, management services agreements, hospitalist agreements, employment and independent contractor agreements, locum tenens agreements, software license agreements and business associate agreements.

Mr. Durkin also represents business corporations in negotiating and drafting a wide variety of transactional documents, including stock purchase and asset purchase agreements, commercial leasing agreements, non-disclosure agreements, confidentiality and non-compete agreements, joint venture agreements, commercial sales agreements (manufactured goods), employment agreements, independent contractor agreements, shareholder agreements, and partnership agreements.

Mr. Durkin was appointed by the Disciplinary Board of the Supreme Court of Pennsylvania to serve as a Hearing Committee member and was reappointed by the Board to serve a second term through July 2010. He previously served as a Board Member of the Allegheny County Sanitary Authority from 1999 through 2004.

Mr. Durkin graduated with a B.A. from the University of Pittsburgh and a J.D. from Widener University School of Law.

Mr. Durkin is admitted to practice in Pennsylvania and New York. He is a member of the American Bar Association, Pennsylvania Bar Association, Allegheny County Bar Association, and the American Health Lawyers Association.

Martin T. Durkin, Jr. may be reached via phone at 412-263-4355 or via e-mail at MTD@PIETRAGALLO.com.

Pietragallo's West Virginia Office Has Changed Locations

The new address is:
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RECENT SUCCESSES

Successful Verdict: William Pietragallo, II and **Bryan S. Neft** were successful in winning a verdict in a bench trial in New Orleans. The case involved a barge shipment with a special type of carbon coke product that had been partially contaminated in that the barge had previously been used for grain and had not been properly cleaned. The coke was valued at $1 million and the damage was estimated at $300,000. They were successful in winning a verdict in the amount of the damages from the barge operator.

$3.3 Million Settlement in Whistleblower Case: Marc S. Raspanti, Kevin E. Raphael and **Michael A. Morse** represented the qui tam whistleblowers in a $3.3 million settlement in one of the largest cases in Delaware under the Federal False Claims Act and Delaware False Claims Act.

SEPTA Race Discrimination Case: Alexandra C. Gaugler and **Amy C. Lachowicz** obtained a victory for SEPTA as the appellee in a race discrimination case before the Pennsylvania Superior Court. The Superior Court affirmed Judge Arnold New's order granting SEPTA's Motion for Judgment on the Pleadings, which addressed arguments under the Pennsylvania Human Relations Act and the coordinate jurisdiction rule.

Dismissal of Claims: Gaetan J. Alfano, Bryan S. Neft and **Divya Wallace** defeated claims by the Mississippi Insurance Guaranty Association for direct access to reinsurance in a case where the Commonwealth Court granted the Motion for Judgment on the Pleadings of Legion Insurance company in litigation.

Dismissal of Commercial Dispute: Gaetan J. Alfano, Bryan S. Neft and **Divya Wallace** were successful in securing a dismissal with prejudice of an international telecommunications company from a $5 million commercial dispute in the Philadelphia Court of Common Pleas.

Physician Defense: Tyler J. Smith received a defense verdict for a physician in Westmoreland County in which the plaintiffs claimed a severed facial nerve as a result of the negligent conduct of the defendant during a right submandibular gland excision to remove an abnormal right submandibular mass.

Plaintiff Settlement: Mark T. Caloyer settled a case for $2.5 million for a metallurgical coke trader who was the plaintiff in a federal court suit in the Western District of PA.

Life Insurance Carrier Settlement: Eric P. Reif negotiated a successful settlement with a major life insurance carrier on behalf of a firm client who had been sold a "vanishing premium" life insurance policy in 1988 with a substantial death benefit.

Summary Judgment: Clem C. Trischler and **James F. Marrion** successfully obtained summary judgment for Smith & Wesson in a failure-to-warn case pending in the United States District Court for the Northern District of Texas. The Court found, among other things, that the warnings were adequate and the plaintiff's failure to read the owner's manual precluded any failure-to-warn claim.

Retaliation Defense: Daniel J. McGravey and **Amy C. Lachowicz** obtained summary judgment on a retaliation claim brought against their client, a regional transportation authority.

Successful Verdict: Paul K. Vey obtained a defense verdict in a death-by-suicide case of a 44-year-old, allegedly psychotic patient who alleged a failure of his primary care physician to provide appropriate follow up and medication following an office visit. The week long trial resulted in a unanimous jury verdict.

Breach-of-Contract Action: Eric A. Fischer and **David W. Turner** obtained a non-jury verdict in the Allegheny County Court of Common Pleas on behalf of an electrical contractor in a breach-of-contract action. The decision required the defendant to pay the contractor for work performed pursuant to an oral agreement, which fell outside of the obligations of a written contract entered into between the parties.

ATTORNEYS IN THE NEWS

Gaetan J. Alfano was honored with the Beccaria Award from the Justinian Society and Philadelphia Bar Association's Criminal Justice Section for his contribution to the cause of justice and the advancement of legal education.

Eric G. Soller has been appointed to the Board of the St. Anthony Charitable Foundation, which aims to provide an academic course of studies and vocational training for students with developmental disabilities.

James W. Kraus and **Douglas K. Rosenblum** co-authored "The Shifting Tide in FINRA Arbitrations," published in *The Legal Intelligencer.*

Timothy M. Hazel has been appointed to serve as vice-chair of the Allegheny County Property Assessment Appeals Review Board.

Gaetan J. Alfano has been appointed to the Insurance Programs Committee of the Philiadelphia Bar Association for a three-year term.

Tyler J. Smith has been appointed to the Editorial Board of *Outpatient Surgery Magazine.*

Eric P. Reif was elected to a three-year term on the 24-person Alumni Council of the Mercersburg Academy, a four-year preparatory school in Central Pennsylvania.

Marc S. Raspanti co-presented two seminars on the "NJ False Claims Act" at the NJ Judicial College.

Alan G. Towner was quoted in the article, "Top court ruling on Bilski case could rock world of patents," in the *Pittsburgh Tribune-Review.*

Marc S. Raspanti is featured in the article, "Leading attorneys explain why the crackdown on drug and device companies is far from over," in *Rx Compliance Report*.

Amy C. Lachowicz was quoted in the article, "Panel: Court Not Precluded From Subject Matter Jurisdiction Issue," in *The Legal Intelligencer* on the *Cobbs v. SEPTA* case.

Bryan S. Neft, with the help of **John A. Schwab**, completed revisions to chapters included in the ninth edition of the *Allegheny County Court of Common Pleas Civil Practice Manual* dealing with trial listings and trials.

Mark Gordon co-authored "Collateral Wars" for *The Legal Intelligencer.*

Bryan S. Neft was appointed to the PA IOLTA Board.

Kathryn M. Kenyon and **Alka A. Patel** were inducted as Fellows by the Allegheny County Bar Foundation.

Douglas K. Rosenblum has been designated as a Certified Fraud Examiner by the Association of Certified Fraud Examiners.

Robert J. D'Anniballe, Jr. and **Sarah R. Lavelle** received their Professional Plan Consultant designation through Robert Morris University and Financial Services Standards, LLC.

Pamela G. Cochenour presented on the FMLA at the IMC Fall 2009 Mini Med School.

Marc S. Raspanti presented on "LESSONS WE LEARNED THE HARD WAY: 35 Years of Spills, Thrills, and Even Some Kills" at the 9th Annual Taxpayers Against Fraud Conference in Washington, DC.

Kevin E. Raphael co-presented on "The Mechanics of Pennsylvania Civil Procedure," at the National Business Institute.

Divya Wallace serves as Committee Chair of the Pennsylvania Defense Institute's Young Lawyers' Committee.

Marc S. Raspanti participated on the panel, "Using the Rules of Criminal Procedure to Your Advantage," at the ABA National White Collar Crime Conference in Miami, FL.

Michael A. Morse, Bryan S. Neft, and **Peter S. Wolff** authored the article, "Protecting the Empire: A Practitioner's Primer on the New York False Claims Act," published in the *New York State Bar Association Journal.*

Marc S. Raspanti and **Michael A. Morse** presented "The 10 Things You Want to Know About Whistleblower Suits But Were Afraid to Ask," at the Pennsylvania Bar Institute's 16th Annual Health Law Institute.

Kevin E. Raphael co-presented "Times They Are A'Changing-Hot Topics In Contracting and Litigation With Private Health Insurance Companies," and "Crimes and Misdemeanors: The Intersection of Health Care Fraud and Rules of Professional Conduct," at the Pennsylvania Bar Institute's 16th Annual Health Law Institute.

Tyler J. Smith spoke on "Five-Star Raises the Bar: Protecting the Integrity of the Facility in the Culture of Change," at the Pennsylvania Bar Institute's 16th Annual Health Law Institute.

Mark Gordon co-presented for IMC's Safety & Human Resources personnel regarding workers' compensation issues.

Eric G. Soller spoke at the Pennsylvania Bar Institute Continuing Legal Education program entitled "Officer and Director Liability."

UPCOMING EVENTS

March 24, 2010, Pittsburgh, PA - **Pamela G. Cochenour** will make a presentation at the ASA of Western PA 2010 Education Seminar.

March 25, 2010, Pittsburgh, PA - **Andrea M. Bartko** will co-present the "Year in Review" section of the Day on Real Estate for the Pennsylvania Bar Institute.

April 8, 2010, Philadelphia, PA - **Andrea M. Bartko** will author and present material on "Piercing the Corporate Veil" for the Pennsylvania Bar Institute.

April 15, 2010, Pittsburgh, PA - The Mid-Atlantic Region Subcommittee of the ABA's Criminal Justice Section White Collar Crime Committee and the firm will host a seminar, "How to Survive a Criminal Tax Investigation."

May 10, 2010, Pittsburgh, PA - **Andrea M. Bartko** will present "Piercing the Corporate Veil" for the Pennsylvania Bar Institute.

June 4, 2010, Washington, DC - **Marc S. Raspanti** will participate on a panel, "State Qui Tam Enforcement" at the 8th Annual National Institute on the Civil False Claims Act and Qui Tam Enforcement.

June 16-20, 2010, St. Paul, MN - **Marc S. Raspanti** serves as an Adjunct Professor of Law at Hamline University School of Law, where he teaches a course on health care fraud.

Pietragallo Adds Three New Associates

Steven W. Hays is a registered patent attorney who focuses his practice on patent and trademark preparation and prosecution and patent litigation. He assists clients in protecting and enforcing their intellectual property rights, providing non-infringement/freedom to operate and invalidity opinions, and preparing and reviewing intellectual property agreements. Mr. Hays has previous experience as a polymer chemist for two Fortune 500 chemical companies.

Holly E. DiCesare focuses her practice on commercial litigation and creditors' rights. She has personally handled over 300 cases, ranging from initial collection to post-judgment proceedings. Ms. DiCesare has also participated in a broad spectrum of pleadings, spanning from motions for summary judgment to preliminary objections. She has initiated and drafted documentation, including service and volunteer agreements.

Ryan J. King is a civil litigator who focuses his practice on products liability, construction and commercial litigation. He has experience in the areas of products liability, construction, insurance and employment litigation. He has successfully litigated and tried cases in both State and Federal Courts in West Virginia and Pennsylvania. Mr. King has also participated in all aspects of litigation, from administrative proceedings to arbitrations and mediations. In addition, Mr. King has worked as national counsel for a multi-national manufacturer of high end archery equipment.

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