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# U.S. Government Nets First Options Backdating Guilty Verdict

*By: James W. Kraus, Esq.*

On August 7, 2007, the jury in the case of USA v. Reyes, No.: C06-0556 CRB (N.D. Cal.), returned a verdict of guilty on 10 fraud counts lodged against former Brocade Communications CEO Greg Reyes based on his involvement with stock options backdating. Given the seriousness of the charges and the amount of money alleged to have been involved in the fraud, Mr. Reyes faces a potential lengthy prison term and a significant fine. In a larger sense, the verdict will likely embolden the U.S. Department of Justice in its prosecution of other backdating cases.

> It is expected that the verdict will embolden the government in other pending backdating cases.

The government had alleged that Mr. Reyes and Stephanie Jensen, Brocade's former head of human resources, had conspired to defraud Brocade and its shareholders by using hindsight to price employee stock options, and had "backdated" option grant paperwork in order to intentionally avoid compensation expenses associated with granting "in-the-money" options. The prosecution further alleged that Mr. Reyes was aware that the company's financial statements were materially inaccurate and that its public disclosures were materially incorrect.

Granting a stock option to a holder gives that holder the right to buy shares at a future date at a fixed price, usually the closing market price on the date of the grant. In the event a stock rises, the recipient can cash in the option for a profit. The concept of backdating a grant to a prior date when the price was lower allows the award's value to increase. Those options are known as being "in the money." Such options are distinguished from options described as "at-the-money" grants, which relate the value of the option to the closing market price of the option on the date that it is actually granted. "In-the-money" grants are not in and of themselves illegal, nor does the use of backdating of stock options constitute fraud. Rather, when such grants are made, they must be expensed by the corporation and appropriately disclosed to shareholders. In that regard, backdating of options is appropriate if no documents have been forged, the information is clearly communicated to shareholders, the backdating is properly reflected in earnings, and the backdating is properly reflected in taxes.

In his defense, Mr. Reyes had argued that the stock option granting process at Brocade had one purpose and one purpose only: To benefit the company and its shareholders by attracting and retaining talented employees. He further asserted that there was no scheme to deceive or to cheat shareholders; that no one intended to falsify the financial statements of the company; and that no one intended to misstate any information in the company's public disclosures. He argued further that Brocade, like many of the other approximately 250 companies involved in the backdating scandal, had a good faith misunderstanding of accounting principals set forth in the accounting opinion that applied to the treatment of the options in this case. Finally, the defense argued that the non-cash accounting entries at issue were not material to reasonable investors, and were factored out by analysts and investment managers in making their investment recommendations and decisions.

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# Gaetan Alfano and Marc Raspanti Joining Pietragallo; Firm to Be Renamed Pietragallo Gordon Alfano Bosick & Raspanti


Alfano


Raspanti

The intense recruitment for attorneys from the highly respected Philadelphia litigation boutique of Miller, Alfano & Raspanti – which included several of Philadelphia's largest law firms – is over, with the winner Pietragallo Bosick & Gordon.

Name shareholders Gaetan J. Alfano and Marc S. Raspanti, three of their fellow shareholders, Kevin E. Raphael, Michael A. Morse and Daniel J. McGravey, and five senior and mid-level associates, along with their support and administrative staff, will be joining Pietragallo on or before January 2008. The firm will then be known as Pietragallo Gordon Alfano Bosick & Raspanti, LLP.

"Philadelphia based, Marc Raspanti and Gaetan Alfano are respected attorneys with a national reputation earned for excellence. Kevin Raphael, Michael Morse and Daniel McGravey are highly respected litigators, and are widely recognized as rising stars in the white collar criminal defense bar. As a litigation-focused law firm, we are excited to join with these exceptional litigators and highly creative lawyers to form what we believe is a powerful litigation firm. Our headquarters is Pennsylvania; our reach is national," said William Pietragallo, II.

Messrs. Alfano and Raspanti agreed that the two firms are a good match and an excellent fit for them at every level.

"Both of our firms have complementary practices with few conflicts. We represent clients not only within Pennsylvania but throughout the United States. The more we talked, the more we realized that Pietragallo Bosick & Gordon was the very best fit for us from among a number of great options," said Mr. Alfano.

"The synergy between our litigation specialties made this combination a natural. Our blended practices will allow us to continue to serve all of our existing clients and expand our relationships into new markets," said Mr. Raspanti.

Mr. Pietragallo added that the firm's other existing practice areas, including corporate and business law, intellectual property litigation, employment law and strategic risk management, allow it to provide a full-range of legal services to clients everywhere.

Mr. Alfano was a founding shareholder of Miller, Alfano & Raspanti in 1989. He concentrates his practice in complex commercial litigation, insurance insolvency and coverage litigation, employment disputes and white collar criminal defense. Before entering private practice, he served as an assistant district attorney in the Philadelphia District Attorney's Office under then-District Attorney Edward G. Rendell.

> "Our headquarters is Pennsylvania; our reach is national."
> -William Pietragallo, II

Mr. Raspanti was also a founding shareholder of Miller, Alfano & Raspanti. His areas of practice include white collar criminal defense; criminal, civil and administrative health care fraud defense; federal and state *qui tam* litigation; corporate and regulatory compliance; internal investigations; and complex commercial litigation. Mr. Raspanti has served as lead trial counsel in a number of complex, high-profile white collar criminal and *qui tam* cases. He also served as an assistant district attorney in the Philadelphia District Attorney's Office under both the Honorable Edward G. Rendell and the Honorable Ronald D. Castille.

In addition to Mr. Alfano and Mr. Raspanti, three other equity shareholders from Miller, Alfano & Raspanti will be making their move to Pietragallo: Kevin E. Raphael, Michael A. Morse and Daniel J. McGravey, each of whom will be assuming leadership roles in various practice groups throughout the firm.

Mr. Raphael, a former Philadelphia prosecutor, is a veteran of hundreds of bench and jury trials. He focuses his national practice on white collar criminal defense, criminal and civil health care fraud defense, complex commercial litigation, professional licensing litigation, health care law, and liquor licensing litigation.

Mr. Morse is a former prosecutor who focuses his national practice on health care law, white collar criminal defense, federal and state *qui tam* litigation, complex commercial disputes, and securities litigation, as well as intellectual property litigation.

Mr. McGravey, a former Philadelphia prosecutor, focuses his practice on white collar criminal defense, complex commercial disputes and employment matters. He has a national litigation practice with extensive experience representing licensed professionals and corporate employees in various governmental investigations involving health care, tax, wire and bank fraud. He also counsels individual and corporate clients in complex business disputes involving restrictive covenants and contractual rights.

Joining the five shareholders from Miller, Alfano & Raspanti are five associates, including senior associate Alexandra C. Gaugler, as well as Amy C. Lachowicz, Christopher A. Iacono, Sarah R. Lavelle and J. Peter Shindel, Jr.

Ms. Gaugler currently handles a wide variety of white collar criminal cases, including health care fraud, public corruption and Food and Drug Administration criminal investigations. In addition, she has experience handling complex *qui tam* actions brought under the federal and state false claims acts.

Ms. Lachowicz focuses her practice on complex commercial disputes, employment disputes and SEC enforcement action defense.

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Mr. Iacono focuses his practice on complex commercial disputes, criminal and civil health care fraud defense, white collar criminal defense, SEC enforcement action defense and professional licensing litigation.

Ms. Lavelle concentrates her practice in complex multi-district litigation, commercial disputes and employment disputes.

Mr. Shindel concentrates his practice in regulatory enforcement actions, defending civil securities fraud actions, and complex civil and criminal matters.

Pietragallo Gordon Alfano Bosick & Raspanti's Philadelphia office will be based in downtown Philadelphia. Attorneys from Pietragallo's existing Wayne office will be relocating to the larger Center City offices.

*(For more details on these attorneys, please visit the 'Newsroom' section of Pietragallo's website at www.PBandG.com).*

## Practice Spotlight: Risk Management

Our risk management attorneys work with clients in industries where risk is a major cost component and where effective management of risk increases profitability. Working in concert with best-in-class vendors, we increase the financial performance of each client's Risk Management program, manage losses to mitigate financial exposure, reduce total insurance costs and assist with the creation of alternative risk transfer vehicles.

We have created and implemented customized practices that are employed by our clients, their insurers, third-party administrators, brokers, lawyers and physicians. These practices yield better investigations, and management and resolution of claims. Our efforts keep small losses from becoming large and large losses from becoming catastrophic.

We have successfully litigated coverage and premium disputes for our clients and have successfully defended insurers for alleged E&O liabilities. Our group has reduced costs to clients through successful class code litigation.

Members of our group have served as experts in state and federal courts in litigation involving claims handling errors and insurance coverage issues. Insurance departments consult us as experts on risk.

We counsel employers on how to reduce exposure in the setting of employment liability. Members of our group address issues such as discrimination claims, privacy and monitoring issues, wage and hour disputes, and hiring and firing practices. Likewise, we assist our clients with the preparation of employee manuals and personnel policy development; all designed to reduce the risk of litigation and the costs associated therewith.

Our group assesses the viability of portfolio transfer for clients in the settings of merger and acquisition. We value potential pre-existing liabilities for successor companies.

The attorneys of our risk management practice are also involved in forming captive insurance companies and other alternative risk transfer vehicles in an array of industries. Many of our clients have entered into alternative risk transfer arrangements with spectacular cost savings.

*For more information, please contact Mark Gordon, chair of Pietragallo's Risk Management Practice Group, at 412-263-1838 or via e-mail at MG@PBandG.com.*

# Superior Court Rules OSHA Regulations Preempt State Tort Law in Injury Case

*By: Clem C. Trischler, Esq. and Michael E. Barrett, Esq.*

In Arnoldy v. Forklift, LLP, 927 A.2d 257 (Pa. Super. 2007), the Superior Court of Pennsylvania ruled that OSHA regulations preempted state tort law where a plaintiff's complaint sounds in both negligence and strict liability. In *Arnoldy*, the plaintiff was struck while standing behind a forklift, which his co-worker was operating in reverse. The plaintiff filed suit, alleging that the forklift was unreasonably dangerous because it had only minimum safety devices and lacked any warning system when it was moving in reverse. The suit was brought against the manufacturer of the forklift as well as its distributor.

After the close of discovery, the manufacturer and the distributor filed motions for summary judgment, arguing that the plaintiff's claims were preempted by federal law, specifically, OSHA regulations pertaining to forklifts. The trial court granted both defendants' motions and judgment was entered in their favor. Plaintiff then appealed the decision to the Superior Court. The Superior Court ruled the Plaintiff-Appellant ("Appellant") to file a Rule 1925(b) Statement of Matters complained of on appeal. The Court accepted the following statements of matters:

1. Whether the trial court erred in granting summary judgment in favor of defendants based on the conclusion that the Occupational Safety and Health Administration regulations pertaining to forklifts preempts state tort law under the Doctrine of Conflicts Preemption;

2. Whether the trial court erred in granting summary judgment in favor of all defendants on the grounds that OSHA regulations not only are admissible in a strict liability case, but are conclusive notwithstanding the long-established law of this Commonwealth that OSHA regulations, ANSI standards or other evidence of industry custom and practice is inadmissible because the reasonableness of the actions of the manufacturer is not at issue in a strict liability case;

3. Whether the trial court erred in granting summary judgment in reliance on the New Jersey Supreme Court case of Gonzales v. Ideal Title Importing Company, Inc., 184 N. J. 415 (2005) without any analysis of either the facts of that case or the differences of the laws of New Jersey and Pennsylvania with respect to the admissibility of OSHA regulations in a products liability case;

4. Whether the trial court erred in implicitly overruling Sheehan v. Cincinnati Shaper Company, 555 A.2d 1352 (1989) and other cases holding that OSHA standards are irrelevant to products liability cases against manufacturers; and

5. Should this Court resolve the conflict between the Common Pleas Court opinions in this case and in Colville v. Crown Equipment Corporation, 785 A.2d 1023 (Pa. Super. 2001), where Judge Manfredi, under similar facts, held that OSHA did not preempt state law products liability claims.

> The Superior Court was being asked to create additional state common law requirements that a manufacturer must meet, where such requirements are not provided via OSHA regulations.

Initially, the Court addressed the appellants first and second arguments together. In support of its appeal, appellants postured two arguments:

1. OSHA regulations regarding forklifts do not preempt state tort law under the Doctrine of Conflicts Preemption; and

2. OSHA regulations are inadmissible because the reasonableness of the actions of the manufacturer is not at issue in a strict liability case.

The Superior Court conceded that an admission of OSHA regulations in a pure, strict liability case would constitute reversible error. However, where a complaint lodges allegations of both strict liability and negligence, OSHA regulations are admissible and relevant. As such, the Court concluded that the trial court properly admitted the OSHA regulations into evidence because of the negligence tort theory which was present in this matter.

The Court then went on to decide whether the OSHA regulations preempt state tort law. Neither party disputed that §1910.178 of the OSHA Act applied to the forklift that injured the plaintiff. This language of this regulation references and incorporates ANSI B56.1-1969. This standard states, "When operating conditions dictate, the user should request the manufacturer to equip the trucks or tractors with visual warning devices such as lights or blinkers."

Thus, appellants tort action is predicated on the claim that the manufacturer of the forklift failed to install additional safety devices. As such, the Superior Court was being asked to create additional state common law requirements that a manufacturer must meet, where such requirements are not provided via OSHA regulations.

"Such a state law would, in effect, require manufacturers of these forklifts to install additional safety devices on all forklifts regardless of the existence of the standard incorporated by OSHA that places the responsibility of the determination of situation-specific safety devices on the user of this equipment. This is in direct conflict with the purpose behind the OSHA regulations, i.e., to protect employees by allowing the end users of the product to determine which safety device would be the most protective in its particular situation."

The Court then limited its ruling in this matter: "[u]nder the circumstances of *this particular case*, the state tort law stands as an obstacle to the accomplishment and execution of the full purpose and objectives of Congress, and accordingly we find it preempted." As such, the Court found against the appellants with respect to their first and second issues on appeal.

As for appellant's third and fourth arguments, the Court indicates that the trial

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court did not solely rely on Gonzales and thus its analysis was not in error. Additionally, the Court distinguishes the facts in this case from the facts in Sheehan because the plaintiff in Sheehan solely brought a case sounding in strict liability and not negligence.

As for the appellants' final argument, the Court distinguished the facts in Colville from the facts in the present case. In Colville, the trial court determined that the plaintiff's tort claims were not preempted by OSHA regulations. There, plaintiff argued that certain training standards mandated by OSHA (i.e., recommendations that operator protection means be designed to permit rapid exit in an emergency) insulated manufacturers against defendant's claim that the defective design of the forklift resulted in injury. On appeal, the Superior Court, in an unpublished opinion, determined that the OSHA regulations in Colville were not inconsistent with the defendant's claim that the product itself was defective, and, accordingly, the tort claims were not preempted. "In this case, we have found that the OSHA regulation embodied in 29 C.F.R. §1910.178, that incorporates by reference the ANSI standard, as inconsistent with the appellant's theory that the manufacturer of the forklift failed to install additional safety devices. Accordingly, appellant's final argument fails."

Thus, the Arnoldy case constitutes a benchmark ruling whereby a manufacturer may rely upon OSHA regulatory standards that specifically relate to a product at issue as a defense to a plaintiff's claim which sounds in both strict liability and negligence. Where the OSHA standard applies to methodology and/or training on a piece of equipment, it is still unlikely that such a standard will be considered by the court in resolving an issue of liability.

*For more information, please contact Clem C. Trischler, co-chair of Pietragallo's Commercial Litigation Practice Group, at 412-263-1816 or CCT@PBandG.com or Michael E. Barrett at 412-263-1825 or MEB@PBandG.com.*

## The Rules of Joint and Several Liability Are Not Trumped by the Exhaustion Requirements of the Insurance Guaranty Act

*By: Louis C. Long, Esq. and Martha S. Helmreich, Esq.*

The Pennsylvania Property and Casualty Insurance Association Act, 40 P.S. §§ 991.1801-991.1820, requires every company that writes property or casualty insurance in Pennsylvania to make payments into a fund which is used to pay claims against insolvent insurers. When an insurer becomes insolvent, the guaranty association assumes its rights and obligations subject to certain limitations.

In Carrozza v. Greenbaum, 916 A.2d 553 (Pa. 2007), the question before the Court was whether, in a case involving joint and several liability, the act's non-duplication of recovery or exhaustion of coverage provision, 40 P.S. § 991.1817, required a judgment creditor to seek recovery solely from the solvent insurer of one defendant when the insurer of the other was insolvent, thus effectively discharging the guaranty association from any liability.

The Court answered this question with a qualified "no."

Carrozza started life as a medical malpractice case. Subsequent to the filing of the case, the insurer for one group of defendants was declared to be insolvent and the guaranty association stepped into its shoes. A jury verdict and rulings on post-trial motions resulted in an ultimate judgment of joint and several liability against all the defendants with a 50/50 allocation of responsibility between the two groups of defendants. However, relying on the non-duplication provision of the act, the trial court directed the plaintiff to seek recovery first from the solvent insurer and, only after exhausting its coverage limits, to look to the guaranty association for payment. The Superior Court reversed, holding that because the plaintiff was only a claimant against an insured, she was not bound by the provision of 40 P.S. § 991.1817(a) to exhaust the available policy before seeking satisfaction of the judgment from the guaranty association. According to the Superior Court, that section only applied to persons making a claim under a policy issued by the Insurer.

The Supreme Court disagreed with the Superior Court and held that "a claim under a policy" for purposes of the act includes a plaintiff's entitlement to recovery from a tortfeasor's insurer, thus potentially requiring that plaintiff exhaust her claims against the co-defendants' solvent insurer before looking to the guaranty association. However, the Court also held that the common law rules of joint and several liability still applied and, therefore, if a solvent insurer would have been subject to the consequences of those rules, the guaranty association must be as well, "unless a manifest duplication of recovery will occur."

In the Court's view, its holding was consistent with the purpose of the act to spread the burden of one insurer's insolvency, did not prevent the guaranty association from seeking contribution from the solvent insurer, and would encourage settlement of claims by ensuring the full participation of the parties covered by an insolvent insurer. This latter result would also protect the interests of the statutory medical excess fund and solvent insurers, all of which would comport with the over-all objectives of the guaranty act.

*For more information, please contact Louis C. Long, chair of Pietragallo's Appellate Practice Group, at 412-263-1441 or LCL@PBandG.com or Martha S. Helmreich at 412-263-4395 or MSH@PBandG.com.*

*Backdating continued from page 1*

All of the above-mentioned arguments were central to Mr. Reyes' defense during the nearly six-week trial. He made the same arguments in a motion for judgment of acquittal at the close of the government's case on July 3, 2007. U.S. District Judge Charles R. Breyer's explanation of his denial of the motion provides insight into how the case was ultimately given to the jury, and the factors that likely guided their unanimous verdict.

In denying Mr. Reyes' motion for judgment of acquittal, Judge Breyer found that there was no apparent dispute that Brocade had a system in place whereby a chart of historical stock prices was created; a favorable historical date and stock price were selected; paperwork was prepared to make it appear as though options had been granted on that more favorable date; and Mr. Reyes then signed the paperwork to make the grants official. He further found no dispute that Brocade understated its compensation expenses as a result. He found that the two primary issues raised by Mr. Reyes, that is whether there was sufficient evidence that he acted knowingly, willfully, or with the intent to defraud, and whether the information regarding backdating would have been material to investors, were issues for the jury to determine, citing TSC Indus., Inc. v. Northway, Inc., 426 U.S. 438, 450 (1976) and Takahashi v. United States, 143 F.2d 118 (9th Cir. 1944).

With respect to the criminal intent to issue, Judge Breyer acknowledged that, prior to trial, he had concerns about the strengths of the government's evidence regarding Mr. Reyes' state of mind. After sitting through trial, however, his concerns were allayed. First, it was clear to him that Mr. Reyes approved stock option grants knowing that the "date" of the grant had been selected retrospectively in order to obtain a favorable stock price. When later confronted about these practices during a subsequent investigation into the company's stock options program, however, Mr. Reyes insisted that he had no knowledge of retrospective pricing. Judge Breyer concluded that such clearly false statements could be considered as circumstantial evidence of Mr. Reyes' consciousness of guilt. Another damaging piece of evidence was an e-mail Mr. Reyes had sent in which he stated: "IT IS ILLEGAL TO BACKDATE STOCK OPTIONS." Although the e-mail had been sent in connection with Mr. Reyes' duties as a member of a board of directors of another company, Judge Breyer found that it was sufficient at least to demonstrate that Mr. Reyes appreciated both the consequences and illegality of retrospectively pricing stock options. Finally, one of the Brocade human resources employees testified that during one discussion with Mr. Reyes regarding the stock options backdating, he stated, "it's not illegal if you don't get caught."

On the issue of materiality, Judge Breyer was satisfied that the jury could find beyond a reasonable doubt that Brocade's practice of backdating stock options resulted in a significant omission or misrepresentation. He added that the government was not required to prove that investors would have behaved differently if they had known the information that was concealed from or misrepresented to them, but instead was only required to show "a substantial likelihood that the disclosure of the omitted fact would have been viewed by the reasonable investor as having significantly altered the 'total mix' of information made available," citing Basic Inc. v. Levinson, 485 U.S. 224, 231-32 (1988). He explained that the government was required to demonstrate "a substantial likelihood that a reasonable shareholder would consider it important in deciding [whether to buy or sell securities]," not whether they actually would have traded those securities differently, citing again TSC Indus., 426 U.S. at 449.

> Numerous witnesses testified that the unreported compensation expenses would have impacted their investment decisions materially.

In fact, numerous witnesses testified that the unreported compensation expenses would have impacted their investment decisions materially. Robert McCormick, an employee of Fidelity Investments at the time of Brocade's alleged scheme, testified that his investment firm disapproved of stock option plans that allowed companies to grant in-the-money options. He testified that Fidelity considered such options "a giveaway of shares," noting that "in-the-money options did not align the interests of shareholders and employees effectively, because they were already worth something."

Dr. John Garvey, an expert witness for the prosecution, provided testimony about the size of the compensation expenses that went unstated as a result of Brocade's pricing practices. Dr. Garvey testified that Brocade failed to recognize more than $173 million in 2001 and more than $161 million in 2002. He further testified that, if Brocade had properly accounted for stock options it had priced retrospectively, then the company would have recorded a loss of $110 million in 2001, rather than the profit of $3 million it had actually reported, and would have recorded a loss of $45 million in 2002, rather than the profit of nearly $60 million it actually reported.

As the trial came to close, the defense maintained its position that Mr. Reyes did not understand the accounting implications of the backdating, nor was he aware that the stock options granting practice required the company to take an accounting charge, and finally asserted that Mr. Reyes had not played a role in preparing Brocade's Form 10Ks for the fiscal years 2001-2003. In the end, the jury rejected those defenses with its unanimous verdict.

*The Wall Street Journal* reported that immediately after the verdict, Mr. Reyes' counsel, Richard Marmaro, announced, "We are confident he will ultimately be exonerated. At all times he acted in the best interests of the employees and shareholders of Brocade." Mr. Marmaro indicated that the case would be appealed. It is expected that the issues of whether or not Mr. Reyes' actions were done knowingly and willfully, and whether the representation of information to shareholders was "material", will form a significant portion of the basis for post-trial motions and appeal.

It is expected that the verdict in the Reyes case, which was not considered to be the strongest of the backdating cases, will embolden the government in other pending cases. These cases include a pending investigation regarding backdating of options at Apple, Inc.

*For more information, please contact James W. Kraus at 412-263-4370 or via email at JWK@PBandG.com.*

# Recent Successes

James W. Kraus successfully defended a securities broker before a National Association of Securities Dealers arbitration panel regarding a claim by a customer on whose behalf the broker had invested in a technology start-up company. The claimant alleged that the broker and the securities firm with which he had worked had committed fraud by misrepresenting the prospects of the technology company and had manipulated the price of the stock by purchasing a large volume of shares for their own account. The broker denied the charges, asserting that he had thoroughly researched the company and had informed the claimant of all the risks of the investment. The arbitration board ruled unanimously for the broker and assessed fees for the arbitration against the claimant.

Richard F. Moroco, Anthony J. Basinski and Albert N. Peterlin obtained an arbitration award in excess of $900,000 on behalf of a steel processor in a dispute with a supplier concerning a critical piece of equipment sold to the client that was defective. The matter was tried over a two-week period before a panel of arbitrators.

Michael E. Barrett persuaded the U.S. Department of Labor to withdraw fully and completely a multi-citation OSHA complaint filed against Avalotis Corporation. The citations were issued as a result of an unfortunate death by a crush injury of one of its employees. The dismissal saved the company $12,000 in penalties and from being subject to future "second violation" penalties.

Louis C. Long and Martha S. Helmreich filed an amicus brief on behalf of the Pennsylvania Defense Institute in support of an insurer's position in a case favorably resolved before the Pennsylvania Superior Court. In Erie Insurance Exchange v. Weryha, the court addressed for the first time the rights of a minor to claim auto insurance benefits under the policy insuring a parent who had joint custody of the child. The court rejected the claim as the child did not permanently live with the parent in question. Mr. Long and Ms. Helmreich argued that this result was compelled by the applicable provisions of the Pennsylvania Motor Vehicle Financial Responsibility Law and the insurance policy, as well as the particulars of the case.

James W. Kraus and Kathryn M. Kenyon successfully argued a Pennsylvania Superior Court appeal of a medical malpractice jury verdict on behalf of a physician accused of failing to properly monitor and treat appellant's risk for stroke. The split jury verdict had found that while there was evidence of medical negligence, it did not cause the appellant to suffer a stroke. On appeal, the appellant argued that the trial court erred in granting a defense motion to exclude expert testimony by a treating physician and that the verdict on causation of the injury was against the weight of the evidence. The Superior Court, in affirming the trial court's decision, found that the latter had acted appropriately and that there was sufficient evidence for the jury to find that the physician did not cause the appellant's injury.

# Attorneys in the News

Mark T. Caloyer, James F. Marrion and Brian G. Ritz were elected partners at Pietragallo Bosick & Gordon. Mr. Caloyer is a member of the firm's Commercial Litigation and Transportation Law practice groups, Mr. Marrion a member of the firm's Commercial Litigation and Product Liability practice groups, and Mr. Ritz a member of the firm's Business practice group.

Sean B. Epstein (Employment Litigation: Defense) and Kathryn M. Kenyon (Business Litigation) were selected for inclusion in *Pennsylvania Super Lawyers Rising Stars 2007*, which recognizes top young attorneys in the state.

Louis C. Long was elected secretary/treasurer of the non-profit National Sprint Car Hall of Fame & Museum Foundation, Inc. The Knoxville, Iowa-based organization is dedicated to the preservation of the rich history and traditions of the oldest form of motorsports.

Richard J. Parks was a speaker at the Erie County Bar Association Bankruptcy Section's annual update on the impact the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005. Mr. Parks discussed Chapter 11 filings and the present and future landscape of preference litigation, forum considerations and other issues.

Pamela G. Cochenour spoke to the Western Pennsylvania Human Resources Association on the Americans with Disabilities Act interactive process.

P. Brennan Hart was elected to the board of governors of the Duquesne University School of Law's Office of Law Alumni Relations for 2007-2008.

Richard A. Pollard will serve as a panelist at the Pennsylvania Bar Institute's Maxim's Monarchy and Sir Thomas More presentation in Pittsburgh on November 9. Mr. Pollard will be part of a discussion of many current questions and issues of concern to lawyers and the legal profession that follows the solo theatrical performance detailing the final hour of Sir Thomas More's life before his 1535 execution and the moral and ethical dilemmas that led him to his fate.

Andrea M. Bartko was honored by the Pittsburgh chapter of the National Association of Women Business Owners for her *pro bono* work on behalf of the organization, which promotes women entrepreneurs.

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