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Defining Disabilities: What Does The Future Hold For Employers?


by Pamela G. Cochenour, Esq. and Jonathan J. Poli, Esq.

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For 20 years, the Americans with Disabilities Act ("ADA") provided guidance to employers and employees regarding the parameters of dealing with disabilities and perceived disabilities in the workplace. Through voluminous decisions, courts have defined the contours and limits of individuals defined as being disabled under the ADA. Believing the Supreme Court and lower courts overly limited the definition of the term "disability," Congress enacted the Americans with Disabilities Act Amendments Act ("ADAAA"), effective January 1, 2009. Because these amendments are not retroactive, cases interpreting these new amendments are few. The case *Rohr v. Salt River Project Agricultural Imp. and Power Dist., 555 F.3d 850 (9th Cir. 2009)*, provides a detailed description of the changes to the ADA, but applies the prior act. On September 9, 2010, the Equal Employment Opportunity Commission ("EEOC") announced the filing of three cases that will test the limits under the modified definition of the term "disability" under the ADAAA. A brief description of this modified "disability" definition is helpful.

The ADAAA Supersedes Supreme Court Precedent in Modifying the Definition of "Disability"

With the ADAAA, Congress overrode the limiting Supreme Court decisions, such as *Sutton v. United Airlines Inc.*, by significantly broadening the definition of "disability" in three significant ways.

Major Life Activities

First, the definition contains language that clarifies what activities can constitute "major life activities," and explicitly lists the following as "major life activities": caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating and working. The Act also includes the following bodily functions as "major life activities": functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine and reproductive.

Impairments

Second, the ADAAA broadly encompasses impairments that substantially limit major life activities. An impairment need only substantially limit one major life activity to be considered a disability. Also, the Act covers any impairment that is episodic or in remission, such as epilepsy or cancer, that would be considered a disability when active.

Mitigating Measures NOT to be Considered

Third, and perhaps the most striking amendment, the ADAAA rejects the notion set forth in *Sutton* that whether an impairment substantially limits a major life activity is to be determined with reference to mitigating measures. The ADAAA makes explicit that the "substantially limiting" analysis shall be made without regard to the "ameliorative effects" of mitigating measures. Such mitigating measures include:

•Medicine, medical equipment, supplies, appliances, prosthetics including limbs and devices, hearing aids including cochlear implants;

•Use of assistive technology;

•Reasonable accommodations or

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Proposed SEC Rules Undermine Dodd-Frank's Whistleblower Incentives

by Marc S. Raspanti, Esq. and Bryan S. Neft, Esq.

For years, the Securities and Exchange Commission ("SEC") had a whistleblower program in place that would accept information about securities violations in exchange for the possibility of a financial reward if funds were recovered. Over the years, however, only five whistleblower claims were ever paid. The reason appears clear. The program was administered entirely at the discretion of the SEC. One example of the failure of the prior program is Harry Markopolos, a former investment officer for a company that competed with Bernie Madoff's investment firm. Markopolos' investment firm assigned him to analyze the basis for Madoff's unbelievable returns to see if they could be duplicated. His analysis concluded that Madoff was either involved in front running or a giant Ponzi scheme. He tried in vain for years to persuade the SEC to investigate Madoff; but the SEC completely ignored Markopolos' warnings, and Madoff's fraud was only revealed when his own children learned the truth and turned him in.

In response to the Madoff crisis, Congress recently enacted new whistleblower provisions for securities law violations as part of the Dodd-Frank Act. The law addresses shortcomings in the SEC's prior program and provides sweeping incentives for insiders to report securities law violations.

Dodd-Frank Requires the SEC to Pay Whistleblowers Between 10 and 30 Percent of Amounts Recovered in Any Enforcement Action with Sanctions Exceeding $1 Million.

Section 21F(b) of Dodd-Frank requires the SEC to pay a whistleblower who voluntarily provides original information to the SEC that leads to the successful enforcement of a covered judicial or administrative action and results in monetary sanctions exceeding $1 million. Under the law, the whistleblower is entitled to an award of between 10 percent and 30 percent of what the SEC collects in monetary sanctions. The amount of the award - between 10 and 30 percent - is determined according to statutory criteria. A whistleblower is defined as "any individual or two or more individuals acting together who provide 'original information' to the SEC relating to a violation of the securities law."

The purpose of the "original information" limitation is to preclude opportunists from recovering. "Original information" is further defined as information derived from the independent knowledge or analysis of the whistleblower; not known to the SEC from any other source unless the whistleblower is the original source of the information; and the information is not derived exclusively from an allegation made in a judicial or administrative hearing, in a governmental report, hearing, audit or investigation, or from the news media, unless the whistleblower is a source of the allegation.

> The new whistleblower provisions provide sweeping incentives for insiders to report securities law violations.

An award may be denied only in limited circumstances if a whistleblower who is, or was at the time he acquired original information: (1) a member, officer or employee of an appropriate regulatory agency, the Department of Justice, a self-regulatory organization, the Public Company Accounting Oversight Board, or a law enforcement organization; (2) convicted of a criminal violation related to the judicial or administrative action for which he is eligible for an award; or if he (3) gained information through the performance of a required SEC audit; or (4) failed to submit information to the Commission in such form as the SEC may by rule require.

How to Make an SEC Whistleblower Claim

A whistleblower may make a claim anonymously; but may do so only through legal counsel. His or her identity must be disclosed, however, prior to the payment of an award. A whistleblower may appeal to the appropriate court of appeals whether an award was consistent with subsections (b) and (c). Otherwise, the SEC has discretion in determining the amount of the award.

Dodd-Frank provides similar whistleblower provisions for violations of commodity futures law, and also provides beefed-up protections against retaliation for whistleblowers by allowing whistleblowers to bring court claims directly, and providing recovery for double lost wages, plus fees and costs.

Will SEC Rules Cannibalize the Whistleblower Program?

Recently published proposed SEC rules threaten to gut the essential provisions of the securities whistleblower scheme. These rules include provisions that:

•Require a whistleblower to report a securities violation internally before filing a claim with SEC;

•Provide grounds for denying awards in addition to those set forth in the statute;

•Attempt to limit statutory rights of appeal;

•Limit recoveries for those with information critical to an SEC violation;

•Place cumbersome procedures on whistleblowers to collect awards.

What Does the Future Hold for the SEC's Whistleblower Program?

Dodd-Frank's whistleblower provisions for violations of securities laws are intended to be a game-changer in the

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Why An Understanding Of Copyright Law Is Vital For Architects


by Joseph J. Bosick, Esq. and J. Peter Shindel, Esq.

Most architects attempt to protect their work product and intellectual property through contract. The general practice in the industry is for the architect to retain ownership in the plans and specifications that the architect prepares. See U.S. Copyright Office, Report of the Register of Copyrights: Copyright in Works of Architecture (1988). The American Institute of Architects ("AIA") provides standard form agreements that satisfy this standard, and which are designed to ensure that the architect retains ownership in the architect's plans and designs as against both the owner and the contractor(s) involved in a project. See AIA Document B141-1997, Owner-Architect Agreement 1.3.2 (regarding owners); AIA Document A201-1997, General Conditions of the Contract for Construction 1.6.1 (regarding contractors).

The Dangers of Reliance on Contracts Alone

It should be noted that the contractual rights of an architect are limited in that they cannot generally be applied against individuals or entities who are not a party to the contract. Conventional tort remedies are also frequently inapplicable. Protection falls within the domain of copyright. See, for example, Bruner & O'Connor on Construction Law § 17:85 (collecting cases).

As a general matter, where an architect employs the standard form language supplied in the AIA agreements, that language will suffice to protect his interests in his work product and bar a subsequent owner or contractor from using those plans if the architect is replaced on a particular project. This concern for protection is no small matter, as the owner may well be interested in pursuing the original design, but wants to replace the original architect as a result of disputes unrelated to the design (such as, for example, the owner's supposed financial constraints). See, for example, *Sparaco v. Lawler, Matusky, Skelly, Engineers, LLP, 303 F.3d 460, 462 (2d Cir. 2002).*

However, in certain cases, the AIA language has been found ineffective to prevent the owner from utilizing an architect's drawings and plans outside of the original, contracted project. The court held in the case of *Wright v. Tidmore, 430 S.E.2d 72 (Ga. App. 1992)* that a clause in a contract between the owner and the first architect that the drawings and specifications were to remain the property of the first architect, did not prevent a second architect from preparing the plats and plans for recording by redacting certain sections of the first architect's designs and then filing them under the second architect's seal. In the Wright case, the second architect prudently retained the first architect's name on all the plans as the design architect.

In *Sparaco*, the second architect and contractor who were found to have infringed on the first architect's copyright could not have been held liable for breach of contract, as they were not parties to the contract between the first architect and the owner. Pursuit of a tort remedy by the first architect would have been equally difficult, given that the owner had authorized use of the designs. In such situations, an architect must rely on copyright law as his sole source of protection. The federal copyright statute protects both architectural drawings and the finished architectural work itself. 17 U.S.C. §102(a)(5) and (8).

> The American Institute of Architects provides standard form agreements which are designed to ensure that the architect retains ownership in the architect's plans and designs.

The Fine Line Between Architectural "Facts" and "Ideas"

In United States law, a hornbook is a text that gives an overview of a particular area of law. In the arena of copyright, it is considered to be "hornbook law" that fact and ideas themselves are not copyrightable. The expression of ideas is copyrightable. However, exactly where the line is drawn between an idea, on the one hand, and its expression, on the other, is a subject far too detailed for a hornbook to cover. Indeed, that "endlessly baffling" question has bedeviled the federal courts since Judge Learned Hand's famous discussion of abstractions in *Nichols v. Universal Pictures Corp., 45 F.2d 119, 121 (2d Cir. 1930)*. See *Sparaco*, 303 F.3d at 469. As Judge Hand put it, "[n]obody has ever fixed that boundary, and nobody ever can." *Nichols, 45 F.2d at 121*. The courts, especially in the past decade, have struggled with the endless task of attempting to determine where to draw the line between idea and expression for architectural drawings. As Judge Hand predicted, what has emerged is not a definitive answer, but certain clear guideposts that are critical for architects, and indeed all designers, to be aware of when entering into a project.

The use of common design features in a particular drawing or plan does not constitute copyright infringement. Here are some examples of what is not copyrightable. "In and of themselves, domes, wind-towers, parapets, and arches represent ideas, not expression." *Sturdza v. Utd. Arab Emirates, 281 F.3d 1287, 1297 (D.C. Cir. 2002)*. Also "…generalized notions of where to place functional elements…" are not copyrightable ideas. *Attia v. Soc'y of N.Y. Hosp., 201 F.3d 50, 55 (2d Cir. 1999)*. Finally, "…the use of standard structural elements and the concept of a one-story office showroom are not copyrightable." *CSM Investors, Inc. v. Everest Dev., Ltd., 840 F. Supp. 1304, 1310 (D. Minn. 1994).*

It is not the case that technical drawings can achieve copyright protection only where they are sufficiently complete and advanced to support actual construction. See, for example, *Sparaco, 303 F.3d at 469*. Instead, a sufficiently unique design employing particular features will be protected by the Copyright Act. The courts that have considered the issue have recognized that the entire set of drawings and plans must be considered as a whole, "because protectable expression may arise through the ways in which artists combine even un-protectable elements." *Sturdza, 281 F.3d at 1296; Sparaco, 303*

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auxiliary aids or services; or

•Learned behavioral or adaptive modifications.

This significant modification to the ADA means that impairments are to be evaluated in their unmitigated state. For example, diabetes will now be assessed in terms of its affect on the employee's major life activities when the diabetic does not take their insulin or medicine and does not require behavior adaptations such as a strict diet.

The EEOC Tests the Boundaries of the Updated Definition of "Disability"

Three United States district courts will soon put these adapted standards to the test with the three cases filed by the EEOC. First is *EEOC v. Eckerd Corporation d/b/a Rite Aid*, filed in the Northern District of Georgia. Here, the EEOC alleges discrimination against a long-time employee who requested a stool to sit on to accommodate severe arthritis in his legs. The employee had used the stool for seven years without incident, yet in 2009, a new district manager decided that the company would no longer accommodate the alleged disability.

Second is *EEOC v. Fisher, Collins and Carter*, filed in the District of Maryland. There, the EEOC alleges that the employer fired two long-time employees because they had diabetes and hypertension despite years of successful performance. The two employees noted on a company health questionnaire that they had these conditions and were subsequently selected for a reduction-in-force on January 21, 2009. The company, it is alleged, retained less-qualified, non-disabled employees.

Third is *EEOC v. IPC Print Serv's, Inc.*, filed in the Western District of Michigan. There, the EEOC alleges that the employer fired an employee stricken with cancer rather than allowing him to work part-time. The employee sought to work part-time while completing his treatment, but the employer terminated employment on the grounds that he exceeded the maximum hours of leave allowed under company policy.

> Courts have defined the contours and limits of individuals defined under the Americans with Disabilities Act.

The Future of Employment Decisions under the ADAAA

Legal forecasting is an imprecise art form, but these cases appear to reflect the three major changes to the ADA's definition of "disability" listed above. All three cases may result in a ruling that the employees in question are "qualified individuals with a disability" under the ADAAA. In *Eckerd*, the court must consider in its analysis that the ADAAA explicitly lists "sitting" and "standing" as major life activities and determine whether arthritis substantially limits those activities without reference to mitigating measures such as a stool. The *Rohr* case is instructive as to *Fisher, Collins and Carter* because the court provides a discussion about how the ADAAA will further support the contention that diabetes is a disability. In *IPC Print*, the Court must evaluate cancer in light of the new provision that an impairment that is episodic or in remission is a disability if it substantially limits a major life activity when active.

Regardless of how these cases resolve, the ADAAA is a major step in the evolution of disability law. Employers should be proactive in re-examining their policies and providing updated supervisor training on ADAAA provisions.

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regulation of securities by providing significant economic incentive for whistleblowers to report wrongdoing. Congress believes that only through whistleblowers can real fraud be detected. The success of the False Claims Act has been instrumental in demonstrating that. The rules that the SEC has proposed to implement the whistleblower program, coupled with a recent decision to defer establishing a dedicated whistleblower division within the SEC, lead to the conclusion that most whistleblower claims will be dead on arrival. It will be critical to see how the SEC modifies the rules in the coming months.

For more information, please contact Marc S. Raspanti at (215) 988-1433 or via e-mail at MSR@PIETRAGALLO.com or Bryan S. Neft at (412) 263-4385 or via e-mail at BSN1@PIETRAGALLO.com.

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F.3d at 467. Thus, for example, the particular arrangement of the unprotectable elements discussed in *CSM Investors*, above, was found to be "sufficiently original to be afforded copyright protection." As another example, the concept of designing a restaurant/bar area with an island or peninsula-shaped bar to bisect a seating area with booths on one side and stool seating on the other is too general to merit copyright protection itself, and where the actual designs for such a floor plan are of different dimensions and contain different seating layouts, copyright protection will not exist. See, for example, *Ale House Mgmt., Inc. v. Raleigh Ale House, Inc., 281 F.3d 137, 142-44 (4th Cir. 2000)*.

However, the more specific a particular plan or set of drawings is, the more likely it will be amenable to copyright protection. *See Sparaco, 303 F.3d at 468*. And, even where specific elements contain certain differences, if the "overall look and feel" of the designs is substantially similar, copyright protection will exist. See *Sturdza, 281 F.3d at 1298* (reversing grant of summary judgment where, despite differences in individual design elements, the "overall look and feel" of two designs was sufficiently similar for a jury to find copyright infringement).

Conclusion

Thus, in order to protect their work product, and in addition to the types of contractual protections afforded by the AIA form agreements, architects must be cognizant of the interaction of copyright law with their profession. In particular, the more specific and detailed the plans they create are, the more likely the architect is to be protected in the event of future infringement by a contractor or rival architect. To the extent that the architect has a particular idea or vision for a project, that vision should be captured in as detailed a plan or drawing as possible, and should be marked with an appropriate copyright notice including the "©" symbol, the author, and the date the drawing was completed. To the extent that a design expresses the manner in which to capitalize on an idea, copyright law will provide protection.

For more information, please contact Joseph J. Bosick, Chair of the Construction Practice Consortium, at (412) 263-1828 or via e-mail at JJB@PIETRAGALLO.COM or J. Peter Shindel at (215) 988-1435 or via-email at JPS@PIETRAGALLO.com.

Community News

Pietragallo Gordon Alfano Bosick & Raspanti, LLP was a proud sponsor of the American Cancer Society's Inaugural Making Strides Against Breast Cancer 5K Walk in Pittsburgh on October 16, 2010. Mark Gordon, Chair of the firm's Risk Management Group, spoke on behalf of the firm at the event.

Over 3,000 people gathered to celebrate breast cancer survivors, remember those lost, and raise money to fight the disease that has touched so many throughout the Pittsburgh area. The campaign helps to fund life-saving breast cancer research, education, advocacy, community partnership grants and patient service programs.

On June 7, 2010, Mark Gordon chaired the American Cancer Society's 2nd Annual Premiere Golf Outing honoring Arnold Palmer at Latrobe Country Club. The event was, as described by the American Cancer Society's officials, one of the Society's most successful. Some of the 47 participating sponsors included: Westinghouse, PNC, Willis, A.C. Dellovade, Minnotte, Burns & Scalo and System One. Next year's event will honor Magee-Women's Hospital and its president, Leslie Davis. Mark Gordon will serve as Executive Chair for the 2011 event.

Pietragallo Adds Ten New Associates In 2010

Back Row:
Jonathan J. Poli, Joanna C. Serago, Brett C. Shear, and Holly E. DiCesare

Front Row:
Ryan J. King, Matthew R. Wendler, and Steven W. Hays

Not pictured:
Ethan J. Barlieb, Jason M. Reefer, Sonia S. Shariff, and Shelly R. Pagac

In 2010, Pietragallo hired 10 new associates throughout its Pittsburgh, Philadelphia and Steubenville offices. The firm extends a warm welcome to its newest members and future leaders.

Steven W. Hays focuses his practice on patent and trademark prosecution and litigation, assisting clients in protecting and enforcing their intellectual property rights, providing non-infringement/freedom to operate and invalidity opinions and preparing and reviewing licensing 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. Ms. DiCesare has personally handled over 300 cases, ranging from initial collection to post-judgment proceedings.

Ryan J. King is a civil litigator who focuses his practice on products liability, construction and commercial litigation. He has successfully litigated and tried cases in both State and Federal Courts in West Virginia and Pennsylvania.

Brett C. Shear has experience in the areas of professional liability, construction, bond law, business torts, insurance, collections, premises liability and personal injury. He has also served as a legal intern for several community law clinics where he assisted low-income taxpayers with various legal matters.

Ethan J. Barlieb focuses his practice on white collar criminal defense, employment and commercial litigation. Prior to joining the firm, Mr. Barlieb served as a judicial law clerk for the Honorable Judge Mitchell S. Goldberg in the U.S. District Court for the Eastern District of Pennsylvania and Bucks County Court of Common Pleas.

Jonathan J. Poli focuses his practice on litigation defense and employment. Mr. Poli has experience in the areas of commercial litigation, insurance coverage, intellectual property and employment discrimination.

Joanna C. Serago is a member of the firm's Commercial Litigation practice group. Ms. Serago has experience in the areas of asbestos, commercial litigation, construction, employment, insurance and medical malpractice matters.

Matthew R. Wendler focuses his practice on product liability. Prior to joining the firm, Mr. Wendler served as a judicial law clerk for the Honorable David C. Klementik of the Court of Common Pleas of Somerset County, Pennsylvania.

Jason M. Reefer is a member of the firm's Product Liability practice group. He has experience in the areas of pharmaceutical product liability litigation, white collar and securities work, antitrust investigations and litigation, environmental litigation, and international contractual law issues as well as qui tam litigation matters.

Sonia S. Shariff focuses her practice on commercial litigation, health care litigation and qui tam litigation. Previously, Ms. Shariff served as a volunteer judicial law clerk for the Honorable Nora Barry Fischer for the U.S. District Court for the Western District of Pennsylvania.

In 2011, **Shelly R. Pagac** joined the firm as senior counsel in the Employment Litigation and Counseling practice group. Ms. Pagac frequently counsels and provides training to employers. Some of Ms. Pagac's recent clients include a state university, a large financial institution, and a growing software company.

Recent Successes

Quash an Appeal: Martha S. Helmreich and **Richard J. Parks** recently convinced the Pennsylvania Superior Court to quash an appeal brought against their client on the grounds that the appellant's failure to timely file a Statement of Matters Complained of on Appeal acted as a waiver of all issues on appeal as a matter of law. The Superior Court's order had the effect of preserving the recovery and sale of a foreclosed property worth two million dollars for the client. Because the ruling was on a motion to quash, the client was relieved of the cost, delay and uncertainty in having to brief and argue the appeal on the merits.

Dismissal of a Class Action Complaint: Daniel J. McGravey and **Sarah R. Lavelle** successfully achieved the dismissal of a class action complaint filed in California state court against a Pennsylvania based company after the court found that the forum selection clause contained in the Employment Contract was enforceable.

Dismissal of Claims: Joseph E. Vaughan successfully defended a national nursing home facility involving a unique claim regarding FMLA, workers' compensation and unemployment compensation issues, winning dismissals of the workers' compensation and unemployment compensation claims and obtaining a beneficial resolution as co-counsel with a national employment firm on the FMLA claims at less than 10% of the demand.

Superior Court Tosses Appeal in Personal Injury Case: Joseph J. Bosick and **Martha S. Helmreich** recently persuaded the Pennsylvania Superior Court to dismiss the appeal of a summary judgment ruling in favor of their client in a personal injury case, where the plaintiff failed to respond to the motion before it was ruled on by the trial court. The Superior Court, citing to Rule 1035.3 of the Pennsylvania Rules of Civil Procedure, a rule governing summary judgment motions, and Rule 302 of the rules governing appeals, found that by not responding to the motion, the plaintiff had effectively waived all of his arguments on appeal, with the result that the Superior Court refused to consider any of plaintiff's issues on their merits. This ruling demonstrates that a case can be won, or lost, on a rule of procedure, as well as on arguments going to its substance.

Defense Verdict: Joseph E. Vaughan and **Mary G. March** obtained a defense verdict in Chester County in a construction defect (mold) claim against the site contractor and received a verdict of 100% of the counterclaim for the contract balance.

Dismissal of a Complaint: Kevin E. Raphael and **Sarah R. Lavelle** successfully achieved the dismissal of a complaint filed in the Eastern District of Pennsylvania for lack of personal jurisdiction filed by the American Board of Internal Medicine against a Georgia-based physician.

Security Company Acquisition: David P. Franklin and **Robert J. Monahan** assisted a national security provider in its acquisition of a security company in Poughkeepsie, NY.

Physician Representation: Kevin E. Raphael and **Sarah R. Lavelle** successfully represented a physician before the American Board of Internal Medicine's internal proceedings and achieved the restoration of his Board Certification.

Dismissal of a Case: Tyler J. Smith's client, a psychiatrist, was dismissed on the eve of trial. The patient was a forty (40) year old male diagnosed with major depressive disorder with psychotic features; the doctor prescribed Zyprexa, FDA approved for the treatment of schizophrenia; and, a drug known to have been associated with hyperglycemia. Two months later, the patient died from Hyperglycemic, Hyperosmolar, Nonketotic Syndrome. The widow alleged that Eli Lilly had marketed Zyprexa "off label" to increase profits; and, that the psychiatrist prescribed the medication "off label" because he owned stock in Eli Lilly. Plaintiff intended to offer "call notes" from Eli Lilly's sales representatives, which made reference to the doctor's stock interest. The doctor denied ever owning stock in Eli Lilly; and, he prescribed the medication "off label" to treat the patient's psychosis. Eli Lilly settled out of court and the Plaintiff elected to discontinue the case against the doctor.

Successful Representation: Joseph E. Vaughan and **Amy C. Lachowicz** successfully represented the former Managing Director of a large, international charitable trust in voluntarily separating employment and obtained a substantial severance package on her behalf.

Summary Judgment: Joseph J. Bosick and **Martha S. Helmreich** recently won a motion and a cross-motion for summary judgment on coverage issues in a Declaratory Judgment Action filed in the U.S. District Court for the Western District of Pennsylvania for their client, a large insurance company. At issue was whether the insurance company had waived the right to raise or was estopped from raising the applicability of an assault and battery exclusion in the general liability insurance policy that it issued to its insured, a building owner. The building owner was sued for damages arising from the stabbing death of one tenant by another tenant. The federal court's ruling had the effect not only of eliminating the insurance company's potential exposure in excess of $1 million on the underlying claim, but also of vindicating the manner in which it initially communicated its reservation of rights to its insured.

Summary Judgment: Joseph E. Vaughan and **J. Peter Shindel** were affirmed by the Superior Court on an earlier grant of summary judgment by the trial court. The Supreme Court refused to hear further appeal, providing the end of 20 years of litigation between the parties.

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