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SUMMER 2012

Yours, Mine & Ours - Who Owns Social Media Information?

by Pamela G. Cochenour, Esq. and Jeanette H. Ho, Esq.

In this age of social media marketing, some employers encourage their employees to create LinkedIn accounts as a means of providing clients and potential clients with information regarding their capabilities and achievements. The question of who actually owns the LinkedIn account (or any social media site which is used for business purposes) – the employee or the employer – has become a matter of litigation. The United States District Court for the Eastern District of Pennsylvania issued a decision in *Eagle v. Morgan*, 2011 U.S. Dist. Lexis 147247 (E.D. Pa. December 22, 2011) which provides some insight into how courts may approach this question.

A professional in the field of financial services and training, the Plaintiff, founded a company known as Edcomm, Inc. The Plaintiff established an account on LinkedIn and used the site to promote Edcomm's services, foster her reputation as a businesswoman, reconnect with family and friends and build social and professional relationships. Edcomm was subsequently purchased by another company. The Plaintiff initially continued to work for the new owner but was later fired. After learning of her termination, she tried to access her LinkedIn account but was not able to do so. Edcomm had purportedly gained access to the site and changed her password. Edcomm supposedly revised the account profile to display the name and photograph of another employee, but attributed the Plaintiff's accomplishments and connections to this other person. The Plaintiff was later able to regain control of the account.

Edcomm and several individuals were sued by the Plaintiff who asserted a variety of causes of action including unauthorized use of her name, invasion of privacy by misappropriation of identity and identity theft. Edcomm responded by asserting, among other things, that it was the owner of the LinkedIn account connections and that the Plaintiff had misappropriated them for her own use when she refused to return Edcomm's proprietary information after regaining control of the site.

In challenging Edcomm's position, the Plaintiff argued that Edcomm had not demonstrated that it had invested a substantial amount of time, effort and money into creating the LinkedIn account. Edcomm responded that its employees developed the accounts and maintained the connections. The court determined that Edcomm had alleged sufficient facts to permit it to conduct discovery on its claim that it owned the LinkedIn account connections and that they had been misappropriated.

In light of the court's decision in *Eagle*, it appears that a key issue in determining whether a LinkedIn account (or potentially any social media site which is used for business, as well as personal purposes) is owned by the employer or the employee will be the amount of time, effort and money the employer puts into the creation and maintenance of the account. The greater the employer's investment, the stronger its claim to ownership. Thus, a company whose employees use social media as part of their marketing activities should keep track of the company's involvement in that internet use.

If companies want to own the business related information contained in its employees' accounts, the first step is to have a written policy in place stating that any business-related information that is placed on the site or that is generated as a result of the site belongs to the company, not the employee. That policy should also state that when employees stop working for the company, they will be required to give the company any business-related connections or content that is contained on that employee's

Continued on page 4

Inside This Issue:

Pittsburgh

Philadelphia

Steubenville

Sharon

Weirton

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When Does A University Own Rights To An Invention?

by Alicia M. Passerin, Ph.D., Esq. and Christy G. Rothwell, Ph.D., Esq.

In the United States, the applicant for a patent must be the inventor(s) of the invention claimed in the patent application. However, the inventor is not necessarily the owner of the patent. Many issues surround inventorship and ownership, particularly in a university setting. Most employees have an employment agreement requiring, at a minimum, disclosure of inventions. Many university researchers receive government funding with stipulations governing intellectual property and patents. As such, many factors must be considered when determining inventorship and ownership of patents.

Governing patent laws require that all of the inventors of the claimed invention must be named in a patent application. Inventors may apply for a patent jointly even if they did not physically work together or at the same time, each did not make the same type or amount of contribution, or each did not make a contribution to the subject matter of every claim of the patent. However, if multiple inventors are named in an application, each must have made some contribution, either jointly or individually, to the subject matter of at least one claim of the application.

"The threshold question in determining inventorship is who conceived the invention." *In re Hardee*, 223 USPQ 1122, 1123 (Comm'r Pat. 1984). Conception is the formation in the mind of the inventor(s) of a definite and permanent idea of the complete and operative invention. "Unless a person contributes to the conception of the invention, he is not an inventor." *Id.*

Once an invention is conceived, all that remains is to reduce the invention to practice, i.e., to actually make the invention. "Insofar as defining an inventor is concerned, reduction to practice, *per se*, is irrelevant [except for simultaneous conception and reduction to practice]." *Id.* Therefore, an inventor may use the services and aid of others in perfecting his invention without expanding the number of inventors. In order for the original conceiver who directs another to reduce the invention to practice to remain a sole inventor, the conceiver must sufficiently elaborate the invention to enable a person skilled in the art to make a product embodying the conception.

A common misconception is that the inventor owns the invention. This is particularly the case in university and medical center settings where research and innovation are the core foundation. Several factors are considered in determining whether an invention is owned by the inventor(s) or by an employer or institution, such as a university or other non-profit organization, and what rights, if any, the employer or institution may have in and to the invention, including: (1) whether the inventor entered into an express agreement to assign the invention to the university; (2) in the absence of an express agreement, whether there is an implied agreement that requires the inventor to assign the invention to the university; (3) whether the inventor is a university employee; (4) whether the invention was made within the scope of the inventor's employment; (5) when and where the invention was made; (6) whether the invention was made in the course of research funded by a sponsor pursuant to a grant, research agreement, or some other legal obligation that affects ownership; (7) whether the invention was made as part of a collaboration; (8) whether the invention was made through government-funded research activities giving the government rights to claim ownership under certain circumstances; and (9) whether the employer has presumed "shop rights" that derive from the employer's contribution to the invention through materials, time, space, and equipment, such as whether the invention is made by an employee outside of the scope of employment but during work hours or by using the employer's equipment, materials, or work space. "Shop rights" give the employer a non-exclusive, royalty-free license to use an employee's invention regardless of any patent rights that the employee may have in the invention and/or whether the employee has licensed the invention to a third party. Technology transfer offices should consider these factors when drafting agreements with employees, including technicians, scientists, and physicians.

Conception is the formation in the mind of the inventor(s) of a definite and permanent idea of the complete and operative invention.

In particular, the Bayh-Dole Act, codified in 35 U.S.C. §§ 200-212 and also known as the Patent and Trademark Law Amendments Act, was adopted in 1980 to accelerate the commercialization of federally funded research. Pursuant to the Act, universities, small businesses, or non-profits retain ownership in and to inventions made using federal research funding. In exchange, those entities are required to file for patent protection and to commercialize the invention. Royalties are typically shared between the inventors, the University, and the technology transfer process.

The complexity of issues surrounding ownership of an invention is exemplified in the case of *Stanford University v. Roche Molecular Systems, Inc.* (131 S. Ct. 2188, 2011). In this case, in a 7-2 decision, the Supreme Court held that the Bayh-Dole Act does not automatically grant Universities the rights to inventions created using federal funds. In 1988, Mark Holodniy, a professor at Stanford University, invented an HIV-detection kit using federally funded grant money. In 1989, Holodniy joined Cetus, a small biotechnology company later acquired by Roche Molecular Systems, Inc., where he learned how to use polymerase-chain reaction (PCR) techniques in quantifying HIV levels. Holodniy then returned to Stanford, where he continued his research. Holodniy assigned his rights in and to the inventions to Stanford, which filed for and obtained three patents related to Holodniy's technology. In Holodniy's contract with Stanford, he "*agree[d]* to assign" Stanford his "right, title and interest in" inventions. However, Holodniy's contract with Cetus

Continued on page 4

Mission "Impossible": Recovering from generic prescription-drug manufacturers in the wake of *PLIVA, Inc. v. Mensing*

by *Emily J. Hicks, Esq. and Matthew R. Wendler, Esq.*

"Products-liability law establishes a classic and well-known triumvirate of grounds for liability: defective manufacture, inadequate . . . warnings, and defective design." *Bruesewitz v. Wyeth*, 131 S. Ct. 1068, 1076 (2011). Until recently, patients who allegedly experienced an adverse reaction to a prescription drug typically sought recovery under the inadequate-warnings (or failure-to-warn) theory, regardless of whether they took a brand-name or generic drug. In June 2011, things changed: the U.S. Supreme Court rendered its decision in *PLIVA, Inc. v. Mensing*, 131 S. Ct. 2567 (2011), *reh'g denied*, 132 S. Ct. 55 (2011).

The Supremacy Clause of the U.S. Constitution is the basis for the federal-preemption doctrine—namely, state law that conflicts with federal law is without effect; it is "preempted." Federal law may preempt state law expressly or by implication. Conflict preemption, an implied-preemption doctrine, arises when state and federal law directly conflict. Direct conflicts occur in two situations: if it is impossible to comply with both a state law and a federal law (impossibility preemption), or a state law frustrates a federal law's purpose (obstacle preemption).

The *Mensing* Court held that the impossibility-preemption doctrine precludes failure-to-warn claims involving generic manufacturers. Its rationale is simple. Congress envisioned only one material difference between a generic drug and its brand-name counterpart: price. Accordingly, federal law requires generic drugs to be identical to the brand-name equivalent in all other material respects. Among other things, a generic's active ingredient and accompanying warnings must be the same as the brand-name's. As a corollary, a generic manufacturer is not at liberty to provide additional or stronger warnings—the duty a failure-to-warn suit seeks to impose. Because the federal "same-as" duty and the state "different-from" duty directly conflict, preemption follows.

Because the federal "same-as" duty and the state "different-from" duty directly conflict, preemption follows.

A cursory reading of *Mensing* suggests that federal law preempts only one of the three products-liability claims. But in reality, the opinion bars patients from recovering against generic manufacturers in all cases where they allegedly experienced an adverse effect of the drug. As made clear below, attempting to recast a failure-to-warn claim as another products-liability claim is a flawed tactic that has been unsuccessful; and dozens of courts have rejected other post-*Mensing*-crafted theories, including attempts to hold generic manufacturers liable for failing to withdraw the drugs from the market.

In the wake of *Mensing,* plaintiffs have also recast their claims as manufacturing and/or design defect claims. However, neither claim should survive in a case involving an adverse reaction to a prescription drug. A manufacturing defect exists when a product deviates from the design's specifications. Because potential side effects are characteristic of the entire prescription-drug product line, no reasonable argument can be made that manufacturing-defect liability is appropriate. Likewise, potential side effects do not constitute defects in the design of the product.

Again, a side effect is an inherent condition of the product. Moreover, imposing liability for inherent conditions is inconsistent with the purpose underlying design-defect liability. Indeed, design-defect claims are premised on the idea that the manufacturer should have done something differently to make the product's design safer. Accordingly, many states require a plaintiff to prove that a feasible alternative design for the at-issue product exists, posing an additional hurdle to recovery. Moreover, almost all states have adopted comment k to the Restatement (Second) of Torts Section 402A, which limits liability in cases involving "unavoidably unsafe" products. Generally, comment k precludes the imposition of design-defect liability where the drug cannot be made any safer.

Even if side effects could be considered to be the result of defects in the design of a prescription drug, a number of post-*Mensing* courts have held that design-defect liability still could not be imposed. As set forth above, failure-to-warn claims against generic manufacturers are preempted because generic labeling must be the same as the brand-name labeling. Similarly, because a generic must also contain the same active ingredient as the brand-name, generic manufacturers are "powerless to change" the design in a way that would eliminate the side effect. *In re Darvocet, Darvon & Propoxyphene Prod. Liab. Litig*., 2012 WL 718618, at *3 (E.D. Ky. Mar. 5, 2012). In other words, *Mensing's* impossibility-preemption analysis also precludes design-defect claims.

In light of the above, most post-*Mensing* courts have rejected the argument that a claim premised on a side effect can simply be recast as a manufacturing- or design-defect claim. Therefore, plaintiffs' attorneys have attempted to expand the grounds for products liability. Specifically, they have argued that if a manufacturer cannot change its drug's warnings or design, it should simply stop selling the product (a failure-to-withdraw theory of liability). This argument has also been rejected by a number of courts—including the Sixth Circuit, the Eighth Circuit, and the *Mensing* Court itself, which reversed a court articulating this very misunderstanding of the impossibility-preemption doctrine. Moreover, a number of courts have held that the obstacle-preemption doctrine precludes this theory. As articulated by one federal court, "any such state law duty would directly conflict with the federal statutory scheme in which Congress vested sole authority with the FDA to determine whether a drug may be marketed in interstate commerce." *Moore v. Mylan Inc*., 2012 WL 123986, at *10 n.14 (N.D. Ga. Jan. 5, 2012).

Continued on page 4

Yours, Mine & Ours continued from page 1

internet site.

Companies should also give consideration to playing a role in the content of the site such as:

- requiring employees to post the company's contact information, rather than personal addresses, telephone numbers or e-mail addresses;
- establishing a company-created template for how the nature of the company's business and the employee's work history and professional activities are described;
- having the photograph which accompanies the employee's profile done by a professional photographer who is hired by the company;
- creating a template for how employees are to respond to professional contacts they receive through the site; and
- informing employees that the company will be monitoring the site to ensure that the employees are following instructions regarding the content of the site and that the company will correct deviations.

Any instructions the company creates regarding the content of a social media account, and the fact that the company will be monitoring and possibly revising the information contained on that site, should be in writing.

Informing the employee of the rules of the road before a social media site is created may avoid issues in the future. In the event that a dispute does arise, the steps outlined above can be used to show that the company always treated the account as its property and that the employee knew, or should have known, that the internet account and the information it contained was not the sole property of the employee.

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When Does A University Own Rights To An Invention continued from page 2

provided that he "hereby *do[es]* assign" to Cetus his right to "ideas, inventions and improvements" made while he worked there. When Roche, believing that it had rights to Holodniy's technology based on his agreement with Cetus, decided to use Holodniy's patented technology, Stanford sued for patent infringement, arguing that Stanford had exclusive title to the patented technology pursuant to the Bayh-Dole Act because the assays were developed with federal funding. As a preliminary matter, the Supreme Court agreed with the Federal Circuit's holding that Holodniy's agreement with Stanford "constituted a mere promise to assign rights in the future, unlike Holodniy's agreement with Cetus… which itself assigned Holodniy's rights in the invention to Cetus. Therefore, as a matter of contract law, Cetus obtained Holodniy's rights in" the invention. Further, the Supreme Court held that an inventor holds primary ownership rights to an invention, and that the Bayh-Dole Act does not give universities primary claim to inventions created using federal funds and patented by university researchers.

In view of the Supreme Court's ruling in *Stanford*, it is essential that the language in agreements between employees, including technicians, scientists, physicians, and universities with respect to intellectual property explicitly assigns all rights, title, and interest in and to any intellectual property, including know-how and inventions, to the university.

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***Christy G. Rothwell, Ph.D.**, former associate with Pietragallo Gordon Alfano Bosick & Raspanti, LLP, is now Associate Global IP Counsel with Mylan Inc. where she handles intellectual property matters.*

Suggestions for University Technology Transfer Offices

- Implement a written Intellectual Property Policy.
- Include language in agreements with employees and non-employees that constitutes an actual assignment of an invention rather than a promise to assign an invention in the future.
- A university that is releasing technology should be specific about what is being released.
- Out-licenses should specify who owns improvements to the licensed technology or inventions related to the licensed technology.
- Sponsored research agreements, collaborations, and the like should be reviewed and include intellectual property ownership provisions.
- Review all employee inventions to determine if the University has shop rights in and to the invention.

Mission Impossible continued from page 3

Most post-*Mensing* courts have made clear that cases involving a generic drug and an alleged side effect are nothing but failure-to-warn cases. By rejecting arguments to the contrary, the courts have shielded generic manufacturers from liability based on their inability to alter the warnings on their generic prescription drugs. Until the appellate courts, and perhaps even the Supreme Court, have spoken as to each of the post-*Mensing*-crafted theories of liability, however, generic manufacturers will likely continue to face the same arguments.

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Pietragallo is a Founding Member of the Pittsburgh Cultural Trust's Legal Society

Pietragallo Gordon Alfano Bosick & Raspanti, LLP is proud to join 17 other Pittsburgh area law firms in a pledge of $1,200,000 over the next five years to help support the important mission of The Pittsburgh Cultural Trust.

Founded in 1984, The Pittsburgh Cultural Trust offers a wide range of performing and visual arts, has restored the Cultural District in the heart of downtown Pittsburgh through the acquisition and development of real estate, and serves as a steward of the investments and collaborations that continue to enhance the Cultural District neighborhood.

THE PITTSBURGH CULTURAL TRUST

The Firm Celebrates its 25th Anniversary

Founded in 1987 as Pietragallo Bosick & Gordon, our firm was composed of nine attorneys whose primary concentration was litigation. Today, the firm has grown to over 85 attorneys expanding the practice into many diverse specialties.

Mark Gordon, Gaetan Alfano, Dan Pietragallo,
Joseph Bosick, William Pietragallo, II & Marc Raspanti

Pietragallo Adds Four New Attorneys

Douglas M. Hall has joined the Pittsburgh office as a partner and the newest member of the Commercial Litigation and Intellectual Property Litigation Practice Groups. As part of his practice, Mr. Hall formulates strategies for the enforcement and management of clients' intellectual property portfolios that are tailored for each technology and industry. Mr. Hall received his J.D. from Duquesne University School of Law where he was a member of the Duquesne Law Review. He received his B.A. from Duke University.

Jonathan C. Parks has joined the Pittsburgh office as a partner in the Patent & Trademark and the Intellectual Property Litigation Practice Groups. Mr. Parks has practiced in all areas of intellectual property protection and enforcement in a wide variety of technologies, including software, telecommunications, business processes, complex mechanical arts, and various electrical and semiconductor technologies. Mr. Parks has been in private practice since 1996. He received his J.D. from Duquesne University School of Law.

Alicia M. Passerin, Ph.D. has joined the Pittsburgh office as an attorney in the Patent & Trademark and the Intellectual Property Litigation Practice Groups. Dr. Passerin is experienced in counseling clients in all areas of intellectual property. She was selected in July 2008 for inclusion in the Rising Stars Edition of *Pennsylvania Super Lawyers*. She received a B.A. degree in Biology/English from Washington & Jefferson College, M.S. and Ph.D. degrees in Neurobiology from Ohio University and a J.D. from the University of Pittsburgh School of Law.

Frank P. Trapani has joined the Philadelphia office as an associate in the Litigation Practice Group. Mr. Trapani focuses his litigation practice on complex commercial litigation, civil RICO litigation, antitrust cases, product liability matters and appellate litigation. Mr. Trapani has significant experience representing corporate clients in commercial and employment litigation and class action matters in state and federal courts nationwide. He received his J.D., *summa cum laude*, from Syracuse University College of Law, at which he served as the Editor-In-Chief of *The Syracuse Law Review.*

Attorneys In The News

Kathryn M. Kenyon was named a 2012 "**Unsung Hero**" by *The Legal Intelligencer*. *The Legal Intelligencer* recognizes attorneys for their dedication to making their communities a better place through pro bono representation. Ms. Kenyon currently serves as Chair of the Administrative Board of the Pittsburgh Pro Bono Partnership. She also serves on the Board of Directors of Neighborhood Legal Services Association which is a non-profit, public interest law firm which provides civil legal assistance to poor and vulnerable residents of Allegheny, Beaver, Butler and Lawrence Counties.

P. Brennan Hart was recently elected Vice-Chair of the Judiciary Committee of the Allegheny County Bar Association. The Judiciary Committee evaluates the judicial candidates for both the trial and appellate level courts, and makes recommendations regarding their qualifications on behalf of the Bar Association. Mr. Hart also serves as a hearing officer for the Disciplinary Board of the Supreme Court of Pennsylvania. Mr. Hart received his law degree from the Duquesne University School of Law and his undergraduate degree from Ohio State University.

Jeanette H. Ho has been appointed to a three-year term as the Western District of Pennsylvania's representative to the Third Circuit's Lawyers Advisory Committee. The Lawyers Advisory Committee is responsible for commenting on proposed rules and the Third Circuit's internal operating procedures, and serves as a liaison between the Court and the legal community. Ms. Ho's practice concentrates in the areas of general litigation with emphasis on civil rights, particularly Section 1983; municipal liability; negligence; and insurance coverage interpretation and litigation including bad faith actions involving insurance companies.

Joseph D. Mancano was elected President of The Saint Thomas More Society of Philadelphia for a two-year term. The Saint Thomas More Society of Philadelphia is an association of Catholic lawyers, judges and law professors, organized to promote the ideals of Saint Thomas More and the practice of high ethical principles in the legal profession. The Society was founded in Philadelphia in 1949, with the approval of Dennis Cardinal Dougherty, then Archbishop of Philadelphia. It continues to be a source of strength, clarity and fellowship for its members and for the legal community as a whole.

Twenty-One Attorneys named Pennsylvania Super Lawyers

*The following attorneys were recognized by the publication as **2012 Pennsylvania Super Lawyers**:*

Gaetan J. Alfano	Joseph J. Bosick
Mark Gordon	P. Brennan Hart
James W. Kraus	Joseph D. Mancano
William Pietragallo, II	Francis E. Pipak, Jr.
Kevin E. Raphael	Marc S. Raspanti
Eric P. Reif	Eric G. Soller
Clem C. Trischler	Paul K. Vey

*The following attorneys were recognized as **2012 Pennsylvania Super Lawyers Rising Stars**:*

Kathryn M. Kenyon	Ryan J. King
James F. Marrion	Daniel J. McGravey
Michael A. Morse	Christopher A. Iacono
Douglas K. Rosenblum	

*In addition to the above honors, **William Pietragallo, II** was selected as a **Pittsburgh Top 50 Lawyer** by Super Lawyers 2012.*

***Marc S. Raspanti** was selected as a **Top 100 Lawyer** in Pennsylvania as well as a **Philadelphia Top 100 Lawyer** by Super Lawyers 2012.*

Recent Successes

False Claims Act Settlement: Marc S. Raspanti, Michael A. Morse and **Christopher A. Iacono** have successfully reached an agreement on behalf of the United States Government with The Boeing Company, the largest manufacturer of commercial jets and military aircraft combined. Boeing has agreed to pay $4,392,779.74 to settle a Federal False Claims Act whistleblower lawsuit brought by current Boeing employee Vincent A. DiMezza, Jr., alleging that Boeing had engaged in a pattern and practice of submitting false and fraudulent claims for modification work performed under a government contract with the United States Department of Defense to produce, maintain, repair and/or modify the Chinook CH-47D and MH-47 helicopters. The False Claims Act allows private persons (known as "relators") to file a lawsuit against those businesses and individuals that have directly or indirectly defrauded the federal government.

Case Dismissal: Michelle L. Gorman and **Jennifer R. Russell** were successful in obtaining the dismissal of a West Virginia client sued in the Court of Common Pleas of Portage County, Ohio. The Plaintiff claimed that the client had the requisite minimum contacts with the State of Ohio because of advertising done in the State of Ohio and a parent company doing business in the State of Ohio. A number of jurisdictional issues were raised and the Court granted the motion to dismiss the claims for lack of jurisdiction.

Joseph J. Bosick and **Jeanette H. Ho** recently established new law in Pennsylvania regarding when a party in a lawsuit can obtain access to another party's mental health records. In *Susan Octave v. David Wade Walker, et al.*, the Commonwealth Court of Pennsylvania held that a defendant could obtain access to a plaintiff's mental health records when the plaintiff has filed a lawsuit under circumstances in which the plaintiff's mental health may have a bearing on the cause of the plaintiff's injuries or whether the defendant is liable to the plaintiff.

Summary Judgment: Pamela G. Cochenour, Eric P. Reif and **Jennifer R. Russell** obtained summary judgment on behalf of a large regional employer successfully arguing that some of the Plaintiff's claims under the Rehabilitation Act of 1973 were barred by the statute of limitations and that the Plaintiff had failed to establish, after five years of litigation, that he had been discriminated against on the basis of his disability – post-traumatic stress disorder. Our lawyers had also successfully defeated the Plaintiff's efforts to certify this case as a class action.

False Claims Act Settlement: Marc S. Raspanti and **Michael A. Morse**, resolved claims in a case brought by two whistleblowers against the Center for Diagnostic Imaging, Inc. ("CDI"), a radiology and diagnostic imaging company that owns diagnostic centers in seven states across the country. The whistleblowers alleged that CDI defrauded federally funded health programs. United States District Judge Robert S. Lasnik awarded the clients the maximum award possible under the law.

Dismissal of Claims: William Pietragallo, II recently obtained dismissal of claims which were brought by Ted Arneault and Gregory Rubino against Erie attorney, Leonard Ambrose. The suit, which was filed with the United States District Court for the Western District of Pennsylvania, revolved around Mr. Arneault's and Mr. Rubino's allegation that employees and members of the Pennsylvania Gaming Control Board had violated Mr. Arneault's and Mr. Rubino's constitutional rights in connection with their efforts to obtain gaming licenses. Both Mr. Arneault and Mr. Rubino had been involved with the Presque Isle Downs Casino in Erie, Pennsylvania. As a result of his application for a license, the Gaming Control Board conducted an investigation into Mr. Rubino's background. During the course of the investigation, Mr. Ambrose was served with a subpoena ordering him to produce certain materials and provide certain information. Mr. Arneault and Mr. Rubino claimed that by providing information to the Gaming Control Board, Mr. Ambrose had conspired with the Board to violate their civil rights. Mr. Arneault and Mr. Rubino also alleged that Mr. Ambrose had defamed them. A motion to dismiss was filed on behalf of Mr. Ambrose and the Western District dismissed the civil rights claims against Mr. Ambrose. The defamation cause of action was also dismissed. Mr. Arneault and Mr. Rubino have filed an appeal, which is still pending, to the United States Court of Appeals for the Third Circuit.

Louis C. Long and **Michelle L. Gorman** successfully represented a commercial general liability insurer sued for coverage and bad faith growing out of a work-related accident in West Virginia. Faced with a questionable coverage denial, they capped the claims of the injured worker and a putative additional insured through mediation, obtaining a substantial contribution from another insurer. The payment was made under an interim funding agreement that reserved the insurers' rights to seek reallocation for amounts that each contributed. Then, they prevailed in an arbitration proceeding initiated by the other insurer seeking to recoup its payment. As a result, their insurer client paid nothing further. The ultimate outcome avoided exposure to substantial extra-contractual liability, limited potentially covered damages to a fraction of what may have been owed and greatly reduced the insurer's defense costs.

Defense Verdict: Tyler J. Smith and **Rochelle L. Moore** successfully defended a five-week medical malpractice trial in Morgan County, West Virginia. This was the longest trial in Morgan County history and involved competing testimony by some of the foremost experts in the fields of rheumatology, emergency medicine, psychiatry and microbiology as it relates to the pathogenesis of the rabies virus.

Defense Verdict: Eric P. Reif obtained a defense jury verdict in the Court of Common Pleas of Westmoreland County on behalf of an ear, nose and throat specialist, or otolaryngologist, who was sued for medical malpractice for supposedly having used an improper surgical technique to perform a septoplasty, or operation to correct a deviated septum.

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