PIETRAGALLO

PIETRAGALLO GORDON ALFANO BOSICK & RASPANTI, LLP

SUMMER 2015

SPOTLIGHT:
THE OPENING OF THE RICHMOND, VA OFFICE

In November of 2014, Pietragallo Gordon Alfano Bosick & Raspanti, LLP opened the firm's sixth office in Richmond, Virginia. Kenneth D. McArthur, Jr., a native Virginian, joined Pietragallo to run the new office, which is located in the Shockoe Slip Historic District in Downtown Richmond. Mr. McArthur practices in the areas of Health Care, Business/Corporate, and Federal and State Qui Tam Litigation.

Mr. McArthur earned his law degree from Mercer University in 1994, after graduating from Virginia Commonwealth University with dual majors in Philosophy and Political Science in 1990. He is also an alumnus of the Collegiate School (Richmond).

Since 1994, Mr. McArthur has worked primarily in the health care space as an attorney, a consulting expert, a graduate school professor and, at one time, a lobbyist. He has assisted thousands of health care industry participants—including health care professionals, businesses and associations—in a broad spectrum of legal and government relations matters ranging from those involving simple counseling to complex litigation. Since 2005, Mr. McArthur has also taught the Pharmacy Law course and co-taught the Pharmacy in the U.S. Health Care System course (both of which are required courses) in the four-year Doctor of Pharmacy Program at the highly-ranked Virginia Commonwealth University (MCV) School of Pharmacy. His professional peers have repeatedly selected him to be included in *Virginia Business* magazine's list of the top attorneys (known as the "Legal Elite") practicing in the area of Health Law. *Law & Politics* magazine has named him a "Super Lawyer" in the category of Health Care.

Mr. McArthur's health care clients have included durable medical equipment (DME) providers, group purchasing organizations (GPOs), health plan sponsors, health plans, health systems, home health care providers, hospice providers, hospitals, long-term care facilities, managed care organizations (MCOs), medical practices, nurse practitioners, pharmaceutical manufacturers, pharmacies (compounding, institutional, mail-order, retail, and specialty), pharmacists, pharmacy benefit managers (PBMs), pharmacy services administration organizations (PSAOs), physical therapists, physician assistants, physicians, professional/trade associations, psychologists, psychology practices, and surgical assistants.

Mr. McArthur's practice focuses on:

- advising health care industry participants on compliance with the numerous and ever-changing state and federal laws governing conduct within the highly-regulated health care industry
- assisting health care professionals and businesses with government and private-party audits, internal and external investigations, disciplinary and other regulatory enforcement matters, contractual negotiations, and payment disputes
- federal and state civil litigation involving allegations of anticompetitive and fraudulent conduct in the health care industry
- serving as an expert on health care issues and the health care industry

*For more information, please contact **Kenneth D. McArthur, Jr.**, a partner in the firm's Health Care, Business/Corporate, and Qui Tam Litigation Practice Groups, at (804) 396-6331 or via e-mail at KDM@Pietragallo.com.*

INSIDE THIS ISSUE:

State and Federal Requirements for Employers' Use of Criminal Background Checks

By Jennifer R. Russell, Esq.

Employers may investigate and make decisions based upon applicants' and employees' prior criminal convictions, but must ensure any investigation and decisions comply with applicable state and federal authority.

Pennsylvania's Criminal History Record Information Act permits employers to consider criminal history information revealed by criminal background checks. Felony and misdemeanor convictions may only be considered if they relate to suitability for employment in the relevant position. Arrests should not be considered. If a decision is based upon criminal history information, employers must notify the applicant in writing. Also, individuals or their attorney can review, challenge, correct or appeal the accuracy of the information.

Act 153 of the Pennsylvania Child Protective Services Law now requires many faculty and staff members of educational institutions, including public and private colleges, and other covered entities and individuals with "direct contact" with minors ("care, supervision, guidance or control of" or "routine interaction with" minors) to undergo regular criminal background checks (see *www.keepkidssafe.pa.gov*). Employees, independent contractors and volunteers must obtain a renewed clearance, including a criminal background check by state police, an FBI check and fingerprinting, and a state child abuse clearance every three years.

Although Pennsylvania does not have a state-wide "ban-the-box" law preventing employers from asking about criminal history on applications and during initial interviews, such laws exist in Allegheny County, as well as Allentown, Lancaster, Philadelphia and Pittsburgh. Philadelphia is the only ordinance that applies to both private and public employers, and Pittsburgh's ordinances apply to the city and its vendors/contractors. Harrisburg is also exploring banning the box for city jobs.

In 2012, the EEOC issued revised guidelines for employers regarding using criminal background checks (*http://www.eeoc.gov/laws/guidance/arrest_conviction.cfm*), which permit checks that are job-related for the position in question and consistent with business necessity. Although not required, these standards are met by a targeted screen considering the nature of the crime, the time elapsed and the nature of the job (three factors identified in *Green v. Missouri Pacific Railroad*, 549 F.2d 1158 (8th Cir. 1977)), and an individualized assessment of those identified in the screen to determine if the policy as applied is job-related and consistent with business necessity. Per the EEOC, blanket exclusions should only be used cautiously when warranted by the position, as in *El v. SEPTA*, 479 F.3d 232 (3d Cir. 2007) (policy of disqualifying paratransit driver applicants based upon prior violent criminal convictions upheld as justified by public safety concerns for mentally and physically disabled passengers). Employers should also not rely upon arrest records in most situations. In March 2014, the EEOC and the Federal Trade Commission also issued joint publications to employers, employees and applicants on the use of background checks, providing "best practices" guidelines and additional resources (*http://www.eeoc.gov/eeoc/publications/background_checks_employers.cfm* and *http://www.eeoc.gov/eeoc/publications/background_checks_employees.cfm*).

The EEOC has made hiring and recruitment practices that adversely impact particular groups a national priority. It has also filed several lawsuits against employers claiming their background check policies or practices violated Federal law, but has not been successful to date (see *EEOC v. Freeman,* 778 F.3d 463 (4th Cir. 2015) (affirming summary judgment for employer due to EEOC's unreliable expert reports); *EEOC v. Peoplemark*, 732 F.3d 584 (6th Cir. 2013) (affirming summary judgment for employer and assessing over $750,000 in fees against the EEOC for pursuing a meritless case). The EEOC's litigation efforts and guidance have also been called into question by members of Congress, several state Attorneys General who sharply criticized the EEOC's condemnation of bright-line screens, and the state of Texas. Despite these challenges, and although the guidance does not have the force of law, they should continue to be followed to best minimize risk.

The Federal Fair Credit Reporting Act ("FCRA") also requires employers using screening companies to evaluate individuals for employment, promotion, reassignment or retention to disclose in a stand-alone document that the information obtained may be used for employment decisions, and to obtain the individual's written permission to perform the check. If an employer decides to take an adverse employment action (employment denial, termination or unfavorable employment change), it must give the individual written notice with a copy of the report, "A Summary of Your Rights Under the Fair Credit Reporting Act," and the name, address and phone number of the screening company. The individual must also be notified of their right to dispute the report, and how to receive a free report from the company, within 60 days. FCRA litigation, including class suits, has resulted in substantial recent settlements, highlighting the importance of compliance with these requirements.

Employers should develop specific policies and procedures regarding screening and considering criminal background information. Overall, employers should consider (1) creating, recording and implementing a narrowly-

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THE UNITED STATES SUPREME COURT SHIFTS THE BALANCE OF POWER IN PATENT LITIGATION

By Eric G. Soller, Esq.

The Supreme Court has agreed to review more patent cases in the past two terms than in the entire decade of the 1990s. The Court's rulings have heightened the significance of the fact-finding role of district courts by limiting the Federal Circuit's authority to overturn those factual decisions on review. These decisions will significantly impact virtually all U.S. patent litigation for years to come.

Scope of Review on Claim Construction

In *Teva Pharmaceuticals, USA, Inc. v. Sandoz, Inc.*, 135 S.Ct. 831 (2015), the Supreme Court shifted the balance of power in patent cases back to the district courts. On January 20, 2015, the United States Supreme Court held that a district court's determination of subsidiary facts underpinning claim construction in patent cases is entitled to deference on review. This case has the potential to significantly enhance a district court's control over the claim construction process by limiting the scope of the Federal Circuit's appellate review. As a result, the claim construction hearing will be even more important to the overall success of the parties. Additionally, the use of expert witnesses may become commonplace in order to set forth the appropriate factual basis for the claim construction position of each party.

Since 1998, the Federal Circuit had applied a de novo standard of review to all aspects of a district court's claim construction, including its findings of fact with respect to evidentiary issues. This allowed the Federal Circuit to overrule the district court's resolution of inherently factual issues such as credibility of witnesses and extrinsic evidence concerning the meaning of technical words and phrases, even where there was no indication that the district court had committed error.

In *Teva*, the Supreme Court held that although the Federal Circuit is permitted to review the district court's legal decisions de novo, it must not reverse the lower court's factual findings unless they are clearly erroneous. By significantly limiting the Federal Circuit's ability to second-guess the factual determinations of the district courts, the *Teva* decision has made it more difficult for the Federal Circuit to overturn claim construction opinions. Accordingly, there is now a heightened importance on factual disputes during claim construction. As a result, testimony from both experts and fact witnesses will be even more important – and potentially dispositive – particularly with respect to the question of how one who is skilled in the art might interpret an ambiguous term. Now that the factual determinations underpinning the district court's claim construction are entitled to deference, parties may give additional consideration to the ability and experience of district judges when making pre-litigation decisions regarding forum selection. Further, parties may attempt to avoid de novo review by framing issues during claim construction as factual rather than legal.

It remains to be seen how the Federal Circuit will apply the new standard of review created by the Supreme Court in *Teva*. In order to avoid the practical effects of the *Teva* holding, the Federal Circuit may attempt to focus exclusively on the patent's intrinsic record in order to avoid giving deference to the district court's determinations regarding extrinsic evidence, such as expert testimony. This approach has appeared in the limited body of Federal Circuit decisions issued after *Teva*.

The Test for Indefiniteness

In *Nautilus, Inc. v. Biosig Instruments, Inc.*, 134 S.Ct. 2120 (2014), the Supreme Court reversed the standard that had been applied for years by the Federal Circuit as to whether a patent is definite under 35 U.S.C. § 112. The Federal Circuit's standard was that a patent lacked "definiteness" if it was "insolubly ambiguous." The Supreme Court opined that the prior standard lacked precision because such terminology "can breed lower court confusion" and "leave courts and the patent bar at sea without a reliable compass," however, noting the "delicate balance" between requiring definiteness and accounting for the inherent limitations of language, "recognizing that absolute precision is unattainable." The Supreme Court stated that the proper assessment of definiteness requires, "that a patent is invalid for indefiniteness if its claims, read in light of the specification delineating the patent, and the prosecution history, fail to inform, with reasonable certainty, those skilled in the art about the scope of the invention."

Direct Infringement Versus Inducement

In *Limelight Networks, Inc. v. Akamai Technologies, Inc.,* 134 S.Ct. 2111 (2014), the Supreme Court redefined liability for "inducing infringement of a patent under 35 U.S.C. § 271(b) when no one has directly infringed a patent under § 271(a) or any other statutory provision." The Supreme Court definitively stated that "liability for inducement must be predicated on direct infringement." The Supreme Court reversed the Federal Circuit and remanded the case, instructing that the "Federal Circuit will have the opportunity to revisit the § 271(a) question if it chooses." The Supreme Court held that if "performance of all of the claimed steps cannot be attributed to a single person," direct infringement has not occurred and, therefore, inducing infringement cannot be found.

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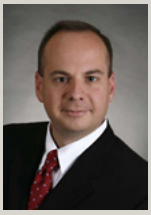
Pietragallo Names Three New Partners

Pamela Coyle Brecht

Pietragallo Gordon Alfano Bosick & Raspanti, LLP is pleased to announce the election of ***Pamela Coyle Brecht*** as a Partner in the firm's Philadelphia office. She is an active member of the Qui Tam Practice Group. She also has experience in employment law, white collar criminal litigation, and labor relations.

Ms. Brecht is involved in litigating some of the most complex Qui Tam cases filed in the United States. She is also part of the team that is advancing one of the first national cases alleging fraud against the Medicare Part D program.



John A. Schwab

The firm is also pleased to announce the election of ***John A. Schwab*** as a Partner in its Pittsburgh office. Mr. Schwab serves as Co-Chair of the Cyber Liability & Technology Law Practice Group. He is also a member of the firm's Government Enforcement, Compliance, and White Collar Litigation; Qui Tam; and Litigation Practice Groups.

Mr. Schwab is an experienced litigator, who practices in the areas of white collar criminal defense, government investigations, corporate internal investigations and compliance, commercial litigation, and intellectual property litigation. Mr. Schwab's litigation practice also includes an emphasis on electronic discovery, and the impact of technology in civil and white collar criminal cases.

Michael D. Lazzara

Michael D. Lazzara of the firm's Pittsburgh office has been elected as a Partner, and is a member of the Intellectual Property Practice Group.

Mr. Lazzara focuses his practice on all phases of intellectual property law including patents, trademarks, copyrights and trade secrets. He handles such matters as preparing and prosecuting patent, trademark and copyright applications, portfolio development, patentability opinions, patent infringement and validity studies, trademark clearance opinions, and general intellectual property counseling.

Pietragallo Welcomes A New Associate

Jason S. Kreps

The Pittsburgh office of Pietragallo has welcomed ***Jason S. Kreps*** as an Associate in the Government Enforcement, Compliance, and White Collar Litigation Group and the Health Care Practice Group. Mr. Kreps practices in the areas of government investigations, commercial litigation, and professional liability matters. Prior to joining the firm, Mr. Kreps was in private practice in New York City, where he represented emerging companies in a broad range of business and finance ventures, as well as commercial litigation matters involving contract disputes, trade secrets, and violations of restrictive covenants.

Criminal Background Checks continued from page 2

tailored, clearly-written policy and procedure for screening applicants and employees, and training all necessary personnel regarding such policy; (2) limiting criminal background checks to obtaining information regarding only those crimes identified as job-related and consistent with business necessity (using the Green factors above) and documenting the reasons such crimes are job-related; (3) eliminating blanket policies or practices excluding anyone from employment based upon any criminal record (unless otherwise required by law); (4) if legitimate business reasons exist to exclude certain individuals from employment, ensuring such policy accurately distinguishes between individuals that do and do not pose an unacceptable level of risk in accordance with *El v. SEPTA*; and (5) requiring an individualized assessment before decisions are made.

*For more information, please contact **Jennifer R. Russell,** an associate in the firm's Litigation and Employment & Labor Practice Groups, at (412) 263-4349 or via e-mail at JRR@Pietragallo.com.*

Balance of Power in Patent Litigation continued from page 3

Empowering the District Courts to Award Attorney Fees

The United States Supreme Court issued two unanimous decisions in 2014 relating to the award of attorney fees in "exceptional" patent infringement cases. This new, more relaxed standard may deter patent trolls or non-practicing entities (NPEs) from seeking to cash in on high-volume, low-value cases. Faced with paying the attorney fees of the prevailing party if an NPE is unsuccessful in a case with little merit may cause NPEs (and their attorneys) to think twice before going to Court.

In *Octane Fitness, LLC v. Icon Health & Fitness, Inc.*, Case No. 12-1184, the Supreme Court reversed the Federal Circuit and held that the *Brooks Furniture* framework for determining whether a case is "exceptional" under Section 285 of the Patent Act is unduly rigid, and impermissibly encumbers the statutory grant of discretion to district courts to award reasonable attorney fees to prevailing accused infringers. Section 285 states: "The court in exceptional cases may award reasonable attorney fees to the prevailing party."

The Supreme Court stated that the *Brooks Furniture* framework was too restrictive, and superimposes an inflexible framework onto statutory text that is inherently flexible. In *Brooks Furniture*, the Federal Circuit held that a case may be deemed "exceptional" only in two limited circumstances: (1) when there has been some "material inappropriate misconduct" related to the matter in litigation; or (2) when the litigation is both "objectively baseless" and "brought in subjective bad faith."

The Supreme Court noted that the first category of cases involves "material inappropriate misconduct" which appears to extend largely to independently sanctionable conduct, which is not the appropriate benchmark. Rather, a district court may award reasonable attorney fees in the rare case in which a party's unreasonable conduct, while not necessarily independently sanctionable, is nonetheless so "exceptional" as to justify an award of fees. With respect to the second category, the Supreme Court noted that a case presenting either subjective bad faith or exceptionally meritless claims may rise to the level of being "exceptional" to warrant an award of reasonable attorney fees.

The Supreme Court noted that Section 285 clearly imposes one and only one constraint on district courts' discretion to award attorney fees in patent litigation: The power is reserved for "exceptional" cases. The Supreme Court instructed that district courts may determine whether a case is "exceptional" in the case-by-case exercise of their discretion, considering the totality of the circumstances.

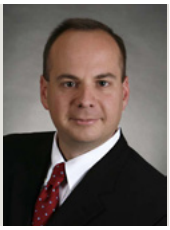
In *Highmark Inc. v. Allcare Health Management Systems, Inc.*, Case No. 12-1163, the Supreme Court found that the Federal Circuit should give deference to a district court's determination that litigation was exceptional under Section 285. The Federal Circuit applied a de novo review standard that is traditionally applied to "reviewable questions of law." The Supreme Court held that attorney fee awards under Section 285 are "matters of discretion," and thus reviewable for "abuse of discretion." The Court further stated that an appellate court should apply an abuse of discretion standard in reviewing "all aspects" of a district court's Section 285 determination, because "[a]lthough questions of law may in some cases be relevant to the [Section] 285 inquiry, that inquiry generally is, at heart, 'rooted in factual determinations.'"

Conclusion

After decades of relative inaction in patent cases, the Supreme Court has now provided more guidance in a series of decisions that clarify certain provisions of the U.S. Patent Statute and shift decision-making power from the Federal Circuit to the district courts. This increased power magnifies the importance of the district court's rulings in the outcome of the case. Also, it may reduce the number of appeals in that the burden to overturn on appeal is now more stringent.

*For more information, please contact **Eric G. Soller**, a partner in the firm's Commercial Litigation Group, at (412) 263-1836 or via e-mail at EGS@Pietragallo.com.*

U.S. Sentencing Commission Weighs Changes to White Collar Crime Sentencing Guidelines



By John A. Schwab, Esq.

The U.S. Sentencing Commission recently proposed amendments to the federal sentencing guidelines, including several important changes which would affect white collar defendants.

"Inflationary" Changes to the §2B1.1 Loss Amounts Increase Thresholds for Offense Level Enhancement

The first change alters the amounts in the loss table under §2B1.1 – termed "monetary values" – such that they are increased to adjust for inflation. This is part of the Commission's obligation under a Congressional mandate to consider inflationary adjustments to monetary penalties every four years. This would be an important change because the §2B1.1 loss table has not been adjusted for inflation since it was originally promulgated in 1987. The threshold amounts for enhancements to offense levels will be higher – in some case significantly higher – than current thresholds.

Although the Commission is considering two methods of adjusting for inflation, both increase the monetary values by at least 1.34, a multiplier derived from the Bureau of Labor Statistics' Consumer Price Index, and then round up by one of two methods. One option rounds up using a statutory rounding method used to adjust civil monetary penalties, while the second option rounds up to higher, "rounder" numbers at more regular intervals for loss amounts above $95,000. As a result, under either method, the new loss amounts would be the same for intervals under $95,000 but different for intervals above $95,000.

For example, a loss amount of $70,000 presently increases the offense level by 8 points; however, under both options under consideration, only a loss amount of $95,000 and higher would trigger the 8-level increase. Likewise, where a loss amount of $1 million currently increases the offense level by 16 points, only loss amounts of $1.35 million or $1.5 million, respectively, would trigger the 16-level increase under the two options.

Clearly, under either scenario, white collar defendants will benefit in comparison to the current fraud guidelines. Given that the "inflationary adjustments" are based on the technical premise of inflation and required by Congress, it's likely that this amendment will ultimately be approved by Congress.

Revisions to §2B1.1 Enhancements

The Commission is also contemplating changes to §2B1.1 including the provisions relating to the definition of "intended loss," and the enhancements for sophisticated means and victims' financial status

Intended Loss Redefined

Regarding intended loss, the Commission is weighing a proposal that the guidelines should be revised to better reflect a defendant's intent when determining the loss amount. Appellate courts presently differ as to whether they require a subjective or objective analysis. The Second, Third, Fifth, and Tenth Circuits have held that a subjective inquiry is required, but the First and Seventh Circuits support an objective approach.

The first of the Commission's two competing options would redefine intended loss to include the pecuniary harm that the defendant purposely sought to inflict as well as the defendant's overall purpose, as inferred from all available facts. The second option is similar to the first, but also includes the pecuniary harm that any other participant sought to inflict in instances where the defendant is accountable under relevant conduct for another participant.

Victim Impact Enhancement

The Commission is also considering an enhancement in cases where the offense resulted in "substantial financial hardship" to one or more victims. The Commission is considering a two-three- or four-level enhancement under that provision. The commentary under §2B1.1 would define "substantial financial hardship," and allow the court to consider factors including whether the offense resulted in the victim becoming insolvent, filing for bankruptcy, relocating to a less expensive home, being erroneously arrested or denied a job, etc.

"Sophisticated Means" Curtailed

As for the "sophisticated means" enhancement under §2B1.1, the Commission is contemplating whether to limit its application to only the defendant's conduct rather than the offense as a whole. The current guidelines allow for a two-level enhancement regardless of whether the defendant's conduct impacted the fraud's sophistication.

In addition, the Commission is considering whether the purportedly "sophisticated means" should be compared to only similar frauds or only frauds that fall under §2B1.1. Prevailing case law allows the offense conduct to be compared to all fraud falling under §2B1.1. The proposed amendment would increase the offense level by two levels where "the offense otherwise involved sophisticated means, and the defendant engaged in or caused the conduct constituting sophisticated means."

Changes to Non-Economic Sentencing Guidelines

The Commission's proposed amendments also include changes to non-white collar guidelines, including those for drug offenses. This year's amendments include a request for comment on the treatment of "flavored drugs" which are colored, packaged or flavored to appeal to children. The Commission received reports that drugs are flavored to make them taste like candy, and marketed in smaller amounts such that they are cheaper and more accessible to children.

The proposed amendments also seek to incorporate new statutory penalties given that hydrocodone is now a Schedule II controlled substance. As a result of that change, the Commission's proposed amendments would remove references to "Schedule III hydrocodone" from §2D1.2, including the drug quantity table, while also giving hydrocodone a new marijuana equivalency.

*For more information, please contact **John A. Schwab,** a partner and Co-Chair in the firm's Cyber Liability & Technology Law Practice Group, at (412) 263-1849 or via e-mail at JAS@Pietragallo.com.*

Upcoming Events

Los Angeles, CA, *June 18, 2015* - **Marc S. Raspanti** and **Pamela C. Brecht** will speak at the ABA Section of Litigation Healthcare Committee LA Regional Conference.

New York, NY, June 18, 2015 - **Christopher E. Ballod** is moderating a panel entitled "Recent Developments in Coverage and Bad Faith" for the Professional Liability Attorney Network in New York. The Panel will include insurance industry professionals and other attorneys.

Pittsburgh, PA, June 19, 2015 - **Shelly R. Pagac** will discuss Issues of Leadership at the ACBA Bench Bar Conference.

Pittsburgh, PA, June 23, 2015 - **Martin T. Durkin, Jr.** will present a webinar for AHLA "Telemedicine: Making the Business Case for Telemedicine-Exploring Different Delivery Models and Their Regulatory Consequences, Part IV: How to Protect Against Fraud and Abuse While Promoting Telemedicine."

Washington, DC, June 30, 2015 - **Kevin E. Raphael** will present at the AHLA Annual Meeting to the Fraud and Abuse Practice Group Luncheon.

Pittsburgh, PA, July 8, 2015 - **Shelly R. Pagac** will present a webinar for the Pittsburgh Human Resources Association on "What you should be considering when using social networking sites in the hiring process."

Pittsburgh, PA, July 10, 2015 - **Shelly R. Pagac** will be speaking for PBI's *Pregnancy Discrimination in the Workplace* program.

Philadelphia, PA, July 14, 2015 and *Pittsburgh, PA, July 21, 2015* - **Kevin E. Raphael** and **Shelly R. Pagac** will present at the PBI Program on "Responding to Allegations of Sexual Misconduct: A Legal Update for Employers, Educators, and Health Care Providers."

Philadelphia, PA, July 22, 2015 - **Kevin E. Raphael** will be speaking at the PBI Program: Understanding the Basics of Fraud and Abuse in the Healthcare Industry on "What you Need to Know about Compliance Programs" and "Defending Fraud and Abuse Matters."

Philadelphia, PA, July 22, 2015 - **Pamela C. Brecht** will present at the PBI program "Understanding the Basics of Fraud and Abuse in the Healthcare Industry" on "The False Claims Act."

Pittsburgh, PA, August, 5, 2015 - **Eric G. Soller** is speaking for PBI on "Cross Examination for Commercial Litigators."

Recent Successes

Shelly Pagac prevailed in a AAA matter on behalf of her client, an international supplier of engineering services. The litigation involved a former employee who resigned his employment and claimed he was entitled to severance benefits under his employment agreement. The agreement provided that if the employee's job duties were materially, adversely changed, he could resign for good cause, and therefore be entitled to the significant severance benefits outlined in the contract. Both parties presented a number of witnesses during the hard fought, three-day trial. The panel agreed with our client's position that there had been no material, adverse changes to the position, and found that the employee was not entitled to any severance benefits.

Summary Judgment Granted. Plaintiff underwent physical therapy following popliteal cyst excisions. She alleged that the physical therapist forcibly pushed her leg toward her chest to stretch her hamstring. Plaintiff claimed that the "excessive pushing" caused herniated discs at L4-5 and L5-S1 and two annular tears which required three additional surgeries and related treatment. **Janet K. Meub** defended the case by presenting medical evidence proving a pre-existing injury.

Defense Verdict. *Helen Jones v. Ron Ott & Eastern Elevator Service & Sales Company* - Plaintiff Helen Jones was involved in a rear-end collision on July 2, 2008, with a van driven by Ron Ott during the course and scope of his employment with Eastern Elevator Service & Sales Company. Ms. Jones alleged that she has not been able to work from September 2008 to the present as a result of the accident. The plaintiff further alleged that she suffered injury requiring C6-C7 discectomy surgery and left rotator cuff surgery with follow-up procedures. Plaintiff argued future wage losses in the amount of $1.2m due to her claim of total disability as a registered nurse, with additional damages for physical pain and loss of enjoyment of life. **Jim Marrion** and paralegal **Tiffany Grimes** tried the case over the course of a week in the Court of Common Pleas of Cambria County, Pennsylvania, resulting in a defense verdict. Defendants contested liability and cause of Ms. Jones's medical condition. The jury deliberated for an hour before finding that the defendants were not negligent. The case was defended in part based on the lack of significant damage to the plaintiff's vehicle, the location of the damage to the vehicle, and the logical inference as to the location of the accident. Plaintiff testified that the event occurred two miles past the merge area of Route 219 South and the on-ramp from 22 West. Defendants argued that the accident occurred in the merge area, and plaintiff was responsible for the accident by pulling in front of Eastern Elevator's vehicle. There were no independent witnesses to the accident nor were the police called.

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