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America Invents Act Provides Sweeping Patent Reform

by Alan G. Towner, Esq. and Steven W. Hays, Esq.

The *America Invents Act* ("AIA") was signed into law on September 16, 2011. It is the first major overhaul of the U.S. patent law since the 1950's. Some major changes under the AIA include switching to a "first-to-file" patent system, greater ability to test the validity of issued patents at the U.S. Patent and Trademark Office ("USPTO"), the ability to challenge certain types of business method patents, and the elimination of certain types of false patent marking suits.

First-to-File

Most significantly, the AIA converts the United States from a "first-to-invent" standard to a "first-to-file" standard of determining priority, thereby bringing the United States into better harmony with the patent laws of other countries. The conversion to the first-to-file system is effective on March 16, 2013.

Prior to this change, inventors could rely on prior conception of their invention to establish priority over others, even if they were not the first one to submit a patent application to the USPTO. Under the new law, priority is simply determined by the date that an inventor files his or her patent application. As a consequence, there may often be a "race to the Patent Office," as inventors working in similar fields try to avoid the loss of patent rights to their competitors. This fundamental change conforms the U.S. Patent Law to the patent laws of virtually every other industrialized country, and is considered by some to benefit large companies and institutions with well-established patent procedures that enable prompt patent filings. However, there is some concern that smaller companies and individual inventors without the resources or knowledge of the new law may be placed at a disadvantage under the first-to-file system.

A loophole that may help inventors who do not win the race to the Patent Office is a limited one-year grace period provided by the AIA. According to the new law, an inventor will have one year from the time he or she publically discloses his or her invention to file a patent application before such a public disclosure prevents him or her from obtaining a valid patent. An inventor's date of public disclosure may also serve to preempt a competitor from obtaining a U.S. patent if the competitor filed its patent application after the inventor's public disclosure. Under the AIA, it will be even more important for inventors to promptly file their patent applications.

Testing Patents at the USPTO

Another major change implemented by the AIA is an increased ability to challenge the validity of issued patents at the USPTO. *Inter partes* review and post-grant review procedures will allow challengers to ask the USPTO to reconsider whether a patent has been properly granted.

Inter partes review will become available on September 16, 2012. It replaces and changes the old USPTO *inter partes* re-examination procedure, which was historically used only to a moderate extent by patent challengers. Under the new procedure, a challenger can submit "prior art" to the USPTO, and if there is a reasonable likelihood that the challenger would prevail, the petition for review will be granted. Both the patent owner and the challenger will have opportunities for limited discovery and to make oral arguments before a newly named Patent Trial and Appeal Board ("PTAB").

Post-grant review will also become available on September 16, 2012, but the procedure will only apply to patents granted on

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CLASS ACTIONS LIMITED: *WAL-MART STORES, INC. V. BETTY DUKES, ET AL.*, THE SUPREME COURT STEPS IN TO REIN IN CLASS ACTION LITIGATION

by Shelly R. Pagac, Esq.

On June 20, 2011, the United States Supreme Court refused to certify a class action lawsuit against Wal-Mart which would have comprised approximately 1.5 million members. The three named Plaintiffs seeking to represent the class claimed they had been discriminatorily denied promotions and pay in violation of Title VII because the local supervisors exercised unfettered discretion over pay and promotion matters. Interestingly, their legal theory, which may have doomed their case, was that the claimed discrimination to which they had been subjected was common to every one of Wal-Mart's female employees. The Supreme Court held because the Plaintiffs provided no convincing proof of a company-wide discriminatory pay and promotion policy, the class could not establish the existence of any common question. Because no common question existed, the Supreme Court refused to certify the class.

How did the Supreme Court reach its conclusion in refusing to certify the class? In reaching its decision, the Supreme Court did not focus on the incredible size of the class to demonstrate that joinder of all members was impracticable, which perhaps would have been an easier approach, but focused on the requirement that there must be questions of law or fact common to all members of the proposed class in order for the class to be certified.

In finding there was no commonality within the class, the Court reasoned that the Rule 23 language requiring commonality is easy to misread since any competently crafted class complaint literally raises common questions. Simply asking whether all the Plaintiffs work for Wal-Mart, or whether managers have discretion over pay, or whether an unlawful employment practice existed are not sufficient questions to obtain class certification. As the Court explained, commonality requires the plaintiff to demonstrate that the class members have suffered the same injury and not merely that they have all suffered a violation of the same provision of law. "Quite obviously, the mere claim by employees of the same company that they have suffered a Title VII injury, or even a disparate impact Title VII injury, gives no cause to believe that all their claims can productively be litigated at once. Their claims must depend upon a common contention - for example, the assertion of discriminatory bias on the part of the same supervisor. Moreover, that contention must be of such a nature that it is capable of class-wide resolution - which means that determination of its truth or falsity will resolve an issue that is essential to the validity of each one of the claims in one stroke." Id. at 9.

In order to establish a nationwide class, Plaintiffs had to present proof that Wal-Mart operated under a general policy of discrimination. In order to do so, the class relied on three forms of proof: (1) statistical evidence; (2) anecdotal reports of discrimination; and (3) the testimony of a sociologist, Dr. William Bielby.

> In order to establish a nationwide class, Plaintiffs had to present proof that Wal-Mart operated under a general policy of discrimination.

First, the Court rejected the sociologist's testimony. The Supreme Court noted that Dr. Bielby could not determine with any specificity how regularly stereotypes play a meaningful role in employment decisions at Wal-Mart. During his deposition, "Dr. Bielby conceded that he could not calculate whether 0.5 percent or 95 percent of the employment decisions at Wal-Mart might be determined by stereotyped thinking." Id. at 13. Because Bielby had no answer to that question, the Court stated it could "safely disregard what he has to say." Id. at 14.

Next, the Plaintiffs attempted to rely on statistical analysis in establishing that a common question existed. The Plaintiffs presented a regression analysis in which the statistician compared region by region the number of women promoted into management positions with the percentage of women in the available pool of hourly workers. The statistician concluded that there were statistically significant disparities between men and women at Wal-Mart, and these disparities could only be explained by gender discrimination. The Court rejected the impact of these studies, and explained that one named plaintiff's experience of discrimination was insufficient to infer that discriminatory treatment was typical of the employer's employment practices.

Finally, the Court found respondents' anecdotal evidence suffered from the same defect in that, just because one individual claimed they had been discriminated against, that did not mean that every female had been discriminated against. Respondents had filed some 120 affidavits reporting incidents of discrimination - about one for every 12,500 class members - relating to only about 230 out of Wal-Mart's 3,400 stores. The Court reasoned that even if every single one of these accounts was true, it would not demonstrate that the entire company operated under a general policy of discrimination.

In *AT&T v. Concepcion*, the Supreme Court upheld AT&T's arbitration provision in its consumer contracts requiring parties to bring suit in their individual capacities, rather than as a plaintiff or class member in any purported class or representative proceeding. These decisions suggest the beginning of a trend of Supreme Court decisions designed to control and rein in the ever-broadening scope of class action litigation in the employment law context and beyond. Both of these decisions can be viewed as critical of class action litigation and may be a signal that the class action heyday is over, or at least is on its way to being controlled.

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For more information, please contact Shelly R. Pagac, Partner in the firm's Employment Litigation and Counseling Practice Group, at (412) 263-4343 or via e-mail at SRP@PIETRAGALLO.com.

The Foreign Corrupt Practices Act: Can Your Company Survive The Wave?

by Joseph D. Mancano, Esq. and Ethan J. Barlieb, Esq.

For companies that conduct business overseas, especially in emerging or third-world markets, the Foreign Corrupt Practices Act ("FCPA") and its high-profile, high-dollar settlements are all too familiar. In order to avoid potential FCPA violations, and the associated price tag, companies need to adopt stringent compliance programs and be vigilant for "red flags," or circumstances which place the company on notice of potential violations. In an effort to aid companies in that endeavor, this article will briefly discuss the substance of the FCPA and will point out some common "red flags" that should be identified and addressed through an effective compliance program.

FCPA Overview

The FCPA was enacted in 1977 in an effort to end the practice of some multi-national corporations obtaining business abroad by bribing foreign officials. The statute itself is a fairly simple anti-bribery and record-keeping statute which criminalizes the act of offering or giving any payment, gift, or thing of value to a foreign official for the purpose of obtaining or retaining business, or in order to obtain an improper business advantage. The record-keeping provisions of the FCPA require companies with publicly-traded stock to meet certain accounting standards that are aimed at preventing and detecting potential foreign bribery.

The FCPA, which may be enforced by the Securities and Exchange Commission ("SEC") and Department of Justice ("DOJ"), applies to any United States company or citizen doing business abroad. The Act also covers foreign companies (and their directors, officers, employees, or agents) with reporting and registration requirements under the Securities Act of 1933 and Securities Exchange Act of 1934 as well as any foreign person or company acting within the United States. The FCPA provides for civil and criminal penalties. Moreover, the Securities and Exchange Commission may require a disgorgement of profits. In the past few years, prosecutions under the FCPA have dramatically increased. The SEC has established an enforcement unit, and the DOJ has assigned prosecutors and FBI agents exclusively to the FCPA. The DOJ and the SEC have made their most recent big splash under the FCPA by settling with Johnson & Johnson ("J&J"). J&J agreed to pay $21.4 million in criminal penalties as part of a deferred prosecution agreement. J&J additionally settled a related matter filed by the SEC agreeing to more than $48.6 million in disgorgement of profits and pre-judgment interest. The $71 million aggregate settlement by J&J registers as just the tenth largest FCPA-related settlement since 2008.

FCPA Compliance Program and FCPA "Red Flags"

The DOJ makes it clear that companies doing business abroad should have effective corporate compliance programs. These programs can prevent and detect criminal conduct and in turn mitigate exposure for FCPA violations. Generally, these compliance programs should contain, among other things, independent audits, periodic training on FCPA compliance, and compliance standards and procedures. For these programs to be effective, however, companies must be keenly aware of the kinds of activities and/or arrangements, which should raise "red flags." Below are some examples of red flags that, unless investigated independently and thoroughly, can potentially lead to FCPA sanctions.

> Companies need to adopt stringent compliance programs and be vigilant for "red flags."

"Red Flags" in the Engagement of Third-Parties (i.e., Consultants, Agents):

•A potential third-party fails to comply with the due diligence required by a company's FCPA compliance program by failing to fully disclose qualifications, information regarding their relationship with foreign government officials, or illegal conduct;

•A potential third-party fails to certify their compliance with the FCPA by failing to execute contracts containing FCPA provisions;

•The existence of prior allegations/convictions of illegal or corrupt conduct by potential third-parties;

•A potential third-party does not appear to be qualified to render the services for which they are being retained;

•Potential third-parties that have been recommended by foreign government officials or who used to serve as foreign government officials.

"Red Flags" in Transactions with Third-Parties:

•A failure to execute contracts describing the services to be rendered prior to performance;

•A high volume of cash transactions;

•Unusually high commissions or the identification of multiple gifts to a single individual;

•Payments outside the country where the goods or services are rendered or payments to third-parties;

•The use of a third-party where no prior relationship exists;

•Identification of frequently used one-time vendor arrangements.

Accounting "Red Flags":

•Payments classified as government expenses;

•Incomplete travel or expense forms that are used to obtain cash;

•The use of general purpose or miscellaneous accounts;

•Lack of specificity regarding the description of payments to foreign individuals, agents, or business partners (i.e., the failure to link payments classified as "commissions," "referral fees," or "business consulting fees" to services actually rendered).

As stated above, an effective compliance program must be designed to detect these "red flags," whether they arise during the selection of third parties or in the accounting of payments to third-parties. Once a "red flag" is detected and reported to those in charge of compliance, an appropriately documented inquiry should occur to determine the existence of any FCPA exposure. Any conduct by a company's directors, officers, employees, agents, or business partners, which raises a "red flag" should be considered for

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applications filed after March 16, 2013. This will effectively delay the implementation of post-grant review for several years until patent applications filed after March 16, 2013 are prosecuted at the USPTO and subsequently issued. Under the post-grant review procedure, anyone other than the patent owner may challenge the validity of a U.S. patent within 9 months of its issue date. The USPTO post-grant review procedures are modeled after European patent opposition procedures that have been used for many years. A petition for post-grant review will only be granted if the petitioner can demonstrate that it is more likely than not that at least one claim of the challenged patent is unpatentable. Both the patent owner and challenger may take limited discovery and will have the right to an oral hearing before the PTAB. In addition to submitting "prior art" to the USPTO, a challenger utilizing the post-grant review procedure may attack the validity of a recently issued U.S. patent on several other statutory grounds that were historically only available in infringement actions brought in federal district courts.

Unlike the "clear and convincing" standard that must be met in order to invalidate a patent in federal court, the new USPTO *inter partes* review and post-grant review procedures will utilize a "preponderance of the evidence" standard. While this lower evidentiary standard may benefit those seeking to invalidate a patent, if a challenger is not successful at the USPTO, it may be estopped from challenging validity of the patent later in federal district court.

The new *inter partes* review and post-grant review proceedings at the USPTO provide avenues, other than federal court, for challengers to attack the validity of U.S. patents. On one hand, the lower evidentiary standard for establishing invalidity at the USPTO, and the likely lower costs associated with such USPTO proceedings, will prompt many patent challengers to utilize the new *inter partes* review and post-grant review procedures. On the other hand, issues such as potential estoppel may prompt certain patent challengers to think twice before foregoing actions in federal district court in favor of the new USPTO procedures.

Challenging Certain Business-Method Patents

The patentability of "business methods" has been a hot topic for several years, culminating in the 2010 Bilski Supreme Court decision, which weakened but did not kill the ability to patent business methods. In the AIA, Congress has taken a further step to limit patent protection for business methods by allowing anyone who has been sued or charged with infringement of a business method patent to petition the USPTO under a procedure similar to post-grant review. Beginning September 16, 2012, such alleged infringers can attack a patent if it covers a method or corresponding apparatus for performing data processing or other operations used in the practice, administration, or management of a financial product or service, except for patents for technological inventions. Congress did not define what constitutes a "technological invention," leaving it to the USPTO and the Court of Appeals for the Federal Circuit to develop the boundaries of what business methods are sufficiently "technological" to warrant patent protection.

False Marking Suits

Under the old patent law, it was an offense to falsely mark goods as "patented," and statutory fines of up to $500 could be imposed for every such offense. Any individual could bring a qui tam action based on false patent marking of a product, and could share half of any money recovered with the government. In recent years, significant monetary awards in lawsuits brought under the false marking statute spawned a cottage industry of individuals seeking to benefit from such recoveries. The false marking portion of the AIA addresses this recent explosion of qui tam actions. Now, only the United States government will be able to sue for statutory damages for false marking. Individuals who claim products were falsely marked may bring a civil action, but can only recover compensatory damages to the extent they can prove that they suffered a "competitive injury." In another change to the false marking statute, marking a product with the number of a patent that covered the product, but which has expired, no longer constitutes false marking.

Conclusion

The AIA has quickly and drastically changed the landscape of patent protection in the United States. Inventors seeking patent coverage should be aware of the new first-to-file system and other new requirements impacting the content of their patent applications and the timing of their patent efforts. Those seeking to enforce their patents, and those accused of patent infringement, should be cognizant of the new *inter partes* review and post-grant review procedures at the USPTO, and should consider how such procedures may impact their patent litigation strategies.

Alan G. Towner is the head of Pietragallo Gordon Alfano Bosick & Raspanti's Intellectual Property Practice Group, and a board member and former president of the Pittsburgh Intellectual Property Law Association. He can be reached at (412) 263-4340 or via e-mail at AGT@PIETRAGALLO.com.

Steven W. Hays is a partner in Pietragallo Gordon Alfano Bosick & Raspanti's Intellectual Property Practice Group, and is a member of the Pittsburgh Intellectual Property Law Association and the American Intellectual Property Law Association. He can be reached at (412) 263-1829 or via e-mail at SWH@PIETRAGALLO.com.

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disciplinary action. Sensitivity to "red flags," such as the ones enumerated above, will put a company in the best possible position to avoid the heavy sanctions that may be levied under the FCPA.

For more information, please contact Joseph D. Mancano, Co-chair of the firm's White Collar Criminal Defense Practice Group, at (215) 320-6244 or via e-mail at JDM@PIETRAGALLO.com or Ethan J. Barlieb, an associate in the White Collar Criminal Defense Practice Group, at (215) 320-6018 or via e-mail at EJB@PIETRAGALLO.com.

Pennsylvania Thrilled Over Punxsutawney Phil's Recovery For Infringement!

Pietragallo is Pleased to Announce The Election of Its Two Newest Partners

Shelly R. Pagac

"Shelly is that rare combination of legal intelligence, social awareness and genuine personality. We are delighted to have her as our partner, and a leader in the firm."

- William Pietragallo, II

Steven W. Hays

"Steve is a diligent and capable patent and trademark practitioner. We recruited him from his home in Detroit with a goal of having him become our partner. That has happened, and we are pleased."

- William Pietragallo, II

Pietragallo Adds Six New Associates

Asher S. Alavi has joined the Philadelphia office as the newest member of the Federal and State Qui Tam Litigation Practice Group. Mr. Alavi is a Boston College Law School graduate and was Note Editor of the Boston College *Third World Law Journal*. Mr. Alavi has experience working as a student attorney at the Boston College Legal Assistance Bureau, Community Enterprise Clinic.

John R. Brumberg joined the Pittsburgh office as an associate in the Commercial Litigation Practice Group. Mr. Brumberg earned his J.D. from Duke University School of Law, where he was the recipient of a Duke Law Scholarship. He has served as an intern with the Pennsylvania Office of Attorney General and also with Federal District Judge Joy Flowers-Conti.

Abigail M. Faett has joined the Pittsburgh office as an associate in the Litigation Defense Practice Group. In addition to receiving her J.D. from the Duquesne University School of Law, and the many honors, Ms. Faett studied abroad in France, the Netherlands and Germany for an International Media course.

Leslie A. Mariotti joined the Philadelphia office as an associate in the Employment Practice Group. Ms. Mariotti earned her Masters at the University of London, and her J.D. from the Temple University Beasley School of Law. She served as a judicial intern for U.S. Magistrate Judge Timothy R. Rice and as a Law Clerk for The Honorable Mitchell S. Goldberg in Philadelphia.

The Pittsburgh office welcomed **Janet K. Meub** as the newest member of the Commercial Litigation, Health Care Litigation and Professional Liability Defense Practice Groups. Ms. Meub has experience in medical malpractice litigation, transportation and professional liability. She has also been recognized as a *Pennsylvania Super Lawyers Rising Star* in 2010 and 2011.

Robert J. Perkins joined the Pittsburgh office as an associate in the Product Liability Practice Group. Mr. Perkins received his J.D., *magna cum laude*, from the Duquesne University School of Law. While in law school, he received many exceptional awards including the Distinguished Student Award and the Cali Excellence for the Future Award.

Attorneys In The News

Shelly R. Pagac has received the **Philip Werner Amram Award** given at the Allegheny County Bench-Bar Conference. The Bench-Bar Conference, an annual gathering of over 700 attorneys, judges and justices throughout the state, is dedicated to professional development and to enhancing and improving the justice system in the community. The Amram Award recognizes individuals who personify professional excellence and who have demonstrated substantial commitment to the ideals of the Allegheny County Bar Association as well as to the betterment of the greater community.

John A. Schwab was selected by *The Legal Intelligencer* as a 2011 **"Lawyer on the Fast Track."** With the help of the editorial staff of *The Legal Intelligencer*, a panel of judges selected Mr. Schwab as one of the future leaders of the Commonwealth's legal community. Mr. Schwab is an experienced litigator, having represented various individuals, government officials, health care practitioners, and corporate executives and officers.

Holly E. DiCesare is the recipient of the **Nora Barry Fischer Award** for 2011. The Nora Barry Fischer Award serves to recognize an attorney within the firm who has given back to the legal profession and the community at large. Ms. DiCesare serves on the Board of Directors of the Washington City Mission, a social services organization in Washington County which provides critically needed goods and services to the homeless, poor and needy of Western Pennsylvania. She is an active member of the Allegheny County Bar Association's Young Lawyers' Division where she serves on the Public Services Committee. In addition, Ms. DiCesare is a member of the Shadyside Action Coalition.

Thomas J. Ward, who recently retired as Special Counsel in the firm's Business Group, received the **Allegheny County Bar Association Special Service Pro Bono Award** for 2011. Mr. Ward was a founding Trustee and President, and served on the Advisory Board of the Bethel Park Community Foundation. He was also President of the Board of Pittsburgh Catholic Publishing Associates, Inc. Until his recent retirement, he served on the Board of the Allegheny County Bar Association's Pro Bono Partnership, and is past President of the Board of Catholic Charities of Pittsburgh.

20 Pietragallo Lawyers named Pennsylvania Super Lawyers

William Pietragallo, II and **Marc S. Raspanti** were selected as *Top 100 Lawyers in Pennsylvania* by *Super Lawyers 2011*.

Twenty attorneys were named by the publication as *2011 Pennsylvania Super Lawyers*. In addition to Mr. Pietragallo and Mr. Raspanti, the following attorneys were recognized by the publication as *2011 Pennsylvania Super Lawyers*: **Anthony J. Basinski**, **Joseph J. Bosick**, **Pamela G. Cochenour**, **P. Brennan Hart**, **Joseph D. Mancano**, **Francis E. Pipak, Jr**., **Kevin E. Raphael**, **Eric P. Reif**, **Clem C. Trischler** and **Paul K. Vey**.

The following attorneys were recognized as *2011 Pennsylvania Super Lawyers Rising Stars*: **Kathryn M. Kenyon**, **Ryan J. King**, **Amy C. Lachowicz**, **James F. Marrion**, **Daniel J. McGravey**, **Michael A. Morse**, **Christopher A. Iacono** and **Douglas K. Rosenblum**.

Eight Pietragallo Lawyers Selected as 2012 Best Lawyers in America

William Pietragallo, II has been selected as the **"Pittsburgh *Best Lawyers* Bet-the-Company Litigation Lawyer of the Year"** for 2012.

Eight lawyers from the firm were recently selected by their peers for inclusion in *The Best Lawyers in America*® 2012 (Copyright 2011 by Woodward/White, Inc., of Aiken, S.C.) The attorneys who received this distinguished honor are:

William Pietragallo, II (Bet-the-Company Litigation, Commercial Litigation, Personal Injury Litigation-Defendants)
Mark Gordon (Workers' Compensation Law-Employers)
Gaetan J. Alfano (Commercial Litigation)
Marc S. Raspanti (Health Care Law)
Alan G. Towner (Litigation-Intellectual Property, Litigation-Patent, Patent Law, Trademark Law)
Paul K. Vey (Medical Malpractice Law-Defendants)
Clem C. Trischler (Product Liability Litigation-Defendants)
Francis E. Pipak, Jr. (Workers' Compensation Law-Employers)

Recent Successes

U.S. Supreme Court Amicus Brief: Joseph D. Mancano and **J. Peter Shindel, Jr.** recently filed an Amicus Curiae brief with the U.S. Supreme Court on behalf of the National Association of Criminal Defense Lawyers ("NACDL") in support of the Petition for Certiorari of Ian P. Norris, a British citizen convicted in federal court in Philadelphia of conspiracy to obstruct justice. The NACDL brief asks the Supreme Court to review the case as it involves significant issues relating to the attorney-client privilege.

Discontinuance with Prejudice: Philip P. Keating and **Joanna C. Serago** successfully represented a movie theatre on a premises liability claim brought in the Court of Common Pleas of Erie County. The plaintiff alleged that she had sustained injuries as a result of a dangerous condition on the premises, causing her to fall and resulting in multiple surgeries and a poor prognosis for recovery. After five contentious days of trial, the plaintiff voluntarily abandoned her case and signed a discontinuance with prejudice.

Supersedeas Recovery: Mark Gordon and **Sean B. Epstein** were successful in securing what is believed to be the largest recovery ever from the Pennsylvania Workers' Compensation Supersedeas Fund ($478,000) for Highmark Casualty Insurance Company.

Defense Verdict: Tyler J. Smith obtained a defense verdict for a hospital and its radiologist in a case involving two other defendants, a primary care physician and a cardio thoracic surgeon, who were both found liable to plaintiff in the amount of $1.6 million. The PCP testified that he relied on the client to report growth of a lung mass over the course of 18 chest x-rays, which substantially contributed to his failure to timely diagnose and treat the plaintiff's decedent's lung cancer. The client was the only one of five defendants to walk away from the claim without having to pay a penny.

Summary Judgment: Gaetan J. Alfano, Daniel J. McGravey and **Sarah R. Lavelle** obtained summary judgment on behalf of a regional transportation authority by successfully arguing that the plaintiff's claims were preempted by the Federal Railroad Safety Act.

Summary Judgment: Joseph J. Bosick and **Martha S. Helmreich** recently convinced a Pennsylvania trial court to grant a Motion for Summary Judgment in favor of their clients, two partnerships which owned and developed real estate. In *Doe v. Thrift Drug* (Lawrence County CCP), summary judgment was granted on the grounds that the plaintiffs could not show that the defendants had one of the limited number of "special relations" to the minor plaintiffs, or to one of the other defendants (a construction foreman), who was accused of molesting the minor plaintiffs, which would give rise to a duty on their part to control the foreman's conduct. Additionally, the plaintiffs could not prove that the foreman was acting within the scope of his employment when he committed the acts.

Successful Prosecution of a Non-Compete Breach: Anthony J. Basinski assisted a Fortune 500 client in enjoining a former employee from competing with the client, and secured a recovery against the former employee of $267,000.

Pennsylvania Supreme Court Amicus Brief: Louis C. Long was invited to file an amicus brief with the Pennsylvania Supreme Court by the Pennsylvania Defense Institute and the Insurance Federation of Pennsylvania, Inc. on the part of industry within Pennsylvania to preserve the exclusive remedy provision of the Pennsylvania Workers' Compensation Act when applied to latent occupational-related disease. The firm is honored to represent the interests of Pennsylvania's industries and the national insurers on this important issue.

Case Dismissal: Marc S. Raspanti and **Sarah R. Lavelle** recently convinced the United States District Court for the District of Columbia to dismiss an action against a former director of the White House Office of Presidential Advance. The plaintiffs had filed the action for alleged violations of their First Amendment rights pertaining to their ejection from a public event. In granting the motion to dismiss, the Court held that the plaintiffs failed to plead facts that plausibly showed that they were excluded pursuant to any policy, or that our client exercised any policymaking authority to promulgate an unconstitutional policy.

Case Dismissal: Kenneth T. Newman, Daniel J. McGravey and **Martha S. Helmreich** were successful in securing the dismissal of a Commonwealth Agency who had been sued as a result of an accident where the plaintiff's vehicle hydroplaned and overturned on a highway. The plaintiff suffered severe injuries. A Motion for Summary Judgment was filed. Following oral argument of the Motion for Summary Judgment, the plaintiff voluntarily dismissed the case.

Partial Motion to Dismiss: Gaetan J. Alfano, Daniel J. McGravey and **Sarah R. Lavelle** successfully prevailed on a partial motion to dismiss pending before the United States District Court for the Middle District of Pennsylvania. There, the plaintiff raised claims based on wrongful termination in violation of public policy and breach of his express and implied contract of employment after he provided additional consideration. In granting the partial motion to dismiss, the court found that the plaintiff's state law claims failed as a matter of law.

Pietragallo's Steubenville Office Has Changed Locations

The new address is:

200 Stanton Boulevard
Suite 100
Steubenville, Ohio 43952
TEL: (740) 282-6705
FAX: (740) 282-8667

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BOSICK & RASPANTI, LLP

ATTORNEYS AT LAW

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