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THE FUNDAMENTALS OF INTELLECTUAL PROPERTY

by Alan G. Towner, Esq. and Alicia M. Passerin, Esq.



“Intellectual property” is a term that refers to intangible assets such as ideas, information, inventions, and other subject matter that is a product of intellectual rather than physical activity. Much like real and personal property, intellectual property can be protected under the law through various common law and government-recognized entitlements. There are four distinct fields of intellectual property: patents, trade secrets, trademarks and service marks, and copyrights. Each field protects a particular form of intellectual property: patents and trade secrets generally protect technology (i.e., ideas), trademarks protect the goodwill that consumers associate with particular products and services, and copyrights protect art, literature, and other authored works (i.e., expressions of ideas).

Virtually every business owns some form of intellectual property that provides it with certain competitive advantages. Recognizing and developing a strategy for protecting that intellectual property may be key to a business’ long term success. This article will focus on the importance of protecting and enforcing patent rights in the U.S. and abroad.

A patent is a government-granted right that gives the patent holder the right, for a limited time, to prevent others from making, using, offering for sale, selling, or importing the subject matter claimed in the patent. The laws protecting patents vary from country to country and, as a result, generally one must pursue patent protection and enforcement within each jurisdiction in which one seeks patent protection. Specifically, while a patent grants the patent holder particular rights in the country whose patent office issued the patent, those rights do not extend to other countries. For example, if an applicant wants patent protection for an invention in the United States, Canada, Europe, and China, that applicant must file a patent application in each of these countries.

The authority for the U.S. government to grant patents originates in the U.S. Constitution, and the patent laws of the U.S. are codified in Title 35 of the U.S. Code. A utility patent is granted for an invention that provides some utility or function, such as processes,

machines, articles of manufacture, compositions of matter, and improvements to any of these. In contrast, a design patent is granted to protect the ornamental (i.e., non-functional) features of an article of manufacture, and a plant patent is granted for a distinct and new variety of asexually reproduced plant. This discussion will focus on utility patents.

On September 16, 2011, President Obama signed the Leahy-Smith America Invents Act (“the AIA”), one of the most sweeping patent reforms of the U.S. patent laws in over 50 years. While the default effective date of the AIA was September 16, 2012, many of the provisions of the AIA have their own effective dates. One key change to the patent laws is that, as of March 16, 2013, the U.S. will move from being a “first to invent” patent system to being a “first inventor to file” system. As a result, the right to patent an invention is given to the first inventor to file a patent application for a particular invention, rather than to the first inventor of the invention. Under this new system, if A independently invents an invention before B invents the same invention, but B files a patent application before A, then B wins the race to the Patent Office and has the right to patent the invention, assuming that all of the statutory requirements for patentability are met.

In most countries (including the U.S. after March 16, 2013) in which a patent application is filed, any public disclosure of an invention prior to filing a patent application may be an absolute bar to patentability. In a small minority of countries such as Canada, patent applicants have a one year grace period in which to file a patent application following a public disclosure. However, not all disclosures of an invention to a third party constitute a public disclosure for purposes of patentability. In particular, a disclosure made to a third party under a confidentiality or non-disclosure agreement is not a public disclosure as long as the third party actually maintains the confidentiality of the invention.

Patent prosecution, the process of obtaining a patent, is initiated when an applicant drafts

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CIRCUIT SPLIT NARROWED IN FAVOR OF EMPLOYEES WITH DISABILITIES REGARDING WHETHER ADA REASSIGNMENT REQUIRES PREFERENTIAL TREATMENT

by Gaetan J. Alfano, Esq. and Jennifer R. Russell, Esq.



A panel of the U.S. Court of Appeals for the Seventh Circuit recently reversed the dismissal of a disability discrimination action filed by the Equal Employment Opportunity Commission (“EEOC”) against United Air Lines, Inc. under the Americans with Disabilities Act (“ADA”). *EEOC v. United Air Lines, Inc.*, 693 F.3d 760 (7th Cir. 2012). In doing so, the court overturned its precedent in *EEOC v. Humiston-Keeling, Inc.*, 227 F.3d 1024, 1029 (7th Cir. 2000), and *Mays v. Principi*, 301 F.3d 866 (7th Cir. 2002), in favor of the EEOC’s position that ADA “reasonable accommodation” requires reassignment of employees with disabilities to vacant positions when they cannot be accommodated in their current positions.

United had a “competitive transfer” policy for disabled employees, which gave preferential treatment over non-disabled employees/applicants. However, the policy did not require automatic placement into vacant positions, and provided that employees needing accommodation could submit transfer applications, receive guaranteed interviews and “receive priority consideration over a similarly qualified applicant.” United, however, could hire another more-qualified applicant.

The EEOC filed suit against United, but the district court dismissed the case, finding that the ADA is not a mandatory preference act. The court relied upon *Humiston-Keeling*, in which the Seventh Circuit had held that the ADA does not require an employer to reassign a disabled employee where there is a better applicant, provided the employer has a consistent and honest most-qualified policy.

On appeal, although the court followed *Humiston-Keeling* and affirmed the dismissal, the panel recommended that the full court reconsider *Humiston-Keeling*. After polling the Seventh Circuit’s active judges, the appeals court vacated its prior opinion and issued a new opinion, overruling *Humiston-Keeling* based upon *U.S. Airways v. Barnett*, 535 U.S. 391 (2002), which applied a two-step, case-specific approach for determining whether or not reassignment is a reasonable accommodation and held that employees with disabilities seeking positions with less physical demands cannot bump more senior employees from such positions. The court reinstated the EEOC’s suit and remanded to the district court, which was

directed to conduct the *Barnett* analysis.

The Seventh Circuit’s position is now that the ADA mandates that employers “appoint employees with disabilities to vacant positions for which they are qualified, provided that such accommodation would be ordinarily reasonable and would not present an undue hardship. . . .” Despite the *Barnett* Court’s recognition that exceptions can be made to reasonably accommodate disabled employees if they do not pose an undue hardship, the Seventh Circuit concluded that requiring United to forego applying its most-qualified policy did not automatically constitute an undue hardship. Although the court did not hold that foregoing application of these policies could never constitute an undue hardship and ruled that courts are to evaluate

Employers should carefully examine policies relating to transfers and reassignment and how they apply to disabled employees...

such policies on a case-by-case basis, the court’s decision effectively means that, in the “run of cases,” requests by disabled employees to fill vacant positions will be deemed to be a reasonable accommodation.

Appeals courts have been divided on whether individuals with disabilities are entitled to vacant positions or must compete for them. The Tenth and D.C. Circuits have held that the ADA requires preferential treatment by automatically placing an individual into another position. *Smith v. Midland Brake, Inc.*, 180 F.3d 1154 (10th Cir. 1999); *Aka v. Washington Hosp. Center*, 156 F.3d 1284 (D.C. Cir. 1998). The Eighth Circuit, however, relying partly on *Humiston-Keeling*, has found that the ADA is not an affirmative action statute and does not require reassignment when it would violate a legitimate, nondiscriminatory most-qualified policy. *Huber v. Wal-Mart Stores, Inc.*, 486 F.3d 480, 483 (8th Cir. 2007), cert. dismissed, 552 U.S. 1136 (2008).

The Fourth Circuit addressed the issue in the context of a seniority system in *EEOC v. Sara Lee Corp.*, 237 F.3d 349, 355 (4th Cir. 2001), a few months prior to the Su-

preme Court’s *Barnett* ruling. Fourth Circuit district courts appear to continue to hold that a reasonable accommodation does not include reassignment, if it would require bumping another employee out of a position. *Atkins v. Holder*, 2012 U.S. Dist. LEXIS 138882 (D. S.C. Aug. 10, 2012). Similarly, the Sixth Circuit in *Hedrick v. Western Care Reserve Care System*, 355 F.3d 444, 459 (6th Cir.), cert. denied, 543 U.S. 817 (2004), held that, although reasonable accommodation may include reassignment, the ADA does not require preferential treatment. Courts in the Sixth Circuit also appear to have continued to find that disabled employees are not entitled to preferential treatment where employers have valid policies requiring other individuals to be hired. *Garcia v. Whirlpool Corp.*, 2010 U.S. Dist. LEXIS 118409 (N.D. Ohio Nov. 5, 2010).

Although the Supreme Court granted certiorari in *Huber*, the case was dismissed when the parties settled. The Supreme Court may get another chance to rule on this issue soon, as United Air Lines filed a Petition for *Writ of Certiorari* with the Court on December 6, 2012, and asked the Seventh Circuit to stay the action until the Supreme Court’s final disposition.

In the meantime, disabled employees will likely rely upon this case to support claims that they are entitled to automatic transfer into vacant positions. Employers should carefully examine policies relating to transfers and reassignment and how they apply to disabled employees, and should also ensure that they are able to demonstrate a resultant significant hardship if such policies are not followed in order to accommodate disabled employees.

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THE SUPERIOR COURT'S DECISION IN *PATTON V. WORTHINGTON* SOUNDS DEATH KNELL FOR STATUTORY EMPLOYER DEFENSE AND ELEVATES CONSTRUCTION COSTS THROUGHOUT THE COMMONWEALTH

by Mark Gordon, Esq. and John R. Brumberg, Esq.



In March of 2012, the Superior Court of Pennsylvania issued a decision in *Patton v. Worthington Associates, Inc.* that virtually eliminated the statutory employer defense in Pennsylvania and, should the decision stand, will create a flood of new litigation against contractors and their insureds and will serve to substantially elevate construction costs throughout the Commonwealth of Pennsylvania.

What does this mean for the construction industry? The short answer is greater exposure to claims made by employees of subcontractors.

In *Patton v. Worthington Associates, Inc.*, 43 A.3d 479 (Pa. Super. Ct. Mar. 27, 2012), the Superior Court concluded that the statutory employer defense is available *only* to contractors which maintain a common law master-servant relationship with the employees of the subcontractor by demonstrating that the contractor had the contractual right to control the means and methods of the subcontractor's injured employee.

Before one can fully appreciate the adverse impact this holding will generate for the construction industry, a historical analysis of the statutory employer concept in the Commonwealth of Pennsylvania is appropriate.

The classic setting for the statutory employer concept is found in the construction industry, where the general contractor typically employs contractors, which, in turn, employs subcontractors to work at a job site. Since it was first included in Pennsylvania's original workers' compensation statute in 1915, the statutory employer concept has worked to provide workers' compensation benefits to workers whose direct employers have failed to provide workers' compensation coverage and has worked to insulate entities other than the subcontractor that could be called upon to provide such benefits from civil liability.

It should be noted that, historically, an employer's election to provide workers' compensation insurance was optional. If an employer opted in, it enjoyed civil liability immunity. On the other hand, if an employer opted out, an injured employee could bring a civil action for injuries sustained which were

alleged to have occurred as a result of the acts or omissions of the employer.

The statutory employer concept grew from this scenario, so that an employee of a subcontractor, which did not have workers' compensation insurance, could still recover benefits from the entity which had contracted with the injured employee's direct employer.

The concept of statutory employer gave any party, which ultimately could be called upon to pay workers' compensation benefits to the employee of another, immunity from civil liability. That immunity existed even if the contractor was never called upon to pay benefits to the injured employee of the subcontractor.

Until the Superior Court's decision in Patton, the courts did not concern themselves with the closeness of the relationship between the contractor on the one hand and the worker of a subcontractor on the other.

Until the Superior Court's decision in *Patton*, the courts did not concern themselves with the closeness of the relationship between the contractor on the one hand and the worker of a subcontractor on the other.

Amendments to the Workers' Compensation Act ultimately obligated all employers in the Commonwealth of Pennsylvania to carry workers' compensation insurance coverage absent an employer's formal designation as self-insured by the Pennsylvania Insurance Department. Once workers' compensation coverage was mandated, instances where the employee of a subcontractor would have to look to a contractor other than his own direct employer for workers' compensation benefits were substantially diminished. As a result of these amendments, there were numerous attempts made by the plaintiffs bar to modify the impact of the statutory employer defense. The plaintiffs bar contended that where a contractor, who had not been called upon to pay workers' compensation benefits to an injured employee of its subcontractor because the subcontractor provided coverage, should not be entitled to avail itself of immunity. Our appellate courts, however, have repeat-

edly rebuffed those attempts, contending that the courts are not empowered to modify or eliminate the statute, and that such remedy was left to the Pennsylvania legislature.

The seminal case setting forth the elements one must satisfy to qualify as a statutory employer is *McDonald v. Levinson Steel Co.*, 153 A. 424 (Pa. 1930). The *McDonald* test provides that:

To create the relation of statutory employer . . . all of the following elements essential to a statutory employer's liability must be present: (1) An employer who is under contract with an owner or one in the position of an owner. (2) Premises occupied by or under the control of such employer. (3) A subcontract made by such employer. (4) Part of the employer's regular business entrusted [sic] to such subcontractor. (5) An employee of such subcontractor.

Asserting that it was not creating a new element under the *McDonald* test, the Superior Court referenced a need for a master-servant relationship to exist between the contractor and the employee of the subcontractor in order for the contractor to have the benefit of immunity provided under the statutory employer defense. In support of its holding in *Patton*, the Superior Court rests the alleged requirement of a master-servant relationship on a prior Pennsylvania Supreme Court holding in *Joseph v. United Workers Ass'n*, 23 A.2d 470, 472 (1942). Curiously, the Supreme Court in *Joseph* did not address the *McDonald* test; addressed nothing about the determination of statutory employer status; and did not address the proper interpretation of a master-servant relationship under the Workers' Compensation Act.

The Superior Court appears to have failed to specifically address the Supreme Court's holding in *McDonald*. Therein, the Supreme Court took note that the statutory employer determination is in no way determined by whether a master-servant relationship exists at common law. Indeed, the Court found that: "A statutory employer is a master *who is not a contractual or common-law one*, but is made one by the Act." The Court went on to state that: "The difficulty arises chiefly in deter-

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and files a patent application with the patent office in the jurisdiction where the applicant wants to obtain patent protection. The United States Patent Act sets forth particular statutory requirements that must be met in order for a utility patent application to be issued as a patent. First, the claimed invention must fall within one of the defined categories of patentable subject matter, including any new and useful process, machine, manufacture, or composition of matter, or any improvement to any of these. Second, the claimed invention must be novel, i.e., unique from any prior device or process. Third, the claimed invention must not be obvious in light of any prior devices or processes. Fourth, the claimed invention must be sufficiently described in the patent application to enable one of ordinary skill in the art to rely on the description to make and use the invention.

In the U.S., patent applicants have the option to file either a provisional patent application or a non-provisional patent application. A provisional patent application is a “place-holder” application that gives the applicant a filing date, is never examined, and requires submission of a non-provisional patent application within one year. Regardless of whether a provisional or a non-provisional patent application is filed, the five requirements for patentability must be met.

After a non-provisional patent application is filed, a patent examiner at the U.S. Patent Office reviews the patent application and the examiner issues an Office Action that details any deficiencies that the examiner finds in the application. In many cases, patent prosecution involves a series of “negotiations” between the applicant and the patent examiner in which the claim language (i.e., the language that legally defines the invention for what the patent is sought) is amended in order to meet the statutory requirements for patentability. If and when the examiner finds that the patent claims are patentable, then a notice of allowance is issued and upon payment of an issue fee, the patent issues.

Patent rights begin on the date on which the patent is issued and ends twenty years from the date on which the patent application was filed. When a patent holder believes that a third party is infringing the claims of an issued patent, the patent holder may initiate a lawsuit in Federal Court for patent infringement. Where a court finds that the claims of a patent have been infringed, the patent holder may be entitled to an award of a reasonable royalty or lost profits resulting from the infringement, or an injunction halting the infringing activities. In certain circumstances, the patent holder may be awarded treble damages, and in

“exceptional cases,” the prevailing party may be awarded attorneys’ fees.

Most businesses invest significant resources into research and development that generates technology and gives them a competitive advantage. This technology may be protectable under the patent system. Therefore, in order to reap the benefits of the research and development, it is critical that a business take affirmative steps to manage and protect its technology by obtaining and enforcing its patent rights. Such management gives the business a competitive advantage by enabling the business to exclude competitors from practicing the claimed invention during the patent term.

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mining who the Legislature intended should be included within the class of statutory employers, as distinguished from master and servant at common law, which is taken care of elsewhere by the act.”

It seems clear from the Supreme Court’s reasoning in *McDonald* that there was no interest in imposing upon a contractor the burden of demonstrating that it had a master-servant relationship with the subcontractor’s employee in order to avail itself of immunity.

Importantly, if, as the Superior Court in *Patton* now seemingly requires, the statutory employer defense is available only when the contractor is controlling the means of performance of the employees of the subcontractor, then the contractor is the actual and direct employer of the subcontractor’s employees. Under such circumstances, there would be no need for a statutory employer concept. On the other hand, if a contractor presents evidence that its contract established that it was engaged in a master-servant relationship with the employee of the subcontractor, the contractor could well be saddled with withholding and benefit obligations to the employee of the subcontractor, as well as legal liability for the actions of the workers retained by the subcontractor.

THE IMPACT ON THE COST OF CONSTRUCTION

It should come as no surprise that insurers which underwrite liability coverage for contractors price coverage on their expectations as to what expenses and losses an insured will incur secondary to their insured’s operations.

The statutory employer concept has historically tempered insurance costs in our Commonwealth. While accidents at job sites are not infrequent, the ability of an injured employee of a subcontractor to successfully pursue an action against another with whom his employer has a contractual relationship is limited because of the historical immunity bestowed by the statute.

It would be difficult to imagine that any contractor would include language in its contract with a subcontractor that would give the contractor sufficient control over the employees of the subcontractor to generate a master-servant relationship that the Superior Court perceives to be necessary to warrant immunity for the contractor and its employees. Thus, should the holding in *Patton* stand, it creates the likelihood that any accident which occurs on a job site, injuring the em-

ployee of a subcontractor, will trigger multiple claims against other contractors present at the site, resulting in defense costs and loss payments that were not previously experienced by insurers in Pennsylvania, thus driving up the future cost of insurance.

Worthington Associates, Inc. has petitioned the Supreme Court of Pennsylvania for review. A refusal by the Court to hear the appeal by Worthington, or an affirmance by our highest court, would significantly alter the construction litigation landscape, and the cost of business for the construction industry and its insurers.

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PENNSYLVANIA PRODUCT LIABILITY LAW REMAINS UNSETTLED

by Clem C. Trischler, Esq. and Bradley A. Matta, Esq.



Pennsylvania products liability law remains unsettled, and a recent decision from the Third Circuit Court of Appeals only highlights the confused state of the law and the law that applies in state court does not apply in federal court. With its decision in *Sikkelee v. Precision Airmotive Corp.*, --- F.3d ---, 2012 WL 5077571 (3d Cir. Oct. 17, 2012), the Third Circuit reaffirmed its holding in *Covell v. Bell Sports, Inc.*, 651 F.3d 357 (3d Cir. 2011) and *Berrier v. Simplicity Mfg., Inc.*, 563 F.3d 38 (3d Cir. 2009), that federal courts sitting in diversity should look to sections 1 and 2 of the *Restatement (Third) of Torts: Products Liability* to determine whether a product is defective. In contrast, the Supreme Court so far has yet to definitively address the applicability of the *Restatement (Third)*, and most recently noted in *Beard v. Johnson & Johnson, Inc.*, 41 A.3d 823, 839 (Pa. 2012), that section 402A of the *Restatement (Second) of Torts* is the current law of Pennsylvania. What this split means in practice is that products cases in Pennsylvania may have markedly different outcomes depending upon whether they proceed in state or federal court, as the shift away from Pennsylvania's traditional standard may allow for broader consideration of conduct-related evidence with cases pending in federal court.

RELEVANT FACTORS THAT CAN BE CONSIDERED WITH CASES PENDING IN PENNSYLVANIA'S FEDERAL DISTRICT COURTS UNDER THE RESTATEMENT (THIRD)

In terms of comparative fault under section 402A of the *Restatement (Second) of Torts*, a plaintiff's comparative negligence is not a defense to a strict liability action. Conversely, the *Restatement (Third)* alters the products liability regime by incorporating negligence principles that take into consideration the foreseeable risks of harm posed by the product and looking to whether those foreseeable risks could have been re-

duced or avoided by the defendant's conduct through the adoption of a reasonable alternative design at the time the product was designed and manufactured. Thus, the practical effect is that under the *Restatement (Third)*, conduct-related evidence of the plaintiff's comparative fault may be admissible for a jury to consider in reducing or barring recovery. In addition, *Sikkelee* reaffirms the Third Circuit's decision in *Covell* where under the *Restatement (Third)*, a manufacturer may now introduce evidence of compliance with administrative regulations, such as the conformity with the U.S. Consumer Product Safety Commission in determining whether a product is

ness or foreseeability of a consumer's actions, as the *Restatement (Second)* bars any consideration of the consumer's alleged comparative negligence or the reasonableness of a manufacturer's decisions. Regarding the latter, this means that in state court, a jury cannot consider relevant factors such as a manufacturer's decision to comport its product's design to prevailing industry standards or to what extent those alternative designs are available at the time the product is manufactured.

CONCLUSION

Until the Pennsylvania Supreme Court issues a definitive opinion as to whether the *Restatement (Third) of Torts* or the *Restatement (Second)* of Torts applies to strict liability and product defect cases in Pennsylvania, *Sikkelee* confirms that those divergent standards will continue to apply based

on whether the case is filed in federal or state court. During this interlude, the fight over whether cases should proceed in federal or state court will be ever more important, and distinguishing the relevant factors that may be introduced as evidence will be seminal for the proper adjudication of Pennsylvania product liability claims.

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During this interlude, the fight over whether cases should proceed in federal or state court will be ever more important...

"defective" under criteria set forth under section 2 of the *Restatement (Third)*.

COMPARISON TO THE APPLICATION UNDER THE RESTATEMENT (SECOND)

In the alternative, with cases pending in state courts throughout the Commonwealth, the Pennsylvania Supreme Court has not been persuaded by the Third Circuit's prediction in *Berrier* and *Covell*, and expressly made note of this in *Beard* where Justice Baer clarified that the current law to be applied in products liability cases in Pennsylvania is under the *Restatement (Second) of Torts*.

Therefore, in differentiating the application under the *Restatement (Second)* in state courts, a jury is left to determine the question of whether the product did not perform as an ordinary consumer would expect when using the product in its "intended" manner, and that the alleged defect is the cause of the plaintiff's injury. Notably absent from these factors is any reference to negligence concepts, such as the reasonable-

PIETRAGALLO NEWS



William Pietragallo, II, managing partner of Pietragallo Gordon Alfano Bosick & Raspanti, LLP, was given the honor of being named a “Distinguished Alumni” by the University of Pittsburgh School of Law for the year 2012. This honor recognizes Alumni who have given exceptional service to the Law School and to the legal community at large, as well as recognizing their extraordinary commitment and outstanding accomplishments.



Shelly R. Pagac began a three-year term on the Pennsylvania Bar Association Board of Governors. As one of 12 zone governors who serve on the PBA board, Ms. Pagac represents the lawyers of Allegheny County. Ms. Pagac is a member of the PBA House of Delegates and served on the PBA Presidential Strategic Planning Committee. She is a member of the PBA Labor and Employment Law Section and is a past member of the PBA Alternative Dispute Resolution and Planning committees. She is also a fellow of the Pennsylvania Bar Foundation.



Joseph J. Bosick was recently elected President-elect of the Board of Governors of the University of Pittsburgh Law Alumni Association. The Law Alumni Association was established in 1986. It aims to enhance the interests of the School of Law and its alumni through the establishment of student scholarships and a variety of activities that recognize and support alumni and current law students.



Marc S. Raspanti, partner, has become a Fellow of the American College of Trial Lawyers, one of the premier legal associations in America. The induction ceremony took place recently before an audience of approximately 1,070 persons during the recent 2012 Annual Meeting of the College at the Waldorf Astoria Hotel in New York, New York. Founded in 1950, the College is composed of the best of the trial bar from the United States and Canada. Fellowship in the College is extended by invitation only, and only after careful investigation of those experienced trial lawyers who have mastered the art of advocacy, and whose professional careers have been marked by the highest standards of ethical conduct, professionalism, civility and collegiality.

PIETRAGALLO ADDS A NEW ASSOCIATE



Jesse Abrams-Morley has joined the Philadelphia office as the newest member of the Litigation Practice Group. Mr. Abrams-Morley received his J.D., *magna cum laude*, from Northwestern University School of Law where he served as an Associate Editor of the *Northwestern University Law Review* and as a member of the *Order of the Coif*. Prior to joining the firm, Mr. Abrams-Morley served as a judicial extern for the Honorable Milton I. Shadur, U.S. District Judge, Northern District of Illinois.

PIETRAGALLO ELECTS ITS NEWEST PARTNER



Pietragallo Gordon Alfano Bosick & Raspanti, LLP is pleased to announce the election of its newest partner, **Douglas K. Rosenblum**, of the firm’s Philadelphia office. Mr. Rosenblum, a former prosecutor and certified fraud examiner, is an accomplished attorney with experience in all aspects of White Collar Criminal Defense and Federal and State Qui Tam Litigation. Mr. Rosenblum serves as Co-Chair of the ABA White Collar Crime Committee’s Philadelphia Young Lawyers’ Steering Committee.

PIETRAGALLO’S WHITE COLLAR CRIMINAL DEFENSE GROUP IS PLEASED TO INTRODUCE ITS BLOG:

WWW.WHITE-COLLARED.COM

THE BLOG WILL FOCUS ON ALL MATTERS RELEVANT TO WHITE COLLAR CRIMINAL DEFENSE, GOVERNMENT ENFORCEMENT AND CORPORATE COMPLIANCE, INCLUDING REVIEW OF RECENT COURT DECISIONS, GOVERNMENT PROSECUTION OR ENFORCEMENT ACTIONS AND CURRENT EVENTS.

WE INVITE YOU TO VISIT OFTEN, TAKE ADVANTAGE OF OUR OFFERINGS, AND PROVIDE YOUR COMMENTS.

RECENT SUCCESSES

Defeated Motion for Conditional Certification: **Shelly R. Pagac** successfully defeated plaintiff's motion for conditional certification in a Fair Labor Standards Act case on behalf of our client who is one of the largest security companies in the nation. Plaintiffs were former security officers who claimed they were required to work before and after their shifts without being compensated.

Summary Judgment: **Shelly R. Pagac** obtained summary judgment on behalf of our client, a leading live entertainment and eCommerce company, in a premises liability action.

Commercial Arbitration Award: **Joseph J. Bosick** tried a complex commercial arbitration case and obtained a large monetary award in favor of his client, the Claimant in the proceeding. The basis of the claim was breach of a Joint Venture Agreement.

Favorable Settlement: **Eric P. Reif** recently negotiated a very favorable settlement for our client, a municipal engineering firm, in a protracted construction litigation case which had been pending in state court in Pennsylvania for seven years. The client was sued by a Pennsylvania Municipal Authority for alleged design deficiencies pertaining to certain sewage treatment and pumping facilities that allegedly affected their operation and required design changes and repairs. A critical part of the defense which helped promote the settlement was the dismissal of several of the Municipal Authority's claims based upon certain defenses such as the gist of the action doctrine, the applicable statute of limitations and a lack of causation.

Summary Judgment: **Joseph J. Bosick** obtained summary judgment on behalf of a newly established performance enhancement fitness training business (whose clientele consisted of NFL football players and other athletes) and its principals, who were sued by the former employer of the principals on the following legal theories: misappropriation of trade secrets, interference with contractual relations, commercial disparagement, breach of the duty of loyalty, breach of fiduciary duty, unfair competition, and conversion.

False Claims Act Settlement: **Marc S. Raspanti, Michael A. Morse and Pamela C. Brecht** represented a doctor in a successful False Claims Act case filed against New Jersey based Cooper Health System and Cooper University Hospital. The qui tam lawsuit sparked a multi-year investigation by the United States Department of Justice and the New Jersey Attorney General's Office that has resulted in Cooper paying \$12,600,000 to settle Medicare and Medicaid fraud allegations. The qui tam lawsuit alleged that Cooper paid millions of dollars in illegal kickbacks to prominent physicians in New Jersey to induce them to refer patients to Cooper for expensive in-patient and out-patient cardiac services. A copy of the whistleblower's qui tam Complaint, which both the United States and the State of New Jersey joined, along with a copy of the Settlement Agreement can be found at www.falseclaimsact.com.

Defense Verdict: **Daniel J. McGravey and Leslie A. Mariotti** successfully defended a one week Title VII and 42 U.S.C. § 1983 retaliation trial against a large transportation agency and one of its high-ranking supervisors in Federal Court in Philadelphia, Pennsylvania in December 2012. The plaintiff alleged that her supervisor retaliated against her over the course of several years for complaining to him about discrimination and harassment. The jury returned a verdict on behalf of the supervisor. The plaintiff further alleged that the transportation agency terminated her employment for complaining to management about the discrimination and harassment that she was allegedly experiencing. The defense included testimony that there were independent, non-retaliatory reasons for the plaintiff's termination, including her insubordination. After considering this evidence, the jury returned a verdict in favor of the transportation agency.

Defeated Motion to Dismiss in Whistleblower Lawsuit: **Marc S. Raspanti, Michael A. Morse and Pamela C. Brecht** successfully defeated a motion to dismiss challenging the first major whistleblower case in the United States alleging fraud on the Medicare Prescription Drug Program. The whistleblower lawsuit, brought on behalf of the United States, alleged that CVS Caremark had defrauded Medicare out of billions of dollars by submitting false claims for prescription drugs for millions of seniors across the nation. On December 20, 2012, in one of the first major decisions regarding the Medicare Part D program under the False Claims Act, United States District Judge Ronald Buckwalter denied CVS-Caremark's motion to dismiss in U.S. ex rel. Spay v. CVS-Caremark, Corp., 2:09-cv-04672-RB (E.D. Pa) allowing all of Relator's claims to proceed. To view the Qui Tam Complaint and Judge Buckwalter's Opinion, please visit www.FalseClaimsAct.com.

Case Dismissal: **Joseph D. Mancano and Christopher A. Iacono** were successful in obtaining the dismissal of claims brought under the Pennsylvania Dram Shop Law against a Bucks County, Pennsylvania tavern in U.S. District Court in Philadelphia. In what appear to be novel allegations in Pennsylvania, the plaintiff claimed that the tavern served alcohol to a visibly-intoxicated patron who then sexually assaulted the plaintiff. The patron was convicted of the sexual assault and sent to prison. Rather than respond to a motion to dismiss her complaint, the plaintiff withdrew her claims against the tavern with prejudice.

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