



**ARMSTRONG TEASDALE LLP**  
**LITIGATION**

PROUD PAST...  
EXCITING FUTURE.



**FIRM NEWS**

**Senn Meulemans Attorneys Join  
Armstrong Teasdale**

The attorneys of Senn Meulemans LLP, a San Francisco based law firm with offices in Las Vegas and Reno, Nevada, have joined St. Louis based Armstrong Teasdale LLP. These additions establish Armstrong Teasdale’s first West Coast presence with new offices in San Francisco and Reno and enhances its existing Las Vegas presence.

Kevin J. Senn, Catherine S. Meulemans and Richard G. Campbell, Jr. joined Armstrong Teasdale as partners, along with three special counsel and three associates on October 2, 2006.

“The partnership with Senn Meulemans is an ideal opportunity to expand to meet the needs of our west coast clients,” stated Armstrong Teasdale’s Managing Partner, Richard B. Scherrer. “This merger will enhance the existing presence in San Francisco and Reno, and strengthen our practice in the Las Vegas area.”

“We are all very excited about this partnership. Together, we intend to expand our position in California and Nevada through an aggressive growth plan concentrating on construction, real estate, labor and employment, intellectual property and litigation,” stated Kevin Senn. “The plan also includes strategic opportunities in the biotechnology, governance and compliance and securities areas – essentially providing our clients with continued individual attention and service while offering a wider range of practice area expertise.”

The San Francisco office will continue to be managed by Kevin J. Senn who co-founded Senn Meulemans in 1993. Senn Meulemans has represented a wide range of clients including commercial property owners, Fortune 500 companies, real estate developers, financial institutions, and insurance companies. The firm’s Nevada offices bring broad experience representing electric, water, telephone and natural gas companies, in addition to serving as special counsel to the State of Nevada and various counties.

*(continued on page 2)*

**In This Issue**

**THE NOT-SO-SECRET BUSINESS PLAN:  
A Recent Reminder on How to Protect  
Trade Secrets In an Otherwise Vulnerable  
Business Plan** ..... 2  
*Jeffrey Kass*

**Appellate Group Successful in Wrongful  
Death Case** ..... 3  
*Cynthia Petracek*

**Constitutional Limits on the Taxability  
of Certain Damages** ..... 4

**Outstanding Trial Results** ..... 6

**Department Leaders**

Glenn E. Davis 314-342-8002 (STL)  
James J. Virtel 314-342-8088 (STL)

**Practice Group Leaders**

**APPELLATE**

Thomas B. Weaver 314-342-8021 (STL)

**BUSINESS LITIGATION**

Edwin L. Noel 314-342-8065 (STL)  
Jay A. Summerville 314-342-8077 (STL)

**CRIMINAL DEFENSE AND COMPLIANCE**

Thomas B. Bradshaw 816-472-3101 (KC)

**HEALTH CARE**

Timothy J. Gearin 314-342-4140 (STL)

**LIFE, HEALTH & DISABILITY INSURANCE**

Clark H. Cole 314-342-8037 (STL)

**TORT LITIGATION**

J. Kent Lowry 573-634-7148 (JC)  
James L. Stockberger 314-552-6615 (STL)

[www.armstrongteasdale.com](http://www.armstrongteasdale.com)



(continued from page 1)

Catherine Meulemans, co-founding partner of Senn Meulemans, will continue to focus her practice in the areas of business and commercial litigation, construction-defect litigation and appellate work.

Richard Campbell will be the managing attorney of the Reno office and will concentrate his practice on administrative law—specifically water law, public utility law and state sales and use tax—general corporate, and business litigation.

O. Kirby Colson III, a partner at Armstrong Teasdale, will remain the managing attorney of the Las Vegas office. Both firms currently have offices in Las Vegas and the combined office will focus on private and public finance, corporate and securities work, intellectual property, construction, real estate and employment law.

## Patent, Trademark and Intellectual Property

### *THE NOT-SO-SECRET BUSINESS PLAN:*

#### *A Recent Reminder on How to Protect Trade Secrets In an Otherwise Vulnerable Business Plan*

On May 4, 2006, a federal district court in Pennsylvania held that a company's business plan did not contain trade secrets despite the plan's disclosure of marketing ideas, competitive market data, specific actions the company planned to take to further its business purchase commitments from specific customers and, most importantly, its strategy for delivering product for customers in a quicker fashion. *Brubaker Kitchens, Inc. v. Brown*, 2006 WL 1193223 (E.D. Pa. 2006). The plaintiff subpoenaed documents from the bank to which the defendant had submitted its private business plan. The defendant moved to quash the subpoena to prevent the release of the business plan, arguing that it contained competitively sensitive trade secrets. In denying the defendant's motion, the Court reasoned in part that because the plan required disclosure to others it was not a trade secret. One significant part of the business plan concerned the defendant's strategy to reduce the time period from customer order to delivery. The defendant's strategy, however, necessarily involved disclosing the plan to employees and dealers in order to make it work.

The Restatement of Torts (a commonly used model legal code), still followed by states such as New York, Texas and Pennsylvania, provides the most basic definition of a trade secret: A trade secret may consist of information which is used in one's business and which possesses economic value because it affords a firm an opportunity to secure advantage over a competitor who does not know of, or use, the information. The Restatement sets forth several factors to consider to make this determination:

- 1) the extent to which information is known outside the business;
- 2) the extent to which information is known by employees and others in the business;
- 3) type and degree of measures used to guard the secrecy of the information;
- 4) the value of the information to the company and competitors;
- 5) amount of money spent by the company developing information; and
- 6) the ease or difficulty with which the information could be acquired or replicated by others.

Most states, although not all, have adopted some form of what is called the Uniform Trade Secrets Act (UTSA) which broadly defines a trade secret as "Information, including a formula, pattern, compilation, program, device, method, technique or process . . . that (a) . . . derives independent economic value, actual or potential, from not being generally known to and not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use; and (b) . . . is the subject of efforts that are reasonable under the circumstances to maintain its secrecy."

Whatever the jurisdiction or applicable law, emerging companies everywhere use business plans to attract investors and obtain loans and, therefore, frequently implement the ideas contained in their business plans. How can a company protect its valuable strategies and still implement them in practice? The case law suggests that confidentiality agreements may be the answer.

(continued on page 3)



(continued from page 3)

In the case of *Alagold Corp. v. Freeman*, 20 F.Supp. 2d 1305 (M.D. Ala. 1998), for example, the federal court in Alabama held that business strategies were not trade secrets because of the company's failure to take reasonable steps to keep the information secret. The Court pointed out several problems with attempts to safeguard the information but was most disturbed by the lack of any confidential agreements with its employees. *Id.* at 1315-16. Simply inserting cautionary and confidentiality language in the business plan may not be enough. *See, e.g., Motor City Bagels, L.L.C. v. American Bagel Co.*, 50 F.Supp. 2d 460 (D. Md. 1999). Conversely, in the case of *Cardinal Freight Carriers, Inc. v. J.B. Hunt Transport Services, Inc.*, 987 S.W. 2d 642, 646 (Ark. 1999), the Arkansas Supreme Court upheld as trade secrets certain future plans and strategies, as well as marketing plans and strategies. The company in the *Cardinal Freight* case required its employees to sign a confidentiality agreement prohibiting them from passing on info to others. *See, also, LaCalbere v. Spolgar*, 938 F.Supp. 523 (W.D. Wis. 1996) (in federal court in Wisconsin, existence of confidentiality agreement protected "strategic and marketing plans" as trade secrets).

Companies with business plans often inform investors and banks that they would be successful based on the strategies contained in their business plans. It would not be uncommon for those strategies to involve disclosure to employees and others necessary to implement the strategies. These disclosures may, however, mean that the strategies no longer are "secret," absent taking precautionary measures. While not necessarily breaking new legal ground, *Brubaker* was a strong reminder that a business plan may not be entitled to protection absent a company's requirement that persons who use the information sign a confidentiality agreement (and then enforce that agreement). The Court in *Brubaker*, like the cases above, was disturbed by the fact that nowhere in the business plan did the company require its employees and dealers to sign confidentiality agreements and keep the information to themselves. Good planning can save what are sometimes a company's most valuable assets—its trade secrets.

Jeffrey Kass

[jkass@armstrongteasdale.com](mailto:jkass@armstrongteasdale.com)

## Appellate

### *Appellate Group Successful in Wrongful Death Case*



The appellate department had a recent victory in an appeal from a judgment on the pleadings. Our client filed a contractual indemnity claim against a trucking company seeking to recover some or all of the amount our client paid to settle a wrongful death claim filed by the widow of an employee of the trucking company. The trucking

company sought judgment on the pleadings based on two grounds. The trucking company argued that our client could not obtain indemnity of amounts paid to settle the underlying wrongful death claim because the widow had not alleged that the trucking company was negligent. From this fact, the trucking company concluded that our client necessarily sought indemnity for its own negligence. The trucking company then argued that our client's claim failed because the contract did not contain clear and unequivocal language expressing the parties' intent that our client be indemnified for its own negligence.

Our client opposed the motion, arguing that it's suit sought indemnity for the trucking company's negligence. Our client argued that the issue of whether it was entitled to indemnity could not be resolved without an evidentiary hearing to determine whether the trucking company was negligent in causing the accident. The circuit court, however granted the trucking company's motion and entered judgment on the pleadings.

The Missouri Court of Appeals reversed the circuit court's judgment. The Court held that the petition stated a cause of action for indemnity and that our client was entitled to attempt to prove that the trucking company owner's death was attributable in whole or in part to the negligence of the trucking company, including the owner. In its opinion, the Court also reaffirmed a number of settled principles that were placed in issue by the trucking company's arguments on appeal, including the following.

(continued on page 4)



(continued from page 3)

A complaint about the lack of specificity in a petition must be raised in the circuit court via a motion for more definite statement. The failure to do so waives any complaint on appeal.

A claim that the petition fails to state a cause of action is a jurisdictional defect that may be raised for the first time on appeal. However, when such a challenge is first raised on appeal, it is subject to a particularly stringent standard of review. The petition will be liberally construed, will be given its fullest intendment, and will be found sufficient after a verdict unless it wholly fails to state a claim. If the petition imperfectly pleads a claim, but is amendable to a proper statement of the claim, it will withstand the jurisdictional challenge.

When a claim arises from contract, the contract need not be attached to the petition in order to state a claim. Under Rule 52, the terms of the contract may be pleaded

according to legal effect, or may be recited in the petition, or a copy of the contract may be attached as an exhibit.

Finally, although the Court of Appeals did not reach this issue, it is important to note a recent clarification in the law regarding the contract language necessary for a party to obtain indemnity for its own negligence. In *Utility Serv. & Maintenance, Inc. v. Noranda Aluminum*, 163 S.W.3d 910 (Mo. banc 2005), the Missouri Supreme Court reaffirmed that broad, inconspicuous language in indemnity contracts between commercial entities and consumers generally will not be enforceable to allow the commercial entity to obtain indemnity for its own negligence. However, the same indemnity language in contracts between sophisticated businesses who negotiate at arms length might be enforceable.

Cynthia Petracek

[cpetracek@armstrongteasdale.com](mailto:cpetracek@armstrongteasdale.com)

## Constitutional Limits on the Taxability of Certain Damages

On August 22, 2006, the United States Court of Appeals for the D.C. Circuit handed down an important opinion on the taxability of damages for non-physical personal injuries. The court held that a section of the Internal Revenue Code was unconstitutional to the extent that it defined such damages as income subject to taxation. This opinion could have a significant effect on the value of claims for such damages.

### The Murphy Case

In *Murphy v. IRS*, No. 05-5139, Marrita Murphy filed a complaint with the Department of Labor alleging that her former employer had violated various whistleblower statutes after she had reported environmental hazards to state authorities. The Secretary of Labor determined that the employer had unlawfully discriminated and retaliated against Murphy. Murphy submitted evidence that she had suffered both mental and physical injuries as a result of the employer's conduct, including teeth grinding, anxiety attacks, shortness of breath, and dizziness. Murphy was awarded compensatory damages totaling \$70,000, of which \$45,000 was for "emotional distress or mental anguish," and \$25,000 was for "injury to professional reputation" from having been blacklisted. None of the award was for lost wages or diminished earning capacity.

*The court held that a section of the Internal Revenue Code was unconstitutional to the extent that it defined such damages as income subject to taxation.*

On her tax return, Murphy included the \$70,000 award in her "gross income" pursuant to section 61 of the Internal Revenue Code, § 26 U.S.C. § 61(a) (defining "gross income" as "all income from whatever source derived"). As a result, she paid \$20,665 in taxes on the award.

Murphy later filed an amended return in which she sought a refund of the \$20,665, but the Internal Revenue Service denied her request for a refund. Murphy thereafter sued the IRS and the United States in district court. In her complaint Murphy argued her compensatory award was in fact for "physical personal injuries" and therefore excluded from gross income under section 104(a)(2) of the Code. In the alternative, she asserted that section 104(a)(2) as applied to her award was unconstitutional because the award was not "income" within the meaning of the Sixteenth Amendment. The district court rejected all of Murphy's claims on the merits and granted summary judgment for the defendants.

(continued on page 5)

(continued from page 4)



On appeal, the D.C. Circuit held that the language of the Internal Revenue Code allows damages for non-physical personal injuries to be taxed as income. Section 104(a) (“Compensation for injuries or sickness”)

provides that “gross income [under § 61 of the IRC] does not include the amount of any damages (other than punitive damages) received . . . on account of personal physical injuries or physical sickness.” 26 U.S.C. § 104(a)(2). Since 1996 it has further provided that, for purposes of this exclusion, “emotional distress shall not be treated as a physical injury or physical sickness.” (The version of section 104(a)(2) in effect prior to 1996 had excluded from gross income monies received in compensation for “personal injuries or sickness,” which included both physical and non-physical injuries such as emotional distress.) Based on the undisputed facts, the court held, “we conclude Murphy’s damages were not ‘awarded by reason of, or because of, . . . [physical] personal injuries.’ Therefore, § 104(a)(2) does not permit Murphy to exclude her award from gross income.” But is that constitutional?

On the constitutional issue, the court noted the settled rule that the United States is a government of limited powers. Every law enacted by Congress must be based on one or more of its powers enumerated in the Constitution. The constitutional power of the Congress to tax income is provided in the Sixteenth Amendment, ratified in 1913: “The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.”

The Supreme Court has held that the word “incomes” in the Amendment and the phrase “gross income” in section 61(a) of the Internal Revenue Code are coextensive. The Supreme Court long ago held that the taxing power extended to any “gain derived from capital, from labor, or from both combined.” Murphy argued that, being neither a gain nor an accession to wealth, her award was not income and that section 104(a)(2) is therefore unconstitutional insofar as it would make the award taxable as income. Broad though the power granted in the Sixteenth Amendment is, the Supreme Court, as Murphy pointed out, has long recognized the principle that a restoration of capital is not income. By analogy, Murphy contended that a damage award for personal injuries —

including non-physical injuries — cannot be income but simply a return of capital — “human capital,” as it were.

After tracing the history of the Sixteenth Amendment and the Internal Revenue Code, the court rejected “the Government’s breathtakingly expansive claim of congressional power under the Sixteenth Amendment . . . . The Sixteenth Amendment simply does not authorize the Congress to tax as ‘incomes’ every sort of revenue a taxpayer may receive.” The court held that it was clear from the record that the damages were awarded to make Murphy emotionally and reputationally “whole” and not to compensate her for lost wages or taxable earnings of any kind: “The emotional well-being and good reputation she enjoyed before they were diminished by her former employer were not taxable as income.” Further, the court ruled that the framers of the Sixteenth Amendment would not have understood compensation for a personal injury — including a non-physical injury — to be income. Therefore, we hold § 104(a)(2) unconstitutional insofar as it permits the taxation of an award of damages for mental distress and loss of reputation.”

### Potential Ramifications

It should be noted that the *Murphy* decision was handed by a three-judge panel of the D.C. Circuit and is still subject to being reconsidered by the panel or by the entire court. Further, it is possible that such a significant case might be taken up by the Supreme Court. The IRS also has the right to litigate the issue in other circuits. Thus, the opinion of August 22 may not be the last word.

Nevertheless, *Murphy* is a very significant case. Numerous causes of action can lead to damages for non-physical personal injuries (employment discrimination, torts, etc.). Parties and their lawyers commonly consider tax consequences in determining the settlement value of these cases. In the *Murphy* case, for example, the plaintiff’s award of \$70,000 was reduced by taxes of \$20,665, making her true recovery less than \$50,000. Under the *Murphy* decision, parties will no longer have to “ramp up” settlement amounts to compensate for taxes, potentially leading to savings for defendants. In dealing with larger sums than those at issue in the *Murphy* case, the savings could be very substantial.

For further information please contact Robert L. Jackson at [rjackson@armstrongteasdale.com](mailto:rjackson@armstrongteasdale.com) or the Armstrong Teasdale attorney with whom you normally consult.



## OUTSTANDING TRIAL RESULTS

### COVENANTS NOT TO COMPETE/UNFAIR COMPETITION

**Jeff Schultz** was successful in defeating a motion for a temporary restraining order seeking enforcement of a non-compete agreement against our client. Our client is a web and graphics designer who recently left his former employer to try to grow a new business. Our client was named as a defendant in a lawsuit brought by his former employer. On a Sunday evening, we were notified by our client that he had been served with a motion for temporary restraining order, which was set for hearing the following day in St. Louis County. Jeff met with the client on Monday morning and prepared an affidavit in opposition to the motion. During the hearing, the judge denied the temporary restraining order with respect to our client and entered a temporary restraining order with respect to two other former employees named in the suit.

The basis of our position was that our client signed a non-compete with plaintiff, but subsequently went to work for an affiliated company and signed another non-compete for that affiliated company. Although our client eventually returned to work for the plaintiff, he did not enter into a new non-compete agreement with the plaintiff. The court found that term on the non-compete agreement with the plaintiff began running on the date our client had originally left plaintiff to work for the affiliated company. Therefore, the non-compete with plaintiff expired during our client's second term of employment with the plaintiff, so there was no non-compete in effect.

### EXPLOSION FIRE ELECTROCUTION

**Lynn Hursh, Casey Housley and Jo Leigh Wagoner** tried a two week wrongful death case in St. Louis City Court in September which received significant coverage in the local media. Two St. Louis Fire Department members were killed on May 3, 2002 in a fire that occurred on Gravois Road. Armstrong Teasdale represented the manufacturer of the firemen's self contained breathing apparatus (SCBA). In the first of the two cases filed, the plaintiffs alleged that the decedent's integrated Personal Alert Safety System (PASS) failed to alarm as designed because of water infiltration into the device's electronics compartment. Our client contended that, while it was possible for the device to leak, it would not cause the device to fail to alarm as claimed but only to cause it to alarm in a "fail safe" mode. The jury deliberated for almost four hours before the case was settled on favorable terms for our client. The second case is set to be tried in January 2007.

### HEALTH CARE LITIGATION

**Robert Foley and Anna Selby** recently began a medical malpractice/wrongful death trial involving a 85-year-old gentleman who had been in and out of various hospitals and nursing homes over the last six months of his life. The decedent's son and step-daughter filed suit alleging wrongful death and lost chance of survival in St. Louis County Court against 10 defendants, including hospitals, nursing homes, dieticians, wound care nurses and a physician. At the time of trial, only two defendants remained, the physician and his employer; Foley and Selby represented the physician's employer. The plaintiffs claimed that the physician failed to order adequate tube feedings for decedent. The plaintiffs alleged that the insufficient tube feedings caused the development of multiple decubitus ulcers, a more compromised medical condition, the development of gangrene, a leg amputation and, ultimately, death. Two days into the trial, our client, the physician's employer, was dismissed from the case.

### INTELLECTUAL PROPERTY LITIGATION

Our client, a technology solutions company, was sued in the City of St. Louis for more than \$1 million over alleged failure to pay royalties under an asset-purchase agreement, as well as alleged failure to properly market a product sold by the plaintiffs to our client. Our client moved to dismiss based on a forum selection clause requiring suit to be brought in federal or state court in Cook County, Illinois. The plaintiffs sought to avoid application of the clause based on several theories including that our client, which was not the party that originally contracted with the plaintiffs, had no connection to Cook County (no offices, employees etc.) and that most of the witnesses (and all the documents) were located in the St. Louis area. After depositions and a full evidentiary hearing with testimony, Judge Julian Bush granted our motion to dismiss. The victory will put tremendous pressure on the plaintiffs to settle this case on much more reasonable grounds than before. **Jeff Schultz** helped prepare the written motions and prepare **Jeffrey Kass** for the hearing.

### LIFE, HEALTH AND DISABILITY INSURANCE

Two of **Ann Buckley's** recent successes in defending disability benefit claims were reported in the July 2006 issue of *Mealey's Disability Insurance Litigation Report*. In one action, involving a mixed claim for depression, anxiety, post-traumatic stress disorder and back injury, the U.S. District Court for the Western District of Missouri granted summary judgment in favor of the claims administrator, finding that its decision was reasonable and not an abuse of discretion. In the other case, in which Armstrong Teasdale represented the claims administrator, the Eighth Circuit affirmed summary judgment in favor of both the claims administrator and the Plan, upholding the determination that the claimant's lupus and fibromyalgia did not prevent her from working.

### PRODUCTS LIABILITY

**Casey Housley and Ryan Fowler** successfully defended a wrongful death action brought by the wife and daughter of the decedent. We represented a processing systems company and one of its employees. Our client contracted with an industrial cleaning service to clean industrial equipment. We successfully argued on summary judgment that our client was the statutory employer of the decedent pursuant to RSMo. 287.040.3. Additionally, we successfully argued that the employee was working in furtherance of his duties as a supervisor for our client and thus was immune from civil liability as a co-employee. The plaintiffs appealed the decision of the District Court, but the 8th Circuit affirmed the decision, again finding that our client was a statutory employer and that the employee was immune as a co-employee. **Jeffrey McPherson** argued the case to the 8th Circuit.

The successful team lead by **Dan Herrington**, which included **Matt Burgess** and **Mischa Bastin** were awarded summary judgment for an electric company client in a benzene case, finding that the testimony relating to the defendant's product was taken before our client was even named as a defendant in the case. The Circuit Court for Jackson County determined that our client was not given a chance to participate in the deposition of the plaintiff, thus justifying summary judgment.



## PROFESSIONAL DEVELOPMENT

**Tom Cummings** wrote the 2006 update to the Bills & Notes Chapter for West Publications' *Business & Commercial Litigation In Federal Courts* series.

**Clark Cole** was the featured speaker and presented a paper (authored by Clark Cole and Matt Shorey) at the annual meeting of the Federation of Defense and Corporate Counsel on July 29 in Southampton, Bermuda. The topic was "Disability Claims by Professionals."

**Jerry King** spoke on Experts Witnesses and Trial Testimony at the National Seminar on Litigation for the National Association of Fire Investigators on August 10-11 in Sarasota, Florida.

**Ed Spalty** moderated and presented on September 15 at the Dispute Resolution Practice Group meeting at the Lex Mundi Annual Meeting in Chicago on "Inside Computer Forensics-Hands on Demonstration."

**Jim Stockberger** and **Brian Kaveney** wrote an article on Missouri Tort Reform. The article has been selected on the "expedited track" and will appear in the December 8 issue of the *Journal of The Missouri Bar*.

**Connie McFarland-Butler** was a guest speaker at the West Point High School Academic Achievement Banquet where she was presented the Distinguished Alumnus Award.

**Larry Tucker** will be giving a speech in Seattle, Washington to the Association of Organ Procurement Organizations, Financial Management Council meeting on October 19. The topic is the medicare appeals process for cost report audits.

**Brant Laue** and **Chad Colgan** gave a presentation in early September for in-house lawyers and executives at Sprint Nextel Corporation. The presentation was titled "A Practical Discussion of the Attorney-Client Privilege and Work Product Doctrine in the Corporate Context."

**Matt Shorey** has recently been appointed as the Vice-Chair of the ABA/TIPS Life Insurance Law Committee and as the committee's Assistant Newsletter Editor.

**Matt Reh** will be speaking at a Missouri Bar CLE in Columbia, Missouri on November 3. The CLE is entitled "Essentials of Missouri Practice."

**John Cowling** spoke to the certified forensic examiners regarding computer forensics at their quarterly meeting.

**Winston Calvert** wrote several entries about the religion clauses for the *Encyclopedia of the First Amendment*, which will be published by Congressional Quarterly Press in 2007.

**Bill Corrigan** spoke at The Missouri Bar Annual Meeting/Missouri Judicial Conference on September 27-29. The topic was covenants not to compete to protect trade secrets and proprietary information.

**Clark Cole** and **Matt Shorey** are working on the 2007 edition of the Eighth Circuit chapter of the ABA book, *ERISA Survey of Federal Circuits*.

**Jo Leigh Wagoner** was recently elected to serve at the President-Elect for the Kansas City Metropolitan Bar Association – Young Lawyer's Section for 2007. She will be the President for the organization in 2008.

**Jim Virtel** and **Karen Baudendistal** spoke at the AEGIS National Claims Conference in Las Vegas, Nevada on October 17.

**Ted Noel** and **Laura McLaughlin** wrote an article in the Summer 2006 issue of the *Business Torts Journal* entitled "Dabit – A Death Knell for State Class Action Securities Holder Claims."

In the July 21-27 issue of the *Kansas City Business Journal*, **John Vering** was significantly quoted and referred to **Jim Martin** and The Prevene Group in a feature article titled, "Sarbanes-Oxley also accounts for demands on lawyers." In the same issue, Vering was quoted in an additional article titled, "Companies must stay abreast of employment law changes," regarding racial discrimination and noncompete agreements in the workplace.

**Gentry Sayad** was quoted in the September 12 Metro section of the *St. Louis Post-Dispatch* in an article titled, "Barnes-Jewish proposal for park parcel is evolving."

**Clark Cole** is authoring a chapter for Missouri in an ABA book to be published in 2007. He is editing the chapters relating to each state in the Eighth Circuit (Arkansas, Iowa, Minnesota, Missouri, Nebraska, North Dakota and South Dakota). The working title is "Misrepresentations in the Life, Health and Disability Insurance Application Process; A National Survey."

**Jeff Demerath** was quoted in an article in the September 20 issue of the *St. Louis Post-Dispatch* regarding the negotiation of a settlement of civil and criminal charges for his client, a sports betting company.

**John Vering** has been appointed by the Kansas City Metropolitan Bar Association to serve as the Chair of the Federal Courts Committee for 2007. He served as Vice-Chair in 2006.

**Patrick Kenny** was featured in the *Leader Spotlight* section of the July 26 issue of *The Voice*, DRI's on-line newsletter.



## PROFESSIONAL DEVELOPMENT

(continued)

**Jeffrey Kass** recently authored “Anonymous E-mailers – How to Find and Stop Them From Breaking the Law,” which was published in the July 2006 issue of the publication *eNews*. He authored a chapter entitled “Fair Use and Nominative Fair Use in Trademark Cases” in the Defense Research Institute’s Compendium – “Defending Intellectual Property Claims” to be published this fall.

Jeffrey also authored another article entitled “Genericness v. Descriptiveness – The Real Confusion in Trademark Law,” which was published in DRI’s August 2006 issue of *For The Defense* magazine. In addition, his article, “Tips for Protecting Your Company’s or Client’s Trademark,” was published in the June 2006 edition of DRI’s newsletter, *The Business Suit*, and also in the summer inaugural issue of DRI’s new magazine, *In Defense Quarterly* as well as the fall 2006 issue of *In-House Defense Quarterly*.

**Bill Corrigan** was elected by The Missouri Bar to serve as a delegate to the American Bar Association’s House of Delegates. The House of Delegates is the policymaking body of the American Bar Association, the largest voluntary bar association in the United States, with over 500,000 members. Corrigan was elected to serve a two-year term.

**Craig Moore** was recently elected President of the Board of Directors for the Downtown Children’s Center. He will serve a two-year term.

**Ted Noel** was mentioned in the July 5 issue of the *St. Louis Lawyer* regarding his election as Chairman of the Board of The Attorneys’ Liability Assurance Society’s Ltd.

**Jack Quinn** was recently admitted to the United States District Court for the District of Colorado.

**Casey Housely** recently became a certified Fire and Explosion Investigator.

In the July 5 issue of the *St. Louis Lawyer*, **Connie Johnson** was pictured delivering the annual Legislative Update at the 27th Annual Bench & Bar Conference.

**Jim Martin** spoke at Lex Mundi’s 2006 Annual and North America Regional Conference (September 14-17) in Chicago, IL.

In the August 26 issues of the *St. Louis Countian* and the *St. Charles County Business Record*, as well as the August 25-31 issue of the *St. Louis Business Journal*, **Bill Corrigan** was mentioned regarding his election to the Executive Council of the National Conference of Bar Presidents.

In the August 14 issue of the *St. Charles County Business Record*, **Jay Summerville** was quoted in an article regarding plans to build a senior-living community in Lake Saint Louis.

**Connie-McFarland-Butler** was featured in an article in the July 27-August 2 issue of the *St. Louis American*. The article discusses how she began her career in law, eventually becoming Armstrong Teasdale’s first black female partner.

**Jim Stockberger** was mentioned in the July 24 issue of *Missouri Lawyers Weekly* regarding his representation of Armstrong Teasdale client National Fire Insurance Co. in a case involving a traffic accident on I-44.

This Litigation Practice Group Update is a summary for general information and discussion only. It should not be construed to be a complete analysis of the matters presented and may not be relied upon as legal advice.

ADVERTISING MATERIAL: COMMERCIAL SOLICITATIONS ARE PERMITTED BY THE MISSOURI RULES OF PROFESSIONAL CONDUCT BUT ARE NEITHER SUBMITTED TO NOR APPROVED BY THE MISSOURI BAR OR THE SUPREME COURT OF MISSOURI.

If you have any questions regarding this material, please do not hesitate to call your regular Armstrong Teasdale contact or any of the Practice Group Leaders noted on the first page.

St. Louis, MO  
One Metropolitan Square  
St. Louis, Missouri 63102  
(314) 621-5070

Jefferson City, MO  
3405 West Truman Boulevard  
Jefferson City, Missouri 65109  
(573) 636-8394

Kansas City, MO  
2345 Grand Boulevard  
Kansas City, Missouri 64108  
(816) 221-3420

Overland Park, KS  
7400 West 132nd Street  
Overland Park, Kansas 66213  
(913) 814-0969

Belleville, IL  
23 South First Street  
Belleville, Illinois 62220  
(618) 397-4411

Edwardsville, IL  
241 North Main Street  
Edwardsville, Illinois 62025  
(618) 655-4004

Las Vegas, NV  
701 North Green Valley Parkway  
Henderson, Nevada 89074  
(702) 678-5070

Reno, NV  
50 West Liberty, Suite 950  
Reno, NV 89501  
(775) 322-7400

San Francisco, CA  
Three Embarcadero Center  
Suite 2310  
San Francisco, CA 94111  
(415) 433-1500

Washington, DC  
1747 Pennsylvania Avenue, N.W.  
Washington, D.C. 20006  
(202) 454-2800

Shanghai, China  
1376 Nan Jing Xi Lu  
Shanghai Centre - Suite 718  
Shanghai 200040  
P.R. China  
011-8621-6279-8808