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**LITIGATION**

PROUD PAST...  
EXCITING FUTURE.



**FIRM NEWS**



**Intellectual Property Trial Lawyer  
Joins Armstrong Teasdale**

Armstrong Teasdale LLP is pleased to announce the hiring of prominent intellectual property trial lawyer, Nicholas B. Clifford Jr., formerly with Thompson Coburn LLP.

Clifford joins the firm’s Litigation Department as a partner and Co-Chair of the Intellectual Property Litigation Practice Group. He has focused his practice in the area of intellectual property, with an emphasis in patent litigation for more than ten years. Clifford also has extensive experience in copyright infringement, trademark infringement, and trade secret misappropriation litigation, as well as general commercial litigation and product liability defense.

“For years, Armstrong Teasdale has had a strong and growing intellectual property practice. This is a targeted growth area for the firm and the addition of Nick expands the Intellectual Property Litigation Practice Group to 17 lawyers and the Intellectual Property Practice Group to 28 lawyers,” said Richard B. Scherrer, former Managing Partner of Armstrong Teasdale. He added “Armstrong Teasdale’s intellectual property practice includes major patent work for leading innovation companies, including General Electric, Boeing, Cooper Industries, Amazon.com and North Pole.”

“I was impressed with the breadth and growth of Armstrong Teasdale’s intellectual property practice and am excited about the opportunity to help build upon the solid foundation they have in intellectual property litigation. Armstrong Teasdale is a top-tier law firm, and I look forward to playing a central role in growing its intellectual property litigation practice over the firm’s local, national and international platform,” said Clifford.

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Clifford is a native of St. Louis. He is a member of The Missouri Bar, Illinois State Bar Association, American Bar Association and the Bar Association of Metropolitan St. Louis. He is a 1988 graduate of Trinity College in Connecticut, and a 1993 graduate, *with high honors*, of the Illinois Institute of Technology's Chicago-Kent College of Law, where he received the *Order of the Coif*.

"We are fortunate to have a person of the professional caliber and personal character of Nick Clifford join our firm, stated Glenn E. Davis, who chairs the firm's Litigation Department. "Nick's experience and proven ability to resolve a wide variety of high stakes and complex intellectual property disputes will serve our clients well. The firm continually strives to develop the next generation of trial lawyers in our key practice areas under our strategic plan," Davis added.

## Tort and Complex Trial

### Missouri Tort Reform Legislation Creates New Rule of Evidence Concerning Medical Bills



Missouri adheres to the common law collateral source rule whereby a defendant is not entitled to a reduction in the claimant's damages "by proving [the claimant] has received or will receive

compensation ... for the loss from" a source independent of the defendant such as insurance coverage.<sup>1</sup> The new law retains the collateral source rule but significantly modifies it.

The new law provides that "a rebuttable presumption [exists] that the dollar amount necessary to satisfy the [plaintiff's] financial obligation to the health care provider represents the value of the medical treatment rendered."<sup>2</sup> To rebut the presumption, the court may still hear evidence on an issue raised about the value of the medical treatment rendered.<sup>3</sup> Thus, upon motion, the presumption may be overcome by evidence such as "(a) [t]he medical bills incurred by a party;" (b) the amount actually paid for medical treatment to a party; or (c) an estimate of the unpaid medical bills that a party remains obligated to pay in the event of a recovery.<sup>4</sup>

With respect to the evidence that the jury may hear, "[p]arties may introduce evidence of the value of the medical treatment rendered to a party that was reasonable, necessary, and a proximate result of the negligence of any party."<sup>5</sup> However, defendants will likely argue that the jury may only hear the presumptive amount or the

amount determined by the court "outside the hearing of the jury" pursuant to § 490.175.5(2), RSMo 2006. Therefore, a defendant may be able to reduce the value of medical bills by the amount actually paid rather than the full cost of care to the plaintiff before any negotiated health care insurance discounts.<sup>6</sup>

The new provision requires the trial judge to determine the value of the medical treatment but leaves open the question of when the judge should make the determination.<sup>7</sup> Counsel for both plaintiffs and defendants must now be especially aware of the medical treatment provided, the actual amounts billed, any discounts negotiated by an insurance company, and the amount a party is obligated to pay to any entity in the event of a recovery.

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<sup>1</sup> *Iseminger v. Holden*, 544 S.W.2d 550 (Mo. banc 1976).

<sup>2</sup> Section 490.715.5(2), RSMo 2006.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> Section 490.715.5(1), RSMo 2006.

<sup>6</sup> Section 490.715.5(2)(b), RSMo 2006.

<sup>7</sup> *Id.*



### *Successor Liability*

Your business is a major product supplier in the region. It agrees to sell a significant number of products to a local corporation for distribution to third parties. The products are shipped with the agreement that the corporation will pay for them in 120 days. Unfortunately, 120 days come and go without any payment. Thereafter, your business learns that the corporation has dissolved. Interestingly, a new company has suddenly appeared to take its place. The new company appears to carry on the same business operations, to employ the same people and to operate out of the same location as the previous corporation. Your business needs to collect on the debt it is owed. Can it pursue the new company under a theory of successor liability?

In Missouri, a corporation that acquires substantially all of the assets of another corporation does not automatically acquire the debts and liabilities of that other corporation. However, there are several exceptions to this general rule. These exceptions include circumstances where one entity is a mere continuation or reincarnation of the other and circumstances where transactions between the one entity and the other are fraudulent. Brockmann v. O'Neill, 565 S.W.2d 796 (Mo.App. 1978). Courts in Missouri evaluate these exceptions on a case-by-case basis.

In evaluating whether one corporation is a continuation or reincarnation of another, courts in Missouri typically review several factors: the existence of common management or ownership, Medicine Shoppe International v. S.B.S. Pill Doctor, Inc., 336 F.3d 801 (8<sup>th</sup> Cir. 2003); the continuation of the business operations and services of one corporation by the other, Young v. Fulton Iron Works Company, 709 S.W.2d 927 (Mo.App. S.D. 1986); the use of the same employees, equipment, inventory, location, management structure and name by the corporations, Roper Electric Company v. Quality Castings, Inc., 60 S.W.3d 708 (Mo.App. S.D. 2001); and the assumption of the obligations of one corporation by the other, Wallace v. Dorsey Trailers Southeast, Inc., 849 F.2d 341 (8<sup>th</sup> Cir. 1988). When examining the fraudulent transaction exception, courts review whether the transactions between the two corporations were being made to permit one entity to escape liability for its debts.

For your business to prevail against the newly formed company, there are several facts it will need to establish to support an allegation of successor liability under the business continuation exception. This includes: confirming the existence of common directors, incorporators, officers

or shareholders between the two companies; demonstrating the existence of common clients, distribution rights, distribution routes or vendors between the two companies;

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*In Missouri, a corporation that acquires substantially all of the assets of another corporation does not automatically acquire the debts and liabilities of that other corporation.*

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establishing that the new entity assumed the accounts receivable, business agreements, collective bargaining agreements, employment contracts, leases, mortgages or works-in-progress of its predecessor; proving that the entities use the same fleet, office equipment, storage or warehousing facilities; showing that the entities have employed the same general personnel; or showing that the new entity was transformed into the other without notice of the corporate change to its own customers or the public.

There are also several facts your business will need to support an allegation of successor liability under the fraud exception. The timing of the dissolution of one company, juxtaposed against the creation of the other, is certainly important. However, the chronology of a corporate shuffle alone may be insufficient to show fraud. Other evidence that could help your business prevail under this theory includes: confirming that assets were transferred to the new entity without appropriate legal documentation that is generally accepted in the industry; demonstrating that inadequate consideration was involved in affecting the transfers; and establishing that the new entity paid off at least some of the debts owed by its predecessor.

Gathering much of the information described above can be done without having to file a lawsuit. Tapping into its industry sources, your business should be able to confirm the existence of shared clients, distribution rights and general personnel. It may also be possible to unearth information about equipment and property ownership through UCC and title searches. Other information may need to be obtained through discovery after filing a lawsuit. This includes bank statements, financial statements, ledgers and other internal company documents. Given the protections afforded by Missouri law, and armed with this kind of information, your business will be in a good position to collect and to prevent this customer from escaping liability for its debts.

**Matthew Reh**

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## Health Care Litigation

### *Health Care Litigation Group Receives Favorable Defense Verdict*



**Dave Ott and Michael Hughes** recently earned a defense verdict in St. Louis County Court in a medical malpractice case against a hospital. The plaintiff, an 82-year old woman, claimed that the hospital was negligent in assessing her fall risk, prescribing medication that would increase her fall risk, responding to her

calls for assistance, and ultimately allowing her to fall and break her hip while in the hospital. The plaintiff was admitted to the hospital for a left total knee replacement. The night of her surgery, the nurses noted that she was confused. The plaintiff was also assessed as a high fall risk. After her knee surgery, she was transferred to the rehabilitation unit. The physician that ordered her transfer ordered that fall precautions should be implemented in the rehabilitation unit. Once in the rehabilitation unit, the plaintiff was assessed as a moderate fall risk. Two days after her transfer to the rehabilitation unit, she was found on the bathroom floor at 2:30 a.m. She had gone to the restroom, gotten up to wash her hands, and then fell breaking her right hip. The fall ultimately required hip surgery and an extended rehabilitation course.

The plaintiff claimed that she should have been assessed as a high fall risk due to her age, documented periods of confusion, history of getting out of bed unassisted and without using a call light button, weakened left knee from knee surgery, unstable gait due to a right drop foot and the physician's request for fall precautions. Additionally, she alleged that she should have been assessed as a high fall risk due the medications she was on, which included a sleeping medication, Ambien, and a pain medication, Vicodin, both of which are known to increase a patient's fall risk. The plaintiff claimed that if she had been properly assessed as a high fall risk, she would have been placed closer to the nurses' station and would have had a bed alarm. The hospital argued that the plaintiff was not confused when she got up to use the restroom, was able to walk over 100 feet with a walker and had been assessed two times as only a moderate fall risk. Further, the defendant's expert witness testified that the hospital personnel met the standard of care and explained that the medications the plaintiff was taking did not cause her to fall. At trial, the plaintiff's counsel sought a verdict of \$502,000. After deliberating approximately three hours, the jury returned a 9-3 verdict in the hospital's favor.

**Anna Selby**

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### *Amrstrong Teasdale Receives Top Verdicts in 2006*

**Paul Kovacs, Dan Nelson, James Martin, Mark Sopher and Craig Moore** received one of the Top Business Verdicts and Settlements of 2006 (*Dale Finke and Albert Riederer v. Morgan Stanley, et al*) in the state of Missouri as reported in *Missouri Lawyers Weekly*. The \$95 million dollar settlement, the second largest in 2006, was awarded to Dale Finke and Albert Riederer of General American Life Insurance Co. regarding a lawsuit with Morgan Stanley over the investment bank's role as adviser to the insurance company before the insurer's collapse in 1999.

**Tim Gearin and Kristin Byrd** received the Top Defense Verdict of 2006 (*Nora Marie Hussey, individually and as plaintiff ad litem, et al. v. SSM Health Care St. Louis d/b/a St. Joseph's Health Center, Donald E. Binz et al*) in the state of Missouri as reported in *Missouri Lawyers Weekly*. The family of a man brought a wrongful death lawsuit against the hospital and the man's doctor after the man went to the hospital with an infected toe and died when his myocardial infarction went undiagnosed. The defense argued that the

standard of care was met by the hospital and doctor in both the assessment and treatment of the patient.

**Carlton Callenbach** served as co-counsel on two of the Top Largest Settlements in 2006 as reported in *Missouri Lawyers Weekly*. The 4th largest settlement (*Lashley, et al v. Dairy Farmers of America, et al*), involved a wrongful death case where the family of a couple killed in a collision with a milk tank trailer settled for \$3,575,000 in Howell County, Missouri. The 9th largest settlement (*Irsik and Boyer v. Estate of Douglas, et al*), involved an automobile accident where two college students died and a third was injured when the car they were riding in was struck by a tractor trailer at an intersection under construction in Maryville, Missouri in October 2002. Settlements totaling almost \$2.2 million were reached with defendants including Loch Sand Construction Co., which had been working at the scene of the accident; the Missouri Highway Transportation Commission; and Carroll Gene Foster, the driver of the tractor trailer.



## Antitrust, Franchise and Distribution

### *FTC Issues Revised Franchise Rule*

On January 23, 2007, the Federal Trade Commission announced the approval of long-awaited amendments to the Franchise Rule, which was originally promulgated by the FTC in 1978. Although franchisors are permitted to begin complying with the amended rule on a voluntary basis as of July 1, 2007, compliance becomes mandatory on July 1, 2008. The amended rule only applies to the sale of franchises to be located in the United States and its territories, and provides several significant exemptions for sophisticated franchise purchasers.

The amended rule is intended to further the FTC's stated goal of preventing "deceptive and unfair" practices in the franchisor-franchisee context, and to address concerns raised by some franchisees that the original rule did not go far enough to protect their interests. The resulting rule both expands a franchisor's disclosure obligations, while at the same time eases some of the compliance costs created by the original rule. Through the amended rule the FTC has also narrowed the differences between federal and state pre-sale disclosure requirements. The FTC Franchise Rule will now closely parallel the UFOC Guidelines promulgated by the North American Securities Administrators Association ("NASAA"). NASAA represents the 15 states that have implemented pre-sale franchise disclosure and/or registration regulations.

The amended rule requires franchisors to make expanded disclosures relating to, among other things:

- Franchisor-initiated litigation;
- A franchisor's use of "confidentiality clauses" in lawsuit settlements;
- Warnings that must be provided when a franchisee does not have an exclusive territory; and
- The bankruptcy history of any of the franchisor's predecessors and affiliates.

The amended rule will also affect how franchisors make financial representations in their disclosure documents. Although the amended rule does not require a franchisor to make financial representations, as had been requested by some franchisee advocates, a franchisor is required to include a preamble that specifically advises franchisees that the franchisor is not precluded from doing so.

Franchisors who choose not to make financial representations are also required to provide a second preamble which advises franchisees not to rely on unauthorized performance representations. If made, financial representations must be included as part of the disclosure document itself. The amended rule also eliminates the original rule's requirement that franchisors use GAAP principles when preparing historical financial performance data.

In some areas the requirements of the amended rule are narrower than the NASAA's UFOC Guidelines, and simplify the manner in which disclosures to franchisees must be made. The amended rule enables a franchisor to comply with pre-sale disclosure obligations electronically, and also dispenses with the original rule's "first personal meeting" disclosure trigger. Under the amended rule a franchisor is required to deliver its UFOC to prospective franchisees at least 14 calendar days before the prospective franchisee signs a binding agreement with the franchisor or makes any payment to the franchisor. Under the existing version of the rule, a franchisor is compelled to provide prospective franchisees with a copy of the UFOC at the earlier of the first personal meeting or ten days prior to the execution of any franchise contract or the payment of any fees in connection with the franchise sale.

Finally, the amended rule preserves the text of the original rule as it pertains to "business opportunity" ventures, which include such things as vending machine routes and rack display operations. Requirements relating to business opportunity ventures, which differ from franchises in that they do not generally include the right to use trademarks or other commercial symbols, will now be covered in a separate rule, which has been identified by the FTC as the Business Opportunity Rule. The FTC is currently conducting proceedings to consider possible amendments to the Business Opportunity Rule.

Although mandatory compliance with the amended rule's many changes is more than 16 months away, franchisors are well served to begin the process of reviewing and revising their disclosure documents and franchise solicitation materials and procedures in order to ensure future compliance with the amended rule.

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## Antitrust, Franchise and Distribution

### *Supreme Court Reverses \$79 Million Award in Closely Watched Predatory-Bidding Suit*

On February 20, 2007, the U.S. Supreme Court released its unanimous decision in the much anticipated antitrust case of *Weyerhaeuser Co. v. Ross-Simmons Hardwood Lumber Co., Inc.*, ruling that the test the Court had applied to predatory-pricing claims in *Brooke Group Ltd. v. Brown and Williamson Tobacco Corp.* also applies to predatory-bidding claims.

The case involved claims of predatory-bidding in the lumber industry. Predator-bidding, as distinguished from predatory-pricing, is a practice that occurs on the buy side of the market. Predatory-bidding involves a buyer exercising market power to bid up input prices in the short-term in an effort to drive competing buyers out of the market, and then later, after acquiring the requisite monopsony power, driving down input prices in the long-term so that the predatory buyer may enjoy supracompetitive profits that more than offset its previously-sustained short-term losses. In this case, Ross-Simmons alleged that Weyerhaeuser, a competing sawmill, had artificially increased prices in the sawlog market by: (1) paying higher prices than necessary (“predatory-bidding”) and (2) buying more than necessary (“predatory-overbuying”).

Ross-Simmons filed suit in district court, claiming Weyerhaeuser’s conduct violated Section 2 of the Sherman Act. When it came time to submit jury instructions, the district court rejected the application of the objective *Brooke Group* standard to Weyerhaeuser’s conduct in favor of a much more subjective standard:

*One of Ross-Simmons contentions in the case is that Weyerhaeuser purchased more logs than it needed or paid a higher price for logs than necessary, in order to prevent Ross-Simmons from obtaining the logs Ross-Simmons needed at a fair price. If you find this to be true, you may regard [the conduct] as an anticompetitive act.*

The jury found for Ross-Simmons and, under the Sherman Act’s treble damages provisions, the district court awarded Ross-Simmons \$79 million in damages. Weyerhaeuser appealed to the Ninth Circuit, claiming its alleged conduct was not actionable under Section 2 of the Sherman Act if the appropriate *Brooke Group* standard was applied. The Ninth Circuit also rejected Weyerhaeuser’s application of

the objective predatory-pricing standard to predatory-bidding claims.

However, the U.S. Supreme Court overturned the \$79 million verdict in favor of Ross-Simmons, unanimously endorsing the application of the two *Brooke Group* prerequisites to recovery on a predatory-pricing claim to predatory-bidding claims:

- a plaintiff must show that the prices in question are below cost; and
- a plaintiff must show that the defendant had “a dangerous probability of recouping its investment in below cost pricing.”

The Court, calling predatory-bidding and predatory-pricing claims “analytically similar” and identifying “the close theoretical connection between monopoly and monopsony,” noted that both practices involve the intentional use of unilateral below-cost pricing measures for anticompetitive purposes and sustaining short-term losses in hopes of eventually reaping long-term profits, before concluding that the same objective standard should apply.

The Court also highlighted the consequences that the application of a more subjective standard, like the one applied at the trial level, may have on the marketplace, noting a concern for the “chilling” impact that such a standard would have on procompetitive conduct. The application of the *Brooke Group* standard, the Court concluded, through the second prerequisite, distinguishes between anticompetitive and procompetitive conduct, and thereby benefits the ultimate consumers. In fact, the Court suggested that predatory-bidding conduct likely presented less of a direct threat to consumer harm than predatory-pricing conduct.

Though the Court’s holding is a rather narrow one, the case does serve to consolidate the law of predatory-pricing and the law of predatory-bidding under a common objective standard, and provides aggressive buyers with a more clearly-defined defense based upon “a close analysis of both the [buyer’s conduct] and the [relevant market’s] structure and conditions.”

**Scott Galt**

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**OUTSTANDING TRIAL RESULTS**

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**APPELLATE**

On Tuesday, November 28, 2006 the Western District Court of Appeals handed down an opinion favorable to the firm's client, a media company. Our client and a landowner, on whose property our client had a permanent easement for the placement of a sign, won \$1.1 Million in compensation from the Missouri Highways and Transportation Commission in a jury trial. After that, the trial court held an apportionment hearing and issued a judgment allocating only 6% of the award (in essence the cost to replace the sign) to our client, while giving the landowner the balance. On appeal, we argued that the court (which had not issued findings and conclusions as part of her judgment) had misapplied the law in failing to allocate any value to our client's permanent easement and in failing to recognize the full value of its sign interests. **Cindy Petracek** did the work of preparing the appellate brief with some review and comments from **Tom Weaver** and **Larry Tucker**. The court of appeals has remanded the case with instructions that the trial court enter judgment taking into account the evidence in the underlying jury trial as to the value of the easement and the other sign interests (which involved evidence of the income derived from the sign and the fact that the market for buying signs takes that into account in valuing signs.) This should result in a substantial increase in the amount of the jury's award allocated to our client.

**Byron Francis** recently won an appeal in the Missouri Court of Appeals for the Eastern District of Missouri. Our clients, the appellants, are nine not-for-profit country clubs located in St. Louis County. The country clubs challenged the St. Louis County Assessor's decision to tax portions of the country clubs' property as commercial, rather than residential, resulting in a substantially higher tax burden. At hearings before the St. Louis County Board of Equalization and the State Tax Commission, the country clubs had introduced evidence that the country clubs' properties could not be converted to commercial use if they ceased operations as golf courses. Although this testimony was unrebutted by the Assessor, the Tax Commission affirmed the Assessor's commercial assessment. The primary argument on appeal was that the Commission's decision was not supported by substantial evidence and, in fact, was contrary to the undisputed evidence in the record. **Cindy Petracek** wrote the brief.

**BUSINESS LITIGATION**

**Melody Nashan** and **Larry Tucker** recently won a motion for summary judgment for client, a shipping company, in the United States District Court for the Western District of Missouri. The trial had been scheduled for May 7, 2007. **LeeAnn Ziegler** and **Bridget Halquist** significantly contributed to the successful outcome.

**COMMERCIAL LITIGATION**

A team led by **Jeffrey Kass**, including **Lisa Wood**, **Scott Galt**, **Chad Silker** and **Kitty Sugrue** achieved a very favorable settlement a day before a jury trial was scheduled to take place on October 23, 2006. The plaintiff was seeking more than \$2.5 million from our client a cable company. Under the settlement, our client ultimately will pay a net out of pocket of less than 10% of the total judgment sought. Over the past few months, Jeffrey and Scott secured three critical partial summary judgment motions that knocked out several of the third party defendant's key defenses as well as its counterclaim. In addition, a week before trial, Lisa and Scott helped achieve a major victory by obtaining an order precluding the plaintiff's expert from testifying regarding the \$1 million in damages sought.

**COVENANTS NOT TO COMPETE**

**Bill Corrigan** and **Jackie Levey** won an especially satisfying jury verdict of more than \$400,000 for our client, a medical group in Sikeston, Missouri, after a grueling four day trial in Scott County. This was the culmination of a longstanding dispute between our fine client and five of its partners/surgeons who abruptly left and walked across the parking lot to accept direct employment by the local hospital in violation of their covenants not to compete. The case has been a hot topic of popular interest and media attention in the Sikeston area for some time. Another lawyer handled the case for several years before it was assigned to us upon his untimely death. The age and posture of the case left Bill and Jackie with many hurdles and challenges to overcome in being able to present our client's claim for liquidated damages under the partnership agreement. John Grimm, a former Circuit Judge, was on the other side, and the trial judge called virtually every discretionary ruling for our opponents and against Bill and Jackie.

**Bill Corrigan** and **Jay Summerville** achieved an extremely favorable (but confidential) monetary settlement of substantial severance benefit claims of a former Chairman of a department store chain against another department store chain, which was set for multi-day arbitration before a three arbitrator panel from the AAA. The dispute was hard fought and the other department store's trial team included four in house attorneys and an outside firm. Jay and Bill were ably assisted by **Michael Kass**, **Brian Kaveney** and **Michelle Sutton**. **Ann Buckley**, **Amy Sung** and **Winston Calvert** provided research assistance.

**ENVIRONMENTAL**

**John Cowling** obtained a dismissal of a third-party complaint against a longtime client of the firm. Third-Party Plaintiffs were seeking recovery of most or all of the \$5 million EPA was seeking for oversight costs for the cleanup of a Superfund site. Judge Perry dismissed the third-party claims on a motion to dismiss for failure to state a claim. **Cindy Petracek** was instrumental in preparing the legal memoranda in support of the motion.



## OUTSTANDING TRIAL RESULTS

*(continued)***EXPLOSION FIRE ELECTROCUTION**

The explosion, fire and electrocution attorneys, on the eve of trial in El Paso, Texas in a dangerous jurisdiction against top Texas plaintiff's attorneys, split the plaintiffs and engineered a fantastic settlement (a small fraction of the demands and mediation offers) for our client, a gas service company. There were many contributors to this fine result, but the lead attorneys were **Lynn Hursh, Jerry King, Karrie Clinkinbeard, and Katie Many**.

**HEALTH CARE LITIGATION**

The trial team of **Bob Foley, Michael Hughes, and Lea Ann Callico** tried a case in St. Louis County against two individuals. The minor plaintiff, now six years old, alleged that her delivery was botched, causing a Brachial Plexus injury and severe neurological damage to her arm and shoulder. The jury deliberated for 6.5 hours before returning a 9-3 defense verdict in the four-day trial.

**Michael Hughes** and **Dave Ott** obtained a successful judgment for our client, a medical facility. The plaintiff, originally demanded \$500,000.00 from the defendant, and after a lengthy three hour deliberation the plaintiff was awarded nothing. Dave gave a dazzling closing argument on behalf of our client and the jury.

**PUBLIC LAW AND FINANCE**

**Jeff McPherson** obtained an outstanding judgment in a hotly-contested TIF litigation matter. The city and a real estate developer, an excellent client, were represented in a two-day trial in Madison County. Thanks to **Matt Shorey** for his assistance at trial and to **Stephanie Grise** for her work in the two years leading up to it.

**TORT AND COMPLEX TRIAL**

**Ty Ketchum** received a defense verdict in U.S. District Court, Western District on behalf of our client a family steakhouse. Our client was sued by an elderly woman who fell in the dining area while in the process of exiting the restaurant. She tripped on an object that was hanging out of another customer's coat pocket. The coat was hanging on the back of that other customer's chair. The plaintiff claimed that the restaurant was overly crowded and that this prevented her from being able to safely walk through the restaurant and ultimately it prevented her from seeing the foreign object. The plaintiff suffered a fractured patella, which required surgery. **Marcia Kerwin** assisted.

## PROFESSIONAL DEVELOPMENT

**Beverly Creaghan Appling** has been selected to become a member of the Maryville University Legal Studies Advisory Board.

**Larry Tucker** moderated and presented a topic in the Missouri Bar's CLE, "Random Acts of Professionalism" on March 14. It was a teleconference presentation. **Larry Tucker** made a presentation at the American Health Lawyers Association's Medicare and Medicaid Conference in Baltimore, Maryland on March 23. The topic is "Organ Procurement Organizations' Medicare Appeals." Also, on April 21, he will make a presentation at the United Methodist Church's Legal Forum in Nashville, Tennessee on "Lessons Learned from the Defense of An Intentional Failure to Supervise Suit."

**Ted Noel** gave a presentation on arbitration to BAMSL members on March 22.

**Brian Kaveney** served as honorary panelist at the USA&M Tort Reform Seminar, "Current Issues in the Law: Tort Reform" on February 2. He presented to over 200 attorneys at the Washington University School of Law.

**Jeff Schultz** and **Jonathan Valentino** participated in BAMSL's Young Lawyers' Division mock trial program on February 23 and won.

**February 21 & 22, Tim Gearin** presented on the topic of "Anatomy of a Shoulder Dystocia Case" at Ascension Health's Annual Perinatal Conference Meeting, as well as at the Ascension Health Birth Trauma Conference the following day.

**Joe Cosby (TPAT)** is co-teaching a seminar with **Bill Eshleman (TPAT)** on "Litigation with the Federal Government." The seminar will be taught during the spring semester at the Catholic University of America.

**Kevin Senn** presented at a seminar entitled, "Risk Management and Development For Residential Condominium Projects," at the Holiday Inn and Conference Center in Saddle Brook, New Jersey on March 19.

The Mound City Bar Association newsletter featured an article co-authored by **Jim Stockberger, Brian Kaveney, and Jovita Foster** in the February 2007 issue. The article is titled, "Missouri Tort Reform Changes to Consider: Venue & Liability Provisions."

In the January 26 – February 1 issue of the *Kansas City Business Journal*, **Rich Ralston** was quoted regarding mediators in trial in an article titled, "Alternative dispute resolution helps keep cases out of court."



## PROFESSIONAL DEVELOPMENT

(continued)

The Winter 2007 issue of the *St. Louis Bar Journal* featured an article written by **Glenn Davis** and **Craig Moore** titled, "Avoiding Collisions at the Intersection of Antitrust and Intellectual Property Rights: An Overview and Guide to Emerging Issues."

**Brant Laue** was quoted in the February 6 issue of the *Kansas City Star* in an article titled, "The Dawning of a New Discovery." He was also quoted in an article titled, "Ready or not: Lawyers prepared for federal e-discovery rules" in the December 12 issue of the *Kansas City Daily Record*.

As of October 2006, **Tom Weaver** became president of the Missouri Board of Law Examiners.

In the February 7 issue of the *Kansas City Star*, **Ford Nelson** was quoted in an article titled, "Compromises Pleases Both Sides," regarding the Village Presbyterian Church.

**Darren Sharp** gave a presentation to the Kansas City Metropolitan Bar Association for CLE credit titled, "Interactive Commercial Damages Workshop" on November 10.

**Bill Corrigan** was quoted in the February 20 issue of the *Dallas Star* in an article titled, "Legal case clouds first day for Pier 1 chief," regarding a new non-compete case involving Pier 1 Imports and TJX Cos. **Bill Corrigan** was significantly quoted in the November 10 issue of the *Kansas City Daily Record* in an article titled, "Campaign trail bumpy for attorneys seeking office." He was also quoted in the November 9 issue of the *St. Louis Daily Record*.

**John Cowling** was featured and pictured in an article titled, "Amended rules help firms in handling electronic data," in the March 2 – 8 issue of the *St. Louis Business Journal*.

The *DRI In-House Quarterly* publication selected an article co-authored by **Jim Stockberger**, **Jeff McPherson**, and **Brian Kaveney** for publication in the March 15 issue.

The article is titled "What in-house counsel needs to know about Missouri's Tort Reform Legislation." Brian also spoke at Washington University School of Law regarding the article.

**Glenn Davis**, **Dan Nelson**, **Anna Selby**, and **Jacqueline Ulin Levey** spoke at the St. Louis Healthcare Lawyers Association meeting on the topic of "E-Discovery and the New Federal Rules: Impact on Healthcare Litigation." The meeting was January 5.

**Bryan Nicholson** was selected to join the Madison County Bar Association.

**Connie Johnson** was selected by the Missouri Coalition of Alzheimer's Association Chapters to receive the Leadership of the Year Award. The award was presented to Connie at the Memory Day Ceremony held on March 13.

**Jeffrey Kass** taught a class on IP Litigation at the University of Toledo on February 3&4. **Jeffrey Kass** was selected to serve on the Board of Directors for the St. Louis Economic Council's St. Louis Enterprise Centers (SLEC). He was also admitted to practice in the U.S. District Court for the District of Colorado.

In the November 6 issue of *Missouri Lawyers Weekly*, **Jeffery Demerath** was significantly quoted in an article titled, "Pendulum swings on white-collar crime sentencing: Columbia sentencing expert pushes to change guidelines that 'went too far.'"

**Clark Cole** presented a paper titled, "When Attorneys Cross the Line: The Squiggly New Line of Attorney-Client Privilege" on March 5. In addition, Clark is also speaking in Chicago on March 30 (and presenting a paper co-authored by **Patrick Kenny**) at the DRI Life, Health, Disability and ERISA Claims Seminar. The topic is "Countering Contra Insurer: Construction Principles, Arguments and Defenses that Level the Contract Interpretation Playing Field." **Clark Cole** completed a three year term as Missouri State Representative to DRI and was awarded the DRI 2006 State Leadership Award at the DRI Annual Meeting in San Francisco in October.

**Glenn Davis** was admitted to practice before the Supreme Court of the United States.

For the Spring 2007 semester, **Connie McFarland-Butler** will serve as an Adjunct Professor at the Washington University School of Law, teaching trial advocacy. **Connie McFarland-Butler** completed a Civil Mediator Certification course offered through the Alternative Dispute Resolution Program at Washington University School of Law.

**Tom Bradshaw** and **Rich Ralston** are *Kansas City Business Journal* 2007 Best of the Bar honorees.

**Kristin Byrd** spoke at the March of Dimes Annual Nursing Symposium on January 23 in Mount Vernon, IL on the topic of prenatal nursing documentation issues.

**Jacqueline Ulin Levey** will be co-chairing St. Louis Hillel Center's 60th Anniversary Gala with Michael Oberlander, General Counsel of Brown Shoe Company on May 6.

**Bill Corrigan** and **Michael Kass** co-authored an article titled, "Protecting the Corporate Jewels: Non-Compete Agreements and Unfair Competition," that was published in the Winter 2007 issue of *In-House Defense Quarterly*.

PROFESSIONAL DEVELOPMENT

(continued)

**Jim Stockberger** and **Brian Kaveney** co-authored an article titled, "Missouri Tort Reform," that was published in the November-December 2006 issue of the *Journal of The Missouri Bar*.

**Karrie Clinkinbeard** wrote an article for the inaugural issue of DRI's new magazine, *In-House Defense Quarterly*, titled "Is it Time to Implement Electronic Case Management?" **Jerry King** contributed to the security and encryption sections of the article.

**Paul Kovacs** was quoted and pictured in the February 14 issue of the *St. Louis Daily Record* for representing General American and the Missouri Department of Insurance in a case against Goldman Sachs. In the November 17-23 issue of the *St. Louis Business Journal*, **Paul Kovacs** was quoted regarding a settlement in favor of our client General American Mutual Holding Co. (GAMHC). The settlement ends a lawsuit that Riederer, the liquidator of GAMHC, brought against Morgan Stanley two years ago.

**Karrie Clinkinbeard** and **Jo Leigh Wagoner** spoke at the Annual Kansas City Arson Task Force seminar the first week in April. The three-hour presentation was on Daubert issues, the Magnetek case, and general legal issues in fire related civil litigation. **Karrie Clinkinbeard** and **Jo Leigh Wagoner** also presented at the Annual Kansas City Arson Task Force seminar on March 30.

**Kent Lowry** participated in the Intersession Trial Practice Program at the University of Missouri Law School in January. The program was coordinated by the Fellows of the American College of Trial Lawyers from around Missouri.

**Tom Bradshaw** was a speaker at a Roundtable Discussion for Kansas City Criminal Defense Lawyers and U.S. Attorneys sponsored by the ABA Section of Litigation Committee on Criminal Litigation.

**Jack Quinn** was recently elected to serve on The Friends of the Sheldon Board of Directors.

**Scott Golde** has been selected as Chair of the Defense Research Institute (DRI) *Corporate Integrity and White Collar Crime Newsletter*. In addition, he has been elected Secretary of BAMSL's Criminal Law Committee. On January 11, **Scott Golde** spoke to the St. Louis Chapter of the Association of Certified Fraud Examiners on "The Bank Secrecy Act, Investigation of White Collar Crime, and the Federal Money Laundering Statutes." **Scott Golde** gave a presentation to the IRS-Criminal Investigation Division, St. Louis Field Office entitled, "Testimony, Investigative Techniques, Current Issues in IRS Prosecution, and the Federal Money Laundering Statutes" on November 6, 2006.

**Jim Martin** and **Laura McLaughlin** authored an article entitled, "When Employee Secrets Become an Employer's Problem," which was published in the *Business Torts Journal* (Fall 2006).

Armstrong Teasdale presented a seminar on December 13 in conjunction with "What To Do When Construction Projects Go Bad in Nevada" in Reno, Nevada. The full-day seminar was promoted by Lorman Education Services and held at the Peppermill Hotel Casino. **Kevin Senn** led the presentation and **Rick Campbell**, **Wayne Burkamp**, **Mike Whittle** and **Byron Francis** were presenters on specific industry-related topic areas.

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.

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