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NAMWOLF Annual Meeting and Law Firm Expo Recap

By Crystal L. Van Der Putten, Livingston Law Firm - Walnut Creek, CA

The NAMWOLF 2012 Annual Meeting and Law Firm Expo (its 8th!) took place in Atlanta, Georgia at the Sheraton Atlanta on October 14th – 17th. The 2012 Annual Meeting featured a variety of great events, including:

- A kick-off cocktail reception at the World of Coca-Cola, a unique museum in downtown Atlanta featuring the largest collection of Coke memorabilia ever assembled and a 4D cinematic experience. The event included, among other things, standard Atlanta fare such as shrimp and grits and tasting of Coke products from around the world.
- An early morning yoga session (sponsored by Greising Law) for those capable of rising before 6:30 a.m.
- A luncheon with a fantastic keynote speaker Karen Ripley, Chief Legal and Corporate Services Officer at MillerCoors.
- A variety of CLE sessions including, intellectual property updates, dealing with bullies, rule-breakers and unprofessional adversaries, indemnification agreement/provisions, employment law topics, mediation strategies, arbitration, and ethical considerations when representing a corporation.
- Information sessions on kick starting diversity spend in legal departments and cross-marketing, as well as a highly informative and entertaining afternoon general counsel panel discussing emerging trends in legal departments and the role of outside counsel.

Panel members for the informative session included:

- * Hinton J. Lucas, Vice President & Assistant General Counsel, DuPont



(Continued on page 2)

2012 Annual Meeting—Atlanta, GA, cont'd

(Continued from page 1)

- * Timothy Phillips, Interim General Counsel, American Cancer Society
 - * Debra Kuper, Vice President, General Counsel & Corporate Secretary, AGCO
 - * Andrew Chang, General Counsel and Corporate Secretary, DreamWorks
- A luncheon panel discussion about the law firm selection process among corporations with procurement teams featuring Mark E. “Rick” Richardson, recipient of the 2012 Outstanding Service by an Advisory Council Member Award, and Justin Ergler of GlaxoSmithKline and David Klemm of Merck.
 - The Law Firm Expo for 460 law firm member and in-house counsel attendees – a 20% increase from the 2011 Annual Meeting.
 - Gala Awards Dinner with entertainment by the fabulous Voices of Atlanta (and dancing by some NAMWOLF members) and tasty food to honor Mark E. “Rick” Richardson, Vice President and Associate General Counsel of GlaxoSmithKline, as the 2012 recipient of the Outstanding Service by an Advisory Council Member Award and Keybank as NAMWOLF’s Diversity Initiative Achievement Award Winner. Law Firm Member Wilson Turner Kosmo was also honored as the first ever 2012 NAMWOLF Law Firm MVP.
 - A closing cocktail reception and casino night where members indulged their inner gambler for the opportunity to win fabulous prizes.

As always, the NAMWOLF Annual Meeting remains a vehicle to build relationships with other law firm members and in-house counsel, meet new partners and encourage working together to increase diversity. The spirit and value of NAMWOLF – to continue to increase the footprint of minority and women-owned law firms across the country – is advanced each year at the Annual Meeting. If you missed out this year, be sure to attend next year and fully experience what NAMWOLF has to offer.

If you missed this year’s Annual Meeting, or if you attended and need CLE materials, they can be found at NAMWOLF’s website or by clicking [here](#).

LIVINGSTON LAW FIRM

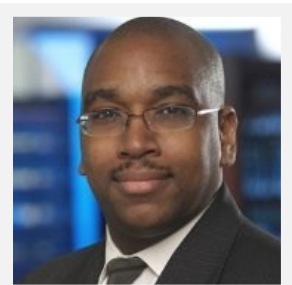
A PROFESSIONAL CORPORATION

Crystal Van Der Putten is a shareholder at Livingston Law firm in Walnut Creek, California. She practices civil litigation defense focusing on products, premises, and general liability and commercial litigation matters.



Greetings from the CEO David Askew

Considering that I have only been on board as CEO for little more than a few months, at first blush, one would think that there is not much that I should have to offer regarding my experiences to date. But after attending the Annual Meeting, just a week after starting at NAMWOLF, there is not enough space in this column to adequately share my thoughts about our Association and what the future holds. For those who were in Atlanta, I hope you feel, like I do, that a good and productive time was shared by all. We had the opportunity to engage scores of in-house lawyers and NAMWOLF firm attorneys; new and wise veterans.



Unlike anyone else however, the Annual Meeting was an event that I will always remember because it was the defining moment that confirmed that I made the right decision to accept the mantle of leadership of NAMWOLF. I had been Pro Bono Director at a large law firm for five years and I was ready for a new challenge. I had been involved in diversity issues for years but never on a full time basis. After researching NAMWOLF and its history, speaking to the former leader, Jason Brown, and evaluating where I wanted to go next in my professional life, I decided that the NAMWOLF position would be my dream job.

- I embrace the challenge of introducing NAMWOLF firms to more in-house lawyers within and outside my network.
- I look forward to helping to make all our events more successful in terms of attendance, quality, and business development opportunities.
- I want to help NAMWOLF continue to grow into what I consider one of the largest and most-diverse “law firms” in the world. We will soon be in all fifty (50) states and U.S. territories and cover almost every conceivable practice area.

The bottom line: I expect NAMWOLF firms to compete for legal business; big and small, in all jurisdictions. It will be a fun ride and I can’t think of a better team to suit up with.

See you in San Diego.



**CLICK HERE for the San Diego
Regional Meeting Schedule &
Information**

Introduction of David Askew

By Emery Harlan, Gonzalez Saggio & Harlan LLP - Milwaukee, WI

David Askew, NAMWOLF's new Chief Executive Officer and General Counsel, received his J.D. from the University of Iowa College of Law. He then served three years in the Judge Advocate General's (JAG) Corps of the United States Navy. After his stint in the Navy, he joined Wildman Harrold as a Litigation Associate and subsequently became the Director of Pro Bono. He first became involved with diversity and the law when he joined the Board of Directors of Just the Beginning Foundation (JTBF), a national organization founded in 1992 as a not-for-profit organization of judges, lawyers, and other citizens dedicated to developing educational programs to inspire and foster careers in the law among students of color. David most values the pipeline aspects of being involved with JTBF. Not only is he able to work with, and reach out to, individuals historically underrepresented in the profession, he is able to network among his colleagues and friends, seeing firsthand the impact they can have on one another.

You have a tremendous passion for diversity in the legal profession. What do you attribute that to? I was raised on the south side of Chicago, probably one of the most segregated cities in the United States. I then went to a historically black college, Florida A&M University, before moving on to the University of Iowa College of Law. During law school, I encouraged my friends and classmates to meet on a regular basis to discuss race issues. We eventually dubbed these meetings the "Race Forum." It was a chance for us to bring to the fore sensitive issues that needed to be discussed, and aired out, so to speak. Unless we can talk about it, we can't fix it. Because many of us were able to speak freely, we became allies and collaborators. To this day, many of us remain in touch with one another.

What were some of your earliest efforts to achieving greater diversity within the legal profession? I was elected to the Board of Directors for the Cook County Bar Association (CCBA) in 2008. The CCBA is one of the oldest black law associations in the United States. I also founded the Midwest Minority In House Counsel Group (MMIHCG). The motivation for starting MMIHCG was a desire to bring together in-house lawyers of color to discuss issues related to mentoring and career enhancement. Second, and more im-

portantly, I believed in the need to connect more experienced attorneys with those new to the profession.

Why should the legal profession be concerned about diversity? All professions should mirror the demographics of society, the legal profession included. Historically underrepresented groups such as women and minorities can bring unique perspectives to the sort of legal issues that lawyers grapple with on a daily basis. We cannot have credibility as a profession if women and people of color are not fairly represented throughout all aspects of what we do.

How did you first learn of NAMWOLF? Former Executive Director & General Counsel, Jason Brown. He is a member of the Midwest Minority In House Counsel Group. At one of MMIHCG's gatherings, Jason mentioned that he was leaving PepsiAmericas to take on the newly formed leadership role with NAMWOLF. I congratulated him and wished him the best but never really gave it much thought after that.

How did you hear about the CEO position? This is funny, really. A legal recruiter, Susan Mendelsohn of Mendelsohn Legal called to tell me about the position and I thought she was asking me to publicize it within the MMIHCG, or through other channels. After a bit more conversation, she finally asked if this would be a position I would consider taking. I turned her down at first. But then, she asked me to lunch, and really, who says no to a free lunch? Well, after listening to her speak about NAMWOLF and its mission and accomplishments over a meal, she had me hooked.

I have heard you say many times that the CEO and General Counsel position at NAMWOLF is your "Dream Job." Can you tell us why you feel that way? Certainly. NAMWOLF is the only legal organization that I am aware of, where both women *and* minorities are well represented. Based on my experience and knowledge generally, neither women nor minority lawyers at major law firms are afforded fair opportunities to originate clients. NAMWOLF has provided a resource for diverse lawyers to take the initiative and create their own success stories. I find myself surrounded by talented and ambitious go-getters who have had the courage to hang out a shingle and compete against big law firms. This can be a daunting task in today's world. I feel the need to support those diverse lawyers who are trying to maintain and grow their firms. Finally, it is of paramount importance to me that this organization continue in its efforts to create opportunities. The major law firms have done a poor job of hiring, promoting and retaining women and lawyers of color. By making sure our firms thrive, I am ensuring that new lawyers of color and women have places they can go to fulfill their professional aspirations.

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You started right before the 2012 Annual Meeting. What are your thoughts about the Annual Meeting you attended? First, WOW! I had no idea of the wide-ranging networking opportunities available. Second, that was an impressive list of attendees. Third, the event was already rolling and successful, so I was able to shelve a lot of my concerns over the handling of administrative tasks and give some thought to other issues that were more aligned with my ideas. Next, the Board of Directors inspired me. They were all more than willing to pull their weight and do what needed to be done to make this event successful. Finally, I have never experienced a national event that has been run so efficiently. I am still in awe.

One thing you did which was new for NAMWOLF was call each in-house lawyer who registered for the Annual Meeting in advance of the event. What prompted you to do this? Many times, when an event is “free” and something else comes up, the “free” event will fall by the wayside. I wanted to make sure that those who registered actually attended. I believe in networking and building relationships. This was a first step for me in pursuing that strategy. In many instances, I was only able to leave a voicemail for the in-house registrant. But many of those people showed up and made it a point to introduce themselves to me. I’m not sure they would have attended had I not reached out to them. I also wanted to send a signal that NAMWOLF was moving to the next level.

I have also started laying the groundwork to engage more corporations in locations where we have various meetings. There are so many different ways in which a company can become involved. We haven’t even begun to scratch the surface.

Touching on the subject of corporate involvement, you traveled recently to the New York/New Jersey area. Can you tell us why? Sure. I have a duty to be fiscally responsible to NAMWOLF. I needed to go to Washington D.C. for the National Asian Pacific American Bar Association’s Annual Conference and figured I could work in a trip to New York. This allowed me to meet with companies already involved with NAMWOLF, such as NBC Universal and Morgan Stanley, as well as further introduce NAMWOLF to companies such as CastleOak Securities, Goldman Sachs, and BNY Mellon. We have struggled to penetrate the financial services space. Based on my time in the New York City area, I am confident that we will be able to make greater progress within that sector.

While we are on the subject of my trip to New York, I would like to thank the law firm of Brune Richard for hosting me and the area law firms for a roundtable

lunch. Despite this trip coming on the heels of Superstorm Sandy, 12 or 13 of us were able to meet over a nice meal, share insights, make suggestions and facilitate referrals.

What are your plans to take NAMWOLF to greater heights in 2013 and beyond? One facet of my plan includes expanding into geographical regions where we have yet to build a presence, such as Oklahoma and Oregon. There are other minority and women-owned law firms out there, we just have to find them. In addition to tapping the existing NAMWOLF law firms and supporting corporations for referrals, I also intend to dig down deeper into my own network. I would also like to continue traveling to meet with our firms, key corporate supporters and prospective corporate participants.

What is the NAMWOLF value proposition for corporations? In-house lawyers are being pressed to accomplish more with the same, or even less, resources. Our firms are comprised of first-rate practitioners who have chosen, for the most part, to work in smaller, less-overhead environments. By using our law firms, in-house counsel get the same, or better, talent than their incumbent firms have been providing, without the oppressive overhead and overstaffing that those large firms are saddled with.

Well David. I think it might be time to bring our interview to an end. Perhaps in closing you would like to tell us a bit about your personal life. I am married to a wonderful woman-Tamara Edmonds Aksew. She is a non-practicing lawyer, currently serving as the Director of the State & Local Government Section of the American Bar Association. She keeps me real, and helps me stay on my path. We have a 7-year-old son, Micah, who keeps himself, and us, very busy. He loves baseball, soccer, basketball, football and chess. I have a theory that if you keep your child engaged and busy, he won’t get lonely. Micah is pretty good at chess. With the idea that there must be others in our community who share this interest, I created a chess club at our church.



Join us in San Diego for the
2013 Regional Meeting at The Hard Rock Hotel
February 10-12, 2013
 For more information, see pages 26-27 of this Newsletter
 or go to www.namwolf.org



Hard Rock
HOTEL

Law Firm Spotlight: LKP Global Law, LLP

By *Cathy Havener Greer, Wells Anderson & Race, LLC - Denver, CO*

LKP Global Law, LLP, is a Los Angeles based firm with a global practice. The Firm was founded in November 2010 by Kevin K. Leung, Young Jun Kim, and Luan K. Phan, all of whom had practiced with large firms before opening their own firm. The Firm began with nine attorneys and has grown to fifteen attorneys. Most of the Firm's attorneys trained at some of the world's preeminent law firms before joining LKP Global Law, LLP.

The Firm has a sophisticated corporate and business department representing corporations and businesses operating in the U.S., Asia and Europe in business transactions ranging from mergers and acquisitions, public securities offerings, and private placements to investment funds, joint ventures, securities regulatory compliance and general corporate activities. While the firm is known for its expertise in cross-border transactions, the firm's corporate and business department practice is broad, representing numerous domestic companies in a broad range of matters, including public utilities in regulatory compliance matters. The Firm's clients include both small emerging companies and multinational corporations.

LKP Global Law, LLP, is also known for its litigation department chaired by Luan Phan. The Firm's litigation practice includes representation of public companies, law firms, partnerships, small businesses and individuals in civil law suits. The Firm represents plaintiffs and defendants in litigation and regularly litigates complex civil matters against large law firms with significantly greater resources. The Firm's litigators handle medical malpractice cases, business torts, including fraud and breach of fiduciary duty in complex business settings as well as disputes involving entertainment, employment, intellectual property, securities, environmental, real estate, construction, elder abuse, insurance and unfair competition claims.

One of the most significant cases litigated by Mr. Phan resulted in a \$96 million judgment in a medical malpractice case against a Glendale hospital and its medical staff after a two month jury trial. The case was appealed to the California Court of Appeals and ultimately the California Supreme Court and resulted in a decision by the Supreme Court overturning a 100 year old case so as to preserve the jury's verdict in favor of Mr. Phan's client.

LKP Global and NAMWOLF

The Firm joined NAMWOLF in 2011 and the Atlanta Annual meeting was the first that the Firm's attorneys at-



Kevin K. Leung

tended. Kevin Leung said that the Firm was introduced to NAMWOLF by one of the Firm's clients. He said that the Firm looks forward to participating in NAMWOLF and believes that LKP Global's practice is unique within the outside counsel members of NAMWOLF, primarily due to its extensive ties to its clients in Asia and its U.S. clients who do cross-border work in Asia.

The Firm's ASIA Practice

The Firm is comprised almost entirely of Asian American attorneys, which complements the extensive practice that the firm has throughout Asia. A number of the Firm's attorneys are fluent in Chinese (Mandarin and Cantonese) or in Korean so that they are able to do business in the local language of their clients.

In addition to being licensed in California, Mr. Leung is a member of the Hong Kong Law Society and serves as essentially a special counsel to a law firm in Hong Kong. Mr. Leung spends two to three weeks every quarter in Asia. Mr. Kim is Korean American and is fluent in Korean. He represents a number of Korean companies in corporate transactions and cross-border transactions.

The Firm's business philosophy

LKP Global not only handles business transactions and litigation for its clients but focuses on "problem solving" and "matchmaking" for its clients by leveraging the business contacts of the Firm's partners and frequently introducing clients to each other and to other business partners that will assist them in their business ventures, whether in the manufacturing area or in securing capital for clients. The Firm is very entrepreneurial in its approach to Firm management and to its business and litigation clients.

The Firm has a unique, West Coast entrepreneurial attitude which focuses not only on helping clients

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Law Firm Spotlight: LKP Global Law, LLP (con't)

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solve legal problems, but also to help clients advance their businesses as a whole. The Firm emphasizes a very collaborative approach among its attorneys, and clients of the Firm truly not only hire one attorney at the Firm, but the collective abilities and contacts of the Firm's attorneys.



Cathy Havener Greer is a member of Wells Anderson & Race, LLC, a Denver NAMWOLF member since 2010. She has practiced law since 1976, served as an Assistant Prosecuting Attorney in Jackson County, Missouri, and as an Assistant Attorney General for Colorado before entering private practice in 1987. Her practice focuses on the defense of corporations and governmental entities and officials in commercial litigation, tort and contract, and civil rights and employment litigation in state and federal trial and appellate courts and before administrative agencies.

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NAMWOLF 2012 - Sports Law Survey

By Kate Legge and Ashley Kenney, Griesing Law, LLC - Philadelphia, PA

1. Sports Stars Jump on the Branding Bandwagon

Athletes have long known the business potential for trademarking their own names, but 2012 saw sports stars recognizing new potential for building their brands, and trademarking everything from poses to catchphrases. For example, football star Tim Tebow filed a trademark for his famous prayer stance, dubbed by fans as "Tebowing", and basketball phenom Jeremy Lin filed a trademark for the word "Linsanity." Sports lawyers can expect to see a continued rise in the number of athletes seeking trademark protection heading into 2013.

2. Expansion of O'Bannon v. NCAA

In 2009, former college basketball star Ed O'Bannon filed a class action suit against the NCAA, challenging the NCAA's licensing of the names, images and likenesses of former Division I college athletes for commercial purposes. While the suit threatened the NCAA with millions of dollars in damages to O'Bannon and other former players, it did not address current college athletes. Now, in a move that has potential to radically "change the game" for college athletes, O'Bannon expanded the suit to include current Division I athletes. While college athletes would remain unpaid for their labor, they would be compensated for the licensing of their identity. Such revenue would be held in trust for those athletes, to be accessible to them upon graduation. A win for O'Bannon in this case may present real financial risks for members of the NCAA and for the companies who profit off of these athletes. There are also may be Title IX implications if male athletes receive more licensing revenue than woman.

3. Twitter Meets Sports

Twitter has presented unique challenges for sports leagues in 2012 as sports leagues try to police athlete and reporter communications. In June, the NBA fined basketball player Amare Stoudemire \$50,000 for tweeting a gay slur. During the London summer Olympics, competitors from Greece and Switzerland were sent home for sending out racist tweets. The NCAA has stated that schools have a duty to monitor student athletes on social media in a way that is "Consistent with the duty to monitor other information outside the campus setting," leading some colleges to employ third party monitoring companies, or appoint school employees to troll social media sites for infractions. It is a slippery slope to start penalizing athletes for their personal communications as doing may raise serious privacy and free speech issues, although the more public the communication, the less likely policing it will implicate constitutional concerns.

In November 2012, the University of Washington reprimanded a reporter who tweeted 53 times during a NCAA basketball game. Traditionally, sports leagues hold the rights to real time coverage of games; now with the media tweeting, leagues are torn between instituting policies limiting media tweeting and exploring ways to exploit the "second screen" experience.

4. NFL Concussion Cases Cause Legal Headache

More than 30% of all former NFL players have filed suit against the NFL for negligence and in some cases fraud and conspiracy, arguing that the NFL has a duty to warn about brain trauma. Teams are implementing policies for athlete concussions, with questions remaining whether these policies will be sufficient to protect players from injury and the league from liability. Some NFL and team lawyers are discussing contract language releasing teams from future concussion-related liability. If these clauses are adopted, professional organizations may begin to ward off lawsuits by avoiding players with a concussion history. There are also ethical issues as former players who are not experiencing any effect from concussions and do not regret participation in the NFL join suits at the advice of lawyers.

GRIESING LAW LLC



Ashley Kenney, the newest member of our Firm, concentrates her practice in business litigation and intellectual property, principally in the areas of hospitality, sports and entertainment. She also represents clients in transactional and employment matters.

Kate Legge, one of the Firm's founders, represents clients in complex litigation, business counseling and intellectual property. Representative matters include trade secret, copyright, trademark, online content protection, licensing, domain name disputes, and website terms of use.



The Supreme Court's 2013 Decisions - Employment Law

By David H. Ganz, Of Counsel, Bertone Piccini LLP - Hasbrouck Heights, NJ

We are not yet two month's into the United States Supreme Court's 2012-2013 term and by year's end, the High Court will already have heard argument on several cases which may be of interest to employers. Its docket includes several labor and employment cases, including matters brought under Title VII, ERISA, and the FLSA, and a fourth case, brought under the antitrust laws, could also have significant consequences for employers.

Title VII. *Vance v. Ball State University* (No. 11-556) will resolve a conflict among the circuits as to the definition of "supervisor" under Title VII. In hostile work environment cases, where the harassment results in a tangible employment action, employers are strictly liable for such harassment when it is inflicted by supervisors. The First, Seventh, and Eighth Circuits have adopted a more restrictive view of who is considered a supervisor, holding that such individuals must have the power to hire, fire, demote, promote, transfer, or discipline their victim. The Second, Fourth, and Ninth Circuits have defined supervisor more liberally, finding that to qualify as a supervisor, a person must only direct and oversee their victim's daily work. How the Supreme Court resolves this issue has the potential to expand or reduce the number of cases in which employers are automatically liable for the actions of their supervisor employees. A number of amicus curiae have filed briefs with the Court, including National Employer Lawyers Association, Society for Human Resource Management, Equal Employment Advisory Council, National Federal of Independent Business Small Business Legal Center, and Chamber of Commerce of the United States. Oral argument in *Vance* was scheduled to occur on November 26, 2012.

ERISA. *U.S. Airways, Inc. v. McCutchen* (No. 11-1285) will focus on Section 502(a)(3) of ERISA, which allows an employee benefit plan to enforce a plan provision that requires a participant, whose medical bills have been covered by the plan and who has also obtained compensation from a third party for the injury, to reimburse the plan in full. The specific question to be answered in *McCutchen* is whether the Third Circuit correctly held, in a decision that conflicts with the Fifth, Seventh, Eighth, Eleventh, and D.C. Circuits, that ERISA Section 502(a)(3) authorizes courts to use equitable principles to rewrite contractual language and refuse to order participants to reimburse their plan for benefits paid, even where the plan's terms confer on it an absolute right to full reimbursement. A number of

amicus curiae have filed briefs with the Court in this matter, including Blue Cross Blue Shield Association, Consumer Watchdog, Chamber of Commerce of the United States, and AARP. Oral argument in *McCutchen* was scheduled to occur on November 27, 2012.

FLSA. *Genesis Healthcare Corp. v. Symczyk* (No. 11-1059) will require the Court to consider whether a collective action brought under the Fair Labor Standards Act becomes moot, and thus beyond the judicial power of Article III, where the lone plaintiff receives an offer of judgment from the defendants to satisfy all of the plaintiff's claims. The outcome of *Symczyk* is sure impact the strategy employed by some defendants who try and defeat putative class actions early in the litigation by settling with the lead plaintiff. Ten amici curiae have filed briefs with the Court, including DRI and National Employment Lawyers Association. Oral argument in *Symczyk* is scheduled for December 3, 2012.

Class Certification. *Comcast Corp. v. Behrend* (No. 11-864) is an antitrust class action. The question to be decided by the Supreme Court is whether a district court may certify a class action without deciding whether the plaintiff class has introduced admissible evidence, including expert testimony, to show that the litigation may result in an award of damages on a class-wide basis. The answer may be especially interesting in light of the 2011 decision of *Wal-Mart Stores, Inc. v. Dukes*, which focused on the evidentiary requirements of FRCP 23. Oral argument in *Behrend* occurred on November 5, 2012.

Decisions on these cases are not expected until sometime in 2013. The Court may, of course, elect to hear other labor and employment cases during its current term.

BERTONE PICCINI ATTORNEYS AT LAW

David H. Ganz is Of Counsel at Bertone Piccini LLP in Hasbrouck Heights, New Jersey. He focuses his practice on representing employers in all aspects of employment law in both New Jersey and New York.



2012 Year in Review - U.S. Supreme Court Employment Law On Behalf of the Labor & Employment Initiative

By Laura Gibson, Ogden, Gibson, Broocks, Longoria & Hall, LLP - Houston, TX
Justi Rae Miller, Berens & Miller, PA - Minneapolis, MN
On Behalf of the NAMWOLF Labor & Employment Initiative

In its latest term, the United States Supreme Court decided only 65 cases after briefing and oral argument, which was the lowest total cases decided by the Court in years. Despite the Court's lower than average caseload, the Court's term hardly lacked for drama. While the Court's upholding of the national healthcare law is widely known, the Court also decided several, lesser known, cases that may impact employers and employees. Those cases are summarized here.

In *Hosanna-Tabor v. EEOC*, 132 S.Ct. 654, 565 U.S. ____ (2012), a unanimous Supreme Court held that the "ministerial exception" founded in the First Amendment's religious clauses barred an employment discrimination suit brought by a Lutheran school teacher. The teacher alleged that the school retaliated against her in violation of the Americans with Disabilities Act ("ADA"). The plaintiff teacher taught core subjects using secular textbooks. She also had the title "Commissioned Minister" and taught a religious class four days a week.

The issues in the case were whether the ministerial exception applied to teachers in religious schools who teach school's secular curriculum, but also teach daily religion classes. Additionally, the Court considered the issue of whether the ministerial exception is an affirmative defense to a retaliation claim as opposed to a jurisdictional bar preventing the courts from hearing the case.

In a 9/0 decision, the United States Supreme Court held that a "called teacher" in the ministry is covered by the ministerial exception grounded in the First Amendment and that the ministerial exception is an affirmative defense to employment discrimination suits against a church brought by a person the church has determined to be one of its ministers. The Court further found that the ministerial exception operates as an affirmative defense rather than a jurisdictional bar.

In *Hosanna-Tabor*, the Court confirmed the ministerial exception to the anti-discrimination laws, previously recognized by various Courts of Appeals. The Court's opinion supports religious organizations' rights to make employment decisions regarding its ministers without governmental interference.

In *Coleman v. Maryland Court of Appeals*, 132 S.Ct. 1327, 566 U.S. ____ (2012), the Supreme Court decided whether the "self-care" provision of the Family Medical Leave Act

("FMLA") validly abrogated a state's Eleventh Amendment immunity.

In *Coleman*, a former Maryland Court of Appeals employee, sued under the self-care provision of the FMLA, alleging that he was fired after requesting sick leave for his own medical condition. The District Court dismissed Coleman's claims on the basis of Eleventh Amendment immunity. The Fourth Circuit found that Congress did not validly abrogate sovereign immunity as to the FMLA's self-care provision noting that the FMLA's legislative history showed that preventing gender discrimination was not a significant motivation for Congress in including the self-care provision, nor was there evidence establishing a pattern of the states as employers discriminating on the basis of gender in granting leave for personal reasons.

In a 5/4 decision, with Justices Ginsburg, Breyer, Sotomayor and Kagan dissenting, the Court held that Congress lacked constitutional authority when it abrogated state sovereign immunity under Section 5 of the Fourteenth Amendment to allow states to be sued for violation of the FMLA self-care provision because the self-care provision unlike the family-care provisions of the FMLA, was not directed at an identified pattern of gender based discrimination. Accordingly, Coleman, was not entitled to recover money damages due to the state's failure to comply with the self-care provision.

In *Christopher v. SmithKline Beecham Corp.*, 132 S.Ct. 2156, 567 U.S. ____ (2012), the Supreme Court considered whether deference should be given to the Department of Labor's interpretation of the FLSA's outside sales tax exemption and related regulations.

In the underlying case, the plaintiffs, who were pharmaceutical sales representatives, filed suit against their former employer claiming overtime violations of the FLSA. The employer took the position that the plaintiffs' responsibilities were outside sales which exempted the plaintiffs from the FLSA overtime laws. The trial court entered summary judgment in defendant's favor which was affirmed by the Ninth Circuit Court of Appeals. In a 5/4 decision, with Justices Breyer, Ginsburg, Sotomayor and Kagan dissenting, the Court did not defer to the DOL interpretation of

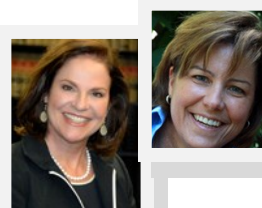
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the FLSA regulations where the DOL's new interpretation post-dated the conduct at issue, would result in unfair surprise, was inconsistent with the DOL's prior inaction, and was "unreasonable." After engaging in its own independent examination and analysis of the statute, the Court found that the pharmaceutical sales representatives were exempt from the minimum wage and overtime requirements of the FLSA.

The NAMWOLF Labor & Employment Initiative intends to monitor future labor and employment matters reviewed by the Court and will be making regular contributions to the NAMWOLF newsletter to apprise our members of decisions warranting your attention.

If you are interested in more information about our initiative's members or joining our Initiative, please go to the NAMWOLF website at www.namwolf.org to learn more information.



A BRIEF RECAP OF THE SUPREME COURT'S INVOLVEMENT IN INTELLECTUAL PROPERTY LAW IN 2012

By Jose I. Rojas of Rojas Law Firm, LLP, On behalf of the NAMWOLF Intellectual Property Alliance

The U.S. Supreme Court continued this year its recent pattern of taking on a number of intellectual property petitions and attempting to bring some clarity to the law in this field. The High Court decided four IP cases during this calendar year and heard oral argument in two others, still pending. These cases, constituting an increasing percentage of the Court's shrinking docket, raise a variety of issues, dealing with patents, copyrights and trademarks. The court took on the following issues:

Decided Cases

Whether Congress can grant copyright protections to foreign authors whose works were already in the public domain in the United States? (Held: Yes, Congress has power to do so as part of an international treaty, 6-2) **Golan v. Holder**, 132 S. Ct. 873 (2012);

Whether a process to correlate blood test results to patient health, incorporating the laws of nature, was eligible for patent protection? (Held: No, not patentable subject matter, 9-0) **Mayo Collaborative Services v. Prometheus Laboratories, Inc.** 132 S. Ct. 1289 (2012);

Whether the words "not an" used in an "use code" submitted by a drug patent owner to the FDA meant "not a particular one" or instead, "not any?" This was important to determine whether the generic drug manufacturer could, by counterclaim, compel the patentee Plaintiff to modify its coding so as to gain allowance to market the generic drug for a use that the patentee had claimed in the use code but which was not covered by its patent. (Held: Here, it means "not a particular one" and the generic manufacturer wins, 9-0) **Caraco Pharmaceutical Laboratories, Ltd. v. Novo Nordisk A/S**, 132 S. Ct. 1670 (2012);

Whether there are limits beyond the Federal Rules of Evidence and of Civil Procedure as to the ability of a patent applicant to introduce new evidence in proceedings before the District Court challenging the Patent and Trademark Office's denial of a patent application and whether, if such evidence creates a factual issue, the dis-

trict court must conduct a *de novo* review including that evidence? (Held: No and yes, respectively, 9-0) **Kappos v. Hyatt**, 132 S. Ct. 1690 (2012).

Argued/Pending Cases

Whether a graduate student who bought textbooks made overseas can now re-sell them for a profit on e-Bay in the United States? (Argued October 29, 2012) **Kirtsaeng v. John Wiley & Sons, Inc.** – Docket No. 11-697;

Whether a party in a trademark litigation can divest the court of Article III subject matter jurisdiction by promising not to assert its mark against the other party's then-existing commercial activities? (Argued November 7, 2012) **Already, LLC v. Nike, Inc.** - Docket No. 11-982.

The Court's decisions in *Prometheus* and *Caraco* both reverse, and basically rebuke, the Federal Circuit and both were unanimous. The *Prometheus* decision comes relatively soon after the Court had addressed the same topic of what constitutes patentable subject matter, in **Bilski v. Kappos**, 130 S. Ct. 3218, 561 US ___, 177 L. Ed. 2d 792 (2010). While the court in *Bilski* was hesitant to adopt a bright line test for patentable subject matter, the Court in *Prometheus* has made clear that processes that merely apply the laws of nature are not patentable. The Court noted that "If a law of nature is not patentable, then neither is a process reciting a law of nature, unless that process has additional features that provide practical assurance that the process is more than a drafting effort designed to monopolize the law of nature itself." The other steps beyond the mere laws of nature must "transform" the process into "an inventive application of the formula." The *Prometheus* case raises some concerns for the future of software patents as algorithms are treated like laws of nature. This issue will likely be the source of substantial litigation in the near future.

The *Golan* decision which started off the year was the Court's only non-unanimous IP case in 2012, being decided by a 6-2 vote with Justice Ginsburg authoring the opinion, Justice Breyer authoring a

(Continued on page 14)

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dissent which was joined in by Justice Alito, and Justice Kagan not participating. The decision has the effect of shrinking the public domain in copyright works for works of foreign authors who before had no protection in the United States. However, the ruling upholds Congress' power to harmonize our laws to that of other nations in this field.

The *Hyatt* case addressed a rarely used statutory provision of the Patent Act that allows direct district court review of the patent office's denial of a patent application. In affirming the Federal Circuit, the decision equips applicants with another arrow in their quiver to challenge the PTO's refusal to allow a patent application, especially if new evidence becomes available after the denial is issued by the PTO. In such case, the applicant will not necessarily be limited to the record that was before the PTO when it made its decision and the district court will review all factual issues *de novo*. It should be noted though that in *Hyatt*, the PTO Board had based its denial on entirely different grounds than had the examiner so the applicant could not anticipate the concerns and present evidence addressing these.

The *Caraco* decision, while turning on interpretation of arcane language and not otherwise being very exciting reading, does serve to constrain drug company patent owners from claiming wider protection under FDA law for a specific drug than that which their patent covers, to prevent generic manufacturers to compete as to the non-patented uses. This decision comes at a time that there is heightened national consciousness of health care issues while facing implementation of President Obama's Health Care law. It continues the ongoing battle between patent-owning pharmaceutical companies and their generic competitors.

We still await the High Court's decisions in two other cases that have been briefed and argued this year. The *Kirtsaeng* case should settle a significant issue and apparent statutory conflict dealing with the so-called "first sale doctrine" in the context of copyrights. That doctrine is similar to "patent exhaustion," holding that once a copyright owner completes the initial sale of a copyrighted work "lawfully made under this title," its right to control sale of the work has been "exhausted" and the purchaser is free to resell the item as he or she wishes. However, another provision in the Copyright Act expressly prohibits importation of a work without the consent of the copyright owner. So the

issue remains whether the purchase abroad of a work that was lawfully made by a licensee and legally sold there (in a different market, where market conditions and pricing may be different than in the United States) is deemed to trump the copyright owner's otherwise existing right to preclude import of the so-called "grey market" goods (which will be sold in the United States in arguable competition with the copyright owner or its distributors or licensees). It will be interesting to see how the Court rules.

The *Already* case raises the interesting question of whether a party can escape a determination of trademark validity by the court by offering not to seek to enforce its trademark rights as against a specific use that is currently being made by the other party. If the court holds that this tactic does in fact divest a court of subject matter jurisdiction by eliminating the case or controversy, it will provide a defendant who sues for infringement and faces a cancellation or invalidity counterclaim the option to "run away and fight another day" by making such offer at any time if it does not feel confident it will win. Look for the court to address the breadth and extent of the covenant that must be offered if such an offer is to be deemed as eliminating the case or controversy.

While we await these decisions and look forward to a number of others in 2013 as to cases where the petitions for certiorari have been granted or are pending, it is apparent that intellectual property issues will likely continue to receive the attention of the Supreme Court and to grow as a percentage of the cases the court considers each year. This reflects the nature of our economy being more and more a "knowledge economy" and highlights the importance and value of intellectual property in our world.

NAMWOLF member firms with substantial expertise and experience in all aspects of intellectual property law have formed an IP Alliance to work with NAMWOLF Corporate and Public Entity Partners and Inclusion Initiative members to develop mutually-beneficial relationships and to promote the greater use of minority and women owned law firms in the field of intellectual property law. For more information about the IP Alliance and our members, please visit the IP Alliance page on the NAMWOLF Website at www.namwolf.org.



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2012 Developments in Delaware Corporate Law

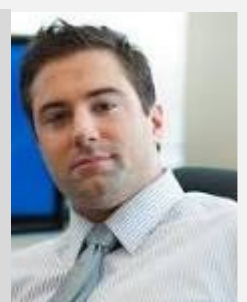
By Jeremy Piccini, Bertone Piccini LLP - Hasbrouck Heights, NJ
and Roland Sanchez-Medina, SMGQ - Miami, FL

The Delaware Supreme Court and Delaware Court of Chancery are general regarded as the country's premier business courts and their decisions carry significant influence over matters of corporate law throughout the country as they have a reputation for expertise in the field and because of the vast majority of public companies in the United States are incorporated in Delaware and governed by its substantive law. Accordingly, we thought it prudent the NAMWOLF Transactional Alliance summarize some of the important cases that may ultimately affect business transactions for corporate members whether they are incorporated in Delaware or otherwise as a result of the overwhelming number of states that follow Delaware law.

Does the Delaware Limited Liability Company Act impose default fiduciary duties on managers of Delaware LLCs in the absence of an express contractual elimination of such duties?

In many jurisdictions across the country, limited liability companies have become the preferred choice of entities because of their flexibility. Unfortunately, settled case law has not developed as quickly. For instance, many practitioners have long been concerned whether the traditional fiduciary duties owed by members of the board of directors to its shareholders are applicable in the context of a limited liability company. In Auriga Capital Corp. et al. v. Gatz Properties, LLC, the Delaware Chancery Court responded in the affirmative and held that the Delaware Limited Liability Company Act (the "Act") imposes default fiduciary duties on managers of Delaware LLCs in the absence of an express contractual elimination of such duties. On appeal, the Supreme Court stated that whether the managers and controllers of a limited liability company are subject to "default" fiduciary duties under the Act is an issue about which "reasonable minds could differ." The Supreme Court also noted that it was unnecessary for the Chancery Court to decide on the applicability of this duty by to the members of the limited liability company where the limited liability agreement had sufficient language to address the issue. In refusing to address the analysis of the Court of Chancery, the Delaware Supreme Court failed to settle this issue once and for all. For practitioners, we are once again reminded that precise language in the agreement governing managers and members is the only way to ensure its members are protected by traditional fiduciary duties.

NAMWOLF member firms with substantial expertise and experience in all aspects of corporate transactional work have formed an Transactional Alliance to develop mutually-beneficial relationships and to promote the greater use of minority and women owned law firms in the field. For more information about the Transactional Alliance and our members, please visit the IP Alliance page on the NAMWOLF Website at www.namwolf.org.



Ten Tips from Outside Counsel on How to Reduce Outside Litigation Costs

By Mary F. Platt, Esq. Griesing Law, LLC - Philadelphia, PA

Here are ten tips for reducing litigation costs from the perspective of an outside counsel who has represented clients ranging from large multinational companies to small family-owned businesses in all kinds of litigation. These tips, which apply to the “bet the company” case as well as less significant cases, will help ensure that your litigation is run efficiently without increasing risk or sacrificing results.

Relationships. Develop a personal relationship with outside counsel based on mutual trust and concern for the needs of the company. Discuss cost concerns with outside counsel, and reach an understanding of strategy and objectives for the case. When possible, meet outside counsel to cultivate the relationship.

Budget. Require outside counsel to prepare a budget based on the strategy discussed and revise the budget as the case evolves. Compare the budget periodically to the bills and share your comparison with outside counsel. Ask questions about fees that appear out of line with budgeted expectations.

Settlement. If settlement is a desirable outcome (as it should be in most cases), discuss at the outset dollar figures and business arrangements that might settle the case, and develop a strategy that will create and take advantage of opportunities to settle the case.

Primary Contact. Establish a single point of contact at your outside law firm who will be knowledgeable about all aspects of the case, and a “back up” contact that will be available when the primary contact is not.

Staffing. Control the size of the outside counsel team. Identify at the outset who will work on the matter, their rates, and what their responsibilities will be. Permit outside counsel to expand the team only after discussing the needs of the case with you and the person’s qualifications and rates. Consider reducing the team when workload declines.

Communications. Communicate frequently with outside counsel. In significant cases where more than one law firm is involved, ask outside counsel to organize a conference call on a regular basis. Instruct outside counsel to send you short e-mails on hearings and meetings, relevant developments in the law, research, upcoming deadlines, and work contemplated to meet those deadlines.

In-house Resources. Use in-house resources to the extent possible. If the company is sued regularly, establish an in-house discovery unit that is knowledgeable about company personnel, computer systems, legacy systems and databases to assist in obtaining documents and other information needed for cases. Maintain databases that identify recommended experts, investigators and other vendors as well as motions and research memos that can be made available to outside counsel.

E-Discovery. Oversee outside counsel’s negotiation of e-discovery with opposing counsel, including custodians, search terms, relevant time periods, data sources, format for deliverables, and deadlines. Evaluate the rates of lawyers assigned to review documents to ensure that the rates are reasonable given the nature of the work performed.

Case Management Orders. Direct outside counsel to negotiate proposed case management orders that include provisions allowing the “claw back” of privileged documents and the designation of confidential documents to reduce motion practice on these issues.

Be the Boss. Make the tough cost/benefit decisions about the need for motions, experts, depositions and other discovery in consultation with outside counsel.

GRIESING LAW LLC

Mary Platt is Practice Group Chair, Complex Litigation and Alternate Dispute Resolution, at Griesing Law, LLC in Philadelphia, PA. She is an experienced trial lawyer who has represented clients ranging from large multinational companies to small businesses in all types of individual cases and class actions. She also has significant experience serving as a mediator and in e-discovery.



Employers Must Begin Using New FCRA Forms As Of January 1, 2013

By Jessica L. Herbster, Schwartz Hannum PC - Andover, MA

The Consumer Financial Protection Board ("CFPB") recently issued regulations modifying three of the forms required under the federal Fair Credit Reporting Act ("FCRA") to reflect that the CFPB, rather than the Federal Trade Commission ("FTC") is the agency from which consumers may obtain information about their rights under the FCRA. Accordingly, employers that use consumer reporting agencies ("CRAs") or other third parties to conduct background screenings of applicants or employees need to ensure that the modified FCRA forms are implemented by no later than January 1, 2013.

FCRA Litigation. In recent years, many employers have been faced with expensive litigation, including class-action lawsuits, based on alleged technical violations of the FCRA. For example, in *Singleton, et al. v. Domino's Pizza, LLC*, No. DKC 11-1823 (D. Md. Jan. 25, 2012), a federal district court denied the employer's motion to dismiss a class action alleging that the employer violated the FCRA by providing FCRA disclosures as part of an overall application packet, rather than separately. As this case illustrates, it is critical that employers ensure that they meet all technical and procedural requirements imposed by the FCRA, and that CRAs and any other third parties used to conduct background checks are in compliance with the FCRA.

Modifications To Forms. Under the 2010 Dodd-Frank Wall Street Reform and Consumer Protection Act, rulemaking responsibility under the FCRA was transferred from the FTC to the CFPB. Since then, the CFPB has published in the Federal Register an interim final rule establishing a new regulation. The new regulation does not implement any substantive changes to the existing regulations, but includes technical changes to reflect this transfer of authority.

To that end, the new regulations modify the following three FCRA forms to indicate that consumers may obtain further information about their rights under the FCRA from the CFPB, rather than the FTC.

Summary Of Consumer Rights. Employers must provide this notice to applicants and employees in various situations, including when an applicant or employee will be the subject of an investigative consumer report, or is receiving a pre-adverse action notice.

Notice To Furnishers Of Information Regarding Their FCRA Obligations. CRAs are required to provide this notice to furnishers of information in certain situations (e.g., when an applicant or employee disputes information contained in a credit report).

Notice To Users Of Consumer Reports Of FCRA Obligations. CRAs are obligated to provide this notice to all users of their services, including employers.

The new regulations, which include sample copies of the modified FCRA forms, can be accessed through the following links:

<http://www.gpo.gov/fdsys/pkg/CFR-2012-title12-vol8/pdf/CFR-2012-title12-vol8-part1022-appK.pdf>

<http://www.gpo.gov/fdsys/pkg/CFR-2012-title12-vol8/pdf/CFR-2012-title12-vol8-part1022-appM.pdf>

<http://www.gpo.gov/fdsys/pkg/CFR-2012-title12-vol8/pdf/CFR-2012-title12-vol8-part1022-appN.pdf>

Recommendations For Employers. As a result of the modification of these FCRA forms, we recommend that employers take the following steps:

Ensure that the revised FCRA forms are implemented by no later than January 1, 2013, for all background screenings carried out by CRAs or other third parties;

Carefully review, in consultation with counsel, their background-check procedures to ensure strict compliance with all of the requirements of the FCRA; and

Continue monitoring developments under the FCRA, including any further regulations that may be issued by the CFPB.

Please contact us if you have any questions regarding these revised FCRA forms or any other background-check issues. We regularly assist employers with such matters, and we would be happy to assist you.

Jessica L. Herbster is a Partner at Schwartz Hannum PC, which represents management in labor and employment, business immigration, and education matters.



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Large Business Compliance with Small Business Subcontracting Rules

By Janine S. Benton, Esq., Benton Potter & Murdock, P.C. - Washington D.C./Virginia/Maryland

Since 2010, new laws and regulations, such as the Small Business Jobs Act of 2010 (the "Act"), proposed regulations of the Small Business Administration ("SBA"), and several memoranda issued by the Office of Management of the Budget ("OMB"), have dramatically changed, or have proposed to change, the way the government does business with small business.

Prime Contractors Required to Pay Small Business Subcontractors Faster

Under the Prompt Payment Act ("PPA"), a federal agency is required, generally, to pay properly submitted invoices from contractors within 30 days of receipt or pay interest. The PPA does not apply to prime contractor payments to subcontractors. In July 2012, OMB issued a memorandum (M-12-16) mandating that agencies take whatever steps allowed by law to assist prime contractors in making fast payments to small business subcontractors, including, where necessary, paying prime contractors within 15 days of receipt of a proper invoice, instead of 30 days. OMB also requested that a new Federal Acquisition Regulation be created providing for prompt payment from the prime contractor to its small business subcontractors. OMB made clear that, at this time, no late payment interest applies.

SBA Requires More Extensive Monitoring of, and Compliance with, Large Business Prime Contractors' Small Business Subcontracting Plans

Section 1321 of the Small Business Jobs Act requires the SBA to establish new policies and regulations to insure large business prime contractors follow the small business subcontracting plans of their prime contracts. On October 5, 2011, (Federal Register Doc No: 2011-25767,) the SBA proposed to tighten the regulations governing small business subcontracting, including, but not limited to the following proposals:

- That large business prime contractor goals for subcontracting with socioeconomic groups be a percentage of overall contract dollars as well as small business subcontracting dollars.
- That the contracting officer's responsibility for monitoring and evaluating the large prime contractor's small business subcontracting plan compliance and reporting be clearer.

- That contract funding agencies receive credit for small business contracts placed by procuring agencies, and that contractors report small business contracting on an order by order basis.
- That large business prime contractors be required to update small business subcontracting plans when an option is exercised, and when a contractor's size status changes from small to other than small because it recertified its size.
- That the large business prime contractor must notify the contracting officer if that contractor fails to utilize a small business that was specifically referenced in its proposal or fails to utilize a small business that it had a subcontract with or fails to utilize a subcontractor that was expressly involved in proposal development with the belief that it would perform under the awarded contract.
- That the large business prime contractor must notify the contracting officer if a payment to a small business subcontractor is reduced or is more than 90 days past due, and the prime contractor has already been paid; and the prime contractor must provide a reason for the payment problem. If the contracting officer finds the reasons unjustified, it must consider that in his/her evaluation of the prime contractor's contract performance.
- That the contracting officer must identify prime contractors with a history of unjustified, untimely payments to small business subcontractors in the government's electronic past performance databases

As of November 1, 2012, these SBA regulations are still only proposed. Nonetheless, large business prime contractors should expect dramatic new interim or final regulations in the very near future.

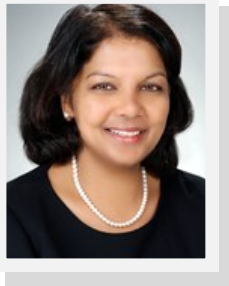
Janine S. Benton is a partner with NAMWOLF member Benton Potter & Murdock, P.C. Ms. Benton has practiced in the government contracts arena since 1995.



NAMWOLF Announces Sonjui Kumar as Editor of Newsletter

NAMWOLF ANNOUNCES SONJUI KUMAR AS EDITOR OF ITS NEWSLETTER FOR 2013-2014

Sonjui Kumar of Kumar, Prabhu, Patel & Banerjee, LLC in Atlanta, GA, has agreed to take over the reins of the NAMWOLF Newsletter effective January 2013. "I am thrilled to have Sonjui chair the Newsletter Committee... we have terrific committee members and along with their input, the newsletter will only get better under Sonjui's guidance and leadership," said Justi Rae Miller, Berens & Miller, PA, the former NAMWOLF Newsletter Editor and Newsletter Committee Chair. "I am looking forward to being a part of NAMWOLF's communications team. The Newsletter is a great forum for the members to connect to others outside the meetings and gives firms and in-house counsel another opportunity to interact during the year. I also want to thank Justi Miller for her outstanding work these past few years and in advance for all the help she will be giving our committee in the next few months."



Sonjui L. Kumar is a founding partner of Kumar, Prabhu, Patel & Banerjee, LLC, a 12 lawyer firm based in Atlanta, Georgia. She has been a practicing attorney for over 20 years. Ms. Kumar is a corporate transactional attorney specializing in corporate governance, contracts and transactional matters for a variety of enterprises including technology and manufacturing companies. A significant amount of Ms. Kumar's practice is focused on cross-border transactions with India.

The NAMWOLF Newsletter is completely formatted with hyperlinks so you can link to a person, firm or company by clicking on the name, photo, logo or event with the Control (Ctrl) button...

For ease of reading, other than the box to the right, we've removed the color/underlined link look!

NAMWOLF Newsletter/Website Submissions

Please send **newsletter submissions** to the editor, Sonjui Kumar, skumar@kppblaw.com, in Word, Arial, 10 font, single space. Please limit substantive articles to 550 words. Photo, logo and a short bio (2-3 sentences) should accompany the article. Photos/logos need to be .jpg equivalent at 300 DPI. Deadlines are as follows:

1st Quarter 2013: February 1, 2013

2nd Quarter 2013: May 1, 2013

NAMWOLF now features member law firm successes & announcements on its website at [Emerging Trends](#) and sends out these notices on [Twitter](#) and [Facebook](#).

Please send **announcements & successes** to jane_kalata@namwolf.org in Word, Arial, 10 font, single space and limited to approximately 350 words. Photo and logo submissions should accompany the announcement/awards and need to be jpg equivalent at 300 DPI. A link to the article at your firm's website is also suggested.

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0417 03 AGT Referral Overview 11/2012



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Coke Active Player in Diversity Legal Hiring

*By Dave Williams, Staff Writer - Atlanta Business Chronicle**

A decade-old organization of minority- and women-owned law firms got a boost recently when The Coca-Cola Co. joined its efforts to promote diversity in the legal industry.

The Atlanta-based soft drink giant has pledged to spend at least 5 percent of its annual budget for outside counsel on certified minority- and women-owned law firms as part of an initiative sponsored by the National Association of Minority & Women Owned Law Firms (NAMWOLF).

Coke has built a strong reputation for championing diversity since settling a landmark racial discrimination lawsuit in 2000. The company's relationship with NAMWOLF began when [Jennifer Manning](#), merger and acquisitions counsel for Coke, sat down to lunch with [Elizabeth "Lizz" Patrick](#), whose Atlanta law firm is a NAMWOLF member.

"I wanted to take over the process of finding minority- and women-owned firms we could work with, [but] there was no good list," Manning said.

"[Patrick] said, 'You need to get involved with NAMWOLF.'"

That led to Coca-Cola joining NAMWOLF's Corporate and Public Entities Partnering Program. Coke is one of more than 125 companies — including Atlanta-based Cox Communications Inc. and **Waffle House Inc.** — that have made that percentage guarantee for retaining minority- and women-owned law firms.

In addition, Coke is part of another NAMWOLF program with two dozen of the nation's largest companies that have pledged to spend at least \$139 million with minority- and women-owned law firms this year. The Inclusion Initiative also includes Sandy Springs-based United Parcel Service Inc.

Manning's search for minority- and women-owned law firms that would suit Coca-Cola's needs for outside counsel are a microcosm of the issue that led to the formation of NAMWOLF 11 years ago.

Patrick, who founded and owns Patrick Law Group LLC, said U.S. corporations were becoming increasingly interested in diversity hiring at that time because they were growing their international presence and, thus, doing more business with a diverse range of customers.

"As their clients and customers were changing, they needed

to have legal resources look like that," she said.

However, corporations interested in hiring minority- and women-owned law firms didn't know how to find them, Patrick said.

"There was a perception that there weren't that many," she said.

Thus was born an organization whose mission is to act as a clearinghouse to match companies in need of outside counsel and interested in diversity with minority- and women-owned law firms. Since its founding, NAMWOLF has grown to more than 100 law firms in 32 states, including eight in Georgia.

But not just any minority- or women-owned firms will do. NAMWOLF has strict vetting standards for prospective members.

Manning, now a member of NAMWOLF's Advisory Council, said it can take up to a year for a law firm to win certification from the organization. To qualify, firms must have at least three lawyers on staff, have at least \$2 million in liability insurance and have references from at least three Fortune 500 companies, she said.

"That means they've been working for Fortune 500 companies, they're very qualified and have gotten good reviews," she said.

[David Askew](#), who came aboard as NAMWOLF's CEO this month, said NAMWOLF certification carries weight with companies looking for outside counsel.

"It's more effective if you have an umbrella organization," said Askew, who joined NAMWOLF after serving five years as director of the pro bono program of an international law firm based in Chicago. "It says we have this group of law firms that have the credentials and have done the quality of work these corporations expect."

Patrick said NAMWOLF members offer business clients a high-quality legal product at a lower price than the big high-profile law firms. She said NAM-

**Reprinted with permission*

WOLF firms tend to be smaller and have less overhead.

"Now, with technology, we don't need that infrastructure to do what we do," she said.

However, Manning said many of the lawyers at NAMWOLF firms have worked for the big firms.

"They have experience and expertise, but at a fraction of the cost," she said.

Askew said the funding commitments Coca-Cola and other big companies have made to hiring NAMWOLF firms is the organization's best recruiting tool.

"Companies on their own have gotten together and made a commitment to spend a certain amount of money on women- and minority-owned firms," he said. "It's nice to see a number, a hard figure, that we can shout from the mountaintops ... so we can get other companies to see that we have found value."

Outside counsel diversity

Gonzalez Saggio & Harlan LLP
 Insley and Race LLC*
 Kumar, Prabhu, Patel & Banerjee*
 Patrick Law Group LLC*
 Rutherford & Christie LLP*
 Thomas Kennedy Sampson & Tompkins LLP*
 Townsend & Lockett LLC*
 Wong, Fleming P.C.

***Firms based in Atlanta - Source: National Association of Minority & Women Owned Law Firms**



NLRB Provides Guidance on At-Will Provisions

By Carolyn Rashby and Emi Gusukuma, Miller Law Group - San Francisco, CA

Employee handbooks commonly contain an at-will disclaimer specifying that the employment relationship can be terminated at any time, with or without cause or advance notice. Earlier this year, however, a National Labor Relations Board (“NLRB”) administrative law judge called into question whether at-will provisions are lawful, ruling that a disclaimer used by an American Red Cross unit interfered with employee Section 7 rights under the National Labor Relations Act (“NLRA”) to engage in concerted activities. The controversial decision was just the latest in a string of NLRB actions over the past year questioning the lawfulness of common employment policies -- including social media and confidentiality provisions -- and leaving employers uncertain about how to draft workplace policies without running afoul of the NLRA. But now, in a welcome move, the NLRB’s Office of General Counsel has issued guidance assuring employers that carefully drafted at-will provisions can withstand challenge under the NLRA.

In the *American Red Cross* case, employees were required to sign a form acknowledging their at-will status. The acknowledgment contained the following language: “I further agree that the at-will employment relationship cannot be amended, modified or altered in any way.” The administrative law judge found that the at-will language was unlawfully broad under the NLRA because by signing the form an employee was effectively waiving the right to “advocate concertedly ... to change his/her at-will status.”

On October 31, 2012, the NLRB’s Office of General Counsel issued advice memoranda endorsing two employers’ at-will provisions and drawing a clear distinction with the American Red Cross provision. In particular, the NLRB evaluated at-will disclaimers in use by Rocha Transportation, a California trucking company, and SWH Corporation d/b/a Mimi’s Café, an Arizona restaurant, and concluded that neither made the at-will relationship unalterable, in contrast to the American Red Cross language.

The Rocha provision stated that only the company president — not managers or supervisors — had the authority to make an agreement for any type of em-

ployment other than at-will employment, and only in writing. The Mimi’s clause stated that no company representative had the authority to enter into an agreement contrary to the employment at-will relationship.

The NLRB found that while these two disclaimers reaffirmed the at-will relationship, neither provision extracted a personal promise from employees to refrain from seeking to change their at-will status or to agree that their at-will status could not be changed in any way. Rather, the provisions simply prohibited the employer’s own representatives from entering into employment agreements that provide for other than at-will employment. The NLRB also noted that there was no evidence that Rocha or Mimi’s issued the policies in response to union activity or applied the policies to restrict Section 7 rights.

In a press release announcing the advice memoranda, the Office of General Counsel explained that because NLRB law on at-will employment disclaimers remains unsettled, it is asking regional offices to send cases involving at-will provisions to the NLRB’s Division of Advice for uniform review, as the agency did previously with social media cases. While the NLRB continues to sort this out, employers should take the time to review their at-will disclaimers – whether in employee handbooks, acknowledgments, offer letters, etc. – to ensure that the language is not overly broad under the NLRA but more closely tracks the at-will provisions endorsed in the recent advice memoranda.

Miller
LAW GROUP

Carolyn Rashby and Emi Gusukuma are special counsel with Miller Law Group, an employment law firm with offices in San Francisco and Los Angeles. Ms. Rashby and Ms. Gusukuma advise employers on a wide range of workplace matters, including wage and hour, leaves of absence, discrimination, harassment, and employee handbooks and personnel policies and practices.





Schedule of Events

SUNDAY, FEBRUARY 10

1:30 p.m. - 6:00 p.m.

2:00 p.m. - 2:45 p.m.

2:00 p.m. - 2:45 p.m.

3:00 p.m. - 4:00 p.m.

3:00 p.m. - 4:00 p.m.

Registration

First Time Attendee Orientation

Emerging Leaders Meeting

Marketing Initiative Meeting

Law Firm Member Forum

When to Grow and When to Shrink Your Firm

The Law Firm Member Forum invites you to participate in a round table discussion on this important issue that many of us face as owners of our own firms.

The discussion will involve real life experience, lessons learned, and takeaways for our law firm members.

NAMWOLF State of the Organization and 2013 Annual Meeting Planning Session

Law Firm Members and In-House Counsel are encouraged to attend this interactive session regarding the State of the Organization. Immediately following, will be the Annual Meeting Planning Session.

Kick-Off Cocktail Reception

Entertainment TBA

4:15 p.m. - 5:30 p.m.

6:00 p.m. - 8:00 p.m.

MONDAY, FEBRUARY 11

7:30 a.m. - 5:00 p.m.

8:45 a.m. - 10:15 a.m.

Registration

CLE Session: Understanding and Expanding California's Utility Supplier

Diversity Program Into Other States and Industries

Dave Jones, Insurance Commissioner, California Department of Insurance

Catherine J.K. Sandoval, Commissioner, California Public Utilities Commission

Dave Smith, Senior Vice President, General Counsel and Assistant Secretary, SDGE

Moderator: Samuel Kang, General Counsel, Greenlining Institute

NAMWOLF Advisory Council Retreat

CLE Session: Cloud Computing: Navigating the Coming Storm (Ethics)

Bruce Jackson, Assistant General Counsel, Microsoft

Harvey Jang, Director, Privacy & Information Management, Hewlett-Packard Company

Rina Shah, Associate Corporate Counsel, Google

Zalika Pierre, d'Arcambal, Ousley & Cuyler Burk, LLP

Moderator: Diane L. Polscer, Gordon & Polscer, L.L.C

Corporate Partner Awards and Luncheon Panel:

Lights, Camera, Action - The Challenges and Successes of Minorities and Women in Law in the Areas of Sports and Entertainment

George Schell, Vice President and Senior Managing Counsel at The Coca-Cola Company (Former V.P. and General Counsel, Oakland Athletics)

Ed Goines, Assistant Chief Counsel, Disney Interactive (Former V.P. and General Counsel, San Francisco 49ers)

Andrew Chang, General Counsel and Corporate Secretary, DreamWorks Animation

Bernard Gugar, SVP & General Counsel, Harpo, Inc.

Moderator: Katie K. Pothier, Wilson Turner Kosmo LLP (Former EVP, General Counsel, San Diego Padres)

CLE Session: Tips And Traps For Surviving And Thriving In The BYOD (Bring Your Own Device) Revolution

Roland Schwillinski, Senior Director, IP and Commercial Litigation, Illumina, Inc.

Brian L. Mannion, Managing Counsel, Nationwide Mutual Insurance Company

Suzanne M. Cerra, Esq., Nukk-Freeman & Cerra, P.C.

Moderator: Jessica Herbster, Schwartz Hannum PC

12:00 p.m. - 1:30 p.m.

1:45 p.m. - 3:15 p.m.



Schedule of Events

(Continued)

MONDAY, FEBRUARY 11

3:30 p.m. - 5:00 p.m.

CLE Session: Defensive Patent Aggregation and Other Defenses Against Patent Trolls

Lewis Stevenson, SVP, General Counsel and Secretary to the Board, Motorola Solutions

Victoria Valenzuela, General Counsel, Cypress Semiconductor Corp.

Emily Gavin, Director, Legal and Intellectual Property, RPX Corporation

Moderator: Philip J. Wang, Partner, Lim, Ruger & Kim, LLP

Inclusion Initiative Meeting (Inclusion Initiative Members ONLY)

Cocktail Reception

Entertainment TBA

3:30 p.m. - 5:00 p.m.

5:00 p.m. - 7:00 p.m.

TUESDAY, FEBRUARY 12

8:00 a.m. - 10:00 a.m.

Registration

NAMWOLF Marketing Initiative Presentation

Training Attorneys To Market – Where Do You Begin?

The Marketing Initiative will give a quick tutorial on the valuable tools needed to train attorneys in the practical ways of marketing, both through direct business development, as well as the new age of social media. Learn how to leverage existing skills, client relationships, and networks, all of which are important aspects for the growth of any practice.

And don't miss our updated "What Not To Do" segment as you prepare to get your booth expo-ready for the annual meeting.

10:00 a.m. - 10:50 a.m.

Intellectual Property Alliance Meeting

10:00 a.m. - 10:50 a.m.

Transactional Alliance Meeting

10:00 a.m. - 10:50 a.m.

Advocacy Committee

10:00 a.m. - 10:50 a.m.

Finance Committee

11:00 a.m. - 11:50 a.m.

Admissions & Law Firm Membership Committee

11:00 a.m. - 11:50 a.m.

Membership Engagement & Outreach

11:00 a.m. - 11:50 a.m.

Labor & Employment Alliance

11:00 a.m. - 11:50 a.m.

Insurance Industry Initiative

IMPORTANT INFORMATION

WHEN:

February 10 - 12, 2012

WHERE:

Hard Rock Hotel
San Diego, CA

RESERVATIONS AT THE HARD ROCK HOTEL SAN DIEGO:

To reserve your room, click [here](#) or call 866-751-ROCK and provide the group name NAMWOLF.

NAMWOLF has secured a great group rate of \$214/night. The room block runs from Friday, February 8 - Tuesday, February 12.

WHO:

Representatives from the nation's top minority and women owned law firms, corporations and government entities will be in attendance.

REGISTRATION:

The 2013 Regional Meeting is FREE for In-House Counsel to attend. **ADVANCED REGISTRATION REQUIRED!** Click [here](#) to register.

SPONSORSHIP:

Sponsorship opportunities are available. Click [here](#) to download.

ATTIRE:

Business Casual

TRAVEL DISCOUNT:

NAMWOLF has partnered with American Airlines to provide our attendees a 5% discount for the NAMWOLF Regional Business Meeting in San Diego, CA. The valid travel dates for this discount are February 7 - 12, 2013. You can easily access American's fares and apply this discount by going to www.aa.com to book your flight. Place the Promotion Code (8223DI) in the promotion code box and your discount will be calculated automatically. This special discount is valid off any applicable published fares listed for American Airlines, American Eagle, and American Connection. International originating guests will need to contact your local reservation number and refer to the Promotion Code. You may also call 1-800-433-1790 to book your flights, please refer to the Promotion Code (8223DI) when you call.