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WORKERS’ COMPENSATION SECTION

Chair
Bonnie Kristan
Littler Mendelson
bkristan@littler.com

Regular Meeting
The second Wednesday of most months from 11:45 am to 1:00 pm, 2nd Floor auditorium of the Frank Lausche Building, 615 Superior Ave. NW, Cleveland, OH 44113

What is your goal?
The section’s main goal is to provide attorneys with workers’ compensation-related CLEs and a forum to discuss issues affecting their practices. We do this by offering a monthly interactive CLE and day-long seminar at the end of the year.

What can members expect?
Section members include attorneys representing injured workers, employers and the Bureau of Workers’ Compensation. By far, the greatest benefit is inexpensive CLE credit in the area of workers’ compensation law. One hour of CLE credit is $20 for section members. The CLE credits are generally considered to be “advanced” and count toward the requirements necessary for Specialty Certification in the area of Workers’ Compensation Law.

Recent Events
Our April meeting featured Danielle Coleman of Ziccarelli & Martello and District Hearing Officer James Bartko discussing ethical issues in the hearing room.

Our May meeting featured Will Ross of Calfee Halter & Griswold presenting an “OSHA update for Workers Compensation Practitioners.”

INTERNATIONAL & IMMIGRATION LAW SECTION

Chair
Lawrence S. Crowther
Wegman, Hessler & Vanderburg
lscrowther@wegmanlaw.com

Regular Meeting
Monthly at CMBA Conference Center

What is your goal?
Reach out to more local lawyers to make them aware of the expertise that the International Law Section has to offer. My goal is to make the International law section one of the largest and most active sections of CMBA.

What can members expect?
We will bring in more practical and world-class CLE resources to Cleveland.

Recent Event
International and Immigration Law under the Trump Administration: The Good, the Bad and the Ugly, on May 3

Section and Committee membership is a great way to get plugged in at your local Bar!

For information on how to join a section or committee, contact Samantha Pringle, Director of CLE & Sections, at (216) 696-3525 x 2008 or pringle@clemetrobar.org.
Poverty and the Rule of Law

Poverty.”

I recall that my law school application essay started with that one-word paragraph. I wanted to become a lawyer to do something significant about the socio-economic injustice I had studied and witnessed. At divinity school, my deep dive into the causes and effects of poverty included homeless days and nights on the streets and in the shelters of Boston. Then, in New York City, I worked for the government on a “life skills” project to help those receiving Aid to Families with Dependent Children to obtain employment and gain independence. While the project appeared to make a positive impact as far as it went, I was struck by the multifarious legal obstacles encountered by those without the means to surmount them. Poverty compounded poverty. The “rule of law” was a reach.

And it still is.

We should be proud of the legal system we have established — a system of well-defined, broadly applicable laws; a system with checks and balances in the creation and enforcement of those laws; a system that embodies our social contract and promotes the pursuit of happiness. But having such a legal system is one thing; accessing it is another. Without both, the “rule of law” remains a goal, not a reality.

Access to our legal system is elusive not just to the outlying poor, but to a massive swath of the socio-economic bell curve. Those who qualify for legal assistance in civil matters from providers such as The Legal Aid Society of Cleveland may not be aware of the availability of such representation, or may be turned away due to lack of institutional resources. Those with modest means may not qualify for legal aid programs, but also may not be able to afford representation at market rates.

Individuals and families clearly benefit from improved access to our legal system. Society does as well. From a cold economic standpoint, unmet legal needs — often straightforward ones — that result in eviction, loss of employment, lack of protection from domestic violence, deportation, loss of earned benefits, etc., do not simply reduce productivity, but place a strain on public resources with a multiplier effect. It is thus not surprising that recent studies in numerous states have shown that, for every dollar spent on legal aid, society benefits many times over. Moreover, the more the rule of law becomes generally accessible, economic interactions become more stabilized, predictable, and thus efficient.

But societal benefits go well beyond the quantifiable. I know firsthand that Clevelanders feel a deep sense of community pride because the Cavs won it all last year. It puts a smile on our face and a hop in our step. And all that from a sports team. Just think of how we would feel, deep down, if we were to live in a community where we truly believed that “justice for all” was a reality.

If there are so many benefits to individuals, families and society, why is it so hard to broaden access to our legal system to those lacking sufficient financial resources? Along these lines, how could there be a threat to legal aid funding such as Legal Services Corporation funding? Some might view such financial support as a “safety net” expenditure, thus subjecting it to attendant politics. Others might simply see it as an expenditure not unlike myriad others that need to be cut in order to balance a bloated budget. But, speaking for myself, I urge us to view it differently — as a fundamental investment in the rule of law to which we as a country have always aspired, in furtherance of a Constitution ordained and established to form a more perfect Union and, most of all, to people’s lives. Let’s let that vision motivate us.

And let us at the Bar Association make it easy for you to become engaged. We have long had programs providing legal services to those with lesser means, such as the Cleveland Homeless Legal Assistance Program (in partnership with the Northeast Ohio Coalition for the Homeless), the Bankruptcy Pro Bono Project and Bankruptcy By-Pass Program (in partnership with Legal Aid), and the Pro Se and Pro Se “Plus” Divorce Clinics (in partnership with Legal Aid and the Cuyahoga County Domestic Relations Court). Also in partnership with Legal Aid, we are gathering volunteers to participate in brief advice clinics located at schools within the Cleveland Metropolitan School District. And our Executive Director, Becky McMahon, in the January edition of the Bar Journal, called for volunteers to help staff new “modest means” initiatives. I know that Colleen Cotter and the good folks at Legal Aid would welcome your call as well.

I challenge each and every one of us to make even a micro-commitment to this fundamental cause. I believe we can create the first true “All-Access Legal System” right here in Cleveland. Because I Believe in the Land.

Richard D. Manoloff

Rick Manoloff is President of the CMBA, and is former President of the Cleveland Metropolitan Bar Foundation. For a dozen years, he served as the Bar Association’s appointee to the Ohio State Legal Services Association, which provided direct legal services in southeastern Ohio and provided support services to legal aid societies throughout Ohio. He has been a CMBA member since 1993. He can be reached at (216) 479-8331 or rick.manoloff@squirepb.com.
Lawyers Make Great Leaders

A t the start of this membership year ... way back on July 1, 2016 ... we debuted a new “Strategic Plan for Action” within our Association. The plan centers on the vision that by 2026, the CMBA will become:

• the ‘go-to’ organization in greater Cleveland on matters of law and justice;
• among the leading organizations in Northeast Ohio;
• a more outward-facing convener as a result of expanded collaborations with other bar associations and community organizations; and
• an indispensable resource for every legal professional in greater Cleveland.

Driving toward that vision, the Plan spotlights four critical areas for attention:
1. Strengthening and growing our membership through our value proposition and member engagement;
2. Maximizing the impact of programs and services designed by and for our sections and committees;
3. Developing and engaging leaders for our Bar and our profession; and
4. Continuing our evolution as a thought leader by serving as a community convener on issues of critical importance.

During the past year, we have taken a much deeper dive into all of these areas of focus through our Board, our established sections and committees, and through the formation of nearly 20 working groups comprised of a variety of members. Time and again we heard from key stakeholders that one of the best aspects of our members’ engagement with the CMBA is the opportunity to assume leadership roles within our sections, committees, boardroom and more. Many of those stakeholders also told us that we could and should do more to support lawyers becoming better leaders in their firms, legal departments, agencies and nonprofits and beyond.

As a direct result of that feedback, we are launching the CMBA Leadership Academy this fall in order to provide lawyers with the opportunity to intentionally expand their capacity for leadership within their places of employment, the Bar, the legal profession and the Greater Cleveland community. We will be accepting lawyers for one of two cohorts: the Emerging Leaders Class has been designed for attorneys who have been practicing law a minimum of five years; and the Established Leaders Class targets attorneys who have been practicing 15 years or more. Each cohort will be limited in size in order to maximize the opportunity for individual engagement. Class members will reflect a broad-spectrum of attributes, including diversity of experience, practice, race, gender, ethnicity, thought and more.

The Leadership Academy will run September to June 2018, and will feature monthly sessions focused on specific topics that are critical for leadership in the legal profession and beyond. In addition to assessing individual leadership styles, the program will explore subjects such as:
• Driving Change – Personally and Organizationally
• Inclusive Leadership in a Rapidly Changing World
• It’s Not What You Say – It’s What They Hear (translation: having difficult conversations and communicating your way through crises)
• Opening Doors to Executive Leadership and Elected Office

The faculty for this dynamic, highly interactive program is being drawn from a variety of public, private and nonprofit organizations. From executive coaches, judges, managing and senior partners, to C-suite executives and civic leaders, our class members will have the opportunity to learn from and get to know some of Cleveland’s most influential decision-makers and thought leaders.

One of the unique components of the CMBA Leadership Academy will be our “Coffee & Conversation” segment. Each of the monthly sessions will include a facilitated conversation between one of our community’s preeminent lawyers and one of his/her “C-suite” clients. Together, the two will candidly discuss:
• their individual pathways to success;
• what it takes to build a successful attorney-client relationship;
• how lawyers can navigate their careers into senior leadership positions within the legal, business and civic arenas; and
• their personal leadership philosophies.

Following each conversation, both cohorts will have the opportunity for personal networking with our participants. A few of our committed speakers include: Tom Anderson, SVP Regional Wealth Executive, Huntington National Bank; Catherine M. Kilbane, SVP, General Counsel and Secretary, The Sherwin-Williams Company; Joseph G. Leonti, VP, General Counsel and Secretary of Parker Hannifin Corporation; P. Kelly Tompkins, Executive Vice President & Chief Operating Officer, Cliffs Natural Resources; and Thomas Wynne, VP and General Counsel, The Interlake Steamship Company.

If you are interested in joining our Leadership Academy, apply! All applications are due by 5 p.m. on June 1. Additional details regarding the program, the schedule, the application process, the cost and more are available at CleMetroBar.org/Leadership. Or call me at (216) 539-3710 or send an e-mail.

We hope you are as excited as we are about this new opportunity to further support the development of collaborative, well-informed leaders within Cleveland’s legal community. Come meet us at the Bar!

Rebecca Ruppert McMahon is the Executive Director of the CMBA and the CMBF. She has been a CMBA member since 1995. She can be reached at (216) 696-3525 or rmcmahon@clemetrobar.org.
Steve Day
Firm/Company: Calfee, Halter & Griswold LLP
Title: Partner
College: University of Illinois
Law School: Case Western Reserve University
Join date: 2007

IF YOU WERE NOT PRACTICING LAW, WHAT WOULD YOUR PROFESSION BE?
Probably a teacher or a professor. I taught several classes while in grad school at Illinois and really enjoyed it. I present at a few classes a year at the Cleveland Institute of Art and Cleveland State University through CMBA’s Volunteer Lawyers for the Arts, and it’s always a fun time.

WOULD YOU CONSIDER VOLUNTEERING FOR A ONE-WAY MISSION TO MARS?
No way. I’ve seen The Martian and I’m not very handy. I’d be dead before I figured out how to get the helmet on.

CAN YOU PLAY AN INSTRUMENT?
A few. I grew up playing the drums. Although I am somewhat proficient on the bass, my main instrument has always been the drums. I am currently in a band called Splitroot. We’ll be playing at the Hessler Street Fair Saturday, June 3 at 2 p.m.

IF YOU COULD GO TO DINNER WITH A FAMOUS PERSON, LIVING OR DEAD, WHO WOULD IT BE AND WHY?
If could go to dinner with a famous person, it would have to be George Harrison. I would just want to talk to George about music and try to learn about his time in the Beatles. The Beatles have always been my favorite band. I personally think George was the most talented Beatle and had the best solo career.

WHAT DO YOU LOVE ABOUT YOUR JOB?
Being able to be my own boss. Although it is difficult running your own business, there is a certain joy I receive from being able to make my own decisions.

TELL US WHAT YOU LOVE ABOUT CLEVELAND.
I am a big fan of Cleveland! I live within the city and have always taken great pride in our sports teams. I am a huge Indians fan and hold season tickets with a good friend of mine. Cleveland also has a wonderful music scene!

DESCRIPT AN IDEAL SUNDAY.
Sleep in until 9 a.m. and have a big breakfast consisting of bacon, eggs, hash browns, and an English muffin. Then, I would relax and maybe play drums for a little bit. Afterwards, I would go to the rec center to get a good work out. Then, I would stop by the office and work for a few hours. I would end the day by going over to my friend’s house and watching a scary movie.

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Mark A. Cicero
Firm/Company: Cicero Law Firm, LLC
Title: Owner and Attorney
CMBA Join Date: 2017
Undergrad: Cleveland State University
Law School: The University of Akron, School of Law

IF YOU WERE NOT PRACTICING LAW, WHAT WOULD YOUR PROFESSION BE?
I would want to be a musician. I have been playing in bands almost non-stop since I was 13-years-old. Although I am somewhat proficient on the bass, my main instrument has always been the drums. I am currently in a band called Splitroot. We’ll be playing at the Hessler Street Fair Saturday, June 3 at 2 p.m.

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Edel Mix-Smith
Firm/Company: CMBA
Title: Receptionist/Facility Coordinator
Start Date: October 2016

MOST MEMORABLE CMBA MOMENT
When my awesome co-worker Jessica Paine and I were filmed in a “mock trial” at the Justice Center. We portrayed two defendants, one white and one black. The film is being used to try to put a stop to unjustified lengthy sentencings of African Americans minorities as opposed to the sentencings of caucasians. It was a fun experience as well as something I was proud to be a part of that can help the community.

WHAT WAS YOUR FIRST PET? ITS NAME?
My first pet was a terrier mixed with poodle named CoCo. I got him when I was 5 years old and had him all the way up until I was 21. He was put down due to various ailments of old age.

WHAT WOULD REALLY SURPRISE PEOPLE ABOUT YOU?
Most people can’t believe my age and that I have two grandchildren. I am 48-years-old, and my grand daughters are 4 years old and 6 months old.
I wish to reserve ________ seat(s) or ________ table(s) for the 10th Annual Meeting.

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Join us at our Mardi Gras style celebration for the installation of 2017–2018 CMBA President Darrell A. Clay of Walter | Haverfield LLP and incoming Bar Association and Bar Foundation officers and trustees. As we celebrate a decade of CBA/CCBA unification, we will also honor members who have achieved legend status, including this year’s award recipients and the 2017 class of 50- and 65-year practitioners.
Why Am I Paying into the Lawyers’ Fund for Client Protection?

BY HON. JOHN J. RUSSO

In 1977, a young Cleveland attorney joined the Ohio Bar, just one of hundreds of lawyers beginning their careers in a challenging and exciting profession. This attorney eventually went on to have a successful law practice with an office on Public Square in Cleveland.

But several years ago, it all fell apart. The attorney was accused of pocketing his client’s fees and not doing the work he was hired for. In November of 2012, the attorney was suspended by the Ohio Supreme Court. He resigned with discipline pending in August of 2013. The Disciplinary Counsel’s report is now filed under seal, but the man’s legal career was over.

Left behind in the aftermath were dozens upon dozens of people who felt they’d been cheated. They filed claims against the attorney for the fees he collected but did not earn. Those claims went to the Lawyers’ Fund for Client Protection, which I am currently the chairman of.

There’s an old saying that one bad apple doesn’t spoil the whole barrel. But when it comes to attorneys, one bad apple can certainly make the rest of us look bad. That’s why the Ohio Supreme Court created the Lawyers’ Fund for Client Protection (LFCP). Quite simply, the LFCP reimburses the clients of dishonest attorneys when a theft has been committed.

Unless you’ve been directly involved in the Fund, you may not know much about it. Since it was established by the Ohio Supreme Court in 1985, the Fund has reimbursed more than $20 million to 2,830 former law clients.

For fiscal year 2016, the Supreme Court allocated $1.4 million to the Fund to reimburse law clients. 190 claims were reviewed by the Fund’s board in 2016, and more than $782,000 was reimbursed to 150 people who were deemed eligible. These were clients who sustained financial losses because of the conduct of 48 lawyers who were licensed to practice law in Ohio. The good news is that number represents less than one-tenth of one percent of all active attorneys in the Buckeye State.

Of those 150 cases in 2016, 125 were unearned fee claims. 19 claims resulted from thefts by fiduciaries and the other four claims involved theft-of-settlement proceeds. The maximum amount that may be reimbursed is $75,000 per claim. During fiscal year 2016, one claimant, a resident of Cuyahoga County, received the maximum reimbursement. 97 claimants received 100% reimbursement for their losses.

And it’s not just the victims of unscrupulous acts that are helped by the Fund. Former clients of 12 deceased lawyers were reimbursed by the Fund as the clients paid for services that were not provided and did not receive refunds of their unearned fees.

So where does the money come from? It comes from us. Funding for the support of the Lawyers’ Fund for Client Protection is provided by attorney registration fees that are collected by the Supreme Court of Ohio.

In a December 2016 Gallup Poll of honesty and ethical standards in professions, 37% of respondents said that lawyers were either low or very low when it comes to honesty. Only 18% rated us high or very high.

Since the days of Shakespeare, lawyers have long been the butt of jokes and political cartoons. One of my favorites came from the comedian Steven Wright when he said, “I busted a mirror and got seven years bad luck, but my lawyer thinks he can get me five.”

But I would argue that very few of us got into the business hoping to become wealthy. I believe that the majority of us became attorneys because we wanted to help people. Some may have been following in the footsteps of family members. Others may have hoped to someday right an injustice they witnessed. Still others sought the challenge and strength that a well fought case can provide.

But, at the heart of it all, it’s the client that matters. An accused killer is provided an attorney to make sure his or her rights are upheld. An elderly woman seeks help with a will so that the right people inherit her beloved china and small bungalow home. A young
woman who saved years for her first new car loses it because a drunk driver made a wrong turn. The cases are endless, and the people entrust their losses and futures to us.

It's a daunting task sometimes. Lawyers have a power and ability that, to many, is intangible. They trust that we are doing right by them. They hope that the fees we charge are fair. They cry when the legal outcome is not what they expected. They hug us when justice has been fairly served.

And that brings me back to the less than one-tenth of one percent who, in some way, cheated their clients to the point where a claim was made. Shame on them for abusing the privilege of practicing law. Shame on them for using their skills to take advantage. And shame on them for giving new life to those worn-out anti-lawyer sentiments.

And bravo to the six commissioners of the Lawyers' Fund for Client Protection who serve on the board with me. These individuals volunteer their time and expertise to help improve the image of the legal profession by helping those who have been harmed by the dishonest acts of a few. Because of the allegations against our fellow attorneys, it's not easy to read these cases. But these few lawyers don't represent the legal community as a whole. The Fund board helps those clients who can't help themselves.

And don't think for a moment that the 48 lawyers singled out by the Fund in 2016 were given slaps on the wrist and scolded with a, "Don't do that again." They have all been sanctioned for their actions. Many will never practice law again.

That Cleveland attorney mentioned at the beginning of this article is among those who have forfeited the privilege of being an attorney. In 2016, the Lawyers' Fund for Client Protection awarded compensation to 15 people who claimed that lawyer was paid for work that didn't get done. The total amount was $18,079, or more than $1,000 per case. But 2016 was actually the fourth consecutive year of reviewing claims against the same attorney!

In 2015, the Lawyers' Fund for Client Protection awarded $53,000 in compensation to 49 people who claimed that he was paid for work that didn't get done. In 2014, 54 claims were processed at a cost of $64,905. Three claims against the same attorney were processed in 2013. If we add it all up, that's 121 claims and a total of nearly $137,000 in compensation for just one attorney. That's 121 angry people who could have told their friends and relatives how a "crooked lawyer" cheated them.

Instead, because of the Fund, we have 121 angry people who were compensated for their losses and had a different ending to report to the people they know.

The question you might be asking is, "Why should we have to pay for someone else's poor behavior?" I could give you a long, drawn out dissertation, but the simple answer is, "Because it's the right thing to do." People come to us for help because the law is complicated and intimidating. When an attorney does wrong by his or her clients, it's our responsibility to punish them and help clean up the mess.

The Supreme Court's Disciplinary Counsel pulls the bad apples out of the barrel. The Lawyers' Fund for Client Protection makes sure their victims are properly reimbursed. You are part of that, and I thank you.

If you would like more information, visit http://sc.ohio.gov/Boards/clientprotection/default.asp.

Hon. John J. Russo is in his fourth year as the Administrative and Presiding Judge of the Court of Common Pleas of Ohio in Cuyahoga County. Judge Russo is responsible for appointing committees, coordinating the development of Court policies, and overseeing the administration and dockets of the General Division. Along with work on the Lawyers' Fund For Client Protection, Judge Russo is involved in numerous justice system boards and committees, and also teaches at the Cleveland-Marshall College of Law. Prior to the bench, Judge Russo was a civil and criminal litigator for 12 years in his private practice. He has been a CMBA member since 1994. He can be reached at (216) 443-8676 or cpjr1@cuyahogacounty.us.
Welcome.

We here at the CMBA are meeting planners ourselves, so we know how many details go into executing a successful event. We do our absolute best to make sure every experience is seamless. You forget an easel, or need an extra registration table? We’ve got you covered, free of charge. Our “all inclusive approach” lets you deal with one contact for all set up, AV and catering needs. We can host board meetings, trainings, receptions, staff retreats, yoga, the list goes on. Best of all, our doors are open to all of Cleveland, whether or not you are part of the legal community. If you are someone who needs space, we have it. Check us out today!

Sarah
The “AV Guy”

Lucy
Cuisine Consultant

Melanie
HVAC Technician

CleMetroBar.org/ConferenceCenter

The Conference Center at the Cleveland Metropolitan Bar Association offers excellent options to meet your needs and save you money for groups of four to 400.

Contact Melanie Farrell at (216) 539-3711 or mfarrell@clemetrobar.org.
The election of Donald Trump as President with a Republican-controlled Congress has created the possibility of substantial changes within the field of labor law because President Trump has the opportunity to significantly alter the composition of the National Labor Relations Board (NLRB or Board).

Presently, the five-member NLRB has a 2-1 pro-labor majority, with two vacancies. While it may take some time for President Trump to fill these positions, President Trump’s appointees will likely flip the Board from pro-labor to a pro-business majority.

This change in ideology will likely affect a number of areas of labor law, including reversing some of the Board’s major decisions during the Obama Administration. In particular, this shift could result in substantial changes to the Board’s positions on joint employment, class action waivers, and what is considered protected concerted activity, among other hotly contested topics.

**Joint Employer (Browning Ferris)**

In August 2015, the NLRB significantly modified the standard for determining joint employer status. *Browning-Ferris Industries of Calif., Inc.*, 362 NLRB No. 186 (Aug. 27, 2015). The decision was widely considered one of the Board’s most significant in years because it altered a joint employer standard that had been in effect for over three decades, making it much easier for entities to be classified as joint employers. The *Browning-Ferris* standard evaluates whether a common-law employment relationship exists and whether an employer “possesses sufficient control over employees’ essential terms and conditions of employment to permit meaningful bargaining.” *Id.* Critically, the new standard allows control to be established directly, indirectly, or even through a reserved right to control, whether or not that right is ever exercised. *Id.*

*Browning-Ferris* significantly broadened situations in which an employer will be considered a joint employer, and therefore subject to collective bargaining obligations for third party employees, liability for unfair labor practices committed by or on behalf of third party employers, and more. With a pro-business majority, business groups are hopeful that the NLRB will revisit the *Browning-Ferris* decision and restore the previous longstanding joint employer standard, which only permits a finding of joint employment when two separate entities share or codetermine matters governing the essential terms and conditions of employment.

Of particular note, President Trump has already appointed Philip Miscimarra as the acting Board Chair. Notably, Chairman Miscimarra penned a lengthy dissent from the Board’s decision in *Browning-Ferris*. Under his leadership, with a Republican majority, the joint employer standard will likely change.

**Class Action Waivers**

The NLRB’s position on class action waivers during President Obama’s tenure could also be subject to change. Though the issue is currently set to be heard by the U.S. Supreme Court during the 2017 term, *NLRB v. Murphy Oil USA, Inc.*, No. 16-307, if the Court fails to resolve the issue, the new NLRB may have the opportunity to make a substantial change to its existing position.

In *D.R. Horton*, 357 NLRB No. 184 (2012), the NLRB held that requiring employees to waive their right to bring a collective action violated the National Labor Relations Act (NLRA). The Board took the position that class action waivers unlawfully infringed on employees’ ability to engage in protected concerted activity by limiting employees’ opportunity to join together in litigation. *Id.* The Fifth Circuit denied enforcement of the NLRB’s decision, but other Circuit Courts have followed the NLRB’s approach.

If the Supreme Court does not resolve the Circuit split, the NLRB could reverse its stance on the validity of class action waivers and take the position that employers should have the freedom to contract with their employees in the manner they see fit.

President Trump’s influence on the outcome of this issue will also be felt through the participation of new Supreme Court Justice Neil Gorsuch, who is expected to play a deciding role in the outcome of the case.
College and University Employment

Colleges and universities have recently been an area of focus by the NLRB, with issues like the potential compensation of Division I student athletes and the labor rights of various university personnel - primarily athletes, graduate assistants, and adjunct professors - coming under scrutiny. The Board has issued a number of opinions in these cases, and General Counsel Richard Griffin has issued advisory memoranda.

Most recently, General Counsel Griffin issued a memorandum in which he concluded that football players at Division I FBS private-sector colleges and universities are employees under the NLRA. Memorandum GC 17-01. The NLRB had previously declined to address this issue in Northwestern University, 362 NLRB No. 167 (2015), when it was asked to determine whether Northwestern’s football players could unionize. In contrast to the NLRB’s decision, the General Counsel’s memorandum was broad, implying that other student workers may also be considered “employees” under the NLRA.

Though the General Counsel’s term does not expire until late in 2017, President Trump will have the opportunity to appoint a replacement. With a more pro-employer individual in this role, the General Counsel’s position on this issue is likely to change.

The Board also recently held that graduate assistants at private universities are employees under the NLRA. Columbia University, 02-RC-143012 (Aug. 23, 2016). As such, graduate assistants are entitled to all the protections granted to employees under the NLRA, including the right to unionize.

Chairman Miscimarra dissented in this case, worried that the unionization of graduate students could “wreak havoc” on students’ education, citing concerns about lockouts and strikes. Id. He considered a graduate student’s primary role to be a student, not an employee. Id.

As with his Browning-Ferris dissent, Chairman Miscimarra’s opinion in this case likely provides guidance as to the direction of a Trump Administration Board. Under a pro-management Board, with a Trump-appointed General Counsel, there is a real possibility of substantial change to the Board’s approach to student athletes and graduate assistants.

Employee Handbook Policies

The current Board has also taken a strong stance on the breadth of employees’ rights to engage in protected concerted activity, particularly as that right pertains to policies in employee handbooks. Following a number of NLRB cases which held that employers’ handbook language violated the NLRA, the General Counsel released a memorandum to provide guidance to employers. Memorandum GC 15-04 (Mar. 18, 2015). Relying largely on the Board’s precedent in Lutheran Heritage, 343 NLRB 646 (2004), the General Counsel found that handbook policies hinder Section 7 activity if they could be reasonably construed by their employees as restricting the pursuit of protected concerted activity, even if the policy was not intended to have that effect. Id.

In particular, the General Counsel found fault in a broad variety of confidentiality policies and policies relating to employee conduct, including policies that required employees to keep workplace investigations confidential. See also Banner Health. This memorandum greatly increased the likelihood that an employer’s policies could be found to infringe upon an employee’s Section 7 rights, and has been an area of targeted enforcement during unfair labor practice proceedings.

The General Counsel’s guidance has proved especially difficult for employers in the area of social media policies. Employers often seek to limit what their employees are permitted to discuss about the workplace on their social media platforms; however, under the current Board and General Counsel’s approach, restricting employee social media use could be considered to affect employees’ Section 7 rights given that social media is a potential platform for employees to engage protected concerted activity.

It is no secret that Miscimarra strongly opposes the standard outlined in Lutheran Heritage for assessing whether an employer’s handbook policies or provisions violate the NLRA. Instead, Miscimarra suggests a balancing test, which focuses on employees’ rights under the Act and which takes into account employers’ legitimate justifications for a particular policy or rule. If the Trump Board adopts Miscimarra’s revised standard or otherwise overrules the standard articulated in Lutheran Heritage, employer’s handbook policies will undoubtedly be subject to much less scrutiny.

Other Potential Changes

In addition to the shifts in policy listed above, the Board under the Trump Administration will also likely make substantial changes in the following areas: 1) the inclusion of temporary workers in bargaining units with an employer’s...
other employees; 2) when employees are permitted to protest on their employer’s property; 3) the policies and procedures for representation elections; 4) the employer’s limited ability to object to the union’s proposed bargaining unit during an election described in Specialty Healthcare, 357 NLRB No. 83 (2011); 5) the Purple Communications, 361 NLRB No. 126 (2014) decision, which provided employees access to employers’ email systems for the purpose of engaging in protected concerted activity; and 6) Weingarten rights, which provide employees with a right to union representation during investigatory interviews.

In sum, employers and labor law practitioners will likely see a wide variety of changes in labor law over the next several years, and should watch closely to ensure that they are compliant with the latest directives from the NLRB.

Patrick O. Peters is a Principal with the Cleveland office of Jackson Lewis P.C. In addition to representing management clients in employment-related litigation and providing day-to-day advice and counsel, Pat leverages his years of employment law experience into a growing specialty practice managing more than a dozen employer-client relationships nationwide. He has been a CMBA member since 2005. Pat can be reached at (216) 750-4338 or Patrick.Peters@JacksonLewis.com.

Kathleen M. Tinnerello is an Associate in JL’s Cleveland office where she focuses her practice on employment litigation and traditional labor law. She is active in the firm’s Labor & Preventive Practices practice group (LPG). Kathleen has been a CMBA member since 2009. She can be reached at (216) 750-4335 or Kathleen.Tinnerello@JacksonLewis.com.

Stephen R. Beiting is an Associate in JL’s Cleveland office where he is also active in the LPG. On a daily basis, Steve works with unionized employers in representation elections and labor arbitrations involving claims of wrongful discharge, contract interpretation, and unfair labor practice. He has been a CMBA member since 2013. Steve may be reached at (216) 750-4329 or Stephen.Beiting@JacksonLewis.com.

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50 Shades of Grey
Rise of Nationalism in the Global Economy

BY RENUKA RAMAN

Nationalism, is an ideology that gives a nation a sense of unity by imposing self-governance; free from unwanted outside interference and develop and maintain a national identity based on shared characteristics such as culture, language, political goals, etc. Globalism, on the other hand, is an ideology that promotes an open border concept, free movement of economy, finance, trade, and communications worldwide. A balance between the two ideologies is important for maintaining both a strong national identity and be part of the global economy; imbalances may lead to issues similar to what is faced by United Kingdom in its impending departure from EU.

EU AND BREXIT
Globalism led to the formation of European Union (EU), which is an economic and political partnership formed after World War II, by six founding countries, namely, Belgium, France, Germany, Italy, Luxembourg and the Netherlands, to foster economic cooperation, with the idea that countries that trade together are more likely to avoid going to war with each other. Since its foundation, the EU undertook continuous modifications to adapt to the changing world, like expanding its member countries to 28, separate governance system, strong market for Europe as a bloc, etc. Recently, one of the treaties that gained attention is the Treaty of Lisbon that became law in 2009. Article 50 of the said treaty listed conditions for member states in the event they choose to withdraw from the EU. It, *inter alia*, states that (1) a member state may decide to withdraw from the EU ‘in accordance with its own constitutional requirements’; (2) any member state that decide to quit, must notify the European Council and negotiate its withdrawal with the EU within 2 years from the date of such notification, unless all members agree to extend it; and (3) the exiting state cannot take part in EU internal discussions about its departure.

Though the EU has been immensely successful, cracks have developed over 44 years of togetherness between EU and United Kingdom of Great Britain and Northern Ireland (UK), the UK, currently the only full member state to have decided to separate itself from EU, holding a referendum on June 23, 2016 (Brexit). The referendum does not automatically trigger a notification of withdrawal. The UK invoked Article 50 on March 29, 2017 by a formal letter to EU and now it has to exit completely by March 29, 2019, unless extended as stated above. This Brexit has lead to many challenges for EU, the UK and the rest of the world.

CHALLENGES FOR THE UK

Within the UK

Of the many legal challenges faced by the UK, one would be battling on her own soil with members of its union. Going back in history, UK is an alliance of 3 countries formed in the 1800s. Pursuant to Acts of Union in 1707 and 1800, Kingdom of Scotland and Republic of Ireland were united with Kingdom of England (which included Kingdom of Wales). This union provided its members with guaranteed access to colonial markets and equal footing in terms of trade, while maintaining its national identities and governance. This formation of the UK is a classic example of nationalism and globalism working in harmony. Now, with the Brexit, this balance is tilting towards nationalism giving rise to more complexity. Each of its members are focusing on their national interests, Kingdom of Scotland has voted not to leave EU, while Republic of Ireland is undecided about its position with EU. UK’s alliances dates before EU, it will be fascinating to see how the issues unfold, for example, the UK have free movement of people, goods and services, etc. amongst themselves. Does exiting EU mean exiting the union by all members of the UK or only Kingdom of England? Surely, the UK would have to deal with multiple legal orders in relation to various provisions with members of its union, while simultaneously negotiating with the EU.

With the EU

Being a part of EU meant, amongst others, that (i) UK had easy market access to other member states; (ii) free trade agreements helped UK’s businesses to manufacture and trade at competitive prices; (iii) UK had reduced administrative burden by adopting to EU laws and EU justice system for most parts. With Brexit, there is a real risk that the UK may be shut off from operating in the European single market and losing all or some of its benefits.

It has opened a new chapter of regional, bilateral and multilateral trading relationships. An ideal case for Britain would be to have access to EU as single market, which would reduce cost and complexity for both parties. However, the EU may not prefer this as it may create precedence for other member states to follow suit.

Brexit opens up a Pandora’s box that include potential increase in tariffs, no free movement of goods, cross-border security arrangements, moving EU agencies, etc.; the most important according to me would be dealing with contracts and its enforceability. Renegotiating a web of

IMPACT OF BREXIT

• Bilateral agreements
• Movement of capital
• Movement of people
• Movement of goods & services
• Existing relations
• EU / Non EU countries
• Dispute resolution
contracts would present an opportunity for increased legal work, costs and complexities. Companies and law firms may position themselves to structure new contracts to more suit the times. With respect to existing commercial contracts, whether Brexit provides grounds for termination of an existing contract would depend very much on the particular terms and specific facts. Since changes in a party’s economic circumstances are generally not been held to qualify as force majeure events under English law, the existing contracts may be frustrated. Other countries would not be interested in bearing costs on renegotiation, especially since it was caused by the UK.

Presently, EU Regulations provides, among others, (i) easy recognition and enforcement of judgments made by member state courts in other member states; (ii) a detailed regimen for determining questions of jurisdiction and avoids the risk of parallel proceedings in courts of different member states; (iii) injunction orders within member states, whereby courts of an member state may not grant injunctions to restrain a party from continuing proceedings in another member state. Post Brexit, particularly, if no treaty is entered to replace the existing arrangement with EU, it is possible that enforcement of English judgments in other member states, service on defendants would, at least procedurally, be more complicated. Whether it will take longer as a matter of fact is difficult to predict. There would be an increased risk of parallel proceedings in English and member state courts with added risk of inconsistent judgments. If the UK does not get access to European Court of Justice then international disputes may be referred to World Trade Organization’s dispute resolution.

CHALLENGES FOR THE U.S.
The Transatlantic Trade and Investment Partnership (T-TIP) is a trade and investment agreement between the United States and the EU, which provides American businesses to have increased access to European markets and vice versa. Both the economies are committed to high standards of consumer protection in the world. Interestingly, total U.S. investment in the EU is three times higher than in all of Asia in 2016. (Source: http://ec.europa.eu/trade/policy/countries-and-regions/countries/united-states/). The UK is one of the largest markets for U.S. goods exports and one of the largest suppliers of U.S. imports.

The United States and the UK share the world’s largest bilateral foreign direct investment partnerships. Brexit could trigger lasting economic and political problems for U.S. companies, particularly for banking industry. For decades, the U.S. has championed a common economic and political bloc in Europe, and any signs of its disintegration with the United States’ largest trading partner may be contrary to U.S. interests.

Although T-TIP would continue to exist, the benefits derived by the United States may reduce, given that most trades are with the UK. Apart from contracts and its enforcement that are discussed above, that remain same to the United States, some of the additional issues would be: (1) challenges for U.S. corporations could include increased tariffs on goods, additional customs clearance requirements, end to the free movement of resources, relocation of employees; (2) the United States may have to enter into bilateral agreement with the UK; (3) the legal framework for M&A transactions may undergo a change since the EU created a one-stop shop where companies could request clearance for their mergers and acquisitions in the whole of the EU. Post Brexit, the United States may have to apply to EU and the UK separately for merger clearance, thus leading to added costs and bureaucracy.

Though a major portion of the pro-Brexit vote might have been to show the displeasure of the vast movement of people to the UK from poorer European countries, refugees from the Middle East and Africa, it serves as a reminder that though it is nice to think of the EU as a single entity, it is made up of very diverse set of cultural, economic and social backgrounds and protecting unique identities is becoming a priority. I believe any change of law is an opportunity for countries to realign their national interests in the global economy, while opening up significant opportunities for attorneys and law firms in crafting the same.

Data compiled July 26, 2016. Data based on table 1 of the quarterly FFIEC E.16 Country Exposure Lending Survey; 71 U.S. banking organizations completed the survey each quarter. *Exposure is defined as country risk claims that are the sum of cross-border claims, foreign-office claims on local residents and claims from derivative products on an ultimate-risk basis. Excludes exposure to international and regional organizations. Sources: FFIECL; SNL Financial, an offering of S&P Global Market Intelligence.

Renuka Raman received her masters in business law from The Ohio State University and currently licensed in the United States (State of Ohio), India and United Kingdom and has over 8 years experience handling matters relating to corporate law, international transactions and immigration law. She is a CMBA member since 2015. Renuka can be reached at (440) 381-2593 or raman.renuka@gmail.com.
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Good Workplace Investigations Are Good Business

BY DIANE CITRINO & DANIELLE LINERT

Conducting thorough and impartial workplace investigations is good business — pure and simple. When addressing employee complaints or allegations of other workplace misconduct, employers should conduct their investigations in a prompt, fair, and objective manner. The selection of the right investigator is critical. Failing to conduct a proper investigation exposes employers to the risk that they will not be able to adequately justify any decisions stemming from the investigation results and can bar employers from asserting what would otherwise be available defenses.

In 1998, the Supreme Court recognized the principle that proper investigations provide good defenses in Ellerth v. Burlington Industries, Inc., 524 U.S. 742, 118 S. Ct. 2257, 141 L. Ed.2d 633 (1998) and Faragher v. Boca Raton, 524 U.S. 775, 118 S. Ct. 2275, 141 L. Ed.2d 662 (1998). In these cases, the Court held that employers may avoid liability for harassment or discrimination claims that do not involve adverse employment actions if the employer can show that (1) it took reasonable steps to prevent and promptly correct such harassment or discrimination in the workplace and (2) the plaintiff failed to take advantage of the preventive or corrective measures offered by the employer.

When employers are made aware of alleged misconduct or an employee complaint, they must first determine whether to initiate an investigation. The answer is almost always — “yes,” an investigation should take place. An employer is obligated to conduct an investigation when it knows or has reason to know that an employee is being subjected to discrimination, harassment or other unlawful conduct in the workplace, even if the employee never submits a formal written complaint. Courts have repeatedly recognized that minimizing or ignoring complaints of unlawful treatment can jeopardize available defenses or subject employers to liability. A Pennsylvania Court held that punitive damages were appropriate in a hostile work environment suit where the plaintiff’s repeated complaints about a co-worker’s sexually charged conduct went ignored and the employer did not conduct an investigation. See Scaife v. Wheaton & Sons, Inc., W.D. Pa. No. 2:14cv708, 2015 U.S. Dist. LEXIS 33549 (March 18, 2015). In another case, in which the supervisor of an employee complaining of sexual harassment told her “ignore it and smile,” the court held that the employee’s claim for intentional infliction of emotional distress would survive a motion to dismiss. See Gillum v. Safeway, Inc., W.D. Wash. No. 2:13-cv-02047, 2015 U.S. Dist. LEXIS 181593 (November 20, 2015). In Meng v. Aramark Corp. N.D. Ill. No. 12-cv-8232, 2015 U.S. Dist. LEXIS 36278 (March 24, 2015), the court found that a triable issue of fact remained regarding whether the employer properly investigated a female employee’s report of sexually suggestive graffiti where the investigators failed to take notes during their investigation, shrugged off the employee’s report of concerns by saying “You can’t change stupid people,” declined to actually view the graffiti, and told the employee that the person responsible for the drawing would not be found. The court determined that the investigators’ actions “fell short of what one might reasonably expect of his or her employer.”

The bottom line is that all employee complaints regarding unlawful treatment and other workplace allegations of misconduct should be taken seriously and investigated. Ignoring complaints is the surest way to create a landmine of opportunities for potential plaintiffs.

Once the decision has been made that conducting an internal investigation is appropriate, employers need to select the right investigator. The person chosen to investigate should be (1) unbiased and neutral, (2) have an understanding of applicable laws, regulations and policies, and (3) be able to instill confidence and gain the trust of all parties involved that the investigation will be fair and impartial. It can be an employee of the company or an independent neutral third party investigator specializing in workplace investigations. Regardless of whether an internal or external investigator is selected, that person should have training and experience with investigations, use a professional demeanor, and be well-versed in the assessing witness credibility and handling confidential matters. The investigator will be an important witness if the investigation is challenged or the matter results in a lawsuit. Employers want to select someone that employees, administrative agencies, and courts will find trustworthy and credible.

In some cases, human resources and management personnel are appropriate investigators; in others, an outside investigator may have better training, experience or impartiality. When the allegations of wrongdoing involve
may make more sense. A n investigator who is investigation, selection of an outside investigator someone who normally would be conducting the highest levels of the organization or involve there might be a job opportunity at one of the employer's sister companies but warned her that reporting the harassment might jeopardize that opportunity. The investigator also failed to interview the proper witnesses. The employer’s selection of a biased investigator resulted in a significant punitive damages award that far exceeded the compensatory and other damages awarded. See also Mendoza v. W. Med. Ctr. Santa Ana, 222 Cal.App.4th 1334, 1344, 166 Cal.Rptr.3d 720 (2014) (“The lack of a rigorous investigation by defendants is evidence suggesting that defendants did not value the discovery of the truth so much as a way to clean up the mess that was uncovered when [the plaintiff] made his complaint.”)

Additionally, a supervisor should not be selected to conduct an investigation into the alleged misconduct of an employee where that employee has accused that supervisor of wrongdoing in the past. See Douglas v. Aiken Regional Medical Center, D.S.C. No. 1:12-cv-02882-JMC, 2015 U.S. Dist. LEXIS 41176 (March 31, 2015). The suggestion of bias can undermine the process and compromise defenses.

Even if an investigator does not ultimately decide whether or how to discipline an employee, the investigator’s alleged bias could impact the employer under the “cat’s-paw” theory. This theory recognizes an employer can be liable for discrimination (1) if an ultimate decision-maker was “duped” by a biased manager who reports an employee for misconduct and (2) the reports from the biased manager were not truthful. Courts have applied this rationale in the context of workplace investigations and held that, if an unbiased manager takes disciplinary action against an employee based on a biased investigator’s findings, the employer may be liable for discrimination. See Staub v. Proctor Hospital, 562 U.S. 411, 422, 131 S. Ct. 1186, 179 L.Ed.2d 144 (2011); Bowish v. Federal Express Corp., 699 F.Supp.2d 1306 (W.D. Okla. 2010).

These decisions demonstrate that using investigators with an obvious or perceived bias can severely hinder the ability of employers to defend their actions in subsequent litigation and may, in fact, result in punitive damages for a plaintiff because of a tainted investigation. When thinking of how bias can affect an investigation, most employers think only of how bias might affect the reporting party. Employers, however, are also susceptible to claims by employees who allege that they were wrongfully accused of misconduct. As a result, investigations should be structured to avoid bias against both the reporting party and the responding party.

Investigation missteps including ignoring complaints and/or selecting the wrong investigator can expose employers to liability. At the end of the day, an unbiased investigator and an impartial investigation can bring clarity to a jumble of innuendo and assertions and best posture employers to justify decisions and defend litigation.
Ohio Cases Undermine Workers’ Compensation Subrogation Statute

BY CHRISTOPHER GRAY

Most workers’ compensation defense attorneys have received a phone call from a client asking about an employee who was injured by a third party. In a common scenario, the client will explain that while the employee was driving to a customer’s site, a negligent motorist drove through a red light and t-boned their employee’s car. The client spoke with the employee, who states she is feeling some pain in her neck and is going to the emergency room. The client asks, “Am I going to be responsible for this?”

Under normal circumstances, the attorney would advise that the employee was in the course and scope of her employment and, as such, has a valid workers’ compensation claim. However, the attorney advises that there is a silver lining: because the third party motorist was responsible for causing the accident, the BWC can assert a subrogation claim against the third party. Although it may take some time, the attorney advises the client that the BWC should recover most, if not all, of the claim costs and the client’s policy premiums should not increase. The client expresses some sense of relief and thanks the attorney.

Unfortunately, recent Ohio appellate court decisions have undermined the ability for the BWC or self-insured employers to pursue subrogation claims. These new rulings state that an injured worker, who would otherwise be eligible for workers’ compensation benefits, isn’t a claimant until he or she files an application for benefits and the application is allowed. One opinion takes the analysis even further, suggesting that there is no subrogation interest until benefits are paid, regardless of whether the claim is allowed. As such, the current case law allows for injured workers to obtain a double recovery by settling their claims against third parties before filing a workers’ compensation claim. The result is that employers will be left with increased claims costs for injuries which should have been subject to subrogation.

The Subrogation Statute

The BWC subrogation program is codified in O.R.C. § 4123.931. Subsection (G) of the statute mandates that the claimant provide to the BWC or the self-insured employer (“the statutory subrogee”) and attorney general the identity of any third party against whom the claimant has or may have a right of recovery. The subsection further states that if the claimant settles his or her claim against a third party without giving the required notice to the statutory subrogee, or if the claimant and third party excludes from the settlement any amount paid by the statutory subrogee, then the claimant and third party become jointly and severally liable to the statutory subrogee for the full amount of the subrogation interest.

The term claimant is defined in O.R.C. § 4123.93 as “a person who is eligible to receive compensation, medical benefits, or death benefits” under the workers’ compensation statutes. Notably absent from this definition is any requirement that a claimant have had or may have a right of recovery. The subsection further states that if the claimant settles his or her claim against a third party without giving the required notice to the statutory subrogee, or if the claimant and third party excludes from the settlement any amount paid by the statutory subrogee, then the claimant and third party become jointly and severally liable to the statutory subrogee for the full amount of the subrogation interest.

The public policy behind O.R.C. § 4123.931(G) is obvious: it preserves the right of the BWC or self-insured employer to recover claims costs from responsible third parties. Further, the statute contemplates that injured workers may try to prevent the subrogee from asserting their interest in settlement negotiations with third parties and so shifts liability for the subrogation interest to the claimants in the event the injured worker tries to avoid paying the subrogee as part of the third party settlement.

Dernier and Verlinger

Ohio Courts began undermining the subrogation statute in 2011 in the case of Ohio Bur. of Work. Comp. v. Dernier, 6th Dist. No. L-10-1126, 2011-Ohio-150. In Dernier, the injured worker was hurt after a third party negligently struck her vehicle with his truck while she was driving to her office. Id. at ¶2. On May 4, 2007, she applied for workers’ compensation benefits. Id. at ¶5. The BWC denied the claim on June 1, 2007. Id. Five days after the BWC denied the claim, Dernier entered into a settlement agreement for $100,000 with the third party’s insurance company. Id. In October 2007, the Industrial Commission allowed the injured workers’ claim and the BWC paid over $122,000 in benefits to the claimant. Id.

The BWC filed suit against both the claimant and the third party to recover its subrogation interest. Id. at ¶6. The trial court granted summary judgment in the defendants’ favor, finding that the injured worker was not a “claimant” under the subrogation statute. Id. at ¶7. The Court of Appeals affirmed the judgment, finding that because the injured worker’s claim had been denied at the time she entered her settlement with the third party, she was not a “claimant” as defined under the statute because she was not yet eligible for workers’ compensation benefits. Id. at ¶29 – 32. The Court also found that because the injured worker and third party’s insurance company entered into their settlement agreement prior to allowance of the workers’ compensation claim, the injured worker’s obligation to inform the statutory subrogee about her right of recovery was extinguished. Id. at ¶33 – 40.

More recently, the Ninth District Court of Appeals addressed the issue in Bur. of Work. Comp. v. Verlinger, 9th Dist. No. 27763, 2016-Ohio-8019. In Verlinger, the injured
worker filed a workers’ compensation claim following a motorcycle accident with a third party; the BWC initially denied the claim. Id. at ¶2. The injured worker appealed and the matter was referred to the Industrial Commission. Id. However, prior to her first hearing with the Industrial Commission, the injured worker settled her claims with both her and the third party’s insurance companies. Id. at ¶3. Shortly thereafter, the Industrial Commission reversed the BWC’s decision and allowed the injured workers’ claim. Id. at ¶4.

Following the allowance of the claim, the BWC filed suit against the injured worker and the insurance companies, claiming they were jointly and severally liable for not complying with the subrogation statute. Id. at ¶5. The trial court granted judgment against the BWC, finding that the injured worker was not a “claimant” under the statute. Id. at ¶8. The BWC appealed, and the Ninth District issued a split decision affirming the trial court’s judgment with two separate concurring opinions. One concurring opinion stated that because the injured worker’s BWC claim was still denied at the time of the third party settlement, she was not a “claimant” under the statute. Id. at ¶11. The other concurring opinion did not analyze whether the injured worker was a claimant, but rather found that because the BWC had yet to pay any benefits to or on behalf of the injured worker at the time of the third party settlement agreement, the BWC had not obtained a right to a subrogation interest. Id. at ¶20. Therefore, there could be no liability for violating the subrogation statute. Id.

Cases Lead to Unfair Recoveries for Claimants and Higher Costs for Employer

Although the case is pending appeal with the Ohio Supreme court, employers should be concerned about the concurrent opinions in Verlinger. First, injured workers can seek an unfair double-recovery simply by not applying for workers’ compensation benefits until after settling their claims with third parties. By doing so, injured workers will obtain a recovery against third parties and then a second recovery against the BWC or self-insured employer for the same work-related injury.

Verlinger may also lead to the termination of subrogation rights through no fault of the BWC or self-insured employer. For example, if the claim is allowed but no benefits have been paid, the second concurring Verlinger opinion suggests that no subrogation interest exists. As such, an injured worker could file a workers’ compensation claim and then delay the submission of medical bills or requests for compensation until after settling their claim with a third party. This would allow injured workers to avoid any statute of limitations issues while pursuing their claims against third parties.

Another reason Derrier and Verlinger are unjust is that the employer will have an unfair choice to make if an employee files a questionable claim. If a third party caused the injury and it is not clear if the injury is work-related, the BWC or employer would likely contest the claim. However, if the claim is initially denied but allowed later on, the BWC or self-insured employer may find that its subrogation right was extinguished during the appeals period. If employers and the BWC act rationally in response to recent case law, the likely result is the BWC and employers will certify more questionable claims in order to preserve potential subrogation rights. The net effect will be increased premiums and costs for employers.

A Legislative Fix Is Necessary

Given this current state of affairs, employers and workers’ comp defense attorneys should demand a legislative correction. Although workers’ compensation statutes are drafted so as to help the injured worker, they were not drafted to allow the injured worker to obtain a windfall at their employer’s expense. The Ohio legislature should expand the subrogation statute to allow the BWC and self-insured employers to assert subrogation claims against claimants and claimants’ attorneys who settle with third parties before filing applications for workers’ compensation benefits or before benefits are paid. Such a fix would discourage claimants from unnecessarily delaying the filing of applications or requests for benefits. Further, the fix would preserve the intent of the subrogation statute in providing policy relief to employers whose employees are injured by third parties.

Christopher Gray is an associate at Wickens, Herzer, Panza, Cook & Batista Co., where he focuses his practice on workers’ compensation and employment law. Chris is admitted to practice in Ohio and Kentucky. He has been a CMBA member since 2015. He can be reached at (440) 695-8064 or cgray@wickenslaw.com.
Each month, these pages will be dedicated to highlighting just some of the activities and programs of your Cleveland Metro Bar.

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This is Member Appreciation Month! It’s our turn to say THANK YOU for all that you have done for our Bar. We have 31 Ways in 31 Days planned to show you just how thankful we are — no strings attached or fine print. We simply wanted you to know how much we appreciate you, our members!

We will be recognizing a member of the day, plus we’ll offer contests, giveaways, fun events and more. If you don’t yet like us on social media, now is a great time to start — Facebook, Twitter, Instagram. Follow us today and join the conversation, tag us at @CleMetroBar and use #31ways. Check out more details at CleMetroBar.org/31ways.

Thank you again for being a CMBA member!!

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CMBA SPOTLIGHTS

Throughout this journal are a number of CMBA events, updates and info worthy of your attention. For your convenience, here is a quick reference list:

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Sponsorship opportunities exist for many of our upcoming and high-profile events. If your firm/office is interested in gaining visibility and building relationships through support of CMBA events, please contact the CMBA at (216)696-3525.
The Palumbo
Presumption
Eases Way For
Firefighters
With Cancer

BY VINCENT D. SCEBBI & CATHERINE TWOHIG LIETZKE

For years, firefighters struggled to campaign for better access to the workers’ compensation system. As of April 6, 2017, Ohio took a step forward and joined the ranks of over thirty states acknowledging a link between cancer and firefighting with the enactment of Senate Bill 27 — known as the Michael Louis Palumbo Jr. Act.

This law creates a rebuttable presumption that a firefighter’s diagnosis of cancer is a work-related occupational disease. This streamlines the process for firefighters to have their claim allowed and access the benefits they are entitled to.

The Uphill Battle of Allowing an Occupational Disease

Historically, Ohio firefighters diagnosed with cancer struggled to establish a compensable claim. Despite constant exposure to chemical fumes, toxic smoke and other carcinogens in the line of duty, the burden of proving each element of an occupational disease was on the firefighter.

An occupational disease is defined as “a disease contracted in the course of employment, which by its causes and the characteristic of its manifestation or the condition of the employment results in a hazard which distinguishes the employment in character from employment generally; and the employment creates a risk of contracting the disease in greater degree and in a different manner than the public in general.” R.C. 4123.01(F).

Prior to the Palumbo Act, in order to prove cancer as an occupational disease, a firefighter had to establish the diagnosed cancer: 1) was contracted in the course of employment; 2) is peculiar to its causes and the characteristics of its manifestations, or the conditions of the employment result in a hazard which distinguishes the character of an injured worker’s employment from that of employment generally; and 3) the employment creates a greater risk of contraction to a greater degree and a different manner from the risk of the general public. State ex rel. Ohio Bell Tel. Co. v. Krise, 42 Ohio St.2d 247 (1975).

The Growing Medical Support

The evidence supporting a link between cancer and firefighting is more persuasive because of the developing body of research on the topic. The medical literature supports a relationship between the carcinogens firefighters are exposed to and cancer. The results were initially astonishing because firefighters are generally healthier than the regular population. They exercise and watch their diets. (From the testimony of Virginia M. Weaver MS MPH at John Hopkins University Bloomberg School of Public Health March 2, 2012).

Despite their health, the research revealed a result between cancer and the exposure firefighters experience in the line of duty. Cancer-causing agents, which firefighters often encounter, include benzene, engine exhaust, chloroform, soot and formaldehyde found at the scene of the fires as well as in idling diesel fire trucks at the station. Robert D. Treitman, William A. Burgess, Avram Gold, Air Contaminants Encountered by Firefighters, 41 American Industrial Hygiene Association Journal 11, 796-802 (2010).

The largest comprehensive and most cited study to date investigating cancer risks associated with firefighting was published November, 2006 at the University of Cincinnati, which found firefighters are more likely to develop cancer more frequently than the general population.

Further, firefighters were twice as likely as non-firefighters to develop testicular cancer and six times as likely to develop non-Hodgkin’s lymphoma and prostate cancer. It also found a definite relationship between firefighting and multiple myeloma, skin, brain, rectum, stomach and colon cancers. Id.

Skin cancer — which firefighters have a 40% increased chance of developing — is linked to soot being absorbed through the skin. Id.

In a study by Harvard University, which examined the level of air contaminants at 200 fires, benzene was detected in 92% of the samples. Half of the scenes contained benzene levels over one part per million, which is the current OSHA permissible exposure level. Air Contaminants Encountered by Firefighters, supra.

These studies show the harm firefighters encounter is great and why Ohio needed this presumption.

The Palumbo Act Process

The Palumbo Act amends R.C. 4123.68 to add a firefighter’s cancer to the list of scheduled diseases that, when contracted in the course of employment, are compensable medical conditions.

In order for a firefighter’s cancer to be presumed work-related, the firefighter must have been assigned to at least six years of hazardous duty. The presumption, however, is rebuttable if there is evidence to support one of the following situations:

1. The hazardous exposure was likely the result of an event outside the firefighter’s official duties, such as tobacco products, or other conditions presenting an extremely high risk for the development of the cancer alleged;
2. the firefighter was not exposed to an agent classified as a group 1 or 2A carcinogen; 3...
3. the firefighter incurred the cancer before becoming a member of the fire department; or
4. the firefighter is 70-years-old or older. R.C. 4123.68(X).

Hazardous duty means a "duty performed under circumstances in which an accident could result in serious injury or death." 5 CFR 550.092. In addition, Group 1 or 2A carcinogens are chemical agents either are or probably carcinogenic to humans, as classified by the International Agency for Research on Cancer. IARC List of Classifications, http://monographs.iarc.fr/ENG/Classification/index.php (last visited April 3, 2017).

Also, this presumption does not apply to firefighters who have not been assigned to hazardous duty in the last twenty years. R.C. 4123.68(X).

The presumption does not come without tradeoffs. Certain compensation other injured workers are entitled to are not available for claims under the Palumbo Act. Wage differential and partial disability benefits are excluded from coverage.

In order to process claims made under the Palumbo Act, the Bureau of Workers’ Compensation require firefighters to file a Presumption of Causation for Firefighter Cancer, known as a C-265, along with their First Report of Injury, Occupational Disease, or Death.

Although the Palumbo Act has limitations, it still lifts a heavy burden off firefighters going forward. As long as the firefighter served six years of hazardous duty, the burden will shift upon the employer to show either the person’s lifestyle, lack of exposure, or a pre-existing disease was the likelier cause.

**Handling Palumbo Claims in the Future**

Here are a few issues attorneys and firefighters may expect:
1. when a firefighter works for multiple entities;
2. when there is minimal documentation of exposure; and
3. when the firefighter was never told the cancer diagnosis was related to work.

It is not uncommon for a firefighter to work part-time for multiple cities. A firefighter who works for two different cities can create a "combined effect" with respect to which exposure likely caused the cancer. This potential raises an issue of the proper entity to pursue the claim against as one employer must bear the burden of the entire claim.

Some guidance on this issue can be found in other occupational disease cases. The determination is based on the last employer in the line of exposure. See State ex rel. Pilkington N. Am., Inc. v. Indus. Comm., 118 Ohio St.3d 161 (2008).

The second issue relates to recordkeeping and building a complete timeline of fires, possible exposure situations and medical treatment. Although under the law, there would be a presumption in a Palumbo case, these records will be vital if the employer challenges whether firefighter was exposed at work. Attorneys should encourage clients to keep a journal documenting all situations of potential exposure.

The last issue relates to the tolling of the statute of limitations. For most workers’ compensation injuries, the clock starts ticking on the date of injury. For occupational diseases, however, the worker must file before:
1. two years from the date of disability;
2. six months after the diagnosis of the occupational disease by a licensed physician; or
3. two years after death. R.C. 4123.85. This can often be problematic where the cause of the cancer is not readily apparent to the physician. The Palumbo Act will not be retrospective, meaning the presumption will apply if the one of the three events occurred on or after April 6, 2017. For any claim where one of these events occurs before this date, the firefighter lacks the benefit of the presumption, but may still have their claim allowed as a non-scheduled occupational disease.

Ohio’s firefighters deserve this presumption given their constant exposure to dangerous...
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toxic chemicals. The access to the workers’ compensation given by the Palumbo Act is much needed and long overdue.

1 LeMasters, Grace K. PhD; Genaidy, Ash M. PhD; Succop, Paul PhD; Deddens, James PhD; Sobeh, Tarek MD, PhD; Barriera-Viruet, Heriberto PhD; Dunning, Kari PhD; Lockey, James MD, MS, Cancer Risk Among Firefighters: A Review and Meta-analysis of 32 Studies. 48 Journal of Occupational & Environmental Medicine 11, pp 1189-1202 (2006).

Vincent D. Scebbi is a first-year associate with Nager, Romaine, & Schneiberg. He focuses his practice on personal injury and workers’ compensation. He is a Brunswick native and his passion is representing injured workers and those harmed by the negligence of others. He has been a CMBA member since 2016. He can be reached at (216) 289-4740 or vscebbi@nrsinjurylaw.com.

Catherine Twohig Lietzke has represented injured workers and firefighters for more than 20 years. She was elected to represent Northern Ohio Firefighters in Columbus on Senate Bill 18. She has successfully represented firefighters in establishing a compensable claim for cancer. She can be reached at (216) 289-4740 or clietzke@nrsinjurylaw.com.
As the weather starts to heat up in Northeast Ohio, so do the chances for significant reforms to both the nation’s tax code and one of its most influential pieces of trade legislation, the North American Free Trade Agreement (NAFTA). After making the renegotiation of NAFTA and the simplification of the U.S. tax system two cornerstones of his presidential campaign, it appears President Donald Trump is moving forward on both fronts at once. Despite staunch opposition from some corners, it is widely accepted that this summer will present the best chance in decades for reform in both areas. The country has experienced marked changes since the passage of NAFTA in 1993 and President Ronald Reagan’s 1986 Tax Reform Act. The rise in globalization along with the internet age has eased the movement of people, services and capital across borders. Many of the world’s most profitable companies do not deal in tangible goods at all. Rather, the value in these companies resides in their intangible property — patents, licensing, and mobile capability — which can easily fall through the cracks of the current tax code and escape taxation.

The current tax code was not built to properly account for such free movement of people, services and capital across borders, which is why the leading Republican proposal promoted by House Speaker Paul Ryan to modernize the U.S. tax system, called “A Better Way,” or more commonly the House “Blueprint,” has introduced the idea of repealing the corporate income tax and replacing it with a Destination Based Cash Flow Tax (DBCFT). The idea behind the DBCFT is to change the focus from taxing businesses from an “origin based” system, in which goods and services are taxed based on the domicile of company, to a “destination based” system, in which tax is levied based on where the product or service is actually consumed or sold. By shifting the focus of taxation to the customer base, which is less mobile and more easily defined than determining the citizenship of a multinational entity, proponents of the proposal believe that the DBCFT is more efficient, easier to administer, and less prone to tax evasion than the current system.

What is the Border Tax Proposal?
Specifically, the DBCFT incorporates two separate ideas: border adjustability and cash flow taxation. Border adjustability, as envisioned by the Blueprint, means that all imports would be subject to taxation and all exports would be exempt. Cash flow taxation, in turn, would make all capital expenditures immediately deductible, such that there would be no need to track depreciation because such investments could be expensed fully in the year of purchase. Additionally, the net interest deduction would be eliminated in order to remove the distortion favoring debt over equity-based purchases. By taxing only income earned strictly within the borders of the U.S. (the border adjustment), and adopting cash flow taxation principles, the House Republicans hope to modernize the business income tax structure to minimize cross-border tax arbitrage (i.e., the use of aggressive tax planning techniques that allow multinational entities to take advantage of gaps between two different tax systems to significantly reduce or even eliminate their tax liability).

In addition to changing the base of the corporate income tax, the DBCFT would also lower the corporate income tax rates from the
top rate of 35 percent to 20 percent. For non-corporate entities, the DBCFT would max out the top rate of business income at 25 percent instead of the highest individual tax rate of 39.6 percent.

How Would the Border Tax Proposal Affect My Business?
If you own a business where your day-to-day operations do not revolve around the import or export of various overseas products or services, such as a pizza parlor or an exercise gym, it’s likely that your taxes would not change very much. In fact, your tax rates may go down slightly because of the reduction in the corporate or individual business tax rate. If you produce and sell your product or service entirely in the United States, you would still be able to deduct the cost of goods sold and labor and then apply the 20 percent DBCFT to the net income, yielding a potentially lower tax on your business income. However, since the DBCFT would levy taxes on imports and exclude exports from taxation, it is likely that prices would rise on imported goods, which could include anything from groceries, to imported cars, to clothing. At the same time, it is also likely that the value of the dollar would rise and would mitigate some of these potential price increases.

If your business relies on imported products, such as a grocery store, a clothing boutique, or a car dealership, the DBCFT is not good news. You would bear the brunt of the change in business taxation. For example, costs of goods sold that would be related to imported products or services would have to be added back to total taxable income, which would yield a higher tax liability. But some economists believe that the higher tax liability will be mitigated by increases in the value of the U.S. dollar after the border adjustment has been fully implemented, which would increase importers purchasing power and partly offset the tax increase. On the other hand, the DBCFT presents a huge tax incentive for exporters. The costs related to goods and services sold overseas would be exempt from taxation because the consumer would be located outside of the U.S. tax base. Unlike the importers, exporters would not only be allowed to deduct the costs related to their exported goods and services, any income they received from these exports would be tax-free. Combined with the DBCFT’s allowance of immediate expensing for capital expenditures, companies that rely on exporting would see a tremendous decrease in the overall amount of taxes owed. In addition, commentators have raised the

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Michelle Cook and Chris Hanwell of Cady Reporting Services, Inc. again this year were instrumental in the success of the Ohio Mock Trial Cuyahoga District and Regional Competitions. The CMBA thanks Michelle and Chris for their help behind the scenes of a very busy and challenging program.

Michelle and Chris joined the CMBA team at the first two stages locally of the statewide competition for the second year in a row, offering enthusiasm and on-the-spot knowhow by greeting volunteers, helping set up courtrooms, taking pictures, and generally helping staff keep the competition running smoothly for hundreds of students, teachers, volunteers, parents, and supporters.

Additionally, Michelle and Chris have volunteered as judicial panelists for the Cleveland Mock Trial Competition, both for the high school and middle school events. In 2016, Chris served as the sole judge for a set of Middle School trials, guiding the courtroom proceedings and ruling during the case based on the classic YA novel The Outsiders. That spring, Michelle and Chris served on judicial panels for the high school competition, scoring student performances in a case hypothetical focusing on a high school student’s First Amendment rights.

When writing about her experience with the 2016 Cleveland Mock Trial on the Cady blog, Michelle said, “Overall, the experience was one that I cannot wait to repeat. You never know what value volunteering will bring you, for me personally, this one brought knowledge, experience and joy. I greatly encourage anyone thinking about volunteering to do so without hesitation. To quote Gandhi, ‘The best way to find yourself is to lose yourself in the service of others.’”
issue that many export intensive companies may begin to run deep losses due to the deductibility of the export and capital expenditures which would have to be dealt with through the form of loss trading or through some kind of regulation.

The Impact of Tax Reform Proposals on NAFTA Renegotiation

The Trump administration is plainly tying its ambitious NAFTA renegotiation agenda into a comprehensive tax reform plan. The administration’s draft letter to Congress, outlining its goals for renegotiating NAFTA, seeks to “level the playing field on tax treatment.” Clearly, the implications of the DBCFT, should it pass into law, would be significant for not only domestic industries, but our NAFTA trading partners, Canada and Mexico, as well as other nations. While the Trump administration views the DBCFT tax on import as a fair means to “level the playing field,” Canadian and Mexican representatives have raised the issue of a possible legal challenge of any such measure before the World Trade Organization (WTO). It is questionable, for example, whether the proposals provision allowing American companies to deduct domestic wages from taxation is permissible under WTO rules, and is likely to be seen as an unfair subsidy to American companies and a trade barrier.

Mexico, Canada and other countries could also take a different tack and respond to the border tax adjustment by instituting retaliatory changes in their own tariff schemes. Ultimately, if taken to its extreme, the DBCFT could even result in key export markets being shut off for U.S. exporters.

However, there are multiple issues to be addressed in the context of NAFTA renegotiations, and Canada and Mexico have their own reasons for coming willingly to the negotiating table. Tightening rules of origin governing what goods are eligible for favorable duty treatment is one issue; increasing the openness of agricultural markets is another. Eliminating a NAFTA chapter that allows Mexico or Canada to challenge U.S. trade remedy decisions is yet another key goal set by the Trump administration. As such, the DBCFT proposal represents merely one part of the puzzle. The implementation of a border adjustment tax could be sufficiently offset by U.S. concessions in other areas.

Preparation for the unexpected is critical in today’s global market, so all eyes will be on Washington, Toronto and Mexico City this summer, as debates on NAFTA and tax reform take center stage. Trade wars, trade deals and new taxes may take years to be negotiated and implemented, but the impacts within larger supply chains will likely be felt more swiftly, as companies anticipate price fluctuations and changing market demands. Businesses of all varieties would be wise to keep abreast of these issues as they progress so that they are not left in the cold when these heated debates on taxes and trade finally come to a head as this summer wears on.

Michelle Rood is an associate attorney at McDonald Hopkins LLC. She focuses on helping clients navigate complex legal and regulatory tax and benefit issues related to international trade policy, healthcare, corporate governance, mergers and acquisitions, and legislative advocacy. She has been a CMBA member since 2016. Michelle can be reached at mrood@mcdonaldhopkins.com or (216) 348-5741.

Mary Edquist is currently Global Compliance Counsel at Diebold Corporation. She was formerly an attorney at McDonald Hopkins who focused her practice on general business counseling, particularly in the areas of international trade, regulatory compliance, and government contracts. She has been a CMBA member 2014. She can be reached at mary.edquist@dieboldnixdorf.com or (330) 490-6110.
Over the past few months, we’ve talked a lot about Rock the Foundation, our yearly opportunity to let our collective hair down, enjoy some great music and great food, and rock out in the name of supporting the Cleveland Metropolitan Bar Foundation. And rightfully so! But that big night would be just one fun evening out among many on our busy calendars if it weren’t for the fact that Rock supports some truly extraordinary programs. Thanks to you, we’re opening doors to change lives.

Earlier this year, the CMBF published its annual Impact Report, telling the story of how programs like The 3Rs, mock trial, homeless legal assistance, and the Volunteer Lawyers for the Arts are benefiting thousands of our fellow Clevelanders. If you haven’t had the chance yet to check it out online, put down your Journal for now and head to CleMetroBar.org/Foundation for the full scoop! Here are some samples of the content you’ll find in the Impact Report.

Dontea is a remarkable young man. He is one of thousands of students who have benefited from CMBA programs supported by Bar Foundation funding. Opening doors, changing lives, making our community a better place for all of its citizens. That’s what our Bar Foundation is all about — I encourage you to learn more in our Impact Report!

Drew T. Parobek is a partner at Vorys, Sater, Seymour and Pease LLP. He is president of the Cleveland Metropolitan Bar Foundation and has been a CMBA member since 1993. Drew can be reached at (216) 479-6162 or dtparobek@vorys.com.

Louis Stokes Scholars Program Progress

50/58 graduated or are on track to graduate from college in five years or less

6 currently in law school (one 3L, one 2L and four 1Ls)

19 planning on applying to law school in 2017 and 2018

Dontea Gresham
MLK High School Valedictorian, Three-Time Louis Stokes Scholar, Cleveland State University Political Science Major, Aspiring Lawyer, Aspiring U.S. Senator, Aspiring POTUS

“As I take this time out to reflect on my journey and experience during my tenure in this program I must first say THANK YOU. This thank you is not only from me, but from my family, friends, mentors, and anyone who’s ever believed in me, a young African-American man who is still growing into his destiny. Because of the giving spirit of the Cleveland Metropolitan Bar Association, it is with honor that I say when someone tells my story, it can never be told completely or accurately without including this amazing Bar Association and its wonderful people.”
Growing up, my parents instilled many important things into my child-sized head: "Say please and thank you!"; "Don't talk to strangers!"; "Maybe next year, the Browns will be good..."; and "Ohio State is better than that school up north." Most of us, at least those of us from Northeast Ohio, grew up hearing very similar sentiments from our parents or other adults in our lives. There were two specific things slightly unique to my parents that greatly affected me once I finally graduated from law school and began the move back to Cleveland. The first was the belief that "to whom much is given, much shall be required." The second, originating from my father's firm belief, which he never hesitated to articulate, and from extensive personal research of my own, was the certainty that immigrants are the backbone of this great country.

I began to wonder how I could wed these two concepts. I was done with school, I had landed a job at Roetzel & Andress, and I was in my dream city. I was in a great place personally and professionally. I had been given so much and I knew I had to give just as much.

I also knew that the immigrant community was where I needed to give. I had just been on a tour of the Cleveland School District's International Newcomers Academy at Thomas Jefferson (INA). The tour was inspiring and I wanted to find a way I could use my schooling to help these immigrant and refugee kids adjust to their new lives in a country that had given me so much and had the potential to give them just as much. I had spent my entire life reading about the immigrant experience. Both of my sisters are adopted, one from South Korea and the other from China. Since I was six years old and we adopted my first sister from South Korea, I was fascinated with the idea of someone, an infant or an adult, traveling halfway across the world to start a new life. The fascination never left me.

That was when I heard about the CMBA's 3Rs Program. The 3Rs is a landmark program connecting lawyers, judges, law students, and paralegals with high school students in Cleveland and East Cleveland schools. Through a series of in-person lessons, 3Rs volunteers help foster an understanding and appreciation of the U.S. Constitution, as well as share important information about how students can achieve their goals beyond high school.

I reached out to Terrence Barry, the American Government teacher at INA, to see if the 3Rs had been in his class with the intention of specifically requesting his classroom when I volunteered. To my surprise, Mr. Barry told me that the program had never been to INA before. The CMBA and Mr. Barry had communicated but were never able to get a team of volunteers over to the school.

The problem was two-fold: The 3Rs program does not have enough volunteers every year to be in all American Government high school classrooms in Cleveland schools and INA's American Government classes included students with varying degrees of English proficiency. Some of these students had been in the United States for mere days, while others had been here for years. Teaching a class about how the judicial branch works is extremely difficult when most of the students have never heard the words "judicial," "judge," or "judiciary."

Mr. Barry told me that he truly believed the program would be exceptionally valuable to these students. The 3Rs was originally designed to help high school students understand their community, government, and civic rights, an understanding that was lacking per results of required testing for graduation. If American citizens, who were born and raised in this country, were struggling with these concepts, imagine how difficult it was for immigrant and refugee children.

For example, one of my students is from Iraq. He told me he and his father sought asylum in the United States because his father worked for a U.S. company in Iraq prior to the war. His father continued to work for the company after relations deteriorated between the two countries. The Iraqi government added his father's name to a traitor list: a traitor does not have a right to a fair trial; a traitor is killed. And the government added this student's name to the list as well simply because he was his father's son.

To this specific student, his community and government were literally out to kill him. The police are an extension of the community and government. He did not know what his civic rights were because he did not have them. Without education and without detailed explanations about the United States community, government, and civic rights, how is he supposed to know that the government is designed to provide for its citizens? Or that calling 9-1-1 when something goes wrong won't result in something far worse happening once the police arrive? Or that he has the right to speak out about things he likes and dislikes without fear of the government hunting him down because they disagree with his statements?

I then offered to teach the class myself and Mr. Barry enthusiastically agreed. I understood language would be a barrier and that I would have to adjust the program to work with these specific students but I was willing to work with them because of how important I thought this program was to their education. And the CMBA agreed. The 3Rs was now a part of the INA American Government curriculum.

I enlisted the help of my dear friend, Sarah Smith, a lawyer in the auditing division of PNC Bank, and we began teaching. A few adjustments had to be made right away. First, we could not break out into sub-groups during the classes. English was the second, third, fourth, or, for one in particular, eighth language to many of these students. It was hard enough for them to hear, digest, and understand words while I was the only one speaking let alone if we had multiple speakers talking within one room.

Second, we had to slow down. The 3Rs curriculum provides, for example, 10 hypotheticals to go over with the class. At INA, we usually get through three hypotheticals. This is because we have to act out every part in
a very dramatic manner. We also have to define terms. Many of the students did not know what the term “prosecutor” meant. Additionally, we have translators in the class. We sometimes have to wait for them to translate a particularly hefty part of the lesson before proceeding.

Besides those simple adjustments, the students wanted to learn just as much as any other high school student. Once they got comfortable they would ask and answer questions or volunteer to read aloud or act out a specific part. They brought an interesting perspective to the class that shocked us. For example, one student asked what their rights if a fake police officer asked for their money? Sarah and I looked at each other quizzically and asked, “A fake police officer?” The student, with murmured agreement from her classmates, explained how thieves back in her native country used to dress up as police officers and go around demanding money and threatening to arrest people if they did not comply. We had to explain (1) how that should not, and rarely does, happen here; and (2) what to do if that happens. They provided another hypothetical based on the reality of their native country, and another, and another, until the class was over and we had gone through only one of our previously prepared hypotheticals.

We adjusted on our feet as needed and have had a great response from the students and Mr. Barry. We have taken notes on what has and has not worked in each class in order to better scale the program for next year’s students. We are hoping that we can take The 3Rs program and modify it for use in INA and other immigrant and refugee schools in the area.

These are great students who have dreams to be artists and FBI agents and manicurists and teachers and singers and doctors. Educating them to help them fulfill these dreams is an amazing experience. Even if I have simply helped these students understand a common English word (e.g., statute), I feel like I have helped them adjust to life in America. Those small victories are very exciting to them, which makes them very exciting to me.

If you have the time to get involved with The 3Rs program, I highly recommend it. As lawyers, we have so much knowledge and so much skill to help those in our community. It can be easy to lose that awareness in the day-to-day grind of our careers. Making a conscious effort to step out of and away from our day-to-day can help benefit our community and help make us better lawyers and better people.

Cassandra Manna is an associate at Roetzel & Andress. Her practice is focused on comprehensive real estate development work and traditional M&A work for family-owned businesses. She has been a CMBA member since 2016. She can be reached at (216) 623-0150 or cmanna@ralaw.com.
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House Bill 2 Proposes a Makeover for Ohio’s Workplace Discrimination Law

BY MAX DEHN & KOMLAVI ATSOU

For years, attorneys have often complained about Ohio Revised Code Chapter 4112, Ohio’s anti-discrimination law. Particularly as it relates to employment discrimination, the unnecessary complexities and idiosyncrasies that inhere in Chapter 4112 have frustrated attorneys and litigants, particularly defendant employers.

In 2016, State Representative Bill Seitz (R-Hamilton County), introduced legislation drafted by the Ohio Chamber of Commerce aimed at reforming Chapter 4112. In the face of objections, including those from the Ohio Civil Rights Commission, the bill was pulled and reintroduced as H.B.2 on February 14, 2017.

The changes in H.B.2 are numerous and substantial. Some of the more pertinent changes are a shortened (and uniform) statute of limitations; the removal of supervisor liability; elimination of concurrent actions at the OCRC and in court; the consolidation of age discrimination actions under a single section; and the codification of an affirmative defense to sexual harassment claims.

Unsurprisingly, support for H.B.2 has come from businesses, defense firms, and human resources organizations, while opposition has been heard from the plaintiffs bar and employee advocacy groups. Also, H.B.2 leaves unchanged the exclusion of lesbians, gays, bisexual, and transgendered persons from protection of Ohio anti-discrimination law.

The statute of limitations is one year.

In Chapter 4112 today, there are a number of limitations periods, ranging from 180 days for an age claim under R.C. 4112.02(L) to six years under R.C. 4112.14 and R.C. 4112.99. H.B.2 eliminates these differences, and sets forth a general one-year statutory period. As supporters point out, this is close to the federal statutory period of 300 days to file a claim with the Equal Employment Opportunity Commission alleging violation of Title VII.

Advocates also argue that Ohio’s six-year limitations period is the longest in the nation. Business proponents claim that such a lengthy limitations period imposes unfair costs and uncertainty upon businesses. Moreover, the six-year period was not established within R.C. 4112, but was set by the Supreme Court of Ohio in Cosgrove v. Williamsburg of Cincinnati Mgt. Co., 70 Ohio St.3d 281 (1994). In her concurrence in Cosgrove, Justice Resnick famously called on the Ohio General Assembly to “reclaim this issue and resolve it on a legislative level.” Id. at 292. Some 23 years later, H.B.2 seeks to at last respond to Justice Resnick’s challenge.

But H.B.2’s one-year limitations period is not without criticism. One critic offered the example of a female employee wrongfully terminated in retaliation for complaining of harassment. She finds a job, but the former employer sues over one year later to enforce its rights under a non-compete agreement. Although the harassment may provide a successful defense against the action (or at least against an injunction enforcing the non-compete), she would be unable to assert harassment as a counterclaim. See, An Analysis of H.B.2 by the Ohio Emp’t Lawyers Assoc.: Hearing on H.B.2 Before the Econ. Dev., Commerce, and Labor Comm., March 14, 2017. Other critics aver that the one-year limitations period is arbitrary, and is too short to permit wrongfully terminated employees to discern their rights, find counsel, and bring an action.

Lawsuits against supervisors and other employees are barred.

Section 4112 currently defines the term “employer” to include “any person acting directly or indirectly in the interest of an employer.” R.C. 4112.01(A)(2). In 1999, a federal court certified a question to the Supreme Court of Ohio, seeking to determine whether the referenced language imposed liability upon managers and/or supervisors. Genaro v. Cent. Transport, Inc., 84 Ohio St. 3d 293 (1999). The question arose, in part, because Title VII defines employer to include “any agent of an employer,” not for the purposes of imposing liability on the agent, but to establish that the employer must answer for the conduct of its agents. But the Supreme Court of Ohio responded that 4112.01(A)(2), unlike Title VII, does impose liability on persons working on behalf of the employer.

H.B.2 removes the language referencing those working in the employer’s interest, and thus eliminates liability for managers and other employees. Currently, plaintiffs bringing R.C. Chapter 4112 actions frequently name supervisors, HR employees, executives, and others that they believe took part in illegal discrimination. Those supporting H.B.2 note that many plaintiffs name individual employees to maximize settlement.
pressure, impose stress and financial hardship on employee/defendants, and/or preclude removal of some actions to federal court. Supporters also note that persons who expose the employer to expensive lawsuits through improper conduct will generally suffer negative job consequences themselves, thus lessening the need to build in legal disincentives. And supporters argue that H.B.2 does not disturb existing causes of action such as assault, battery, slander, libel, and emotional distress claims that plaintiffs may bring against other employees.

Opponents argue that H.B.2 negates the accountability that R.C. 4112(A)(2) now imposes, thus encouraging discriminatory and/or harassing conduct. Opponents also note that even though Title VII does not impose personal liability, anti-discrimination statutes in many other states do so, including neighboring states such as Pennsylvania and Michigan. Worse, opponents claim that, irrespective of common law remedies, H.B.2 provides sexual harassers cover for their misconduct.

**Impact on charges filed with the Ohio Civil Rights Commission.**

Currently, employees may bring an action in court at the same time an OCRC matter is pending. OCRC charges must be filed within 180 days of the alleged discrimination (R.C. 4112.05(B)(1)), but they are not requisite to a court claim, and they do not preclude filing suit during their pendency.

H.B.2 extends the 180 days to file OCRC charge to 365 days, but eliminates dual filing. H.B.2 also tolls the one-year statute of limitations for a court action during the pendency of the OCRC charge. Following disposition of an OCRC charge, the employee must bring suit within the longer of either the remaining time under the 365-day statute of limitations, or 60 days.

Supporters note that the 365-day limitations period is longer than the 180 days now available to file OCRC charge, and that the tolling provision of 60 days is ample for filing suit. Opponents respond that a charging party filing with the EEOC has 90 days upon receipt of an EEOC right to suit letter to commence an action in federal court.

**H.B.2 codifies an affirmative defense against vicarious liability in harassment suits.**

H.B.2 codifies an affirmative defense shielding employers from vicarious liability arising from a supervisor’s alleged harassment if the employer: "(1) exercised reasonable care to prevent or promptly correct any sexually harassing behavior[;]" and "(2) the employee *
H.B.2 advocates argue that the affirmative defense incentivizes employers to undertake harassment prevention and investigation practices. But opponents point out that the bill defines tangible action more narrowly than set forth in Ellerth. Specifically, H.B.2 states that “tangible employment action’ means an action resulting in material economic detriment such as failure to hire or promote, firing, or demotion.” R.C. 4112.054(A)(1) (as proposed). The H.B.2 definition, therefore, appears to exclude such conduct as reassignment to less desirable work. Thus, a harasser could reassign their accuser to different and more difficult work without affecting the company’s assertion of the affirmative defense to sexual harassment.

H.B.2 establishes a single cause of action for age discrimination.

Currently, an employee may elect to bring an age discrimination claim under R.C. 4112.02(L); 4112.14; and 4112.99. H.B.2 establishes a single cause of action under R.C. 4112.99, subject to the 365-day limitations period explained above. Additionally, H.B.2 eliminates the mandatory award of attorney fees now found in R.C. 4112.14(B).

In summary, H.B.2 supporters represent the bill as generally bringing R.C. 4112 into alignment with federal law. But H.B.2 does more. The bill provides potentially significant advantages to employers defending discrimination lawsuits, while making plaintiffs’ claims more difficult to prosecute.

Max Dehn is a shareholder with Cavitch Familo & Durkin Co., LPA, and focuses his practice on business and employment litigation. He has represented clients in a variety of areas, including employment discrimination, wage and hour matters, non-compete litigation, business contract disputes, and class action defense in state and federal courts, as well as arbitration forums. He has been a CMBA member since 2002. He can be reached at (216) 621-7860 or mdehn@cavitch.com.

Komlavi Atsou is a shareholder with Cavitch Familo & Durkin Co., LPA, and is a top rated business litigation attorney by Super Lawyers. He focuses his practice in Employment and Labor Litigation, Business Litigation, General Civil Litigation, Class Action and Appellate Practice. He has been a CMBA member since 2012. He can be reached at (216) 621-7860 or katsou@cavitch.com.

Lara S. Nochomovitz

Lara is thrilled to return home to Cleveland after spending nearly a decade in Colorado and New York. With her background in litigation and the prevention of and response to sex-based discrimination, in particular gender-based violence, she is a welcome addition to TPG. She looks forward to continuing to advocate to preserve and protect civil rights, and confronting workplace discrimination.

Thorman Petrov Group represents whistleblowers and victims of workplace discrimination, wrongful termination, and financial malfeasance. The firm counsels executives and employees in ongoing employment relationships, advises whistleblowers, negotiates resolution of employment, business and financial disputes, and litigates individual and class action cases. Please visit our website at www.tpgfirm.com or contact us by phone at 216-621-3500.
### May

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<tr>
<th>MONDAY</th>
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<th>WEDNESDAY</th>
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<tr>
<td>22  Green Initiative Committee Meeting</td>
<td>23  Membership Committee Meeting</td>
<td>24  Litigation Institute – 10 a.m.</td>
<td>25  Coffee &amp; Donuts – 7 a.m.</td>
<td>26</td>
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<td>Spring Foundation Reception – 5 p.m. (Azure</td>
<td>Labor &amp; Employment Section</td>
<td>Court Rules Committee – 11:45 a.m.</td>
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<td>Roof at the Metropolitan at the 9)</td>
<td>VLA Presentation – 6:30 p.m. (Happy Dog West)</td>
<td>TLC at the CMSD Clinics – 3 p.m.</td>
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<td></td>
<td>Fellows only</td>
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<td>Why Lawyers Strike Out CLE – 3 p.m. (Progressive Field)</td>
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<td>29  Memorial Day – Office Closed</td>
<td>30  PLI – 8:30 a.m.</td>
<td>31  PLI – 8:30 a.m.</td>
<td>32  3Rs Committee Meeting</td>
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### June

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<tr>
<td>5   Stokes Scholars – 8 a.m.</td>
<td>6   CMBF Executive Committee Meeting – 8:15 a.m.</td>
<td>7   Managing Risk CLE – 9 p.m.</td>
<td>8   Pillars Program Small Solo/LRS CLE – 1 p.m.</td>
<td>9   Insurance Law Section Spring Seminar &amp; Lunch – 8 a.m. Mental Health Meeting</td>
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<td>CMBF Board of Trustees Meeting</td>
<td>PLI: International Arbitration – 8:30 a.m.</td>
<td>PLI: Class Action Litigation – 8:30 a.m.</td>
<td>PLI: Acquiring or Selling the Privately Held Company – 8:30 a.m.</td>
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<td>Hot Topics for Estate Planners – 8:30 a.m.</td>
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<td>Court Rules Committee – 11:45 a.m.</td>
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<td>Grievance Committee Meeting</td>
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<td>Social Security CLE</td>
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<td>3Rs Volunteers &amp; Teachers Recognition Event – 4:30 p.m. (Music Box Supper Club)</td>
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<td>12  PLI: Audit Committee and Financial Reporting – 8:30 a.m.</td>
<td>13  PLI: Expert Witness – 8:30 a.m.</td>
<td>14  Stokes Scholars Meeting UPL Committee Meeting Workers’ Comp Section Meeting VLA Committee Meeting</td>
<td>Fellows and 3Rs volunteers only</td>
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<td>CMBF New Trustee Orientation – 8:30 a.m.</td>
<td>15  Appellate Practice 2017 CLE</td>
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<td>ADR Section Meeting</td>
<td>16  Family Law Section Meeting Milestones Autism Conference Legal Track (IX Center)</td>
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<td>JFA Committee Meeting</td>
<td>17  3Rs Volunteers &amp; Teachers Recognition Event – 4:30 p.m. (Music Box Supper Club)</td>
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<td>19  PLI: Internal Investigation – 8:30 a.m.</td>
<td>20  Grievance Committee Meeting</td>
<td>18  Real Estate Section Happy Hour – 5 p.m. (Masthead Brewery)</td>
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<td>CMBF Board of Trustees Meeting</td>
<td>Gambling CLE – 9 a.m.</td>
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<td>Insurance Law Section Meeting</td>
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<tr>
<td>26  Golf Outing (Westwood Country Club)</td>
<td>27  Federal Court Video – 12:30 p.m.</td>
<td>28  3Rs Committee Meeting Litigation Section Indians Game – 5 p.m.</td>
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<tr>
<td>PLI: Fundamentals of Investment Adviser Regulation – 8:30 a.m.</td>
<td>29  PLI: Acquiring or Selling the Privately Held Company – 8:30 a.m.</td>
<td>30  PLI: Acquiring or Selling the Privately Held Company – 8:30 a.m.</td>
<td>Pro Se Divorce Clinic – 10 a.m.</td>
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All events are held at the CMBA Conference Center at noon unless otherwise noted. Information is current as of publication date.
**Cleveland Metropolitan Bar Journal May 2017**

All programs will be held at the CMBA Conference Center.

The Estate Planning, Probate & Trust Law Section presents

**Hot Topics for Estate Planners**

**Tuesday, June 6**

**CREDITS** 3.00 CLE and specialization hours

**REGISTRATION & CONTINENTAL BREAKFAST** 8 a.m.

**PROGRAM** 8:30 – 11:45 a.m. (Lunch to follow)

**Welcome and Introductions**

Franklin C. Malemud, Reminger Co., LPA, Section Chair
Julie Fischer-Taff, Mansour Gavin LPA, Section Vice Chair

**The Insidious Operation of Adult Financial Exploitation: Lessons from the Case of Dr. Charles Siffford**

Adam M. Fried, Reminger Co., LPA
Paul R. Shugar, Reminger Co., LPA

**Breaking Up is Hard To Do: Options Available to Transition a Trusteeship**

Andrew W. Kirkpatrick, Relationship Manager, Wealth Advisory, Glenmede Trust Company, N.A.

**Current Developments in Guardianship from the Indignant to the Solvent**


**Trusted Advisor 2.0: Building Client Relationships and Communicating Your Brand**

Julie Dreilishak, Marketing Director, Reminger Co. LPA
Judy M. Bodenhamer, Co-Founder, Client Experience Institute

**Adjourn to the Estate Planning, Probate & Trust Law Section’s Annual Meeting & Lunch**

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**Managing Risk: Tools for Building an Effective Risk & Crisis Management Program**

**Wednesday, June 7**

**CREDITS** 3.75 CLE requested

**REGISTRATION & BREAKFAST** 8:30 a.m.

**SEMINAR** 9 a.m. – 1 p.m.

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**Hypothetical Risk Scenario**

**Crisis Management – An Overview – Kevin J. Donahue**

- Philosophy and Best Practices
- Crisis Preparedness Steps
- Risk & Vulnerabilities Analysis
- Crisis Management & Communications — Structure and Plan
- Tabletop Exercise/Drill and Training

**Risk Management – An Overview – Kirk Walsh**

- Best-In-Class Risk Management Practices
- Understanding Organizational Risk Within Each Business and Corporate Function
- Steps to Lower the Total Cost of Risk

**Legal and Liability Issues and Roles – Brent M. Buckley**

- D&O Liability and the Fiduciary Duty to Prepare
- Protecting Privilege
- GC and Outside Counsel Roles

**Tabletop Exercise – Kevin Donahue facilitates**

- Hypothetical Scenario - Breakout Teams Share Issues, Actions, Messages

**Review Parking Lot Issues**

**FACULTY**

Brent M. Buckley, Managing Partner; Buckley King
Kirk Walsh, CCO and Executive Vice President, Director, Risk Management Practice Group, Risk International
Kevin J. Donahue, Senior Vice President and Managing Director, Reputation Risk & Crisis Management Group, Falls Communications

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**Let’s Talk About Small & Solo Practice**

**Thursday, June 8**

**CREDITS** 3.00 hours CLE requested

**REGISTRATION & LUNCH** 12 p.m.

**Small & Solo Section Meeting & Announcements**

**Lawyer Referral Service Meeting & Awards**

**Starting, Building and Maintaining Your Law Practice**

Ashley Jones, The Law Office of Ashley Jones, Chair, CMBA Small & Solo Section
Pat Espinosa, Attorney at Law
Howard Miskind, Mishkind & Kulwacki

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**Matinee Mutual: A Movie-Magic Masterpiece of Insurance Coverage Minutia**

**Friday, June 9**

**CREDITS** 6.00 CLE and advanced specialization credits requested

**REGISTRATION/BREAKFAST** 8:30 a.m.

**SEMINAR** 9 a.m. – 4 p.m.

**Welcome and Introductions**

Gregory E. O’Brien, Seminar Chair
Cavitch, Familo & Durkin Co., LPA

**Double Indemnity: Challenging Issues**

Bryan Zunlowski, Founder | CEO, ZFunnel

**The Verdict: The Judicial perspective**

Cassandra Collier-Williams, Judge Janet Burnside, Judge John Russo, Judge

**The Unbundling of Legal Services**

Joseph J. Lanter, Lanter Legal, LLC

**Hot Talks: LGBT Issues**

Joseph J. Lanter, Lanter Legal, LLC

**Hot Talks: Immigration Issues**

Melissa A. Gawelek, The Law Office of Melissa A. Gawelek

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**Money Talks: Creative Billing Arrangements That Satisfy the Ohio Rules of Professional Conduct**

Sandra M. Kelly, Ray, Robinson, Carle & Davies Co., LPA

**The Unbundling of Legal Services**

Joseph J. Lanter, Lanter Legal, LLC

**Tech Talks: How To Build Your Presence on Google and Other Search Engines**

Bryan Zunlowski, Founder | CEO, ZFunnel

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**In the Heat of the Night: Hot Topics and Market Trends in Commercial Brokerage/Risk Advising**

Jeremy Bryant, Britton Gallagher
How Green Was my Valley: Recent Developments in Environmental Impairment Liability Coverage
David J. Fagnilli, Marshall Dennehey Warner Coleman & Goggin

The Fortune Cookie: A Fresh Look at Subrogation in Ohio
Kimberly L. Rathbone, Rathbone Group, LLC

The Late Late Show: The Effect of “Lateness” on Notice to Insurers, Pre-Tender Defense Costs, and Consent to Settle Under Ohio Law
K. James Sullivan, Caiffe, Halter & Griswold LLP

Up in Smoke: Medical Marijuana and Insurance
Daniel F. Gourash, Seeley, Savidge, Ebert & Gourash Co., LPA

Adjourn to Reception

Appellate Practice 2017
Thursday, June 15
Sponsored by the Appellate Court Committee

CREDITS 4.00 CLE requested and advanced specialization credit in appellate law approved

REGISTRATION 11:45 a.m.

PROGRAM (WITH LUNCH) 12 – 4:45 p.m.

Welcome & Introductions
Timothy J. Fitzgerald, Koehler Fitzgerald LLC, Seminar Chair

Views and Insights of a Practitioner, Court of Appeals Judge, and Supreme Court Justice of Different Perspectives to Appellate Advocacy
Justice Patrick F. Fischer, The Supreme Court of Ohio

Reflections on Recent Cases from the Supreme Court of Ohio
Marianna Brown Bettman, Distinguished Teaching Professor and Professor of Practice Emerita at the University of Cincinnati College of Law

Winning Strategies for Post-Judgment Motions
Derek E. Diaz, Hahn Loeser & Parks LLP

Original Actions: Practice Pointers and Potential Pitfalls
Paul W. Flowers, Paul W. Flowers Co., LPA

Assignments of Error: Should Ohio Abandon Them?
Thomas D. Warren, BakerHostetler LLP

High Stakes: The Impact of Gambling on Clients and Practitioners
Tuesday, June 20

CREDITS 3.00 CLE requested

REGISTRATION/BREAKFAST 8:30 a.m.

SEMINAR 9 a.m. – 12:15 p.m.

Raising Awareness Through Storytelling: A Client’s Perspective
Brian Borczak, Lisa Fosel, LPC, Agency Clinician at Recovery Resources

The Basics of Gambling Addiction: Signs, Treatment and Obstacles
Michael Buzzelli, MA, MPH, OCPSA

The Impact of Gambling on Clients
Michael Hennenberg, Dinn, Hochman & Potter, LLC

Introduction to Gambling Law in Ohio
Carla M. Tricarichi, Deputy Director, Government and Community Relations, Ohio Lottery Commission (invited)

The Impact of Gambling on Practitioners
Richard S. Milligan, Milligan Pusateri Co., LPA

Social Security Disability: The Advanced Practitioner’s Guide for an Evolving Climate
Thursday, June 22

CREDITS 3.00 CLE requested

REGISTRATION & LUNCH 12 p.m.

PROGRAM 1 – 4:15 p.m.

Welcome & Introductions
Andrew S. November, Liner Legal, LLC
Chair, CMBA Social Security & Disability Section
Michael A. Liner, Liner Legal, LLC, Vice Chair, CMBA Social Security & Disability Section

Attorney Fees at the Administrative Level and Federal Court
Matthew Shupe, Paulette F. Balin & Associates, LLC

The Five Day Rule
Erl Schmidt, Bevan & Associates LPA, Inc.

Opinion Evidence: Understanding the New Law
Rebecca R. Gillissie, Wilson & Gillissie, LLC

Estate Planning and Social Security Disability
David S. Banas, Hickman & Lowder Co., LPA

Questions & Answer session featuring all speakers

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Judge4Yourself’s ratings are made by four cooperating bar associations (CMBA, Cuyahoga County Defense Lawyers’ Association, Ohio Women’s Bar Association and Norman S. Minor Bar Association), with the help of dozens of experienced lawyers — many who work in the courts every day. Participants interview the candidates, and probe their written responses to the Coalition’s questionnaire. The group looks at examples of the candidates’ writing, and gets the input of lawyers who know their work.

The ratings by the participating bar associations are non-partisan and independent. Coalition members care only whether the candidates who are running this year will be competent, fair and trustworthy judges. Participants assess each candidate’s integrity, knowledge, experience, diligence, and community understanding, and every candidate’s ability to be impartial, even-tempered and respectful to the people who must come to court as parties, witnesses and counsel.

The Coalition presents the ratings to the public on the Judge4Yourself.com before every primary and general election for judges. The website gives citizens the considered views of legal professionals about the candidates’ fitness for judicial office, so that people in Cuyahoga County can vote more wisely.

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Deborah Coleman of Coleman Law LLC helps parties in conflict resolve complex business disputes through mediation or arbitration. She has been a CMBA member since 1977. She can be reached at dac@dacolemanlaw.com or (216) 991-4510.
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Chagrin Falls – Furnished office available with other attorneys in eastside law firm. Chagrin Falls location with parking. $500/month includes office, WiFi, kitchen and conference room. Contact lawfirmchagrinfalls@gmail.com.

Highland Heights – Fantastic offices available. Includes receptionist, waiting area, conference room, kitchen, phone, printer/copier/fax, Internet. Space available for paralegal/secretary. Contact Annette at (440) 720-0379 or asamber@hendersonschmidlin.com.

Mayfield Heights – Beautiful office space available with conference room, receptionist, all necessary law firm amenities, complementary practices. Rent negotiable. (440) 473-5262.

Mentor – Two offices available at Carrabine & Reardon. Expense sharing arrangement is negotiable. Great location! Contact Jim Carrabine at (440) 974-9911.

Suburbs – South

Brecksville – Conference room and mailing services available in the Ganley Building for $50 or $150 per month. Possible legal referrals. (440) 526-6411, ask for Laurie.

Parma/North Royalton – Office spaces in modern suite available now. Contact Paul T. Kirner at (440) 884-4300.

Seven Hills – Law office for rent – Rockside Road, Seven Hills Corner office in prime location with Internet, copy, fax, scanner, telephone, receptionist. Two conference rooms. $1,000 per month. Call Anthony at (216) 401-7763.

Suburbs – West

Avon – New office space with multiple professionals. Great for networking. Desired location across from Avon Commons on Detroit Road. Many included amenities. Contact Doug; (440) 937-1551.

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Services


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Certified Divorce Financial Analyst – Financial Affidavit, Budget, Cash Flow Projections, Executive Compensation Valuation, Separate Property Tracing, etc. Contact Leah Villalobos, CDFA, MAFF at (216) 328-2113; leah@greatlakesdfs.com.

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New Associations & Promotions

Ciano & Goldwasser LLP is pleased to announce that Brent S. Silverman has joined the firm as a principal.

Tucker Ellis LLP is pleased to announce that Heather Bartzi has joined the firm as Director of Professional Development. She will manage, evaluate, and implement all Tucker Ellis in-house career development and professional training programs, working closely with the firm’s department chairs, practice group leaders, and other firm management.

Ulmer & Berne LLP is pleased to announce the addition of Manju Gupta. Gupta joins Ulmer as counsel from McDonald Hopkins.

Weston Hurd is pleased to announce that Susan M. White and Glenn R. Wilson have joined the firm.

Reminger Co., LPA elected the following attorneys as new firm shareholders during their recent annual shareholder meeting: Julian Emerson, Jonathan Krol, Allison McMeechan, and Joseph Palcko.

Remington Co., LPA is pleased to announce the opening of a full-service office in Evansville, Indiana. This office marks our firm’s fourth office in Indiana, and fourteenth office overall.

Carter Strang, a partner with Tucker Ellis, a CMBA Trustee, and past CMBA and FBA-NDOC president, co-authored Corporate Representative Depositions and Proportionality which was published in the DRI In-House Quarterly (Winter 2017). Co-author Giuseppe Pappalardo is an Ohio State University Moritz College of Law 3L and will join Tucker Ellis as an associate this fall after passing the Ohio Bar Exam.

Patrick F. Haggerty, Partner and Chair of the Frantz Ward Litigation Practice Group, is featured on the cover and in the article “A ‘Holy War’ Harnessed to Benefit the Marginalized” in the 2017 Cleveland edition of Best Lawyers Magazine, a supplement inside of Crain’s Cleveland Business and The Plain Dealer.

Litigation partners Jason Winter and Courtney Trimacco announced the establishment of Winter Trimacco, Co., LPA. Mr. Winter and Ms. Trimacco, whose practices over the last two decades have included a wide range of professional liability, employment practices, securities, and catastrophic injury matters will continue the provision of legal services in these and related areas throughout Ohio, Florida, and neighboring states.

James T. Dixon and Daniel K. Wright, II of Brouse McDowell recently spoke at the International Council of Shopping Centers Ohio, Kentucky, Indiana, Michigan and Pennsylvania Retail Development & Law Symposium in Columbus, Ohio on “A Practical Approach to ‘Get ER Done’: Design and Construction Contracting in Retail Projects.”

Elections & Appointments

Brouse McDowell is pleased to congratulate Patricia A. Gajda re-elected to the firm’s Executive Committee.

Ulm er & Berne LL P announces that Patricia A. Shlonsky has been appointed to the board of Business Volunteers Unlimited: The Center for Nonprofit Excellence (BVU).

Attorney Frank Manning has formed Manning & Clair Attorneys at Law (www.manning-law.com). The firm will offer clients legal services stretching across a variety of disciplines from corporate litigation to domestic relations to criminal defense.

Honors

Frantz Ward is proud to announce that construction attorney, Allison Taller Reich, will receive the Ohio State Bar Foundation Community Service Award for Attorneys 40 and Under for District 12.

BTI Consulting Group identifies Ulmer & Berne LLP as a firm that is recommended first to peers and colleagues without prompting in its newly released BTI Brand Elite 2017: Client Perceptions of the Best-Branded Law Firms. BTI’s research also found that corporate counsel named Ulmer as a firm that takes an innovative approach to creating value for clients.

Something To Share?

Send brief member news and notices for the Briefcase to Jackie Baraona at jbaraona@clemetrobar.org. Please send announcements by the 1st of the month prior to publication to guarantee inclusion.
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