ECKERT SEAMANS

Fall 2009

ATTORNEYS AT LAW
www.eckertseamans.com | info@eckertseamans.com

Legal Update

In This Issue…

Page 1
Employment Litigation
After the dust settles: What *Ricci V. DeStefano* means to employers

Bankruptcy
Bankruptcy asset sales: Who doesn't like a bargain?

Page 5
Fair Pay Act
Lilly Ledbetter Fair Pay Act could change employment litigation landscape for years to come

Board of Vehicles Act
Major revision of Board of Vehicles Act signed into law

Page 7
Firm News

PITTSBURGH, PA
BOSTON, MA
CHARLESTON, WV
HARRISBURG, PA
PHILADELPHIA, PA
RICHMOND, VA
SOUTHPOINTE, PA
WASHINGTON, DC
WEST CHESTER, PA
WHITE PLAINS, NY
WILMINGTON, DE

Employment Litigation

After the dust settles: What *Ricci v. DeStefano* means to employers

John J. Myers

The U.S. Supreme Court recently ruled on a now well-known case involving a group of New Haven, Connecticut firefighters who claimed reverse discrimination when they were passed over for promotions after passing qualifying exams. While the high court ruled in favor of the firefighters, its decision has ramifications for any employer faced with difficult decisions around compliance with two separate prohibitions regarding discrimination.

To understand what this means to employers, it is important to understand something about two types of discrimination as defined by Title VII of the Civil Rights Act of 1964. They are "disparate treatment" discrimination and "disparate impact" discrimination.

The Act prohibits intentional discrimination against employees based upon their race and sex, among other things. Reverse discrimination is also prohibited. This means employers cannot intentionally favor women or minorities because of their race or sex. When an employer intentionally discriminates, this is called "disparate treatment" discrimination.

continued on page 2

Bankruptcy

Bankruptcy asset sales: Who doesn't like a bargain?

Ronald S. Gellert

Perhaps its capitalism's form of "natural selection." Whatever you call it, through the myriad of factors causing today's difficult economic climate, one clear result is a substantial increase of bankruptcy filings across the country. No sector appears immune from the effects of the downturn. Retail, homebuilders, auto, energy, metals—you name it and there is a good chance that one or more entities within a given sector has recently

continued on page 3

Employment Litigation

(continued)

"While private employers chafe under a difficult standard, public employers have been, for the time being, left without any standard at all."

Title VII also prohibits unintentional discrimination. For example, an employer who requires a high school diploma for all employees would be guilty of race discrimination if this requirement screened out significantly more minorities than Caucasians, and if not all jobs really needed a high school education. Consider a security guard company that requires all guards be at least six feet tall or weigh at least 150 pounds. Such requirements might screen out a disproportionate number of females, even though they may not be needed for performance of guard duties. This unintended discrimination is called "disparate impact" discrimination.

Not uncommonly, these two kinds of discrimination claims come into conflict with each other, as they did in the Supreme Court's *Ricci v. DeStefano* case.

The City of New Haven paid an outside vendor over $100,000 for a professionally developed, validated test to measure the relative qualifications of candidates for promotion to lieutenant and captain in its fire department. When the test was given, white and Hispanic firefighters scored much higher than the black candidates. The Civil Service Board refused to certify the exam results because some members were concerned the city would be sued by the black firefighters on a theory of disparate impact discrimination, or unintentional discrimination. So no one was promoted.

The high-scoring white firefighters sued claiming intentional reverse discrimination in violation of the Equal Protection Clause and Title VII. By now, you may be aware that they lost in the district and appeals courts, but in the end, the Supreme Court reversed, holding that the city's refusal to use the test results amounted to disparate treatment or intentional race discrimination against the plaintiffs.

For employers, the issue in the *Ricci* case was whether an employer's concern about disparate impact race discrimination lawsuit justified a race-conscious remedial such as scrapping the test results.

Think about how the same issue can play out in common business situations, such as when a reduction in force results in a disproportionately high lay off of females or minorities. If the employer attempts to correct the disparate impact, it can be faced with accusations of disparate treatment or intentional reverse discrimination.

The Supreme Court's ruling said to employers that fear of a lawsuit by the low-performing minority employees does not justify undoing a selection process, since undoing the process would be a race-based decision in and of itself. Instead, an employer who wants to redo a decision because of its adverse impact on minorities or females must have "a strong basis in evidence" for a belief that it would lose a disparate impact lawsuit.

To know whether there is "strong evidence" of disparate impact, the employer must know the elements of a disparate impact case. They are: (1) there is a statistically significant difference between the race/sex of employees selected for promotion, termination or hire and the racial makeup of the successful group, had a random selection been used; and either (2) that the test or other criteria used to make the selections was not job-related and consistent with business necessity; or (3) that there were alternative criteria that would have been as effective in choosing a qualified group, but which would have had less of an adverse impact. An employer whose initial decisions result in a statistical imbalance must assess its own actions to see whether there is "strong evidence" that they were illegal. If so, it can redo the process to achieve a more balanced result. If not, it should proceed as planned and brace for a disparate impact suit.

The "strong evidence" standard has left employers in a very difficult situation. It is not easy to decide whether the standard is met in a particular case or how a court will view the same set of facts. The key will be to exercise prudence and care in choosing the criteria by which important employment decisions are made. Should those criteria result in an adverse impact, while that gives an employer the opportunity to reconsider, in most cases the wise decision will be to proceed with the selections based upon the original criteria. If they make sense in the context, it is less likely that a judge will second-guess the decision.

For public employers it's more complex. They must comply with Title VII and the Fourteenth Amendment's equal protection provisions. For them, the *Ricci* decision created more issues than it resolved. The Supreme Court said it would not decide until another case whether a public employer can ever be subject to disparate impact liability, since that would require the public employer to make race- or sex-conscious choices to avert liability. Therefore, a public employer might never be permitted to adjust a decision to avoid disparate impact claims even if there is "strong evidence" that less discriminatory alternatives exist. While private employers chafe under a difficult standard, public employers have been, for the time being, left without any standard at all.

This article originally appeared in the *Pittsburgh Post-Gazette* on August 18, 2009.

John J. Myers chairs the Labor & Employment Group. He can be reached at jmyers@eckertseamans.com

Bankruptcy (continued)

or soon will enter into a bankruptcy proceeding.

Not surprising, as a result of the upswing in bankruptcy proceedings, there are a growing number of companies/assets "on sale" in the market. If you are financially well positioned, a bankruptcy proceeding provides a beneficial means through which you may purchase assets. Besides the fact that there are certain bargain prices to be found, another benefit is that the Bankruptcy Court Order approving the sale provides a finality to the sale that cannot be unwound (except for in the rarest of cases). Moreover, arguably the biggest advantage of purchasing bankruptcy assets is that such purchase is "free and clear" of all liens, claims and encumbrances, such that the buyer takes only the assets and leaves the liabilities with the debtor. As discussed below, while the free and clear concept is limited in certain specific instances, it typically provides a significant protection to a purchaser that cannot be readily replicated in a sale outside of bankruptcy.

Considering that the current trend in bankruptcy cases often focuses on a sale of all or substantially all of a debtor's assets, or at a minimum, the sale of an underperforming unit or affiliate of the debtor, this article will outline the process and identify both the advantages and pitfalls associated with the sale of assets out of bankruptcy.

Sale and Bidding Process

Bankruptcy cases generally require court approval when a debtor sells some or all of its assets. Section 363 of the Bankruptcy Code governs sales of assets in bankruptcy cases where the sale of such assets is outside of the ordinary course of the debtor's business. Considering that most companies are not in the business of selling all of their assets, the purchase/sale of the assets must be accomplished through the bankruptcy court.

Prior to bankruptcy, a debtor has likely located a potential buyer. Oftentimes the potential buyer is within the same industry or is a direct competitor of the debtor. The potential buyer will usually present a bid that the parties will negotiate and formalize in an asset purchase agreement ("APA"). This buyer is known as the "stalking horse." The debtor will take the stalking horse's offer to the court for approval. However, before approving the sale, the court will require the debtor to further market the assets to other potential purchasers for a brief period of time to see if someone is willing to beat that initial offer. If there are competing bids, the court will require that an auction be held, in an effort to drum up the sale price.

At the conclusion of the auction (when no additional bids are received), the debtor, typically in consultation with a committee of unsecured creditors, will select what it deems to be the "highest and best" offer.[1] Accordingly, it is very possible that the stalking horse who established the initial bid may not be the eventual successful bidder for the debtor's assets.

Advantages for the Stalking Horse / Break-Up Fees, Etc.

Considering the foregoing auction process whereby the stalking horse may potentially lose the purchase at auction, one may wonder what advantages a stalking horse enjoys by taking that role. In fact, under these circumstances it might be counter-intuitive for a buyer to want to be a stalking horse when in order to be selected for that position, the buyer must be the first party to review and complete due diligence, run up costs, time and other expenses in evaluating and negotiating the terms of the asset purchase agreement, only to have the possibility of being "outbid" at auction.

However, there are incentives in serving as the stalking horse. First, the stalking horse is able to take more time in the due diligence process than it would otherwise have in the short marketing period between the initial hearing and the auction. This permits a stalking horse to better understand the assets and their relative worth. Further, stalking horses largely control the terms of the APA, whereas, a non-stalking horse purchaser will be largely forced to live with the terms of the pre-negotiated APA. Moreover, stalking horses may require and may obtain "break-up" fees and/or "topping" fees, as long as these fees are within the realm of reasonableness. Thus, even if they lose the auction, stalking horse are compensated for the time and costs associated with setting the floor bid since they legitimized the sale and, albeit inadvertently, helped bring competitive bids to the table. Notably, however, break-up fees are not always approved by bankruptcy courts, especially when there is more than one potential purchaser who would have otherwise stepped into the stalking horse role.

Finally, considering that stalking horses are responsible for setting the floor bid, they may try to underbid (within reason—remember the debtor and the court still have to approve that amount) and hope no competing bids are made. This may enable a stalking horse to buy the assets for less then it was ultimately willing to pay.

Accordingly, aside from the possibility of losing at the auction (or being disapproved for break-up fees), being a stalking horse bidder has significant advantages which often outweigh the risks.

Additional Advantages for Buyers of Assets of Bankrupt Entities

Purchasers in a bankruptcy case also have the opportunity to pick and choose which contracts it does not want to take and which contracts it wishes to have "assumed" and "assigned" to it by the debtor. Thus, a purchaser need not take any of the contracts it perceives to be above-market, while it can assume the favorable contracts. However, the buyer must be cognizant that, upon assumption, any arrears under the assumed contract must be cured, which is typically a cost borne by the buyer. Accordingly, it is important during due diligence to focus not only on the advantageous nature of the debtor's contracts, but also how much it will cost to bring the contracts current, and whether such cure eliminates the perceived advantage of assuming those contracts.

As referenced above, one unique advantage of purchasing bankruptcy assets is that, upon approval of certain criteria (such as the sale is in the best business judgment of the debtor), the bankruptcy court will issue an order approving the sale. What makes the sale order so advantageous for a buyer (as opposed to a sale outside of bankruptcy) is the fact that once the sale order is final, it cannot be disturbed thereafter. Thus, parties wishing to make claims against these assets will be directed to the pot of

continued on page 4

Bankruptcy (continued)

proceeds generated through the sale of the assets which is held by the debtor. Accordingly, the buyer is often referred to taking the assets free and clear of all liens, claims and encumbrances. Consequently, the buyer is able to make valuable use of the assets without the headache of dealing with claimants who wish to take a piece of the assets to satisfy their claims.

> *Most buyers of assets of a bankrupt company eventually find that bankruptcy is a great place to find a bargain.*

Potential Pitfalls

In certain limited instances, assets sold through bankruptcy have been deemed not to have escaped all future liabilities arising from the assets. The categories where the "free and clear" benefit has faced some resistance are products liability, environmental and labor. These criteria, which arise typically as state-and federal law exceptions to free and clear, have not been applied uniformly by bankruptcy courts.

For example, in Title VII claims, a purchaser who had notice of the claim before acquisition and who made a substantial continuation of the operation of the business after the sale was held liable for the pre-existing claims.

Other instances where successor liability is applied: (1) *express or implied assumption*—implied assumption is invoked where there is ambiguous language in the purchase agreement and the buyer conducts itself consistent with assumption of the obligation; (2) *de facto merger*—continuity of selling corporation, evidenced by the same management, personnel, assets, location, stockholders, etc.; (3) *mere continuation*—similar to *de facto* but mere continuation focuses on whether the purchaser is merely a restructured form of the seller in an attempt to avoid successor liability while remaining in control under a different name; (4) *product line exception*—several states recognize this exception to free and clear where the buyer continues to operate the same product line for liability arising from the product, especially where the bankruptcy is being used as an effort to shield liability arising from the product with no corrective measures.

Finally, it is noteworthy to point out that there remain significant challenges associated with the sale and transfer of intellectual property that is licensed by or to the debtor. Special care needs to be taken when conducting due diligence as to the transferability of such licenses.

Courts regularly consider intellectual property licenses as executory contracts (i.e., both parties to the contract have a continuing obligations). However, while most executory contracts are capable of being assumed and assigned under Section 365 of the Code, intellectual property licenses can fit within an exception in Section 365(c).

Section 365(c) essentially provides that a contract may not be assumed or assigned where applicable law excuses the non-debtor party from performing and such non-debtor does not provide consent.

Notably, trademark licenses and non-exclusive patent licenses practically always require consent, an agreement to consent or an agreement waiving consent rights. Thus, it may be difficult to assume and assign such licenses, thereby minimizing the asset's realizable value.

At present, there is a split of authority in circuit courts across the country regarding the assumption as well as the assignment of intellectual property licenses. Thus, it is important to know, whether from the perspective of licensor or licensee, where a potential bankruptcy may be filed that may impact how the license can be used.

CONCLUSION

In sum, the advantages to purchasing assets out of a bankruptcy estate typically outweigh any risks associated with such a sale. Of course, thorough due diligence and careful drafting of the asset purchase agreement are essential to protecting and ensuring the consummation of a favorable transaction. Consequently, most buyers of assets of a bankrupt company eventually find that bankruptcy is a great place to find a bargain.

---

[1] Although unusual, it is possible that the highest offer received is not necessarily the best offer received. For instance where an offer for $1,000,000 in restricted stock is pitted against $800,000 in cash, the cash offer may be perceived as the better offer.

Ronald S. Gellert is a Member in the Bankruptcy & Restructuring Department and the Member-In-Charge of the Wilmington Delaware office. He can be reached at rgellert@eckertseamans.com.

Fair Pay Act

Lilly Ledbetter Fair Pay Act Could Change Employment Litigation Landscape for Years to Come

Clare M. Gallagher

On January 29, 2009, President Obama signed into law the Lilly Ledbetter Fair Pay Act, which was enacted to overrule the U.S. Supreme Court's decision in *Ledbetter v. Goodyear Tire & Rubber Co. 2007*. The high court held that the 180-day time limit for filing a charge under Title VII of the Civil Rights Act of 1964 for pay discrimination starts after the alleged unlawful employment action and not upon receipt of each successive paycheck. The plaintiff, a former employee of Goodyear, had maintained that each time she received a paycheck, it constituted an original offense, extending the statute of limitations.

The Ledbetter Fair Pay Act changes when the statute of limitations begins to run on lawsuits involving claims of unlawful compensation that are based on various types of discrimination by amending Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act, the Americans with Disabilities Act, and the Rehabilitation Act of 1973.

The expansive language in the statute appears to allow for numerous types of stale claims that could be revived by the Lilly Ledbetter law, if courts apply the language literally. If the Lilly Ledbetter Fair Pay Act is found by the courts to be applicable to claims involving the continuing impact of old non-compensation-related employment decisions on current "compensation," this legislation could prove to be a nightmare for employers and a great opportunity for plaintiffs' employment lawyers.

This article originally appeared in the *Pittsburgh Post-Gazette* on April 15, 2009.

Clare M. Gallagher is a Member in the Labor & Employment Group. She can be reached at cgallagher@eckertseamans.com.

Board of Vehicles Act

Major revision of Board of Vehicles Act signed into law

Gregory H. Teufel

Loudon L. "Hap" Campbell

Pennsylvania was hit hardest by dealership terminations, with 53 Chrysler dealers terminated and 90 GM dealers terminated. In addition, bankruptcies resulted in modifications to dealership agreements with remaining dealers that were not favorable to the dealers. In response, Pennsylvania recently passed legislation highly favorable to new vehicle dealers.

This new legislation is the first major revision of the Board of Vehicles Act ("the Act") since 1996. The Act is the primary law governing vehicle manufacturers, dealers, and salespersons in Pennsylvania. The new legislation modifies the conditions imposed on the franchise relationship between new vehicle dealers and manufacturers to make it easier for dealers to add additional lines of vehicles ("dualing") and to require manufacturers to buy back more vehicles upon franchise termination.

Currently, Sections 11, 12 and 17 of the Act establish conditions on the franchise relationship between vehicle manufacturers and dealers in Pennsylvania. Section 11(a) of the Act requires mediation before a dealer may file a complaint with the State Board of Vehicle Manufacturers, Dealers, and Salespersons ("the Board") against a manufacturer regarding the establishment, relocation or termination of a franchise agreement.

The new legislation adds an exception to the Section 11(a) mediation requirement, such that dealers are not required to enter into mediation prior to filing a complaint with the Board against a manufacturer for denying a dealer's dualing request. The Act previously contained no definition of "dualing." The new legislation adds definitions to the Act for the terms "dual" or "dualing," defining them to mean "having two or more line-makes of new vehicles located in the same dealership facilities."

Section 12(a)(6) of the Act prohibits a manufacturer from denying a dealer's request to dual a franchise if the dealer maintains a reasonable line of credit for each brand and the dealer remains in compliance with the reasonable facility requirements of the manufacturer. Reasonable facility requirements do not include building or maintaining brand exclusive facilities when that would be unreasonable considering economic conditions. Dealers are required to request consent from the manufacturer to dual a franchise, and previously the manufacturer was required to

continued on page 6

Board of Vehicles Act (continued)

respond within 60 days. A manufacturer's failure to respond within the time allowed is deemed an approval.

The new legislation reduces the manufacturer's required response time to a dualing request from 60 days to 45 days. If a dualing request is denied by a manufacturer, the new legislation allows the dealer to immediately file a complaint with the Board and requires the Board to render a determination within 90 days. The new legislation puts the burden of proof on the manufacturer to show that the dualing request is unreasonable.

Section 12(a)(8) of the Act prohibits manufacturers from requiring dealers to expand facilities without assuring a reasonable supply of new vehicles to justify such an expansion considering economic conditions and prohibits requiring separate brand facilities if economic conditions do not clearly justify the separate facility. The new legislation added a new paragraph, 12(a)(8.1), prohibiting a manufacturer from requiring a dealer to expand or modify facilities if it is unreasonable considering the market and economic conditions.

Section 12(b)(4) of the Act previously prohibited manufacturers from "arbitrarily and capriciously" denying dealer requests to relocate a dealership. The new legislation changed the Section 12(b)(4) standard to prohibit the manufacturer from "unreasonably" denying a relocation request.

Section 17(a)(1) of the Act requires manufacturers to repurchase new vehicle inventory within 60 days of return by the dealer when a franchise is terminated. The Act previously defined new vehicle inventory as vehicles of the current model year, or vehicles purchased from the manufacturer within 120 days prior to termination. The new legislation amended Section 17(a)(1) to provide that, in the event of a franchise termination, the manufacturer is required, within 60 days of return, to repurchase from the dealer new vehicles acquired from either the manufacturer or another dealer within 18 months of the termination date. For new heavy duty trucks (gross vehicle weight rating of at least 10,001 pounds), the new legislation requires the manufacturer to repurchase current and two prior model years' inventory.

"This new legislation makes clear that, despite the immediate impact of the bankruptcies, state laws will continue to have a significant role in shaping and governing the relationship between vehicle manufacturers and dealers."

Though much of the focus recently has been on the power of bankruptcy courts to allow terminations and revisions of dealership agreements that otherwise would be prohibited or limited by state law, this new legislation makes clear that, despite the immediate impact of the bankruptcies, state laws will continue to have a significant role in shaping and governing the relationship between vehicle manufacturers and dealers.

This article was accepted to appear in ACBA *Lawyers Journal*, November 2009. Reprinted with permission from the *Lawyers Journal*.

Gregory H. Teufel is a Member in the Litigation Division and Loudon L. "Hap" Campbell is a Member in the Government Affairs Department, Real Estate and Land Use Department, and Insurance Coverage and Business Compliance Department. They can be reached at gteufel@eckertseamans.com and lcampbell@eckertseamans.com, respectively.

Firm News

Eckert Seamans' Charity Challenge Raises Over $78,000 in Cash and Food Donations to Local Food Banks

For a recently-established annual charitable initiative in honor of Executive Director C. James Parks' 30th anniversary at Eckert Seamans, the firm raised a total of $42,473 in cash donations and it collected an additional 45,582 units of food valued at about $36,000. Food bank executives estimated that this will provide over 100,000 children's meals in the communities where Eckert Seamans has offices. The firm also owes special thanks to firm client StarKist, which made a generous donation through the Southpointe office.

The challenge encouraged everyone within the firm to get involved by working together to collect food and cash donations, to volunteer their time and talent, to donate auction items and to volunteer on site at local food banks. People throughout the firm held bake sales, raffles, charity poker games, cookbooks, and e-mail auctions. These are difficult times for many people and as a result of the challenge, the firm pulled together to raise money for those who have been hit hard in the current economic times.

Eckert Seamans Hosts Secretary of Transportation - Ray LaHood

On June 18th, Eckert Seamans and the International Air Transport Association sponsored a reception with the Honorable Ray LaHood, U.S. Secretary of Transportation. The event was held at The University Club of Washington, D.C. Secretary LaHood addressed the attendees and shared his thoughts on the changes occurring in transportation and some recent Department of Transportation initiatives. Secretary LaHood then answered questions from the audience comprised of representatives from domestic and international airlines, trucking companies, suppliers to the transportation industry and other representatives from the Federal Aviation Administration, port authorities and airport associations.

Eckert Seamans' Growth Continues to Buck Recessionary Trend, Adding Several Attorneys to Growing Practices

While many firms are downsizing in the current economic climate, Eckert Seamans continues to be on sound financial footing and has capitalized on outstanding growth opportunities in the areas of corporate law, intellectual property, litigation, and real estate. The following attorneys have recently joined the firm.

Members

Karl F. Milde, Jr. has joined the firm in White Plains, New York. He focuses his practice on all aspects of intellectual property law including patents, trademarks, copyrights, computers, software, internet, licensing and trade secrets. Mr. Milde commenced his career in intellectual property as a Patent Examiner in the U.S. Patent and Trademark Office. In addition, he previously served as Director of Patents for Siemens Corporation, the U.S. subsidiary of Siemens AG. After leaving Siemens, he co-founded the firm of Milde & Hoffberg, LLP. In addition to practicing law, Mr. Milde is an inventor himself, having patented numerous advances in vertical take-off and landing aircraft. He is also a children's book author, and has penned a series of books about a young inventor and detective named "Jason" as well as an adult novel entitled "The Commuter Train." Active in the profession, Mr. Milde has frequently participated as a guest lecturer for the IEEE and the New York Intellectual Property Law, Copyright and Trademark Association, and has authored numerous articles on the licensing and patentability of software. Also, he previously served as Chairman of the MIT Enterprise Forum, Chairman of the MIT Symposium on Management of Innovation and Program, and as Chairman of a combined MIT-Harvard Business School Entrepreneurship Workshop. Mr. Milde also served as President of the MIT Club of Westchester and as President of the Rotary Clubs of New York and White Plains, NY. Mr. Milde currently serves as District Governor for the Rotary District that spans Westchester County, New York, the New York City Boroughs of the Bronx, Manhattan and Staten Island, as well as the country of Bermuda. Mr. Milde is an active member of the New York Intellectual Property Law Association as well as the Eastern New York Intellectual Property Law Association. Mr. Milde earned his law degree from the Georgetown University Law Center and holds two bachelor of science degrees from the Massachusetts Institute of Technology in Physics and Electrical Engineering. He is admitted to practice in New York and before the U.S. Patent and Trademark Office, the U.S. District Court for the Southern and Eastern Districts of New York, the U.S. Court of Appeals for the Second and Federal Circuits and the U.S. Supreme Court. He holds an AV® rating from Martindale-Hubbell. He is fluent in German.

Kathryn Deans-Schaub recently rejoined the firm's Philadelphia office. She focuses her practice in the area of mass tort litigation and product liability litigation. Ms. Deans-Schaub has represented major pharmaceutical companies in defense of nationwide product liability cases, as well as managed complex product liability litigation matters. She earned her J.D. from the University of Pennsylvania Law School and her undergraduate degree, *summa cum laude*, from the University of Pittsburgh.

Ralph K. Stone joins the Boston office from Seyfarth Shaw LLP. He concentrates his practice in real estate, including all aspects of acquisition, financing, development, leasing and sale of commercial, industrial and residential properties. He frequently represents for-profit and non-profit owners, lenders, contractors, developers and investors in the acquisition, management and disposition of real estate, in mortgage loan transactions, or as landlord or tenant in lease and sublease transactions, including ground leases, building, warehouse, office space, store, parking garage and telecommunications facility leases, in new construction and reuse of property. Mr. Stone is often involved in drafting and negotiation of purchase and sale agreements, brokers' listing agreements, construction

continued on page 8

Firm News (continued)

contracts, loan commitments, mortgages, notes, leases and other real estate documents, and in counseling clients on use of real estate assets. His practice also includes restructuring and revision of mortgage loan and lease transactions, and real estate due diligence for corporate acquisitions and mergers. Mr. Stone earned his J.D. from Harvard Law School and both his B.A. and M.A. degrees from Trinity College. He is admitted to practice in Massachusetts, California and New York and before the U.S. District Court for the District of Massachusetts.

Elizabeth A. Weill joins the firm's Philadelphia office. She concentrates her practice on complex litigation including representation of national and international companies involved in product liability, toxic tort, commercial and other lawsuits. Ms. Weill has represented clients including global delivery corporations, manufacturers of vertical and horizontal transportation devices, industrial machinery, automobiles and heavy vehicles and their components, lawn and garden equipment and other industrial and consumer products. Her experience includes counseling, litigation, trial and appellate practice in state and federal courts. She has tried cases in multiple jurisdictions throughout the United States. She also counsels clients in areas of insurance coverage, litigation preparedness and risk management, records information management and electronic discovery. Ms. Weill earned her J.D. from the University of Pennsylvania Law School and her undergraduate degree from Cornell University.

Jun Yu joins the Pittsburgh office from Meyer Unkovic & Scott LLP. He focuses his practice in the areas of corporate and commercial transactions, with an emphasis on sales and acquisitions, securities regulations, capital formation, commercial law, financing, real estate and general business consulting. Mr. Yu has represented various public and private companies in M&A deals and raised capital for new and mature businesses through structured offerings of securities. He has significant experience in representing private investment companies in acquiring target businesses on joint ventures, strategic alliances and separations. In addition, he has negotiated and drafted commercial contracts, leases, licenses and other agreements. Mr. Yu earned his J.D., *cum laude*, from Wayne State University, a masters degree from the University of Chicago and his undergraduate degree from Dickinson College.

Associates

Rachel L. Gould joins the Boston office from Seyfarth Shaw LLP. She focuses her practice in the representation of businesses, lenders, real estate investors, developers, landlords, tenants and individual property owners in all areas of commercial real estate including acquisitions, dispositions, loan workouts and foreclosures, leasing, zoning and title matters and the financing of shopping centers, hotels, office retail, multi-family and mixed use properties. She earned her law degree from Northeastern University School of Law and her undergraduate degree from Wheaton College. She is admitted to practice in Massachusetts and New York.

Mary Mitchell joins the Philadelphia office. She focuses her practice primarily on intellectual property law, including trademark and copyright litigation and trademark prosecution. Prior to joining the firm, she worked in patent management at Drexel University and the University of Pennsylvania. Ms. Mitchell earned her J.D., *magna cum laude*, from the Drexel University Earle Mack School of Law and masters and undergraduate degrees from the University of Pennsylvania.

Enrico Pagnanelli also joins the Philadelphia office. He focuses his practice in the area of corporate law, representing public and privately held corporations on matters relating to mergers and acquisitions, securities transactions, private securities offerings, financing and general corporate governance. He also represents companies on intellectual property licensing and outsourcing, as well as general cyberlaw issues. Mr. Pagnanelli has drafted and negotiated software, marketing and website development agreements and counseled companies on terms of service and privacy and security law compliance. He earned his J.D. from the Georgetown University Law Center and his B.B.A. from Emory University.

Andrew T. Quesnelle joins the firm's Pittsburgh office from Reed Smith. He has represented employers in matters encompassing the full spectrum of federal and state employment statutes, including Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act, the Americans with Disabilities Act, the Family and Medical Leave Act, the Fair Labor Standards Act, Section 510 of the Employee Retirement Income Security Act, the Pennsylvania Human Relations Act, and the Pennsylvania Wage Payment and Collection Act. In addition, Mr. Quesnelle has assisted in the defense of common law causes of action, including wrongful termination, breach of contract and defamation. He earned his J.D., *summa cum laude*, from the Villanova University School of Law and his undergraduate degree from the University of Michigan.

The information in this publication is for the purpose of informing and educating our clients about various aspects of the law and is not intended to be used as legal advice. If you have questions concerning any of the topics, please contact your Eckert Seamans attorney.
Eckert Seamans Cherin & Mellott, LLC. All rights reserved © 2009.