

## 1. THESE AREN'T THE FEES YOU'RE LOOKING FOR: WHY ATTORNEY'S FEES SHOULD NOT OPEN THE DOOR TO FEDERAL COURT

University of Florida Journal of Law and Public Policy | August, 2016 | 27 U. Fla. J.L. & Pub. Pol'y 281 | Clay Weinstein

Introduction. 281 I. What is the Amount in Controversy, and When Are Attorney's Fees Calculated Into It?. 285 II. The State of the Law in the Federal Circuits. 287 A. Circuits Favoring the Time-of-Removal Method. 288 B. Circuits Favoring the Potential Method. 288 C. Circuits That Remain Undecided. 290 D. Impression. 293 III. The Merits & Drawbacks...

...Judicial Vacancies, Litigation & Trial L. Blog (Jan. 7, 2013), [http:// www.litigationandtrial.com/2013/01/articles/series/special-comment/judicial-vacancies/](http://www.litigationandtrial.com/2013/01/articles/series/special-comment/judicial-vacancies/). [FN10] . See...

## 2. § 37:45.Civility—Civility and zealous advocacy

Successful Partnering Between Inside and Outside Counsel | SPARTNER § 37:45 | Professionalism | by Amy Weaver and Elizabeth C. Peterson

Zealous advocacy is a pillar of the legal profession. “[I]t is fundamental to our adversary system that as advocates we are required to zealously advance the interests of only one side, our client’s.... In short, our role as advocates is to try to properly achieve the best result for our client, which is not necessarily a fair or just one.” Some...

...Blog of Plaintiff's Attorney Max Kennerly (Oct. 24, 2012), [http:// www.litigationandtrial.com/2012/10/articles/the-business-of-law/aggressive-lawyer/](http://www.litigationandtrial.com/2012/10/articles/the-business-of-law/aggressive-lawyer/); Amy...

## 3. “PRIVATE JUSTICE” AND FCPA ENFORCEMENT: SHOULD THE SEC WHISTLEBLOWER PROGRAM INCLUDE A QUI TAM PROVISION?

American Criminal Law Review | Winter, 2016 | 53 Am. Crim. L. Rev. 67 | Julie Rose O'Sullivan

The most important--and under-recognized--fact about the enforcement of transborder anti-corruption legal regimes is this: governments cannot realistically expect to be able to do it effectively without enlisting the help of whistleblowers and the private bar. Various international conventions that require criminalization of transborder corruption...

...Awards Over \$50 Million Litig. & Trial (Apr. 24, 2009), [http:// www.litigationandtrial.com/2009/04/articles/trial/ideas/why-false-claims-act-whistleblower...](http://www.litigationandtrial.com/2009/04/articles/trial/ideas/why-false-claims-act-whistleblower...)

## 4. HOME IS WHERE THE CONFUSION IS: PENNSYLVANIA FORMALLY ADOPTS THE “GIST OF THE ACTION” DOCTRINE AND BUILDS A HOUSE FOR AMBIGUITY IN BRUNO V. ERIE INSURANCE CO.

Villanova Law Review | 2016 | 61 Vill. L. Rev. 235 | Lauren Anthony

“If you can't convince them, confuse them.” The contract-tort distinction is fundamental to civil litigation in the United States. While actions for breach of contract compensate the plaintiff for damages foreseeable at the time of a contract, tort claims remedy injuries resulting from the defendant's conduct. Nonetheless, the contract-tort...

...Contract and Tort Claims Litig. & Trial (July 29, 2008), [http:// www.litigationandtrial.com/2008/07/articles/the-law/for-lawyers/in-pennsylvania-gist...](http://www.litigationandtrial.com/2008/07/articles/the-law/for-lawyers/in-pennsylvania-gist...)

## 5. THE DANGERS OF DENIAL: THE NEED FOR A CLEAR-EYED UNDERSTANDING OF THE POWER AND ACCOUNTABILITY STRUCTURE ESTABLISHED BY THE DELAWARE GENERAL CORPORATION LAW

Wake Forest Law Review | Fall, 2015 | 50 Wake Forest L. Rev. 761 | Honorable Leo E. Strine, Jr.

There are, as in any intellectual and political tradition, different strands of thought on the center-left of American politics, as well as different approaches to looking at the world. I confess that the one I most admire is clear-eyed, and attempts to make things better by acknowledging how things in fact are, and not how I would wish them to be....

...Required To Maximize Profits Litig. & Trial (Sept. 13, 2010), [http:// www.litigationandtrial.com/2010/09/articles/series/special-comment/ebay-v-newmark-al...](http://www.litigationandtrial.com/2010/09/articles/series/special-comment/ebay-v-newmark-al...)

## 6. SNAP JUDGMENT: RECOGNIZING THE PROPRIETY AND PITFALLS OF DIRECT JUDICIAL REVIEW OF AUDIOVISUAL EVIDENCE AT SUMMARY JUDGMENT

Fordham Law Review | May, 2015 | 83 Fordham L. Rev. 3343 | Denise K. Barry

Conflicting results in two recent police excessive force decisions by the U.S. Supreme Court -- Tolan v. Cotton and Plumhoff v. Rickard -- have sown confusion about the standards for summary judgment. This Note shows how the two decisions are consistent with each other and with longstanding summary judgment precedents. The key insight is that since...

...Oriented Summary Judgment Precedent Litigation&Trial.com (June 6, 2014), [http:// www.litigationandtrial.com/2014/06/articles/attorney/civil-rights-1/results-oriented-summary...](http://www.litigationandtrial.com/2014/06/articles/attorney/civil-rights-1/results-oriented-summary...)

## 7. CORPORATE POLITICAL CONTRIBUTIONS AS BAD FAITH

University of Colorado Law Review | Spring 2015 | 86 U. Colo. L. Rev. 477 | Joseph K. Leahy

A shareholder who objects to a corporate political contribution can file a derivative lawsuit to challenge that contribution as a breach of management's duty of loyalty to the corporation. Such a lawsuit will face long odds, however, if it is founded upon a traditional theory for breach of the duty of loyalty, like waste or self-dealing. Yet, there...

...Required To Maximize Profits Litig. & Trial ( Sept. 13, 2010), [http:// www.litigationandtrial.com/2010/09/articles/series/special-comment/ebay-v-newmark-al...](http://www.litigationandtrial.com/2010/09/articles/series/special-comment/ebay-v-newmark-al...)

## 8. THE INTRACORPORATE CONSPIRACY TRAP

Cardozo Law Review | February, 2015 | 36 Cardozo L. Rev. 969 | J.S. Nelson

In the recent case of Commonwealth v. Lynn, Pennsylvania prosecuted a Roman Catholic priest who had not abused children himself but who, to protect the archdiocese that employed him, covered up information about priests who had abused children and reassigned the priests to new parishes. This case was the first of its kind to bring criminal charges...

...Prove About Monsignor Lynn? Litigation & Trial (May 19, 2012), [http:// www.litigationandtrial.com/2012/05/articles/sexual-abuse/prosecution-proof-monsignor-lynn](http://www.litigationandtrial.com/2012/05/articles/sexual-abuse/prosecution-proof-monsignor-lynn) [hereinafter...]

## 9. POLICING THE CEASE-AND-DESIST LETTER

University of San Francisco Law Review | 2015 | 49 U.S.F. L. Rev. 411 | Leah Chan Grinvald

THE U.S. REPUTATION for litigiousness is so pervasive that it has entered our cultural fabric: books and articles have been written about it and a variety of popular media have satirized our infamy. There is a paradox, though. Statistics show that approximately only three percent of all legal disputes are brought to the judicial system. Of this...

...Demand Letter Become Extortion? Litigation & Trial (July 19, 2013), [http:// www.litigationandtrial.com/2013/07/articles/attorney/demand-letter-extortion/](http://www.litigationandtrial.com/2013/07/articles/attorney/demand-letter-extortion/). [FN136] See supra...

## 10. BEHAVIOUR ON A BEER MAT: LAW, INTERDISCIPLINARITY & EXPERTISE

University of Illinois Journal of Law, Technology and Policy | Fall 2014 | 2014 U. Ill. J.L. Tech. & Pol'y 361 | Nicky Prialux, Martin Weinel

In this paper we seek to offer an original theoretical platform for thinking about the nature of legal knowledge produced through 'legal interdisciplinarity.' The context for our discussion is the emergence of a 'behavioural boom' in the field of law where researchers increasingly turn to fields like behavioural economics to encourage shifts in...

...Evidence and The Scientific Method *Liti. & Trial* ( Apr.23, 2012), [www.litigationandtrial.com/2012/04/articles/litigation/scientific-evidence-and-the-scientific-method...](http://www.litigationandtrial.com/2012/04/articles/litigation/scientific-evidence-and-the-scientific-method...)

### 11. U.S. SUPREME COURT UPDATE 2012-2013 TERM

ALI-CLE Course Materials | February 27 - March 1, 2014 | SV037 ALI-CLE 509 | Robert B. Fitzpatrick

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...he-sued-he-won-who-knew.aspx? ref=rss o [http:// www.litigationandtrial.com/2013/03/articles/attorney/civil-rights-1/prisoner-tort-case...](http://www.litigationandtrial.com/2013/03/articles/attorney/civil-rights-1/prisoner-tort-case...)

### 12. THE HIGH COST OF LOW SANCTIONS

Florida Law Review | January, 2014 | 66 Fla. L. Rev. 157 | Irina D. Manta

Low sanctions can initially appear to be a mitigating factor for unjust or inefficient laws, but this perception is likely wrong. This Article argues that low sanctions may have a pernicious effect on the democratic process and on legislative rule making because, as both public choice theory and historical precedent suggest, the laws accompanying...

...for Computer Fraud, *Litig. & Trial Blog* (July 19, 2011), [http:// www.litigationandtrial.com/2011/07/articles/series/special-comment/aaron-swartz-computer-fraud...](http://www.litigationandtrial.com/2011/07/articles/series/special-comment/aaron-swartz-computer-fraud...)

### 13. THE 2015 PROPOSALS TO THE FEDERAL RULES OF CIVIL PROCEDURE: PREPARING FOR THE FUTURE OF DISCOVERY

Northern Kentucky Law Review | 2014 | 41 N. Ky. L. Rev. 133 | Brian Morris

How many attorneys can cite the first rule of the Federal Rules of Civil Procedure? As the "scope and purpose" behind the Rules, Rule 1 demands that the Federal Rules govern and administer "the just, speedy, and inexpensive determination of every action and proceeding." However, the current state of discovery in American litigation is the "number..."

...Discovery Rules, *Litigation & Trial L. Blog* (June 18, 2013), [http:// www.litigationandtrial.com/2013/06/articles/attorney/judicial-committees-proposal-discovery-rules/; see...](http://www.litigationandtrial.com/2013/06/articles/attorney/judicial-committees-proposal-discovery-rules/; see...)

### 14. A FORK IN THE STREAM: THE UNJUSTIFIED FAILURE OF THE CONCURRENCE IN J. MCINTYRE MACHINERY LTD. V. NICASTRO TO CLARIFY THE STREAM OF COMMERCE DOCTRINE

DePaul Business & Commercial Law Journal | Winter 2014 | 12 DePaul Bus. & Com. L.J. 171 | Cody Jacobs

I. Introduction. 172 II. History of the Supreme Court's Personal Jurisdiction Jurisprudence and the Stream of Commerce Theory. 174 A. Background. 174 B. Purposeful Availment. 177 C. The Stream of Commerce Theory. 179 D. Asahi. 181 III. Nicastro. 183 A. The Court's Opinions. 186 B. The Confusion Created by the Opinions. 191 1. Public and Scholarly...

...Employees and Injured Persons, *Litig. & Trial* (July 5, 2011), [http:// www.litigationandtrial.com/2011/07/articles/attorney/personal-injury-1/supreme-court-term...](http://www.litigationandtrial.com/2011/07/articles/attorney/personal-injury-1/supreme-court-term...)

### 15. U.S. SUPREME COURT UPDATE 2012-2013 TERM

ALI-CLE Course Materials | July 25 - 27, 2013 | CV001 ALI-CLE 1 | Robert B. Fitzpatrick

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[...01/he-sued-he-won-who-knew.aspx?ref=rss http:// www.litigationandtrial.com/2013/03/articles/attorney/civil-rights-1/prisoner-tort-case...](http://www.litigationandtrial.com/2013/03/articles/attorney/civil-rights-1/prisoner-tort-case...01/he-sued-he-won-who-knew.aspx?ref=rss)

### 16. CORPORATE TORT LIABILITY UNDER THE ALIEN TORT STATUTE POST-KIOBEL

University of Miami Business Law Review | Summer 2013 | 21 U. Miami Bus. L. Rev. 281 | Scott E. Allbright, Jr.

I. Introduction. 282 II. Developing a Context: The Alien Tort Statute in the Courts. 286 A. Adopting an Orphan: The Second Circuit and the ATS. 286 1. Breaking New Ground. 286 2. Jurisdiction Over Non-State Actors for Genocide. 286 3. Suits Against Corporations. 287 4. Assuming Corporate Liability Under the Law of Nations. 288 B. The ATS Across...

[...The Alien Tort Statute, Litig. & Trial \(Feb. 28, 2012\), http:// www.litigationandtrial.com/2012/02/articles/series/special-comment/alien-tort-statute/; Michael...](http://www.litigationandtrial.com/2012/02/articles/series/special-comment/alien-tort-statute/)

### 17. NFL AND NBA LOCKOUTS: A U.K. LAWYER'S LEGAL RETROSPECTIVE

Sports Lawyers Journal | Spring 2013 | 20 Sports Law. J. 1 | Kevin Carpenter

I. The U.S. Sport Model and CBAs. 2 II. CBAs and the Law. 3 A. So What Relevance Does This Have to the Recent NFL and NBA Disputes?. 5 B. The Consequences of a Breakdown in Negotiations and Expiry of CBAs. 6 III. How the NFL Lockout Arose. 6 A. An Initial Victory for the Players. 8 B. Back to Lockout!. 9 C. Lockout over in Time for the New Season....

[...Labor Law Against Employees, Litig. & Trial \(July 11, 2011\), http:// www.litigationandtrial.com/2011/07/articles/attorney/antitrust/nfl-lockout-lawsuit-injunction-reversal...](http://www.litigationandtrial.com/2011/07/articles/attorney/antitrust/nfl-lockout-lawsuit-injunction-reversal...)

### 18. POWERLESS AGAINST POLICE BRUTALITY: A FELON'S STORY

Saint Thomas Law Review | Spring 2013 | 25 St. Thomas L. Rev. 218 | Tamara F. Lawson

Imagine driving to the store with friends, but while en route, you are shot and beaten by the police so severely that random citizen witnesses intervene to stop the police brutality. Next, envision recovering from those injuries and awakening from a coma chained to your hospital bed informed that you are under arrest for attempted murder of a...

[...Blog of Plaintiff's Att'y Max Kennerly \(June 25, 2012\), http:// www.litigationandtrial.com/2012/06/articles/attorney/civil-rights-1/a-trial-lawyers...](http://www.litigationandtrial.com/2012/06/articles/attorney/civil-rights-1/a-trial-lawyers...)

### 19. RIGHTS TO DO GRAVE WRONG

Journal of Legal Analysis | Spring, 2013 | 5 J. Legal Analysis 107 | Mark Osiel

Rights to do grave wrong arise whenever the law permits conduct that ordinary morality severely reproaches. We examine one good reason, ignored by legal thought, why such rights develop: because their undoubted dangers are mitigated by extra-judicial encumbrances on their irresponsible exercise, establishing a normatively acceptable equilibrium....

[...Cases Need Awards Over \\$50 Million. Litigation & Trial Blog , http:// www.litigationandtrial.com/2009/04/articles/trial/ideas/why-false-claims-act-whistleblower...](http://www.litigationandtrial.com/2009/04/articles/trial/ideas/why-false-claims-act-whistleblower...)

## 20. REEVALUATING GAG ORDERS AND RAPE SHIELD LAWS IN THE INTERNET AGE: HOW CAN WE BETTER PROTECT VICTIMS?

Seton Hall Legislative Journal | 2013 | 38 Seton Hall Legis. J. 71 | Bonnie Birdsell

I. Introduction. 72 II. Savannah Dietrich and Social Media Exploitation. 75 III. An Overview of Current Laws Affecting Rape Victims and Their Origins. 77 A. A History of Rape Victims at Trial and Attempts to Protect Their Privacy. 78 B. A Distinct Inconsistency in Rights and Rulings Plagues Juvenile Courts Due to the Lack of a Federal Standard...

...Plea Bargain?, *Litigation & Trial* (July 24, 2012), available at <http://www.litigationandtrial.com/2012/07/articles/series/special-comment/savannah-dietrich-free-speech...>

## 21. READY OR NOT: HOSPITAL VALUE-BASED PURCHASING POISED TO TRANSFORM HEALTHCARE REIMBURSEMENT MODEL AND INTRODUCE NEW FRAUD TARGETS UNDER THE FALSE CLAIMS ACT

Annals of Health Law | Winter, 2013 | 22 Annals Health L. 43 | PollyBeth Hawk

There are a multitude of healthcare reform forces converging on the United States' healthcare system, but arguably none as profoundly transformative as the government's value-driven healthcare agenda. The nation's healthcare stakeholders continue to grapple with reports and statistics detailing the delivery of inadequate care across provider...

...*Litigation and Trial Blog* (May 19, 2011), available at <http://www.litigationandtrial.com/2011/05/articles/attorney/whistleblower/electronic-health-records-fraud-the...>

## 22. RELIEVING THE VIGILANT DOORKEEPER: LEGISLATIVE REVISION OF THE ALIEN TORT STATUTE IN THE WAKE OF JUDICIAL LAWMAKING

Southern California Review of Law & Social Justice | Fall 2012 | 22 S. Cal. Rev. L. & Soc. Just. 91 | Brittany J. Shugart

To the victims of international human rights abuses, hope of judicial redress in United States federal courts hinges on the outcome of a pending U.S. Supreme Court case. In *Kiobel v. Royal Dutch Petroleum Co.*, the Court will consider whether corporations may be sued in U.S. courts for extraterritorial violations of international law under the Alien...

...*Blog of Plaintiff's Attorney Max Kennerly* (Sept. 14, 2009), <http://www.litigationandtrial.com/2009/09/articles/series/special-comment/conservative-judicial-activists-on...>

## 23. CORPORATE PURPOSES IN A FREE ENTERPRISE SYSTEM: A COMMENT ON EBAY V. NEWMARK

Yale Law Journal | June, 2012 | 121 Yale L.J. 2405 | David A. Wishnick

In 1995, while working for Charles Schwab's San Francisco IT department, Craig Newmark started an email list to publicize local events for his friends. Sixteen years later, craigslist dominates the online classifieds market, owing in part to the price of most of its services: free. As Craig tells it, craigslist emerged "both technologically and in..."

...*Required To Maximize Profits*, *Litigation & Trial* (Sept. 13, 2010), <http://www.litigationandtrial.com/2010/09/articles/the-law-for-lawyers/ebay-v-newmark...>

## 24. OUR CONTINUING STRUGGLE WITH THE IDEA THAT FOR-PROFIT CORPORATIONS SEEK PROFIT

Wake Forest Law Review | Spring 2012 | 47 Wake Forest L. Rev. 135 | Leo E. Strine, Jr.

This Essay addresses an issue that, to be candid, perplexes me. That issue is the continuing dismay evidenced in Western, capitalist nations when public corporations that pursue profit for their stockholders take actions that adversely affect the nation's economic stability, the corporation's employees, or the environment. When a corporation's...

...Required To Maximize Profits, Litig. & Trial (Sept. 13, 2010), [http:// www.litigationandtrial.com/2010/09/articles/the-law-for-lawyers/ebay-v-newmark...](http://www.litigationandtrial.com/2010/09/articles/the-law-for-lawyers/ebay-v-newmark...)

## **25. LAWYERS, NOT WIDGETS: WHY PRIVATE-SECTOR ATTORNEYS MUST UNIONIZE TO SAVE THE LEGAL PROFESSION**

Minnesota Law Review | April 2012 | 96 Minn. L. Rev. 1482 | Melissa Mortazavi

More than two decades ago, Chief Justice Rehnquist lamented: It seems to me that a law firm that requires an associate to bill in excess of two thousand hours per year . . . is substantially more concerned with profit-maximization than were firms when I practiced. Indeed, one might argue that such a firm is treating the associate very much as a...

...Flat Fees, Signifying Nothing, Litig. & Trial (Jan. 18, 2011), [http:// www.litigationandtrial.com/2011/01/articles/the-business-of-law/the-long-view...](http://www.litigationandtrial.com/2011/01/articles/the-business-of-law/the-long-view...)

## **26. U.S. SUPREME COURT UPDATE: 2010-2011 TERM**

ALI-ABA Course of Study | March 22 - 24, 2012 | ST033 ALI-ABA 629 | Robert B. Fitzpatrick

THE INFORMATION CONTAINED HEREIN IS BASED UPON SOURCES BELIEVED TO BE ACCURATE AND RELIABLE -- INCLUDING SECONDARY SOURCES. DILIGENT EFFORT WAS MADE TO ENSURE THE ACCURACY OF THESE MATERIALS, BUT THE AUTHOR ASSUMES NO RESPONSIBILITY FOR ANY READER'S RELIANCE ON THEM AND ENCOURAGES READERS TO VERIFY ALL ITEMS BY REVIEWING PRIMARY SOURCES WHERE...

...Residents.html; • <http://www.erisalawyerblog.com/2011/01/employmenttax-supreme-court-up.html>; • [http:// www.litigationandtrial.com/2011/01/articles/the-law-for-lawyers/mayo-foundation-v...](http://www.litigationandtrial.com/2011/01/articles/the-law-for-lawyers/mayo-foundation-v...)

## **27. A GUIDE TO PREDICTING THE CALCULATION OF ATTORNEYS' FEES UNDER DELAWARE LAW FOR SHAREHOLDER SUITS**

Delaware Journal of Corporate Law | 2012 | 37 Del. J. Corp. L. 501 | Jason W. Adkins

The Delaware Court of Chancery and Supreme Court recently made headlines that echoed throughout the plaintiff's bar when they approved an unprecedented attorneys' fee award amounting to over \$304 million in the In re Southern Peru Copper Corporation Shareholder Derivative Litigation. This award has highlighted an area of law that is unpredictable...

...In Shareholder Lawsuits, Litig. & Trial Blog (Dec. 21, 2011), [http:// www.litigationandtrial.com/2011/12/articles/attorney/contingent-fee/attorneys-fee-shareholder-lawsuits...](http://www.litigationandtrial.com/2011/12/articles/attorney/contingent-fee/attorneys-fee-shareholder-lawsuits...)

## **28. ENCOURAGING LITIGATION: WHY DODD-FRANK GOES TOO FAR IN ELIMINATING THE PROCEDURAL DIFFICULTIES IN SARBANES-OXLEY**

Hastings Business Law Journal | Winter 2012 | 8 Hastings Bus. L.J. 175 | Jessica Luhrs

In the wake of the recent financial crisis, widely touted as "the Great Recession," the government and public have struggled to identify a proper solution in order to prevent another catastrophic hit to the national economy. One of the most difficult aspects of this endeavor has been understanding the sophisticated and exotic investment schemes...

...Blog of Plaintiff's Attorney Max Kennerly (Sept. 10, 2010), [http:// www.litigationandtrial.com/2010/09/articles/the-law-for-people/the-idiots-guide...](http://www.litigationandtrial.com/2010/09/articles/the-law-for-people/the-idiots-guide...)

### **29. CONSUMERS OF GENERIC DRUGS SEARCH FOR COMPENSATION: THE EFFECT OF PLIVA V. MENSING ON THE CONTE/FOSTER DICHOTOMY**

New York University Annual Survey of American Law | 2012 | 68 N.Y.U. Ann. Surv. Am. L. 165 | Clifford M. Laney

Introduction. 165 I. The Foster/Conte Dichotomy. 167 A. Foster v. American Home Products and Its Progeny. 168 B. Conte v. Wyeth. 170 II. Preemption in the Prescription Drug and Device Context. 172 A. Brief Overview of Preemption Doctrine. 172 B. Riegel v. Medtronic and Wyeth v. Levine: First Looks at Preemption in the Prescription Drug/Device...

...Opinions Of 2011, Litigation and Trial (Jan. 3, 2012), [http:// www.litigationandtrial.com/2012/01/articles/attorney/consumer-protection/the-most-unfair-prescription...](http://www.litigationandtrial.com/2012/01/articles/attorney/consumer-protection/the-most-unfair-prescription...)

### **30. CRYING FOUL: WHISTLEBLOWER PROVISIONS OF THE DODD-FRANK ACT OF 2010**

Loyola University Chicago Law Journal | Winter 2012 | 43 Loy. U. Chi. L.J. 427 | Umang Desai

Instances of corporate fraud within the past ten years have been greater than at any time in this country's history. The decade began with Enron manipulating accounting records and exploiting the energy markets. It ended with Bernard Madoff's fifty billion dollar Ponzi scheme and the sub-prime mortgage crisis, which led to the 2008 collapse of the...

...Wall Street Reform Act, Litig. & Trial (Sept. 10, 2010), [http:// www.litigationandtrial.com/2010/09/articles/the-law/for-non-lawyers/the-idiots...](http://www.litigationandtrial.com/2010/09/articles/the-law/for-non-lawyers/the-idiots...)

### **31. BRADY V. NFL: HOW THE EIGHTH CIRCUIT "SAVED" THE 2011 NFL SEASON BY SUPPORTING NEGOTIATION, NOT LITIGATION**

Villanova Sports and Entertainment Law Journal | 2012 | 19 Vill. Sports & Ent. L.J. 603 | Erick V. Posser

Until March 11, 2011, the National Football League ("NFL"), and its thirty-two privately owned organizations, operated under a collective bargaining agreement ("CBA") with the National Football League Players Association ("NFLPA"). At the time, the NFLPA was the exclusive bargaining representative for the NFL's professional football players (the...

...Using Labor Law Against Employees, LitigationAndTrial.com (July 11, 2011), [http:// www.litigationandtrial.com/2011/07/articles/attorney/antitrust/nfl-lockout-lawsuit-injunction-reversal...](http://www.litigationandtrial.com/2011/07/articles/attorney/antitrust/nfl-lockout-lawsuit-injunction-reversal...)

### **32. RESTORING THE GATEKEEPER: HOW ILLUSTRATIVE NOTICE PLEADING CAN SAVE THE AMERICAN JUDICIAL SYSTEM**

Liberty University Law Review | Fall, 2011 | 6 Liberty U. L. Rev. 243 | John Robert Toy II

When the United States Supreme Court decided to review its interpretation of the procedural rules concerning pleadings, its decisions in *Bell Atlantic v. Twombly* and *Ashcroft v. Iqbal* became the center of a legal and academic controversy. *Twombly*, though decided in 2002, is one of the twenty cases cited most often in federal court opinions, and...

...and Tribulations of a Philadelphia Lawyer (Aug. 10, 2009), [http:// www.litigationandtrial.com/2009/08/articles/the-law/for-lawyers/posner-and-easterbrook...](http://www.litigationandtrial.com/2009/08/articles/the-law/for-lawyers/posner-and-easterbrook...)

### **33. RULE 37(A)'S LOSER-PAYS "MANDATE": MORE BARK THAN BITE**

University of Memphis Law Review | Fall, 2011 | 42 U. Mem. L. Rev. 109 | Lindsey D. Blanchard

I. Introduction. 110 II. The History and Purposes of Rule 37(A) Sanctions. 115 III. The Problem and Its Effects. 121 A. The Problem: Judicial Reluctance to Become Involved in Discovery Disputes Leads to Lax Enforcement

of Rule 37(a). 122 1. So Much Judging, So Little Time. 126 2. That Isn't My Job!. 129 B. The Effects: Lax Enforcement of Rule 37(a)...

...Civil Discovery Objections, LITIG. & TRIAL BLOG (Mar. 13, 2009), [http:// www.litigationandtrial.com/2009/03/articles/trial/news/american-college-of-trial-lawyers...](http://www.litigationandtrial.com/2009/03/articles/trial/news/american-college-of-trial-lawyers...)

### **34. U.S. SUPREME COURT UPDATE 2010-2011 TERM**

ALI-ABA Course of Study | July 28 - 30, 2011 | ST001 ALI-ABA 1 | Robert B. Fitzpatrick

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...Residents.html; • <http://www.erisalawyerblog.com/2011/01/employmenttax-supreme-court-up.html>; • [http:// www.litigationandtrial.com/2011/01/articles/the-law/for-lawyers/mayo-foundation-v...](http://www.litigationandtrial.com/2011/01/articles/the-law/for-lawyers/mayo-foundation-v...)

### **35. THE APPEARANCE OF IMPROPRIETY AND JURORS ON SOCIAL NETWORKING SITES: REBOOTING THE WAY COURTS DEAL WITH JUROR MISCONDUCT**

Georgetown Journal of Legal Ethics | Summer, 2011 | 24 Geo. J. Legal Ethics 589 | David P. Goldstein

In an Arkansas case that resulted in a \$12.6 million judgment against Stoam Holdings, a wall panel supplier, the defendant sought to overturn the decision after a juror sent out Twitter messages during the trial, including "oh and nobody buy Stoam. Its bad mojo and they'll probably cease to Exist, now that their wallet is 12m lighter." In another...

...Mistrial? Litig. & Trial (Mar. 16, 2009, 9:57 AM), [http:// www.litigationandtrial.com/2009/03/articles/the-law/for-lawyers/does-the-fumo...](http://www.litigationandtrial.com/2009/03/articles/the-law/for-lawyers/does-the-fumo...)

### **36. DOES WESTLAWNEXT REALLY CHANGE EVERYTHING? THE IMPLICATIONS OF WESTLAWNEXT ON LEGAL RESEARCH**

Law Library Journal | Summer, 2011 | 103 Law Libr. J. 359 | Ronald E. Wheeler

WestlawNext, Thomson Reuters's newest electronic research service, has now been around for over a year. Professor Wheeler shares his thoughts on how this service may impact various aspects of legal research, and suggests that further study and research are necessary to fully evaluate and understand the system. Introduction. 359 What Is...

...Third-Party Litigation Funding Litigation & Trial (Apr. 20, 2010), [http:// www.litigationandtrial.com/2010/04/articles/the-law/for-people/investing-in-lawsuits...](http://www.litigationandtrial.com/2010/04/articles/the-law/for-people/investing-in-lawsuits...)

### **37. WHISTLE WHILE YOU WORK: THE FAIRYTALE-LIKE WHISTLEBLOWER PROVISIONS OF THE DODD-FRANK ACT AND THE EMERGENCE OF "GREEDY," THE EIGHTH DWARF**

Mercer Law Review | Summer 2011 | 62 Mercer L. Rev. 1279 | Lucienne M. Hartmann

The Dodd-Frank Wall Street Reform and Consumer Protection Act (the Act) is arguably the most sweeping and significant expansion of financial regulatory reform since the Great Depression. The Act, stimulated by Congress's perceived failures of government banking regulations, is intended to promote financial stability in the United States. Amidst the...

...a Philadelphia Lawyer (Sept. 10, 2010, 7:39 AM), [http:// www.litigationandtrial.com/2010/09/articles/the-law/for-people/the-idiots-guide...](http://www.litigationandtrial.com/2010/09/articles/the-law/for-people/the-idiots-guide...)

### **38. U.S. SUPREME COURT UPDATE 2010-2011 TERM**

ALI-ABA Course of Study | March 31 - April 2, 2011 | SS032 ALI-ABA 609 | Robert B. Fitzpatrick



THE INFORMATION CONTAINED HEREIN IS BASED UPON SOURCES BELIEVED TO BE ACCURATE AND RELIABLE - INCLUDING SECONDARY SOURCES. DILIGENT EFFORT WAS MADE TO ENSURE THE ACCURACY OF THESE MATERIALS, BUT THE AUTHOR ASSUMES NO RESPONSIBILITY FOR ANY READER'S RELIANCE ON THEM AND ENCOURAGES READERS TO VERIFY ALL ITEMS BY REVIEWING PRIMARY SOURCES WHERE...

...Residents.html • <http://www.erisalawyerblog.com/2011/01/employmenttax-supreme-court-up.html> • <http://www.litigationandtrial.com/2011/01/articles/the-law/for-lawyers/mayo-foundation-v-...>

### 39. COLOR COMMENTATORS OF THE BENCH

Florida State University Law Review | Spring, 2011 | 38 Fla. St. U. L. Rev. 451 | Adam Benforado

Featuring prominently in the last four sets of Supreme Court confirmation hearings, the judge-as-umpire analogy has become the dominant frame for understanding the role of the Justice and may also now act as a significant constraint on judicial behavior. Strong criticisms from legal academics and journalists attacking the realism of the analogy...

...Judges Are Not Umpires, *Litig. & Trial* (Mar. 11, 2010), <http://www.litigationandtrial.com/2010/03/articles/the-law/for-people/trial-judges-are...>

### 40. HACKING INTO FEDERAL COURT: EMPLOYEE "AUTHORIZATION" UNDER THE COMPUTER FRAUD AND ABUSE ACT

Vanderbilt Journal of Entertainment and Technology Law | Spring 2011 | 13 Vand. J. Ent. & Tech. L. 543 | Thomas E. Booms

Few would disagree that computers play an important role in modern United States society. However, many would be surprised to discover the modest amount of legislation governing computer use. Congress began addressing computer crime in 1984 by enacting the Computer Fraud and Abuse Act (CFAA). The CFAA represented the first piece of federal...

...and Stolen Trade Secrets, *Litigation & Trial* (July 7, 2009), <http://www.litigationandtrial.com/2009/07/articles/litigation/news/civil-remedies-the-computer-fraud...>

### 41. WORKING THROUGH A MUDDLED STANDARD: PLEADING DISCRIMINATION CASES AFTER IQBAL

Columbia Journal of Law and Social Problems | Winter, 2010 | 44 Colum. J.L. & Soc. Probs. 235 | Tanvir Vahora

In 2009, the U.S. Supreme Court ruled that Javaid Iqbal, a Pakistani Muslim detained by the FBI, had not sufficiently pled the facts in his complaint alleging discrimination by top United States government officials. As such, the Court dismissed his claims. The Court's opinion in *Ashcroft v. Iqbal* appeared to adopt the Court's heightened pleading...

...against the federal government for deprivations of constitutional rights." ), <http://www.litigationandtrial.com/2009/06/articles/the-law/for-lawyers/ashcroft-v-iqbal...>

### 42. IQBAL SIGNALS BIVENS' PERIL: A CALL FOR CONGRESSIONAL ACTION

Fordham Urban Law Journal | October, 2010 | 37 Fordham Urb. L.J. 1057 | Megan Gephart

Introduction. 1057 I. The Shifting Attitude of the Court toward Bivens. 1059 A. The History of Bivens. 1059 B. The Current Court's Attitude Toward Bivens. 1063 C. Given that Bivens is Disfavored, What Options Does the Court or Congress Have?. 1067 II. Arguments for and Against a Codification of Bivens. 1068 A. Arguments for Replacing Bivens by...

...Important As You Think, *Litigation & Trial* (June 29, 2009), <http://www.litigationandtrial.com/2009/06/articles/the-law/for-lawyers/ashcroft-v-iqbal...>

### 43. PEARSON, IQBAL, AND PROCEDURAL JUDICIAL ACTIVISM

Florida State University Law Review | Summer, 2010 | 37 Fla. St. U. L. Rev. 901 | Goutam U. Jois

In its most recent term, the Supreme Court of the United States decided *Pearson v. Callahan* and *Ashcroft v. Iqbal*, two cases that, even at this early date, can safely be called "game changers." What is fairly well known is that *Iqbal* and *Pearson*, on their own terms, will hurt civil rights plaintiffs. A point that has not been explored is how the...

...v. Iqbal : Not Nearly As Important As You Think, [http:// www.litigationandtrial.com/2009/06/articles/the-law/for-lawyers/ashcroft-v-iqbal...](http://www.litigationandtrial.com/2009/06/articles/the-law/for-lawyers/ashcroft-v-iqbal...)

### 44. JUROR MISCONDUCT IN THE TWENTY-FIRST CENTURY: THE PREVALENCE OF THE INTERNET AND ITS EFFECT ON AMERICAN COURTROOMS

Loyola of Los Angeles Entertainment Law Review | 2010 | 30 Loy. L.A. Ent. L. Rev. 301 | Amanda McGee

"sittin in court about 2 exercise my right as a juror" . . . "the testimony of the last witness doesn't add up" . . . "closing arguments r finally underway, then deliberations. the def is so guilty." Though these statements are seemingly harmless, they each have the power to deprive the criminal defendant of a constitutional right, trigger a...

...Twittering Warrant a Mistrial?, *Litig. & Trial*, Mar. 16, 2009, [http:// www.litigationandtrial.com/2009/03/articles/the-law/for-lawyers/does-the-fumo...](http://www.litigationandtrial.com/2009/03/articles/the-law/for-lawyers/does-the-fumo...)

### 45. THE END IS NIGH: WILL TURNAROUND AGREEMENTS LEAD TO HOLLYWOOD'S FINANCIAL DEMISE?

Widener Law Journal | 2010 | 19 Widener L.J. 977 | Peri Fluger

This city is afraid of me. I have seen its true face. The streets are extended gutters and the gutters are full of blood and when the drains finally scab over, all the vermin will drown. The accumulated filth of all their sex and murder will foam up about their waists and all the whores and politicians will look up and shout "Save us!" . and I'll...

...Split All in One *Litigation & Trial* , Aug. 25, 2008, [http:// www.litigationandtrial.com/2008/08/articles/the-law/the-watchmen-movie-copyright-infringement...](http://www.litigationandtrial.com/2008/08/articles/the-law/the-watchmen-movie-copyright-infringement...)

### 46. SOCIAL MEDIA USE DURING TRIALS: STATUS UPDATES FROM THE JURY BOX

Antitrust | Fall, 2009 | 24-FALL Antitrust 90 | Lisa C. Wood

I HAVE A CONFESSION TO MAKE. I have a Facebook page and go on Facebook nearly every day. I signed up for Facebook to keep up with my kids, but I quickly became a regular user to connect with long lost friends from high school, summer camp, and college and to stay in closer touch with family and friends. I even post status updates to report on...

...of a Philadelphia Lawyer, Mar. 16, 2009, available at [http:// www.litigationandtrial.com/2009/03/articles/the-law/for-lawyers/does-the-fumo...](http://www.litigationandtrial.com/2009/03/articles/the-law/for-lawyers/does-the-fumo...)

### 47. SOCIAL FACTORING THE NUMBERS WITH ASSISTED REPRODUCTION

Texas Journal of Women and the Law | Fall 2009 | 19 Tex. J. Women & L. 1 | Bridget J. Crawford, Lolita Buckner Inniss

I. INTRODUCTION. 2 II. RACE-ING NADYA SULEMAN: BLACK, WHITE, AND/OR OTHER. 4 A. Anxiety #1: The Specter of Blackness. 6 B. Anxiety #2: Of "Chicken Doo-Doo" Whites: Contingent Whiteness and Racial Hierarchy. 9 III. POLICING ROLES, POLICE ROLES. 11 A. Anxiety #3: Policing White Motherhood. 11 B. Anxiety #4: Doctors as Failed State Agents. 12 IV....

...Philadelphia Lawyer, Can the Octuplets Sue for Medical Malpractice?, [http:// www.litigationandtrial.com/2009/02/articles/litigation/ideas/can-the-octuplets-sue-for...](http://www.litigationandtrial.com/2009/02/articles/litigation/ideas/can-the-octuplets-sue-for...)