

# The Spotlight

## JENNER & BLOCK

Litigation Monitor

June 2010

Volume 2 • Issue 6

### TOP RANKED CHAMBERS USA 2010

36 Jenner & Block partners were recognized in the 2010 edition of Chambers USA. The Firm was also recognized in 19 of Chambers' practice categories. Many Firm practices and partners were ranked at "Band 1," Chambers' highest level of recommendation, including General Commercial Litigation (Illinois) and White Collar (Illinois). [more...](#)

### Spotlight Live

#### 2009 Supreme Court Term in Review - Leading Business Cases

Partners Paul M. Smith, William M. Hohengarten, Elaine J. Goldenberg and Marc A. Goldman will host the breakfast seminar "2009 Supreme Court Term in Review: Leading Business Cases" at Jenner & Block's Chicago Office on June 30 from 8:30 AM - 10:00 AM. Benna R. Solomon, Deputy General Counsel to the City of Chicago, will join the panel to add her insights on *McDonald v. City of Chicago*. The panelists will discuss the implications of the Court's biggest business cases including: patentability after *Bilski*; class actions and arbitration after *Stolt-Nielsen*; and, criminal liability and honest service laws after *Black and Skilling*. The panelists will also take a look ahead to next term's big copyright, entertainment, and preemption cases. For more event information and to register, please [click here](#).

### Message from the Co-Chairs of the Litigation Department

In this edition of The Spotlight, we highlight a number of interesting recent developments, including several decisions from the Supreme Court as it wraps up its October 2009 Term. As we discuss, the Supreme Court has recently held that conduct by the National Football League to jointly market the intellectual property of all of its teams can constitute concerted action within the scope of § 1 of the Sherman Act. This decision has interesting implications for the status of other joint ventures under the antitrust laws. The Court has also ruled that under the Federal Arbitration Act a party cannot be compelled to submit to class arbitration unless there is a contractual basis for concluding that the parties agreed to class arbitration. Addressing ERISA, the Court has decided that where a plan grants a fiduciary discretion to interpret the plan, the fiduciary's interpretation is entitled to deference, even if the fiduciary's initial interpretation of the same plan terms was found to be unreasonable. And in a case involving an award of attorneys' fees, the Court has held that there is a strong presumption that lodestar amounts are a sufficient award, and that enhancements are proper only in rare and exceptional circumstances supported by specific evidence that the lodestar fee is inadequate.

Several high-profile cases from this Term remain to be decided, including a case on the patentability of business methods, and we will report on those in upcoming editions. In addition, Jenner & Block's next Spotlight Live event will cover the leading business cases from the Supreme Court's 2009 Term. More information on this event and how to register is included below.

This edition also discusses other developments of note in the lower courts, including an interesting First Amendment decision from the Fourth Circuit, a change of course in the closely watched *Qualcomm* sanctions matter, and the Federal Circuit's decision to consider en banc a number of questions related to the inequitable conduct defense.

Regards,

**David J. Bradford** and **Craig C. Martin**

Co-Chairs Jenner &amp; Block Litigation Department

### In This Issue

Senior Editor, **Barbara S. Steiner** and Issue Editor, **Elaine J. Goldenberg**

#### Antitrust Litigation

- *The Supreme Court Denies NFL Antitrust Immunity for Joint Marketing.* [more...](#)
- *Hospital Has Antitrust Standing To Sue Rival On Tying Claims.* [more...](#)
- *Second Circuit Panel States There Are "Compelling Reasons" To Revisit Tamoxifen "Reverse Payment" Decision En Banc.* [more...](#)
- *Government Challenges Consummated Acquisition Too Small To Require HSR Notification.* [more...](#)

#### Appellate & Supreme Court

- *Third Circuit Rules Against Interlocutory Appeal in New Jersey Suit Against Lehman Brothers Officers and Directors.* [more...](#)

#### Arbitration

- *Class Arbitration Requires Agreement By The Parties.* [more](#)
- *Non-Signatory To Arbitration Agreement May Be Compelled To Arbitrate.* [more...](#)
- *Unavailability Of Arbitration Forum Does Not Invalidate Arbitration Clause.* [more](#)

#### Attorney-Client Privilege

- *New Jersey Rules Personal Emails On Company Computer Are Privileged.* [more...](#)
- *Advice Of Counsel Defense Leads To Subject Matter Waiver.* [more...](#)
- *Disclosure To SEC Per Confidentiality Agreement Did Not Waive Privilege.* [more...](#)
- *Disclosure Of Privileged Documents To Business Acquirer Waived Privilege.* [more...](#)

#### Class Action

- *Divided Supreme Court Remands Class Action Based On Shady Grove.* [more...](#)
- *Full Daubert Analysis Applies To Expert At Class Certification Stage.* [more...](#)
- *Second Circuit Enforces CAFA Limitation On Review Of Securities Actions.* [more...](#)
- *Ninth Circuit En Banc Permits Wal-Mart Class Action To Proceed.* [more...](#)

#### Complex Commercial Litigation

- *Supreme Court Reverses Enhanced Attorneys' Fees Award.* [more...](#)
- *Seventh Circuit Affirms \$1 Damages Award In Trade-Show Dispute.* [more...](#)
- *No Breach Of Fiduciary Duty Claims For Matters Covered By Contract.* [more...](#)

#### Electronic Discovery

- *Court Reverses Sanctions Order In Qualcomm Dispute.* [more...](#)
- *Parties Should Cooperate On E-Discovery Or Face Potential Sanctions.* [more...](#)

#### Environmental Litigation

- *Third Circuit Addresses "Still Developing" Relationship Between CERCLA Cost Recovery and Contribution Actions.* [more...](#)
- *Fifth Circuit Dismisses Hurricane Katrina Climate Change Appeal.* [more...](#)

#### ERISA Litigation

- *Supreme Court Reverses Ruling Against Plan Administrator, Noting That Everyone Makes Mistakes, Even Administrators of ERISA Plans.* [more...](#)
- *Plaintiffs' Claims Dismissed Based On ERISA Section 404(c) "Safe Harbor" Defense.* [more...](#)

### Litigation Department News

Jenner & Block Named "2010 U.S. Copyright Firm of the Year" by Managing Intellectual Property [more...](#)

Firm Secures Victory for Cayuga Indian Nation in New York's Highest Court [more...](#)

### In The Firm

Jenner & Block Creates Real Estate Finance Litigation and Workout Task Force to Aid Clients in the Commercial Real Estate Crisis [more...](#)

Terri L. Mascherin to be Installed as President of Chicago Bar Association at Annual Meeting [more...](#)

#### First Amendment

- *Fourth Circuit Upholds Ban on Alcohol Advertising.* [more...](#)

#### Health Care Litigation

- *Pharmaceutical Company Will Pay \$520 Million To Resolve Improper Off-Label Marketing Allegations.* [more...](#)
- *Pharmaceutical Company Ordered To Pay \$500 Million Verdict Resulting From Hepatitis Outbreak.* [more...](#)

#### Intellectual Property

- *Federal Circuit Decision May Signal an Overhaul of the Inequitable Conduct Standard.* [more...](#)
- *Federal Circuit Upholds FDA Position That Approval Phase of Review Process Begins When Sponsor "Initially Submits" an "Application."* [more...](#)

#### International Arbitration

- *District Of Columbia Court Refuses To Dismiss Action to Enforce Award Against Nigeria.* [more...](#)
- *Section 1782 Applies To Foreign Private Arbitration Proceedings.* [more...](#)
- *Bilateral Investment Treaty Arbitration Under UNICTRAL Rules Satisfies Section 1782.* [more...](#)

#### Product Liability

- *West Virginia Bars Punitive Award Based On Medical Monitoring Recovery.* [more...](#)
- *Texas Supreme Court Views Jurisdiction Over Foreign Manufacturer Expansively.* [more...](#)

#### Professional Responsibility & Ethical Developments

- *Summary Contempt Proceedings Violated Counsel's Due Process Rights.* [more...](#)
- *California Court Holds Ethical Screen May Prevent Firm's Disqualification.* [more...](#)

#### Securities Litigation

- *Court Rejects SEC's Proposed Injunction As Improper "Obey-The-Law" Injunction.* [more...](#)
- *Court Rules That SEC Cannot Be Held Liable For Careless Investigation of Madoff.* [more...](#)

#### White Collar Defense & Investigations

- *UK Enacts Major Foreign Bribery Legislative Reform.* [more...](#)
- *DOJ Opines: Hiring Foreign Official Per U.S. Government Contract Permissible.* [more...](#)
- *Compliance Failures Lead To \$160 Million In Penalties.* [more...](#)
- *DoD Proposes Rules Penalizing Deficiencies In Internal Business Systems.* [more...](#)
- *Sentencing Commission Approves New Rules Re: Ethics Programs.* [more...](#)



**Richard F. Ziegler**

Managing Partner, New York Office

### In The Spotlight: Attorney Profile

Richard F. Ziegler is Managing Partner of the Firm's New York office, Co-Chair of the International Arbitration Practice and former Co-Chair of the Complex Commercial Litigation Practice. Mr. Ziegler joined Jenner & Block in 2007 after serving as General Counsel of 3M Company for nearly five years. At 3M he was deeply involved in the company's corporate governance and business conduct processes and supervised significant litigation involving intellectual property, antitrust, product liability, employment and environmental matters. He also oversaw the 3M's largest-ever acquisition. Since returning to private practice at Jenner & Block Mr. Ziegler has focused his practice on major commercial disputes, governance and compliance matters including internal investigations and representation of a board of directors special committee, and international arbitrations involving Israeli, Brazilian, Jordanian and Thai counterparties. Among other recognitions Mr. Ziegler has been identified as a BTI "Client Service All-Star," awarded in a client survey for exceptional understanding of client needs and outstanding results. Earlier in his career Mr. Ziegler served as an Assistant United States Attorney in the Southern District of New York and as Deputy Chief Appellate Attorney in that office. He was a partner at Cleary, Gottlieb, Steen & Hamilton for more than 20 years, where he served as coordinator of its New York litigation practice and was a member of its worldwide Executive Committee. He is a frequent author and speaker on compliance and governance matters, having served as Co-Chair of PLI's Corporate Counsel Institute in 2007 and 2008, and is currently Co-Chair of the PLI Corporate Compliance and Ethics Institute. [more...](#)