

The Spotlight

JENNER & BLOCK Litigation Monitor

May 2010

Volume 2 • Issue 5

Litigation Department

Jenner & Block's Litigation Department is comprised of 330 litigators in offices in Chicago, Los Angeles, New York and Washington DC. The Litigation Department is organized in the following practice groups:

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Message from the Co-Chairs of the Litigation Department

In this edition of The Spotlight, we highlight several recent developments that we think you will find both interesting and helpful to your practice.

We discuss the continuing trend of significant sanctions for discovery abuses, including the Sixth Circuit's decision granting summary judgment for defendants on plaintiffs' lost profits claim when plaintiffs produced only information related to their lost gross revenues and refused to produce information related to their underlying costs (*Bessemer & Lake Erie Rail Road Co.*), and a district court's sanction of plaintiff's counsel for refusing to narrow propounded electronic discovery requests in response to a court order (*Edelen*). We also discuss in Professional Responsibility the New York County Lawyers' Association Committee on Professional Ethics opinion stating that a lawyer who learns after the fact that a client has given false deposition testimony must take remedial measures and that simply withdrawing from representation will not cure the problem.

In Attorney-Client Privilege, we discuss district court holdings requiring a party to produce privileged information that had been inadvertently produced to a testifying expert witness (*MVB Mortgage Corp.*) and holding that, under Arizona state law, disclosing internal investigation materials to a health services regulator did not waive privilege (*Bickler*). In addition, we discuss the Seventh Circuit decision that, pursuant to *Upjohn Co. v. United States*, an investigation conducted by counsel for the purpose of obtaining factual information which will form the basis for counsel's legal advice is protected by the attorney-client privilege (*South Berwyn School Dist.*). However, in *White Collar*, we also note that a district court found that internal audits regarding the classification of employees as exempt were not work product because they would have been created in substantially similar form even if no litigation was anticipated (*Lewis*).

Among the matters we discuss, in *Antitrust*, is a petition for certiorari to clarify the pleading standards outlined by the *Supreme Court in Bell Atlantic Corp. v. Twombly*. (*In re: Travel Agent Commission Antitrust Litigation*).

Finally, we would like to announce that the revised and expanded edition of Jenner & Block's privilege outline "Protecting Confidential Legal Information: A Handbook for Analyzing Issues Under the Attorney-Client Privilege and the Work Product Doctrine," is now available. To view this document, please click [here](#).

Regards,

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

Co-Chairs Jenner & Block Litigation Department

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Senior Editor, **Barbara S. Steiner** and Issue Editor, **Craig A. Cowie**

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- *FTC And Other Plaintiffs May Pursue Reverse Payment Claims.* [more...](#)

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Philip L. Harris

Partner

In The Spotlight: Attorney Profile

Philip L. Harris is a partner in the Firm's Litigation Department and a Co-Chair of the Product Liability and Mass Tort Defense Practice. Mr. Harris focuses his legal practice on the defense of substantial and complex product liability, mass tort and commercial cases for large corporate entities. He has served as trial counsel for General Motors Corporation in a variety of product liability and commercial disputes since 1993. He has tried numerous jury cases to defense verdict and won many Daubert and summary judgment motions in high exposure cases. He has served as national, regional and generic defense counsel for companies facing repetitive exposure issues such as Dow Corning, Abbott Laboratories and NutriSystem. In addition to his impressive legal track record, Mr. Harris has made a measurable, national impact in providing leadership in the efforts to increase the number of minority attorneys in law firms and the legal profession. Mr. Harris published a widely recognized article on the status of black partners in law firms and the issue of race within the legal profession that was the cover story of *Chicago Lawyer* magazine in July of 2007. Mr. Harris is a member of the Northwestern University Board of Trustees, where he serves on the Executive Committee. He also serves on the boards for The Chicago Zoological Society/Brookfield Zoo and Chicago Committee on Minorities in Large Law Firms. He is a Fellow of the Aspen Institute's Henry Crown Leadership Program and a Fellow of Leadership Greater Chicago. [More...](#)