Knoxville Bar Association

THE CONSIGLIERE

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"The best thing about the future is that it comes one day at a time ."

--Abraham Lincoln

Let us know your ideas and suggestions for *THE CONSIGLIERE:*

- Call or e-mail Chris Field at 312-8183 or ccf@lyblaw.net or Marsha Wilson at 522-6522 or mwilson@knoxbar.org.
- Submit an article for consideration.
- Give us your feedback on this newsletter.
- Tell us about CLE topics or networking events you would like the Section to sponsor.

FROM THE CO-CHAIRS

It appears that 2012 may bode well for many businesses in our area. For starters, the Knoxville News Sentinel recently reported that venture-capital investments were up 19% in the fourth quarter nationally. Tennessee is primed and ready to take advantage of these funds, having become a hub for auto and other manufacturers over the past few years. Locally, the press has also recognized Knox County and the townships located within as being particularly business friendly. Personally, I can attest for the buzz and excitement surrounding the upcoming Tennessee Veterans Business Association Expo, where there are over 150 vendors and more than 1,000 total participants anticipated.

Perhaps, however, it will be the startups and small companies that will most benefit from this trend. The ubiquitous nature of social media and devices such as the $10 gadget that allows everyone with an iPhone to take credit cards, lends itself to the small business. These things will help the small business, who otherwise could not afford the efficiencies of big business economies of scale. Although small federal contractors in this area are hurting from the budget and associated politics, the State of Tennessee appears to be sponsoring a number of programs to help small businesses get financing and other support.

The question will be, as lawyers, how can we support the legal interests of small businesses, which do not have the resources to support a full-time lawyer? It would certainly be a shame for new Tennessee businesses to use certain unnamed online legal websites to apply California contract law in this state. Additionally, will this mean that the trend will be for legal jobs to move from "in house" to "out house"? Only time will tell.

At any rate, the Knoxville Bar Association's Corporate Counsel Section will most certainly enjoy another great year under the leadership of Co-Chair Marcia Kilby and myself. Just kidding, it takes a whole team to run the Section, and it looks like things are coming together once again. Social Committee Chair Ned Morgan is lining up quarterly dates for our CLEs and social gatherings. We are arranging for seminars on employment law and e-discovery. We are also planning a discussion on international law. As always, the Section plans to publish four quarterly issues of *The Consigliere*, now overseen by attorney Chris Field.

We are looking for a CLE Committee Chairperson. The Section hosts its annual half-day CLE every August and needs somebody to help organize it this year. We have one or two speakers in the works already. Plus, with the election-year, there will most certainly be plenty of topics and material. If you would like to help, please let us know as soon as possible.

As always, we would appreciate your input. Please feel free to contact any of the above with suggestions or ideas of any kind.

Hope to see you soon.
David Headrick, Co-chair

UPCOMING SECTION EVENT

Come enjoy a beer with your colleagues

WHEN: Wednesday, February 29, 2012 at 6:00 p.m.

WHERE: The Casual Pint, 234 Brookview Centre Way, Knoxville

The proprietor of The Casual Pint in Bearden will lead the section in a beer-related discussion fittingly accompanied by a fine selection of brews. CLE credit will not be available.

TAX TIDBIT:

Unintended Consequences and Substantial Nexus

By: Bradley C. Sagraves, Esq.,
Woolf, McClane, Bright, Allen & Carpenter, PLLC

Companies operating in multiple jurisdictions have to comply with numerous statutes and regulations or risk facing fines, penalties, or worse, taxes. That happened recently to Scholastic Book Clubs, Inc. (“Scholastic”), when it failed to plan for the effect its marketing plan would have in Tennessee. The result was a huge Tennessee sales and use tax audit that cost Scholastic almost $6 million.

Scholastic is a Missouri book publisher that markets to teachers and students at nursery to secondary schools throughout the United States. Scholastic mails its catalogs to teachers and parents of home school students, who in turn distribute the catalogs to the students. The students give their orders to their teachers or parents who compile a master list and remit the list to Scholastic’s office in Missouri. Scholastic has no employees, independent contractors, distributions centers, warehouses, bank accounts or real property in Tennessee.

The Tennessee Department of Revenue (“Department”) audited Scholastic’s books and records and found Scholastic liable for approximately $3.6 million in sales and use tax, with an additional $2 million in penalties and interest. The Department argued that Scholastic had a “substantial nexus” with Tennessee because the teachers and parents of homeschool children acted as *de facto* agents for Scholastic by distributing the catalogs, compiling orders, remitting the order forms and payment to Scholastic and receiving shipments of books from Scholastic to distribute to the students. Scholastic argued that the teachers and parents were not agents because they had no contract with Scholastic, received no compensation from Scholastic and were free to order from other book companies.

TAX TIDBIT: Unintended Consequences and Substantial Nexus

The trial court found that Scholastic was not subject to sales and use tax in Tennessee because Scholastic did not have "substantial nexus" with Tennessee. The Department appealed the decision and the Tennessee Court of Appeals overturned the ruling of the trial court.

The Court of Appeals found that the teachers and parents of homeschool students operated as a *de facto* marketing and distribution mechanism for Scholastic to sell books in Tennessee. Although there is an exception to "substantial nexus" under the Commerce Clause for businesses whose only connection with a state is through a common carrier or the U.S. Mail, the Court of Appeals narrowly construed the exception and found that Scholastic's contacts with the teachers and homeschool parents in Tennessee established a connection with Tennessee greater than only using a common carrier or the U.S. mail. As a result, Scholastic was found to have a "substantial nexus" with Tennessee and liable for approximately $6 million in unpaid sales and use tax (including penalties and interest).

The moral of this story is to advise your clients on how their actions may subject them to taxation in other states. A business can unknowingly tread into another state wholly unprepared for the tax consequences of its actions. In Scholastic's case, its savvy marketing techniques caused it to be subject to sales and use taxes in Tennessee. Make sure your clients are aware of the possible consequences of their actions.

OUR FEATURE ARTICLES

CRIMINAL LAW

Trade Secrets: The Federal Government's Protection of Private Property Rights through the Criminal Justice System [1, 2]

By: Troy S. Weston, Esq.,
Eldridge, Blakney & Trant, P.C.

For corporate counsel, including corporate general counsel, the protection of trade secrets by federal statutory and jurisprudential law can be a comfort or a concern, depending on which side of the secret your client finds himself. Comfort can be derived from the reality that, if your corporate client operates with information that must be protected from outside consumption in order to continue to successfully do business, federal law can help protect your client's efforts. Concern, however, is a function of the competitive processes that companies engage in with other individuals and companies that hold a portion of a collective market share. Learning information about your competitor may give your client a commercial advantage, or it may subject your client to criminal penalties. Therefore, it is imperative that when you advise your client, you understand and are able to successfully navigate the rubric of federal laws addressing trade secrets.

Trade secrets, the definition of which is derived from the Uniform Trade Secrets Act,[3] which has been adopted in a majority of states including

CRIMINAL LAW: Trade Secrets: The Federal Government's Protection of Private Property Rights through the Criminal Justice System

Tennessee, are broadly defined as information, whether "financial, business, scientific, technical, economic, or engineering," that have economic value, and are related to a product that it inserted into the stream of interstate commerce. Trade secrets are protected by federal law from espionage by individual or collective entities.[4] What makes a trade secret a distinct type of proprietary information is that, per the statute, trade secrets may be either tangible or intangible in quality.[5] Thus, the subject matter forming the basis of a federal prosecution may not actually be memorialized in any material way. Moreover, the owner of a trade secret may be a person or a collective entity, provided that it has a legal or equitable interest in the trade secret.[6]

The first criminal penalties relating to trade secrets in modern federal law came in 1996 with the passage of the Economic Espionage Act (the "Act").[7] The Act addresses two distinct types of trade secrets crimes.[8] The first set of criminal penalties applies to the theft of trade secrets for the benefit of a "foreign government, foreign instrumentality, or foreign agent."[9] This provision of the Act imposes penalties, including fines of up to $500,000 and/or imprisonment for up to 15 years, with a maximum fine for collective entities of $10,000,000.[10] The second criminal offense codified by the Act contemplates the beneficiary being domestic.[11] Under this ambit of the Act, the penalties range from a fine and/or a period of imprisonment not to exceed 10 years, with collective entities being subjected to a fine of up to $5,000,000.[12] It is important to also note that the inchoate offenses of attempt and participation in a conspiracy carry the same criminal penalties as the actual completed offenses under the Act.

In the prosecution of an individual or entity for the theft of trade secrets under the Act, it is important to recognize that the Sixth Circuit takes the position that the statute is sufficiently clear for constitutional analysis purposes, notwithstanding the Act's use of seemingly vague language such as "reasonable measures" to keep trade secrets confidential.[13] Further, it is not a defense to prosecution that an individual or entity was unaware that the information obtained was a trade secret. Rather, in *United States v. Krumrei*, the Sixth Circuit Court of Appeals determined that because the defendant knew that the information was owned by someone else (i.e., proprietary in nature), and that his actions were illegal, the prosecution of his actions was allowable under constitutional parameters.[14]

An additional part of the Act that functions to identify what a trade secret is, is that the trade secret must the subject of "reasonable measures to keep [the] information secret."[15] As previously discussed, this language has been deemed constitutionally sufficient in the Sixth Circuit.[16] However, there is no precise formula that has been articulated, in any circuit, as to what does and does not constitute reasonable measures for preserving the esoteric nature of the information. In the Seventh Circuit, the trade secret at issue was deemed to be the subject of sufficient "reasonable measures," because the materials were locked in a central location, even though parts of the trade secrets were routinely turned over to subcontractors for use in their work.[17] The *Lange* Court was, likewise, not persuaded that the trade secrets were not sufficiently protected because the owner did not require those obtaining the confidential information to sign a confidentiality agreement.[18] Additionally, in *Hsu*, the Pennsylvania District Court found that reasonable measures had been taken when the defendants were informed that the relevant information was proprietary and that it could not be obtained through licensure or a joint venture.[19] The take away message from these cases is that courts that have reviewed the Act have been willing to interpret the language of the Act broadly to protect an expansive range of information owned by private enterprise.

CRIMINAL LAW: Trade Secrets: The Federal Government's Protection of Private Property Rights through the Criminal Justice System

It is, therefore, important for corporate counsel to work closely with all of the research and manufacturing departments of their clients to make sure that appropriate steps are taken to maintain the confidentiality of their client's trade secrets. Conversely, however, corporate counsel must ensure that they are precise in their practices relative to hiring and outside research such that their clients are not obtaining a competitive advantage that violates federal law.

[1] The author would like to thank Douglas A. Trant, Esq., shareholder with Eldridge, Blakney & Trant, P.C., for his substantial assistance in the creation of this article.

[2] This article is part one of a series dealing with the current statutory and case law framework addressing trade secrets and corporate espionage.

[3] *See* Uniform Trade Secrets Act § 1(4); *see also United States v. Lange*, 312 F.3d 263, 267 (7th Cir. 2002).

[4] 18 U.S.C. § 1839(3).

[5] *Id.*

[6] *See* 18 U.S.C. 1839(4).

[7] Prior law criminalizing trade secrets had been limited to national defense trade secrets. *See* 18 U.S.C. § 792-799.

[8] *Compare* 18 U.S.C. § 1831 *with* 18 U.S.C. § 1832.

[9] 18 U.S.C. § 1831

[10] *Id.*

[11] 18 U.S.C. § 1832.

[12] *Id.*

[13] *United States v. Krumrei*, 258 F.3d 535 (6th Cir. 2001); *see also United States v. Hsu*, 40 F.Supp.2d 623 (E.D.Pa. 1999).

[14] *Krumrei* at 539.

[15] 18 U.S.C. § 1839(3)(A).

[16] *See Krumrei, supra*

[17] *See Lange*, 312 F.3d at 266.

[18] *Id.*

[19] See Hsu, 40 F.Supp.2d at 628

HEALTH LAW

New Pain Clinic Law May Affect More Than The Average "Pill Mill"

By Ian P. Hennessey and J. David Watkins,
London & Amburn, P.C.

On May 30, 2011, in response to the legislature's growing concern over prescription drug abuse, Governor Haslam signed new legislation targeting

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pain management clinics. Effective January 1, 2012, Public Chapter No. 340 (the "Act") imposes new legal requirements on pain clinics and threatens professional discipline and other penalties for failure to comply. Although the new law is aimed at dealing solely with the perceived problem of pain clinics, it is possible that other medical practices could find themselves in the crosshairs. Therefore, attorneys advising medical practices should familiarize themselves with the requirements of the new legislation and work with any clients who may (unintentionally) come under the definitions set forth in the Act.

The Act only applies to healthcare providers associated with "pain management clinics." But how is a "pain management clinic" defined? The Act specifically does <u>not</u> apply to a certain entities, such as medical schools, dental schools, hospitals, nursing homes, hospice services, and facilities maintained by the State or Federal government.[1] Outside of these exceptions, however, the definition of a "pain management clinic" leaves some room for interpretation.

Pursuant to the new Tenn. Code Ann. § 63-1-301, a "pain management clinic" is defined as (1) a "privately-owned facility," and (2) in which a medical doctor, an osteopathic physician, an advanced practice nurse, and/or a physician assistant provides "pain management services to patients," and (3) a majority of which patients "are issued a prescription for, or are dispensed, opioids, benzodiazepine, barbiturates, or carisoprodol, but not including suboxone" for more than 90 days in a twelve-month period.[2] Although the term "facility" replaced "physician's practice or medical office" in the final draft of the bill, the new Act does not specifically define what constitutes a "facility," nor does it specifically exclude a physician practice or medical office.[3] Similarly, there is no guidance in the new Act as to what constitutes "pain management services."[4] Consequently, the greatest single factor for determining whether a practice fits the definition of a pain management clinic may be whether a majority of its patients are prescribed "opioids, benzodiazepine, barbiturates, or carisoprodol" for 90 days in any year. Based on the language of the statute, any combination of patients taking the above-listed prescriptions that totals more than 50% of the patient population may qualify the practice as a "pain management clinic." As a result, these statutory ambiguities could lead to a practice being classified as a pain management clinic as a result of the needs of its patients during a given year.

If a practice falls under the definition of a pain clinic, it must adhere to the requirements of the Act or risk professional discipline by relevant state boards and costly fines up to $1,000 per day.[5] In general, the Act sets forth certain requirements for the certification, ownership and operation of pain management clinics.[6] Each individual clinic location, regardless of ownership, must be certified by the state in order to legally operate as a pain management clinic.[7] The Act also grants authority to the health-related boards to inspect pain management clinics, including medical records, and to conduct investigations regarding complaints.[8] In addition, the Act restricts the manner of payment for services, with cash payments only permitted for co-payments.[9] Going forward, the Department of Health is authorized to promulgate additional rules and regulations pertaining to pain management clinics to which qualifying practices will be required to adhere.[10]

By this time, existing pain management clinics should be certified by the state or, at the very least, in the process of applying for certification. Based upon the risk of disciplinary action and substantial fines involved, providers should be made aware of the legal requirements of the Act and monitor the prescriptions of their patient populations to ensure that their practice does not inadvertently fit within the definition of a pain management clinic.

[1] *See* T.C.A. § 63-1-302.

[2] T.C.A. § 63-1-301.

[3] *See id*.

[4] *See id*.

[5] *See* T.C.A. § 63-1-311.

[6] *See* T.C.A. § 63-1-301 *et seq*.

[7] *See* T.C.A. § 63-1-306.

[8] *See* T.C.A. § 63-1-304, -305.

[9] *See* T.C.A. § 63-1-310.

[10] *See* T.C.A. § 63-1-303.

Disclaimer: The information contained herein is strictly informational; it is not to be construed as legal advice.

EMPLOYMENT LAW

EEOC to Employers: Using Educational Requirements to Screen Applicants May Violate ADA

By Leslie Beale
The Beale Firm, PLLC

When hiring, most employers include educational requirements as part of the qualifications for a job. It seems logical that one of the most significant factors in predicting an applicant's success as an employee is her educational background. Because of a recent discussion letter posted by the EEOC, however, employers should re-examine their use of such qualification standards.

On December 2, 2011 the EEOC issued an informal discussion letter in response to a situation involving people who could not earn high school diplomas because of learning disabilities, and as a result, were ineligible for jobs that required a high school diploma. The issue was whether the Americans with Disabilities Act ("ADA") prevents employers from relying on such qualifications in refusing to hire individuals with learning disabilities.
According to the EEOC, qualification standards that screen out employees on the basis of a disability must be job related and consistent with business necessity, or they may violate the ADA. The Commission reasoned that this would include applicants who could not earn a high school diploma because of a disability.

To be "job related and consistent with business necessity," a qualification standard must accurately measure an applicant's ability to perform the central duties of the job. If a qualification standard meets this test, the employer must still show that an applicant who does not meet the standard is unable to perform the essential duties of the job, even with an accommodation.

Though the EEOC letter is informal guidance, employers should take notice of its underlying message – disabled individuals cannot be excluded from job consideration based on artificial barriers like inflexible educational qualification standards. In response, employers should take the following steps:

1. Carefully review the duties associated with any job that is posted. Ensure that the duties listed are accurately reflect what is required for the position, and that no duties essential to the job are left out.

2. Carefully consider what educational qualifications are required to perform the essential functions of the job. While you may prefer to have applicants with high school diplomas, if it is not crucial to their ability to perform the job, you risk future claims of discrimination if you make a diploma a prerequisite for consideration.

3. Document your analysis of each job that is posted. When making the above considerations, keep good notes, so if you are questioned about your practices later you can answer the EEOC's questions or concerns.

4. Train those responsible for drafting job descriptions, and hiring and interviewing applicants. Employees involved in the drafting of job descriptions and advertisements for positions, as well as employees who actually conduct interviews and make hiring decisions, should be well-trained in the ADA and its requirements related to hiring.

Although as an employer you are not required to give preference to individuals with learning disabilities when making hiring decisions, you should be prepared to have the EEOC carefully scrutinize any decisions you make that exclude such individuals from consideration.

Leslie L. Beale is the founding member of The Beale Firm, PLLC. She focuses her practice in advising companies on labor and employment law

INTELLECTUAL PROPERTY

Avoiding that Trademark "Cease and Desist" Letter

By Brad Brittian and John Winemiller,
Merchant and Gould, Knoxville

Tom read the letter for at least the tenth time. The trademark lawyer he went to see when he received it called it a "cease and desist" letter. It accused him of infringing a trademark that belonged to a company on the other side of the country, a company using the same corporate name. Tom had built his business from nothing over the past six long, hard years, and the letter demanded that he immediately stop using the company name. He couldn't believe it! He had spent thousands of dollars advertising the name. All his customers knew his business by that name. And he had spent a fortune on the company website. Despite this, his trademark lawyer was in *the midst of negotiating the terms of surrender.*

Tom's trademark attorney explained that if a corporate name functions to identify the source or origin of goods or services it is a trademark. Obviously, this corporate name was a very important trademark – both to Tom and to the letter writer. Tom wanted to fight, but his attorney concluded that he did not have a good chance of winning. The other party had used the same trademark first in connection with essentially the same goods, and it held a federal trademark registration for the mark. Tom's best case scenario was to work out an agreement that would give him some time to phase in a new name for his business, and it looked like that was going to be possible. But that was little consolation. Now he was worried about the trademarks that he used on his products. Was he at risk of having to change them as well? Tom shook his head and asked, "What went wrong?"

The answer lies in decisions made, or not made, when Tom's corporation was being formed. When the business was being formed there had been an on-line check of the records of the Tennessee Secretary of State to see if the corporate name was available. The name didn't appear in the records, so it was assumed that it was available. The name had been reserved, and no difficulty was encountered in subsequently incorporating under it. The problem was that the author of the cease and desist letter was from another state. Even a check of the Secretary of State's trademark registration records would not have disclosed the problem. What would have disclosed the problem is a trademark search that included a search of the records of the United States Trademark Office. Indeed, as discussed below, a comprehensive trademark search not limited to the State and Federal registration records was called for.

There are no requirements that a trademark be registered. Common law rights can be acquired merely through use of a mark in connection with goods and/or services. Such common law trademark rights are, however, generally limited to the geographic area of use plus, in some cases, a natural zone of expansion. For example, a common law trademark owner who markets within a two hundred mile radius of Knoxville, Tennessee, may acquire trademark rights that may be asserted against subsequent users in that geographic area. But a subsequent user of the same mark in California, for example, may have superior rights to the mark in its geographic market as long as its use of the mark does not overlap with the Tennessee company's geographic market. As a consequence, it is not uncommon for multiple common law users to use the same or similar mark in separate geographic areas. This multiple common law use may go on for years without controversy if the users' geographic markets remain fixed. Problems arise where one common law user expands its market into the geographic area of another. Thus, when a business selects a corporate name/trademark, it should investigate any existing trademark use of the same or confusingly similar marks for the same or similar goods or service which may give rise to a trademark controversy, or which may limit the geographic expansion of the business. Limits on geographic expansion can become a problem, for example, where a successful restaurant wants to franchise, but common law trademark use by others in new geographic markets may make franchising impracticable.

Tom's situation is a bit different. The other party is the first user, and it holds a federal trademark registration. A federal trademark registration allows the registrant to exclude subsequent users throughout the United States from using the mark, or substantially similar marks, even if the registrant's trademark use did not originally extend to the second user's geographic market. Therefore, Tom's business was at risk from the date of first use of the corporate name. Unfortunately, it took six years for the problem to surface, and in that time substantial goodwill had built up in the trademark – goodwill that will be lost.

Another hypothetical situation that is worth noting is the situation where the common law user is the first user of the trademark in a limited geographic market, and the party holding the federal trademark registration is the second user who registers without knowledge of the earlier use. Typically this results in the common law user's rights being viewed as superior within the common law user's geographic market, and perhaps a natural zone of expansion beyond that market. The registrant is viewed as having superior rights elsewhere within the United States. Still, the inability of the registrant to capture nationwide rights can substantially impair the ability of the registrant to expand its business or offer franchises. Once again, it is important to identify others who may be using the same or similar marks on the same or similar goods and/or services before a mark is adopted.

So, ideally what should happen at the startup of a new business? For starters, there should be a comprehensive trademark search of the proposed business name and any other trademarks to be used. The search should include the records of the U.S. Patent and Trademark Office, the State trademark records of all 50 States, domain name registrations, and other sources likely to show common law trademark usage. As noted above, common law trademark rights are acquired merely by using the trademark in the market place. Obviously, a search which is limited to Federal or State trademark registration records is not likely to disclose such prior use. The search results should be reviewed and analyzed by experienced trademark counsel to determine the risk which may be associated with the adoption of a mark. Such searches may not in every instance show all common law usage, but they go a long way in avoiding the possibility of that cease and desist letter down the road.

Further, if the trademark search indicates that the trademark is available for adoption, pursuing a federal trademark registration is generally a very good idea. Even where the trademark has not yet been used, an intent-to-use application can be filed in the United States Trademark Office. Although the trademark must be used before the trademark registration will be allowed to issue, the filing date of the intent-to-use application is viewed as a constructive date of first use which fixes the applicant's priority with respect to potential subsequent users of the mark or confusingly similar marks.

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COUNSEL'S CORNER

Going In-house: One Counsel's Perspective

By Kristi Bennett,
Alstom Power

Since ~~selling out~~ going in-house in 2007 after litigating for about seven years, it has been interesting to discover how many misconceptions there are about the professional lives of in-house counsel. For the readers who have never worked in-house, I hope this article will give you a better sense of the pressures and expectations your in-house counterpart experiences. For those of you who have worked as in-house counsel, I hope that my experience does not prove unique to me such that I am labeled as a complete fruit loop. With those lofty goals in mind, I'll proceed:

<u>Yes, Virginia, in-house lawyers do have cushy 9-5 schedules!</u>

I'm just kidding. It's totally not true. However, I can say unequivocally that while I do work more than forty hours a week, I do not work the same number of hours as when I was in private practice. I do work weekends, nights, and holidays when it is called for. But, I do not have to work primarily just to ensure that I meet a billable hours goal.

The hours that in-house lawyers must work are less flexible than those of their outside counterparts. The company expects its employees to get to work at a specific time every day and leave at a specific time every day and take a sick day if they're sick and take a vacation day if they're on vacation (assuming their manager approves it), and if they're out of sick days and vacation days, then they're in a real pickle.

One of the major perks of being a corporate employee? The work goes on in my absence, and, if I plan ahead, the important stuff will wait on me to return. In other words, when I take a vacation, I am actually *on vacation*; when I am sick at home, I can *stay in bed*; and when I need to go to the dentist, I don't have to answer a client's urgent phone call with a numb lip and slobber dripping down my chin.

<u>It's just a different kind of pressure.</u>

Prior to going in-house, I envisioned the corporate world as a place where lawyers meandered the hallways, drinking their coffee, discussing the latest episode of American Horror Story with their peers, and making fun of their lawyer friends who were stuck in sweat shops. Now, admittedly, I've been known to do most (okay, all) of those things at some point…but I didn't enjoy it…I mean…I didn't mean to enjoy it…I mean….

I'll just start over: The pressure that a litigator feels in a private firm is incomparable to the pressure felt in any other situation: there is no stopping, no 'easy button,' no break. One could literally work twenty-four hours a day, every week of every month of every year, and <u>never</u> have a blank "to do" list. Legal work in the corporate environment is an entirely different kind of pressure and, frankly, somewhat more complex. When the pressure hits you, it hits you hard… like, Mike-Tyson-biting-off-your-ear kind of hard. You may go from having a clean desk with no new messages in your inbox and time to read the latest blog about how Dylan-McDermott's-towel-miraculously-managed-to-stay-attached-during-that-fight-scene to walking into a heated argument with a supplier over a multi-million dollar order, negotiating a nine-figure contract with a customer, reviewing a claim statement prepared by outside counsel to be sure it accurately reports the facts, collecting documents from the entire company with business units located in at least 6 states, not to mention the dozen or more units in Europe, in response to a request for information about one of your customers, determining if a patent has expired on a competitor's design, advising a manager on how to approach an employee about their, well, *unfortunate* choice of perfume, drafting a memo explaining to employees that no, they cannot park in the visitors' parking spaces just because it's raining outside, and assuring your

Knoxville Bar Association
505 Main Street
Suite 50
Knoxville, TN 37902

Phone:
(865) 522-6522

Fax:
(865) 523-5662

E-mail Addresses:
dheadrick@terryadamslaw.com
mkilby@deroyal.com
ccf@lyblaw.net
jhmccall@tva.gov
mwilson@knoxbar.org

http://www.knoxbar.org

outside counsel that yes, we did receive the invoice, that yes, it is in line for payment, and sure, we'd be more than happy to try to get that paid early so they can meet their fiscal year end goal.

We're All in This Together

At the end of the day, I really don't think in-house and outside lawyers are that different. Both are under immense pressure to produce; both 'serve many masters;' and both could really use more time away from the office, on a beach, frosty beverage in hand. Cheers!

NEWS AND NOTES

Thanks to Our Authors!

Thanks to all those who contributed to this issue of *THE CONSIGLIERE.* We would like to welcome our new regular Intellectual Property contributor, Merchant and Gould. Also, a tip of the hat to Kristi Bennet of Alstom Power for penning the inaugural "Counsel's Corner," a new column in which we give an in-house counsel from the area free reign to share his or her hard-earned insights with the section. Thank you, Kristi!

CONTACT INFORMATION

See the contact information on the left-hand margin of this page. Use the hyperlinks to contact our Co-Chairs, David Headrick and Marcia Kilby; Editor Chris Field; or the KBA's Executive Director, Marsha Wilson.

See the web site address at the bottom of the left-hand margin on this page to access the official Knoxville Bar Association web site by the hyperlink.