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**Jason L. Brown, New Executive Director & General Counsel
of NAMWOLF on NAMWOLF's Past, Present and Future**

By: Justi Miller | Kelly & Berens, P.A



Jason L. Brown

On October 5, 2010, NAMWOLF appointed its first Executive Director and General Counsel. Prior to accepting the position, Jason was Director of Legal/Senior Counsel - Domestic and Caribbean, PepsiAmericas, Inc. where he handled litigation, risk management, government relations, promotional/sweepstakes issues, negotiating and drafting customer and vendor agreements, corporate compliance and fraud, and a variety of other legal issues. He also served as president of the PepsiAmericas Foundation.

Jason graduated from Howard University School of Law in Washington, D.C. He began his legal career as an associate at the law firm of Winthrop & Weinstine, P.A. in Minneapolis then joined the law firm of Ungaretti & Harris in Chicago in 2000.

Jason, prior to this appointment, what has been your involvement with NAMWOLF?

Initially, when I was with PepsiAmericas, I was their contact to NAMWOLF. Then in 2004, I was invited to join NAMWOLF's Advisory Council, which consists of in-house attorneys who have expressed a desire and commitment to help NAMWOLF reach its goals. A little over a year later, in 2005 and prior the very first annual meeting, I was asked to chair the Advisory Council. Then in about 2007, I joined the board of directors when NAMWOLF included an in-house person on the board.

So is it fair to say you've been involved in NAMWOLF from the early days...

Not as early as 2001, but for the past eight years I have been extremely involved with almost everything NAMWOLF has done.

Why were you interested in NAMWOLF back in those early days?

What really attracted me then - and what attracts me now - is the spirit of NAMWOLF. The fact that it was designed and created to push for more opportunities for women and minority owned law firms intrigued me. We, as in-house attorneys, are not traditionally involved, or looked to, as the major supplier for diversity initiatives within our company.

For us to be engaged in the development of diversity initiatives and show our own leadership in this area within my corporation was really exciting. But once you take away the business side of it, the more time I spent with the people in NAMWOLF, the more I simply I really have enjoyed just being around the people associated with NAMWOLF.

It's true, we've experienced that sense of joy dealing with members of NAMWOLF too...why do you think that is?

As an organization, NAMWOLF has the strong business goals and push for diversity, but a really nice - and unintentional - result was that it created a



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2010 ANNUAL MEETING
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OCTOBER 4 - 6, 2010

WASHINGTON, DC

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Q&A with Jason L. Brown

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great community of lawyers who are committed and focused on the same ideals.

When we get together as an organization it is a great time and a great learning experience. Because of my fondness for the people affiliated with NAMWOLF, as in-house, it was a labor of love to make sure we achieved our 5% goal of hiring minority and women owned firms. In addition, I found personal fulfillment and professional satisfaction when there was an opportunity for greater involvement with NAMWOLF events or initiatives.

No one is hiding the ball here. Everyone knows that the in-house people are targeted to participate in our organization to hire and assist in the retention of our NAMWOLF law firm members, but it does not have a hard-sell feel to it. No one I have spoken to has felt that there is unreasonable pressure to hire NAMWOLF members during our events. Most in-house counsel are looking to provide more opportunities. In sum, it is a far more positive experience between in-house and law firm members than many would expect coming to our events for the first time.

How did you end up taking the Executive Director and General Counsel role at NAMWOLF?

Well, that is an interesting story... at the conclusion of summer of 2010, PepsiCo, Inc. had completed the acquisition of PepsiAmericas, Inc. and Pepsi Bottling Group. I was left with options: (1) continue to work with Pepsi and move my family to New York or (2) pursue opportunities with another company. Shortly after I became a "free agent" the NAMWOLF Board of Directors began to discuss hiring an Executive Director. While mulling over great opportunities at other companies, the opportunity to lead this organization was too good to pass up. After deep thought and deliberation, I decided that NAMWOLF was the best place for me at this time in my career.

What is your vision for NAMWOLF?

To push the organization to achieve its mission. First, my goal in the very short term is for corporations and law firms to think of NAMWOLF when they think of diversity – a household name for those seeking quality and diverse legal representation. Second, I want those law firms who aren't in NAMWOLF to want to be members and I want our members to feel pride in the organization. Third, to make sure our events are the gold standard for legal conferences and professional networking.

Law firms need to know that NAMWOLF is client-development at a very large scale. 153 companies will become familiar with who you, but cultivating a relationship with one or more takes some time. Finding work within the first year of joining isn't really the goal, but with time, being involved with NAMWOLF, opportunities that you've never heard of will result in new clients and new paths for your firm.

Where do you see the future of NAMWOLF ten years down the road?

I would expect our organization to continue to see growth - not just in the numbers of law firm members or corporation partners and sponsors, but growth in the number of our corporate partners who have achieved their 5% goal. Year after year, it would be great to see more and more corporations coming to the annual meeting who have easily achieved their 5% goal and are eager to help provide a road map for new corporations to do the same.

What are your thoughts on last month's annual meeting?

The meeting was outstanding and I think we have room to grow. It is always great to meet in-house counsel and law firms who are at their first event who say, "Wow, I didn't expect this!" which is very positive because then we know we have delivered and delivered well. We did it in a way that inspired some people about NAMWOLF. And, I hope to build on that for 2011. The annual meeting gets better and bigger each year and we have to continue to challenge ourselves with events.

Anything specific you loved about the annual meeting . . . CLEs, afternoon panel, expo?

Personally, I love the Expo because in one room, I get to have a snapshot of the individual personalities of our law firm members.

I also enjoy talking with our in-house members during the annual meeting and having them specifically ask for a law firm in a particular geographic area with a particular expertise and making those connections ... seeing people begin long-lasting relationships...that's what we are about.

Any recent victories you can report to the members?

Between the annual meeting and today, one month later, our name and presence has been felt in the legal community. The number of new corporations that are calling us and asking us for information about participating is very encouraging. I think our 10th

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Q&A with Jason L. Brown

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anniversary year, 2011, will be a banner one for us. The seeds of growth were planted before I came on board, but my goal is to make sure we cultivate those seeds and really see them grow. Our NAMWOLF members will see very exciting things this year.

Anything else you want to share with our members?

Our business meeting will be a little earlier than in years past. We are planning on February 22-23 in Miami, Florida at the Ritz Carlton South Beach.

This year's Business Meeting will be important as we set the platform for the organization in 2011. We will present a "state of the organization" that will provide our law firm members with everything they want to know – and need to know – about their organization. All committee and initiatives will meet to discuss their annual goals and objectives as well. We will also include our Advisory Council and Corporate and Public Entity Partners as we develop new and exciting ways to assist them in achieving their diversity objectives. In addition, planning for our Annual Meeting will get into full swing and allow for our members to have a lasting impact on our 10th Anniversary Celebration. As I said before, 2011 will be a banner year for NAMWOLF. Please keep in touch by following us on LinkedIn, Facebook and Twitter! I want the members to know that I am always available to discuss any concerns or questions you may have about NAMWOLF.



Justi Rae Miller is a partner with Kelly & Berens, P.A., a Martindale-Hubbell AV Rated law firm located in downtown Minneapolis which focuses its practice on litigating disputes and counseling clients regarding a wide variety of complex business transactions. The firm is WBENC certified and a proud member of NAMWOLF.



Message from the Chairman



Emery K. Harlan
Chairman

Thank you to everyone who attended the Annual Meeting, October 3 – 6 at the Gaylord National! This year's meeting was our highest attended with over 300 attendees. I would like to thank Robin Wofford, Wilson Turner Kosmo and Rick Richardson, GlaxoSmithKline, for their leadership as our 2010 Annual Meeting Co-Chairs, as well as our many event sponsors, law firm members, panelists and vendors. THANK YOU!

I am excited to announce that Jason L. Brown has been named as NAMWOLF's Executive Director and General Counsel. Jason has been actively involved in NAMWOLF over the past several years and has held leadership positions within NAMWOLF as a member of the Board of Directors and Chair of the NAMWOLF Advisory Council. Prior to joining NAMWOLF Jason was Director of Legal/Senior Counsel – Domestic and Caribbean, PepsiAmericas, Inc. where he handled litigation, risk management, government relations, promotional/sweepstakes issues, negotiating and drafting customer and vendor agreements, corporate compliance and fraud, and a variety of other legal issues. He also served as president of the PepsiAmericas Foundation.

If you are interested in participating in the planning of our upcoming NAMWOLF Business Meeting or the 2011 Annual Meeting, please contact Jane Kalata, Operations & Events Manager, 414.277.1139 or jane_kalata@namwolf.org.

Welcome New NAMWOLF Members



Yolanda Coly
Managing Director

New Law Firm Members:

Grant Schumann, LLC
Chicago, IL

LeBlanc Butler LLC
Metairie, LA

Ogden, Gibson Broocks, Longoria
& Hall LLP
Houston, TX

Rutherford & Christie LLP
Atlanta, GA

Holstein Law Group, PLLC
Minneapolis, MN

Gaffney Lewis & Edwards, LLC
Columbia, SC

New Corporate Partner:
Krispy Kreme Doughnuts, Inc.

Financial Contributor Renewals:
Freddie Mac (Gold)
Wal-Mart (Silver)
Fluor Enterprises (Bronze)

NAMWOLF Annual Meeting & Expo: A Newcomer's Perspective

By: Leslie Holstein, Esq. | Holstein Law Group

From Cow Heads to Boat Rides: What I Loved about the 2010 NAMWOLF Annual Meeting



On Thursday, September 16, 2010 Natasha Florence called me with some wonderful news: our law firm, the Holstein Law Group in Minneapolis, was now officially certified as a member of NAMWOLF! Even better, our membership entitled

us to attend the Annual Meeting in D.C. two weeks from that date, with the chance to meet over 100 minority and women law firm owners and corporate sponsors.

Frankly, I wasn't at all sure what to expect, but I did hear the part about "give-aways." So we packed up all of our Holstein cow heads – do you still have your Holstein stress relief cow head from the Expo? – and I set forth to experience all things NAMWOLF.

Here are four brief highlights from my first Annual Meeting:

Listening to Rep. Maxine Waters passionately describe the new Offices of Minority and Women Inclusion she helped establish as part of the Dodd-Frank Wall Street Reform & Consumer Protection Act. On the flight to D.C., I read a *Forbes* editorial criticizing this provision, Section 342 of the Act, as a "brash example of social engineering." How empowering to then be on Capitol Hill the very next day, listening to this eloquent and powerful female, Rep. Waters, tell us about her effort to include us – minority and women law firm owners – in this initiative.

The majesty of the moment – when Yolanda Coly presented Maxine Waters with NAMWOLF's award and recognition – was so very inspiring to me. I knew I was in the right place.

The CLE sessions – on cross-marketing, on investigations, on legal ethics in the electronic age – were invaluable. Especially helpful for me as a trial lawyer was Monday's session on "Litigating in the Technology World." These presenters were not only highly informative, they were funny! Thank you.

Meeting friendly lawyers at the Law Firm Expo. I was worried no one would talk to me or stop by my table. I had no one on my schedule. But lawyers did stop to chat, listen and question me about our law firm's expertise and how we might connect. I am so grateful for Jane, Natasha and Jason Brown helping me pack up all my stuff at 5:15 p.m.! (I actually thought I needed enough for 300 people)

The "Dine Around," a.k.a. the Boat Ride. Despite the drizzle, this event was fun and actually quite soothing once we got to the drinking and dining part in Old Alexandria. I appreciated that I was able to "re-connect" (from three hours earlier) with lawyers I'd met at the Expo.

Marketing gurus tell us that networking is a "contact sport." The NAMWOLF meeting was all that and more. Holstein Law Group looks forward to the next event, and more boat rides.



NAMWOLF Annual Meeting & Expo: 2010 Award Winners

Diversity Initiative Achievement Award Winner:
Prudential

Outstanding Service by an Advisory Council Member Award Winner:
Joel Stern

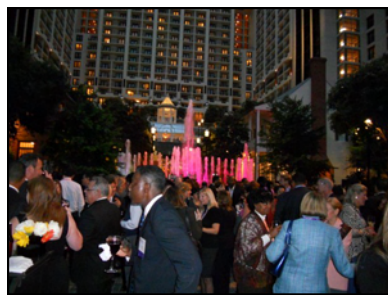
Trailblazer Award:
Federal Deposit Insurance Corporation
(accepted by Stephen Hanas)

Social Justice & Equality Award:
**Congresswoman Maxine Waters
and Senator Robert Menendez**
(presented at Capitol Hill Day on October 4, 2010)



Congresswoman Maxine Waters and Yolanda Coly

Annual Meeting & Expo Photos



Photos courtesy of
Laura Gibson
Ogden, Gibson, Brooks,
Longoria & Hall LLP
www.ogblh.com

NAMWOLF Announcements



NAMWOLF ANNOUNCES JUSTI RAE MILLER AS EDITOR OF ITS NEWSLETTER FOR 2011

Justi Rae Miller, a partner with Kelly & Berens, P.A. in Minneapolis, has agreed to take over the reins of the NAMWOLF newsletter, effective January 2011. "We are very excited at Kelly & Berens about our membership in NAMWOLF and the firm is fully committed to giving back to the organization by handling the newsletter," Miller says. Ms. Miller has already flown out to San Diego to meet with the current editor and to get prepared for 2011, "Stacy Fode, Valeina Jack and the Brown Law Group have done a fantastic job for NAMWOLF, we are very thankful for their leadership and we look forward to continuing a quality product for the members."

NEWSLETTER SUBMISSIONS

Please send future submissions for the NAMWOLF newsletter to jmiller@kellyandberens.com preferably in Word, Times New Roman, 12 font. While substantive articles can be 500-800 words, please limit firm announcements to approximately 350 words. Photo and logo submissions need to be jpg equivalent at 300 DPI.



Are you LinkedIn to
NAMWOLF? Follow this link to get
connected: [http://www.linkedin.com/
company/1392878?](http://www.linkedin.com/company/1392878?)

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Tried and True Tactics for Expediting Contract Negotiations

By: Polly A. Dinkel | Sideman & Bancroft LLP



The Problem: Companies engaged in large-ticket sales of products and/or services, particularly when their customers are also large and sophisticated, frequently find it challenging to sell their products or services time- and cost-effectively, while also controlling business and legal risks. Large-volume customers usually have strict internal policies and

procedures for purchasing that include “mandatory” terms and multiple levels of review and approval, by both legal and business units. If not managed correctly, these negotiations can drag on, lengthening the sales cycle, burdening internal resources, increasing outside legal costs, and resulting in last-minute concessions to close the deal timely.

Tactics for Expediting the Contract:

Know Your Customer.

Understand the customer’s timetable for launch. If implementation is not imminent, conserve resources by responding only as necessary to keep the deal alive until it makes sense to proceed. Repeated starts and stops and deal changes increase costs unnecessarily.

Understand the customer’s familiarity with your product/service and whether the customer is entering a new technology arena or market. If so, expect delays and build in time for education.

Learn the customer’s approval process and identify the decision-makers.

Assess the parties’ relative leverage: do they need you, or do you need them?

Appreciate that the customer’s attorneys, whether in-house or outside, will be highly motivated to avoid any risk. In most cases, the incentives to avoid risk will override the incentives to get the deal done.

Set the Customer's Expectations.

Educate the customer at the outset of your contracting process, from both a business and legal perspective, and remind as necessary during the negotiations.

Set expectations early as to what is/is not possible/negotiable, from both a business and legal perspective.

Make sure that front line sales is selling the terms as well as the product/service.



The Contract is Key.

Consider whether lower-value products or services can be separated from the bundle and sold or licensed on a PO or a click- or-shrink-wrap agreement. Consider moving an SLA or other highly technical terms to a webpage that can be cross-referenced in your customer contract. The idea is to remove as many terms as possible from the negotiation process.

Present the customer with a pristine contract. While it is easy to push back on a lawyer who is “moving commas,” you will quickly become bogged down in defending typos, grammatical errors and ambiguities.

Maintain compilation/database of acceptable compromises and educate negotiators about them.

Move as many of the “negotiated” terms as possible to the exhibits. Not only will this take focus away from the provisions that you would rather not change, but it will facilitate identifying non-standard terms throughout the term of the customer relationship.

Avoid separately pricing consulting services and the resulting “if we pay for it, we own it” response.

Control the Paper.

Don’t expect that sending a document in a form that is not intended to be edited will discourage comments. Technology and custom have left those days behind. Do impress upon the customer that versions of your agreement will be controlled at your end and commit to turning revisions timely.

Encourage the customer to discuss comments by phone rather than inputting changes (once made, the customer becomes wedded to the changes).

Always provide a marked copy. Failure to do so promotes unnecessary suspicion.

Control Your Counsel.

Make sure your outside counsel is aware of company “hot buttons” and is clear on the chain of command.

If there are legal budget constraints on the deal, make sure your outside counsel is aware of these.

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Tried and True Tactics for Expediting Contract Negotiations

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Check your counsel's availability for conference calls and notify him/her in advance if "on call" availability is necessary.

Make sure the business representatives are controlling the deal.

Just Say No!

Make sure the team members are supporting, rather than undercutting, one another. "Good cop/bad cop" only works when everyone know his/her role.

The tone should always be respectful but firm. If antagonized, the customer's representatives are likely to dig in their heels.

Resist deal fatigue, threatened deadlines, and last-minute nickel-and-diming; make concessions only if assuming additional risk makes sense in the context of the entire deal.

Choose a contract negotiator who will not own the ongoing customer relationship.

Business Versus Legal.

Separate business from legal issues and have the business people negotiate their issues separately. Having attorneys present during business negotiations is usually not an effective use of legal resources.

On the other hand, astute business negotiators can contribute to negotiation of the "legal" issues by making decisions about the appropriate level of risk the company should assume.

Have your counsel hold training sessions with contract negotiators to sensitize them to the importance of warranties, limitations of liability and indemnification provisions.

On the Same Page.

Internally: take 5 or 10 minutes before a scheduled call to bring the negotiating team up to date on interim developments.

With the customer: insist on getting all requested changes before responding; don't negotiate against yourself.

Deal Momentum.

Make the call.

Don't end the call or leave the room without agreeing upon next steps and a timetable. Hold your team accountable to meet its commitments.

Contract Evolution.

Constantly update templates in response to historical comments.

Convene periodic meetings with counsel to review and evaluate issues arising in contract negotiations.

Err on the side of reducing the level of detail.

SAVE THE DATE!

2011 NAMWOLF BUSINESS MEETING

FEBRUARY 22 - 23, 2011

RITZ CARLTON SOUTH BEACH - MIAMI, FL

The 2011 Business Meeting Will Feature:

- State of the Organization by Jason L. Brown, Executive Directory & General Counsel of NAMWOLF
- Advisory Council Retreat Session
- Standing Committee and Initiative Meetings
- Networking Luncheons
- Marketing Session for NAMWOLF Law Firm Members
- 2011 Annual Meeting Planning, lead by 2011 Co-Chairs, Kim Howard: Smith Fisher Maas & Howard and Wendy Weingart, Prudential
- Many networking opportunities



**Registration will
launch soon!
Stay tuned for
more details.**



Spotlight—Member Firm: Gaffney Lewis & Edwards



Amy Gaffney, Regina Lewis and Susan Edwards had all faced the challenges that confront women and minorities in large corporate law firms. Regina Lewis had been told many times by potential corporate clients that although her credentials as a partner in her law firm were impressive, the law firm lacked the diversity that was imperative to so many corporations in choosing outside counsel. This and other factors propelled her, along with Susan Edwards who was an associate at the same firm, and Amy Gaffney, a successful solo practitioner at the time, to form the Gaffney, Lewis and Edwards, LLC ("GLE") in the summer of 2007. In so doing the three women formed what may be South Carolina's only all female, ethnically diverse law firm with a significant focus on the representation of corporate entities in tort and employment matters.



Amy L. Gaffney



Regina Hollins Lewis



Susan R. Edwards

Since formation, the three women have never looked back. They found that many corporations are in the market for what Gaffney Lewis & Edwards provides -- "big firm experience at small firm rates." In only three short years, the firm has added two associate attorneys and a support staff of four supporting paralegals and assistants. While its main office is centrally located in the capital city of Columbia, GLE also maintains a satellite office in Charleston, South Carolina, which enables the firm to handle matters across the state, from the "Low Country" coastal areas to the mountains or "Upstate." "We are proud to first and foremost bring over 40 years of litigation experience to the work that we do," said Amy Gaffney, the firm's managing partner. "The fact that we are a group of ethnically diverse women adds to the

perspective that we bring and we think reflects the diversity in the customers served by our clients."

Gaffney Lewis & Edwards focuses on tort defense litigation, including premises and products liability as well as false arrest and related claims, labor and employment litigation, breach of warranty and internal corporate investigations. The firm represents national retailers and a major automobile manufacturer.

The firm is currently the only certified WBENC and NAMWOLF law firm located in South Carolina.

When was the firm founded?

The firm was founded in July of 2007.

Who are the founding shareholders?

The founding members are Amy L. Gaffney, Regina Hollins Lewis and Susan R. Edwards.

And how big is the firm – office location, partners and attorneys?

The firm consists of the three founding partners and two associates with offices in Columbia and Charleston, South Carolina.

What are the firm's significant areas of practice?

The firm's significant areas of practice are tort defense, including premises and products liability, commercial litigation and labor and employment law. The firm also conducts internal investigations on behalf of companies and two of its members are certified mediators.

How did your firm come to know NAMWOLF? Why did you join?

The firm learned of NAMWOLF and its mission from one of our clients who spoke enthusiastically about the organization and encouraged our firm to seek membership.

Please name some corporate clients in the firm?

The firm represents or has represented several national retailers and a major automobile manufacturer.

Spotlight—Member Firm: Gaffney Lewis & Edwards

Why is diversity important to your firm?

Diversity is important to our firm because we believe that the differences in our backgrounds and experiences strengthen our law firm and our ability to represent clients who have broad and diverse customer bases. It is important internally because it creates a work environment where individuals can be free to respect each other's differences and in turn, can feel free to maximize individual potential. In addition, our diversity enhances our ability to bring different perspectives to the business issues that our clients face, which we believe enables us to better serve our clients. On a broader level, diversity is critical because social prejudices will not likely change unless and until we ourselves are reflective of what we would like to see in our community.

What are your thoughts on the annual meeting? And what tangible benefits has your firm received from the conference?

While marketing and client development is always a major goal of any firm, we found the NAMWOLF conference to consist of much more than simply "marketing." As a fairly young firm, and one which is new to NAMWOLF, we found the annual conference to be a great opportunity to meet and see other minority and women owned law firm "success stories". The early tangible benefits were the new relationships we formed with other firms all of whom we found to be encouraging and inspirational.

Anything specific you loved about the annual meeting ... CLEs, afternoon panel, expo?

We found the CLEs to be focused on relevant and timely topics and the "take-a-ways" from those discussions have proved valuable. We of course enjoyed the social functions as well, particularly the "Dine Around," which allowed us to become familiar with several other members in great settings while learning about the town.

Any recent victories, special recognition, awards?

We consider our recent acceptance into NAMWOLF to be the most exciting recent event for our firm. We are also proud to have been certified by the WBENC. In addition, we are thrilled that one of our members, Susan Rawls Edwards, was recently named one of the area's "Legal Elite" by the Greater Columbia Business Monthly magazine.

What are your firm's long term goals?

Our firm's long term goal is to continue to grow in a smart and efficient manner and to increase our opportunities to provide superior legal representation to businesses that recognize the importance of diversity. In so doing, we hope to become active members in NAMWOLF and the programs that it sponsors.

Where do you see the future of NAMWOLF?

We are impressed and encouraged by the statistics presented at the annual conference regarding NAMWOLF's progressive growth in the five years since its formation. We are excited about the prospect of increasing the membership of firms in the Carolinas where the existence and recognition of women and minority owned law firms has been somewhat lacking.

What has been your involvement with NAMWOLF? For how long?

We were accepted into NAMWOLF in September of this year and thus, are new to the organization and have had the opportunity to attend only one annual meeting to date. The meeting was informative and invigorating and provided us with a tremendous opportunity to network with similar firms and with a number of corporate representatives. We are enthusiastic about the opportunity to develop our participation in NAMWOLF and to expand its exposure in the southern market.



Law Firm News: Successes & Awards



Gonzalez, Quesada, Lage, Crespo, Gomez & Machado, LLP ("SMGQ LAW"), was honored with the "2010 Law Firm of the Year Award" at the South Florida Hispanic Chamber of Commerce's 16th Annual Sunshine Awards Luncheon on Wednesday, November 3, 2010 at the Biltmore Hotel in Coral Gables, Florida.

SMGQ LAW is an AV-Rated, South Florida-based law firm offering its clients services in a wide range of areas including corporate, securities and lending transactions, complex commercial and business litigation, insurance coverage and life, health, disability and ERISA litigation, white-collar criminal defense, commercial and residential real estate transactions, tax, asset protection and estate planning, government relations and entertainment, and sports and art law. The firm enjoys client relations throughout the United States, Latin America, Europe, the Middle East and Asia.

Members of the firm are involved in various organizations that provide legal services to the indigent through local pro bono programs. Committed attorneys and staff from the firm also contribute their time, money and other resources to local, national and international charitable, philanthropic and religious organizations, with the common purpose of giving back to the South Florida community.

KUCHLER POLK Schell Weiner & Richeson, LLC

Kuchler Polk Schell Weiner & Richeson, LLC in New Orleans is pleased to announce several positive developments.

Deb Kuchler has been appointed to serve as one of the Defense Liaison Counsel and to serve as a member of the Defense Steering Committee for the Deepwater Horizon Multi-District Litigation arising out of the explosion of the rig on April 20, 2010 and subsequent oil spill in the Gulf of Mexico.

Monique Weiner's appellate briefing, and preparation of the defense at the trial court level, recently resulted in the United States Fifth Circuit Court of Appeals affirming the trial court's grant of summary judgment in *Keri Richard v. DuPont Company*. After her termination, the plaintiff claimed that she was disabled under the Americans with

Disability Act ("ADA"), and that DuPont had failed to accommodate her disability, resulting in a discrimination and wrongful termination claim. She also alleged that she was discriminated against because of her gender and her pregnancy. The trial court granted summary judgment as to all claims, and the Fifth Circuit affirmed the dismissal, finding that no genuine issues of fact existed as to whether the plaintiff was disabled under the ADA, or whether she had proved pretext for the gender discrimination claim. The unpublished opinion can be located at 2010 WL 3852347 (C.A.5 (La.) 2010).

Francis deBlanc and Terrance Prout have joined the firm as associates. Both focus their practice on Toxic Tort Litigation, Products Liability, Premises Liability and General Civil Litigation.

And, to recognize the personal accomplishments of our lawyers along with their professional ones, in October Leigh Ann Schell completed the Chicago marathon and Janika Polk completed the San Francisco half marathon.



**NEMETH
BURWELL**
Attorneys & Counselors

Nemeth Burwell Announces Recent Victories

Nemeth Burwell, P.C. has continued its run of impressive wins and positive outcomes. In the last 45 days, the Firm had two Motions to Dismiss granted in federal court: one case involving claims of Whistleblowing, Race Discrimination, Harassment, and Retaliation; the other case involving claims of Age Discrimination and Retaliation. The Firm secured the Dismissals of two claims pending before the EEOC: one involving a claim of Age Discrimination; and the other involving claims of Disability Discrimination and Retaliation.

In another case involving Whistleblowing and other employment-related claims, the Firm secured a case evaluation award for a modest (five figures) sum that was literally millions less than the demand in the Complaint.

As for examples of other successful resolutions, in one case the Firm fended off a motion to dismiss its Counterclaim; precipitating the voluntary dismissal of the entire Complaint with the Plaintiff receiving nothing. In another case, the Firm secured a settlement of a case involving claims for Breach of Contract and Age Discrimination for less than the severance package initially offered to the separated employee. In a Whistleblower case, the Firm filing a Motion for Summary Disposition which prompted the quick and successful settlement of the claim.

LAW FIRM NEWS—Successes and Awards



Noted Employment & Corporate Attorney Joins PCT Law Group, PLLC



PCT Law Group, PLLC is pleased to announce that Dominique T. March has joined the firm's new Boca Raton, FL, office as Managing Partner. She will focus her practice on corporate, employment law and employment litigation.

March has extensive experience representing employers of all sizes. She is an advocate of developing preventive strategies to reduce employer exposure to employment lawsuits. In addition, March has litigated the enforcement of non-competition agreements and issues arising under federal employment laws.

PCT Law Group, PLLC (www.pctlg.com) provides legal counsel and representation in the practice areas of corporate, intellectual property, employment and litigation.

professionalism, and integrity.

Kelly is the third recipient of the Minneapolis Bet-the-Company Litigator of the Year Award, joining previous recipients Lewis A. Remele and Marianne D. Short. Tim Kelly is a 1973 magna cum laude graduate of the University of Minnesota School of Law, where he was a research editor of the Minnesota Law Review. He is a member of Phi Beta Kappa and the Order of Coif. In 1974-1975, Mr. Kelly clerked on the U.S. Supreme Court for Chief Justice Warren E. Burger.



GIFFEN & KAMINSKI, LLC
Attorneys at Law

Giffen & Kaminski is pleased to announce the addition of three lawyers who have joined our firm to help serve our clients and we hope you will help us welcome them.

We are a progressive women-owned litigation firm that creates a culture for our clients and employees which champions excellence, diversity, teamwork, concern for others, and professional growth. Our firm is committed to continually evolving our legal practice to meet the needs of our clients.



Tim Kelly Named by Best Lawyers' 2011 Lawyer of the Year



Timothy D. Kelly, a partner and co-founder of the Minneapolis law firm Kelly and Berens, P.A., has just been named the "Minneapolis Bet-The-Company Litigator of the Year" for 2011 by Best Lawyers.

Best Lawyers, the oldest and most respected peer-review publication in the legal profession, compiles its lists of outstanding attorneys by conducting exhaustive peer-review surveys in which thousands of leading lawyers confidentially evaluate their professional peers. The current, 17th edition of The Best Lawyers in America (2011) is based on more than 3.1 million detailed evaluations of lawyers by other lawyers.

Only a single lawyer in each specialty in each community is honored as the "Lawyer of the Year." The attorneys honored as "Lawyers of the Year" have received particularly high ratings in the surveys by earning a high level of respect among their peers for their abilities,



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Law Firm News: Successes & Awards

SCHWARTZ HANNUM PC

LABOR AND EMPLOYMENT LAWYERS REPRESENTING MANAGEMENT

Schwartz Hannum PC Expands Immigration Practice With Addition Of Maria L. Santos



Maria L. Santos

Schwartz Hannum PC is pleased to announce that Maria L. Santos has become Immigration Counsel to the Firm. Sara Goldsmith Schwartz, Founder and Managing Partner of the Firm, is delighted by the addition of Maria to the Firm's Immigration Practice and commented that Maria brings with her a wealth of experience in employment-based immigration and nationality law. "Maria's talent and experience will be an invaluable asset to the Firm and its clients who rely on Schwartz Hannum for these critical services."



Sara Goldsmith Schwartz

Maria L. Santos is a graduate of Boston College Law School. She received a Bachelor of Science degree, *summa cum laude*, from Rivier College. Maria has over 14 years of

experience in employment-based immigration and nationality law, and has represented corporations, institutions and individuals on both a local and national level. Her practice also includes family-based immigration.

Maria is a member of the American Immigration Lawyers Association (AILA), the Massachusetts Bar Association (MBA), the New England Human Resources Association (NEHRA), Associated Industries of Massachusetts (AIM), and the Greater Lowell, Northern Middlesex, and North Suburban Chambers of Commerce. She is Chair of the Board of the Cambridge Portuguese Credit Union, and a member of the Massachusetts Alliance of Portuguese Speakers, the Rivier College Paralegal Program Advisory Board, and the Rivier College Alumni Board of Trustees. Maria is fluent in both English and Portuguese.

Settling Parties Beware of New Medicare Reporting Requirements

By: John K. Nelson | Cooper & Walinski, L.P.A.



New Medicare Reporting Requirements are Added to Longstanding Medicare Reimbursement Requirements

The date for compliance with new Medicare reporting requirements (October 1, 2010) has arrived. These requirements apply to any payment of a judgment in, or settlement of, a claim or lawsuit brought by a plaintiff who seeks to recover from a third-party medical bills that were paid by Medicare. A plaintiff is eligible for Medicare payments if he or she:

- is 65 years of age or older;
- has been entitled to receive Social Security Disability benefits for at least 24 months;
- has amyotrophic lateral sclerosis ("ALS"); or
- has had end-stage renal disease within the last 36 months.

When a settlement or judgment is paid to a Medicare recipient, the parties must be mindful of both the Medicare reporting requirements and the need to satisfy Medicare's reimbursement claims.

Defendant's Medicare Reporting Requirements

For all payments of settlements or judgments to Medicare-eligible plaintiffs made on or after October 1, 2010, defendants and their insurers must report the payments to the Centers for Medicare and Medicaid Services ("CMS"). These payments must be reported quarterly, beginning in the first quarter of 2011. The reporting will be made electronically to Medicare's Coordination of Benefits Coordinator ("COBC"). All defendants and their insurers should now be registered with the COBC and in file testing status.

To comply with these reporting requirements, defendants will need to obtain from the plaintiff, at a minimum, the following information regarding the plaintiff:

- full name, as it appears on the Social Security card;
- date of birth;
- Social Security number; and
- Health Insurance Claim Number ("HICN") from the Medicare card, if available.

New Medicare Reporting Requirements

Some courts handling pattern litigation like asbestos claims have issued standing orders which require that plaintiffs provide this information (and more) to defendants on designated data forms. Information provided on these forms can be used by defendants and their insurers for specified purposes only.

All payments of settlements or judgments in excess of \$5,000 (for claims resolved before 2012) must be reported to Medicare. This threshold amount drops in subsequent years.

Payments of settlements or judgments in cases based on incidents occurring before December 5, 1980 are not reportable. For claims involving alleged injury by "exposure" to a product or substance, reporting is not necessary if there was no exposure to the particular defendant's products on or after December 5, 1980 alleged, established, or included within a release. According to recent statements by the CMS, settlements must be reported to the CMS even where plaintiff alleges only injury or exposure before December 5, 1980 if the plaintiff signs a full release of all claims against the defendant (which, according to the CMS, would release claims for exposures after December 5, 1980).

Where a settlement or a judgment involving a Medicare recipient involves multiple defendants or multiple insurers, each defendant or insurer involved must report the total settlement or judgment to Medicare, not just the share it paid. If a settlement or judgment is paid by insurance which involves a deductible, whether the defendant or its insurer needs to comply with the Medicare reporting requirements depends on whether the settlement or judgment amount is within the deductible.

Failure to report a payment of a settlement or judgment to a Medicare beneficiary could result in a fine to defendant or its insurer of \$1,000 per day, per claim.

Additional information about the Medicare reporting requirements is available online at www.cms.gov/MandatoryInsRep.

Potential Liability for Not Satisfying Medicare's Reimbursement Claim

When a tort claim is resolved by payment of a settlement or judgment, the primary responsibility to resolve Medicare's reimbursement claim has historically rested with the plaintiff, and it still does. But if a plaintiff fails to reimburse Medicare for its conditional payments,

Medicare may sue directly the plaintiff, the plaintiff's counsel, the defendant, and/or the defendant's insurer to recover back the Medicare conditional payments and it can recover up to **double** the amount of the conditional payments (if a lawsuit is necessary) **even if the defendant or its insurer has already paid the settlement or judgment.**

Because of this potential liability, defendants should take steps to ensure that the plaintiff discharges all Medicare reimbursement claims from the proceeds of the settlement or judgment. This can be accomplished by, for example:

1. Drafting a release which specifies a process for resolving the Medicare claim. Options include requiring the plaintiff's attorney to deposit into his or her client trust account a sufficient part of the settlement proceeds to resolve Medicare's claim before the remaining funds are disbursed to the plaintiff;
2. Requiring the plaintiff to provide defendants with written proof of satisfaction of Medicare's reimbursement claim; and/or
3. Including provisions in the release by which plaintiff agrees to indemnify defendants and their insurers against any claim or suit brought by Medicare to recover its conditional payments made to plaintiff.

To expedite the conclusion of a case upon a settlement, it is important for plaintiff's counsel to self-identify – i.e. to contact Medicare early in the case to determine whether, and to what extent, Medicare has made conditional payments to the plaintiff. This will allow Medicare to open a potential recovery file early in the case, so it is better prepared to resolve its reimbursement claim when the case is eventually settled.

