The Legal Intelligencer

THE OLDEST LAW JOURNAL IN THE UNITED STATES 1843-2019

PHILADELPHIA, FRIDAY, NOVEMBER 22, 2019 VOL 260 • NO. 102 $5.00 An ALM Publication

Pa. Lawyer Pleads Guilty to $3.4M Settlement Scam

BY P.J. D'ANNUNZIO
Of the Legal Staff

A former White and Williams insurance attorney has pleaded guilty to a charge related to scamming product manufacturers and class action settlements out of $3.4 million, the Philadelphia-based U.S. Attorney's Office has announced.

Craig Cohen pleaded guilty to mail fraud in federal court Thursday afternoon. According to a plea agreement filed by the U.S. Attorney's Office for the Eastern District of Pennsylvania, Cohen assisted authorities in their investigation.

Sentencing has been scheduled for February. Cohen faces a maximum of 20 years in prison and prosecutors are seeking $3.4 million in restitution.

Cohen's lawyer, Hope Lefeber, did not return a call seeking comment.

Scam *continues on* **10**

$21M Bad-Faith Verdict Against Nationwide Mulled by Justices

BY MAX MITCHELL
Of the Legal Staff

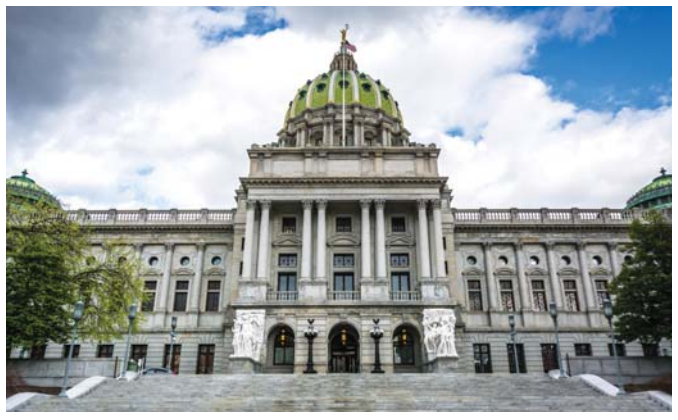

Photo by Shutterstock
The Pennsylvania State Capitol building in Harrisburg.

A trial judge's decision to slam an insurance carrier with a $21 million bad-faith award was an assault on the industry and the state Superior Court was well within reason to toss the verdict, an attorney representing Nationwide argued before the Pennsylvania Supreme Court in the closely watched case, *Berg v. Nationwide*.

Dechert attorney Robert Heim told six judges of the Supreme Court during its Harrisburg session Thursday that Berks County Court of Common Pleas Judge Jeffrey Sprecher's decision awarding the plaintiffs $18 million in bad-faith damages and $3 million in attorney fees was completely divorced from the evidence in the record and showed clear bias.

Sprecher's scathing 2014 opinion announcing the decision was a "flat-out assault on the [insurance] industry," Heim told the justices.

Nationwide *continues on* **10**

Longtime Reed Smith Partner to Become Highmark Health GC

BY DAN CLARK
Of the Legal Staff

Highmark Health announced Wednesday that longtime Reed Smith partner Carolyn Duronio has been named general counsel.

Duronio will begin her role as general counsel Jan. 6. She will oversee a staff of

Highmark Health *continues on* **11**

Litigation Funders Find Traction With Smaller Firms, Amid Buyers' Market

BY DAN PACKEL
The American Lawyer

Small law firms have mostly been the ones driving the boom in commercial litigation finance, according to a new report on the industry from broker Westfleet Advisors.

In collecting data on several dozen commercial litigation funders active in the U.S. market, Westfleet found that 70% of the capital committed by litigation funders over a 12-month period spanning 2018 and 2019 went to firms outside of the Am Law 200.

In a connected finding, the broker also highlighted the popularity of portfolio deals that fund a collection of cases being handled

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PEOPLE IN THE NEWS

ADDITIONS

CONNOR

Reger Rizzo & Darnall announced that **William M. Connor** joined the firm's Philadelphia office as a partner in the litigation department.

Connor has experience handling a variety of commercial and personal injury matters, including products liability and mass tort litigation, construction litigation, liquor liability, admiralty, transportation law, insurance coverage and bad-faith litigation, employment litigation and general casualty/premises liability.

Connor defends manufacturers and sellers in products liability litigation involving a variety of machines, trucking and automotive products, pharmaceuticals, chemicals, asbestos and consumer products.

He litigates matters involving allegations of manufacturing and construction design defect, inadequate warning, exposure to toxic chemicals and worksite accidents.

He has experience representing trucking companies and common carriers, as well as motor vehicle and fleet insurers and their insureds.

He also litigates employment-related matters, as well as a variety of insurance coverage issues, representing insurers in declaratory judgment actions to enforce exclusions and other limitations of coverage.

His practice also includes the representation of bars, taverns, restaurants, hotels and clubs in liquor liability cases.

In addition to his litigation experience, Connor served as a mediator and arbitrator on personal injury and commercial matters as a member of the **American Arbitration Association–Commercial Arbitration Tribunal**.

Jonathan Flora, an attorney with more than 20 years of experience advising clients on the tax aspects involved in corporate structures, partnerships and business transactions, joined **Ballard Spahr** as a partner in its tax group.

Flora's experience spans industries and deal types, including mergers and acquisitions, joint ventures, divestitures, investment transactions, private offerings, licensing and reorganizations.

He provides tax counsel for private equity fund formation, advises emerging companies on the tax advantages of entity and capitalization options, represents foreign companies on in-bound tax planning, and handles the tax aspects of mergers and acquisitions transactions.

He represents clients in disputes with the Internal Revenue Service and state taxing authorities.

Flora counsels exempt organizations on structuring, affiliation, operating and compliance issues.

He also advises on allocation and distribution matters.

He joins Ballard Spahr from **Schnader Harrison Segal & Lewis**, where he was a partner in the tax group and chair of the employee benefits group.

Horn Williamson announced that Philadelphia construction attorney **Matthew H. Dempsey** joined the firm as an associate.

Dempsey will share his time between the firm's construction practice and the firm's construction defect legal team.

After graduating from **Villanova University Charles Widger School of Law**, Dempsey clerked for Judge **Bernard A. Moore** of the Montgomery County Court of Common Pleas.

For the last five years, Dempsey was engaged in private practice as a construction litigation attorney.

He is barred in state and federal court in both Pennsylvania and New Jersey as well as the U.S. Bankruptcy Court for the Eastern District of Pennsylvania and the District of New Jersey and the U.S. Tax Court.

Dempsey sits on the boards of the Woodbury Old City restoration committee and **Woodbury Community Pride**.

EVENTS

The **Barristers' Association of Philadelphia Inc.** held a happy hour at Ladder 15 to raise funds for its annual turkey drive.

With the underwriting of **Post & Schell**, 100% of the proceeds will help Barristers' feed about 700 Philadelphia-area families.

Members of Post & Schell's leadership team, including president and CEO **James Johnston**, general counsel and chief compliance officer **Andrew Allison**, and chief marketing and communications officer **Michael Baltes**, attended.

Post & Schell associate and Barristers' elected member **Aaron Dunbar** coordinate the event. •

All potential items for People in the News should be addressed to **Aleeza Furman** at The Legal Intelligencer, **afurman@alm.com**

REGIONAL NEWS

NJ Firm Targeted in Texas-Based Litigation Funder's Latest Suit

BY ANGELA MORRIS
New Jersey Law Journal

Two New Jersey attorneys facing a $1 million litigation funding lawsuit in Houston removed the case from state to federal court Tuesday.

The lawsuit is just the latest example of a nationwide trend in which litigation funders pursue law firms alleging nonpayment of litigation loans.

This time, lender and plaintiff, Series 4—Virage Master, on Oct. 31 sued attorneys John Vlasac Jr. and Boris Shmaruk and their firm, Iselin, New Jersey-based Vlasac & Shmaruk. It seeks to recover more than $1 million.

Virage has filed many similar lawsuits in the past.

According to Vlasac & Shmaruk's website, Shmaruk practices workers' compensation law, while Vlasac handles civil litigation, including personal injury, medical malpractice and work accident cases, and toxic and mass tort matters, among other things.

The law firm, which has offices in New Jersey, New York and Pennsylvania, has been a borrower with Virage since 2018, and borrowed $925,000 in April 2018, the petition said. The firm's two name partners individually guaranteed the loan, which was supposed to be paid back with at least 60% of case proceeds, the suit alleges. But so far, the defendants allegedly have made only two payments totaling $24,226. They've received other case proceeds on eligible cases, but have failed to pay back the loan, the plaintiff also claims. Virage has demanded payments, but the defendants have refused, said the petition.

The loan balance, plus interest, now stands at $1.24 million, the petition said. Virage alleges the defendants breached the contract. It seeks to recover damages, attorney fees and costs.

The law firm has been a borrower with Virage since 2018, and borrowed $925,000 in April 2018, the petition said.

Plaintiffs attorney Ashish Mahendru of Mahendru in Houston didn't immediately return an email seeking comment.

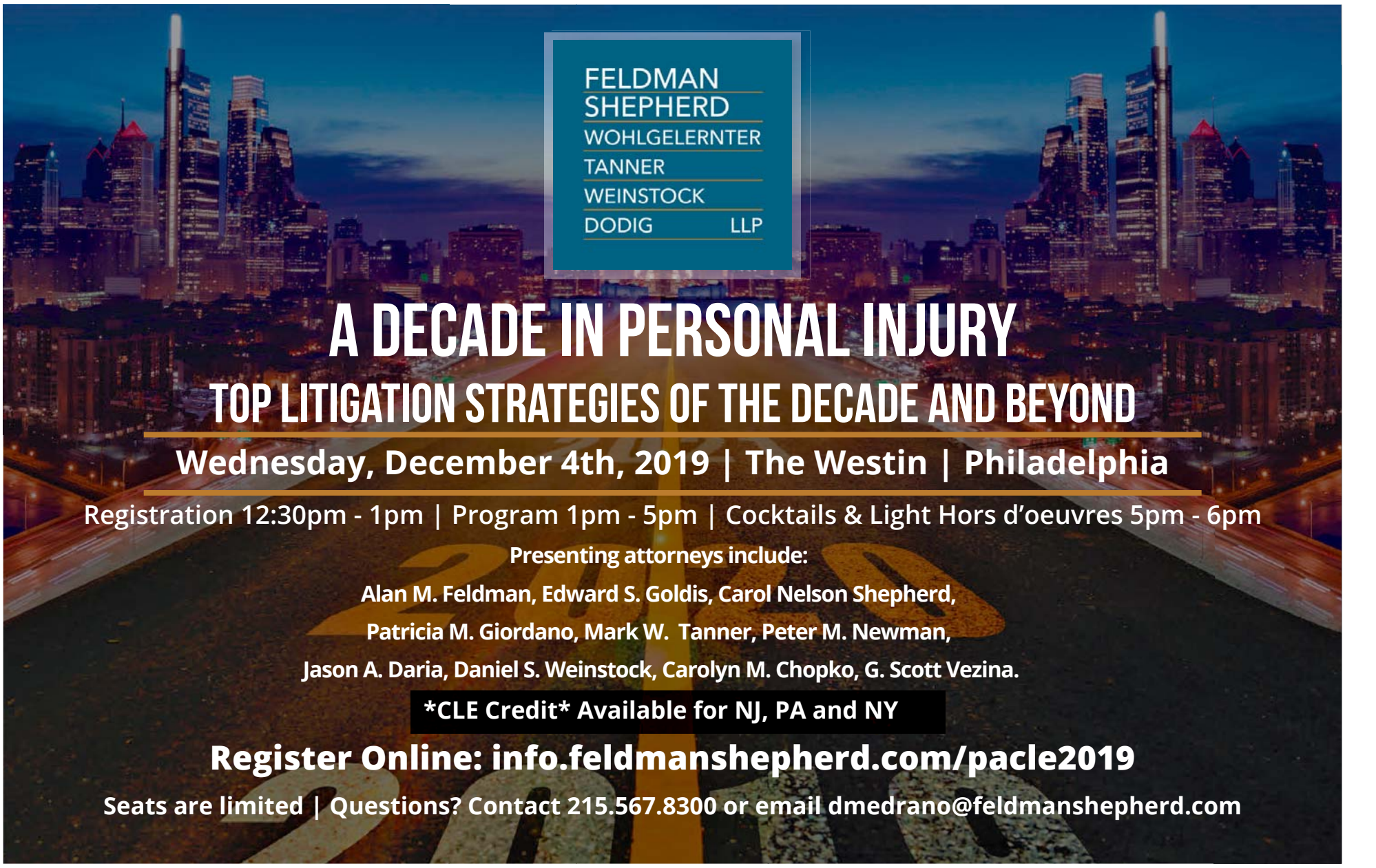
The defendants removed the case to federal court because, while Virage operates in Harris County, Texas, the defendants live and work in New Jersey, according to a notice of removal.

The defendants' attorney, James W. Walker, managing partner of the Dallas office of Hackensack, New Jersey-based Cole Schotz, declined to comment on specifics of the case, but said he's pleased it was removed to federal court, and that he looks forward to pursuing his clients' rights under the contract and Texas law.

Across the nation, there's been a rise in litigation by big litigation finance companies that allege law firms fail to repay advances. For example, in August, Virage won a $2.4 million judgment against a Missouri law firm for failing to make payments on a $1.4 million litigation loan.

And in October, Virage filed a $5.74 million lawsuit against a Texas attorney who allegedly didn't make any payments on a $3.25 million loan, made in 2015 for business expenses, even though some of the cases that were collateral for the loan have already settled.

Angela Morris can be contacted at amorris@alm.com. •



NATIONAL NEWS

Ex-Big Law Partner Sues to Stop Calif. 'Woman Quota' Law

BY CHERYL MILLER
The Recorder

A retired Baker McKenzie partner from Illinois is the named plaintiff in a federal lawsuit challenging a California law that requires corporations to include women on their boards of directors.

Creighton Meland Jr., a former banking and finance partner in Baker McKenzie's Chicago office, is represented by the Pacific Legal Foundation. The complaint, filed in California's Eastern District, said the new state law "is not only deeply patronizing to women, it is also plainly unconstitutional."

A resident of Hinsdale, Illinois, Meland is a shareholder of Hawthorne, California-based OSI Systems, which makes medical monitoring and security components. The company's seven-member board of directors includes no women.

A spokeswoman for Baker McKenzie said Meland left the firm in 2018, and the firm does not endorse or support the lawsuit.

"Baker McKenzie is committed to a diverse and inclusive culture where all of our people flourish, contribute their ideas and skills to the success of the business of the firm and achieve a sense of meaningful well-being and purpose at work," she said.

Meland and his attorneys at the Pacific Legal Foundation allege the law, which the complaint refers to as "the woman quota," denies him the "right to vote for the candidate of his choice, free from the threat that the corporation will be fined if he votes without regard to sex."

Meland, through his attorney, declined to comment on the suit. Anastasia Boden, a senior attorney with the Pacific Legal Foundation, said Meland approached the firm for representation in the case.

California's law requires a publicly traded company with "principal executive offices" in the state to have at least one woman serving on its board of directors by the end of 2019. By 2021, companies with six or more directors must have at least three women serving on the board. Corporate violators are subject to fines starting at $100,000.

Photo by Jason Doiy

Sacramento State Capitol building in California.

"This law puts equal numbers above equal treatment," Boden said in a prepared statement. "This law is built on the condescending belief that women aren't capable of getting into the boardroom unless the government opens the door for them. Women are capable of earning a spot on corporate boards without the government coercing businesses to hire them."

Senate Bill 826 was a priority bill for the California Legislature's Women's Caucus. The legislation was patterned after similar requirements in European countries, including Norway and Germany, that a certain number of corporate board seats be reserved for women.

The legislation was among the last bills signed by Gov. Jerry Brown. Although he noted "potential flaws that indeed may prove fatal to its ultimate implementation," Brown wrote in a signing statement that "given all the special privileges that corporations have enjoyed for so long, it's high time corporate boards include the people who constitute more than half the 'persons' in America."

The bill's author, Sen. Hannah-Beth Jackson, D-Santa Barbara, said she respects Meland's "constitutional right" to challenge the law.

"However, I strongly believe that this measure meets constitutional requirements and will be held up in court," Jackson said. "Significant research has shown the importance of adding women to boards to improve profitability and add to the economic well-being of the state, as well the interest of the state to advance gender equality."

The law is facing a separate challenge in state court by three plaintiffs represented by the conservative group Judicial Watch Inc. That complaint alleges that the hiring requirements violate anti-discrimination language in Article 1 of California's constitution.

Cheryl Miller can be contacted at cmiller@alm.com. •

Longtime Warner Bros. Television Group GC Promoted to New Role

BY DAN CLARK
Corporate Counsel

Longtime Warner Bros. Television Group general counsel Jody Zucker has been promoted to the newly created role of executive vice president of legal affairs, the production company announced Monday.

Zucker will oversee the legal affairs across all of the studio's production divisions, which include Warner Bros. Television, Warner Horizon Scripted Television, Warner Bros. Animation, Warner Horizon Unscripted Television, Telepictures and Shed Media. He will also see the legal affairs of Alloy Publishing, Stage 13 and Blue Ribbon Content. Zucker will report to the company's general counsel, John Rogovin.

"Throughout his almost two decades with the studio, Jody has made a number of important contributions to Warner Bros. Television's industry-leading success," Rogovin said in a press release. "As every part of our business continues to evolve, thoughtful, visionary leaders like Jody are more valuable than ever. I'm glad that we'll be able to tap more broadly into his experience and expertise across the entire Television Group in this expanded role."

A spokesperson from Warner Bros. said that Zucker is not doing interviews on his new role.

Zucker most recently served as the Warner Bros. Television's senior vice president and general counsel. He joined the company in 2000 as vice president of legal affairs and also worked as deputy general counsel.

Before joining the Burbank, California-based Warner Bros. Television, Zucker worked as vice president of legal affairs at Paramount Network Television. He has also worked at Capital Cities/ABC Inc. as general attorney of litigation and employment. Zucker is a graduate of New York Law School.

Dan Clark can be contacted at dclark@alm.com. •

LEGAL MARKETING

Master Media Relations to Be on Top of Your Game as a Litigator

BY DAVE POSTON, MEGAN PAQUIN AND JEFF ROSSEN
New York Law Journal

Occasionally, we still hear that old trope from litigators under siege by the media: "We'll try our case in court, not the media."

Oh, if only that were possible. We recently had a litigator client argue a case at the U.S. Supreme Court, and when we searched for the law firm client's name on Google the day of the argument, it yielded 329,000 hits. As all of us have learned by now, maybe the hard way, any information that can excite or inflame will go around the world a million times a day, shaping and reshaping public opinion and taking on a life of its own. In today's world, you must master the media if you are going to effectively represent your client.

We have represented law firms in communications for years, and we marvel at how the speed of the game has changed. There are fewer newspapers, and those that are left are leaner. Meanwhile, there are a million self-made experts out there and, make no mistake, they will control your message if you are not vigilant.

We were reminded of this recently when our plaintiff's-side employment law firm client, Atlanta's Buckley Beal, argued *Bostock v. Clayton County, Georgia* at the high court. Gerald Bostock alleged that he was fired from his job as a juvenile court child welfare coordinator for Clayton County after he joined a gay softball league. The question before the court is whether discrimination against an employee because of sexual orientation constitutes prohibited employment discrimination "because of … sex" within the meaning of Title VII of the Civil Rights Act of 1964, 42 U.S.C. Section 2000e-2. Bostock was argued Oct. 8.

DAVE POSTON *is an attorney and CEO of Poston Communications, a public relations firm with a client base that is predominately law firms.* **MEGAN PAQUIN** *is a vice president at the agency. New York-based* **JEFF ROSSEN** *is a national investigative journalist and frequent consultant to Poston Communications.*

The case created a whirlwind of activity, and in our post-mortem we were reminded of why it's important for litigators—those fast-on-their-feet gladiators of the legal world—to call on the knowledge and experience of professional communicators. Here are a few of the takeaways from our experience representing these litigators as well as hundreds of others over the years to help lawyers with their media efforts for the benefit of their clients.

• Understand that risk extends beyond the courtroom.

Brand equity isn't just an MBA buzzword. Clients and consumers care about whether a company does the right thing, however they might define it. Witness the noise on both sides when Walmart and Dick's Sporting Goods pulled back on firearms and ammunition sales. In the Young Presidents' Organization (YPO) 2019 Global Leadership Survey in which 2,200 CEOs responded, more than 93% said it is more important for business to have a positive impact on society than to pursue profit. The same CEOs said shareholders rank behind their employees, customers and family. None of this means we are headed toward a kumbaya world. It does mean that it matters what the public thinks of your company in a broader social context. Bottom line: Your mission isn't just to win in the courtroom.

As much as law firms should focus on preventative strategies, similarly you also need to help clients implement a crisis plan—and communications should be a big part of it.

• "We don't discuss pending litigation."

Not so fast. The other side may welcome your silence and fill the vacuum with its own message. We agree, law firm clients should not discuss litigation except with their lawyers present because there are all sorts of mistakes they can make that will imperil a case. But litigators should speak up when the facts are in their favor. And if the facts aren't in your client's favor, the public likes to be reassured you are striving to do the right thing, and that you take the situation seriously. The public understands that businesses and people make mistakes, but avoiding responsibility won't win them over. This can be a challenge, but you're a litigator, right?

• Think ahead.

Every company is going to face difficult

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COMMERCIAL LITIGATION

What to Know Before Signing a Commercial Nondisclosure Agreement

BY GARY M. SANDERSON
Special to the Legal

In the increasingly competitive and globalized market, information is sacred. Companies secure it physically, digitally and in the minds of employees. As such, entities that are about to enter a partnership, merge or perform a transaction would be well-advised to get up to speed on how they handle commercial nondisclosure agreements (NDAs).

NDAs are legal contracts between parties that determine what information is deemed confidential and must be kept private. By their very nature, they are circulated prior to the parties actually agreeing to any business terms or sharing any information as part of a proposed transaction. Often, they are not given much thought, as the companies may be focused on the substance of the transaction and may not want to appear hard to work with by seeking massive revisions on what may be their introductory set of documents. Yet, this reluctance to review and revise an NDA can be a major error.

WHO'S SHARING INFORMATION

When receiving a proposed commercial NDA, the first matter to determine is whether it is a unilateral or mutual NDA. Unilateral NDAs generally only provide for

GARY M. SANDERSON *is an attorney with Pittsburgh-based law firm Meyer, Unkovic & Scott. He focuses his practice on a wide range of business matters and works with new and established companies to navigate complex transactions and disputes.*

the confidentiality and nondisclosure of one party's material, which can be appropriate when only one party is sharing information. More common, both parties will be sharing information with one another in an effort to decide if they should do business with each other. As such, a mutual NDA would be more appropriate to ensure both parties' information is validly protected. It would be a critical mistake for a party to blindly sign a unilateral NDA, yet mutually share information, and believe that it was protected.

WHAT IS BEING SHARED—AND WITH WHOM

Another aspect of the NDA that the parties should carefully analyze is the definition of what information must be kept confidential, what information may be excluded and who will have access to the information. Defining what information is to be kept confidential varies widely based on the type of transaction and industry. It is often suggested that parties define what must be kept confidential broadly, but only disclose the minimum that is needed for review in the proposed transaction. Defining confidential information broadly helps protect information that may have been inadvertently disclosed as part of a large batch of data, even though it may not have been pertinent to the transaction. In some instances, it is important for the parties to negotiate certain permitted disclosures, which often involve sharing information with representatives, such as accountants or attorneys of the company, or when compelled by law or if the information becomes public knowledge.

In the event of a breach of the NDA, it is vitally important that the disclosing party require a provision allowing for injunctive relief to stop or minimize the effects of a leak of information.

WHAT DAMAGES CAN LOOK LIKE

One of the more prominent—and certainly costly—recent cases involving the breach of an NDA was *ZeniMax Media v. Oculus VR*. ZeniMax sued the virtual reality technology company after alleging Oculus founder Palmer Luckey breached an NDA and misappropriated trade secrets, among other accusations. A federal jury ruled in favor of ZeniMax, apportioning $200 million (out of the total verdict of $500 million) for breach of the NDA. Facebook, which bought Oculus for $2 billion not long before the lawsuit, eventually settled the dispute for $250 million.

That was an extreme example of damages from NDA litigation, but the agreement itself was standard—notably, there was a clear definition of "proprietary information" and a statement that the information was to remain the property of the disclosing party. Although a massive company like Facebook can weather a quarter-billion-dollar verdict, many smaller

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litigation at some point. Data will be hacked, products will fail, innovations create new challenges and employees will say or do the wrong thing. As much as law firms should focus on preventative strategies, similarly you also need to help clients implement a crisis plan—and communications should be a big part of it. How will the legal and communications teams coordinate? Who is the front-facing spokesperson? What are the likely risk scenarios? Every crisis is litigation in the making, and your litigation crisis plan better include a communications component.

• **Get media training.**

Most communications firms have former broadcast and print journalists on staff. Some of them live and breathe crisis communications assignments, taking the hard questions for clients every day. In addition, they were the journalists who asked the tough questions. They know the tricks of the trade, what questions to anticipate and how to make sure your message makes it in the article or segment. While they won't show you how to control journalists, they will show you how to deliver your narrative in a crisp and compelling way. By the way, even the little things matter—like how you're sitting and what you're doing with your hands. Most C-suite executives start the session with a variation of "I think I know what to do but it'll be good to refresh, I guess." By the end of the day, every one of them—yes, every single one—says a variation of "I can't believe I walked in here thinking I knew what I was doing." They come away more confident, on message and equipped with the techniques to handle any situation with the media. The biggest mistake we see litigators make when speaking to the media is not being able to distill their message into something comprehensive for the public. There's an art to speaking to the masses, and you will pick it up quickly in media training.

• **Sometimes the client must speak.**

There are times when putting the lawyer out as the spokesperson suggests a company has something to hide. In some matters—products liability is a good example—brand preservation depends on the company's top executive speaking. Corporate communications departments, like legal departments, usually are better at locking things down than messaging. Rather than hiding your client away from the media, prevent reputation erosion by putting them out there, but only with you at their side, and after prepping them with media training.

• **Make social media an asset.**

Yes, you can be a target of a virtual mob, but you also can be proactive, forming your own groups and creating a following that both inoculates you from attacks and false information, as well as builds trust. Business leaders fear social media as a headless monster they can't control, and while we can't promise that the monster can be slain, having your own voice will ensure your position isn't trampled. Social media also is a research tool to find emerging issues and keep a finger on the pulse of public sentiment.

• **Lawyers should call the shots.**

While reputation and brand have to be top of mind, all communication strategies and decisions must be run through the attorney who is calling the shots on the legal case to establish attorney-client privilege and work-product protections. While we are strong advocates for being as transparent as possible, there are places that you can't go in the run-up to a court case. Litigators are experts in what can't be said, and professional communicators should discuss how to turn challenges into opportunities with a "how can we approach" for both sides to achieve a win.

• **Losing sometimes is winning.**

On cases that have public policy implications, we find that the public understanding of the case is as important as anything else in effectively representing your client, even if the battle at court is lost. In *Bostock*, we expect to see many companies take affirmative stands on equal treatment of the LGBTQ community, regardless of the outcome of the case. We feel confident our side prevailed in the court of opinion on *Bostock* because of the global coverage of this matter of general public concern.

• **Retain a communications firm that shares your values.**

We know, in the real world, everybody has to sometimes hold their nose because, well, business is business. We also know there are moral forks in the road, moments that define who we are. *Bostock* wasn't just another case to us; it was one of those times when we recognized a moral imperative, as a business, to place ourselves on the right side of history. By becoming the communications partner of the *Bostock* legal team, we did our very best to help them master the media on behalf of their client.

This article first appeared in New York Law Journal, an ALM affiliate. •

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companies might not have the money to survive a lawsuit over a breached NDA if the information is valuable enough.

WHAT HAPPENS AT THE END

Parties should also think about what should occur at the end of the arrangement, whether by expiration or termination. Companies should consider adding a provision requiring that the disclosed information be destroyed or returned to the disclosing party. It is also recommended that the parties ensure that the time periods for the nondisclosure agreements align with the companies' corporate needs. For example, some standard NDAs only require the parties keep the information confidential for a year or two. Some companies may want to negotiate a far longer period of confidentiality.

And in the event of a breach of the NDA, it is vitally important that the disclosing party require a provision allowing for injunctive relief to stop or minimize the effects of a leak of information. The disclosure of sensitive information may not cause immediate quantifiable damages, but it must be stopped, or it could be catastrophic for companies in certain industries.

Addressing these issues initially may be more effort but will reduce risk and save companies valuable time and money down the road. An attorney experienced in contracts between businesses will be able to help draft a commercial NDA and put minds at ease. •

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Scam

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Prosecutors claimed Cohen, who represented insurance companies in litigation over water damage, created a shell company called WLSP, which he used to file fabricated claims to collect settlement money for himself over the course of four years. He also used legitimate claims from the insurance companies he represented to illicitly line his own pockets, prosecutors alleged.

According to prosecutors, from 2015 to 2019 Cohen created fake subrogation claims by modifying the paperwork from legitimate claims that he and other attorneys had already successfully resolved on behalf of law firm clients.

"His fake paperwork for each claim made it falsely appear that losses to the insured were caused by one manufacturer's defective product, when in fact, a different manufacturer's product caused those losses," prosecutors said in an October statement. "Where necessary, Cohen would physically damage products and take pictures of them to submit with his fraudulent claim. He also engaged an expert engineer to examine the defective product and issue a report describing the defect that would entitle Cohen's purported client to a recovery against the product manufacturer or settlement fund."

In addition to filing fake claims, prosecutors said "Cohen also used legitimate, unresolved claims from insurance company clients of the firm and submitted those claims through WLSP, generating financial recoveries entirely for himself."

In those cases, Cohen allegedly convinced the firm and its clients that their claims were not viable and they shouldn't be pursued, even though they were, prosecutors claimed.

"In converting these legitimate claims to his own company's name and pursuing them solely for his own benefit, Cohen defrauded the insurance company clients of the law firm that were entitled to a recovery as well as the law firm that was entitled to a contingency fee on those matters," prosecutors had said.

To give the appearance of a legitimate business, prosecutors said Cohen also opened a post office box in Philadelphia and created internet domains and email addresses for his company.

Cohen was suspended by the state disciplinary board in April.

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Nationwide

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"You can't read these rants and ravings as being fair and impartial," Heim said, later adding, "The [Superior Court] credited the trial judge as much as they could ... but the evidence wasn't there."

Heim made the arguments in an effort to have the Supreme Court affirm the Superior Court's decision from April 2018 to toss the multimillion-dollar verdict and enter judgment for the defense.

Justice Christine Donohue recused from the argument session Thursday.

However, according to Pittsburgh attorney Kenneth Behrend, who represented plaintiffs Daniel and Sharon Berg, the Superior Court's decision went beyond the proper appellate scope of review, and did not give proper deference to the trial court. According to Behrend, Sprecher "lived" through Nationwide's aggressive litigation strategies, and so the court should have relied on his findings.

"The judge got to live with these litigation strategies," Behrend told the court. "There were observations made in a first-hand basis by the trial judge."

The case arose after plaintiffs took their damaged 1996 Jeep Grand Cherokee to a facility participating in the insurer's "Blue Ribbon Repair Program," where one appraiser recommended that the vehicle be totaled. The Bergs, however, alleged that Nationwide Mutual Insurance reversed that appraisal without informing them and then ordered the vehicle sent to another repair facility. After allegedly finding problems with the car, the Bergs argued that, despite the attempted repairs, Nationwide knowingly returned them their vehicle with an unsound structural frame in order to avoid paying for a new vehicle.

After a jury found Nationwide violated the Unfair Trade Practices and Consumer Protection Law, the trial judge granted a directed verdict for Nationwide, but the Superior Court eventually reversed, giving the plaintiffs another chance to try their bad-faith claims. In June 2014, Sprecher issued his $21 million bad-faith verdict, along with a lengthy and scathing opinion, finding that "Nationwide strong-armed its own policyholder rather than negotiating in good faith to compensate plaintiff for the loss suffered in the automobile collision."

A three-judge Superior Court panel reversed, and the Supreme Court agreed to take up the case in April.

Much of the argument session Thursday focused on determining exactly where the bad faith took place, and whether insurance carriers should act as a de facto guarantor of a repair shop if it tells its insured that the vehicle needs to be repaired, rather than replaced.

Behrend said that is the law and has been the law for years.

"You want to repair it, you need to repair it to safety standards," Behrend said. "If the carrier elects to repair it, they're responsible for it."

Heim, however, said the carrier could be considered a guarantor to the extent that the insured are reimbursed, but, he said, the repairs were not done at Nationwide's direction and the company had been led to believe the car was in a safe condition before it was released.

"Nationwide's duty was to pay," Heim said. "That's their duty. There's no duty beyond that."

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Highmark Health

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approximately 110 employees. She said in an interview Thursday that she began working with Pittsburgh-based Highmark Health in 1986 as outside counsel and this opportunity seemed to be a good fit.

"I've always loved the organization. There is so much going on in health care right now, and Highmark Health is going to be right in the middle of it," Duronio said.

She said she is looking forward to the challenges of working at an organization like Highmark Health.

"Working with an organization that has a really large insurer means that you're going to look for new ways to provide community-based health care at a higher quality and a lower cost," Duronio said.

Duronio will be joining Highmark Health as a part of its transition plan to replace chief legal officer Tom VanKirk. VanKirk will be retiring from his role at the end of 2020, at which point Duronio will take over as chief legal officer and executive vice president. VanKirk became chief legal officer of Highmark Health in March 2012.

Duronio has worked at Reed Smith in Pittsburgh her entire career. She joined in 1984 and became a partner in 1992. She has spent most of her career supporting tax-exempt organizations.

"There are no words to describe the impact Carolyn has had on Reed Smith and on the Pittsburgh community throughout her 35-year career. Through her law practice and her community service, she has advanced the efforts of nonprofits to do good for people in so many walks of life across Pennsylvania and beyond," Sandy Thomas, global managing partner at Reed Smith in Washington, D.C., said in a statement.

Duronio said Reed Smith has been "spectacularly supportive" throughout her career.

Highmark Health is one of the nation's largest nonprofit hospitals and Blue Cross Shield-affiliated insurers. It employs over 35,000 people in the U.S.

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Market

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by a particular law firm; 47% of capital committed over the study period took the form of law firm portfolios. These are predominantly employed by firms who have or are looking to build contingency-fee practices.

"It's a function of the fact that smaller law firms are more willing to entertain contingency fee arrangements than larger law firms," said Westfleet managing partner Charles Agee III.

Westfleet attempted to collect data from the 41 commercial litigation funders it identified as being currently active in the U.S. market. The vast majority contributed information via a third party, which was then kept confidential as it was aggregated. The buyers guide also includes capsule summaries of over 30 funders.

Based on these efforts, the broker found that the industry had a total of $9.5 billion in assets under management dedicated to commercial litigation finance. Of that total, in the past year $2.3 billion was committed to commercial litigation finance transactions with a nexus to the U.S.

For Westfleet, that disparity suggests that the supply of capital available is outpacing the current rate of deployment, and it indicates that funders feel pressure to increase their pace of deployment.

That, in turn, indicates a buyers market for the users of commercial litigation finance, both law firms and entities that have viable claims they'd be eager to pursue if attorney fees were not an issue.

"I think funders are going to be reluctant to compete on price so you'll see them competing on process. That will make for a better overall user experience and will be better for the overall industry," Agee said.

But Agee doesn't anticipate the buyers' market to continue indefinitely, particularly as players in the marketplace gain a fuller picture of how litigation finance operates in differing contexts.

"Awareness of litigation funding is very, very high. It's nearly 100%," he said. "But the depth of understanding necessary for lawyers to bring up with clients or for in-house lawyer to take litigation finance as an option to the C-suite, that can be addressed through education."

One area of opportunity is corporate portfolios. Only 15% of capital currently committed is in portfolios from corporations and other entities such as universities. But as corporations gain comfort with using litigation finance to unlock the value of claims, the tides could turn and demand could ultimately outpace supply.

"I don't think it's going to happen overnight," Agee said. "It will take years, not months, to really achieve the depth of understanding in the market to bring demand up to its potential."

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